



# Oregon

Theodore R. Kulongoski, Governor

## Department of Land Conservation and Development

635 Capitol Street, Suite 150

Salem, OR 97301-2540

(503) 373-0050

Fax (503) 378-5518

www.lcd.state.or.us

### NOTICE OF ADOPTED AMENDMENT

December 19, 2006



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

FROM: Mara Ulloa, Plan Amendment Program Specialist

SUBJECT: Wasco County Plan Amendment  
DLCD File Number 004-06

The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. Due to the size of amended material submitted, a complete copy has not been attached. A copy of the adopted plan amendment is available for review at the DLCD office in Salem and the local government office. This amendment was submitted without a signed ordinance.

Appeal Procedures\*

### **DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: January 2, 2007**

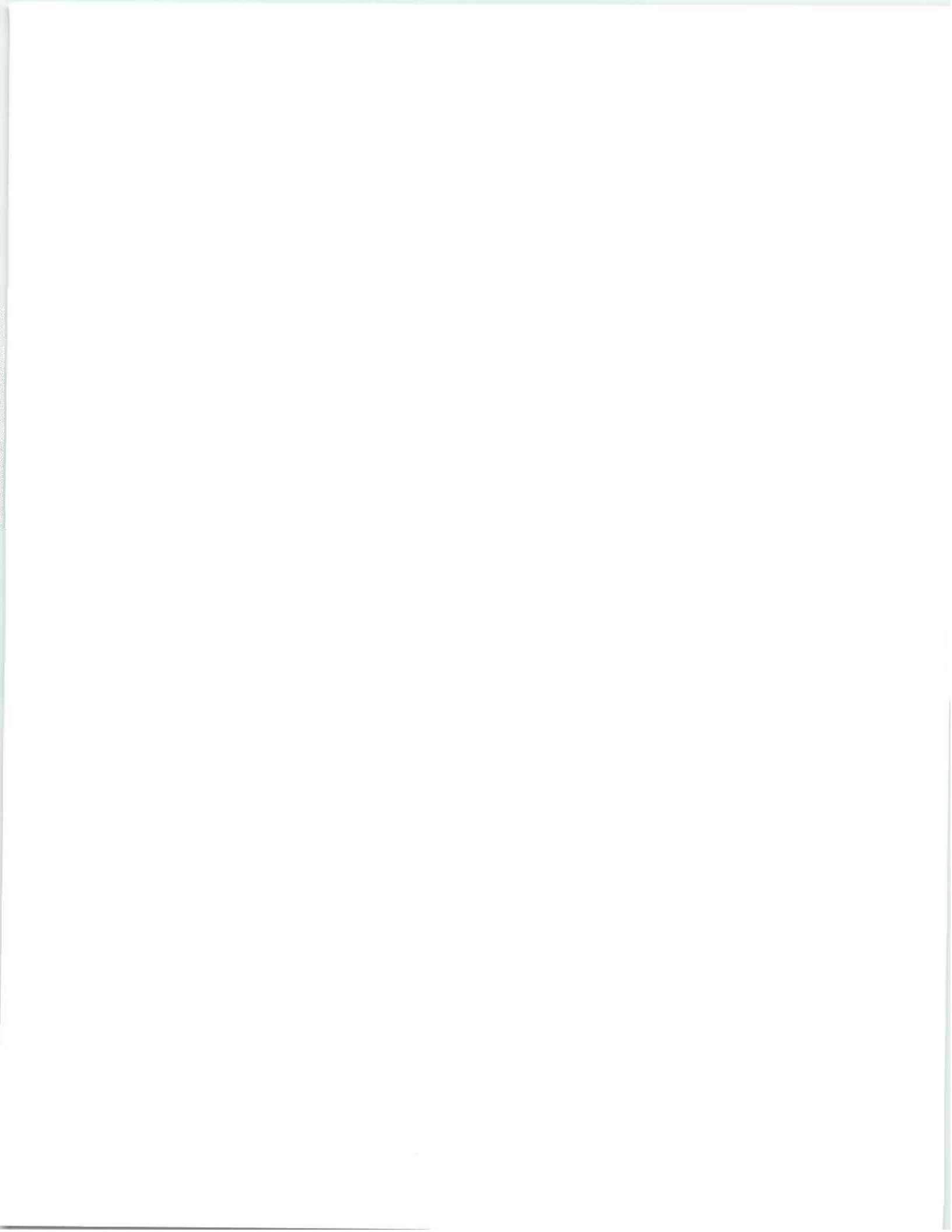
This amendment was submitted to DLCD for review 45 days prior to adoption. Pursuant to ORS 197.830 (2)(b) only persons who participated in the local government proceedings leading to adoption of the amendment are eligible to appeal this decision to the Land Use Board of Appeals (LUBA).

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 ABOVE DATE SPECIFIED.**

Cc: Doug White, DLCD Community Services Specialist  
Jon Jinings, DLCD Regional Representative  
Amanda Punton, DLCD Natural Resource Specialist  
Dawn Baird, Wasco County

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# Notice of Adoption

**THIS FORM MUST BE MAILED TO DLCD  
WITHIN 5 WORKING DAYS AFTER THE FINAL DECISION  
PER ORS 197.610, OAR CHAPTER 660 - DIVISION 18**

In person  electronic  mailed

DATE STAMP

**DEPT OF**

**DEC 12 2006**

**LAND CONSERVATION  
AND DEVELOPMENT**  
For DLCD Use Only

Jurisdiction: **Wasco County**

Local file number: **CPA-06-102**

Date of Adoption: **12/6/2006**

Date Mailed: **12/11/2006**

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? **Select one** Date: **8/10/2006**

Comprehensive Plan Text Amendment

Comprehensive Plan Map Amendment

Land Use Regulation Amendment

Zoning Map Amendment

New Land Use Regulation

Other:

Summarize the adopted amendment. Do not use technical terms. Do not write "See Attached".  
Comprehensive Plan Amendment to add an existing aggregate site to the County's Aggregate Inventory.

Does the Adoption differ from proposal? No, no explanation is necessary

Plan Map Changed from:

to:

Zone Map Changed from:

to:

Location: **3S 1E 0 4000**

Acres Involved: **30**

Specify Density: Previous:

New:

Applicable statewide planning goals:

- |                          |                          |                          |                          |                                     |                          |                          |                          |                          |                          |                          |                          |                          |                          |                          |                          |                          |                          |                          |
|--------------------------|--------------------------|--------------------------|--------------------------|-------------------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|
| <b>1</b>                 | <b>2</b>                 | <b>3</b>                 | <b>4</b>                 | <b>5</b>                            | <b>6</b>                 | <b>7</b>                 | <b>8</b>                 | <b>9</b>                 | <b>10</b>                | <b>11</b>                | <b>12</b>                | <b>13</b>                | <b>14</b>                | <b>15</b>                | <b>16</b>                | <b>17</b>                | <b>18</b>                | <b>19</b>                |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

Was an Exception Adopted?  YES  NO

Did DLCD receive a Notice of Proposed Amendment...

45-days prior to first evidentiary hearing?

Yes  No

If no, do the statewide planning goals apply?

Yes  No

If no, did Emergency Circumstances require immediate adoption?

Yes  No

*DLCD # 004-06 (15459)*



**DLCD file No.** \_\_\_\_\_

Please list all affected State or Federal Agencies, Local Governments or Special Districts:

Oregon Dept. of Transportation, Oregon Dept. of Geology & Mineral Industries, Wasco County Assessor

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Local Contact: **Dawn Baird, Associate Planner**

Phone: **(541) 506-2567** Extension:

Address: **2705 E 2<sup>nd</sup> Street**

Fax Number: **541-506-2561**

City: **The Dalles, OR**

Zip: **97058-**

E-mail Address: **dawnb@co.wasco.or.us**

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## **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 Complete Copies** (documents and maps) 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. Electronic Submittals: At least **one** hard copy must be sent by mail or in person, but you may also submit an electronic copy, by either email or FTP. You may connect to this address to FTP proposals and adoptions: **webserver.lcd.state.or.us**. To obtain our Username and password for FTP, call Mara Ulloa at 503-373-0050 extension 238, or by emailing **mara.ulloa@state.or.us**.
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 now access these forms online at **http://www.lcd.state.or.us/**. Please print on **8-1/2x11 green paper only**. You may also call the DLCD Office at (503) 373-0050; or Fax your request to: (503) 378-5518; or Email your request to **mara.ulloa@state.or.us** - ATTENTION: PLAN AMENDMENT SPECIALIST.

WASCO COUNTY PLANNING  
AND DEVELOPMENT  
Todd R. Cornett, Director  
2705 East Second Street  
The Dalles, Oregon 97058



Phone: (541) 506-2560  
Fax: (541) 506-2561  
Web Address: co.wasco.or.us

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## WASCO COUNTY COURT NOTICE OF DECISION

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**FILE #** CPA-06-102, CUP-06-112

**DATE:** December 6, 2006

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**REQUESTS** Comprehensive Plan Amendment to add an aggregate site to the County Aggregate Inventory, and Conditional Use Permit to allow extraction and crushing of aggregate, on approximately 25-30 acres of a 140 acre parcel.

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**RECOMMENDATION:** Approval, with conditions

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**APPLICANT/OWNER INFORMATION:**

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**Applicant(s)** Jack E. Stevens **Owner(s)** Same

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**Mailing Address** 56100 Smock Road  
Wamic, OR 97063

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**Mailing Address**

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**Contact** Katherine Young, Attorney, Foster/Peachey/Young

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**PROPERTY INFORMATION:**

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Township	Range	Section	Tax Lot No.(s)	Acres	Acct. #	Zoning
3S	13E	0	4000	140	10368	A-1(160)

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**Address:** None

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**Location:** West of U.S. Highway 197, approximately ¼ mile north of its intersection with Shadybrook Road, approximately 1¼ mile northwest of Tygh Valley, Oregon .

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**Attachments:**

**Staff Reviewer:** Dawn Baird, Associate Planner

- A. Conditions of Approval
- B. Time Limits & Appeal Information
- C. Maps

After recording, return to:  
Wasco County Planning & Development Dept.



## ATTACHMENT A – CONDITIONS OF APPROVAL

- A. Current and future property owners shall comply with the application as reviewed and approved by the staff report which is available at the Wasco County Planning Department. This report details the restrictions on aspects of the approved development including but not limited to location, dimensions and use. This decision does not constitute tacit approval for any other development or use.
- B. After Expiration Of The 21 Day Appeal Period And Prior To Commercial Operation of the Aggregate Site, the Owner(s) Shall:
1. Farm Management Easement: Sign and record with the Wasco County Clerk a completed Farm Management Easement.
  2. ODF Permit: Obtain a Permit to Operate Power Driven Machinery from the Oregon Department of Forestry (Notification of Operations).
  3. DOGAMI Operating Permit: Obtain an Operating Permit from Oregon Dept. of Geology & Mineral Industries (DOGAMI), and provide a copy to the Wasco County Planning Dept.
  4. Reclamation Plan: Submit a DOGAMI approved reclamation plan to the Wasco County Planning Dept. If DOGAMI does not a reclamation plan, a reclamation plan shall be completed and submitted for approval to the Wasco County Planning & Development Dept.
  5. DEQ Permits: The property owner shall research and obtain all necessary Department of Environmental Quality (DEQ) permits prior to commencement of the operation. Copies of permits shall be submitted to the Wasco County Planning Dept.

