

# LAWFUL LOT RESEARCH

Date of Research: 7/10/23  
Researched By: CMB

FILE NUMBER: 439-23-00001-LRP

MAP DESCRIPTION: T 35 R 1W S 01/02 TL 100

### SOURCES CHECKED:

- Accela
- Jackson County Website
- Historical Central File
- 1973 Assessor Map

**The property is a lawful parcel**, as defined by the 2004 Land Development Ordinance Section 10.2 because:

- It was created prior to countywide land use regulations:
  - Volume \_\_\_\_\_, Page \_\_\_\_\_ (or)
  - Document Number \_\_\_\_\_ of the Official Records of Jackson County.

Date signed/recorded: \_\_\_\_\_

- It was created in compliance with land use regulations in effect:
  - Volume \_\_\_\_\_, Page \_\_\_\_\_ (or)
  - Document Number \_\_\_\_\_, of the Official Records of Jackson County.

Date signed/recorded: \_\_\_\_\_

It was reviewed and approved by Jackson County on 6/6/11, through File No. 439 SUB 2009-00038.

Other: Parcel 2 CS-20879 P-13-2011

**The property is not a lawful parcel**, as defined by the 2004 Land Development Ordinance Section 10.2, because:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Jackson County Planning Commission  
File No. 439-23-00001-LRP Exhibit # 26  
Offered by: Staff  
Date: 9-19-2023 Received by: PC

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# LAWFUL LOT RESEARCH

Date of Research: 8/11/23  
Researched By: CHS

FILE NUMBER: 439-23-00001-LRP

MAP DESCRIPTION: T 35 R 1W S 03 TL 100

### SOURCES CHECKED:

- Accela
- Jackson County Website
- Historical Central File
- 1973 Assessor Map

**The property is a lawful parcel**, as defined by the 2004 Land Development Ordinance Section 10.2 because:

It was created prior to countywide land use regulations:

- Volume \_\_\_\_\_, Page \_\_\_\_\_ (or)
- Document Number \_\_\_\_\_ of the Official Records of Jackson County.

Date signed/recorded: \_\_\_\_\_

It was created in compliance with land use regulations in effect.

- Volume \_\_\_\_\_, Page \_\_\_\_\_ (or)
- Document Number \_\_\_\_\_, of the Official Records of Jackson County.

Date signed/recorded: \_\_\_\_\_

It was reviewed and approved by Jackson County on 6/6/11, through File No. (439) SUB 2009-00038.

Other: Parcel 1 CS 20879 P-13-2011

**The property is not a lawful parcel**, as defined by the 2004 Land Development Ordinance Section 10.2, because:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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EASEMENTS ON CURRENT TITLE REPORT

1. Power line easements recorded in Vol. 232, Page 108 D.R., Vol. 224, Page 421 D.R., Vol. 234, Page 103 D.R., Vol. 271, Page 12 and Vol. 358, Page 421 D.R. could not be located. Overhead power line exist along and in the Highway 62 right-of-way and along driveway to residence in Parcel No. 1. It was not determined if any of these easements pertain to these existing power lines.

2. Easements recorded in Vol. 274, Page 369 D.R., Vol. 275, Page 474 D.R. and Vol. 277, Page 37 D.R. affects the relocation of irrigation ditches and drainage ditches, structures drainage ditches along and in the State Highway right-of-way. Easements benefit the State of Oregon through its State Highway Commission. These easements were created in 1946 when highway was reconstructed.

3. 25 foot wide irrigation easement recorded in Vol. 146, Page 286 D.R. affects the irrigation ditch across Sections 1, 2, 3, 10 and 11, Township 35 South, Range 1 West, W.M. benefiting Eagle Point Irrigation District. Also, 25 foot wide irrigation easement recorded in Vol. 600, Page 309 D.R., for irrigation ditch across the SW1/4 of the NE1/4 and the SE1/4 of the NW1/4 of Section 10 in Township 35 South, Range 1 West, W.M., benefit Eagle Point Irrigation District. The irrigation ditches subject to these easements were not located on this plat but appear to affect subject properties.

4. Easement for pumping irrigation water mentioned in Inst. No. 67-06132 D.R. is located in the SE1/4 of the NW1/4 is not a part of subject property.

PARTITION PLAT No. 4-13-2011

Located in Sections 1, 2 and 3 and the North-half of Section 10 and the Northwest Quarter of Section 11, T.35S.,R.1W., W.M., Jackson County, Oregon

SURVEY FOR: Free & Associates, LLC  
P.O. Box 587  
Shady Cove, OR. 97539

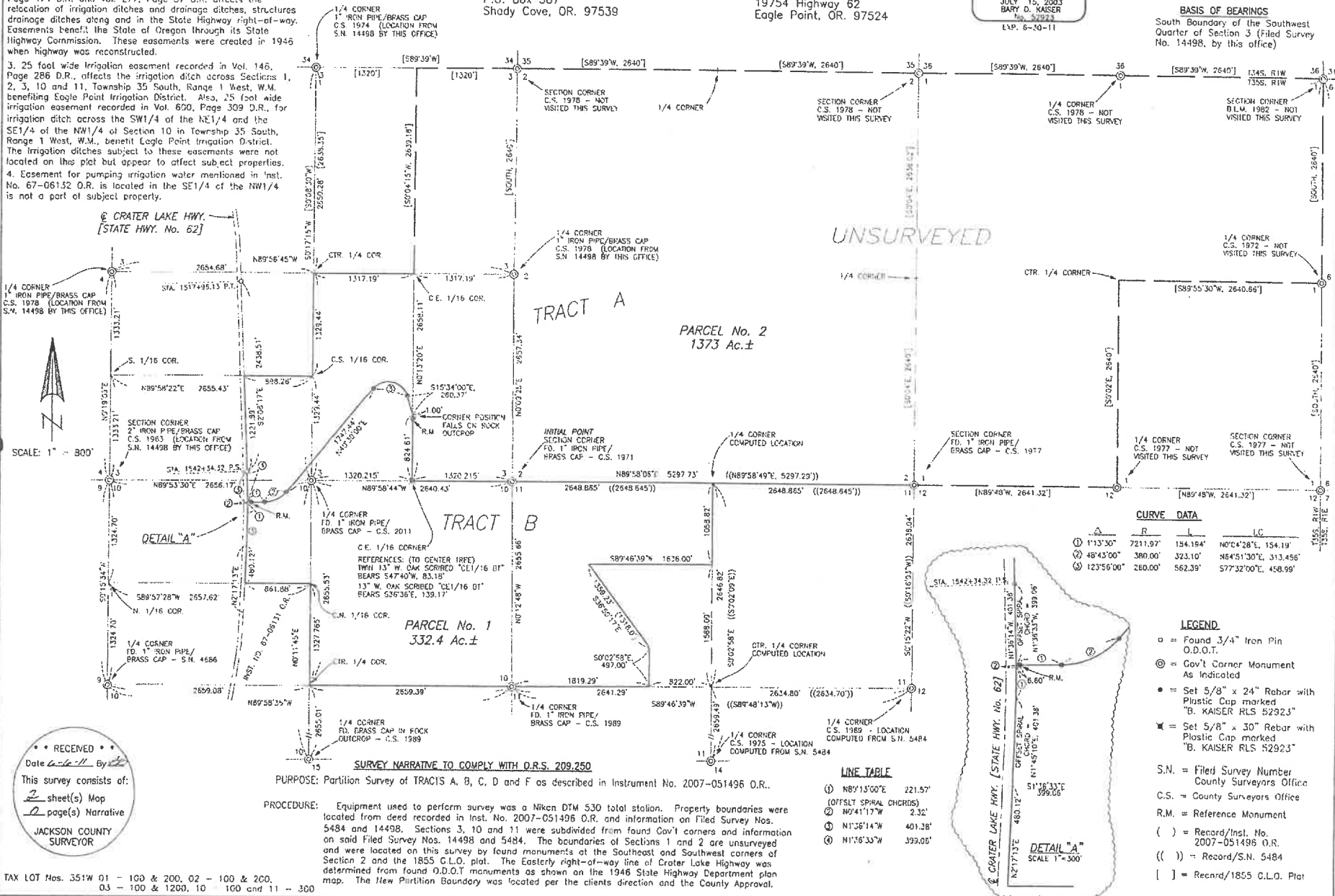
DATE: February 25, 2011

SURVEY BY: Kaiser Surveying  
19754 Highway 62  
Eagle Point, OR. 97524



I HEREBY CERTIFY THAT THIS IS AN EXACT COPY OF THE ORIGINAL PLAT

BASIS OF BEARINGS  
South Boundary of the Southwest Quarter of Section 3 (Filed Survey No. 14498, by this office)

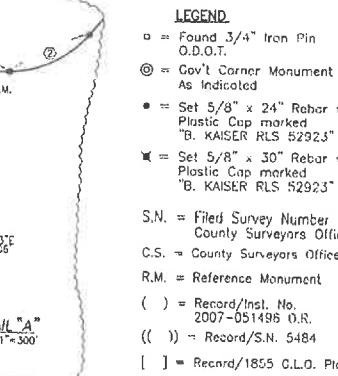


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UNSURVEYED

**CURVE DATA**

Δ	R	L	LC
① 1°13'30"	7211.97'	154.184'	N0°04'28"E, 154.19'
② 48°43'00"	380.00'	323.10'	S84°51'30"E, 313.456'
③ 123°56'00"	260.00'	562.39'	S77°32'00"E, 458.99'



RECEIVED  
Date 4-13-11 By [Signature]  
This survey consists of:  
2 sheet(s) Map  
2 page(s) Narrative  
JACKSON COUNTY SURVEYOR

SURVEY NARRATIVE TO COMPLY WITH O.R.S. 209.250

PURPOSE: Partition Survey of TRACTS A, B, C, D and F as described in Instrument No. 2007-051496 D.R.

PROCEDURE: Equipment used to perform survey was a Nikon DTM 530 total station. Property boundaries were located from deed recorded in Inst. No. 2007-051496 D.R. and information on Filed Survey Nos. 5484 and 14498. Sections 3, 10 and 11 were subdivided from found Gov't corners and information on said Filed Survey Nos. 14498 and 5484. The boundaries of Sections 1 and 2 are unsurveyed and were located on this survey by found monuments at the Southeast and Southwest corners of Section 2 and the 1855 C.L.O. plat. The easterly right-of-way line of Crater Lake Highway was determined from found O.D.O.T monuments as shown on the 1946 State Highway Department plan map. The New Partition Boundary was located per the clients direction and the County Approval.

TAX LOT Nos. 351W 01 - 100 & 200, 02 - 100 & 200, 03 - 100 & 1200, 10 100 and 11 - 300



**JACKSON COUNTY  
DEVELOPMENT SERVICES**

**TYPE 2 LAND USE DECISION**

**MINOR PARTITION  
STAFF REPORT**

**DEVELOPMENT  
SERVICES**

**Kenneth Skyles  
Planner II**

10 South Oakdale Ave.  
Medford, OR 97501  
Phone: (541) 774-6115  
Fax: (541) 774-6791  
skyleskd@jacksoncounty.org

**PROPERTY OWNER:** C. David Freel  
PO Box 587  
Shady Cove, OR 97539

**FILE:** SUB2009-00038

**AGENT:** Matt Ropp Land Use Consulting, Inc.  
10 S. Bartlett street Ste 203  
Medford, OR 97501

<b>MAP DESCRIPTION:</b>	<b>Twp:</b> 35	<b>Range:</b> 1W	<b>Section:</b> 01	<b>Tax Lot:</b> 100
	<b>Twp:</b> 35	<b>Range:</b> 1W	<b>Section:</b> 01	<b>Tax Lot:</b> 200
	<b>Twp:</b> 35	<b>Range:</b> 1W	<b>Section:</b> 02	<b>Tax Lot:</b> 100
	<b>Twp:</b> 35	<b>Range:</b> 1W	<b>Section:</b> 02	<b>Tax Lot:</b> 200
	<b>Twp:</b> 35	<b>Range:</b> 1W	<b>Section:</b> 03	<b>Tax Lot:</b> 200
	<b>Twp:</b> 35	<b>Range:</b> 1W	<b>Section:</b> 03	<b>Tax Lot:</b> 1200
	<b>Twp:</b> 35	<b>Range:</b> 1W	<b>Section:</b> 10	<b>Tax Lot:</b> 100
	<b>Twp:</b> 35	<b>Range:</b> 1W	<b>Section:</b> 11	<b>Tax Lot:</b> 300

**LOCATION:** The property is located at 16550 Highway 62, Eagle Point, OR 97524.

**NATURE OF APPLICATION:** A request to allow a 2-lot minor partition resulting in parcels of 333 acres and 1,371 acres.

**LOT LEGALITY:** The tax lots listed above are one lawful parcel together. The subject parcel is a lawfully parcel, as defined by the 2004 Land Development Ordinance Section 10.2. It was reviewed and approved on November 9, 1990 through Jackson County File Number 1990-6-LOT.

**CURRENT ZONING:** The subject parcel is currently zoned Exclusive Farm Use (EFU) with areas of Aggregate Removal (AR) zoning.

**I. KEY ISSUES**

- 1) JCLDO Section 3.1.3(B), Type 2 Review Criteria;
- 2) JCLDO Section 3.3.3, Land Division Approval Criteria;
- 3) JCLDO Section 4.2.12, Land Division in Exclusive Farm Use (EFU) Zoning Districts;
- 4) JCLDO Section 7.1.1(C), ASC 90-1, Deer and Elk Habitat;
- 5) JCLDO Section 8.2, Dimensional Standards;
- 6) JCLDO Section 8.6, Stream and Riparian Habitat
- 7) JCLDO Section 8.7, Wildfire Safety;
- 8) JCLDO Section 9.5.4, Emergency Vehicle Access;
- 9) JCLDO Section 10.3.1, General Approval Criteria for Tentative Plans;
- 10) JCLDO Section 10.3.3, Approval Criteria for Final Plats

**LAND PARTITION  
(TENTATIVE)**

Submitted By  
**MATT ROPP**  
LAND USE CONSULTING INC.

**OWNER & APPLICANT:**  
FREEL & ASSOCIATES, LLC  
P.O. Box 587  
Shady Cave, OR. 97539

**LOCATION:**  
T.L. Nos. 351W 01 - 100 & 200  
02 - 100 & 200, 03 - 100 & 1200  
10 - 100, 11 - 300  
Jackson County, Oregon

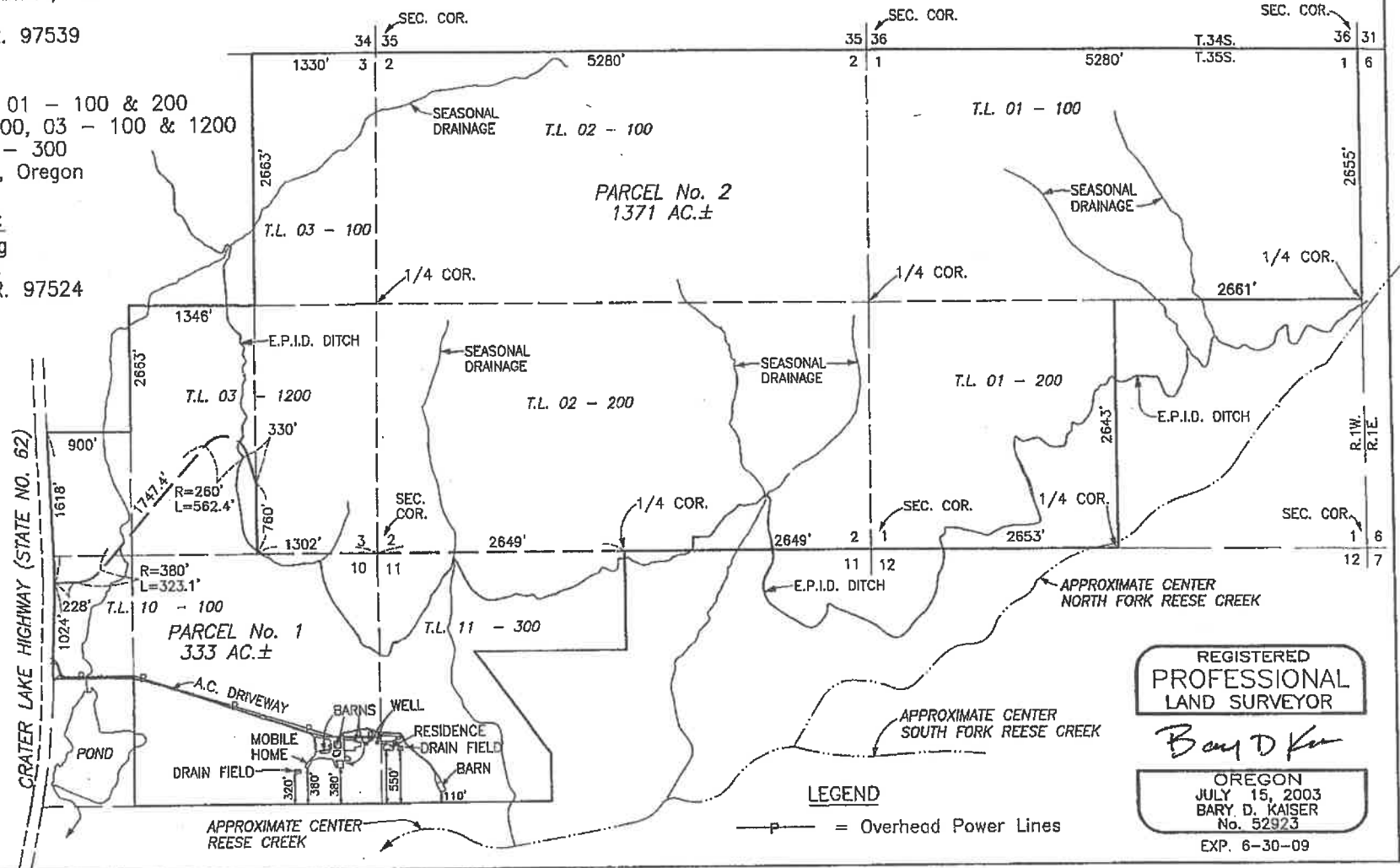
**PREPARED BY:**  
Kaiser Surveying  
19754 Hwy. 62  
Eagle Point, OR. 97524

**ZONE:**  
EFU

**DATE:**  
May 15, 2009



SCALE 1" = 1320'



REGISTERED  
PROFESSIONAL  
LAND SURVEYOR  
*Bary D. Kaiser*  
OREGON  
JULY 15, 2003  
BARY D. KAISER  
No. 52923  
EXP. 6-30-09

Conditionally Approved   
Approved   
Denied

**REDUCED  
COPY**

By: *[Signature]* Date: \_\_\_\_\_  
Jackson County Planning & Development

PARTITION PLAT No. P-13-2011

Located in Sections 1, 2 and 3 and the North-half of Section 10 and the Northwest Quarter of Section 11, T.35S., R.1W., W.M., Jackson County, Oregon

SURVEY FOR: Freel & Associates, LLC  
P.O. Box 587  
Shady Cove, OR. 97539

DATE: February 25, 2011

SURVEY BY: Kaiser Surveying  
19754 Highway 62  
Eagle Point, OR. 97524

\*\*\* SURVEYOR'S CERTIFICATE \*\*\*

I, Bary D. Kaiser, a duly registered professional land surveyor of the State of Oregon, do hereby certify that I have correctly surveyed the land represented on the attached Partition Plat, the boundaries being described as follows:

TRACT A:

The North-Half and the Southwest Quarter of Section 1, all of Section 2, the East-Half of the Northeast Quarter and the Southeast Quarter of Section 3, Township 35 South, Range 1 West of the Willamette Meridian in Jackson County, Oregon.

TRACT B:

Beginning at a 1" iron pipe with brass cap found set for the Section corner common to Sections 2, 3, 10 and 11, Township 35 South, Range 1 West of the Willamette Meridian in Jackson County, Oregon for THE INITIAL POINT OF BEGINNING; thence North 69° 58' 08" East, 264-8.865 feet to the Quarter corner common to said Sections 2 and 11; thence along the North-South centerline of said Section 11, South 0° 02' 58" East, 1358.82 feet to the Easterly Southeast corner of Tract F as described in Instrument No. 2007-051496 of the Official Records of said County; thence along the Southerly boundary of said Tract F, South 89° 46' 39" West, 1635.00 feet to an interior corner of said Tract F; thence South 36° 50' 17" East, 1359.23 feet (record = 1318.0 feet) to and angle point on the Easterly boundary of said Tract F; thence South 0° 02' 58" East, 497.00 feet to intersect the East-West centerline of said Section 11 and Southerly Southeast corner of said Tract F; thence along the said East-West centerline, South 89° 46' 39" West, 1819.29 feet to a 1" iron pipe with brass cap found set for the Quarter corner common to said Sections 10 and 11; thence along the Southerly boundary of the Northeast Quarter of said Section 10, North 89° 58' 35" West, 2659.39 feet to the Southwest corner thereof; thence along the Westerly boundary of said quarter section, North 0° 11' 45" East, 1327.765 feet to the Northeast corner of the Southeast quarter of the Northwest quarter of said Section 10; thence along the Northerly boundary of said quarter-quarter section, South 89° 57' 28" West, 861.88 feet to intersect the Easterly right-of-way line of Crater Lake Highway (State Hwy. No. 62); thence along said Highway line as follows: North 2° 17' 13" East, 480.12 feet; thence along an offset spiral curve to the left (long chord bears North 1° 45' 10" East, 401.38 feet); thence 154.194 feet along the arc of a 7211.97 foot radius curve to the left (long chord bears North 0° 04' 28" East, 154.19 feet); thence along an offset spiral curve to the left (long chord bears North 1° 36' 14" West, 401.38 feet) to a 3/4" iron pin found set at Engineers station 1542+34.32; thence North 2° 08' 17" West, 1221.89 feet to intersect the Northerly boundary of the South-Half of the Southwest quarter of said Section 3; thence leaving said Highway line along the said Northerly boundary, North 89° 58' 22" East, 893.26 feet to the Northeast corner of said South-Half; thence along the Easterly boundary of said South-Half, South 0° 17' 15" West, 1329.44 feet to a 1" iron pipe with brass cap found set for the Quarter corner common to said Section 3 and 10; thence along the South boundary of said Section 3, South 89° 58' 44" East, 2640.43 feet to THE INITIAL POINT OF BEGINNING.

REGISTERED PROFESSIONAL LAND SURVEYOR

Bary D Kaiser

OREGON JULY 15, 2003 BARY D. KAISER No. 52421 Exp. 6-30-11

\*\*\* APPROVALS \*\*\*

Approved by Jackson County Development Services (File SUB2009-00038).

By: KAM, PLANNING DIRECTOR DATE: June 1, 2011

Examined and approved this 19<sup>th</sup> day of APRIL, 20 11.

Kenneth K. Bradshaw  
COUNTY SURVEYOR

All taxes, fees, assessments or other charges as required by O.R.S. 92.095 have been paid as of the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

Wesley Brumby 6/3/2011  
ASSESSOR DATE

Karen W. Meade 6/1/2011  
TAX COLLECTOR DATE

\*\*\* RECORDER'S CERTIFICATE \*\*\*

Filed for record, this 6<sup>th</sup> day of June, 20 11, at 12:51 o'clock P. m., and recorded as Partition Plat No. P-13-2011 of the Records of Partition Plats in Jackson County, Oregon

Index Volume 22 Page 13

Christine D. Walker Carman R. Helman  
COUNTY CLERK DEPUTY

COUNTY SURVEYOR FILE No. 20879

\*\*\* DECLARATION \*\*\*

Known all men by these presents, that FREEL & ASSOCIATES, LLC, an Oregon Limited Liability Company, hereafter referred to as Declarant, is the owner of the lands represented on this Partition Plat and more particularly described in Surveyor's Certificate, and has caused the same to be partitioned into parcels as shown on Sheet 2 of the Partition Plat.

IN WITNESS WHEREOF, I HAVE SET MY HAND AND SEAL THIS 19<sup>th</sup> DAY OF April, 20 11.

C. David Freel  
C. DAVID FREEL  
(managing member, Freel & Associates, LLC, an Oregon Limited Liability Company)

STATE OF OREGON)  
COUNTY OF JACKSON)

Personally appeared before me the above named C. DAVID FREEL, and acknowledge the foregoing instrument to be his voluntary act and deed and it was signed on behalf of Freel & Associates, LLC, an Oregon Limited Liability Company.

Subscribed and sworn to before me this 19<sup>th</sup> day of April, 20 11.

(SIGN) Cindy H. Webb  
Cindy H. Webb NOTARY PUBLIC - OREGON  
(PRINT)  
COMMISSION NO. 427154  
MY COMMISSION EXPIRES 04-05-12

RECEIVED  
Date 6-6-11 By AK  
This survey consists of:  
2 sheet(s) Map  
2 page(s) Narrative  
JACKSON COUNTY SURVEYOR

I HEREBY CERTIFY THAT THIS IS AN EXACT COPY OF THE ORIGINAL PLAT  
Bary D Kaiser  
SURVEYOR

**RECEIVED**

JUL 10 2023

JACKSON COUNTY  
DEVELOPMENT SVCS



**O'CONNOR LAW** | LLC

541.702.5350 | 670 G STREET, SUITE B, JACKSONVILLE, OR 97530

July 9, 2023

VIA EMAIL

Charles Bennett  
Jackson County

**RE: File No. 439-23-0001-LRP  
Freel & Associates Aggregate Zone Change Application**

Dear Mr. Bennett,

This correspondence is in reference to the above-numbered application and your letter dated February 9, 2023.

Enclosed as Exhibit "A" is a letter from Micah Horowitz, Senior Transportation Planner at the Oregon Department of Transportation ("ODOT"). In this letter, ODOT recommends a finding that there will be no net increase in trip generation to satisfy the Transportation Planning Rule ("TPR").

We have made an effort to meet with the neighbors. Enclosed as Exhibit "B" is a letter that was sent out to the many neighbors concerning the application. We held an information session for the neighbors on July 6, 2023. Enclosed as Exhibit "C" is the optional sign in sheet for the neighbors.

Enclosed as Exhibit "D" is a geological report prepared by geologist Jonathan Williams for the entire subject area. Mr. Williams reports that the geology satisfies all relevant ODOT standards.

Lastly, concerning Quarry Site "E", we are not applying for any zone changes to that site or the immediate adjacent area. We propose that it remain in its current configuration.

Please deem our application complete. As always, please let us know if you have any questions or wish to discuss. Thank you for your patience in this matter.

Yours sincerely,

**O'CONNOR LAW, LLC**

*/s/ Garrett West*

---

Garrett K. West, OSB No. 174890  
west@PacificLand.law

GKW:



**Garrett West**

---

**From:** HOROWITZ Micah <Micah.HOROWITZ@odot.oregon.gov> on behalf of ODOT Region 3 Development Review <R3DevRev@odot.oregon.gov>  
**Sent:** Thursday, July 6, 2023 1:45 PM  
**To:** Garrett West; Kim Parducci  
**Cc:** SCRUGGS Julee Y; WANG Wei; SCHAUFFLER Lucas D; GRIFFIN Jeremiah M  
**Subject:** RE: Freel Quarry - administrative zone change application

Hi Garrett and Kim,

Thanks for your patience with this one. ODOT District has requested monthly sweeping as needed at the Quarry access connection to OR62. We recommend the transportation finding reference that there will be no net increase in trip generation based on the land use action to satisfy TPR. Please let me know if you have any questions or concerns.

Best regards,  
Micah

**Micah Horowitz, AICP** | Senior Transportation Planner  
ODOT Region 3 | Southwest Oregon (Coos, Curry, Douglas, Jackson & Josephine Counties)  
c: 541.603.8431 | e: [micah.horowitz@odot.oregon.gov](mailto:micah.horowitz@odot.oregon.gov)

**From:** Garrett West <west@pacificland.law>  
**Sent:** Thursday, June 29, 2023 11:38 AM  
**To:** ODOT Region 3 Development Review <R3DevRev@odot.oregon.gov>  
**Cc:** Kim Parducci <kim.parducci@gmail.com>  
**Subject:** RE: Freel Quarry - administrative zone change application

You don't often get email from [west@pacificland.law](mailto:west@pacificland.law). [Learn why this is important](#)

This message was sent from outside the organization. Treat attachments, links and requests with caution. Be conscious of the information you share if you respond.

Hello Micah,

I just tried to call, I'm thinking you're probably in a meeting.

I'm checking in with you on this. I've asked Kim Parducci to draft a letter to the County addressing their requests. We're approaching our deadline to get the County our materials (end of next week), so we'll be responding to them no matter what.

If the DevRev team has any thoughts or concerns, please let me and Kim know.

Many thanks and hope you have a Happy Fourth!

Garrett West  
Associate Attorney  
670 G Street, Suite B  
Jacksonville, OR 97530

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**O'CONNOR LAW | LLC**

541.702.5350 | 670 G STREET, SUITE B JACKSONVILLE, OR 97530

VIA MAIL

**RE: Freel Ranch Quarry**

Dear Neighbor,

This letter concerns the Freel Ranch Quarry located at 16568 Highway 62, Eagle Point (the "property" and the "Quarry"). The Quarry is located just east of Highway 62, approximately 1,100 feet north of the intersection with Hammel Road. We represent Freel & Associates, LLC, which is one of the owners of the Quarry.

The property is currently split-zoned: one part is zoned Aggregate Resource (AR) and another is zoned for Farm Use (EFU). We are in the process of submitting a land use application to the Jackson County Planning Department to adjust the property's internal zoning boundary northward. We have included maps of both the current zoning and the proposed adjustments.

The problem is that the zoning maps issued by Jackson County and the maps issued by the Oregon Department of Geology and Mineral Industries ("DOGAMI") for charting the boundaries of the Quarry operations do not precisely align. Normally zoning boundaries are straight lines, but as you can see from the attached maps, the current boundaries are irregular bubble shapes, which has caused a mapping mismatch. Our hope is that the zone change will re-align the County and DOGAMI maps by simplifying the boundaries, thereby fixing the mismatch.

The property is bound by certain conditions of approval imposed by the Jackson County Board of Commissioners in 2006. It is also bound by additional conditions imposed by DOGAMI. These conditions collectively prevent the current quarry operation from increasing in size or intensity.

It is important to note that we are not asking to change any existing conditions of approval, nor increase the size or intensity of the current quarry operation. Any of those kinds of changes would require both notice to you as a neighbor and the consent of both the County and DOGAMI. We are only applying to adjust the zoning boundaries to correct the administrative issues.

Freel & Associates desire to be good neighbors and wish to alleviate any impacts on you. We will be holding an information session on Thursday, July 6<sup>th</sup> at 11:00 am at the Eagle Point City Hall parking lot (17 S Buchanan Ave, Eagle Point, OR 97524) to answer any of your questions and to discuss quarry operations in general. If you would like to attend, please RSVP to:

541-702-5350  
Kathy@PacificLand.law  
670 G St., Suite B  
Jacksonville, OR 97530

If you would like to make alternative arrangements to meet, wish discuss over the phone, or if you have any questions or comments, please reach out at any time.

We expect that Jackson County will be sending you an official notice in the coming weeks regarding our application and we would like to give you a preview of what the proposal is and why we are proposing it. Given that this is just a proposed administrative zone change, we do not expect it to create any new impacts on the surrounding neighborhood, but we wanted to let you know ahead of time.

Again, feel free to reach out.

Yours most sincerely,

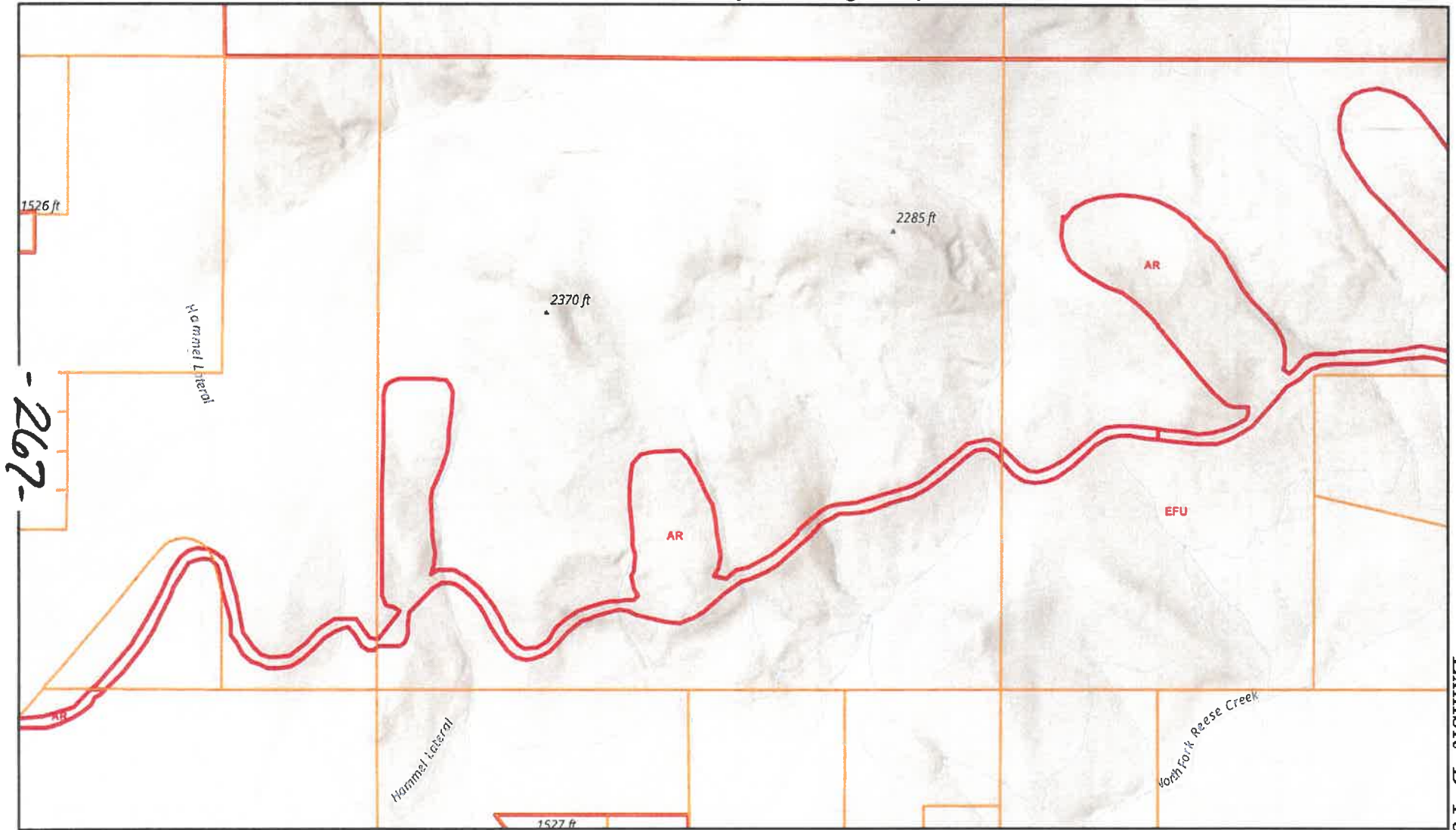
**O'CONNOR LAW, LLC**

*/s/ Garrett West*




Garrett K. West, OSB No. 174890  
west@PacificLand.law

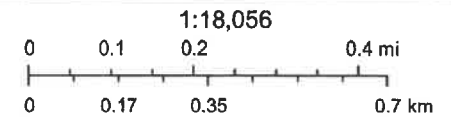
GKW:

# Jackson County Zoning Map



6/29/2023, 3:00:45 PM

-  County Boundary
-  Tax Lots
-  County Zoning



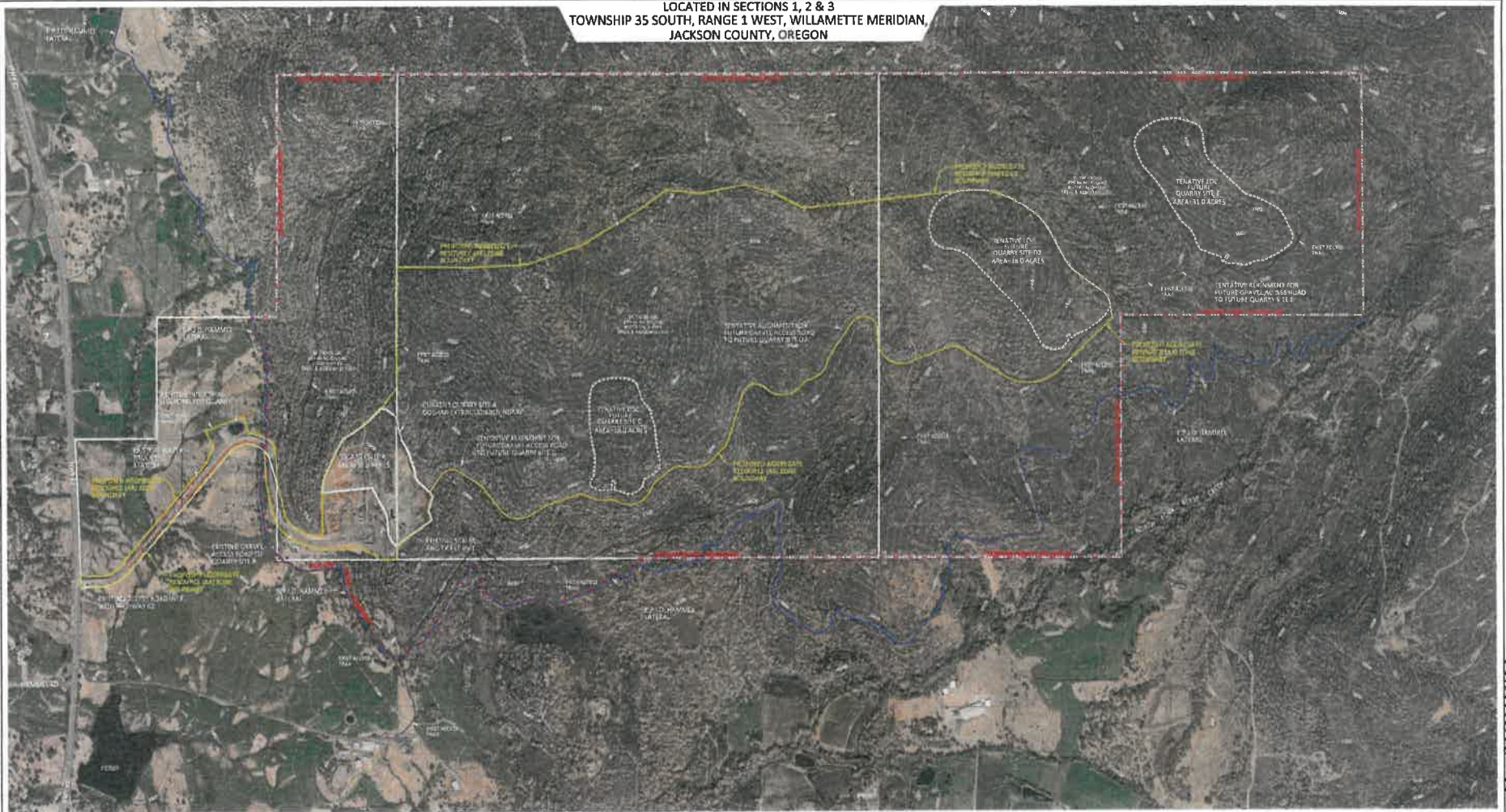
Esri Community Maps Contributors, County of Jackson, OR, Oregon State Parks, State of Oregon GEO, Esri, HERE, Garmin, SafeGraph, GeoTechnologies, Inc. METI/NASA, USGS, Bureau of Land Management, EPA, NPS, US Census Bureau, USDA, Esri, NASA, NGA, USGS, FEMA

Jackson County - Public User

Data within this application may contain inaccuracies. Maps produced are not intended for legal purposes and do not substitute for a professional land survey. For more information, see ORS 672.060(13), ORS 306.125(1), ORS 308.245(1)-(4) and Oregon SB55.

