



Oregon
Theodore R. Kubongski, 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

03/19/2009

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

FROM: Larry French, Plan Amendment Program Specialist

SUBJECT: Linn County Plan Amendment
DLCD File Number 002-08

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: Thursday, April 02, 2009

This amendment was submitted to DLCD for review 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 THAT IT WAS MAILED TO DLCD. AS A RESULT, YOUR APPEAL DEADLINE MAY BE EARLIER THAN THE ABOVE DATE SPECIFIED.

Cc: Olivia Glantz, Linn County
Doug White, DLCD Community Services Specialist
Amanda Punton, DLCD Regional Representative
Ed Moore, DLCD Regional Representative

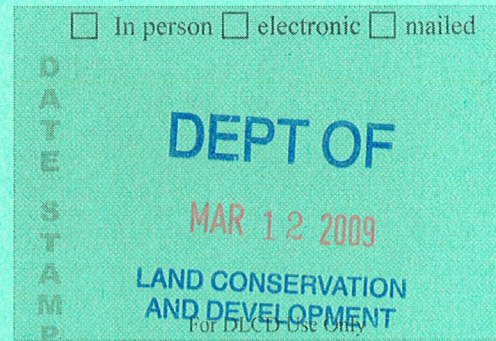
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FORM 2

DLCD

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



Jurisdiction: **Linn County**

Local file number: **BC08-0006**

Date of Adoption: **3/10/2009**

Date Mailed: **3/12/2009**

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? **Yes** Date: 12/15/2008

- | | |
|---|---|
| <input checked="" type="checkbox"/> Comprehensive Plan Text Amendment | <input type="checkbox"/> Comprehensive Plan Map Amendment |
| <input type="checkbox"/> Land Use Regulation Amendment | <input checked="" type="checkbox"/> Zoning Map Amendment |
| <input type="checkbox"/> New Land Use Regulation | <input type="checkbox"/> Other: |

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

A comprehensive plan text amendment to add a 28.04-acre portion of a 128.86-acre property to the Linn County aggregate inventory as a significant aggregate resource site. A zone map amendment to add an aggregate resource overlay (ARO) designation to the 28.04-acre portion of the property is also requested

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

Plan Map Changed from: **Farm/Forest**

to: **No Change**

Zone Map Changed from: **Farm/Forest(F/F)**

to: **F/F w/ Aggregate Resource Overlay**

Location: **10S-01E-10 (See Legal)**

Acres Involved: **28**

Specify Density: Previous: **na**

New: **na**

Applicable statewide planning goals:

- | | | | | | | | | | | | | | | | | | | |
|--------------------------|--------------------------|-------------------------------------|-------------------------------------|-------------------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 |
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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

002-08(17297)[15437]

DLCD file No. _____

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

Linn County Environmental Health, Linn County Assessor, Linn County Building Official, Linn County Roads Department, Lyons Rural Fire Protection District, State Fire Marshall, Department of Forestry, DEQ, WRD, DOGAMI

Local Contact: **Olivia Glantz**

Phone: **(541) 967-3816** Extension: **2368**

Address: **PO BOX 100**

Fax Number: **541-926-2060**

City: **Albany**

Zip: **97322-**

E-mail Address: **oglantz@co.linn.or.us**

ADOPTION SUBMITTAL REQUIREMENTS

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

1. **Send this Form and TWO 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.

BEFORE THE BOARD OF COUNTY COMMISSIONERS

FOR LINN COUNTY OREGON

IN THE MATTER OF AMENDING THE)
LINN COUNTY *COMPREHENSIVE*)
PLAN TEXT AND THE LINN COUNTY)
ZONING MAP; AND APPROVING AN)
AGGREGATE MINING PERMIT)

RESOLUTION &
ORDER NO. 2009-084
(Planning and Building Department BC08-0006)
(Findings and Conclusions)

WHEREAS, The Board of County Commissioners for Linn County (Board) conducted a duly advertised public meeting on February 25, 2009 for the purpose of considering the matter of a proposed *Comprehensive Plan* text amendment and zoning map amendment that would amend the *Comprehensive Plan* text to include a 28.04-acre portion of the property identified as Tax Lot 100 on Assessor map T10S, R01E, Section 10, in the inventory of significant aggregate resource sites without conflicting uses; amend the Zoning Map to apply the Aggregate Resource Overlay (ARO) to the resource site; and permit the mining and processing of aggregate on the property;

WHEREAS, The proposed *Comprehensive Plan* text amendment and proposed zoning map amendment had been previously considered by the Linn County Planning Commission at a duly advertised meeting on February 10, 2009 and who voted 8-0 to recommend approval to the Board;

WHEREAS, The Board, after considering all testimony and evidence submitted, reached a consensus to recommend that the proposed *Comprehensive Plan* text amendment and proposed zoning map amendment be adopted to permit the proposed aggregate mining and processing; and

