



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

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NOTICE OF ADOPTED AMENDMENT

March 9, 2007

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

FROM: Mara Ulloa, Plan Amendment Program Specialist

SUBJECT: Jefferson County Plan Amendment
DLCD File Number 006-06



The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. A copy of the adopted plan amendment is available for review at the DLCD office in Salem and the local government office.

Appeal Procedures*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: March 22, 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
Sandy Matthewson, Jefferson County

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FORM 2

D L C D 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

(See reverse side for submittal requirements)

DEPT OF

MAR 05 2007

LAND CONSERVATION AND DEVELOPMENT

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

Date of Adoption: 2-28-07 Date Mailed: _____
(Must be filled in) (Date mailed or sent to DLCD)

Date the Notice of Proposed Amendment was mailed to DLCD: 9-8-06

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

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

Added a site to the Comp Plan inventory of Mineral and Aggregate Sites.

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

Size of area added to inventory was reduced from original proposal of 160 acres to approximately 90 acres.

Plan Map Changed from: _____ to _____
Zone Map Changed from: _____ to _____

Location: 3 1/2 miles west of Hwy 26 on Ramms Road 12-15-30-2200. Acres Involved: _____
Specify Density: Previous: _____ New: _____

Applicable Statewide Planning Goals: 5

Was an Exception Adopted? Yes: _____ No: X

DLCD File No.: 006-06(15546)

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

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

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

Affected State or Federal Agencies, Local Governments or Special Districts: DOGAMI,
ODOT

Local Contact: Sandy Mathewson Area Code + Phone Number: 541-475-4402

Address: 85 SE D'ST.

City: Madras Zip Code+4: 97741

ADOPTION SUBMITTAL REQUIREMENTS

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

1. **Send this Form and TWO (2) Copies of the Adopted Amendment to:**
ATTENTION: PLAN AMENDMENT SPECIALIST
DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
635 CAPITOL STREET NE, SUITE 150
SALEM, OREGON 97301-2540
2. Submit **TWO (2) copies** the adopted material, if copies are bounded please submit **TWO (2) complete copies** of documents and maps.
3. **Please Note:** Adopted materials must be sent to DLCD not later than **FIVE (5) working days** following the date of the final decision on the amendment.
4. Submittal of of this Notice of Adoption must include the text of the amendment plus adopted findings and supplementary information.
5. The deadline to appeal will be extended if you submit this notice of adoption within five working days of the final decision. Appeals to LUBA may be filed within **TWENTY-ONE (21) days** of the date, the "Notice of Adoption" is sent to DLCD.
6. In addition to sending the "Notice of Adoption" to DLCD, you must notify persons who participated in the local hearing and requested notice of the final decision.
7. **Need More Copies?** You can copy this form on to 8-1/2x11 green paper only ; or call the DLCD Office at (503) 373-0050; or Fax your request to:(503) 378-5518; or Email your request to Larry.French@state.or.us - ATTENTION: PLAN AMENDMENT SPECIALIST.

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

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

Ordinance No. 0 - 27 - 07

WHEREAS, ORS 215.298 states that a permit for mining of aggregate shall be issued only for a site included on an inventory in an acknowledged comprehensive plan; and

WHEREAS, Dave Molony submitted an application for a Post Acknowledgment Plan Amendment to amend the Jefferson County Comprehensive Plan to add a 160-acre site, part of tax lot 1413 in Township 12 South, Range 15 East, Section 20 to the Mineral and Aggregate Sites Inventory, and a concurrent application for a conditional use permit to allow the site to be mined, Casefiles 06-PA-06 and 06-CU-04; and

WHEREAS, the Jefferson County Planning Commission conducted public hearings on the applications on October 26, 2006 and November 9, 2006, and after considering the staff report and public testimony presented, voted to recommend that the Board of Commissioners approve the Comprehensive Plan amendment and conditional use permit subject to 13 conditions of approval, but to reduce the amount of land added to the Mineral and Aggregate Sites Inventory to 90 acres rather than 160 acres in order to decrease the amount of the site that would be within a pronghorn Wildlife Area Overlay; and

WHEREAS, the Jefferson County Board of Commissioners conducted a public hearing on January 10, 2007, after which they closed the record and conducted deliberations on January 24, February 7 and February 14, 2007; and

WHEREAS, after considering all evidence in the record and public testimony presented, the Board of Commissioners voted to ACCEPT the Planning Commission recommendation but to modify the conditions of approval for the conditional use permit.

