



# Oregon

Theodore R. Kubangoski, Governor

Department of Land Conservation and Development

635 Capitol Street, Suite 150

Salem, OR 97301-2540

(503) 373-0050

Fax (503) 378-5518

www.lcd.state.or.us



## NOTICE OF ADOPTED AMENDMENT

03/02/2009

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

**FROM:** Mara Ulloa, Plan Amendment Program Specialist

**SUBJECT:** Marion County Plan Amendment  
DLCD File Number 006-07

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

Appeal Procedures\*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: Friday, March 13, 2009

This amendment was not submitted to DLCD for review prior to adoption Pursuant to OAR 660-18-060, the Director or any person is eligible to appeal this action to LUBA under ORS 197.830 to 197.845.. Pursuant to ORS 197.830(2)(b) only persons who participated in the local government proceedings leading to adoption of the amendment are eligible to appeal this decision to the Land Use Board of Appeals (LUBA).

If you wish to appeal, you must file a notice of intent to appeal with the Land Use Board of Appeals (LUBA) no later than 21 days from the date the decision was mailed to you by the local government. If you have questions, check with the local government to determine the appeal deadline. Copies of the notice of intent to appeal must be served upon the local government and others who received written notice of the final decision from the local government. The notice of intent to appeal must be served and filed in the form and manner prescribed by LUBA, (OAR Chapter 661, Division 10). Please call LUBA at 503-373-1265, if you have questions about appeal procedures.

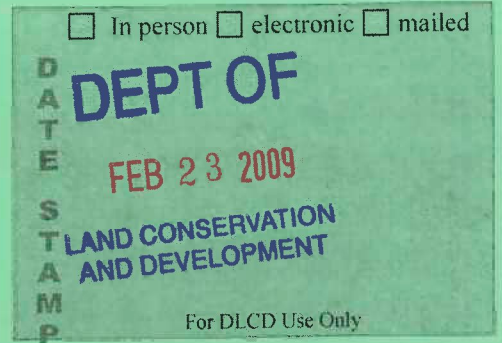
**\*NOTE:** THE APPEAL DEADLINE IS BASED UPON THE DATE THE DECISION WAS MAILED BY LOCAL GOVERNMENT. A DECISION MAY HAVE BEEN MAILED TO YOU ON A DIFFERENT DATE THAT IT WAS MAILED TO DLCD. AS A RESULT, YOUR APPEAL DEADLINE MAY BE EARLIER THAN THE ABOVE DATE SPECIFIED.

**Cc:** David Epling, Marion County  
Doug White, DLCD Community Services Specialist  
Amanda Punton, DLCD Regional Representative

<paa> YA

# Notice of Adoption

**THIS FORM MUST BE MAILED TO DLCD  
WITHIN 5 WORKING DAYS AFTER THE FINAL DECISION  
PER ORS 197.610, OAR CHAPTER 660 - DIVISION 18**



Jurisdiction: **MARION COUNTY**

Local file number: **CP/CU07-006**

Date of Adoption: **2/18/2009**

Date Mailed: **2/18/2009**

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? **Select one** Date: **7/12/07**

Comprehensive Plan Text Amendment

Comprehensive Plan Map Amendment

Land Use Regulation Amendment

Zoning Map Amendment

New Land Use Regulation

Other:

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

Comprehensive Plan amendment to add a mining site to the Marion County Comprehensive Plan Mineral and Aggregate and a conditional use to allow aggregate mining and processing on a 34.4 acre parcel in an Farm Timber zone.

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

Plan Map Changed from:

to:

Zone Map Changed from:

to:

Location:

Acres Involved:

Specify Density: Previous:

New:

Applicable statewide planning goals:

- |                          |                          |                          |                          |                          |                          |                          |                          |                          |                          |                          |                          |                          |                          |                          |                          |                          |                          |                          |
|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|
| <b>1</b>                 | <b>2</b>                 | <b>3</b>                 | <b>4</b>                 | <b>5</b>                 | <b>6</b>                 | <b>7</b>                 | <b>8</b>                 | <b>9</b>                 | <b>10</b>                | <b>11</b>                | <b>12</b>                | <b>13</b>                | <b>14</b>                | <b>15</b>                | <b>16</b>                | <b>17</b>                | <b>18</b>                | <b>19</b>                |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

Was an Exception Adopted?  YES  NO

Did DLCD receive a Notice of Proposed Amendment...

45-days prior to first evidentiary hearing?

Yes  No

If no, do the statewide planning goals apply?

Yes  No

If no, did Emergency Circumstances require immediate adoption?

Yes  No

*DLCD # 006-07 (16243)*

**DLCD file No.** \_\_\_\_\_

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

---

Local Contact: **David Epling**

Phone: **(503) 588-5038** Extension:

Address: **PO BOX 14500**

Fax Number: - -

City: **SALEM**

Zip: **97309-**

E-mail Address:

---

## **ADOPTION SUBMITTAL REQUIREMENTS**

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

1. **Send this Form and TWO Complete Copies (documents and maps) of the Adopted Amendment to:**

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

2. **Electronic Submittals:** At least **one** hard copy must be sent by mail or in person, but you may also submit an electronic copy, by either email or FTP. You may connect to this address to FTP proposals and adoptions: **webserver.lcd.state.or.us**. To obtain our Username and password for FTP, call Mara Ulloa at 503-373-0050 extension 238, or by emailing **mara.ulloa@state.or.us**.
3. **Please Note:** Adopted materials must be sent to DLCD not later than **FIVE (5) working days** following the date of the final decision on the amendment.
4. Submittal of this Notice of Adoption must include the text of the amendment plus adopted findings and supplementary information.
5. The deadline to appeal will not be extended if you submit this notice of adoption within five working days of the final decision. Appeals to LUBA may be filed within **TWENTY-ONE (21) days** of the date, the Notice of Adoption is sent to DLCD.
6. In addition to sending the Notice of Adoption to DLCD, you must notify persons who participated in the local hearing and requested notice of the final decision.
7. **Need More Copies?** You can now access these forms online at **http://www.lcd.state.or.us/**. Please print on **8-1/2x11 green paper only**. You may also call the DLCD Office at (503) 373-0050; or Fax your request to: (503) 378-5518; or Email your request to **mara.ulloa@state.or.us** - ATTENTION: PLAN AMENDMENT SPECIALIST.

**BEFORE THE BOARD OF COMMISSIONERS  
FOR MARION COUNTY, OREGON**

In the Matter of the Application of:	)	Case No. CP/CU 07-6
Lynne Sacher and the Lynne Sacher Revocable	)	Clerk's File No. 5576
Living Trust	)	Comprehensive Plan Amendment/
	)	Conditional Use

AN ADMINISTRATIVE ORDINANCE

ORDINANCE NO. 1284

THE MARION COUNTY BOARD OF COMMISSIONERS HEREBY ORDAINS AS FOLLOWS:

Section I. Purpose

This matter comes before the Marion County Board of Commissioners ("Board"), on the application of Lynne Sacher and the Lynne Sacher Revocable Living Trust for a comprehensive plan text amendment to add a mineral and aggregate site to the "significant sites" inventory of the Marion County Comprehensive Plan and a conditional use to allow extraction and processing of aggregate materials on the site. The subject property consists of 34.4 acres located in a FT (Farm Timber) zone at 158 Silver Falls Drive NE, Silverton (Sections 27 and 27D, T7S; R1E).

Section II. Procedural History

The Marion County hearings officer held a hearing on this application on September 5, 2007, at which the applicant requested a continuance in order to submit additional information. The hearings officer continued the hearing to November 7, 2007 to receive additional testimony. No objections were raised as to notice, jurisdiction, conflicts, or to evidence or testimony presented. On March 8, 2008, the hearings officer referred this application to the Board with a recommendation that there was insufficient specific information in the record to substantiate a recommendation for approval of the application.

The applicant requested a delay in scheduling a hearing with the Board of Commissioners in order to prepare additional evidence. The Board held a duly noticed public hearing on the subject application on December 10, 2008. Official notice was taken of the Planning Division file and the hearings officer's recommendation. The Board has reviewed all the evidence in the record, all arguments of the parties and is otherwise fully advised in the premises.

