



**Oregon**  
Theodore R. Kubongoski, 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**

3/23/2010

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

**FROM:** Plan Amendment Program Specialist

**SUBJECT:** Marion County Plan Amendment  
DLCD File Number 001-09

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: Monday, April 05, 2010**

This amendment was submitted to DLCD for review prior to adoption with less than the required 45-day notice. Pursuant to ORS 197.830(2)(b) only persons who participated in the local government proceedings leading to adoption of the amendment are eligible to appeal this decision to the Land Use Board of Appeals (LUBA).

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

**\*NOTE:** The Acknowledgment or Appeal Deadline is based upon the date the decision was mailed by local government. A decision may have been mailed to you on a different date than it was mailed to DLCD. As a result, your appeal deadline may be earlier than the above date specified. NO LUBA Notification to the jurisdiction of an appeal by the deadline, this Plan Amendment is acknowledged.

**Cc:** David Epling, Marion County  
Jon Jinings, DLCD Community Services Specialist  
Amanda Punton, DLCD Regional Representative  
Gary Fish, DLCD Regional Representative

<paa> YA/l



FORM 2

DLCD

# Notice of Adoption

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

DATE STAMP	<input type="checkbox"/> In person	<input type="checkbox"/> electronic	<input checked="" type="checkbox"/> mailed
	<b>DEPT OF</b>		
	<b>MAR 16 2010</b>		
	<b>LAND CONSERVATION AND DEVELOPMENT</b> <small>For Office Use Only</small>		

Jurisdiction: **Marion County**

Local file number: **ZC/CP09-001**

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

Date Mailed: **3/15/10**

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

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".

for a post acknowledgement comprehensive plan amendment (PAPA) to add an aggregate extraction site to the Goal 5 list of significant aggregate resource sites on 405.75 acres in an EFU (Exclusive Farm Use) zone

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

Plan Map Changed from: \_\_\_\_\_ to: \_\_\_\_\_

Zone Map Changed from: \_\_\_\_\_ to: \_\_\_\_\_

Location: **16675 Coon Hollow RD SE**

Acres Involved: **405.75**

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

Was an Exception Adopted?  YES  NO

Did DLCD receive a Notice of Proposed Amendment...

45-days prior to first evidentiary hearing?  Yes  No

If no, do the statewide planning goals apply?  Yes  No

If no, did Emergency Circumstances require immediate adoption?  Yes  No

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

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

DLCD File No. 001-09 (17342) [16051]

Local Contact: David Epling  
Address: PO Box 14500

City: Salem

Zip: 97309

Phone: (503) 588-5038 Extension:  
Fax Number: 503-588-3284

E-mail Address:

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## ADOPTION SUBMITTAL REQUIREMENTS

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

1. This Form 2 must be submitted by local jurisdictions only (not by applicant).
2. When submitting, please print this Form 2 on light green paper if available.
3. Send this Form 2 and One (1) Complete Paper Copy and One (1) Electronic Digital CD (documents and maps) of the Adopted Amendment to the address in number 6:
4. **Electronic Submittals: Form 2 – Notice of Adoption will not be accepted via email or any electronic or digital format at this time.**
5. The Adopted Materials must include the final decision signed by the official designated by the jurisdiction. The Final Decision must include approved signed ordinance(s), finding(s), exhibit(s), and any map(s).
6. DLCD Notice of Adoption must be submitted in One (1) Complete Paper Copy and One (1) Electronic Digital CD via United States Postal Service, Common Carrier or Hand Carried to the DLCD Salem Office and stamped with the incoming date stamp. (for submittal instructions, also see # 5)] **MAIL the PAPER COPY and CD 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**

7. Submittal of this Notice of Adoption must include the signed ordinance(s), finding(s), exhibit(s) and any other supplementary information (see ORS 197.615 ).
8. Deadline to appeals to LUBA is calculated **twenty-one (21) days** from the receipt (postmark date) of adoption (see ORS 197.830 to 197.845 ).
9. In addition to sending the Form 2 - Notice of Adoption to DLCD, please notify persons who participated in the local hearing and requested notice of the final decision at the same time the adoption packet is mailed to DLCD (see ORS 197.615 ).
10. **Need More Copies?** You can now access these forms online at <http://www.lcd.state.or.us/>. You may also call the DLCD Office at (503) 373-0050; or Fax your request to: (503) 378-5518.

Updated December 22, 2009

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

In the Matter of the	)	Case No. ZC/CP 09-1
Application of:	)	Clerk's File No. 5625
	)	Comprehensive Plan Amendment
PHILLIPS FAMILY		
LIMITED PARTNERSHIP, LLC		

AN ADMINISTRATIVE ORDINANCE

ORDINANCE NO. 1303

**THE MARION BOARD OF COMMISSIONERS HEREBY ORDAINS AS FOLLOWS:**

**Section I. Statement of Purpose:**

This matter comes before the Marion County Board of Commissioners, on the application of Phillips Family Limited Partnership, LLC ("applicant"). This application is for a comprehensive plan text amendment to add a 100.5 acre mineral and aggregate site to the "significant sites" inventory of the Marion County Comprehensive Plan. The subject property consists of 405.75 acres located in an EFU (Exclusive Farm Use) zone property located at 16675 Coon Hollow Road SE, Stayton (T8S; R1E; Section 31; tax lots 1000 and T8S; R1E; Section 32; tax lot 500).

**Section II. Procedural History:**

The Marion County Hearings Officer held a duly noticed public hearing on this application on March 18, 2009, at which hearing the applicant requested a continuance in order to allow an opportunity to submit additional information. The Hearings Officer continued the hearing to April 17, 2009 to receive additional testimony from the applicant, until May 1, 2009 for opponents, and until May 15, 2009 to allow the applicant to submit rebuttal information to the record. No objections were raised as to notice, jurisdiction, conflicts, or to evidence or testimony presented. On August 27, 2009, the Hearings Officer referred this application to the Board of Commissioners with a recommendation for denial.

The Board held a duly noticed public hearing on the subject application on December 16, 2009. 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. This Ordinance represents the final decision of the Marion County Board of Commissioners, including finding of facts, conclusion of law and conditions of approval.

**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 in Exhibit A, attached hereto, and by this reference incorporated herein.

**Section IV. Action of Approval With Conditions:**

Based upon the substantial evidence in the record and the findings and conclusions contained in Exhibit A, the Marion County Board of Commissioners 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, safety and welfare. The Marion County Board of Commissioners adopts the conditions of approval attached hereto as Exhibit B, incorporated herein by this reference.

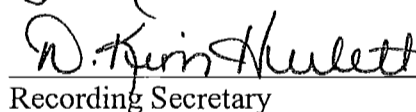
**Section V. Effective Date:**

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 10<sup>th</sup> day of March, at Salem, Marion County, 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 decision becomes final.**

## EXHIBIT A

The Marion County Board of Commissioners, after careful consideration of all the testimony and evidence in the record makes the following findings of fact and additional findings of fact in Comprehensive Plan Amendment Case 09-01/Phillips Family Limited Partnership, LLC:

### **I. Findings of Fact**

The Marion County Board of Commissioners, after careful consideration of the testimony and evidence in the record, issues the following findings of fact:

1. This is an application by the C/E Phillips Family Limited Partnership ("Phillips FLP") to establish a basalt rock mining and processing operation on its property (hereinafter referred to variously as "the subject property", "the subject parcels", or "the site"), located along the south side of Coon Hollow Road SE (MR 81), about three miles east of Sublimity. The ownership consists of two contiguous parcels, identified as Tax Lot 1000 on Assessor's Map T8S R1E Section 31 and Tax Lot 500 on T8S R1E Section 32. The ownership totals approximately 405.75 acres, of which a mining and processing area of 100.5 acres is proposed. The entire ownership and all of the land that surrounds it is zoned EFU, as shown on County Zoning Maps 84 and 93.
2. The subject property is currently used for agriculture and timber production. Small quantities of basalt rock from the property have been excavated by the property owner for use on the on-site roads. Mill Creek bisects the property from northeast to southwest, and flows in a canyon through the property for approximately a mile. The basalt rock resource that is the subject of this application is located north of Mill Creek. Because it is at a lower elevation than the surrounding land Mill Creek is not visible from Coon Hollow Road, the nearest public right of way.
3. Within the ownership, Christmas trees are grown on the land to the north of the Mill Creek canyon, and timber management is practiced both north and south of the canyon. The lands surrounding the subject property are in similar farming and timber production uses, including Christmas trees, grass seed, pasture, and timber management. None of the farm land in the surrounding area is irrigated.
4. Two public hearings were held on the application, at which time interested and affected parties were afforded the opportunity to provide oral and written testimony. A public hearing was held by the Hearings Officer on March 18, 2009. Public notice of that hearing was provided as required by MCRZO 120.435, and included mailed notice to surrounding property owners, published notice in the newspaper, and posting of notice signs on and off the property that were visible from the public right of way. At the hearing an objection was raised to the manner in which the posted signs were maintained. The Hearings Officer reviewed the objection and determined it was unfounded.

Following that public hearing were open record periods for the applicant and opponents. The final open record period closed on May 15, 2009. The Hearings Officer referred the matter to the Board on August 27, 2009. The second public hearing was held by the Board of Commissioners on December 16, 2009. Notice of that hearing was provided in the same manner as for the first hearing. No objections to notice were raised. There were no requests by any parties to leave the record open, and the hearing and the record were closed on that date.

5. The Applicant provided extensive information and evidence for the case record, in the form of reports, maps, technical drawings and aerial photos, to address the applicable requirements of the Goal 5 rule. The Board finds that these reports and documents provide substantial evidence in support of the application. The reports and documents provided with the application included the following:

- An Applicant's Statement report by Tross Consulting, Inc., describing the proposal and addressing the criteria and standards of OAR 660-023-0180 and MCRZO Chapter 120.400.
- The USDA/SCS (NRCS) Soil Survey of Marion County, Sheet 56; and the Marion County GIS soils inventory.
- A report from EGR & Associates, Inc., the project Geologist, consisting of text and maps, titled Geology, Hydrogeology and Resource Report Coon Hollow Quarry, February 2009.
- A report by EGR & Associates, Inc., Mining and Reclamation Plan Coon Hollow Quarry, February 2009, describing the proposed quarry operation and the reclamation plan.
- A copy of the County Road Map showing the location of the site.
- A Traffic Impact Analysis (TIA) by Associated Transportation Engineering and Planning (ATEP), Traffic Impact Analysis for Coon Hollow Quarry, to address OAR 660-23-0180(5)(b)(B).
- A noise impact and mitigation report by Kerrie Standlee, P.E. Acoustic Engineer with Daly-Standlee & Associates, Coon Hollow Goal 5 Noise Study, March 13, 2009; to address OAR 660-23-0180(5)(b)(A).
- A large aerial photo showing the property and the area that surrounds it, produced by the Marion County GIS system.

During the open record periods following the Hearings Officer public hearing the Applicant submitted the following additional materials:

- A letter report from Tross Consulting, Inc., April 17, 2009, with attachments from EGR & Associates, April 9, 2009; Zion Natural Resources Consulting, April 13, 2009; Kerrie Standlee, P. E., Daly-Standlee & Associates, April 14, 2009; Richard Woelk, P.E., ATEP, April 10, 2009; and Assessor's map 9-1E-06; in response to issues and questions raised during the March 18, 2009 public hearing and in opponent's documents submitted during the first open record period.
- A letter report from Tross Consulting, Inc., May 14, 2009, Applicant's Rebuttal to opponents' testimony and submittals.

Following the Hearings Officer referral to the Board, the Applicant submitted additional materials for the case record to address the issues presented in the referral. These additional materials were incorporated in a 3-ring binder, titled Report to the Board of Commissioners, and included the following:

- A letter report from Tross Consulting, Inc., November 12, 2009, addressing the issues in the Hearings Officer's recommendation.
- A copy of a joint report from DLCD and ODOT, Planning for Aggregate, November 2001; Attachment 1.
- Lab test results on three additional rock samples from the site, by Carlson Testing, Inc., September 30, 2009, and a map showing the rock sampling locations; Attachment 2.
- A letter report from EGR & Associates, November 3, 2009, responding to issues in the Hearings Officer's recommendation, with a Site Plan Map as Fig. 2; Attachment 3.
- An aerial photo map showing the property boundaries, mining area boundaries, 1500' Goal 5 impact area, and dwellings within the impact area; Attachment 4.
- A revised Transportation and Traffic Narrative, ATEP, October 26, 2009, Attachment 5.
- Production and Sales Spreadsheets, prepared by Nesko Rock; Attachment 6.
- A General Blasting Plan, prepared by Northwest Energetic Services, October, 2009; Attachment 7.
- A letter report by Zion Natural Resources Consulting, November 10, 2009, on the effects of mining on water temperatures in Mill Creek; Attachment 8.
- A new aerial photo of the subject property and the surrounding area, obtained from the Marion County GIS system, dated December 9, 2009.

6. Opponents' testimony on this matter, oral and written, offered opinions and personal observations about the possible effects of a mining and processing operation at this location. However, the testimony was not directed to specific approval criteria, and there is no evidence in the record of similar detail or from sources that are similarly qualified as those of the Applicant's, that challenges or contradicts the Applicant's evidence. The opponents' testimony does not show that the applicable criteria and standards have not been satisfied. Based on all of the testimony and evidence in the case record, the Board finds that there is substantial evidence to conclude that all of the applicable criteria and standards that apply in this case have been addressed and have been met. The Board's conclusion is based on the following:

## **II. Additional Findings of Fact**

1. The application is to include the site on the Comprehensive Plan Goal 5 Inventory of Significant Mineral and Aggregate Sites through a "Post-Acknowledgement Plan Amendment" (PAPA), and to operate the site for extraction and processing of the aggregate resource. The procedures, criteria, and standards for a Goal 5 PAPA for a mineral and aggregate resource are provided in Oregon Administrative Rule (OAR) 660-023, and specifically in OAR 660-023-0180. OAR 660-023-0180 supplements or supersedes the general Goal 5 process requirements of OAR 660-023-030 to -050 for mineral and aggregate resources. The local operating standards for a mineral and aggregate resource site are provided in Marion County Rural Zoning Ordinance (MCRZO) Chapter 120.400.



2. Under OAR 660-023 a jurisdiction is first required to inventory significant Goal 5 resources and determine whether mining will be allowed. After the inventory is completed the county must determine whether conflicts with other uses can be minimized. If conflicts cannot be minimized the county must analyze the positive and negative economic, social, environmental, and energy (ESEE) consequences that could result from a decision to allow, limit, or prohibit conflicting uses. The local government must then adopt comprehensive plan provisions and land use regulations to implement its decisions regarding the site.

3. Under OAR 660-023-0180(3) a site shall be considered significant if adequate information regarding the quantity, quality, and location of the resource demonstrates that the site meets any one of the criteria in subsections (a) through (c). Based on the information and evidence in the record the Board finds that this site meets the requirements of subsection (a). Under (a), to satisfy the quantity standard the estimated amount of material in a deposit in the Willamette Valley must be at least 2,000,000 tons. The site is in the Willamette Valley (as defined in 660-023-0180(1)(k)), and as described in the February, 2009, EGR & Associates report, the deposit within the 100.5 acre mining area is estimated to contain 42.3 million tons. This estimate was based a calculation that included data obtained from 11 borehole tests performed on the property, and well logs from the surrounding area. The boreholes encountered basalt from 57' thick to 76' thick. Well logs for 25 wells show an average basalt thickness of 153'. The maximum measured thickness of basalt shown by these logs was 433', and in that well the bottom of the rock layer was not reached.