### C. Miscellaneous Conditions

- a. Mining equipment be removed from the site when not in use for more than 6 months.
- b. No-Disturbance Buffer: Maintain a minimum 100 foot no-disturbance buffer from Oak Creek for all new ground disturbance.
- c. Months of Operation:
  - 1) Aggregate extraction, crushing, screening, hauling and stockpiling may occur between March 1<sup>st</sup> and November 30<sup>th</sup> within the extraction boundary area, and hauling and stockpiling may occur during any month of the year in the areas identified as stockpile sites on the final site plan.
  - 2) Extraction, crushing, screening, hauling and stockpiling may occur during the months of December, January and February, below the ridge containing the current shale pit. (See map, Attachment C, 2/2).
  - 3) If ODFW submits written comments to the Wasco County Planning Office within five years from the date of final approval stating that mining activities are resulting in detrimental harassment to the White River Wildlife Area's winter wildlife, condition 3.c. shall replace 3.b., and the use of the site shall be restricted

during December, January, and February to screening and hauling on the areas identified for stockpiling on the final site plan.

- d. Hours of Operation shall be Monday – Saturday, dawn to dusk, but in all cases not to exceed 7 a.m. – 7 p.m.
- e. To avoid the encroachment of the proposed use on surrounding properties, all mining activities shall occur within the area outlined on the amended, approved, site plan (Attachment C, 2/2). Any expansion outside of the approved site should be reviewed as new development and will require approval of a Conditional Use Permit.
- f. This approval allows extraction, stockpiling, screening, and crushing. This approval does not include asphalt/concrete plant or batching, or blasting.
- g. To avoid excessive airborne dust, dust suppression shall be provided in accordance with Department of Environmental Quality (DEQ) Visible Air Contaminant Limitation standards as prescribed by OAR-340-208-0110.
- h. Water sprays or other suppressive devices should operate at all times that dust is created and should be located in such a manner as to most effectively suppress the polluting emissions.
- i. Noncompliance with any condition shall be grounds for revocation of the conditional use permit.

**D. Recommendation**

- a. Fill out and record Special Agricultural Considerations.
- b. The applicants have been provided a copy of the State of Oregon Right to Farm Ordinance, and the Wasco County Complaint Mediation Ordinance.

SIGNED THIS 11<sup>TH</sup> day of December, 2006, at The Dalles, Oregon.

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Todd Cornett, Planning Director  
Wasco County Planning & Development Office

State of Oregon  
County of Wasco

Signed or attested before me on December 11, 2006, by Todd Cornett.

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Notary Public – State of Oregon



## ATTACHMENT B – TIME LIMITS & APPEAL INFORMATION

No development shall occur until all zoning permits are obtained, all applicable zoning conditions are met, all building permits are issued and all appeal periods have expired.

*Per Section 2.125 of the Wasco County Land Use & Development Ordinance, if the aggregate extraction operation is commenced within two years from the date of approval and is not abandoned for one continuous year or more, the approval shall stay in full force and effect. If not, the approval shall expire and a new application shall be made.*

### **Please Note!**

No guarantee of extension or subsequent approval either expressed or implied can be made by the Wasco County Planning and Development Office. Please take care in implementing your proposal in a timely manner.

### **APPEAL PROCESS:**

The decision of the Wasco County Court shall be final unless an appeal from an aggrieved party is received by the State Land Use Board of Appeals within twenty-one (21) days of the mailing date of this decision, **Tuesday, January 2, 2007, 4:00 p.m.** The decision will not become final until the period for filing an appeal has expired.

A complete record of the matter is available for review upon request during regular business hours or copies can be ordered at a reasonable price at the Wasco County Planning and Development Office.

### **FINDINGS OF FACT:**

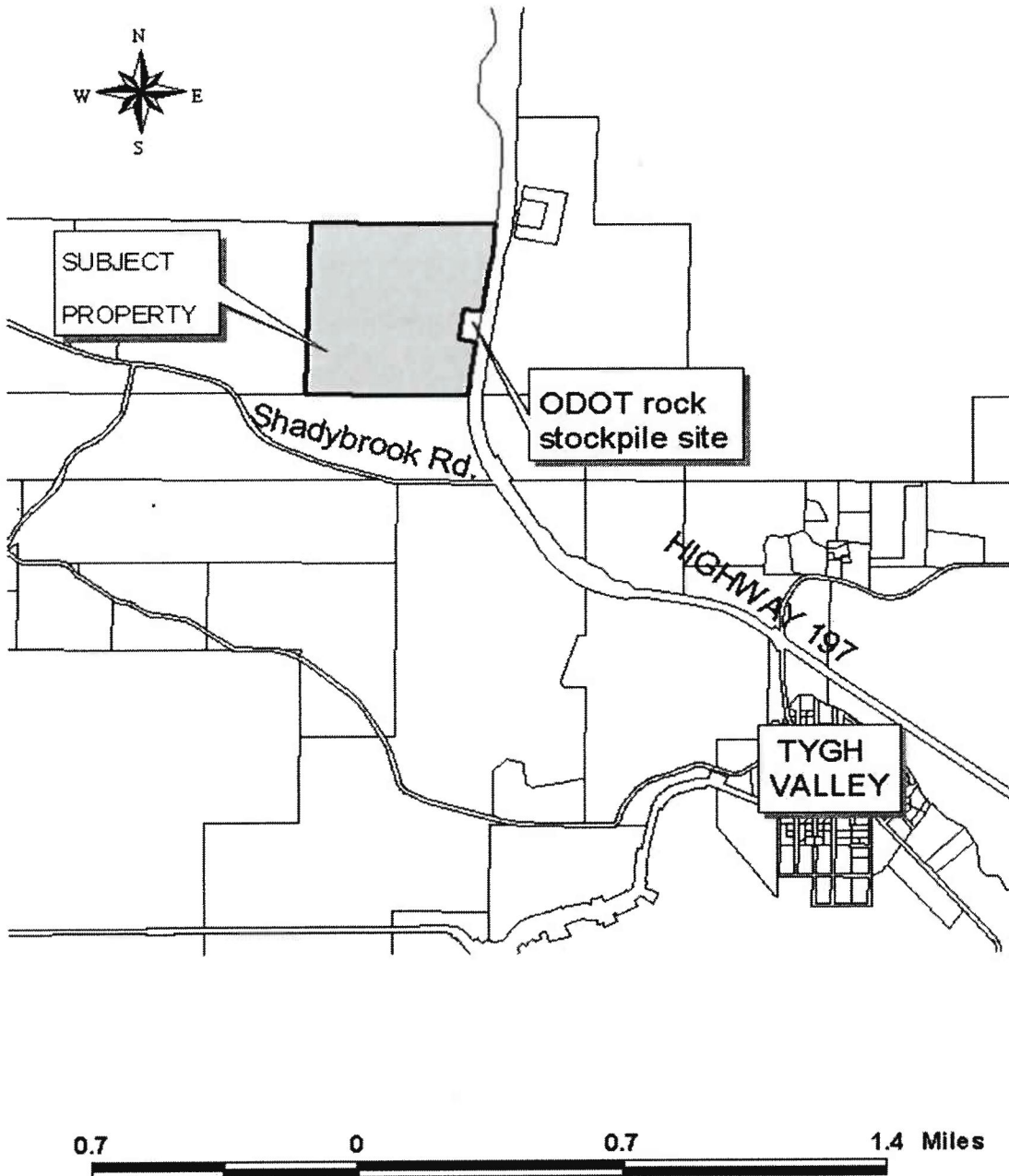
Findings of fact approving this request may be reviewed at the Wasco County Planning & Development Office, 2705 East Second Street, The Dalles, Oregon, 97058, or are available for purchase at the cost of \$0.25 per page. These documents are also available online at: [www.co.wasco.or.us/planning/planhome.html](http://www.co.wasco.or.us/planning/planhome.html), click on Current Land Use Actions. There is a table for National Scenic Area applications and a table for regular County applications. Each table is sorted alphabetically by the name of the applicant. The information will be available until the end of the appeal period.

**NOTICE TO MORTGAGEE, LIENHOLDER, VENDOR OR SELLER: Oregon Revised Statutes, Chapter 215, requires that if you receive this notice, it must promptly be forwarded to the purchaser**

# ATTACHMENT C-MAPS

3S 13E 0 4000

## Vicinity Map





ATTACHMENT C - MAPS

3S 13E 0 4000

Amended Site Plan

Jack Stevens  
Conditional use permit application

**AMENDED  
SITE  
PLAN**

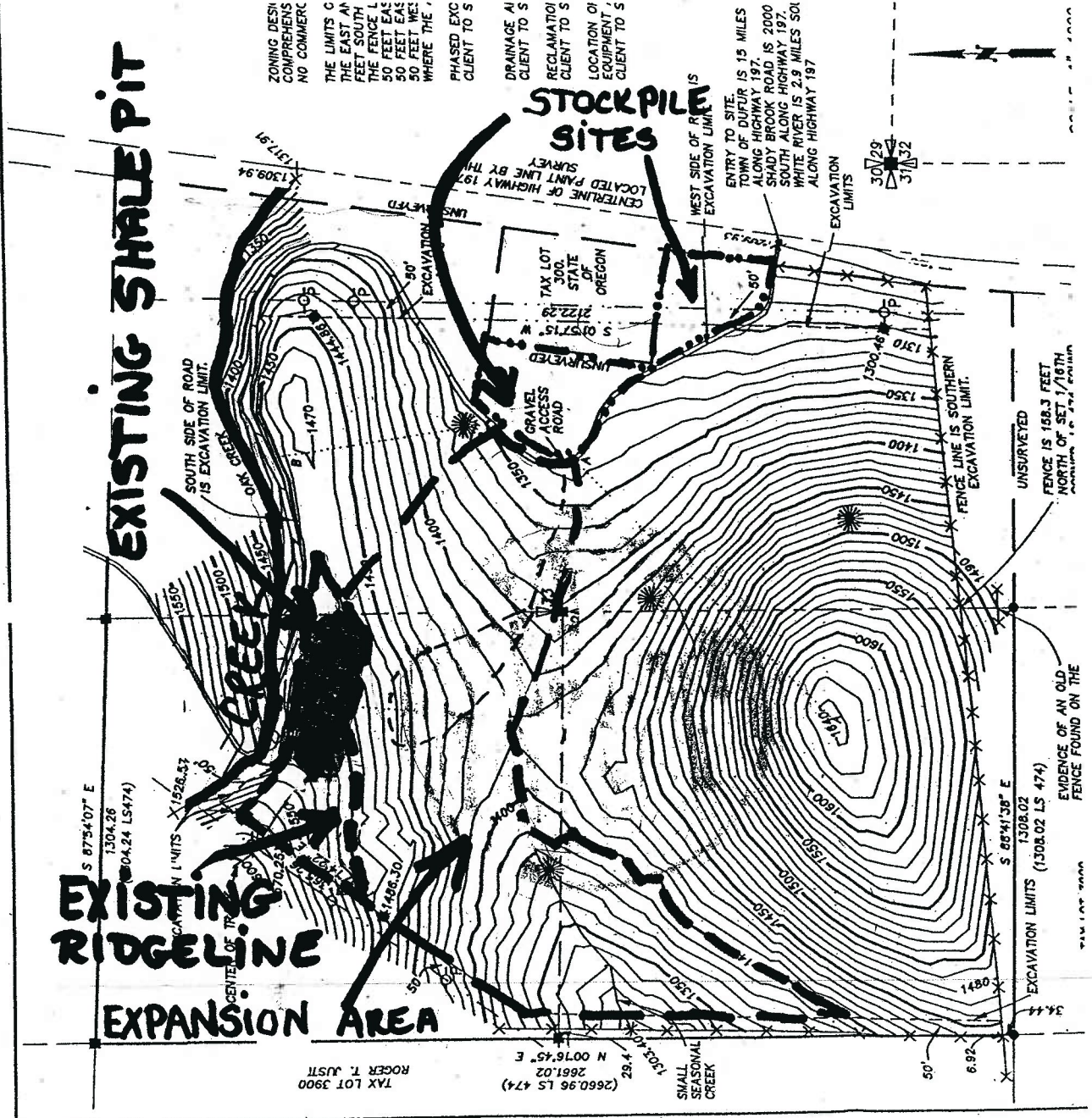
9-14-06

- current shale mining
- Area #2** - future site for mining, crushing, stockpiling
- potential future road to access mining

ZONING DESIGNED FOR COMPREHENSIVE COMMERCIAL USE  
THE LIMITS OF THE EAST AND WEST SIDES OF THE FENCE LINE ARE 50 FEET EAST AND 50 FEET WEST OF WHERE THE PHASED EXCAVATION CLIENT TO S

DRAINAGE AREA CLIENT TO S  
RECLAMATION CLIENT TO S  
LOCATION OF EQUIPMENT, CLIENT TO S

ENTRY TO SITE IS 15 MILES ALONG HIGHWAY 197. SHADY BROOK ROAD IS 2000 SOUTH ALONG HIGHWAY 197. WHITE RIVER IS 2.9 MILES SOUTH ALONG HIGHWAY 197



**File Number:** CPA-06-102/CUP-06-112

**Applicant:** Jack E. Stevens; Katy Young, Representative

**Owners:** Jack E. Stevens

**Request:** Comprehensive Plan Amendment to add an aggregate site to the County Aggregate Inventory, and Conditional Use Permit to allow extraction and crushing of aggregate, on approximately 25-30 acres of a 140 acre parcel.

