



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

07/02/2013

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 005-10RR

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

Appeal Procedures*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: Thursday, July 18, 2013

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 Natural Resources Specialist

<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

DATE STAMP	<input type="checkbox"/> In person <input checked="" type="checkbox"/> electronic <input type="checkbox"/> mailed
	DEPT OF
	JUN 28 2013
	LAND CONSERVATION AND DEVELOPMENT
For Office Use Only	

Jurisdiction: **LINN COUNTY**

Local file number: **BC10-0004**

Date of Adoption: **06/26/2013**

Date Mailed: **06/27/2013**

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? ☒ Yes ☐ No Date: 11/24/2010

☒ Comprehensive Plan Text Amendment

☐ Comprehensive Plan Map Amendment

☐ Land Use Regulation Amendment

☒ Zoning Map Amendment

☐ New Land Use Regulation

☐ Other:

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

ON REMAND: A comprehensive plan text amendment to add a 37.1-acre portion of a 84.11-acre property to the Linn County aggregate inventory as a significant aggregate resource site. A zone map amendment to add an aggregate resource overlay (ARO) designation to the 37.1-acre portion of the property is also requested

The removal of Batching to minimize conflicts.

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

Plan Map Changed from:

to:

Zone Map Changed from: **EFU**

to: **EFU-ARO**

Location: **13S-01W-13-100**

Acres Involved: **37**

Specify Density: Previous:

New:

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...

35-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. 005-10R (18623) [17512]

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

Linn County Enviromental Health, Linn County Assessor, Linn County Building Offical, Linn County Roads Department, Lebanon Rural Fire Protection District, State Fire Marshall, Department of Forestry, DEQ, WRD, DOGAMI, United State Army Corps of Engineers, Oregon Fish and Wildlife

Local Contact: **OLIVIA GLANTZ**

Phone: (541) 967-3816 Extension: 2368

Address: **PO BOX 100, ROOM 114**

Fax Number: 541-967-2060

City: **ALBANY**

Zip: 97321-

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 December 30, 2011



LINN COUNTY PLANNING AND BUILDING DEPARTMENT

Robert Wheeldon, Director

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

NOTICE OF ADOPTION

RESOLUTION NO: 2013-168
ORDINANCE NO. 2013-169
PLANNING FILE NO: BC10-0004
APPLICANT Myles Conway (Weber Plt)

PROPOSAL

Applications by Myles Conway of Schwabbe, Williamson & Wyatt, P.C., for a *Comprehensive Plan* text amendment to include a 37.1-acre portion of an 84.11-acre property in the Linn County aggregate inventory as a significant aggregate resource site, an Aggregate Resource Overlay (ARO) zone map amendment, and a development permit for aggregate mining and processing. The proposed development permit would authorize the mining, crushing, processing, stockpiling, blasting and hauling of aggregate within the proposed 37.1-acre resource site. The property is identified as T13S, R01W, Section 13, Tax Lot 100; and is zoned Exclusive Farm Use (EFU). The proposed mining site is located on the east side of Berlin Road at its Intersection with Skyline Road, Sweet Home.

Board Action: Resolution and Order No. 2013-168

The Linn County Board Of Commissioners approved *Resolution and Order No. 2013-168* to: (1) Approve the Findings and Conclusions supporting the Board decision on remand; (2) Order that the applications be approved as proposed to include the identified 37.1-acre portion of the subject 84.11-acre property in the Linn County aggregate inventory as a significant aggregate resource site with all conflicts minimized; (3) apply the aggregate resource overlay (ARO) to the mining site and the impact area; and (4) Authorize mining consistent with the ARO and other applicable regulations.

Board Action: Ordinance No. 2013-169

The Linn County Board Of Commissioners approved *Ordinance No. 2013-169* to: (1) Amend the Linn County *Comprehensive Plan* text to include the subject 37.1-acre resource site in the Linn County *Comprehensive Plan*, LCC Chapter 905 Appendix 6, entitled *Inventory of Significant Sites With all Conflicts Minimized*; and (2) Amend the Linn County *Comprehensive Plan*, LCC Chapter 905 Appendix 6A, entitled *Inventory of significant Sites With all Conflicts Minimized* to add the adopted subsection and text.

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

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

Resolution/Order No. 2013-168 and Ordinance No. 2013-169 may be reviewed at the office of the Linn County Clerk, Room 205, Linn County Courthouse; that office is open from 8:30 a.m. to 5:00 p.m., Monday through Friday, except legal holidays. A copy of the ordinance is available in the office of the Linn County Clerk. A fee to cover copying costs will be charged.

Robert Wheeldon

Robert Wheeldon
Director

6/26/13

Date

c: Kenneth and Renaye Weber, **DLCD**, DOGAMI, DEQ, DSL, Linn County EHP, Linn County Road Department, State Fire Marshal, ODOT, Myles Conway et. al, Jordan Ramis, PC, Shannon & Wilson, Inc, Cal Emmert, Rodger Emmert, Richard Ball et. al., Anne Davies et.al, David Poto et. al., Gilbert Davis et.al

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR LINN COUNTY OREGON

**IN THE MATTER OF AMENDING THE LINN)
COUNTY COMPREHENSIVE PLAN TEXT)
AND THE LINN COUNTY ZONING MAP;)
APPROVING AN AGGREGATE MINING)
PERMIT; AND AMENDING RESOLUTION)
AND ORDER NO. 2012-225)**

**RESOLUTION &
ORDER NO. 2013-168**
(Planning and Building Department BC10-0004)
(Findings and Conclusions)

WHEREAS, Myles Conway, of Schwabe, Williamson & Wyatt, PC et al filed an application for a *Comprehensive Plan* text amendment and zoning map amendment to amend the *Comprehensive Plan* text to include a 37.1-acre portion of the property identified as Tax Lot 100 on Assessor map T13S, R01W, Section 13, in the inventory of significant aggregate resource sites with all conflicts minimized; amend the Zoning Map to apply the Aggregate Resource Overlay (ARO) to the resource site; and permit the mining and processing of aggregate on the property;

WHEREAS, Following public review, on April 19, 2011, the Board of County Commissioners for Linn County (the Board) adopted Resolution and Order No. 2011-101 and Ordinance No. 2011-102, approving the applications;

WHEREAS, The April 19, 2011, Board decision in this matter was appealed to the Land Use Board of Appeals (the LUBA);

WHEREAS, The LUBA granted a voluntary remand on October 27, 2011 (*David Poto, Gilbert Davis and Richard Ball v. Linn County*, LUBA No. 2011-044);

WHEREAS, Following public review, on August 15, 2012, the Board adopted Resolution and Order No. 2012-225 and Ordinance No. 2012-226, approving the applications with additional findings;

WHEREAS, The August 15, 2012, Board decision in this matter was appealed to the LUBA;

WHEREAS, The LUBA issued its Final Opinion and Order on March 12, 2013, remanding the Board decision in this matter, limited to a single assignment that the County must make additional findings related to batching aggregate on the property (*David Poto, Gilbert Davis, and Richard Ball et. al. v. Linn County*, LUBA No. 2012-065), which decision was not appealed;

WHEREAS, Applicant requested a remand hearing before the Board and requested the Board amend its prior decision to remove any related findings and authorization to seek future County approval to operate an asphalt batching plant on the subject property;

WHEREAS, On June 26, 2013 the Board held a duly noticed public hearing on remand to consider written testimony limited to the single issue on remand;

WHEREAS, The Board, having read the proposed resolution and ordinance and having received and considered all evidence and testimony presented prior to the hearing;

WHEREAS, The findings in support of this decision to approve the proposed Comprehensive Plan Text, Linn County Zoning Map amendments, and Aggregate Mining Development permit, on remand are attached hereto as Exhibit 1;

WHEREAS, The measures to minimize identified conflicts and supplement the County's program to achieve Goal 5 compliance for the Weber Site are attached hereto as Exhibit 2; and now, therefore, be it

RESOLVED, That the Board of County Commissioners for Linn County adopt the Findings and Conclusions set forth in Exhibit 1 and the measures to minimize identified conflicts and supplement the County's program to achieve Goal 5 compliance for the Weber Site set forth in Exhibit 2; and

ORDERED, That the applications be approved to include a 37.1-acre portion of the subject 84.11-acre property in the Linn County aggregate inventory as a significant aggregate resource site with all conflicts minimized; to apply the aggregate resource overlay (ARO) to the resource site and the impact area; and to authorize mining consistent with the ARO, the adopted measure to minimize conflicts, and other applicable regulations;

ORDERED, That the *Linn County Comprehensive Plan* text be prepared for Board adoption amending LCC Chapter 905, Appendix 5, entitled "*Inventory of Significant Sites Without Conflicting Uses (Privately Owned Aggregate Sites)*" to remove a portion of the property identified on Linn County Assessor maps as Tax Lot 300 on Assessor map T13S, R01W, Section 13 containing an aggregate resource;

ORDERED, That the *Linn County Comprehensive Plan* text be prepared for Board adoption amending LCC Chapter 905, Appendix 6, entitled "*Inventory of Significant Sites With All Conflicts Minimized*" to include the 37.1-acre portion of the property identified on Linn County Assessor maps as Tax Lot 300 on Assessor map T13S, R01W, Section 13 containing a significant aggregate resource;

ORDERED, That *Linn County Comprehensive Plan* text be prepared for Board adoption amending LCC Chapter 905, Appendix 6A, entitled "*Analyses Justifying a Classification as a Significant Site With All Conflicts Minimized*" to include the conclusions of the Goal 5 resource and conflict analysis in support of adding the identified 37.1-acre portion of the property identified on Linn County Assessor maps as Tax Lot 100 on Assessor map T13S, R01W, Section 13, to the aggregate inventory as a significant site;

ORDERED, That the proposed Zoning Map amendment be prepared for adoption to apply the Aggregate Resource Overlay (ARO) mining area to the 37.1-acre portion of the property identified on Linn County Assessor maps as Tax Lot 100 on Assessor map T13S,

R01W, Section 13 that is identified as a significant aggregate resource site, as delineated in Exhibit 1, Attachment A; and

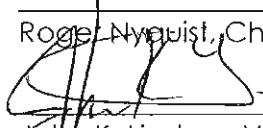
ORDERED, That the proposed Zoning Map amendment be prepared for adoption to apply the Aggregate Resource Overlay (ARO) impact area boundary to designated land that is within 1500 feet of the identified ARO mining area boundaries, with no additional restrictions other than those established by existing code, as delineated in Exhibit 1, Attachment A;

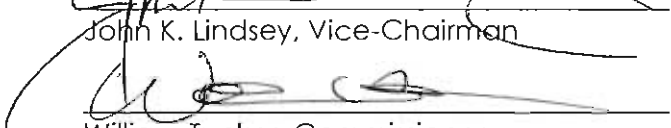
ORDERED, That a development permit be issued to authorize aggregate mining and processing on the 37.1-acre portion of the property identified on Linn County Assessor maps as Tax Lot 100 on Assessor map T13S, R01W, Section 13, that is identified as a significant aggregate resource site, consistent with LCC Chapter 905, Appendix 6 and Appendix 6A; LCC Chapter 921; LCC Chapter 931; LCC Chapter 934; and the Conditions of Approval attached hereto as Exhibit 2.