Exhibit "B" Page 3 of 4

LOCATED IN SECTIONS 1, 2 & 3  
TOWNSHIP 35 SOUTH, RANGE 1 WEST, WILLAMETTE MERIDIAN,  
JACKSON COUNTY, OREGON



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Exhibit "B" Page 4 of 4

**SITE DATA**  
TOTAL SITE AREA = 1,373 ACRES (3 TAX LOTS)  
DOGAMI PERMIT BOUNDARY AREA = 1,336 ACRES  
CURRENT AIR ZONING BOUNDARY AREA = 156 ACRES  
PROPOSED AIR ZONING BOUNDARY AREA = 435 ACRES

2013 & 2015 LIDAR DATA PROJECTED ON TO NAD83 (2011)  
OREGON GRANT TO BASE ASHLAND ZONE HORIZONTAL  
COORDINATE SYSTEM & HATCHER VERTICAL DATUM  
OCTOBER 04, 2022 US PHOTO PROJECTED ON TO NAD83  
2011 UTM ZONE 18QMS PNE-ASHLAND ZONE HORIZONTAL  
COORDINATE SYSTEM

EVN LOT MAPS: 35 SW 01, 35 1W 01 & 35 2W 03

**LEGEND**

PROPERTY LINE  
DOGAMI PERMIT BOUNDARY

**CONTOURS**

MAJOR CONTOUR INTERVAL = 30'  
MINOR CONTOUR INTERVAL = 30'

EXISTING GROUND  
MAJOR CONTOUR  
EXISTING GROUND  
MINOR CONTOUR

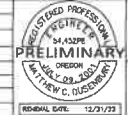
**PROPOSED SITE PLAN - W/ PROPOSED AGGREGATE RESOURCE (AR) BOUNDARY**  
**FREEL RANCH QUARRY**



**GENERAL NOTES**

1. The information indicated on this plan is approximate only. The proprietors are not held liable for internal planning purposes only. The client shall retain a licensed land surveyor for delineation of actual property boundaries.

DOGAMI-MLR INFORMATION	
PERMIT NUMBER: 18-0252	DRAWN: mjed
SITE NAME: FREEL RANCH QUARRY	DATE: 03/04/22
PERMIT HOLDER: FREE AND ASSOCIATES, LLC 1720 OLIVE WATERS ROAD, SUITE 100-100 SEASIDE, OR 97138 541-703-2843	
PERMIT HOLDER SIGNATURE:	



**WHETSTONE ENGINEERING, INC.**

PROPOSED SITE PLAN - W/ PROPOSED AR BOUNDARY - FREEL RANCH QUARRY

FREEL AND ASSOCIATES, LLC  
JACKSON COUNTY, OREGON

JOB NO. 21-002  
PLAN NUMBER:  
OFFICE: (541) 864-6344  
www.wetstone-engineering.com  
CENTRAL POINT, OREGON 97502  
813 ALBERTA STREET  
CENTRAL POINT, OREGON 97502

SHEET 2  
OF 2





**Alpine Environmental Consultants, LLC**

12210 Antioch Road  
White City, Oregon 97503  
541.944.4685  
jwilliams@alpine-env-llc.com

June 30, 2023

Mr. Dave Freel  
Freel & Associates, LLC  
1750 Delta Waters Road #102-309  
Medford, Oregon 97504

RE: Geologist Report for the Proposed Aggregate Resource Boundary Adjustment, Freel Ranch Quarry in Jackson County, Oregon

**Introduction**

This Geologist Report prepared by Alpine Environmental Consultants, LLC (AEC) describes rock sampling field activities, analytical laboratory results, and data evaluation completed to support the proposed aggregate resource boundary adjustment at the Freel Ranch Quarry property owned by Freel & Associates, LLC (Freel & Associates). The Freel Ranch Quarry property is comprised of the following three tax lots: Map 351W03 Taxlot (TL) 100, Map 351W02 TL 100, and Map 351W01 TL 100 (the Subject Property). These three TLs cover approximately 1,373 acres. The general location of the Subject Property is illustrated on **Figure 1**.

The Freel Ranch Quarry initiated quarry operations on approximately 20 acres in 2012 in an area identified as Quarry Site A (**see Figure 2**). Freel & Associates is proposing to expand the aggregate resource boundary illustrated on **Figure 2**. To demonstrate the proposed aggregate resource boundary at the Subject Property meets applicable requirements, this Geologist Report presents the following technical elements:

- Rock quality within the proposed aggregate resource boundary meets relevant standards developed by the Oregon Department of Transportation (ODOT). This element was achieved through the collection of rock samples and subsequent laboratory analyses.
- Rock quantity within the proposed aggregate resource boundary exceeds 500,000 tons.
- A map illustrating the Subject Property geology.
- A soil survey map for the Subject Property demonstrating quarry activities within the proposed aggregate resource boundary will not impact prime agricultural soils.

## Rock Quality

Mr. Jonathan Williams of AEC visited the Subject Property on May 3, 2023, to collect rock samples. In addition, Mr. Williams visited the Subject Property on June 8, 2023, to take photographs of current quarry operations within Quarry Site A. Photographs taken during visits to the Subject Property and of rock samples are presented in **Appendix 1**. Current quarry operations include mining and crushing, segregation and stockpiling of various rock products, and a small office and scale house where trucks and rock products are weighed.

On May 3, 2023, Mr. Williams met with Mr. Dave Freel and Mr. Rob Hula to tour the Subject Property and collect rock quality samples. A total of five rock quality samples were collected for laboratory analyses by the Carlson Testing, Inc. (CTI) laboratory in Bend, Oregon. Per CTI's testing requirements, each of the five samples consisted of three 5-gallon buckets of cobble-sized indurated rock. Sample locations on the Subject Property are illustrated on **Figure 3**. Given access restrictions and Mr. Williams' extreme allergic reaction to poison oak, the predominant vegetative brush cover over most of the Subject Property, the two samples on the northern part of the Subject Property were collected outside of the proposed aggregate resource boundary adjustment area. However, three of the five rock samples were collected within the proposed aggregate resource boundary area. Furthermore, the local geology is fairly uniform across the Subject Boundary (see below), so the two rock samples collected north of the proposed aggregate resource boundary area are considered to be representative of the proposed aggregate resource boundary area.

The five rock samples, consisting of a total of 15 X 5-gallon buckets, were transported by Mr. Williams to the CTI analytical laboratory in Bend, Oregon, on May 5, 2023. Photographs representative of the samples are included in **Appendix 1**. The rock samples consisted of brown, gray, and black basalt and andesite, some of which was porphyritic. It should be noted that all of the cobble-sized rock sample material was collected at ground surface. During future quarry operations at depth below ground surface, it is reasonable to assume that in general rock quality will improve at greater depth due to decreased chemical and physical weathering.

The five rock samples were submitted to CTI for the following laboratory analyses:

- Percent Loss to Abrasion by the American Association of State Highway and Transportation Officials (AASHTO) by Method T96.
- Percent Passing the #20 Sieve by the Oregon Air Degradation Method TM 208 developed by the Oregon State Highway Division (OSHD).
- Sediment Height by the Oregon Air Degradation Method TM 208 developed by OSHD.

Analytical results for the five rock samples submitted to CTI are presented in **Table 1**. The analytical results demonstrate the rock quality of all five rock samples exceeds ODOT standards



for aggregate base specifications for the percent loss to abrasion, percent passing the #20 Sieve, and Sediment Height. These are the relevant ODOT standards for aggregate base specifications. Copies of the CTI analytical laboratory reports are included as **Appendix 2**.

### Rock Quantity

Based on the available data, the conservatively estimated volume of quality rock within the proposed aggregate resource boundary area exceeds 1,600,000 tons. For example, a single quarry area covering 20 acres and mined to an average depth of 50 feet would yield approximately 1,600,000 cubic yards of in-situ rock. After crushing, this 1,600,000 cubic yards of in-situ rock would generate more than 1,600,000 cubic yards of crushed rock. While the mass of crushed rock varies depending on the rock type, crushed size, and moisture content, it is reasonable to assume a cubic yard of crushed rock has a mass of at least 2,000 pounds, or 1 ton. Accordingly, the example quarry area referenced above would yield a crushed rock mass of at least 1,600,000 tons.

### Subject Property Geology

AEC researched readily available geologic maps for the Subject Property. The most recent readily available geologic map for the Subject Property was prepared by the Oregon Department of Geology and Mineral Industries (DOGAMI) in 1992. This geologic map is identified as the *Geology And Mineral Resources Of The Shady Cove Quadrangle, Jackson County, Oregon*, prepared by Frank R. Hadley. An overlay of the geologic map on the Subject Property is included as **Figure 4** and a copy of the geologic map is included as **Appendix 3**.

The predominant surface-mapped geology within the proposed aggregate resource boundary adjustment area is identified as Roxy Formation. The Roxy Formation is aged from the lower to upper Oligocene and consists of mostly brown, tan, and gray weathered andesite flows. On the east-central portion of the proposed aggregate resource boundary, a predominant tuff member of the Roxy Formation has been mapped in a north-south trend with a width ranging from approximately 500 to 1,500 feet. On the western side of the Subject Property, but outside of the proposed aggregate resource boundary area, the surface mapped geology consists of Tuff of Mosser Mountain, a lower Oligocene ash-flow tuff that is typically olive or tan.

### Soil Types

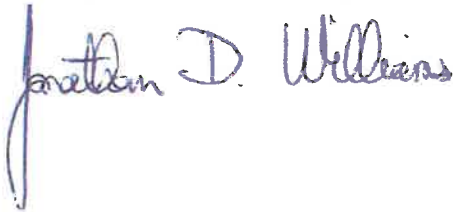
To determine if mining within the proposed aggregate resource boundary adjustment area would disturb high quality agricultural soils, defined as Class I or Class II soils, a soil survey map was overlaid on the proposed aggregate resource boundary area as shown on **Figure 5**. Soil survey data were obtained from U.S. Department of Agriculture National Resource Conservation Service. The predominant mapped soil type within the proposed aggregate resource boundary area is the Medco-McMullin Complex, with lesser areas covered by McMullin-McNull Gravelly Loams and McMullin-Rock Outcrop Complex. These three soil types are Class IV and Class VI soils.

### Technical Memorandum Preparation

This Geologist Report was prepared by Jonathan Williams. Mr. Williams received a Bachelor of Science degree in Geology, with honors, from Duke University in 1987. He has 30 years of experience working with geological, hydrogeological, groundwater modeling, and environmental projects. Mr. Williams has been a Registered Geologist in the State of Oregon since 1996.

Please feel free to contact Jonathan Williams at 541-944-4685 or [jwilliams@alpine-env-llc.com](mailto:jwilliams@alpine-env-llc.com) if you have any questions about this technical memorandum.

### ALPINE ENVIRONMENTAL CONSULTANTS, LLC



Jonathan D. Williams, R.G.  
Senior Hydrogeologist, Principal

### Attachments:

**Figure 1** – General Site Location Map

**Figure 2** – Proposed Site Plan with Proposed Aggregate Resource Boundary

**Figure 3** – Proposed Site Plan with Proposed Aggregate Resource Boundary and Rock Sample Locations

**Figure 4** – Site Geology and Rock Sample Location Map

**Figure 5** – Soil Survey and Rock Sample Location Map

**Table 1** – Rock Sample Testing Results

**Appendix 1** – Photographs

**Appendix 2** – Rock Sample Testing Analytical Laboratory Reports

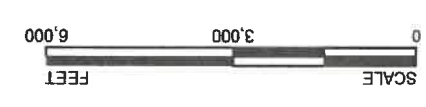
**Appendix 3** – Geology and Mineral Resources Map of the Shady Cove Quadrangle



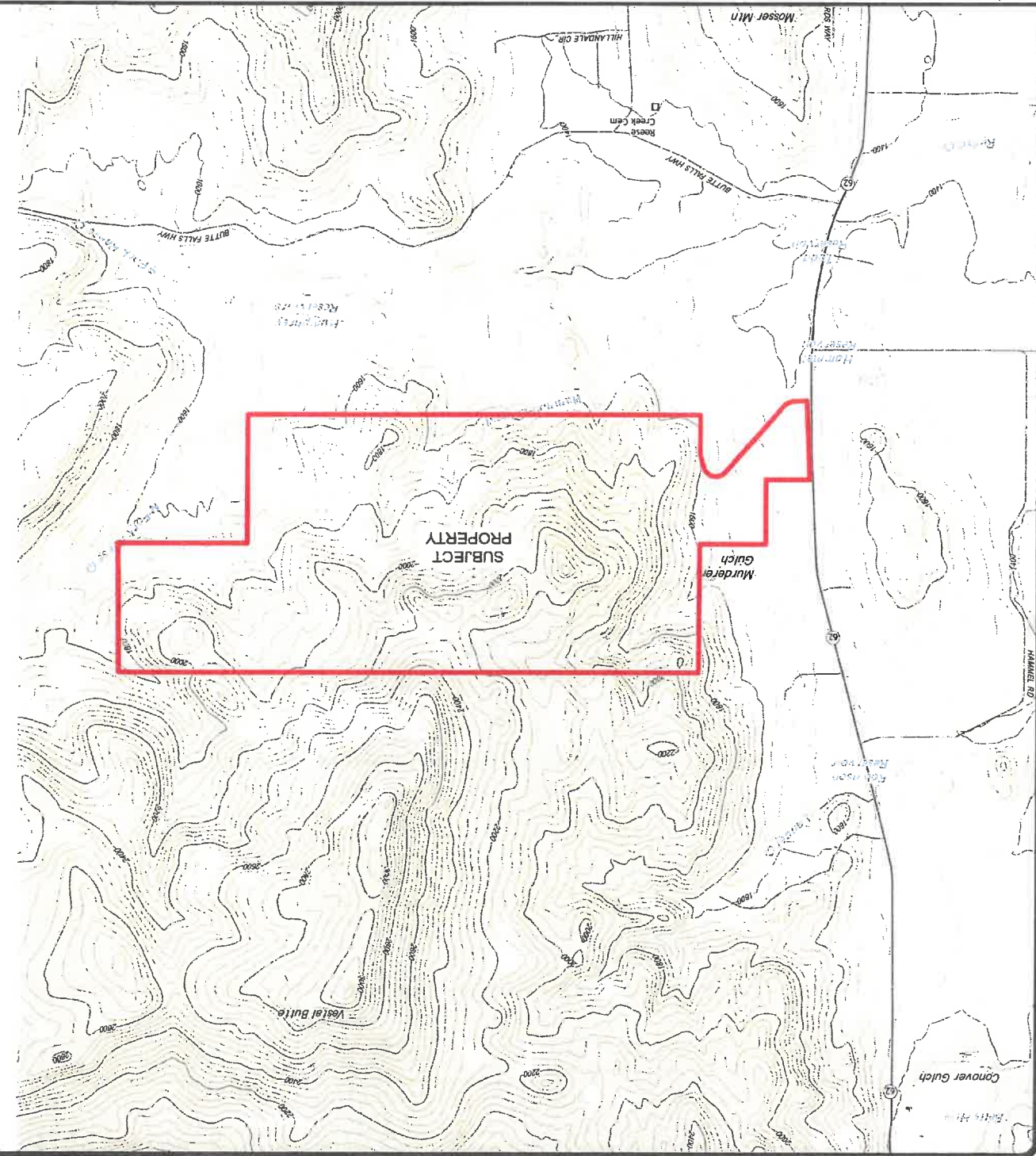
**FIGURES**

<p>ALPINE ENVIRONMENTAL CONSULTANTS, LLC</p> 	DATE: 6/26/23
	DRAWN BY: SRM

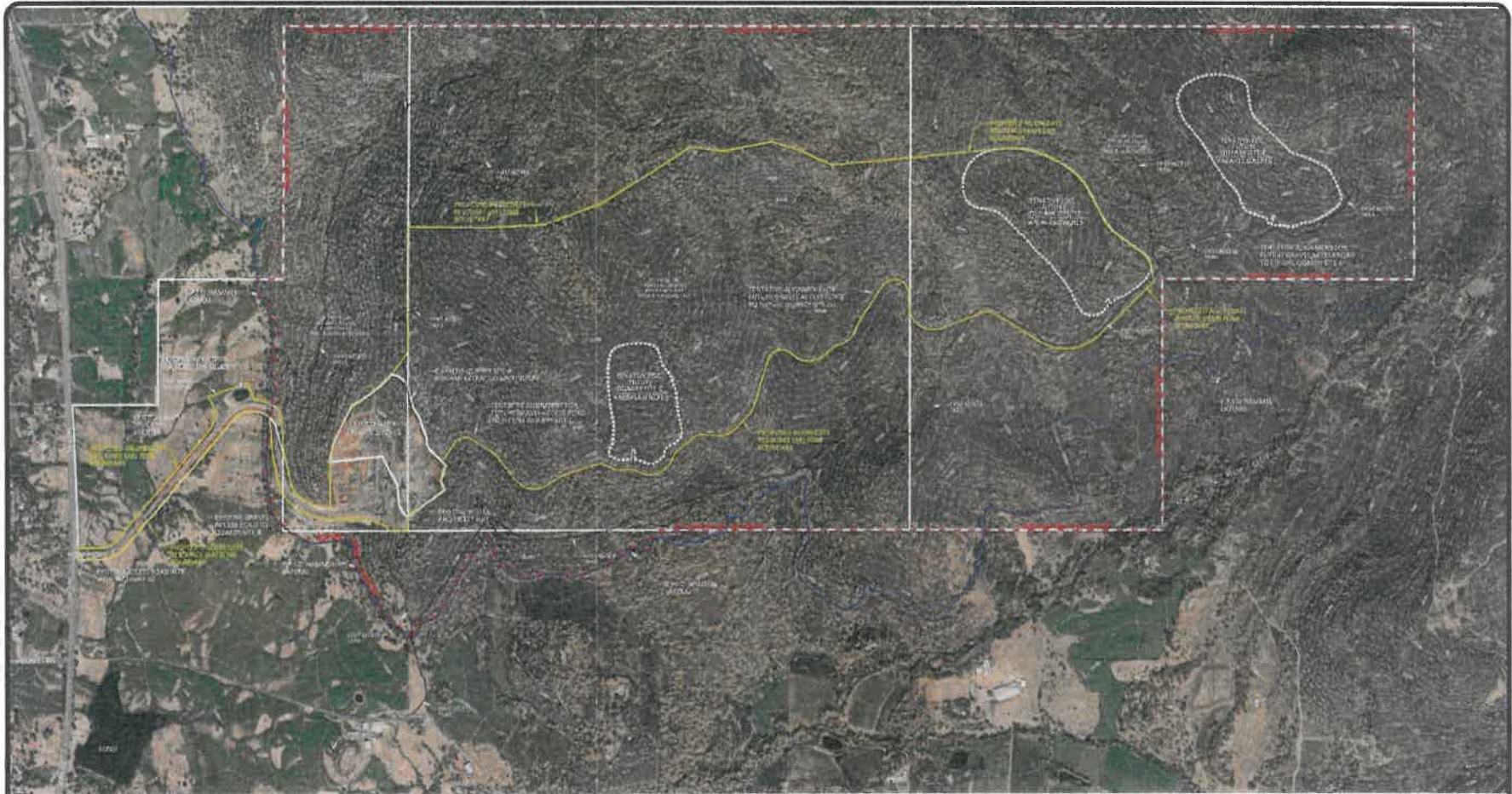
275 - Jackson County, Oregon  
 Freel Ranch Quarry  
 General Site Location Map  
 Figure 1



SOURCE: U.S.G.S. 7.5 MINUTE TOPOGRAPHIC QUADRANGLE  
 SHADY COVE, OREGON (2020)



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SOURCE: WHETSTONE ENGINEERING, INC., PROPOSED SITE PLAN  
 - W/ PROPOSED AR BOUNDARY, SHEET 2, 3/4/22

**SITE DATA**

TOTAL SITE AREA = 1,373 ACRES (3 TAX LOTS)  
 DOGAMI PERMIT BOUNDARY AREA = 1,336 ACRES  
 CURRENT AR ZONING BOUNDARY AREA = 156 ACRES  
 PROPOSED AR ZONING BOUNDARY AREA = 435 ACRES

**LEGEND**

PROPERTY LINE  
 DOGAMI PERMIT BOUNDARY

**CONTOURS**

MAJOR CONTOUR INTERVAL = 400'  
 MINOR CONTOUR INTERVAL = 20'  
 EXISTING GROUND MAJOR CONTOUR  
 EXISTING GROUND MINOR CONTOUR



**GENERAL NOTES**

1. The properties indicated on the plan are approximate only. The properties are indicated for internal planning purposes only. The client shall retain a licensed land surveyor for delineation of actual property boundaries.

**DOGAMI-MLR INFORMATION**

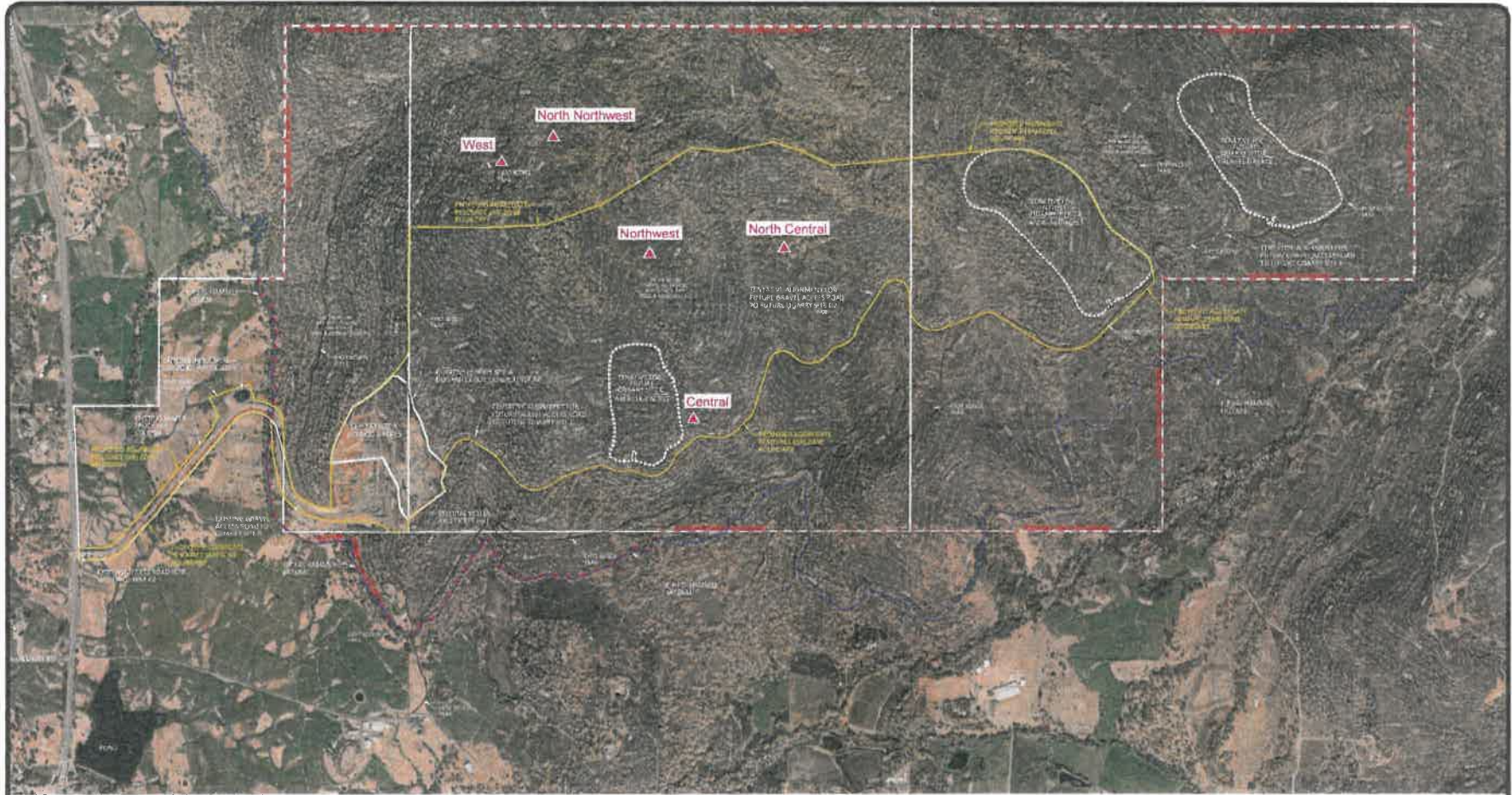
PERMIT NUMBER:	15-0252
SITE NAME:	FREEL RANCH QUARRY
PERMIT HOLDER:	FREEL AND ASSOCIATES, LLC 1750 DELTA WATERS ROAD, SUITE 302-309 MEDFORD, OR 97504 541-702-3343



ALPINE ENVIRONMENTAL CONSULTANTS, LLC  
 DATE: 6/21/23 DRAWN BY: SRM

Figure 2  
 Proposed Site Plan With Proposed  
 Aggregate Resource Boundary  
 Freel Ranch Quarry  
 Jackson County, Oregon

- 277 -



SOURCE: WHETSTONE ENGINEERING, INC., PROPOSED SITE PLAN  
- W/ PROPOSED AR BOUNDARY, SHEET 2, 3422

**SITE DATA**

TOTAL SITE AREA = 4,373 ACRES (3 TAX LOTS)  
DOGAMI PERMIT BOUNDARY AREA = 1,336 ACRES  
CURRENT AR ZONING BOUNDARY AREA = 156 ACRES  
PROPOSED AR ZONING BOUNDARY AREA = 435 ACRES

**LEGEND**

- PROPERTY LINE
- DOGAMI PERMIT BOUNDARY
- EXISTING BOUNDARY
- MAJOR CONTOUR
- MINOR CONTOUR
- ROCK SAMPLE LOCATION



**GENERAL NOTES**

1. The property lines indicated on this plan are approximate only. The property lines are included for general planning purposes only. The client shall retain a licensed land surveyor for delineation of actual property boundaries.

(2020 & 2011) UTM DATA PROJECTED ON TO NAD83 (2011)  
OREGON GRANTS PASS ASHLAND ZONE HORIZONTAL  
COORDINATE SYSTEM & NAVD83 VERTICAL DATUM

(OCTOBER 08, 2020 GIS PHOTO PROJECTED ON TO NAD83  
(2011) OREGON GRANTS PASS ASHLAND ZONE HORIZONTAL  
COORDINATE SYSTEM)

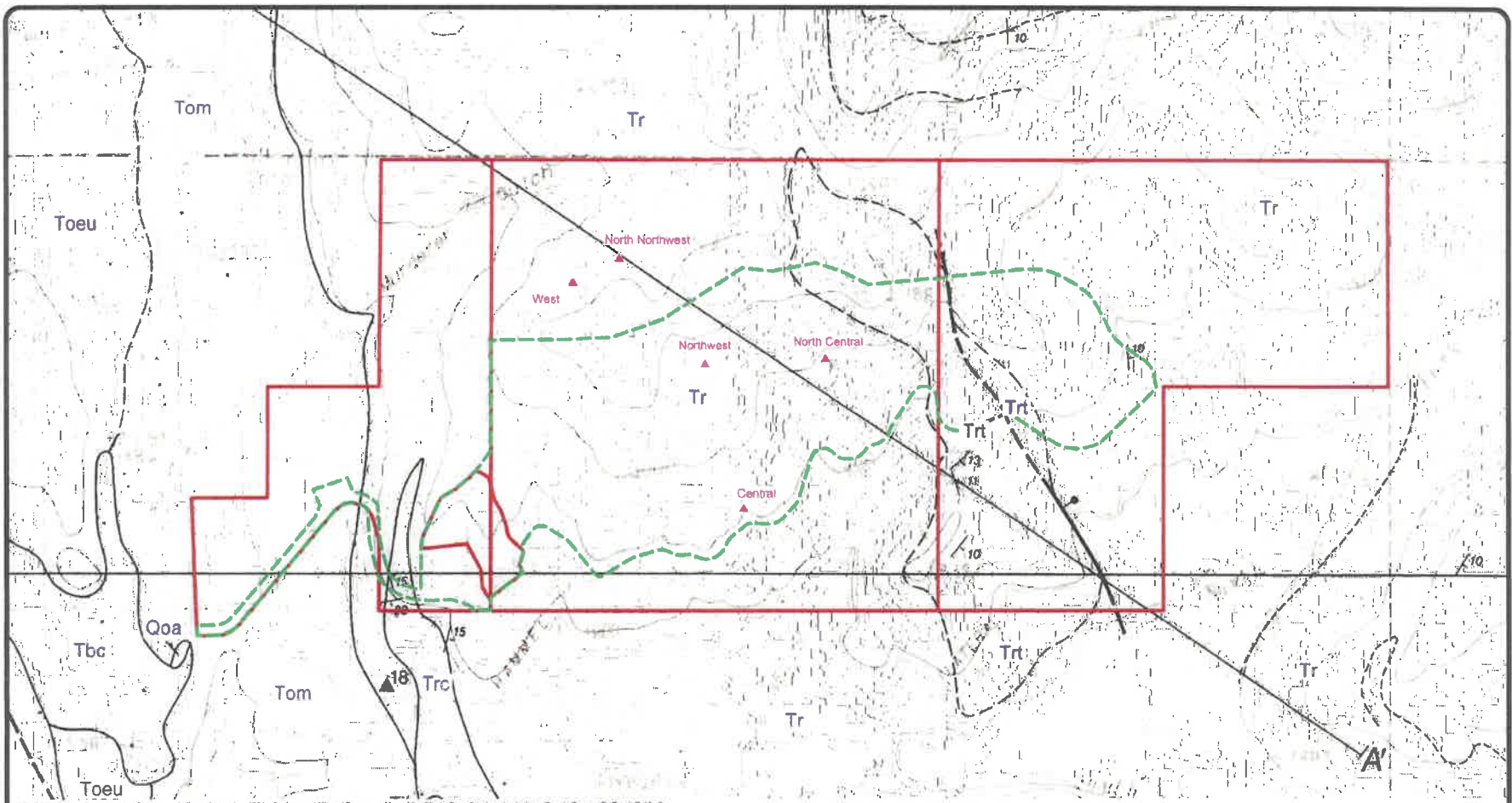
DOGAMI-MLR INFORMATION	
PERMIT NUMBER:	15-4752
SITE NAME:	FREER RANCH QUARRY
PERMIT HOLDER:	FRED AND ASSOCIATES, LLC 1700 DELTA WATERS ROAD, SUITE 102-309 MEDFORD, OR 97504 541-792-3343

ALPINE ENVIRONMENTAL CONSULTANTS, LLC

DATE: 6/28/23 DRAWN BY: SRM

Figure 3  
Proposed Site Plan With Proposed Aggregate  
Resource Boundary and Rock Sample Locations  
Freer Ranch Quarry  
Jackson County, Oregon

-278-



SOURCE: Oregon Department of Geology and Mineral Industries, 1992. Geology and Mineral Resources Map of the Shady Cove Quadrangle, Jackson County, Oregon, By Frank R. Hasky.

**LEGEND**

- Proposed Aggregate Resource Boundary
- ▲ Rock Sample Location
- Approximate Site Boundary
- Qoa Old Alluvium (Pleistocene and Holocene)
- Tr Roxy Formation (Lower to Upper Oligocene)
- Trt Tuff (Lower to Upper Oligocene)
- Trc Conglomerate (Lower to Upper Oligocene)
- Tom Tuff of Mosser Mountain (Lower Oligocene)
- Tbc Tuff and Bond Creek of Smith and Others (1982) (Lower Oligocene, 34.9 Ma)
- Toeu Volcanic and Volcanogenic Rocks, Undivided (Lower Oligocene to upper Eocene?)