To satisfy the quality requirement a representative set of samples of material taken from the deposit must meet the three ODOT specifications for base rock. A total of four samples taken from widely separated locations within the deposit were tested by Carlson Testing. One sample was tested for only two of the ODOT specifications, and satisfied both. Three more samples were tested for all three ODOT specifications, and satisfied all three. The locations of these three samples are shown on a map in the record, Attachment 2 in the Report to the Board of Commissioners. The Board finds that the three samples that were tested for all three ODOT specifications constitute a representative set of samples from the deposit, and are sufficient to show that the quality criterion is met.

With regards to location, the aggregate deposit is located through the interior of the ownership where it is for the most part well separated from adjacent properties, and it is buffered by the surrounding farm and forest uses within the subject property. The location of the resource within the property helps to minimize the potential for conflict with other uses on surrounding lands. As described in the joint ODOT/DLCD document Planning for Aggregate, November 2001, providing local sources of basalt near to where it is needed and used is important to minimize the haul distance from the material source to where it is used. Haul distance is a major component of the material's cost, in part due to the cost of fuel, and providing local sources of rock helps to reduce the cost of this material for both private and public sector users. This resource site is in proximity to the

urban centers of Stayton, Sublimity, and Salem, where rock is needed and used, and to major transportation routes including Highway 22 and I-5.

4. OAR 660-0180-023(3)(b) and (c) are not applicable because Marion County does not have a local standard that establishes a lower threshold for significance, and the site was not on the inventory of significant resources prior to September 1, 1996.

5. Notwithstanding subsection (a), under OAR 660-023-0180(3)(d) an aggregate site is not significant if the criteria in either subsection (A) or (B) apply. These are if more than 35% of the mining area consists of soil Classified as Class I, or of a combination of Class I and Class II or Unique soil, on NRCS maps available on June 11, 2004; unless the average thickness of the aggregate layer within the mining area exceeds 60 feet in Marion County (subsection (B)(i)). As shown by the soils data in the record the proposed mining area includes no Class I soils, and only 14.6% Class II soils. Therefore, neither subsection (A) or (B) applies and the site is not disqualified as significant due to its soils.

6. Because the quantity of material is greater than two million tons, a representative set of samples of the materials meets the three ODOT specifications for base rock, the deposit is near urban centers where rock is needed and used, and it is near the major transportation routes in the area, the Board finds that subsection (a) is satisfied. The subject site qualifies as significant, and the county must place the site on the comprehensive plan list of significant aggregate resource sites. The county must next determine whether to allow mining at the site.

7. Under OAR 660-023-0180(5), for a significant mineral and aggregates site, local governments shall decide whether mining is permitted. For a PAPA application involving an aggregate site determined to be significant under section (3) of this rule, the process for this decision is set out in subsections (a) through (g) of this section. A local government must complete the process within 180 days after receipt of a complete application that is consistent with section (8) of this rule, or by the earliest date after 180 days allowed by local charter.

(a) The local government shall determine an impact area for the purpose of identifying conflicts with proposed mining and processing activities. 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.

(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 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 approval have been granted by the local government. For determination of conflicts from proposed mining of a significant aggregate site, the local government shall

limited its consideration to the following:

(A) Conflicts due to noise, dust, or other discharges with regard to those existing and approved uses 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;

(C) Safety conflicts with existing public airports due to bird attractants, i.e. open water impoundments;

(D) 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) Agricultural practices;

(F) Consideration for other conflicts necessary to carry out ordinance that supersede DOGAMI regulations pursuant to ORS 517.780.

(c) 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) is not applicable. If identified conflicts cannot be minimized, subsection (d) of this section applies.

(d) The local government shall determine any significant conflicts identified under the requirements of subsection (c) of this section that cannot be minimized. Based on these conflicts only, local governments shall determine the ESEE consequences of either allowing, limiting, or not allowing mining at the site. Local governments shall reach this decision by weighing the ESEE consequences, with consideration of the following:

(A) The degree of adverse effect on existing land uses within the impact area.

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

(C) The possible duration of the mining operation and the proposed post-mining use of the site.

(e) Where mining is allowed, the plan and implementing ordinances shall be amended to allow such mining. Any required measures to minimize conflicts, such as special conditions and procedures regulating mining, shall be clear and objective. Additional land use review (e.g. site plan review), if required by the local government, shall not exceed the minimum necessary to assure compliance with these requirements, and shall not provide opportunities to deny mining for reasons unrelated to these requirements, or to attach additional requirements, except with regard to mining or processing activities.

(f) 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.

(g) (refers to authorizing processing materials from a new site at an existing site, and does not apply in this case.)

8. With regards to OAR 660-023-0180(5), the Board finds that the resource site is significant under section (3). The applicant authorized extensions to the 180 day time frame for completing this process.

9. With regards to subsection (a), the Board finds that an impact area of 1500' from the boundaries of the mining area applies to this site. The Applicant's conflict analysis included a noise impact study, which showed that noise generated by the quarry operation will conform to the applicable DEQ noise standards within the 1500' impact area. There is no factual information in the record that shows a significant potential conflict beyond that distance.

10. With regards to subsection (b), the Board finds that the only existing or approved land uses within the impact area that could be adversely affected by the proposed mining operation are dwellings. There are six dwellings within the 1500' impact area. The location of these dwellings is shown on the impact area map that is in the record. There are no schools, parks, campgrounds, public areas, or other uses in the impact area that could be adversely affected. All of the dwellings in the impact area are in the EFU zone. Based on a review of the County zoning maps of the area, and the County records of approved land use actions for this area, there are no "approved land uses" such as dwellings allowed by a residential zone on existing platted lots, or other uses for which conditional or final approval have been granted, within the 1500' impact area.

11. The determination of conflicts from proposed mining of the significant aggregate site is limited to consideration of those specified in subsections (b)(A) through (F). With regards to (A), the Board finds that the potential for conflicts from noise, dust, or other discharges will be minimized. With regards to noise, the noise impact study provided for the record has shown that with appropriate mitigation measures for operation of the front-end loader, the noise levels at the dwellings within the impact area will conform to the applicable DEQ noise standard, and the potential conflict is therefore minimized. Under OAR 660-023-0180(1)(g), conformance with an applicable local, state, or federal standard constitutes minimizing the conflict so that it is no longer significant. A condition of approval will require conformance with the noise mitigation measures described in the noise impact study. Dust will not create a significant conflict because of the minimal soil overburden that will need to be handled in preparation for excavation, and because the type of hard-rock material to be excavated at this site does not produce high volumes of dust during its excavation. The rock processing activity will be limited to crushing, and dust will be controlled by keeping the rock wet during the crushing operation. Additional dust control will be provided by keeping the ground surface where equipment operates and the on-site haul roads watered to suppress dust during the dry

season. The Board finds that these are reasonable and practicable measures for minimizing the potential for a significant conflict due to dust from the operation. A dust control plan incorporating these measures will be a condition of approval. In addition, the operation will be required to obtain a DEQ air quality permit and maintain compliance with the standards associated with that permit.

Another potential discharge from this site is runoff of storm water runoff and process water, which could affect turbidity in Mill Creek. A plan for the detention, settling, and controlled release of storm water and process water from the mining operation has been provided as a part of the operating plan in the record, and will also be made a condition of approval. In addition, the required NPDES General 1200-A storm water permit, which regulates the handling and discharge of runoff from the site, will be required as a condition of approval. This will minimize the potential for significant conflict due to storm water and process water runoff that could affect turbidity in Mill Creek.