Resolved this 26th, day of June, 2013.

BOARD OF COUNTY COMMISSIONERS FOR
LINN COUNTY

ABSENT


Roger Nyquist, Chairman


John K. Lindsey, Vice-Chairman

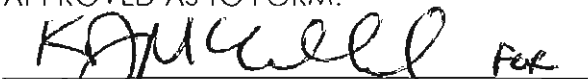

William Tucker, Commissioner

APPROVED AS TO CONTENT:



Robert Wheeldon
Director, Linn County Planning and Building

APPROVED AS TO FORM:

 For

Eugene Karandy
Linn County Legal Counsel

Resolution and Order No. 2013-168
Planning File BC10-0004
Ken and Renaye Weber
Weber Quarry Site
Decision Criteria, Findings and Conclusions

I. APPLICATION SUMMARY

- A. A Comprehensive Plan (Plan) text amendment application to include a 37.1 acre portion of an 84.11 acre property in the Linn County aggregate inventory as a significant aggregate resource site (shown on attachment).
- B. An aggregate resource overlay (ARO) zone amendment application to apply the ARO to the 37.1-acre resource site and the associated mining impact area. Mining and processing is an allowed use in the ARO (shown on attachment).
- C. A development permit application for aggregate mining and processing on the resource site consistent with adopted provisions in the Plan and the ARO.
- D. A copy of the complete application, the supplemental materials submitted by the Applicant in connection with this proceeding and the Staff Report prepared by the Linn County Planning and Building Department are included in the record.
- E. On April 19, 2011, the Board of County Commissioners for Linn County (Board) adopted Resolution and Order No. 2011-101 and Ordinance No. 2011-102 approving the Applicant's Comprehensive Plan text amendment, applying the ARO and issuing a development permit for the quarry subject to the terms and conditions specified in Exhibit 1 of Resolution and Order No. 2011-101.
- F. Petitioners David Poto, Gilbert Davis and Richard Ball appealed the Board decision to the Oregon Land Use Board of Appeals (LUBA) (LUBA No. 2011-044). The applicant filed as Intervenor-Respondent and agreed to a voluntary remand to address the issues raised in the Petition for Review. LUBA remanded the decision through a Final Opinion and Order dated October 27, 2011.
- G. On August 15, 2012, the Board, after conducting a voluntary remand hearing, amended its original decision and findings, and adopted Resolution and Order No. 2012-225 and Ordinance No. 2012-226, approving the Applicant's Comprehensive Plan text amendment, applying the ARO and issuing a development permit for the quarry subject to the terms and conditions specified in Exhibit 1 of Resolution and Order No. 2012-225.
- H. Petitioners David Poto, Gilbert Davis and Richard Ball appealed the County decision to the LUBA (LUBA No. 2012-065). The applicant filed as Intervenor-Respondent. LUBA remanded the decision through a Final Opinion and Order dated March 12, 2013, ruling that the County must make findings that address whether the proposed batching plant will require future permits or is authorized under a permit prior to 1989.

- I. The applicant filed a remand hearing request, which stated that the applicant: "withdraws any request that it be permitted to seek future County approval to operate an asphalt batching plant on the subject property".
- J. On June 26, 2013 the Board conducted a remand hearing to consider the applicant's request to withdraw approval for current or future batching on the property under this action. The hearing was limited to written comments relating to the single issue on remand and was closed to any other new testimony or evidence.
- K. The following is the Board's written findings on remand addressing the single issue on remand from LUBA's Final Opinion and Order in LUBA No. 2012-065. Other findings and conclusions referenced in Resolution and Order No. 2012-225 are readopted herein by reference.

II. DECISION CRITERIA

The Board finds that the application complies with OAR 660-023-0180(5) for a significant aggregate site, that mining is permitted and reasonable and practical measures are identified and imposed herein to minimize all identified conflicts.

The Board finds that the Plan text amendment to include a 37.1 acre portion of an 84.11 acre property in the Linn County aggregate inventory as a significant aggregate resource site complies with the criteria in *Linn County Code (LCC) 921.872; LCC 939.010 to 939.200; and LCC 921.540 to 921.569.*

The Board finds that the application of the aggregate resource overlay (ARO) zone amendment to apply the ARO to the 37.1-acre resource site and the associated impact area complies with the criteria in *LCC 939.010 to 939.200.*

The development permit shall comply with the Plan and the criteria in *LCC 933.310 and the operating standards in LCC 934.350 to 934.359.*

III. FINDINGS

A. Proposal Summary

The subject property is owned by the Kenneth & Renaye Carol Weber Trust. The quarry is operated by Liberty Rock Products. The property is identified on Linn County Assessor maps as T13S, R01W, Section 13, Tax Lot 100; is zoned Exclusive Farm Use (EFU); and is located on the east side of Berlin Road at its intersection with Skyline Road, Sweet Home.

The applicant seeks authorization to expand the existing 33-acre quarry by four additional acres and to amend the Comprehensive Plan (Plan) designation of the 37.1-acre resource site to include the site in the aggregate inventory as a significant site with all conflicts minimized.

The County previously authorized the subject property for aggregate mining and processing by the Linn County Board of Commissioners (Board) Order 81-206 (CU-83-

80/81) and later modified by Board Order 97-540 (CU-83-96/97). The existing conditional use permit authorizes extraction and processing of a 33-acre portion of the 84.11 acre property. The Linn County Comprehensive Plan identifies a 33-acre mining area on the subject property. The subject property is currently listed on the County Comprehensive Plan as site 5514 (Wildish Corvallis/Weber) as a privately owned aggregate site (Significant Site without conflicting uses- formerly "2A" Site).

Based on the findings contained herein, the Board designates the subject property as a "significant" aggregate resource site under OAR 660-023-0180(3) and LCC 939.120. An aggregate resource site is "significant" if a representative set of samples of aggregate material in the deposit on the site meet applicable Oregon Department of Transportation (ODOT) specifications for base rock for air degradation, abrasion and soundness, and the estimated amount of material is more than 2,000,000 tons in the Willamette Valley. The record contains evidence and reports from a certified engineering geologist demonstrating that the amount of aggregate materials at the site exceed the threshold for a significant site. In addition, the record contains evidence taken from the sampling of materials on site that demonstrates that aggregate materials exceed all ODOT specifications for air degradation, abrasion and sulfate soundness.

The Planning Commission (Commission) conducted a public hearing on the applications on January 11, 2011. At the close of the hearing the Commission adopted a motion to recommend that the Board of Commissioners approve the application and include the resource site in the "Inventory of Significant Sites with all Conflicts Minimized (Appendix 6)," apply the Aggregate Resource Overlay (ARO) to the resource site, and approve an operating permit to mine the property subject to compliance with identified mining requirements and specified operating conditions which are intended to minimize conflicts with surrounding land uses.

Based on the evidence in the record, the Board found the subject property to be a "Significant Site with all Conflicts Minimized (Appendix 6)" and that the conditions of approval were reasonable and practical measures that would minimize any conflicts between the mining and processing operations and existing/approved land uses within the vicinity of the site that were identified in the land use process.

On appeal, the Petitioners did not dispute the finding of "significance" but argued the identified impact area was too small and that there were conflicts with nearby agricultural uses and impacts to residential wells that could not be minimized and therefore an ESEE analysis had to be done. On remand, the Board considered testimony and evidence regarding potential impacts within an expanded study area of one mile. The Applicant and opponents introduced additional evidence and argument supporting their respective positions. The Board reviewed all the evidence, applied that evidence to the law and concluded the proposal met the criteria for approval of a PAPA to add the site as a significant aggregate site with all conflicts minimized and that an ESEE analysis was not warranted. The following findings are intended to re-adopt, affirm and incorporate by reference the findings supporting the Decision which

were not challenged on appeal and to issue new findings on remand addressing the issues raised in the Petition for Review and the evidence and argument submitted by the parties on remand.

B. Inventory Classification (*LCC 939.120*)

The subject property is identified on Linn County Assessor maps as tax lot 100, Section 13, T13S, R01W. The site is located on the east side of Berlin Road at its intersection with Skyline Road in Sweet Home. The resource site encompasses approximately 37.1 acres of the 84.11-acre property and contains the existing quarry that is operating under a conditional use permit first issued by Linn County in 1981. The record shows that this quarry has operated since the early 1940's and its operation pre-dates the adoption of State and County rules governing the extraction and processing of aggregate resources. The aggregate resource area includes the northern 37.1 acres of the subject property.

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

The application contains a stamped report prepared by Douglas C. Shank, a certified engineering Geologist, stating that nearly 3 million tons of aggregate material could be mined from the site utilizing the setback and operational requirements and limitations specified for the site. This amount is greater than the significance threshold of 2,000,000 tons or 1.5 million cubic yards in *LCC 939.120(B)(2)* to include the property in the inventory as a significant aggregate resource site.

The property contains soils that are classified as predominately classes III, IV and VI by the Soil Conservation Service (SCS). Evidence in the record demonstrates that the significance criteria in *LCC 939.120(C)* do not apply to this property.

The applicant has established the location, quantity and quality of the resource as meeting the requirements of the Goal 5 rule and County Code. The site meets the significance criteria in *LCC 939.120*.