**MAP SYMBOLS**

- Contact—Approximately Located, Dashed Where Inferred
- Fault - Dashed Where Inferred; Dotted Where Concealed
- Bedding Plane Form Line-Delineates Prominent Local Marker Bed
- ▲ 9 Rock Sample Location and Map Number
- M 3 Mine Site and Map Number

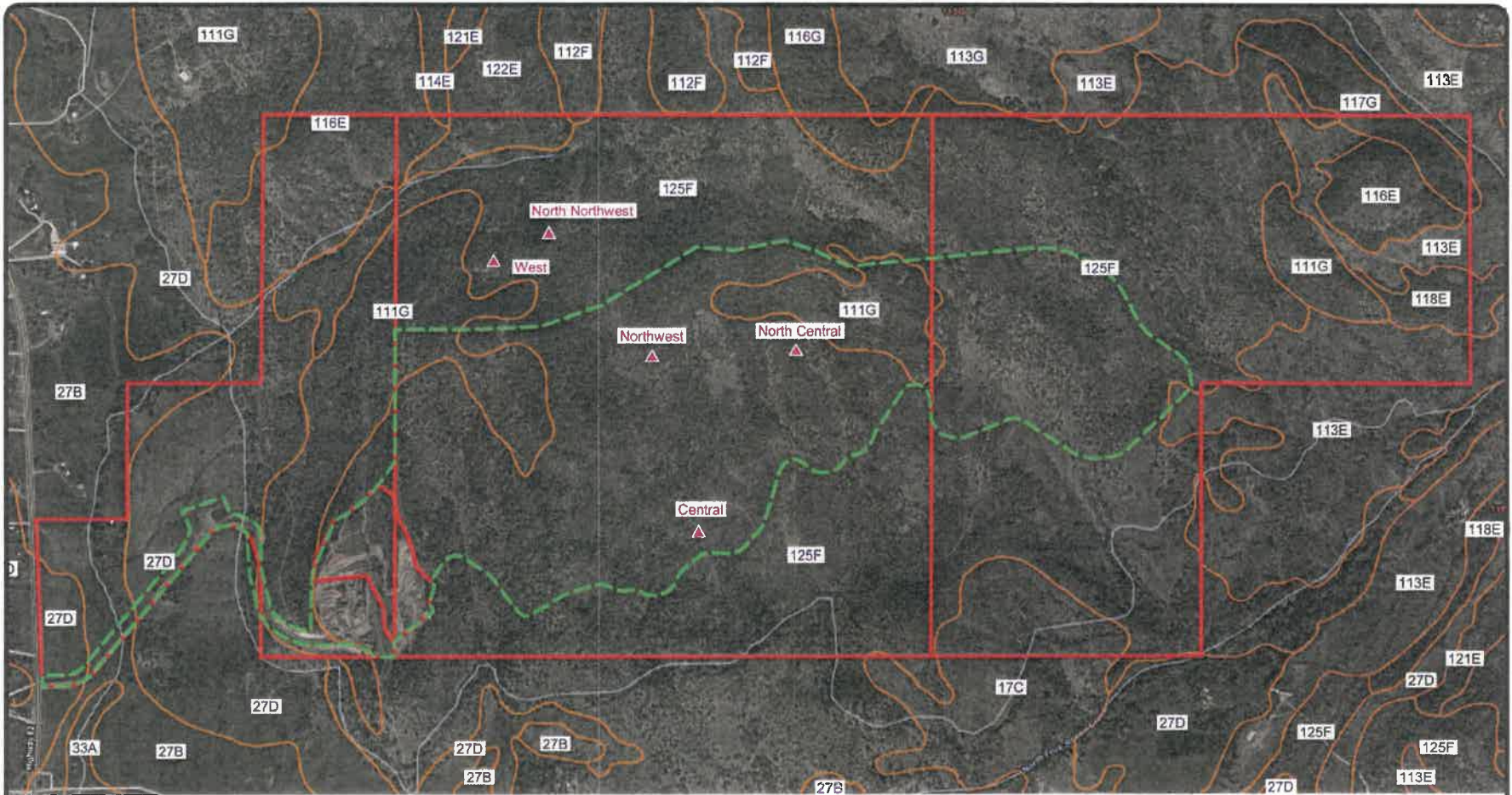


ALPINE ENVIRONMENTAL CONSULTANTS, LLC  
 DATE: 6/26/23 DRAWN BY: SRM

**Figure 4**  
 Site Geology and Rock Sample Location Map  
 Freel Ranch Quarry  
 Jackson County, Oregon

M. Shao/Geology-RockSamples.r2

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SOURCE: <http://websoilsurvey.nrcs.usda.gov/app/WebSoilsurvey.aspx>

- LEGEND**
- ▲ Rock Sample Location
  - Proposed Aggregate Resource Boundary
  - Approximate Site Boundary

**MAP UNIT KEY**

17C	Brader-Debenger Loams	114E	McNull Loam
27B	Carney Clay	116E	McNull-McMullin Gravelly Loams
27D	Carney Clay	116G	McNull-McMullin Gravelly Loams
33A	Coker Clay	117G	McNull-McMullin Complex
111G	McMullin-McNull Gravelly Loams	118E	McNull-Medco Complex
112F	McMullin-Medco Complex	121E	Medco Cobbly Clay Loam
113E	McMullin-Rock Outcrop Complex	122E	Medco Cobbly Clay Loam
113G	McMullin-Rock Outcrop Complex	125F	Medco-McMullin Complex



ALPINE ENVIRONMENTAL CONSULTANTS, LLC

DATE: 6/28/23 DRAWN BY: SRM

Figure 5  
Soil Survey and Rock Sample Location Map  
Freel Ranch Quarry  
Jackson County, Oregon





**TABLE**

**Table 1.**  
**Rock Sample Testing Results**  
**Freel Ranch Quarry - Jackson County, Oregon**

Sample Identifier	Central	North Central	Northwest	North Northwest	West
Sample Date	5/3/2023	5/3/2023	5/3/2023	5/3/2023	5/3/2023
Sample Time	11:45	12:10	12:40	13:20	13:45
<b>AASHTO Method T96</b>					
Percent Loss to Abrasion	19.2	20.1	27.1	21.7	17.5
ODOT Aggregate Base Specifications, Maximum Permitted (Percent)	35.0	35.0	35.0	35.0	35.0
<b>Oregon Air Degradation, OSHD Method TM 208</b>					
Percent Passing the #20 Sieve	20.8	20.6	25.3	17.7	15.5
ODOT Aggregate Base Specifications, Maximum Permitted (Percent)	30.0	30.0	30.0	30.0	30.0
Sediment Height (Inches)	1.1	0.3	0.4	0.5	0.4
ODOT Aggregate Base Specifications, Maximum Permitted (Inches)	3.0	3.0	3.0	3.0	3.0

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Notes:

- AASHTO = American Association of State Highway and Transportation Officials
- ODOT = Oregon Department of Transportation
- OSHD = Oregon State Highway Division

**APPENDIX 1**

Photographs



1. Existing quarry and crushing operations.



4. Collecting rock samples.



2. Stockpiled quarry product.



5. Collecting rock samples.



3. Quarry face.



6. Collecting rock samples.



7. Northwest rock sample.



10. Central rock sample.



8. North Central rock sample.



11. West rock sample.



9. North Northwest rock sample.

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**APPENDIX 2**

Rock Sample Testing Analytical Laboratory Reports

Bend Office (541) 330-9155  
 Geotechnical Office (503) 601-8250  
 Eugene Office (541) 345-0289  
 Salem Office (503) 589-1252  
 Tigard Office (503) 684-3460

# Carlson Testing, Inc.

May 31, 2023  
 B2301456.CTI

Alpine Environmental Consultants, LLC  
 Attn: Jonathan Williams  
 12210 Antioch Road  
 White City, Oregon 97503

Re: Freer Ranch Quarry Rock Quality Testing  
 LA Abrasion and Oregon Air Degradation Testing – Pit Cobbles (Central, 1145)

As requested we have completed testing on a sample of pit cobbles that was sampled from Central pit on May 3, 2023 and submitted to our laboratory on May 5, 2023 by your representative. The material was reduced to size by laboratory crushing. Following is the test data:

## **ABRASION – AASHTO T96:**

Percent Loss to Abrasion @ 500 Revs. = 19.2%\*

\* The percentage of loss was determined by using grading "A".

ODOT Aggregate Base Specification: 35.0% Maximum

## **OREGON AIR DEGRADATION - OSHD TM 208:**

Percent Passing the #20 Sieve = 20.8%  
 ODOT Aggregate Base Specification: 30.0% Maximum

Sediment Height: 1.1"  
 ODOT Aggregate Base Specification: 3.0" Maximum

Our reports pertain to the material tested/inspected only. Information contained herein is not to be reproduced, except in full, without prior authorization from this office. Under all circumstances, the information contained in this report is provided subject to all terms and conditions of CTI's General Conditions in effect at the time this report is prepared. No party other than those to whom CTI has distributed this report shall be entitled to use or rely upon the information contained in this document.

If there are any further questions regarding this matter, please do not hesitate to contact this office.

Respectfully Submitted,  
 CARLSON TESTING, INC.

  
 Destry McNeeley  
 Laboratory Supervisor

CC: No report distribution per Client request

CTI/B2301456.2 TLB

- 286 -

# Carlson Testing, Inc.

May 31, 2023  
B2301456.CTI

Alpine Environmental Consultants, LLC  
Attn: Jonathan Williams  
12210 Antioch Road  
White City, Oregon 97503

Re: Freel Ranch Quarry Rock Quality Testing  
LA Abrasion and Oregon Air Degradation Testing – Pit Cobbles (West, 1345)

As requested we have completed testing on a sample of pit cobbles that was sampled from West of pit on May 3, 2023 and submitted to our laboratory on May 5, 2023 by your representative. The material was reduced to size by laboratory crushing. Following is the test data:

### **ABRASION – AASHTO T96:**

Percent Loss to Abrasion @ 500 Revs. = 17.5%\*

\* The percentage of loss was determined by using grading "A".

ODOT Aggregate Base Specification: 35.0% Maximum

### **OREGON AIR DEGRADATION - OSHD TM 208:**


Percent Passing the #20 Sieve = 15.5%  
ODOT Aggregate Base Specification: 30.0% Maximum

Sediment Height: 0.4"  
ODOT Aggregate Base Specification: 3.0" Maximum

Our reports pertain to the material tested/inspected only. Information contained herein is not to be reproduced, except in full, without prior authorization from this office. Under all circumstances, the information contained in this report is provided subject to all terms and conditions of CTI's General Conditions in effect at the time this report is prepared. No party other than those to whom CTI has distributed this report shall be entitled to use or rely upon the information contained in this document.

If there are any further questions regarding this matter, please do not hesitate to contact this office.

Respectfully Submitted,  
CARLSON TESTING, INC.

  
Destry McNeeley  
Laboratory Supervisor

CC: No report distribution per Client request

CTI/B2301456.5 TLB

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Bend Office (541) 330-9155  
Geotechnical Office (503) 601-8250  
Eugene Office (541) 345-0289  
Salem Office (503) 589-1252  
Tigard Office (503) 684-3460

# Carlson Testing, Inc.

May 31, 2023  
B2301456.CTI

Alpine Environmental Consultants, LLC  
Attn: Jonathan Williams  
12210 Antioch Road  
White City, Oregon 97503

Re: Freer Ranch Quarry Rock Quality Testing  
LA Abrasion and Oregon Air Degradation Testing – Pit Cobbles (Northwest, 1240)

As requested we have completed testing on a sample of pit cobbles that was sampled from Northwest of pit on May 3, 2023 and submitted to our laboratory on May 5, 2023 by your representative. The material was reduced to size by laboratory crushing. Following is the test data:

**ABRASION – AASHTO T96:**

Percent Loss to Abrasion @ 500 Revs. = 27.1%\*

\* The percentage of loss was determined by using grading "A".

ODOT Aggregate Base Specification: 35.0% Maximum

**OREGON AIR DEGRADATION - OSHD TM 208:**

Percent Passing the #20 Sieve = 25.3%  
ODOT Aggregate Base Specification: 30.0% Maximum

Sediment Height: 0.4"  
ODOT Aggregate Base Specification: 3.0" Maximum

Our reports pertain to the material tested/inspected only. Information contained herein is not to be reproduced, except in full, without prior authorization from this office. Under all circumstances, the information contained in this report is provided subject to all terms and conditions of CTI's General Conditions in effect at the time this report is prepared. No party other than those to whom CTI has distributed this report shall be entitled to use or rely upon the information contained in this document.

If there are any further questions regarding this matter, please do not hesitate to contact this office.

Respectfully Submitted,  
CARLSON TESTING, INC.



Destry McNeeley  
Laboratory Supervisor

CC: No report distribution per Client request

CTI/B2301456.3 TLB

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Bend Office (541) 330-9155  
Geotechnical Office (503) 601-8250  
Eugene Office (541) 345-0289  
Salem Office (503) 589-1252  
Tigard Office (503) 684-3460

# Carlson Testing, Inc.

May 31, 2023  
B2301456.CTI

Alpine Environmental Consultants, LLC  
Attn: Jonathan Williams  
12210 Antioch Road  
White City, Oregon 97503

Re: Freeland Quarry Rock Quality Testing  
LA Abrasion and Oregon Air Degradation Testing – Pit Cobbles (North Central, 1210)

As requested we have completed testing on a sample of pit cobbles that was sampled from North Central pit on May 3, 2023 and submitted to our laboratory on May 5, 2023 by your representative. The material was reduced to size by laboratory crushing. Following is the test data:

**ABRASION – AASHTO T96:**

Percent Loss to Abrasion @ 500 Revs. = 20.1%\*

\* The percentage of loss was determined by using grading "A".

ODOT Aggregate Base Specification: 35.0% Maximum

**OREGON AIR DEGRADATION - OSHD TM 208:**


Percent Passing the #20 Sieve = 20.6%  
ODOT Aggregate Base Specification: 30.0% Maximum

Sediment Height: 0.3"  
ODOT Aggregate Base Specification: 3.0" Maximum

Our reports pertain to the material tested/inspected only. Information contained herein is not to be reproduced, except in full, without prior authorization from this office. Under all circumstances, the information contained in this report is provided subject to all terms and conditions of CTI's General Conditions in effect at the time this report is prepared. No party other than those to whom CTI has distributed this report shall be entitled to use or rely upon the information contained in this document.

If there are any further questions regarding this matter, please do not hesitate to contact this office.

Respectfully Submitted,  
CARLSON TESTING, INC.

  
Destry McNeeley  
Laboratory Supervisor

CC: No report distribution per Client request

CTI/B2301456.1 TLB

- 289 -

Bend Office (541) 330-9155  
Geotechnical Office (503) 601-8250  
Eugene Office (541) 345-0289  
Salem Office (503) 589-1252  
Tigard Office (503) 684-3460

# Carlson Testing, Inc.

May 31, 2023  
B2301456.CTI

Alpine Environmental Consultants, LLC  
Attn: Jonathan Williams  
12210 Antioch Road  
White City, Oregon 97503

Re: Freel Ranch Quarry Rock Quality Testing  
LA Abrasion and Oregon Air Degradation Testing – Pit Cobbles (North, Northwest, 1320)

As requested we have completed testing on a sample of pit cobbles that was sampled from North, Northwest of pit on May 3, 2023 and submitted to our laboratory on May 5, 2023 by your representative. The material was reduced to size by laboratory crushing. Following is the test data:

**ABRASION – AASHTO T96:**

Percent Loss to Abrasion @ 500 Revs. = 21.7%\*

\* The percentage of loss was determined by using grading "A".

ODOT Aggregate Base Specification: 35.0% Maximum

**OREGON AIR DEGRADATION - OSHD TM 208:**

Percent Passing the #20 Sieve = 17.7%  
ODOT Aggregate Base Specification: 30.0% Maximum

Sediment Height: 0.5"  
ODOT Aggregate Base Specification: 3.0" Maximum

Our reports pertain to the material tested/inspected only. Information contained herein is not to be reproduced, except in full, without prior authorization from this office. Under all circumstances, the information contained in this report is provided subject to all terms and conditions of CTI's General Conditions in effect at the time this report is prepared. No party other than those to whom CTI has distributed this report shall be entitled to use or rely upon the information contained in this document.

If there are any further questions regarding this matter, please do not hesitate to contact this office.

Respectfully Submitted,  
CARLSON TESTING, INC.



Destry McNeeley  
Laboratory Supervisor

CC: No report distribution per Client request

CTI/B2301456.4 TLB

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**APPENDIX 3**

Geology and Mineral Resources Map of the Shady Cove Quadrangle





**O'CONNOR LAW** | LLC

541.702.5350 | 670 G STREET, SUITE B, JACKSONVILLE, OR 97530

August 22, 2023

VIA HAND DELIVERY

Attn: Charles Bennett, Planner III  
Jackson County Development Services  
10 South Oakdale Avenue, Room 100  
Medford, OR 97501

**RECEIVED**

AUG 22 2023

**JACKSON COUNTY  
DEVELOPMENT SVCS**

**RE: Jackson County File No. 439-23-00001-LRP.**

Dear Mr. Bennett,

Enclosed please find two additional reports for the above-designated file.

The first report is from the Oregon Department of Transportation demonstrating that the source geological material on the subject property in the area proposed for rezoning satisfies all state standards for "soundness".

The second report is a Traffic Memorandum from Kim Parducci, traffic engineer from Southern Oregon Transportation Engineering, LLC. It demonstrates that the proposal satisfies relevant criteria related to traffic.

Lastly, the applicant wishes to stipulate to the size of any future "pits" or quarries. Currently, the largest authorized potential quarrying site is 41 acres in size pursuant to Jackson County Ordinance No. 2006-7, Condition 17. The Applicant stipulates that if any new mining operations were applied for on the subject property in the future (such as a site plan to start a new quarry), the largest "pit" would be capped at 41 acres. This should be made a condition of approval.

As always, please let me or Dan O'Connor know if you have any questions.

Yours most sincerely,

**O'CONNOR LAW, LLC**

*/s/ Garrett West*

Garrett K. West, OSB No. 174890  
west@PacificLand.law

GKW:

Jackson County Planning Commission  
File No. 439-23-00001-LRP Exhibit # 28.  
Offered by: Garrett West  
Date: 9-19-2023 Received by: PC

OREGON DEPARTMENT OF TRANSPORTATION

MATERIALS LABORATORY

800 AIRPORT RD. SE SALEM, OR 97301-4792

Page 1 of 1  
(503) 986-3000  
FAX (503) 986-3096

Contract No.: PRIVATE EA No.: PRIVATE TESTING Lab No.: 23-001758  
 Project: PRIVATE AGGREGATE TESTING - FREEL RANCH QUARRY  
 Highway: County: Data Sheet No.: F43168 654  
 Contractor: FREEL RANCH FA No.:  
 Project Manager: MARC BIENCOURT Org Unit: Bid Item No.:  
 Submitted By: MARC BIENCOURT Org Unit: Sample No.:  
 Material Source: 15-261-3 FREEL RANCH QUARRY Qty Represented:  
 Sampled At: STOCKPILE Sampled By: Witnessed By:  
 DATE-Sampled: 23/ 7/17 Received: 23/ 7/24 Tested: 23/ 8/ 4 Date Reported: 23/ 8/ 4  
 Class/Type: COMPLIANCE Use: CLN COARSE PCC AGGR

Q or G: QUARRY			AGGREGATE LABORATORY REPORT - CPCCAG		Size: 1 1/2" - 3/4"	
Test	Field	Lab	T 84 F. Grav.	T 85 C. Grav.		
T 176 S.E.			Bulk:	Bulk: 2.726		
T 89 L.L.			S.S.D.:	S.S.D.: 2.771		
T 90 P.I.			Appar.:	Appar.: 2.856		
T 335 Ttl Frac.			Absorp.:	Absorp.: 1.66 %		
TM 226 Dust/Clay			T 104 Soundness	TM 208 Degrade		
TM 227 Cleanness			C A: 1% F A:			
TM 229 Elong pcs			1.5-3/4: 0.9 %			
308 Incin/Ga A/C			3/4-3/8: 0.5 %			
Total A/C			3/8- #4: 0.0 %			Crse Ht: 0.7 in
Retention			#4- #8:			P20: 14.1 %
T 329 Moisture			#8-#16:			Fine Ht:
T 27/11			#16-#30:			P20:
Sieve	Passing	Passing	#30-#50:			
2.5			T 96 Abrasion	T 21 Impurity		
2		100 %	13.7 %	Plate #:		
1.5		99 %	Type 3			
1		49 %	T 335 Fracture	T 112 Friables		
3/4		14 %	1.5:	Wt'd Avg :		
1/2		1 %	1.0:	1.5-3/4:		
3/8		1 %	3/4:	3/4-3/8:		
1/4		1 %	1/2:	3/8- #4:		
# 4		1 %	3/8:	#4-#16:		
# 8		1 %	T 113 Lightweight	TM 225 Woodwaste		
# 10			Coarse: 0.0 %	Lab:		
# 16		1 %	Fine:	Field:		
# 30		1 %	AASHTO T 288/289	AASHTO T 267		
# 40			Resist: Ω	Organic:		
# 50		1 %	pH:			
#100		0 %	AASHTO T 291	AASHTO T 290		
#200		0.4 %	Chloride:	Sulfate:		
			T 327 Micro Deval ==> Grading:	Loss: %		

4 @ t27 = \$101.00  
 3 @ t11 = 50.00  
 1 @ t85 = 96.00  
 1 @ t96 = 209.00  
 4 @ t104 = 64.00  
 1 @ t113 = 74.00  
 1 @ tm208 = 160.00

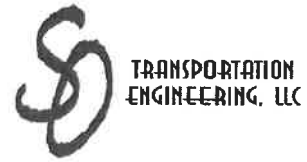
NSM = Not Sufficient Material  
 REMARKS:  
 INFORMATION ONLY

TOTAL CHARGES: \$ 1349.00

KEVIN BROPHY - LABORATORY SERVICES MANAGER

REPORT SHALL NOT BE REPRODUCED, EXCEPT IN FULL, WITHOUT WRITTEN APPROVAL OF THIS LABORATORY.

C: FILES ; PROJ MGR: MARC BIENCOURT ; FREEL RANCH ; A JOHNSON - CONCRETE QUALITY ; J CIESLAK - AGGREGATE ROB.HULLA@FREELRANCHQUARR



TRANSPORTATION  
ENGINEERING, LLC

319 Eastwood Drive  
Medford, OR 97504

Telephone 541.941.4148  
Kim.parducci@gmail.com

## MEMORANDUM

To: Charles Bennett, Planner III  
Jackson County Development Services  
10 South Oakdale Avenue, Room 100  
Medford, OR 97501

Date: 08/17/2023

Project: Freel & Associates - Minor Comprehensive Plan Amendment / Zone Change

Subject: Type IV Application – Traffic Assessment

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Southern Oregon Transportation Engineering prepared a traffic assessment for a Type IV Application for a proposed comprehensive plan map amendment and zone change from Exclusive Farm Use (EFU) and Aggregate Removal (AR) on portions of 351W01 tax lot 100, 351W02 tax lot 100, and 351W03 tax lot 100 in Eagle Point, Oregon. The subject property is located east of Crater Lake Highway (OR 62), north of Butte Falls Highway. Our assessment is provided below.

### Background

The subject property is approximately 1,343.55 acres in size with 155 of the acres zoned AR. The purpose of this application is to request a zone change / comprehensive plan map amendment for only portions of the subject property. The Applicant intends to modify the configuration of the existing AR zone district within the bounds of the subject property to encompass the subject site.

The site is currently used as an aggregate operation for quarry (rock quarry). It operates with imposed conditions including, but not limited to, where the aggregate operations may occur, hours of operation, noise mitigation, dust control, and various traffic regulations. This application will not amend/change those conditions and the Applicant is not proposing a new mining operation. Prior to commencing any particular mining or processing aggregate operation on the subject site, the Applicant would be required to apply for and receive additional operational permits from Jackson County, the Oregon Department of Geology and Mineral Industries, and other government agencies.

Currently, there are four mining areas (Pits A, C, D2, and E). The pit currently being mined is Pit A, which is 20 acres in size. The largest pit is 38 acres in size. Under existing conditions, any of the pits could be mined but would require applying for and receiving additional operational permits (as stated above). This will continue to be the case with the requested comprehensive plan map amendment / zone change application. No change in operation is proposed as part of this application, and the largest pit size will continue to be 38 acres. Included with the application is a stipulation that no pit size will exceed 38 acres.

### Analysis

A traffic impact analysis (TIA) is required as part of a Type IV application for a change in zoning or plan amendment per the Jackson County Land Development Ordinance (LDO) Section 3.7.3(C)(1) under LDO 3.1.4(B)(2). A TIA is also required to evaluate potential traffic impacts and address Section 660-012-0045(2)(e) of the State Transportation Planning Rule (TPR). This analysis serves as the TIA



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for the proposed comprehensive plan map amendment / zone change based on the operation not changing on the subject property.

**Jackson County Land Development Ordinance (LOD)**

**Section 3.7.3(C) Minor Comprehensive Plan Map or Zoning Map Amendments**

All proposed minor map amendments will be reviewed for compliance with the criteria set forth below and with all other applicable provisions of this Ordinance and the Comprehensive Plan:

1. Adequate public safety, transportation, and utility facilities services can be provided to the subject property. In the case of a minor zoning map amendment, adequate transportation facilities must exist or be assured through satisfaction of criteria under LDO 3.1.4(B)(2).

**Section 3.1.4(B)(2)**

In order to ensure that certain land use actions will not result in land uses that are incompatible with public transportation facilities, compliance with criteria a, b, c and d must be satisfied through completion of a Transportation Impact Study (TIS) completed by a registered professional engineer with expertise in transportation. These criteria will be considered sufficient to demonstrate compliance with the Transportation Planning Rule requirements under OAR 660-012-0060. The requirement for a TIS may be waived if the Planning Director and the Roads and Parks Director administratively concur in writing that sufficient evidence exists to show that the cumulative effect of approving the proposed land use action, along with the potential for similar approvals on similarly situated parcels within 2 miles (0.75 miles within an MPO) of the subject parcel will not significantly affect a transportation facility identified in State, regional or local transportation plans.

*Adequate public safety, transportation, and utility facilities currently exist to serve the subject property. No change in operation is proposed as a result of the plan amendment / zone change with the provided stipulation that no mining operation will exceed 38 acres in size, which is the largest pit that can currently be mined under existing conditions. With the included stipulation, no impact is shown to occur.*

**Oregon Administrative Rule 660-012-0060 Plan and Land Use Regulation Amendments**

A plan or land use regulation amendment significantly affects a transportation facility if it would:

- a. Change the functional classification of an existing or planned transportation facility

*No change in functional classification of an existing or planned transportation facility will occur as a result of the proposed minor plan amendment / zone change.*

- b. Change standards implementing a functional classification system; or

*The proposed minor plan amendment / zone change will not change standards implementing a functional classification system.*

- c. Result in any of the effects listed in (A) through (C)

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

*The proposed plan amendment / zone change will not result in types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility.*

- 
- B. Degrade the performance of an existing or planned transportation facility such that it would not meet the performance standard identified in the TSP or comprehensive plan; or  
*The proposed plan amendment / zone change will not degrade the performance of any existing or planned transportation facility.*
- C. Degrade the performance of an existing or planned transportation facility that is otherwise projected to not meet the performance standards identified in the TSP or comprehensive plan.  
*The proposed plan amendment / zone change will not degrade the performance of an existing or planned transportation facility that is otherwise projected to not meet the performance standards identified in the TSP or comprehensive plan.*

## Conclusions

The proposed minor plan amendment / zone change is shown to produce no net increase in trips on the transportation system. This is concluded to have no significant impact on the transportation system in accordance with the Jackson County LDO and Oregon Administrative Rule 660-012-0060, which identify when significant impacts occur as a result of a plan or land use regulation amendment.

This concludes our analysis. Please feel free to contact us if you have any questions or concerns.

Respectfully,



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Kimberly Parducci, PE PTOE  
Firm Principal  
Southern Oregon Transportation Engineering, LLC

Cc: James Philp, Jackson County Engineer  
Client



RECEIVED

SEP 12 2023

JACKSON COUNTY  
DEVELOPMENT SVCS



O'CONNOR LAW | LLC

541.702.5350 | 670 G STREET, SUITE B, JACKSONVILLE, OR 97530

September 11, 2023

VIA HAND DELIVERY

Jackson County Development Services

Attn: Charles Bennett

**RE: Supplemental for Application No. 439-23-00001-LRP  
Freel Quarry – Aggregate Zone Change**

Dear Mr. Bennett,

This letter concerns the above application, which is for a proposed zone change for the Freel Quarry. The purpose of this letter is to address some outstanding questions, to clarify some potential ambiguities, to address some public comments added to the record, and to propose conditions of approval.

**A. Mapping**

The Applicant wishes to clarify that Exhibit “E” of the original application, the Proposed Zoning and Comprehensive Plan Boundary Map, states that the Proposed Boundary Area is 435 acres. These 435 acres do not include the area of Pit Site “E”, which is the easternmost pit.

**B. Clarification of Findings**

The Applicant stated in its findings for LDO Section 4.4.8(D) that “This application does not propose to mine or remove any material from the subject site, nor is it anticipated that trucks will be on site or leave the site daily.” The Applicant wishes to clarify that a small portion of the subject property is already being mined but that the subject application itself does not propose any new mining—merely an administrative zone change.

**C. Blasting**

Jackson County Ordinance No. 2006-7 Condition of Approval No. 10 requires: “If blasting is required, operator shall develop a procedure to ensure that a notice will

be mailed or delivered to the owners and occupants of all residences within one-half mile of the site at least three working days before the blast.”

Further, Jackson County Site Review Approval File No. SIT2012-00008-SR, Condition of Approval No. 9 states: “If blasting is required, the operator shall develop a procedure to ensure that a notice will be mailed or delivered to the owners and occupants of all residences within one-half (½) mile of the site at least three (3) working days before the blast. The notice must provide information concerning the date and time that blasting will occur and must designate a responsible contact person for inquiries or complaints.”

The Applicant and Operator have complied with these conditions concerning noticing. Some neighbors have placed comments in the record indicating that they have not received such notices. Those neighbors live outside the one-half mile noticing area. Nevertheless, the Applicant has updated the list of neighbors to receive noticing to include those neighbors who provided comments.

On rare occasions there have been misfires when attempting to conduct blasting. This is an irregular but normal experience. On such occasions, the Applicant’s explosive technicians cannot allow the ordinances to remain on the property in an undetonated state because it poses a serious threat to public safety. The technicians must locate, dig up, and destroy the explosives. This takes time and often means that the destruction of the explosives, and the blasting, occurs outside of the scheduled and noticed timeframe. On those rare occasions where this has occurred, the technicians have followed protocols to render the explosives safe and immediately notify the County of the issue.

#### **D. Notice to Neighbors**

Attached as Exhibit “A” is a copy of the mailing labels of those neighbors to whom we sent the letter for a meeting.

#### **E. Reclamation**

There are already conditions that explain how the reclamation of any quarried or mined sites will occur. These include Jackson County Ordinance No. 2006-7 Condition of Approval No. 22, which requires submitting an approved DOGAMI site reclamation plan prior aggregate operations. This condition has been satisfied.

Further, DOGAMI Permit No. 15-02582 Condition No. 11 requires that the applicant submit a detailed highwall reclamation blasting plan to DOGAMI at least five years before mining is completed. Further, Condition No. 12 requires annual plant counts for five years after the plants are established pursuant to the reclamation plan.

The Applicant desires to clarify the timeline for how reclamation will occur on the subject property.

1. Five years before a quarry is exhausted or before mining operations are to cease, the owner/operator will notify DOGAMI, will propose any needed updates to the reclamation plan, and will provide DOGAMI with a detailed highwall reclamation blasting plan as required by DOGAMI Permit No. 15-02582 Condition No. 11.
2. An application for a site plan review for a future quarry / pit may be submitted to Jackson County prior to the closure of the quarry / pit that is currently in operation. Any site plan approval must be conditioned on the existing operating quarry / pit being closed and may be conditioned on the reclamation plan being initiated as required by DOGAMI. This is to ensure a timeless and smooth transition between quarry sites.
3. At the time that the operating quarry / pit closes, the owner/operator will begin to implement the reclamation plan including the highwall reclamation blasting plan. This also includes the planting of the native vegetation as required by DOGAMI Permit No. 15-02582 Condition No. 12. The owner/operator will complete the reclamation plan and provide the necessary notices to the County and State.
4. The owner/operator may not begin operating at the new quarry / pit until a site plan has been approved and all necessary permits and pre-requisite conditions have been fulfilled. These new permits will include plans for how the new quarry / pit will be reclaimed post-use.
5. The owner/operator will continue to provide reports to Jackson County and DOGAMI concerning the closed quarry that is undergoing reclamation.

#### **F. Arsenic**

One of the comments submitted into the record allege the applicant and operator of using arsenic on the subject property, which is inaccurate. Arsenic is a naturally occurring compound that is often found in well water in the area because of the geology, not because of the existing operation. Arsenic is sometimes used on copper mining, but the subject property does not have copper and so the element is not used.

#### **G. Conditions of Approval**

If this application is approved, the Jackson County Board of Commissioners will need to issue a new county ordinance. That new ordinance will replace the existing Jackson County Ordinance No. 2006-7 and the associated conditions of approval. The

applicant proposes the following conditions of approval for the proposed zone change, which mirror those from the prior zone change:

1. Ongoing. Quarries.

- a. Number of Quarries. Only one quarry site will be allowed to operate at a time.
- b. Quarry Size. Individual quarries sites are limited in size to 41 acres.
- c. Location. Mineral extraction is limited to those sites approved by the County (through a site plan approval) and the Department of Geology and Mineral Industries (DOGAMI).
- d. Impacts outside of approved sites. If mining operations disturb any area outside of the permit area or area designated for active mining in the reclamation plan filed with DOGAMI, including but not limited to disturbances caused by landslide, erosion or fly rock, the operator must restore the disturbed area to a condition that is comparable to what it was prior to the disturbance.
- e. Not near public roads. No extraction or removal of aggregate/minerals will occur within 25 feet of the public right-of-way roads or private road easements.
- f. Setbacks from Other Properties. Processing equipment and batch plants will not be operated within 50 feet of another property or a public road right-of-way, or within 200 feet of a residence or residential zoning district, unless written consent of the property owner(s) has been obtained.

2. Prior to Operation and Ongoing. Permits:

- a. All appropriate local, State, and Federal permits (if any), shall be obtained, including:
  - i. DOGAMI permits. Up-to-date operating permit from the Department of Geology and Mineral Industries (DOGAMI). All facets of the operation will be conducted in a manner that complies with applicable DOGAMI permits.
  - ii. DEQ permits. The crusher on site shall obtain and maintain an Oregon Department of Environmental Quality (DEQ) air contaminant discharge permit and comply with all permit

conditions. All facets of the operation will be conducted in a manner that complies with applicable DEQ air quality, water quality (including stormwater), and noise standards.

iii. ODOT permits. A valid Oregon Department of Transportation (ODOT) Road Approach Permit shall be maintained. The following ODOT requirements shall be maintained:

1. Applicant shall sweep the access at OR 62 once a month or as needed to ensure no aggregate accumulates on the State Highway.
2. A closed loop automated warning system with flashing lights that is activated by truck traffic at the access point, and which warns motorists both north and south bound on Highway 62, that heavy trucks are entering the highway is already installed. It shall be maintained.
3. The improvements to the access road where it connects to Highway 62 to ensure a flat entrance for trucks entering the highway and adequate width along the access road to allow incoming and outgoing truck traffic to easily pass.
4. Coordinate management of existing warning signs with ODOT as needed.
5. Operator will cooperatively enter a traffic education program with the appropriate state and County entities to achieve a greater awareness of the posted speed limit of Highway 62 in the general area of the proposed site. This may include intermittent use of non-enforcement mobile radar speed control boxes.
6. Create, and provide to all drivers entering the site, a driver education program and continuing education about traffic safety issues.
7. Maintain the existing improvements to the access road where it connects to Highway 62 to ensure the flat entrance for trucks entering the highway and adequate width along the access road to allowing incoming and outgoing truck traffic to easily pass.

