



Oregon

John A. Kitzhaber, M.D., Governor

Department of Land Conservation and Development

635 Capitol Street NE, Suite 150

Salem, Oregon 97301-2540

Phone: (503) 373-0050

Fax: (503) 378-5518

www.oregon.gov/LCD



NOTICE OF ADOPTED CHANGE TO A COMPREHENSIVE PLAN OR LAND USE REGULATION

Date: 08/12/2014
Jurisdiction: Umatilla County
Local file no.: Z-300-14 & T-14-052
DLCD file no.: 001-14

The Department of Land Conservation and Development (DLCD) received the attached notice of adopted amendment to a comprehensive plan or land use regulation on 08/06/2014. A copy of the adopted amendment is available for review at the DLCD office in Salem and the local government office. This amendment was submitted without a signed ordinance.

Notice of the proposed amendment was submitted to DLCD 35 days prior to the first evidentiary hearing.

Appeal Procedures

Eligibility to appeal this amendment is governed by ORS 197.612, ORS 197.620, and ORS 197.830. Under ORS 197.830(9), a notice of intent to appeal a land use decision to LUBA must be filed no later than 21 days after the date the decision sought to be reviewed became final. If you have questions about the date the decision became final, please contact the jurisdiction that adopted the amendment.

A 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).

If the amendment is not appealed, it will be deemed acknowledged as set forth in ORS 197.625(1)(a). Please call LUBA at 503-373-1265, if you have questions about appeal procedures.

DLCD Contact

If you have questions about this notice, please contact DLCD's Plan Amendment Specialist at 503-934-0017 or plan.amendments@state.or.us

If the comprehensive plan map change is a UGB amendment including less than 50 acres and/or by a city with a population less than 2,500 in the urban area, indicate the number of acres of the former rural plan designation, by type, included in the boundary.

Exclusive Farm Use – Acres:	Non-resource – Acres:
Forest – Acres:	Marginal Lands – Acres:
Rural Residential – Acres:	Natural Resource/Coastal/Open Space – Acres:
Rural Commercial or Industrial – Acres:	Other: – Acres:

If the comprehensive plan map change is an urban reserve amendment including less than 50 acres, or establishment or amendment of an urban reserve by a city with a population less than 2,500 in the urban area, indicate the number of acres, by plan designation, included in the boundary.

Exclusive Farm Use – Acres:	Non-resource – Acres:
Forest – Acres:	Marginal Lands – Acres:
Rural Residential – Acres:	Natural Resource/Coastal/Open Space – Acres:
Rural Commercial or Industrial – Acres:	Other: – Acres:

For a change to the text of an ordinance or code:

Identify the sections of the ordinance or code that were added or amended by title and number:

Add a significant aggregate resource site to the Goal 5 list in the Comprehensive Plan.

For a change to a zoning map:

Identify the former and new base zone designations and the area affected:

Change from EFU	to EFU/AR Overlay	Acres: 33
Change from	to	Acres:
Change from	to	Acres:
Change from	to	Acres:

Identify additions to or removal from an overlay zone designation and the area affected:

Overlay zone designation: AR Overlay Acres added: 33 Acres removed:

Location of affected property (T, R, Sec., TL and address): 5N 36 07

List affected state or federal agencies, local governments and special districts: Department of Agriculture; DOGAMI; OWRD; ODOT Region 5; County Assessor; County Public Works; Walla Walla Watershed Council; Milton Freewater School District; CTUIR; DEQ; City of Milton Freewater.

Identify supplemental information that is included because it may be useful to inform DLCD or members of the public of the effect of the actual change that has been submitted with this Notice of Adopted Change, if any. If the submittal, including supplementary materials, exceeds 100 pages, include a summary of the amendment briefly describing its purpose and requirements.

A copy of the Final Findings is attached. The Board Ordinance will be submitted separately.

**UMATILLA COUNTY BOARD OF COMMISSIONERS
FINDINGS AND CONCLUSIONS
ZONE MAP AMENDMENT REQUEST, #Z-300-14
PLAN TEXT AMENDMENT REQUEST, #T-14-052
MAP #5N 36 07, TAX LOT #200, Account #134106**

1. APPLICANT: A & B Asphalt¹
PO Box 5280
Benton City, WA 99320

2. OWNER: James Spence Properties
510 West Main Street
Walla Walla, WA 99362

3. REQUEST: The request is to add 33.26 acres of land to the acknowledged County Goal 5 Rock Material Resources Inventory (RMRI) of the Comprehensive Plan. This RMRI is the County's Goal 5 significant aggregate resource site inventory. The proposal is also to implement the RMI designation by applying the County Aggregate Resources Overlay Zone (ARZO) to the 33.26 acres. As relevant here, there are 9.83 acres abutting the 33.26 acres to be added to the RMRI to the west, and these 9.83 acres are already on the County RMRI.² Since these 9.83 acres are already on the RMRI, there is no reason to add them to the RMRI.³ The 33.26 acres proposed to be added to the County RMRI includes three areas:

1. A 14.15 acre portion of an existing quarry site⁴ approved for mining under County conditional use permits (CUPs) C-333 (1984) and C-479 (1987).⁵ Some of the 14.15 acre area has been mined and some has not been mined and all of the 14.15 acre area is still being mined. Mining is proposed to continue or begin anew, as applicable, on all of this 14.15 acres. None of this area is on the existing County RMRI.
2. A 7.47 acre area composed of a half arc around the above area. This 7.47 acre area is outside the above referenced CUP areas and outside of the existing RMRI area.
3. 11.64 acres of land to the north of the areas described above. This 11.64 acre area is also outside of the CUP areas described above and is not on the existing RMRI.

A map showing the areas to be added to the RMRI is attached to the application. The proposal to add the 33.26 acre areas described above to the County's RMRI

1 While A & B Asphalt is the applicant, this approval is not personal to A & B and will run with the land.

2 These 9.83 acres are also approved for mining and processing under two County conditional use permits – C-333(1984) and C-479 (1987).

3 It is noted here that about 30 acres is approved for mining and processing under a 1984 conditional use permit (C-333). This 30 acres includes the 9.83 acres on the RMRI, plus the 14.15 acres described in Section 1 below and other acres to the west of the proposed area that not included or at issue in, this application.

4 The existing quarry site is called the "Spence Pit".

5 Those CUPs, issued years ago are not at issue in this decision.

is designed to protect and support mining in and around the existing pit and in specific areas outside the scope of the existing CUPs for the existing pit. Conducting mining operations pursuant to a Goal 5 designation as a significant site on the County's RMRI provides more protection and certainty for the aggregate operator than a site not on the RMRI.

4. **LOCATION:** The property is located east of the Walla Walla River Road, approximately ¼ mile from the city of Milton-Freewater.
5. **SITUS:** There is no situs address for this property.
6. **ACREAGE:** Tax Lot 200 is 286.79 acres.
7. **COMP PLAN:** TL 200 has the North/South Agricultural Region Plan Designation. There is an existing RMRI designation on a part of TL 200. The existing RMRI on TL 200 is described as T5N R36E 7 SW ¼ of the SW ¼ and is designated as a "2A" site. This means this RMRI area was determined by the County to be a "significant site with no conflicting uses identified". The 9.83 acres is the only developed part of the "Spence Pit" that is within the existing RMRI area. The proposed 33.26 acre area to be added to the RMRI is not within, but rather abuts, this ¼ section area described above as a "2A" site.
8. **ZONING:** Exclusive Farm Use (EFU, 160 acre minimum).
9. **ACCESS:** The property has access to Walla Walla River Road (Co. Rd. No.610) via a private roadway.
10. **ROAD TYPE:** Walla Walla River Road, (No.610), is a paved County roadway.
11. **EASEMENTS:** There is a natural gas line easement on TL 200. The specific location of the easement is identified on the county property owner notice map. The natural gas line transects TL 200 from north to south, approximately in the middle of the existing approved quarry area. The proposed RMRI amendment does not include, and is to the east of, this natural gas line easement.
12. **LAND USE:** TL 200 is used for agricultural purposes (dry land wheat farming) and also includes the approved quarry, asphalt batch plant and rock crusher operations. The area of the subject TL 200 property where the asphalt batch plant is situated is on the part of the property that is on the existing County RMRI and this asphalt plant is approved as "processing" approved under CUP C-333 and also specifically by CUP C-479 (1987) and is not a part of this application.
13. **ADJACENT USE:** Properties surrounding TL 200 are also zoned EFU, and are used in similar ways to the subject property – dryland wheat farming. Abutting the west TL 200 boundary is the Milton-Freewater Urban Growth Boundary. A small portion of the west boundary of TL 200 abuts a rural residential area with home sites. To the west approximately 1,500 feet from the TL 200 boundary is the

Milton-Freewater City Limits.

Adjacent land uses to the subject 33.26 acres, are dryland wheat farming to the north, south and east and mining (on the existing 9.83 acre RMRI site) to the west. No residences or residential zones abut the 33.26 acre area subject to the application.

14. SOIL TYPES: The subject property contains non-high value and high value soil types. High Value Soils are defined in UCDC 152.003 as Land Capability Class I and II.

Soil Name, Unit Number, Description	Land Capability Class	
	Dry	Irrigated
61C: Oliphant silt loam, 3-12% slopes	IIe	IIe
50F: Licksillet- rock outcrop complex, 40-70% slopes ⁶	7e	--

Soil Survey of Umatilla County Area, 1989, NRCS⁷. The suffix on the Land Capability Class designations are defined as “e” – erosion prone, “c” – climate limitations, “s” soil limitations

15. STRUCTURES: There is an office and scale house to the west of the proposed 33.26 acre RMRI area, within the existing 9.83 acre RMRI area. There is also an asphalt plant located within the existing 9.83 acre RMRI area. The office, scale house and asphalt plant are currently approved through the existing county RMRI and also conditional use permits (C-333 and C-479) and so need not be included as a part of this application.

There is a portable rock crusher located in the existing CUP quarry area in the 14.17 acre area or the part of the proposed mining area referred to in this process as “Area B.” A graphic showing the mining areas is below for reference.

⁶ These soils are referred to in these findings as “Licksillet”.

⁷ This is the NRCS map that is now, and that was in 2004, “currently available.” OAR 660-023-0180(3)(c)(B).



Because the 14.17 acre area (which roughly includes most of areas C and B), a portion of the 33.26 acres to be added to the RMRI, is not on the existing RMRI, this area containing the portable rock crusher is included in the RMRI amendment approved herein. The crusher is “re-justified” here as the applicant seeks to add the area on which it is situated to the RMRI and this means all parts of the proposed RMRI must establish compliance with OAR 660-023-180.

16. UTILITIES: The parcel is served with electrical power.

17. WATER/SEWER: There are no water rights associated with the proposed operation. There is a domestic well that supplies water for the office and for dust control. The domestic well is considered an “exempt” use and may be used to supply up to 5,000 gallons of water per day for these purposes without a water right. The applicant will also maintain three 10,000 gallon water tanks on-site to store non potable water to aid in dust control. Auxiliary water may be purchased from the City of Milton-Freewater as needed. The applicant estimates daily peak demand of about 6,000 gallons of water per day. There is adequate water available to serve the site.

There is no sewer available to serve the property. The property is served by an on-site septic system.

18. RURAL FIRE: The property is served by the Milton-Freewater rural fire district and is within

the Milton-Freewater Ambulance Service District. A condition of approval requires evidence that the applicant establish and maintain a subscription to the fire district.

- 19. IRRIGATION:** The property is not within an irrigation district. As noted, there are no known water rights permitted by the Oregon Water Resources Department for this operation.
- 20. FLOODPLAIN:** The property is NOT in a floodplain. The property is found in Zone D (“Undetermined flooding”) which is NOT a special flood hazard. The Community Number for Umatilla County is #41059C and the Panel Number that covers this area is #0575-G effective September 3, 2010. The Panel is not printed.
- 21. NOTICES SENT:** Notice was sent on February 20, 2014 to the Department of Land Conservation & Development and to affected agencies. Notice to adjacent property owners was sent on March 14, 2014 for the Planning Commission hearing and on May 31, 2014 for the Board of Commissioners Hearing. The notice area map includes all properties located within 750 feet of the subject property (tax lot 200) and all properties within 1,500 feet of the proposed RMRI area. All properties within the two boundaries were provided notice.
- 22. PUBLIC HEARINGS:** The Umatilla County Planning Commission conducted two hearings on the application. One hearing was on Thursday, March 27, 2014 and the other was on April 24, 2014. The Planning Commission deliberated on April 24, 2014 and recommended approval of the application subject to specific conditions, to the Board of Commissioners. The Board of Commissioners conducted their hearing on the matter June 11, 2014. After closing the hearing, the Board of Commissioners deliberated and voted to approve the proposal subject to the Planning Commission’s recommended conditions of approval.
- 23. AGENCIES:** Department of Land Conservation and Development, Department of Agriculture, Department of Geology and Mineral Industries, Oregon Water Resource Department, Oregon Department of Transportation, County Assessor, County Public Works, Walla Walla Watershed Council, City of Milton-Freewater, Milton-Freewater School District, Confederated Tribes of the Umatilla Indian Reservation, Department of Natural Resources.
- 24. COMMENTS/EXHIBITS:** A list of the exhibits placed before the Planning Commission and the Board of County Commissioners is listed at the end of these findings. No offered evidence was rejected. Rather, all evidence submitted to the decision makers was accepted.
- 25. STANDARDS OF THE OREGON ADMINISTRATIVE RULES, DIVISION 23 FOR GOAL 5 LARGE SIGNIFICANT SITES** are found in OAR 660-023-0180 (3), (5), & (7). The standards for approval are provided in underlined text and the responses are indicated in standard text. The UCO Aggregate Resource Zone standards in UCD 152.485-491 also apply to the extent they are not

inconsistent with the requirements and authorizations in OAR 660-023-180.

Because the Umatilla County Development Code has not been updated to incorporate the OAR 660-Division 23 Rules relative to Goal 5 Aggregate Resources, OAR 660-023-0180 to establish a Goal 5 Large Significant Site is required to be applied directly to this application per OAR 660-023-180 (9). The AR zone also requires compliance with applicable portions of OAR 660-023-180. UCO 152.487(5).

Summary/Overview of Goal 5 Process for Significant Aggregate Sites

There are seven steps in the Goal 5 process applicable to mining.

Step One

The first step is to decide whether the aggregate resource⁸ site to be added to the RMRI is “significant”.

To decide whether an aggregate resource site is significant (and thus can be added to the County’s RMRI), the County must apply OAR 660-023-0180(3) or (4). OAR 660-023-180(4)(a) authorizes a site to be determined to be significant if the material quantity in the site to be added to the RMRI is below 500,000 tons and is of a lesser quality than required for OAR 660-023-0180(3).⁹ The material in the 33.26 acre area to be added to the RMRI exceeds both thresholds. It is noted that OAR 660-023-180(4)(c) also authorizes a site to be determined to be significant regardless of quantity and quality if:

“A local land use permit that allows mining on the site was issued prior to April 3, 2003, and the permit is in effect at the time of the significance determination.”

Regarding this provision, the County notes that prior to April 3, 2003, while the County had not added the 14.15 acres to the RMRI, the county had issued C-333 (1984) which authorized mining and processing on 30 acres including the 14.15 acres to be added to the RMRI. The evidence in the record establishes that there is between 400,000 and 500,000 tons of rock meeting the quality requirements of OAR 660-023-0180(3)(a) in the 14.15 acre portion of the 33.26 acres to be added to the RMRI alone and, more than 500,000 tons of rock meeting the quality and quantity standards in the 33.26 acre area overall. Therefore, for simplicity the County determines the significance of the 33.26 acre area to the RMRI based on OAR 660-023-180(3), and not (4).

OAR 660-023-0180(3) requires an aggregate site¹⁰ to be considered “significant” if the applicant shows

⁸ OAR 660-023-0180(1)(a) defines the term “aggregate resources” as follows: (a) “‘Aggregate resources’ are naturally occurring concentrations of stone, rock, sand gravel, decomposed granite, limestone, pumice, cinders, and other naturally occurring solid materials commonly used in road building or other construction.” The proposed 33.26 acre significant site is evaluated as a basalt resource area and basalt is commonly used in road building and other construction. This staff report, like the administrative rule, refers to this basalt resource as an “aggregate resource.”