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

A. Adoption of Comprehensive Plan Amendment

Jefferson County hereby AMENDS its Comprehensive Plan Mineral and Aggregate Inventory to add a 90 acre portion of tax lot 1413 in Township 12 South, Range 15 East,

0-27-07

Section 30, as shown on Exhibit A attached hereto and incorporated herein by this reference.

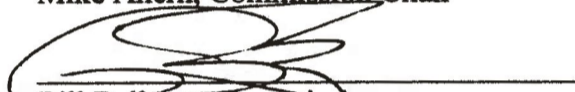
B. Adoption of Findings

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

Dated this 28TH day of February, 2007.

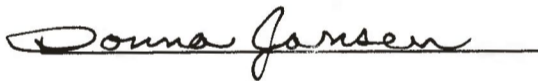
BOARD OF COMMISSIONERS:


Mike Ahern, Commission Chair


Bill Bellamy, Commissioner


John Hatfield, Commissioner

Attest:



Appeal Information

Planning Casefile #06-PA-06

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

Board of Commissioners adoption date: Feb. 28, 2007

0- 27-07

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

EXHIBIT B

FINDINGS OF FACT AND CONCLUSION

1. The applicant requested a Post Acknowledgement Plan Amendment (PAPA) to amend the Comprehensive Plan to include a portion of the property on the inventory of Mineral and Aggregate sites. The original application requested that 160 acres be added to the inventory; during the Planning Commission hearing process the applicant reduced the area that he wished to add to the inventory to approximately 90 acres. OAR 660-023-0180(9) requires the county to amend its Comprehensive Plan and land use regulations to include procedures and requirements consistent with the rule for the consideration of PAPAs. Until such regulations are adopted, or unless the county Comprehensive Plan contains specific criteria regarding the consideration of a PAPA to add a site to the list of significant aggregate sites, the procedures and requirements of the OAR must be applied directly.

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

2. OAR 660-023-0030 indicates that the Goal 5 inventory process consists of four steps: 1) collecting information about the resource site, 2) determining the adequacy of the information, 3) determining the significance of the site, and 4) adopting a list of significant sites.

Finding: Regarding step 1), the applicant provided the information about the proposed site. Adequate information to allow review of the application was submitted, as required by step 2). The application provided information on the quality of rock samples that were tested, an estimate that there are over 2 million cubic yards of material, and a map showing the location of the site. The applicant testified that the operation will cut down the surface of a ridge, like taking layers off a wedding cake, and will not create a pit. There is little existing surface soil, and once mining is complete the site will likely remain bare rock that will be used as a cattle feeding area. An opponent testified that this does not meet the requirement for a reclamation plan. The Board finds that using the mined area as part of a livestock operation on the property is sufficient reclamation, provided the site complies with all DOGAMI requirements for reclamation.

Regarding step 3), OAR 660-023-0180(3) contains the requirements for determining whether the site is significant, as addressed in the following finding. If found to be significant, the site must be added to the Comprehensive Plan inventory of Mineral and Aggregate Sites, as required by step 4).

2. OAR 660-023-0180(3) contains the requirements for determining whether a mineral and aggregate site is significant, as follows:

An aggregate resource site shall be considered significant if adequate information regarding the quantity, quality, and location of the resource demonstrates that the site

meets any one of the criteria in subsections (a) through (c) of this section, except as provided in subsection (d) of this section:

- (a) A representative set of samples of aggregate material in the deposit on the site meets applicable Oregon Department of Transportation (ODOT) specifications for base rock for air degradation, abrasion, and soundness, and the estimated amount of material is more than 2,000,000 tons in the Willamette Valley, or more than 500,000 tons outside the Willamette Valley;*
- (b) The material meets local government standards establishing a lower threshold for significance than subsection (a) of this section; or*
- (c) The aggregate site was on an inventory of significant aggregate sites in an acknowledged plan on September 1, 1996.*
- (d) Notwithstanding subsections (a) and (b) of this section, except for an expansion area of an existing site if the operator of the existing site on March 1, 1996, had an enforceable property interest in the expansion area on that date, an aggregate site is not significant if the criteria in either paragraphs (A) or (B) of this subsection apply:*
 - (A) More than 35 percent of the proposed mining area consists of soil classified as Class I on Natural Resource and Conservation Service (NRCS) maps on June 11, 2004; or*
 - (B) More than 35 percent of the proposed mining area consists of soil classified as Class II, or of a combination of Class II and Class I or Unique soil, on NRCS maps available on June 11, 2004, unless the average thickness of the aggregate layer within the mining area exceeds:*
 - (i) 60 feet in Washington, Multnomah, Marion, Columbia, and Lane counties;*
 - (ii) 25 feet in Polk, Yamhill, and Clackamas counties; or*
 - (iii) 17 feet in Linn and Benton counties.*