WHEREAS, The findings in support of the proposed *Comprehensive Plan* text amendment and zoning map amendment are attached hereto as Exhibit 1 (BC08-0006 Decision Criteria, Findings and Conclusions); and now, therefore, be it

RESOLVED, That the Board of County Commissioners for Linn County approve the Findings and Conclusions as set forth in Exhibit 1 (BC08-0006 Decision Criteria, Findings and Conclusions); and

ORDERED, That the applications be approved as proposed to include a 28.04-acre portion of the subject 128.86-acre property in the Linn County aggregate inventory as a significant aggregate resource site without conflicting uses; to apply the aggregate resource overlay (ARO) zone to the resource site and the impact area; and to authorize mining consistent with the ARO and other applicable regulations;

ORDERED, That the *Linn County Comprehensive Plan* text be prepared for Board adoption amending LCC Chapter 905, Appendix 5, entitled “*Inventory of Significant Sites Without Conflicting Uses – Privately Owned Aggregate Sites*” to include the 28.04-acre portion of the property identified on Linn County Assessor maps as T10S, R01E, Section 10, TL100 containing a significant aggregate resource;

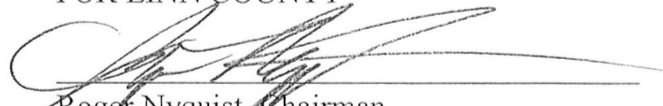
ORDERED, That *Linn County Comprehensive Plan* text be prepared for Board adoption amending LCC Chapter 905, Appendix 5A, entitled “*Analyses Justifying a Classification as a Significant Site Without Conflicting Uses*” to include the conclusions of the Goal 5 resource and conflict analysis in support of adding the identified 28.04-acre portion of the property identified on Linn County Assessor maps as T10S, R01E, Section 10, TL100 to the aggregate inventory as a significant site;

ORDERED, That the proposed Zoning Map amendment be prepared for adoption to apply the Aggregate Resource Overlay (ARO) to the 28.04-acre portion of the property identified on Linn County Assessor maps as T10S, R01E, Section 10, TL100 that is identified as a significant aggregate resource site, as delineated in Exhibit 1, Attachment A; and

ORDERED, That a development permit be issued to authorize aggregate mining and processing on the 28.04-acre portion of the property identified on Linn County Assessor maps as T10S, R01E, Section 10, TL100 that is identified as a significant aggregate resource site, consistent with LCC Chapter 905, Appendix 5 and Appendix 5A; LCC Chapter 921; LCC Chapter 931; and LCC Chapter 934.

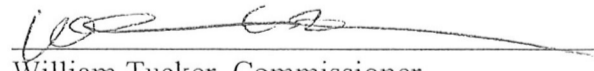
Resolved this 10th day of ~~February~~ ^{March}, 2009.

BOARD OF COUNTY COMMISSIONERS
FOR LINN COUNTY

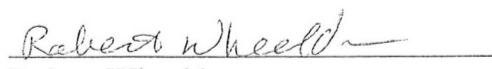

Roger Nyquist, Chairman

ABSENT


John K. Lindsey, Commissioner


William Tucker, Commissioner

APPROVED AS TO CONTENT:


Robert Wheeldon
Linn County Planning and Building Director

APPROVED AS TO FORM:


Thomas N. Corr
Linn County Legal Counsel

If the site does not contain a significant resource, the site would be added to the inventory of non-significant sites and the mining permit would be reviewed under the criteria in *LCC 933.310*.

C. Impact Area (*LCC 939.130*)

To determine existing and potential conflicts between the proposed mining and processing activities and other area land uses, Oregon Administrative Rules (OAR) and *LCC 939.130(A)(1)* establish an impact area of 1500 feet from the boundaries of the proposed mining area, except where factual information is adequate to indicate significant potential conflicts beyond this distance.

The impact area includes farm land to the north and south and farm/forest land to the east and west. There are six adjacent properties partially within the impact area, and two off-site dwellings. No information has been submitted to-date to indicate a larger impact area is required. The Board finds that the designated impact area is consistent with the provisions in *LCC 939.130(A)*.

D. Conflicts Due to Noise, Dust or Other Discharges [*LCC 939.130(B) (4) (a)*]

The impact area includes farm land to the north and south and farm/forest land to the east and west. There are six adjacent properties partially within the impact area, and two off-site dwellings. No significant conflicts have been identified with these properties. The Board finds that no significant conflicts have been identified with these properties.

There are no anticipated conflicts with other land uses as a result of this application. Mining currently exists on the property. The level of activity will remain the same but will allow expansion of the mining area.

Periodic watering of the mining area will prevent dust impacts. Continued compliance with DEQ and DOGAMI mining practices further prevents certain dust and noise impacts.