**Recommendations:**

- (1) Recommend approval of the Comprehensive Plan Amendment to the Wasco County Court to add the aggregate site to the Wasco County Aggregate Inventory List; and
- (2) Recommend approval of the Conditional Use Permit for the aggregate operation.

**Planning Commission Hearing Date:** October 4, 2006

**County Court Hearing Date:** December 6, 2006

**Prepared by:** Dawn Baird, Associate Planner

**Procedure Type:** IV – County Court

**Location:** West of U.S. Highway 197, approximately ¼ mile north of its intersection with Shadybrook Road, approximately 1¼ mile northwest of Tygh Valley, Oregon; more specifically described as:

<u>Existing</u>	<u>Previous</u>
3S 13E 0 4000	3S 13E 0 2800

**Contiguous Ownership:** None

**Legal Parcel Determination:** This parcel was created as a 2,296 acre parcel by Deed 64-0455, in 1964, prior to the existence of partition and subdivision requirements in the County. In 1981, 2,155 acres of the legal parcel was donated to the Oregon Dept. of Fish & Wildlife (ODFW) for wildlife habitat, leaving the current 140 acre parcel. The land donated to ODFW was absorbed into their ownership, and did not create a legal separate parcel. The effect of this donation was a property line adjustment prior to the existence of requirements for property line adjustments. This parcel is consistent with the definition of “Legal Parcel” in Section 1.090 of the WCLUDO.



**Zoning District:** A-1 (160), Exclusive Farm Use

**Past Actions:** None

## **I. APPLICABLE STANDARDS**

### **A. Oregon Administrative Rules and State Statutes**

#### **1. Oregon Revised Statutes (ORS)**

##### **a. Chapter 215 – County Planning, Zoning, Housing Codes**

ORS 215.298(2), Mining in exclusive farm use zone

##### **b. Chapter 517 – Mining and Mining Claims**

ORS 517.50 - .900, requirements for reclamation of mined lands.

#### **2. Oregon Administrative Rule (OAR)**

Chapter 632, Division 30 – Oregon Mined Reclamation Act

### **B. Wasco County Comprehensive Plan: Goal 5 - Open Spaces, Scenic and Historic Areas and Natural Resources**

#### **1. Chapter XII, Definitions**

Comprehensive Plan Map Designation – Exclusive Farm Use

#### **2. Chapter XV.E., Goals & Policies**

Mineral Resources

#### **3. Chapter XI, Revision Process**

### **C. Land Use & Development Ordinance (WCLUDO)**

#### **1. Chapter 2 – Development Approval Procedures**

Section 2.060.B.1. (Quasi-Judicial Plan Amendment)

Section 2.060.B.14. (Matters the Director Elects Not to Review)

Section 2.080 (Notice)

#### **2. Chapter 3 – Basic Provisions**

##### **“A-1(160)” Exclusive Farm Use Zone**

Section 3.210.C.4. (Uses Permitted Conditionally – Operations Conducted for Mining, Crushing, Stockpiling of Mineral, Aggregate and Other Subsurface Resources)

Section 3.210.D. (Conditional Use Approval Standards)

Section 3.210.I. (Property Development Standards)

Section 3.210.J. (Special Agricultural Considerations)

Section 3.210.N. (Complaint Mediation Process)

#### **3. Chapter 5 – Conditional Use Review**

Section 5.020 (Authority to Grant or Deny Conditional Uses, and Standards and Criteria Used)



Section 5.030 (Conditions)  
Section 5.040 (Revocation of Conditional Use Permit)

## II. AFFECTED AGENCIES

Oregon Dept. of Geology and Mineral Industries (Aggregate Operating Permit)  
Oregon Dept. of Environmental Quality (Air and water quality)  
Oregon Department of Transportation (Access Permit)  
Oregon Department of Fish & Wildlife (Wildlife Concerns)  
Oregon Department of Forestry (Wildfire Protection)  
Tygh Valley Rural Fire District (Structural Fire Protection)

## III. COMMENTS

Brian Tuck, OSU Wasco County Extension Agent (telephone conversation, August 3, 2006).

This land is not highly productive for farm use, however, it still has some grazing value. When the rock extraction operation is ultimately completed, the land will be reclaimed and can again be used for farm use.

Staff Response: N/A

Rod French, Oregon Dept. of Fish & Wildlife, Mid-Columbia District Fish Biologist (e-mail, July 31, 2006)

Oak Creek is a seasonal creek, however, a rock quarry has potential to input significant sediment to downstream waters during times when it flows. Recommends a 100' no-disturbance buffer from Oak Creek. Has no concerns with proposed amended boundary.

Staff Response: Impacts to natural resources are addressed in IV.C.a.6.

Keith Kohl, Oregon Dept. of Fish & Wildlife, Wildlife Biologist (e-mail July 31, 2006). With a prohibition of extraction and crushing during December, January, and February, no concerns with the amended boundary for the aggregate operation.

Staff Response: Additional comments were received on November 9, 2006. Wildlife concerns are addressed in IV.C.a.6.

Patrick Smith, Permit Specialist, Oregon Dept. of Transportation (telephone conversation August 23, 2006). ODOT has an Approach Permit on file for the existing approach onto Highway 197. No additional permit is required.

Robert Houston, Oregon Dept. of Geology & Mineral Industries (DOGAMI)

The owner must obtain a DOGAMI Operating Permit prior to exceeding one acre of disturbance or excavating more than 5,000 CY of material within any 12 month period. The Operating Permit includes an Operating Permit Application, Operating/Reclamation Plan, Permit Boundary Map, and Reclamation Security based on the amount of initial disturbance within the first 12 month period.

Staff Response: If approved, the owner shall obtain all necessary permits from DOGAMI.

David Jacobs, Oregon Dept. of Forestry, Unit Forester (e-mail dated September 19, 2006).

Owner must obtain a Permit to Operate Power Driven Machinery from the Oregon Department of Forestry

Staff Response: Fire suppression standards are addressed in IV.B.2.b.1)

**Please note:** Complete comments are on file at the Wasco County Planning and Development Office.

## **IV. FINDINGS**

### **A. Oregon Administrative Rules and Revised Statutes**

- 1. Oregon Revised Statute (ORS) 215 – County Planning, Zoning, Housing Codes. ORS 215.298(2), Mining in exclusive farm use zone; and use permit, states that 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 owner has made application for a Comprehensive Plan Amendment to add the existing/expanded site to the Aggregate Inventory. The request for a Conditional Use Permit has been made in conjunction with the Comprehensive Plan Amendment.

- 2. Oregon Revised Statute (ORS) 517 – Mining and Mining Claims  
ORS 517.50 - .900 lists the requirements for reclamation of mined lands.  
Mining operations affecting more than five acres must obtain an operating permit from the Oregon Dept. of Geology & Mineral Industries.**

**FINDING:** With a **condition**, the request complies with ORS 517.

- A **condition** requiring the property owner to submit an approved Operating Permit and Reclamation Plan from DOGAMI is indicated in IV.B.2.b.2).

- 3. Oregon Administrative Rule (OAR) 632, Division 30 – Oregon Mined Reclamation Act, requires approval of a reclamation plan, and identifies the requirements for this plan.**

**FINDING:** With a **condition**, the request is consistent with criterion 3.

- A **condition** requiring the property owner to submit an approved Operating Permit and Reclamation Plan from DOGAMI is indicated in IV.B.2.b.2).

### **B. Wasco County Comprehensive Plan: Goal 5 - Open Spaces, Scenic and Historic Areas and Natural Resources**

- 1. Chapter XII, Definitions  
Comprehensive Plan Map Designation – Exclusive Farm Use  
The subject property is designated Exclusive Farm Use on the Comprehensive Plan map. The purpose of this mapping designation is to preserve and maintain land used for agriculture which include orchard lands, wheat and other dry farming lands, open range and grazing lands (other than commercial forest), and all other agricultural lands, such as those cultivated and used for irrigated farm lands, Christmas tree growing, or other minor farm uses.**

**FINDING:** The request is consistent with criterion a.

- The owner is requesting a Comprehensive Plan Amendment to add an existing aggregate site to the “potential sites” Comprehensive Plan Inventory List, and a Conditional Use Permit to allow the existing shale pit to be used for commercial use, allow future expansion of the aggregate operation to a second location on the property, and allow crushing with a portable crusher, stockpiling of rock, and installation of a truck scale.
- The expanded aggregate operation, identified as Area #2 on the site plan, would utilize approximately 30 acres of the 140 acre parcel, with an additional 5 (approximate) acres identified for stockpile sites. The existing shale pit is approximately 2-3 acres in size. According to information submitted by the owner, “rock from this site was used to build the road that pre-dated the current Highway 197.” According to Patrick Smith, Permit Specialist, Oregon Dept. of Transportation (ODOT), the right-of-way map for this portion of the highway is dated 1926, and the highway existed at that time (e-mail, July 25, 2006).
- The subject parcel contains the following soils:

Soil Symbol	Soil Name	Acres	Percent of Parcel	Agricultural Capability Class Rating
30E	Lickskillet very stony loam, 15-40% slopes	7.45	5	VII
31F	Lickskillet extremely stony loam, 40-70% slopes	41.91	30	VII
40E	Sherar cobbly loam, 5-45% slopes	55.63	39	VI
42E	Sinamox silt loam, 20-45% slopes	36.87	26	VI

- The subject parcel contains approximately 49.36 acres (35%) agricultural capability class VII soils. These soils are located on the northern 700-1,000 feet of the subject parcel, and are well drained. The remainder of the subject parcel contains approximately 92.50 acres (65%) agricultural capability class VI soils. Runoff from these soils is generally rapid, and hazard of erosion is severe.
- In eastern Oregon, agricultural capability class I-VI soils are considered suitable for commercial agricultural use, while class VII and VIII are considered unsuitable for agricultural use.
- The subject parcel does not contain any registered field crops or water rights. It is identified as grazing land according to Farm Services Agency information.
- Information submitted by the owner states that he can graze 50 head of cattle for one week per year on the 140 acre parcel. According to Brian Tuck, OSU Extension Agent, the land is not highly productive for grazing.
- Once extraction of rock from the proposed site has been completed, the land will be reclaimed and returned to farm use, likely grazing. Though it may take many years to extract rock from the proposed site, it is still a temporary removal of land that is not highly productive from farm use, and upon completion, farm use will be reintroduced to the land.



