



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

635 Capitol Street, Suite 150

Salem, OR 97301-2540

(503) 373-0050

Fax (503) 378-5518

www.lcd.state.or.us



NOTICE OF ADOPTED AMENDMENT

10/31/2011

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

FROM: Plan Amendment Program Specialist

SUBJECT: Linn County Plan Amendment
DLCD File Number 003-11

The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. Due to the size of amended material submitted, a complete copy has not been attached. A Copy of the adopted plan amendment is available for review at the DLCD office in Salem and the local government office.

Appeal Procedures*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: Sunday, October 16, 2011

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 Acknowledgment or 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. NO LUBA Notification to the jurisdiction of an appeal by the deadline, this Plan Amendment is acknowledged.

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

<paa> YA



FORM 2

DLCD

Notice of Adoption

This Form 2 must be mailed to DLCD within **5-Working Days after the Final Ordinance is signed** by the public Official Designated by the jurisdiction and all other requirements of ORS 197.615 and OAR 660-018-000

In person electronic mailed

DATE STAMP

DEPT OF

OCT 27 2011

LAND CONSERVATION AND DEVELOPMENT

For Office Use Only

Jurisdiction: **Linn County**

Local file number: **BC11-0003**

Date of Adoption: **10/12/2011**

Date Mailed:

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? Yes No Date: 7/29/2011

Comprehensive Plan Text Amendment

Comprehensive Plan Map Amendment

Land Use Regulation Amendment

Zoning Map Amendment

New Land Use Regulation

Other: **CODE TEXT AMENDMENT**

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

Amend Plan LCC 905.820(B)(d-e) to be consistent with ORS 215.296, 215.298 and OAR 660-23-0010; 660-023-0010 & 660-023-0240. Add Appendix 9(Significant site but not protected by Goal 5). Correct Error in Appendix 7 for location of an ARO site. Amend LCCs 921.552, 921.562, 921.564, 931.702, 931.710, 931.720, 931.745-755, 933.190, 939.030, 939.050 and 939.110-200 to be consistent with ORS 215.296, 215.298 and OAR 660-23-0010; 660-0240. Amendments include the corrections of "house-keeping" errors

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

NONE

Plan Map Changed from: **NA**

to:

Zone Map Changed from: **NA**

to:

Location: **NA**

Acres Involved: **0**

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
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Was an Exception Adopted? YES NO

Did DLCD receive a Notice of Proposed Amendment...

45-days prior to first evidentiary hearing?

Yes No

If no, do the statewide planning goals apply?

Yes No

If no, did Emergency Circumstances require immediate adoption?

Yes No

DLCD File No. 003-11 (18914) [16814]

DLCD file No. _____

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

Local Contact: **OLIVIA GLANTZ**

Phone: (541) 967-3816 Extension: 2368

Address: **PO BOX 100**

Fax Number: 541-926-2060

City: **ALBANY**

Zip:

E-mail Address:

OGLANTZ@CO.LINN.OR.US

ADOPTION SUBMITTAL REQUIREMENTS

This Form 2 must be received by DLCD no later than 5 working days after the ordinance has been signed by the public official designated by the jurisdiction to sign the approved ordinance(s)
per ORS [197.615](#) and [OAR Chapter 660, Division 18](#)

1. This Form 2 must be submitted by local jurisdictions only (not by applicant).
2. When submitting the adopted amendment, please print a completed copy of Form 2 on light **green paper if available**.
3. Send this Form 2 and one complete paper copy (documents and maps) of the adopted amendment to the address below.
4. Submittal of this Notice of Adoption must include the final signed ordinance(s), all supporting finding(s), exhibit(s) and any other supplementary information ([ORS 197.615](#)).
5. Deadline to appeals to LUBA is calculated **twenty-one (21) days** from the receipt (postmark date) by DLCD of the adoption ([ORS 197.830 to 197.845](#)).
6. In addition to sending the Form 2 - Notice of Adoption to DLCD, please also remember to notify persons who participated in the local hearing and requested notice of the final decision. ([ORS 197.615](#)).
7. Submit **one complete paper copy** via United States Postal Service, Common Carrier or Hand Carried to the DLCD Salem Office and stamped with the incoming date stamp.
8. Please mail the adopted amendment packet to:

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

9. **Need More Copies?** Please print forms on **8½ -1/2x11 green paper only if available**. If you have any questions or would like assistance, please contact your DLCD regional representative or contact the DLCD Salem Office at (503) 373-0050 x238 or e-mail plan.amendments@state.or.us.

<http://www.oregon.gov/LCD/forms.shtml>

Updated April 22, 2011



LINN COUNTY PLANNING AND BUILDING DEPARTMENT

Robert Wheeldon, Director

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

NOTICE OF ADOPTION

RESOLUTION NO. 2011-355

ORDINANCE NO. 2011-356

FILE NO. BC11-0003

APPLICANT Linn County

PROPOSAL BC11-0003: A proposal by Linn County to amend the Comprehensive Plan (Plan) and the Land Development Code (Code) to reflect changes in Oregon Administrative Rules (OAR) for aggregate resources planning contained in OAR 660-23-0010, OAR 660-023-0010, and OAR 660-023-0240; and changes in Oregon Revised Statutes (ORS) contained in ORS 215.296 and ORS 215.298. Amendments to the Plan are in LCC Chapter 905. The Plan will also be amended to add Appendix 9: Significant site but not protected by Goal 5; and correct an error in Appendix 7 for the location of an Aggregate Resource Overlay (ARO) site. Amendments to the Code are in LCC Chapter 921, Chapter 931, Chapter 933, Chapter 934, and Chapter 939. Plan and Code amendment procedures and criteria are contained in LCC 921.850 to 921.890 and LCC 921.802 to 921.840.

BOARD ACTION On October 12, 2011 the Linn County Board of Commissioners voted 3-0 to approve Resolution and Order No. 2011-355 and Ordinance No. 2011-356 adopting the proposed *Plan* and Code text amendments.

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, contact LUBA in Salem at (503) 373-1265.

Resolution and Order No. 2011-355 and Ordinance No. 2011-356 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.

Handwritten signature of Robert Wheeldon in cursive.

Robert Wheeldon
Director

10/26/11
Date

cc: DLCD

FILED

OCT 12 2011

STEVE DRUCKENMILLER/CLERK
By Sam M. White Clerk

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR LINN COUNTY OREGON**

**IN THE MATTER OF AN ORDINANCE)
AMENDING THE LINN COUNTY RURAL)
DEVELOPMENT ZONE CODE,)
CODIFIED AT LINN COUNTY CODE)
CHAPTER 921, 931, 933, and 939; AND)
THE LINN COUNTY *COMPREHENSIVE*)
PLAN, CODIFIED AT LINN COUNTY)
CODE CHAPTER 905 (LAND USE)
ELEMENT CODE))**

**ORDINANCE
NO. 2011-356
(Amending Code)
(BC11-0003)**

WHEREAS, Linn County adopted Ordinance No. 80-335, as amended by 99-190 *et al.*, adopting an ordinance now codified as LCC 921 (Land Development Administration Code), LCC 931 (Overlay Code), LCC 933 (Conditions of Approval and Decision Criteria Code) and LCC 939 (Mining Permits and Uses Code) and LCC 905 (Land Use Element Code);

WHEREAS, The Board of County Commissioners for Linn County (Board) advertised notice that on September 28, 2011 it will consider proposed amendments to the Linn County Land Development Code (Code) to be codified at Title 9, LCC 921 (Land Development Administration Code), LCC 931 (Overlay Code), LCC 933 (Conditions of Approval and Decision Criteria Code) and LCC 939 (Mining Permits and Uses Code) and Title 9, Chapter 905 – Linn County Land Use Element Code;

WHEREAS, At 10:00 a.m., on September 28, 2011, the Board opened the meeting for public comment and after hearing such comments reached a consensus to direct that the proposed text, as approved by the Board and substantially set forth in *Exhibit 1* and *Exhibit 2*, attached hereto, be placed in ordinance format for formal adoption;

WHEREAS, Findings in support of the proposed *Plan* and Code text amendments are attached to Resolution and Order No. 2011-355 and entitled *Exhibit 3* (Decision Criteria, Findings and Conclusions);

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 now, therefore, be it

Ordained by the Board of County Commissioners for Linn County, That:

Section 1. Amendment. LCC 921 (Land Development Administration Code), LCC 931 (Overlay Code), LCC 933 (Conditions of Approval and Decision Criteria Code) and LCC 939 (Mining Permits and Uses Code) and LCC 905 (Land Use Element Code) are amended as set forth in *Exhibit 1* and *Exhibit 2* (**redline** indicates text that has been added to the Code; **strikeout** indicates text that has been deleted from the Code).

Section 2. 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 3. Effective date. To protect the health, safety, and welfare of the citizens of Linn County, this ordinance shall take effect following adoption, October 12, 2011.

Section 4. Codification. Following adoption, this ordinance shall be codified pursuant to LCC Chapter 120.

Public reading held September 28, 2011, and October 12, 2011.

Adopted and passed October 12, 2011.

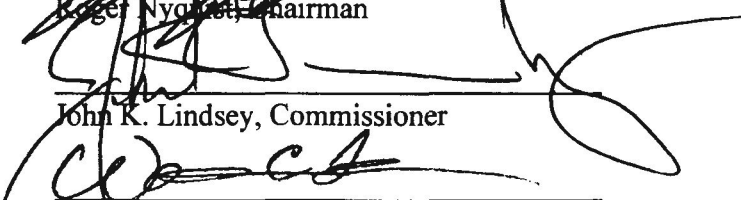
The effective date of this Ordinance shall be October 12, 2011.

BOARD OF COUNTY COMMISSIONERS FOR LINN COUNTY

Signed October 12, 2011

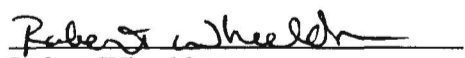
BOARD OF COUNTY COMMISSIONERS
FOR LINN COUNTY


Roger Nyquist, Chairman


John K. Lindsey, Commissioner


William C. Tucker, Commissioner

APPROVED AS TO CONTENT:


Robert Wheeldon
Linn County Planning and Building Director

APPROVED AS TO FORM:

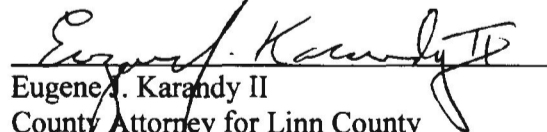

Eugene J. Karandy II
County Attorney for Linn County

EXHIBIT 1

Linn County Comprehensive Plan Text Changes
Section 905.820(B)(d-e)
Appendix 6A
Appendix 7
Add Appendix 9

can present a significant level of conflicts. Proposals to mine aggregate resources in such areas must be reviewed on a case-by-case basis to ensure that possible impacts are minimized.

905.810 Goals for aggregate resources

The goals shall be:

- (A) Recognize aggregate resources as a non-renewable resource vital to community development.
- (B) Promote the wise management and efficient use of aggregate resources to meet the present and future needs of people.
- (C) Coordinate the development of mineral and aggregate resources with other uses of land to minimize conflicts.
- (D) Minimize the environmental and aesthetic impact of extraction and processing areas.
- (E) Develop means that will assure the protection and use of significant mineral and aggregate resource sites.
- (F) Seek to make aggregate resources available at reasonable costs for the overall development of Linn County.

905.820 Policies for aggregate resources

(A) The policies for aggregate resources are set forth in subsection (B) of this section.

(B) *Policies.*

- (1) Linn County shall consider mineral and aggregate resource extraction and processing as a resource use of the land in Agricultural Resource, Farm/Forest and Forest Resource plan designations.
- (2) To identify and protect significant mineral and aggregate resources, Linn County shall follow the procedures and criteria in Statewide Planning Goal 5 and the Goal 5 administrative rule.
- (3) Linn County shall maintain an inventory of identified aggregate resource sites.

The inventory shall comprise five categories:

- (a) *Sites the County has determined are not significant.* These sites are "non-significant" sites. Under the original Goal 5 rule these sites were referred to as "1A sites." The sites determined to be non-significant are set forth in an inventory in Appendix 4 — entitled "Inventory of Non-significant Sites" (Formerly "1A" Sites) following this Chapter.
- (b) *Sites for which insufficient information about the location, quality and quantity of the resource is provided to determine whether the site is significant.* These sites are "possibly significant" sites. Under the original Goal 5 rule these sites were referred to as "1B sites." The sites determined not to have enough information to make a determination of significance are set forth in an inventory in Appendix 3 — entitled "Inventory of Possibly Significant Sites (Formerly "1B" Sites)" following this Chapter. The inclusion of a site in this category will serve to notify the owner and all other persons of the need to assess and document the value of the resource before conflicting uses become established in the area. The Director will address each resource site pursuant to this Subchapter when an application is filed by the owner with the Director requesting approval of the site for mining. If the decision maker determines that the site needs reclassified, the site will be so reclassified and

Deleted: four

the appropriate inventory in LCC Chapter 905 (Land Use Element Code) will be amended to include the site.

(c) *Sites the County has determined are significant resources to be protected by Goal 5.* These sites are "significant" sites. Under the original Goal 5 rule these sites were referred to as "2A," "3A," and "3C" sites. The sites determined to be significant aggregate sites are set forth at the end of this Chapter in one of the following inventories:

- (i) Appendix 5 — entitled "Inventory of Significant Sites Without Conflicting Uses (Formerly "2A" Sites),"
- (ii) Appendix 6 — entitled "Inventory of Significant Sites With All Conflicts Minimized," or
- (iii) Appendix 7 — entitled "Inventory of Significant Sites Protected by Goal 5 and Approved for Mining Pursuant to an ESEE Analysis (Formerly "3A" and "3C" Sites).

(d) *Sites the County has determined are significant resources but not to receive Goal 5 protection and not approved for mining pursuant to an ESEE analysis.* These sites are "significant" sites. Under the original Goal 5 rule these sites were referred to as "3B" sites. These sites are not protected under Goal 5 and are not approved for mining pursuant to an ESEE analysis. A development permit may be issued pursuant to LCC 921.562 for a site described in this subparagraph. The sites determined to be significant aggregate sites but not receiving Goal 5 protection pursuant to an ESEE analysis are set forth at the end of this Chapter in Appendix 8 — entitled "Inventory of Significant Sites Not Protected by Goal 5 and Not Approved for Mining Pursuant to an ESEE Analysis (Formerly "3B" Sites).

(e) *Sites on farmland that the County has determined are significant resources pursuant to LCC 939.120(D) and are not protected by Goal 5.* These sites are "significant" sites, that do not warrant the protections of Goal 5. A development permit may be issued under LCC 921.562 for a site described in this subparagraph. Sites determined to be significant aggregate sites pursuant to LCC 939.120 (D) but not receiving Goal 5 protection are set forth at the end of this Chapter in Appendix 9 — entitled "Inventory of Significant Sites Not Protected by Goal 5).

- (4) An aggregate resource site shall be considered significant if the site meets the significance criteria in the Goal 5 administrative rule.
- (5) Linn County shall apply an Aggregate Resource Overlay to:
 - (a) significant aggregate resource sites where no conflicting uses are present; and
 - (b) significant sites that qualify under the Goal 5 planning process for full or partial protection from conflicting uses.
- (6) The application of an aggregate resource overlay shall include the resource site and the surrounding land within an identified impact area.
- (7) Where conflicts exist between a significant aggregate resource site and other land uses, and reasonable and practicable measures are identified to minimize the conflicts, Linn County shall adopt provisions to minimize the conflicts and allow mining.

Deleted: and approved for mining pursuant to an ESEE analysis

Deleted: do not warrant the protections of

Deleted: under

Deleted: protection

Deleted: These sites

- (8) Where identified conflicts between a significant aggregate resource site and other land uses cannot be minimized, and the conflicting land use qualifies under the Goal 5 planning process for full protection from the impacts of developing the aggregate resource, mining and processing of the resource shall not receive Goal 5 protection.
- (9) If an aggregate resource site is not significant, mining and processing may be permitted only through the conditional use permit process.
- (10) Where a new aggregate extraction site or expansion of an existing site is proposed, a site development plan shall be submitted for review by Linn County. The County shall evaluate such proposals and attach operating conditions when necessary. The proposal shall include the following:
 - (a) Provision of buffering and visual screening throughout the extraction period, and other means designed to minimize existing or potential conflicts with surrounding land uses;
 - (b) Development, where necessary, of all-weather access roads. Access roads shall be developed in a location and maintained in a manner that will minimize the impacts on neighboring properties and existing residential structures;
 - (c) Analysis of the overlying soils capabilities for long-term agricultural or forest resource use;
 - (d) Mechanisms to minimize the impact on air, surface and ground water quality, fish and wildlife habitat and general environmental quality;
 - (e) Acceptable proposed final use;
 - (f) Reclamation plan approved by the Department of Geology and Mineral Industries that results in the final use;
 - (g) Provisions for public safety; and
 - (h) Other site development information required by the Land Development Code.
- (11) Proposals for extraction and processing of aggregate resources in the Agricultural Resources, Farm/Forest and Forest Resource plan designations shall incorporate as a final use agricultural or forest resource production, ~~wildlife habitat or other similar open space land uses~~. Linn County shall determine whether the proposed final use is an acceptable use.
- (12) Linn County review of proposed aggregate extraction and processing sites and of proposed expansions to existing sites shall be coordinated with state agency review.
- (13) Conditional use permits issued for aggregate extraction shall identify an area for extraction and standards for development. A proposed expansion beyond the identified extraction area shall require an evaluation of the operation's performance under the existing permit conditions.
- (14) Aggregate and mineral resource sites shall comply with all applicable reclamation standards of federal and state agencies.
- (15) Neither new aggregate resource extraction sites nor the expansion of existing extraction sites shall be permitted in areas designated Rural Residential or Rural Center.
- (16) There is insufficient location, quantity, and quality information to determine the significance of numerous existing aggregate resource sites. When more complete

Deleted: recreational sites

- (6) *Safety Conflicts With Existing Public Airports.* The site will be mined at grade. Because no open water impoundments or other bird attractants would be associated with mining this resource, and because there are no existing public airports within three miles of this site, no conflicts with existing public airports are identified.
- (7) *Conflicts With Other Goal 5 Resource Sites.* No other Goal 5 resources are identified in the *Comprehensive Plan* in the impact area. No conflicts with other Goal 5 resources are identified.
- (8) *Conflicts With Agricultural Practices.* Agricultural practices within the impact area are minimal and are primarily limited to cattle grazing. There is a small area in the northwest portion of the impact area that is EFU and farmed in grass seed. This area is completely shielded by existing topographic features. No conflicts with agricultural practices are identified.
- (9) *Potential Future Conflicting Uses*
- (a) The land south of the resource site is in Lane County and is zoned Quarry & Mining (Q&M). No potential conflicts with land uses allowed in the Q&M zoning district are identified. The properties within the impact area to the north, east and west of the resource site are in the F/F or EFU zoning districts. Farm and forest uses are protected uses in these districts. The land in the impact area is a mixture of small stands of timber and rocky pasture. The primary farm use in the area is cattle grazing. No information has been submitted identifying potential conflicts between aggregate mining and farm or forestry uses within the impact area.
- (b) New industrial uses are not permitted in the EFU and F/F zones. New commercial and residential uses are not allowed in the EFU or F/F zones without conditional use permit approval. If a conditional use permit is proposed within the impact area, potential conflicts with existing land uses, including this resource site, shall be considered in the decision. This precludes new commercial or residential uses in the area from conflicting with mining at this site.
- (10) *Measures to Minimize Potential Conflicts*
- (a) The Board concludes there is a potential for crushing and truck traffic to impact two existing homes along the haul road if the quarry were to begin operating beyond the current operating hours or if the quarry ownership were to change. These potential conflicts include noise and dust impacts along the access roadway.
- (b) In order to minimize potential future conflicts with the mining operation, mining at this site shall be conducted in compliance with the following operating conditions:
- (i) Operating hours for crushing shall be limited to Monday through Saturday, 7:00 a.m. to 7:00 p.m.
Operating hours for truck traffic entering and leaving the quarry shall be limited to Monday through Saturday, 7:00 a.m. to 5:30 p.m.
- (ii) The quarry operator shall be responsible to ensure adequate dust abatement measures are maintained on the access roadway.
- (11) *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 the adoption of the provisions set forth in this resource site analysis.
- (12) *Post-Mining Use and Reclamation.* Mid-Valley Gravel Co. has filed a reclamation plan with the Department of Geology and Mineral Industries (DOGAMI) identifying wildlife habitat as the final post-mining land use. Wildlife habitat is identified in the *Comprehensive Plan* as an approved final use in the F/F zoning district.

APPENDIX 6 — INVENTORY OF SIGNIFICANT SITES WITH ALL CONFLICTS MINIMIZED AGGREGATE SITES

No. Owner/operator Township Range Section Tax-lot Acreage

6001 Pinnacle Rock 12S 1W 6 1700 30.50

6002 Waggener/Bond Butte 14S 3W 28 1300 55.00

[Adopted 80-335 eff 9/2/80; amd 99-156 §1 eff 6/30/99; amd 00-495 § 6 eff 9/13/00; amd 02-048 §1 eff 2/5/02]

905 - 66 LINN COUNTY — LAND USE ELEMENT CODE (Latest rev. February 2, 2005)

Run time: February 19, 2005 (1:43:37pm) Distribution

APPENDIX 6A — ANALYSES JUSTIFYING A CLASSIFICATION AS A SIGNIFICANT SITE WITH ALL CONFLICTS MINIMIZED

TABLE OF CONTENTS

905.6001 Pinnacle Rock site

905.6002 Waggener/Bond Butte site

905.6001 Pinnacle Rock site

(A) *Goal 5 analysis*

(1) *Inventory Information*

- (a) The aggregate resource site is the southeastern 30.50-acre portion of the 80.98-acre property identified as T12S, R1W, Section 6, Tax-lot 1700, Linn County, Oregon. The property is located approximately one and one-half miles northeast of Lebanon on the south side of Mt. Hope Drive. The site is located near the top of the ridge between Golden Valley Drive and Mount Hope Drive. The property is on the North facing side of the ridge with elevation ranging from 600 to 700 feet. From the ridge the land slopes down to the north with slopes of 30 to 60 percent.