Finding: Information from Carlson Testing, Inc. was submitted that shows that rock samples from the subject property exceeded ODOT specifications. The rock that was tested came from two test areas. One of the test areas was the existing quarry, which is operating under a DOGAMI Grant of Total Exemption. The other test area was an area 600 feet in width by 1320 feet in length on the south side of the plateau that is proposed to be mined by lowering the surface of the plateau. Based on the testing, the applicant estimated that the amount of rock easily exceeds 500,000 tons. This complies with (a). Regarding (d), according to NRCS information, the soils within the area that is proposed to be added to the Mineral and Aggregate Inventory are Class VI and are not Unique soils. Since the standards in (a) and (d) are met, the Board finds that the site is significant.

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

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

- (a) *The local government shall determine an impact area for the purpose of identifying conflicts with proposed mining and processing activities. The impact area shall be large enough to include uses listed in subsection (b) of this section and shall be limited to 1,500 feet from the boundaries of the mining area, except where factual information indicates significant potential conflicts beyond this distance. For a proposed expansion of an existing aggregate site, the impact area shall be measured from the perimeter of the proposed expansion area rather than the boundaries of the existing aggregate site and shall not include the existing aggregate site.*
- (b) *The local government shall determine existing or approved land uses within the impact area that will be adversely affected by proposed mining operations and shall specify the predicted conflicts. For purposes of this section, "approved land uses" are dwellings allowed by a residential zone on existing platted lots and other uses for which conditional or final approvals have been granted by the local government. For determination of conflicts from proposed mining of a significant aggregate site, the local government shall limit its consideration to the following:*
- (A) *Conflicts due to noise, dust, or other discharges with regard to those existing and approved uses and associated activities (e.g., houses and schools) that are sensitive to such discharges;*
- (B) *Potential conflicts to local roads used for access and egress to the mining site within one mile of the entrance to the mining site unless a greater distance is necessary in order to include the intersection with the nearest arterial identified in the local transportation plan. Conflicts shall be determined based on clear and objective standards regarding sight distances, road capacity, cross section elements, horizontal and vertical alignment, and similar items in the transportation plan and implementing ordinances. Such standards for trucks associated with the mining operation shall be equivalent to standards for other trucks of equivalent size, weight, and capacity that haul other materials;*
- (C) *Safety conflicts with existing public airports due to bird attractants, i.e., open water impoundments as specified under OAR Chapter 660, Division 013;*

- (D) *Conflicts with other Goal 5 resource sites within the impact area that are shown on an acknowledged list of significant resources and for which the requirements of Goal 5 have been completed at the time the PAPA is initiated;*
- (E) *Conflicts with agricultural practices; and*
- (F) *Other conflicts for which consideration is necessary in order to carry out ordinances that supersede Oregon Department of Geology and Mineral Industries (DOGAMI) regulations pursuant to ORS 517.780;*

Finding: The surrounding area is entirely zoned Range Land. There is one dwelling within 1500 feet of the area that is proposed to be added to the inventory. It is located on tax lot 12-15-1407, approximately 800 feet from the area proposed to be mined. Testimony was received that the house is a rental and the renter may move if the mining operation generates noise and dust, which will adversely impact the property owner and reduce the property's value. The applicant stated that he would adhere to standard hours of operation to minimize impacts from noise, and to use water for dust control. No other existing or approved uses that are sensitive to dust, noise and other discharges are within 1500 feet. An opponent testified that he owns two vacant parcels in the Range Land zone that are more than 320 acres and a dwelling is permitted outright on each, so impacts to these future dwellings must be considered. The opponent misunderstands the OAR requirement. There is no land in the vicinity in a residential zone, and neither he nor any other nearby property owner has received conditional or final approval for a dwelling or other use. When considering whether mining should be allowed, the County is not required to give consideration to potential uses which may or may not be approved in the future. Other than the impacts that could potentially occur to county roads, no factual information is available to suggest that there will be significant potential conflicts beyond 1500 feet, so the impact area was limited to that distance.