⁹ OAR 660-023-0180(4)(b) also includes the requirement found in OAR 660-023-180(3)(b) that the area to be added to the RMRI is composed of not more than 35% Class 1 or 2 soils.

¹⁰ This is an aggregate site because it has “aggregate resources.” OAR 660-023-0180(1)(a) defines the term “aggregate resources” as follows: (a) “‘Aggregate resources’ are naturally occurring concentrations of stone, rock, sand gravel, decomposed granite, limestone, pumice, cinders, and other naturally occurring solid materials commonly used in road building or other construction.” The proposed 33.26 acre significant site is evaluated as a basalt resource area and basalt is commonly used in road building and other construction. This staff report, like the administrative rule, refers to this basalt resource as an “aggregate resource.”

that the quantity and quality of material meets certain quantity and quality standards and that the “proposed mining area” added to the RMRI is not composed of more than 35% soil classified as Class 1 or 2 on NRCS mapping. The OAR 660-023-180(3) quantity and quality standards are:

“(3)(a) A representative set of samples of aggregate material in the deposit on the site meets applicable Oregon Department of Transportation (ODOT) specifications for base rock for air degradation, abrasion, and soundness, and the estimated amount of material is more than * * * 500,000 tons outside the Willamette Valley.”¹¹

It is explained later in these findings that the material in the 33.26 acre area to be added to the RMRI meets the quantity and quality standards and is not composed of more than 35% Class I or II soils. Therefore, the area to be added to the RMRI under the proposal is required to be considered “significant.”

Step Two

If, as here, the aggregate resource on the proposed RMRI site is determined to be “significant,” then the second step in the process is to decide the scope of the “impact area” for purposes of evaluating whether there are “conflicts” from allowing mining on sensitive uses within the identified impact area. This conflicts analysis falls under the third step in the process.

Location from Which the Rule Requires Impacts Be Measured

OAR 660-023-0180(5) limits the area in which impacts may be evaluated and the types of impacts that may be evaluated in that area. OAR 660-23-0180(5)(a) establishes that impacts may only be evaluated from the perimeter of the area to be added to the RMRI. In a situation like this one where there is an abutting mine already on the RMRI, the rule states that the impact area is drawn from the expanded area to be added to the RMRI and does not take in the area already on the RMRI:

“For a proposed *expansion of an existing aggregate site*, the impact area shall be measured from the *perimeter of the proposed expansion area* rather than the boundaries of the existing aggregate site and *shall not include the existing aggregate site.*” (Emphases supplied.)

Relatedly, OAR 660-023-0180(5)(g) establishes:

“Local governments shall allow a currently approved aggregate processing operation at an *existing site* to process material from a new or *expansion site* without requiring a reauthorization of the existing processing operation unless limits on such processing were established at the time it was approved by the local government.” (Emphases supplied.)

The existing asphalt plant is located on the existing 9.83 acre area already on the RMRI. Therefore, if mining is allowed, then the County is required to allow that asphalt plant to be used to process material in the RMRI expansion area (the 33.26 acres) without subjecting the 9.83 acres already on the RMRI to

¹¹ OAR 660-023-180(3)(b) provides an alternate to this quality and quantity requirement as follows:

“(b) The material meets local government standards establishing a lower threshold for significance than subsection (a) of this section.” The County has not adopted any such alternative standards.

an impact or other analysis.

This follows from the definition of an “existing site” (which is excluded from the impact analysis area) in OAR 660-023-0180(1)(c) which means a site that “was included on an inventory of significant aggregate sites in an acknowledged comprehensive plan, on September 1, 1996” or one that was not on the inventory but was “lawfully operating” on that date. As explained later in these findings, only the 9.83 acres (not to be added again to the RMRI) was on the county’s acknowledged Goal 5 inventory of significant sites on September 1, 1996. However, it is also true that no part of the “Spence Pit” was “lawfully operating” on the requisite date because between July 23, 1996 and November 5, 1996 the site here was under a DOGAMI “Closure Order”.¹² The DOGAMI Closure Order expressly states:

“No further extractive mining activity or processing or removal of stockpiled material may be conducted at this site in the absence of a valid operating permit.”

Thus it is impossible that the site was “lawfully operating” on September 1, 1996 because DOGAMI had forbidden it from operating on that date. Thus, per the express terms of the rule, the 33.26 acres proposed to be added to the RMRI, is an “expansion area” of the 9.83 acre “existing site”. In this regard, OAR 660-023-0180(1)(d) defines “expansion area” to mean “an aggregate mining area contiguous to an existing site.”

The Scope of the Impact Analysis Area

OAR 660-023-180(5)(a) specifies the scope of the impact area, as follows:

“The impact area shall be large enough to include uses listed in subsection (b) of this section and shall be limited to 1,500 feet from the boundaries of the mining area, except where factual information indicates significant potential conflicts beyond this distance. For a proposed expansion of an existing aggregate site, the impact area shall be measured from the perimeter of the proposed expansion area rather than the boundaries of the existing aggregate site and shall not include the existing aggregate site.”

As noted, OAR 660-023-180(1)(c) defines “Existing Site” as follows:

“(c) ‘Existing site’ is an aggregate site that meets the requirements of subsection (3)(a) of this rule and was lawfully operating, or was included on an inventory of significant aggregate sites in an acknowledged plan, on September 1, 1996.”

As explained in greater detail below, per these requirements, the impact analysis area is drawn 1,500 feet from the boundaries of the 33.26 acre area to be added to the RMRI and does not include the 9.83 acre area that is already on the RMRI. As is also explained below, the Board of Commissioners finds that there is no “factual information [that indicates] significant potential conflicts beyond this distance.”

THIRD STEP

The third step in the analysis is to determine whether there are “significant conflicts” within the impact area.

¹² Birch Creek had the subject site at the time.

Impacts Considered in the 1500 foot Impact Area

OAR 660-0123-0180(5)(b) explains the types of conflicts that may be considered, as follows:

“The local government shall determine existing or approved land uses within the impact area that will be adversely affected by proposed mining operations and shall specify the predicted conflicts. For purposes of this section, ‘approved land uses’ are dwellings allowed by a residential zone on existing platted lots and other uses for which conditional or final approvals have been granted by the local government. For determination of conflicts from proposed mining of a significant aggregate site, the local government shall limit its consideration to the following:

- “(A) Conflicts due to noise, dust, or other discharges with regard to those existing and approved uses and associated activities (e.g., houses and schools) that are sensitive to such discharges;
- “(B) Potential conflicts to local roads used for access and egress to the mining site within one mile of the entrance to the mining site unless a greater distance is necessary in order to include the intersection with the nearest arterial identified in the local transportation plan. Conflicts shall be determined based on clear and objective standards regarding sight distances, road capacity, cross section elements, horizontal and vertical alignment, and similar items in the transportation plan and implementing ordinances. Such standards for trucks associated with the mining operation shall be equivalent to standards for other trucks of equivalent size, weight, and capacity that haul other materials;
- “(C) Safety conflicts with existing public airports due to bird attractants, i.e., open water impoundments as specified under OAR chapter 660, division 013;
- “(D) Conflicts with other Goal 5 resource sites within the impact area that are shown on an acknowledged list of significant resources and for which the requirements of Goal 5 have been completed at the time the PAPA is initiated;
- “(E) Conflicts with agricultural practices; and
- “(F) Other conflicts for which consideration is necessary in order to carry out ordinances that supersede Oregon Department of Geology and Mineral Industries (DOGAMI) regulations pursuant to ORS 517.780[.]”

As explained later in these findings, in the impact analysis area, relating to the first type of conflict “noise, dust or other discharges...” the three potential conflicts in the 1,500 foot impact area identified by the Planning Commission and Board of Commissioners: (1) noise, (2) dust and (3) blasting.

Step Four

The fourth step in the process is to take the identified “conflicts” and decide whether there are “reasonable and practicable” measures that will reduce the identified conflict(s) to a level where they are no longer significant. The selected measures to minimize conflicts are required to be “clear and objective.” If there are such measures then the rule specifies that “mining shall be allowed.” These steps follow from OAR 660-023-180(5)(c), which provides:

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

OAR 660-023-180(1)(g) defines how the County “minimize[s] a conflict” by stating to do so:

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

OAR 660-023-180(5)(e) specifies that mitigation conditions must be clear and objective as follows:

“Where mining is allowed, the plan and implementing ordinances shall be amended to allow such mining. Any required measures to minimize conflicts, including special conditions and procedures regulating mining, shall be clear and objective.”

As explained in these findings, based on the evidence the Board determined that: (1) dust conflicts are mitigated by assuring adequate water is available for dust control and requiring certain dust control measures; (2) noise is mitigated by mining as outlined in the noise study which keeps noise at levels that comply with all relevant state noise standards; and (3) blasting is mitigated by compliance with the applicant’s blasting plan as well as conducting one pre-blast survey and also providing notice of blasting each time within specified areas.

Step Five

The fifth step in the process is to take any identified conflicts that the County finds *cannot* be mitigated and decide whether mining should be allowed anyway, by running the proposal through the Goal 5 “ESEE” process specified in OAR 660-023-180(5)(d). This step is unnecessary where (as here) identified conflicts are minimized. OAR 660-023-0180(5)(e). In other words, if conflicts are identified under step three, and the County were to find that there are no “reasonable and practical measures” by which those conflicts can be minimized, “then the county must proceed to step five and determine the ESEE consequences (economic, social, environmental and energy) consequences of ‘either allowing, limiting or

not allowing mining at the site.” *Hellberg v. Morrow County*, 49 Or LUBA 423, ___ (2005) (“* * * If reasonable and practicable measures are identified to minimize all identified conflicts, mining shall be allowed at the site and subsection (d) of this section is not applicable. If identified conflicts cannot be minimized, subsection (d) of this section applies.”)

As explained below, all identified conflicts are “minimized” as that term is defined in the rule. Therefore, the County is not required to address the fifth step ESEE analysis and it does not do so.

Step Six

The sixth step applies where mining is allowed, as here. In the sixth step, the County is to determine whether it needs to add any additional protections for the mining site by limiting or preventing new conflicting uses. This follows from OAR 660-023-180(7) quoted below:

“* * * local governments shall follow the standard ESEE process in OAR 660-023-0040 and 660-023-0050 to determine whether to allow, limit, or prevent new conflicting uses within the impact area of a significant mineral and aggregate site.”

As explained below, while the applicant proposed a notice to property owners and covenant not to object to lawful mining activities for “conflicting uses” within the 1,500 foot impact area, the County decided this was unnecessary. Under the County Code (UCO 150.04 and 150.08), once an area is added to the RMRI, it is deemed a “resource site” and no complaints about allowed mining activity from nonresource users will be acted on by the County and the scope of allowed complaints is quite limited. The County finds this is substantial protection for the site and that additional protection is unnecessary.

Step Seven

The final step in the process requires the County to determine post-mining uses of the property. This follows from OAR 660-023-180(5)(f), which states:

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

As explained below, the County incorporates the DOGAMI approved reclamation plan to specify the “post-mining” uses of the property.

Specific Analysis of the Applicable Goal 5 Rule Standards

STEP 1: OAR 660-023-0180(3) “Significance Determination”

- (a) A representative set of samples of aggregate material in the deposit on the site meets applicable Oregon Department of Transportation (ODOT) specifications for base rock for air degradation.

abrasion, and soundness, and the estimated amount of material is more than 2,000,000 tons in the Willamette Valley, or more than 500,000 tons outside the Willamette Valley;

This standard asks for an analysis of “representative samples” from rock the proposed RMRI area and whether the rock thus sampled meet certain standards. Rock core samples were taken in three random areas outside of the existing 14.15 acre pit, in the 11.64 acre area to the north. The area where core samples were taken from are composed of Class II soils according to the NRCS survey. Samples from random locations in the 11.64 acre area to the north confirm the amount of rock there and that it meets required standards. It was discovered through these core samples that the 11.64 acre area is essentially a continuation of the basalt that is mined in the existing pit and 7.47 acre half arc around the existing pit. The existing pit plus the 7.47 acre half arc around the existing pit are all composed of Class VII Licksillet Rock Outcrop” according to the NRCS. The County finds that the three rock core samples are “representative samples” of the 33.26 acre area to be added to the RMRI.

The County further notes that the 14.15 acre portion of the existing pit is being mined and the record establishes that it alone is estimated to have between 400,000 to 500,000 tons of rock of the requisite quality left in it. Rock from the 14.15 acre area currently being mined have been evaluated by the company as well as for actual projects. The record shows that representative sampling from those evaluations meet the required ODOT quality standards described in the rule. The record is undisputed that the pit supervisor, Mr. Stalder, is familiar with the rock in the pit and has expertise in rock testing. He gave his opinion that the rock in the existing 14.15 acre area being mined meets all required ODOT standards.¹³ The evidence regarding the rock in the existing pit for rock soundness and degradation under a #20 screen is the opinion of Mr. Stalder which the County finds persuasive. The evidence of soundness based on a #20 screen from the representative core sample to the north is the geologists report described later. The WSDOT reports in the record from rock from the 14.15 existing pit, confirm that the rock meets all required tests. The exception is the one 2012 WSDOT report submitted by opponents. This one rock test failure does not undermine the representative samples for the 33.26 acre area taken from the core samples or the fact that the weight of the evidence including the representative rock from the 14.15 acres meets required ODOT tests.

The letter from the pit manager, Mike Stalder, further explains that the 14.15 acre area still has between 400,000-500,000 tons of high quality rock meeting the above referenced ODOT standards left in this area. He goes on to explain his expertise and to conclude:

“It is further my expert opinion that the lens of hard rock in the 14.15 acre area extends to the other areas to be added to the RMRI boundary...”

Moreover, the existing pit has long been described as rocky and a previous 1948 Umatilla County Soil Conservation Service soil survey, as described in a 1977 conditional use permit for the site, (superseded by C-333 in 1984), characterized the existing pit area as “rough, broken stoney land with characteristic steep slopes and rough, broken ground that makes cultivation impossible”. Further, there is a basalt rock face to the north and also east of the existing pit area. Basalt is also being excavated in south pit area of the 14.15 acres. It is visually obvious that the basalt in the existing pit continues into the 7.47 acre half arc of Licksillet soils around the existing 14.15 acre pit area to be added to the RMRI.

¹³ The record establishes that the WSDOT and ODOT standards are the same. None of the WSDOT reports for the particular projects ran the material through a #20 screen for degradation but rather were tested having been screened at ¾” or 3/8”. The rock met the applicable degradation tests for ¾ and 3/8’ material.

The applicant submitted a geologist report and a materials testing report from Karl Languirand, P.G. and reviewed by Monica Saculles, P.E. (Geotechnical Engineer), explaining the ODOT standards and comparing the core samples taken from the 11.64 acres to the north, as below.

Sample Description	Soundness (Weighted Loss%)	L.A. Abrasion (Weighted Loss)	Oregon Degradation
Crushed Basalt Core from various depths	3.7 % Fine	21%	4.6 % Passing #20 Screen
	0.8 % Coarse		0.3" Sediment Height
2002 ODOT Standard Specifications according to section 02630	Tested Per AASHTO T 104	Tested Per AASHTO T 96	Tested Per ODOT TM 208
	12.0% Maximum Loss	35.0 % Maximum Loss	Passing #20 Screen - 30% Max Sediment Height - 3" Max

*The Oregon degradation % is the amount of degraded material that passes through a # 20 screen. WSDOT expresses Degradation as the percentage of rock that is not degraded and that does not pass through a screen or as a factor.