Section III. Adoption of Findings and Conclusions

After careful consideration of all facts and evidence in the record, the Board adopts as its own the Findings of Fact and Additional Findings of Fact and Conclusions of Law in Exhibit A, attached hereto, and by this reference incorporated herein.

Section IV. Action

Based upon the substantial evidence in the record, the findings and conclusions contained in Exhibit A, the Board does hereby **APPROVE** the application for a comprehensive plan amendment, identifying and listing the subject property on the Marion County inventory of significant aggregate sites, and approving the operating plan proposed by the applicant. This approval carries with it certain conditions, which are deemed to be necessary for the public health, welfare and safety. The Board adopts the conditions of approval attached hereto as Exhibit B, incorporated herein by this reference.

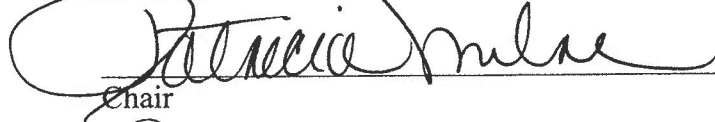
The requested conditional use to allow extraction and aggregate processing is hereby **GRANTED**, subject to the conditions identified in Exhibit B, attached hereto and by this reference incorporated herein.


Section V. Effective Date

Pursuant to Ordinance 669, this is an administrative ordinance and shall take effect 21 days after the adoption and final signature of the chair of the Marion County Board of Commissioners.

SIGNED and FINALIZED this 18<sup>th</sup> day of February 2009, at Salem, Oregon.

**MARION COUNTY BOARD OF COMMISSIONERS**

  
Chair

  
Recording Secretary

JUDICIAL NOTICE

Oregon Revised Statutes, Chapter 197.830, provides that land use decisions may be reviewed by the Land Use Board of Appeals by filing a notice of intent to appeal within 21 days from the date this Ordinance becomes final.

## EXHIBIT A

### FINDINGS OF FACT

The Marion County Board of Commissioners, after careful consideration of the testimony and evidence in the record, makes the following findings of fact and additional findings of fact and conclusions of law in Comprehensive Plan Amendment/Conditional Use Case 07-6/Sacher:

1. The 34.4 acre parcel has a Farm and Timber designation in the Marion County Comprehensive Plan and is correspondingly zoned FT. Areas that receive the Farm and Timber designation “support a mixture of both agricultural and forestry activities.” MCCP, II B 3. Permissible uses that may occur in a FT zone after obtaining a conditional use permit, and satisfying the requirements of MCRZO 139.060(a), include aggregate mining and processing operations that are subject to the criteria in MCRZO section 120.400. MCRZO 139.050(e)(2) and (4). Pursuant to ORS 215.298, a county must first amend the mineral and aggregate inventory of its comprehensive plan to include the site of a proposed aggregate mining and processing operation before approving a conditional use permit to conduct aggregate mining and processing.

The applicant has filed an application to add an aggregate mining and processing operation to Marion County’s Mineral and Aggregate Resources Inventory by amending the county’s Comprehensive Plan. The applicant has also requested a conditional use permit to conduct aggregate mining and processing activities on the site. The processing operation, if approved, would include crushing and screening of aggregate material only. Although the application did not initially include information regarding that portion of the aggregate resource site on Tax Lot 200, it appears from information contained within the Planning Division’s file that Tax Lot 200 is also zoned FT.

2. The subject property is located on the north side of Silver Falls Drive and at the northern terminus of Loar Road. Currently, the property produces Christmas trees. The subject property contains an existing dwelling, accessory and farm-related buildings, a well, and a septic system. At the public hearing, the applicant modified the application, which initially referred only to Tax Lot 100, to include that portion of the aggregate resource site located on Tax Lot 200.
3. The subject property is surrounded by land that is zoned either FT or Exclusive Farm Use (EFU). Christmas tree operations and woodlots are the predominate uses in the area. Applicant’s revised site plan includes Tax Lot 200 and reveals what uses occur on the surrounding properties.
4. On August 29, 2007, before the applicant began including Tax Lot 200 in her submitted documents, the Planning Division released a memorandum to the hearings officer stating the subject property, which at that time consisted solely of real property on Tax Lot 100, contained the following three mapped soil units:

<u>Soil:</u>	<u>SCS Soil Class:</u>	<u>% of Parcel:</u>	<u>High Value:</u>	
McCully clay loam, 2-7% (McB)	II	41.8		Y
McCully clay loam, 7-12% (McC)	III	44.9		N
McCully clay loam, 12-20% (McD)	III	13.3		N

In the *Significance Aggregate Evaluation* performed by Kuper Consulting, LLC and dated October 26, 2007, the principal geologist, H. Tom Kuper, C.E.G., wrote that “[a] review of the United States Department of Agriculture (USDA) Soil Survey of Marion County ‘survey’ dated September 1972 indicated that the Tax Lot 100 and 200 area of the proposed Sacher Quarry property contains three mapped soil units”, the same soil units listed above. *Evaluation*, pg. 3. However, the evaluation does not discuss the soil composition of Tax Lot 200, revealing only that McCully clay loam, 2-7% (McB) “occupies approximately 70% of the proposed Sacher Quarry area.” *Id.*, pgs. 3 and 4.

5. The Marion County Planning Division requested, and received, comments regarding the application from the following state and local governmental agencies:

Marion County Department of Public Works provided comments concerning:

Streets: Silver Falls Drive is under the jurisdiction of the Oregon Department of Transportation (ODOT). As a condition of approval, the applicant must meet ODOT’s requirements for issues such as access, frontage improvements, traffic analysis and mitigation, right-of-way, and permits. It is the applicant’s responsibility to show that this condition has been met. Driveways will need to meet fire district standards for emergency access.

Storm Drainage: Site grading may not impact surrounding properties, roads, or drainage ways in a negative manner. Construction improvements on the property may not block historical or naturally occurring runoff from adjacent properties. The applicant will be required to submit a site drainage plan to demonstrate this lack of negative impact.

General Issues: The subject property is within the unincorporated area of Marion County. Transportation System Development Charges shall be assessed upon development of the property, if development is permitted. Payment of these charges, estimated at \$7,634.00, is a condition of approval.

Any utility work in the public right-of-way will require a utility permit from the Department of Public Works.

A National Pollutant Discharge Elimination System (NPDES) permit, available from the Oregon Department of Environmental Quality (DEQ), is required for all construction activities that disturb one or more acres.

Marion County Tax Office provided tax information concerning the subject area.

Department of Land Conservation and Development (DCLD) commented that the proposed site must meet criteria established in OAR 660-023-0180(4).

Oregon Department of Transportation commented that prior to issuance of conditional use or building permits, the applicant must provide the Planning Division with proof that applicant has obtained any approach permits or completions of improvements required by ODOT.

#### **Additional Findings of Fact and Conclusions of Law**

1. Applicant has the burden of proving that all applicable standards and criteria are met. Knapp v. City of Jacksonville, 20 Or LUBA 189, 200 (1990); *see also* MCRZO 110.680 and 120.430. OAR chapter 660, division 23 establishes specific procedures for how applicant’s compliance

with Goal 5 is to be demonstrated, and OAR 660-034-0180 establishes specific standards and criteria for “an aggregate site PAPA application.” Molalla River Reserve, Inc. v. Clackamas County, 42 Or LUBA 251, 272-273 (2002).

### Proposed Comprehensive Plan Amendment

2. The Department of Land Conservation and Development (DLCD) must be notified of all comprehensive plan amendments. ORS 197.610. DLCD was notified as required by statute and provided the comments noted above.
3. Comprehensive plan amendments must comply with applicable statewide planning goals. ORS 197.250. Goal 5 applies in this case because it establishes the framework for land use decisions on natural resources, including mineral and aggregate resources. The purpose of this statewide planning goal is to preserve open space and protect natural and scenic resources.