- (b) Eight test holes were drilled on the site to determine the quality and quantity of aggregate on the property. Quality tests conducted by the Oregon Department of Transportation (ODOT) Materials Laboratory indicate that a representative set of samples of aggregate material in the deposit on the site exceeds the ODOT specifications for base rock for air degradation, abrasion, and sodium sulfate soundness. The quality test results and analysis are included in Planning Department File No. CP-1-98.
- (c) The quantity calculations are included in Planning Department File No. CP-1-98. The quantity calculations indicate an estimated 1.2 million cubic yards of material. The *Comprehensive Plan* Background Report, page II-5, indicates the Linn County quantity threshold for significance is 400,000 cubic yards of material. Based on the quality and quantity criteria listed in OAR 660-23-180(3), this site is identified as a significant aggregate resource site.
- (2) **Impact Area.** In order to determine conflicts from potential mining and processing activities at the site, an impact area including land within 1500 feet from the boundaries of the mining area is established, as set forth in OAR 660-23-180 (4)(a). No factual information has been presented to indicate significant potential conflicts beyond this distance. The impact analysis is limited to those potential conflicts with existing and approved land uses within the impact area that are identified by OAR 660-23-180(4)(b).
- (3) **Conflicts Due to Noise, Dust or Other Discharges.**
- (a) The impact area contains nine residences and two other operating rock quarries. The other rock quarries are on adjacent parcels to the south and east of the site. The site is in the Farm/Forest (F/F) zone. The land across Mt. Hope Drive to the north is zoned Exclusive Farm Use (EFU). The land to the east, west and south is zoned F/F. To the West and North are properties ranging in size from 3 to 80 acres. The tax lots to the east and south are 192 acres and 226 acres, respectively.
- (b) Typical conflicts associated with aggregate extraction and processing which may affect established residential uses within the impact area arise from noise, dust, and vibration impacts. These impacts can result from blasting, crushing and hauling operations. Of the nine residences within the impact area, one is on the same property as the resource site, 600 feet north of the resource boundary, and is visible from the site. The next closest residence is approximately 800 feet to the west of the resource boundary and is screened by existing vegetation, trees and topography.
- (c) A residence is located approximately 950 feet to the northeast of the site. Testimony indicates this property would be likely to experience visual, noise and vibration impacts from mining operations. Identified measures to minimize these impacts are to install a berm or vegetative screen north of the mine site. Another residence is located 950 feet to the northwest of the site boundary. Testimony indicates identified impacts from mining on this use would occur primarily due to truck noise and dust from the proposed haul road. Identified measures to minimize these impacts are to locate the haul road at least 50 feet east of the property boundary and to install and maintain vegetative screening. The five remaining residences within the impact area are between 1000 and 1500 feet from the site. No significant impacts have been identified which would affect these residential uses. New dwellings are not permitted in the EFU or F/F zone without a conditional use permit. This precludes new residential uses in the area from conflicting with mining at this site.
- (4) **Potential Conflicts to Local Roads.**
- (a) Aggregate will be hauled from this site in 5 -yard or 10-yard trucks or in personal pickup trucks to Mt. Hope Drive, a paved county road. The City of Lebanon is one and one-half miles to the southwest and would be the primary destination for the truck trips originating from this site. From Mt. Hope Drive, Brewster Road is the main arterial to Lebanon to the south and to Highway 226 to the north. This is the same haul route currently used by trucks serving the Morse Bros. quarry, west of the Pinnacle Rock site on Mount Hope Drive, and the Rock Products quarry, east of the Pinnacle Rock site on Mount Hope Drive. This section of Mount Hope Drive is already constructed to handle the truck traffic in the area and to withstand the weight of the trucks that will be leaving the proposed quarry.
- (b) The Linn County Road Department has determined that a safe road approach to access Mt. Hope Drive from the property can be developed approximately 50 feet from the west property line. Several area residents expressed concern that traffic from the proposed quarry operation would impact the local road system. The Road Department did not identify any negative impacts on the local transportation system from existing or proposed mining in the area. There are two existing quarries on property adjacent to this site. Because aggregate is nearly always obtained from the resource site nearest the point of final consumption, and because there is no evidence that the addition of a third mine site at this location will increase off-site demand for aggregate resources, no net increase in traffic is expected to occur on the County Road system if this site is also mined. The County finds that mining at this site will not impact the safety of the local road system.
- (5) **Safety Conflicts With Existing Public Airports.** The identified resource would be mined at grade. Because no open water impoundments or other bird attractants would be associated with mining this resource, and because there are no existing public airports within three miles of this site, no significant safety conflicts with existing public airports are identified.
- (6) **Conflicts With Other Goal 5 Resource Sites.**
- (a) There is an existing quarry 50 feet to the south of the site. That quarry includes 40 acres which is currently mined on the parcel to the south, and another 35 acres of leased land which is located on the parcel to the

east. Another active quarry is located approximately 1400 feet to the north. A total of 50 acres of the adjacent parcel to the east is identified as aggregate resource for which mining is allowed through an active conditional use permit. No conflicts are identified with these existing resources.

- (b) No sensitive riparian, fish or wildlife habitat areas are identified on the property. The *Comprehensive Plan Wildlife Habitat Inventory* indicates the property is within the western boundary of peripheral big game range, which runs along Mt. Hope Drive along the northern parcel boundary. Although mining in this area may disrupt a small amount of game habitat, this disruption would not be permanent. The previous owners of the property harvested all salable timber within the none area in approximately 1989 and did not reforest. After mining is completed the reclamation plan calls for reforestation of the mine site with Douglas Fir or Ponderosa Pine. The reclamation plan for the resource site indicates the property will be restocked as forest land, thereby providing increased wildlife habitat in the future.
- (c) There are no wetlands identified on the property in the National Wetlands Inventory (NWI) wetlands map, Onehorse Slough Quadrangle. No significant wildlife habitat conflicts have been identified. No significant open space, scenic or historic resources are identified on the property in the *Comprehensive Plan*.

(7) *Conflicts With Agricultural Practices.*

- (a) The properties to the immediate south, north, east and west are zoned EFU and F/F and are mixed agricultural and forest land. Agricultural uses on these properties are mostly cattle grazing and hay crop farming. Testimony shows the agricultural use on the adjacent property to the east includes the breeding and raising of Emu. The properties to the northwest are primarily in forest use. One property to the northwest has periodic sheep grazing. No conflicts have been identified with this use during the hearing process.
- (b) The 50.48-acre portion of tax-lot 1700 which is not part of this proposal is between the mine site and Mt. Hope Drive to the north. The farm use of this property is primarily pasture and hay. No identified conflicts with farming or forestry practices are identified on this property. Tax-lot 100 to the south is 226.26 acres with an existing 40-acre quarry along the southern boundary of the subject property. The remainder of the land is in timber and pasture. No identified conflicts with farming or forestry practices are identified on this property.
- (c) Tax-lot 1800 to the east is 191.98 acres and includes an emu farm. The property has two quarry sites: one to the east and another to the northeast of the subject property. A total of 50 acres of tax-lot 1800 is identified as aggregate resource for which mining is allowed through an active conditional use permit. The owners of this property have identified noise, vibration and dust impacts from the existing quarries in the vicinity which conflict with their farming operation and may have a negative impact on the health of their emu stock. Noise, dust, and vibration impacts from mining the subject aggregate resource are identified as potential conflicts with agricultural practices on this property.
- (d) Tax-lot 1701 to the west is 29.59 acres and is primarily in timber. Tax-lot 1600 to the west is 4.59 acres and is primarily timbered. No identified conflicts with farming or forestry practices are identified on these properties. Other properties within the impact area are a mixture of timber, hay crops and pasture. No conflicts with farming or forestry practices are identified on other properties within the impact area.

(8) *Measures to Minimize Identified Conflicts.*

- (a) This Goal 5 review has identified conflicts with the residential use of tax-lot 1800 to the northwest and taxlot 1600 to the west. Conflicts have also been identified with an existing agricultural use of tax-lot 1800.
- (b) The following identified measures are determined to be reasonable and practical to minimize identified conflicts. These minimized impacts will not force a significant change in or significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.
- (c) The mining and processing of aggregate at this site shall be an allowed use when the following mitigating measures are applied. When mining is approved, additional approval requirements, if any, shall be limited to those identified in OAR 660-23-180(4)(c).
- (i) In order to minimize noise and other discharge impacts on residential and agricultural uses in the impact area, asphalt and cement batching shall not be permitted uses at the resource site.
- (ii) In order to minimize identified visual, noise and dust impacts on the residential and agricultural uses on tax-lot 1800 to the northeast, a berm or vegetation sufficient to visually screen rock crushing equipment shall be established along the northeastern boundary of the resource site prior to mining the area identified on the site plan as "Mining Site Phase 2".
- (iii) In order to minimize identified noise and dust conflicts with the residential use of tax-lot 1600 to the west, the following measures shall be implemented:
- (I) The on-site haul road and road access to Mt. Hope Drive shall be located at least 50 feet from the western property boundary and shall be approved by the Linn County Road Department prior to establishing the mining operation.
- (II) Prior to initiating mining of this resource, a vegetative screen at least 6 feet in height and 10 feet in width shall be established between the on-site haul road and tax-lot 1600. The Vegetation shall be a species capable of providing a visual screen at least 10 feet in width to a height of at least 10 feet and shall be maintained in a healthy condition.

(III) Either water or another dust palliative conforming to DEQ standards shall be used to mitigate dust on the stockpiles, roads and vehicle circulation areas.

(IV) In order to prevent significant traffic impacts on the local road system, rock from other sites shall not be hauled to this site for sale or processing.

(9) *Post-Mining Use and Reclamation.*

- (a) Pinnacle Rock has filed a reclamation plan with the Department of Geology and Mineral Industries (DOGAMI) identifying forestry as the final post-mining land use. The reclamation plan identifies measures which will be taken upon termination of mining at the site to replace overburden and top soil, seed the area with grass to control erosion, and plant Douglas fir or ponderosa pine throughout the mined area. Forest resource production is identified in the *Comprehensive Plan* as an approved final use in the F/F zoning district.
- (b) The Soil Conservation Service (SCS) *Soil Survey of Linn County Area, Oregon*, July, 1987, indicates the 30.50-acre aggregate resource site is predominately Ritner soil, identified as soil units 84E and 84G. Soil type 84E is in SCS capability class VI. Soil type 84G is in SCS capability class VII. These soils are not Class I or II soils and are not defined as prime or unique farmland in *OAR 660-33-020(8)*. Forestry is therefore an allowed post-mining use under *OAR 660-23-180(4)(c)*.
- (c) *Potential Future Conflicting Uses.*
- (d) The properties within the impact area are in the EFU and the F/F zoning districts. Farm and forest uses are protected resource uses in these districts. No information has been submitted identifying significant conflicts between aggregate mining and forestry uses. Typical farm uses in the area include sheep and cattle grazing and hay production. No substantive information has been presented identifying significant potential impacts on mining this property due to potential agricultural practices in the area.
- (e) New industrial uses are not permitted in the EFU and F/F zones. New commercial and residential uses are not allowed in the EFU or F/F zones without conditional use permit approval. If a conditional use permit is proposed within the impact area, potential conflicts with existing land uses shall be considered in the decision.
- (f) Tax-lot 100, south of the subject property, is the only property within the impact area which is not already developed with a residence. Tax-lot 100 includes a 75-acre aggregate mining and processing operation which would be between the subject resource site and any potential homesite. Such potential homesite would be screened from and would not impact the proposed mine site.
- (g) The existing utility operations within or near the impact area consist of the Consumer's Power right of way, which runs along Mount Hope Drive, and the BPA right of way, which runs from North to South along the western boundary of the property. These structures are static industrial uses and will not conflict with the proposed aggregate site.
- (h) Because of all the facts identified in this section, the County finds that no significant potential future conflicting uses are identified. The County further concludes that acknowledged policies and land use regulations are sufficient to protect the resource site.

905.6002 ~~Waggener/Bond Butte~~

(A) *Goal 5 analysis.*

- (1) *Findings of fact.* The findings of fact in support of this resource site analysis are contained in Order No. 2002-047. 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 BC01-0006.
- (2) *Inventory Information.*
- (a) The resource site is a 55-acre portion of a 101-acre property identified as T14S, R3W, S28, TL1300, in an Exclusive Farm Use (EFU) zone. The site is located approximately 7.5 miles southwest of Brownsville and seven miles southeast of Halsey, one-quarter mile west of the intersection of Center School Road and Bond Butte Drive and one-quarter mile east of Interstate 5.
- (b) A representative set of basalt samples from the 55-acre resource site meets Oregon Department of Transportation (ODOT) specifications for base rock for air degradation, abrasion, and sodium sulfate soundness. The site contains more than 3,000,000 tons of basalt reserves meeting the ODOT specifications.
- (c) The 55-acre aggregate resource site is a significant site as set forth in the *Comprehensive Plan* and the Goal 5 rule for aggregate.
- (3) *Impact Area.* To determine conflicts associated with the proposed mining of this resource site a base 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.

(B) *Conflicts Due to Noise, Dust or Other Discharges.*

- (1) The proposed haul road is fully developed from the site to Bond Butte Drive. The haul road is over a reciprocal 30-foot easement crossing the adjacent ODOT property and the Waggener property. The road approach shall be paved and improved to Road Department standards prior to initiating the development permit to mine the expansion area. There are no conflicts identified with the haul road due to noise, dust or other discharges.

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- (2) There are two noise or dust sensitive uses identified on nearby properties within the impact area. One is the Bierly residence and the other is the Charity Grange Hall, each approximately 1200 feet north of the northern boundary of the site. Neither property owner identified any conflicts with noise, dust or other discharges under the current operating characteristics.
- (3) There is one home located on the subject property, at the base of the identified resource site. Because the home is on the same property and within the proposed resource site, it is not a conflicting use for purposes of this analysis.
- (4) The operator will maintain the existing southfacing quarry face to shield the home and grange from noise and dust impacts from mining the property. Blasting notice shall be provided as requested and blasting will be conducted during limited daytime hours to reduce conflicts with surrounding land uses. Water shall be used on the rock crusher to reduce dust pursuant to the DEQ permit.
- (5) Grass seed farming is the predominant land use in the area. Grass seed farming is not considered a noise or dust sensitive use under the Goal 5 rule for aggregate. No conflicts with agricultural practices are identified. Mining the site would not force a significant change in or significantly increase the cost of accepted agricultural practices within the impact area.

(C) Other Conflicts

- (1) No potential conflicts with local roads are identified.
- (2) No safety conflicts with existing public airports are identified.
- (3) No conflicts with other Goal 5 resource sites are identified.
- (4) The subject property and the surrounding land are zoned Exclusive Farm Use (EFU). All surrounding property, except for the adjacent ODOT quarry, is in farm use. No existing or potential conflicts with agricultural practices are identified.

(D) Measures to Minimize Identified Conflicts

(1) Potential conflicts are identified with the residential use of tax lot 400 and with the Charity Grange property on tax lot 103, both approximately 1200 feet from the northern boundary of the resource site, if the quarry were to vary significantly from the existing operating characteristics. Order No. 2002-047 contains a list of reasonable and practical measures that will ensure all potential conflicts will be minimized. The development permit to mine the expansion area of this site shall require compliance with all the conditions set forth in Order No. 2002-047.

(E) *Post-mining Use and Reclamation.* Mr. Waggener has filed a reclamation plan with DOGAMI identifying forestry as the final post-mining land use. The soils on the site are not Class I or II soils and are not defined as prime or unique farmland in OAR 660-33-020 (8). Forestry is an allowed postmining use on this site.

(F) *Potential Future Conflicting Uses.* All of the surrounding lands are zoned EFU. New noise and dust sensitive uses (i.e. homes, churches, hospitals, schools) are not allowed unless approved by a conditional use review and found not to conflict with existing land uses. New commercial and industrial land uses are not allowed. No conflicts with potential future land uses are identified.

APPENDIX 7 — INVENTORY OF SIGNIFICANT SITES PROTECTED BY GOAL 5 AND APPROVED FOR MINING PURSUANT TO AN ESEE ANALYSIS (FORMERLY "3A" AND "3C" SITES) AGGREGATE SITES SITES RECEIVING FULL "GOAL 5" PROTECTION (FORMERLY "3A" SITES):

No. Site Name Location

(T / R / S / T-L) Size (acres)

7001 Wilson 9S 2E 26 500 98.8

7002 Morse Brothers, Inc., Inc. #1 11S 3W 10, TL 2401, 2402 11 TL 500 & 1000 & 14 406,

7003 Wodtli 13S 1W 26 400 & 50 155.1

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229.3

SITES RECEIVING LIMITED GOAL 5 PROTECTION (FORMERLY "3C" SITES):

No. Site Name Location

(T / R / S / T-L) Size (acres)

7501 Wildish Sand and Gravel 9S 3W 32 100 218.8

7502 Morse Brothers, Inc. #2 11S 3W 10 2400 &

11S 3W 14 301 (portion of)

27

[Adopted 80-335 eff 9/2/80; amd 99-156 §1 eff 6/30/99; amd 00-495 §6 eff 9/13/00]

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APPENDIX 7A — ESEE ANALYSES JUSTIFYING PROTECTION OF A SIGNIFICANT SITE BY GOAL 5 AND APPROVING

MINING

PURSUANT TO AN ESEE ANALYSIS (FORMERLY "3A" OR "3C" SITES)

TABLE OF CONTENTS

905.7001 Wilson — 3A site

905.7002 Morse Brothers, Inc. #1 (Tax-lots 406, 1000, 1001, 2401 & 2402) — 3A site

905.7003 Wodtli — 3A site

905.7501 Wildish Sand & Gravel (Tax-lot 100) — 3C site

905.7502 Morse Brothers, Inc. #2 (Tax-lots 2400 & 301) — 3C site

- (1) With large reserves and close proximity to Brownsville and Interstate-5, this is an important aggregate resource site. Though no formal concerns or complaints have been raised, the site is located within 200 yards of a Rural Residential (1 acre lot size) area to the east.
- (2) Operation of the site provides full-time employment and increased tax revenues to the county. Environmental factors (noise, dust, etc.) should not pose a problem as long as state mining standards are adhered to. Additionally, the residential area is located to the east on the opposite side of the Powell Hills, and thus is "buffered" from the mining site. Operation of the mining site consumes far less energy than would residential uses.
- (3) The area is zoned for Exclusive Farm Use, and limits development, and provides for public review of development proposals. The site is located in the Calapooia River flood plain.
- (4) The conflicting use identified with this site is of more importance than the aggregate resource site, as the latter suffers no real threat from development or surrounding land uses. The conflicting use should be allowed fully, a "3-B" designation under the Goal 5 process.

APPENDIX 9 -- "Inventory of Significant sites not protected by Goal 5" TABLE OF CONTENTS

EXHIBIT 2

Linn County Code Text Changes

Section 921.552(A)(3)&(B)

Section 921.562 (A)(2)&(4)

Section 921.564 (B)(2)

Section 931.708(B)(2)

Section 931.710

Section 931.720

Section 931.745-755

Section 933.190

Section 939.030

Section 939.050

Section 939.110 (B)(2)

Section 939.120(D-F)

Section 939.150(A)

Section 939.170(C)

Section 939.200

921.544 Performance and development standards

- (A) The minimum standards set forth in LCC 934.350 to 934.359 shall apply to the establishment, maintenance and operation of a mining area that is subject to a development permit issued under LCC 921.552 or 921.562.
- (B) The measures, conditions, and regulations approved under LCC 939.200.
- (C) The decision maker may, at its discretion, provide additional performance or development standards on the mining permit and mining operation.

921.545 Removal of structures and equipment

When mining is completed, all equipment, refuse, buildings and structures not related to the final use shall be removed from a mining area that is subject to a permit issued under LCC 921.552 or 921.562. The mining area shall be left free of debris.

921.546 Final use

- (A) Each mining area subject to a permit issued pursuant to LCC 921.552 shall be reclaimed to a final use as set forth in LCC 933.190 (C).
- (B) Each mining area subject to a permit issued pursuant to LCC 921.562 shall be reclaimed to a final use as set forth in LCC 933.190 (B).

C. DEVELOPMENT PERMITS FOR MINING OF SITES RECEIVING GOAL 5 PROTECTION

921.552 Development permit for mining of sites receiving Goal 5 protection

- (A) The Director shall issue a development permit authorizing the initiation of mining if a determination was made that the site is a significant site under LCC 939.120 and is a site listed on or after September 1, 1996 on:
 - (1) Appendix 5 in LCC Chapter 905 (a site without conflicts); or
 - (2) Appendix 6 in LCC 905 (all conflicts have been minimized); or
 - (3) Appendix 7 in LCC 905 (based on an ESEE analysis the site is to receive Goal 5 protection and to be approved for mining with or without limitations).
- (B) A permit authorizing the initiation of mining of a significant site listed on Appendix 6 or 7 in LCC Chapter 905 shall be subject to:
 - (1) any required measures, conditions and regulations approved in LCC 939.200; and
 - (2) a condition that mining may not be initiated or conducted unless in compliance with a site development plan approved by the decision maker; and
 - (3) a condition that the owner and operator comply with the program adopted to protect the resource.
- (C) Any conditions imposed on the permit issued pursuant to this section shall be clear and objective whether imposed by this Code, the *Comprehensive Plan*, the process that leads to minimization of all significant conflicts, or by an ESEE analysis.

921.556 Additional land use review

- (A) The decision maker, in making a determination under LCC Chapter 939 pursuant to the Goal 5 process, may consider the additional land use review factors set forth in subsection (B) of this section.
- (B) Additional land use review authorized by this section and by LCC 921.544 shall not:
 - (1) exceed the minimum review necessary to assure compliance with the requirements in LCC 939.200 pertaining to the site under review.

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- (2) provide opportunities to deny mining for reasons unrelated to these requirements, or to attach additional approval requirements, except with regard to mining activities:
 - (a) not requested in an application filed under LCC Chapter 939; or
 - (b) for which the *Plan* amendment application does not provide information sufficient to determine clear and objective measures to resolve identified conflicts; or
 - (c) for which a significant change to the type, location, or duration of the activity shown on the *Plan* amendment application is proposed by the operator.