**2. Chapter XV.E., Goals & Policies: Goal 5 – Open Spaces, Scenic and Historic Areas and Natural Resources - Mineral Resources:**

**a. Policy 1: Protect and utilize appropriately the mineral and aggregate resources of Wasco County, and minimize conflict between surface mining and surrounding land uses.**

- 1) Policy 1.A. states that the development of new rock and aggregate resource sites shall be consistent with the State Planning Goal 5 and Oregon Administrative rules Chapter 660, Division 16 process to balance conflicts between mining operations and new and existing surrounding conflicting uses.**

**FINDING:** The request is consistent with criterion 1).

- Division 16, Requirements and Application Procedures for Complying with Statewide Goal 5, requires counties to identify existing aggregate resources, identify conflicting uses, and requires development of a program to achieve the goal. Wasco County completed this process in 1993.

- 2) Policy 1.C. states that mining and processing of gravel and mineral materials may only be allowed at sites included on the “Other Site” inventory or “Significant Sites” inventory: Mining at sites on the “Other Sites” inventory may be allowed by a conditional use permit.**

**FINDING:** The request complies with criterion 2).

- Policy 1.c. requires inclusion on either the “Significant Site” or “Other Site” inventory. Policy 2, in b., allows sites to be identified as a “Significant Site”, an “Other Site”, or a “Potential Site”. Potential sites are those for which there is not adequate information to make a determination of significance, therefore, staff concludes that a “potential site” would be identified as an “Other Site”, not a “Significant Site” in policy 1.c.
- Policy 1.c. states that mining at “other sites” may be allowed as a conditional use. The property owner has made application for a conditional use permit to allow extraction, crushing, and stockpiling.
- Conditional use standards are addressed in IV.C.3.

- b. Policy 2: The County shall maintain an inventory of mineral and aggregate resource sites. The comprehensive plan inventory shall consist of three parts: 1) an inventory of “Significant Sites” identified through the Goal 5 process as important resources that will be protected from conflicting uses; 2) an inventory of “Potential Sites” for which sufficient information concerning the location, quality and quantity of a resource site is not adequate to allow the County to make a determination of significance; and 3) an inventory of “Other Sites” for which available information demonstrates that the site is not a significant resource to be protected.**

**Sites on the "Other Sites" inventory shall not be protected from conflicting uses.**

**FINDING:** Staff recommends that the expanded aggregate site be added to the list of "Potential Sites" in the Comprehensive Plan Inventory.

- The owner has not requested the protection the "significant" determination provides. No data, lab tests, etc., have been submitted to identify the quality or quantity of rock within the extraction boundary, therefore, the County cannot make a determination of significance, but it can be approved as a "Potential Site".
- Through this land use process, the owner is made aware that the aggregate extraction operation will not be protected from conflicting uses unless the owner makes application to add this site to the inventory of "Significant Sites", and to apply the EPD-5, Mineral & Aggregate Overlay zone to the extraction site.

**1) In order to approve surface mining at a site zoned for exclusive farm or forestry use, the County shall find, as part of the ESEE analysis, that the proposed activity will not: a) force a significant change in, or significantly increase the cost of, accepted farming or forest practices on surrounding lands, and b) will not significantly increase fire hazard or significantly increase fire suppression costs or significantly increase risks to fire suppression personnel.**

**FINDING:** With a **condition**, the request is consistent with criterion 1).

- There are no registered, planted farm fields within 1,000 feet of the subject parcel, however, grazing exists on properties to the east, south and west.
- Force significant change in/significant increase in cost of farming or forest practices: This criterion is addressed in IV.C.2.b.
- Fire suppression: David J. Jacobs, Unit Forester COD - The Dalles, stated in an e-mail dated September 19, 2006, that the proposed aggregate expansion "should have little or no impact on Oregon Dept. of Forestry (ODF). The applicant will be required to get an annual Permit to Operate Power Driven Machinery from ODF and will be expected to have all the appropriate fire prevention tools in place during fire season." The list of necessary tools is provided by ODF with the permit. A **condition** is indicated requiring the property owner to obtain an annual Power to Operate Power Driven Machinery from ODF.

**2) No surface mining or processing activity, as defined by the zoning ordinance, shall commence without land use approval from the County, and approval of a reclamation plan and issuance of an operating permit by DOGAMI.**

**FINDING:** With **conditions**, the request is consistent with 3).

- A **condition** is indicated requiring the owner to complete all County conditions, and provide the Wasco County Planning Office with an approved reclamation plan and operating permit from DOGAMI prior to commencing aggregate operations.



- If DOGAMI does not require a reclamation plan, a reclamation plan shall be completed and submitted for approval prior to commencement of aggregate extraction operations, to the Wasco County Planning & Development Dept. A **condition** stating this is indicated

**3) Aggregate sites shall be subordinate to the landscape setting as seen from travel corridors when such travel corridors have been determined to be significant by the ESEE analysis.**

**FINDING:** As amended, with **conditions**, the request complies with criterion h.

- The Wasco County Comprehensive Plan states that the portion of Highway 197, adjacent to the extraction area, is designated as a scenic corridor. Recognizing the site is adjacent to a scenic corridor, protecting the visual character of the area adjacent to the Highway should be considered.
- The type of mining equipment used at the site will include, primarily, a rock crusher(s), bulldozers, and loaders. The rock crusher will be brought in as needed, so that piece of machinery should not need to be stored on site continuously. Staff is unaware if the other mining equipment will require continuous storage on-site. To protect the visual character of the area, a **condition** is indicated that requires all mining equipment be removed from the site when not in use for **more than 6 months**.
- Extraction Boundary (Original Proposal): The extraction boundary (as originally proposed) is located near the center of the property, and proposes significant extraction into the large hill on the southern part of the parcel. The site is adequately screened from properties to the north and south, but is exposed to Highway 197 to the northeast, east and southeast, and property to the west. There is no vegetative screening between the proposed extraction site and the highway.

The extraction site (as originally proposed) would result in disturbance to a large, symmetrical hill that rises approximately 300 feet above the elevation of Highway 197. This hill is highly visible from Highway 197 at a close distance when traveling southbound. Due to lack of topographic or vegetative screening between Highway 197 and the original extraction boundary, the area originally proposed by the owner would not be visually subordinate from Highway 197. When traveling northbound on Highway 197, portions of the extraction site, as originally proposed, would be partially visible for ¼ mile approximately 2½ -3 miles southeast of the site, for ¼ mile approximately 1 mile southeast of the site, and then for approximately 1/3 mile on Highway 197 directly east of the property. The existing shale pit gives a sample of what the land looks like when it is disturbed, and it blends into the landscape very well when traveling northbound on Highway 197.

- Extraction Boundary (Amended Proposal): An amended extraction boundary was proposed by staff. The amended site was accepted by the property owner and his representative on September 14, 2006.

The amended boundary excludes disturbance to the large hill on the southern portion of the parcel, with the exception of a small portion of the northwest corner of the hill, which is not visible from Highway 197. The amended extraction area is located primarily on the northern portion of the parcel, on south-facing slopes (including southeast and southwest). This site

eliminates the majority of the proposed extraction boundary from view from the southbound lane of Highway 197. From the northbound lane of Highway 197, as amended, the extraction site would be visible for the same linear distance as the original boundary. A larger portion of the extraction site would be visible, however, due to the distance and the color of the disturbed ground, staff finds that the proposed extraction site will blend into the hillside, and will be subordinate to the rocky landscape setting.

- Proposed hours of operation are 8 a.m. – 5 p.m., Monday – Friday. No outdoor lighting is proposed.
- Approval of a reclamation plan will ensure that the aggregate site is reclaimed to the **condition** consistent with the rural character of the area. A condition requiring the owner be required to submit a reclamation plan, approved by the Oregon Dept. of Geology & Mineral Industries, is indicated.

### 3. Chapter XI, Revision Process

**Chapter X, Section VIII. Lists the general criteria which must be considered before approval of an amendment to the Comprehensive Plan is given:**

- a. **Compliance with the statewide land use goals as provided by the Land Conservation and Development Commission, where applicable.**

**FINDING:** The request is consistent with the statewide land use planning goals.

- 1) **Goal 1 – Citizen Involvement ensures “ the opportunity for citizens to be involved in all phases of the planning process.” Various opportunities for citizen involvement have been incorporated into the Plan and LUDO. Compliance with Goal 1 is achieved by compliance with the application review procedures and notice requirements applicable to this application.**

**FINDING:** The request is consistent with Goal 1 – Citizen Involvement.

- The proposal will be scheduled for hearing by the Planning Commission. Required legal notice of the hearing will be provided by Wasco County. The applicant and owner will provide full information about the project prior to the hearing and will be in attendance at the hearing to address any concerns or answer any questions from public or commission at that time.
- The Planning Commission will review the matter and make a recommendation to the County Court. The County Court will schedule a hearing and provide all required public notice of the hearing. The applicant will continue to support the decision making process by providing any requested information prior to the hearing and attending the hearing to provide any additional input needed by the County Court to respond to public input. Once the County Court makes a decision, the decision will be noticed as required by LUDO and State Law.
- The application has been available on the Planning web site since June 8, 2006. The staff report and recommendation was available on the County Planning Department web site one week prior to the October 4<sup>th</sup> hearing.



- 2) **Goal 2 – Land Use Planning** guarantees that processes will be followed which establish a land use planning process and policy framework as a basis for all decisions related to the use of land and assure an adequate factual base for its decisions and actions.

**FINDING:** Wasco County has an acknowledged comprehensive plan (8/25/83) and implementing ordinances which establish the planning, inventory, and factual basis for land use actions in Wasco County. These findings ensure a well reasoned and fully informed decision is made. Compliance with the County's review process and provision of all necessary information to address applicable regulations and comprehensive plan policies ensures compliance with Goal 2.

- 3) **Goal 3 – Agricultural Lands** requires that agricultural lands be preserved and maintained for farm use consistent with the state's agricultural land use policies in ORS 215.

**FINDING:** The request is consistent with Goal 3 – Agricultural Lands.

- The subject parcel is zoned A-1(160), Exclusive Farm Use, contains primarily cheat grass and medusa head, and is used for seasonal grazing (approximately 50 cattle for one week per year). The land is not considered to be high value farm land, nor is it considered highly productive because of the quantity of rock below and above the soil surface.
- The request is to expand an existing rock source that has been used by previous property owners, and that provided rock to build the road that pre-dated the current Highway 197.
- The proposed extraction area will be temporarily removed from agricultural production during the period of time when rock is removed from the land. Upon completion of the mining, reclamation of the land will occur, and the land will be returned to commercial agricultural use.

- 4) **Goal 4 – Forest Lands** applies to lands zoned Forest.

**FINDING:** Goal 4 is not applicable to this proposal because the subject parcel does not include any F-1 or F-2 Forest-zoned land and no forest resources exist on this land. In addition, there are no F-1 or F-2 zoned-land or active forest operations within 1½ miles of the subject parcel.

- 5) **Goal 5 – Open Spaces, Scenic and Historic Areas and Natural Resources** provides for the conservation and protection of natural and scenic resources.

**FINDING:** With a condition in IV.C.3.a.6), the request complies with Goal 5.

- The Plan and LUDO have been acknowledged by LCDC as being in compliance with the statewide planning goals, so in this post-acknowledgement process the county is entitled to rely on its acknowledged inventory of Goal 5 resources to determine if any Goal 5 resources are present at or near the proposed exception area.

- According to the Wasco County Comprehensive Plan and LUDO, there are no identified historic/cultural sites or sensitive wildlife sites/species on the subject parcel, nor does it contain any geologic hazard or flood hazard.
- Oak Creek, a seasonal creek, is a natural resource which requires protection. A **condition** in IV.C.3.a.6) requires the maintenance of a 100 foot no-disturbance buffer from Oak Creek for all new disturbance.
- Highway 197 is identified in Goal 5 as a scenic resource (scenic corridor). Protection of this scenic resource is addressed in IV.B.2.b.2).