C. Impact Area (*LCC 939.130*)

To determine existing and potential conflicts between the proposed mining and processing activities and other area land uses, Oregon Administrative Rules (OAR) and *LCC 939.130(A)(1)* establish an impact area of 1500 feet from the boundaries of the proposed mining area, except where factual information is adequate to indicate significant potential conflicts beyond this distance. Based on the information contained in the record, the Board found that the 1500 foot impact area specified in OAR 660-023-0180(5) and *LCC 939.130(A)(1)* fulfilled the purpose of identifying conflicts with proposed mining and processing activities. In the original decision, the Board initially determined that factual information

contained in the record did not indicate significant potential conflicts with the proposed mining and processing operation beyond the 1500 foot impact area specified by rule and ordinance. In LUBA Case 2011-044, Petitioners Poto, Davis and Ball (hereafter the "Petitioners") alleged that the County erred in utilizing a 1500 foot impact area in connection with the subject application. Petitioners argued that identified conflicts with mining mandated an expansion of the impact area beyond 1500 feet. On remand, the Applicant submitted evidence that evaluated potential impacts within one mile of the quarry. Expert reports and testimony evaluated the potential for impacts to agricultural and forest practices, residential uses, including water wells and dwelling structures within one mile of the quarry.

One Mile study area: The following is a general description of land uses within one mile of the quarry site:

North:

Exclusive Farm Use and Farm Forest Zoning Districts:

There are seven dwellings and no businesses or schools within 1,500 feet of the aggregate resource area. To the north there is a mix of farm and forest uses. Beyond the 1500-foot boundary, properties are zoned Forest Conservation Management and contain commercial forestry operations. Land uses within the one-mile impact area to the north are: approximately 160 acres of timber, approximately 19 acres of row crops, and property used in conjunction with existing dwellings.

West:

Farm / Forest and Rural Residential 5 Acre Minimum Zoning Districts:

There are thirteen existing dwellings and no businesses or schools within 1,500 feet west of the aggregate resource area. Within the one-mile area, there are two additional quarries located to the east of the subject property and the majority of the land is developed into single family dwellings and uses associated with dwellings.

South:

Farm / Forest and Exclusive Farm use Zoning Districts:

There are no dwellings, businesses or schools within 1,500 feet south of the aggregate resource area. Within the one-mile area, the majority of the area to the south is in agricultural use consisting of pasture. There are approximately 40-acres of timber located directly south of the subject property.

East:

Farm / Forest Zoning District:

There are no dwellings, businesses or schools within 1,500 feet of the aggregate resource area. Within the one-mile area, the property to the east is mostly in timber production and pasture, with some residential uses.

D. Conflicts with Surrounding Land Uses

The proposed development plan and the specific operating plan for the existing and proposed mining area operation are described in detail in the application

materials, the staff report prepared by the Linn County Planning and Building Department, and the evidence and expert reports submitted by the Applicant in the remand proceedings. Based on a review of those documents, the correspondence submitted by neighboring property owners and testimony and evidence provided at hearings before the Planning Commission and Board and in the remand proceedings, the Board has identified the following potential conflicts that are associated with the existing and proposed mining operation on the subject property: (1) conflicts due to noise, dust or other discharges including blasting activity, (2) potential conflicts to local roads and, (3) conflicts with agricultural practices. As referenced below, the Board finds that the identified conflicts are minimized by the application of the permit conditions specified herein and required by this Order. The findings and operating conditions are described in detail below:

Noise

The record indicates that the potential noise sources from the site are the following: mining activity, aggregate crushing and processing operations, truck/equipment operations and blasting. The record indicates that noise impacts associated with the application will be consistent with the noise levels generated at the site under the existing conditional use permit. No additional uses or operations are authorized under the proposed application. The record further indicates that noise impacts are likely to decrease for some surrounding property owners as mining operations move north into the existing hillside.

The Board finds that residential dwellings and other land uses within the designated impact area are adequately buffered from operations on the subject property. Individual properties located north of the subject property are buffered by the large rock wall that is the subject of the ongoing mining operation. The evidence shows that the wall provides a natural buffer to mitigate and minimize noise impacts associated with the operation. Property located south of the quarry is buffered by the significant setback between mining operations and the southern property boundary. The record demonstrates that the southern portion of the subject property is planted with trees of varying ages that provide a natural buffer that mitigates and minimizes noise impacts associated with the mining operation. Active mining operations will be located a significant distance from the southern property line. As a condition of approval, the applicant has been required to retain the forested areas on site as a buffer between the quarry and nearby land uses. Properties to the east are zoned primarily for resource related uses (farm and forest zoning) and are also adequately buffered from noise associated with the mining operations. Properties to the west are buffered by required setbacks, the stated conditions of approval (Exhibit 2) and the right-of-way for Berlin Road.

The Board Order adopts a number of operating conditions that will minimize conflicts associated with noise. First, the applicant is required to maintain an excavation setback from property lines of no less than 75 feet. Second, the applicant's operation is limited to specified hours of operation that are specific to mining and processing activities, crushing and blasting activity. See Conditions of Approval attached hereto. The designated operating hours will minimize noise

conflicts on surrounding properties. Third, the applicant's operation is required to adhere to the applicable noise standards regulated by the Oregon Department of Environmental Quality. Under both state and local law, the applicant's adherence to applicable legal standards is sufficient to minimize an identified conflict in connection with the Goal 5 process. (See OAR 660-023-0180(1)(g): "minimize a conflict" means conformance with applicable legal standards; See also LCC 939.030(M).) Fourth, the applicant is required to provide advance written notice of blasting to all residents within 1500 feet of the quarry.

Dust

Based on evidence in the record and the testimony provided in public hearings, the Board finds that very minimal amounts of dust are associated with the proposed application. Aggregate mining in a basalt quarry creates minimal amounts of dust. Hearing testimony, comment letters, the Petition for Review at LUBA and the evidence submitted on remand did not identify significant issues related to the creation of dust from mining or processing operations at the subject location over its long history of active operations. The record demonstrates that dust levels are not expected to increase in connection with this application. The specific conditions of development approval that govern the current mining and processing operations on the subject property (specified in CU-83-80/81) have proved to be effective in minimizing any conflicts associated with dust. The Board adopts the Conditions of Approval attached hereto which incorporate the current operating conditions related to dust. The applicant shall use water or another dust palliative conforming to DEQ standards to mitigate dust on the stockpiles, on-site haul roads and vehicle circulation areas as needed. In addition, the applicant shall be required to obtain and maintain all permits necessary for the operation of the site, including but not limited to a permit issued by the Oregon Department of Geology and Mineral Industries (DOGAMI) and other state or federal permits needed in connection with the ongoing operation of the facility.

Blasting Activity

The record indicates that blasting activity conducted at the site potentially conflicts with surrounding land uses. Public testimony identified a number of concerns with blasting activity conducted at the site. The primary concern identified by project opponents is with the potential impacts to domestic water wells on surrounding properties. Issues/impacts related to water wells are discussed in greater detail below. Project opponents also identified conflicts related to the noise and vibration that are associated with blasting activity at the site. Project opponents contend that the vibration from blasting activity has caused damage to structures and water wells within the vicinity of the quarry. Project opponents offered the testimony of both area residents and third party experts in an effort to establish a link between property damage and blasting activity at the quarry.

For the reasons set forth below, the Board finds that any noise and/or vibration impacts associated with blasting activity can be minimized through the imposition of the conditions of approval set forth in this decision.

To address opponents' concerns related to possible damage from blasting, the Applicant submitted a detailed Blasting Vibration Analysis conducted by Earth Dynamics (Exhibit R-1). The report shows that Earth Dynamics is a lead contractor for noise and vibration analyses and has conducted over 80 vibration related projects in the Oregon/Washington area. The analysis and written report at the Weber pit was completed by Dr. Michael Feves of Earth Dynamics, who holds a Ph.D. in geophysics from MIT and has over 30 years experience analyzing vibration and acoustic issues.

Dr. Feves examined vibration data from 13 years of blasting at the Weber quarry, analyzed it to determine potential conflicts within the one mile study area, reviewed alleged vibration damage claims and the potential for future claims, and provided recommended shot design and procedures to minimize any potential conflicts. Based on this analysis, Dr. Feves concluded that noise and vibrations from blasting at the Weber pit are felt within the study area and are perceptible to almost everyone, including domestic animals and livestock, within 1500 feet of the pit. Dr. Feves found that all blasting records over the 13 years at the Weber pit produced measured vibrations less than the United States Bureau of Mines ("USBM") criteria safe for modern drywall construction (.75 inches per second "ips"). Dr. Feves also cites to several studies, as summarized by Siskind (2000) examining blasting effects on wells and buried utilities (i.e., ground vibration as a function of depth) and finding some loss of cement bonding at 4.7 ips but no damage to wells or water flows at vibration levels up to 8.7 ips. Based on the recorded vibration levels in the vicinity of the Weber quarry, at less than .75 ips, Dr. Feves concluded that the vibration levels from the Weber pit are far too low to cause damage to wells or structures.

In a supplemental report dated May 16, 2012, Dr. Feves examined the evidence submitted by the project opponents, including the letter from John Martin, the letter from E.F. Beebe, the letter from Tim O'Gara and the many reports of alleged damage to wells and structures submitted by neighboring property owners. Dr. Feves explains why Martin's and O'Gara's speculations about vibration levels and damage to structures and wells are based on incorrect assumptions about the area geology and are not accurate. Dr. Feves addressed each incident of well damage cited by the project opponents and their attorney and explains why the alleged damages have no correlation or connection to blasting at the Weber pit. Dr. Feves' analysis demonstrates that the vibration level at the Ball well, located approximately 1,075 feet from the blasting, was .09 ips, slightly greater than vibrations at Davis and Peterson wells, is similar to vibration levels produced by vehicle traffic on a rough road. Based on an analysis of all of this evidence, Dr. Feves concludes there is no evidence linking blasting at the Weber pit to any of the damage claims or complaints opponents have raised. Dr. Feves cites to a study analyzing the effects of blasting on wells and particularly one involving hydrology and well construction similar to that in the vicinity of the Weber pit (i.e., low yield aquifer with uncased wells) establishing a safe vibration level at 2.0 ips.

Based on all the information he reviewed, Dr. Feves concluded that the maximum vibration recorded at the wells within the vicinity of the Weber pit fell

far below the safe vibration level cited in the reports and is not the cause of the damages alleged by opponents.