Goal 5 is implemented statewide by OAR chapter 660, division 23 and in Marion County specifically by MCRZO section 120.400. OAR 660-023-0180 establishes a post-acknowledgement plan amendment (PAPA) process for amending mineral and aggregate resource inventories of acknowledged county comprehensive plans. Walker and Walker v. Deschutes County, LUBA No. 2007-013, pg. 4 (October 3, 2007). The PAPA process creates a procedure for reviewing comprehensive plan amendments that is separate from a periodic comprehensive plan review conducted under OAR 660-023.

4. The requirements applicable to amending a resource inventory through the PAPA process are found at OAR 660-023-0180(2), which provides that local governments “shall follow the applicable requirements of OAR 660-023-0030, except where those requirements are expanded or superceded for aggregate resources as provided in subsections (b) through (d) of this section and sections (3), (4) and (8) of this rule”.

“When a local government determines that a particular resource site is significant, the local government shall include the site on a list of significant Goal 5 resources adopted as part of the comprehensive plan [i.e., a mineral and aggregate resource inventory]..” OAR 660-023-0030(5). OAR 660-023-0180 provides two criteria for determining whether a proposed aggregate site is significant. In this case, because the amount of aggregate at the resource site is estimated at less than two (2) million tons, the appropriate criteria for determining whether the site in question is significant are found at section (4) of the rule. An aggregate resource site within the Willamette Valley, defined at OAR 660-023-0180(1) to include Marion County, may be deemed significant if “the quantity of material proposed to be mined from the site is estimated to be 2,000,000 tons of aggregate material or less...” and 35% or less of the “proposed mining area consists of soil classified as Class II, or of a combination of Class II and Class I or Unique soil...unless the average thickness of the aggregate layer within the mining area exceeds...60 feet in” Marion County. OAR 660-023-0180(3)(d)(B) and -0183(4).

An aggregate resource site that is determined to be significant pursuant to OAR 660-023-0180(4) is exempt from complying with the requirements of OAR 660-023-0040 and -0050. OAR 660-023-0180(6) and (7). Instead, a local government shall apply the requirements of OAR 660-023-0180(6) to an aggregate resource site that has been determined to be significant pursuant to OAR 660-023-0180(4).



5. When determining whether a proposed aggregate resource site is significant for purposes of OAR 660-023-0180(4), a local government may rely on information submitted by an applicant who has requested a PAPA. “An application for approval of an aggregate site following sections (4) and (6) of this rule shall be adequate if it provides sufficient information to determine whether the requirements in those sections are satisfied.” OAR 660-023-0180(8).

The applicant submitted a significance aggregate evaluation performed by Kuper Consulting, LLC on or about October 26, 2007. This evaluation was comprised of three parts: the first, a visual reconnaissance of the proposed site; the second, a subsurface investigation utilizing air-track borings; and the third, a review of available geologic publications concerning the area. As part of the subsurface investigation, seven (7) air-track borings, with a maximum depth of 84 feet, were drilled at different locations throughout those 8.2 acres of the subject property designated on the revised site plan as the site of the proposed aggregate extraction operation and storage of overburden. “The air-track borings were drilled with a track-mounted air-track using a 3-inch diameter bit.” *Significance Aggregate Evaluation*, pg. 3. Kuper Consulting determined that the minimum thickness of the aggregate layer within the proposed mining area is 70 feet, and, “[b]ased on an 8.2-acre area for the potential Sacher Quarry and a thickness of at least 70 feet,” estimated that potentially 1.4 million tons of aggregate material underlies the proposed mining area. *Significance Aggregate Evaluation*, pg. 5. Both the Kuper evaluation and Planning Division memorandum agree that the subject property contains soils classified as SCS Soil Classes II and III.

The information contained within the evaluation performed by Kuper Consulting and submitted by the applicant is sufficient for the Board of Commissioners to determine that the proposed mining area satisfies the requirements of OAR 660-023-0180(4)(a) and (b). Kuper Consulting estimates the site in question contains less than two (2) million tons of aggregate material and, although 35% or more of the proposed aggregate mining and extraction site consists of soil classified as Class II, the aggregate layer has an average thickness in excess of 60 feet. For this reason, the hearings officer concluded that the aggregate resource site on the subject property is significant for purposes of the PAPA review process.

6. Upon determining that a potential aggregate resource site upon farmland is significant for purposes of OAR 660-023-0180(4), the procedures for deciding whether mining may occur at the site are provided by OAR 660-023-0180(6)(a) through (d). Local governments may adopt regulations that “include procedures and requirements consistent with this rule [OAR 660-023-0180] for the consideration of PAPAs concerning aggregate resources.” MCRZO section 120.400 establishes procedures and requirements for PAPA reviews of proposed significant aggregate sites within Marion County that are consistent with those at OAR 660-023-0180.

The following analysis of both the subject application and procedures for deciding whether mining may occur at the site in question that is presented below conforms to the structure of OAR 660-023-0180(6).

#### Procedures for deciding whether mining may occur

- A. *Compliance with approval standards and criteria established by statute, administrative rule, and county ordinance.*

“The proposed aggregate mine shall satisfy discretionary conditional use permit approval standards adopted by the local government pursuant to applicable requirements of ORS 215.213(2) or 215.283(2), and the requirements of ORS 215.296 and 215.402 through 215.416.” OAR 660-023-0180(6)(a).

Pursuant to ORS 215.283(2)(b)(B), operations for the mining, crushing, or stockpiling of aggregate and mineral resources occurring on land for farm uses shall be conducted subject to ORS 215.298, which provides that “ a land use permit is required for mining more than 1,000 cubic yards of material or excavation preparatory to mining of a surface area of more than one acre” and that “[a] permit for mining aggregate shall be issued only for a site included on” a mineral and aggregate resource inventory in an acknowledged comprehensive plan. ORS 215.298(1) and (2).

Discretionary conditional use permit approval standards adopted by Marion County pursuant to both ORS 215.283(2) and OAR 660-023-0180 are found at MCRZO 120.400. That section establishes requirements applicable to applications for new, or expansions of current, aggregate sites (MCRZO 120.430), criteria for reviewing aggregate site applications (MCRZO 120.450), and standards for the development and operation of approved aggregate sites (MCRZO 120.460).

Two sections of MCRZO 120.400 respond specifically to the requirements of ORS 215.298(1) and (2). The first, MCRZO 120.425(C), exempts excavations for aggregate resources that involve 1,000 cubic yards or less from needing a permit from the county. The second, MCRZO 120.450(B), provides that before the county can approve a permit for an aggregate mining and processing operation on a site that qualifies as significant, the applicant must first satisfy the requirements of OAR 660-023-0180(4)(a) through (d), a reference to the subsection (6) of the current rule, which provides that a local government may issue such permits only for a site included on the local government’s inventory of significant aggregate sites.

Non-farm uses established on land in an area zoned EFU are subject to ORS 215.296, which prohibits approving a non-farm use allowed under ORS 215.283(2) that would either “[f]orce a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use” or “[s]ignificantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.” ORS 215.296(1)(a) and (b). Similarly, MCRZO 139.060(a) requires an analysis of how aggregate mining and processing will impact uses within a 1,500 foot area of the mining and processing site.

The subject property is not zoned EFU, instead it is located in a mixed agricultural and forest zone established pursuant to OAR chapter 660, divisions 6 and 33, specifically 660-006-0050, as well as Statewide Planning Goals 3 and 4. “ Uses authorized in Exclusive Farm Use Zones in ORS Chapter 215, and in OAR 660-006-0025 and 660-006-0027, subject to the requirements of the applicable section, may be allowed in any agricultural/forest zone.” OAR 660-006-0050(2). As such, the applicable requirements of ORS 215.283(2), and 215.296, apply to the subject property, which is zoned FT.

ORS 215.402 through 215.416 establish procedures for conducting hearings on applications for proposed uses of land, such as conditional use permits.