**6) Goal 6 – Air, Water, and Land Resources Quality exists to maintain and improve the quality of these resources.**

**FINDING:** With previously recommended conditions, the request is consistent with Goal 6.

- **Air** – A **condition** in IV.C.3.a.5) requires the owner to comply with DEQ standards for air quality. No deterioration of air quality will result as a result of the aggregate operation.
- **Water** – Oak Creek is located approximately 50’ north of the existing aggregate operation. A **condition** in IV.C.3.a.6) requiring all future expansion to maintain a 100 foot no-disturbance buffer will ensure groundwater quality will be maintained.
- **Land** – Land resource quality will be affected on a temporary basis by the expanded aggregate operation. After the rock has been removed from the land, it will be reclaimed in compliance with the DOGAMI reclamation plan, and can to be placed in farm use again.

**7) Goal 7 – Areas Subject to Natural Disasters and Hazards exists to “protect life and property from natural disasters and hazards.”**

**Applicant’s Finding:** The request is consistent with Goal 7.

- This goal is implemented by the Plan’s corresponding goal and policies identifying areas subject to natural disasters and hazards. The proposed aggregate extraction site is not identified or inventoried as a natural hazard area (geologic hazard, flood hazard) and there is no development proposed in an identified natural disaster or hazard area.

**8) Goal 8 – Recreation Needs is designed to “satisfy the recreational needs of the citizens of the state and visitors and, where appropriate, to provide for the siting of necessary recreational facilities, including destination resorts.”**

**FINDING:** Goal 8 is not applicable to the subject parcel. No new recreational resources are proposed, and no recreational resources are identified within ¼ mile of the subject property. The request is for aggregate mining in a zone which allows mining as a conditional use.

**9) Goal 9 – Economy of the State is to “provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon citizens.” The county**



**implements this goal through the economy of the state goal and corresponding policies.**

**FINDING:** The request complies with Goal 9 – Economy of the State.

- Approval of the request will allow for the commercial sale of a mineral resource. It will provide material necessary for construction projects. It can be seen as an opportunity vital to the welfare and prosperity of Oregon citizens.

**10) Goal 10 – Housing provides for the housing needs of citizens of the state.**

**FINDING:** Goal 10 is not applicable to this parcel. There is no housing on the subject parcel, and no housing is proposed.

**11) Goal 11 – Public Facilities and Services requires the planning and development of an orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development.**

**FINDING:** Goal 11 is not applicable to this parcel. Except for transportation facilities, which are addressed in Goal 12, no public facilities and services are required for the aggregate operation. Public facilities and services are further discussed in IV.C.3.

**13) Goal 12 – Transportation is to “provide and encourage a safe, convenient and economic transportation system.” It is implemented by LCDC’s Transportation Planning Rule (TPR), OAR 660-12.**

**FINDING:** The request is consistent with Goal 12

- The subject parcel has access from Highway 197, a state highway. The access road in and out of the property provides good visibility and a good paved travel surface.
- The proximity of this aggregate site to Highway 197 reduces the cost of transportation for local users of rock.

**14) Goal 13 – Energy Conservation provides that land and land uses shall be managed to maximize the conservation of all forms of energy based on sound economic principles. It is implemented by local plans and regulations that control location, orientation, and density of development to minimize net energy consumption. Conservation measures are generally of two types: (1) development of energy resources, and (2) wise use of energy.**

**FINDING:** The request complies with Goal 13.

- The development of new energy resource is not proposed.
- Due to its proximity adjacent to Highway 197, a major highway, fuel costs traveling to and from the subject parcel will be reduced.



**14) Goal 14 – Urbanization** requires that comprehensive plans provide for an orderly and efficient transition from rural to urban use. It requires that urban growth boundaries (UGBs) be established around incorporated cities through a cooperative process with surrounding counties to assure compact and efficient urban growth within the boundary while protecting and facilitating rural resource uses outside the boundary. It directs urban level of development to be located inside acknowledged UGBs. It also requires that development allowed outside UGBs be limited to rural uses and provides definitions of acceptable rural use.

**FINDING:** The subject parcel is located in the Exclusive Farm Use zone outside of an urban growth boundary. Goal 14 is not applicable to this request.

**b. Substantial proof that such change shall not be detrimental to the spirit and intent of such goals.**

**APPLICANT'S FINDING:** The request is consistent with criterion b.

- Resource sites were originally identified for the Wasco County Comprehensive Plan. Not all resource sites were identified or acknowledged because they were located in areas of the county which were not easily visible. Had this area been reviewed as a potential resource site at the time the Comprehensive Plan was prepared, this site would have most likely been included. This site served as a rock pit in the past and adding it to the inventory is not detrimental to the spirit or the intent of the land use planning goals.

**STAFF FINDING:** Staff concurs with the applicant's finding. Applicable statewide planning goals were addressed in a. With recommended **conditions**, the request is consistent with the statewide planning goals.

**c. A mistake in the original Comprehensive Plan or change in the character of the neighborhood can be demonstrated.**

**APPLICANT FINDING:** The request is consistent with criterion c.

- While there was not necessarily a mistake in the original Comprehensive Plan resource identification, there clearly was an oversight because there was an active rock pit opened on this property long before the Comprehensive Plan was approved. Adding this land to the inventory will not create a change in character to the neighborhood.

**STAFF FINDING:** The request is consistent with criterion c.

- Staff concurs with the applicant's finding.
- The aggregate operation has existed on the site since at least the mid-1920s. The current site is not easily visible from the state highway, and was likely overlooked during the compilation of the aggregate inventory for Wasco County.

- The Wasco County Comprehensive Plan is a document that must be revised occasionally when new information is discovered, or a change in the character of the County is noted.
- The property owner's request to include an aggregate site on the "Potential Sites" Aggregate Site Inventory is as a result of the Oregon Dept. of Transportation's (ODOT) lease of the local rock source in Tygh Valley. Since the lease of the Davis pit occurred, there is no public rock source in the area.

**d. Factors which relate to the public need for healthful, safe and aesthetic surroundings and conditions.**

**APPLICANT'S FINDING:** The request complies with criterion d.

- Because of its location, and the use of the neighboring properties, factors relating to the public need for "healthful, safe and aesthetic surroundings and conditions" is not as important as the public's need for aggregate material within a reasonable haul distance, supplied from a source which has historically been in production. This proposal will fill that need. There is very limited residential use on adjoining properties. There is already aggregate mining on adjacent properties, and aggregate mining will not interfere with wildlife conservation activities adjacent to the property.

**STAFF FINDING:** The request complies with criterion d.

- Concur with the applicant's finding.
- The original extraction boundary was amended to reduce the visual impact of the proposed expansion area. As amended, the visual impact of the extraction area will be limited.
- An existing access permit for the approach onto Highway 197 is on file at ODOT. The access onto the road has been determined to be adequate for safety purposes.
- With conditions in this report, the use will comply with all air pollution requirements regulated by the Oregon Dept. of Environmental Quality (DEQ). Strict adherence to these **conditions** will ensure the use does not create any emissions to harm human health.

**e. Proof of change in the inventories originally developed.**

**APPLICANT'S FINDING:** The request is consistent with criterion e.

- There is no proof of change in the inventories originally developed other than the fact that this site should now be added.

**STAFF'S FINDING:** The request is consistent with criterion e.

- The original Aggregate Site Inventory for Wasco County was based on a 1976 report by Montagne and Associates entitled "Wasco County Aggregate Sites and Aggregate Demand Analysis." This information was updated by a mail survey to individual property owners, conducted by the Planning Office in 1991, to confirm the location of aggregate sites.



- The request by the applicant identifies a potential aggregate site and requires a change in the Aggregate Inventory List to address the identified site.

**f. Revisions shall be based on special studies or other information which will serve as the factual basis to support the change. The public need and justification for the particular change must be established.**

**APPLICANT'S FINDING:** The request complies with criterion f.

- Material from this site will be available to the public and governmental entities for construction projects. As such, there is public need and justification for the particular change being requested.

**STAFF'S FINDING:** The request complies with criterion f.

- Staff verified the lease of the Davis pit by ODOT, and is unaware of any other public aggregate site in Tygh Valley, therefore, a need for the proposed use is identified.
- This report and documentation submitted by the applicant serves as the other information which will provide the factual basis and justification for the change.

### **C. Wasco County Land Use & Development Ordinance (WCLUDO)**

#### **1. Chapter 2 - Development Application Procedure**

##### **a. Sections 2.060.B.1., Quasi-Judicial Plan Amendment, and 2.060.B.14., Matters the Director Elects Not to Review**

**FINDING:** With a **condition**, the request complies with a.

- The LUDO requires the Planning Commission to conduct a hearing and make a recommendation to the County Court regarding all quasi-judicial plan amendments. In addition, the Planning Commission has requested that they review all aggregate operations. Because of these factors, the Director elects not to review the accompanying Conditional Use Permit for an aggregate extraction/crushing operation, but to combine the applications into a single decision on this matter. The Planning Commission will hear this matter in a quasi-judicial public hearing in accordance with the applicable basic provisions of Chapter 3, and Conditional Use Review Provisions of Chapter 5. The applicable Ordinance provisions and required findings are outlined in this report.
- To ensure ordinance provisions are adhered to, a **condition** is indicated requiring current and future property owners to comply with the application as reviewed by this staff report. This report details the restrictions on aspects of the approved development including but not limited to location, dimensions and use. This decision does not constitute tacit approval for any other development or use.

##### **b. Section 2.080 & 2.140 - Notice**

**FINDING:** Public notice was given, as specified by Section 2.080 of the WCLUDO, twenty days prior to the hearing. Upon issuance of a decision, notice will again be given, and a 21 day appeal period provided.

## **2. Chapter 3 – Basic Provisions**

### **Section 3.210, A-1, Exclusive Farm Use Zone**

- a. Section 3.210.C.4. allows operations conducted for the mining, crushing or stockpiling of mineral, aggregate and other subsurface resources subject to ORS 215.298 and WCLUDO Section 3.800.**

**FINDING:** The request is consistent with Section 3.210.C.4.

- ORS 215.298 requires a land use permit to be issued for mining more than 1,000 cubic yards of material or mining of more than one acre, and all mining sites must be included on an inventory in an acknowledged comprehensive plan.
- The owner has made application for a Comprehensive Plan Amendment to add the existing 2-3 acre shale pit to the Aggregate Inventory List, and a Conditional use Permit to expand the existing aggregate extraction area to approximately 30 acres.
- LUDO Section 3.800 is not applicable to this request because the property owner is not requesting Goal 5 protection for the aggregate site.

- b. Section 3.210.D. - A-1, Exclusive Farm Use Zone Conditional Use Approval Standards. The proposed 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:** The request is consistent with criterion 2).

- According to information from Farm Services Agency, property to the north (3S 13E 0, tax lot 2500) owned by Oregon Dept. of Fish & Wildlife is not in farm or forest production, but is used for wildlife habitat. Also, property owned by ODOT (3S 13E 33, tax lot 300) is surrounded on three sides by the subject parcel, is not in farm or forest production but is used as an aggregate stockpile site. It is unlikely that either of these properties will be used for farm or forest production in the future because of their commitment to other types of resource use.
- There are no forest operations on or within ¼ mile of the subject parcel.
- The owner estimates there will be approximately 365 vehicle trips per year to the aggregate site, or an average of one per day. There could be an impact to adjacent farm uses based upon vehicle and truck traffic potentially impacting their ability to get their products to market. Access to the aggregate site is from Highway 197. At this location, the highway



contains three 12' wide paved lanes (two northbound and one southbound), with an 8' shoulder on each side, a paved highway within a 200' right-of-way. Based on the status of the state highway and the owner's approach onto the highway, the proposal will not change nearby farmers' ability to get their products to market.