Landscaping including trees and shrubs along the southern, western, and eastern sides of the mining area prevent visual conflict with areas in these directions. The presence of the hill containing mature trees on the eastern portion of the mining area prevents certain visual, dust, and noise conflicts.

Dust or other discharges will be minimal due to dust abatement activity on the site and compliance with DEQ dust discharge standards.

The Board finds that the proposal does not create conflicts due to noise, dust or other discharges within the impact area, and the criteria in *LCC 939.130(B)(4)(a)* are satisfied.

E. Potential Conflicts to Local Roads [*LCC 939.130(B) (4) (b)*]

Truck traffic to and from the site will use the existing quarry access. The sight-distance is good from the existing intersection where the haul road meets Thomas Drive. The Linn County Roadmaster provided a letter stating that the Roadmaster finds that there

will be no significant impacts to Linn County roads from the proposed quarry expansion. The Roadmaster further states that he has reviewed the rock haul plan and finds that it meets the requirements of the Linn County Road Department. The Board finds that this criterion is satisfied.

F. Conflicts with Other Goal 5 Resource Sites [LCC 939.130(B) (4) (c)]

No other Goal 5 resources are identified in the Comprehensive Plan in the impact area. No conflicts with other Goal 5 resources are identified.

G. Conflicts with Agricultural Practices [LCC 939.130(B) (4) (d)]

The impact area includes forest land to the east and farm land to the north, south and west of the subject property. According to the applicant, there are no known conflicts with the current mining activity and adjacent agricultural practices within 1500 of the resource site boundaries. The primary use of the neighboring agricultural properties is growing hay and grass seed. The proposed mining on the site does not pose any significant conflict with these agricultural practices. Dust or other discharges will be minimal due to dust abatement activity on the site and compliance with DEQ dust discharge standards.

Noise impacts will not affect hay and grass seed practices on adjacent properties. Impacts of any crushing equipment will be mitigated through the requirements of the DEQ permit required for operation rock crushing machinery. Permit requirements include dust abatement controls. Compliance with the DEQ permit will minimize impacts to local agricultural practices.

The Board finds that the proposal does not result in conflicts with agricultural practices within the impact area and that the proposal satisfies the criterion in *LCC 939.130(B) (4) (d)*.

H. Potential Future Conflicting Uses (LCC 939.180)

The impact area includes forest land to the east and farm land to the north, south and west of the subject property. There are six adjacent properties partially within the impact area and two off-site dwelling. No significant conflicts have been identified to-date within the impact area

The properties to the west and south are zoned EFU and properties to the north and east are zoned F/F. Residential and limited resource-related commercial uses are permitted in the F/F and EFU zones only with a conditional use permit, and only if it can be shown that those proposed uses would not conflict with existing resource uses on adjacent property, including property with an ARO designation. If the ARO is applied to the site, there are no identifiable outright or permitted uses in County Code that could be placed within 1,500 feet of the resource area boundary that would be permitted to conflict with the resource use of the property. The Board finds that the proposal satisfies the criterion in *LCC 939.180*.

I. Measures to Minimize Potential Conflicts (LCC 939.140)

The Board finds that no potential conflicts have been identified within the impact area. If a conditional use permit were proposed within an ARO impact area, potential conflicts with existing land uses, including this resource site, would be considered in the decision. This would preclude new uses in the EFU portion of the impact area from conflicting with mining at this site. The Board finds that the proposal satisfies the criterion in *LCC 939.140*.

J. Economic, Social, Environmental and Energy (ESEE) Consequences (*LCC 939.150*)

The Board finds that there are no conflicts between the proposed quarry expansion and adjacent land uses. An ESEE conflict analysis in *LCC 939.150* is therefore not required.

K. Plan Consistency [*LCC 921.872(A)*]

The proposal would add the identified 28.04-acre resource site to the inventory of significant aggregate resource sites without conflicting uses; apply the Aggregate Resource Overlay (ARO) to the property; and authorize a development permit for aggregate extraction and processing on the site. To approve an aggregate inventory Plan amendment, the amendment must be consistent with the intent of the applicable section(s) of the Comprehensive Plan (Plan) [*LCC 921.872(A)*].

The aggregate resources element of the Plan states at *LCC 905.800(F)* that: "Aggregate resources must be inventoried and significant resource sites must be protected for use by future generations." The Plan at *LCC 905.800(G)* states: "...an Aggregate Resource Overlay (ARO) is established in the Agricultural Resource... plan designation(s) when a significant aggregate resource site qualifies for protection from conflicting land uses."