Ramms Road is the local road that will be used for access to and egress from the mining site. There are no other local roads within a mile. The nearest arterial is Highway 26, which is approximately three miles from the entrance to the mining site. The Public Works Director indicated that Ramms Road has adequate width and capacity to accommodate haul trucks, the existing entrance to the mine site has adequate sight distance for safety, and the grade of the road is minimal, being approximately 4 percent. The road is also used frequently by trucks hauling agricultural products. Opponents testified that the road is too narrow to safely accommodate haul trucks, and will be degraded because of the weight of loaded haul trucks and increased traffic. The Board finds the Public Works Director's testimony to be persuasive, and finds that his suggested conditions of approval regarding signage and limiting weights during winter months are adequate to minimize impacts.

There are no public airports in the vicinity, and no open water impoundments are proposed as part of the mining operation.

There are several Goal 5 resources within the 1500-foot impact area. Willow Creek is listed in the Comprehensive Plan inventory of streams because it is fish habitat. It is

located approximately ¼ mile from the proposed mining site at the nearest point. Newbill Creek and McMeen Creek are also within the 1500-foot impact area. An opponent testified that McMeen Creek contains fish habitat. No evidence to support this assertion was submitted. Neither Newbill Creek nor McMeen Creek is a designated Goal 5 resource. Testimony was received that sediment entering either creek could conceivably move downstream into Willow Creek since flooding occurs in all of the creeks, and that sheet flow and erosion could move sediment that would make its way to Willow Creek. The applicant testified that runoff should not be able to reach any creek, based on a DOGAMI report of an onsite inspection of the existing quarry which stated that "storm water appears to infiltrate into the ground rather than running off the surface of the ground. This site does not need a storm water permit at this time." The Board finds that DOGAMI adequately regulates mining operations to prevent stormwater runoff, but that the applicant should also work with the Willow Creek Watershed Council to prevent sediment or runoff from reaching Willow Creek.

When submitted, the application requested that 160 acres be added to the Comprehensive Plan Mineral and Aggregate Sites inventory. The western approximately 75 acres of this area is at the eastern edge of a designated antelope winter range wildlife habitat area. The Oregon Department of Fish and Wildlife (ODFW) submitted comments requesting that mining operations within the designated habitat area be limited from December 1 to April 1 in order to minimize the impacts to pronghorn during winter months. During the public hearings, the applicant indicated that mining would not occur in the majority of the habitat area, except for approximately five acres where the existing quarry is located. He agreed to not include the portion of the site that is in the habitat area on the Comprehensive Plan Inventory, except for the five acre existing quarry site. Although the County could include the land within the habitat area on the inventory but not allow mining within this area, the Board finds that since the applicant has agreed to amend the application, the area that is added to the inventory should not include any land within the habitat area except the five acre existing quarry site. Because this five acre area is limited in size, is at the extreme outer edge of the designated habitat area, has already been impacted by mining activities, and the applicant agrees to limit mining activities during winter months, the Board finds that there will be minimal impact to pronghorn.

Lands within the 1500-foot impact area are range land. Any agricultural activity is limited to grazing livestock. The mining operation will have no off-site impacts other than dust, noise and truck traffic on roads, so will not conflict with agricultural uses.

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

Finding: Measures to minimize conflicts to the dwelling on tax lot 1407 include imposing hours of operation, prohibiting operations on holidays, and requiring the

operation to comply with all Department of Environmental Quality (DEQ) noise and air quality standards, which will be made conditions of approval of the conditional use permit.

Measures to minimize conflicts to local roads include prohibiting use of Grizzly Road by haul trucks except for local deliveries, requiring that the road approach (entrance to the mine site) be paved, limiting the quarry to one entrance onto Ramms Road, and requiring payment of a fee for all material removed from the site to be dedicated to county road improvements.

Because of the distance of Willow Creek from the mining operation, it is unlikely that any runoff or sediment could make its way to the creek and have an adverse impact on fish habitat. Compliance with DOGAMI requirements and coordination with the Willow Creek Watershed Council will minimize potential conflicts.

The potential impacts to the pronghorn winter range will be minimized by reducing the size of the area that will be added to the Comprehensive Plan inventory, so that mining can only occur on five acres that is within the designated habitat area. Additional measures that can be taken to minimize conflicts to the wildlife are to avoid blasting and other noisy activities during winter months, in accordance with the limitations suggested by ODFW. This will be made a condition of approval.