8. Maintain the paved 400 feet of the access road to the east of Highway 62 and operate a wheel cleaning facility to ensure there is no track out of materials onto Highway 62 that would contribute to safety problems.
3. Ongoing. Hours of operation. Operations will observe the following limits on operations:
    - a. Hours and Days. Mining, processing, and hauling from the site are restricted to the hours of 6 a.m. to 7 p.m. Monday through Saturday. Neither mining, processing, nor hauling from the site will take place on Sundays.
    - b. Holidays. Neither mining, processing, nor hauling from the site will take place on the day of or the day after these legal holidays: New Year's Day, Memorial Day, July 4, Labor Day, Thanksgiving Day, and Christmas Day.
    - c. Exemption for Public Works Projects. The limits on hours and days of operation do not apply to hauling for public works projects.
    - d. Changes. An exemption or change to the hours of operation may be approved by Jackson County through the following process without amending the zoning ordinance:
      - i. The applicant shall apply to Jackson County for a change through Type II review procedures.
      - ii. Jackson County shall mail notice of the proposed change in operating hours to all property owners within 1,000 feet radius of the approved aggregate removal site or surface mining operation, to residences within one-half (1/2) mile of the site, and to owners of property adjacent to private site access roads. Such neighbors shall have the opportunity to provide written comments on the application and to request a hearing.
        1. If no request for a public hearing is made to Jackson County within 12 calendar days of mailing said notice, the County may approve the changes to the operating hours.
        2. If a request is made for a public hearing, adjustment of operating hours shall be determined by the Hearings Officer, subject to findings that the proposal is consistent with the best interests of public health, safety, and welfare



and that the operation will not conflict with other nearby land uses.

- e. Emergency Extraction. Jackson County may permit emergency extraction pursuant to the requirements of Section 4.4.8(B) of the 2004 Land Development Ordinance as amended or superseded.

4. Ongoing. Noise.

a. Blasting:

- i. If blasting is required, the operator shall develop a procedure to ensure that a notice will be mailed or delivered to the owners and occupants of all residences within one-half ( $\frac{1}{2}$ ) mile of the site at least three (3) working days before the blast.
- ii. The notice must provide information concerning the date and time that blasting will occur and must designate a responsible contact person for inquiries or complaints.
- iii. Failure to notify neighbors and the County before blasting is a violation of the LDO for which a citation may be issued.
- iv. Notice will be deemed sufficient if the operator can show that the notices were mailed or delivered, even if one (1) or more of the households within the notice area did not receive the notice. Operator shall choose a blast day when wind velocity is expected to be minimal.
- v. Blasting should use the minimum explosive necessary, blast hole stemming and at least a 17-millisecond delay between holes.
- vi. If a misfire occurs during blasting, the operator will render the ordinance safe using best practices. If this causes a blasting to occur outside of the noticed period, the operator will immediately notify the county of the occurrence.

- b. Blasting and Crushing season. For deer and elk habitat protection purposes, there shall be an annual seasonal closure for extraction activities (blasting and crushing) as follows:

- i. In Township 35 South Range 1 West Section 2: closure from January 1 through March 31.

- ii. In Township 35 South Range 1 West Section 1: closure from January 1 through March 31 and November 1 through December 31.
    - iii. Loading and hauling of rock from the sites is permitted during the closure periods.
  - c. Loud Braking Prohibited. Use of compression release engine brakes (commonly known as Jake brakes) is always prohibited on the subject property. Signs shall be posted and maintained on the access road to this effect.
  - d. Diesel Generator Location. The operator shall locate any diesel generator trailer at the processing site so that its open-end points away from residences and will install a residential quality exhaust muffler on the diesel generator.
  - e. Equipment Location/Elevation. The operator shall locate the rock crusher and screens at the lowest possible elevation.
  - f. Site E Noise Study. Before operations commence in the northeast quarter of Township 35 South Range 1 West Section 2, the Operator shall conduct an onsite noise study to determine whether berms are needed on the haul road between the northwest quarter and the northeast quarter of Township 35 South Range 1 West Section 1, and if so needed, to what height they must be constructed to allow truck traffic to meet DEQ standards in effect at the date of this approval. This noise study shall also determine what noise control measures (e.g., berms, enclosures, or screens for equipment, etc.), if any, are needed to meet the DEQ standards in effect on the date of this approval for the building site on 35-1E-6 Tax Lot 2700 (currently known as the Machado property).
  - g. Noise Barriers.
    - i. The operator shall locate the rock storage piles between the crushing equipment and nearby residences. If possible, operator should route the haul dump trucks so that they can be loaded by the front-loader behind a rock storage pile and berm.
    - ii. Berms shall be constructed at the edge of each processing area so that they are positioned between the crusher processing area and residential sites (generally to the south). The berm height should be a minimum of 4 feet above the top of any crusher cone or screen part, or approximately 8 feet above the grade of the lowest

elevation of the crushing equipment, dependent on the height of the equipment.

5. Ongoing. Gates. New private roads within the deer and elk winter range habitat overlay will be gated between November and April (where permitted by law) to protect wintering deer and elk.

6. Ongoing. Roads.

a. External Access.

- i. Roads Safety Check. The operator shall meet as needed with the County Road Engineer and representative from ODOT to review access related issues to Highway 62 and cooperatively address any safety issues.
- ii. Turn Movement Analysis. The operator shall submit a turning movement analysis, prepared by a registered professional traffic engineer, once every five years to Oregon Department of Transportation and Jackson County Roads Department.
- iii. The operator will sweep the access at OR 62 / Highway 62 once a month or as needed to ensure no aggregate accumulates on the State Highway.

b. Internal Access.

- i. Standards. The applicant/operator shall provide evidence that the internal access road meets the standards for LDO currently Section 9.5.5 as applicable.
- ii. On-site haul roads shall be constructed to minimize rise in grade.
- iii. Dust Free.
  1. All internal access roads will be maintained in a dust-free condition at all points within 250 feet of a dwelling or other identified conflicting use and within 100 feet of a paved public road, unless the operator other methods of dust control are implemented.
  2. Gravel amendments shall be added to the main truck haul road and processing area.

3. The operator shall use water or dust binding agents to control dust on haul roads and processing areas. A water truck shall be available for dust control purposes at all times.

iv. Truck Speed Limit: Truck speed on site shall be limited to no more than 15-25 mph.

7. Environment.

a. Buffer vegetation. Existing trees and other natural vegetation adjacent to any public park, residential zoning district, or parcel on which a dwelling is situated will be preserved for a minimum width of 25 feet along the boundary of the property on which the operation is located.

b. Portable Toilets: Operator shall use on site portable toilets or an approved septic system.

8. Insurance. Evidence the operation is insured for a minimum of \$500,000 against liability and tort arising from surface mining, processing, or incidental activities conducted by virtue of any law, ordinance, or condition shall be submitted to development services to be included in this record. Insurance shall be kept in full force and effect during the period of such activities. Evidence of a prepaid policy of such insurance which is in effect for a period of one (1) year shall be deposited with the County prior to commencing any operations. The owner or operator shall upon request promptly provide the County with evidence that the policy has been renewed.

9. Reclamation.

a. An approved DOGAMI site reclamation plan will be submitted to the County prior to the commencement of aggregate operations. The reclamation plan will provide for site reclamation to farm, forest and/or wildlife habitat uses. The plan must return the land to natural conditions, or return it to a state compatible with land uses allowed in the zoning district or otherwise identified through the Goal 5 review process. The Goal 5 review process has determined that upon completion of the aggregate resources, the land will be used for farm, forest and/or wildlife habitat.

b. Future rezoning. It is anticipated that once the aggregate deposit has been depleted, there is a cessation of all aggregate operations, and there has been a successful reclamation of all aggregate sites, the County will rezone the subject property consistent with the Comprehensive Plan.

## H. Area Name

The Applicant wishes to clarify that the area of the proposed zone change is historically and colloquially referred to as "Murderer's Gulch" as depicted on the United States Geological Survey topographical maps for the area. See **Exhibit "B"** attached hereto.

## I. Goal 5

A large portion of the subject property is within the Deer & Elk Winter Range: Area of Special Concern 90-1. During the prior zone change for the subject property, there was considerable evidence placed into the record concerning the two Goal 5 resources: the Aggregate and the Wildlife Habitat. Enclosed as **Exhibits "C", "D", and "E"** are portions of the record from the prior zone change. Ultimately, both ODFW and Jackson County concluded that the property could be partially zoned Aggregate Resource (AR) so long as various conditions of approval were imposed so as to protect the wildlife. The relevant conditions have been updated and included above.

At the time of the first zone change, the Jackson County Board of Commissioners adopted the findings from the staff report (1995-4-CPA-RM1(ESEE)):

"conditions of approval that were suggested by the Oregon Department of Fish and Wildlife to mitigate any adverse effect on wildlife will be required to be met by the operator. Staff finds that with these conditions, including seasonal closure of portions of the site, the use is fully consistent with wildlife habitat use well into the future. For all these reasons, staff believes the land use action meets the requirements of conserving forest lands and maintains the forest lands base to protect the state's economy consistent with sound management of soil, water, air and fish and wildlife resources." Staff Report at 35 (emphasis added).

"Goal 5 requires the protection of natural resources and the conservation of scenic, historic and open spaces. Staff finds that the mineral and aggregate resource is a significant Goal 5 resource and that this process is the periodic review process to gain compliance and acknowledgement of the Goal 5 element of the county's comprehensive plan. Staff finds the Black-tailed deer and the Roosevelt elk winter range habitat are the only other identified Goal 5 resources within the impact area. ODFW has determined conditions that will minimize impacts to the winter range habitat and staff recommends the Board include these[] conditions as conditions of approval should the Board approve the proposed rezone and aggregate use. Several individuals claimed the scenic view for this area should be protected, but staff has found that there are no protected Goal 5 scenic areas either within the impact areas or in the general area. Staff finds that the pertinent Goal 5 resources for this analysis are the determined significant aggregate resource and the identified big game winter range habitat, and that ODFW has determined the aggregate operations will have

minimal impact on the winter range habitat if their specific conditions for the operation are adopted as part of the approval for the proposed rezone and aggregate operation.” Staff Report at 35 (emphasis added).

Jackson County also discussed ODFW’s position in Order File 1995-4-CPA-RM / Order 412-01, page 26:

“The Board finds that there are several letters in the Record from John Thiebes, District Wildlife Biologist for the Oregon Department of Fish and Wildlife. Mr. Thiebes initially recommended denial of a zone change for the subject property, noting that this area is designated as Especially Sensitive Wildlife Habitat, and is an important area for winter feeding as well as spring birthing for both black-tailed deer and Roosevelt elk. Mr. Thiebes’ correspondence goes on to indicate that wildlife and their habitat may be protected if the following measures are implemented as part of the aggregate operation:

- Sites A & C have a seasonable closure from January 1 through March 31, loading and hauling of rock could be permitted during this period;
- No approval be given for Pit D1 as this is critical deer winter range browse;
- Sites D2 and E have a seasonable closure from November 1 through March 31; and,
- Habitat improvement mitigation projects in the form of controlled burns be conducted on 130 or more acres.

“The Board finds that Northwest Biological Consulting met with Mr. Thiebes and Dave Freel on the McKenzie Family Trust property, and identified the following mitigation options:

- Prescribed and controlled burns to create better habitat and reduce overall fire danger;
- Seasonal closure of Aggregate Pits A & C from December through March, and Pits D2 & E from November through April;
- Limited juvenile hunting program from deer and elk; and,
- High tolerance to animal damage on the property.” Order File 1995-4-CPA-RM, page 26.

**J. JCCPSC 4.4, OAR 660-023-0180(8), and LDO Section 3.2.4.**

JCCPSC 4.4 states as follows:

***Establishment of Zoning District and Aggregate Use:***

**“The Aggregate Removal (AR) zoning district will be applied when an aggregate site plan consistent with the requirements of OAR 660-023-0180(8) and LDO Section 3.2.4 has been approved by the County. The**

site plan will be adopted by ordinance concurrent with the Post Acknowledgment Plan Amendment and zone change application. The approving ordinance will serve as the development ordinance for land uses on the subject property. After establishment of the zoning district the use is subject to the operating standards of the Land Development Ordinance for Mineral, Aggregate, Oil and Gas Uses (LDO Section 4.4.8). These standards apply to issuance of AR use permits. Aggregate review includes: DOGAMI and DEQ permits and oversight, reclamation plan approval, public access road standards, on site road and dust treatment, blasting notice, insurance, setbacks, floodplain overlay check, screening and buffering, and hours of operation.” [JCCPSC 4.4].

The Applicant desires to clarify its findings in its application. A site plan for the subject property (Quarry Pit “A”) already exists and has been approved by Jackson County. That existing site plan serves to satisfy the requirements of JCCPSC 4.4. If necessary, that site plan should be made a part of the ordinance of approval for this application. Any future site plans would also need to be approved by the County.

As always, please let us know if you have any questions.

O’CONNOR LAW, LLC

*/s/ Garrett West*

Garrett K. West, OSB No. 174890

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BEFORE THE JACKSON COUNTY BOARD OF COMMISSIONERS  
STATE OF OREGON, COUNTY OF JACKSON

IN THE MATTER OF AN ECONOMIC, SOCIAL, ENVI- )  
RONMENTAL, AND ENERGY (ESEE) ANALYSIS FOR )  
AN OFFICIAL COMPREHENSIVE PLAN AND ZONING )  
MAP #5 AMENDMENT TO RE-ZONE PORTIONS OF )  
PROPERTY LEGALLY DESCRIBED AS TOWNSHIP 35 )  
SOUTH, RANGE 1 WEST, SECTION 1, TAX LOTS 100 )  
& 200, TOWNSHIP 35 SOUTH, RANGE 1 WEST, SEC- )  
TION 2, TAX LOTS 100 & 200, TOWNSHIP 35 SOUTH, )  
RANGE 1 WEST, SECTION 3, TAX LOTS 100 & 1200, )  
TOWNSHIP 35 SOUTH, RANGE 1 WEST, SECTION 10, )  
TAX LOTS 100 & 502, AND TOWNSHIP 35 SOUTH, )  
RANGE 1 WEST, SECTION 11, TAX LOT 300 FROM )  
EXCLUSIVE FARM USE (EFU) TO AGGREGATE RE- )  
SOURCE (AR) AS PART OF TASK #14 OF JACKSON )  
COUNTY'S PERIODIC REVIEW; PROPERTY OWNER - )  
THE MCKENZIE FAMILY TRUST; FILE 95-4-CPA ESEE )

ORDER # 412-01

ORDER, denying an Official Comprehensive Plan and Zoning Map #5 amendment for portions of the McKenzie Family Trust property, legally described as Township 35 South, Range 1 West, Section 1, Tax Lots 100 and 200, Township 35 South, Range 1 West, Section 2, Tax Lots 100 and 200, Township 35 South, Range 1 West, Section 3, Tax Lots 100 and 1200, Township 35 South, Range 1 West, Section 10, Tax Lots 100 and 502, and Township 35 South, Range 1 West, Section 11, Tax Lot 300, located east of Highway 62 and north of Butte Falls Highway, in Jackson County, Oregon.

RECITALS:

1. Pursuant to Chapters 197 and 215 of the Oregon Revised Statutes and in conformance with the Statewide Planning Goals, Jackson County's Comprehensive Plan and implementing ordinances have been acknowledged by the Oregon Land Conservation and Development Commission (LCDC).
2. Statewide Planning Goal 5 requires counties to conserve open space and protect natural and scenic resources, including mineral and aggregate resources. Oregon Administrative Rule (OAR) 660, Division 16, establishes the procedure for completing an inventory, analyzing conflicts, and implementing a program to protect significant and potentially significant aggregate sites, by evaluating the environmental, social, economic and energy (ESEE) consequences of either re-zoning or not re-zoning property as Aggregate Resource.
3. In 1996, the Land Conservation and Development Commission adopted OAR 660, Division 023, to establish procedures and criteria for inventorying and evaluating Goal 5 resources, including aggregate resources. At that time, Jackson County had been in Periodic Review for over nine years, and many of the completed tasks involved Goal 5 resources. Jackson County elected

1-ORDER; File 1995-4-CPA-RM (ESEE)  
MCKENZIE FAMILY TRUST ESEE

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Board of County Commissioners

File No. 1995-4-CPA-RM1 Exhibit # 8

Offered by: Staff

Date: 3-16-2005 Received by: [Signature]

to continue working under OAR 660, Division 16 for all aggregate resources, and to delay adoption of OAR 660, Division 23 regulations until the next periodic review, as provided for in OAR 660-023-250(7).

4. On April 11, 1994, the Department of Land Conservation and Development (DLCD) approved the Jackson County Periodic Review Work Program, including 22 tasks. Task 14, Central County ESEE Analyses included eight potential aggregate resource sites. The McKenzie Family Trust property was evaluated as part of Task 14.

5. The Jackson County Planning Commission held properly advertised public hearings on May 25 and June 5, 1995, to consider information supplied by the property owner supporting an Aggregate Resource zoning designation for five sites on property located east of Highway 62 and north of Butte Falls Highway. The Planning Commission continued their public hearings for deliberation to June 22, 1995.

6. Based on testimony received at the hearings and submitted into the Record, the Planning Commission voted to recommend that four of the five sites be found significant and included on the Jackson County Aggregate Sites Inventory, but, because the conflicting uses outweighed the significance of the aggregate material, the property should not be re-zoned to Aggregate Resource.

7. The Board of County Commissioners held a properly advertised public hearing on August 29, 1995, and conducted a field trip to the property on September 29, 1995. On October 12, 1995, the Board deliberated to a decision to protect the aggregate resources by placing the sites on the Jackson County Aggregate Sites Inventory.

8. Based on testimony received at the hearing and evidence submitted into the Record, the Board concluded that the Environmental, Social, Economic and Energy (ESEE) consequences created by noise and dust generation, wildlife habitat degradation, and decreased traffic safety would outweigh the value of the aggregate. The Board signed Order #460-95 on December 21, 1995.

9. The property owner filed an objection to Board Order #460-95 with DLCD on January 16, 1996. On December 15, 1997, DLCD remanded the Board's decision to Jackson County, finding that the County had failed to:

- A. Adequately define or describe the "impact area" to be affected by mining aggregate resources;
- B. Acknowledge that the impacts resulting from mining could be mitigated; and,
- C. Sufficiently protect an identified Goal 5 aggregate resource.

10. On November 3, 1999, the Board held a properly advertised public hearing on the DLCD remand. Testimony and new evidence were offered by the property owner and by opponents. This hearing was continued to January 4, 2000, and again to February 22, 2000, to deliberate to a decision.

11. On June 6, 2000, the Board of Commissioners held a properly advertised public hearing to more fully describe the impact area decided upon in the November, 1999, and January and February, 2000, public hearings.

NOW THEREFORE, the Jackson County Board of Commissioners hereby **ORDERS** as follows:

**SECTION 1. FINDINGS OF FACT**

1.1 The Board adopts by reference the findings from the October 29, 1999, staff report, insofar as they are consistent with the following findings.

1.2 The Board adopts the findings and conclusion in Order #460-95, except for the definition and description of the impact area and the impact mitigation, insofar as they are consistent with the following findings.

**SECTION 2. FINDINGS—CONFLICTING USES**

2.1 The Board finds that the Jackson County Land Development Ordinance (JCLDO) defines a conflicting use as:

A use which, if allowed, could adversely affect operations at a significant mineral and aggregate site, or could be adversely affected by extraction and processing activities at a significant mineral and aggregate site<sup>1</sup>. For the purposes of this Chapter<sup>2</sup>, another Goal 5 resource located on or adjacent to a mineral and aggregate resource may be considered a conflicting use if that resource could be adversely affected by surface mining activities, or force a change in mining activities at the site.

2.2 The Board finds that to determine the size of the impact area, the conflicting uses must first be identified.

2.3 As demonstrated by substantial evidence in the Record, the Board of County Commissioners finds that there are many adverse impacts the proposed use would have on farming, ranching, wildlife, traffic safety, and residences within the impact area.

2.4 As will be shown in more detail in Section 3 of this Order, the impact area has been designated because of the effect the existing uses would have on the proposed aggregate, as well as the effect the aggregate operation would have on existing and permitted uses within the impact area. Those impacts would include increased noise, dust and traffic hazards, and degradation of views and wildlife habitat.

2.5 Within the impact area, there are four separate zoning districts, each with specified permitted uses. The Board of County Commissioners reviewed the permitted and administratively permitted uses within each zone to determine the uses which were the most likely to impact the proposed aggregate operations, and to determine which uses were the most likely to be impacted by the aggregate operations. After this analysis, the Board found that the aggregate mining would negatively affect the uses identified in the following zones.

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<sup>1</sup> Emphasis added.

<sup>2</sup> JCLDO Chapter 244 - Aggregate Resource District.

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2.5.1 117 of the 202 parcels within the Impact Area are zoned for Exclusive Farm Use (EFU). Uses permitted outright or administratively in the EFU District, which testimony indicated would negatively impact or would be negatively impacted by the aggregate operation included dwellings, schools, churches and livestock activities, including breeding, boarding and milk production. The permitted uses most likely to impact or be impacted by the aggregate operation include:

- 2.5.1.1 Farm use, including animal and livestock boarding, breeding and milk production;
- 2.5.1.2 Buildings customarily provided in conjunction with farm use;
- 2.5.1.3 Breeding, boarding, and training of horses for profit;
- 2.5.1.4 Creation, restoration, or enhancement of wetlands;
- 2.5.1.5 Alteration, repair and replacement of a lawfully established dwelling;
- 2.5.1.6 Single family dwelling;
- 2.5.1.7 Winery;
- 2.5.1.8 Farm stands;
- 2.5.1.9 Public or private schools; and,
- 2.5.1.10 Churches.

2.5.2 34 of the 202 parcels in the Impact Area are zoned as Forest Resource (FR), which includes the Woodland Resource (WR) and Open Space Reserve (OSR) Districts. There are a number of ancillary forest uses which would impact or would be impacted by aggregate operations. Uses permitted outright or administratively in the Forest Resource District (FR), and which testimony indicated would be negatively impacted by aggregate operations, included residences, wildlife habitat, and farm uses, including livestock boarding, breeding and milk production. The permitted uses most likely to be impacted by aggregate operations include:

- 2.5.2.1 Forest management, including temporary on-site auxiliary structures and portable equipment used for management and harvesting;
- 2.5.2.2 Soil, air and water quality conservation and wildlife and fishery resources enhancement;
- 2.5.2.3 Farm uses, including animal and livestock breeding;
- 2.5.2.4 Alteration, repair and replacement of existing dwellings;
- 2.5.2.5 Towers and fire stations for forest fire protection;
- 2.5.2.6 Temporary forest labor camp; and,

2.5.2.7 Single family dwelling.

2.5.3 Residences are the most noise-sensitive uses permitted in the Farm Residential (F-5) District, which testimony indicated would be negatively impacted by aggregate operations. 27 of the 202 parcels within the impact area are zoned as Farm Residential. Additionally, non-intensive livestock breeding could also be negatively affected by the noise and dust from nearby aggregate operations. The permitted uses most likely to be impacted by aggregate operations on the subject property include:

2.5.3.1 Single family dwelling;

2.5.3.2 Home occupations;

2.5.3.3 Agriculture, including produce stands and non-intensive livestock production;

2.5.3.4 Accessory uses.

2.5.4 Residences are the most noise-sensitive uses permitted in the Suburban Residential (SR-2.5) District, which testimony indicated would be negatively impacted by aggregate operations. 24 of the 202 parcels within the impact area are zoned Suburban Residential. Additionally, non-intensive livestock breeding could also be negatively affected by the noise and dust from nearby aggregate operations. The permitted uses most likely to be impacted by aggregate operations on the subject property include:

2.5.4.1 Single family dwelling;

2.5.4.2 Home occupations;

2.5.4.3 Agriculture, including produce stands and non-intensive livestock production;

2.5.4.4 Accessory uses.

2.6 The Board finds, based upon the ESEE analysis below, that the conflicting uses identified therein are legally permitted uses within the impact area, which will be adversely impacted by aggregate mining on the McKenzie Trust property. Many of these uses have been in existence for a long time, and many of these uses are protected by other Statewide Planning Goals, especially Goal 3, Agricultural Lands.

**SECTION 3. FINDINGS--IMPACT AREA<sup>3</sup>:** It is this Board's responsibility to determine the extent of the impact area.

3.1 The Board finds that the impact area is not defined in either the applicable Statewide Planning Goals or the Oregon Administrative Rules developed by the LCDC.

3.2 The Board finds that in the Jackson County Comprehensive Plan (JCCP) Map Designation Element, Subsection 3(c) requires impact area identification as follows:

Identify Impact Area. For each site determined to be significant and to be included on the inventory of "Significant Goal 5 Resource Sites", the Impact Area shall be identified and mapped. The Impact Area shall be 1500 feet unless increased or decreased based on analysis and findings developed in the course of the Goal 5 process.

3.3 The property owner and it's agent have proposed that the impact area be only 1,500 feet from each site. The property owner and agent acknowledge that this will keep the impact area almost wholly on the McKenzie Family Trust property. After receiving the testimony and evidence, the Board finds that the impact area should be as shown on Exhibit 30<sup>4</sup> in order to protect the conflicting uses identified in Section 2 of this Order.

3.4 The opponents proposed a 1-1/2 mile by 2-1/2 mile impact area, centered along Butte Falls Highway. This impact area encompasses properties which are zoned EFU, F-5, FR, OSR, SR-2.5 and WR. The tax lots partially or completely within this impact area include 110 separate property owners, 97 dwellings, 3 home site approvals, and 62 vacant parcels.

3.5 The Board finds that the identification of an impact area is interrelated with identification of the aggregate resource extraction impacts and the nature of the conflicting uses. To the extent the extraction impacts affect conflicting uses, or the conflicting uses affect the aggregate extraction, the impact area must include those conflicting uses.

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<sup>3</sup>Eckis v. Linn County, 19 Or LUBA 15 (1990), is a leading case analyzing the ESEE analysis process in connection with the identification and use of aggregate resource sites. The economic, social, environmental and energy impacts of allowing an aggregate resource site must be analyzed to determine how they affect permitted uses within the impact area. According to the Eckis case, what is an impact area is not defined by statewide goals or LCDC's rules. However, LUBA said the impact area is the area where uses may occur which could adversely affect the resource site or be adversely affected by the resource site. In Eckis, the governing body determined that livability was a standard in determining the social impacts of the operation of the resource site. At P. 50, LUBA approved the governing body's determination that livability meant "the expectation a person has for health, safety and general well-being in light of surrounding natural resources, neighbors and applicable zoning laws." Webster's Dictionary defines social generally as of or relating to human society, the interaction of the individual and the group, or the welfare of human beings as members of society. The two other principal parts of the analysis for purposes of the impact area in this case are the economic and environmental elements of the ESEE analysis. All of the ESEE elements for the impact area should be weighed against the economic benefit and need for the establishment of an aggregate resource operation on the Applicant's property at the present time.

<sup>4</sup> Remand Record.

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3.6 Based upon the staff report, exhibits in the Record, and testimony received, the Board finds that the impact area encompasses the area identified on Exhibit 30<sup>5</sup>, and reproduced as Exhibit A, attached to this Order. The impact area ranges from 3 to 4 miles (east to west) by 2.5 to 2.8 miles (north to south), generally lying south, east and west of the McKenzie Trust property.

3.7 The Board finds that the record shows that the Impact Area includes 202 parcels, 153 separate property owners, and the following characteristics<sup>6</sup>:

<u>Zoning</u>	<u># of Parcels</u>	<u># of Parcels with Houses<sup>7</sup></u>	<u># of Houses</u>	<u># of Homesite Approvals</u>	<u># of Vacant Parcels</u>
EFU	117	65	73	4	52
FR, OSR, WR	34	17	19	8 <sup>8</sup>	17
F-5	27	24	27	0	3
SR-2.5	<u>24</u>	<u>15</u>	<u>15</u>	<u>0</u>	<u>9</u>
Totals	202	121	134	12	81

3.8 The Board finds that the Impact Area is developed with other noise sensitive uses, including horse arenas and livestock boarding, breeding and milking.

3.9 Since conflicting uses have been identified, the Board finds that the economic, social, environmental and energy consequences analysis must be completed. Impacts on both the resource site and on the conflicting uses must be analyzed.

**SECTION 4. ANALYZE THE ECONOMIC, SOCIAL, ENVIRONMENTAL AND ENERGY CONSEQUENCES (ESEE)**

4.1 The Board finds that State Law requires an analysis of the ESEE consequences which could result from a decision to allow, limit, or prohibit each conflicting use.

4.2 The Board finds that evidence in the record shows that the conflicting uses are predominately residences and agriculture.

4.3 The Board finds that there are 134 residences currently developed within the Impact Area, another 12 homesites approved on resource zoned properties, 12 vacant residentially zoned properties which could be developed, and another 69 vacant resource zoned properties which potentially could have residences approved. In total, there could be 227 residences developed within the Impact Area.

**4.4 Economic Consequences Analysis**

<sup>5</sup> Remand Record.

<sup>6</sup> The residential development in the Impact Area is shown on Exhibit B, attached to this Order.

<sup>7</sup> 13 parcels have multiple dwellings.

<sup>8</sup> 6 homesite approvals are on one parcel.

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4.4.1 The Board finds that an economic consequences analysis is defined as the identification of the positive and negative economic consequences that could result from a decision to allow, limit or prohibit a conflicting use.

4.4.2 The Board finds that in looking at the economic value of the resource and the impact on the economic value of surrounding properties, the Board must balance the two conflicting uses.

4.4.3 Economic Consequences to Residences: Residences are permitted uses in the residential districts, and require an administrative review in the farm and forest districts.

4.4.3.1 The Board finds that the preponderance of the evidence in the record indicates that property values within the Impact Area will be reduced if aggregate mining is allowed on the McKenzie Family Trust property, because at least one of the four aggregate sites will be visible to 145 residences, 288 parcels, and long sections of the Rogue Umpqua Scenic Byway (Highway 62) in this area.<sup>9</sup>

4.4.3.1.1 Frank J. Pulver<sup>10</sup> III, CCIM, indicated that a rock quarry within sight and sound of the D. E. Briggs property would 'affect both its marketability and value.'

4.4.3.1.2 Mike Malepsy<sup>11</sup>, Broker with Trails End Real Estate, indicated to Mr. Duncan that a commercial aggregate operation which was within view and sound of his property 'could adversely affect the value of your property.'

4.4.3.1.3 Denny Purvis<sup>12</sup>, Associate Broker at Eagle View Properties indicated to Mrs. Briggs that 'a shale pit next to your property would adversely affect the future value.'

4.4.3.1.4 Wes Milton<sup>13</sup>, Broker at Whitehall Realty, stated that 'Property values are an additional issue, and I believe adjacent property owners will be subject to a reduction in their overall property desirability and value.' Mr. Milton also testified at the Planning Commission, Board and Board Remand public hearings.

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<sup>9</sup> Remand Record, Exhibit 24, Viewshed and Residential Development Map, and Subsection 4.5.3.6 of this Order.

<sup>10</sup> Packet #2, Exhibit 19, at page 92.

<sup>11</sup> Packet #2, Exhibit 20.

<sup>12</sup> Packet #2, Exhibit 25.

<sup>13</sup> Packet #2, Exhibit 68.

4.4.3.1.5 Roy Wright<sup>14</sup>, SRA stated that 'it is my opinion that there will be no measurable adverse affect on the value of the surrounding property as a result of the proposed aggregate operation.'

4.4.3.2 The Board finds that the applicant, in their rebuttal<sup>15</sup>, states that: "The professional opinion of a qualified SRA or MIA appraiser on a site specific issue certainly is more credible than the generalist letters from real estate sales persons." The Board finds that this over simplistic statement does not take into account that:

4.4.3.2.1 Three of the other four property value testimonies were from Real Estate Brokers, not just 'real estate sales persons'; and,

4.4.3.2.2 The fourth property value testimony is from Frank J. Pulver III, a Certified Commercial Investment Member; and,

4.4.3.2.3 The four other property value testimonies were more specific than Roy Wright, SRA, in stating that they were basing their professional opinion on the fact that the specific properties they cited would be within sight and sound of the proposed aggregate operation.

4.4.3.3 The Board finds that the applicant stated "Finally, while it seems fairly obvious that a mining operation in one's backyard may have some impacts on value, it is important to note that the nearest extraction site is a minimum of 2200 feet from the nearest residence...and over 4800 feet (almost a mile) from the residences along Butte Falls Highway (Echo Valley)."<sup>16</sup> The Board finds that the record documents that residences can be found as close as 1,500 feet to the proposed aggregate extraction sites. The residences along Butte Falls Highway, specifically R. Finch and H. Leonardo, are between 3,900 and 4,200 feet from Pit C. The Board finds that the following table shows the relationship of some residences to the proposed aggregate sites. Based on the preponderance of the evidence, the Board finds that aggregate extraction on the McKenzie Family Trust property will significantly reduce property values in the Impact Area.

Property Owner	Legal Description	Year Built	Pit A	Feet Miles	Pit C	Feet Miles	Pit E	Feet Miles
McKenzie Family Trust	35, 1W, 10, 300	1977	X	2,200 0.42				
J Burns	35, 1E, 2700	Mobile Home					X	1,500 0.28

<sup>14</sup> Packet #1, Exhibit 86 at page 165.

<sup>15</sup> Remand Packet, Exhibit 87 at page 457.

<sup>16</sup> Remand Record, Exhibit 87, loc. cit.

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Property Owner	Legal Description	Year Built	Pit A	Feet Miles	Pit C	Feet Miles	Pit E	Feet Miles
K Shaw	35, 1W, 11, 408	1973	X	2,450 0.46	X	2,200 0.42		
J Kezer	35, 1W, 11, 406	1992	X	3,050 0.58	X	2,850 0.54		
R Hawkins	35, 1W, 3, 1102	1926	X	2,900 0.55				
R Batzer	35, 1W, 3, 1300	1930	X	3,300 0.63				
R Finch	35, 1W, 11, 500	1942			X	3,900 0.74		
H Leonardo	35, 1W, 11, 101	1956			X	4,200 0.80		
CCD	35, 1E, 2501	1930					X	4,500 0.85

4.4.3.4 The Board finds that the applicant also stated "It is a difficult stretch of the imagination to conclude that a use that far away is going to have any impact on value of a rural property, particularly since the impacts from farm and forest uses are similar to aggregate uses, in terms of noise and dust and truck traffic..."<sup>17</sup>. The Board finds that this conclusion is not supported by the evidence in the record, as discussed within this order.

4.4.3.5 The Board finds that the proposed commercial aggregate operation will have an unwarranted adverse economic impact on this area of the County because it will have significant impacts on the property values of neighboring properties. The required economic analysis requires an examination of impact on property values<sup>18</sup>.

4.4.3.6 The Board finds that the noise, dust, traffic and terrain impacts created by the proposed aggregate operation will significantly reduce property values of properties in close proximity to the actual extraction sites and the travel routes of trucks transporting aggregate materials.

4.4.3.7 The Board, in reviewing these exhibits, and listening to testimony, finds that it is swayed by the preponderance of the evidence which acknowledges that a commercial aggregate operation would create up to a 30 percent reduction in the Impact Area property values.

4.4.3.8 The Board also finds that the residents on these properties will be negatively affected by the noise and dust resulting from the proposed commercial aggregate operation. Residents within the Impact Area have

<sup>17</sup> Remand Record, Exhibit 87, loc. cit.

<sup>18</sup> *Eckis v. Linn County*, 19 Or LUBA 30 (1990)

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provided notices from their physicians, identifying medical impacts which can result from increased noise and dust, particularly increased allergic reactions.

4.4.3.9 Additionally, at least two residents within the Impact Area testified that they are professionals who work varied shifts. Noise and blasting during their day-time sleep hours will reduce their ability to sleep and decrease their job performance and effectiveness.

4.4.4 Economic Consequences to Agriculture: Agriculture is a permitted use in the farm, forest and residential districts. Exhibit C, attached to this Order, locates the farms identified in the Record and discussed below.