Dr. Feves also explains why Beebe's photographic evidence of cracks in concrete flatwork and gaps at wall/ceiling junctions are typical of normal shrinkage and expansion found in construction and do not support a theory of vibration induced cracking. The record demonstrates that no measured vibration at the Weber quarry has exceeded .75 ips, which is the safe standard for normal drywall construction. According to Dr. Feves and the published reports, this level of vibration could not have caused the concrete cracking observed and photographed by Mr. Beebe. Likewise, Dr. Feves explains the gaps at the ceiling and wall junctures submitted in the Beebe photographs are not the types of cracking which occurs from blasting vibrations. His report describes the types of cracks which occur from blasting, which subjects a structure to ground vibration to cause midwall cracking, possibly in an X or a diagonal pattern, not cracking at corners as shown in the Beebe photographs. According to Dr. Feves, extensive midwall cracking would need to be present for ceiling/wall junction cracks to be associated with a vibration induced event. Dr. Feves concludes the cracking and dust present in the Beebe photograph was typical of expansion and settlement in residential construction from environmental forces such as wind and temperature changes, with dust settling as the result of normal expansion/contraction and settlement of airborne dust particles.

The Board finds Dr. Feves to be a qualified and credible expert with a high degree of expertise in the areas at issue in this proceeding. The Board further finds that Dr. Feves and Earth Dynamics have completed a thorough and detailed analysis of all the evidence contained in the record. The Board accepts the evidence and analysis submitted by Dr. Feves and Earth Dynamics and finds it to be more credible than the allegations and evidence offered by the project opponents. The Board does not dispute that many project opponents have had problems with water wells and does not discount the impacts of those problems to the opponents. However, the evidence submitted by the opponents, even that submitted by persons with some geology and hydrology qualifications, does not establish a causal link between the problems with the wells and the aquifer and activities at the Weber pit, including blasting. The Board finds that the Feves report adequately addresses the evidence submitted by the opponents and explains why it does not support a connection between blasting and the alleged impacts to opponents. The Board finds that the evidence and analysis submitted by Dr. Feves (together with the corroborating evidence discussed below) establishes that the vibration levels of blasting at the Weber quarry are below the safe standard for drywall construction and are of an insufficient level to have caused damage to structures or wells within the study area.

This evidence provided by Dr. Feves and Earth Dynamics are further supported and corroborated by the study and report provided by the geologists and hydrogeologists of Shannon & Wilson, Inc. as discussed below.

The Geotechnical Engineering firm of Shannon & Wilson, Inc. performed hydrogeologic and groundwater studies within the impact area to evaluate potential impacts to wells and groundwater quality and supply from blasting at

the Weber quarry. The analysis and written report was performed and prepared by: 1) David Higgins, an Oregon registered professional Geologist and Certified Engineering Geologist, with 13 years of engineering geology experience in Oregon, specializing in geologic site characterization and geologic hazard mitigation; and 2) Gary Peterson, a Certified and Registered Geologist and Hydrogeologist with a 35 year career performing and managing hundreds of geotechnical and hydrogeologic investigations and projects. Shannon & Wilson mapped the one mile radius and conducted a site visit at the Weber quarry, reviewed the geologic mapping of the area and completed an extensive review of 61 wells in the one mile study area. Well logs dating back to 1964 were also reviewed, as well as the written testimony and evidence submitted by the opponents.

Shannon & Wilson analyzed the potential for conflicts between mining activities and the use of area groundwater wells. The Shannon & Wilson analysis utilized a one-mile study area around the quarry and expansion area that included approximately 140 parcels wholly or partially within the area with approximately 99 "addressed" dwellings. The scope of the one mile study area is depicted on the Figure 1 Site Plan that is attached to Shannon & Wilson's April 19, 2012 Report. (See Applicant's Exhibit R-2.) The initial Shannon & Wilson analysis included the 52 Individual well logs submitted by project opponents, together with an additional 9 well logs from adjoining sections. In total, Shannon & Wilson analyzed 61 water wells within the one mile study area. Based on this analysis, Shannon & Wilson concluded that well problems in the area of the quarry are the result of area geology. Shannon & Wilson found no correlation between mining/blasting activity at the quarry and the water well issues reported by the project opponents.

Geologic mapping indicates that the quarry itself lies within the Basalt of Marks Ridge. Marks Ridge trends approximately northeast-southwest and appears to consist of at least two basalt flows. The quarry is along the southwestern face of the ridge. A contact between the lower basalt flow and the underlying sedimentary deposits (mapped as Miocene Conglomerate and Sandstone) is visible in an outcrop a couple hundred feet southeast of the quarry. The majority of the Topview Subdivision (Skyline Drive and Hiltz Road) is mapped within the Conglomerate and Sandstone Unit, while Marks Ridge Drive and Berlin Road north of the intersection with Skyline Drive are mapped within Basalt of Marks Ridge. The basalt formation in the area of the quarry is up to 200-300 feet thick and directly overlies Conglomerate and Sandstone.

The well logs reveal a wide range of well depths (from 80- 700 feet) and construction techniques (unlined open hole, casings, liners, etc). Many properties showed multiple well logs (as many as six) and many well logs reported low flow rates of 0.5 to 10 gallons a minute at the time of installation. Several well logs reported "dry" or "trace" amounts of water immediately after drilling. Well logs also reported caving during the drilling process. Properties in this area show a history of repeated well replacements and deepening. Generally, the well logs show thick layers of basalt overlying sandstone and conglomerate on Marks Ridge and interbedded sandstone and claystone in the areas mapped Conglomerate and Sandstone. Most of the well logs were terminated in the

Conglomerate and Sandstone formation. Both cased and uncased wells in low yield aquifers are susceptible to plugging due to naturally occurring process. The conglomerate and sandstone formations are made up of soft rock and clay that are subject to caving. The formation also consists of silt, clay and sand particles that spall from the well bore walls and collect as sediment at the base of the well over time. The deposition of these fine deposits is referred to as "sanding", which over time reach the level of the pump, clog its intake and reduce well production until it no longer yields water. Shannon & Wilson notes there are multiple reports in the well logs of pumps being raised several times as the base of the well sands in or fills with fine sediments.

Shannon and Wilson concludes that well problems and failures are the result of the geology of this low yield aquifer:

In our opinion the abundance of wells with low productivity and relatively short useful lives in the area is due to inadequate well depth and inadequate well construction for the geologic conditions. The inadequate construction results in the gradual deterioration of the exposed rock layers in the wall of the open well and gradual sanding. There are reports of caving in some well logs that resulted in raising the pump or deepening the well, but we did not find reports of pumps becoming stuck in wells due to caving. This suggests that caving after the pump was installed is relatively rare but that the majority of repairs or replacements are due to clogging from gradual sanding. There is also the possibility that some wells are plugging due to biological deposit, but to our knowledge this has not been explored by property owners.

The Initial Shannon & Wilson Report (See Applicant's Exhibit R-3) contains a detailed analysis of the specific water well concerns raised by opponents to the quarry project. Opponents cite the gradual reduction of water flow over a period of years, pump replacements, raising of pumps, deepening of wells, flushing of wells and the need to drill new wells after earlier wells failed and wells going dry seasonally. Shannon & Wilson finds that these concerns are, "consistent with low yield, poorly consolidated sedimentary deposits tapped by uncased open-hole wells". In all but two instances, reported well damage occurred long after blasting. In the two instances that are loosely correlated to the dates of blasting activity, Shannon & Wilson finds there is no persuasive evidence that the loss of well water was due to blasting. More likely, the well problems are the result of geologic conditions and well construction that is typical within the 1-mile study area. Both of the wells were uncased in the bottom portion and one well had a very poor yield (1 gallon per minute) at the time of installation and lasted for 10 years. In the other well, the pump became clogged while the owner was on vacation. This well had likely been sanding slowly over time and become clogged when the well remained idle during the owner's vacation. Evidence submitted by the Applicant also raises questions regarding the veracity of Petitioners' claims regarding the alleged correlation between well damage and blasting. Specifically, several of the well reports the opponents submitted as evidence of blasting damage were contradicted by the owners of those wells. The owners attributed the well problems to issues other

than blasting. This evidence undermines the credibility of the opponents' evidence on these issues.

Shannon & Wilson notes that blast induced damage to properly constructed wells is not at all common. The Oregon Department of Geology and Mineral Industries ("DOGAMI") does not document blasting as a significant hazard to wells. The Oregon Department of Water Resources ("OWRD") records indicate that most area wells are unlined and in very poor condition, and yield very low water volumes. The well logs on file with OWRD document caving during drilling and repeated failures and repairs due to clogging (sanding). Blast records document very low particle velocity values, far below accepted damage thresholds that are applied to construction in congested and developed areas as well as the minimum particle velocity required to damage residential structures as adopted by USBM RI 8507 (codified in NFPA 495). Shannon & Wilson states that,

Modern blasting methods are highly controlled, safe and minimize adjacent impacts. In contrast, open wells in highly fractured basalt and gravel conglomerate sandstone sedimentary rock units are subject to internal rockfall and sanding, corrosion and other problems, none of which related to the quarry. Although convenient, no factual basis exists that associates well damage to blasting.

In summary, Shannon & Wilson finds that problems with area wells are "endemic and not the result of damages caused by quarry operations". Uncased wells in the study area tap a poor quality aquifer in conglomerate and sandstone sedimentary formations that lie beneath the basalt being mined at the Weber quarry. Most wells are open-hole (no casing) and are susceptible to sanding as fine sediments gradually file the base of the well and clog the pump. The sanding of the base of the well also reduces yield by filling the well with low permeability sediment. Diminished well yields result in well deepening or flushing, pump raising, or replacement of failed wells over time. Well casing installed at the time wells are drilled would prevent or reduce most of these problems. There is also no greater occurrence of well problems near the quarry than at the outer limits of the study area one mile away, suggesting well problems are not the result of blasting.

The Board finds the report and conclusions of Shannon & Wilson to be extremely thorough, accurate and reliable. The expertise in this area is highly specialized and the detailed report, including an analysis of each well and the allegations of damage by opponents, is highly credible and persuasive. The Board accepts the conclusions of Shannon & Wilson, including the analysis of the evidence submitted by the opponents and the explanation of why it does not establish a connection between the blasting and the well problems.