The aggregate resources policy in *LCC 905.820(B)(1)* states, "Linn County shall consider mineral and aggregate resource extraction and processing as a resource use of the land in Agricultural Resources, Farm/Forest and Forest Resource plan designations." The aggregate resources policies in *LCC 905.820(B)(2) to 905.820(B)(20)* establish review policies and procedures to include aggregate resource sites in the Plan inventory as appropriate.

The procedures and criteria in *LCC Chapter 939* implement the Aggregate Resources element of the Plan. This application has been submitted and reviewed pursuant to *LCC Chapter 939* to ensure consistency with the Comprehensive Plan. The Board finds that the record supports a conclusion that the proposal is consistent with the applicable sections of the Comprehensive Plan, and the criteria in *LCC 921.872(A)* are satisfied.

L. Statewide Planning Goals [*LCC 921.872(B)*]

Aggregate is a Goal 5 resource. The aggregate element of the Plan (*LCC 905.800 to 905.820*), and *LCC Chapter 939* are acknowledged to be consistent with the Goal 5 rule for aggregate. The application is consistent with Goal 5 when these procedures and rules governing protection of significant aggregate resources are followed. The

applicant has submitted written testimony showing compliance with Goal 5 and other applicable statewide planning goals on pages 11 through 16 of the application. Additional information showing compliance with each statewide planning goal is contained in the staff report. The Board finds that the proposal is consistent with the criteria in *LCC 921.872(B)*.

IV. CONCLUSION

The proposal has been reviewed in compliance with the procedures and criteria in *LCC 939.050 to LCC 939.200* and *LCC 921.872*. Based on the facts presented in this hearing the Board hereby concludes that:

1. A 28.04-acre portion of the subject property is a significant aggregate resource site pursuant to the criteria in *LCC 939.120*.
2. There are no existing or potential conflicts between the proposed mining area and land uses within the impact area.
3. The 28.04-acre resource site shall be identified in LCC Chapter 905, Appendix 5, entitled "Inventory of Significant Sites Without Conflicting Uses" pursuant to *LCC 939.200(A)(1)(c)*.
4. The conclusions of the Goal 5 analysis shall be included in LCC Chapter 905, Appendix 5A, entitled "Analyses Justifying a Classification as a Significant Site without Conflicting Uses."
5. The zoning map shall be amended to apply the Aggregate Resource Overlay (ARO) to the subject 28.04-acre resource site and to the impact area pursuant to *LCC 939.200(B)*.
6. A development permit shall be issued authorizing aggregate mining and processing on the 28.04-acre resource site subject to the applicable provisions of LCC Chapter 921; LCC Chapter 931; and LCC Chapter 934.

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR LINN COUNTY

IN THE MATTER OF AMENDING THE)
LINN COUNTY *COMPREHENSIVE*)
PLAN TEXT AND THE LINN COUNTY)
ZONING MAP)

ORDINANCE NO. 2009-085
(Amending Code)
Planning & Building Department BC08-0006)

WHEREAS, The Linn County Board of Commissioners (Board) advertised notice that it would consider proposed amendments to the Linn County *Comprehensive Plan* text and zoning map on February 25, 2009;

WHEREAS, At 10:00 a.m., on February 25, 2009, the Board conducted a regularly scheduled and duly advertised public hearing and considered the proposed amendments for the *Comprehensive Plan* text and the zoning map;

WHEREAS, The Board having read the proposed ordinance and having received and considered the oral and written public testimony presented prior to and at the hearing; and

WHEREAS, The findings in support of this ordinance are attached to Resolution and Order No. 2009-084 and entitled Exhibit 1, (BC08-0006 Decision Criteria, Findings and Conclusions); and, now, therefore, be it

Ordained by the Linn County Board of Commissioners, That:

Section 1. Text Amendment. The Linn County *Comprehensive Plan*, LCC Chapter 905 Appendix 5, entitled *Inventory of Significant Sites Without Conflicting Uses – Privately Owned Aggregate Sites*, be amended to add the following subsection and text:

Silbernagel	10S 01E 10 100 28.04	2009-084; 2009-085;
BC08-0006	Farm and Forest Use	

Section 2. Text Amendment. The Linn County *Comprehensive Plan*, LCC Chapter 905 Appendix 5A, entitled *Analyses Justifying a Classification as a Significant Site Without Conflicting Uses*, be amended to add the following subsection and text:

GOAL 5 ANALYSIS

Findings of Fact

The findings of fact in support of this resource site analysis are contained in Order No. 2006-574. The record supporting this analysis is located in the office of the Linn County Clerk. Copies of the application, evidence and decision documents are contained in Planning and Building Department case file number BC08-0006.

Inventory Information

The resource site is a 28.04-acre portion of a 128.86-acre property identified on Linn County Assessor maps as T10S, R01E, S10, TL100. The site is in a Farm/Forest (F/F) zone and is located approximately 10 miles east of Scio on the west and south side of Thomas Drive.