4.4.4.1 The Board finds that evidence in the Record shows that commercial and noncommercial agricultural uses on adjacent and nearby properties within the Impact Area would be adversely affected by the increases in noise and dust from the proposed aggregate activities.

4.4.4.2 The Board finds that evidence in the Record<sup>19</sup> shows that given the proposed aggregate site locations, in conjunction with the acoustics of the area, these increases in noise and dust would adversely affect properties well beyond the individual aggregate sites.

4.4.4.3 The economic consequences analysis includes an evaluation of damage to agriculture<sup>20</sup>. Evidence in the Record<sup>21</sup> describes the existence of livestock, including goats, cattle and horses, within the Impact Area. This evidence further documents livestock's noise sensitivity.

4.4.4.4 The Board finds, based on the preponderance of evidence in the record and in the public testimony, that it is most plausible that noise impacts caused by the proposed aggregate operation will adversely affect livestock breeding, resulting in a reduction of agricultural income, thereby negatively impacting the agricultural "livelihood" of this area. Exhibit 38 in the Remand Record is an article by John O. Sullivan, PhD, further documenting the negative impacts noise has on livestock.

4.4.4.5 The Board finds that there is written evidence in the Record<sup>22</sup>, as well as testimony at the Planning Commission and Board public hearings concerning the effect of noise on milk production. One ranch on Butte Falls Highway<sup>23</sup> indicated that its goat herd would produce less milk because of the effects of

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<sup>19</sup> Packet #2, Exhibits 43 & 58; Remand Record, Exhibit 36.

<sup>20</sup> *Eckis v. Linn County*, 19 Or LUBA 15, 30 (1990).

<sup>21</sup> Packet #2, Exhibits 31 & 36; Remand Record, Exhibits 65, 71, 77, 78 & 81.

<sup>22</sup> Remand Record, Exhibits 77 & 81.

<sup>23</sup> Exhibit C, Farm #1 is the Joseph Burns and Diane Heaney Goat Ranch, located at 2344 Butte Falls Highway, and approximately 0.95 miles south of Pit 'C'.

noise on milk production. The goat breeding business run by Diane Heaney will be adversely affected by environmental changes resulting from the aggregate extraction operation. The increased noise and dust would decrease productivity in the herd, thereby lowering the value of the herd for breeding purposes. Diane Heaney<sup>24</sup> provided the following testimony:

4.4.4.5.1 Dairy goats are easily alarmed by loud or percussive sounds. The louder the sound, the greater the alarm. This is particularly true of intermittent sounds like blasting.

4.4.4.5.2 We considered these factors when we purchased our property many years ago as we wanted to maintain goat breeding stock of highest value. The loud, percussive sounds from a shale pit operation (blasting, rock crushing, heavy trucks/equipment) would have a negative financial effect on the value of our animals, their semen, and their offspring.

4.4.4.6 The Board finds the written testimony of Ms. Heaney's husband, Joseph Burns<sup>25</sup>, to be very persuasive, stating that 'We want you to understand that the proposal for the shale pits on the McKenzie/Freel property, which would be located directly across from our property on the facing slope of our little valley, would adversely affect our business concerns, our income, our investment in our home, and our way of life. Years ago I worked for Southern Oregon Underground construction company and I know the amount of noise and dust that a rock pit would cause. I also know what these disturbances would do to our livestock. Goats, though hardy, are sensitive to severe environmental changes and there is no way that the proposed excavations could be screened from sight and sound intrusion so as not to damage the dairy production of our stock. The negative effect on our monthly DHIR (Dairy Herd Improvement Records) would cause all of our animals to be worth less. A decrease in milk production would also cause semen collected from our animals and marketed nationally and internationally to be worth less. Our small farm business, as modest as it may be, does contribute to the Rogue Valley's economy and this business would be significantly hurt by the planned shale pits. I would like to remind you that our business was located here because of the existing EFU zoning and a long time before McKenzie/Freel's planned pits and proposed zone change.'

4.4.4.7 The Board finds that oral testimony was provided at the Planning Commission public hearings, the Board and Board Remand public hearings, and written testimony from Mike, Lona and Stacy Sims<sup>26</sup>, owners of Shady Shadow Morgans<sup>27</sup>, indicating that the noise from blasting, drilling and crushing could

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<sup>24</sup> Remand Record, Exhibit 77, at Page 397.

<sup>25</sup> Remand Record, Exhibit 81, at Page 401.

<sup>26</sup> Remand Record, Exhibit 78, at Page 398.

<sup>27</sup> Exhibit C, Farm #2 is the Michael & Lona Sims Ranch, Shady Shadow Morgans, located at 2744 Butte Falls Highway, and approximately 1.23 miles from Pit D2.

prevent their mares, and those brought in from several states for breeding, from conceiving. They indicated that horses are nervous during breeding and gestation, and sudden noises will cause mares to lose their foals before full gestation. One mare lost her foal at seven months, during hunting season, due to shooting noises.

4.4.4.8 The Board finds that testimony before the Planning Commission and Board of Commissioners, along with evidence submitted into the Record<sup>28</sup> document the negative effect noise and blasting can have on the West's<sup>29</sup> noise sensitive Arabian horses. The Wests related that one filly lost 83% of her value when the neighbor's cattle, alarmed by the Klamath Falls earthquake, bolted, thereby scaring the filly into running through a barbed wire fence.

4.4.4.9 The Board finds that testimony before the Planning Commission and Board of Commissioners, along with evidence submitted into the Record<sup>30</sup> document breeding problems with the Friesen's<sup>31</sup> Missouri Fox Trotters caused by loud noises.

4.4.4.10 The Board finds that testimony before the Planning Commission, along with evidence submitted into the Record<sup>32</sup>, document the Freeborn Horse Ranch<sup>33</sup> breeding problems caused by loud, sudden noises.

4.4.4.11 The Board finds that the evidence submitted into the Record<sup>34</sup> documents the White's<sup>35</sup> horse training problems caused by sudden noise, noting that both Cindy and Tom raise and train livestock for 4-H and FFA programs.

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<sup>28</sup> Packet #1, Exhibits 57, 58 & 93, and Packet #2, Exhibits 31 & 80.

<sup>29</sup> Exhibit C, Farm #3 is the Judith West property, located at 1660 Butte Falls Highway, approximately 0.85 miles south of Pit 'C'.

<sup>30</sup> Packet #1, Exhibit 60, Packet #2, Exhibits 28 & 82 and Remand Record, Exhibit 71.

<sup>31</sup> Exhibit C, Farm #4 is Pamela and Anthony Friesen's Echo Valley Ranch, located at 1460 Butte Falls Highway, approximately 1.02 miles south of Pit 'C'.

<sup>32</sup> Packet #2, Exhibit 36.

<sup>33</sup> Exhibit C, Farm #5 is the Mary Benson property, located at 2299 Butte Falls Highway approximately 0.3 miles from both Pits 'C' and 'D2'.

<sup>34</sup> Remand Record as Exhibit 62 & 65.

<sup>35</sup> Exhibit C, Farm #6 is the Nanna Lee Finch Farm where Tom White and Cindy White raise and train 4-H and FFA livestock, at 1545 Butte Falls Highway, approximately 0.09 miles south of Pit 'C'.

4.4.4.12 The Board finds that testimony before the Planning Commission and Board of Commissioners, along with evidence in the Record<sup>36</sup> document problems created for the Womelsdorf's<sup>37</sup> Angus cattle by loud noises.

4.4.4.13 The Board finds that testimony before the Jackson County Planning Commission, and the evidence submitted into the Record<sup>38</sup> document many economic, social, and environmental consequences from the development of new aggregate pits on the McKenzie Family Trust property. Specifically, Mr. Bateman identified problems the aggregate blasting, crushing and hauling will create for the Bateman<sup>39</sup> Cattle Ranch.

4.4.4.14 The Board finds that there is substantial evidence in the Record concerning animal sensitivity to noise, noting that mating, gestation, birthing and milk production are all negatively affected by loud and sudden noises, such as blasting, crushing, extraction and hauling.

4.4.5 Economic Consequences to Aggregate: Aggregate is a conditional use in the forest and residential districts. In the Exclusive Farm Use District, aggregate is a conditional use only if the site is in the Jackson County Aggregate Sites Inventory<sup>40</sup>. Sites D2 and E are currently included on the Jackson County Aggregate Sites Inventory. Once Jackson County completes Aggregate Tasks #10, 11 and 14 of Periodic Review, the Planning Commission and Board of County Commissioners will begin the process of updating the Aggregate Sites Inventory with the new information collected through Periodic Review. Based on the Board's original decision on this property, Pits 'A' and 'C' would be added to the Jackson County Aggregate Sites Inventory at that time, and conditional use permit applications for all four Pits could be made.

4.4.5.1 The Board finds that the record has conflicting testimony from the McKenzie Family Trust agents, on the quantity of aggregate available on this property. The Board finds that, for the purposes of this ESEE, the more credible evidence is supplied by the Engineering Geologist, William Hicks, who has

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<sup>36</sup> Packet #2, Exhibit 35 at Page 121.

<sup>37</sup> Exhibit C, Farm #7 is the Womelsdorf Angus Ranch, which is located at 889 Butte Falls Highway, approximately 0.78 miles south of Pit 'A'.

<sup>38</sup> Packet #1, Exhibits 33, 34, 35, 38, 42, 84 & 85, Packet #2, Exhibits 27, 30 & 54, and the Remand Record, Exhibits 51, 52 & 76.

<sup>39</sup> Exhibit C, Farm #8 is the Bateman's Cattle Ranch, located at 2929, 2951 and 2963 Butte Falls Highway, approximately 0.51 miles from Pit 'D2' and 0.57 miles from Pit 'E'.

<sup>40</sup> The Jackson County Aggregate Sites Inventory was adopted on September 10, 1980 (Ordinance #372-80). This is a Goal 5 required Aggregate Inventory, and documents the quantity and quality of known aggregate and mineral resources in Jackson County. As part of Jackson County's Periodic Review, this inventory will be updated once Tasks #10, 11 and 14 are completed.

indicated that these four Pits have a total of 5,510,000<sup>41</sup> cubic yards of marketable aggregate, which, at \$1.50 a cubic yard<sup>42</sup>, would yield up to \$8,265,000.00 in gross income. The resource and value are as follows:

<u>Pit #</u>	<u>Estimated Cubic Yards</u>	<u>Estimated Value</u>
A	1,423,000	\$ 2,134,500.00
C	1,225,000	1,837,500.00
D2	912,000	1,368,000.00
E	<u>1,950,000</u>	<u>2,925,000.00</u>
Totals	5,510,000 cubic yards	\$ 8,265,000.00

4.4.5.2 The Board finds that a number of persons<sup>43</sup> testified that the cost of hauling the aggregate from the McKenzie Family Trust property would make the basalt uneconomical.

4.4.5.3 The Board finds that in the McKenzie Family Trust's documentation<sup>44</sup>, notes that the cost of aggregate in Jackson County is \$2.00 per ton higher than in the adjoining counties.

4.4.5.4 The Board finds that Vale Womelsdorf<sup>45</sup>, owner of Top Rock Trucking Company, testified that, if the rock from the McKenzie Family Trust property were free, he could not afford to use it because of the long haul involved. Mr. Womelsdorf further testified that the McKenzie Family Trust property is not well located to serve the Eagle Point/White City area in light of other existing operations.

4.4.5.5 For the McKenzie Family Trust's 2000 Remand rebuttal testimony, Vale Womelsdorf<sup>46</sup> provided new information, stating that "There have been significant changes since 1995" including increased demand in the north county area, declining quality and capacity of several north county aggregate sites, and improved Highway 62 access to Medford, ending with his opinion that the McKenzie Family Trust aggregate sites are favorable. The Board finds that the

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<sup>41</sup> The 5.51 million yards<sup>3</sup> aggregate estimate from B. G. Hicks, Consulting Engineering Geologist, is found in Packet #2, Exhibits 3 & 4. Dave Freel's aggregate estimate of 1.8 million yards<sup>3</sup> is found in Packet #1, Exhibit 88, page 158. J. Michael LaNier's aggregate estimate of 'at least 10 million yards<sup>3</sup>' is found in the Remand Record, Exhibit 15, page 75.

<sup>42</sup> Estimate used by McKenzie Family Trust Agent, J. Michael LaNier.

<sup>43</sup> Packet #2, Exhibit 59 states that it costs \$1.00 per mile to haul aggregate. Remand Record Exhibit 15 states that the cost of hauling aggregate runs between \$1.00 to \$1.62 per ton.

<sup>44</sup> Remand Record, Exhibit 15, page 124.

<sup>45</sup> Packet #2, Exhibit 59.

<sup>46</sup> Remand Record, Exhibit 87, page 480.



preponderance of testimony does not support Mr. Womelsdorf's altered testimony.

4.4.5.6 The Board finds that a number exhibits<sup>47</sup> and substantial testimony have been submitted into the Record regarding existing aggregate operations in the north Jackson County area, the quantity of aggregate already available, the potential need for additional aggregate to meet development needs, and the actual value of this aggregate to the development industry. The Board finds the following table to be a summary of the evidence and testimony in the Record. Board finds this to be conclusive evidence regarding known and available aggregate resources in the north-west Jackson County area.

Remand Exhibit #31 <sup>48</sup>	Remand Exhibit #32 <sup>49</sup>	Remand Exhibit #33 <sup>50</sup>	Quarry Name/ Owner	Location	Material	Quantity	Significance <sup>51</sup>
1			Boise	SE of Prospect	Material certified for ODOT road material		
2			Medco	Butte Falls	Material certified for County road work		
3	2	2	Collier	SW of Lost Creek Lake	Basalt	5.13 acres	Significant
4	5 & 6	5 & 6	Jerry's Shale Pit	West of Shady Cove on both sides of Long Branch Ck	Basalt	80 acres 5 million cubic yards	63 acres Potential; 17 acres significant

<sup>47</sup> Packet #1, Exhibits 19, 21, 30, 31, 35, 48, 58, 59, 61, 70 & 76; Packet #2, Exhibits 14, 19, 27, 30, 36, 41, 86, 87, 89, 91, 92, 96 & 97; and, Remand Record, Exhibits 31, 32, 33, 35 & 36.

<sup>48</sup> Shaded Relief GIS map, submitted by John Hassen for the opponents, in conjunction with Exhibit 36, Memorandum in Support of Jackson County Board of Commissioners' Decision to Protect Conflicting Uses.

<sup>49</sup> Copy of the 1980 Jackson County Aggregate Resources Map, submitted by staff.

<sup>50</sup> Copy of the acknowledged Jackson County Aggregate Sites Inventory Map from the Jackson County Comprehensive Plan, Aggregate and Mineral Resources Element, submitted by staff.

<sup>51</sup> As discussed in the Jackson County Comprehensive Plan, Aggregate and Mineral Resources Element, "The determination of significance is a matter of local discretion based on information concerning the location, quality and quantity of resource sites. The relative abundance and quality of resources are important factors in determining significance, as is the location of resources in response to local or regional markets."

Remand Exhibit #31 <sup>48</sup>	Remand Exhibit #32 <sup>49</sup>	Remand Exhibit #33 <sup>50</sup>	Quarry Name/ Owner	Location	Material	Quantity	Significance <sup>51</sup>
5	7	7	Nork Quarry	SE of Shady Cove	Basalt	40 acres 1 million cubic yards	Significant
6	11	11	Reese Creek Quarry	N & S of Butte Falls Hwy	Basalt	280 acres 15 million cubic yards	240 acres Potential <sup>52</sup> ; 40 acres significant
7	14	14	House, BLM, etc	So of Butte Falls Hwy	Basalt	80 acres 3 million cubic yards	Potential
8	22	22	Rogue Aggregate	South of Hwy 234, east & west of Modoc	Gravel	340 acres 16 million cubic yards	180 acres Potential; 160 acres Significant
	18	18	Panther	South of Hwy 140, east of Brownsboro	Basalt	3100 acres 18 million cubic yards	2596 acres Potential; 504 acres Significant
<b>TOTALS</b>					Basalt	3,585 ac. 42 million cubic yards	P = 2,979 S = 606 ac.
					Gravel	340 acres 16 million cubic yards	P = 180 ac. S = 160 ac.

4.4.4.7 The Board finds that all sites except Jerry's Shale Pit have a history of State, County and City road work and regulated development projects such as subdivisions and commercial sites.

4.4.4.8 The Board finds that the large inventory in this area can serve the White City - Eagle Point - Shady Cove area for 20 plus years. Additionally, testimony indicated that existing quarries in Jackson County contain an aggregate supply that will last until the year 2100<sup>53</sup>.

4.4.4.9 The Board finds that the McKenzie Family Trust's agent, Mr. Freel, testified at the Planning Commission hearing that the purpose of the proposed aggregate operation would be for supplemental income, indicating a lack of significant aggregate contribution to the existing market. Furthermore, there is

<sup>52</sup> includes Pits D2 and E on the McKenzie Family Trust property.

<sup>53</sup> Packet #1, Exhibit 36.

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no evidence in the Record indicating that there is any unusual level of demand for aggregate materials in this portion of the County. Consequently, the Board finds that the proposed commercial aggregate operation will have no significant positive economic impact on this area of the County, or the County as a whole.

4.4.4.10 The Board finds that the evidence in the Record shows that the economic value of the proposed resource site to Jackson County is inconsequential due to the existence of the other commercial aggregate operations closer to the Eagle Point - White City and Shady Cove developing areas.

#### 4.5 Social Consequences Analysis

4.5.1 The Board finds that a social consequences analysis is defined as the identification of the positive and negative social consequences that could result from a decision to allow, limit or prohibit a conflicting use.

4.5.2 The Board finds that the social consequences for the McKenzie Family Trust ESEE relate to family impacts from increased noise, increased dust, increased traffic, and decreased traffic safety and decreased viewsheds.

4.5.3 Social Consequences to Residences: The Board finds that overwhelming evidence has been presented by property owners within the Impact Area that the increased noise, dust and traffic, and the decreased aesthetic viewsheds and traffic safety would dramatically reduce the livability of the area. The increases would disturb the rural lifestyle and setting of the Echo Valley area, as well as being medically harmful to many existing residents and their livestock. The required social analysis must include such impacts as the loss of aesthetics.<sup>54</sup>

4.5.3.1 The Board finds that portions of Echo Valley are included within the Impact Area. Echo Valley is aptly named because the valley echoes and carries noise over long distances. Neighbors testified that they hear conversations from people across the valley as if those people were standing just outside their door or window.

4.5.3.2 The Board finds that there is evidence in the Record and from testimony at the public hearings documenting that aggregate extraction operations on the subject property would cause a substantial noise impact on Echo Valley residents.

4.5.3.3 The Board finds that there is evidence in the Record<sup>55</sup> that aggregate will be initially blasted to prepare the rock for ripping, rushing and removal. This blasting will not only cause noise impacts, but the resultant vibrations may also affect existing building foundations and damage or destroy existing wells.

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<sup>54</sup> *Eckis v Linn County*, 19 Or LUBA 30 (1990).

<sup>55</sup> Remand Record, Exhibit 15, page 123, 'Proposed Operations Plan', from the McKenzie Family Trust and their agents.

4.5.3.4 In addition to the substantial amount of empirical evidence concerning noise from opponents who live in the area, the applicant presented a noise study prepared by Hammond Engineering, Inc.<sup>56</sup>. The Commissioners find that the noise study was done by Lee Brennan, P.E., whose expertise is in solid waste management, environmental assessment and remediation work<sup>57</sup>. Mr. Brennan is a certified Oregon DEQ Soil Matrix Cleanup Supervisor and a Certified Hazardous Waste Site Operations (HAZWHOPPEK) Supervisor. The Board finds that Mr. Brennan's resume does not identify him as an Oregon DEQ noise study expert.

4.5.3.5 The Board finds that in the Hammond Noise Study, the following conclusions are made:

4.5.3.5.1 The McKenzie property supports some scattered trees and bushes.<sup>58</sup>

4.5.3.5.2 Each proposed aggregate site is located in a low spot of the property and naturally screened from view.<sup>59</sup>

4.5.3.5.3 Due to the time of year this study was performed, this noise study will not accurately reflect traffic sector noise measurements.<sup>60</sup>

4.5.3.5.4 Expected noise levels should also meet the allowable statistical noise levels published by DEQ.<sup>61</sup>

4.5.3.5.5 It is our conclusion that there is sufficient natural screening and buffering around the proposed quarry location to meet DEQ standards for noise control.<sup>62</sup>

4.5.3.6 The Board finds that other, more credible evidence in the record does not support these conclusions.

4.5.3.7 The Board finds that Daly-Standlee & Associates, Inc., an engineering firm, reviewed the Hammond Engineering, Inc. noise study to determine if the [Hammond Engineering] noise study was conducted in a way

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<sup>56</sup> Remand Record, Exhibit 37, beginning at page 248.

<sup>57</sup> Remand Record, Exhibit 37, page 326.

<sup>58</sup> Remand Record, Exhibit 37, page 251.

<sup>59</sup> Remand Record, Exhibit 37, loc. cit.

<sup>60</sup> Remand Record, Exhibit 37, loc. cit.

<sup>61</sup> Remand Record, Exhibit 37, page 270.

<sup>62</sup> Remand Record, Exhibit 37, loc. cit.

that allowed an accurate assessment of potential aggregate extraction noise levels.<sup>63</sup>

4.5.3.8 The Board finds that the Daly-Standlee, Inc. review was conducted by Kerrie G. Standlee, P.E., an Oregon Registered Professional Acoustical Engineer, and a member of the Acoustical Society of America, the Institute of Noise Control Engineering, the City of Portland Noise Review Board and the Port of Portland Noise Advisory Committee. The Board finds that Mr. Standlee has worked in the field of acoustic design and noise control since 1973, is experienced in the measurement, evaluation and control of outdoor environmental noises to meet Oregon Department of Environmental Quality regulations, and is experienced in assessing, evaluating and establishing mitigation measures for aggregate mining noises.<sup>64</sup>

4.5.3.9 The Board concurs with the Daly-Standlee, Inc. conclusion that the Hammond Engineering, Inc. noise study does not adequately address the noise impacts associated with the proposed quarry development, and that the persons conducting the noise study were not familiar with the DEQ noise regulations or with the measurement and interpretation of noise data relative to the DEQ noise regulation.<sup>65</sup>

4.5.3.10 The Board further concurs with the Daly-Standlee conclusions that:

4.5.3.10.1 The Hammond Engineering, Inc. conclusion from the technical data are incorrect.

4.5.3.10.2 The Hammond Engineering, Inc. noise study is insufficient to conclude that the noise generated by the proposed McKenzie Family Trust quarry will meet the Oregon Department of Environmental Quality's (DEQ) noise regulation criteria.

4.5.3.10.3 The noise generated by the proposed McKenzie Family Trust quarry will exceed the DEQ noise regulations.

4.5.3.11 The Board finds that the proposed aggregate operation would consist of open pits on south facing slopes<sup>66</sup>. The pits would be visible throughout the area. The scarring of these hillsides would substantially reduce the aesthetic value and enjoyment of the area.

4.5.3.12 The Board finds that evidence in the Record indicates that the aggregate pits will be in plain view from neighboring properties, Butte Falls Highway, Crater Lake Highway 62 and Sams Valley Highway 234. The Rogue

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<sup>63</sup> Remand Record, Exhibit 84, page 410.

<sup>64</sup> Remand Record, Exhibit 84, page 417.

<sup>65</sup> Remand Record, Exhibit 84, page 410.

<sup>66</sup> Packet #1, Exhibit 36, page 86.

Umpqua Scenic Byway begins at Highway 234 in Gold Hill and continues on Highway 62 to Crater Lake. It took four state agencies and three years to approve the route, which is the gateway to the Cascades and Crater Lake National Park. The four aggregate pits and the scenic damage their excavation will cause will be visible from the Rogue-Umpqua Scenic Byway and from Butte Falls Highway.

4.5.3.13 The Board finds that the Record contains maps<sup>67</sup> identifying those properties which will be visible from and have a view of the proposed aggregate pits. As shown on the Viewshed and Residential Development Map, there are 145 residences and 288 parcels which have a clear view of at least one of the proposed aggregate pits. As evidenced by testimony at the public hearings, these properties with a clear view of the aggregate pits will also be the properties which will have the greatest noise impact.

4.5.3.14 The Board finds that, due to the aggregate pit locations, and the general topography of the areas, the aggregate pits are not currently, and will not be able to be screened by berms or vegetation. Although the property owner and their agents have stated that the proposed pits are screened by topography and existing vegetation, the Board finds that the more credible evidence is contained in Exhibits 20, 24, 25 and 31 of the Remand Record, which clearly show that these aggregate pits will be visible to at least 288 parcels, as well as the Rogue-Umpqua Scenic Byway and Butte Falls Highway.

4.5.3.15 Evidence in the Record<sup>68</sup> indicates that Site A will be open for at least 25 years. The Board finds that reclamation of the site after that 25 year period will not mean much to many of the residents now living within the Impact Area. The impact of having the operation go on for that long, including the impact on view, is critical. The Board finds that a 25+ year aggregate extraction operation would have a significant social impact on more than a generation of the residents in the area.

4.5.3.16 The Board finds that evidence in the Record clearly shows that these aggregate pits will be open and operating over the next 60 to 100 years. The property owner's agent<sup>69</sup> indicates that Pit A will be the initial pit to be opened and operated. They further explain that Pit A will operate for 15 to 25 years, initially extracting 25,000 cubic yards annually, but eventually maintaining an annual output of 40,000 cubic yards.

4.5.3.16.1 The Board finds that the evidence in the record shows that 25,000 cubic yards annually is equivalent to 1,250 - 20 cubic yard trucks,

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<sup>67</sup> Remand Record, Exhibit 24, Viewshed and Residential Development Map.

<sup>68</sup> Remand Record, Exhibit 15, page 123.

<sup>69</sup> Remand Record, Exhibit 15, pages 122 & 123.

which equals 2,500 (round trip) truck trips annually, or an average of 208 truck trips per month, or 48 truck trips per week, or 8 truck trips per day<sup>70</sup>.

4.5.3.16.2 The Board finds that the evidence in the Record shows that 40,000 cubic yards annually is equivalent to 2,000 - 20 cubic yard trucks, which equals 4,000 (round trip) truck trips annually, or an average of 333 truck trips per month, or 78 truck trips per week, or 13 truck trips per day.

4.5.3.17 The Board finds that, although ODOT has stated that the access to Highway 62 at Mile Point 15.3 has good sight distance and is not in the traffic weaving area, there is substantial evidence in the Record from persons who have experience in negotiating Highway 62 as to its dangerous and hazardous condition at the site in question.

4.5.3.18 The Board finds that the property owner's own estimates are that the number of truck trips per day from the site would range from 6 to as many as 30<sup>71</sup>, with the higher truck traffic rates occurring during the summer building season. The Board finds that the summer building season is the same time that Jackson County experiences high tourist traffic on the Rogue-Umpqua Scenic Byway.

4.5.3.19 The Board finds that the increased truck traffic resulting from this proposed operation will increase the risk of traffic fatalities on Highway 62 in this area. Safety concerns have been raised by numerous residents. Fully loaded trucks will be entering Highway 62 which has a posted speed limit of 55 miles per hour. Highway 62 already contains high traffic volumes and as oral testimony indicates there have already been a high number of traffic accidents on this section of the Highway. Slow moving and large aggregate trucks entering and leaving the Highway will increase the potential for injuries and fatalities caused by traffic accidents. The Board finds that the unwarranted increase in the potential of traffic fatalities is an unreasonable social impact.

4.5.3.20 The Board finds that the substantial testimony of C. W. Smith, a law enforcement official with significant background in traffic safety matters, demonstrates the hazards that will result from the aggregate truck traffic entering and exiting the highway at the McKenzie Family Trust property. The Board finds that Mr. Smith's<sup>72</sup> substantial experience in law enforcement and traffic accident investigation substantiates his testimony regarding the hazards which aggregate trucks entering and exiting Highway 62 at this location would create.

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<sup>70</sup> Based on the operating standards established in JCLDO 244.040(9).

<sup>71</sup> Remand Record, Exhibit 15, page 65.

<sup>72</sup> Remand Record, Exhibit 39, page 335.

4.5.3.21 The Board finds that Mr. Smith's maps<sup>73</sup> and demonstration of how traffic would be impacted by trucks exiting from the subject site and turning left on Highway 62 shows that there would be substantial adverse impacts to the operation of the highway in that area. Exhibit 34 is an aerial photograph of Highway 62 in the area which shows the traffic pattern for the area. The daily trip estimates from the McKenzie Family Trust aggregate operation range from eight trips per day to one trip every 12 minutes depending on the number of months of operation and the number of hours of operation per day. The aerial photo of Highway 62 and Mr. Smith's testimony show the dangers involved with having fully loaded trucks enter the highway at the proposed access road area.

4.5.3.22 The Board finds that the empirical data indicates that this is a dangerous stretch of highway. The intersection of Highway 62 and Butte Falls Highway is one of the hot spots for ODOT in terms of traffic accidents. Even though the proposed operation would meet ODOT's minimum requirements for allowing an access permit, the analysis does not end there. The empirical data on this section of highway clearly shows social impacts to the area which must be considered when determining whether to rezone the property to AR.

4.5.3.23 The Board finds that the traffic analysis done by Mr. Smith is not just based on the number of trips on Highway 62. It is a safety analysis based on the width of the road, site distances and road topography.

4.5.3.24 The Board finds that further evidence<sup>74</sup> of the traffic safety problems is found throughout the Record, noting that Highway 62 access is a concern because: 1) Loaded trucks will be attempting to merge into 55 mph (+) traffic from a full stop, at an uphill incline on the McKenzie Family Trust property. Those trucks turning north will slow northbound traffic, and those trucks turning south will need to cross at least two travel lanes moving at a high rate of speed; and, 2) Empty trucks will be slowing to a near stop to access the McKenzie Family Trust property at a 90-degree angle, in either a right turn movement, blocking at least one northbound lane, or a left turn movement, blocking the southbound lane and crossing the two northbound lanes.

4.5.3.25 The Board finds that there was substantial testimony from other residents in the area, relating their personal experiences in negotiating the portion of Highway 62 which will be affected by the proposed aggregate operation. The Board finds that traffic impact mitigation would be better addressed under the conditional use permit process.

4.5.3.26 The Board finds that the RDK<sup>75</sup> Engineering's analysis of the impacts of truck traffic entering the highway at the subject site deals more with

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<sup>73</sup> Remand Record, Exhibit 34, page 234.

<sup>74</sup> Packet #1, Exhibits 41, 44, 75, 139, 141, 145 & 248; Packet #2, Exhibits 14, 21, 27, 33, 36, 37, 42, 45, 47, 48, 64, 68, 70, 73, 78 & 81; and Remand Record, Exhibits 15, 16, 36, 41, 51, 56, 70, 79, 84 & 87.

<sup>75</sup> Remand Record, Exhibit 16, beginning at page 169, submitted by The McKenzie Family Trust and their agents.



capacities of the highway than with safety. Mr. Kortt is a traffic engineer whose background has been in analysis of street capacities and level of service. His expertise is not traffic safety. The Board finds that C. W. Smith's testimony on traffic safety is more reliable in this regard than is Mr. Kortt's.

4.5.3.27 The Board finds that evidence in the Record<sup>76</sup> by both neighboring property owners and persons with substantial qualifications have shown that the operation of the aggregate resource mining will be deleterious to the health of persons living in the Impact Area, who have asthma and other breathing problems. A number of persons put information in the Record concerning the health impacts of dust which would be generated by the proposed aggregate extraction operation. There are several letters in the Record<sup>77</sup> from doctors concerning both people and animals which indicate the effect of noise and dust on health.

4.5.3.28 The Board finds that Exhibit #30, a shaded relief base map noting tax lots, existing dwellings, and a three mile viewshed, identifies those properties which will view the proposed aggregate extraction operation. While all do not lie within the Impact Area, those that do will be impacted in one or more of the ways set forth above by the proposed aggregate extraction operation.

4.5.4 Social Consequences to Agriculture: The Commissioners have weighed conflicting evidence concerning the social consequences to agriculture.

4.5.4.1 The Board finds that a noise study, entitled "Animal Sensitivity to Noise"<sup>78</sup> conducted by John O. Sullivan, Ph.D., Department of Biology, Southern Oregon State University, shows the substantial adverse impact noise from the aggregate resource operation will have on the farm animals in the Impact Area.

4.5.4.2 The Board finds that substantial evidence and testimony were provided on the adverse impact noise would have on agricultural production in the area.<sup>79</sup>

4.5.5 Social Consequences to Aggregate: The Board finds that there are negligible, if any, social consequences to aggregate.

#### 4.6 Environmental Consequences Analysis

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<sup>76</sup> Packet #1, Exhibits 84 and 93; Packet #2, Exhibits 36 & 79, and the Remand Record, Exhibits 23, 31, 54 & 65.

<sup>77</sup> Packet #1, page 266, and Packet #2, pages 151 & 178.

<sup>78</sup> Remand Record, Exhibit 38, beginning at page 330.

<sup>79</sup> Packet #1, Exhibits 85, 89 & 93; Packet #2, Exhibits 31, 36, 43 & 58; and, Remand Record, Exhibits 38, 54, 65, 71, 77, 78 & 81.

4.6.1 The Board finds that an environmental consequences analysis is defined as the identification of the positive and negative environmental consequences that could result from a decision to allow, limit or prohibit a conflicting use.

4.6.2 The Board finds that the Environmental Consequences relate primarily to other Goal 5 Resources, including groundwater and water resources, wildlife habitat, fish habitat, and archaeological resources.

4.6.3 Environmental Consequences to Residences: The Board has reviewed conflicting testimony on the potential environmental consequences to residences.

4.6.3.1 The Board finds that the primary environmental consequence of this aggregate operation are impacts and degradation to wells and groundwater resources caused by blasting and increased groundwater used by the aggregate operation for dust control and environmental measures to reduce other aggregate extraction impacts.

4.6.3.1.1 The Board finds that evidence in the Record<sup>80</sup> raises serious questions about potential degradation of water quality by the increased use of existing, limited groundwater resources and potential pollution of Reese Creek and Murderers Gulch. In response, the McKenzie Family Trust<sup>81</sup> has stated that their aggregate extraction operation will not discharge water from these aggregate sites and they will operate under a Department of Environmental Quality (DEQ) Non-discharge Permit.

4.6.3.1.2 The Board finds that property owners within the Impact Area questioned the amount of water the McKenzie Family Trust would need to meet the various regulations to limit dust, require rock cleaning while crushing, loading and moving materials. The Board does not find credible evidence in the record on the water source(s) the McKenzie Family Trust will use in the proposed aggregate extraction operation.

4.6.3.1.3 The Board finds that the proposed aggregate operation plans to use groundwater to attempt to mitigate the increased dust to be generated. The area has experienced groundwater shortage problems in the past. The large amounts of groundwater to be used by the proposed aggregate operation may further exacerbate the water shortage for other agricultural and commercial operations.

4.6.3.1.4 The Board finds that many of these same residents questioned the potential for the blasting and other aggregate operation practices to reduce their water quantity or quality, indicating that water quantity is a long standing problem in this area, particularly during years of low rainfall. The Board finds that the McKenzie Family Trust has not resolved these

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<sup>80</sup> Packet #1, Exhibits 10, 38, 53, & 91; Packet #2, Exhibits 21, 27, 55, 58, 67, 73, 79 & 81; and Remand Record, Exhibits 49, 74 & 87.

<sup>81</sup> Remand Record, Exhibit 15, pages 76 & 77.

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questions to the Board's satisfaction, but rather has indicated that they will comply with state regulations, therefore there will not be a problem.

4.6.3.2 The Board finds that there is substantial evidence in the record of the negative environmental consequence to Wildlife Habitat.