The geologist’s report in the record explains that there are approximately 709,156 tons of quality minable material in the 11.64 acre area to the north alone based on two of the three bore holes¹⁴ and this rock has the requisite quality. This means the entire 33.26 acre area to be added to the RMRI has between 1,100,000 and 1,200,000 tons of rock meeting the required quality standards. The geologist also submitted a supplemental report responding to opponent concerns. The geologist’s initial report explains that the rock sampled is from old lava flows and that in particular, the rock sampled from Bore Holes 1 and 3 was of nearly identical type and quality. Rock layers, like the massive basalt layer of quality rock at the existing pit’s north and eastern rock faces and from the similar samples removed from the Bore Hole samples, do not begin and end at property lines. Where, as here, a thick layer of rock is evident at the current quarry face and where the NRCS study identifies the rock in the 14.15 acre existing pit and the 7.47 acre half arc around it as a particular type of rock outcrop and the same type of rock was found 400 and 1,000 feet to the center north and north west where test holes No 1 and 3 were located, it is reasonable to conclude that a continuous lens of rock of a similar type and quality underlies and extends through the proposed RMRI area boundary.¹⁵

Opponents did not dispute the quantity of rock in the proposed RMRI area and there is no evidence that the requisite quantity does not exist. The opponent concerns were about quality. They argued that the representative samples of the rock quantity and quality are not representative enough; that the sample methodology was flawed; and that the elevations for the collection of the samples were erroneous. The opponents also submitted a single June 2012 WSDOT sample they claim failed to meet ODOT

¹⁴ These two boreholes are located in the center of the property and to the west. See Geologist’s Report “Site Map with Boring Locations.”

¹⁵ It is noted that test hole No 2 had some similar rock but also had some lesser quality rock. The Geologist’s report explains that the representative samples show that based on the other two borings in the RMRI area, there is more than 700,000 tons of rock meeting required standards.

standards and claimed that single test result undermined the other evidence of rock quality. Taking the latter first, the County finds that a single WSDOT sample failure does not undermine representative samples that did meet relevant ODOT standards – both from new rock core samples as well as from the existing pit areas. As to the other concerns, the County finds the applicant’s samples are adequately representative, that the sampling methodology was appropriate, and that the sampling elevations were correct. Specifics follow.

Regarding that the core samples are representative and the collection methodology valid. As the geologist explained in the supplemental report responding to these issues, the three boring holes were at selected at random locations and were identified using “standard geologic and engineering practices.” He further explained:

“The rock samples from the three borings were combined to mimic the work practice of the future pit operation. It was a way to assess future procedures accurately.”

As to the criticism of taking samples at varying elevations, the geologist’s supplement further explained:

“The depths of the samples that were collected mimic the work practices of the future mining operation as the mining will occur continuously throughout the vertical and lateral extents of the expansion area.”

The county finds that the sampling methodology was appropriate and that such appropriately taken and analyzed representative samples show that the rock in the proposed RMRI area is composed of more than 500,000 tons of aggregate resource material and that this material meets required ODOT standards and the minimum standards for Goal 5

b. Proposed RMRI area is not composed of more than 35% Class I or II soils.

The proposed RMRI area is within the Columbia River Plateau. Wind blown soils overlay a layer-cake of basalt flows that occurred over millions of years as explained in the Geologist’s Report.

Per the required NRCS, the proposed RMRI area includes Class II soils.

Table 2 – Soil Types in the Proposed RMRI Area

Soil Type	Area	Percentage	Capability Class (Dry)	Capability Class (Irrigated)
Lickskillet rock outcrop	21.62 acres	65%	VII	n/a
Oliphant	11.64 acres	34.99%	IIe	IIe
Total area	33.26 acres	100%		

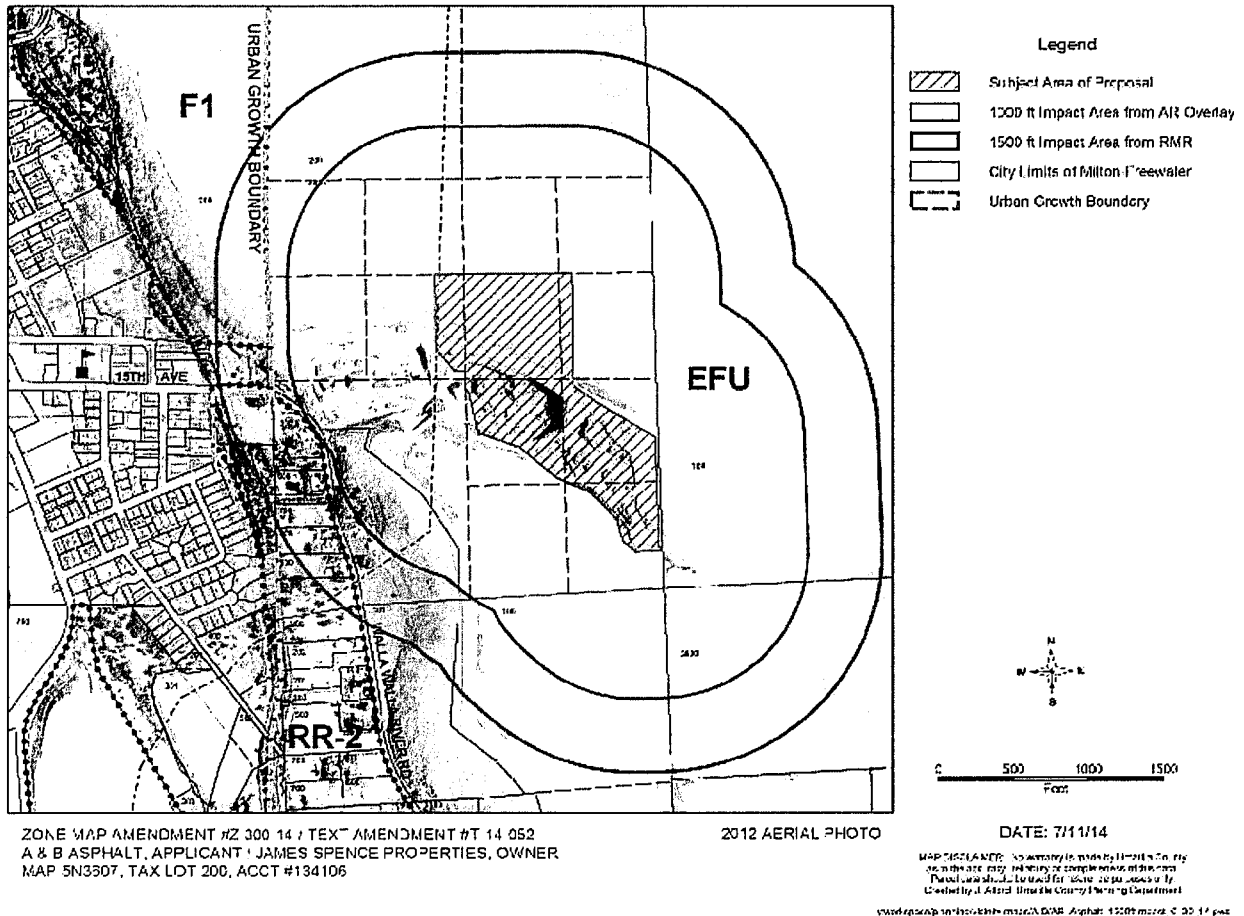
The Class II (Oliphant) soil¹⁶ does not exceed 35% of the area proposed to be added to the RMRI.

¹⁶ Soil types are taken from the required NRCS maps.

The proposed RMRI site is significant.

2nd Step – Impact Area for Analysis

The County identified a 1,500 feet Impact Area from the boundary of the 33.26 acre “proposed expansion area”. The blue line identifies the “1,500 feet impact area from Proposed Expansion Area.” It is also noted that the dark pink line on the vicinity map marks the area that is 1,000 feet from the western boundary of the proposed RMRI.



Just outside the 1000 foot mark is the boundary of Rural Residential Zoning, where several dwellings are located, just to the west of the Walla Walla River Road. Other land uses within the 1,500 feet boundary include dry land wheat farming and mining.

The impact area was drawn from the boundaries of the proposed 33.26 acre RMRI area and the Board finds this to be appropriate. It would not be appropriate to draw the impact area from the 9.83 acres that is already on the county RMRI. This was an issue in the hearings below and the Board explains its reasoning for excluding the 9.83 acres below.

OAR 660-023-0180(5) limits the area in which impacts may be evaluated and the types of impacts that

may be evaluated. OAR 660-23-0180(5)(a) establishes that impacts are to be evaluated from the perimeter of the area to be added to the RMRI. In a situation like this one where there is an abutting mine already on the RMRI, the rule further states that the impact area is drawn from the expanded area to be added to the RMRI and does not take in an abutting area that is already on the RMRI:

“For a proposed expansion of an existing aggregate site, the impact area shall be measured from the perimeter of the proposed expansion area rather than the boundaries of the existing aggregate site and shall not include the existing aggregate site.” (Emphases supplied.)

The definition of “existing site” in OAR 660-023-180(1)(c) means a site that “was included on an inventory of significant aggregate sites in an acknowledged comprehensive plan, on September 1, 1996” or one that was not on the inventory but was “lawfully operating” on that date. Only the 9.83 acres (not to be added again to the RMRI) was on the county’s acknowledged Goal 5 inventory of significant sites (the RMRI) on September 1, 1996. No part of the “Spence Pit” (which would include the 14.15 acres to be added to the RMRI and the 9.83 acres on the existing RMRI) was “lawfully operating” on the requisite date because between July 23, 1996 and November 5, 1996 the entire site was under a DOGAMI “Closure Order” stating the mine is “closed to all surface mining activities.”¹⁷ The DOGAMI Closure Order expressly states:

“No further extractive mining activity or processing or removal of stockpiled material may be conducted at this site in the absence of a valid operating permit.”

Accordingly, there can be no dispute that on September 1, 1996 the site was precluded from “lawfully operating”. If it did operate during this time, it would not be “lawfully operating.” Which means it impossible that the site was “lawfully operating” on September 1, 1996. Which further means under the definition in the rule, that the only “existing site” is the 9.83 acre area that was already on the county inventory, which standard does not concern itself with whether the pit was “lawfully operating on September 1, 1996.” The proposed RMRI area abuts this 9.83 acre “existing site” area.

On March 27, 2014 DLCD submitted comments to the County. In that letter DLCD stated:

“It is [DLCD’s] position that it would be inconsistent with the rule not to recognize the entire existing quarry as an ‘existing site’ and that an ‘expansion area’ and an ‘existing site’ cannot overlap.”

DLCD then contended in a follow up email of the same date, a seemingly inconsistent position:

*“An existing site is not precluded from obtaining Goal 5 protection. An operator of an existing site can apply for a comprehensive plan amendment to and seek protection for ongoing operations or new operations following the procedures set out in the Goal 5 rule.”*¹⁸

It is difficult to draw a definitive conclusion from DLCD’s position. The County finds, however, it does not matter, because no “existing site” as the rule defines it is being added to the RMRI. Which brings us to the definition of “existing site” in the rule. DLCD acknowledged in its March 27, 2014

¹⁷ Birch Creek had the subject site at the time.

¹⁸ The “Goal 5 Rule” is OAR 660-023-180.

letter that the OAR defines an “existing site” to refer to the two above referenced situations: One type being a site that is already on an inventory of significant sites on September 1, 1996 (here the 9.83 acre area) and the other type of “existing site” is one that was “lawfully operating” on September 1, 1996. DLCD focuses on the latter type of “existing site” then went on to explain that it is not clear to the agency what “lawfully operating” means, but states it has a “preference” about the meaning of that term:

“[t]he term ‘lawfully operating’ leaves some room for interpretation. One possibility is that a business with a temporary gap in any permit authorization on September 1, 1996 may not have the same status under the rule as one that did not have such a gap. Another possibility is the term refers to land use authorization. The department prefers the latter interpretation, particularly since the term is in DLCD’s administrative rule; a rule that deals with land use authorization.”

Translated to the facts here, DLCD is saying that the 14.15 acre portion of the proposed expansion area should be considered an “existing site” based on the agency’s preferred interpretation of “lawfully operating” because there was a CUP that allowed mining it on September 1, 1996. Respectfully, the County believes DLCD’s “preferred” interpretation is wrong and cannot be reconciled with the express terms of the rule, its context or legislative history. As explained previously in these findings, on September 1, 1996, the pit was under a DOGAMI Closure Order stating the mine is “closed to all surface mining activities.” This order made any mining at the site unlawful, expressly stating that:

“No further extractive mining activity or processing or removal of stockpiled material may be conducted at this site in the absence of a valid operating permit.”

In order to operate a mine lawfully, the operator must possess a valid DOGAMI permit. ORS 517.750 et seq. When state permission to operate a mine is required, and that permission is removed through a “Closure Order”, then no mining operations are lawful. By analogy, a suspended license to drive a car does not mean that one lawfully operates their car during the period of the license suspension. Accordingly, and with respect, the County finds that the mining operator (“Birch Creek” is the previous operator) did not and could not as a matter of law “lawfully operate” the mine without a valid DOGAMI permit; that all permission to mine had been removed by DOGAMI before, during and after on September 1, 1996, and so the pit did not and could not lawfully operate on that date.

Moreover, the legislative history of the Goal 5 rule supports that “lawfully operating” has this meaning. Specifically, as the Goal 5 rule was being rewritten, there rule proposals to separately require and attach consequences to both DOGAMI permits and land use permissions. At one point having a DOGAMI permit was proposed as a requirement and during a similar timeframe, 1000 Friends proposed that the Goal 5 rule be written to give land use permits special significance. The final rule ascribes no independent significance to either and instead existing sites are defined as those that are either “lawfully operating” (which presumably referred to lawful in both respects – having DOGAMI and local land use permission), as well as mines on existing significant site inventories. The rule also allows certain existing mines to by-pass the significance analysis altogether, where a property owner has an “enforceable property interest” in an expansion area.¹⁹ OAR 660-023-0180(3)(d). No mention is made of separate consequences for land use and DOGAMI permission as had been proposed by

¹⁹ There is no claim in this case that the property owner or the operator had an enforceable property interest in an expansion area.

commentators. This tends to support that “lawfully operate” means what it says – both land use and DOGAMI permission is required.

Similarly, ORS 197.180, establishes that “state agencies carry out their planning duties, power and responsibilities and take actions that are authorized by law with respect to programs affecting land use.” In order to carry out this responsibility, DOGAMI has a State Agency Coordination Program which has been acknowledged by the Land Conservation & Development Commission. DOGAMI and county in good faith carry out their respective regulatory responsibilities in accordance with the SAC Program so that landowners operate with both land use (county) and mining (DOGAMI) permits. The permits are interdependent and neither can be viewed as legal in isolation. Both active DOGAMI and land use permits are required in order for a site to be considered “lawfully operating.”

Accordingly, the County finds that per the express terms of the rule, as well as its legislative history, the 33.26 acres proposed to be added to the RMRI, is an “expansion area” of the 9.83 acre “existing site”, because the 9.83 acres was on the County inventory, but no part of the pit was lawfully operating, on September 1, 1996.

In this regard, OAR 660-023-0180(1)(d) defines "expansion area" to mean “an aggregate mining area contiguous to an existing site.” The proposed RMRI is contiguous to the 9.83 acre existing site.

Opponents point out that the RMRI “Technical Report” includes narrative stating:

“Seventeen sites were identified as having or causing no conflicting uses (shown as ‘2A’ on Table D-XXII). These sites are characteristically located on scab land bluffs far from any residential and intensive farming (cultivated) areas. All are small sites are two acres or less and all are inactive; *i.e.* not currently being used.”

We understand opponents to claim the acknowledged county RMRI which specifically lists “T5N R36E 7 SW ¼ of the SW ¼” (which is a 40 acre quarter, quarter section) as a designated “2A” site is wrong and that the “existing site” on the RMRI can be no more than 2 acres based on this language in the “Technical Report” quoted above. The County disagrees and finds:

1. The acknowledged inventory (in the Technical Report at D-XXII) controls;
2. The acknowledged inventory establishes TL 200 has a 40 acre section on the RMRI which 40 acre section includes the 9.83 acres, but not the rest of the area to be added to the RMRI under the application and this decision. This is because the 9.83 acres is in the 40 acre section area described on the inventory, but the area to be added to the RMRI is not;
3. The fact that the RMRI includes the 9.83 acres in the listed 40 acres is consistent with the fact that a CUP had been issued for 30 acres (not 2 acres) for mining in 1977 (Z-2231²⁰/C-2232 and C 2232) and then again in 1984 (C-333). The findings for those decisions are in the record and expressly establish that no conflicts with the approved mining were identified. The date of the county RMRI is May 1980, updated in September 1982, June 1984 and September 1984;

²⁰ The 1977 planning action also included a zone change for aggregate uses for the 30 acre area approved for mining (z-2231). While the findings for that decision are helpful to show that this site was never intended or understood to be limited to 2 acres at the time the RMRI was developed, the County also notes the subject property was later zoned EFU which zone continues to apply today.