The site contains 3.3 million cubic yards of aggregate material that meets the Oregon Department of Transportation (ODOT) specifications for base rock for air degradation, abrasion, and sodium sulfate soundness. The 28.04-acre aggregate resource site is a significant site as set forth in the *Comprehensive Plan* and the Goal 5 rule for aggregate.

Impact Area

To determine conflicts associated with the proposed mining of this resource site an impact area including all land within 1500 feet from the boundaries of the site is established. There is no substantive evidence of significant impacts or conflicts beyond the 1500-foot impact area boundary.

Conflicts Due to Noise, Dust or Other Discharges

The impact area includes forest land to the east and farm land to the north, south and west of the subject property. There are six adjacent properties partially within the impact area and two off-site dwellings. The development standards in *LCC 934.352* limit excavation to a minimum of 75 feet from adjacent property. There is existing native vegetation and trees between the proposed quarry area and adjacent timber lands. The quarry will maintain natural topography and the steep quarry face as a screen as the quarry is mined. Periodic watering of the mining area will prevent dust impacts. Continued compliance with DEQ and DOGAMI mining practices further prevents certain dust and noise impacts. Topography and vegetation along the southern, western, and eastern sides of the mining area prevent visual conflict with areas in these directions. No significant conflicts have been identified with these properties.

Other Conflicts

No potential conflicts with local roads are identified.

No safety conflicts with existing public airports are identified.

No conflicts with other Goal 5 resource sites are identified.

No existing or potential conflicts with agricultural practices are identified.

Potential Future Conflicting Uses

No significant conflicts have been identified within the impact area. The impact area includes forest land to the east and farm land to the north, south and west of the resource site.

All surrounding properties are zoned F/F and EFU. Potential conflicting uses are permitted in the F/F and EFU zones only with a conditional use permit, and only if it can be shown that those proposed uses would not conflict with existing resource uses on adjacent property, including property with an ARO designation.

Program to Protect the Resource

The program to protect the resource is contained in the Plan policies for aggregate resources in LCC 905.820(B); by the application of the Aggregate Resource Overlay (ARO) pursuant to LCC 939.200(B) and LCC 931.700 to 931.755 and by the provisions set forth in this resource site analysis.

Post-mining Use and Reclamation

The proposed post-mining use is identified in the reclamation plan as farm and forest uses.

Section 3. Map Amendment. Appendix 1, Zoning map, following LCC Chapter 920 [see LCC 920.010(B)] be amended to designate the 28.04-acre resource site on the 128.86-acre property identified on Linn County Assessor maps as T10S, R01E, S10, TL100 an Aggregate Resource Overlay (ARO) mining area.

Section 4. Map Amendment. Appendix 1, Zoning map, following LCC Chapter 920 [see LCC 920.010(B)] be amended to designate the land that is within 1500 feet of the identified ARO mining area boundaries on the property identified on Linn County Assessor maps as T10S, R1E, S10, TL100 identified as Aggregate Resource Overlay (ARO) impact area.

Section 5. Savings clause. Repeal of a code section or ordinance shall not revive a code section or ordinance in force before or at the time the repealed code section or ordinance took effect. The repeal shall not affect a punishment or penalty incurred before the repeal took effect, nor a suit, prosecution, or proceeding pending at the time of the repeal for an offense committed under the repealed code section or ordinance.

Section 6. Severability. Invalidity of a section or part of a section of this ordinance shall not affect the validity of the remaining sections or parts of sections.

Section 7. Effective date. To protect the health, safety, and welfare of the citizens of Linn County, this ordinance shall take effect following adoption.

Section 8. Codification. Following adoption, this ordinance shall be codified pursuant to LCC Chapter 120.


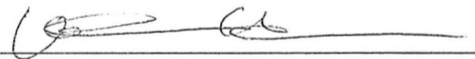
Public reading held March 10, 2009.

Adopted and passed March 10, 2009.

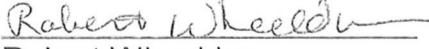
The effective date of this Ordinance shall be March 10, 2009.

BOARD OF COUNTY COMMISSIONERS FOR LINN COUNTY


Signed March 10, 2009

		Voting	
		For	Against
Steve Druckenmiller, Linn County Clerk Recording Secretary	 Roger Nyquist, Chairman	<u>2</u>	___
	ABSENT John K. Lindsey, Commissioner	___	___
By _____	 William Tucker, Commissioner	<u>1</u>	___

APPROVED AS TO CONTENT:


Robert Wheeldon
Linn County Planning and Building Director

APPROVED AS TO FORM:


Thomas N. Corr
Linn County Legal Counsel



LINN COUNTY PLANNING AND BUILDING DEPARTMENT

Robert Wheeldon, Director

Room 114, Linn County Courthouse
PO Box 100, Albany, Oregon 97321
Phone 541-967-3816, 1-800-319-3816
Fax 541-926-2060 www.co.linn.or.us