No Impact on the Groundwater Aquifer

Petitioners expressed concerns that blasting has affected and will continue to affect the groundwater aquifer or the aquifer source area. The Shannon & Wilson analysis demonstrates that there is no aquifer located within the basalt

formation at the quarry site. This fact is evident because there is no groundwater or seepage from the large exposed face of the existing quarry. Joints in the basalt are tight and the quarry face is dry. The aquifer is located well below the basalt formation being quarried and lies within the conglomerate sandstone formation. Water does not pass vertically through basalt formations, the flow is primarily through basalt interflow zones. The source area for the conglomerate and sandstone aquifer is not at the quarry site and may be miles away. Based on these facts, Shannon & Wilson concludes there is no risk of damage to the aquifer or source area from blasting. Further, no groundwater will be withdrawn in connection with mining activity. Water tables will continue to respond to recharge and withdrawal in the area as they do now, prior to the expansion of the quarry. As a result, Shannon & Wilson concludes that the groundwater supply will not be influenced by mining. In fact, Shannon & Wilson notes that no mines in Western Oregon extending below the local groundwater table have documented groundwater quality or quantity impacts. The Board accepts this evidence as credible and persuasive and substantial evidence to support a finding that there is no evidence of damage to the aquifer from blasting at the Weber quarry.

No Impact on Spring Water

Petitioners argue the blasting somehow impacts the flow of natural springs in the area. Shannon & Wilson conducted a field visit to the Weber quarry site in which it evaluated the potential impact of mining on area springs. The Shannon & Wilson report (See Applicant's Exhibit R-2), notes two springs in the area between the existing quarry face and Marks Ridge Drive, with the water from the quarry flowing around the quarry to the west. Shannon & Wilson notes that the groundwater source for the spring is located "up gradient" of the quarry with the groundwater perched on the surface of the basalt, flowing downhill below the soil and surfacing where bedrock reaches the ground surface just up slope of the quarry. The spring water then flows over the surface of the basalt and around the quarry. Shannon & Wilson concludes that the spring water is not impacted by the quarry. As the mining area expands, the spring water will continue to be directed around the quarry to the west so that the water continues to follow its current natural course. This will work to mitigate any potential impacts down gradient. Shannon & Wilson states there is "no evidence that blasting at the quarry has influenced spring activity, and therefore no reason to believe that continued blasting poses a threat". Area springs are either from perched groundwater flowing on the surface of area basalt formations or in areas where conglomerate and sandstone layers are near the surface. Mining of the basalt bedrock will not have any impact on these features. (See Applicant's Exhibit R-2 at page 7.) The Board accepts this evidence and finds nothing in the evidence or argument submitted by opponents which would undermine the researched and well-reasoned conclusions reached by Shannon & Wilson with regard to the lack of impacts to springs.

Opposition Testimony- John Martin and Tim O'Gara

Project opponents offer the testimony of retired geologist and area resident, John Martin, for the proposition that blasting is adversely impacting area water

wells. Martin acknowledges that he has not performed a professional study of the quarry and states that he "cannot make a professional assessment of the above-referenced quarry" and that his letter is not a "professional opinion". The Shannon & Wilson report contains a detailed rebuttal of the points and analysis offered by Martin. In an effort to explain why well problems are endemic in the larger area surrounding the quarry, Martin argues that blasting vibrations are transmitted by a contiguous structure of basalt. Martin's conclusion is based upon a misinterpretation of actual site geology. (See Shannon & Wilson Rebuttal Report dated May 15, 2012) Martin states that the geology of the area "is composed of a continuous structure of cooled basalt flows. This explains why blasts at the quarry are felt well beyond the immediate area at strengths greater than would be expected if a zone of unconsolidated materials were present to attenuate energy". This analysis is contradicted by geologic mapping and the area well logs that demonstrate that the majority of wells and structures within the impact area are located in the conglomerate and sandstone layers and not areas of basalt. Similarly, Martin incorrectly concludes that a water aquifer is located within the basalt layer, a point that is contradicted by Shannon & Wilson and the area well logs. Again, the study conducted by Shannon & Wilson demonstrates that the existing aquifer lies in the conglomerate and sandstone layers and not in the basalt.

Project opponents also offer the testimony of consulting hydrogeologist Tim O'Gara to support their claim of potential damage to area water wells. As is further discussed in the Shannon & Wilson report, Mr. O'Gara makes assumptions regarding site hydrogeology and impacts from blasting based on the use of inaccurate outdated USGS mapping. The maps utilized by Mr. O'Gara incorrectly characterize the geology of the area and have subsequently been replaced by more recent Oregon Department of Geology and Mineral Industries maps. These new DOGAMI maps match the field observations of Shannon & Wilson in their field study of the area and the geology described by well drillers in the various well logs that are included in the record. The inaccurate mapping utilized by Mr. O'Gara led him to erroneous conclusions about area geology and the presence of water bearing tuff layers and interflow zones. As referenced by Shannon & Wilson, those zones are not present in the study area. (See Shannon & Wilson Rebuttal letter dated May 15, 2012.) As a result, Mr. O'Gara's underlying conclusion, that blasting affects the "entire interbedded formation in this area" is without merit and is incorrect. Shannon & Wilson's response to the specific claims of Tim O'Gara are provided in Table 2 of the Shannon & Wilson Rebuttal Letter.

Riggs Hill Road Evidence

With their April 20, 2012 testimony, project opponents have offered a comparison set of well logs for wells located outside of the initial one-mile study area. The opponents offered well logs from an additional 16 wells located in the "Riggs Hill Road" area of Sweet Home and offered the logs as "Comparison Water Wells". In their rebuttal letter, Shannon & Wilson provided its review and analysis of the 16 wells offered by the project opponents, together with an additional 19 wells in the Riggs Hill Road area. Shannon & Wilson notes that all of the new Comparison Water Wells are located at least five miles from the quarry and lie in a different geologic unit. Shannon & Wilson concluded that the newly referenced wells are

located too far from the quarry to provide for a relevant comparison. They did, however, note that many of the Riggs Hill wells were experiencing similar problems to those in the study area. The Comparison Water Wells are located within what is called the "Mehama Formation," a formation that consists of volcanoclastic conglomerate, breccia and sandstone with basalt lavas and rhyolitic ash-flow tuff layer. Shannon & Wilson notes that the conglomerate geology of this comparison area does pose challenges similar to those faced by residents in the vicinity of the Weber quarry. Well logs for the Comparison Water Wells show newly drilled "dry" wells, frequent well deepening and low productivity. Again, it is geology and not mining that adversely impacts water wells in the Riggs Hill Road area.

The Applicant has submitted a number of letters from residents of the Riggs Hill Road area. These letters chronicle the difficulties of obtaining water supply in this area. Residents testify to the need to drill multiple wells to obtain water and to the impact of a neighboring development on their water supply. It is clear that geology and increasing water demands are the cause of water supply problems in the Riggs Hill Road area – not the minimal blasting activity conducted over 5 miles away at the Weber quarry.

The Board finds Shannon & Wilson to be qualified and credible experts with a high degree of expertise in the areas at issue in this proceeding. The Board further finds that Shannon & Wilson completed a thorough and detailed analysis of all the evidence contained in the record. The Board accepts the evidence and analysis submitted Shannon & Wilson and finds it to be more credible than the testimony and evidence offered by the project opponents and their experts. The Board finds that the evidence and analysis submitted Shannon & Wilson (together with the corroborating evidence provided by Dr. Feves and Earth Dynamics discussed above) conclusively establishes that the vibration levels of blasting at the Weber quarry are insufficient to have caused the water well and aquifer damage that has been alleged by project opponents.

To ensure the operating characteristics will continue with all conflicts minimized, the Board adopts the following conditions:

"Reasonable and Practicable Measures to Minimize Conflicts"

The actual conflicts identified under the OAR subsection(5)(b) analysis include noise and vibrations perceptible to humans and animals within a 1500 foot radius of the site. To minimize these conflicts, the Board requires the following conditions based upon the recommendations of Dr. Feves and agreed to by the Applicant. The blasting at the quarry shall be designed and conducted in a manner which minimizes conflicts with surrounding properties. To ensure this occurs, all blasting shall be conducted under the following conditions:

- All residents within 1500 feet of the quarry should be notified in writing of the date and time for any future shots. Notice letters shall be postmarked at least four days prior to blasting and shall indicate the date and estimated time of the scheduled blast. Any alteration to the blast schedule shall require a minimum 24 hour notice by mail, phone, or hand-delivered to each residence

within that notice area. People who have farm animals or livestock should be advised to avoid being in a confined space with animals or riding horses during the shot.

- To ensure that safe ground vibration and air shock levels, based on accepted industry standards, are not exceeded, each blast at the quarry shall include vibration and acoustic monitoring and analysis at selected locations on surrounding properties. A minimum of three locations on nearby properties shall be monitored during each blast. The quarry operator shall be responsible to ensure the seismographic monitoring requirements are carried out.
- Blast plans should be reviewed and approved by a qualified, independent professional prior to all future blasts.
- Measured ground vibration and air overpressure shall not exceed the limits specified in the National Fire Protection Association NFPA 495, Explosive Materials Code.

Other Discharges from the Site

The record demonstrates that the only other potential discharges from the site are associated with temporary asphalt batching, as requested in the original application. On remand, the applicant submitted a written request into the record stating that the applicant: "withdraws any request that it be permitted to seek future County approval to operate an asphalt batching plant on the subject property". The Board concurs. Because this decision does not authorize current or future asphalt batching on the property, there is no associated conflict identified.

Potential Conflicts to Local Roads

The Board finds that there are no conflicts with local roads that would adversely affect land uses in the impact area. The Roadmaster has submitted a letter concluding that mining at the site, as proposed, will not have an adverse impact on County roads. The County Roadmaster reviewed the applicant's Truck Haul Plan and found that it meets the requirements of the County Road Department.

Access to the site is from Berlin Road, which is a county road. Vegetation has been removed at the entrance to improve sight lines. The entrance is at a slight horizontal curve. The remainder of Berlin Road features broad horizontal curves with good visibility. Vertical curves are present in this area; however the height of the dump trucks improves their visibility over vertical curves, and thus these vehicles pose less of a risk at vertical curves than passenger vehicles which are lower to the ground and harder to see over vertical curves.

The nearest arterial road is Hwy 20 which is utilized from some deliveries into Lebanon. The site is in a rural residential area and road capacity is more than sufficient. The site operates continuously throughout the day and does not

generate a concentrated number of peak hour trips, either in the morning or in the afternoon.

According to the County Roadmaster, sight distances are adequate along the route. There are no adverse impacts on the quality of county roads or local access roads in the area of the proposed resource site. The proposed haul plan included in the submittal to the Linn County Road Department was deemed satisfactory to the Roadmaster.

Safety Conflicts with Public Airports

No safety conflicts are identified with public airports in association with this application.