4. Not all inventoried “2A” sites were two acres or less, the subject site among them. This is evidenced by the terms of the inventory itself, as well as the staff report dated April 11, 2014 prepared by county planner Shane Fink for the record from which this can also be, and hereby is, inferred.

The opponents also claimed that the CUP for the asphalt plant in C-479 at some points in history did not comply with conditions of approval (when an opponent operated the site) and that the County should invalidate C-479. However, the County does not understand how such a claim is relevant to whether the 9.83 acres is an existing site. The 9.83 acres is an existing site because it is on the RMRI. The status of C-479 makes no difference to that issue. The only relevance of C-479 to this matter is through OAR 660-023-0180(5)(g) which provides:

“g) Local governments shall allow a *currently approved* aggregate processing operation at an existing site to process material from a new or expansion site without requiring a reauthorization of the existing processing operation unless limits on such processing were established at the time it was approved by the local government.”²¹
(Emphasis supplied.)

No one disputes that the processing activities (the asphalt batch plant) occurring under C-479 are “currently approved.” The opponents argued that C-479 should be revoked for various alleged reasons. However, those allegations do not change the fact that the processing (asphalt plant) on the 9.83 acres are “currently approved” per C-479 (and C-333 as we will see below), and the Board so finds.

As a precaution only and without waiving that the county believes the issue to be irrelevant to this application other than the fact that C-479 expresses a “current approval”, the County finds as follows:

1. There is no claim C-333 is invalid in any respect. The asphalt plant is approved under both C-333 and C-479. If C-479 is invalid for any reason, then there is no evidence that C-333 is not a valid “current approval” for the processing (asphalt plant) on the 9.83 acre area already on the RMRI. C-333 specifically authorizes “processing” and “processing” is defined in the UCO 152.003 as “* * * the batching and blending of mineral aggregate into asphalt and Portland cement located within the operating permit areas.” That definition describes the asphalt plant on the 9.83 acre area already on the RMRI. Further, C-333 explains it was for the same thing approved in 1977 (C-333 p 6). The conditional use permit approved in 1977 approved both an asphalt batch plant and crushing²² among other things. The County finds that C-333 is a current approval for the asphalt plant.
2. C-479 was issued in 1987 and a slight modification decision to C-479 (changing the name of the operator) was issued in 1992. Both of these decisions were issued more than 10 years ago. They may not be challenged now per ORS 197.830(6).
3. The county has twice determined C-479 is valid and all conditions satisfied. Once in 2006 and once in 2010, both in letters from the planning director. These decisions are final and binding and may not be collaterally attacked now. All opponents have been aware of these decisions at least because

²¹ C-479 placed no limits relevant to this standard on the processing operations it approved.

²² As noted elsewhere in these findings, the crushing operations have been evaluated in this application because they are in the area proposed to be added to the RMRI (the 14.15 acre portion of the 33.26 acres).

either they were the direct recipients of these letters or because they became aware of them in this proceeding. No one filed an appeal of these decisions at any point. These decisions are final.

4. At least one zoning permit specifically referring to and for C-479 was issued by the county. The Board finds that this zoning permit is, as provided in the UCO: “An official finding that a planned use of a property, as indicted by an application, complies with the requirements of this chapter or * * * conditional use permit.” That zoning permit is a final decision not subject to collateral attack.

Scope of the Impact Analysis Area

Opponents claimed the impact analysis area should be enlarged beyond 1,500 feet from the proposed RMRI boundary to include the following:

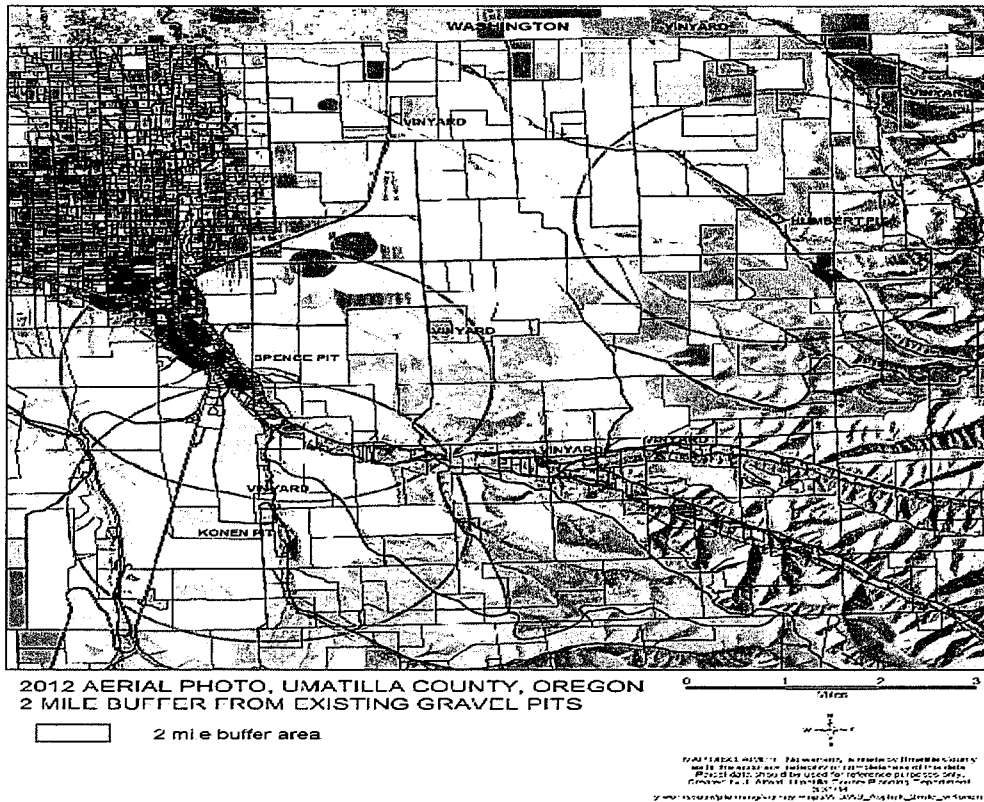
1. Opponents seek to increase the impact analysis area to include two vineyards – one of vineyards are on Couse Creek Road, about 1.75 miles south from A&B and the other is on Spofford Road, about 1.75 miles east from A & B, on the claim that any dust from the proposed RMRI area, no matter how miniscule the amount, “will contribute to the development of mites, which will threaten the grape crop at these vineyards”.
2. Grove Elementary School because the school play yard is a City of Milton-Freewater inventoried Goal 5 open space site.
3. The Walla Walla River, based on a county inventory designating the entire river as a “Sensitive Area for Fish Production.”

The County finds that there is no lawful justification for enlarging the OAR 660-023-0180(5) safe harbor 1,500 foot impact analysis area. OAR 660-023-0180(5) provides that “The impact area shall be large enough to include uses listed in subsection (b) of this section and shall be limited to 1,500 feet from the boundaries of the mining area, *except where factual information indicates significant potential conflicts beyond this distance.* (Emphasis supplied.) The County finds that factual information in the record does not indicate “significant potential conflicts” beyond 1,500 feet from the proposed 33.26 acre RMRI area. The explanation follows.

Vineyards²³

The vineyards are separated from the proposed RMRI area by distance (about one mile away and nearly 2 miles away respectively) and topography. *See* graphic below.

²³ The asphalt plant in the 9.83 acre area already on the RMRI need not be and is not considered.



Opponents contend that any dust from anything, including mining in the proposed RMRI area, will adversely affect these two distant vineyards and contribute to vineyard mites. The factual information in the record does not indicate significant potential dust conflicts from the proposal beyond the 1,500 foot impact boundary in the rule. Dust is well controlled at the site and unlikely to transcend the operations boundaries to any significant extent. Any dust that is generated from mining at the proposed RMRI area will potentially be only present at these distant vineyards in the most miniscule amounts and would not pose a ‘significant’ conflict.

Opponents produced photographs of the site that they assert show dust from the A & B operation, ostensibly to claim this dust will somehow migrate to the two vineyards. However, in the first place, the evidence in the record is that many of these photographs show steam, not dust; and the balance of these photographs show dust limited to the tax lot 200 boundaries within which A & B operates. In fact, the site does not now and is not reasonably expected to produce fugitive dust. As DEQ explained in the correspondence with the County in the record: “From time to time we [DEQ] have received complaints of excess dust from the crusher and/or [A & B’s] asphalt plant. * * * However, upon investigating the complaints, no compliance problems were observed.” Moreover, the neighbor most greatly affected by the operation – owning two residential properties right across from A & B’s driveway -- wrote letters of support for the record stating they have no problems with the A & B operation. The County finds that the applicant adequately controls off site dust and that dust does not transcend the TL 200 A & B boundaries to any significant actual or potential extent.

The county also notes that A & B’s crusher has all required DEQ authorizations and those authorizations are in the record. In this regard there is also in the record a memorandum from Tom

Hack, ODEQ, confirming that A&B has the requisite Air Contaminant Discharge Permit (AQDP) and is in good standing with ODEQ. The County further notes that compliance with DEQ standards is adequate to show dust is appropriately controlled per the terms of the Goal 5 rule.

Further, the County finds that the applicant has adequate water to control dust as explained by the applicant's expert Martha Pagel regarding the availability and adequacy of water sources for dust control as summarized in the beginning of these findings. Opponents claimed otherwise, but the County finds the testimony and evidence from Ms. Pagel to be the most persuasive.

The evidence is also that the area within which the vineyards are located is within significant dryland wheat operations, the harvest of which produces significant dust – far more than the subject operation. Within 300 yards of one of the vineyards - the vineyard to the south and east of the proposal area -- is the Konen mining operation for which there is evidence in the record showing that operation produces significant dust. This vineyard apparently co-exists with the Konen mining operation which operation features a crushing operation and an asphalt batch plant. The vineyard located further to the east from the subject property is about 2 miles from opponent Humbert's mining operation and nearly two miles from the proposal here. It is also in the middle of dryland wheat operations. Given these two vineyards are (a) separated from the proposed area by significant distance and topography, (b) that the applicant adequately controls dust; and (c) that there is no significant amount of dust that transcends the applicant's boundaries, there is no reasonable basis to conclude that factual information indicates significant potential conflicts beyond the 1,500 foot impact area that is established by OAR 660-023-180(5). Further, the County finds that even if a particle of dust from the proposed RMRI area did reach either of these vineyards that such would be a de minimus event and de minimus addition to dust already at those vineyards and not a "significant potential conflict".

City of Milton-Freewater Inventoried Goal 5 Resource – Grove School Open Space

The City of Milton-Freewater's officially adopted acknowledged Goal 5 inventory includes Grove Elementary School as an open space Goal 5 resource. Grove Elementary School is a few hundred feet outside the 1,500 foot impact boundary established in OAR 660-023-180(5). The City's Goal 5 program selects as its "program to protect" this open space resource that the city designate it "Public Lands Zone." In fact, it is so zoned. The proposal to add 33.26 acres to the County RMRI has no impact on the City's zoning of this property, which is how the City has decided to protect that resource. There is no evidence that the proposed mining activities have any impact on the City of Milton-Freewater's zoning designation of the Grove School as "Public Lands Zone." Further, the evidence is that there are no special noise, dust or traffic impacts that are potentially significant at the school that impact its ability to serve as "open space" that is posed by the RMRI proposal. Even though not strictly required, the applicant's initial and supplemental noise analyses considered noise from operations at the RMRI site at the school and determined that no significant adverse impacts are predicted. The applicable DEQ noise standards in this regard are shown in the figure below.

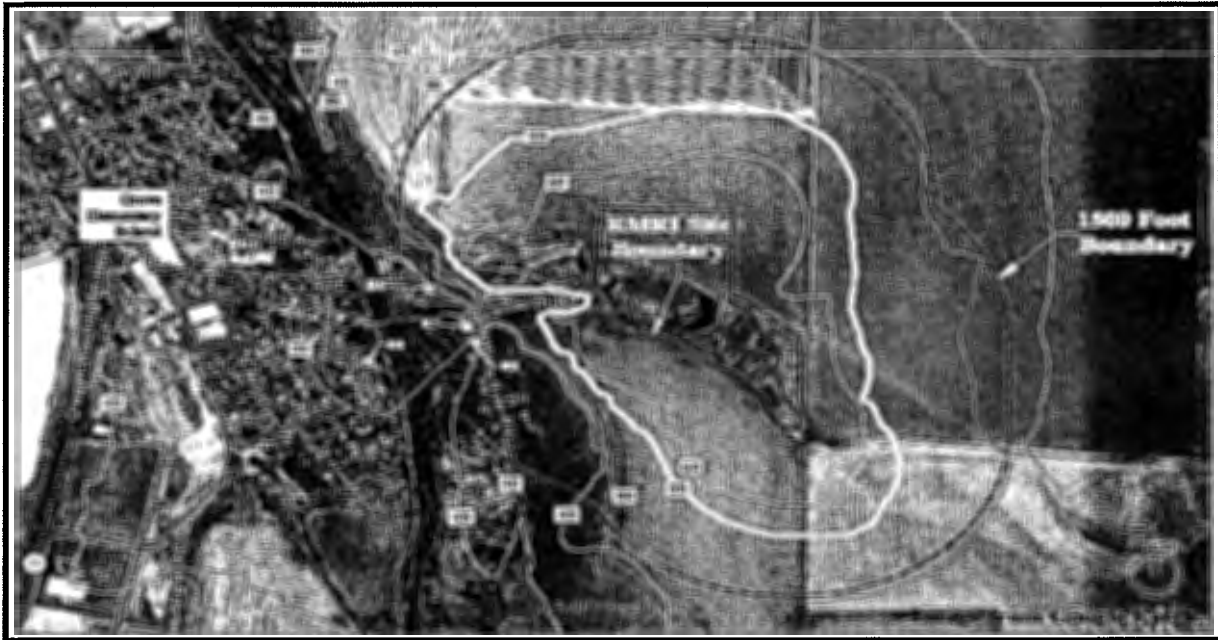
DEQ Noise Regulations

- Existing noise source
- Expansion of existing site

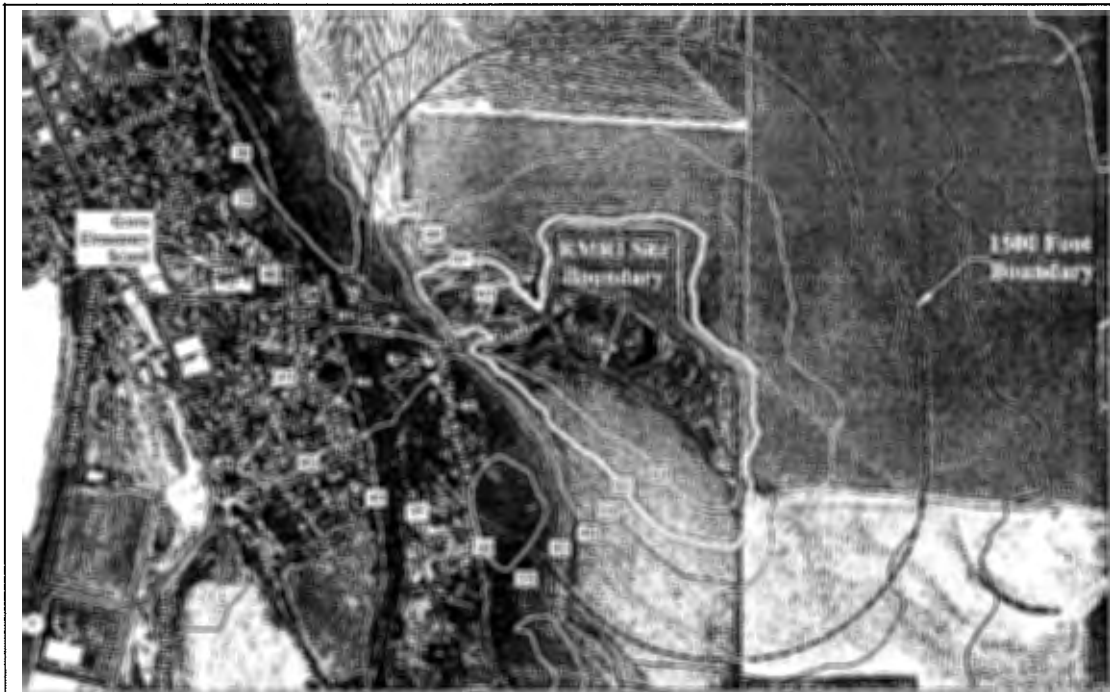
OAR 340-035-0035 – Noise Criteria

	Maximum Allowable Rule		
	Hourly	Hourly	Hourly
	L ₀₁	L ₁₀	L ₅₀
Day (7am – 10pm)	75	60	55
Night (10pm – 7am)	60	55	50

As shown in the two graphics below, all DEQ noise requirements are met including at Grove School.