4.6.3.2.1 The Board finds that there are several letters in the Record from John Thiebes, District Wildlife Biologist for the Oregon Department of Fish and Wildlife. Mr. Thiebes<sup>82</sup> initially recommended denial of a zone change for the subject property, noting that this area is designated as Especially Sensitive Wildlife Habitat, and is an important area for winter feeding as well as spring birthing for both black-tailed deer and Roosevelt elk. Mr. Thiebes' correspondence goes on to indicate that wildlife and their habitat may be protected if the following measures are implemented as part of the aggregate operation:

- Sites A & C have a seasonal closure from January 1 through March 31, loading and hauling of rock could be permitted during this time period;
- No approval be given for Pit D1 as this is critical deer winter range browse;
- Sites D2 and E have a seasonal closure from November 1 through March 31; and,
- Habitat improvement mitigation projects in the form of controlled burns be conducted on 130 or more acres.

4.6.3.2.2 The Board finds that Northwest Biological Consulting met with Mr. Thiebes and Dave Freel on the McKenzie Family Trust property, and identified the following mitigation options:

- Prescribed and controlled burns to create better habitat and reduce overall fire danger;
- Seasonal closure of Aggregate Pits A & C from December through March, and Pits D2 & E from November through April;
- Limited juvenile hunting program for deer and elk; and,
- High tolerance to animal damage on the property.

4.6.3.2.3 The Board finds that Dave Freel, agent for the McKenzie Family Trust, agreed<sup>83</sup> to a portion of two of the above recommendations. Specifically, Mr. Freel agreed to not blast or crush during December, January and February, but that he would continue to load and haul aggregate during that time period. This stipulation does not provide closure during March, as requested by ODF&W for Pits A & C, nor does it provide for closure during November and March, plus a limitation on loading and hauling, as requested by ODF&W, for Pits D2 & E. Mr. Freel did not

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<sup>82</sup> Packet #2, Exhibit 72.

<sup>83</sup> Packet #2, Exhibit 75.

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stipulate to habitat improvement during the 60 to 100 years this aggregate extraction operation would last. The Board finds that without these stipulations, the impact to wildlife habitat could be significant.

4.6.3.2.4 The Board finds that the McKenzie Family Trust agents<sup>84</sup> indicate that they will work with ODF&W to protect and ultimately rehabilitate Pits D2 & E with a habitat easement. Previous stipulations are not mentioned. The Board finds that, based on the record, extraction at Pits D2 & E will not start for approximately 50 years, leaving a significant period during which habitat will not be improved, and creating significant impacts on this especially sensitive habitat area.

4.6.3.2.5 The Board finds that there is substantial testimony<sup>85</sup> from residents in the Impact Area concerning the use of the McKenzie Family Trust property as well as the surrounding areas by elk, deer and other wildlife during the spring, summer and fall months, as well as the winter months. There is considerable testimony noting the existence of elk herds and other wildlife in the area of the proposed commercial aggregate operation.

4.6.3.2.6 The Board finds that testimony at the public hearings and evidence in the Record have shown that noise, dust and disturbance from an aggregate operation would have an adverse effect upon the wintering elk and deer herds as well as their spring birthing season. Surface mining activities would reduce available cover and forage of the site, increasing competition for the remaining cover and forage. Because the McKenzie Family Trust have not stipulated to complying fully with the ODF&W requirements, the Board can only conclude that the proposed aggregate extraction operations will have a significant negative affect on wildlife and their habitat.

4.6.3.3 The Board finds that the McKenzie Family Trust property drains generally in a southern direction toward Reese Creek, an important tributary to the Rogue River. Evidence in the Record identifies Reese Creek as an important winter steelhead spawning habitat, and that increased siltation in Reese Creek would negatively affect the quality of Reese Creek to support the winter steelhead, as well as salmon in the Rogue River.

4.6.3.4 The Board finds that evidence in the record identifies the McKenzie Family Trust property as an archaeological and therefore an historic site.

4.6.3.4.1 Kate Winthrop, PhD<sup>86</sup>, a professional archaeologist, testified that she is aware of archaeological sites in the vicinity of the McKenzie Family

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<sup>84</sup> Remand Record, Exhibit 15, at page 76.

<sup>85</sup> Packet #1, Exhibits 10, 12, 20, 22, 32, 36, 38, 56, 61 & 99; Packet #2, Exhibits 11, 14, 24, 26, 27, 29, 30, 31, 33, 35, 36, 45, 46, 60, 64, 68, 70, 72, 73, 74 & 75; and Remand Record, Exhibits 15, 36, 74, 79, 82 & 87.

<sup>86</sup> Packet #2, Exhibit 69.

Trust property. Dr. Winthrop requested that the property owner have archaeological surveys conducted on these Pits to document existing archaeological resources, and to establish measures for the protection or mitigation.

4.6.3.4.2 The Board finds that Dennis Martinez, representing the Takelma Intertribal Project, testified that given "the fact there's a stream and a lot of springs, some level ground, the most ecologically productive ecosystem - oak woodland - and the elk and deer population being what it is, there's a high probability of a[n archaeological] site." Mr. Martinez went on to recommend that professional judgement be obtained to review, document and catalogue the archaeological resources before aggregate extraction begins.

4.6.3.4.3 The Board finds that Dave Free<sup>87</sup> agreed to have archaeological studies on Pits A & C conducted prior to doing quarry work. However, more recently, the McKenzie Family Trust agents<sup>88</sup> indicated that, within the Jackson County Goal 5 Document, "there are no historical sites on or within 1,500 feet of the site."

4.6.3.4.4 The Board finds that without commitment to protect archaeological resources, the historic resource impact from aggregate exploration and extraction could be significant and would be irreversible.

#### 4.6.4 Environmental Consequences to Agriculture

4.6.4.1 The Board finds that concerns were raised by residents within the Impact Area that their agricultural water rights may be impacted either by reduction in water available for agriculture or increased silt in the water, reducing its quality and increasing the sedimentation in agricultural ponds, thereby decreasing the pond capacity.

4.6.4.2 The Board finds that the McKenzie Family Trust was not forthcoming in providing information on its water rights for the proposed aggregate operation. Water supply concerns raised through these hearings have not been addressed. The Board finds that the lack of information on the aggregate operation's water source(s) and water right(s) leaves the potential for significant, negative agricultural consequences unresolved.

4.6.5 Environmental Consequences to Aggregate: The Board finds that there are negligible, if any, environmental consequences to aggregate.

#### 4.7 Energy Consequences Analysis

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<sup>87</sup> Packet #1, Exhibit 88.

<sup>88</sup> Remand Record, Exhibit 15, at page 77.

4.7.1 The Board finds that an energy consequences analysis is defined as the identification of the positive and negative energy consequences that could result from a decision to allow, limit or prohibit a conflicting use.

4.7.2 Energy Consequences to Residences: The Board finds aggregate extraction will increase noise and dust, thereby forcing residents to close windows, and utilize air filtration and air conditioning systems to a greater extent. The Board finds that these systems will increase residential energy consumption and costs.

4.7.3 Energy Consequences to Agriculture: The Board finds that evidence has not been presented on the energy consequences to agriculture of the proposed aggregate extraction operation.

4.7.4 Energy Consequences to Aggregate:

4.7.4.1 The Board finds that energy consumption is necessary at any aggregate site because of fuel needed to run equipment, both on site and in transporting aggregate to project sites.

4.7.4.2 The Board finds that the record documents that currently there are more than adequate supplies of aggregate in the County and the north Jackson County area, which can meet the aggregate demands of this area.

4.7.4.3 The Board finds that any energy increase or decrease could be offset by increased or decreased production at an alternate site.

## SECTION 5. DEVELOP A PROGRAM TO ACHIEVE GOAL 5

### 5.1 ESEE Consequences of Fully Allowing Conflicting Uses

5.1.1 The Board finds that residences and agriculture are the primary conflicting uses. The Board finds that to fully allow these uses, the McKenzie Family Trust property should not be re-zoned to Aggregate Resource, and limitations should not be placed on the development of new conflicting uses.

#### 5.1.2 Economic Consequences

5.1.2.1 The Board finds that the protection of the surrounding conflicting noise sensitive uses may preclude or limit aggregate extraction activities on the McKenzie Family Trust property, thereby limiting the property owner's potential income.

5.1.2.2 The Board finds that the property owners in the Impact Area would maintain the assets they have developed in their residences.

5.1.2.3 The Board finds that the 69 vacant, resource zoned properties could potentially be developed, bringing to 227 the number of residences within this Impact Area.

5.1.2.4 The Board finds that the significant investment in both time and money, made by many individuals in their agricultural enterprises would continue to bear fruit not only for those individuals, but also for the County as a whole.

5.1.2.5 The Board finds that this is an agricultural area, with many developing farm uses. Along with residential development, agriculture would be allowed to expand, increasing the value of the residential and agricultural properties.

5.1.2.6 The Board finds that testimony and evidence in the record create doubt about the need for a new source of aggregate at this time and in this location. There is substantial evidence in the Record that there are substantial aggregate resource deposits throughout the County, including the north valley area.

5.1.2.7 Although the McKenzie Family Trust supplied information that these aggregate sites have 5.5 million cubic yards of available aggregate, worth \$8.3 million, the Board finds that evidence throughout the record questions the potential for this aggregate site to be profitable, given the distance and hauling charges for aggregate from the McKenzie Family Trust property to the developing Medford - Eagle Point areas.

5.1.2.8 The Board finds that the evidence in the Record shows that the economic value of the proposed resource site to Jackson County is inconsequential due to the existence of the other commercial aggregate operations in the vicinity of this resource site and in the County as a whole. The County can meet its obligation under periodic review simply by designating the site as a significant site. There is no evidence in the Record to indicate that the proposed sites are necessary to accommodate growth in the north end of the valley. There is no projection that substantial growth will occur in the area of the proposed operations. There are adequate supplies of aggregate resource materials available to serve the Shady Cove area. There are no major road projects proposed for the north end of the valley. The Record is full of testimony concerning the economic, social and environmental consequences of allowing the aggregate resource rezoning, and the evidence clearly indicates that the conflicting uses in the Impact Area should be protected.

5.1.2.9 Protecting the conflicting uses would preserve the economic value of the present agricultural and commercial uses, and maintain current property values. The proposed aggregate extraction would be precluded, however, future use could still occur. Evidence was submitted demonstrating that there is currently a more than adequate supply of aggregate for the County and for the area near the proposed site. The inability to use aggregate from the proposed site would have a negligible effect upon the County's economic climate. The only adverse economic effect would be the opportunity lost to the property owner and the few jobs the operation would generate.

5.1.3 Social Consequences

5.1.3.1 The Board finds that the social consequences of allowing the conflicting uses fully are minimal. The increased noise, viewshed destruction and decreased traffic safety would not occur, and the aesthetic value of this area would be maintained.

5.1.3.2 The Board finds that there are no social impacts to agriculture resulting from a decision to not protect these aggregate sites. The negative affects to agriculture will only occur if aggregate extraction takes place on the McKenzie Family Trust property.

5.1.3.3 The Board finds the record does not identify any social consequences of allowing the conflicting uses fully.

#### 5.1.4 Environmental Consequences

5.1.4.1 The Board finds that the environmental consequences associated with aggregate extraction will not be a consequence to either the residences and agriculture if this resource site is not protected. Although the McKenzie Family Trust could apply for a conditional use permit on Sites D2 and E, adequate environmental studies and mitigation measures would be required to ensure the aggregate extraction operation does not significantly impact water resources, fish and wildlife habitat, and archeological resources.

5.1.4.2 The Board finds that there will be no environmental consequences to this aggregate resource resulting from fully protecting the conflicting uses.

#### 5.1.5 Energy Consequences

5.1.5.1 The Board finds that the energy consequences to residences will not be realized if the conflicting uses are fully allowed. The need for increased air conditioning and filtration will not result, therefore increased energy for those mitigation measures will not be needed.

5.1.5.2 The Board finds that evidence in the Record shows that there are adequate aggregate resources in the developing Jackson County areas, as well as in the Upper Rogue area, therefore energy consequences will not result from a decision to fully protect the conflicting uses.

### 5.2 **ESEE Consequences of Limiting Conflicting Uses**

5.2.1 The Board finds that limiting the conflicting uses would include measures which limit residential and agricultural development within the Impact Area, while re-zoning the four aggregate pits to Aggregate Resource, thereby allowing aggregate extraction.

#### 5.2.2 Economic Consequences

5.2.2.1 The Board finds that evidence in the Record shows residences to be a noise sensitive use. Limiting future residential development within the Impact



Area will affect the value of the 12 vacant residentially zoned properties, and the 69 vacant resource zoned properties.

5.2.2.2 The Board finds that property values in the Impact Area will be decreased by as much as 30% with the introduction of aggregate extraction on the McKenzie Family Trust property.

5.2.2.3 The Board finds that limiting noise sensitive agricultural uses will devalue agriculture in the Echo Valley area specifically, and Jackson County as a whole, as noted in Section 4.4.3 of this Order.

5.2.2.4 The Board finds that limiting new conflicting uses in the Impact Area would not have economic consequences on the proposed aggregate sites.

**5.2.3 Social Consequences**

5.2.3.1 The Board finds that limiting the conflicting uses, residences and agriculture, while allowing aggregate extraction on the McKenzie Family Trust property, will result in decreased aesthetics and livability within the Impact Area.

5.2.3.2 The Board finds that evidence in the Record indicates that noise levels will increase, the viewshed will deteriorate, traffic will increase, and traffic safety will decrease if the aggregate pits are allowed to open on the McKenzie Family Trust property.

**5.2.4 Environmental Consequences**

5.2.4.1 The Board finds that evidence in the Record shows that aggregate extraction on the McKenzie Family Trust property will increase water demand, decrease groundwater, and may affect wells within the Impact Area.

5.2.4.2 The Board finds that evidence in the Record shows that this aggregate extraction will impact fish and wildlife habitat.

5.2.4.3 The Board finds that the McKenzie Family Trust aggregate operation will impact archaeological and historical resources.

**5.2.5 Energy Consequences**

5.2.5.1 The Board finds that allowing these aggregate pits to be excavated will increase residential energy use with the increased air conditioning and filtration needed to mitigate aggregate extraction impacts.

5.2.5.2 The Board finds that aggregate extraction activities, by the nature of that activity, will further increase energy consumption in the area

**5.3 ESEE Consequences of Prohibiting Conflicting Uses**

5.3.1 The Board finds that this alternative would prohibit any new conflicting uses, specifically agriculture and residences, while re-zoning the four aggregate sites as

Aggregate Resource, and allowing aggregate extraction under the Operating Standards in JCLDO Chapter 244.

5.3.2 Economic Consequences

5.3.2.1 The Board finds that prohibiting new residential development will significantly reduce the value of those properties to the current owners.

5.3.2.2 The Board finds that evidence in the record and testimony at the public hearings indicated that current residences could be devalued by as much as 30% with the proposed aggregate extraction.

5.3.2.3 The Board finds that evidence in the Record shows that agricultural products, specifically livestock, will be devalued with an aggregate operation in the vicinity.

5.3.3 Social Consequences

5.3.3.1 The Board finds that allowing aggregate extraction on the McKenzie Family Trust property will impact the 146 existing and approved residences with increased noise, decreased viewshed, increased traffic and decreased traffic safety.

5.3.3.2 The Board finds that aggregate extraction on the McKenzie Family Trust property will decrease the aesthetics and livability of the Echo Valley, as discussed in Section 4.5.3 of this Order.

5.3.3.3 Protecting the proposed aggregate use would result in substantial increases in noise, dust, vibration, and traffic.

5.3.3.4 A commercial aggregate operation will adversely impact the aesthetic values of neighboring properties in a significant manner.

5.3.3.5 The Board finds that single family dwellings are permitted throughout the Impact Area. The proposed aggregate operation would adversely affect single family dwellings well beyond the boundaries of the site. Increased noise and dust from blasting and crushing would travel throughout the Echo Valley area. Substantial increases in heavy truck traffic on Highway 62 would occur with development of the site. The proposed aggregate operation would create open pits which would visibly scar the landscape and which would be visible from throughout the area. The proposed aggregate operation plans to use large amounts of groundwater to reduce dust. Large scale water use from the proposed wells has the potential to lower existing well water levels in the area. The proposed aggregate operation would also substantially decrease property values.

5.3.4 Environmental Consequences

5.3.4.1 The Board finds that evidence in the Record shows that aggregate extraction on the McKenzie Family Trust property will increase water demand, decrease groundwater, and may affect wells within the Impact Area.

5.3.4.2 The Board finds that evidence in the Record shows that this aggregate extraction will impact fish and wildlife habitat.

5.3.4.3 The Board finds that the McKenzie Family Trust aggregate operation will impact archaeological and historical resources.

5.3.5 Energy Consequences

5.3.5.1 The Board finds that allowing these aggregate pits to be excavated will increase residential energy use with the increased air conditioning and filtration needed to mitigate aggregate extraction impacts.

5.3.5.2 The Board finds that aggregate extraction activities, by the nature of that activity, will further increase energy consumption in the area

**SECTION 6. PROGRAM TO MEET GOAL 5**

6.1 The Board finds that the aggregate resource on the McKenzie Family Trust property meets the definition of significant aggregate resource in the Jackson County Comprehensive Plan and Land Development Ordinance.

6.2 The Board finds that, as part of Periodic Review Task #1, the Board will update the Aggregate Sites Inventory to include Aggregate Pits A and C, once all the Periodic Review Aggregate ESEEs have been completed and acknowledged.

6.3 The Board finds, based on the conflicts analysis contained in Sections 4 and 5 of this Order, that the potential adverse effects of this aggregate operation are:

- 6.3.1 Increased noise;
- 6.3.2 Increased dust;
- 6.3.3 Increased traffic;
- 6.3.4 Decreased traffic safety;
- 6.3.5 Decreased viewshed;
- 6.3.6 Decreased property values;
- 6.3.7 Decreased agricultural income;
- 6.3.8 Decreased aesthetics;
- 6.3.9 Decreased livability;

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- 6.3.10 Decreased fish habitat;
- 6.3.11 Decreased wildlife habitat;
- 6.3.12 Decreased groundwater;
- 6.3.13 Decreased archaeological resources;
- 6.3.14 Impacts on historical resources;
- 6.3.15 Impacts on water resources; and,
- 6.3.16 Increased energy consumption.

6.4 The Board finds that mixing the tourist traffic on Highway 62, the Rogue-Umpqua Scenic Byway, with industrial (aggregate) traffic will decrease traffic safety on that highway.

6.5 The Board finds that the conflicts created by these adverse effects outweighs the value of opening a new aggregate operation near existing aggregate operations.

## **SECTION 7. RESPONSE TO DLCD REMAND**

7.1 "Jackson County failed to adequately define or describe the 'impact area'."

7.1.1 The Board finds that Section 3 of this Order, along with Exhibit 30 in the Remand Record, and Exhibit A attached to this Order, adequately define the Impact Area.

7.1.2 The Board finds that this Order describes and identifies the expanded Impact Area and conducts an ESEE Analysis based upon that Impact Area. A program to protect the aggregate and conflicting uses has been developed within Goal 5 criteria.

7.1.3 The Board finds that the Impact Area described in Section 3 of this Order, identified on Remand Record, Exhibit 30, and Exhibit A attached to this Order, and the ESEE Consequences Analysis in Sections 4 and 5 of this Order, the benefits of protecting the conflicting uses far outweigh the limited benefits of protecting the proposed aggregate site. The only benefits associated with allowing the proposed aggregate use are the economic gain to the property owner and the minor gains from associated economic activity. The benefits associated with protecting the conflicting uses fully include:

7.1.3.1 The economic benefits resulting from protecting agricultural and residential uses from harmful effects and protecting property values;

7.1.3.2 The social benefits resulting from protecting livability and aesthetics from noise, dust, vibration, pollution, traffic, and protecting scenic viewsheds;

7.1.3.3 The environmental benefits resulting from preventing pollution, protecting fish and wildlife habitat, and reducing traffic, noise, and dust.

**7.2 "Jackson County failed to acknowledge that impacts resulting from mining could be mitigated."**

7.2.1 The Board finds that some effects of an aggregate operation could be partially mitigated, however, all of the adverse impacts cannot be mitigated.

7.2.2 The Board finds that, as discussed in Sections 4 and 5 of this Order, the proposed aggregate use would have an adverse effect upon wildlife and the Especially Sensitive Habitat. Although ODF&W and a wildlife biologist from Northwest Biological Consulting proposed mitigation measures, the McKenzie Family Trust agents only agreed to partially comply with those suggestions. Seasonal closure would help mitigate some of the adverse effects. While seasonal closure would possibly allow use of the site during the winter and spring, habitat would still be taken out of use during the rest of the year. In addition, foraging areas would be removed for up to 100 years, thereby ensuring a significant impact on Wildlife habitat.

7.2.3 The Board finds that the aggregate operation can have significant effects on river water quality and fisheries habitat.

7.2.4 The Board finds that the noise and dust which would result from the proposed aggregate use would have an adverse economic, social and environmental effect on the conflicting uses. The property owner suggests that JCLDO 244.040(6)&(7) and DEQ regulations include restrictions on dust and noise that would mitigate the adverse effects. That noise and dust may be legally increased under County and DEQ regulations does not alter the fact that the proposed aggregate use will increase noise and dust substantially within the Impact Area. Merely meeting regulations within the Aggregate Resource District Operating Standards does not protect the conflicting uses from the increases in noise and dust. It is important to note that the conflicting uses by and large are existing legal uses.

7.2.5 The Board finds that increased traffic, including large, dangerous gravel trucks, would have adverse effects on traffic safety within the Impact Area. The estimate on numbers of trips per day range from eight trips per day to one trip every twelve minutes. The entry of gravel trucks at this location on Highway 62 would exacerbate an already dangerous stretch of road. Even though the road has additional capacity and ODOT has issued an access permit. The Board received expert testimony from C. W. Smith. The Board finds the increased traffic would nonetheless result in increased danger to residents, tourists and aggregate truck drivers alike. This adverse effect cannot be mitigated.

7.2.6 The Board finds that the proposed aggregate use would have substantial adverse effects upon ranching and breeding operations within the Impact Area. Noise, dust, and vibrations would affect livestock breeding, milk production, birthing and training. These effects cannot be mitigated.

7.2.7 The Board finds that the proposed aggregate operation would result in a substantial decrease in property values within the Impact Area. This effect cannot be mitigated.

7.2.8 The Board finds that the proposed aggregate operation would result in substantial adverse impacts to livability and aesthetics, including damage to viewshed, within the Impact Area. These effects cannot be mitigated.

7.2.9 The Board finds that attempts at mitigation of the adverse impacts associated with the proposed aggregate operations cannot be successful in protecting the conflicting uses.

7.2.10 The Board finds that in balancing the aggregate operation impacts and the conflicting uses, the decision weighs heavily in favor of fully protecting the conflicting uses, because the aggregate impacts cannot be mitigated.

**7.3 "Jackson County failed to sufficiently protect an identified Goal 5 aggregate resource."**

7.3.1 The Board finds that the ESEE Analysis, contained in Sections 4 and 5 of this Order, is followed by a program that implements statewide planning Goal 5 pursuant to OAR 660-16-010. The program may protect the resource site, allow conflicting uses fully, or limit conflicting uses while conserving or using the resource in a manner consistent with Goal 5. In this case, the Board concludes that the conflicting uses should be allowed fully. The ESEE Analysis demonstrates that the conflicting uses are of sufficient importance relative to the resource site to warrant full protection.

7.3.2 In making its determination, the Board recognizes that the number of conflicting uses in the Impact Area are uses allowed under the JCLDO. In addition, those uses are preexisting uses and will suffer severe social, environmental and economic adverse impacts if they are not protected.

7.3.3 The Board finds that the Goal 3, Agricultural Resources, reflect a significant investment of time and money by residents within the Impact Area. The Board finds that this agricultural investment would be significantly reduced if the aggregate zoning were approved forthwith.

7.3.4 The Board concludes that the most obvious differences between operating within an Aggregate Resource zone or under a Conditional Use Permit are that batch plant operations and blasting, relatively uncontrolled, are permitted in the Aggregate Resource District. However, these uses can be regulated as part of the conditional use permit process in the Exclusive Farm Use District.

7.3.5 The Board concludes that the Goal 3 uses outweigh the aggregate uses because there have already been considerable investments in the farming industry in horse breeding, goat breeding, goat milking and all of the different agricultural uses described in Sections 4 and 5 of this Order.

7.3.6 The Board concludes that the proposed aggregate site is in an area of extremely stable development. The aggregate sites which are being given priority for protection are those which will likely have increasing development surrounding them. Given there is no pressing need to protect the aggregate resource site, and

in view of the current lack of economic feasibility, protection of conflicting uses is warranted.

7.3.7 The Board concludes that these aggregate pits will be protected by:

7.3.7.1 Inclusion on the Jackson County Aggregate Sites Inventory; and,

7.3.7.2 Requiring the recordation of a Restrictive Covenant, acknowledging that the property is within the McKenzie Family Trust Impact Area, and may be subject to the noise, dust, traffic and other impacts which can result from the aggregate extraction on the McKenzie Family Trust property.

## SECTION 8. CONCLUSIONS

8.1 The Board concludes that it has received all information necessary to consider this remand.

8.2 The Board concludes that proper public notices have been given.

8.3 The Board concludes that the Impact Area of the McKenzie Family Trust aggregate operation is the adequately described and identified Section 3 and Exhibit A of this Order, and on Remand Record Exhibit 30.

8.4 The Board concludes that farm use, wildlife resources and single family dwellings are conflicting uses within the Impact Area.

8.5 The Board concludes that, based upon the ESEE Analysis of the adverse impacts of the proposed aggregate use on the conflicting uses and the conflicting uses on the proposed aggregate use, the benefits fully protecting the conflicting uses far out weigh the benefits of fully protecting or partially protecting the proposed aggregate resource use.

8.6 The Board concludes that the adverse effects of the proposed aggregate use on the conflicting uses cannot be mitigated.

8.7 The Board concludes that the conflicting uses should be fully protected.

8.8 The Board concludes that the ESEE Analysis is followed by a program that implements statewide planning Goal 5 pursuant to OAR 660-16-010. The program may protect the resource site, allow conflicting uses fully, or limit conflicting uses while conserving or using the resource in a manner consistent with Goal 5. In this case, the conflicting uses should be allowed fully. The ESEE Analysis demonstrates that the conflicting uses are of sufficient importance relative to the resource site to warrant full protection.

8.9 In making its determination, the Board recognizes that the number of conflicting uses in the Impact Area are uses allowed under the JCLDO. In addition, those uses are preexisting uses and will suffer severe social, environmental and economic adverse impacts if they are not protected.

8.10 The Board concludes that the most obvious difference between operating within an Aggregate Resource zone or under a Conditional Use Permit are that batch plant operations and blasting, relatively uncontrolled, are permitted in the Aggregate Resource District. However, these uses can be regulated as part of the conditional use permit process in the Exclusive Farm Use District.

8.11 The Board concludes that the Goal 3 uses outweigh the aggregate because there have already been considerable investments in the farming industry in horse breeding, goat breeding, goat milking and all of the different agricultural uses described in Sections 4 and 5 of this Order.

8.12 The Board concludes that the proposed aggregate site is in an area of extremely stable development. The aggregate sites which are being given priority for protection are those which will likely have increasing development surrounding them. Given there is no pressing need to protect the aggregate resource site, and in view of the current lack of economic feasibility, protection of conflicting uses is warranted.

**SECTION 9. DECISION**

9.1 Aggregate Pits D2 and E are already on the Jackson County Aggregate Sites Inventory, indicating that they are significant aggregate sites.

9.2 Aggregate Pits A and C should be placed on the Jackson County Aggregate Sites Inventory when that map is updated at the end of Periodic Review.

9.3 The conflicting uses shall be fully protected, however all new residential permits shall be preceded by the recordation of a Restrictive Covenant, acknowledging that the property is within the McKenzie Family Trust Impact Area, and may be subject to the noise, dust, traffic and other impacts which can result from the aggregate extraction on the McKenzie Family Trust property.

9.4 Based upon the foregoing Sections 1 through 8, the re-zoning of the aggregate pits from Exclusive Farm Use (EFU) to Aggregate Resource (AR) is **DENIED**.

DATED this 21st day of November, 2001, at Medford, Oregon.

**JACKSON COUNTY BOARD OF COMMISSIONERS**

  
\_\_\_\_\_  
Sue Kupillas, Chair

  
\_\_\_\_\_  
Ric Holt, Vice-Chair

  
\_\_\_\_\_  
Jack Walker, Commissioner



ATTEST:

  
Recording Secretary

Attachments:

- Exhibit A - Impact Area
- Exhibit B - Impact Area Residential Development
- Exhibit C - Impact Area Farms

This order represents the Board of Commissioner's final decision on Work Task #14. Pursuant to State law, Jackson County will notify all persons who participated in the hearings, either in writing or orally, or persons who have requested notice on Work Task #14, who will then have 21 days from the date the County's notice is mailed to raise an objection with the Department of Land Conservation and Development (DLCD) if they believe the County did not satisfactorily complete the work task or the work task does not comply with the Statewide Planning Goals. This decision is being mailed on December 04, 2001. To file an objection with DLCD, you **must** do three things. 1) Submit a written objection to Task #14, to Doug White, DLCD, 635 Capitol Street N.E., Suite #200, Salem, Oregon 97301-2540. DLCD must receive the objection **within 21 days** of the date the notice is mailed. 2) Send a copy of that objection to Jackson County Roads, Parks and Planning Services, 10 South Oakdale, Room 100, Medford, Oregon 97501. 3) In your objection, show how you participated in the County's periodic review either by speaking at a public meeting or by sending written comments about the work task; and, explain your complaint about the work task, and recommend a specific change to the work task that would resolve your objection. If you have questions about DLCD's review of this work task, call Doug White at 1-503-373-0050.

If your disagreement concerns issues of the County's decision that do not involve periodic review and the Statewide Planning Goals or are outside the jurisdiction of the Land Conservation and Development Commission (LCDC), you may appeal to the Land Use Board of Appeals (LUBA), within 21 days of the date the notice is mailed. For appeal information, contact LUBA, 550 Capitol Street N.E., Suite 235, Salem, Oregon 97301-2552, 1-503-373-1265.

I:\ZONING\WP\Woerner\McKENZIE-FREEL\FINDINGS.3R.CLN.ORD.wpd

40-ORDER; File 1995-4-CPA-RM (ESEE)  
M<sup>c</sup>KENZIE FAMILY TRUST ESEE

- 352 -  
- 84 -

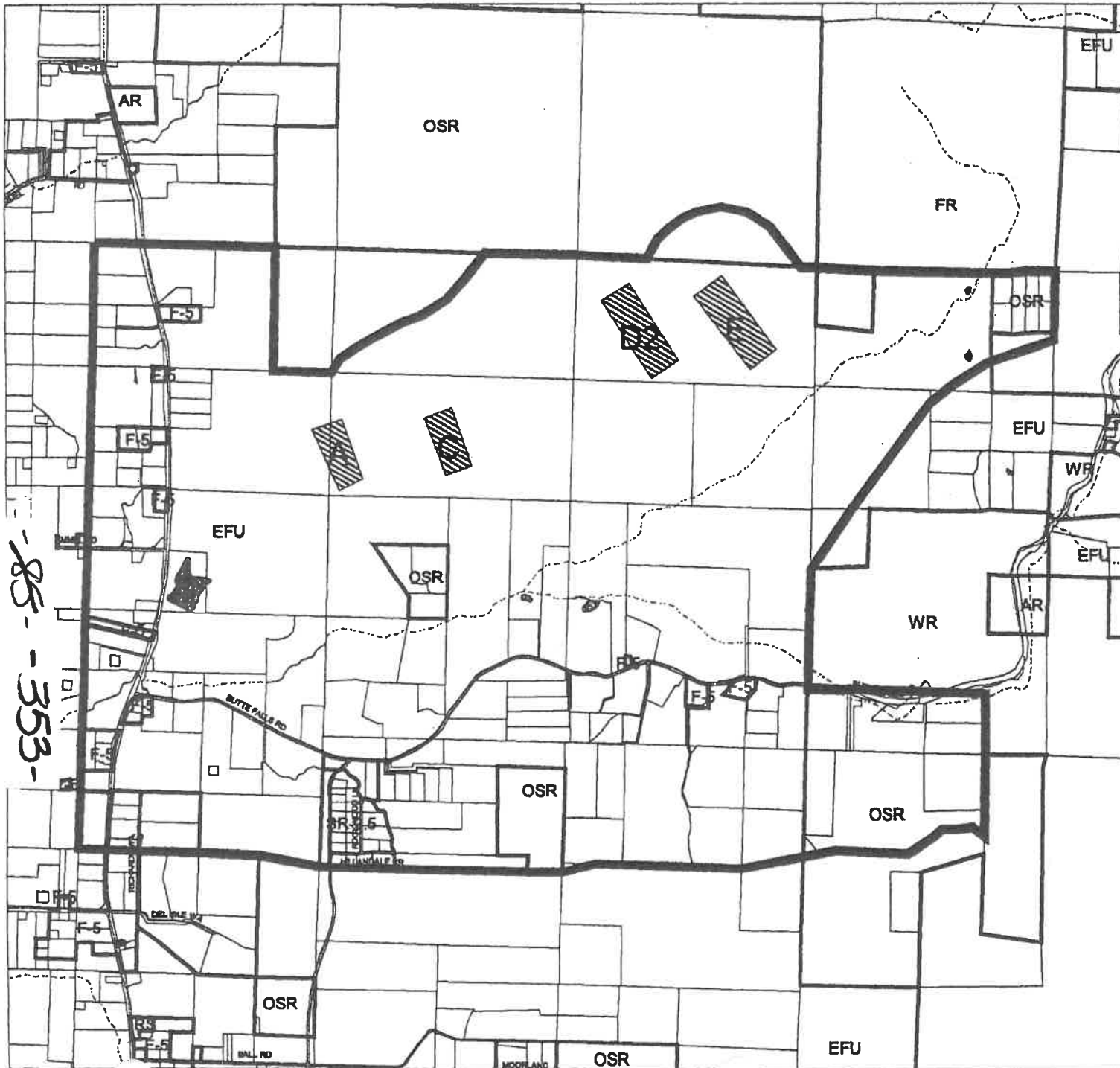





EXHIBIT "A"  
IMPACT AREA

McKENZIE/FREEL  
ESEE

-  Pits
-  Impact area
-  County Zoning

0 1000 2000 3000 Feet

1" = 3000 feet



This map is based on a digital database compiled by Jackson County from a variety of sources. Jackson County cannot accept responsibility for errors, omissions or positional accuracy. There are no warranties, expressed or implied.