NOTICE OF ADOPTION

RESOLUTION NO: 2009-084
ORDINANCE NO. 2009-085
PLANNING FILE NO: BC08-0006
APPLICANT Ted and Joan Silbernagel

PROPOSAL

Applications by Ted and Joan Silbernagel for a *Comprehensive Plan* text amendment to include a 28.04-acre portion of a 128.86-acre property in the Linn County aggregate inventory as a significant aggregate resource site, an Aggregate Resource Overlay (ARO) zone map amendment, and a development permit for aggregate mining and processing. The proposed development permit would authorize the mining, crushing, processing, batching, stockpiling and hauling of aggregate within the proposed 28.04-acre resource site. The property is identified as T10S, R01E, Section 10, TL100 and is zoned Farm/Forest (F/F). The proposed mining site is located approximately 10 miles east of Scio, 43570 Thomas Drive.

Board Action: Resolution and Order No. 2009-084

The Linn County Board Of Commissioners approved *Resolution and Order No. 2009-084* to: (1) Approve the Findings and Conclusions supporting the Board decision; (2) Order that the applications be approved as proposed to include the identified 28.04-acre portion of the subject 128.86-acre property in the Linn County aggregate inventory as a significant aggregate resource site without conflicting uses; (3) apply the aggregate resource overlay (ARO) zone to the resource site and the impact area; and (4) Authorize mining consistent with the ARO and other applicable regulations.

Board Action: Ordinance No. 2009-085

The Linn County Board Of Commissioners approved *Ordinance No. 2009-085* to: (1) Amend the Linn County *Comprehensive Plan* text to include the subject 28.04-acre resource site in the Linn County *Comprehensive Plan*, LCC Chapter 905 Appendix 5, entitled *Inventory of Significant Sites Without Conflicting Uses – Privately Owned Aggregate Sites*; and (2) Amend the Linn County *Comprehensive Plan*, LCC Chapter 905 Appendix 5A, entitled *Analyses Justifying a Classification as a Significant Site Without Conflicting Uses*, to add the adopted subsection and text.

If you wish to appeal this decision, an appeal must be filed with the Land Use Board of Appeals (LUBA) within 21 days from the date this notice is mailed.

Appeals to LUBA must be filed in accordance with ORS 197.830. If you have any questions about this process, you should contact LUBA in Salem.

Resolution/Order No. 2009-084 may be reviewed at the office of the Linn County Clerk, Room 205, Linn County Courthouse; that office is open from 8:30 a.m. to 5:00 p.m., Monday through Friday, except legal holidays. A copy of the ordinance is available in the office of the Linn County Clerk. A fee to cover copying costs will be charged.