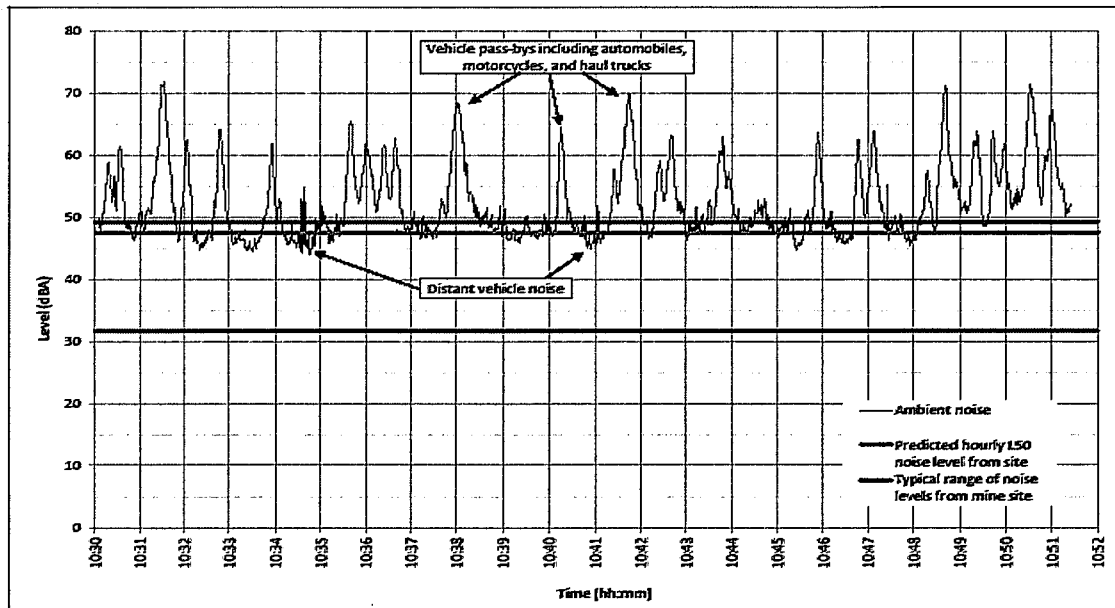


Daly-Standlee & Associates, Inc. ph: 503-646-4420 fax: 503-646-3385 email: DSA@accustechgroup.com		A&B Asphalt New RMRI Site L50 Contours - Ripping Excavation and Crushing Operations		
Scale	Project Engineer: BDW	DATE: 04/08/14	PROJECT NO: 113131	FIGURE #1



Daly-Standlee & Associates, Inc. Phone: 503/646-4420 Fax: 503/646-3385 Email: DSA@accustechgroup.com		A&B Asphalt New RMRI Site L ₅₀ Contours – Drilling and Crushing Operations		
DESIGNED BY BDW	DRAWN BY BDW	DATE 04/08/2014	PROJECT NO 113132	Figure 9

In fact, the evidence in the record is that background noise at the school is greater than noise predicted from mining at the proposed RMRI site, as demonstrated in the graphic below.



Daly-Standlee & Associates, Inc. Phone: 503/546-4420 Fax: 503/546-3385 Email: DCA@acoustechgroup.com		Received levels at Grove Elementary		
DESIGNED BY: BDW	DRAWN BY: BDW	DATE: 04/11/2014	PROJECT NO: 113132	Figure 13

Further, there is nothing about traffic patterns from the proposed RMRI that justify any conclusions that the proposal has any potential for a significant traffic conflict. The Board finds that the type and volume of traffic coming and going from the proposed RMRI area will be substantially equivalent to the type and volume of traffic coming from the existing mining operations on the property. The only difference is that as mining areas are exhausted, new areas will be mined within the RMRI.

The County concludes that factual information does not justify a conclusion that there are significant potential conflicts to the Open Space Designation or use of Grove School to justify expanding the default 1,500 foot impact area to include it.

Walla Walla River

Opponents argue that the impact area should be enlarged to include the Walla Walla River because it is a Goal 5 designated "Sensitive Area for Fish Production." Factual information does not support that mining within the proposed RMRI area has potential significant impact on the Walla Walla River or its ability to produce fish. There is no significant potential noise impact to the river as is demonstrative in the noise information presented above. The only possible impact to the river from the proposal relates to stormwater from the proposed RMRI site. However, the County finds that evidence in the record establishes that the operation in the proposed RMRI area does not cause and will not cause any significant offsite storm water discharge problems to justify adding the river to the impact analysis area. In fact, the evidence is that the operator adequately controls stormwater from the site and the County so finds. The County notes that DOGAMI nominated the operator, A & B, for excellence in storm water control. The evidence is also that the operator has significantly improved and controlled stormwater that

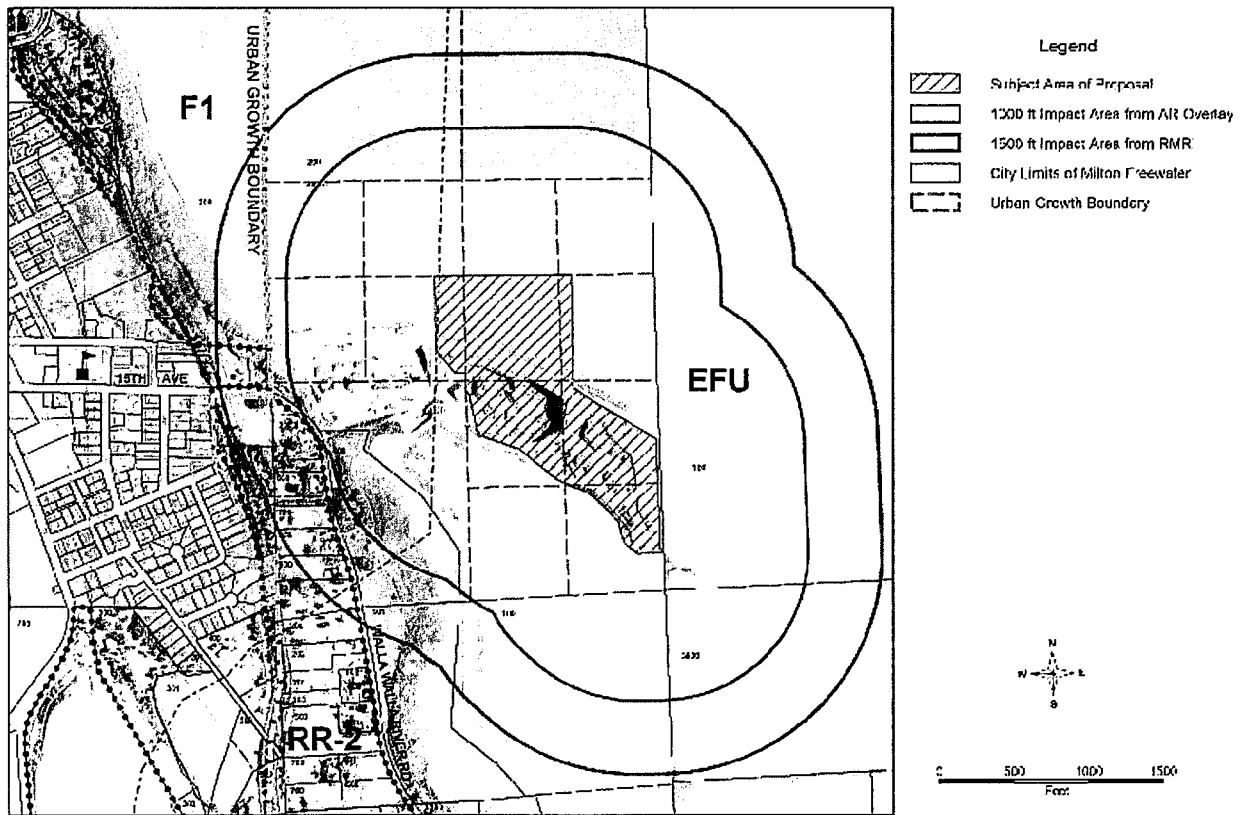
flows through the property including water that is not generated at the site. The County finds the evidence in the record does not support a conclusion that the 1,500 foot impact area should be enlarged to include the Walla Walla River based on stormwater or other impacts because there is no potential for significant stormwater or other impacts from the mining in the proposed RMRI area.

Third Step – Evaluate Impacts in 1,500 foot Area

“(b) The local government shall determine existing or approved land uses within the impact area that will be adversely affected by proposed mining operations and shall specify the predicted conflicts. For purposes of this section, "approved land uses" are dwellings allowed by a residential zone on existing platted lots and other uses for which conditional or final approvals have been granted by the local government. For determination of conflicts from proposed mining of a significant aggregate site, the local government shall limit its consideration to the following:

“(A) Conflicts due to noise, dust, or other discharges with regard to those existing and approved uses and associated activities (e.g., houses and schools) that are sensitive to such discharges;”

The impact analysis area for the discussion below is shown on the graphic below



ZONE MAP AMENDMENT #Z 300 14 ; TEX AMENDMENT #T 14 052
 A & B ASPHALT, APPLICANT ; JAMES SPENCE PROPERTIES, OWNER
 MAP 5N3307, TAX LOT 200, ACCT #134106

2012 AERIAL PHOTO

DATE: 7/11/14

MAP SCALE: 1" = 500' (1:500) (1:500) (1:500)
 The user may not use this map for any other purpose without the express written consent of the Umatilla County Board of Commissioners.
 Created by J. Arndt, Umatilla County Planning Department

Umatilla County Planning Department, 1200 Main St., Astoria, OR 97103

Noise

The applicant submitted a Goal 5 Noise Study conducted by Daly-Standlee & Associates to evaluate conflicts as the above rule requires. Existing and approved land uses within the 1,500 foot impact area are residences. The noise study considered these to be “noise sensitive properties”²⁴. Uncontrolled noise exceeding DEQ allowed limits has the potential to present an adverse impact on residences within the 1,500 foot impact area. The applicant must adhere to the DEQ Noise Standard as found in OAR 340-035-0035 *Noise Control Regulations for Industry and Commerce*. The applicable noise standard the proposal must meet is the DEQ standards listed below:

DEQ Noise Regulations

- Existing noise source
- Expansion of existing site

OAR 340-035-0035 – Noise Criteria

	Maximum Allowable Rule		
	Hourly L ₀₁	Hourly L ₁₀	Hourly L ₅₀
Day (7am – 10pm)	75	60	55
Night (10pm – 7am)	60	55	50

The study concludes that “the noise radiating from the A&B Asphalt’s new RMRI site will comply with the DEQ noise criteria at all times that mining operations occur in the proposed new RMRI site.” The proposal’s adherence to applicable DEQ noise standards is illustrated in the attached graphics which show the “Noise Compliance Boundary” where outside of the “Blue” boundary, noise associated with mining within the proposed RMRI area is in compliance with applicable DEQ requirements.

²⁴ OAR 340-035-0015 Definitions: (38) "Noise Sensitive Property" means real property normally used for sleeping, or normally used as schools, churches, hospitals or public libraries. Property used in industrial or agricultural activities is not Noise Sensitive Property unless it meets the above criteria in more than an incidental manner.



As is shown below there is no existing or approved residence (noise sensitive property) outside of the blue color noise compliance boundary. Accordingly, the County finds the applicant's noise report and supplements in the record are substantial evidence upon which the County concludes that no noise violating any applicable DEQ standard will transcend the RMRI site boundaries.

The applicant's noise analysis is generally based on the type of equipment to be used, as well as the sequence, location and manner in which mining is proposed to occur including the creation of berms, as well as the below grade mining activities and natural barriers between the mining proposed in the new proposed RMRI area and residences. See Noise Study Figure 3 showing the mining areas A-C and Noise Study 6.4 "Assumptions Used in Predicting Future Mining Noise Levels". A condition of approval is imposed requiring the mining operation to proceed consistently with the Noise Study. It is noted that noise mitigation is feasible in large part due to site topography, as the Noise Report at pages 16-17 states:

"The noise radiating toward residences from the existing crushing and screening plant located on the floor of the Spence Pit is fairly well minimized by the terrain between the equipment and the residences. The 'dog-leg' turn in the pit formed by the excavation that has occurred in the past has created a natural barrier between the equipment and the residences. During the trip to gather reference sound data for the equipment that will be used in the new RMRI site, it was noted that the excavation and crushing operation noise was not audible at the entrance to the Spence Pit simply due to the way in which the line-of-sight between that equipment and the gate was blocked by the terrain."

The County finds that so long as mining follows the sequence and practices relied on in the applicant's noise report noted above, all noise will be mitigated as that term is used in the rule because it will meet all applicable DEQ standards.

The DEQ rules for blasting are different than for mining generally. DEQ rules require blasting noise not exceed 98 dBC slow response. The nearest residence to the blast areas is about 1,100 ft away. The evidence in the record from Daley Standlee and the applicant's blasting expert, establishes the proposal can and will meet this standard so long as the applicant complies with the blasting plan. Compliance with the blasting plan is a condition of approval. The County finds that noise mitigation, especially the nearest residence to blast areas being 1100 feet, is both expected and feasible. Even if mitigated to comply with DEQ requirements and even where a blast causes no damage, noise and pressure from a blast can be frightening to people. The County finds that so long as the applicant complies with the blast plan in the record and people are given notice, noise is adequately mitigated. In this regard, conditions of approval are imposed that (1) requires the applicant to comply with the blast plan it submitted for the record, (2) conduct one pre-blast survey of property within 2,500 feet of the proposed RMRI boundaries, and (3) give 24 hour advance notice of all blasts to property owners of property within the 1,500 impact analysis area.

Dust

Dust has the potential to adversely affect residential uses within the 1,500 foot impact area. With respect to fugitive dust from the crusher,²⁵ that is regulated by DEQ and the crusher meets all DEQ

25 The asphalt batch plant is within the existing RMRI and is not subject to this application.

requirements. The evidence in the record is that DEQ periodically inspects the site and it is in compliance with dust rules. No fugitive dust is expected to migrate to any significant extent off the boundaries of TL 200. Water is applied to keep dust down. In addition, on-site roads have crushed basalt surfacing, which minimize dust from vehicle movements. The County finds the evidence and testimony presented by Martha Pagel for the applicant persuasive that the applicant has adequate sources of water for dust control. Conditions of approval are included requiring (1) a flow meter be installed on the water well used for the RMRI area, (2) that the applicant obtain and emplace on the property the three, 10,000 gallon water tanks outlined by Ms. Pagel in her written submissions, and (3) that the applicant maintain compliance with all applicable DEQ requirements, water haul roads regularly with the use of water trucks and water extraction areas regularly with the use of a sprinkler system.