D. DEVELOPMENT PERMITS FOR SITES NOT RECEIVING GOAL 5 PROTECTION

921.560 Statement of purpose

The purpose of LCC 921.560 to 921.569 is to allow for the development and utilization of aggregate resources not protected by Goal 5 while providing guidelines for conditions to be applied to the mining of the aggregate. These conditions are designed:

- (A) to provide reasonable protection to neighboring properties,
- (B) to minimize undesirable effects, and
- (C) to result in the reclamation, rehabilitation and the ultimate beneficial reuse of the property for land uses which will be compatible with the surrounding activities.

921.562 Development permit for mining of sites not receiving Goal 5 protections

- (A) The Director may issue a development permit for a site that:
 - (1) is listed on Appendix 4 (non-significant site) in LCC Chapter 905 (Land Use Element Code) and the decision maker has approved the issuance of a development permit under LCC 921.560 to 921.569, or
 - (2) is listed on Appendix 8 (significant site but based on an ESEE analysis conducted under LCC 939.150 is not to receive Goal 5 protection) in LCC Chapter 905 and the decision maker has approved the issuance of a development permit under LCC 921.560 to 921.569, or
 - (3) is listed before September 1, 1996, on Appendix 5 (no conflicts), or Appendix 7 (Goal 5 protections based on ESEE analysis), or
 - (4) is listed on Appendix 9 (Significant site but not protected by Goal 5) in Chapter 905 and the decision maker has approved the issuance of a development permit under LCC 921.560 to 921.569.

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- (B) A permit issued under this section must comply with LCC 921.560 to 921.569.

921.564 Decision criteria

- (A) Approval to issue a permit to mine a site described in LCC 921.562 shall be based on compliance with all the decision criteria described in subsection (B) of this section.
- (B) *Decision criteria.*
 - (1) LCC 933.310.
 - (2) The site is listed on one of the appendices as described in LCC 921.562.
 - (3) Sites found to be significant under 939.120 (D) and listed on Appendix 9 (significant site but not protected by Goal 5) in Chapter 905 shall also comply with the following:
 - (a) The application shall comply with 933.190 (C).

(b) The mining operation shall be limited to mine less than 2,000,000 tons of aggregate material.

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921.568 Permit issuance and renewal

- (A) A permittee holding a development permit issued under LCC 921.562 shall comply with the performance standards of LCC 921.544, in addition to any conditions established by the decision maker.
- (B) Except as otherwise provided in LCC 921.960, a development permit issued by the Director to mine under LCC 921.562 pursuant to which mining has been initiated in compliance with LCC 920.400 (B) (1) shall be valid until the DOGAMI or DSL permit expires.

- (8) The proposal shall not have a significant effect upon potentially erodible areas.
- (9) The proposal is compatible with existing uses in the surrounding area.
- (10) The proposal has been directed away from the Willamette River to the greatest extent possible.
- (11) The maximum possible landscaping area, open space and vegetation will be provided between the Willamette River and the proposal.

931.670 WRGO; aggregate extraction

- (A) The extraction of aggregate resources shall be consistent with the criteria for review established in LCC 931.660.
- (B) Extraction activities shall minimize adverse effects on water quality, fish and wildlife habitat, the natural vegetative fringe, stream bank stabilization efforts, stream flow, scenic quality, noise and safety.

931.680 WRGO; property development standards

Development of all properties in the WRGO must comply with the development standards set forth in LCC Chapter 934 (Development Standards Code) and specifically to LCC 934.850, and also to any specific standards applicable to the underlying zoning district.

VII. AGGREGATE RESOURCE OVERLAY (ARO)

A. GENERAL PROVISIONS

931.700 Subchapter title

This Subchapter, LCC 931.700 to 931.755, shall be known and may be cited as the "Linn County Aggregate Resource Overlay Code" or simply as the "Aggregate Resource Overlay Code."

931.701 Statement of purpose

The purpose of this Subchapter is:

- (A) to protect significant sand, gravel, rock, stone and related aggregate resources to ensure the continued availability of aggregates at reasonable costs for the overall development of Linn County;
- (B) to coordinate the development and utilization of significant aggregate resources with other land uses to minimize conflicts;
- (C) to establish standards of development and operation for significant aggregate resource extraction and processing sites;
- (D) to prohibit the use of land in the Aggregate Resource Overlay (ARO) for uses incompatible with the extraction and processing of significant aggregate resources;
- (E) to provide for the agricultural and forest use of land in the ARO prior to the development of extraction and processing activities; and
- (F) to provide for the reclamation, rehabilitation and beneficial final use of aggregate resource sites in a manner compatible with the surrounding land use pattern.

931.702 Definitions

The definitions set forth in LCC 939.030 apply to this Subchapter.

931.704 Aggregate Resource Overlay; content and application

- (A) Contents. The Aggregate Resource Overlay (ARO) comprises two areas, the mining area and the impact area.
- (B) Application of the ARO.
 - (1) The ARO may be applied to significant aggregate resource sites following:

- (a) a Type IIIA legislative Plan amendment process, if the application is initiated by Linn County; or
- (b) a Type IIIB application for a post-acknowledgment Plan amendment, if the application is not initiated by Linn County.
- (2) Before applying an ARO or ARO-I to the underlying zoning district, the decision maker shall:
 - (a) comply with the process identified in LCC Chapter 939 (Mining Permit and Uses Code); and
 - (b) implement the ARO by amendments to the Comprehensive Plan text and the Land Development Code Zoning Map; and
 - (c) include within the boundary of the ARO the mining area and ARO-I all property as determined to be within the the impact area.
- (3) The decision maker shall not apply either a mining area or an impact area to land within another county without that county's consent, or to land within a city or its urban growth boundary without that city's consent.

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(C) Sites formerly designated as an Aggregate Extraction and Processing (AXP) zoning district are re-designated with the ARO classification. The re-designation shall not alter the mining of aggregate except as authorized in OAR 660, Division 23.

931.706 Application for an ARO

A person may apply for the application of an Aggregate Resource Overlay as provided in LCC Chapter 939 (Mining Permit and Uses Code) and Chapter 921 (Land Development Administration Code).

931.710 ARO; mining area property development standards

Development of all properties in the ARO or ARO-I must comply with the development standards set forth in LCC Chapter 934 (Development Standards Code) and specifically to LCC 934.350 to 934.359, and also to any specific standards applicable to the underlying zoning district.

931.715 ARO; mining area final use and site reclamation

Each extraction site shall be reclaimed to a final use as set forth in LCC 933.190.

931.720 ARO; termination of Aggregate Resource Overlay

When a significant site has been fully mined and reclamation has been completed, the affected property within the mining area and the impact area shall be rezoned to remove the ARO and ARO-I designation.

- (A) The zone change shall be initiated by the County, the owner or contract purchaser of the property comprising the mining area.
- (B) If a restrictive covenant is imposed within the ARO or ARO-I, it shall state that the obligations imposed expire upon the termination of the ARO or ARO-I.
- (C) Removal of the ARO or ARO-I shall not relieve requirements on the part of the owner or operator to reclaim the site in accordance with the DOGAMI reclamation plan, ORS 517.750 through 517.900, and the rules adopted thereunder.

B. USES ALLOWED OR PERMITTED IN THE ARO

931.730 ARO; mining area uses allowed outright

- (A) The uses set forth in subsection (B) through subsection (C) are allowed outright in the mining area subject to compliance with the development standards in LCC 934.350 to 934.359, any requirements adopted as part of the Comprehensive Plan for

the protection of significant mineral and aggregate sites, and an approved site development plan.

(B) Non-dwelling uses allowed outright.

(1) *Aggregate materials.*

- (a) Operations that entail extraction and stockpiling of mineral and aggregate materials mined and processed onsite.
 - (b) Processing, including but not limited to crushing, washing, milling and screening.
 - (c) The batching and blending of mineral aggregate into asphaltic and Portland cement products located within the operating permit area, except the batching or blending of mineral and aggregate materials into asphalt concrete within two miles of a planted commercial vineyard existing on the date the application was received for the batch plant.
- (2) Existing processing operations. A currently approved aggregate processing operation at an existing site may process material from a new or expansion site without obtaining a reauthorization of the existing processing operation unless limits on such processing were established at the time it was permitted by the County.
- (3) Equipment storage yard, offices, maintenance and storage buildings, and other accessory structures, when used in conjunction with on-site mining operations.
- (4) Retail and wholesale sales of aggregate products produced on-site.
- (5) Farm and forest uses.
- (6) Signs, subject to the development standards in LCC 934.210 to 934.217.
- (7) Transportation improvements.
- (8) Other activities including buildings and structures necessary and accessory to development or reclamation of the onsite mineral or aggregate resource.

(C) *Dwellings allowed outright.* Alteration, restoration, or replacement of a lawfully established dwelling meeting the requirements in LCC 933.180.

931.735 ARO; mining area uses permitted through Type IIA conditional use review

- (A) The uses, including principal and accessory buildings, set forth in subsection (B) may be permitted in the mining area pursuant to a Type IIA review process. Permitted uses shall comply with any requirements adopted as part of the Comprehensive Plan for the protection of significant aggregate sites, and an approved site development plan.
- (B) Dwellings. One on-site manufactured dwelling, including accessory buildings, for a caretaker or watchman for each authorized land use, subject to LCC 932.800 to 932.815.

931.740 ARO; mining area uses permitted through Type IIIB conditional use review

- (A) The uses, including principal and accessory buildings, set forth in subsection (B) may be permitted in the mining area pursuant to a Type IIIB review process. Permitted uses shall comply with any requirements adopted as part of the Comprehensive Plan for the protection of significant aggregate sites, and an approved site development plan.
- (B) Uses permitted conditionally.
- (1) Operations for exploration and extraction of minerals other than aggregate materials.

- (2) Exploration for and production of geothermal resources, subject to LCC 932.100 to 932.160.
- (3) Exploration and production of oil and gas, subject to LCC 932.100 to 932.160.
- (4) Utility facilities necessary for public service, including commercial, thermal, electrical generating facilities producing power for public sale from resources obtained on-site.
- (5) Hunting or fishing preserves.
- (6) A site for the disposal of solid waste together with equipment, facilities, or buildings necessary for its operation subject to:
 - (a) LCC 932.500 to 932.580; and
 - (b) a permit, if required, by the Department of Environmental Quality.
 - (c) the site is operated only as an interim subsequent use in accordance with an approved final use and reclamation plan.
- (7) Facilities for the primary processing of forest resources.
- (8) Private airports.

931.745 ARO-1; impact area uses allowed outright

- (A) The uses, including principal and accessory buildings, set forth in subsection (B) through subsection (C) are allowed outright in the impact area. Allowed uses shall comply with the requirements of the underlying zone and any requirements in the Comprehensive Plan for the protection of significant aggregate sites.
- (B) Non-dwelling uses. The non-dwelling uses allowed outright by the underlying zone subject to the requirements of the underlying zone and any requirements in the Comprehensive Plan for the protection of significant aggregate sites.
- (C) Dwellings. The Alteration, restoration, or replacement of a lawfully established dwelling meeting the requirements in LCC 933.180.

931.750 ARO-1; impact area uses permitted through Type IIA conditional use review

- (A) The uses, including principal and accessory buildings, set forth in subsection (B) through subsection (C) may be permitted in the impact area pursuant to a Type IIA review process. Permitted uses shall comply with the requirements of the underlying zone and any requirements in the Comprehensive Plan for the protection of significant aggregate sites.
- (B) Non-dwelling uses. The non-dwelling uses permitted through a Type IIA conditional use review by the underlying zone, subject to the requirements of the underlying zone and any requirements in the Comprehensive Plan for the protection of significant aggregate sites.
- (C) Dwellings. permitted through a Type IIA conditional use review in the underlying zoning districts, subject to the requirements of the underlying zone and any requirements in the *Comprehensive Plan* for the protection of significant aggregate sites.
- (D) No use in the impact area that is a noise or dust-sensitive use may be approved unless a finding is first made that the sensitive use has been protected by the imposition of conditions or unless the owner of the sensitive use has recorded a waiver of remonstrance in the land records of the County.

931.755 ARO-1; impact area uses permitted through Type IIIB conditional use review

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933.190 Final use requirements

(A) The definitions set forth in LCC 939.030 apply to this section.

(B) *Final uses in areas not under an ARO.*

(1) Each mining area in an area not under an ARO shall be reclaimed to a final use set forth in paragraph (2) of this subsection and shall be accomplished:

- (a) as specified in a reclamation plan approved by DOGAMI; or
- (b) in compliance with conditions of operation imposed by DSL.

(2) Final uses authorized in areas not under an ARO are:

- (a) The uses allowed outright in the zoning district.
- (b) The uses permitted in the zoning district if approved.
- (d) Fish or wildlife habitat or management facilities.

(3) When mining is completed on property not under an ARO and reclamation activities are scheduled to begin, the operator may submit a new, proposed final use and reclamation plan for review by the decision maker. When the decision maker finds that the new proposal is more suitable, the new final use and reclamation plan may substitute for the original proposal provided the landowner, permittee, DOGAMI, DSL, and the County approve.

(C) *Final uses in areas under an ARO.*

(1) Each mining area under an ARO, shall be reclaimed to a final use as set forth in paragraph (2) of this subsection and be accomplished as specified in a DOGAMI approved reclamation plan or in compliance with the DSL conditions of operation.

(2) The uses set forth in this subsection are authorized within an ARO as a final use subject to any limitations set forth in this subsection:

- (a) The uses allowed outright in the underlying zoning district.
- (b) The uses permitted in the underlying zoning district if approved pursuant to the procedure for permitting such uses in the underlying zoning district.
- (d) Fish or wildlife habitat including habitat management facilities.

933.195 Property used for religious purposes

(A) If a church, synagogue, temple, mosque, chapel, meeting house or other nonresidential place of worship is allowed in a zoning district, the reasonable use of the property for activities customarily associated with the practices of the religious activity, including worship services, religion classes, weddings, funerals, child care and meal programs shall be allowed. However, this does not include private or parochial school education for pre-kindergarten through grade 12 or higher education.

(B) The decision maker may:

- (1) subject the property described in subsection (A) to reasonable regulations, including site review or design review, concerning the physical characteristics of the uses authorized under subsection (A); or
- (2) prohibit or restrict the use of property by a place of worship described in subsection (A) if it finds that the level of service of public facilities, including

~~Deleted: (c) Recreational uses permitted in the Exclusive Farm Use (EFU), Farm/Forest (F/F) or Forest Conservation and Management (FCM) zoning districts.~~

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**CHAPTER 939
MINING PERMITS AND USES CODE**

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I. GENERAL PROVISIONS

939.010 Subchapter title

This Chapter, LCC 939.010 to 939.999, shall be known and may be cited as the “Linn County Mining Permit and Uses Code” or simply as the “Mining Permit and Uses Code.”

939.020 Statement of purpose

The purpose of this Chapter is:

- (A) to identify and protect significant sand, gravel, rock, stone and related aggregate resources to ensure the continued availability of aggregates at reasonable costs for the overall development of Linn County;
- (B) to coordinate the development and utilization of significant aggregate resources with other land uses to minimize conflicts;
- (C) to establish standards of development and operation for significant aggregate resource extraction and processing sites;
- (D) to prohibit the use of land in the Aggregate Resource Overlay (ARO) for uses incompatible with the extraction and processing of significant aggregate resources (see LCC 931.700 to 931.755);
- (E) to provide for the agricultural and forest use of land in the ARO prior to the development of extraction and processing activities; and
- (F) to provide for the reclamation, rehabilitation and beneficial final use of aggregate resource sites in a manner compatible with the surrounding land use pattern.

939.030 Definitions

As used in this Chapter:

- (A) “Aggregate resources” means naturally occurring concentrations of stone, rock, sand and gravel, decomposed granite, lime, pumice, cinders, and other naturally occurring solid materials commonly used in construction and road building.

- (B) "Conflicting use" means 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, as specified in OAR 660-023-0180 (5) (b) and OAR 660-023-0180 (7).
- (C) "Development permit" means a permit approved by the decision maker and issued by the Director granting authority to the permittee to initiate some or all aspects of mining of aggregate at the site specified in the permit. The term does not include a text amendment to the Comprehensive Plan whereby the Plan is amended to include the site in any category described in this Chapter. A development permit may be issued pursuant to LCC 921.552 for sites receiving Goal 5 protection, or pursuant to LCC 921.562 for sites not receiving Goal 5 protection.
- (D) "ESEE analysis" means the consideration and balancing of the positive and negative economic, social, environmental and energy consequences of a decision to allow, limit, or prohibit a conflicting use, following the process in OAR 660-023-0040. Based on the results of the ESEE analysis, the decision maker determines a level of protection for the resource and adopts Comprehensive Plan provisions and regulations to achieve the designated level of protection.
- (E) "ESEE consequences" are the positive and negative economic, social, environmental, and energy (ESEE) affects that could result from a decision to allow, limit, or prohibit a conflicting use.
- (F) "Existing site" means a significant aggregate site that is lawfully operating, or is included in the aggregate inventory in the Comprehensive Plan, on September 1, 1996.
- (G) "Expansion area" resource proposed aggregate mining area contiguous to an existing site in which mining approval is being sought under this Chapter.
- (H) "Farmland" means land planned and zoned for exclusive farm use pursuant to Goal 3 and OAR chapter 660, division 033.
- (I) "Future potential use" means a use that is not adopted or approved at the time an application under this Chapter is deemed complete by the Director.
- (J) "Goal 5 process" means the planning process for mineral and aggregate resources identified in OAR 660-023-0180. Depending on the circumstances the process may include, but is not limited to, one or more of the following: the identification of resource sites; the determination of site significance; the identification of conflicting uses; the identification of measures to minimize conflicts; analysis of ESEE consequences; and adoption of a program to protect the resource. The term does not include a determination to issue a development permit pursuant to LCC 921.560 to 921.569 even if part of the Goal 5 process as described in this Chapter is considered.
- (K) "Goal 5 protection" means those conditions and terms imposed on the mining of a site determined to be significant under LCC 939.130 and that has completed the Goal 5 process as set forth in LCC 939.110 to 939.200 and has been added to Appendix 5, 6, or 8 in LCC Chapter 905 (Land Use Element Code).
- (L) "Impact area" means a geographic area within which conflicting uses could adversely affect a significant Goal 5 aggregate resource.
- (M) "Inventory" is a survey, map, or description of one or more resource sites that is prepared by a local government, state or federal agency, private citizen, or other organization and that includes information about the resource values and features

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associated with such sites. As a verb, "inventory" means to collect, prepare, compile, or refine information about one or more resource sites (see resource list).

- (N) "Minimize a conflict" means to reduce an identified conflict to a level that is no longer significant. For those types of conflicts addressed by local, state, or federal standards (such as the Department of Environmental Quality standards for noise and dust levels) to "minimize a conflict" means to ensure conformance to the applicable standard.

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- (Q) "Mining" means the extraction and processing of aggregate resources, in the manner provided under paragraph (1).

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- (1) The term 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.
- (2) The term 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 non-surface impacts of underground mines.
- (3) The term includes: stockpiling and movement of aggregate materials, and the operations or activities necessary to abandon a mining area.

- (P) "Mining area" means the geographic area containing an identified significant aggregate site within which some or all aspects of mining is permitted. The mining area may consist of one or more properties or portions of properties, and may include two or more contiguous properties under different ownership. The mining area does not include undisturbed buffer areas or areas on a property where mining is not authorized.

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- (Q) "Noise or dust sensitive use" means a conflicting use that is primarily used for year round habitation. Residences, churches, hospitals, schools, public libraries, and campgrounds are considered noise or dust sensitive uses during their period of use. A forest use or a farm use is not noise or dust sensitive uses unless the use is so:
- (1) defined in state law, or
 - (2) determined based on analysis and findings adopted through the Goal 5 planning process.

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- (R) "Operator" includes owner.

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- (S) "PAPA" is a "post-acknowledgment plan amendment." The term encompasses actions taken in accordance with ORS 197.610 to 197.625, including amendments to Linn County's acknowledged *Comprehensive Plan* or Land Development Code and the adoption of any new *Plan* or land use regulation. The term does not include periodic review actions taken in accordance with ORS 197.628 to 197.650.

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- (T) "Processing" means the activities described in ORS 517.750 (10). Processing includes, but is not limited to, crushing, washing, milling and screening, as well as the batching and blending of mineral aggregate into asphalt or Portland cement concrete within the operating permit area.

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(U) "Program" or "program to achieve the goal" is a plan or course of proceedings and action either to prohibit, limit, or allow uses that conflict with significant Goal 5 aggregate resources, adopted as part of the Comprehensive Plan and Land Development Code (e.g., zoning standards, easements, cluster developments, preferential assessments, or acquisition of land or development rights).

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(V) "Protect" means to adopt land use regulations for a significant aggregate site in order to authorize mining of the site and to limit or prohibit new conflicting uses within the impact area of the site.

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(W) "Resource site" or "site," for purposes of completing the Goal 5 process under this Chapter, is a particular area where resources are located. A site may consist of one or more properties or portions of properties, and may include two or more contiguous properties under different ownership.

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(X) "Resource list" means a list that includes the description, maps, and other information about significant Goal 5 aggregate resource sites within Linn County and is adopted by the County as a part of its Comprehensive Plan or as a land use regulation. The Plan inventories following LCC Chapter 905 (Land Use Element Code) are resource lists.

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(Y) "Significant site" means a site listed on one of the Comprehensive Plan significant aggregate inventories following LCC Chapter 905 (Land Use Element Code).

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(Z) "Thickness of aggregate layer" means the depth of the water-lain deposit of sand, stones, and pebbles of sand-sized fraction or larger, minus the depth of the topsoil and non-aggregate overburden.

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939.050 Application for a development permit authorizing mining of aggregate

(A) A person may apply for a development permit authorizing mining of aggregate as set forth in this section. The issuance of the development permit authorizing the initiation of mining is subject to LCC 921.540 to 921.569.

(B) One-step process. A single application shall be required which shall consist of:

(1) if a site is already on Appendix 5, 6, or 7 of LCC Chapter 905 (Land Use Element Code), a request for a development permit, which if authorized to be issued shall result in an authorization to initiate some or all aspects of mining pursuant to this Chapter; or

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(2) if a site is already on Appendix 4 or 8 of LCC Chapter 905, a request for a development permit, which if authorized to be issued shall result in an authorization to initiate some or all aspects of mining pursuant to LCC 921.560 to 921.569.