Another potential discharge from this site is blasting vibration, air overpressure (“air blast”), and fly rock. A blasting plan was submitted for the record that describes how blasting effects will be controlled and monitored. Vibration from blasting is regulated by the U.S. Bureau of Mines standards that set a limit of a half-inch per second of ground velocity. The blasting plan also describes the practices that will be used to prepare for and conduct blasting, and the measures that will be employed to control air blast and fly-rock, and protect on-site personnel and off-site property. Adherence to these practices and standards for blasting is a condition of approval. By maintaining conformance with the federal standards for blasting and by conducting blasting as described in the blasting plan the potential for significant conflict will be minimized and it is no longer significant.

12. Because the noise impact study shows that the operation can maintain compliance with DEQ noise standards at the location of the dwellings within the impact area; because dust from the operation can be controlled and minimized with measures that are reasonable and practicable, and will be required to comply with the DEQ Air Quality permit; because water runoff from the operation can be controlled with measures that are reasonable and practicable as shown on the operating plan that is in the record, and will be required to comply with the NPDES-1200A permit; and because blasting activities including vibration, fly rock, and air blast will be controlled according to the blasting plan and required to meet the applicable federal standards, the Board concludes that these potential conflicts are minimized.

13. No other discharges have been identified as being associated with the proposed operation.

14. With regard to subsection (B), potential conflicts with local roads used for access and egress to the mining site, the roads serving the mining site and identified as the “haul roads” are classified as local roads in the County Transportation System Plan (TSP). These include Coon Hollow Road, Boedigheimer Road, Fern Ridge Road, and Triumph Road. In addition, haul trucks from the quarry operation may also travel on Church Street

in Sublimity, which is classified as a Collector. The Board finds that, as shown by the TIA that is part of the record, these roads and the intersections along the haul route have adequate capacity to continue operating at an acceptable Level of Service (LOS) with the projected traffic volumes that may result from the quarry operation. The Public Works Department concurs with that analysis. There is no other substantial evidence in the record that shows otherwise.

15. With further regard to subsection (B), the Public Works Department determined that the roads serving the mining site do not in all cases have adequate geometry, or structure, to sustain the impact that is expected to occur over time by the volume of rock haul trucks projected by the Applicant, considering their weight, without incurring potential significant deterioration. Therefore, the Board finds that the projected impact of the rock haul trucks on the local roads that serve the site is a potential significant conflict, and as a result, in order to allow the quarry to operate, this conflict must be mitigated. Based on the estimates of the Public Works Department engineers, the mitigation measures shall consist of specified improvements to the local roads that will improve safety, and be adequate to maintain the road structure for 20 years, considering the projected size, weight, and volume of trucks hauling rock from the quarry. These mitigation measures will include, among others, minor travel lane widening where necessary, improving intersection corner radii to allow safe truck turning movements, and a pavement overlay. The pavement overlay will be to specifications determined by the Public Works Department, or in the alternative, according to the results of a pavement analysis provided by the Applicant with agreement of the Public Works Department. The Board finds these road mitigation measures to be reasonable and practicable considering the size and weight of the haul trucks, the projected volume of haul trucks, and potential impacts associated with these factors, and concludes that with the specified mitigation measures the potential for significant conflict to the local roads will be minimized.

16. With regard to subsection (C), safety conflicts with existing public airports due to bird attractants, i.e. open water impoundments; there are no public airports in the vicinity of the proposed operation. The nearest public airport is McNary Field in Salem, which is approximately fourteen miles west of the quarry site. For these reasons the Board finds that there are no identified conflicts with a public airport.

17. With regard to subsection (D), there are no other resource sites within the impact area that are on the County's list of significant Goal 5 resources for which the requirements of Goal 5 have been completed at the time this PAPA was initiated. Mill Creek is on the County list of Goal 5 resources as a "sensitive headwaters", but the requirements of Goal 5 have not been completed for this resource. Mining and processing activity will be required to maintain a setback of at least 100' from the stream channel, and to leave riparian vegetation undisturbed, which will protect the creek from being affected by the mining operation. The creek channel will not be altered by mining activity. There are no other Goal 5 resource sites on the County inventory within the impact area, and the Board finds this requirement is satisfied.

18. With regard to (E), conflicts with agricultural practices, the agricultural practices within the impact area are Christmas trees and grass seed to the north, Christmas trees to the northeast, timber to the east, timber and grass seed to the south, and grass seed, pasture, and Christmas trees to the west. The farm uses in the impact area are not irrigated, and as shown by the EGR Hydrology report the quarry operation will not affect groundwater supplies or availability. These farm activities are not affected by noise, and as described, dust from the quarry operation will be minimized and will not create a significant conflict. The mining and processing operation will remain separated from the property's external boundaries by a minimum 100' setback, and in most areas by several hundred feet; and by the farm and timber uses within the subject property, and by the canyon slopes. As shown by the TIA the local roads have adequate capacity for the projected quarry traffic in addition to the existing farm related traffic of the area, and no potential traffic conflicts are predicted. There will be no direct access between the mining operation and any surrounding land in farm use. For these reasons, the Board finds that the quarry will create no conflicts with agricultural practices.

19. With regard to (F), other conflicts for which consideration is necessary in order to carry out ordinances that supersede DOGAMI regulations pursuant to ORS 517.780, the Board finds that there are no ordinances that supersede DOGAMI regulation in this case, and no other conflicts for which consideration is necessary..

20. With regards to subsection (c), reasonable and practicable measures have been determined to minimize all conflicts identified under subsection (b) of this section. These include the measures to minimize noise, the measures to minimize dust, the measures to minimize the discharge of water to the creek, the measures to minimize the impact of quarry traffic on the local roads, and the measures to minimize fly rock, air blast and vibration from blasting. With regards to determining whether proposed measures would minimize conflicts with agricultural practices according to the requirements of ORS 215.296, the Board finds a follows:

With regards to ORS 215.296(1)(a), the proposed mining operation will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use because it will have no impacts that will affect the conduct or operation of those farm or forest practices. The farm practices within the 1500' impact area include grass seed, Christmas trees, timber, and pasture. The specific locations of each of these farm practices relative to the proposed mining operation have been identified in the record, according to the parcel where they occur. None of the surrounding farm operations is irrigated, and as shown by the geological and hydrological information in the record, the mining operation will not affect the local groundwater resource. The mining operation will not create significant dust or noise, and the farm and forest practices on the surrounding lands are not affected by noise in any case. As shown on the maps and photos in the record the mining operation will for the most part be separated by several hundred feet from the boundaries of the subject property, and at a minimum will be set back 100' from the property boundary. The mining area is further buffered from the farm activities on surrounding lands by the terrain, and by the timber land and

extensive acreage of Christmas trees that lie within the subject property. There is no access from the mining operation through any surrounding farm land. Based on these factors the Board finds that the proposed mining operation will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use, and ORS 215.296(1)(a) is satisfied.

With regards to ORS 215.296(1)(b), the Board finds that the proposed mining operation will not significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use because it will not have any effects that will cause alteration in the way the farm practices are conducted, will not cause any land to be removed from farm use, will not alter the transportation pattern of the area, or change any operational factors associated with the types of accepted farm or forest practices on the surrounding lands. Nothing associated with the proposed mining and processing activities has been identified that would significantly increase the cost of the accepted farm or forest practices on the surrounding lands devoted to those purposes.

Because the proposed mining operation will have no effects that will cause a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use, and because it will not create any conditions that will significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use, the Board concludes that the proposal satisfies the requirements of ORS 215.296(1)(a) and (b).

Based on the reasons and measures described above, the Board concludes that reasonable and practicable measures have been identified to minimize all identified conflicts, including those to agricultural practices under ORS 215.296(1)(a) and (b), and mining shall be allowed at the site and subsection (d) of this section is not applicable.