(B) Potential conflicts to local roads used for access and egress to the mining site within one mile of the entrance to the mining site unless a greater distance is necessary in order to include the intersection with the nearest arterial identified in the local transportation plan. Conflicts shall be determined based on clear and objective standards regarding sight distances, road capacity, cross section elements, horizontal and vertical alignment, and similar items in the transportation plan and implementing ordinances. Such standards for trucks associated with the mining operation shall be equivalent to standards for other trucks of equivalent size, weight, and capacity that haul other materials;

Roads within a one mile area are either County collector roads (Walla Walla River Rd is a “Major Collector”) or a State Highway. A state highway is an “Arterial” road. There are no local roads serving the proposed RMRI area. There is only the private driveway – private local haul road -- and its intersection with Walla Walla River Rd. According to LUBA in *Morse Bros. v. Columbia County*, 37 Or LUBA 85 (1999), where there are no local roads then there are no impacts that may be considered under the rule. Regardless, the applicant conducted a TIA to demonstrate compliance with the TPR for the site as well as a supplement responding to the opponents’ concerns. The applicant’s traffic analysis analyzed and concluded there is no conflict between the proposal with sight distances, road capacity, or any other clear and objective transportation related standard. The County agrees and that analysis is adopted by the County herein. Further, the applicant’s TIA and supplement concludes, and the County agrees, that the proposal is to continue mining at an existing mine; that no substantial change to the type or level of traffic associated with the proposal will occur from the type and level of traffic that is now associated with the mining operations. There is no conflict presented by the transportation impacts of the proposal.

C. Safety conflicts with existing public airports due to bird attractants, i.e., open water impoundments as specified under OAR chapter 660, division 013;

There are no airports within the Impact Area. The closest public airport is located some 15 miles to the north in Walla Walla. Thus, there are no conflicts with public airports and the proposed RMRI mining operation.

(D) Conflicts with other Goal 5 resource sites within the impact area that are shown on an acknowledged list of significant resources and for which the requirements of Goal 5 have been completed at the time the PAPA is initiated;

The County finds, with the caveat noted below, that the only other Goal 5 resources within the Impact Area is the existing mining operations on the existing RMRI. The County finds that both the new RMRI area and existing operation on the existing RMRI area are compatible and that no conflicts

between them are anticipated. Thus, no conflicts exist between the proposed aggregate site and other area Goal 5 resources.

One caveat is in order. Opponents pointed out that the City of Milton-Freewater has inventoried in its comprehensive plan its views of the Blue Mountains. The subject property while not in the City, can be said to be within the view of the Blue Mountains from some parts of the City. It is not clear if a city inventory of a view that can extend many miles into another jurisdiction is a Goal 5 resource that must be considered in this context. As a precaution and without finding it to be necessary or appropriate (particularly since the city did not advance any issue in this regard even though notified of the proposal), the County evaluates this City inventoried Goal 5 resource.

The City inventoried view does not exist in a vacuum. The program that the City adopts in its plan is limited and the means to protect the noted scenic views is the result of a balance reflected on the city inventory, to protect views and economic uses. Accordingly, the means the city has chosen to protect the noted views, is by imposing limitations on the building height of certain structures: "Economic development should be allowed but limited by height restrictions which generally protect views of the mountains from the City." The application proposes no new or other structures that are subject to any building height standards. Moreover, quarry operations are largely at or below grade. While there will be some work temporarily in Area A which is at the top of the grade on the subject property, the mining operations will quickly create and then move below a berm and then below grade, and not be visible from the City at all. Moreover, the subject property is far enough away from the Blue Mountains that the view of them will not be substantially impaired by continuing to mine at the site. Further, the city program does not purport to justify denying economic development proposals in the name of view shed protection in any case. Rather, the City protects views through height restrictions against structures that block views and there is nothing about the proposal that will block any such view. Therefore, the County decides that to the extent it is relevant, the proposal does not conflict with the City's Goal 5 inventoried views of the Blue Mountains.

(E) Conflicts with agricultural practices:

The rule asks for an evaluation of "conflicts with agricultural practices". It further specifies:

"To determine whether proposed measures would minimize conflicts to agricultural practices, the requirements of ORS 215.296 shall be followed rather than the requirements of this section."

In turn, ORS 215.296 requires the following analysis:

"[w]ill not force a significant change in accepted farm * * * practices on surrounding lands devoted to farm * * * use," and "[w]ill not significantly increase the cost of accepted farm * * * practices on lands devoted to farm use."

The County finds that the evidence establishes that there are no significant conflicts between the proposed RMRI operations and agricultural practices within the 1,500 foot analysis area. The evidence is that dryland wheat farming occurs within the 1,500 foot analysis and that it has long coexisted with the existing mining operations of A & B, as well as the previous operators - Birch Creek and Humbert. The County finds that dryland wheat farming coexists without conflict with Konan's mining operation to the

south. The only potential conflict with agricultural operations in the 1,500 foot analysis area is the generation of dust. However, the Board finds that the operator does now, and can feasibly in the future, adequately control dust to avoid significant dust falling on and interfering with agricultural operations within 1,500 feet of the proposed RMRI. In this regard, the County finds it particularly persuasive that the owner of the dryland wheat operation to the north that will adjoin the 11.64 acre that has not previously been mined (Spence who also leases to A & B) testified there is and has been no problem between the mining operations and the dryland wheat operations. While the batch plant on the existing RMRI 9.83 acres is irrelevant, the County further notes the testimony of an opponent at its own land use process to site its own an asphalt batch plant near agricultural operations (a vineyard), explained:

“Mr. Shannon referred to a 40 page DEQ permit which is required for the operation of asphalt plants and said that *asphalt plants operate cleanly* and have been built next to waterways. Asphalt is also used to patch reservoirs. *The exhaust from a diesel-operated piece of farm equipment has more emissions than an asphalt plant.*” (Emphasis supplied.)

The County finds that there is no conflict between mining as proposed in the proposed RMRI area and agricultural activities within the 1,500 foot analysis area and that any potential conflict posed by dust is adequately controlled such that significant dust will not reach wheat operations in the 1,500 foot impact area. Accordingly the County finds that the proposal to add the 33.26 to the County RMRI and to allow mining neither forces a significant change in accepted farm practices on surrounding lands devoted to farm use, nor significantly increases the cost of accepted farm practices on lands devoted to farm use.

F. Other conflicts for which consideration is necessary in order to carry out ordinances that supersede Oregon Department of Geology and Mineral Industries (DOGAMI) regulations pursuant to ORS 517.780;

Opponents asked the county to consider as conflicts, evidence that A & B received some traffic tickets and fines from ODOT. This is not a conflict with any residential or other use in the 1,500 foot analysis area. The County does not believe that this is a type of “conflict” in any event is one that the rule allows to be considered. *See Morse Bros. v. Columbia County*, 37 Or LUBA 85 (1999) (reversing a local government denial of an application under the Goal 5 rule under this section finding the identified conflicts under this section were not allowed as a matter of law unless contemplated by the county’s own adopted ordinances.) No county ordinance makes this issue relevant here and the County finds it is not. The County further notes that in the applicant’s supplemental traffic analysis it states:

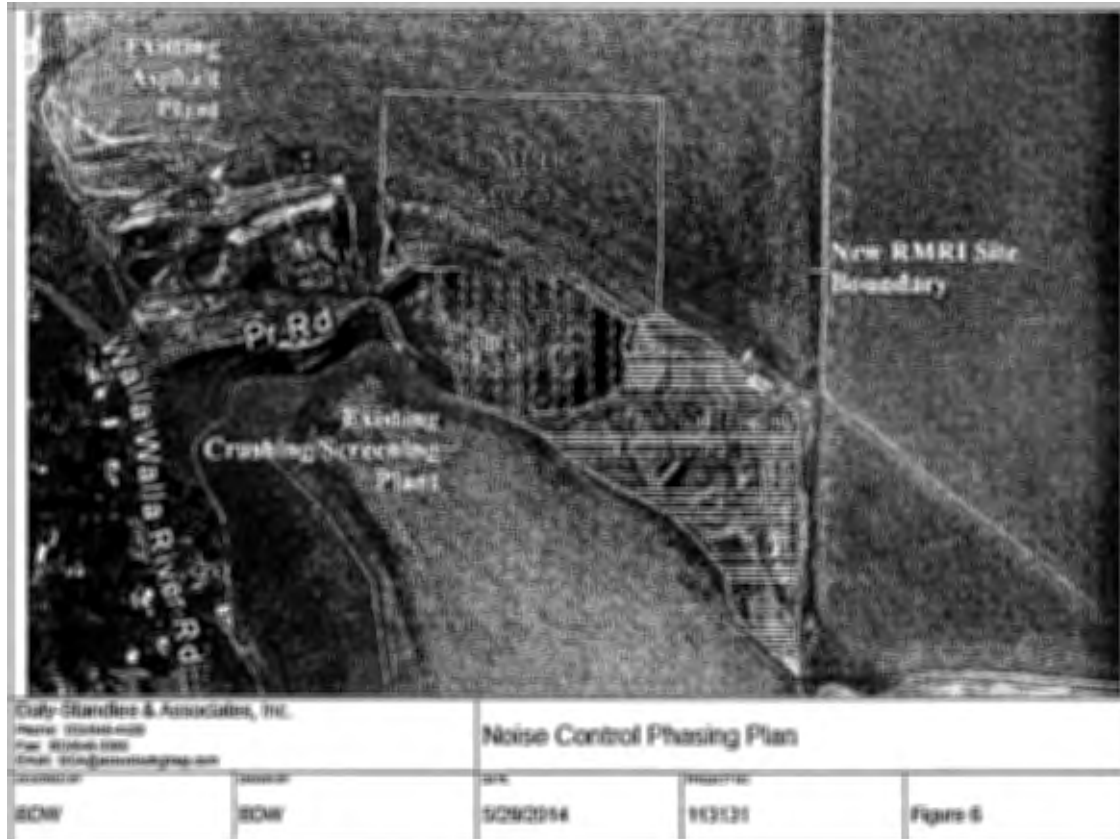
Further, there are no documented/significant safety impacts along SE 15th Avenue between the quarry site and OR 11 including the roadway section adjacent to Grove Elementary School. Also, based on a review of City of Milton-Freewater traffic warnings and citations issued for this roadway section, from January 2011 through April 2014 there were 5 warnings and 1 citation and all were related to speed. This speeding issue is not specifically attributable to quarry operations and none of the warnings or citations was issued to or received by A & B drivers.

The County declines to add the alleged tickets and fines issue as one relevant to this process.

Fourth Step – Minimize Conflicts

Under the fourth step in the rule it is necessary to identify any reasonable and practicable measures can be established to minimize conflicts. Here all identified conflicts are adequately minimized by the conditions of approval explained above and listed at the end of this decision.

Because the County finds that all conflicts can be minimized as that term is defined in the rule, then the rule requires that mining be allowed. The County in this decision hereby allows mining in the RMRI area subject to the conditions of approval imposed. The specific approved RMRI area is that area shown below, taken from the noise study. This map is chosen by the County to represent the RMRI boundaries because the conditions of approval require adherence to the phasing program in the noise study, which is tied to this map. The approved RMRI area is shown on the below graphic:



NEXT STEP – IDENTIFY POST MINING USES

The rule requires that post mining uses be identified:

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

The County adopts as its identification and determination of post mining uses the DOGAMI approved reclamation plan and the reclamation plan supplement that is in the record.

NEXT STEP – PROTECTING THE RMRI AND ALLOWED MINING USE

[Protecting the site from other uses/conflicts] Except for aggregate resource sites determined to be significant under section (4) of this rule, local governments shall follow the standard ESEE process in OAR 660-023-0040 and 660-023-0050 to determine whether to allow, limit, or prevent new conflicting uses within the impact area of a significant mineral and aggregate site. (This requirement does not apply if, under section (5) of this rule, the local government decides that mining will not be authorized at the site.)

The process to determine how to protect the site from other uses/conflicts is referred to as an ESEE Analysis. The standards for the ESEE analysis are set forth in OAR 660-023-0040 & 0050. The applicant provided an ESEE analysis under these standards on pages 17-22 of their application. The applicant sought a requirement for nonresource users to be given notice of the mining activity and be required to sign a waiver of objection in exchange for any county land use approvals. The county denies the applicant's requested protective program finding it to be unnecessary. The reason follows.

The County has a section of its code devoted to "Resource use Protection. UCO 150. A non-resource use is defined to include a mining use that is not on the County RMRI ("not conducted in accordance with a program complying with Goal 5"). UCO 150.03 defines resource use as follows:

"RESOURCE USE. Any current or future generally accepted aggregate mining, farming, ranching or forest practice or facility conducted in compliance with applicable county land use ordinances."

The UCO protects "resource uses" as follows:

UCO 150.04 PROTECTING RESOURCE USES OUTSIDE UGB.

(A) No resource use occurring outside an urban growth boundary (UGB) shall be declared to be a public or private nuisance or trespass, or support any complaint procedure, or give rise to a claim for relief in favor of, or to protect the interests of, nonresource uses or any persons or property associated therewith, to the extent that such right, proceeding or claim would arise under an ordinance or the inherent authority of the county.

(B) This section applies regardless of:

- (1) The location of the purportedly affected non-resource use.
- (2) Whether the nonresource use purportedly affected existed before or after the occurrence of the resource use.
- (3) Whether the resource use or non-resource use has undergone any change or interruption.
- (4) Whether the resource use or non-resource use is located inside or outside an area designated as secondary resource lands

The UCO goes on to state that the fact that the County may approve a particular land use, does not give any rights inconsistent with the Resource Use Protection provisions in UCO 150. UCO 150.07. UCO

150.08 provides:

“§ 150.08 COMPLAINTS BY NON-RESOURCE USERS.

Any persons engaged in a nonresource use are deemed on notice that the county will not act on complaints involving a resource use protected under this chapter, wherever located, so long as such resource use complies with applicable provisions of federal and state laws and this chapter

The decision here puts the subject 33.26 acre site on the RMRI. As such the site, including mining and processing, is a “resource use” that is protected by this chapter. The County finds that additional protection for the RMRI mining uses is unnecessary.

660-023-0040 ESEE Decision Process

(1) Local governments shall develop a program to achieve Goal 5 for all significant resource sites based on an analysis of the economic, social, environmental, and energy (ESEE) consequences that could result from a decision to allow, limit, or prohibit a conflicting use. * * * The steps in the standard ESEE process are as follows:

- (a) Identify conflicting uses;
- (b) Determine the impact area;
- (c) Analyze the ESEE consequences; and
- (d) Develop a program to achieve Goal 5.

The items (a) through (d) will be addressed below.

(2) Identify conflicting uses. Local governments shall identify conflicting uses that exist, or could occur, with regard to significant Goal 5 resource sites. To identify these uses, local governments shall examine land uses allowed outright or conditionally within the zones applied to the resource site and in its impact area. Local governments are not required to consider allowed uses that would be unlikely to occur in the impact area because existing permanent uses occupy the site. The following shall also apply in the identification of conflicting uses:

To determine potentially conflicting uses that could occur under the county code within 1500 feet of the boundary of the proposed new RMRI area, the following county uses are considered:

(Note, the list of uses in the EFU Zone is substantially the same as uses listed in the F1 EFU Zone, where one property is located within the 1500 foot impact area.)