- B. The local government shall determine the post-mining use in accordance with subsection (5)(f) of OAR 660-023-0180, which provides that 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 the Department of Geology and Mineral Industries (DOGAMI ) regarding the regulation and reclamation of mineral and aggregate sites, except where exempt under ORS 517.780. OAR 660-023-0180(6)(b).
- C. The local government shall issue a permit for mining aggregate only for a site included on an inventory of significant aggregate sites in the comprehensive plan in accordance with ORS 215.298(2). OAR 660-023-0180(6)(c).
- D. The conditional use permit shall not allow mining of more than the maximum amount of aggregate material specified under OAR 660-023-0180(4)(a), which is two (2) million tons or less. OAR 660-023-0180(6)(d).

#### **Applicant's compliance with procedures**

- A. *Applicant's compliance with discretionary conditional use permit approval standards adopted by Marion County pursuant to applicable requirements of ORS 215.283(2) and OAR 660-023-0180.*

Marion County has adopted discretionary conditional use permit approval standards, pursuant to both ORS 215.283(2) and OAR 660-023-0180, that apply to this application. The county's discretionary standards comprise three sections. Before discussing these sections, the Board notes that the applicable rural zoning ordinance references a previous version of OAR 660-023-0180 and does not reflect the current rule. For this reason, citations in the rural zoning ordinance to specific sections of the rule may not be accurate.

#### *Application Requirements:*

MCRZO 120.430 establishes minimum requirements for an application for a new aggregate site. "An application for a new or expanding mineral or aggregate site shall be adequate if it" meets the following minimum requirements:

Information regarding quantity, quality, and location sufficient to determine whether the site is significant pursuant to OAR 660-023-0180(4).

The significance aggregate evaluation performed by Kuper Consulting, LLC and submitted by the applicant contains sufficient information regarding quantity, quality, and location sufficient to determine that the proposed aggregate site is significant for purposes of OAR 660-023-0180(4).

#### *A conceptual site reclamation plan:*

Neither OAR 660-023-0180 nor MCRZO 120.430 provides minimum standards for site reclamation plans. OAR 632-030-0025 and -0027 provide requirements and minimum standards, respectively, for mining site reclamation plans adopted by the Department of Geology and Mineral Industries (DOGAMI). Although not directly applicable to the PAPA review process established by OAR 660-

023-0180(6), the DOGAMI standards are instructive as to what an aggregate site reclamation plan should contain. The minimum standards established by DOGAMI require slope stabilization, revegetation of all disturbed areas, establishment of water slopes for permanent water impoundments, and the completion of all reclamation efforts in a timely manner. The submitted application contains a general statement that “[a]fter we are done with the ground for our aggregate site, the land will be used for a pond and wet land.” This general statement is inadequate both by itself, because it fails to discuss the procedures by which the applicant intends to achieve these stated goals, and as compared to the minimum site reclamation plan standards adopted by DOGAMI.

The applicant submitted, to the Board of Commissioners, a conceptual site reclamation plan that explains the process by which the applicant will reclaim the proposed aggregate site and put the site to use as a pond and forestry. This plan should include a discussion of re-vegetation, or replanting the site, ensuring soil stability and erosion prevention, and an anticipated date of completion.

*A traffic impact assessment for the proposed aggregate site within one mile of the entrance to the mining area:*

The application contains applicant’s estimate that “[w]e will be trucking an estimated amount of between 6 and 10 trucks per day depending on purchase orders received.” Applicant’s estimate does not satisfy the TIA report requirements established by the Marion County Department of Public Works and available on the county’s website at <http://www.co.marion.or.us/PW/Engineering/analysis.htm>.

The applicant provided the Department of Public Works and Oregon Department of Transportation (ODOT) with traffic information regarding a TIA. It should be noted that ODOT (Oregon Department of Transportation) and Marion County Public Works concurred that a TIA (Traffic Impact Assessment) is not necessary.

*Proposals to minimize conflicts with existing uses preliminarily identified by the applicant within a 1,500 foot impact area:*

The applicant provided the Marion County Board of Commissioners a revised impact area that includes the private roadway and portion of the aggregate site on Tax Lot 200 and a proposal to minimize conflicts with uses identified by the applicant within the revised 1,500 impact area.

*A site plan indicating the location, hours of operation, and other pertinent information for all proposed mining and associated uses:*

The applicant submitted a revised site plan on November 20, 2007 that indicates the location of the proposed mining operation and over burden storage, but not the location of processing or transportation facilities. In the applicant’s statement of November 6, 2007, the applicant provided her proposed hours of operation which are substantially similar to the hours of operation established by MCRZO 120.460(D)(1) and (2).

The applicant completely adopted the hours of operation established in MCRZO 120.460(d)(1) and (2). This includes clarifying that extraction, processing, and transportation activities will only occur on Mondays through Fridays between 6:00 a.m. and 6:00 p.m. Applicant also clarified that extraction, processing, transportation, and blasting activities will not occur on those holidays identified in the ordinance: New Year’s Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day. As a condition of approval, the applicant shall provide an “Official Site Plan”

approved by the Planning Director that identifies the location of processing and transportation facilities at the site.

Application Review Criteria:

Before a conditional use permit for an aggregate extraction and processing operation is granted, the application must first satisfy the applicable application review criteria of MCRZO 120.450. The first criterion is that “[t]he proposed uses, activities and facilities are included in Section 120.440” MCRZO 120.450(A). Section 120.440 of the MCRZO provides a listing of allowable uses at a mineral and aggregate mining operation within Marion County. Those permitted uses include, but are not limited to, mining operations for the extraction of gravel, processing and crushing mineral and aggregate resources, stockpiling of mineral and aggregate resources, and other incidental related activities. MCRZO 120.440(A) and (B). The second criterion requires sites that qualify as significant comply with the applicable requirements of OAR 660-023-0180. MCRZO 120.450(B). The final applicable criterion provides that “[i]f the site is in the EFU or SA [Special Agricultural] zones and batching mineral and aggregate into asphalt cement is proposed, this activity must be located at least two miles from a planted vineyard totaling 40 acres or more that are planted as of the date the application for batching and blending is filed.” MCRZO 120.450(D).

According to the application, the proposed uses, activities, and facilities, which include mining, processing, and crushing are among those allowed pursuant to MCRZO 120.440. The proposed site qualifies as significant for purposes of OAR 660-023-0180(4), as discussed above. Finally, the applicant has not proposed batching mineral and aggregate into asphalt cement.

Standards for Development and Operation:

Mineral and aggregate resource sites within Marion County are subject to certain standards of development and operation. These standards, codified at MCRZO 120.460, apply to all resource sites, unless specifically excluded or modified as part of either the PAPA review or conditional use permit approval processes, and are as follows:

Dimensional Requirements:

- (1) The minimum lot area shall be that area necessary to meet setback requirements.
- (2) Setbacks for mineral and aggregate extraction shall be:
  - (a) At least 100 feet from any property line; and at least 500 feet from a habitable building existing on adjacent property at the time the use is established.

The revised site plan that applicant submitted to the Planning Division on November 20, 2007, shows that the boundaries of the indicated extraction area and pit site, which is also the proposed location of overburden storage, are at least 370 feet from the nearest property line and at least 600 feet from the nearest habitable building on adjacent property.

The applicant submitted a revised site plan that provides information regarding setbacks around that portion of the aggregate site located in Tax Lot 200. As a condition of approval, the applicant shall flag or otherwise mark the boundaries of the required setbacks before beginning excavation at the aggregate resource site.

(3) Setbacks for mineral and aggregate processing and loading shall be:

- 100 feet from any property line; and
- 500 feet from a habitable building existing on adjacent property at the time the processing operation is established.

The approved site plan shall indicate specifically where the loading area for the proposed operation shall be located or the loading area's distance from nearby property lines and habitable buildings on adjacent properties. The approved site plan shall clearly indicate the location where aggregate processing operations will take place. The plan shall indicate an area titled 'processing limits,' and clarify exactly where within that area processing operations will occur. The area titled 'processing limits' shall meet required setbacks from the nearest property line and from a habitable building which exists on adjacent property.