21. With regards to subsection (e), the Board finds that as a result of being found to be a significant resource the site shall be added to the Plan Inventory of Significant aggregate resource sites. The required measures to minimize conflicts as described herein will be adopted as conditions of approval. The conditions are clear and objective and are based on the information and evidence in the record. No additional land use review is required

22. With regards to subsection (f), the post-mining use of the site will consist of farming, wetlands including wetland mitigation banking, ponds, and fish and wildlife habitat. A reclamation plan providing for these uses is required. The reclamation plan shall be subject to approval by the Oregon Dept. of Geology and Mineral Industries (DOGAMI) and the County.

23. Subsection (g) refers only to processing materials from a new site at an existing site, and does not apply in this case.

24. OAR 660-023-0180(6) applies to an aggregate site found to be significant under section (4) of this rule. The subject site has been found to be significant under section



(3), and section (6) does not apply.

25. OAR 660-023-0180(7) requires an ESEE process to determine whether to allow, limit, or prevent new conflicting uses within the impact area of a significant mineral and aggregate site. An ESEE analysis for this purpose was provided by the Applicant and is a part of the record. As described in the ESEE analysis the surrounding lands in the impact area are zoned EFU. The ESEE analysis reviewed the uses included in the EFU zone to determine if any would create a conflict with the mining operation. As described in the ESEE analysis the EFU zone severely restricts land uses that could conflict with the mineral and aggregate site, including dwellings. Farm uses are not considered to be a conflict with mining (OAR 660-23-0010(1)). A land use other than agricultural practices proposed for surrounding land in the impact area would require a review procedure, which would provide for a determination of possible conflict with the aggregate site.

Based on the examination of the uses allowed outright, subject to standards, or conditionally in the EFU zone, only new dwellings would present the potential for conflict with the identified resource site. For these reasons, the Board finds that limiting the location of new dwellings in the impact area to prevent conflicts due to noise will achieve protection of the aggregate resource site. As a result of the restrictions imposed by the various requirements, criteria, and standards of the EFU zone, the potential for new farm dwellings or non-resource uses within the impact area is minimal. There is only one parcel within the impact area, to the southeast of the mining area, that could potentially qualify for a new dwelling. For these reasons, the Board concludes that a specific prohibition on new conflicting uses within the impact area does not need to be included because the existing criteria, standards, and regulations of the EFU zone are sufficient to protect the resource site. The ESEE findings in the record regarding identification of conflicting uses within the impact area are consistent with OAR 660-23-0040(1)(a) and (2)(a) and (b).

26. OAR 660-023-0180(8) provides requirements for determining whether information in a PAPA submittal concerning an aggregate site is adequate. A local government shall follow the requirements of this section rather than OAR 660-023-0300(3). An application for a PAPA concerning a significant aggregate site following sections (3) and (5) of this rule shall be adequate if it includes the following:

- (a) Information regarding quantity, quality, and location sufficient to determine whether the standards and conditions in section (3) of this rule are satisfied;
- (b) A conceptual site reclamation plan;
- (c) A traffic impact assessment within one mile of the entrance to the mining area pursuant to section (5)(b)(B) of this rule;
- (d) Proposals to minimize any conflicts with existing uses preliminarily identified by the applicant within a 1500' impact area, and
- (e) A site plan indicating the location, hours of operation, and other pertinent information for all proposed mining and associated uses.

27. This proposal followed sections (3) and (5) of this rule. Upon review of the

information in the record the Board finds that: With regards to (a) information has been provided that shows that the quantity, quality, and location of the resource satisfies section (3), by showing that the volume of aggregate material from the site exceeds the minimum requirement, that the material meets the ODOT quality standards, and that the location of the resource is appropriate to nearby markets and the transportation system. With regards to (b) a conceptual site reclamation plan is included in the EGR Mining and Reclamation report. The concept reclamation plan shows final contours of the site after excavation is complete. The final form of the site is a function of the terrain, the type of rock in the resource, the mining methods to be employed to excavate the rock, and the expected post-mining use of the resource site. With regards to (c) the submitted traffic impact assessment satisfies section (5)(b)(B) of this rule by analyzing the capacity of the affected roads and intersections to accommodate the expected volumes of traffic, by analyzing the safety factors of those roads with regards to sight distance, travel lane width, and corner radii, and by analyzing the structural ability of the roads to handle the expected traffic. With regards to (d) proposals have been submitted through the various reports and documents in the record to minimize conflicts with the existing uses within the 1500' impact area, including restrictions on the use of the front-end loader to reduce noise, methods to suppress and control dust, methods to control and monitor blasting, and methods to control runoff into the creek. With regards to (e) a site plan that indicates the location, hours of operation, and other pertinent information for all proposed mining and associated uses is part of the record. Based on the information and evidence in the record the Board concludes that the extensive, substantial information and evidence submitted for this PAPA includes the requirements of subsections (a)-(d) and is adequate, and (8) is satisfied.

28. OAR 660-023-0180(9) provides that local governments shall amend the comprehensive plan and land use regulations to include procedures and requirements consistent with this rule for the consideration of PAPAs concerning aggregate resources. Until such local regulations are adopted, the procedures and requirements of this rule shall be directly applied to local government consideration of a PAPA concerning mining authorization, unless the local plan contains specific criteria regarding the consideration of a PAPA proposing to add a site to the list of significant aggregate sites, provided:

- (a) Such regulations were acknowledged subsequent to 1989; and
- (b) Such regulations shall be amended to conform to the requirements of this rule at the next scheduled periodic review after September 1, 1996, except as provided under OAR 660-023-0250(7).

The County has not amended its comprehensive plan and land use regulations to include procedures and requirements consistent with this rule for the consideration of PAPAs concerning aggregate resources, and this rule is applied directly.

29. Opponents to this proposal presented objections for the record that included concerns for impacts on the local roads, noise impacts, impacts to Mill Creek including water quality and increased flooding, wildlife impacts, the change in the view of the subject property from an adjoining property to the south, and a concern about the impact of the

quarry on property values. The Board, having reviewed the testimony and evidence in the entire record, finds as follows: The impacts to the local roads have been examined in the TIA from the Applicant's professional Traffic Engineer, and in the analysis by the County Public Works Dept. The TIA found that the roads have the capacity to accommodate projected levels of traffic and maintain an acceptable level of service. Measures for improving the safety and structure of the roads have been recommended by the Public Works Dept. engineers and the Applicant will be required to make reasonable and practicable improvements to the roads as conditions of approval, that will improve safety and the road structure. There is no substantial evidence in the record to show that the affected roads do not have adequate capacity, or that the required improvements will not be adequate to accommodate the quarry traffic.

With regards to noise impacts, the report from the Applicant's Acoustic Engineer shows that the operation, with recommended mitigation measures, will conform to the applicable DEQ noise standards at the location of the dwellings within the impact area. By conforming to the DEQ noise standards the potential for conflict is minimized. There is no substantial evidence in the record to show that the DEQ noise standards will not be met.

With regards to impacts to Mill Creek, the Applicant has provided information by EGR & Associates that includes a mining plan that provides for storm water and process water detention that provides for settling ponds, a controlled point of release, and a 100' wide berm between the mining area and the creek. These measures will prevent runoff from the mining area from directly entering the creek, which will minimize the potential for turbidity and maintain water quality. The EGR reports also describe the required NPDES General 1200-A Permit, which requires a Spill Prevention and Response Procedure to address methods to prevent spills and address clean up in the event of a spill. The report from Zion Natural Resource Consulting confirms that water temperatures in the creek will not be significantly affected, if at all, from the release of water into the creek. In addition, an undisturbed setback will be maintained along both sides of the tributary drainages that enter the creek from the north side of the canyon, which will also serve to prevent turbidity in the natural drainage that enters the creek. With regards to flooding, the EGR reports discuss the hydrology, hydrogeologic conditions, and groundwater impacts of the site and the operation, and shows that the site will not be a significant source of water discharge. There is no substantial evidence in the record to support the claim that the mining operation would result in increased volumes of water entering the creek over present conditions or increase flooding either upstream or downstream of the site.