UCDC 152.056 - EFU Permitted Uses –
Outright

- (A) Farm Use
- (B) Harvesting of a forest product.
- (C) On-site filing
- (D) Temporary public roads
- (E) Projects specifically identified in the TSP

- (F) Landscaping
- (G) Emergency measures
- (H) Construction of a road
- (I) Utility facility service lines
- (J) Maintenance or minor betterment of existing Transmission lines
- (K) The transport o biosolids
- (L) Reconstruction of roads

- (M) Irrigation canals
- (N) Minor betterment of roads

UCDC 152.058 - EFU Permitted Uses – Zoning Permit

- (A) Activities within parks
- (B) Operation for the exploration of geothermal
- (C) Operations for the exploration for minerals
- (D) Winery
- (E) Farm stands
- (F) Replacement Dwellings
- (G) Signs
- (H) Accessory buildings
- (I) On-site filming
- (J) Takeoff and landing of model aircraft
- (K) Fire Service facilities
- (L) Gathering of fewer than 3,000 persons
- (M) Wetlands
- (N) Climbing and passing lanes
- (O) Accessory structures to a farm use\
- (P) Met towers
- (Q) Home Occupations

UCDC 152.059 - EFU Permitted Uses – Land Use Decisions

- (A) (Item Deleted)
- (B) Churches and Cemeteries**
- (C) Utility Facilities Necessary for Public Service
- (D) A facility for the processing of forest products
- (E) Continuation of fire arms training
- (F) A facility for the processing of farm crops
- (G) The land application of reclaimed water
- (H) (Item Deleted)
- (I) (Item Deleted)
- (J) (Item Deleted)
- (K) Dwellings – Farm, Non-Farm and Lot of Record Dwellings**

UCDC 152.060 - EFU Conditional Uses

- (A) Commercial activities in conjunction with farm use
- (B) Mining
- (C) Private Parks, private playgrounds, private hunting and fishing preserves and private campgrounds**
- (D) Public parks**
- (E) Golf Courses**
- (F) Commercial utility facilities for the purpose of generating power for public use
- (G) Personal Use Airports
- (H) Home occupations
- (I) Community centers
- (J) Hardship Dwellings**
- (K) Dog kennels
- (L) A site for the disposal of solid waste
- (M) The propagation, cultivation, maintenance and harvesting of aquatic species.
- (N) Construction of additional passing lanes
- (O) Reconstruction of additional passing lanes
- (P) Improvement of public roads
- (Q) Destination Resorts
- (R) Living History Museum
- (S) Bottling of water
- (T) On-Site filming
- (U) Construction of highways
- (V) Residential houses**
- (W) Transmission or communication towers
- (X) Expansion of existing county fairgrounds
- (Y) Room and board**
- (Z) Wildlife habitat
- (AA) Aerial fireworks display
- (BB) Composting facilities
- (CC) Uses compatible with the TSP
- (DD) Public or private schools**

Uses in the Rural Residential Zone

RR2, RURAL RESIDENTIAL ZONE (Note, this list of land uses in the RR2 Zone is substantially the same as uses listed in the R-1 Zone, where one property is located within the 1500 foot impact area.)

(A) Uses permitted outright. In a RR-2 Zone, the following uses and their accessory uses are permitted without a zoning permit:

(1) Farm use, as defined in ORS 215.203 except livestock feed yards and sale yards, hog or poultry farms and the raising of fur-bearing animals or hogs, and except the dwelling and other buildings customarily provided in conjunction with farm use referred to in ORS 215.203

(2) Normal operation, maintenance, repair, and preservation activities of existing transportation facilities.

(3) Installation of culverts, pathways, medians, fencing, guardrails, lighting, and similar types of improvements within the existing right-of-way.

(4) Projects specifically identified in the Transportation System Plan as not requiring further land use regulation.

(5) Landscaping as part of a transportation facility.

(6) Emergency measures necessary for the safety and protection of property

(7) Acquisition of right-of-way for public roads, highways, and other transportation improvements designated in the Transportation System Plan.

(8) Construction of a road as part of an approved subdivision or land partition approved consistent with the applicable land division ordinance.

(B) Uses permitted with a zoning permit.

In a RR-2 Zone, the following uses and their accessory uses are permitted upon the issuance of a zoning permit, pursuant to §152.025:

(1) Dwelling, single-family;

(2) Home occupations as provided in §152.573;

(3) Mobile home

(4) Non-commercial greenhouse or nursery.

(5) Public or semi-public use

(6) Signs

(7) Residential home (adult foster care)

(8) Nursery

CONDITIONAL USES PERMITTED In a RR-2 Zone:

(A) Church

(B) Commercial greenhouse or nursery

(C) Roadside stand for the sale of agricultural products grown by the owner

(D) Grange hall or community center, park, playground or recreational facility

(E) Boarding, lodging or rooming house

(F) Rest home, home for the aged, nursing home, or convalescent home

(G) Utility facility

(H) Veterinary clinic or animal hospital

(I) Model home including sales office, subdivision or development sales office

(J) Special exemptions, as provided in §§152.575

(K) Cemetery

(L) Home occupation/cottage industry

(M) Personal-use landing strip for airplanes and helicopter pads

(N) Construction, reconstruction, or widening of highways, roads, bridges or other transportation projects

(a) If no uses conflict with a significant resource site, acknowledged policies and land use regulations may be considered sufficient to protect the resource site. The determination that there are no conflicting uses must be based on the applicable zoning rather than ownership of the site. (Therefore, public ownership of a site does not by itself support a conclusion that there are no conflicting uses.)

The uses allowed in the EFU and RR2 Zone could be adversely affect by mining on the proposed site if potential conflicts were not minimized as they are here. Because all conflicts from mining in the RMRI area are mitigated to the level that they are not significant, and because the County already protects against complaints, there is no reason to impose further protections for the RMRI site.

(b) A local government may determine that one or more significant Goal 5 resource sites are conflicting uses with another significant resource site. The local government shall determine the level of protection for each significant site using the ESEE process and/or the requirements in OAR 660-023-0090 through 660-023-0230 (see OAR 660-023-0020(1)).

The County finds that any one of the potentially allowed uses have the potential of conflicting with the aggregate site if located within the impact area. Goal 5 resources within the impact area other than the existing mine on the existing RMRI and if applicable (as explained above) the City's view of the Blue Mountains. However, as explained elsewhere in this decision the County's existing code protections for resource uses and the fact that mining in the RMRI is mitigated means there is nothing more to do under this provision.

There are parcels located within the 1,500 foot impact area that do not have dwellings. If any potentially allowable use including a dwelling or a church were to locate within the Impact Area in the future, there could be perceived but not actual conflict with the proposed RMRI mining uses. This is because mining operations produce some noise, some dust and traffic and people sometimes object to these. However, here, conflicts have all been adequately mitigated as explained in this decision. The County finds people are adequately put on notice that their rights to object to lawful mining uses are significantly limited because the County has adopted code provisions that people are presumed to be aware of.

(3) **Determine the impact area.** Local governments shall determine an impact area for each significant resource site. The impact area shall be drawn to include only the area in which allowed uses could adversely affect the identified resource. The impact area defines the geographic limits within which to conduct an ESEE analysis for the identified significant resource site.

The County finds that the impact area is defined as 1,500 feet from the proposed RMRI boundaries.

(4) **Analyze the ESEE consequences.** Local governments shall analyze the ESEE consequences that could result from decisions to allow, limit, or prohibit a conflicting use. The analysis may address each of the identified conflicting uses, or it may address a group of similar conflicting uses. A local government may conduct a single analysis for two or more resource sites that are within the same area or that are similarly situated and subject to the same zoning. The local

government may establish a matrix of commonly occurring conflicting uses and apply the matrix to particular resource sites in order to facilitate the analysis. A local government may conduct a single analysis for a site containing more than one significant Goal 5 resource. The ESEE analysis must consider any applicable statewide goal or acknowledged plan requirements, including the requirements of Goal 5. The analyses of the ESEE consequences shall be adopted either as part of the plan or as a land use regulation.

In the impact area there is the potential for two, possibly more, new dwellings or potentially other uses, based on the assumption that vacant parcels could qualify for a future single family residence. Given the limitations on qualifying for a farm dwelling, there may not be many future dwellings in the EFU Zone. Additionally, each of the EFU parcels have land located inside and outside of the 1500 foot impact area and so if a parcel qualified for a farm dwelling, the home site might be located outside of the 1,500 impact area. Some of the parcels are located in the flood zone and may be restricted altogether from construction of any occupied structures due to the restrictions on building in a floodplain and floodway. Regardless even if all parcels within the 1500 foot impact area developed with any of the allowed uses that could potentially conflict with mining, there are no consequences to the allowed RMRI mining activity. This is because as is explained elsewhere, the mining activity has been adequately mitigated to minimize its objectionable impacts and the County's resource users protections adequately protect the mining resource use from complaints and is adequate notice that such uses are protected.

(a) Economic Consequences of Future Uses

Dwelling Uses

Allowing potentially conflicting uses maintains property values. There is no reason to limit these uses because of the approved RMRI, as explained elsewhere.

(b) Social Consequences

The size of the available building area 1,500 feet from the boundaries of the proposed RMRI to situate any new potentially conflicting use is very small, and this together with the lack of access as well as the applicable EFU zoning limits, the potential for new dwellings, churches, community centers and schools in the 1,500 foot impact area is quite small etc. New uses (other than one or two new dwellings) are unlikely to locate in the RMRI impact area and so the social consequences are likely to be insignificant in any case. Regardless, because there is no legitimate conflict in fact from the proposal, there is no apparent reason to limit the County's ability (or the landowners property right) to a new dwelling, church, community center or school or other use from locating in the 1,500 foot impact area beyond the standards that already exist: e.g. EFU and flood zone regulations.

(c) Environmental Consequences

If new potentially conflicting uses were established in the impact Area, then they might be affected or at least perceive that they are affected by noise, dust, or truck traffic associated with the lawful mining use. But they will not in fact be significantly impacted as explained in this decision elsewhere. Thus, it is likely that there would be little impact from future potentially conflicting uses given the mitigating measures already in place. Moreover, complaints are already significantly restricted by the County code as is also explained elsewhere. There is no consequence of note to the resource use allowed by

this decision to not limit the small number of potentially conflicting uses from being established within the 1,500 foot impact area.

(d) Energy Consequences]

Prohibiting or limiting future potentially conflicting uses in the impact area would have essentially no impact on energy usage, as dwellings would locate elsewhere and consume identical quantities of energy. Either allowing or limiting these uses would likewise have no negative effects on energy use. This consideration does not err in favor or against of any type of restriction.

(5) Develop a program to achieve Goal 5. Local governments shall determine whether to allow, limit, or prohibit identified conflicting uses for significant resource sites. * * * One of the following determinations shall be reached with regard to conflicting uses for a significant resource site:

(c) A local government may decide that the conflicting use should be allowed fully, notwithstanding the possible impacts on the resource site. The ESEE analysis must demonstrate that the conflicting use is of sufficient importance relative to the resource site, and must indicate why measures to protect the resource to some extent should not be provided, as per subsection (b) of this section.

Allowing mining in the proposed new RMRI is strong protection of the RMRI. This is because this entitles the RMRI mining use to receive the protections of UCDO 152.485 – 152.491 protecting the RMRR uses from vexatious litigation. There is no need to further restrict other uses to protect mining in the RMRI.

660-023-0050 Programs to Achieve Goal 5

(1) For each resource site, local governments shall adopt comprehensive plan provisions and land use regulations to implement the decisions made pursuant to OAR 660-023-0040(5). The plan shall describe the degree of protection intended for each significant resource site. The plan and implementing ordinances shall clearly identify those conflicting uses that are allowed and the specific standards or limitations that apply to the allowed uses. A program to achieve Goal 5 may include zoning measures that partially or fully allow conflicting uses (see OAR 660-023-0040(5) (b) and (c)).

(2) When a local government has decided to protect a resource site under OAR 660-023-0040(5)(b), implementing measures applied to conflicting uses on the resource site and within its impact area shall contain clear and objective standards. For purposes of this division, a standard shall be considered clear and objective if it meets any one of the following criteria:

(a) It is a fixed numerical standard, such as a height limitation of 35 feet or a setback of 50 feet;

(b) It is a nondiscretionary requirement, such as a requirement that grading not occur beneath the dripline of a protected tree; or

(c) It is a performance standard that describes the outcome to be achieved by the design, siting, construction, or operation of the conflicting use, and specifies the objective criteria to be used in evaluating outcome or performance. Different performance standards may be needed for different resource sites. If performance standards are adopted, the local government shall at the same time adopt a process for their application (such as a conditional use, or design review ordinance provision).

There is no need to do anything more than to:

Designate the proposed RMRI area a significant site, put it on the RMRI and allow mining. This will bring the site within the protection of UCO 150.04, 150.07 and 150.08 which is at a minimum the substantial equivalent of the program that the applicant proposed but even more protective of the resource use under the RMRI.

II. STANDARDS OF THE UMATILLA COUNTY DEVELOPMENT CODE TO ESTABLISH AN AGGREGATE RESOURCE OVERLAY ZONE (UCDC 152.487 – 488)

As previously explained in these findings, the standards in the Goal 5 rule supersede and preempt contrary County requirements because the County has not adopted the Goal 5 rule requirements, making them apply directly. Therefore, the AROZ provisions which the County will use to implement the RMRI designation above, only apply to the extent that they are consistent with the Goal 5 rule. Thus, while the “applicability” section of the AROZ states that an AROZ zone alone does not allow “processing of aggregate from another site”, the terms of the Goal 5 rule specially authorize, and do not require re-justification of, processing material at the proposed RMRI at the 9.83 acre “existing site” where the batch plant is located. Accordingly, no further County permission is required to process material from the proposed 33.26 acre RMRI area at the existing 9.83 acre RMRI area, and doing so is allowed under the RMRI approval explained above. Additionally, the County interprets its AROZ use of the term “aggregate” to have the same meaning of the term “aggregate” found in the Goal 5 rule.²⁶ The basalt material to be mined here is used in road building and is therefore, “aggregate” under both the Goal 5 rule and the AROZ. The applicable AROZ standards for approval are provided in underlined text and the responses are indicated in standard text.

§ 152.487 CRITERIA FOR ESTABLISHING AN OVERLAY ZONE.

(A) At the public hearing the Board of Commissioners shall determine if the following criteria can be met:

(1) The proposed overlay would be compatible with the Comprehensive Plan; The only applicable portions of the comprehensive plan are those relating to agriculture and to mining. The proposal complies with both. With respect to Agriculture, the plan recognizes that EFU zoning authorizes nonfarm uses and that the plan’s Goal 3 Agriculture element is designed to preserve farm land and minimize conflicts from nonfarm uses. The plan (18-4) however recognizes the importance of agricultural areas to nonfarm natural resource uses:

²⁶ OAR 660-023-180(1)(a): a) “Aggregate resources’ are naturally occurring concentrations of stone, rock, sand gravel, decomposed granite, limestone, pumice, cinders, and other naturally occurring solid materials commonly used in road building or other construction.” Basalt is a naturally occurring concentration of rock commonly used in road building.

“It is the intent of Umatilla County to continue the capability to economically farm lands by limiting conflicts with non-farm uses. This will be done by prohibiting both incompatible non-farming activities and/or carefully monitoring land divisions to those compatible with agricultural needs.

The protection and preservation of farmland is primarily for the purpose of preserving agricultural soils and thus the industry as a basis for food and fiber production now and in the future. Secondary benefits *preserve potential mineral resources*, fish and wildlife resources and the valuable character of open space.” (Emphasis supplied.)

As explained in other parts of this decision, potential conflicts between the proposal and farming is adequately mitigated. Further, the proposal complies with the Comprehensive Plan, Chapter 8, and Policy 38 states:

Policy 38. (a) The County shall encourage mapping of future agencies sites, ensure their protection from conflicting adjacent land uses, and required reclamation plans.

(b) Aggregate and mineral exploration, extraction, and reclamation shall be conducted in conformance with the regulations of the Department of Geology and Mineral Industries.

(c) The County Development Ordinance shall include conditional use standards and other provisions to limit or mitigate conflicting uses between aggregate sites and surrounding land uses

Policy 38(a) while not artfully worded applies to aggregate resource sites like the subject. The reference to “other agencies sites” refers to sites permitted by DOGAMI or sites that are owned/operated by agencies like ODOT. The proposal encourages the mapping of future sites because it shows that if sites meet applicable standards, the County will approve them. Further, the proposed RMRI mining operation has been approved through the Goal 5 process and includes conditions of approval adequate to avoid conflicts with adjacent land uses which mitigates against those conflicting land uses complaining about lawful mining activities. The County code protects the mining use approved herein as once it is added to the RMRI – significant sites inventory -- it becomes a “Resource Use” subject to the protections of UCDO 152.485 - 152.491. Moreover, the proposal will adhere to DOGAMI rules for operation and reclamation of the site and the DOGAMI approved reclamation plan is specifically approved in this decision. This standard is met.