The applicant submitted a revised site plan to the Marion County Board of Commissioners. The approved site plan shall clearly indicate:

- The location of the aggregate extraction and processing operation's loading area, as well as the loading area's distance from any property line and habitable buildings on adjacent properties;
- The location where processing operations will occur, as well as the distance between the site of processing operations and the nearest property line, as well as any habitable buildings on adjacent properties; and
- Compliance with the setback provisions established by MCRZO 120.460(A)(3)(a) and (b).

(4) Setbacks for offices, shops, or other accessory structures shall be regulated by the zone in which the proposed use is located.

As the proposed site is located within a FT zone, the setback requirements of MCRZO Chapter 139 apply. MCRZO 139.070 establishes special use and siting requirements that may be applied as a standard or condition of approval for uses permitted in a FT zone, including mineral and aggregate extraction and processing operations subject to MCRZO section 120.400 and permitted pursuant to MCRZO 139.050(e). The siting standards established for buildings other than dwellings are at MCRZO 139.070(a)(2) and require that buildings other than a dwelling shall be located at least 100 feet from any abutting parcel in farm use or timber production, and that buildings other than a dwelling shall be located within 300 feet of the driveway entrance on an abutting public road.

From the revised site plan, it appears that those portions of the extraction area, pit site, and processing limits area within Tax Lot 100 are all at least 100 feet from any abutting parcel in farm use or timber production; however, it does not appear that buildings related to the proposed aggregate extraction and processing operation will be located within 300 feet of a driveway entrance on an abutting public road. For sites that do not meet the siting requirements of MCRZO 139.070(a)(2), alternative siting requirements are provided at MCRZO 139.070(a)(3). These alternative standards require that (1) the site will have the least impact on nearby or adjoining forest or agricultural lands; (2) the site ensures that adverse impacts on forest operations and accepted farming practices on the tract will be minimized; (3) the amount

of agricultural and forest lands used to site access roads, service corridors, and structures is minimized; and (4) the risks associated with wildfire are minimized.

In the applicant's statement of November 6, 2007, applicant wrote that the proposed site of the aggregate extraction and processing operation was "a very poor timber growing site because of shallow soils and lack of water retention." Applicant also noted that "[t]he surrounding areas are our own farm and timber grounds and will not be impacted by the site." From the revised site plan, it appears that the site access road will be an extension of an existing access road developed for applicant's Christmas tree farm. Applicant also noted in her November 6, 2007 statement that "[t]he pit will not interfere with fire suppression at all. In fact it will increase accessibility in case of fire and all ground surrounding the site has been cleared of all combustible slash and brush. . . We also have our own fire suppression equipment on site as needed." Based on the information contained in her written statement and revised site plan, it appears that the applicant has met the setbacks established by the alternative siting requirements of MCRZO 139.070(a)(3).

The applicant provided the Marion County Board of Commissioners with a revised site plan that included that portion of the aggregate resource site on Tax Lot 200 and indicated whether that portion complies with the setback requirements of MCRZO 139.070 and 120.460, as well as a statement containing information regarding the structures, including crushers and related facilities, applicant intends on building at the aggregate site. As a condition of approval that the applicant shall inform the Board of the size and placement of proposed structures at the aggregate site.

- (5) Storage of overburden is allowed within setbacks. There shall be no setback for existing roads, internal truck paths, or other transportation facilities. Any new roads, internal transportation, or other transportation facilities shall not be located closer than 50 feet from a habitable building on adjacent property existing at the time storage commences.

From the revised site plan, it appears that the site access road will be an extension of an existing private access road developed for applicant's Christmas tree farm. Any new road development is apparently at least 50 feet from a habitable building on adjacent property. As a condition of approval, the applicant shall submit a revised site plan to the Marion County Board of Commissioners that clearly indicates the location of transportation facilities related to the proposed aggregate extraction and processing operation that meets the required 50 foot setback.

- (6) The maximum height of any structure, except mineral and aggregate processing and extraction equipment, shall be 85 feet.

The applicant shall meet maximum height requirements of any structure, aside from mineral and aggregate processing and extraction equipment.

As a condition of approval that the maximum height of any structure, except mineral and aggregate processing and extraction equipment, at the proposed aggregate resource site shall be 85 feet.

- (7) One sign not exceeding 32 square feet in area is permitted at each entrance.

The applicant's revised site plan does not indicate the location or size of a sign at the Silver Falls entrance. If proposed, the applicant shall meet signage requirements listed in the Marion County Zoning Ordinance.

*Screening and Fencing Requirements:*

Fencing shall be required only if the site is adjacent to an urban or rural residential zone.

The proposed aggregate resource site is located in a FT zone. A plot plan included with the applicant's application reveals that residential dwellings are present in the area and on adjacent properties. Although residential dwellings are permitted within a FT zone, subject to standards at MCRZO 139.030, these dwellings are not within a rural residential zone. The fencing requirement is not applicable to the subject application.

- (1) Existing deciduous and evergreen vegetation within required setback areas that screen visibility of the operation from adjacent property or public roads shall be retained unless located within a vision clearance area or determined by the county to be a public safety hazard.

As a condition of approval, the applicant shall retain existing deciduous and evergreen vegetation that is within the required setback areas and screen the aggregate operation from adjacent properties or public roads unless the vegetation is located within a vision clearance area or determined by the county to be a hazard to the public safety.

*Access Requirements:*

- (1) For sites that qualify as significant, access requirements shall comply with OAR 660-023-0180.

As currently written, OAR 660-023-0180 does not directly impose access requirements on mineral and aggregate resource sites that are significant for purposes of OAR 660-023-0180(4). Instead, access requirements will be found in applicable statutes and ordinances. MCRZO 139.070(e)(2) provides that "private road or driveway access to structures of more than 200 square feet in area or a dwelling shall meet the requirements in Marion County Fire District #1 Ordinance 1993.1, Appendix A-7, except that the county maximum grade standard for a private road is 15 percent." Although the applicant has not addressed the requirements of Marion County Fire District #1 Ordinance 1993.1, Appendix A-7, the applicant has stated that the single access road to the resource site is gated and will remain locked except during operating hours.

As a condition of approval, the applicant shall satisfy the requirements of Marion County Fire District #1.

*Hours of Operation:*

- (1) Extraction, processing, and transportation activity shall be allowed Monday through Friday between the hours of 6:00 a.m. and 6:00 p.m. Transportation activity shall be allowed on Saturdays between the hours of 6:00 a.m. and 6:00 p.m. No extraction, processing, or transportation activities are allowed on the following holidays: New Year's Day, Memorial Day, Independence Day, Labor day, Thanksgiving Day, and Christmas.



The applicant established that the hours of operation for the proposed aggregate extraction and processing operation “will be from 6:00 a.m. to 6:00 p.m. On Saturday only transportation from 6:00 a.m. to 6:00 p.m.” These hours are substantially similar to those provided in MCRZO 120.460(D). However, the applicant’s hours of operation do not include the prohibition on conducting extraction, processing, or transportation activities on those holidays that are included in MCRZO 120.460(D).

As a condition of approval, the applicant shall comply with the hours of operation established in MCRZO 120.460(D) for extraction, processing, and transportation activities, unless an exception is granted pursuant to MCRZO 120.460(D)(3).

- (2) Blasting shall be restricted to the hours of 9:30 a.m. to 4:30 p.m., Monday through Friday. No blasting shall occur on Saturdays and Sundays, or during the aforementioned holidays.

The applicant established that blasting would occur as part of the proposed aggregate extraction and processing operation “Monday thru (sic) Friday from 9:30 a.m. to 4:30 a.m.” These are the same hours provided in MCRZO 120.460(D). However applicant did not include a prohibition on blasting activities during the weekend and on the holidays listed at MCRZO 120.460(D)(2).

As a condition of approval, the applicant shall comply with the hours of operation established in MCRZO 120.460(D) for blasting, unless an exception is granted pursuant to MCRZO 120.460(D)(3).

- (3) An owner or operator may request, and the Director may grant, an exception to provide for additional hours of operation for a mineral and aggregate extraction and processing operation when additional hours of operation are needed to alleviate a public emergency. Public emergency includes:

- (a) Damage to public roads or structures that requires immediate repair; and
- (b) Road construction or repair that is scheduled during nighttime hours to reduce traffic conflicts.