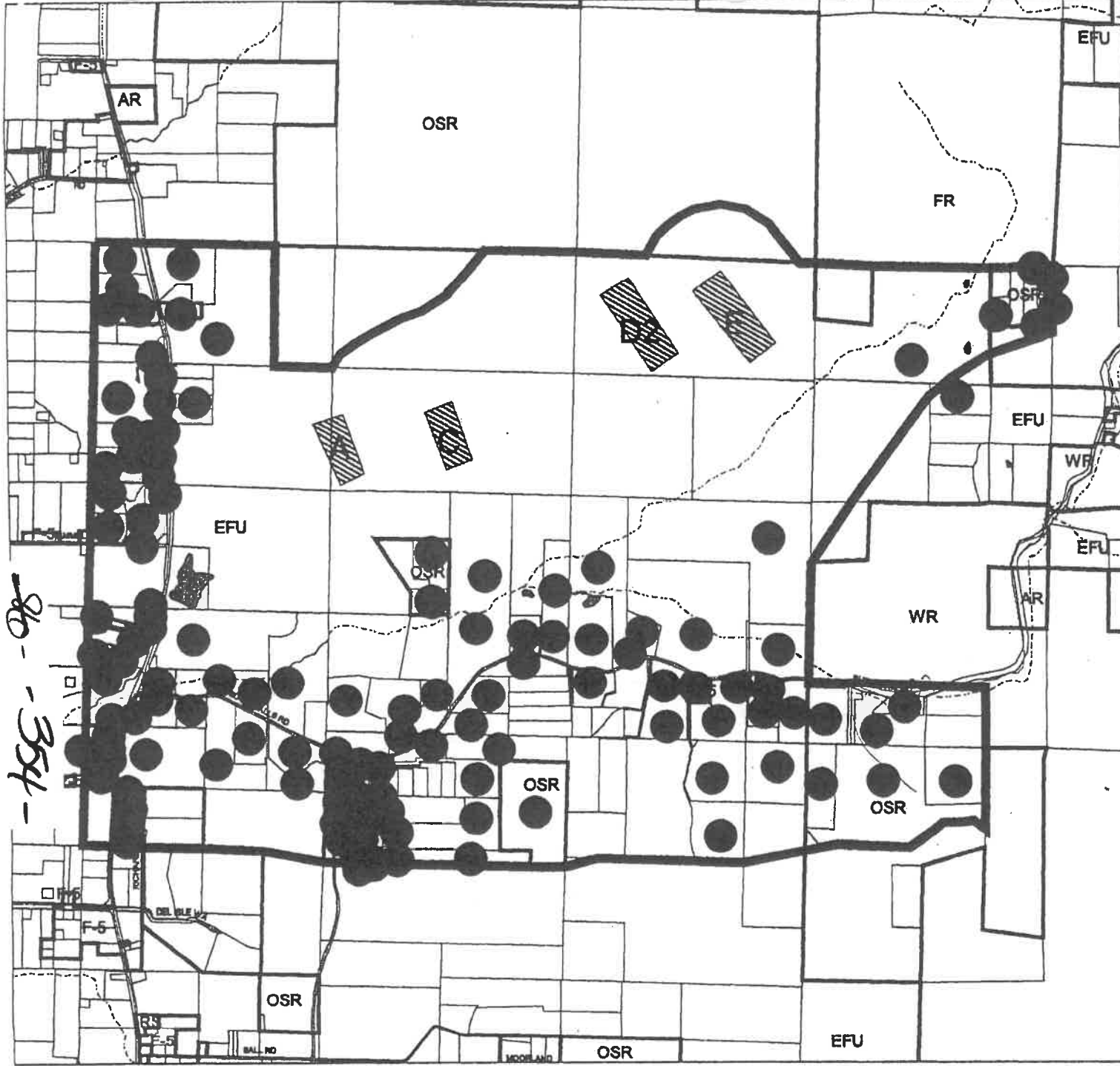
Plot date: Mar 7.

85-353-

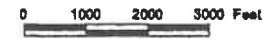


# EXHIBIT "B"

## IMPACT AREA - RESIDENTIAL DEVELOPMENT McKENZIE/FREEL ESEE



- Existing Dwelling
- Pits
- Impact Area
- County Zoning



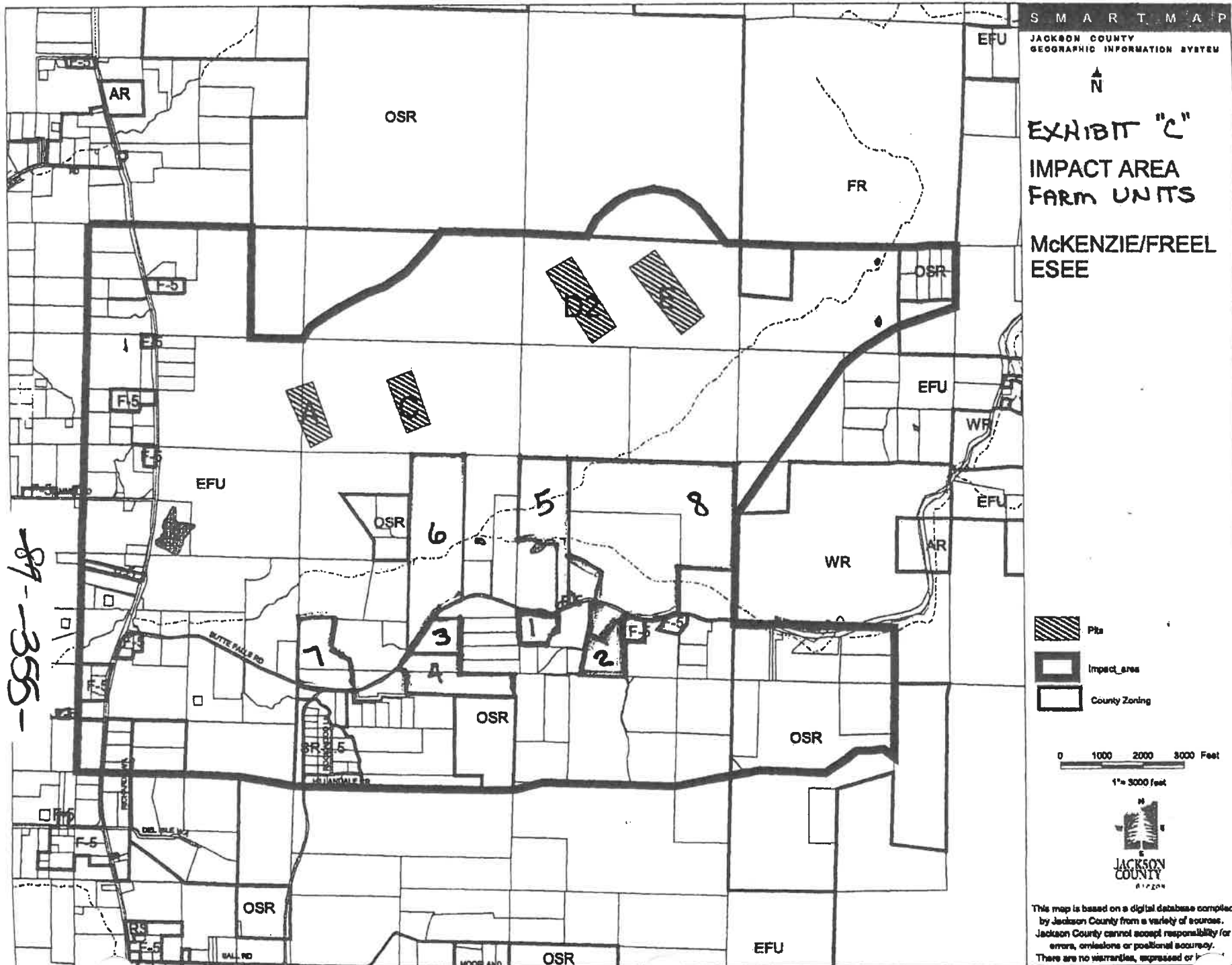
1" = 3000 feet



This map is based on a digital database compiled by Jackson County from a variety of sources. Jackson County cannot accept responsibility for errors, omissions or positional accuracy. There are no warranties, expressed or implied.

Plot date: Mar 7, 2001; n1




910 - 354 -



87-355-

EXHIBIT "C"  
 IMPACT AREA  
 FARM UNITS

MCKENZIE/FREEL  
 ESEE

-  Pits
-  Impact area
-  County Zoning

0 1000 2000 3000 Feet

1" = 3000 feet



This map is based on a digital database compiled by Jackson County from a variety of sources. Jackson County cannot accept responsibility for errors, omissions or positional accuracy. There are no warranties, expressed or implied.

Plot date: Ma

**PR NOTICE/ORDER #412-01**  
**File #1995-4-CPA-RM**  
**Parties/Witnesses/IP/Staff**  
**Mailed: 12-04-01**

File 1995-4-CPA-RM PR Notice

**PR NOTICE & COPY OF ORDER**  
**#412-01:**

File 1995-4-CPA-RM PR Notice  
(APPLICANT)  
DAVID C FREEL  
P O BOX 587  
SHADY COVE OR 97539

File 1995-4-CPA-RM PR Notice  
(ATTORNEY)  
ERIC STARK  
201 W MAIN ST STE B  
MEDFORD OR 97501

File 1995-4-CPA-RM PR Notice  
(ATTORNEY)  
JOHN HASSEN  
717 MURPHY RD  
MEDFORD OR 97504

File 1995-4-CPA-RM PR Notice  
**ADD'L PARTIES/WITNESSES/IP/  
AGENCIES/STAFF REC'D PR  
NOTICE ONLY:**

File 1995-4-CPA-RM PR Notice  
DANA ANTHONY  
515 MAZAMA  
CENTRAL POINT OR 97502

File 1995-4-CPA-RM PR Notice  
AGNES BAKER-PILGRIM  
369 SHAN CREEK RD  
GRANTS PASS OR 97527

File 1995-4-CPA-RM PR Notice  
JAMES BATEMAN  
3050 TABLE ROCK RD  
MEDFORD OR 97501

File 1995-4-CPA-RM PR Notice  
MARK BATEMAN  
2929 BUTTE FALLS HWY  
EAGLE POINT OR 97524

File 1995-4-CPA-RM PR Notice  
PETER/NEOMI BATEMAN  
2591 BUTTE FALLS HWY  
EAGLE POINT OR 97524

File 1995-4-CPA-RM PR Notice  
DIANE BEERS-BATEMAN  
1465 BUTTE FALLS HWY  
EAGLE POINT OR 97524

File 1995-4-CPA-RM PR Notice  
ROCKY BERGMAN  
NANCY BROPHY-STONER  
17181 HWY 62  
EAGLE POINT OR 97524

File 1995-4-CPA-RM PR Notice  
BOB/SHARSTIN BRANNOCK  
JESSE/EVAN BRANNOCK  
200 BUTTE FALLS HWY  
EAGLE POINT OR 97524

File 1995-4-CPA-RM PR Notice  
DAVID/DENISE/RACHELE BRIGGS  
1465 BUTTE FALLS HWY  
EAGLE POINT OR 97524

File 1995-4-CPA-RM PR Notice  
JOSEPH BURNS  
2344 BUTTE FALLS HWY  
EAGLE POINT OR 97524

File 1995-4-CPA-RM PR Notice  
TOM CALDWELL  
800 HWY 234  
EAGLE POINT OR 97524

File 1995-4-CPA-RM PR Notice  
FRED CUOZZO  
2561 BUTTE FALLS HWY  
EAGLE POINT OR 97524

File 1995-4-CPA-RM PR Notice  
CHUK & KIM DACK  
4036 REESE CREEK RD  
EAGLE POINT OR 97524

File 1995-4-CPA-RM PR Notice  
THE DAVIS FAMILY  
429 BUTTE FALLS HWY  
EAGLE POINT OR 97524

File 1995-4-CPA-RM PR Notice  
PATRICK DUFFY  
P O BOX 001  
EAGLE POINT OR 97524

File 1995-4-CPA-RM PR Notice  
JOHN DUNCAN  
214 HAMMEL RD  
EAGLE POINT OR 97524

File 1995-4-CPA-RM PR Notice  
DAVE ERICKSON  
626 BARTON RD  
EAGLE POINT OR 97524

File 1995-4-CPA-RM PR Notice  
DALE EVENSON  
174 CARLY CIR  
MEDFORD OR 97504

File 1995-4-CPA-RM PR Notice  
TIM FINCH  
1551 BUTTE FALLS HWY  
EAGLE POINT OR 97524

File 1995-4-CPA-RM PR Notice  
ROGER FREEBORN  
2299 BUTTE FALLS HWY  
EAGLE POINT OR 97524

File 1995-4-CPA-RM PR Notice  
TONY AND PAM FRIESEN  
1460 BUTTE FALLS HWY  
EAGLE POINT OR 97524

File 1995-4-CPA-RM PR Notice  
ELIZABETH FUSON  
1122 SPRING ST UNIT 211  
MEDFORD OR 97504

File 1995-4-CPA-RM PR Notice  
DIANE HEANEY  
2344 BUTTE FALLS HWY  
EAGLE POINT OR 97524

File 1995-4-CPA-RM PR Notice  
B G HICKS  
190 VISTA ST  
ASHLAND OR 97520

*-88-356-*

File 1995-4-CPA-RM PR Notice  
BRANDE HOLPITTS  
501 GLENN WAY  
CENTRAL POINT OR 97502

File 1995-4-CPA-RM PR Notice  
DEBBI HUENERS  
4958 BUTTE FALLS HWY  
EAGLE POINT OR 97524

File 1995-4-CPA-RM PR Notice  
DOUGLAS JACKSON  
17645 HWY 62  
EAGLE POINT OR 97524

File 1995-4-CPA-RM PR Notice  
PATTI JASON  
P O BOX 774  
EAGLE POINT OR 97524

File 1995-4-CPA-RM PR Notice  
PATTY JASON  
2425 HAMMEL RD  
EAGLE POINT OR 97524

File 1995-4-CPA-RM PR Notice  
JOHN JENSEN  
1888 S OBENCHAIN RD  
EAGLE POINT OR 97524

File 1995-4-CPA-RM PR Notice  
MARTIN JENSEN  
16265 SHILOH RD  
WHITE CITY OR 97503

File 1995-4-CPA-RM PR Notice  
PHILIP JOHNSON  
9500 BUTTE FALLS HWY  
EAGLE POINT OR 97524

File 1995-4-CPA-RM PR Notice  
VIOLET JOHNSON  
16005 HWY 62  
EAGLE POINT OR 97524

File 1995-4-CPA-RM PR Notice  
LORRY JUTEAU-DAVIS  
429 BUTTE FALLS HWY  
EAGLE POINT OR 97524

File 1995-4-CPA-RM PR Notice  
GLENDA KAISER  
19440 HWY 62  
EAGLE POINT OR 97524

File 1995-4-CPA-RM PR Notice  
JOHN/ARLEE KETTEN  
4262 REESE CREEK RD  
EAGLE POINT OR 97524

File 1995-4-CPA-RM PR Notice  
ELIZABETH KULA  
810 BUTTE FALLS HWY  
EAGLE POINT OR 97524

File 1995-4-CPA-RM PR Notice  
LOU ANNA LACY  
17099 HWY 62  
EAGLE POINT OR 97524

File 1995-4-CPA-RM PR Notice  
MIKE LA NIER  
P O BOX 4368  
MEDFORD OR 97501

File 1995-4-CPA-RM PR Notice  
JIM & TERRY LEFFMANN  
3110 BUTTE FALLS HWY  
EAGLE POINT OR 97524

File 1995-4-CPA-RM PR Notice  
THERESA JEAN LEONARDO  
1955 BUTTE FALLS HWY  
EAGLE POINT OR 97524

File 1995-4-CPA-RM PR Notice  
WILLIAM LISCUM  
460 TRAILS END LN  
EAGLE POINT OR 97524

File 1995-4-CPA-RM PR Notice  
LINDA LOMES  
3516 MICHAEL PARK  
MEDFORD OR 97504

File 1995-4-CPA-RM PR Notice  
MARGARET McGUIRE  
684 ROCKWOOD LN  
EAGLE POINT OR 97524

File 1995-4-CPA-RM PR Notice  
GREG AND CONNIE McUNE  
1400 BUTTE FALLS HWY  
EAGLE POINT OR 97524

File 1995-4-CPA-RM PR Notice  
ROBERT AND JOAN MERCIER  
16235 HWY 62  
EAGLE POINT OR 97524

File 1995-4-CPA-RM PR Notice  
WES MILTON  
3903 WALLINGFORD AVE N  
SEATTLE WA 98103

File 1995-4-CPA-RM PR Notice  
CRYSTAL S NACKERUD  
1080 BUTTE FALLS HWY  
EAGLE POINT OR 97524

File 1995-4-CPA-RM PR Notice  
PHILLIP/JOAN NEVIN  
151 HAMMEL RD  
EAGLE POINT OR 97524

File 1995-4-CPA-RM PR Notice  
DONNA NOLES  
1660 BUTTE FALLS HWY  
EAGLE POINT OR 97524

File 1995-4-CPA-RM PR Notice  
DAN O'CONNOR  
835 ALDER CREEK STE A  
MEDFORD OR 97504

File 1995-4-CPA-RM PR Notice  
RICK & RITA PITTS  
6775 BUTTE FALLS HWY  
EAGLE POINT OR 97524

File 1995-4-CPA-RM PR Notice  
ROBERT POWELL  
2644 BUTTE FALLS HWY  
EAGLE POINT OR 97524

File 1995-4-CPA-RM PR Notice  
LEO RADEMACHER  
1840 REESE CREEK RD  
EAGLE POINT OR 97524

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File 1995-4-CPA-RM PR Notice  
JOE AND APRIL RUELL  
696 ROCKWOOD LN  
EAGLE POINT OR 97524

File 1995-4-CPA-RM PR Notice  
LOUISE SCHERCK  
2561 BUTTE FALLS HWY  
EAGLE POINT OR 97524

File 1995-4-CPA-RM PR Notice  
ROBERT/DARLENE SCHMALTZ  
N269 TARR RD  
WAUPACA WI 54981-9438

File 1995-4-CPA-RM PR Notice  
LARRY & SANDRA SHARPE  
574 BUTTE FALLS HWY  
EAGLE POINT OR 97524

File 1995-4-CPA-RM PR Notice  
KENNETH SHAW  
1415 BUTTE FALLS HWY  
EAGLE POINT OR 97524

File 1995-4-CPA-RM PR Notice  
MIKE/LORA/STACY SIMS  
2744 BUTTE FALLS HWY  
EAGLE POINT OR 97524

File 1995-4-CPA-RM PR Notice  
DENNIS C W SMITH  
P O BOX 138  
EAGLE POINT OR 97524

File 1995-4-CPA-RM PR Notice  
FRANK SPRINGER  
10740 BUTTE FALLS HWY  
EAGLE POINT OR 97524

File 1995-4-CPA-RM PR Notice  
GEORGES ST LAURENT  
3660 BROPHY RD  
EAGLE POINT OR 97524

File 1995-4-CPA-RM PR Notice  
RICHARD STEVENS  
P O BOX 4368  
MEDFORD OR 97501

File 1995-4-CPA-RM PR Notice  
CRAIG STONE  
708 CARDLEY AVE  
MEDFORD OR 97504

File 1995-4-CPA-RM PR Notice  
BRIAN STORER  
5010 BUTTE FALLS HWY  
EAGLE POINT OR 97524

File 1995-4-CPA-RM PR Notice  
PEGGY STRONG  
1305 BUTTE FALLS HWY  
EAGLE POINT OR 97524

File 1995-4-CPA-RM PR Notice  
DAVID SURLS  
256 PEEBLER  
MEDFORD OR 97501

File 1995-4-CPA-RM PR Notice  
RITA WARREN  
10290 BUTTE FALLS HWY  
EAGLE POINT OR 97524

File 1995-4-CPA-RM PR Notice  
JOE & JUDY WEST  
6928 BLY MOUNTAIN CUTOFF RD  
BONANZA OR 97623

File 1995-4-CPA-RM PR Notice  
DANIEL WEYGAND  
4114 REESE CREEK RD  
EAGLE POINT OR 97524

File 1995-4-CPA-RM PR Notice  
BOB WILLIAMS  
15551 HWY 62  
EAGLE POINT OR 97524

File 1995-4-CPA-RM PR Notice  
KATHI WILLIAMS-LINVILLE  
GLENN LINVILLE  
810 BUTTE FALLS HWY  
EAGLE POINT OR 97524

File 1995-4-CPA-RM PR Notice  
ETHEL WOPSCHALL  
1450 FISH HATCHERY RD  
GRANTS PASS OR 97527

File 1995-4-CPA-RM PR Notice  
ROY WRIGHT  
706 CARDLEY AVE  
MEDFORD OR 97504

File 1995-4-CPA-RM PR Notice  
CHRISTINE & GRADY WYATT  
636 HILLANDALE CIR  
EAGLE POINT OR 97524

File 1995-4-CPA-RM PR Notice  
**AGENCIES:**

File 1995-4-CPA-RM PR Notice  
DOUG WHITE  
DLCD  
635 CAPITOL ST NE STE 200  
SALEM OR 97310

File 1995-4-CPA-RM PR Notice  
HAZEL BROWN  
EAGLE POINT IRRIGATION DIST  
P O BOX 157  
EAGLE POINT OR 97524

File 1995-4-CPA-RM PR Notice  
JOHN THIEBES  
FISH & WILDLIFE  
1495 E GREGORY RD  
CENTRAL POINT OR 97502

File 1995-4-CPA-RM PR Notice  
ROBERT MILLER  
FIRE DISTRICT #4  
P O BOX 996  
SHADY COVE OR 97539

File 1995-4-CPA-RM PR Notice  
ERIC NIEMEYER  
ROADS & PARKS

File 1995-4-CPA-RM PR Notice  
**INTERESTED PERSON -  
PERIODIC REVIEW**

File 1995-4-CPA-RM PR Notice  
BARBARA BEAN  
510 TERRACE  
ASHLAND OR 97520

-358-

90-

File 1995-4-CPA-RM PR Notice  
ART COOLIDGE  
14280 ANTIOCH RD  
WHITE CITY OR 97503

File 1995-4-CPA-RM PR Notice  
DAVID ERION  
1013 PINECREST TERR  
ASHLAND OR 97520

File 1995-4-CPA-RM PR Notice  
DIANA GARDENER  
3405 HILLCREST RD  
MEDFORD OR 97504

File 1995-4-CPA-RM PR Notice  
ANNA HIRST  
655 REITEN DR  
ASHLAND OR 97520

File 1995-4-CPA-RM PR Notice  
JOAN JENSEN  
1888 S OBENCHAIN RD  
EAGLE POINT OR 97524

File 1995-4-CPA-RM PR Notice  
RAMONA OSBURN  
1325 WAGON TRAIL DR  
JACKSONVILLE OR 97530

File 1995-4-CPA-RM PR Notice  
REIDER PETERSON  
367 MAPLE ST  
ASHLAND OR 97520

File 1995-4-CPA-RM PR Notice  
G T SMITH  
20703 KAHLER DR  
LEAVENWORTH WA 98826-9569

File 1995-4-CPA-RM PR Notice  
CHARLES SWINDELL  
1000 FRIENDS OF OREGON  
534 SW THIRD AVE #300  
PORTLAND OR 97204

File 1995-4-CPA-RM PR Notice  
CITY PLANNER  
CITY OF CENTRAL POINT  
155 S 2<sup>ND</sup> STREET  
CENTRAL POINT OR 97502

File 1995-4-CPA-RM PR Notice  
B LINCOLN  
CITY OF EAGLE POINT  
P O BOX 779  
EAGLE POINT OR 97524

File 1995-4-CPA-RM PR Notice  
DENNIS OLMSTEAD  
DOGAMI  
880 NE OREGON ST  
PORTLAND OR 97232

File 1995-4-CPA-RM PR Notice  
ALLEN THROOP  
DOGAMI  
229 BROADALBIN ST SW  
ALBANY OR 97321-2246

File 1995-4-CPA-RM PR Notice  
JCCL  
33 N CENTRAL #429  
MEDFORD OR 97501

File 1995-4-CPA-RM PR Notice  
R ANGSTROM  
OCAPA  
707 13<sup>TH</sup> ST SE  
SALEM OR 97310-0590

File 1995-4-CPA-RM PR Notice  
DON GRISSOM  
WHITE CITY CAC  
2933 S F LITTLE BUTTE CR RD  
EAGLE POINT OR 97524

File 1995-4-CPA-RM PR Notice  
JUDY BURNS  
W C COMMUNITY IMPROVEMENT  
P O BOX 2403  
WHITE CITY OR 97503

File 1995-4-CPA-RM PR Notice

**BoC PH INTERESTED PARTIES:**

File 1995-4-CPA-RM PR Notice  
MARY KAY MICHELSEN  
JCCL  
33 N CENTRAL #429  
MEDFORD OR 97501

File 1995-4-CPA-RM PR Notice

**STAFF:**

File 1995-4-CPA-RM PR Notice

STEVE RINKLE  
SR ASST COUNTY COUNSEL

File 1995-4-CPA-RM PR Notice  
ALWIN TURIEL  
PLANNING MANAGER

File 1995-4-CPA-RM PR Notice

RAUL WOERNER  
PLANNER

- 359 -

Handwritten signature



NOTARY PAGE

STATE OF OREGON )  
 )  
COUNTY OF JACKSON )

I, Patricia A. Guida, being first duly sworn, depose and say that on behalf of Jackson County Roads, Parks and PLANNING Services, I gave notice of the public hearing described in the attached notice of hearing by mailing a copy thereof by regular mail to each of the following named persons at their respective last known addresses, to wit: (as attached)

Each of said copies of the notice was enclosed in a sealed envelope addressed to the persons at the addresses above set forth, with postage thereon fully prepaid and was deposited in the post office at Medford, Oregon, on March 10, 2005, a day at least 20 days prior to the date of hearing set forth in said notice.

Patricia A. Guida  
Signature

Personally appeared before me this 10<sup>th</sup> day of March, 2005, the above named Patricia Guida, who acknowledged the foregoing affidavit to be her voluntary act and deed.



Marisa J. Harris  
Notary Public for Oregon  
My Commission Expires: 7-23-06

NOTICE OF PUBLIC HEARING SENT TO: AFFECTED AGENCIES, INTERESTED PERSONS, AND PROPERTY OWNERS AS DESCRIBED IN 2004 LDO SECTION 2.7.5(B)(2)(d).

NAME: MCKENZIE/FREEL

FILE NOS: 1995-4-CPA-RM1

-360-  
-99-

Board of County Commissioners ✓  
File No. 1995-4-CPA-RM1 Exhibit # 10  
Offered by: Staff  
Date: 3-16-2005 Received by: Pg

**1995-4-CPA-RM1(ESEE)  
STAFF REPORT TO  
JACKSON COUNTY BOARD OF COMMISSIONERS**

**Request:** This application requests amendment of the Jackson Comprehensive Plan Map designation from Agricultural land to Aggregate Resource Land and the Zoning Map from Exclusive Farm Use (EFU) to Aggregate Removal (AR) to allow mineral and aggregate extraction at four sites on the McKenzie Freel aggregate property. A Site Plan Review to allow aggregate operations is also requested in order to change the Zoning Map from Exclusive Farm Use (EFU) to Aggregate Removal (AR). This matter is part of Task #14 of Jackson County's Periodic Review.

**Location:** The application location consists of four separate aggregate removal extraction areas (totaling approximately 117 acres) and an internal truck path (connecting the sites with Highway 62) on portions of property described as Township 35 South, Range 1 West, Section 1, Tax Lots 100 and 200; Township 35 South, Range 1 West, Section 2, Tax Lots 100 and 200; Township 35 South, Range 1 West, Section 3, Tax Lots 100 and 1200; Township 35 South, Range 1 West, Section 10, Tax Lots 100 and 502; and Township 35 South, Range 1 West, Section 11, Tax Lot 300. The property ownership, the four gravel extraction sites (site A consisting of 20 acres; site C consisting of 18 acres; site D2 consisting of 38 acres and site E consisting of 41 acres), and the connecting internal truck path are set forth in Map 1 that is incorporated by reference herein. The property is commonly known as the McKenzie Freel aggregate property and is generally located east of Highway 62 and north of Butte Falls Highway.

**Property Owners:** Lawrence N. McKenzie and Kathleen L. McKenzie, Co-Trustees of the McKenzie Community Property Trust; Charles D. Freel, Trustee of the Charles D. Freel Trust; Charles D. Freel, Jeanne M. Freel, Lawrence N. McKenzie and Kathleen L. McKenzie.

**Procedural History:** In the spring of 1994, DLCD authorized Jackson County's periodic work program which included more than 20 tasks. One of those tasks, Task #14, included the evaluation of eight potential resource sites under the existing administrative rule for Goal 5 resources, OAR 660, Division 16. The McKenzie Freel aggregate property contained four of the potential aggregate resource sites to be evaluated as part of Work Task #14. After public hearings on May 25 and June 5, 1995, the Jackson County Planning Commission determined, on June 22, 1995, that sites A, C, D2 and E of the McKenzie Freel aggregate property were significant under the Division 16 rules, but recommended that the property not be rezoned as an aggregate resource because of adverse effects on conflicting uses. The Jackson County Board of Commissioners held a public hearing on August 29, 1995, made a site visit on September 29, 1995, and on October 12, 1995 determined to add sites A, C, D2 and E of the McKenzie Freel aggregate property to the Jackson County aggregate site's inventory of significant resources, but not allow aggregate resource extraction nor the change to aggregate resource zoning because of adverse effects on conflicting uses. The Jackson County Board of Commissioners signed Order #460-95 on December 21, 1995 denying the zone change to Aggregate Resource on portions of the McKenzie Freel aggregate resource property and fully allowed the conflicting uses, a "3B" decision under OAR 660-0016-0010. As part of periodic review, the property owners timely filed an objection with DLCD in January 1996. After analysis and deliberation, DLCD remanded Jackson County's decision (Remand #1) finding that the county had failed to adequately describe the impact area to be affected by mining aggregate resources, that the county had failed to acknowledge the impacts resulting from mining could be mitigated, and that the county had failed to sufficiently protect an identified Goal 5 resource.

Board of County Commissioners

File No. 1995-4-CPA-RM1 Exhibit # 96

Offered by: STAFF

Date: 12-30-05 Received by: HAC

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After Remand #1, Jackson County Board of Commissioners held an additional public hearing on November 3, 1999 to consider additional public input on the matter. Additional hearings were held in January and February 2000. On November 21, 2001, Jackson County Board of Commissioners concluded that aggregate sites D2 and E on the McKenzie Freel aggregate property were already on the Jackson County Aggregate Site Inventory and that aggregate sites A and C on the McKenzie Freel aggregate property should be placed on the same inventory. The Jackson County Board of Commissioners again denied the requested change to Aggregate Resource zoning based on the Board's determination, at that time, to allow conflicting uses fully and to not protect the mineral and aggregate resource. The county's second decision was again a "3B" decision under OAR 660-016-0010. The county's negative decision was made final through Order #412-01 signed on November 21, 2001. In December 2001, Jackson County submitted Order #412-01 to DLCD as evidence it had completed Periodic Review Work Task #14 related to aggregate resources. Owners of the McKenzie Freel aggregate property timely filed objections to the county's Order and Periodic Review Work Task response with DLCD.

After review of the county's Order, DLCD, on June 3, 2002, issued a remand order, Order No. 00140, (Remand #2) to Jackson County. In sum, nearly all of the McKenzie Freel objections were upheld by DLCD. The upheld objections included the following: that Jackson County failed to properly delineate the impact area, that Jackson County failed to properly determine that "conflicting uses" could be minimized or mitigated, and that the county's determination of the impact area and the county's decision to allow conflicting uses fully (the "3B" decision) rather than to limit conflicting uses (a "3C" decision) was not supported by substantial evidence. In its conclusion to Remand Order #2, DLCD stated: "Based on the record, the county has not provided substantial evidence to support its periodic review decision to deny a zone change and protection under Statewide Planning Goal 5 for the four significant McKenzie Family Trust/David Freel aggregate sites." DLCD ordered Jackson County to revisit its decision and withheld approval of Periodic Review Work Task #14. Opponents of the mineral and aggregate resource site filed exceptions to DLCD's Remand Order #2 to LCDC. After a public hearing, LCDC fully affirmed DLCD's Remand Order #2 (LCDC #02-WKTASK-001430). Opponents of the McKenzie Freel aggregate resource sites appealed LCDC's final decision to the Oregon Court of Appeals (CA A119831) arguing that the county, not DLCD or LCDC, had full authority to interpret the facts under the periodic review statute. On August 25, 2004, the Court of Appeals rejected the opponents' position and affirmed LCDC's decision in all respects without opinion. Periodic Review Goal 5 Work Task #14 was subsequently remanded to Jackson County by formal letter from DLCD establishing a new submittal date for Jackson County to address the requirements of Remand #2.

Subsequent to Remand #2, Jackson County held numerous public hearings on the issue, including March 30, April 27, May 4 and May 11, 2005. Opponents raised various procedural issues and additional public hearings were held by the Jackson County Board of Commissioners on June 15, 2005. Further procedural issues were raised by the opponents. To assure that all parties had sufficient time to address all issues, the Jackson County Board of Commissioners provided substantial time for all parties to respond in writing as part of the public hearing process, allowing opponents' responses through August 3, 2005, and providing the applicants an additional seven days (until August 10, 2005) to submit additional material in writing. The final public hearing was held on September 17, 2005 at which time the Jackson County Board of Commissioners accepted no new additional information, and deliberated on the matter. Based on the thorough weighing of all evidence submitted and guidance provided by DLCD, the Jackson County Board of Commissioners, through these findings, approves the

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requested zone change to protect the four resource sites (A, C, D2 and E) on the McKenzie Freel aggregate property and further, as set forth in this findings document, limits conflicting uses to confirm protection of these resource sites in compliance with OAR 660, Division 16.

An additional procedural matter arose as part of the county's determination subsequent to Remand #2. Commissioner Dennis C.W. Smith was elected to the Jackson County Board of Commissioners in November 2004. Prior to his election, he had been an opponent of the McKenzie Freel application and had testified against the application. As an elected member of the Board of Commissioners, Mr. Smith would be required to participate in a matter that he had previously opposed in the public hearing process. The applicant and applicant's counsel were informed of this development by the County Counsel's office. The applicant, through its attorney on the record at a public hearing, formally waived any objection to Commissioner's Smith participation as a decision maker in the county proceedings subsequent to Remand #2.

At the second hearing subsequent to Remand #2 on April 27, 2005, the opponents objected to the continuing participation of Commissioner Smith and filed a formal motion to disqualify Commissioner Smith from further involvement in the case. As reflected in the record, Commissioner Smith, at each subsequent public hearing, explained the circumstances of his participation in the prior hearings in this matter, explained that he could impartially review the evidence, and further explained that, in an abundance of caution, he would attend the hearings, listen to the evidence, but not participate in the decision unless required to do so under the "rule of necessity." Commissioner Smith attended all public hearings subsequent to Remand #2 but abstained from voting or participation in any portion of the hearings. As reflected in our decision, Commissioner Smith abstained from the final decision and, because the other two commissioners voted for approval, his participation was not required under the "rule of necessity."

Commissioner Walker has experienced some health issues that made it difficult for him to attend all of the public hearings. However, as Commissioner Walker indicated on the record, he fully reviewed all of the evidence submitted, listened to the tapes of the hearings that he did not attend, participated in a hearing via telephone, and watched portions of the hearings that he did not attend on television.

**Applicable Criteria:** Consistent with posting, mail and published notice, Jackson County publicly announced and established the following applicable approval criteria for this matter:

1. The Oregon Administrative Rules (OAR 660, Division 16)
2. Jackson County Comprehensive Plan, Map Designations Element-Aggregate Resources Land; Aggregate and Mineral Resources Element Policies 1, 2, 3 and 4; Transportation System Plan Policies 4.1.4, 4.3.1, 4.3.3 and 4.3.4; and
3. Jackson County Land Development Ordinance, Sections 3.7.3(C), 4.4.5 and 4.4.8.

No person or party objected to these listed criteria nor did any person or party provide any additional criteria which the person or party claimed to be applicable to this decision. The Jackson County Board of Commissioners must find that the information before the Board demonstrates the request satisfies all the approval criteria that apply to the matter as more specifically described below.