Robert Wheeldon
Director

Date

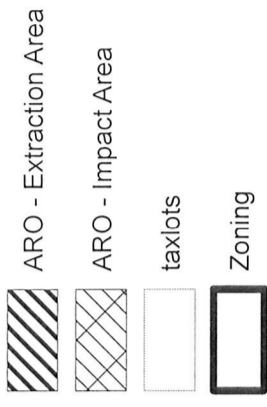
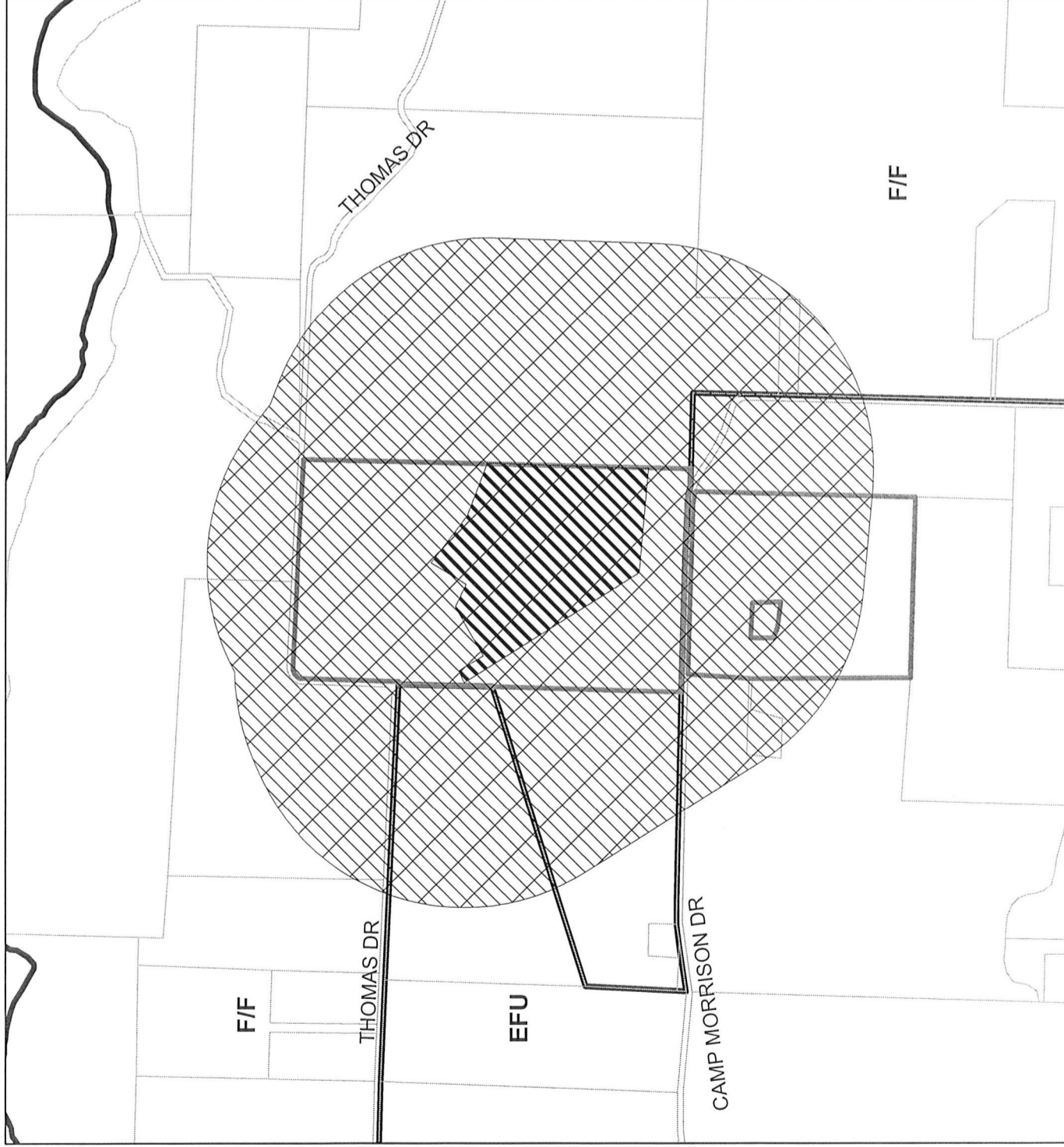
c: Ted and Joan Silbernagel, Robert Adams, DLCD, DOGAMI, DEQ, Linn County EHP. Linn County Road Department.

LEGAL DESCRIPTION OF PROPOSED RESOURCE SITE

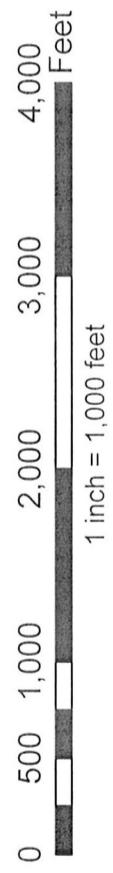
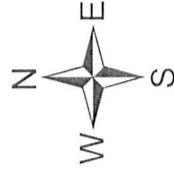
A tract of land situated in the northeast quarter of Section 10, Township 10 South, Range 1 East of the Willamette Meridian, Linn County, Oregon, being more particularly described as follows:

Commencing at the northeast corner of the George Bilyeu Donation Land Claim No. 42, said Township and Range; thence North $89^{\circ} 55' 39''$ West, 498.87 feet to intersect the east line of that tract of land as described in Tract 1, of Book 294, Page 13, Linn County Deed Records; thence along the east line of said tract, North $00^{\circ} 02' 00''$ East, 352.55 feet to a 5/8 inch rebar set for the True Point of Beginning; thence leaving said east line, North $89^{\circ} 58' 00''$ West, 756.00 feet, thence North $32^{\circ} 34' 46''$ West, 1302.29 feet; thence North $46^{\circ} 39' 00''$ East, 100.00 feet; thence South $32^{\circ} 34' 46''$ East, 308.58 feet; thence North $46^{\circ} 39' 00''$ East, 364.46 feet; thence South $58^{\circ} 30' 00''$ East, 143.00 feet; thence North $31^{\circ} 30' 00''$ East, 276.00 feet; thence South $55^{\circ} 42' 15''$ East, 339.03 feet; thence South $69^{\circ} 02' 11''$ East, 436.57 feet to the east line of the said tract of land described in said Book 294, Page 13; thence along the said east line, South $00^{\circ} 02' 00''$ West, 970.00 feet to the True Point of Beginning. Containing 28.04 acres more or less.