As a condition of approval, the applicant shall comply with MCRZO 120.460(D)(3) should the applicant or the operator of the aggregate mining and processing operation require additional hours of operation to help alleviate a public emergency as provided in the ordinance.

*Environmental Standards:*

- (1) Any crusher or asphalt or concrete batch plant shall have a valid permit from the Department of Environmental Quality.

As a condition of approval, the applicant shall include with the application any documentation that would indicate that steps have been taken to acquire any necessary permits required from DEQ for a crusher.

- (2) Owners or operators shall present evidence that they possess the appropriate DEQ permits prior to commencing operations.

As a condition of approval, the applicant shall include evidence of acquiring the appropriate DEQ permits.

- (3) Owners or operators of mineral and aggregate operations shall comply with the sound levels in OAR 340-35-035 for habitable buildings on nearby properties.

The applicant has provided an acoustical engineer's report to address this criteria.

*Safety Standards:*

- (1) Access roads to all mineral and aggregate resource sites shall be gated and locked when not in operation.

In the applicant's faxed statement of November 6, 2007, applicant wrote that the aggregate resource site's sole access road is gated and will remain locked, except during operating hours.

*Site Reclamation:*

- (1) A site reclamation plan shall be submitted prior to the public hearing. It shall be amended to conform to any conditions of county approval and be approved by DOGAMI prior to commencement of operations. DOGAMI approval shall be evidence by a DOGAMI surface mining operating permit.

The applicant did not originally submit a site reclamation plan with the application. However, prior to the Board hearing, the applicant submitted a conceptual site reclamation plan and documentation that would indicate that the applicant has taken the necessary initial steps to acquire a DOGAMI permit pursuant to ORS 517.790.

As a condition of approval, the applicant shall develop a site reclamation plan to meet DOGAMI requirements for approval.

*Performance Agreements:*

- (1) The operator of a mineral and aggregate site shall provide the county with a letter and two copies of relevant documents that demonstrate that the operator has in full force and effect the bond or security deposit with DOGAMI to assure conformance with the state-required reclamation plan. This information shall be provided to the county prior to commencing operations.

The applicant submitted a conceptual site reclamation plan with her application. Applicant also provided evidence of a letter from DOGAMI demonstrating that the operator of the proposed aggregate extraction and processing operation has a DOGAMI operating permit number assigned to the operation.

As a condition of approval, either the applicant or the company, identified by the applicant as the operator of future crushing operations at the aggregate resource site, shall have in full force and effect either a bond or security deposit with DOGAMI to assure conformance with an approved site reclamation plan.

- (2) Mineral and aggregate operations shall be insured for \$100,000 against liability and tort arising from production activities or incidental operations conducted or carried on by virtue of any law, ordinance, or condition, and the insurance shall be kept in full force and effect during the period of such operations.

Evidence of a prepaid policy of such insurance that is effective for a period of 1 year shall be deposited with the county prior to commencing any mineral and aggregate operations. The owner or operator shall annually provide the county with evidence that the policy has been renewed.

The applicant submitted evidence of a prepaid policy of insurance that satisfies the requirements of MCRZO 120.460(H)(2) prior to commencing extraction and processing activities at the proposed aggregate resource site and that the applicant deposit with the county evidence that she possess such insurance on an annual basis.

*Applicant's compliance with requirements of applicable state statutes and administrative rules, including, but not limited to, ORS Chapter 215 and OAR 660-023-0180.*

OAR 660-023-0180(6)(a) provides that proposed aggregate mines must satisfy discretionary conditional use permit approval standards adopted by the local government pursuant to applicable requirements of ORS 215.283(2). Discretionary conditional use permit approval standards for a proposed aggregate mine adopted by Marion County pursuant to ORS 215.283(2) and OAR 660-023-180 are found at MCRZO 120.400 and are discussed in the preceding section.

Among the non-farm uses permitted by ORS 215.283(2) in EFU zones, and by OAR 660-006-0050(2) "in any agricultural/forest zone," are operations for mining and crushing aggregate resources, provided that such operations comply with ORS 215.298. Under ORS 215.298(1), "a land use permit is required for mining more than 1,000 cubic yards of material or excavation preparatory to mining of a surface area of more than one acre." Additionally, "[a] permit for mining of aggregate shall be issued only for a site included on an inventory in an acknowledged comprehensive plan." ORS 215.298(2).

The site of the proposed aggregate extraction and processing operation is within a FT zone, and the applicant has indicated the mining of 2 million tons or less of aggregate material. By submitting an application for an amendment to the county comprehensive plan that would add the proposed aggregate resource site to the county's Mineral and Aggregate Resource Inventory and a conditional use permit to allow mining operations at that site, the applicant has taken sufficient steps that could comply with ORS 215.298(2).

*Identifying Conflicts with Existing Farm and Forest Practices:*

Non-farm uses allowed under ORS 215.283(2), including aggregate mining operations, must comply with standards for approval established by ORS 215.296. Pursuant to ORS 215.296(1) local government approval of permitted non-farm uses within an EFU zone is dependent upon the governing body or its designee finding that the use will not "[f]orce a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use" or "[s]ignificantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use..." Although "accepted farming practice" is not defined for the purposes of ORS 215.296, the term is defined at ORS 215.203(2)(c) as meaning "a mode of operation that is common to farms of a similar nature, necessary

for the operation of such farms to obtain a profit in money and customarily utilized in conjunction with farm use.” Eugene Sand and Gravel, Inc. v. Lane County, 189 Or App 21, 34-35, 74 P.3d 1085 (2003).

To demonstrate compliance with ORS 215.296(1), the county’s findings must: (1) describe the farm and forest practices on surrounding lands devoted to farm or forest use; (2) explain why the proposed use will not force a significant change in those practices; and (3) explain why the proposed use will not significantly increase the cost of those practices. Schellenberg v. Polk County, 21 Or LUBA 425, 440 (1991). Similar to the demands of ORS 215.296(1), MCRZO 120.430(D) provides that to be considered adequate, applications for new or expanded mineral or aggregate sites must include proposals to minimize conflicts with existing uses identified by the applicant within a 1,500 foot impact area.

The applicant has identified properties neighboring the site of the proposed aggregate extraction and processing operation as being primarily used for Christmas tree farming. Applicant also referenced an aggregate mining and processing facility that currently operates in the vicinity that has not disturbed either her Christmas tree farm or her neighbors. The assertion that is implicit in applicant’s reference to the existing aggregate mining and processing facility is this: that because an allegedly larger commercial aggregate mining and processing operation has not disturbed either the applicant or the neighbors, it is likely that the smaller aggregate operation the applicant has proposed will also have a negligible or nonexistent impact on farm or forest practices in the vicinity.

The applicant provided a site plan that addressed the above criteria. In addition, as a condition of approval, an “Official Site Plan” shall be submitted for the approval of the Planning Director. The site plan shall contain all criteria listed in Section 120.460.

As part of the application requirements of MCRZO 120.430, an applicant must provide “proposals to minimize any conflicts with existing uses preliminarily identified by the applicant with a 1,500 foot impact area”. The applicant provided a statement that established a 1,500 foot impact area around the site of the proposed aggregate mining and processing operation and identified existing uses within the area that might be impacted by the proposed operation. The applicant submitted a map of the 1,500 foot impact area surrounding the site of the proposed aggregate mining and processing operation to the Marion County Board of Commissioners. The map identified existing uses on land within the impact area. The applicant’s statement addressed the potential conflicts discussed below and identifying reasonable and practicable measures that would minimize those conflicts within the impact area. This statement also included information regarding the applicant’s farming practices at her Christmas tree farm.

#### *Noise.*

The Oregon Department of Environmental Quality’s (DEQ) noise control regulations applicable to industrial and commercial operations are contained at OAR 340-035-0035. DEQ does not have a noise permitting process and does not fund a noise enforcement program. Meeting state noise standards will provide adequate protection to the public, but the state provides no mechanism for ensuring compliance with the rules. Compliance with state noise rules must be ensured on the local level.