- Properties to the east (east of Highway 197), south and west of the subject parcel are used for livestock grazing. The closest planted farm fields are located approximately 950' southwest of the southwest corner of the subject parcel, and are over ¼ mile from the boundaries of the proposed extraction area.
- The A-1(160), Exclusive Farm Use zone requires new structures to be set back a minimum of 200' from all property lines to avoid conflicts with surrounding farm uses. The proposed expansion area of the existing aggregate site will be located a minimum of 450' from the western property line, and over 650' from the southern property line. In addition, there is a topographic barrier (hill) between the proposed expansion site and the property to the south.
- Property to the west and south contain agricultural capability class VI soils, and property to the north contains class VII soils. Class VI and VII soils are considered suitable for range, timber, wildlife habitat and water supply. Property east of Highway 197 contains class VIII soils which are considered suitable for wildlife habitat, water supply, and as a source of material for roads and other construction. Considering existing soils on surrounding properties, it is unlikely that more intensive commercial agricultural use will be introduced into the area in the future.
- The proposed aggregate extraction operation will create dust and noise, primarily when crushing occurs. Cattle operations to the east and south will be unaffected by dust or noise due to distance and topography. Although the grazing operation to the west is not separated from the proposed extraction boundary by topography or a large distance, there is a potential for only a slight impact on the grazing operation for the following reasons: no extraction will occur between December 1<sup>st</sup> and February 28<sup>th</sup>; cattle become acclimated to and easily adjust to strange noises; and a minimum 50' buffer will be maintained between the extraction boundary and the common property line. In addition, slopes on the property to the west are primarily 30-40% with several drainageways, and contains class VI and VII soils similar to the subject property. This land is also similar to the subject property because it can only support seasonal grazing.

**c. Section 3.210.J., Special Agricultural Considerations)**

**These considerations are intended to provide future property owners with a list of agencies and/or other important individuals they may need to contact if they have questions about fire protection, livestock fencing, water rights, and other issues.**

**FINDING:** With a **recommendation**, the request is consistent with Section 3.210.J.

- Certain land uses must comply with various State regulations. An example of this is livestock fencing which must comply with specific standards of the Oregon Department of Agriculture.
- It is the policy of Wasco County to provide information to future property owners by providing a list of agencies, and contact persons/phone numbers so that they can check to

see what regulations are in effect in their area of Wasco County. This list includes, but is not limited to: Irrigation district, water rights information, weed control, chemical trespass, fire protection, big game winter range, livestock fencing, and animal control.

- Staff recommends the applicant fill in the agency information in the blank spaces shown on page 3-48A of the Wasco County Land Use & Development Ordinance (Attachment E), and record it with the Notice of Decision. Recordation of the Notice of Decision is mandatory, however completion of Attachment I is voluntary. An appropriate implementing **recommendation** is, therefore, included in the notice of decision.

**d. Section 3.210(N) – Complaint Mediation Process**

**All those receiving land use approval in the EFU zone shall be advised and receive a copy of the following:**

- 1) State of Oregon Right to Farm Ordinance.**
- 2) Wasco County Farming and Forestry Practices Protection and Complaint Mediation Ordinance.**

**FINDING:** Copies of these documents are attached to this report (Attachment D).

**3. Chapter 5 – Conditional Use Review**

**a. Section 5.020 - Authorization to Grant or Deny Conditional Uses, and Standards and Criteria Used.**

- 1) The proposal is consistent with the goals and objectives of the Comprehensive Plan and implementing Ordinances of the County.**

**FINDING:** The request was found to be consistent with Comprehensive Plan provisions addressed in IV.B.

- 2) Taking into account location, size, design and operational characteristics of the proposed use, the proposal is compatible with the surrounding area and development of abutting properties by outright permitted uses.**

**FINDING:** With **conditions**, the request complies with criterion 2).

- **Surrounding Area/Development:**

Outright permitted uses in the A-1(160) zone include agricultural uses.

Approximately 2-3 acres of the proposed 30 acre (approximate) extraction area have been in use by the current and previous property owners for more than 50 years. The Planning Department has never received a complaint from adjacent farm owners/operators regarding the use of the site, or other aggregate and stockpile sites in the area.

- **Site and Location:**



The proposed 30 acre (approximate) extraction area is predominantly located on the north half of the 140 acre parcel, with a small portion located on the southwestern portion of the property. The location of the extraction area is isolated and far removed from existing residential and farm use, with the exception of the grazing operation to the west. The extraction area is located approximately 1,000' north of the nearest soil mapping unit that is capable of agricultural production. Based on soils information, the aggregate operation is isolated from potential planted farmland. The grazing operation to the west contains poor soils with limited, seasonal grazing. Potential disruption to this grazing operation will be minimal.

The extraction area is located approximately 8/10 mile northwest of the nearest residential zone where dwellings are permitted outright. The extraction area is isolated from existing residential zoned land and uses by extreme hilly topography located to the south and east. There is one dwelling located within ½ mile of the subject property, to the southwest, and one dwelling located approximately ¾ mile of the subject property, to the southeast. Both homes are topographically separated from the proposed aggregate operation by a hill more than 500' in height.

Based on the proposed extraction area's location in and around poor agricultural soil mapping units and distances from agricultural and residential uses, the proposed aggregate operation will not significantly conflict with these uses on contiguous properties. A condition is indicated requiring the property owner to record with the Wasco County Clerk, a farm management easement acknowledging adjacent and nearby farm-forest operators' rights to employ farm or forest management practices. This **condition** will ensure a farm or forest operator's ability to remain in or qualify for the farm-forest tax deferral program.

- Operational Characteristics:

The operational characteristics include extraction, crushing, screening and stockpiling. The owner does not indicate that blasting is required to remove rock.

The application states that the proposed extraction area will be as needed. The application states that it is estimated that there will be approximately 365 trips per year to and from the aggregate site, an average of one per day. Although the rock will be sold for commercial purposes, operation would not necessarily be conducted on a daily or seasonal basis, as is typical for a commercial operation. This fact will also lessen the overall impact to surrounding properties by not being a full-time operation.

Potential incompatibilities between the proposed use and uses permitted outright on contiguous properties, include: encroachment, noise, dust, aesthetic values and traffic. The following conditions will minimize significant conflict with outright permitted uses in the future:

- To avoid the encroachment of the proposed use on surrounding properties, all mining activities shall occur within the area outlined on the final, approved, site plan. Any expansion outside of the approved site should be reviewed as new development.
- This approval allows extraction, stockpiling, screening, and crushing. This approval does not include asphalt/concrete plant or batching, or blasting.



- o To minimize noise conflicts, uses approved under this permit shall occur only from 8 a.m. – 5 p.m., Monday through Friday.
- o To avoid excessive airborne dust, dust suppression should be provided in accordance with Department of Environmental Quality (DEQ) Visible Air Contaminant Limitation standards as prescribed by OAR-340-21-015 (DEQ standards will be fully addressed in staff's recommendation).
- o Water sprays or other suppressive devices should operate at all times that dust is created and should be located in such a manner as to most effectively suppress the polluting emissions.

Traffic concerns are addressed in 3).

**3) The proposed use will not exceed or significantly burden public facilities and services available to the area, including, but not limited to: roads, fire and police protection, sewer and water facilities, telephone and electrical service, or solid waste disposal facilities.**

**FINDING:** With a **condition**, the request complies with criterion 3).

- Road: The proposed use would be served by U.S. Highway 197, a two-lane, paved, State-maintained road. Pat Smith, Permit Specialist, Oregon Dept. of Transportation (ODOT) verified that the owner has an Approach Permit for the existing road approach onto Highway 197, and it is approved for the proposed use. No additional permits are required from ODOT. Staff concludes based on this permit, the proposed use will not significantly burden Highway 197.
- Fire: The subject parcel is located within the boundaries of the Tygh Valley Rural Fire District (structural fire protection) and Oregon Dept. of Forestry, ODF (wild fire protection). Staff received an e-mail from David Jacobs, Unit Forester with ODF on September 19, 2006. Mr. Jacobs said that the request should have little or no impact on ODF. The applicant will be required to get an annual Permit to Operate Power Driven Machinery from our office and will be expected to have all the appropriate fire prevention tools in place during fire season. The list of necessary tools is provided by ODF with the Permit. With a **condition** requiring the owner to obtain an annual Permit to Operate Power Driven Machinery from ODF, the request will not burden fire protection resources.
- Police Protection: Highway 197 is patrolled by the Wasco County Sheriff's Office. The proposed use will not create a need for additional policing of the area.
- Sewer: There are no existing sewer facilities on the subject parcel, and none are proposed.
- Water: The application indicates that no domestic water source will be used for the proposed aggregate operation.
- Telephone, Electrical, and Solid Waste Disposal are not required by the proposed use.
- Water Rights: According to Robert Wood, District 3 Watermaster, the subject parcel contains no water rights.

**4) The proposed use will not unduly impair traffic flow or safety in the area.**

**FINDING:** As indicated in 3), the owner has an Approach Permit from ODOT for an aggregate operation. Staff concludes based on this permit and the lack of comments received expressing concern about traffic, the proposed use will not unduly impair traffic flow or safety in the area.

**5) The effects of noise, dust and odor will be minimized during all phases of development and operation for the protection of adjoining properties.**

**FINDING:** With **conditions**, the request complies with criterion 5).

- The applicant proposes to operate the site Monday – Friday, 8 a.m. to 5 p.m. To ensure noise will be minimized during operation, work at the site should occur only from dawn to dusk, Monday through Friday, so as to avoid noise during early morning and late hours of the day. A **condition** stating this is indicated.
- No blasting is proposed at the site.
- Dust is a typical by-product of mining operations (actually crushing and screening) that can impact adjacent properties and potential visibility on roadways. With the following **conditions**, the affects of airborne dust will be insignificant to surrounding uses:
  - The property owner shall research and obtain all necessary Department of Environmental Quality (DEQ) permits prior to commencement of the operation. Copies of permits shall be submitted to the Wasco County Planning Dept.
  - Dust suppression should be provided in accordance with DEQ Visible Air Contaminant Limitation standards as prescribed by OAR 340-21-015.
  - Water sprays or other suppressive devices should be operate at all times that dust is created and should be located in such a manner as to most effectively suppress the polluting emission.

**6) The proposed use will not significantly reduce or impair sensitive wildlife habitat, riparian vegetation along streambanks and will not subject areas to excessive soil erosion.**

**FINDING:** With **conditions**, the request is consistent with criterion 6).

- Sensitive wildlife habitat: Staff spoke with Keith Kohl, Wildlife Biologist, Oregon Dept. of Fish & Wildlife (ODFW) on Thursday, September 14, 2006, regarding the proposed aggregate operation, and provided him with a copy of the amended extraction boundary.



The subject property is located adjacent to (south of) the White River Wildlife Management Area boundary, which is managed by ODFW. There are two wildlife feeders located a short distance north of the common line between the wildlife area and the Stevens property, the existing aggregate site is located approximately 550' south of this common line. Many deer and some elk winter in this area, and Mr. Kohl indicated that he is concerned about potential disturbance to wildlife, specifically during December, January and February. Mr. Kohl originally recommended that no extraction or crushing occur during these months. Staff concurred and a condition was *adopted* prohibiting extraction and crushing on the subject parcel during December, January, and February.