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(3) if the site is not on one of the inventories of LCC Chapter 905, a request for:
(a) an amendment to the *Comprehensive Plan* text, and, if required under this Chapter, an amendment to the Land Development Code Zoning Map; and
(b) a development permit, which if authorized, shall authorize the initiation of some or all aspects of mining pursuant to this Chapter, or to LCC 921.560 to 921.569 based on the findings made in this Chapter.

(C) *Contents*. The application shall contain:

- (1) the information required by LCC 921.040;
- (2) Information regarding the location, quality, and quantity of the aggregate resource;
- (3) A conceptual site reclamation plan;

- (4) A traffic impact assessment within one mile of the entrance to the mining area;
 - (5) An indication of whether the applicant intends to haul material to another authorized site for processing, and if so, a proposal for hauling;
 - (6) A map indicating the initial 1,500-foot impact area and location and type of existing and potential conflicting uses.
 - (7) Proposals to minimize any conflicts with existing uses preliminarily identified by the applicant within a 1,500-foot impact area; and
 - (8) A site development plan as described in subsection (D) of this section.
- (D) *Site development plan.* The applicant shall submit the information and materials set forth in this subsection to the Director as part of the application for a development permit authorizing the mining of aggregate resources.
- (1) The name and address of the extraction operator, property owner, and applicant, if different from the mining operator or property owner.
 - (2) The location (township, range, section, tax-lot[s]) and size of the resource site.
 - (3) An aerial photograph of the resource site that was photographed less than 12 months prior to submission of the application. Older photographs may be submitted if accompanied by a signed declaration by the applicant stating that no substantial changes have occurred.
 - (4) Provisions for safety fence as required under LCC 934.354 (C).
 - (5) Measures, if any, required by federal and state agencies to meet applicable environmental quality standards and minimize impacts on fish and wildlife habitat.
 - (6) Proposed final use as permitted in LCC 933.190.
 - (7) A reclamation plan approved by Oregon Department of Geology and Mineral Industries (DOGAMI) that results in the proposed final use or Oregon Division of State Lands (DSL) conditions of operation.
 - (8) A surface water management plan as required by DOGAMI or DSL.
 - (9) Past and present use of the land, including agricultural and forest resource uses.
 - (10) Types and location of vegetative screening to be used.
 - (11) Types, location, and sizes of equipment to be used.
 - (12) The full extent and nature of the operation, such as blasting, crushing, or asphaltic compounding.
 - (13) A reproducible map at a scale of 1 inch equals 400 feet, unless a different scale is approved by the Director, which depicts the general land area within a one-mile radius and identifies:
 - (a) The property under the applicant's control;
 - (b) The land areas proposed for extraction, processing and storage of topsoil or aggregate;
 - (c) Location of all uses within 1500 feet of the resource site boundaries;
 - (d) Location of on-site haul roads and proposed access point(s);
 - (e) Location and names of all structures, roads, railroads and utility facilities within 1500 feet of the resource site;
 - (f) Required setback areas;
 - (g) Identification of soil types in the resource site, if available; if not available, identification of the soil types adjoining the resource site; and
 - (h) Phasing of mining activity, if applicable.

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(14) A digital copy of the map required under item (13).

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(15) Proposed months, days and hours of mining operation.

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(16) The resource site owner or authorized agent of the owner shall file a truck route plan with the Roadmaster indicating all proposed haul routes for any equipment used in the preparation, exploration, or mining of the site, including proposals to haul material to another authorized site for processing. The truck route plan shall also include a proposal for the rehabilitation and restoration of any county roads, or any local access roads, which may be damaged or diminished in quality due to the conducting of such preparation, exploration, or mining activities.

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(17) Evidence that:

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(a) The Roadmaster has approved a truck haul plan including all routing, paving and access to the resource site and to and from any other approved site if material is hauled to the other site for processing; and

(b) the Roadmaster has made a finding that the development will not have significant adverse impacts on the quality of county roads, or local access roads in the area, or

(c) verification that a performance security meeting the requirements of LCC 933.110 has been filed.

(18) Other pertinent information for all proposed mining and associated uses.

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939.060 Goal 5 process; generally

(A) The Goal 5 process is set forth in LCC 939.110 to 939.200. The process is illustrated generally in Appendix 1 following this Chapter. The process involves following the steps set forth in this section to determine whether and under what conditions aggregate extraction and processing may occur:

(1) STEP 1 — determine adequacy of information provided in the application with regard to the location, quality, and quantity of the aggregate resource (LCC 939.110);

(2) STEP 2 — determine site significance and classification (LCC 939.120);

(3) STEP 3 — identify impact area and all conflicts with existing uses (LCC 939.130);

(4) STEP 4 — determine whether conflicts can be minimized (LCC 939.140);

(5) STEP 5 — analyze ESEE consequences if significant conflicts can not be minimized (LCC 939.150);

(6) STEP 6 — approve the mining of the aggregate resource (LCC 939.160);

(7) STEP 7 — determine the postmining use (LCC 939.170);

(8) Step 8 — identify conflicts from new conflicting uses (LCC 939.180);

(9) STEP 9 — analyze ESEE consequences and decide whether to allow new conflicting uses (LCC 939.190); and

(10) STEP 10 — adopt final decision and implementing amendments to the *Comprehensive Plan* and Land Development Code (LCC 939.200).

(B) Except as provided in LCC 939.200 (A) (1) (a), the decision maker must complete the Goal 5 process within 180 days after an application filed under this Chapter is deemed complete under LCC 939.110.

(C) The decision maker is not required to follow strictly the order of the process as set forth in LCC 939.130, so long as such review or determination does not significantly adversely affect the outcome of the Goal 5 process.

II. GOAL 5 PROCESS

939.110 STEP 1 — determine adequacy of information provided in the application

- (A) STEP 1 — The first step in the Goal 5 aggregate process requires the Director to determine whether an application filed under this Chapter may be deemed complete under LCC 921.060 and this section.
- (B) The Director shall deem an application filed under this Chapter complete if the application contains:
- (1) the information required by LCC 939.050;
 - (2) A description of the quality of the resource, including a statement of compliance with federal, state or local standards issued by a certified lab according to the following applicable methods:
 - (a) Resistance to Abrasion (AASHTO Designation T96, ASTM Designation C131, OSHD Test Method 211)
 - (b) Sodium Sulfate Soundness (OSHD Test Method 206)
 - (c) Oregon Air Degradation (OSHD Test Method 208) or
 - (d) Other test appropriate for the type of resource.
 - (3) a conceptual site reclamation plan;
 - (4) a traffic impact assessment within one mile of the entrance to the mining area pursuant to LCC 939.130 (B) (4) (b);
 - (5) proposals to minimize any conflicts with existing uses preliminarily identified by the applicant within a 1,500-foot impact area; and
 - (6) a site development plan as described in LCC 939.050.
- (C) Information on location, quantity, and quality must be reliable information, such as:
- (1) an engineer's or geologist's report; or
 - (2) drill results, including depth.
- (D) If application is deemed complete — go to STEP 2. If the Director deems the application complete, the Director shall next determine whether the site is significant pursuant to LCC 939.120.
- (E) If application is not deemed complete — go to STEP 10. If the Director determines that the application is not complete for the sole reason that the applicant is unable to provide information adequate to make the determination required by subsection (B) (2) of this section, the Director shall:
- (1) return the application to the applicant; and
 - (2) set the matter before the decision maker to proceed pursuant to LCC 939.200 (A) (1) (a).

939.120 STEP 2 — determine site significance and classification

- (A) STEP 2 — The Director shall determine whether an aggregate resource site is a significant or a non-significant site pursuant to this section.
- (B) An aggregate resource site shall be significant if adequate information regarding the location, quality, and quantity of the resource demonstrates that the site meets the following criteria:
- (1) A representative set of samples of aggregate material in the deposit on the site meets Oregon Department of Transportation (ODOT) specifications for base rock for air degradation, abrasion, and sodium sulfate soundness; and
 - (2) The estimated amount of material is more than 1.5 million cubic yards or 2 million tons; or

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- (3) The aggregate site was listed on an inventory of significant aggregate sites in the Comprehensive Plan on September 1, 1996.
- (C) Notwithstanding subsections (1) through (3) of this section, and except for an expansion area of an existing site if the operator of the existing site had an enforceable property interest in the expansion area on March 1, 1996, an aggregate site is not significant if the following criteria apply:
- (1) More than 35 percent of the proposed mining area consists of soil classified as Class I on Natural Resource Conservation Service (NRCS) maps on June 11, 2004; or
 - (2) 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 17 feet;
- (D) Notwithstanding Section (C) of LCC 939.120 a local government may also determine that an aggregate resource site on farmland is significant if subsections (1) and (2) of this section apply or if subsection (3) of this section applies:
- (1) The quantity of material proposed to be mined from the site is estimated to be 2,000,000 tons of aggregate material or less; and
 - (2) Not more than 35 percent of the proposed mining area consists of soil
 - (a) Classified as Class I on Natural Resource and Conservation Service (NRCS) maps available on June 11, 2004; or
 - (b) 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 the amounts specified in subsection (2) of LCC 939.120 (C); or
 - (3) A local land use permit that allows mining on the site was issued prior to April 3, 2003, and the permit is in effect at the time of the significance determination.
- (L) If non-significant site — go to STEP 10. If the Director determines that the site is a non-significant site under this section, the Director shall set the matter before the decision maker to proceed pursuant to LCC 939.200 (A) (1) (b).
- (F) If significant site — go to STEP 3. If the Director determines that the site is a significant site under this section, the Director shall proceed to LCC 939.130.
- 939.130 STEP 3 — identify impact area and all conflicts with existing uses**
- (A) *STEP 3A — Identify an impact area and known conflicts within it.* The Director shall:
- (1) Identify an impact area for the purpose of identifying conflicts with proposed mining and processing activities.
 - (a) 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 proposed mining area, except where factual information is adequate to indicate significant potential conflicts beyond this distance.
 - (b) For a proposed expansion of an existing site, the impact area shall be measured from the perimeter of the proposed expansion area rather than the boundaries of the existing site and shall not include the existing site.
 - (2) Prepare a map showing the impact area and proposed mining area; and
 - (3) Identify known conflicting uses.

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- (4) Prepare a staff report containing the determinations made under LCC 939.110, 939.120, and subsection (A) of this section along with any supporting findings; and
- (5) Set the matter before the decision maker to complete the Goal 5 process. The decision maker may approve, modify, or deny any determination of the Director required by LCC 939.120, or this subsection. If the decision maker modifies or denies a determination made by the Director which is required under those provisions, the decision maker shall make a new determination consistent with those provisions before completing the Goal 5 process.
- (B) *STEP 3B — Identify all conflicts from existing and approved uses in the impact area.*
- (1) The decision maker shall identify all existing or approved land uses within the impact area that will be adversely affected by proposed mining,
 - (2) The decision maker shall also specify conflicts from existing or approved uses that are able to be reasonably predicted.
 - (3) For purposes of this subsection, "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 Linn County.
 - (4) The consideration of conflicts that could be caused by the mining of a significant aggregate site shall be limited to:
 - (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 to include the intersection with the nearest arterial identified in the Transportation Plan.
 - (i) Conflicts with local roads 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 County Code.
 - (ii) Standards for trucks associated with the mining operation shall be equivalent to standards for other trucks of equivalent size, weight, and capacity which haul other materials;
 - (c) ~~Safety conflicts with existing public airports due to bird attractants, i.e., open water impoundments 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 Plan amendment is initiated; and~~
 - (e) ~~Conflicts with agricultural practices.~~
 - (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.~~
- (C) *STEP 3C — For an aggregate site on farmland that is determined to be significant under LCC 939.120 (D), the requirements of LCC 939.130 (A) & (B) are not applicable, except for LCC 939.130(B)(f), and the requirements of LCC 939.150 and*

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939.190 are not applicable. Instead, the decision maker shall determine whether mining is permitted by a conditional use permit.

- (D) If there are conflicts — go to STEP 4. If the decision maker identifies conflicts, the decision maker shall proceed as set forth in LCC 939.140.
- (E) If there are no conflicts — go to STEP 6. If the decision maker identifies no conflicts, the decision maker shall proceed as set forth in LCC 939.160.
- (F) If the decision maker finds that the application is consistent with STEP 3C, proceed to STEP 10.

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939.140 STEP 4 — determine whether conflicts can be minimized

- (A) STEP 4 — Determine whether conflicts can be minimized. The decision maker shall determine whether the conflicts identified pursuant to LCC 939.130 can be minimized by reasonable and practicable measures. Such measures shall be clear and objective.
 - (1) If conflicts can not be minimized — go to STEP 5. If the decision maker finds that all the conflicts identified by the decision maker can not be minimized by reasonable and practicable measures, the decision maker shall proceed as set forth in LCC 939.150.
 - (2) If conflict can be minimized — go to STEP 6. If the decision maker finds that all the conflicts identified by the decision maker can be minimized, the decision maker shall identify the reasonable and practicable measures that would minimize the conflicts. The decision maker shall next proceed as set forth in LCC 939.160.
- (B) In making the determination whether proposed measures would minimize conflicts with agricultural practices, the decision maker shall consider only the requirements of ORS 215.296.
- (C) Recording a waiver of remonstrance in compliance with LCC 933.150 (B), is evidence that a conflict has been minimized under LCC 939.140, or resolved under LCC 939.150 or 939.190.

939.150 STEP 5 — analyze ESEE consequences if significant conflicts can not be minimized

- (A) STEP 5 — Identify and resolve conflicts through ESEE analysis. Limited to any conflicts identified in LCC 939.140 that could not be minimized, the decision maker shall determine the ESEE consequences of either protecting the resource by allowing mining without or with limitations, or not protecting the resource and prohibit mining or permit mining under a permit pursuant to LCC 921.560 to 921.569. The determination shall be based on weighing the identified ESEE consequences, with consideration of the following:
 - (1) The degree of adverse effect on existing land uses within the impact area;
 - (2) Reasonable and practicable measures that could be taken to reduce the identified adverse effects; and
 - (3) The probable duration of the mining operation and the proposed post-mining use of the site.
- (B) If the site should be protected and mining authorized — go to STEP 6. If, based on the ESEE analysis required under this section, the decision maker determines that the site should be given Goal 5 protections and mining should be approved with or without limitations, the decision maker shall proceed as set forth in LCC 939.160.
- (C) If the site should not be protected by Goal 5 — go to STEP 10. If, based on the ESEE analysis required under this section, the decision maker determines that the site

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should not be protected by Goal 5, the decision whether to permit mining or not shall be made by the decision maker as set forth in LCC 939.200 (A) (j)(f).

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- (D) Recording a waiver of remonstrance in compliance with LCC 933.150 (B), is evidence that a conflict has been minimized under LCC 939.140, or resolved under LCC 939.150 or 939.190.

939.160 STEP 6 — approve the mining of the aggregate resource

- (A) *STEP 6 — Approve the mining.* The decision maker shall protect the resource site and approve an application for mining if:

- (1) no conflicts were identified under LCC 939.130, or
- (2) all identified conflicts with a significant aggregate resource site are minimized pursuant to LCC 939.140, or
- (3) based on an ESEE analysis, conducted pursuant to LCC 939.150, mining is permitted with or without limitations.

- (B) *Go to STEP 7.* After the decision maker approves an aggregate site for mining of aggregate, the decision maker shall proceed as set forth in LCC 939.170.

939.170 STEP 7 — determine the post-mining use of site

- (A) *STEP 7 — Post-mining use and reclamation.* At the time the determination under LCC 939.160 is made, the decision maker shall:

- (1) determine the post-mining use of the site.
- (2) proceed as set forth in LCC 939.180 (STEP 8).

- (B) For significant aggregate sites on Class I, II soils and unique farmland, the post-mining use shall be limited to farm uses under ORS 215.203, uses listed under ORS 215.283 (1), and fish and wildlife habitat uses, including wetland mitigation banking.

- (C) The County and applicant shall coordinate with DOGAMI regarding the regulation and reclamation of aggregate sites, except where exempt under ORS 517.780.

939.180 STEP 8 — identify conflicts from potential future uses

- (A) *STEP 8 — Determine all conflicts from potential future uses in the impact area.* The decision maker shall:

- (1) Identify future potential uses which, if allowed, would conflict with the proposed mining;
- (2) Identify predicted conflicts from those future potential uses.

- (B) The consideration of future potential uses shall be limited to those land uses that, if approved, would be allowed outright in the underlying zoning district.

- (C) Go to STEP 9. The decision maker shall next proceed as set forth in LCC 939.190.

939.190 STEP 9 — analyze ESEE consequences and determine whether to allow a future potential use

STEP 9 — Analyze future potential uses and determine whether to allow the use.

- (A) The decision maker shall determine whether to allow, limit, or prevent a future potential use identified in LCC 939.180. To make this determination, the decision maker shall apply the standard ESEE process set forth in OAR 660-023-0040 and 660-023-0050.

- (B) Recording a waiver of remonstrance in compliance with LCC 933.150 (B), is evidence that a conflict has been minimized under LCC 939.140, or resolved under LCC 939.150 or 939.190.

- (C) Go to STEP 10. The decision maker shall next proceed as set forth in the applicable provisions of LCC 939.200.

939.200 STEP 10 — adopt final decision and implementing amendments

(A) *STEP 10A — Amend the Comp Plan to carry out the decision.* The decision maker shall implement the determinations made under this Chapter by amending the *Comprehensive Plan* as set forth in paragraphs (1) and (2) of this subsection.

(1) *Inventories.* The decision maker shall amend the appropriate appendices following LCC Chapter 905 (Land Use Element Code) to include the site on an inventory and to include any supporting analyses pursuant to this paragraph.

(a) Application not complete — sites possibly significant (formerly 1B sites). If the Director determined that the application is not complete solely because the applicant was unable to provide information adequate to make the determination required by LCC 939.110 (B) (2), the decision maker shall amend Appendix 3, LCC Chapter 905 (Land Use Element Code) and add the site for which information is not adequate to make the determination under LCC 939.110 to the inventory entitled — “Inventory of Possibly Significant Sites (Formerly “1B” Sites).”¹

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(b) Non-significant sites (formerly 1A sites). If the Director, based on location, quality and quantity information determines that an aggregate resource site is not significant, the decision maker shall amend Appendix 4, LCC Chapter 905 (Land Use Element Code) entitled — “Inventory of Non-significant Sites (Formerly “1A” Sites).”²

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(c) Significant sites without conflicts (formerly 2A sites). If the Director, based on location, quality and quantity information determines that an aggregate resource site is significant, and the decision maker has determined that the site is without conflicts, the decision maker shall amend Appendix 5, LCC Chapter 905 (Land Use Element Code) entitled — “Inventory of Significant Sites Without Conflicting Uses (Formerly “2A” Sites).”³

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(d) Significant sites with conflicts that have been minimized. If the decision maker is able to minimize the conflicts under LCC 939.140, the decision maker shall amend Appendix 6, LCC Chapter 905 (Land Use Element Code) and add the site for which all conflicts have been minimized under LCC 939.140 to the inventory entitled — “Inventory of Significant Sites With All Conflicts Minimized.”⁴

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(e) Significant sites with conflicts that can not be minimized but, based on an ESEE analysis, are to be protected by Goal 5 and approved for mining. If a significant site has conflicts not able to be minimized but pursuant to an ESEE analysis is determined to receive Goal 5 protection for approved for mining, the decision maker shall amend LCC Chapter 905 (Land Use Element Code) to:

(i) add the site to Appendix 7, entitled — “Inventory of Significant Sites Protected by Goal 5 and Approved for Mining Pursuant to an ESEE Analysis (Formerly “3A” or “3C” Sites)”⁵; and

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(ii) to add the ESEE analysis to the Appendix 8 entitled — “ESEE Analyses Justifying the Protection of an Site by Goal 5 and Granting Mining Approval.”

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(f) *Significant sites with conflicts that can not be minimized but, based on an ESEE analysis, are not to be protected by Goal 5 or approved for mining.*

(i) If a significant site has conflicts not able to be minimized, but, pursuant to an ESEE analysis, is determined not to receive Goal 5 protection not to be approved for mining under Goal 5, the decision maker shall provide full protection to the conflicting use and shall amend LCC Chapter 905 (Land Use Element Code) to:

(I) add the site to Appendix ~~8~~ entitled "Inventory of Significant Sites Not Protected by Goal 5 and Not Approved for Mining Pursuant to an ESEE Analysis (Formerly "3B" Sites)"; and

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(II) add the ESEE analysis to Appendix ~~8A~~ entitled — "Inventory of Significant Sites Not Protected by Goal 5 and Not Approved for Mining Pursuant to an ESEE Analysis"; and

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(ii) Where mining is not protected pursuant to Goal 5, the ARO shall not be applied to the site.

(g) Significant sites meeting LCC 939.120(D), and not to be protected by Goal 5.

(i) if an aggregate site is determined to be significant under LCC 939.120(D) and not to receive Goal 5 protection, the decision maker shall amend LCC Chapter 905 (Land Use Element Code) to add the site to Appendix 9 — entitled "Inventory of Significant Sites Not Protected by Goal 5.

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(ii) Mining may be approved under LCC 921.560 to 921.590; and

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(iii) Where mining is not protected pursuant to Goal 5, the ARO shall not be applied to the site.

(2) If the decision maker makes a determination approving mining under subsections (A) (1) (c) to (A) (1) (e), the amendments set forth in the *Comprehensive Plan* shall include:

(a) a program to protect the resource;

(b) identified measures to minimize conflicts and any special conditions and regulations. Such measures, conditions, and regulations shall be clear and objective; and

(c) the approved post-mining use.

(B) *STEP 10B — Amend the Zoning Map to apply the ARO.* If the decision maker makes a determination approving mining under subsections (A) (1) (c) to (A) (1) (e), the decision maker shall amend the Land Development Code Zoning Map:

(1) To show the mining area. The extraction area shall be applied to significant sites where mining is permitted by the Comprehensive Plan. The mining area boundary as set forth in an application may be modified through the Goal 5 process to reduce conflicts with uses existing within the impact area.

(2) To show the impact area. The size of the impact area may be increased or decreased through application of the Goal 5 process.

(3) To apply an ARO to the impact area for sites receiving protection pursuant to Goal 5.

(C) The requirements of subsections (A) (2), (A) (3) and (B) of this section, do not apply to approval of mining under LCC 921.560 to 921.569.

FILED

OCT 12 2011

STEVE DRUCKENMILLER, CLERK
By  Clerk



2011-00582

I, Steve Druckenmiller, County Clerk for Linn County, Oregon, certify that the instrument identified herein was recorded in the Clerk records.