As defined at OAR 340-035-0015(33) ‘new industrial or commercial noise sources’ are “any industrial or commercial noise source for which installation or construction was commenced after January 1, 1975 on a site not previously occupied by the industrial or commercial noise source in question.” No evidence was presented that the subject property of this application was the site of a mining operation

on or before January 1, 1975. The subject property meets the definition of a new industrial or commercial noise source.

The subject property also meets the definition of a 'previously unused industrial or commercial site,' which is defined at OAR 340-035-0015(47) as "property which has not been used by any industrial or commercial noise source during the 20 years immediately preceding commencement of construction of a new industrial or commercial source on that property. Agricultural activities and silvicultural activities generating infrequent noise emissions shall not be considered as industrial or commercial operations for the purposes of this definition." As the subject property was previously used for silvicultural activities that generated infrequent noise emissions and no evidence was presented that the subject property was used by an industrial or commercial noise source during the 20 years immediately preceding the application, it is a previously unused industrial or commercial site.

Noise control standards and regulations applicable to new noise sources on previously unused sites are found at OAR 340-035-0035(1)(b)(B). Noise levels generated or caused, directly or indirectly, by such sites shall not increase ambient statistical noise levels, L10 or L50, by more than 10 dBA in any one hour, or exceed the levels specified in OAR 340-035, Table 8. Under this formula, L10 and L50 are percentages of an hour, 6 and 30 minutes respectively, and provide the amount of time in an hour that a noise source can exceed ambient statistical noise levels by 10 dBA, or 10 decibels on an 'A' weighted scale.

Although OAR 340-035-0035(5)(c) generally exempts sounds created by the tires and motors of motor vehicles from compliance with OAR 340-035-0035(1), under OAR 340-035-0035(1)(b)(B)(ii) "[s]ources exempted from the requirements of section (1) of this rule, which are identified in subsections (5)(b) – (f), (j), and (k) of this rule, shall not be excluded from" the measurement of the ambient statistical noise level of a new industrial or commercial noise source on a previously unused industrial or commercial site.

Applicant provided evidence that an acoustical engineering examination was conducted at the subject property. The statement addressed noise sensitive uses likely within the impact area and along the route applicant has designated for trucks entering and exiting the proposed aggregate site.

The applicant provided additional information to the Board of Commissioners to determine whether the proposed aggregate mining and processing operation will meet the requirements established in OAR chapter 340, division 35. Because OAR 340-035-0035 contains specific requirements regarding sound study equipment, placement, and test methodology, an on-site examination by an acoustical engineer was provided.

#### *Dust and light emissions:*

In its memorandum of August 29, 2007 the Department of Public Works requested a dust mitigation plan from the applicant. The file received by the hearings officer did not contain a dust mitigation plan and as of the date of this recommendation, the applicant has not submitted one.

Dust is listed as an air contaminant by the Oregon Department of Environmental Quality and subject to regulation in OAR chapter 340, division 208. Many of the activities applicant has proposed for the aggregate extraction site, including but not limited to, mining, crushing, overburden management, and hauling, can generate dust. Particulate matter, such as dust, can have a negative impact on agricultural uses on neighboring properties, road maintenance, water quality, and human health.

Various techniques are available for dust control and suppression. For example, the applicant could pave the entire roadway between Silver Falls Drive and the proposed aggregate extraction and processing site and construct natural or artificial wind breaks or wind screens near the proposed site and roadway. Applicant could apply water or chemical dust suppressants, including but not limited to lignin sulfonate or magnesium chloride products. Certain mining practices can also reduce dust emissions, for example mining aggregate sequentially and stripping overburden one area at a time to reduce dirt exposure.

As a condition of approval, the applicant shall provide a dust mitigation plan for the Planning Director's approval. The applicant statement noted agreement to provisions that address dust control.

The discharge of light is also an emission that must be controlled to prevent illumination of, and conflicts with uses occurring on, adjacent properties. *Cf.* OAR 660-013-0080(1)(c). Various means of reducing the discharge of light are available and include, but are not limited to, using fully shielded outdoor fixtures installed so that no light is emitted above a horizontal plane running through the lowest part of the fixture. Time controls or sensors can be used to turn lighting fixtures off when not needed. Low Pressure Sodium or reduced wattage light sources minimize light pollution.

If lighting is used at the site, the applicant shall meet provisions to reduce light emissions as a condition of approval.

#### *Drainage:*

Storm water and water runoff drainage is regulated through the Department of Environmental Quality permitting process. However, the applicant has not obtained a NPDES permit or other necessary permits from DEQ. The applicant addressed which mining practices she will undertake to address potential impacts and conflicts arising from drainage concerns.

As a condition of approval, the applicant shall obtain any required DEQ permits and address drainage issues, and also provide the Department of Public Works with evidence of compliance with their conditions.

#### *Traffic impacts:*

Pursuant to OAR 660-023-0180(8) an application for an aggregate site deemed significant under OAR 660-023-0180(4) and (6) need not include a traffic impact assessment (TIA). Instead, the applicant provided a letter from a traffic engineer verifying that a TIA is not requested by ODOT. The applicant alleged in the written statement dated November 6, 2007 that the applicant anticipated processing between 6 and 10 truckloads of aggregate material daily. The applicant provided the Department of Public Works and Oregon Department of Transportation (ODOT) with traffic information regarding a TIA. It should be noted that ODOT (Oregon Department of Transportation) and Marion County Public Works concurred that a TIA (Traffic Impact Assessment) is not necessary.

The applicant shall pay to the Marion County Department of Public Works the assessed Transportation System Development Charges.

The applicant supplied the required documentation to address the criteria. Information from ODOT (Oregon Department of Transportation) and Marion County Public Works concurred that a TIA (Traffic Impact Assessment) is not necessary.

A. *Permissible Post-Mining Uses*

Post-mining uses for an aggregate site that is significant pursuant to OAR 660-023-0180(4) are provided at OAR 660-023-0180(5)(f). The permitted uses include: farm uses under ORS 215.203, those uses listed under ORS 215.213 or 215.283(2) and fish and wildlife habitat, including wetland mitigation banking. Local governments shall coordinate with DOGAMI for the regulation and reclamation of mineral and aggregate sites, unless exempt under ORS 517.780. Additionally, MCRZO 120.460(G) provides that site reclamation plans must be submitted prior to holding of a public hearing and be approved by DOGAMI prior to commencement of mining and processing operations.

The applicant has proposed reclaiming the aggregate site for forestry and pond after the completion of mining and processing operations. These are permitted uses as provided at OAR 660-023-0180(5)(f).

B. *The local government may only issue a permit for mining aggregate for a site included on an inventory of significant aggregate sites in the comprehensive plan in accordance with ORS 215.298(2).*

Although the subject site has not been added to Marion County's Mineral and Aggregate Resource Inventory, the applicant has applied for an amendment to the county comprehensive plan that would amend the inventory listing to include the subject site. The applicant can satisfy this requirement, OAR 660-023-0180(6)(c) if the Board of Commissioners approves the application and amends the resource inventory.

C. *The conditional use permit shall not allow mining of more than the maximum amount of aggregate material specified under OAR 660-023-0180(4)(a), 2 million tons or less.*

The aggregate mining and processing operations are permissible uses within a FT zone pursuant to MCRZO 139.050(e), provided that the applicant has obtained a conditional use permit and satisfied the conditional use review criteria of MCRZO 139.060(a).

An application for a conditional use permit may be filed only by the owner or purchaser of the subject property, MCRZO 119.020(a) and (b), and must be signed by either the owner or purchaser of the subject property. MCRZO 119.025(a) and (b). A hearing on a conditional use permit application shall be public, MCRZO 119.040, and notice shall be provided pursuant to ORS 197.763(3). MCRZO 119.150. Public agencies will have an opportunity to review and provide comments or suggestions regarding the application for a conditional use permit. MCRZO 119.120. The Marion County Board of Commissioners has delegated the authority to conduct hearings regarding proposed conditional uses to the hearings officer. MCRZO 119.030.