Linn County Planning & Building Department
Proposed Aggregate Resource Overlay (ARO) Zone District



BC08-0006
10S01E10 00100
SILBERNAGEL, TED, TR
128.83 acres



Date: 02/13/2009

EXHIBIT 1
BC08-0006
Decision Criteria, Findings and Conclusions

I. APPLICATION SUMMARY

- A. A Comprehensive Plan (Plan) text amendment application to include a 28.04-acre portion of a 128.86-acre property in the Linn County aggregate inventory as a significant aggregate resource site.
- B. An aggregate resource overlay (ARO) zone amendment application to apply the ARO to the 28.04-acre resource site and the mining impact area. Mining and processing is an allowed use in the ARO.
- C. A development permit application for aggregate mining and processing on the resource site consistent with adopted provisions in the Plan and the ARO, if applicable.

II. DECISION CRITERIA

The proposed aggregate inventory Plan text amendment will be reviewed and decided using the applicable criteria and procedures in *Linn County Code (LCC) 921.872* and *LCC 939*. If the property is included in the aggregate inventory, the mining and processing development permit will be subject to the criteria in *LCC 921.540* to *921.569*.

If the resource site is determined to be a significant site that is approved for mining, the Aggregate Resource Overlay (ARO) will be applied to the site. Mining and processing aggregate is an allowed use in the ARO. If the site is determined to be a non-significant site, the mining and processing development permit application will be reviewed using the criteria in *LCC 933.310*. The operating standards that govern aggregate mining and processing are identified in *LCC 934.350* to *934.359*.

III. FINDINGS

A. Proposal Summary

The subject property is owned by Ted and Joan Silbernagel, the quarry is operated by Canyon Rock Products. The subject property is identified on Linn County Assessor maps as T10S, R01E, Section 03, Tax Lot 100; is zoned Farm/Forest (F/F); and is located at 43570 Thomas Drive approximately ten miles east of Scio.

The applicants currently operate a 5-acre rock quarry on the subject property. The proposal is to expand the existing quarry to authorize mining on an additional 23.04-acre for a total of 28.04-acres of the 128.86-acre property. Before mining can be authorized on the property, the county must first include the aggregate resource site in the county's aggregate inventory (ORS 215.298). The inventory process and classification must comply with the implementing regulations for statewide planning Goal 5 (OAR 660-023-0180). A *Comprehensive Plan text amendment* is required to include the property in the aggregate inventory. The Plan amendment, zone amendment, and development permit applications are being reviewed concurrently.

The proposed operating characteristics are the same as currently exist on the property. The application states the amount of mining activity on the property and the area of the property affected at any one time would remain the same. The application states that the quarry generally operates six days a week, year-round, with normal hours of 6:00 a.m. to 7:00 p.m., and with additional hours utilized on a project by project basis. The application states that actual hours are substantially less due to the limited and sporadic nature of the mining operation. The quarry employs blasting up to once per month and crushes up to three weeks, six days a week at one time, when the crusher is moved on to the site, which depends on market conditions. During this time, crushing occurs during normal business hours.

The application states that the operator expects no more than three employees at most times. Typical mining equipment that would be used on-site includes: two excavators and two front loaders. The Canyon Rock Products operate and perform the drilling, crushing, and blasting on the site.

B. Inventory Classification (LCC 939.120)

The location, quality and quantity information for this aggregate resource site is in *Section 1*, *Section 3* and *Section 4* of the application materials. The property is identified on Linn County Assessor maps as T10S, R1E, Section 10, tax lot 600 and is located at 43570 Thomas Drive, approximately ten miles east of Scio.

The resource site totals 28.04-acres of the 128.86-acre property, and is comprised of the existing 5-acre quarry. The identified resource area is approximately 860 feet south of the northern property line, 290 feet north of Camp Morrison Drive and 1,800 feet north of the southern property line. The area is depicted on the map in ***Exhibit 1, Attachment A***.

The application contains the results of laboratory testing of aggregate samples from the property. The test results indicate that a representative set of samples from the property meet Oregon Department of Transportation (ODOT) specifications for base rock for air degradation, abrasion, and sodium sulfate soundness. These results satisfy the requirements of *LCC 939.120(B) (1)* for a significant aggregate site.

The application contains a report prepared by Cascade Earth Sciences detailing the location and quantity of aggregate material on the property. The report calculates that the resource site contains 3.3 million cubic yards of aggregate material. This amount is greater than the significance threshold of 2,000,000 tons or 1.5 million cubic yards in *LCC 939.120(B) (2)* to include the property in the inventory as a significant aggregate resource site.

The property contains predominately SCS Class VI soil. The average depth of the aggregate layer is greater than 17 feet. The significance criteria in *LCC 939.120(C)* therefore do not apply to this property.

Pursuant to the significance criteria in *LCC 939.120*, if the Board determines that the site contains a significant aggregate resource, the site shall be included in one of the inventories of significant aggregate sites in the Linn County Comprehensive Plan.