ORS 215.296 requires that a proposed use will not force a significant change in, or significantly increase the cost of accepted farm practices on surrounding lands devoted to farm use. Land within the impact area is range land. Mining and processing operations may produce dust and noise similar to that produced by farming activities, but not at a level that would force a significant change in, or significantly increase the cost of range land agricultural activities such as raising livestock.

The Board finds that reasonable and practical measures can be taken to minimize all identified conflicts, so mining should be allowed.

(d) *The local government shall determine any significant conflicts identified under the requirements of subsection (c) of this section that cannot be minimized. Based on these conflicts only, local government shall determine the ESEE consequences of either allowing, limiting, or not allowing mining at the site. Local governments shall reach this decision by weighing these ESEE consequences, with consideration of the following:*

- (A) *The degree of adverse effect on existing land uses within the impact area;*
- (B) *Reasonable and practicable measures that could be taken to reduce the identified adverse effects; and*
- (C) *The probable duration of the mining operation and the proposed post-mining use of the site.*

Finding: All identified conflicts can be minimized by the placement of conditions on the

conditional use permit. Consequently, subsection (d) is not applicable and an ESEE analysis is not required.

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

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

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

Finding: The post-mining use of the site will be a cattle feeding and calf breeding area as part of the livestock operation of the rest of the parcel. Because of a lack of irrigation water and top soil, reclamation for growing crops is not feasible. The site does not contain class I, II or Unique farmland, so does not have to be reclaimed for agricultural use.

- (g) *Local governments shall allow a currently approved aggregate processing operation at an existing site to process material from a new or expansion site*

without requiring a reauthorization of the existing processing operation unless limits on such processing were established at the time it was approved by the local government.

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

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

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

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

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

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

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

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

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

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

Finding: Statewide Planning Goal 5 requires that the county adopt a program to identify and protect mineral and aggregate resources and sites for removal and processing of such resources. Areas identified as having non-renewable mineral and aggregate resources should be planned for interim, transitional and “second use” utilization as well as for the primary use. Further requirements for compliance with Goal 5 are found in OAR 660-023. OAR 660-023-0180 contains provisions specific to mineral and aggregate resources, as addressed in the previous findings. OAR 660-023-0180(9) requires the county to apply the OAR directly. The provisions in OAR 660-023-0180 do not allow

consideration of other county approval criteria when determining whether an aggregate site is significant and should be added to the county's Comprehensive Plan inventory. Although several opponents questioned the need for the site because of its proximity to another quarry a few miles away on the same property, criterion (B) is not applicable because it exceeds the level of review allowed by OAR 660-023-0180.

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

Finding: The proposed operation falls into the category of mining, crushing and stockpiling of aggregate. The application was reviewed by the Planning Commission at a public hearing, but could not be approved unless the Comprehensive Plan amendment is also approved. Since the Board of Commissioners must approve all Plan amendments, the Planning Commission forwarded the conditional use application to the Board with a recommendation for approval.

OAR 660-033-0120 indicates that the proposed use may be allowed subject to review for compliance with ORS 215.296 and subject to ORS 215.298. ORS 215.296 is addressed in Findings 3 and 9(E). ORS 215.298 is addressed in the following finding.

8. ORS 215.298 contains requirements for mining in an exclusive farm use zone, as follows:
- 1) *For purposes of ORS 215.213 (2) and 215.283 (2), a land use permit is required for mining more than 1,000 cubic yards of material or excavation preparatory to mining of a surface area of more than one acre. A county may set standards for a lower volume or smaller surface area than that set forth in this subsection.*
 - 2) *A permit for mining of aggregate shall be issued only for a site included on an inventory in an acknowledged comprehensive plan.*
 - 3) *For purposes of ORS 215.213 (2) and 215.283 (2) and this section, "mining" includes all or any part of the process of mining by the removal of overburden and the extraction of natural mineral deposits thereby exposed by any method including open-pit mining operations, auger mining operations, processing, surface impacts of underground mining, production of surface mining refuse and the construction of adjacent or off-site borrow pits except those constructed for use as access roads. "Mining" does not include excavations of sand, gravel, clay, rock or other similar materials conducted by a landowner or tenant on the landowner or tenant's property for the primary purpose of reconstruction or maintenance of access roads and excavation or grading operations conducted in the process of farming or cemetery operations, on-site road construction or other on-site construction or nonsurface impacts of underground mines.*

Finding: The proposal is to mine more than 1000 cubic yards and more than an acre, so land use approval (a permit) is required. The site has been found to be significant and

will be added to the Comprehensive Plan inventory of mineral and aggregate sites, in compliance with subsection (2). The proposed mining operation conforms to the definition in (3).