- On November 8, 2006, after the Planning Commission meeting, Mr. Kohl met with the owner on the subject property in response to the owner's concern about the limitation of extraction, crushing, etc., during December, January, and February. After reviewing the site, Mr. Kohl concluded that if all proposed activity is below (south of) the top of the ridge that the current shale mining operation occupies, the mining activity should be sheltered from the White River Wildlife Area to the north, and should not disturb wildlife in the area. Mr. Kohl stated that approval of extraction, crushing, etc. outside of the identified stockpile areas during the months of December, January, and February should be reviewed in five years to determine if the mining activity results in detrimental harassment to the White River Wildlife Area's winter wildlife. If the activities are found to be detrimental, the original restriction prohibiting extraction, crushing, etc., during December, January and February, should be reinstated.
- On November 8, 2006, Keith Kohl provided amended comments to staff regarding the aggregate operation. In a conversation with staff, Mr. Kohl stated that he did not believe there would be negative impacts to wildlife, provided extraction during December, January, and February did not extend above the top of the ridge where the current shale mining operation is located. In an e-mail to staff dated November 17, 2006, Mr. Kohl stated that vehicle noise and movement below the ridge should be fine as long as there is no crushing.
- Condition 3.c. addressing months of operation was approved by the Planning Commission as follows:

Months of Operation: Aggregate extraction and crushing shall be limited to March 1<sup>st</sup> – November 30<sup>th</sup>. Screening and hauling is permitted throughout the year, but during December, January, and February, screening and hauling is limited to the areas identified for stockpiling on the final site plan.

- Based on input from ODFW, staff recommends condition 3.c. be updated as follows:
3. Months of Operation:
- a. Aggregate extraction, crushing, screening, hauling and stockpiling may occur between March 1<sup>st</sup> and November 30<sup>th</sup> within the extraction boundary area, and hauling and stockpiling may occur during any month of the year in the areas identified as stockpile sites on the final site plan.



- b. Extraction, hauling and stockpiling may occur during the months of December, January and February, south of the ridge containing the current shale pit.
  - c. If, within five years of the final decision date, ODFW establishes through a review process with the landowner that mining activities are resulting in detrimental harassment to the White River Wildlife Area's winter wildlife, and ODFW so advises the Wasco County Planning Office of that determination in writing, condition 3 c. shall replace 3.b. and the use of the site shall be restricted during December, January, and February to screening and hauling on the areas identified for stockpiling on the final site plan.
- Riparian vegetation along streambanks: Staff reviewed the amended extraction boundary with Rod French, Fish Biologist, ODFW, on September 18, 2006. Mr. French stated that the proposed amended boundary will retain vegetation along streambanks, and prevent runoff into the streambed that will flow downstream during wet times and negatively impact the fish population. The amended boundary maintains a 100' no-disturbance buffer from Oak Creek for all new extraction activities.
  - Excessive soil erosion: A previous **condition** requires a reclamation plan to be filed with and approved by the Oregon Dept. of Geology & Mineral Industries. Reclamation of disturbed slopes will ensure that excessive soil erosion does not occur.

**7) The proposed use will not adversely affect the air, water, or land resource quality of the area.**

**FINDING:** With recommended **conditions**, the request complies with criterion 7).

- Dust emissions affecting air quality are of concern throughout Wasco County. Previous **conditions** on dust suppression should be provided in accordance with DEQ standards to avoid dust pollution.
- As excavation is on a steep slope, no impact on ground water supply is anticipated. Previous **conditions** on stream setbacks and riparian maintenance should be implemented to protect riparian vegetation and water quality along Oak Creek.
- Concerning land resource quality, a condition requiring a copy of an approved Dept. of Geology and Mineral Industries (DOGAMI) reclamation plan to be submitted to the Wasco County Planning and Development Office is recommended. If no reclamation plan is required by DOGAMI, said plan should still be submitted to the Wasco County Planning and Development Office for approval prior to any new ground disturbance.
- Implementation of the required dust emission control, riparian and stream protection measures, and compliance with an approved reclamation plan from DOGAMI will assure compliance with criterion 7).

**8) The location and design of the site and structures for the proposed use will not significantly detract from the visual character of the area.**

**FINDING:** The visual impact of the proposed extraction operation is addressed in IV.B.2.b.3) where it was found to be subordinate to the landscape setting.

- 9) **The proposal will preserve areas of historic value, natural or cultural significance, including archaeological sites, or assets of particular interest to the community.**

**FINDING:** The request is consistent with criterion 9).

- According to the inventory of historic landmarks, as inventoried by the Wasco County Historical Landmarks Committee, 6/15/81-present, no historic sites are located on the subject site.
- According to the Wasco County Comprehensive Plan, there are no natural areas identified within two miles of the subject property.
- No comments from the local area (property owners within five hundred (500) feet of the subject tract) have stated the development will interfere with assets of particular interest to the community.

**10) The proposed use will not significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to or available for farm and forest use.**

**11) The proposed use will not force a significant change in accepted farm or forest practices on surrounding lands devoted to or available for farm or forest use.**

**FINDING:** Staff concluded in Section IV.C.2.b. that the proposal would not force a significant change or significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.

**b. Section 5.030 - Conditions**

**Such reasonable conditions as are necessary to ensure the compatibility of a conditional use to surrounding permitted uses as are necessary to fulfill the general and specific purposes of this Ordinance may be imposed in approving an application, pursuant to Section 2.110.D.**

**FINDING:** If the application is approved, **conditions** indicated throughout this report are recommended to be included to ensure that the proposed aggregate extraction site is compatible with surrounding permitted uses.

**c. Section 5.040 - Revocation of Conditional Use Permit**

**Noncompliance with any condition placed on a conditional use permit shall be grounds for revocation of the permit. Revocation of a conditional use permit shall be considered a land use action and reviewed by the Planning Commission. The following procedures shall be completed at least twenty (20) days prior to the date of the revocation hearing:**

**FINDING:** With a condition, the request complies with Section 5.040.



- A **condition** stating that noncompliance with any condition shall be grounds for revocation of the conditional use permit is recommended.

## V. CONCLUSIONS

- A. The request is for a Comprehensive Plan Amendment to add an existing aggregate site to the County Aggregate Inventory, and Conditional Use Permit to allow expansion of the existing site, extraction and crushing of aggregate, on approximately 25-30 acres of a 140 acre parcel.
- B. The Comprehensive Plan designation for the subject parcel is Exclusive Farm Use, and the zone is A-1(160).
- C. With **recommended conditions**, the request is consistent with Oregon Revised Statutes, Oregon Administrative Rules, the Wasco County Comprehensive Plan, and Wasco County Land Use & Development Ordinance.

**VI. RECOMMENDATION:** Based upon the above findings of fact and conclusions, staff recommends that the application by Jack Stevens (Katy Young, Representative for a Comprehensive Plan Amendment to add an existing aggregate site to the County Aggregate Inventory, and Conditional Use Permit to allow expansion of the existing site, extraction and crushing of aggregate, on approximately 30 acres of a 140 acre parcel, be approved with the following conditions.

## VII. CONDITIONS

- A. **Current and future property owners shall comply with the application as reviewed and approved by the staff report which is available at the Wasco County Planning Department. This report details the restrictions on aspects of the approved development including but not limited to location, dimensions and use. This decision does not constitute tacit approval for any other development or use.**
- B. **After Expiration Of The 21 Day Appeal Period And Prior To Commercial Operation of the Aggregate Site, the Owner(s) Shall:**
  1. Farm Management Easement: Sign and record with the Wasco County Clerk a completed Farm Management Easement for the nonfarm part of parcel.
  2. ODF Permit: Obtain a Permit to Operate Power Driven Machinery from the Oregon Department of Forestry (Notification of Operations).
  3. DOGAMI Operating Permit: Obtain an Operating Permit from Oregon Dept. of Geology & Mineral Industries (DOGAMI), and provide a copy to the Wasco County Planning Dept.
  4. Reclamation Plan: Submit a DOGAMI approved reclamation plan to the Wasco County Planning Dept. If DOGAMI does not a reclamation plan, a reclamation plan



shall be completed and submitted for approval to the Wasco County Planning & Development Dept.

5. DEQ Permits: The property owner shall research and obtain all necessary Department of Environmental Quality (DEQ) permits prior to commencement of the operation. Copies of permits shall be submitted to the Wasco County Planning Dept.

### **C. Miscellaneous Conditions**

1. Mining equipment be removed from the site when not in use for more than 6 months.
2. No-Disturbance Buffer: Maintain a minimum 100 foot no-disturbance buffer from Oak Creek for all new ground disturbance.
3. Months of Operation:
  - a. Aggregate extraction, crushing, screening, hauling and stockpiling may occur between March 1<sup>st</sup> and November 30<sup>th</sup> within the extraction boundary area, and hauling and stockpiling may occur during any month of the year in the areas identified as stockpile sites on the final site plan.
  - b. Extraction, hauling and stockpiling may occur during the months of December, January and February, south of the ridge containing the current shale pit.
  - c. If, within five years of the final decision date, ODFW establishes through a review process with the landowner that mining activities are resulting in detrimental harassment to the White River Wildlife Area's winter wildlife, and ODFW so advises the Wasco County Planning Office of that determination in writing, condition 3 c. shall replace 3.b. and the use of the site shall be restricted during December, January, and February to screening and hauling on the areas identified for stockpiling on the final site plan.
4. Hours of Operation shall be Monday – Saturday, dawn to dusk, but in all cases not to exceed 7 a.m. – 7 p.m.
5. To avoid the encroachment of the proposed use on surrounding properties, all mining activities shall occur within the area outlined on the amended, approved, site plan (Attachment A, 3/3). Any expansion outside of the approved site should be reviewed as new development and will require approval of a Conditional Use Permit.
6. This approval allows extraction, stockpiling, screening, and crushing. This approval does not include asphalt/concrete plant or batching, or blasting.
7. To avoid excessive airborne dust, dust suppression shall be provided in accordance with Department of Environmental Quality (DEQ) Visible Air Contaminant Limitation standards as prescribed by OAR-340-21-015.

8. Water sprays or other suppressive devices should operate at all times that dust is created and should be located in such a manner as to most effectively suppress the polluting emissions.
9. Noncompliance with any condition shall be grounds for revocation of the conditional use permit.

**D. Recommendation**

1. Fill out and record Special Agricultural Considerations (Attachment E).
2. The applicants have been provided a copy of the State of Oregon Right to Farm Ordinance, and the Wasco County Complaint Mediation Ordinance.



## FARM MANAGEMENT EASEMENT

Jack Stevens, herein called the Grantor is the owner of real property described as follows:

Township 3 South, Range 13 East W.M., Tax Lot 4000; Assessor Account 10368

In accordance with the conditions set forth in the decision of Wasco County Court, dated \_\_\_\_\_, 2006, approving a Comprehensive Plan Amendment (CPA-06-102) and a Conditional Use Permit (CUP-06-112) for the above described property, and in consideration of such approval, Grantor hereby grants to the Owners of all property adjacent to the above described property, a perpetual nonexclusive easement as follows:

1. The Grantor, his heirs, successors, and assigns hereby acknowledge by granting of this easement that the above described property is situated in an Exclusive Farm Use zone in Wasco County, Oregon, and may be subjected to conditions resulting from farm or forest operations on adjacent lands. Farm operations include, but are not limited to, the raising, harvesting and selling of crops or the feeding, breeding, management and sale of livestock or poultry, application of chemicals, road construction and maintenance, and other accepted and customary farm management activities conducted in accordance with Federal and State laws. Forest operations include, but are not limited to reforestation of forest land, road construction and maintenance, harvesting of forest tree species, application of chemicals and disposal of slash, and other accepted and customary forest management activities conducted in accordance with Federal and State laws. Said farm or forest management activities ordinarily and necessarily produce noise, dust, odor, and other conditions, which may conflict with Grantor's use of Grantor's property for residential purposes. Grantors hereby waive all common law rights to object to normal and necessary farm or forest management activities legally conducted on adjacent lands which may conflict with grantor's use of grantor's property for residential purposes and grantors hereby give an easement to adjacent property owners for such activities.
2. Grantors shall comply with all restrictions in the Exclusive Farm Use zone that may be required by State and local land use laws and regulations.