Steve Druckenmiller - County Clerk



**BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR LINN COUNTY OREGON**

**IN THE MATTER OF AMENDING THE)
LINN COUNTY RURAL DEVELOPMENT)
ZONE CODE [CHAPTER 921, 931, 933,)
and 939] AND THE LINN COUNTY LAND)
USE ELEMENT CODE [CHAPTER 905])**

**RESOLUTION &
ORDER NO. 2011-355
(Planning and Building Department)
(BC11-0003)
(Findings and Conclusions)**

WHEREAS, The Board of County Commissioners for Linn County (Board) conducted a duly advertised meeting on September 28, 2011 for the purpose of considering the matter of proposed Land Development Code (Code) text amendments to be codified at Title 9, LCC 921 (Land Development Administration Code), LCC 931 (Overlay Code), LCC 933 (Conditions of Approval and Decision Criteria Code) and LCC 939 (Mining Permits and Uses Code) and LCC 905 (Land Use Element Code);

WHEREAS, The proposed *Plan* and Code text amendments had been previously considered by the Linn County Planning Commission at a duly advertised meeting on September 13, 2011 and who voted 4-0 to recommend approval to the Board;

WHEREAS, The Board opened the meeting for public comment and after hearing such comments reached a consensus to direct that the proposed text, as changed by the Board and substantially set forth in *Exhibit 1* and *Exhibit 2*, attached hereto, be placed in ordinance format for formal adoption;

WHEREAS, The findings in support of the proposed *Plan* and Code text amendments are attached hereto as *Exhibit 3* (Decision Criteria, Findings and Conclusions); and now, therefore, be it

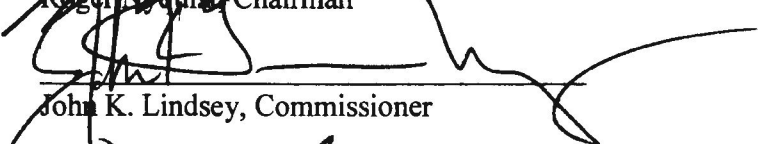
RESOLVED, That the Board of County Commissioners for Linn County approves the text set forth in *Exhibit 1* and *Exhibit 2* showing the changes made by the Board of County Commissioners for Linn County; and

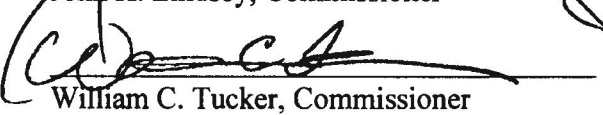
ORDERED, That the text set forth in *Exhibit 1* and *Exhibit 2* be placed in ordinance format for formal adoption in compliance with ORS Chapter 215 by the Board of County Commissioners for Linn County.

Resolved and Ordered this 12th day of October, 2011.

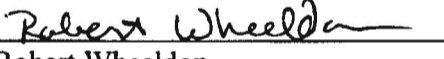
BOARD OF COUNTY COMMISSIONERS
FOR LINN COUNTY


Roger Norquist, Chairman


John K. Lindsey, Commissioner


William C. Tucker, Commissioner

APPROVED AS TO CONTENT:


Robert Wheeldon
Linn County Planning and Building Director

APPROVED AS TO FORM:

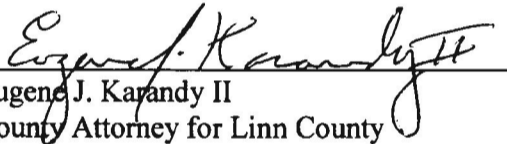

Eugene J. Karandy II
County Attorney for Linn County

EXHIBIT 1

Linn County Comprehensive Plan Text Changes
Section 905.820(B)(d-e)
Appendix 6A
Appendix 7
Add Appendix 9

can present a significant level of conflicts. Proposals to mine aggregate resources in such areas must be reviewed on a case-by-case basis to ensure that possible impacts are minimized.

905.810 Goals for aggregate resources

The goals shall be:

- (A) Recognize aggregate resources as a non-renewable resource vital to community development.
- (B) Promote the wise management and efficient use of aggregate resources to meet the present and future needs of people.
- (C) Coordinate the development of mineral and aggregate resources with other uses of land to minimize conflicts.
- (D) Minimize the environmental and aesthetic impact of extraction and processing areas.
- (E) Develop means that will assure the protection and use of significant mineral and aggregate resource sites.
- (F) Seek to make aggregate resources available at reasonable costs for the overall development of Linn County.

905.820 Policies for aggregate resources

(A) The policies for aggregate resources are set forth in subsection (B) of this section.

(B) *Policies.*

- (1) Linn County shall consider mineral and aggregate resource extraction and processing as a resource use of the land in Agricultural Resource, Farm/Forest and Forest Resource plan designations.
- (2) To identify and protect significant mineral and aggregate resources, Linn County shall follow the procedures and criteria in Statewide Planning Goal 5 and the Goal 5 administrative rule.
- (3) Linn County shall maintain an inventory of identified aggregate resource sites.

The inventory shall comprise five categories:

- (a) *Sites the County has determined are not significant.* These sites are "non-significant" sites. Under the original Goal 5 rule these sites were referred to as "1A sites." The sites determined to be non-significant are set forth in an inventory in Appendix 4 — entitled "Inventory of Non-significant Sites" (Formerly "1A" Sites) following this Chapter.
- (b) *Sites for which insufficient information about the location, quality and quantity of the resource is provided to determine whether the site is significant.* These sites are "possibly significant" sites. Under the original Goal 5 rule these sites were referred to as "1B sites." The sites determined not to have enough information to make a determination of significance are set forth in an inventory in Appendix 3 — entitled "Inventory of Possibly Significant Sites (Formerly "1B" Sites)" following this Chapter. The inclusion of a site in this category will serve to notify the owner and all other persons of the need to assess and document the value of the resource before conflicting uses become established in the area. The Director will address each resource site pursuant to this Subchapter when an application is filed by the owner with the Director requesting approval of the site for mining. If the decision maker determines that the site needs reclassified, the site will be so reclassified and

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the appropriate inventory in LCC Chapter 905 (Land Use Element Code) will be amended to include the site.

(c) *Sites the County has determined are significant resources to be protected by Goal 5.* These sites are "significant" sites. Under the original Goal 5 rule these sites were referred to as "2A," "3A," and "3C" sites. The sites determined to be significant aggregate sites are set forth at the end of this Chapter in one of the following inventories:

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(i) Appendix 5 — entitled "Inventory of Significant Sites Without Conflicting Uses (Formerly "2A" Sites),"

(ii) Appendix 6 — entitled "Inventory of Significant Sites With All Conflicts Minimized," or

(iii) Appendix 7 — entitled "Inventory of Significant Sites Protected by Goal 5 and Approved for Mining Pursuant to an ESEE Analysis (Formerly "3A" and "3C" Sites).

(d) *Sites the County has determined are significant resources but not to receive Goal 5 protection and not approved for mining pursuant to an ESEE analysis.*

These sites are "significant" sites. Under the original Goal 5 rule these sites were referred to as "3B" sites. These sites are not protected under Goal 5 and are not approved for mining pursuant to an ESEE analysis. A development permit may be issued pursuant to LCC 921.562 for a site described in this subparagraph. The sites determined to be significant aggregate sites but not receiving Goal 5 protection pursuant to an ESEE analysis are set forth at the end of this Chapter in Appendix 8 — entitled "Inventory of Significant Sites Not Protected by Goal 5 and Not Approved for Mining Pursuant to an ESEE Analysis (Formerly "3B" Sites).

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(e) *Sites on farmland that the County has determined are significant resources pursuant to LCC 939.120(D) and are not protected by Goal 5.*

These sites are "significant" sites, that do not warrant the protections of Goal 5. A development permit may be issued under LCC 921.562 for a site described in this subparagraph. Sites determined to be significant aggregate sites pursuant to LCC 939.120 (D) but not receiving Goal 5 protection are set forth at the end of this Chapter in Appendix 9 — entitled "Inventory of Significant Sites Not Protected by Goal 5).

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- (4) An aggregate resource site shall be considered significant if the site meets the significance criteria in the Goal 5 administrative rule.
- (5) Linn County shall apply an Aggregate Resource Overlay to:
 - (a) significant aggregate resource sites where no conflicting uses are present; and
 - (b) significant sites that qualify under the Goal 5 planning process for full or partial protection from conflicting uses.
- (6) The application of an aggregate resource overlay shall include the resource site and the surrounding land within an identified impact area.
- (7) Where conflicts exist between a significant aggregate resource site and other land uses, and reasonable and practicable measures are identified to minimize the conflicts, Linn County shall adopt provisions to minimize the conflicts and allow mining.

- (8) Where identified conflicts between a significant aggregate resource site and other land uses cannot be minimized, and the conflicting land use qualifies under the Goal 5 planning process for full protection from the impacts of developing the aggregate resource, mining and processing of the resource shall not receive Goal 5 protection.
- (9) If an aggregate resource site is not significant, mining and processing may be permitted only through the conditional use permit process.
- (10) Where a new aggregate extraction site or expansion of an existing site is proposed, a site development plan shall be submitted for review by Linn County. The County shall evaluate such proposals and attach operating conditions when necessary. The proposal shall include the following:
- (a) Provision of buffering and visual screening throughout the extraction period, and other means designed to minimize existing or potential conflicts with surrounding land uses;
 - (b) Development, where necessary, of all-weather access roads. Access roads shall be developed in a location and maintained in a manner that will minimize the impacts on neighboring properties and existing residential structures;
 - (c) Analysis of the overlying soils capabilities for long-term agricultural or forest resource use;
 - (d) Mechanisms to minimize the impact on air, surface and ground water quality, fish and wildlife habitat and general environmental quality;
 - (e) Acceptable proposed final use;
 - (f) Reclamation plan approved by the Department of Geology and Mineral Industries that results in the final use;
 - (g) Provisions for public safety; and
 - (h) Other site development information required by the Land Development Code.
- (11) Proposals for extraction and processing of aggregate resources in the Agricultural Resources, Farm/Forest and Forest Resource plan designations shall incorporate as a final use agricultural or forest resource production, ~~wildlife habitat or other similar open space land uses~~. Linn County shall determine whether the proposed final use is an acceptable use.
- (12) Linn County review of proposed aggregate extraction and processing sites and of proposed expansions to existing sites shall be coordinated with state agency review.
- (13) Conditional use permits issued for aggregate extraction shall identify an area for extraction and standards for development. A proposed expansion beyond the identified extraction area shall require an evaluation of the operation's performance under the existing permit conditions.
- (14) Aggregate and mineral resource sites shall comply with all applicable reclamation standards of federal and state agencies.
- (15) Neither new aggregate resource extraction sites nor the expansion of existing extraction sites shall be permitted in areas designated Rural Residential or Rural Center.
- (16) There is insufficient location, quantity, and quality information to determine the significance of numerous existing aggregate resource sites. When more complete

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- (6) *Safety Conflicts With Existing Public Airports.* The site will be mined at grade. Because no open water impoundments or other bird attractants would be associated with mining this resource, and because there are no existing public airports within three miles of this site, no conflicts with existing public airports are identified.
- (7) *Conflicts With Other Goal 5 Resource Sites.* No other Goal 5 resources are identified in the *Comprehensive Plan* in the impact area. No conflicts with other Goal 5 resources are identified.
- (8) *Conflicts With Agricultural Practices.* Agricultural practices within the impact area are minimal and are primarily limited to cattle grazing. There is a small area in the northwest portion of the impact area that is EFU and farmed in grass seed. This area is completely shielded by existing topographic features. No conflicts with agricultural practices are identified.
- (9) *Potential Future Conflicting Uses*
- (a) The land south of the resource site is in Lane County and is zoned Quarry & Mining (Q&M). No potential conflicts with land uses allowed in the Q&M zoning district are identified. The properties within the impact area to the north, east and west of the resource site are in the F/F or EFU zoning districts. Farm and forest uses are protected uses in these districts. The land in the impact area is a mixture of small stands of timber and rocky pasture. The primary farm use in the area is cattle grazing. No information has been submitted identifying potential conflicts between aggregate mining and farm or forestry uses within the impact area.
- (b) New industrial uses are not permitted in the EFU and F/F zones. New commercial and residential uses are not allowed in the EFU or F/F zones without conditional use permit approval. If a conditional use permit is proposed within the impact area, potential conflicts with existing land uses, including this resource site, shall be considered in the decision. This precludes new commercial or residential uses in the area from conflicting with mining at this site.
- (10) *Measures to Minimize Potential Conflicts*
- (a) The Board concludes there is a potential for crushing and truck traffic to impact two existing homes along the haul road if the quarry were to begin operating beyond the current operating hours or if the quarry ownership were to change. These potential conflicts include noise and dust impacts along the access roadway.
- (b) In order to minimize potential future conflicts with the mining operation, mining at this site shall be conducted in compliance with the following operating conditions:
- (i) Operating hours for crushing shall be limited to Monday through Saturday, 7:00 a.m. to 7:00 p.m.
Operating hours for truck traffic entering and leaving the quarry shall be limited to Monday through Saturday, 7:00 a.m. to 5:30 p.m.
- (ii) The quarry operator shall be responsible to ensure adequate dust abatement measures are maintained on the access roadway.
- (11) *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 the adoption of the provisions set forth in this resource site analysis.
- (12) *Post-Mining Use and Reclamation.* Mid-Valley Gravel Co. has filed a reclamation plan with the Department of Geology and Mineral Industries (DOGAMI) identifying wildlife habitat as the final post-mining land use. Wildlife habitat is identified in the *Comprehensive Plan* as an approved final use in the F/F zoning district.

APPENDIX 6 — INVENTORY OF SIGNIFICANT SITES WITH ALL CONFLICTS MINIMIZED AGGREGATE SITES

No. Owner/operator Township Range Section Tax-lot Acreage

6001 Pinnacle Rock 12S 1W 6 1700 30.50

6002 Waggener/Bond Butte 14S 3W 28 1300 55.00

[Adopted 80-335 eff 9/2/80; amd 99-156 §1 eff 6/30/99; amd 00-495 § 6 eff 9/13/00; amd 02-048 §1 eff 2/5/02]

905 - 66 LINN COUNTY — LAND USE ELEMENT CODE (Latest rev. February 2, 2005)

Run time: February 19, 2005 (1:43:37pm) Distribution

APPENDIX 6A — ANALYSES JUSTIFYING A CLASSIFICATION AS A SIGNIFICANT SITE WITH ALL CONFLICTS MINIMIZED

TABLE OF CONTENTS

905.6001 Pinnacle Rock site

905.6002 Waggener/Bond Butte site

905.6001 Pinnacle Rock site

(A) *Goal 5 analysis.*

(1) *Inventory Information.*

- (a) The aggregate resource site is the southeastern 30.50-acre portion of the 80.98-acre property identified as T12S, R1W, Section 6, Tax-lot 1700, Linn County, Oregon. The property is located approximately one and one-half miles northeast of Lebanon on the south side of Mt. Hope Drive. The site is located near the top of the ridge between Golden Valley Drive and Mount Hope Drive. The property is on the North facing side of the ridge with elevation ranging from 600 to 700 feet. From the ridge the land slopes down to the north with slopes of 30 to 60 percent.

- (b) Eight test holes were drilled on the site to determine the quality and quantity of aggregate on the property. Quality tests conducted by the Oregon Department of Transportation (ODOT) Materials Laboratory indicate that a representative set of samples of aggregate material in the deposit on the site exceeds the ODOT specifications for base rock for air degradation, abrasion, and sodium sulfate soundness. The quality test results and analysis are included in Planning Department File No. CP-1-98.
- (c) The quantity calculations are included in Planning Department File No. CP-1-98. The quantity calculations indicate an estimated 1.2 million cubic yards of material. The *Comprehensive Plan* Background Report, page II-5, indicates the Linn County quantity threshold for significance is 400,000 cubic yards of material. Based on the quality and quantity criteria listed in OAR 660-23-180(3), this site is identified as a significant aggregate resource site.
- (2) **Impact Area.** In order to determine conflicts from potential mining and processing activities at the site, an impact area including land within 1500 feet from the boundaries of the mining area is established, as set forth in OAR 660-23-180 (4)(a). No factual information has been presented to indicate significant potential conflicts beyond this distance. The impact analysis is limited to those potential conflicts with existing and approved land uses within the impact area that are identified by OAR 660-23-180(4)(b).
- (3) **Conflicts Due to Noise, Dust or Other Discharges.**
- (a) The impact area contains nine residences and two other operating rock quarries. The other rock quarries are on adjacent parcels to the south and east of the site. The site is in the Farm/Forest (F/F) zone. The land across Mt. Hope Drive to the north is zoned Exclusive Farm Use (EFU). The land to the east, west and south is zoned F/F. To the West and North are properties ranging in size from 3 to 80 acres. The tax lots to the east and south are 192 acres and 226 acres, respectively.
- (b) Typical conflicts associated with aggregate extraction and processing which may affect established residential uses within the impact area arise from noise, dust, and vibration impacts. These impacts can result from blasting, crushing and hauling operations. Of the nine residences within the impact area, one is on the same property as the resource site, 600 feet north of the resource boundary, and is visible from the site. The next closest residence is approximately 800 feet to the west of the resource boundary and is screened by existing vegetation, trees and topography.
- (c) A residence is located approximately 950 feet to the northeast of the site. Testimony indicates this property would be likely to experience visual, noise and vibration impacts from mining operations. Identified measures to minimize these impacts are to install a berm or vegetative screen north of the mine site. Another residence is located 950 feet to the northwest of the site boundary. Testimony indicates identified impacts from mining on this use would occur primarily due to truck noise and dust from the proposed haul road. Identified measures to minimize these impacts are to locate the haul road at least 50 feet east of the property boundary and to install and maintain vegetative screening. The five remaining residences within the impact area are between 1000 and 1500 feet from the site. No significant impacts have been identified which would affect these residential uses. New dwellings are not permitted in the EFU or F/F zone without a conditional use permit. This precludes new residential uses in the area from conflicting with mining at this site.
- (4) **Potential Conflicts to Local Roads.**
- (a) Aggregate will be hauled from this site in 5 -yard or 10-yard trucks or in personal pickup trucks to Mt. Hope Drive, a paved county road. The City of Lebanon is one and one-half miles to the southwest and would be the primary destination for the truck trips originating from this site. From Mt. Hope Drive, Brewster Road is the main arterial to Lebanon to the south and to Highway 226 to the north. This is the same haul route currently used by trucks serving the Morse Bros. quarry, west of the Pinnacle Rock site on Mount Hope Drive, and the Rock Products quarry, east of the Pinnacle Rock site on Mount Hope Drive. This section of Mount Hope Drive is already constructed to handle the truck traffic in the area and to withstand the weight of the trucks that will be leaving the proposed quarry.
- (b) The Linn County Road Department has determined that a safe road approach to access Mt. Hope Drive from the property can be developed approximately 50 feet from the west property line. Several area residents expressed concern that traffic from the proposed quarry operation would impact the local road system. The Road Department did not identify any negative impacts on the local transportation system from existing or proposed mining in the area. There are two existing quarries on property adjacent to this site. Because aggregate is nearly always obtained from the resource site nearest the point of final consumption, and because there is no evidence that the addition of a third mine site at this location will increase off-site demand for aggregate resources, no net increase in traffic is expected to occur on the County Road system if this site is also mined. The County finds that mining at this site will not impact the safety of the local road system.
- (5) **Safety Conflicts With Existing Public Airports.** The identified resource would be mined at grade. Because no open water impoundments or other bird attractants would be associated with mining this resource, and because there are no existing public airports within three miles of this site, no significant safety conflicts with existing public airports are identified.
- (6) **Conflicts With Other Goal 5 Resource Sites.**
- (a) There is an existing quarry 50 feet to the south of the site. That quarry includes 40 acres which is currently mined on the parcel to the south, and another 35 acres of leased land which is located on the parcel to the

east. Another active quarry is located approximately 1400 feet to the north. A total of 50 acres of the adjacent parcel to the east is identified as aggregate resource for which mining is allowed through an active conditional use permit. No conflicts are identified with these existing resources.

- (b) No sensitive riparian, fish or wildlife habitat areas are identified on the property. The *Comprehensive Plan* Wildlife Habitat Inventory indicates the property is within the western boundary of peripheral big game range, which runs along Mt. Hope Drive along the northern parcel boundary. Although mining in this area may disrupt a small amount of game habitat, this disruption would not be permanent. The previous owners of the property harvested all salable timber within the none area in approximately 1989 and did not reforest. After mining is completed the reclamation plan calls for reforestation of the mine site with Douglas Fir or Ponderosa Pine. The reclamation plan for the resource site indicates the property will be restocked as forest land, thereby providing increased wildlife habitat in the future.
- (c) There are no wetlands identified on the property in the National Wetlands Inventory (NWI) wetlands map, Onehorse Slough Quadrangle. No significant wildlife habitat conflicts have been identified. No significant open space, scenic or historic resources are identified on the property in the *Comprehensive Plan*.

(7) *Conflicts With Agricultural Practices.*

- (a) The properties to the immediate south, north, east and west are zoned EFU and F/F and are mixed agricultural and forest land. Agricultural uses on these properties are mostly cattle grazing and hay crop farming. Testimony shows the agricultural use on the adjacent property to the east includes the breeding and raising of Emu. The properties to the northwest are primarily in forest use. One property to the northwest has periodic sheep grazing. No conflicts have been identified with this use during the hearing process.
- (b) The 50.48-acre portion of tax-lot 1700 which is not part of this proposal is between the mine site and Mt. Hope Drive to the north. The farm use of this property is primarily pasture and hay. No identified conflicts with farming or forestry practices are identified on this property. Tax-lot 100 to the south is 226.26 acres with an existing 40-acre quarry along the southern boundary of the subject property. The remainder of the land is in timber and pasture. No identified conflicts with farming or forestry practices are identified on this property.
- (c) Tax-lot 1800 to the east is 191.98 acres and includes an emu farm. The property has two quarry sites: one to the east and another to the northeast of the subject property. A total of 50 acres of tax-lot 1800 is identified as aggregate resource for which mining is allowed through an active conditional use permit. The owners of this property have identified noise, vibration and dust impacts from the existing quarries in the vicinity which conflict with their farming operation and may have a negative impact on the health of their emu stock. Noise, dust, and vibration impacts from mining the subject aggregate resource are identified as potential conflicts with agricultural practices on this property.
- (d) Tax-lot 1701 to the west is 29.59 acres and is primarily in timber. Tax-lot 1600 to the west is 4.59 acres and is primarily timbered. No identified conflicts with farming or forestry practices are identified on these properties. Other properties within the impact area are a mixture of timber, hay crops and pasture. No conflicts with farming or forestry practices are identified on other properties within the impact area.