9. JCZO Section 302(C) states:

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

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

Finding: The application was considered at a public hearing before the Planning Commission. As indicated previously, OAR 660-023-0180(5)(e) requires additional review to be limited to the minimum necessary to minimize conflicts with identified conflicting uses. The criteria in this section exceed the review allowed by the OAR.

2. *The following criteria shall be used when evaluating a Conditional Use for an R-L area:*
 - a. *Immediate and future impact on public services, existing road systems and traffic demands.*
 - b. *Soil type and its development limitations, including slides, erosions, flooding and drainage.*

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- c. *Agricultural productivity which includes not only food productivity, but the production of any other useable agricultural product which requires open space and non-urban environment.*
- d. *Development is to be designed to minimize the effects of terrain, slope and ground cover.*
- e. *Development shall be compatible with the existing land use pattern and the overall character of the overall area.*
- f. *An adequate quantity and quality of water and either sub-surface or other sanitary disposal system, and adequate provisions for solid waste disposal.*
- g. *Conversion of agricultural lands to non-farm uses shall be based upon*
 - (1) *Environmental, energy, social and economic consequences if Goal V resources are effected.*
 - (2) *Unavailability of an alternative suitable location for the requested use.*
 - (3) *Compatibility of the proposed uses with related agricultural land.*
 - (4) *The retention of Class I through VI soils in farm use and the retention of range lands.*

Finding: Any water that would be used for crushing or dust control would need to be trucked in. A portable toilet will be used for sanitation. No other provisions are needed for sewage disposal, and the operation will not generate solid waste. No other public services will be needed other than road access. The Public Works Director has requested that conditions be placed on the approval to minimize impacts to the county road system.

Mining activities at the site will be regulated by DOGAMI. An operating permit will need to be obtained once the operation exceeds 5,000 cubic yards or one acre of disturbance annually. Existing ground cover on the site consists almost entirely of grass. Any top soil that is removed must be stockpiled and used later for site reclamation. The area proposed for mining and inclusion on the Comprehensive Plan inventory is not in a mapped flood hazard area.

Agricultural productivity of the mining area or conversion of agricultural land cannot be considered because the site has been found to be significant under Goal 5. Compatibility with the land use pattern and character of the area cannot be considered other than to identify conflicting uses within the 1500-foot impact area, as discussed previously.

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

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

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

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

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

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

Finding: The applicant has indicated his intent to use the site for mining.

- D. *In permitting a new conditional use or the alteration of an existing conditional use, the Planning Director in case of Administrative Permitted Uses, or Planning Commission may impose, in addition to those standards and requirements expressly specified by this ordinance, additional conditions which the Planning Director or Planning Commission considers necessary to protect the best interests of the surrounding area or the County as a whole. These conditions may include but are not limited to the following:*

1. *Increasing the required lot size or yard dimension.*
2. *Limiting the height, size, or location of buildings.*
3. *Controlling the location and number of vehicle access points.*
4. *Increasing the street width.*
5. *Increasing the number of required off-street parking spaces.*
6. *Limiting the number, size, location, and lighting of signs.*
7. *Required dike, fencing, screening, landscaping, or other facilities to protect adjacent or nearby property.*
8. *Designating site for open space.*

9. *Limiting the manner in which the use is conducted including restricting the time an activity may take place and restraints to minimize such environmental effects as noise, vibrations, air pollution, glare and odor.*
10. *The owner shall sign and record a "Waiver of Remonstrance" for the property regarding any future formation of a local road improvement district. The owner shall sign and record a "Waiver Of Right To Remonstrate Against Accepted Farm Use Practices and The Maintenance Or Construction Of County Roads" and "Waiver Of Right To Remonstrate Against Formation Of A Local Fire Protection District" for the property.*

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

No buildings are proposed. Ramms Road has adequate width and capacity to accommodate haul trucks. No signs have been proposed, although a four square foot sign is permitted pursuant to Section 406(G)(2). The property is fairly remote and is bordered on all sides by range land, so fencing, screening or landscaping are not warranted. Designating the site for open space is also not appropriate because of the location of the site and the nature of the mining operation. Conditions limiting the hours of operation are appropriate in order to limit impacts to property owners in the vicinity and along the haul route. Requiring waivers of remonstrance to be recorded is not warranted since the operator will be required to pay a fee towards road maintenance, fire danger will be minimal, and farming practices will not adversely impact the mining operation.