This easement is appurtenant to all property adjacent to the above described property and shall bind to the heirs, successors and assigns of Grantors and shall endure for the benefit of the adjoining landowners, their heirs, successors and assigns.

IN WITNESS WHEREOF, the Grantor has executed this easement on \_\_\_\_\_, 2006.

\_\_\_\_\_  
Titleholders Name

STATE OF OREGON )  
COUNTY OF WASCO)

Personally appeared the above named \_\_\_\_\_ and \_\_\_\_\_ and acknowledged the above easement to be their voluntary act and deed.

\_\_\_\_\_  
Notary Public for Oregon



**ATTACHMENT D – WASCO COUNTY FARMING AND FOREST PRACTICES PROTECTION & COMPLAINT MEDIATION PROCESS**

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IN THE COUNTY COURT OF THE STATE OF OREGON

FILED  
WASCO COUNTY  
2003 SEP 12 P 3:15

IN AND FOR THE COUNTY OF WASCO

IN THE MATTER OF THE ADOPTION OF )  
AN AMENDED ORDINANCE PROVIDING )  
PROTECTION FOR GENERALLY ACCEPTED )  
FARMING AND FORESTRY PRACTICES AND )  
ESTABLISHING A COMPLAINT MEDIATION )  
PROCESS. )

AMENDED  
ORDINANCE  
RECEIVED  
SEP 12 2003  
DANIEL LEBRETON COATS  
COUNTY CLERK

THE WASCO COUNTY COURT ORDAINS AS FOLLOWS

Section 1. SHORT TITLE. This Ordinance may be cited as the Wasco  
County Farming and Forestry Practices Protection and Complaint Mediation  
Ordinance.

RECEIVED  
SEP 23 2003  
By \_\_\_\_\_

Section 2. PURPOSE.

(1) Wasco County recognizes that complaints about farming and forestry practices will sometimes occur because these practices create odors, smoke, dust and noise and there is a close proximity of agricultural and forest lands to expanding urban and rural residential development.

(2) Wasco County recognizes that all resource use complaints have the potential of requiring immediate shutdowns or interruptions of farming and forestry practices which could result in significant economic consequences for resource users.

(3) The purpose of this Ordinance is therefore to provide a rapid complaint response and mediation process for resource use complaints by Wasco County residents in order to protect farming and forestry operations to the greatest extent possible from immediate shutdowns or interruptions.

1            Section 3. DEFINITIONS. As used in this Ordinance:

2            (1) "FACILITY" means any real or personal property,  
3 including appurtenances thereto and fixtures thereon, associated with a given use.

4            (2) "FARMING PRACTICE" means the cultivation, growing,  
5 harvesting, processing or selling of plants or animals of any kind, which lawfully may  
6 be grown, possessed and sold, including but not limited to fish, livestock, poultry,  
7 grapes, cherries, apples, pears, wheat, barley, Christmas trees and nursery stock.

8            (3) "FORESTRY PRACTICE" means any operation conducted on or  
9 pertaining to forest land, including but not limited to:

- 10            (a) Reforestation of forest land;
- 11            (b) Road construction and maintenance;
- 12            (c) Harvesting of forest tree species;
- 13            (d) Application of chemicals; and
- 14            (e) Disposal of slash.

15            (4) "NONRESOURCE USE" means any facility, activity or  
16 other use of land which does not constitute a resource use, including but not limited  
17 to residential use.

18            (5) "RESOURCE USE" means any current or future generally  
19 accepted farming or forestry practice or facility conducted in compliance with  
20 applicable Wasco County Ordinances and Federal and State laws.

21            (6) "RESOURCE USE NUISANCE" means any current or future generally  
22 accepted farming or forestry practice or facility conducted in  
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compliance with applicable Wasco County Ordinances and Federal and State laws, which may be considered offensive, annoying, or interferes with or otherwise affects the urban and rural residents of Wasco County.

(7) "RESOURCE USE" does not include:

- (a) Any unlawful act;
- (b) The willful growing of infested, infected or diseased plants or animals;
- (c) Trespass which involves actual physical intrusion onto the property of another by a person or by a person's animals;

(8) "DESIGNEE" means a Case Developer, appointed by the Six Rivers Community Mediation Services Director.

(9) "COMPLAINT MEDIATION PROCESS"

- (a) Means a procedure established by the Wasco County Court to provide a forum for the mediation of Wasco County residents complaints regarding farming or forestry practices or facilities, including, but not limited to: odors from domestic livestock operations; blowing smoke from heaters, smokers and slash burning; noise from machines, including those devices producing sounds designed for agricultural purposes in order to frighten predacious birds or animals away from agricultural crops; drift or contamination from chemical and fertilizer applications; hours of operation; and littering of County roads; and

1 (b) Shall consist of at least two (2) mediators, working cooperatively in a co-  
2 mediation role. Both mediators shall maintain a neutrality and confidentiality  
3 throughout and beyond the process. The Six Rivers Community Mediation  
4 Services Director or Designee shall serve as a consultant to the Complaint  
5 Mediation Process. Consultation may come prior to, during or after the actual  
6 mediation, as appropriate.

7 (10) "PEER REVIEW BOARD" is a Board appointed, as needed, by the Wasco County  
8 Court to advise the Six Rivers Community Mediation Services on whether a disputed resource  
9 use activity is a generally accepted farming or forest practice or facility. The Board shall consist  
10 of 5 persons who regularly are involved in a resource use within the County, at least 3 of whom  
11 are regularly involved in the same type of disputed resource use being heard through the  
12 Complaint Mediation Process.

13 Section 4. PROTECTING RESOURCE USES.

14 (1) Wasco County shall not support a resource use nuisance complaint or claim  
15 for relief by nonresource uses or any persons or property associated therewith unless the  
16 resource use complaint response and mediation procedure of Section 5 of this Ordinance has  
17 been utilized.

18 (2) This Section applies regardless of:

- 19 (a) The location of the purportedly affected nonresource use;
- 20 (b) Whether the nonresource use purportedly affected existed before or  
21 after the occurrence of the resource use;



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- (c) Whether the resource use or nonresource use has undergone any change or interruption; and
- (d) Whether the resource use is inside or outside an urban growth boundary to the extent permissible under State law.

Section 5. RESOURCE USE COMPLAINT RESPONSE AND MEDIATION PROCEDURE.

- (1) Initial resource use complaints involving farming or forestry practices or facilities shall:
  - (a) Be referred to the Six Rivers Community Mediation Services during regular operating hours or the Wasco County Sheriffs Office after hours and on weekends; and
  - (b) Be responded to as soon as possible.

- (2) The responding Six Rivers Community Mediation Services Agent or Designee shall:
  - (a) Use Six Rivers Community Mediation Services' procedures to respond to a complaint;
  - (b) Notify the Wasco County Court about the documented complaint as soon as possible and report on the effort and/or success in resolving the complaint.

- (3) If the initial contact is through the Wasco County Sheriffs Department, or any other law enforcement agency, the responding officer should:

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- (a) Contact the complainant and document the complaint; and
- (b) Encourage the complainant to call or meet with the resource user and attempt a one-on-one resolution of the complaint; and
- (c) Provide both complainant and resource user with written documentation of the complaint, including, but not limited to the name and address of complainant, the name and address of the resource user, and a description of the nature of the complaint; and
- (d) Inform both parties that the complaint will be referred to Six Rivers Community Mediation Services and that they will be contacted by that agency; and
- (e) Deliver a copy of the complaint to the Six Rivers Community

Mediation Services as soon as possible.

(4) If the complainant and resource user that are principles in a documented resource use complaint within Wasco County request assistance beyond that provided by the Case Developer, the Case Developer shall implement the Complaint Mediation Process.

(5) The Complaint Mediation Process shall:

- (a) Set a date to hear the complaint from both complainant and resource user within a reasonable amount of time; and
- (b) Work with both complainant and resource user in an attempt to resolve the complaint.



(6) The Complaint Mediation Process may:

(a) Request the Wasco County Court to set up a Peer Review Board for assistance in determining whether an activity or facility is a generally accepted farming or forestry practice or facility;

(b) Suggest recommendations for Peer Review Board members to the Wasco County Court; and

(c) Meet with the complainant and resource user any number of times if the Mediators determine that progress is being made toward a resolution of the complaint.

(7) If the Complaint Mediation Process is unable to resolve the complaint, the complainant and resource user shall be advised by the Six Rivers Community Mediation Services of their additional options including, but not limited to, seeking advice from private counsel.

Section 6. LAND USE DECISIONS. The fact that Wasco County's Comprehensive Plan, Zoning Ordinances and land use decisions allow the siting, development or support of any particular use does not negate the provisions of this Ordinance intended to protect a resource use.

Section 7. EFFECT ON OTHER REMEDIES. The provisions of this Ordinance shall not impair the right of any Wasco County resident to pursue any remedy authorized by applicable Wasco County Ordinances or Federal and State laws that:

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- (1) Concerns matters other than a resource use nuisance;
- (2) Does not expressly purport to prohibit or regulate a farming or forestry practice as a resource use nuisance; or
- (3) Prohibits or regulates the use or physical condition of resource use activities or facilities that adversely affect public health or safety.

Section 8. SEVERABILITY CLAUSE. If any portion of this Ordinance is held invalid by a Court of competent jurisdiction, such decision shall apply only with respect to the specific portion held invalid by the decision. It is the intent of Wasco County that the remaining portions of this Ordinance continue in full force and effect.

Section 9. EMERGENCY CLAUSE. This Ordinance being immediately necessary for the preservation of the public well being, an emergency is declared to exist and this Ordinance shall take effect immediately upon adoption.

Regularly passed and adopted by the unanimous vote of all members of the County Court of the County of Wasco, State of Oregon, present on this day.

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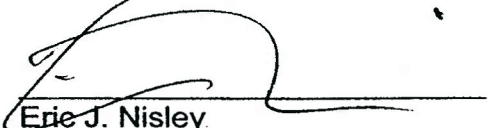
WASCO COUNTY COURT

  
\_\_\_\_\_  
Dan Ericksen, County Judge

  
\_\_\_\_\_  
Scott McKay, County Commissioner

  
\_\_\_\_\_  
Sherry Holliday, County Commissioner

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Eric J. Nisley  
Wasco County District Attorney

Page

9 – AMENDED ORDINANCE



## SPECIAL AGRICULTURAL CONSIDERATIONS

The following "Special Agricultural Considerations" including but not exclusive to the following list, are to be included with approved land use applications as information that property owners need to be aware of in the EFU. The following information is voluntary, but it is recommended that it be recorded on deeds to insure that future property owners and successors in interest are aware of the circumstances that may effect this EFU property.

Irrigation District: Juniper Flat Irrigation District Contact: NA

Water Rights: Wasco County Watermaster Contact: 541 506-2650  
(Prevent loss of water rights to instream use)

Weed Control: Wasco County Weed and Pest Contact: 541 506-2650  
(Control of noxious weeds required)

Chemical Trespass: Wasco County OSU Extension Contact: 541 296-5494

Fire Protection: Juniper Flat V R F P District Contact: NA  
Fire break and stand pipes required.

Big Game WR: No Winter Range identified Contact: NA  
(Fencing recommendations provided by ODFW)

Livestock Fencing: \_\_\_\_\_ Contact: \_\_\_\_\_  
(Open or closed range, must observe appropriate fencing standards. Oregon Dept. of Agriculture - Brand Inspector & OR Law requiring 50/50 fence upkeep).

Animal Control: Wasco County Animal Control Contact: 506-2580  
Animals at large