With regards to impacts on wildlife, the site is not a designated wildlife habitat and there is no evidence in the record that it provides habitat for any listed threatened or endangered species. The site is zoned EFU and is subject to accepted farm and forest practices, which include the cultivation and harvest of crops and timber. The site is not set aside or preserved as a wildlife habitat.

With regards to the objection to the change in the view of the subject property from the adjoining property to the south, the change in the view is not a decision criterion and cannot be considered in this decision. Similarly, the impact of the quarry on property values is not a decision criterion and cannot be considered in this decision.

Based on the testimony and evidence in the entire record the Board finds that the opponents' testimony does not address the applicable decision criteria with sufficient, specific evidence to show that the Applicant has failed to satisfy the criteria and standards that apply in this case. Based on all of the testimony and evidence in the case record, the Board finds that the Applicant has provided sufficient substantial evidence to conclude that all of the applicable criteria and standards that apply in this case have been addressed and are satisfied.

### **III. Findings Regarding Marion County Rural Zoning Ordinance, Chapter 17.120- Article III. Mineral and Aggregate Resource Operations**

1. The standards and requirements for the operation of a mineral and aggregate resource site are provided in MCRZO Chapter 17.120. There are several sections that repeat OAR requirements, nevertheless, these standards and requirements are reviewed as follows:

2. 17.120.410 Purpose: *The purpose of this section is to provide definitions, criteria and development standards applicable to applications for new or expanding mineral and aggregate resource operations that either (A) do not qualify as a "significant" site pursuant to OAR 660-023-180(3) and OAR 660-32-0180(4) or (B) qualify as a "significant" site and the county determines mining should be allowed.*

The subject site qualifies as significant under OAR 660-023-0180(3) and mining shall be allowed.

3. 120.420 Definitions

A. *"Aggregate resources" means crushed or uncrushed gravel, stone, rock, or sand of a quality typically used in concrete or road construction.*

The subject site consists of basalt rock, which is typically used in road construction, consistent with this definition.

H. *"Mining" means the extraction and processing of mineral or aggregate resources, as defined in ORS 215.298(3) for farmland, and in ORS 517.750 for land other than farmland.*

The proposed activity is mining and processing. The land is designated as farmland.

J. *"Significant site" means an aggregate resource site that satisfies the criteria in OAR 660-023-180(3) or (4) regarding location, quality, and quantity of the resource.*

The subject site qualifies as a significant site according to the criteria of OAR 660-23-0180(3).

4. 17.120.430 Application Requirements. *An application for a new or expanding mineral or aggregate site shall be adequate if it includes:*

A. *A Comprehensive Plan Amendment Application for an aggregate resource under OAR*

660-23-180(3) that includes:

1. Information regarding quantity, quality, and location sufficient to determine whether the site is significant pursuant to OAR 660-23-180(3); and

The application is a Comprehensive Plan Amendment and information regarding the quantity, quality, and location of the resource has been submitted as required by OAR 660-023-0180(3), and the site qualifies as significant based on this information.

2. A Post Acknowledge Plan Amendment (PAPA) determination, pursuant to OAR 660-23-180(5) including:

The PAPA determination has been made as required by OAR 660-023-0180(5).

3. A conceptual site reclamation plan;

4. A traffic impact assessment for the area within one mile of the entrance to the mining area;

5. Proposals to minimize any conflicts with existing uses preliminarily identified by the applicant within a 1,500 impact area; and

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

All of the information required by parts 2.-6. has been provided as a part of the application.

5. 17.120.435 Hearing Notice.

Mailed notice and posted notice of the hearings was provided as required by this section.

6. 17.120.440 Allowable Uses.

The proposed use consists of the extraction of rock, as provided for in A., processing operations consisting of crushing, screening and stockpiling, as provided for in B.1. and 2., management office and accessory structures as provided for in B.3., sales of rock products as provided for in B.4., storage of equipment or machinery as provided for in B.6.; transportation and loading facilities as provided for in B.7.

7. 17.120.450 Review Criteria. *The following criteria must be met in order to grant approval for a mineral and aggregate operation, in addition to any criteria in the applicable zone:*

*A. The proposed uses, activities and facilities are included in Section MCC 17.120.440;*

The proposed mining and processing operations are included as allowable uses in Section MCC 17.120.440, as described above.

*B. A permit for mining of aggregate on farmland shall be issued only for a site included on an inventory in an acknowledged comprehensive plan as required under ORS 215.298(2);*

As a result of this application the site is included on the acknowledged comprehensive plan inventory, as required.

*C. For sites that qualify as significant under the requirements of OAR 660-23-180(3)(a)*

*through (d), the county has completed the requirements of OAR 660-23-180(5)(a) through (g);*

The site qualifies as significant under OAR 660-23-180(3)(a)-(d), and the requirements OAR 660-23-180(5)(a)-(g) have been completed, and this criterion is met.

*D.* is not applicable because it applies to sites found significant under OAR 660-23-180(4).

*E.* does not apply because the site qualifies as significant.

*F.* does not apply because batching and blending for asphalt cement is not proposed.

8. 17.120.460 Standards for Development and Operation. *Unless specifically deleted or modified as part of the post-acknowledgement plan amendment or conditional use approval the following standards and requirements apply:*

*A. Dimensional Requirements.*

1. *Lot Area: The minimum area shall be that area necessary to meet setback requirements.*

2. *Setbacks for mineral and aggregate extraction shall be:*

a. *The extraction area must be at least 100' from any property line;*

b. *The extraction area must be at least 500' from a habitable building existing on adjacent property at the time the use is established;*

c. *does not apply because the site does not abut another mineral and aggregate site.*

3. *Setbacks for mineral and aggregate processing and loading shall be as follows;*

a. *One hundred feet from any property line;*

b. *Five hundred feet from a habitable building existing on adjacent property at the time the use is established;*

The setbacks for the extraction area and processing areas are shown on the site plan map that is included as a part of the application. The site plan shows that the setback requirements for the extraction area and for the processing area will be met.

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

The entire property is zoned EFU. The location of any such structures will conform to the standard of the EFU zone.

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.*

6. *Height: The maximum height of any structure, except mineral and aggregate*

*processing and extraction equipment, shall be (85) feet.*

These standards will be met when the site is put into operation.

*B. Screening and Fencing*

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

All land surrounding the site is zoned EFU. It is not adjacent to an urban or a rural residential zone.

*2. Existing deciduous or 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.*

Any existing screening vegetation within the required setback areas will be retained.

*C. Access*

*1. is not applicable, applies to sites that do not qualify as significant.*

*2. For sites that qualify as significant, access requirements shall comply with OAR 660-23-180(5)(b)(B).*

An access drive for the operation will be located according to the requirements of the Public Works Dept., which has indicated the existing site access may need to be relocated in order to meet sight distance requirements. The property has adequate frontage on the public road for a suitable access drive location. This will conform with the requirements of 660-023-0180(5)(b)(B).

*D. Hours of Operation*

*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 activities may occur on January 1, Memorial Day, July 4, Labor Day, Thanksgiving Day, and December 25.*

The operation will comply with these days and hours for the specified activities.

*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.*

Blasting days and hours will conform to these standards.

*E. Environmental Standards*

*1. Any crusher, asphalt batch plant or concrete plant, shall have a valid DEQ permit.*

*2. Owners or operators shall present evidence of the appropriate DEQ permits prior to*

*commencing operations.*

All necessary DEQ permits will be obtained as required and presented to the County at or prior to the time the site is placed into operation.

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

A Noise Study report on the noise characteristics of the location and the operation is included with this application. Based on that report the site operations will comply with the DEQ noise standards within the impact area.

*F. Safety Standards. Access roads to all mineral and aggregate resource sites shall be gated and locked when not in operation.*

This operation will comply with this requirement.