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

Finding: The site is currently operating under a DOGAMI Grant of Total Exemption, which means that less than one acre can be disturbed and no more than 5,000 cubic yards of material can be removed per year. The proposal is to expand the size of the operation, which led to the need to submit applications for a Comprehensive Plan amendment and conditional use permit.

- E. *A use allowed under 215.283(2) may be approved only where the County finds the use will not:*
1. *Force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; or*
 2. *Significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.*

Finding: There are no surrounding lands devoted to forest use. The operation will not force a significant change in, or significantly increase the cost of farming operations since the surrounding land is range land which is either not in production or is used to raise livestock.

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

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

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

Finding: The property contains a significant rock deposit and has minimal value as agricultural land due to shallow soils and lack of irrigation water. Consequently, mining is the most appropriate use of the land. Section 302(H) requires 30-foot setbacks in the RL zone, which the operation can easily comply with. There is little if any pedestrian use on Ramms Road, so fencing and screening are not warranted. Measures to protect fish and wildlife habitat have been discussed previously. There are no designated bird nesting sites in the vicinity. The only water that may be used would be for processing and dust abatement. DOGAMI permits normally require that the pit floor and access road be sloped so that all water and stormwater will drain internally. DOGAMI requires submittal of a reclamation plan prior to issuing an operating permit, and is responsible for

verifying that the plan is completed. DOGAMI also regulates mining operations, but does not regulate access roads or equipment. Mining and processing equipment must comply with DEQ air and noise quality regulations.

The Board has found that the site should be added to the Comprehensive Plan Mineral and Aggregate Inventory.

12. Five acres of the area that will be added to the Comprehensive Plan inventory is in the pronghorn winter range. Mining or other development on that portion of the property is subject to the requirements of Section 321, Wildlife Overlay Combining Zone. Subsection 321(E)(4) and (5) state:
4. *In addition to the general criteria that must be satisfied for the zoning requirements of the underlying zone, each Applicant must satisfy the additional criteria below.*
 - a. *Dwellings and structures shall be located near each other and existing roads;*
 - b. *Dwellings and structures shall be located to avoid habitat conflicts;*
 - c. *Dwellings and structures shall be located to utilize the lease valuable habitat areas;*
 - d. *Road development shall be the minimum necessary to support the use.*
 - e. *The Applicant shall notify the Oregon Department of Fish and Wildlife (ODFW) of the proposed use under the land use application if said application has or may have a potential adverse impact on habitat. If it is determined that habitat will be affected, the property owner shall work with ODFW to develop a management plan to protect the deer and elk.*
 5. *Approval Conditions: In permitting a use within the WA Zone and in order to mitigate the impact of the proposed use, the Planning Director, Planning Commission or County Commissioners may impose any reasonable conditions on the proposed use in order to ensure that it will not destroy wildlife habitat or result in abandonment by the protected wildlife of the area.*

Finding: The proposal does not involve any dwellings or permanent structures. Road development will be limited to that necessary to allow mining and processing operations. ODFW was notified of the application, and suggested limitations on mining activities within the habitat area during winter months. The Board finds that these should be made conditions of approval.

V. Conclusions

The site meets the requirements of OAR 660-023-0180(3) to be deemed significant, so the Comprehensive Plan must be amended to add the site to the Mineral and Aggregate inventory. A 1500-foot impact area is adequate to consider potential impacts to surrounding properties.

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Compliance with conditions of approval can minimize the potential impacts on uses within the 1500-foot area, so mining should be allowed.

When the county has determined that mining should be allowed, OAR 660-023-0180(5)(e) limits any subsequent land use review to the minimum review necessary to assure compliance with clear and objective standards related to mining and processing activities. Since many of the county's conditional use approval criteria exceed the allowed level of review, they cannot be applied. The mining and processing operation can comply with all criteria that are applicable. Conditions of approval have been imposed to minimize potential conflicts to pronghorn winter range, roads and surrounding properties, and to ensure that mining operations comply with regulatory requirements.