(2) There is sufficient information supplied by the applicant to show that there exist quantities of aggregate material that would warrant the overlay;

The applicant provided evidence demonstrating that the RMRI area consists of more than 500,000 tons of aggregate (actually somewhere between 1,100,000 and 1,200,000 tons) of “aggregate”²⁷ material. The material is actually a hard basalt but the County finds this to be within the scope of the use of the term “aggregate” here. This criterion is met.

(3) The proposed overlay is located at least 1,000 feet from properties zoned for residential use or

designated on the Comprehensive Plan for residential;

The County finds that there is no residential zoning district within 1,000 feet from the proposed mining operation. The nearest residential zone is along the western edge of Walla Walla River Road. The 1,000 foot distance from the proposed new RMRI area ends at the far eastern edge of Walla Walla River Road. The nearest residential zone on the far western edge of Walla Walla River Rd. In the alternative and without waiver that this above statement is the County's position, if the residential zone is deemed to go to the centerline of Walla Walla River Rd, then the RMRI is still more than 1000 feet from it. This standard is met.

(4) Adequate screening, either natural or man-made, is available for protecting the site from surrounding land uses.

As detailed in the application and the Noise Report, there are significant topographical barriers between the proposed RMRI and surrounding land uses. When mining begins in Area A, there will be a temporary period when topography does not provide screening until the berm is established and operations head below grade. Screening will be in the form of the berm and then the below grade operations. The natural screening of topography, the operations phasing and the establishment of the berm are all adequate natural screening to protect the site from surrounding land uses. This standard is met.

(5) The site complies with OAR 660-023-0180. The County determines above the site complies with OAR 660-023-0180. This standard is met.

§152.488 MINING REQUIREMENTS.

(A) All work done in an AR Overlay Zone shall conform to the requirements of the Department of Geology and Mineral Industries * * *.

The site has and will maintain a DOGAMI permit. This permit establishes conformity to DOGAMI requirements. Maintaining compliance with all DOGAMI requirements is a condition of approval.

(B) In addition to those requirements, an aggregate operation shall comply with the following standards:

(1) For each operation conducted in an AR Overlay Zone the applicant shall provide the Planning Department with a copy of the reclamation plan that is to be submitted under the county's reclamation ordinance; The reclamation plan approved by DOGAMI has been submitted as a part of the record in this proceeding. This standard is met.

(2) Extraction and sedimentation ponds shall not be allowed within 25 feet of a public road or within 100 feet from a dwelling, unless the extraction is into an area that is above the grade of the road, then extraction may occur to the property line; The County finds that no part of the proposed RMRI area is within these setback areas. These standards are met.

(3) Processing equipment shall not be operated within 500 feet of an existing dwelling at the time of the application of the overlay zone. Dwellings built after an AR Overlay Zone is applied shall

not be used when computing this setback. The County finds that there are no dwellings within 500 feet of any processing equipment in the 33.26 acre RMRI area.²⁸ This criterion is met.

(4) All access roads shall be arranged in such a manner as to minimize traffic danger, nuisance to surrounding properties and eliminate dust. The County finds that the haul road will be the same as what is currently utilized. Watering of the haul road is required to manage dust. This standard is met.

III. STATEWIDE PLANNING GOALS

It is unclear whether or to what extent that the statewide planning goals apply to this decision. Applying the Goal 5 rule to a mining site and allowing mining is a special kind of process that amends the County's Comprehensive Plan and is a process required by the specific terms of OAR 660-023-0180. OAR 660-023-0180 says nothing about applying other statewide planning goals. In context, it is reasonably implied that OAR 660-023-180 includes the totality of requirements applicable to proposals to add land to an RMRI. The only exception appears to be that the rule contemplates that particular goals will be applied in circumstances inapplicable here. OAR 660-023-0240. Many of the requirements of OAR 660-023-180 appear to be specific refinements to the provisions of Statewide Planning Goals that would otherwise apply to a plan amendment. For example, OAR 660-023-180(5)(b), includes a specific type of transportation analysis that would be superfluous if a Goal 12 TPR analysis were required. Further, the Statewide Planning Goals do not apply to the application of the AROZ to the property, because that action is the amendment of a land use regulation and it is consistent with the amendment of the County Comprehensive Plan approved herein to make the site a significant aggregate site and allow mining. ORS 197.835(7)(a). Nevertheless in an abundance of caution, the Goals are evaluated below.

Goal 1 Citizen Involvement

The proposal does not change or impact the County's Goal 1 citizen involvement program. Accordingly, here, Goal 1 is satisfied by following the County's acknowledged citizen involvement program. The County followed its acknowledged citizen involvement program and this goal is satisfied. *Casey Jones Well Drilling, Inc. v. City of Lowell*, 34 Or LUBA 263 (1998).

Goal 2 Land Use Planning

Goal 2 requires an adequate factual base for land use decisions and an explanation of policy choices. The decision is based on substantial evidence (an adequate factual base) and these findings explain the County's policy choices. The plan amendment to add the subject property to the RMRI is implemented by the corresponding AROZ applied per this decision. The decision was coordinated with other units of government because as explained earlier in these findings applicable units of government were provided notice and the opportunity to comment. As applicable those comments are addressed in this decision.

Goal 3 and 4 Agricultural Lands and Forest Lands

²⁸ As noted elsewhere, the asphalt plant for the mine is located on the 9.83 acres already on the RMRI. It is not subject to re-justification here and the AR zone is not being applied to it. In any case, the County notes that evidence is in this record that the asphalt plant is more than 500 feet from the nearest dwelling.

The property is planned and zoned EFU. It is not planned and zoned for forest uses. Goal 4 does not apply but Goal 3 does.

Adding the subject land to the RMRI is consistent with Goal 3 because mining is allowed in EFU zones – which implement Goal 3 – subject to compliance with OAR 660-023-0180. *See Hiebenthal v. Polk County*, 45 Or LUBA 297 (2003) (Goal 3 inapplicable to a use authorized in ORS 215.283(2)). The proposal is a use authorized by ORS 215.283(2)(b). Moreover, the proposal is further consistent with Goal 3 because instead of opening a new pit, it expands an existing one; limiting the amount of EFU land impacted to be devoted to producing aggregate material for road building in the County. The proposal complies with OAR 660-023-180 and having complied with the rule further establishes compliance with Goal 3.

Goal 5 Open Spaces and Natural Resources

Compliance with Goal 5 is achieved by complying with the Goal 5 rule – OAR 660-023-0180. The proposal complies with the Goal 5 rule.

Goal 6 Air Water and Land Use Resource Quality

For a mining use, the County need only determine that the mine is reasonably expected to comply with applicable state or federal environmental quality standards. *Friends of the Applegate v. Josephine County*, 44 Or LUBA 786 (2003). The only applicable federal environmental quality standards are the Clean Air Act, which is implemented by Oregon DEQ through Air Contaminant Discharge Permits. Oregon also has clean air standards which are implemented through DEQ issuance of Air Contaminant Discharge Permits. As explained elsewhere in these findings the operation has and is expected to maintain all required Air Contaminant Discharge Permits. Goal 6 is satisfied.

Goal 7 – Natural Disasters and Hazards

Goal 7 requires the County to evaluate risks from development in areas subject to natural disaster or where there are hazards. The subject property is not in a flood or landslide hazard area. There is no particular wildfire hazard given the proposal is largely devoid of vegetation. There is a natural gas pipeline on a part of the property that abuts the proposed RMRI area. It is within the area already on the RMRI. Mining has successfully occurred around the pipeline for a long time, because mining has been ongoing at the Spence Pit in various locations around the pipeline, since the 1940s. The owner of that pipeline submitted a letter for the record stating that mining in the proposed RMRI area, including blasting could safely occur near the pipeline so long as no material was removed from the pipeline easement area. No material will be removed from the pipeline area per this approval, because the pipeline is not within the area authorized for mining as a part of this RMRI approval in the first place. Further, the blast plan for mining under this approval expressly requires that no material be removed from the pipeline easement area and requires that “no blast holes will be drilled in Northwest Pipeline Company’s 50’ wide easement.” The blast plan also requires preblast notice to Northwest Pipeline Company, the owner of the gas pipeline easement. Moreover, the blast plan requires “A minimum of two seismographs will be set up. The first seismograph will be placed at the gas line, upon Williams Northwest Pipeline Company’s approval, and the other at the nearest structure.” Compliance with the blast plan is a condition of approval. The County finds that Goal 7

is met because there are no natural hazards associated with the subject property and that potential problems with the gas line are adequately mitigated and controlled through compliance with the blast plan such that this approval does not significantly increase or create unreasonable risks associated with the pipeline.

Goal 8 Recreation

Goal 8 either does not apply or is satisfied. The Board observes that there is not much in the way of requirements in Goal 8 in any event. The County has planned for parks and other recreational needs for its citizens. To the extent Goal 8 generally expresses a sense that the proposal should not interfere with recreational uses the County notes that there is nothing about the approval of the RMRI here that adversely affects any recreation use. Findings about the open space at Grove Elementary School are included in other parts of this decision. The proposal does not in any way foreclose or impair recreational use of the school. To the extent the Walla Walla River is used for recreation, the proposal does not affect that use of the river either.

Goal 9 Economy of the State

Goal 9 requires the County to provide adequate opportunities for a variety of economic activities. Mining is an economic activity. This approval provides the opportunity for mining. Goal 9 is met.

Goal 10 Housing

This goal pertains to needed housing. The subject property is not planned or zoned for housing of any type. The proposal has no impact on needed housing and this Goal does not apply.

Goal 11 Public Facilities and Services

No public facilities like public water or sewer are available to it or proposed. As explained elsewhere in these findings, there is adequate water available to serve the proposal. A septic system serves the office. The Sheriff provides police protection and fire service is provided by the Milton-Freewater rural fire department. A condition of approval is imposed requiring the applicant maintain a subscription to the rural fire department. Storm water is adequately controlled on site as explained elsewhere. Goal 11 is met.

Goal 12 Transportation

Goal 12 relates to the requirements of the County transportation plan. The County has an acknowledged transportation plan. There are no nearby freeway interchanges or major mass transit stations or major air, land or water terminals. Goal 12 is met. The County does not believe the Transportation Planning Rule (“TPR”) which implements Goal 12 applies. However, as a precaution it also notes that to the extent that the TPR applies it is met.²⁹ The applicant provided a

²⁹ As noted elsewhere, it does not appeal Goal 12 or the Transportation Planning Rule (“TPR”) applies to this proposal. OAR 660-023-180(5)(b) includes a specific type of transportation analysis that would be superfluous if the TPR also applied. Similarly, the AROZ, while a map amendment, application of the AROZ simply follows and implements the RMRI authorized by OAR 660-023-180, the county TSP is acknowledged and the neither the project nor the County was not exempted from the TPR per OAR 660-012-0060(9). Thus, the AROZ does not trigger the

Transportation Impact Analysis and supplement that among other things, concludes that the proposal has “no significant impact” on a transportation facility under OAR 660-012-060 (TPR). The analysis in the applicant’s transportation submittals is incorporated by the County. The County finds the proposal has no significant impact” on a transportation facility because the proposal does not change the volume or types of transportation impacts from the existing mining operation that existing transportation system experiences or change how the transportation system is planned to function or does function over the planning horizon.

Goal 13 Energy Conservation

This goal requires development and use of land be managed and controlled so as to maximize conservation of energy. The proposal is consistent with this goal. Energy efficiency is maintained by expanding an existing site as here rather than opening a new one. The proposal avoids the need to open a new pit to mine aggregate resources and avoids distant travel between a new or different pit to process material at this site. It avoids the need for new processing facilities which are energy consumptive, and rather encourages the efficiency of utilizing existing processing facilities for rock mined at the expanded site. Sharing facilities as here and expanding an existing site rather than adding a new one promote energy efficiency.

Goal 14

Goal 14 does not apply because the proposal does not expand an urban growth boundary, does not establish an urban growth boundary and is not an “urban” use.

Goals 15-19

None of these goals apply because none of the implicated natural resources are present at or near the site.

CONDITIONS APPLICABLE TO MINING IN THE APPROVED 33.26 RMRI AREA:

Precedent Conditions: The following precedent conditions must be fulfilled prior to final approval of this request:

1. Sign and record a Covenant Not to Sue Agreement (Farming Practices). The Agreement will be provided by the County Planning Department.
2. Provide evidence of a current subscription to the Milton-Freewater Rural Fire District or evidence of coverage by another fire service provider

Subsequent Conditions: The following subsequent conditions must be fulfilled following final approval of the request:

TPR “significant impact” analysis per the terms of OAR 660-012-060(9). The County further notes that it would not make much sense for the rule to specifically authorize only a specific type of transportation analysis in the plan amendment process in OAR 660-023-180 to add a site to a significant mining site inventory, and then to turn around and require a full blown TPR analysis in applying the implementing AROZ zone.

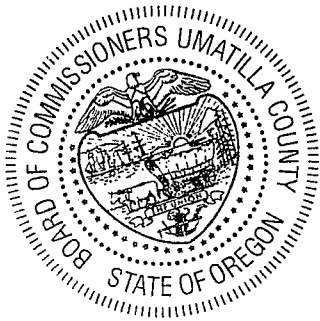
3. Obtain a Zoning Permit from the Umatilla County Planning Department with an approved site plan showing setbacks, existing structures, driveways, utilities, etc. on the proposed RMRI area.
4. Obtain all other State permits necessary for development (i.e. building codes, DEQ On-site, etc.) including the following permits regarding the aggregate site:
 - a. DOGAMI. Comply with DOGAMI permit and Reclamation Plan requirements. A copy of the DOGAMI permit and Reclamation Plan is to be provided to the County Planning Department when issued.
 - b. DEQ. Obtain all necessary DEQ permits in relation to an aggregate site.
 - c. DEQ. Continue to meet the DEQ Noise Standard as found in OAR 340-035-0035(B).
5. Implement and adhere to the Applicant's Daley Standlee Noise Study Section 6.4 "Assumptions Used in Predicting Future Mining Noise Levels."
6. Follow the blasting plan which includes pre-blast notification to the owner of the gas pipeline as well as area property owners. Pre-blast notification to area property owners shall be to those persons as shown on the currently available Umatilla County tax roll for real property located within 2,500 feet of the RMRI boundary. Notification if given a week in advance of a blast may be by First Class U.S. Mail. If within 24 hours of a blast then notice shall be via email or telephone call so long as the recipient property owner has authorized the same; provided however that notice to area property owners complying with this condition may also be accomplished by leaving written notice at the door of residential property that is within the 2,500 notice area. If access to the door is not possible due to locked gates or threatening animals or other legitimate reasons, then notice may be posted on the property or nearby road right of way in the most visible way and place that is reasonable and possible.
7. No blasting or extractive activities within the 50 foot wide gas pipeline easement;

Conduct one pre-blast survey within the 1,500 foot impact area. If there is a complying preblast survey within the previous 3 months of this approval then evidence of such pre-blast survey shall be adequate to satisfy this condition.
8. Hours of operation will be 6:00 a.m. to 7:00 p.m.
9. Plant a buffer zone of trees to mitigate noise and dust
10. Install a flow meter on the domestic well
11. Install three 10,000 gallon water tanks for water storage on the property;
12. The applicant shall remove all debris at the conclusion of mining operations and leave the extraction area in a safe and useable condition.

13. If lighting is added then shielding is required to prevent glare onto the adjoining properties and roadways.
13. Haul roads will be watered regularly with the use of water trucks. Extraction areas will be watered regularly with the use of a sprinkler system.
14. Maintain a subscription to the Milton-Freewater rural fire district or other fire service provider.

Dated this the 31 day of July, 2014

UMATILLA COUNTY BOARD OF COMMISSIONERS



William J. Elfering
William J. Elfering, Chair

George L. Murdock
George L. Murdock, Commissioner

RECUSED DID NOT PARTICIPATE

W. Lawrence Givens, Commissioner

ATTEST:
OFFICE OF COUNTY RECORDS

Gene Chandler
RECORDS OFFICER