Conflicts with Other Goal 5 Resources

There are no Goal 5 resources located within the designated impact area or in the general vicinity of the applicant's mining and processing operation. As a result, the Board finds that the application does not create any conflicts with other Goal 5 resources.

Conflicts with Agricultural Practices

The record contains written and oral testimony referencing the potential for conflict between mining and processing operations and surrounding agricultural practices. The applicant performed a detailed inventory of the agricultural practices within a one mile radius, which are described in the Lanfear report dated April 19, 2012. The Board adopts the description of those agricultural practices herein by reference.

Much of the testimony concerned the potential impacts of blasting activity on wells and springs in the vicinity of the mine. There was no evidence or testimony on remand regarding impacts to agricultural practices apart from the well/aquifer evidence related to blasting (discussed above) and the winery (discussed below). As referenced above, the Board finds that the conditions of approval referenced herein are reasonable and practical measures that will minimize identified conflicts between surrounding uses and blasting and quarry operations.

On remand, the applicant submitted a written request into the record stating that the applicant: "withdraws any request that it be permitted to seek future County approval to operate an asphalt batching plant on the subject property". The Board concurs. An asphalt batching plant is not an approved use under this Plan amendment and associated mining permit. Because this decision does not authorize current or future asphalt batching on the property, there is no associated conflict identified.

E. Measures to Minimize Potential Conflicts

The Board finds that the conditions of approval specified in this Order and

attached hereto are reasonable and practical measures that will minimize all of the conflicts that have been identified in this proceeding. The Board finds that the proposal satisfies the standard in *LCC 939.140* and *OAR 660-023-0180(5)*.

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

The Board finds that there are no conflicts between the proposed mine expansion and adjacent land uses that cannot be minimized to a level at which they can no longer be considered significant. An ESEE conflict analysis, as specified in *LCC 939.150* and *OAR 660-023-0180(5)*, is therefore not applicable.

G. Natural and/or Geologic Hazards

A small portion of the western portion of the 84.11 acre subject property has been identified in the Environmental Geology of Western Linn County Oregon as being subject to mass movement topography. This portion of the subject property falls outside of the boundaries of both the existing mining area and the area proposed for the expansion of mining and processing operations through this application and decision. A County GIS map depicting the location of the geologic hazard area in relation to the existing and proposed mining areas can be found in the record as an exhibit to the Applicant's letter to the Board dated March 1, 2011. This evidence demonstrates that this application does not authorize any activities within the mapped hazard area.

Petitioners argued that mining and blasting activity could adversely impact the stability of this area. This claim was also analyzed by Shannon & Wilson who confirmed they had observed topographic features typically associated with "mass movement" during their site investigation. Shannon & Wilson stated that this area appeared to be an ancient landslide mass with no evidence of recent large scale movement. Shannon & Wilson states that the landslide occurred thousands of years ago and has likely experienced multiple earthquakes that would have resulted in far greater shaking and particle velocity than would be induced by blasting activity at the quarry. Shannon & Wilson states that ancient slide areas are inherently subject to slow creeping movements, particularly during the wet winter months, but that such movements have nothing to do with blasting. The particle acceleration caused by a large loaded truck crossing the landslide on a roadway would likely be greater than that caused by blasting at the quarry. (See Shannon & Wilson Rebuttal Letter, page 6.) The report notes that Western Oregon is littered with both recent and ancient landslides. It is likely that dozens of mining sites in Oregon are within a mile of a mapped landslide. Shannon & Wilson is not aware of blasting ever triggering a landslide movement. The Board finds this evidence to be credible and persuasive.

Moreover, all mining and reclamation activity on the subject property is regulated by DOGAMI and are subject to the terms and conditions specified in the Operating Plan and Reclamation Plan that are specific to this site. DOGAMI will require that the mining and processing operations be engineered, designed and operated in a manner that will comply with all applicable hazard mitigation requirements. Therefore, the Board requires that the applicant adhere to all operating requirements specified in its DOGAMI Operating Plan and Reclamation

Plan.

The Board finds that the existing and proposed mining areas are not located within an area subject to flooding, based on FEMA maps. There are no other areas subject to Natural Disasters and Hazards identified on the site.

H. Plan Consistency (LCC 921.872(A))

The proposal would add a 37.1 acre resource site to the inventory of significant aggregate resource sites without conflicting uses; apply the ARO to the property; and authorize a development permit for aggregate extraction and processing on the site. To approve an aggregate inventory Plan amendment, the amendment must be consistent with the intent of the applicable section(s) of the Plan. LCC 921.872(A).

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

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

The procedures and criteria in LCC Chapter 939 implement the Aggregate Resources element of the Plan. This application has been reviewed pursuant to LCC Chapter 939 and is found to be consistent with the Comprehensive Plan.

I. Statewide Planning Goals (LCC92.872(B))

To approve the proposed aggregate inventory Plan amendment, the amendment must be consistent with the statewide planning goals. LCC 921.872(B)

Goal 1: Citizen Involvement. The proposal has been reviewed in public hearings before the Linn County Planning Commission and the Linn County Board of Commissioners. The hearings provided opportunities for citizen involvement. Notice of the hearings was provided to surrounding landowners and concerned citizens in the manner specified in county ordinance and state law. Property owners within 1000 feet of the property and within 1500 feet of the proposed resource site were provided notice. Affected public agencies were also provided written notice. The remand proceedings were appropriately noticed and all parties were given an opportunity to participate. The remand meeting was open to the public and Board deliberations occurred on the record.

Goal 2: Land Use Planning. Linn County has an acknowledged comprehensive plan

and implementing Code. The Plan and Code establish procedures to amend the Linn County Comprehensive Plan, including amendments to the Aggregate Resource Inventory. The County has determined the application is complete and in compliance with Chapter 921 and Chapter 939 of the Linn County Code.

Goal 3: Agricultural Lands. The area is zoned Exclusive Farm Use (EFU). The aggregate resource area is not predominately high-value farmland pursuant to OAR 660-33-0020(8). It is comprised 77% of soils classified as Agricultural Capability Class III through VI. The proposed aggregate resource site is not suitable for agricultural use due to slope and soil characteristics. The reclamation of the property for forestry and wildlife habitat uses is consistent with Goal 3. Therefore, the proposed Plan amendment complies with Statewide Planning Goal 3.

Goal 4: Forest Lands. Goal 4 requires that the county conserve forest land by maintaining the forest land base. ORS 527.722 and OAR 660 Division 6 have been adopted by the Legislature and LCDC to implement Goal 4. OAR 660-006-0025 specifies authorized uses in Goal 4 areas and includes, "mining and aggregate and mineral resources." The proposed Plan amendment would allow mining of a "significant" aggregate resource site consistent with all provisions of state law and local ordinances. The reclamation of the property for forestry and wildlife habitat uses is consistent with Goal 4. Therefore, the proposed Plan amendment complies with Statewide Planning Goal 4.

Goal 5: Open Spaces, Scenic and Historic Areas and Natural Resources. Goal 5 requires that the county protect natural resources and lists mineral and aggregate resources as being subject to Goal 5. The proposed Plan amendment would allow mining of a "significant" aggregate resource site. OAR 660-023-0180 specifies that, "An aggregate resource site shall be considered significant if adequate information regarding the quantity, quality and location of the resource demonstrates that (a) A representative set of samples of aggregate material in the deposit on the sites meets the applicable Oregon Department of Transportation (ODOT) specifications for base rock for air degradation, abrasion and soundness and the estimated amount of material is more than 2,000,000 tons in the Willamette Valley.

The application demonstrates that the aggregate material at the site meets ODOT's specifications and that there is more than 2,000,000 tons of material at the site. Therefore, the site is a significant Goal 5 resource pursuant to OAR 660-023-0180. A one-mile "impact area" around the proposed aggregate resource site has been identified and potential conflicts with existing surrounding uses, potentially permitted uses, and Goal 5 resources have been reviewed and addressed as provided herein. Therefore, the proposed Plan amendment complies with Statewide Planning Goal 5.

Goal 6: Air, Water and Land Resources Quality. Aggregate processing require Department of Environmental Quality (DEQ) permits. The DEQ was provided notice of this proposal. The Applicant has been required (as a condition of approval) to obtain all permits required by DEQ and obtain and maintain all permits necessary for the operation and reclamation of the site. Therefore, the proposed Plan amendment complies with Statewide Planning Goal 6.

Goal 7: Areas Subject to Natural Disasters and Hazards. A small portion of the southeast corner of the proposed aggregate site has been identified in the Environmental Geology of Western Linn County Oregon as being subject to mass movement topography. The record demonstrates that the affected portion of the subject property falls outside of the areas proposed for mining and/or processing operations. Slope stabilization measures during mining and reclamation are regulated by Oregon DOGAMI and are indicated on DOGAMI inspection reports as part of the operating permit and reclamation procedures. The operation will comply with all DOGAMI requirements. There are not other areas subject to Natural Disasters and Hazards identified on the site. Therefore, the proposed Plan amendment complies with Statewide Planning Goal 7.

Goal 8: Recreational Needs. This property is not a planned recreation site. There are no recreational facilities within the impact area. The application complies with Goal 8 to the extent applicable.

Goal 9: Economy of the State. The proposal would permit a 37.1-acres resource site. The quarry provides employment and a supply of aggregate products for local and regional development. The Plan recognizes the importance of aggregate sites to the local economy. The application complies with Goal 9.

Goal 10: Housing. This proposal does not involve the provision of an additional dwelling. The site is in the EFU zone and is surrounded by other resource-zoned land and residential-zoned land. The proposed quarry would provide the types of aggregate products necessary for housing and road construction. The application complies with Goal 10.

Goal 11: Public Facilities and Services. The Lebanon Fire Protection District provides fire protection. Access to the site is from Berlin Road, which is a paved County road. The Linn County Road Department has approved the haul route on nearby County roads and the on-site haul road. Public water and sewer facilities are not a part of this application. The application complies with Goal 11.

Goal 12: Transportation. The site is in a rural residential area and road capacity is more than sufficient. The site operates continuously throughout the day and does not generate a concentrated number of peak hour's trips, either in the morning or in the afternoon. The Board finds that there are no conflicts with local roads. The Roadmaster has submitted a letter concluding that mining at the site, as proposed, will not have significant adverse impacts on county roads. The proposed haul plan included in the submittal to the Linn County Road Department was deemed satisfactory to the Roadmaster.