(8) *Measures to Minimize Identified Conflicts.*

- (a) This Goal 5 review has identified conflicts with the residential use of tax-lot 1800 to the northwest and taxlot 1600 to the west. Conflicts have also been identified with an existing agricultural use of tax-lot 1800.
- (b) The following identified measures are determined to be reasonable and practical to minimize identified conflicts. These minimized impacts will not force a significant change in or significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.
- (c) The mining and processing of aggregate at this site shall be an allowed use when the following mitigating measures are applied. When mining is approved, additional approval requirements, if any, shall be limited to those identified in OAR 660-23-180(4)(e).
- (i) In order to minimize noise and other discharge impacts on residential and agricultural uses in the impact area, asphalt and cement batching shall not be permitted uses at the resource site.
- (ii) In order to minimize identified visual, noise and dust impacts on the residential and agricultural uses on tax-lot 1800 to the northeast, a berm or vegetation sufficient to visually screen rock crushing equipment shall be established along the northeastern boundary of the resource site prior to mining the area identified on the site plan as "Mining Site Phase 2".
- (iii) In order to minimize identified noise and dust conflicts with the residential use of tax-lot 1600 to the west, the following measures shall be implemented:
- (I) The on-site haul road and road access to Mt. Hope Drive shall be located at least 50 feet from the western property boundary and shall be approved by the Linn County Road Department prior to establishing the mining operation.
- (II) Prior to initiating mining of this resource, a vegetative screen at least 6 feet in height and 10 feet in width shall be established between the on-site haul road and tax-lot 1600. The Vegetation shall be a species capable of providing a visual screen at least 10 feet in width to a height of at least 10 feet and shall be maintained in a healthy condition.

(III) Either water or another dust palliative conforming to DEQ standards shall be used to mitigate dust on the stockpiles, roads and vehicle circulation areas.

(IV) In order to prevent significant traffic impacts on the local road system, rock from other sites shall not be hauled to this site for sale or processing.

(9) *Post-Mining Use and Reclamation*

- (a) Pinnacle Rock has filed a reclamation plan with the Department of Geology and Mineral Industries (DOGAMI) identifying forestry as the final post-mining land use. The reclamation plan identifies measures which will be taken upon termination of mining at the site to replace overburden and top soil, seed the area with grass to control erosion, and plant Douglas fir or ponderosa pine throughout the mined area. Forest resource production is identified in the *Comprehensive Plan* as an approved final use in the F/F zoning district.
- (b) The Soil Conservation Service (SCS) *Soil Survey of Linn County Area, Oregon*, July, 1987, indicates the 30.50-acre aggregate resource site is predominately Ritner soil, identified as soil units 84E and 84G. Soil type 84E is in SCS capability class VI. Soil type 84G is in SCS capability class VII. These soils are not Class I or II soils and are not defined as prime or unique farmland in *OAR 660-33-020(8)*. Forestry is therefore an allowed post-mining use under *OAR 660-23-180(4)(0)*.
- (c) *Potential Future Conflicting Uses*.
- (d) The properties within the impact area are in the EFU and the F/F zoning districts. Farm and forest uses are protected resource uses in these districts. No information has been submitted identifying significant conflicts between aggregate mining and forestry uses. Typical farm uses in the area include sheep and cattle grazing and hay production. No substantive information has been presented identifying significant potential impacts on mining this property due to potential agricultural practices in the area.
- (e) New industrial uses are not permitted in the EFU and F/F zones. New commercial and residential uses are not allowed in the EFU or F/F zones without conditional use permit approval. If a conditional use permit is proposed within the impact area, potential conflicts with existing land uses shall be considered in the decision.
- (f) Tax-lot 100, south of the subject property, is the only property within the impact area which is not already developed with a residence. Tax-lot 100 includes a 75-acre aggregate mining and processing operation which would be between the subject resource site and any potential homesite. Such potential homesite would be screened from and would not impact the proposed mine site.
- (g) The existing utility operations within or near the impact area consist of the Consumer's Power right of way, which runs along Mount Hope Drive, and the BPA right of way, which runs from North to South along the western boundary of the property. These structures are static industrial uses and will not conflict with the proposed aggregate site.
- (h) Because of all the facts identified in this section, the County finds that no significant potential future conflicting uses are identified. The County further concludes that acknowledged policies and land use regulations are sufficient to protect the resource site.

905.6002 Waggener/Bond Butte

(A) *Goal 5 analysis*.

(1) *Findings of fact*. The findings of fact in support of this resource site analysis are contained in Order No. 2002-047. 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 BC01-0006.

(2) *Inventory Information*.

- (a) The resource site is a 55-acre portion of a 101-acre property identified as T14S, R3W, S28, TL1300, in an Exclusive Farm Use (EFU) zone. The site is located approximately 7.5 miles southwest of Brownsville and seven miles southeast of Halsey, one-quarter mile west of the intersection of Center School Road and Bond Butte Drive and one-quarter mile east of Interstate 5.
- (b) A representative set of basalt samples from the 55-acre resource site meets Oregon Department of Transportation (ODOT) specifications for base rock for air degradation, abrasion, and sodium sulfate soundness. The site contains more than 3,000,000 tons of basalt reserves meeting the ODOT specifications.
- (c) The 55-acre aggregate resource site is a significant site as set forth in the *Comprehensive Plan* and the Goal 5 rule for aggregate.

(3) *Impact Area*. To determine conflicts associated with the proposed mining of this resource site a base 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.

(B) *Conflicts Due to Noise, Dust or Other Discharges*.

(1) The proposed haul road is fully developed from the site to Bond Butte Drive. The haul road is over a reciprocal 30-foot easement crossing the adjacent ODOT property and the Waggener property. The road approach shall be paved and improved to Road Department standards prior to initiating the development permit to mine the expansion area. There are no conflicts identified with the haul road due to noise, dust or other discharges.

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- (2) There are two noise or dust sensitive uses identified on nearby properties within the impact area. One is the Bierly residence and the other is the Charity Grange Hall, each approximately 1200 feet north of the northern boundary of the site. Neither property owner identified any conflicts with noise, dust or other discharges under the current operating characteristics.
- (3) There is one home located on the subject property, at the base of the identified resource site. Because the home is on the same property and within the proposed resource site, it is not a conflicting use for purposes of this analysis.
- (4) The operator will maintain the existing southfacing quarry face to shield the home and grange from noise and dust impacts from mining the property. Blasting notice shall be provided as requested and blasting will be conducted during limited daytime hours to reduce conflicts with surrounding land uses. Water shall be used on the rock crusher to reduce dust pursuant to the DEQ permit.
- (5) Grass seed farming is the predominant land use in the area. Grass seed farming is not considered a noise or dust sensitive use under the Goal 5 rule for aggregate. No conflicts with agricultural practices are identified. Mining the site would not force a significant change in or significantly increase the cost of accepted agricultural practices within the impact area.

(C) Other Conflicts

- (1) No potential conflicts with local roads are identified.
- (2) No safety conflicts with existing public airports are identified.
- (3) No conflicts with other Goal 5 resource sites are identified.
- (4) The subject property and the surrounding land are zoned Exclusive Farm Use (EFU). All surrounding property, except for the adjacent ODOT quarry, is in farm use. No existing or potential conflicts with agricultural practices are identified.

(D) Measures to Minimize Identified Conflicts

(1) Potential conflicts are identified with the residential use of tax lot 400 and with the Charity Grange property on tax lot 103, both approximately 1200 feet from the northern boundary of the resource site, if the quarry were to vary significantly from the existing operating characteristics. Order No. 2002-047 contains a list of reasonable and practical measures that will ensure all potential conflicts will be minimized. The development permit to mine the expansion area of this site shall require compliance with all the conditions set forth in Order No. 2002-047.

(E) *Post-mining Use and Reclamation.* Mr. Waggener has filed a reclamation plan with DOGAMI identifying forestry as the final post-mining land use. The soils on the site are not Class I or II soils and are not defined as prime or unique farmland in OAR 660-33-020 (8). Forestry is an allowed postmining use on this site.

(F) *Potential Future Conflicting Uses.* All of the surrounding lands are zoned EFU. New noise and dust sensitive uses (i.e. homes, churches, hospitals, schools) are not allowed unless approved by a conditional use review and found not to conflict with existing land uses. New commercial and industrial land uses are not allowed. No conflicts with potential future land uses are identified.

APPENDIX 7 — INVENTORY OF SIGNIFICANT SITES PROTECTED BY GOAL 5 AND APPROVED FOR MINING PURSUANT TO AN ESEE ANALYSIS (FORMERLY "3A" AND "3C" SITES) AGGREGATE SITES SITES RECEIVING FULL "GOAL 5 PROTECTION (FORMERLY "3A" SITES):

No. Site Name Location

(T / R / S / T-L) Size (acres)

7001 Wilson 9S 2E 26 500 98.8

7002 Morse Brothers, Inc., Inc. #1 11S 3W 10, TL 2401, 2402 11 TL 500 & 1000 & 14 406,

7003 Wodtli 13S 1W 26 400 & 50 155.1

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229.3

SITES RECEIVING LIMITED GOAL 5 PROTECTION (FORMERLY "3C" SITES):

No. Site Name Location

(T / R / S / T-L) Size (acres)

7501 Wildish Sand and Gravel 9S 3W 32 100 218.8

7502 Morse Brothers, Inc. #2 11S 3W 10 2400 &

11S 3W 14 301 (portion of)

27

[Adopted 80-335 eff 9/2/80; amd 99-156 §1 eff 6/30/99; amd 00-495 §6 eff 9/13/00]

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APPENDIX 7A — ESEE ANALYSES JUSTIFYING PROTECTION OF A SIGNIFICANT SITE BY GOAL 5 AND APPROVING MINING

PURSUANT TO AN ESEE ANALYSIS (FORMERLY "3A" OR "3C" SITES)

TABLE OF CONTENTS

905.7001 Wilson — 3A site

905.7002 Morse Brothers, Inc. #1 (Tax-lots 406, 1000, 1001, 2401 & 2402) — 3A site

905.7003 Wodtli — 3A site

905.7501 Wildish Sand & Gravel (Tax-lot 100) — 3C site

905.7502 Morse Brothers, Inc. #2 (Tax-lots 2400 & 301) — 3C site

Deleted: 7004 Morse Brothers 401,
1000, 1001, 2401 & 2402

- (1) With large reserves and close proximity to Brownsville and Interstate-5, this is an important aggregate resource site. Though no formal concerns or complaints have been raised, the site is located within 200 yards of a Rural Residential (1 acre lot size) area to the east.
- (2) Operation of the site provides full-time employment and increased tax revenues to the county. Environmental factors (noise, dust, etc.) should not pose a problem as long as state mining standards are adhered to. Additionally, the residential area is located to the east on the opposite side of the Powell Hills, and thus is "buffered" from the mining site. Operation of the mining site consumes far less energy than would residential uses.
- (3) The area is zoned for Exclusive Farm Use, and limits development, and provides for public review of development proposals. The site is located in the Calapooia River flood plain.
- (4) The conflicting use identified with this site is of more importance than the aggregate resource site, as the latter suffers no real threat from development or surrounding land uses. The conflicting use should be allowed fully, a "3-B" designation under the Goal 5 process.

APPENDIX 9 — "Inventory of Significant sites not protected by Goal 5" TABLE OF CONTENTS

EXHIBIT 2

Linn County Code Text Changes

Section 921.552(A)(3)&(B)

Section 921.562 (A)(2)&(4)

Section 921.564 (B)(2)

Section 931.708(B)(2)

Section 931.710

Section 931.720

Section 931.745-755

Section 933.190

Section 939.030

Section 939.050

Section 939.110 (B)(2)

Section 939.120(D-F)

Section 939.150(A)

Section 939.170(C)

Section 939.200

921.544 Performance and development standards

- (A) The minimum standards set forth in LCC 934.350 to 934.359 shall apply to the establishment, maintenance and operation of a mining area that is subject to a development permit issued under LCC 921.552 or 921.562.
- (B) The measures, conditions, and regulations approved under LCC 939.200.
- (C) The decision maker may, at its discretion, provide additional performance or development standards on the mining permit and mining operation.

921.545 Removal of structures and equipment

When mining is completed, all equipment, refuse, buildings and structures not related to the final use shall be removed from a mining area that is subject to a permit issued under LCC 921.552 or 921.562. The mining area shall be left free of debris.

921.546 Final use

- (A) Each mining area subject to a permit issued pursuant to LCC 921.552 shall be reclaimed to a final use as set forth in LCC 933.190 (C).
- (B) Each mining area subject to a permit issued pursuant to LCC 921.562 shall be reclaimed to a final use as set forth in LCC 933.190 (B).

C. DEVELOPMENT PERMITS FOR MINING OF SITES RECEIVING GOAL 5 PROTECTION

921.552 Development permit for mining of sites receiving Goal 5 protection

- (A) The Director shall issue a development permit authorizing the initiation of mining if a determination was made that the site is a significant site under LCC 939.120 and is a site listed on or after September 1, 1996 on:
 - (1) Appendix 5 in LCC Chapter 905 (a site without conflicts); or
 - (2) Appendix 6 in LCC 905 (all conflicts have been minimized); or
 - (3) Appendix 7 in LCC 905 (based on an ESEE analysis the site is to receive Goal 5 protection and to be approved for mining with or without limitations).
- (B) A permit authorizing the initiation of mining of a significant site listed on Appendix 6 or 7 in LCC Chapter 905 shall be subject to:
 - (1) any required measures, conditions and regulations approved in LCC 939.200; and
 - (2) a condition that mining may not be initiated or conducted unless in compliance with a site development plan approved by the decision maker; and
 - (3) a condition that the owner and operator comply with the program adopted to protect the resource.
- (C) Any conditions imposed on the permit issued pursuant to this section shall be clear and objective whether imposed by this Code, the *Comprehensive Plan*, the process that leads to minimization of all significant conflicts, or by an ESEE analysis.

921.556 Additional land use review

- (A) The decision maker, in making a determination under LCC Chapter 939 pursuant to the Goal 5 process, may consider the additional land use review factors set forth in subsection (B) of this section.
- (B) Additional land use review authorized by this section and by LCC 921.544 shall not:
 - (1) exceed the minimum review necessary to assure compliance with the requirements in LCC 939.200 pertaining to the site under review.

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- (2) provide opportunities to deny mining for reasons unrelated to these requirements, or to attach additional approval requirements, except with regard to mining activities:
 - (a) not requested in an application filed under LCC Chapter 939; or
 - (b) for which the *Plan* amendment application does not provide information sufficient to determine clear and objective measures to resolve identified conflicts; or
 - (c) for which a significant change to the type, location, or duration of the activity shown on the *Plan* amendment application is proposed by the operator.

D. DEVELOPMENT PERMITS FOR SITES NOT RECEIVING GOAL 5 PROTECTION

921.560 Statement of purpose

The purpose of LCC 921.560 to 921.569 is to allow for the development and utilization of aggregate resources not protected by Goal 5 while providing guidelines for conditions to be applied to the mining of the aggregate. These conditions are designed:

- (A) to provide reasonable protection to neighboring properties,
- (B) to minimize undesirable effects, and
- (C) to result in the reclamation, rehabilitation and the ultimate beneficial reuse of the property for land uses which will be compatible with the surrounding activities.

921.562 Development permit for mining of sites not receiving Goal 5 protections

- (A) The Director may issue a development permit for a site that:
 - (1) is listed on Appendix 4 (non-significant site) in LCC Chapter 905 (Land Use Element Code) and the decision maker has approved the issuance of a development permit under LCC 921.560 to 921.569, or
 - (2) is listed on Appendix 8 (significant site but based on an ESEE analysis conducted under LCC 939.150 is not to receive Goal 5 protection) in LCC Chapter 905 and the decision maker has approved the issuance of a development permit under LCC 921.560 to 921.569, or
 - (3) is listed before September 1, 1996, on Appendix 5 (no conflicts), or Appendix 7 (Goal 5 protections based on ESEE analysis), or
 - (4) is listed on Appendix 9 (Significant site but not protected by Goal 5) in Chapter 905 and the decision maker has approved the issuance of a development permit under LCC 921.560 to 921.569.
- (B) A permit issued under this section must comply with LCC 921.560 to 921.569.

921.564 Decision criteria

- (A) Approval to issue a permit to mine a site described in LCC 921.562 shall be based on compliance with all the decision criteria described in subsection (B) of this section.
- (B) *Decision criteria.*
 - (1) LCC 933.310.
 - (2) The site is listed on one of the appendices as described in LCC 921.562.
 - (3) Sites found to be significant under 939.120 (D) and listed on Appendix 9 (significant site but not protected by Goal 5) in Chapter 905 shall also comply with the following:
 - (a) The application shall comply with 933.190 (C).

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(b) The mining operation shall be limited to mine less than 2,000,000 tons of aggregate material.

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921.568 Permit issuance and renewal

- (A) A permittee holding a development permit issued under LCC 921.562 shall comply with the performance standards of LCC 921.544, in addition to any conditions established by the decision maker.
- (B) Except as otherwise provided in LCC 921.960, a development permit issued by the Director to mine under LCC 921.562 pursuant to which mining has been initiated in compliance with LCC 920.400 (B) (1) shall be valid until the DOGAMI or DSL permit expires.

- (8) The proposal shall not have a significant effect upon potentially erodible areas.
- (9) The proposal is compatible with existing uses in the surrounding area.
- (10) The proposal has been directed away from the Willamette River to the greatest extent possible.
- (11) The maximum possible landscaping area, open space and vegetation will be provided between the Willamette River and the proposal.

931.670 WRGO; aggregate extraction

- (A) The extraction of aggregate resources shall be consistent with the criteria for review established in LCC 931.660.
- (B) Extraction activities shall minimize adverse effects on water quality, fish and wildlife habitat, the natural vegetative fringe, stream bank stabilization efforts, stream flow, scenic quality, noise and safety.

931.680 WRGO; property development standards

Development of all properties in the WRGO must comply with the development standards set forth in LCC Chapter 934 (Development Standards Code) and specifically to LCC 934.850, and also to any specific standards applicable to the underlying zoning district.

VII. AGGREGATE RESOURCE OVERLAY (ARO)

A. GENERAL PROVISIONS

931.700 Subchapter title

This Subchapter, LCC 931.700 to 931.755, shall be known and may be cited as the "Linn County Aggregate Resource Overlay Code" or simply as the "Aggregate Resource Overlay Code."

931.701 Statement of purpose

The purpose of this Subchapter is:

- (A) to protect significant sand, gravel, rock, stone and related aggregate resources to ensure the continued availability of aggregates at reasonable costs for the overall development of Linn County;
- (B) to coordinate the development and utilization of significant aggregate resources with other land uses to minimize conflicts;
- (C) to establish standards of development and operation for significant aggregate resource extraction and processing sites;
- (D) to prohibit the use of land in the Aggregate Resource Overlay (ARO) for uses incompatible with the extraction and processing of significant aggregate resources;
- (E) to provide for the agricultural and forest use of land in the ARO prior to the development of extraction and processing activities; and
- (F) to provide for the reclamation, rehabilitation and beneficial final use of aggregate resource sites in a manner compatible with the surrounding land use pattern.

931.702 Definitions

The definitions set forth in LCC 939.030 apply to this Subchapter.

931.704 Aggregate Resource Overlay; content and application

- (A) Contents. The Aggregate Resource Overlay (ARO) comprises two areas, the mining area and the impact area.
- (B) Application of the ARO.
 - (1) The ARO may be applied to significant aggregate resource sites following:

- (a) a Type IIIA legislative Plan amendment process, if the application is initiated by Linn County; or
- (b) a Type IIIB application for a post-acknowledgment Plan amendment, if the application is not initiated by Linn County.
- (2) Before applying an ARO or ARO-I to the underlying zoning district, the decision maker shall:
 - (a) comply with the process identified in LCC Chapter 939 (Mining Permit and Uses Code); and
 - (b) implement the ARO by amendments to the Comprehensive Plan text and the Land Development Code Zoning Map; and
 - (c) include within the boundary of the ARO the mining area and ARO-I all property as determined to be within the impact area.
- (3) The decision maker shall not apply either a mining area or an impact area to land within another county without that county's consent, or to land within a city or its urban growth boundary without that city's consent.
- (C) Sites formerly designated as an Aggregate Extraction and Processing (AXP) zoning district are re-designated with the ARO classification. The re-designation shall not alter the mining of aggregate except as authorized in OAR 660, Division 23.

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931.706 Application for an ARO

A person may apply for the application of an Aggregate Resource Overlay as provided in LCC Chapter 939 (Mining Permit and Uses Code) and Chapter 921 (Land Development Administration Code).

931.710 ARO; mining area property development standards

Development of all properties in the ARO or ARO-I must comply with the development standards set forth in LCC Chapter 934 (Development Standards Code) and specifically to LCC 934.350 to 934.359, and also to any specific standards applicable to the underlying zoning district.

931.715 ARO; mining area final use and site reclamation

Each extraction site shall be reclaimed to a final use as set forth in LCC 933.190.

931.720 ARO; termination of Aggregate Resource Overlay

When a significant site has been fully mined and reclamation has been completed, the affected property within the mining area and the impact area shall be rezoned to remove the ARO and ARO-I designation.

- (A) The zone change shall be initiated by the County, the owner or contract purchaser of the property comprising the mining area.
- (B) If a restrictive covenant is imposed within the ARO or ARO-I, it shall state that the obligations imposed expire upon the termination of the ARO or ARO-I.
- (C) Removal of the ARO or ARO-I shall not relieve requirements on the part of the owner or operator to reclaim the site in accordance with the DOGAMI reclamation plan, ORS 517.750 through 517.900, and the rules adopted thereunder.