*G. Site Reclamation*

*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 evidenced by a DOGAMI surface mining operating permit.*

A conceptual reclamation plan is a part of this application. DOGAMI approvals for the reclamation plan will be secured as required by the County or DOGAMI procedures.

*H. Performance Agreements*

These requirements will be met prior to the start of site operations, as specified.

9. 17.120.480 Supplemental Provisions

*A. Notwithstanding MCC 17.119.030, for significant sites where the county has determined there are no significant conflicts identified under the requirements of OAR 660-23-180(5) or (6) that cannot be minimized, the county shall not:*

- 1. Deny mining at the site; or*
- 2. Impose additional requirements beyond those required to assure minimum compliance with OAR 660-23-180, except with regard to mining or processing activities;*
  - a. For which the application does not provide information sufficient to determine clear and objective measures to resolve land use conflicts;*
  - b. Not requested in the application; or*
  - c. For which a significant change to the type, location, or duration of the activity shown on the application is proposed by the operator.*

The site is a significant site and there are no significant conflicts that cannot be minimized. Therefore, the proposed mining and processing activities must be allowed.

*B. For a significant site, the county shall render a final local decision within 180 days of*



*accepting an application as complete.*

The site is significant. The Applicant has granted extensions to the 180 day decision requirement.

10. Based on the information and evidence provided by the Applicant, the Board finds and concludes that the application conforms to the application requirements, and development and operating standards, presented in this Chapter.

#### **IV. Conclusion**

This proposed quarry site includes a vast quantity of high quality material. The site is located in proximity to major markets. The transportation system that serves the site is or will be made adequate to accommodate the proposed use. These factors qualify the site as a Significant aggregate resource. Including the site on the Comp Plan inventory of Significant aggregate resources will protect it and keep it available for future utilization, consistent with the requirements of Statewide Planning Goal 5.

The site is surrounded by land in farm and timber uses. There are no identified conflicts between the proposed quarry and the farm and timber uses in the surrounding impact area. Potential conflicts between the proposed quarry and the existing dwellings in the impact area can be minimized. New dwellings on lands in the surrounding EFU farm zone are severely restricted, and new dwellings require review and approval by the County, subject to certain standards. The limitations and requirements on new dwellings in the EFU zone serve to protect the resource site.

Based on consideration of all of the information and evidence that is in the record the Board concludes that the subject site qualifies for inclusion on the Comprehensive Plan Inventory of Significant aggregate resource sites, and mining shall be allowed.

## **EXHIBIT B**

The Marion County Board of Commissioners adopts the following conditions CP09-01/Phillips Family Limited Partnership.

Pursuant to the Marion County Rural Zone Code section 17.123.070 the following conditions apply to the 100.5 acres added to the to the Marion County Comprehensive Plan list of significant mineral and aggregate sites. These conditions are reasonably related to the specific development proposed, will serve the public interest of reducing land use conflicts, and are based upon standards adopted by the County. The conditions are necessary for the public health, safety and welfare.

### **Conditions of Approval**

#### **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 and include a 1500-foot impact area from the aggregate mining area. The plan shall provide evidence of compliance with all the applicable use and development standards in the ordinance including a detailed 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) The applicant shall flag or otherwise mark the boundaries of the required setbacks before beginning excavation at the aggregate resource site.
- (c) **Reclamation Plan.** Prior to any aggregate extraction, processing or preparation of the site for processing or extraction the applicant shall submit a reclamation plan. The plan shall be part of the reclamation plan submitted to DOGAMI. The reclamation

plan shall also be designed to achieve wetland, ponds, farming or wildlife habitat use of the excavation area and shall include setback and other unexcavated areas within the entirety of the subject properties necessary for buffering these uses from surrounding land uses and activities. The plan shall provide for sequential reclamation of the excavation and buffer areas, and include procedures for monitoring implementation.

The reclamation plan shall include either wetland, ponds, farming and wildlife habitat program element that describes graphically and in a narrative form the specific process for reclamation of the site. The wetland, pond, and wildlife habitat program is integral to approval of aggregate extraction of these properties. The reclamation program shall be substantially completed within one-year of completion of excavation of the properties.

The plan shall be subject to the approval of the Oregon Department of Fish and Wildlife and the County. The plan shall be in conformance with DOGAMI reclamation plan and reclamation bond standards. The reclamation bond shall be in an amount sufficient to fully implement the wetland and wildlife habitat reclamation plan **as required by DOGAMI**. In addition to any DOGAMI enforcement authority, the implementation of the reclamation plan is enforceable as provided under County enforcement laws.

- (d) 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.

- (e) The applicant shall satisfy requirements of the Sublimity Fire District.
  - (f) The mining operation shall follow procedures and recommendations for the mine plan as stated in the engineer's hydrogeology report unless otherwise instructed by Marion County or DOGAMI.
  - (g) The applicant shall meet Marion County Public Works Engineering requirements listed below. The conditions shall be met to Public Works' satisfaction.
1. In accordance with Marion County Driveway Ordinance #651, the applicant will be required to obtain access permits for all accesses to the property. Driveways must meet sight distance, design, spacing, and safety standards. Only one point of access to Coon Hollow Road SE to serve the mining site will be allowed. A preliminary field review of the assumed driveway location, being an existing graveled driveway approximately 1000 feet east of Dennison Road SE, indicates that the location may not offer sufficient sight distance looking west due to a vertical crest curve. The applicant shall demonstrate, to Public Works' satisfaction, that adequate sight

distance is available prior to being issued an access permit. This may require the proposed access be relocated.

2. Once the location of the access is designated and permitted, it shall be paved with asphaltic concrete for a minimum longitudinal distance of 50 feet, as measured from the existing edge of pavement.
3. Because of the physical and safety impacts of adding a significant amount of large truck traffic to the existing roadways, the applicant shall improve their property frontage from the west property line to a point at least 250 feet east of the mining operation access to Marion County standards for a local road having a 30-foot half width. Those improvements would include vegetation clearing and improvement of the roadway cross-section to current Marion County standards.
4. The primary haul routes are on roads designated as local roads having isolated geometric constraints. Because of the addition of a significant number of large trucks on the routes, the applicant shall improve the corner radii at the Triumph Road SE/Cascade Highway SE and the Coon Hollow Road SE/Boedigheimer Road SE intersections to accommodate truck-turning movements. The applicant shall provide plans of these improvements, including truck-turning templates to Marion County for review and approval. Construction of the improvements will require permits from Marion County. Intersection improvements shall be completed prior to the removal of aggregate and/or materials from the site. The Applicant/Operator shall be allowed to use rock from the site for the purpose of providing material for the road improvements required by the County for this application, prior to the start of commercial operations.
5. Trucks leaving a resource site often carry dirt and rock onto the public roadway creating a safety hazard for users of the roadway. The applicant shall provide a truck-wash area or other means to prevent dirt and rock from being tracked onto Coon Hollow Road SE. At least weekly, for the life of the operation and upon special request by the County, the applicant shall inspect the primary haul routes used by it or its customers to Cascade Highway SE and OR 22 to determine if any rock or debris has been left on the roadway. If so, it shall be promptly removed by the applicant.
6. Access roads serving the site must meet fire district requirements.
7. The applicant is responsible to preserve and protect the current integrity of the adjacent County roadway, ditch, and other public facilities from any damage that the applicant's activities would have the potential to cause. Failure to preserve and protect the roads, ditches, or other facilities may result in the applicant being responsible for replacing or reconstructing the damaged facility at its expense.
8. The roads in this area are functionally classified as "Local" roads, and were not built to withstand the amount of truck traffic that will be generated by this development; the intended design life will be shortened considerably. Also, the addition of large numbers of trucks on these narrower country roads presents safety concerns for all users and will also damage the weaker outer edges of the pavement further narrowing the safe usable surface over time.