The proposed quarry expansion will not:

- (a) Change the functional classification of an existing or planned transportation facility (exclusive of correction of map errors in an adopted plan);
- (b) Change standards implementing a functional classification system; or
- (c) As measured at the end of the planning period identified in the adopted transportation system plan:
 - (A) Allow land uses or levels of development that would result in types or

levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;

- (B) Reduce the performance of an existing or planned transportation facility below the minimum acceptable performance standard identified in the TSP or comprehensive plan; or
- (C) Worsen the performance of an existing or planned transportation facility that is otherwise projected to perform below the minimum acceptable performance standard identified in the TSP or comprehensive plan.

Therefore, under Goal 12, the quarry expansion is consistent with current and planned transportation facilities and in compliance with the policies of this Statewide Planning Goal.

Goal 13: Energy Conservation. Economic factors, specifically the energy and capital costs of hauling aggregate, dictate that aggregate resources are normally chosen that are closest to the point of consumption. The primary market for aggregate in this area is for rural uses, such as road construction and maintenance, farm and forest uses, and construction markets in Lebanon, Sweet Home and Albany. Aggregate from this site would promote energy conservation when compared to hauling building materials to these areas from sites farther from the point of consumption. The proposal is consistent with Goal 13.

Goal 14: Urbanization. The subject property is not proposed or available for urbanization, so Goal 14 is not directly affected by the proposal. The local communities of Lebanon, Sweet Home and Albany are typical urban markets for aggregates produced from this site. The proposal supports urbanization by providing building materials that are a necessary component of urbanization in nearby communities. The application complies with Goal 14.

Goal 15: Willamette River Greenway. The property is more than 10 miles from the Willamette River. Goal 15 does not apply.

Goal 16: Estuarine Resources; Goal 17: Coastal Resources; Goal 18: Beaches and Dunes. Linn County does not have any estuaries, coastal shorelines, beaches or dunes. Goals 16, 17, and 18 do not apply in Linn County.

IV. CONCLUSION

The proposal has been reviewed in compliance with all applicable law, including the procedures and criteria in *LCC 939.050* to *LCC 939.200* and *LCC 921.872*. Based on the facts presented in the application materials and in the public hearings, the Board hereby concludes that:


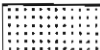

1. A 37.1 acre portion of the subject property is a significant aggregate resource site pursuant to the criteria in *LCC 939.120*
2. The applicant submitted evidence that evaluated potential impacts within one mile of the quarry. The Board found that existing and potential conflicts between

the proposed mining and processing activities and other area land uses have been evaluated within the 1,500-foot impact area. The Board found that there was not factual information to indicate significant potential conflicts beyond this distance.

3. There are no existing or potential conflicts between the proposed mining area and land uses within the impact area that cannot be minimized by the reasonable and practical measures identified as conditions of approval to this decision. The binding Conditions of Approval attached to this Resolution and Order constitute a supplemental, site-specific program to achieve Goal 5 compliance for the site, and ensure all identified conflicts are minimized.
4. The 37.1-acre resource site shall be identified in LCC Chapter 905, Appendix 6, entitled, "Inventory of Significant Sites with All Conflicts Minimized" pursuant to LCC 939.200.
5. The conclusions of the Goal 5 analysis shall be included in LCC Chapter 905, Appendix 6A, entitled "Analysis Justifying a Classification as a Significant Site with All Conflicts Minimized."
6. The zoning map shall be amended to apply the Aggregate Resource Overlay (ARO) to the subject 37.1 acre resource site and to the designated impact area pursuant to LCC 939.200(B).
7. A development permit shall be issued authorizing aggregate mining and processing on the 37.1-acre resource site subject to the applicable provisions of LCC Chapter 921; LCC Chapter 931; LCC Chapter 934; and the conditions of approval specified in this Resolution and Order, and included as Exhibit 2.

Linn County Planning & Building Department



-  taxlots
-  ARO - IMPACT AREA
-  ARO EXTRACTION AREA

BC10-0004 ; WEBER PIT; CONWAY
 13S01W13 00100
 WEBER KENNETH & RENAYE
 84.11 acres



0 350 700 1,400 2,100 2,800 Feet

1 inch = 700 feet

Date: 03/03/2011

Exhibit #
 Page 1 of 1

EXHIBIT 2
Resolution and Order No. 2013-168
Planning File BC10-0004
Conditions of Approval and
Site-specific Program to Achieve Goal 5
Myles Conway; Weber Pit

The following requirements and conditions intended to minimize conflicts with surrounding land uses shall be included in the Comprehensive Plan and shall be incorporated into the mining permit issued for this resource site:

Mining Requirements:

1. The mining, processing and sale of rock produced on-site shall be authorized within the 37.1-acre resource site identified on the Resource Site Map adopted as part of this Resolution, subject to limitations set forth in the development permit. Primary processing activities including drilling, excavating, crushing, blasting, stockpiling and hauling are permitted uses. Asphalt batching is not authorized under this permit.
2. The applicant shall survey and mark the permitted mining area boundary. The survey must be conducted by a registered land surveyor and the resulting survey coordinates must be capable of being converted to the state plane coordinate system. The permitted mining boundary and setbacks (property line, river, and north boundary of pasture) must be marked and clearly visible to equipment operators. Other features, such as processing areas, stockpiles, access roads and excavation boundaries must be staked.
3. The applicant shall maintain an excavation setback from property lines of no less than 75-feet.
4. Aggregate extraction may occur year-round, in conformance with these conditions and other applicable law.
5. The operator shall obtain and maintain all permits necessary for operation and reclamation of the site. Prior to commencing mining operations, the operator shall submit to the County:
 - A. A copy of a DOGAMI approved operating permit and reclamation plan for the site;
 - B. Relevant documents demonstrating that the operator's DOGAMI reclamation bond is in full force and effect;
 - C. Copies of any and all NPDES, Fill and Removal, or other state or federal permits required for operation of the facility.
6. The aggregate site shall comply with the applicable noise standards regulated by the Department of Environmental Quality.
7. The applicant shall obtain and maintain a current permit from the Department of Environmental Quality.
8. The operation shall at all times remain in compliance with the Aggregate Site standards in LCC 934.350-359.
9. The applicant shall obtain and maintain a current permit from the Oregon Department of Geology and Mineral Industries (DOGAMI). A copy of the permit, approved

reclamation plan and performance bond shall be provided to the Planning and Building Department prior to establishing the mining operation.

10. The post-mining use of the site shall be forestry, fish and wildlife habitat, consistent with the provisions of the DOGAMI approved Reclamation Plan, the Linn County Comprehensive Plan and implementing ordinances, and state law.
11. All buildings and structures used in conjunction with this quarry shall comply with the applicable provisions of the Linn County Development Code.
12. All lighting used on the resource site shall be shielded to cast light downward and shall be arranged so as not to shine the light directly towards other properties.
13. Applicant shall comply with all requirements found in Linn County Code Chapter 921.541-921.546 & 934.350 – 934.359.

Measures to Minimize Conflicts:

1. The applicant shall retain the forested area located between the resource site and dwellings within the impact area, to act as a buffer between the quarry and nearby land uses.
 2. The authorized mining and processing activities shall be permitted Monday – Friday, 6:30am – 6:30pm, and 9:00am – 5:00pm on Saturday's. Mining and processing activities shall not be permitted on Sundays or any of the following holidays; New Year's Day, Memorial Day; the Fourth of July; Labor Day; Thanksgiving Day or Christmas Day.
 3. Rock crushing is authorized Monday – Friday only, 8:00am – 5:00pm.
 4. Blasting shall occur only between the hours of 10:00am – 4:00pm, Monday through Friday. Drilling shall be limited to the hours of 8:00am – 5:00pm, Monday through Friday. Written notice of blasting shall be provided to the residents of properties within 1500-feet of the approved Aggregate Resource Overlay (ARO) boundary. Notice letters shall be postmarked at least four days prior to blasting and shall indicate the date and estimated time of the scheduled blast. Any alteration to the blast schedule shall require a minimum 24 hour notice by mail, phone or hand-delivered to each residence within that notice area.
 5. Asphalt batching is not authorized under this permit.
 6. The blasting at the quarry shall be designed and conducted in a manner which will not cause damage to surrounding properties. To ensure that safe ground vibration and air shock levels, based on accepted industry standards, are not exceeded, each blast at the quarry shall include seismographic monitoring and analysis at selected locations on surrounding properties. A minimum of three locations on nearby properties shall be monitored during each blast. The quarry operator shall be responsible to ensure the seismographic monitoring requirements are carried out. The quarry operator shall be responsible to ensure the seismographic monitoring requirements are carried out. Measured ground vibration during blast shall not exceed 0.3 inches per second (ips) at any well or building foundation in the vicinity of the quarry. The measured peak air over pressure (air blast) shall not exceed United States Bureau of Mines guidelines of 134 decibels (db) at any location on or around the quarry. Blasting will not exceed 125 pounds of explosive per delay. After each blast the seismographic report shall be provided to the Linn County Planning and Building Department.
 7. When in the interest of the public the Linn County Board of Commissioners shall adjust blasting operations to reflect the latest and best safety regulations, expertise and technology in the mining field.
-

8. The applicant shall develop an adequate truck circulation and parking areas to accommodate all trucks entering and leaving the property. Trucks shall not park within the public right-of-way.
9. The planning director may grant an exception allowing additional hours of operation upon a demonstration that such hours are needed to address damage to public roads or structures that require immediate repair; or road construction or repair that is scheduled during nighttime hours or weekends to reduce traffic conflicts.
10. The applicant shall use water or another dust palliative conforming to DEQ standards to mitigate dust on the stockpiles, on-site haul roads and vehicle circulation areas as needed.
11. The following restrictive covenant shall be made part of the chain of title to the 84.11-acre parcel:

Grantees and their heirs, legal representatives, assigns and lessees hereby acknowledge by the placement of this covenant, or the acceptance and recording of this instrument, that the property herein described is situated in a Exclusive Farm Use zoning district of Linn County, Oregon. As such, they may be subjected to common, customary and accepted farm or forest management activities for the operation of a commercial farm or forest that includes management and harvesting of agricultural products or timber, disposal of slash, reforestation, application of chemicals, road construction and maintenance, and any other accepted and customary farm or forest management activity conducted in accordance with federal and state laws. The above practices ordinarily and necessarily produce noise, dust, smoke and other types of visual, odor or noise impacts which grantees accept as normal and necessary forming or forestry management activities and as part of the risk of building a residential dwelling in a Exclusive Farm Use zoning district.