B. USES ALLOWED OR PERMITTED IN THE ARO

931.730 ARO; mining area uses allowed outright

- (A) The uses set forth in subsection (B) through subsection (C) are allowed outright in the mining area subject to compliance with the development standards in LCC 934.350 to 934.359, any requirements adopted as part of the Comprehensive Plan for

the protection of significant mineral and aggregate sites, and an approved site development plan.

(B) Non-dwelling uses allowed outright.

(1) *Aggregate materials.*

- (a) Operations that entail extraction and stockpiling of mineral and aggregate materials mined and processed onsite.
 - (b) Processing, including but not limited to crushing, washing, milling and screening.
 - (c) The batching and blending of mineral aggregate into asphaltic and Portland cement products located within the operating permit area, except the batching or blending of mineral and aggregate materials into asphalt concrete within two miles of a planted commercial vineyard existing on the date the application was received for the batch plant.
- (2) Existing processing operations. A currently approved aggregate processing operation at an existing site may process material from a new or expansion site without obtaining a reauthorization of the existing processing operation unless limits on such processing were established at the time it was permitted by the County.
- (3) Equipment storage yard, offices, maintenance and storage buildings, and other accessory structures, when used in conjunction with on-site mining operations.
- (4) Retail and wholesale sales of aggregate products produced on-site.
- (5) Farm and forest uses.
- (6) Signs, subject to the development standards in LCC 934.210 to 934.217.
- (7) Transportation improvements.
- (8) Other activities including buildings and structures necessary and accessory to development or reclamation of the onsite mineral or aggregate resource.

(C) *Dwellings allowed outright.* Alteration, restoration, or replacement of a lawfully established dwelling meeting the requirements in LCC 933.180.

931.735 ARO; mining area uses permitted through Type IIA conditional use review

- (A) The uses, including principal and accessory buildings, set forth in subsection (B) may be permitted in the mining area pursuant to a Type IIA review process. Permitted uses shall comply with any requirements adopted as part of the Comprehensive Plan for the protection of significant aggregate sites, and an approved site development plan.
- (B) Dwellings. One on-site manufactured dwelling, including accessory buildings, for a caretaker or watchman for each authorized land use, subject to LCC 932.800 to 932.815.

931.740 ARO; mining area uses permitted through Type IIIB conditional use review

- (A) The uses, including principal and accessory buildings, set forth in subsection (B) may be permitted in the mining area pursuant to a Type IIIB review process. Permitted uses shall comply with any requirements adopted as part of the Comprehensive Plan for the protection of significant aggregate sites, and an approved site development plan.
- (B) Uses permitted conditionally.
- (1) Operations for exploration and extraction of minerals other than aggregate materials.

- (2) Exploration for and production of geothermal resources, subject to LCC 932.100 to 932.160.
- (3) Exploration and production of oil and gas, subject to LCC 932.100 to 932.160.
- (4) Utility facilities necessary for public service, including commercial, thermal, electrical generating facilities producing power for public sale from resources obtained on-site.
- (5) Hunting or fishing preserves.
- (6) A site for the disposal of solid waste together with equipment, facilities, or buildings necessary for its operation subject to:
 - (a) LCC 932.500 to 932.580; and
 - (b) a permit, if required, by the Department of Environmental Quality.
 - (c) the site is operated only as an interim subsequent use in accordance with an approved final use and reclamation plan.
- (7) Facilities for the primary processing of forest resources.
- (8) Private airports.

931.745 ARO-I; impact area uses allowed outright

- (A) The uses, including principal and accessory buildings, set forth in subsection (B) through subsection (C) are allowed outright in the impact area. Allowed uses shall comply with the requirements of the underlying zone and any requirements in the Comprehensive Plan for the protection of significant aggregate sites.
- (B) Non-dwelling uses. The non-dwelling uses allowed outright by the underlying zone subject to the requirements of the underlying zone and any requirements in the Comprehensive Plan for the protection of significant aggregate sites.
- (C) Dwellings. The Alteration, restoration, or replacement of a lawfully established dwelling meeting the requirements in LCC 933.180.

931.750 ARO-I; impact area uses permitted through Type IIA conditional use review

- (A) The uses, including principal and accessory buildings, set forth in subsection (B) through subsection (C) may be permitted in the impact area pursuant to a Type IIA review process. Permitted uses shall comply with the requirements of the underlying zone and any requirements in the Comprehensive Plan for the protection of significant aggregate sites.
- (B) Non-dwelling uses. The non-dwelling uses permitted through a Type IIA conditional use review by the underlying zone, subject to the requirements of the underlying zone and any requirements in the Comprehensive Plan for the protection of significant aggregate sites.
- (C) Dwellings. permitted through a Type IIA conditional use review in the underlying zoning districts, subject to the requirements of the underlying zone and any requirements in the *Comprehensive Plan* for the protection of significant aggregate sites.
- (D) No use in the impact area that is a noise or dust-sensitive use may be approved unless a finding is first made that the sensitive use has been protected by the imposition of conditions or unless the owner of the sensitive use has recorded a waiver of remonstrance in the land records of the County.

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931.755 ARO-I; impact area uses permitted through Type IIIB conditional use review

933.190 Final use requirements

(A) The definitions set forth in LCC 939.030 apply to this section.

(B) *Final uses in areas not under an ARO.*

(1) Each mining area in an area not under an ARO shall be reclaimed to a final use set forth in paragraph (2) of this subsection and shall be accomplished:

- (a) as specified in a reclamation plan approved by DOGAMI; or
- (b) in compliance with conditions of operation imposed by DSL.

(2) Final uses authorized in areas not under an ARO are:

- (a) The uses allowed outright in the zoning district.
- (b) The uses permitted in the zoning district if approved.
- (d) Fish or wildlife habitat or management facilities.

(3) When mining is completed on property not under an ARO and reclamation activities are scheduled to begin, the operator may submit a new, proposed final use and reclamation plan for review by the decision maker. When the decision maker finds that the new proposal is more suitable, the new final use and reclamation plan may substitute for the original proposal provided the landowner, permittee, DOGAMI, DSL, and the County approve.

(C) *Final uses in areas under an ARO.*

(1) Each mining area under an ARO, shall be reclaimed to a final use as set forth in paragraph (2) of this subsection and be accomplished as specified in a DOGAMI approved reclamation plan or in compliance with the DSL conditions of operation.

(2) The uses set forth in this subsection are authorized within an ARO as a final use subject to any limitations set forth in this subsection:

- (a) The uses allowed outright in the underlying zoning district.
- (b) The uses permitted in the underlying zoning district if approved pursuant to the procedure for permitting such uses in the underlying zoning district.
- (d) Fish or wildlife habitat including habitat management facilities.

Deleted: (c) Recreational uses permitted in the Exclusive Farm Use (EFU), Farm/Forest (F/F) or Forest Conservation and Management (FCM) zoning districts.¶

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Deleted: (e) Public or private hunting or fishing preserves as permitted in the EFU, F/F and FCM zoning districts

933.195 Property used for religious purposes

(A) If a church, synagogue, temple, mosque, chapel, meeting house or other nonresidential place of worship is allowed in a zoning district, the reasonable use of the property for activities customarily associated with the practices of the religious activity, including worship services, religion classes, weddings, funerals, child care and meal programs shall be allowed. However, this does not include private or parochial school education for pre-kindergarten through grade 12 or higher education.

(B) The decision maker may:

- (1) subject the property described in subsection (A) to reasonable regulations, including site review or design review, concerning the physical characteristics of the uses authorized under subsection (A); or
- (2) prohibit or restrict the use of property by a place of worship described in subsection (A) if it finds that the level of service of public facilities, including

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MINING PERMITS AND USES CODE**

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I. GENERAL PROVISIONS

939.010 Subchapter title

This Chapter, LCC 939.010 to 939.999, shall be known and may be cited as the “Linn County Mining Permit and Uses Code” or simply as the “Mining Permit and Uses Code.”

939.020 Statement of purpose

The purpose of this Chapter is:

- (A) to identify and protect significant sand, gravel, rock, stone and related aggregate resources to ensure the continued availability of aggregates at reasonable costs for the overall development of Linn County;
- (B) to coordinate the development and utilization of significant aggregate resources with other land uses to minimize conflicts;
- (C) to establish standards of development and operation for significant aggregate resource extraction and processing sites;
- (D) to prohibit the use of land in the Aggregate Resource Overlay (ARO) for uses incompatible with the extraction and processing of significant aggregate resources (see LCC 931.700 to 931.755);
- (E) to provide for the agricultural and forest use of land in the ARO prior to the development of extraction and processing activities; and
- (F) to provide for the reclamation, rehabilitation and beneficial final use of aggregate resource sites in a manner compatible with the surrounding land use pattern.

939.030 Definitions

As used in this Chapter:

- (A) “Aggregate resources” means naturally occurring concentrations of stone, rock, sand and gravel, decomposed granite, lime, pumice, cinders, and other naturally occurring solid materials commonly used in construction and road building.

(B) "Conflicting use" means 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, as specified in OAR 660-023-0180 (5) (b) and OAR 660-023-0180 (7).

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(C) "Development permit" means a permit approved by the decision maker and issued by the Director granting authority to the permittee to initiate some or all aspects of mining of aggregate at the site specified in the permit. The term does not include a text amendment to the Comprehensive Plan whereby the Plan is amended to include the site in any category described in this Chapter. A development permit may be issued pursuant to LCC 921.552 for sites receiving Goal 5 protection, or pursuant to LCC 921.562 for sites not receiving Goal 5 protection.

(D) "ESEE analysis" means the consideration and balancing of the positive and negative economic, social, environmental and energy consequences of a decision to allow, limit, or prohibit a conflicting use, following the process in OAR 660-023-0040. Based on the results of the ESEE analysis, the decision maker determines a level of protection for the resource and adopts Comprehensive Plan provisions and regulations to achieve the designated level of protection.

(E) "ESEE consequences" are the positive and negative economic, social, environmental, and energy (ESEE) affects that could result from a decision to allow, limit, or prohibit a conflicting use.

(F) "Existing site" means a significant aggregate site that is lawfully operating, or is included in the aggregate inventory in the Comprehensive Plan, on September 1, 1996.

(G) "Expansion area" resource proposed aggregate mining area contiguous to an existing site in which mining approval is being sought under this Chapter.

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(H) "Farmland" means land planned and zoned for exclusive farm use pursuant to Goal 3 and OAR chapter 660, division 033.

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(I) "Future potential use" means a use that is not adopted or approved at the time an application under this Chapter is deemed complete by the Director.

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(J) "Goal 5 process" means the planning process for mineral and aggregate resources identified in OAR 660-023-0180. Depending on the circumstances the process may include, but is not limited to, one or more of the following: the identification of resource sites; the determination of site significance; the identification of conflicting uses; the identification of measures to minimize conflicts; analysis of ESEE consequences; and adoption of a program to protect the resource. The term does not include a determination to issue a development permit pursuant to LCC 921.560 to 921.569 even if part of the Goal 5 process as described in this Chapter is considered.

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(K) "Goal 5 protection" means those conditions and terms imposed on the mining of a site determined to be significant under LCC 939.130 and that has completed the Goal 5 process as set forth in LCC 939.110 to 939.200 and has been added to Appendix 5, 6, or 8 in LCC Chapter 905 (Land Use Element Code).

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(L) "Impact area" means a geographic area within which conflicting uses could adversely affect a significant Goal 5 aggregate resource.

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(M) "Inventory" is a survey, map, or description of one or more resource sites that is prepared by a local government, state or federal agency, private citizen, or other organization and that includes information about the resource values and features

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associated with such sites. As a verb, "inventory" means to collect, prepare, compile, or refine information about one or more resource sites (see resource list).

(N) "Minimize a conflict" means to reduce an identified conflict to a level that is no longer significant. For those types of conflicts addressed by local, state, or federal standards (such as the Department of Environmental Quality standards for noise and dust levels) to "minimize a conflict" means to ensure conformance to the applicable standard.

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(Q) "Mining" means the extraction and processing of aggregate resources, in the manner provided under paragraph (1).

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(1) The term 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.

(2) The term 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 non-surface impacts of underground mines.

(3) The term includes: stockpiling and movement of aggregate materials, and the operations or activities necessary to abandon a mining area.

(P) "Mining area" means the geographic area containing an identified significant aggregate site within which some or all aspects of mining is permitted. The mining area may consist of one or more properties or portions of properties, and may include two or more contiguous properties under different ownership. The mining area does not include undisturbed buffer areas or areas on a property where mining is not authorized.

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(Q) "Noise or dust sensitive use" means a conflicting use that is primarily used for year round habitation. Residences, churches, hospitals, schools, public libraries, and campgrounds are considered noise or dust sensitive uses during their period of use. A forest use or a farm use is not noise or dust sensitive uses unless the use is so:

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(1) defined in state law, or

(2) determined based on analysis and findings adopted through the Goal 5 planning process.

(R) "Operator" includes owner.

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(S) "PAPA" is a "post-acknowledgment plan amendment." The term encompasses actions taken in accordance with ORS 197.610 to 197.625, including amendments to Linn County's acknowledged *Comprehensive Plan* or Land Development Code and the adoption of any new *Plan* or land use regulation. The term does not include periodic review actions taken in accordance with ORS 197.628 to 197.650.

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(T) "Processing" means the activities described in ORS 517.750 (1Q). Processing includes, but is not limited to, crushing, washing, milling and screening, as well as the batching and blending of mineral aggregate into asphalt or Portland cement concrete within the operating permit area.

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(U) "Program" or "program to achieve the goal" is a plan or course of proceedings and action either to prohibit, limit, or allow uses that conflict with significant Goal 5 aggregate resources, adopted as part of the Comprehensive Plan and Land Development Code (e.g., zoning standards, easements, cluster developments, preferential assessments, or acquisition of land or development rights). Deleted: T

(V) "Protect" means to adopt land use regulations for a significant aggregate site in order to authorize mining of the site and to limit or prohibit new conflicting uses within the impact area of the site. Deleted: U

(W) "Resource site" or "site," for purposes of completing the Goal 5 process under this Chapter, is a particular area where resources are located. A site may consist of one or more properties or portions of properties, and may include two or more contiguous properties under different ownership. Deleted: V

(X) "Resource list" means a list that includes the description, maps, and other information about significant Goal 5 aggregate resource sites within Linn County and is adopted by the County as a part of its Comprehensive Plan or as a land use regulation. The Plan inventories following LCC Chapter 905 (Land Use Element Code) are resource lists. Deleted: W

(Y) "Significant site" means a site listed on one of the Comprehensive Plan significant aggregate inventories following LCC Chapter 905 (Land Use Element Code). Deleted: X

(Z) "Thickness of aggregate layer" means the depth of the water-lain deposit of sand, stones, and pebbles of sand-sized fraction or larger, minus the depth of the topsoil and non-aggregate overburden. Deleted: Y
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939.050 Application for a development permit authorizing mining of aggregate

(A) A person may apply for a development permit authorizing mining of aggregate as set forth in this section. The issuance of the development permit authorizing the initiation of mining is subject to LCC 921.540 to 921.569.

(B) One-step process. A single application shall be required which shall consist of:

(1) if a site is already on Appendix 5, 6, or 7 of LCC Chapter 905 (Land Use Element Code), a request for a development permit, which if authorized to be issued shall result in an authorization to initiate some or all aspects of mining pursuant to this Chapter; or Deleted: 8

(2) if a site is already on Appendix 4 or 8 of LCC Chapter 905, a request for a development permit, which if authorized to be issued shall result in an authorization to initiate some or all aspects of mining pursuant to LCC 921.560 to 921.569. Deleted: 10

(3) if the site is not on one of the inventories of LCC Chapter 905, a request for:
(a) an amendment to the *Comprehensive Plan* text, and, if required under this Chapter, an amendment to the Land Development Code Zoning Map; and
(b) a development permit, which if authorized, shall authorize the initiation of some or all aspects of mining pursuant to this Chapter, or to LCC 921.560 to 921.569 based on the findings made in this Chapter.

(C) *Contents*. The application shall contain:

- (1) the information required by LCC 921.040;
- (2) Information regarding the location, quality, and quantity of the aggregate resource;
- (3) A conceptual site reclamation plan;

- (4) A traffic impact assessment within one mile of the entrance to the mining area;
 - (5) An indication of whether the applicant intends to haul material to another authorized site for processing, and if so, a proposal for hauling;
 - (6) A map indicating the initial 1,500-foot impact area and location and type of existing and potential conflicting uses.
 - (7) Proposals to minimize any conflicts with existing uses preliminarily identified by the applicant within a 1,500-foot impact area; and
 - (8) A site development plan as described in subsection (D) of this section.
- (D) *Site development plan.* The applicant shall submit the information and materials set forth in this subsection to the Director as part of the application for a development permit authorizing the mining of aggregate resources.
- (1) The name and address of the extraction operator, property owner, and applicant, if different from the mining operator or property owner.
 - (2) The location (township, range, section, tax-lot[s]) and size of the resource site.
 - (3) An aerial photograph of the resource site that was photographed less than 12 months prior to submission of the application. Older photographs may be submitted if accompanied by a signed declaration by the applicant stating that no substantial changes have occurred.
 - (4) Provisions for safety fence as required under LCC 934.354 (C).
 - (5) Measures, if any, required by federal and state agencies to meet applicable environmental quality standards and minimize impacts on fish and wildlife habitat.
 - (6) Proposed final use as permitted in LCC 933.190.
 - (7) A reclamation plan approved by Oregon Department of Geology and Mineral Industries (DOGAMI) that results in the proposed final use or Oregon Division of State Lands (DSL) conditions of operation.
 - (8) A surface water management plan as required by DOGAMI or DSL.
 - (9) Past and present use of the land, including agricultural and forest resource uses.
 - (10) Types and location of vegetative screening to be used.
 - (11) Types, location, and sizes of equipment to be used.
 - (12) The full extent and nature of the operation, such as blasting, crushing, or asphaltic compounding.
 - (13) A reproducible map at a scale of 1 inch equals 400 feet, unless a different scale is approved by the Director, which depicts the general land area within a one-mile radius and identifies:
 - (a) The property under the applicant's control;
 - (b) The land areas proposed for extraction, processing and storage of topsoil or aggregate;
 - (c) Location of all uses within 1500 feet of the resource site boundaries;
 - (d) Location of on-site haul roads and proposed access point(s);
 - (e) Location and names of all structures, roads, railroads and utility facilities within 1500 feet of the resource site;
 - (f) Required setback areas;
 - (g) Identification of soil types in the resource site, if available; if not available, identification of the soil types adjoining the resource site; and
 - (h) Phasing of mining activity, if applicable.

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(14) A digital copy of the map required under item (13).

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(15) Proposed months, days and hours of mining operation.

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(16) The resource site owner or authorized agent of the owner shall file a truck route plan with the Roadmaster indicating all proposed haul routes for any equipment used in the preparation, exploration, or mining of the site, including proposals to haul material to another authorized site for processing. The truck route plan shall also include a proposal for the rehabilitation and restoration of any county roads, or any local access roads, which may be damaged or diminished in quality due to the conducting of such preparation, exploration, or mining activities.

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(17) Evidence that:

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(a) The Roadmaster has approved a truck haul plan including all routing, paving and access to the resource site and to and from any other approved site if material is hauled to the other site for processing; and

(b) the Roadmaster has made a finding that the development will not have significant adverse impacts on the quality of county roads, or local access roads in the area, or

(c) verification that a performance security meeting the requirements of LCC 933.110 has been filed.

(18) Other pertinent information for all proposed mining and associated uses.

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939.060 Goal 5 process; generally

(A) The Goal 5 process is set forth in LCC 939.110 to 939.200. The process is illustrated generally in Appendix 1 following this Chapter. The process involves following the steps set forth in this section to determine whether and under what conditions aggregate extraction and processing may occur:

(1) STEP 1 — determine adequacy of information provided in the application with regard to the location, quality, and quantity of the aggregate resource (LCC 939.110);

(2) STEP 2 — determine site significance and classification (LCC 939.120);

(3) STEP 3 — identify impact area and all conflicts with existing uses (LCC 939.130);

(4) STEP 4 — determine whether conflicts can be minimized (LCC 939.140);

(5) STEP 5 — analyze ESEE consequences if significant conflicts can not be minimized (LCC 939.150);

(6) STEP 6 — approve the mining of the aggregate resource (LCC 939.160);

(7) STEP 7 — determine the postmining use (LCC 939.170);

(8) Step 8 — identify conflicts from new conflicting uses (LCC 939.180);

(9) STEP 9 — analyze ESEE consequences and decide whether to allow new conflicting uses (LCC 939.190); and

(10) STEP 10 — adopt final decision and implementing amendments to the *Comprehensive Plan* and Land Development Code (LCC 939.200).

(B) Except as provided in LCC 939.200 (A) (1) (a), the decision maker must complete the Goal 5 process within 180 days after an application filed under this Chapter is deemed complete under LCC 939.110.

(C) The decision maker is not required to follow strictly the order of the process as set forth in LCC 939.130, so long as such review or determination does not significantly adversely affect the outcome of the Goal 5 process.

II. GOAL 5 PROCESS

939.110 STEP 1 — determine adequacy of information provided in the application

- (A) STEP 1 — The first step in the Goal 5 aggregate process requires the Director to determine whether an application filed under this Chapter may be deemed complete under LCC 921.060 and this section.
- (B) The Director shall deem an application filed under this Chapter complete if the application contains:
- (1) the information required by LCC 939.050;
 - (2) A description of the quality of the resource, including a statement of compliance with federal, state or local standards issued by a certified lab according to the following applicable methods:
 - (a) Resistance to Abrasion (AASHTO Designation T96, ASTM Designation C131, OSHD Test Method 211)
 - (b) Sodium Sulfate Soundness (OSHD Test Method 206)
 - (c) Oregon Air Degradation (OSHD Test Method 208) or
 - (d) Other test appropriate for the type of resource.
 - (3) a conceptual site reclamation plan;
 - (4) a traffic impact assessment within one mile of the entrance to the mining area pursuant to LCC 939.130 (B) (4) (b);
 - (5) proposals to minimize any conflicts with existing uses preliminarily identified by the applicant within a 1,500-foot impact area; and
 - (6) a site development plan as described in LCC 939.050.
- (C) Information on location, quantity, and quality must be reliable information, such as:
- (1) an engineer's or geologist's report; or
 - (2) drill results, including depth.
- (D) If application is deemed complete — go to STEP 2. If the Director deems the application complete, the Director shall next determine whether the site is significant pursuant to LCC 939.120.
- (E) If application is not deemed complete — go to STEP 10. If the Director determines that the application is not complete for the sole reason that the applicant is unable to provide information adequate to make the determination required by subsection (B) (2) of this section, the Director shall:
- (1) return the application to the applicant; and
 - (2) set the matter before the decision maker to proceed pursuant to LCC 939.200 (A) (1) (a).