The applicant signed the Marion County Conditional Use Application contained in the Planning Division file on May 4, 2007 as the owner of the subject property. Notice of a public hearing in this matter was provided in the manner provided by ORS 197.763 and MCRZO 111.030. Affected public agencies were given an opportunity to review the conditional use application, which was submitted jointly with an application to amend the Marion County Comprehensive Plan, and provided the comments and suggestions noted above. The public hearing in this matter was initially held on September 5, 2007, but was continued at the applicant's request to November 7, 2007. The record from that hearing was left open until November 21, 2007 to allow the applicant an opportunity to submit a revised site plan. The hearings officer was authorized to conduct the hearing in this matter. The hearings officer recommended conditions of approval that were determined necessary for the public

health, safety, and general welfare, or to protect persons working or residing in the area, or to protect property or improvements in the area, or necessary to fulfill the purpose and intent of the Marion County Rural Zoning Ordinance.

The aggregate resource site in question contains an estimated 1.4 million tons of aggregate material according to the significance aggregate evaluation performed by Kuper Consulting, LLC. It is conceivable that once mining operations begin, should the Board of Commissioners approve the application, more aggregate material will be found. The requirement of OAR 660-023-0180(6)(d) limiting the amount of aggregate material that can be extracted from the site to 2 million tons or less can be satisfied by adopting a condition of approval that establishes 2 million tons as the maximum amount of aggregate material that shall be mined or otherwise extracted from the subject site.

As a condition of approval, the maximum amount of aggregate material that can be mined or otherwise extracted from the subject site shall be 2 million tons.

## **CONCLUSION**

The applicant prepared a Conceptual Reclamation Plan for submittal to DOGAMI (Department of Geology and Mining Industries), and the required acoustical study was performed at the site. The applicant shall maintain a current DOGAMI (Department of Geology and Mining Industries) operating permit, obtaining DOGAMI approval of the submitted reclamation plan, and meet ongoing Standards for Development and Operation listed in Section 120.460 of the MCRZO. These standards include setbacks, access, hours of operation, environmental standards subject to DEQ permits, and other criteria to address impacts of the operation at the location

Based on all of the findings set forth above and all of the evidence in the record, the Board approves this application with the conditions of approval listed on Exhibit B, which are adopted and specifically incorporated by this reference.



## EXHIBIT B

Approval of CP/CU07-6 is subject to the following conditions of approval that are hereby adopted as being necessary for the public health, safety and welfare.

### Conditions Prior to Mining Operation:

- (a) Site Plan. Prior to any extraction of aggregate, aggregate processing or removal of overburden, the applicant shall submit a detailed site plan for review and approval by the Planning Director. The site plan shall include all of the subject properties. The plan shall provide evidence of compliance with all the applicable use and development standards in the ordinance including a detail processing area that indicates the location of equipment such as crusher, loaders, structures, and truck parking areas. The site plan shall delineate the standards for development and operation listed in Section 120.460A, B, and C of the Marion County Rural Zoning Ordinance. The plan shall be identified as the "Official Site Plan" and signed by the Planning Director.

The site plan shall identify the location and use of all buildings, roadways, public road access points, materials stockpiling areas, berms, equipment storage areas, and any areas that will be filled to an elevation greater than the natural grade. After approval any modifications will require approval of a new site plan by the Planning Director.

The site plan shall indicate specifically where the loading area for the proposed operation shall be located or the loading area's distance from nearby property lines and habitable buildings on adjacent properties. The revised site plan shall clearly indicate the location where aggregate processing operations will take place. The plan shall indicate an area titled 'processing limits' and clarify exactly where within that area processing operations will occur. The area titled 'processing limits' shall meet required setbacks from the nearest property line and from a habitable building that exists on adjacent property.

- (b) Reclamation Plan. Prior to any aggregate extraction, processing or preparation of the site for processing or extraction the applicant shall submit a reclamation plan. This plan shall be part of the DOGAMI reclamation plan approval.
- (c) Performance agreements shall be submitted prior to extraction activities as required by section 120.460(H) that states the applicant shall provide the county with a letter and two copies of relevant documents that demonstrate that the operator has in full force and effect the bond or security deposit with DOGAMI to assure conformance with the state-required reclamation plan. The applicant shall also provide evidence of having the insurance required under this section.
- (d) The applicant shall flag or otherwise mark the boundaries of the required setbacks before beginning excavation at the aggregate resource site.
- (e) The applicant shall meet requirements and obtain any access permits required by the Oregon Department of Transportation (ODOT) prior to extraction.
- (f) The applicant shall satisfy the requirements of Marion County Fire District #1.

- (g) The applicant shall obtain a NPDES permit or other permits as required by DEQ.
- (h) The applicant shall meet the Department of Public Works conditions to the department's satisfaction.

Conditions Ongoing During Mining Operation:

- (i) Extraction Area. The extraction area shall not exceed that area shown on the applicant's detailed site plan. The amount of aggregate material removed from the site shall not exceed 2,000,000 tons. Mining shall only occur in the designated area.
- (j) Future Use. Except as otherwise approved herein, farming, wetland, wildlife habitat, and recreation are the designated uses of the subject property. These shall be the designated uses unless the county approves a conditional use permit for other uses allowable as a permitted or conditional use in the underlying zone. When excavation is completed if the parcels remains in private ownership the owner(s) shall record irrevocable deed restrictions, approved by the County, ensuring that the areas which are deemed wetlands, wildlife habitat areas and buffers, shall be reserved for wildlife and wetland conservation use in perpetuity. All processing and stockpiling shall be discontinued within 6 months of the date excavation is completed.
- (k) Dewatering as a method of extraction shall be prohibited to minimize conflicts created by dust. The applicant shall submit to the Planning Division a dust mitigation plan for approval by the Planning Director that shall be implemented during mining operation.
- (l) Outdoor lighting shall be on only during permitted hours of operation except for lighting required for safety near buildings and equipment parking areas. Outdoor lighting shall be shielded so it does not illuminate any adjacent property or public right-of-way.
- (m) DEQ permits shall be submitted for the operation of a crusher on the site and the operation shall meet provisions as required under Section 120.460(E) of the MCRZO.
- (n) The hours of operation shall at all times be consistent with the standards in section 120.460(D) of the Marion County Rural Zoning Ordinance as follows:
  - (1) Extraction, processing and transportation activity shall be allowed Monday through Friday between the hours of 6:00 a.m. through 6:00 p.m. Transportation activity shall be allowed Saturdays between the hours of 6:00 a.m. through 6:00 p.m. No extraction, processing or transportation activity is allowed on the following holidays: January 1, Memorial Day, July 4, Labor Day, Thanksgiving Day, and December 25.
  - (2) Blasting shall be restricted to the hours of 9:30 a.m. to 4:30 p.m., Monday through Friday. No blasting shall occur on Saturdays, Sundays or the following holidays: January 1, Memorial Day, July 4, Labor Day, Thanksgiving Day, and December 25.
  - (3) An owner or operator may request, and the Director may grant, an exception to provide for additional hours of operation for a mineral and aggregate extraction and processing operations when additional hours of operation are needed to alleviate a public emergency. Public emergency includes:

- (a) Damage to public roads or structures that requires immediate repair.
- (b) Road construction or repair that is scheduled during nighttime hours to reduce traffic conflicts.
- (o) Existing deciduous and evergreen vegetation within required setback areas that screen visibility of the operation from adjacent property or public roads shall be retained unless located within a vision clearance area or determined by the county to be a public safety hazard.
- (p) Access roads to the aggregate site shall be gated and locked when not in operation.

07542655/09/2013  
\$02.087  
02/20/2009  
Mailed From 97302  
US POSTAGE

Hester



FIRST CLASS  
PRESORTED

ADDRESS  
SERVICE  
REQUESTED

State of Oregon Health Department  
555 Court St. NE, 2nd Floor  
PO Box 14500  
Salem OR 97309

STATE OF OREGON LCDC  
MARA ULLOA  
635 CAPITOL ST NE SUITE 200  
SALEM OR 97301-6033