12. Prior to the issuance of development permits or operation of the mining area, the applicant shall supply proof that the deed covenant has been incorporated into the deed and recorded in the Linn County Clerk's Office.
13. The applicant shall comply with all requirements of the Linn County Road Department.

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR LINN COUNTY

IN THE MATTER OF AMENDING THE)	ORDINANCE NO. 2013-169
LINN COUNTY COMPREHENSIVE)	(Amending Code)
PLAN TEXT; THE LINN COUNTY)	(Planning & Building Department)
ZONING MAP; AND AMENDING)	(BC10-0004)
<u>ORDINANCE NO. 2012-226</u>)	

WHEREAS, Myles Conway, of Schwabe, Williamson & Wyatt, PC et al filed an application for a *Comprehensive Plan* text amendment and zoning map amendment to amend the *Comprehensive Plan* text to include a 37.1-acre portion of the property identified as Tax Lot 100 on Assessor map T13S, R01W, Section 13, in the inventory of significant aggregate resource sites with all conflicts minimized; amend the Zoning Map to apply the Aggregate Resource Overlay (ARO) to the resource site; and permit the mining and processing of aggregate on the property;

WHEREAS, Following public review, on April 19, 2011, the Board of County Commissioners for Linn County (the Board) adopted Resolution and Order No. 2011-101 and Ordinance No. 2011-102, approving the applications;

WHEREAS, The April 19, 2011, Board decision in this matter was appealed to the Land Use Board of Appeals (the LUBA);

WHEREAS, The LUBA granted a voluntary remand on October 27, 2011 (*David Poto, Gilbert Davis and Richard Ball v. Linn County*, LUBA No. 2011-044);

WHEREAS, Following public review, on August 15, 2012, the Board adopted Resolution and Order No. 2012-225 and Ordinance No. 2012-226, approving the applications with additional findings;

WHEREAS, The August 15, 2012, Board decision in this matter was appealed to the LUBA;

WHEREAS, The LUBA issued its Final Opinion and Order on March 12, 2013, remanding the Board decision in this matter, limited to a single assignment that the County must make additional findings related to batching aggregate on the property (*David Poto, Gilbert Davis, and Richard Ball et. al. v. Linn County*, LUBA No. 2012-065), which decision was not appealed;

WHEREAS, Applicant requested a remand hearing before the Board and requested the Board amend its prior decision to remove any related findings and authorization to seek future County approval to operate on asphalt batching plant on the subject property;

WHEREAS, On June 26, 2013 the Board held a duly noticed public hearing on remond to consider written testimony limited to the single issue on remond;

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

WHEREAS, The findings in support of this decision to approve the proposed Comprehensive Plan Text amendment, Linn County zoning map amendment, and Aggregate Mining Development permit are attached to Resolution and Order No. 2013-168 and entitled Exhibit 1, (BC10-0004 Decision Criteria, Findings and Conclusions);

WHEREAS, The measures to minimize identified conflicts and to supplement the County's program to achieve Goal 5 compliance for the Weber Site are attached to Resolution and Order No. 2013-168 and entitled Exhibit 2 (Resolution and Order No. 2013-168 Planning File BC10-0004; Conditions of Approval and Site-specific Program to Achieve Goal 5; Weber Site); and now, therefore, be it

Ordained by the Linn County Board of Commissioners, That:

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

5514 Wildish Corvallis/Weber T13S R01W S13, TL 100

Section 2. Text Amendment. The Linn County Comprehensive Plan, LCC Chapter 905 Appendix 6, entitled *Inventory of Significant Sites With All Conflicts Minimized*, be amended to add the following subsection and text:

6006 Weber Pit T13S R01W S13, TL 100; Acreage: 37.1 acres

Section 3. Text Amendment. The Linn County Comprehensive Plan, LCC Chapter 905 Appendix 6A, entitled *Analyses Justifying a Classification as a Significant Site With All Conflicts Minimized*, be amended to add the following subsection and text:

905.6006 Weber Pit

(A) Goal 5 analysis.

(1) Findings of Fact.

The findings of fact in support of this resource site analysis are contained in Resolution and Order No. 2013-168. 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 BC10-0004.

(2) Inventory Information.

- (a) The resource site is a 37.1-acre portion of an 84.11-acre property identified on Linn County Assessor maps as T13S R01W S13, TL 100. The site is in an Exclusive Farm Use zoning district, and located on the east side of Berlin Road at its intersection with Skyline Road, Sweet Home. The 37.1-acre extraction area added to the inventory is a new Goal 5 resource site and processing facility, located at 28827 Berlin Road, Sweet Home, Oregon.
- (b) The area added to the inventory contains an estimated 2,968,000 tons, of aggregate material that meets the Oregon Department of Transportation (ODOT) specifications for base rock for air degradation, abrasion, and sodium sulfate soundness. The average thickness of the aggregate layer is 125 feet. The 37.1-acre aggregate resource site is a significant site as set forth in the *Comprehensive Plan* and the Goal 5 rule for aggregate.

(c) *Impact Area*

To determine conflicts associated with the proposed mining of this resource site, an impact area including land within 1500 feet from the boundaries of the site is adopted.

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

- (1) The analysis of the truck haul route, the intersection between Berlin Road and the interior haul road, and the Traffic Impact Analysis shows the truck haul route will have no significant impact to Linn County roads. The operator is required to improve the access and driveway to minimize the dust and tracking onto Berlin Road. These measures minimize conflicts identified with the haul road due to noise, dust or other discharges are minimized.
- (2) The property is a new noise source on a previously unused site. The operator shall meet DEQ noise standards for all noise sensitive uses in the impact area. The operator shall retain the existing vegetative buffer on the southern portion of the property as long as the aggregate resource area is active.
- (3) The findings adopted in Resolution and Order No. 2013-168 establish that all identified potential conflicts with the Weber Pit are prevented or minimized by the adopted measures to minimize conflicts which are included in the County's program to achieve Goal 5 protection for the site. Mining at this site, as permitted, will not cause significant conflicts with any land uses that are sensitive to noise, dust, or other discharges when mining is conducted in compliance with the adopted measures to minimize conflicts.

All potential conflicts are minimized such that they are not significant.

Potential dust conflicts with dwellings within the impact area are minimized through applications of water and dust palliatives on the site as necessary to prevent the generation of fugitive dust and meet DEQ nuisance standards. Potential noise impacts are minimized by maintaining the required vegetative buffers and by meeting DEQ noise standards.

To minimize potential conflicts with the existing planted vineyard located within two miles of the quarry, batching is not approved under this Goal 5 review. The Goal 5 resource is not exempt from ORS 215.301.

(C) *Other Potential 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) No existing or potential conflicts with agricultural practices are identified.
- (5) Blasting Activity

The conflict analysis identified potential conflicts between blasting at the resource site and surrounding land uses within the impact area. Potential impacts to residential uses and domestic water wells were identified and analyzed.

The findings and conclusions adopted in Resolution and Order No. 2013-168, Exhibit 1, establish that potential noise and vibration impacts to residential uses and area aquifers associated with blasting activity at the resource site are minimized through the application of the operating conditions set forth in the Goal 5 review and associated mining permit.

(D) Measures to Minimize Identified Conflicts

Potential conflicts are identified with some residential uses within the 1500-foot impact area boundary. Resolution and Order No. 2013-168 includes reasonable and practicable measures that will ensure all existing and potential conflicts are minimized. The development permit to mine the site shall require compliance with all the conditions and requirements set forth in Resolution and Order No. 2013-168.

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; by the provisions set forth in this resource site analysis; and by the measures to minimize conflicts adopted in Resolution and Order No. 2013-168.

(E) Post-mining Use and Reclamation.

The proposed post-mining use is farm use and wildlife habitat.

(F) *Potential Future Conflicting Uses.*

The mining operation is designed and permitted to eliminate or minimize all potential conflicts with surrounding uses such that they are not significant. New uses permitted within the identified impact area will not be significantly impacted by extraction area activities and will not significantly impact approved mining activities. Land uses within the impact area are not restricted beyond limitations otherwise contained in the Plan and land development code. The plan establishes conditions for operations within the mining area to prevent impacts to existing and potential future uses within the impact area.

Section 3. Map Amendment. Appendix 1, Zoning map, following LCC Chapter 920 [see LCC 920.010(B)] be amended to apply the Aggregate Resource Overlay (ARO) mining area designation to the significant 37.1-acre resource site identified as portions of Linn county Assessor maps T13S R01W S13, TL 100. (Exhibit 1)

Section 4. Map Amendment. Appendix 1, Zoning map, following LCC Chapter 920 [see LCC 920.010(B)] be amended to designate the land that is within 1500 feet of the identified ARO mining area boundaries as Aggregate Resource Overlay (ARO) impact area, with no additional restrictions other than those established by existing code. (Exhibit 1)

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

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

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

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

Public reading held June 26, 2013.

Adopted and passed June 26, 2013.

The effective date of this Ordinance shall be June 26, 2013.

BOARD OF COUNTY COMMISSIONERS FOR LINN COUNTY

Signed June 26, 2013

ABSENT

Voting
For Against

Steve Druckenmiller,
Linn County Clerk
Recording Secretary

By [Signature]

[Signature]
Roger Nyquist, Chairman

[Signature]
John K. Lindsey, Vice Chairman

[Signature]
William Tucker, Commissioner

Voting	For	Against
Chairman	X	
Vice Chairman		
Commissioner	X	

APPROVED AS TO CONTENT:

Robert Wheeldon
Robert Wheeldon
Director, Linn County Planning and Building

APPROVED AS TO FORM:

Eugene Karandy For:
Eugene Karandy
Linn County Legal Counsel

Linn County Planning & Building Department



- taxlots
- ARO - IMPACT AREA
- ARO EXTRACTION AREA

BC10-0004 ; WEBER PIT; CONWAY
13S01W13 00100
WEBER KENNETH & RENAYE
84.11 acres



0 350 700 1,400 2,100 2,800 Feet
1 inch = 700 feet

Date: 03/03/2011

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JUN 27 2013

LAND CONSERVATION
AND DEVELOPMENT

LD BUILDING DEPARTMENT
COUNTY COURTHOUSE
P.O. BOX 100
ANY, OREGON 97321

DLCD
Planning Manager
635 Capitol St. NE. Ste. 150
Salem, OR 97301-2540