The applicant originally identified two primary trucking routes and assumed trucks would not use E. Church Street through the City of Sublimity. However, E. Church Street is the designated Collector Street in the area, and is the likely route choice for many drivers unfamiliar with the area. There is not a practical way to ensure that development-related truck traffic does not use this route, therefore it is appropriate to require the applicant to address traffic impacts on this roadway.

The three primary trucking routes are:

- I. From the development to OR 22 via Coon Hollow Road SE, Boedigheimer Road SE and Fern Ridge Road SE.
- II. From the development to Cascade Highway SE via Coon Hollow Road SE, Boedigheimer Road SE and Triumph Road SE.
- III. From the development to Cascade Highway SE via Coon Hollow Road SE and E. Church Street.

To address these various impacts from the applicant's proposal, based on 130 projected total truck and trailer trips on an average day during a peak month, the applicant shall do the following:

- Provide and construct a pavement design for the primary truck routes listed above that achieves a 20-year design life with the addition of the amount of truck traffic from this development noted above. This will require the appropriate testing and pavement design by a qualified pavement design engineer. In addition, coordination, scoping, and approval of Public Works will be required. Minor widening in designated areas on existing roadway shoulders to achieve a consistent, usable travel width as identified in the table below will be required in conjunction with all surface treatments.

Public Works would allow the applicant to construct a minimum pavement section as shown in the table below in lieu of the pavement design process as described above. Minor widening as identified in the table below will still be required in conjunction with all surface treatments.

The applicant shall determine if the pavement design method will be pursued and shall notify Public Works prior to undertaking any testing or analysis. The results of the pavement design will override the values in the table unless Public Works and the applicant mutually agree otherwise.

Road	From	To	Overlay Thickness Required	Minor Travel Surface Widening Required to Achieve	Comments
Coon Hollow	Site	Boedigheimer	6"	21'/22'	Localized widening in curves

Boedigheimer	Coon Hollow	Fern Ridge	4.5"	22'	
Boedigheimer	Coon Hollow	Triumph	4.5"	22'	
Fern Ridge	Boedigheimer	OR 22	4.5"	22'	
Triumph	Boedigheimer	Cascade Hwy	4.5"	22'	
E. Church	Boedigheimer	Cascade Hwy	4.5"	21'/22'	Feathering req'd in wider sections

- Actively encourage all truck drivers serving the proposed site to use primary routes I and II, rather than traveling through Sublimity on E. Church Street. At a minimum, this shall be achieved by the use of on-site signing, directions to drivers, and possibly by off-site signing (as determined by Public Works.)

Depending upon the final pavement requirements, and/or other engineering and business needs, Public Works may enter into an agreement to allow improvements to be staged or deferred to a more appropriate time, however, all improvements shall be in place within 5 years of commencement of hauling materials and aggregate from the site. Any such agreement and an acceptable form of security must also be in place prior to commencement of hauling materials and aggregate.

If the actual use were to intensify beyond the projected 130 total truck trips on an average day during a peak month, or measurable roadway damage attributable to the traffic from the proposed operation is occurring at locations along the primary haul routes, then additional mitigation may be required in the future.

9. Review of the Transportation Impact Analysis (TIA) prepared by Associated Transportation Engineering & Planning, Inc. (ATEP), dated October 13, 2008, and the revised TIA, dated October 30, 2009, for the subject property indicates that the level of impact to the County roadway system is only moderate and that Coon Hollow Road SE has the capacity to operate at LOS C or better with operation of the development. As a worst-case scenario, the TIA used 400 daily truck trips and 40 daily automobile trips, which would more than double the amount of traffic on some roads in the area. However, this was for purposes of capacity analysis and is not likely to occur. If the use were to intensify, then additional mitigation may be required in the future.

#### **Storm Drainage/Environmental**

10. The applicant's construction of improvements on the property shall not block historical or naturally occurring runoff from adjacent properties. Furthermore, site grading shall not impact surrounding properties, roads, or drainage ways in a negative manner.
11. The applicant is required to submit a storm-water management plan to Marion County for review and approval.
12. The applicant must provide evidence of having submitted application for an Operating Permit or a Grant of Total Exemption from the State Department of Geology & Mineral Industries (DOGAMI). An Operating Permit is required for mining operations that have an activity level that exceeds one acre and/or 5,000 cubic

yards of new disturbance in any 12-month period, unless the excavated material stays on the property. The DOGAMI contact number is (541) 967-2084.

#### **General**

13. The subject property is within the unincorporated area of Marion County. Per Marion County Ordinance 00-10R, Transportation Systems Development Charges will be assessed.
  14. Any work in the public right-of-way above and beyond that which is directly related to improving the driveway will require other permits from Public Works.
  15. Applicant shall pay all costs associated with any required route or traffic control signing and striping determined by Public Works to be needed to address traffic issues related to the applicant's proposed use. Signing and traffic issues may require periodic review and adjustment as issues arise after operation begins, and applicant would also be responsible for those costs.
- (h) Prior to the start of the aggregate extraction operation, the applicant shall provide evidence of obtaining any required permits from DSL (Division of State Lands) or evidence that permits are not required.
  - (i) The applicant shall provide evidence of obtaining a National Pollutant Discharge Elimination System (NPDES) Industrial Storm-water General 1200-A Permit for the discharge of storm-water from a point source to surface waters or to conveyance systems that discharge to surface waters. The NPDES permit is obtained through the State Department of Environmental Quality (DEQ). Water discharge into Mill Creek shall be controlled by the design and construction of storm water detention ponds that conform to requirements of the NPDES permit. All discharges shall be released through the filter berm at the west end of the detention system.

#### **Conditions Ongoing During Mining Operation:**

- (j) Extraction Area. The extraction area shall not exceed that area shown on the applicant's conceptual reclamation plan and approved site plan.
- (k) Future Use. Except as otherwise approved herein, farming, wetland, ponds, and wildlife habitat 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, ponds, and 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.
- (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. The applicants shall also follow any DEQ fugitive dust standards and obtain any required permits.
- (n) The hours of operation. The applicant shall maintain hours of operation from 6:00 a.m. to 7:00 p.m. for noise mitigation, or hours below, and 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 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.
    - (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 or replanted 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.
- (q) The front end loader must operate in the zone identified as the “FEL allowed operating area” on figure #5 of the Noise Study unless extraction occurs in a manner that creates a barrier between the front end loader and the location of receiver R5 and R6 situated to the southwest and west of the extraction area. The mining operator must continually meet DEQ and US Bureau of Mines noise standards during the mining operation.



- (r) The applicant shall maintain a dust mitigation plan during any extraction related activities at the site.
- (s) The mining operation shall follow the guidelines established in the “General Blasting Plan” provided in the file. Seismic monitoring shall take place during blasting events by vibration monitoring seismographs and seismically sensitive receivers to measure ground vibration and peak particle velocity. Guidelines pertaining to the management of over burden shall also be followed during the mining process.
- (t) The mining operation shall provide seismic monitoring of each blasting event at the nearest structure and limit the peak particle velocity at residential structures to one-half inch per second. Additionally, air blasts shall conform to the U.S. Bureau of Mines recommended air overpressure limit for residential structures. A blasting report shall be prepared by a Registered Professional Engineer and submitted to the Planning Division for each blasting event. Reports shall be filed every six months, during the first week of January and the first week of July, if blasting occurs.
- (u) Applicant shall obtain all necessary state or federal air and water quality permits, and to operate in continual compliance with these permits and state and federal regulations.
- (v) The haul road for the mining operation shall not be located within the 100 foot setback area.
- (w) The blasting company hired by the mining operator shall design the layout and sequencing of charges to meet 98dBc, slow response for noise levels.
- (x) The extraction area shall not exceed that area shown on the applicant’s conceptual reclamation plan and approved site plan. Any expansion of the mining or processing operation outside the defined approved area shall require the filing of a new Comprehensive Plan Amendment Application along with required fees.

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