939.120 STEP 2 — determine site significance and classification

- (A) STEP 2 — The Director shall determine whether an aggregate resource site is a significant or a non-significant site pursuant to this section.
- (B) An aggregate resource site shall be significant if adequate information regarding the location, quality, and quantity of the resource demonstrates that the site meets the following criteria:
- (1) A representative set of samples of aggregate material in the deposit on the site meets Oregon Department of Transportation (ODOT) specifications for base rock for air degradation, abrasion, and sodium sulfate soundness; and
 - (2) The estimated amount of material is more than 1.5 million cubic yards or 2 million tons; or

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- (3) The aggregate site was listed on an inventory of significant aggregate sites in the Comprehensive Plan on September 1, 1996.
- (C) Notwithstanding subsections (1) through (3) of this section, and except for an expansion area of an existing site if the operator of the existing site had an enforceable property interest in the expansion area on March 1, 1996, an aggregate site is not significant if the following criteria apply:
- (1) More than 35 percent of the proposed mining area consists of soil classified as Class I on Natural Resource Conservation Service (NRCS) maps on June 11, 2004; or
 - (2) 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 17 feet;
- (D) Notwithstanding Section (C) of LCC 939.120 a local government may also determine that an aggregate resource site on farmland is significant if subsections (1) and (2) of this section apply or if subsection (3) of this section applies:
- (1) The quantity of material proposed to be mined from the site is estimated to be 2,000,000 tons of aggregate material or less; and
 - (2) Not more than 35 percent of the proposed mining area consists of soil
 - (a) Classified as Class I on Natural Resource and Conservation Service (NRCS) maps available on June 11, 2004; or
 - (b) 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 the amounts specified in subsection (2) of LCC 939.120 (C); or
 - (3) A local land use permit that allows mining on the site was issued prior to April 3, 2003, and the permit is in effect at the time of the significance determination.
- (E) If non-significant site — go to STEP 10. If the Director determines that the site is a non-significant site under this section, the Director shall set the matter before the decision maker to proceed pursuant to LCC 939.200 (A) (1) (b).
- (F) If significant site — go to STEP 3. If the Director determines that the site is a significant site under this section, the Director shall proceed to LCC 939.130.
- 939.130 STEP 3 — identify impact area and all conflicts with existing uses**
- (A) *STEP 3A — Identify an impact area and known conflicts within it.* The Director shall:
- (1) Identify an impact area for the purpose of identifying conflicts with proposed mining and processing activities.
 - (a) 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 proposed mining area, except where factual information is adequate to indicate significant potential conflicts beyond this distance.
 - (b) For a proposed expansion of an existing site, the impact area shall be measured from the perimeter of the proposed expansion area rather than the boundaries of the existing site and shall not include the existing site.
 - (2) Prepare a map showing the impact area and proposed mining area; and
 - (3) Identify known conflicting uses.

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- (4) Prepare a staff report containing the determinations made under LCC 939.110, 939.120, and subsection (A) of this section along with any supporting findings; and
 - (5) Set the matter before the decision maker to complete the Goal 5 process. The decision maker may approve, modify, or deny any determination of the Director required by LCC 939.120, or this subsection. If the decision maker modifies or denies a determination made by the Director which is required under those provisions, the decision maker shall make a new determination consistent with those provisions before completing the Goal 5 process.
- (B) *STEP 3B — Identify all conflicts from existing and approved uses in the impact area.*
- (1) The decision maker shall identify all existing or approved land uses within the impact area that will be adversely affected by proposed mining,
 - (2) The decision maker shall also specify conflicts from existing or approved uses that are able to be reasonably predicted.
 - (3) For purposes of this subsection, “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 Linn County.
 - (4) The consideration of conflicts that could be caused by the mining of a significant aggregate site shall be limited to:
 - (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 to include the intersection with the nearest arterial identified in the Transportation Plan.
 - (i) Conflicts with local roads 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 County Code.
 - (ii) Standards for trucks associated with the mining operation shall be equivalent to standards for other trucks of equivalent size, weight, and capacity which haul other materials;
 - (c) Safety conflicts with existing public airports due to bird attractants, i.e., open water impoundments 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 Plan amendment is initiated; and
 - (e) Conflicts with agricultural practices.
 - (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.
- (C) *STEP 3C — For an aggregate site on farmland that is determined to be significant under LCC 939.120 (D), the requirements of LCC 939.130 (A) & (B) are not applicable, except for LCC 939.130(B)(f), and the requirements of LCC 939.150 and*

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939.190 are not applicable. Instead, the decision maker shall determine whether mining is permitted by a conditional use permit.

(D) If there are conflicts — go to STEP 4. If the decision maker identifies conflicts, the decision maker shall proceed as set forth in LCC 939.140.

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(E) If there are no conflicts — go to STEP 6. If the decision maker identifies no conflicts, the decision maker shall proceed as set forth in LCC 939.160.

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(F) If the decision maker finds that the application is consistent with STEP 3C, proceed to STEP 10.

939.140 STEP 4 — determine whether conflicts can be minimized

(A) *STEP 4 — Determine whether conflicts can be minimized.* The decision maker shall determine whether the conflicts identified pursuant to LCC 939.130 can be minimized by reasonable and practicable measures. Such measures shall be clear and objective.

(1) If conflicts can not be minimized — go to STEP 5. If the decision maker finds that all the conflicts identified by the decision maker can not be minimized by reasonable and practicable measures, the decision maker shall proceed as set forth in LCC 939.150.

(2) If conflict can be minimized — go to STEP 6. If the decision maker finds that all the conflicts identified by the decision maker can be minimized, the decision maker shall identify the reasonable and practicable measures that would minimize the conflicts. The decision maker shall next proceed as set forth in LCC 939.160.

(B) In making the determination whether proposed measures would minimize conflicts with agricultural practices, the decision maker shall consider only the requirements of ORS 215.296.

(C) Recording a waiver of remonstrance in compliance with LCC 933.150 (B), is evidence that a conflict has been minimized under LCC 939.140, or resolved under LCC 939.150 or 939.190.

939.150 STEP 5 — analyze ESEE consequences if significant conflicts can not be minimized

(A) *STEP 5 — Identify and resolve conflicts through ESEE analysis.* Limited to any conflicts identified in LCC 939.140 that could not be minimized, the decision maker shall determine the ESEE consequences of either protecting the resource by allowing mining without or with limitations, or not protecting the resource and prohibit mining or permit mining under a permit pursuant to LCC 921.560 to 921.569. The determination shall be based on weighing the identified ESEE consequences, with consideration of the following:

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(1) The degree of adverse effect on existing land uses within the impact area;

(2) Reasonable and practicable measures that could be taken to reduce the identified adverse effects; and

(3) The probable duration of the mining operation and the proposed post-mining use of the site.

(B) *If the site should be protected and mining authorized — go to STEP 6.* If, based on the ESEE analysis required under this section, the decision maker determines that the site should be given Goal 5 protections and mining should be approved with or without limitations, the decision maker shall proceed as set forth in LCC 939.160.

(C) *If the site should not be protected by Goal 5 — go to STEP 10.* If, based on the ESEE analysis required under this section, the decision maker determines that the site

should not be protected by Goal 5, the decision whether to permit mining or not shall be made by the decision maker as set forth in LCC 939.200 (A) (1)(f).

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- (D) Recording a waiver of remonstrance in compliance with LCC 933.150 (B), is evidence that a conflict has been minimized under LCC 939.140, or resolved under LCC 939.150 or 939.190.

939.160 STEP 6 — approve the mining of the aggregate resource

- (A) *STEP 6 — Approve the mining.* The decision maker shall protect the resource site and approve an application for mining if:
- (1) no conflicts were identified under LCC 939.130, or
 - (2) all identified conflicts with a significant aggregate resource site are minimized pursuant to LCC 939.140, or
 - (3) based on an ESEE analysis, conducted pursuant to LCC 939.150, mining is permitted with or without limitations.
- (B) *Go to STEP 7.* After the decision maker approves an aggregate site for mining of aggregate, the decision maker shall proceed as set forth in LCC 939.170.

939.170 STEP 7 — determine the post-mining use of site

- (A) *STEP 7 — Post-mining use and reclamation.* At the time the determination under LCC 939.160 is made, the decision maker shall:
- (1) determine the post-mining use of the site.
 - (2) proceed as set forth in LCC 939.180 (STEP 8).
- (B) For significant aggregate sites on Class I, II soils and unique farmland, the post-mining use shall be limited to farm uses under ORS 215.203, uses listed under ORS 215.283 (1), and fish and wildlife habitat uses, including wetland mitigation banking.
- (C) The County and applicant shall coordinate with DOGAMI regarding the regulation and reclamation of aggregate sites, except where exempt under ORS 517.780.

939.180 STEP 8 — identify conflicts from potential future uses

- (A) *STEP 8 — Determine all conflicts from potential future uses in the impact area.* The decision maker shall:
- (1) Identify future potential uses which, if allowed, would conflict with the proposed mining;
 - (2) Identify predicted conflicts from those future potential uses.
- (B) The consideration of future potential uses shall be limited to those land uses that, if approved, would be allowed outright in the underlying zoning district.

- (C) Go to STEP 9. The decision maker shall next proceed as set forth in LCC 939.190.

939.190 STEP 9 — analyze ESEE consequences and determine whether to allow a future potential use

STEP 9 — Analyze future potential uses and determine whether to allow the use.

- (A) The decision maker shall determine whether to allow, limit, or prevent a future potential use identified in LCC 939.180. To make this determination, the decision maker shall apply the standard ESEE process set forth in OAR 660-023-0040 and 660-023-0050.
- (B) Recording a waiver of remonstrance in compliance with LCC 933.150 (B), is evidence that a conflict has been minimized under LCC 939.140, or resolved under LCC 939.150 or 939.190.
- (C) Go to STEP 10. The decision maker shall next proceed as set forth in the applicable provisions of LCC 939.200.

939.200 STEP 10 — adopt final decision and implementing amendments

(A) *STEP 10A — Amend the Comp Plan to carry out the decision.* The decision maker shall implement the determinations made under this Chapter by amending the *Comprehensive Plan* as set forth in paragraphs (1) and (2) of this subsection.

(1) *Inventories.* The decision maker shall amend the appropriate appendices following LCC Chapter 905 (Land Use Element Code) to include the site on an inventory and to include any supporting analyses pursuant to this paragraph.

(a) Application not complete — sites possibly significant (formerly 1B sites). If the Director determined that the application is not complete solely because the applicant was unable to provide information adequate to make the determination required by LCC 939.110 (B) (2), the decision maker shall amend Appendix 3, LCC Chapter 905 (Land Use Element Code) and add the site for which information is not adequate to make the determination under LCC 939.110 to the inventory entitled — “Inventory of Possibly Significant Sites (Formerly “1B” Sites).”¹

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(b) Non-significant sites (formerly 1A sites). If the Director, based on location, quality and quantity information determines that an aggregate resource site is not significant, the decision maker shall amend Appendix 4, LCC Chapter 905 (Land Use Element Code) entitled — “Inventory of Non-significant Sites (Formerly “1A” Sites).”²

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(c) Significant sites without conflicts (formerly 2A sites). If the Director, based on location, quality and quantity information determines that an aggregate resource site is significant, and the decision maker has determined that the site is without conflicts, the decision maker shall amend Appendix 5, LCC Chapter 905 (Land Use Element Code) entitled — “Inventory of Significant Sites Without Conflicting Uses (Formerly “2A” Sites).”³

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(d) Significant sites with conflicts that have been minimized. If the decision maker is able to minimize the conflicts under LCC 939.140, the decision maker shall amend Appendix 6, LCC Chapter 905 (Land Use Element Code) and add the site for which all conflicts have been minimized under LCC 939.140 to the inventory entitled — “Inventory of Significant Sites With All Conflicts Minimized.”⁴

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(e) Significant sites with conflicts that can *not be minimized but, based on an ESEE analysis, are to be protected by Goal 5 and approved for mining.* If a significant site has conflicts not able to be minimized but pursuant to an ESEE analysis is determined to receive Goal 5 protection for approved for mining, the decision maker shall amend LCC Chapter 905 (Land Use Element Code) to:

(i) add the site to Appendix 7 entitled — “Inventory of Significant Sites Protected by Goal 5 and Approved for Mining Pursuant to an ESEE Analysis (Formerly “3A” or “3C” Sites)”⁵; and

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(ii) to add the ESEE analysis to the Appendix 8 entitled — “ESEE Analyses Justifying the Protection of an Site by Goal 5 and Granting Mining Approval.”

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(f) *Significant sites with conflicts that can not be minimized but, based on an ESEE analysis, are not to be protected by Goal 5 or approved for mining.*

(i) If a significant site has conflicts not able to be minimized, but, pursuant to an ESEE analysis, is determined not to receive Goal 5 protection not to be approved for mining under Goal 5, the decision maker shall provide full protection to the conflicting use and shall amend LCC Chapter 905 (Land Use Element Code) to:

(I) add the site to Appendix 8 — entitled “Inventory of Significant Sites Not Protected by Goal 5 and Not Approved for Mining Pursuant to an ESEE Analysis (Formerly “3B” Sites)”⁶; and

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(II) add the ESEE analysis to Appendix 8A entitled — “Inventory of Significant Sites Not Protected by Goal 5 and Not Approved for Mining Pursuant to an ESEE Analysis”⁷; and

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(ii) Where mining is not protected pursuant to Goal 5, the ARO shall not be applied to the site.

(g) Significant sites meeting LCC 939.120(D), and not to be protected by Goal 5.

(i) if an aggregate site is determined to be significant under LCC 939.120(D) and not to receive Goal 5 protection, the decision maker shall amend LCC Chapter 905 (Land Use Element Code) to add the site to Appendix 9 — entitled “Inventory of Significant Sites Not Protected by Goal 5.

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(ii) Mining may be approved under LCC 921.560 to 921.590; and

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(iii) Where mining is not protected pursuant to Goal 5, the ARO shall not be applied to the site.

(2) If the decision maker makes a determination approving mining under subsections (A) (1) (c) to (A) (1) (e), the amendments set forth in the *Comprehensive Plan* shall include:

(a) a program to protect the resource;

(b) identified measures to minimize conflicts and any special conditions and regulations. Such measures, conditions, and regulations shall be clear and objective; and

(c) the approved post-mining use.

(B) *STEP 10B — Amend the Zoning Map to apply the ARO.* If the decision maker makes a determination approving mining under subsections (A) (1) (c) to (A) (1) (e), the decision maker shall amend the Land Development Code Zoning Map:

(1) To show the mining area. The extraction area shall be applied to significant sites where mining is permitted by the *Comprehensive Plan*. The mining area boundary as set forth in an application may be modified through the Goal 5 process to reduce conflicts with uses existing within the impact area.

(2) To show the impact area. The size of the impact area may be increased or decreased through application of the Goal 5 process.

(3) To apply an ARO to the impact area for sites receiving protection pursuant to Goal 5.

(C) The requirements of subsections (A) (2), (A) (3) and (B) of this section, do not apply to approval of mining under LCC 921.560 to 921.569.

EXHIBIT 3

Decision Criteria, Findings and Conclusions

I. SUMMARY

A proposal by Linn County to amend the Comprehensive Plan (Plan) and the Land Development Code (Code) to reflect changes in Oregon Administrative Rules (OAR) for aggregate resources planning contained in OAR 660-23-0010, OAR 660-023-0180, and OAR 660-023-0240; and changes in Oregon Revised Statutes (ORS) contained in ORS 215.296 and ORS 215.298. Amendments to the Plan are in LCC Chapter 905. The Plan will also be amended to add Appendix 9: Significant site but not protected by Goal 5; and correct an error in Appendix 7 for the location of an Aggregate Resource Overlay (ARO) site; Amendments to the Code are in LCC Chapter 921, Chapter 931, Chapter 933, Chapter 934, and Chapter 939.

The hearing reviewed and approved the amendments to the aggregate resource sections of the Linn County Comprehensive Plan (Plan) and the Linn County Land Development Code (Code). The amendments are to comply with changes in Oregon Administrative Rules (OAR) for aggregate resources planning contained in OAR 660-23-0010, OAR 660-023-0180, and OAR 660-023-0240; and changes in Oregon Revised Statutes (ORS) contained in ORS 215.296 and ORS 215.298.

The Plan amendments are in LCC Chapter 905. The Plan will also be amended to add Appendix 9: Significant site but not protected by Goal 5; and correct an error in Appendix 7 for the location of an Aggregate Resource Overlay (ARO) site. Code amendments are in LCC Chapter 921, Chapter 931, Chapter 933, Chapter 934, and Chapter 939.

II. PROCEDURE AND DECISION CRITERIA

The applicant is Linn County. The Linn County Planning Commission (Commission) held a public hearing on the proposed Code text amendments on September 13, 2011. The Commission voted 4-0 to recommend that the Board of Commissioners (Board) adopt the proposed text amendments. The Board conducted a public hearing on the proposed Code text amendments at 10:00 a.m., September 28, 2011. The hearings were be conducted under the procedures for a Type IIIA Legislative Hearing in *Linn County Code (LCC) 921.130*. At the close of the hearing the Board reached a consensus to adopt the proposed text.

The proposed Code text amendments must meet the decision criteria specified in *LCC 921.824* which states:

(A) A Land Development Code text amendment may be granted if on the basis of the application, investigation, testimony and evidence submitted, findings and conclusions show that:

(1) The amendment is consistent with the intent and purpose statement of the affected Chapter or subchapter of the Land Development Code; and

(2) The amendment is consistent with the intent of the policies within the applicable section(s) of the *Comprehensive Plan*.

III. FINDINGS

Comprehensive Plan (LCC 921.872(A))

The proposed amendments are consistent with the Plan.

LCC 905.820 Policies for aggregate resources

(B) Policies.

(1) Linn County shall consider mineral and aggregate resource extraction and processing as a resource use of the land in Agricultural Resource, Farm/Forest and Forest Resource plan designations.

The amendments are to comply with changes in statutes and rules. The state rule changes were adopted in response to a court decision that restricted aggregate extraction and processing on Agricultural Resource land. The text amendments will restore the classification of aggregate resource extraction and processing as a resource use of the land in Agricultural Resource Plan designations, and is consistent with this Plan policy.

(2) To identify and protect significant mineral and aggregate resources, Linn County shall follow the procedures and criteria in Statewide Planning Goal 5 and the Goal 5 administrative rule.

As stated above, the amendments are to comply with changes to the Goal 5 administrative rule and will serve to identify and protect significant mineral and aggregate resources.

(3) Linn County shall maintain an inventory of identified aggregate resource sites. The inventory shall comprise four categories:

A fifth category and a new Appendix 9 will identify significant sites in the EFU zone that are not protected by Goal 5.

(4) An aggregate resource site shall be considered significant if the site meets the significance criteria in the Goal 5 administrative rule.

The amendments are to comply with changes to the Goal 5 administrative rule. Significance will continue to be determined using the criteria in the Goal 5 administrative rule.

(5) Linn County shall apply an Aggregate Resource Overlay to:

- (a) significant aggregate resource sites where no conflicting uses are present; and*
- (b) significant sites that qualify under the Goal 5 planning process for full or partial protection from conflicting uses.*

The proposed changes include new text to be consistent with ORS and OAR's. The Department has not identified any inconsistencies between the *Plan* and the proposed changes.

Statewide Planning Goals (LCC 921.872(B))

The Statewide Planning Goals (Goals) include provisions for the identification, protection and appropriate use of agricultural lands (Goal 3), forest lands (Goal 4) and Natural Resources, Scenic and Historical Areas and Open Spaces (Goal 5).

The proposed amendments will update the county's Plan to be consistent with recent changes in legislation related to mining in exclusive farm use zones. The new rules require additional criteria when applicants are applying for Goal 5 protection (215.298) on agricultural resource land. The remaining edits to the plan are housekeeping items, such as correcting text and citation errors, adding an Appendix 9 for certain significant sites in the Exclusive Farm Use (EFU) zone, and making corrections to appendix 6A and 7.

Land Development Code (LCC Section 921.824(A)(1))

The Code text amendments are consistent with the intent and statement of the Exclusive Farm Use (EFU) zoning district (LCC 928.300). The Code will continue to preserve land suitable for agricultural production, to allow only those uses consistent with agricultural practices in the EFU zone, and provide for the protection of open space, fish and wildlife habitat, watersheds, scenic resources, and air, water and land resource quality.

The Code text amendments are consistent with the intent and purpose statement of the Aggregate Resource Overlay (LCC 931.701) and the Mining Permits and Uses Code (LCC 939.020). The Code will continue to identify and protect significant aggregate resources to ensure continued availability of aggregates at reasonable costs for the overall development of Linn County, to coordinate the development and use of aggregate resources with other land uses to minimize conflicts, to provide for agricultural and forest use of land, and to provide for reclamation and beneficial final use of aggregate resource sites.

The Code text amendments are identified in **Exhibit 1 & Exhibit 2**. The amendments in LCC Chapter 921 establish applicable decision criteria to be consistent with ORS 215.298, add a fifth category of significant sites in Appendix 9, and include several non-substantive "housekeeping" edits. The text amendments in LCC Chapter 931 add an acronym for the Aggregate Resource Overlay Impact area (ARO-I). The proposed text amendments in LCC Chapter 933 remove uses that are no longer listed in OAR 660-23-180 or are redundant. The proposed text amendments in LCC Chapter 939 amend definitions to be consistent with OAR 660-23-180 and add a requirement that a digital copy of maps be submitted with an application or a Goal 5 aggregate site review. Additional edits of LCC Chapter 939 stipulate methods for testing aggregate samples and update the review process and criteria in the EFU zone to be consistent with the Plan and Administrative Rule.

Comprehensive Plan (LCC Section 921.824(B)(2))

This criterion is addressed under subsection A. above and satisfies LCC 921.876.

IV. CONCLUSION

Based on the criteria, facts and findings identified above the Board of County Commissioners for Linn County concludes the proposed Code text amendments and edits comply with the decision criteria in County Code and other applicable law.