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**I. OREGON ADMINISTRATIVE RULES - OAR 660, DIVISION 16**

**A. Criterion: 660-016-0000, Inventory Goal 5 Resources**

Division 16 of the Oregon Administrative Rules requires Jackson County to inventory Goal 5 resources. The inventory process for statewide planning Goal 5 begins with the collection of available data from as many sources as possible. The inventory of a Goal 5 resource must include a determination of the location, quality and quantity of each resource site, including a description or map of the boundaries, and the impact area to be affected, if different. Determination of quality requires some consideration of the resource site's relative value and determination of quantity requires consideration of the relative abundance of the resource. Jackson County has twice concluded (in 1995 and again in 2001) that sites A, C, D2 and E of the McKenzie Freel aggregate property are significant Goal 5 mineral and aggregate resources, and that the four sites should be placed on the Jackson County Aggregate Sites Inventory. The county's findings in this regard have been twice affirmed by DLCD, and during Remand #2, were affirmed by LCDC and the Oregon Court of Appeals. No party has raised objection to the determination of the location of the resource other than to express concern that the areas indicated in the most recent site map have "migrated" from what was originally proposed in 1995. No objection was made to the location of the pits as defined in the maps before the Board at the time of prior consideration or when the matter was before DLCD, LCDC or the Court of Appeals. LCDC, as affirmed by the Court of Appeals, did not articulate any issue with regard to the location of the four quarry sites A, C, D2 and E. As such, staff finds that the prior work with regard to the location of the sites has been accepted and approved by DLCD and LCDC, has not been objected to by any party, and that the location of the sites is materially the same as prior maps, the county staff reports and the maps accompanying the prior decisions of the county. In determining the location of the sites, a description of the areas has been included showing site A being 20 acres, site C being 18 acres, site D2 being 38 acres and site E being 41 acres. This is consistent with how the sites were originally proposed by the applicant in 1995 (staff notes that site D1 was dropped from the application and is no longer being considered). The location of the sites is shown on topographic maps and has been shown on such maps since 1995. The Aggregate Resource Report provided by consulting engineering geologist B.G. Hicks, identifies each of the four sites (A, C, D2 and E) and shows photographic evidence of their general locations, shows map evidence of their general locations, and describes the size of each of the four sites consistent with the more detailed maps currently before the Board prepared in July 2001 by Whetstone Engineering. Importantly, staff finds that the location of each of the four sites is contained in staff reports and prior county decision documents, and that the location of each of the four sites (A, C, D2 and E) is substantially similar to, and consistent with, the mapped locations of the four sites (A, C, D2 and E) in prior county documents. Staff finds that all this evidence is sufficient to allow us to properly determine the location of the mineral and aggregate resource on the McKenzie Freel aggregate property for the purposes of establishing a Goal 5 inventory. To assure the accurate location of the sites, a condition of approval will require a survey of the sites. Such survey shall be provided to the County Planning Department and shall be consistent with the size and location of site A (20 acres), site C (18 acres), site D2 (38 acres), and site E (41 acres) shown on the site plans we presently have before the Board.

The opponents have provided the testimony of a surveyor to contend that there is a small difference between the properties as initially submitted in 1995 and properties as they appear on the site plans we have before us today. Staff finds that this does not serve to call into question the location of the mineral and aggregate resource on the McKenzie Freel aggregate

property. The opponent's information confirms that the sites are, and have always been, in substantially the same location on the McKenzie Freel aggregate property. Staff further finds that sufficient safeguards are in place and verify the size of each of the four sites and their actual location consistent with the requirements of this approval criterion and consistent with how the sites were initially presented and have been reviewed through a 10-year process. As discussed below, the Board has assessed an impact area for each of the four mineral and aggregate sites (A, C, D2 and E), as well as an impact area for the haul road that connects the sites to Highway 62. Staff incorporates herein the findings under criteria I(B), I(C) and I(D) below in this regard. Based on the facts before the Board and above findings, staff concludes the location is properly established for each of the four mineral and aggregate resource sites (A, C, D2 and E) on the McKenzie Freel aggregate property.

With regard to quality and quantity, staff finds that the determination of significance for McKenzie Freel aggregate property sites (A, C, D2 and E) in both 1995 and 2001, included an assessment of quality and quantity of the mineral and aggregate resource. No party has objected to the determination that all four of the sites are significant and that DLCDC, LCDC and the Oregon Court of Appeals did not remand the matter for a redetermination of the findings that all four sites are significant and appropriately placed on the Jackson County Aggregate Site Inventory based both on the quality and quantity of the resource. Accordingly, staff finds that determination of the significance of sites A, C, D2, and E has been decided previously and does not need to be reviewed again. However, in the event further analysis would be deemed necessary, staff finds the record contains the report and application information of B.G. Hicks, a registered engineering geologist. Mr. Hicks' report addresses the quality and quantity of mineral and aggregate resource on each of the four sites (A, C, D2 and E) on the McKenzie Freel aggregate property. Mr. Hicks is the only registered professional to provide information regarding quality and quantity and that no contrary professional information about quality or quantity was provided. Consistent with Mr. Hicks' report, the proposed aggregate resource areas on the McKenzie Freel property are located in areas that are indicative of underlying hard, durable and high-strength rock. The zone in which the four aggregate resource sites are located produces excellent quality base course rock used throughout the Bear Creek and Rogue River Valleys. The rock at the four sites was examined and tested and is of the same quality as other volcanic rock used throughout the Bear Creek/Rogue Valleys for base course rock and aggregate (concrete and asphaltic uses). The rock in areas A, C, D2 and E fully complies with the Los Angeles rattler test (an aggressive test which yields a value that approximates the relative durability and soundness of the rock resource). This test is an ODOT specification for construction grade aggregate material as required for a determination of significance in the Jackson County Aggregate and Mineral Resources Element. The estimated volume of rock for area A is approximately 1.4 million cubic yards, area C is approximately 1.2 million cubic yards, area D2 is approximately 912,000 cubic yards, and area E is approximately 1.9 million cubic yards. The Aggregate and Mineral Resources Element requires that for a determination of significance, the resource must possess a minimum of 100,000 cubic yards. Staff finds that each of the sites (A, C, D2 and E) contains a significant quantity of rock and that the quantity at each site is greater than 100,000 cubic yards. The rock is of the same quality relative to other volcanic rock used throughout the Jackson County area. The testimony of several individuals, including Ms. Mary Savage, indicated that good rock for construction and building purposes in Jackson County has become less abundant and new sources need to be protected. The rock at each of the four sites is of good quality (that is the same quality as other rock used throughout the county). Staff finds that the four separate sites, each with more than 100,000 cubic yards of available high quality material, is a significant Goal 5 mineral and aggregate resource within the county.

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Under OAR 660-016-0000(5), once the location of the resource and the quality and quantity of the resource has been determined, there are three options. Those options are: (1) not include the four sites on the county inventory; (2) delay the Goal 5 process, or (3) include the four sites on the county Aggregate Sites Inventory. In 1995 and again in 2001, the Board determined it was appropriate to include all four sites (A, C, D2 and E) of the McKenzie Freel aggregate property on the county's Aggregate Sites Inventory. As indicated above, no one has objected to this determination and staff finds that there is sufficient information available as to the location, quality and quantity of the four aggregate resource sites on the McKenzie Freel aggregate property. Staff finds that each is significant, and continues to believe that each is significant and important as a result of the review of the data and analysis throughout the Remand #2 process. The location of sites (A, C, D2 and E) as shown on attached Map 1, is consistent with the evidence considered in this proceeding and the maps that were prepared by Whetstone Engineering on July 2001. The mineral and aggregate resource at each site is of good quality, at least equal to the volcanic mineral and aggregate resources commonly used in the Jackson County area for base course rock and aggregate for concrete and asphalt. Staff further finds that each of the sites has more than 100,000 cubic yards of quality mineral and aggregate material. As such, the Board can conclude that both the quality and quantity of each of the four sites is significant and, consistent with prior decisions, all four sites (A, C, D2 and E) should be listed on the county's Aggregate Sites Inventory.

An argument has been made that the county does not have an Aggregate Sites Inventory. Whatever the merits of that argument, the Board is empowered under the statute and administration regulations to create an inventory. The county's inventory, whether it is presently in existence or whether it is created with this decision, should contain sites A, C, D2 and E of the McKenzie Freel aggregate property.

**B. Criterion: 660-016-0005, Identifying Conflicting Uses**

Once a site (or in this case, four sites) is included on the mineral and aggregate inventory, Jackson County must proceed through the remainder of the Goal 5, Division 16 process as required by both the Administrative Rules and the guidance provided by DLCD and LCDC. The next step in the analysis under OAR 660-016-0005 is to identify conflicts with the inventoried Goal 5 resource sites. Under this provision of the Administrative Rule, it is the responsibility of the Board to identify conflicts with the identified Goal 5 resource sites A, C, D2 and E on the McKenzie Freel aggregate property. The rule defines a conflicting use as one which, if allowed, could negatively impact a Goal 5 resource site. Since Jackson County last addressed this issue (November 2001) and the matter was remanded back to the county via DLCD's remand order (Remand #2 after the Court of Appeals' rejection of the opponents' appeal), an intervening legal case has been decided by the Oregon Court of Appeals which has a direct effect on how the county must identify conflicting uses. In November 2003, the Court of Appeals decided *Hegele v. Crook County*. In the *Hegele* case, the Court of Appeals interpreted OAR 660-016-0005 (related to the identification of conflicts) to provide that the local government may consider only other allowable uses that have a negative impact *on* the Goal 5 resource. Prior analysis for identifying conflicts was based on the idea that the Division 16 rule provided a "two-way" conflict analysis; that is, the conflicting use was deemed to be one which could either negatively impact the Goal 5 resource or one which could receive a negative impact from the Goal 5 use. This approach is clearly disallowed under the *Hegele* case and for the purposes of identifying conflicts, staff and the Board must identify only those allowable uses that present conflicts which could have an adverse effect on the Goal 5 resources (sites A, C, D2 and E).

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As suggested in the *Hegele* case, the opponents at various public hearings before the Board of Commissioners raised a variety of social protests and legal protests in an attempt to demonstrate that their existing or potential uses could adversely affect the four Goal 5 resource sites on the McKenzie Freel aggregate property. Some opponents testified that they would complain to regulatory agencies, would socially protest, and would use the court system to sue the operator. The opponents argued that these are negative impacts on the Goal 5 resource. Staff believes this line of argument generated by Hegele is unfortunate and is largely unpersuaded that these types of activities would have any meaningful adverse impact on any of the four Goal 5 resources on the McKenzie Freel aggregate property. Staff finds the operator has provided evidence, which is credible, that it can control noise, dust and other discharges from the site in compliance with regulatory standards and in this regard, that finding is incorporated under this criterion below as well as criteria I(D), Goal 6 below. Staff finds because the applicant can control discharges, such as noise, in compliance with regulatory standards, regulatory complaints, lawsuits or other social pressures would be largely ineffective and have little effect or impact on the Goal 5 resource and the operation of the Goal 5 resource. Staff finds that all businesses, including the mineral and aggregate business, must comply with regulatory standards and such businesses' compliance with the standards are subject to complaint and review processes through regulatory agencies (or the courts) that may be initiated by complainants. As such, regulatory compliance is a normal cost for any business, including a mineral and aggregate extraction business. Staff questions how threats of complaints and litigation can negatively affect the mineral and aggregate operation in a location where the operation has demonstrated that it may successfully meet regulatory requirements.

Staff has reviewed the record carefully and that with regard to noise, dust and other discharges, the proposed application can feasibly meet all regulatory requirements. These findings are incorporated from criteria I(B), I(C) and I(D) below. The logical progression of this analysis (following the conclusion that there will be no adverse effects from nearby uses on the four resources sites [A, C, D2 and E] because all regulatory standards can, and will, be met) would be that there are no conflicting uses that have been identified which would adversely or negatively impact the proposed four Goal 5 resource sites on the McKenzie Freel aggregate property. This logical progression seems somewhat forced given that a mineral and aggregate operation is a rural-based industrial-type operation that has more potential for conflict with surrounding uses than other passive Goal 5 resources, such as historic resources, scenic resources and the like. Mindful of the Court of Appeals' admonition in *Hegele* that the "two-way" approach may present little practical difference as compared to the strict analysis of impact "on" the Goal 5 resource, staff has reviewed carefully the issues that have been raised by the opponents, particularly noise. In this regard, staff finds while other alleged impacts such as dust and traffic are fully mitigated and do not rise to the level of a conflict, the possibility exists that notwithstanding the applicant's full ability to control noise effects within allowed regulatory standards, that complaints about noise could have a negative impact on the resource site by causing the applicant to spend dollars to defend regulatory or court-based complaints.

Staff believes, as demonstrated in this findings document, that the appropriate decision is to preserve the resource site. However, because of the potential for noise impacts, staff also believes it is appropriate to consider the existing (and potential) residential uses in the area as conflicting uses based on the possibility of noise complaints and, therefore, Jackson County is required to complete the impact area designation and the economic, social and environmental energy analysis of the consequences of locating the resource site on the McKenzie Freel aggregate property as provided in OAR 660-016-0005. Staff finds that the Division 16 Goal 5 process, as interpreted by the Court of Appeals in *Hegele*, is virtually unworkable but would be inappropriately implemented by the county without examination and

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weighing of these potential noise-based impacts. As such, it is assumed that complaints from residential-type uses "could" negatively impact the four protected resource sites through regulatory and legal channels if such an allowable use or potential use were to exist in an adjacent zoning district near the four approved Goal 5 sites.

As an initial point of departure for the analysis in identifying conflicting uses, it should be noted that the applicant has purposefully and appropriately located the resource sites (A, C, D2 and E) on portions of its property which allow operational effects to be largely buffered by the applicant's own property. Applicant has used east/west ridges and existing topographic features to the south to screen the proposed uses from properties to the west and to reduce noise to the west and south where virtually all of the potential conflicting residential uses are located. Applicant has also used the large size of its property to place the four resource sites in locations that provide a significant buffer area (in almost all cases at least 1,500 feet) on its own property. Staff finds that this allows for buffer space to reduce any negative effects of the proposed operations by using the applicant's own property as opposed to using the Goal 5 process to place impact areas predominantly on the property of others. Staff believes this is a sound approach to siting uses, such as mineral and aggregate extraction operations, that may have impacts that flow offsite.

Under the Division 16 Goal 5 process, the requirement is to set out an impact area to be affected, if that area is different from each of the four resource sites themselves. It is recognized that, in the past, the county has incorrectly established the impact area and that a significant portion of the DLCD's Remand #2 is related to the county's prior decisions with regard to the impact area. After careful review of the entire record and a thorough analysis of the guidance provided by DLCD in Remand #2, staff finds that county must reassess the prior work with regard to impact areas, reduce the size of the impact areas to more realistically reflect the extent of potential conflicts as provided in the evidentiary record, and provide individualized impact areas for each of the resource sites (A, C, D2, E and the connecting road) on the McKenzie Freel aggregate property.

As has been discussed above with regards to the *Hegele* case, the way the sites are located and their location on the interior of the McKenzie Freel aggregate property serve greatly to reduce any possibility that allowable uses on adjoining property could have an adverse effect on the mineral and aggregate extraction operations through regulatory or legal complaints. Nonetheless, for purposes of the discussion and to ensure a complete evaluation of all economic, social, environmental and energy consequences of our approval of the four Goal 5 resource sites, it is assumed that allowable uses *could* have an adverse effect on each of the resource sites in the manner suggested by opponents with regard to noise issues only. Other external effects of the potential mineral and aggregate operation, such as dust to traffic, can be fully mitigated and do not rise to the level of a conflict. This requires the Board to identify and assess conflicting uses, as well as identify an impact area.

As with significance, staff finds that while the Administrative Rules at OAR 660, Division 23 do not apply in this case, they provide some guidance with regard to the appropriate size of an impact area for each of the four resource areas. OAR 660-023-0180(5)(a) indicates in a nonbinding manner that the impact area 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. The Jackson County Land Comprehensive Plan Map Designation Element for Aggregate Resource Land states "*For each site determined to be significant and to be included on the inventory of 'Significant Goal 5 Resource Sites', the Impact Area shall be identified and mapped. The Impact Area shall be 1,500 feet unless increased or decreased*

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based on analysis and findings developed in the course of the Goal 5 process." In examining and weighing the evidence, the Board reached the determination that a 1,500 foot impact area is appropriate around each of the four resource sites and the applicant recommends a modified 1,500 impact area is appropriate for the rezoned internal road that will allow the mineral and aggregate materials to be hauled from each of the four resource sites to Highway 62. In determining this 1,500 foot distance, staff has reviewed and considered the effects and impacts that were testified to by the opponents of the application. Many individuals spoke sincerely and earnestly about their concerns approving aggregate operations in the area would have on their existing uses or potentially allowable uses in the general area. Until the last hearings, these objections were universally articulated from the standpoint that the mineral and aggregate use would adversely affect the residential and farming uses in the area and not the other way around. Only belatedly did individuals argue, under the *Hegele* standard, that lawsuits and regulatory threats based on quarry impacts could be used by property owners in the area to adversely affect activities at the resource site and, therefore, create an impact on the resource site. Nonetheless, whether the opponents articulated conflicts from the resource use on their existing or other allowable uses in the area, or whether they, under the proper *Hegele* standard, describe regulatory steps they would take based on activities at the quarry which would have an impact on the resource site, the identified conflicts to be generated were generally four in nature: (1) a quarry would interrupt existing pastoral views; (2) the quarry would cause increased traffic problems; (3) the quarry would create dust effects; and (4) the quarry would have noise effects. In determining the appropriate size for an impact area, staff will analyze the potential reach of any impacts from the quarry on any of the four identified conflicts that would potentially allow an established use (or potential use) in the area, to bring a legal or regulatory complaint against the quarries that would result in an adverse impact on the quarry.

With regard to pastoral views, staff finds there are no designated Goal 5 scenic views or view sheds near the McKenzie Freel aggregate property. Portions of Highway 62, because of the connection to Crater Lake, are designated as scenic highway, but that this designation does not spring from land use regulations. The location of the four resource sites (on the east side of existing ridge lines) largely blocks the view of the sites to the west, in the direction of Highway 62. Absent a view or view shed protected by land use regulations (e.g., an identified protected Goal 5 view), it would be difficult to determine that the complaints about view shed rise to establish a conflict that would adversely affect the proposed use. It is understood that the quarries will effect a change in the view, just as other approvable land uses on the McKenzie Freel aggregate property, such as a building structure, timber harvesting, or even a natural event as a fire, would also significantly affect the view. As such, while staff understands the neighbors concerns related to the views they now enjoy of the McKenzie Freel aggregate property, staff does not feel that a change in such views by siting and protecting four mineral and aggregate sites, is a conflict and a mechanism that allows the Board to meaningfully establish an impact area greater than 1,500 feet. Unless there is a designated Goal 5 scenic area for which the Land Development Ordinance requires addressing the criteria for the designated scenic area, staff does not believe that views, and interference with views, would give rise to conflicts and, as such, cannot serve as a basis for delineating an impact area greater than 1,500 feet.

With regard to traffic, staff incorporates the discussion under Goal 12 in criterion I(D) below. Many opponents raised issues related to traffic impacts that would be created by the trucks that move the mineral and aggregate materials from the four resource sites on the McKenzie Freel aggregate property to the market areas in Jackson County. While staff is mindful of traffic safety issues, staff is also aware that the applicant has previously held an approved access permit issued by Oregon Department of Transportation, that the Oregon

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Department of Transportation has jurisdiction over access to Highway 62, not the county, and that ODOT has indicated that any adverse effects at the access point can be mitigated. In assessing how traffic conflicts may help form the impact area, it is appropriate to look by analogy to Division 23 regulations. Again, the Division 23 regulations do not control, but OAR 660-023-0180(5)(b)(B) focuses the conflict analysis for traffic on the use of local roads and indicates that local roads, if used for access and egress to the mining site, must be considered as potential conflict sources within one mile of the entrance to the mine site. The rule further provides guidance that conflicts are to be analyzed to include the intersection with the nearest arterial. In this particular case, the applicant has been able to maintain all internal truck traffic from the four proposed mineral and aggregate sites on internal truck paths on its own property to the point at which the internal paths intersect a state highway. Staff further finds that the applicant has provided evidence there is adequate site distance and road capacity with regard to the access point on Highway 62 and trucks gaining access to that highway. As such, staff does not believe that complaints about traffic are an appropriate way to delineate an impact area greater than 1,500 feet for these particular resource sites.

Opponents also indicated that dust from the quarry operations on the four identified resource sites would adversely affect their quality of life and their agricultural operations. Staff finds that the applicant has demonstrated that it has sufficient water and the ability to control dust from its operations through an Air Contaminant Discharge Permit on any crusher located at the site, through good housekeeping measures and through the use of water trucks to moisten work and travel areas. The applicant has analyzed the daily water needs for dust suppression purposes and identified three mechanisms for providing water: an onsite exempt commercial well under ORS 537.545, a change of use of its existing irrigation water under ORS 540 or by trucking in water to onsite storage tanks. Staff finds that the applicant has adequately analyzed and defined the amount of water that would be necessary to control dust from all aspects of the mineral and aggregate operation. The applicant has submitted materials prepared by the State of Washington, Department of Ecology with regard to dust suppression and the applicant has agreed to adopt the methodologies for reducing dust, including obtaining and maintaining a permit for a crusher that is used at the facility, and gravel the truck path roads and staging areas to reduce dust, reducing truck speed, constructing wind breaks such as berms or stockpiles, striping surface vegetation only when necessary, and using water to dampen traffic areas. Staff finds that the applicant has evaluated dust concerns and is committed to steps that will mitigate and eliminate dust effects from proposed operations. Attached, as a condition of approval, is a detailed list of conditions that will need to be followed by the applicant operator and which will be sufficient to mitigate and/or eliminate dust effects from the operation. Evidence has been submitted to indicate dust effects will be reduced to levels that meet regulatory standards. For these reasons, staff finds that opponents concerns about dust do not provide a mechanism for establishing a conflicting use nor an impact area greater than 1,500 feet because adverse effects related to dust, if any, will be controlled on site and mitigated to meet regulatory standards by a series of dust prevention techniques.

With regard to noise, staff finds that the applicant submitted detailed noise studies and used those studies to address issues that were raised during the public hearings. Staff also finds that the opponents submitted comments which critiqued the applicant's noise study and conclusions. The applicant submitted subsequent findings responding to the critique of the noise study. The noise study was authored by Mr. Al Duble, an acoustical engineer with wide experience in analyzing noise issues for a variety of industrial facilities. Based on Mr. Duble's reports and supplements, which staff finds credible, DEQ standards can be met at all existing neighboring residences and, more importantly, DEQ standards can be met at 1,500 feet or more from any of the resource sites (A, C, D2 and E) the quarry operations associated

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with those sites. Mr. Duble's analysis indicates that predominant noise sources in the general area of the McKenzie Freel aggregate property are Highway 62 to the west and Butte Falls Road to the south, not operations at the quarry sites A, C, D2 and E. Based on the data and analysis provided by Mr. Duble, staff believes that noise impacts can be controlled to within DEQ regulatory standards at a distance of no more than 1,500 feet from each of the four resource sites and the connecting internal truck path. Staff finds that noise compliance at no more than 1,500 feet provides the outside limit of the impact area and the appropriate impact area, as discussed below, is 1,500 feet.

For the purposes of establishing an impact area, that noise is generated from quarry operations and that noise can be the basis for regulatory and legal complaints. The operation of quarry extraction activities and transportation related with each of the four resource sites (A, C, D2 and E) can be contained within DEQ standards at 1,500 feet from the perimeter of the identified sites. Staff finds that it may be possible to control noise at a closer distance, but the applicant, and the applicant's noise expert, have presented credible evidence that the noise can be properly mitigated and controlled to be within DEQ standards at 1,500 feet. Based on the *Hegele* standard, any noise recipient farther from the individual sites (A, C, D2 and E) than 1,500 feet would not have a legal or regulatory claim because the use would be in compliance with regulatory standards beyond 1,500 feet. Conversely, although there are no existing noise sensitive uses within 1,500 feet of any of the individual resource sites, if such an allowable use were allowed within 1,500 feet of any of the proposed four resource sites (A, C, D2 and E) there could be the possibility of a regulatory or legal claim that could adversely affect the operation of the boring activities at the resource sites. For this reason, staff believes that the 1,500 foot impact area is appropriate and should be established around each of the four resource sites (A, C, D2 and E).

Staff has evaluated the evidence in this matter and finds the credible evidence provided by the applicant's noise expert confirms the suggested impact areas contained in the Jackson County Land Comprehensive Plan Map Designation Element, 1,500 feet, is appropriate. As indicated above, staff finds that the 1,500 foot individual impact area around each of the resource sites (A, C, D2 and E) is primarily contained on the McKenzie Freel property, although there are properties not owned by the applicant which are partially within the 1,500 feet impact. Staff also finds that there are no existing residences within 1,500 feet of any of the four resource sites (A, C, D2 and E). There is, however, an approved homesite within the 1,500 feet impact area for resource site E (351E(6), tax lot 2700, file ZON2004-00127).

Staff has also reviewed the evidence submitted with regard to the impact area for the internal haul road between the four resource sites and Highway 62, which would be rezoned with an AR designation as part of this application. In the initial deliberations during the public hearing regarding the appropriate extent of the impact area around the internal access road, the Board indicated it would be appropriate to have the 1,500 foot impact area in each direction from the access road, including the portion of the road where it leaves resource site A until its intersection at the access point on Highway 62. The applicant has requested the impact area be changed as the access road nears Highway 62. The applicant has indicated, because of information provided by Mr. Duble, that as traffic travels the access road from east to west toward the Highway 62 access point, noise effects from traffic on the access road increasingly compete with the noise effects from Highway 62. Highway 62 is the louder and more consistent noise source and that as traffic on the internal access road approaches Highway 62, the noise impacts from traffic traveling on the access road begin to be overwhelmed by the noise effects from Highway 62. The opponents' noise commenter, Mr. Standlee, agrees with Mr. Duble's analysis in this regard, according to the applicant. As

such, the applicant does not believe it is appropriate to put a full 1,500 foot impact area around the access road. Rather, the impact area around the rezoned AR access road should "taper" and be reduced to zero at the point where the access road intersects Highway 62. A schematic of the access road impact area is provided on Map 1 and shows this "taper" approach. The applicant specifically asks the Board to decline to place an impact area on the westerly side of Highway 62 at the point where the access road intersects Highway 62. Based on the evidence in the record, the applicant believes the dominant noise source at that point is emanating from Highway 62 and not the transportation along the resource access road through the McKenzie Freel aggregate property. The applicant would further note to the Board that at each of the four resource sites, the access road effectively becomes part of the resource site and the access road at those points is included in the 1,500 foot impact area for the resource site. The applicant would like the Board to also note that with the exception of the portion of the access road between resource sites D2 and E, and two other small locations (one immediately east of site C and one midpoint between sites A and C), that no point on the access road is less than 1,500 feet of the McKenzie Freel aggregate property boundary, meaning that the 1,500 foot impact area for the access road remains largely on the McKenzie Freel aggregate property. The applicant believes this is important because the noise "conflicts" are eliminated within 1,500 feet and that if the 1,500 foot impact area is on the McKenzie Freel property, there is no possibility that the owner of that property would construct a residence or noise sensitive use within the 1,500 foot zone. Even if this were to occur, the applicant indicates that the DEQ noise regulations allow for an exception from the regulations for noise sensitive property owned or controlled by the person who controls or owns the noise source. As such, the applicant believes there is no possibility for conflict related to noise on the portions of the impact area located on the McKenzie Freel aggregate property.

In Exhibit 62, pages 530-533 of the current record, Mr. Duble states "*With Highway 62 noise at this distance (at 50 feet) averaging L50 = 62 dBA and L10 = 70 dBA, quarry-related truck noise will not exceed the ambient noise and should be masked by the background noise from Highway 62. Even the closest residence to the haul road access point (Jones) should be masked by highway noise for both highway and haul truck noise. The measurement results of 58 dBA traffic noise at 1500 feet from the highway shows that even trucks traveling at 45 mph should not exceed the L50 background noise. The net result is that any extension of the 1500 foot impact area to the West of highway 62 is NOT needed or justified. In addition, the impact area should not cross over onto the Hawkins property (on the East side of highway 62 to the north of the haul road access point). Placing the impact area on these properties is NOT justified based on noise considerations.*" The Board will need to determine that the noise study and conclusion is substantial evidence to reduce the 1,500 foot impact area around the access road as shown on Map 1. Mr. Duble's conclusion also states that the aggregate operations can be made to operate in complete compliance with DEQ standards, with a few minor controls. Controls to minimize noise impacts are:

1. Grade the onsite haul truck roads so that there is a minimum rise in grade, so that the rise is more gradual.
2. Instruct truck drivers to avoid using truck engine jake brakes on downhill legs.
3. Construct berms at the edge of each processing area so that they are between the processing areas and the residential sites. The berm height should be a minimum of 4 feet from the top of any crusher cone or screen part, or approximately 8 feet above the grade of the crushing equipment lowest elevation, dependent on the height of the equipment.

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4. Restrict operating hours to 0700 to 1800 hours, Monday through Saturday, with no operation on Federal holidays.
5. Install a residential quality exhaust muffler on the diesel generator. Locate the generator trailer at all processing sites so that its open end points away from the residences.
6. Locate the rock crusher and screens at the lowest possible elevation at each processing site.
7. Locate the rock storage piles between the crushing equipment and the sensitive residences. If possible, route the haul dump trucks so they can be loaded by the front-loader behind a rock storage pile and the berm.
8. If blasting is required, notify neighbors at the five nearest residences when blasting will occur. Choose a blast day when wind velocity will be minimum. Blasting should use the minimum explosive necessary, blast hole stemming and at least 17 millisecond delay between holes.
9. Operate only one quarry site at a time.
10. Because of the location of the building site for 351E(6), tax lot 2700, once operations are established at Site E, a follow-up noise study should be performed to determine which mitigation measures will be used to insure DEQ compliance.

Staff finds that #8 above does not comply with requirements for blasting in the LDO. #8 should state "If the operation will include blasting, the operator must develop a procedure to ensure that a notice will be mailed or delivered to the owners and occupants of all residences within one-half mile of the site at least three working days before the blast. The notice must provide information concerning the date and time that blasting will occur, and must designate a responsible contact person for inquiries or complaints. Failure to notify neighbors and the County before blasting is a violation of this Ordinance for which a citation may be issued. Notice will be deemed sufficient if the operator can show that the notices were mailed or delivered, even if one or more of the households within the notice area did not receive the notice." 1 through 10, including the revised #8, should be conditions of approval if the Board should approve this amendment and Site Plan Review for mining operations. It should be noted that condition #10 does not show that mitigation measures determined through a future noise study can meet DEQ compliance.

The applicant has further indicated that berming is available, if necessary, for the portion of the access road between resource sites D2 and E (or on the small section of the road immediately to the east of site C and midpoint between sites A and C) that can, and will, control the noise level to within DEQ requirements at 1,500 feet. The applicant believes that noise is an impact that would have the possibility of providing a *Hegele*-based impact on the resource sites from allowable uses on adjoining property to the four resource sites. However, the quarry noise can be controlled at 1,500 feet to meet DEQ's standards, thereby removing the possibility of a *Hegele*-based legal or regulatory complaint that would adversely affect the resource site. As such, the applicant believes the appropriate impact area is 1,500 feet from around each of the four resource sites (A, C, D2, E and the internal access road) with a tapering of the impact area for the access road traveling west from site A to its intersection with Highway 62. The tapering, consistent with Map 1, shall initially begin at 1,500 feet and be reduced to zero as the access road intersects with Highway 62.

Staff would like to discuss three other potential conflicts that were raised by opponents. First, some opponents claim there would be an adverse effect on water supplies in the area. Staff construes this argument to assert that if the applicant takes the regulatory

exemption amount (5,000 gallons a day), there may be an adverse effect on wells in the area. Staff finds that 5,000 gallons a day translates to approximately 3.5 gallons per minute. This amount is a statutory exemption and any landowner has the ability, for an improved industrial or commercial use, to drill a well and extract up to 5,000 gallons per day under this regulatory exemption. Staff finds that a regulatory exemption would not be allowed if there were adverse effects associated with this level of water use. There has been no evidence submitted which indicates that allowing the statutorily exempt level of water use would have any adverse effects on wells in the area. The applicant has indicated a willingness, if necessary, to truck in water for dust suppression uses on the property. Staff does not find opponents' complaints about water to be persuasive or to rise to a level of conflict which would adversely affect the mineral and aggregate resource sites.

Opponents also indicated there may be some siltation that would go into local streams from activities on the site. Staff has reviewed documentation regarding how the sites will be developed and how they will be bermed on the downhill side. Applicant further states that as part of the Department of Geology and Mineral Industry process, it will obtain a permit that requires it to maintain all runoff water onsite. Because the runoff water will be contained onsite, we do not find this situation to be a conflict that will permit an allowable use to make legal regulatory claims that will adversely affect the resource use.

The record contains some testimony with regard to adverse effects on wildlife, particularly winter range in the area. The aggregate sites are within Area of Special Concern 90-1, lands on which development can affect survival of Black-tailed deer or Roosevelt elk herds. This is an identified Goal 5 resource. The applicant specifically withdrew site D1 to address the concerns about wildlife. There is persuasive evidence in the record from the Oregon Department of Fish and Wildlife stating that if certain conditions were adopted, the activities at the four resource sites (A, C, D2 and E) would be mitigated and there would be minimal wildlife impacts. The conditions include:

1. Sites A and C will have a seasonal closure from January 1 through March 31. Loading and hauling of rock could be permitted during this time period.
2. No approval be given for site D1 as this is critical deer winter range browse (D1 has been removed from consideration of this application).
3. Sites D2 and E have a seasonal closure from November 1 through March 31.
4. Habitat improvement mitigation projects in the form of controlled burns be conducted on 130 or more acres.

Staff recommends these be adopted as conditions of approval. Staff finds that wildlife conflicts can be mitigated by the adoption of the above conditions. As such, staff believes that complaints about conflicting uses with wildlife value do not serve as an appropriate basis for defining an impact area beyond 1,500 feet because they can be mitigated.

Under OAR Division 16 and the Jackson County Comprehensive Plan Map Designations Element for Aggregate Resource Land, it is Jackson County's responsibility, within the confines of the *Hegele* analysis, to identify conflicts with each of the four inventoried Goal 5 resource sites. This is done primarily by examining all uses that are allowed in broad zoning districts established by Jackson County. A conflicting use, as defined in the *Hegele* decision, is one which, if allowed, could negatively impact a Goal 5 resource site. Within 1,500 feet a portion of the four resource sites (A, C, D2 and E) and within the applicants proposed 1,500 feet

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of the access road (with the tapered impact area for the access road between Highway 62 on the west and resource site A on the east), there are only three zoning districts: EFU (Exclusive Farm Use), FR (Forest Resource), and OSR (Open Space Reserve). The FR and OSR zoning districts considered to be a single zoning district, FR, and uses allowed within these districts are the same and will not be addressed separately. Should the Board determine that the impact area for the internal access road will include the area 1,500 feet from the entrance of the access road to Hwy 62, the RR-5 (Rural Residential, 5 acre minimum area) would be included in the conflicting use analysis. The potential uses allowed by Jackson County within each of these broad zoning districts will be examined to identify conflicts with the four inventoried resource sites (A, C, D2 and E) and the internal access road. After categorizing the potential uses that could conflict with the resource site, staff will determine the economic, social, environmental and energy consequences ("ESEE") of the conflicting uses. The impacts on the resource site and on the conflicting use will be considered as part of the ESEE analysis. In addition, staff will consider the applicability and requirements of other statewide planning goals as part of the ESEE analysis.

An examination of the potential allowable uses within the impact area that we have described is guided by the county's land development ordinance and the uses listed therein for EFU, FR, and OSR zones. Staff recognizes that certain uses must go through different review types (type 1 through type 4) but for the purposes of this analysis, it will be presumed that all listed uses are "allowable," and could be located, within the impact area. In the Jackson County Land Development Ordinance, some allowable uses with similar characteristics are combined into groups. Because the characteristics are similar, staff will analyze the groups rather than the individual uses. The impact area on the McKenzie Freel aggregate property itself is within the EFU zone and potentially on the McKenzie Freel aggregate property there are allowable uses that could give rise to a conflict. However, the applicant is the owner of the property and the applicant has persuasively presented its case that it wishes the impact area to be predominantly located on its own property. The property owner has voluntarily submitted to restrictions that would allow the mineral and aggregate operation to succeed and that this, logically, is not consistent with the property owner exerting "conflicts" from its own property to adversely affect the rezoning that it seeks. More to the point, we also find the impact area has been delineated solely based on the potential for noise impacts. Under DEQ noise regulations, the owner of the property may obtain a waiver of the DEQ noise regulations for a noise source on its own property. As such, we find that there is a regulatory mechanism that eliminates noise-based conflicts on the owner's property. In any event, we also note that other properties in the area are zoned EFU and our analysis for those EFU properties would be equally applicable to the McKenzie Freel aggregate property, were such analysis necessary.

Within the EFU zone in Jackson County, the Land Use Development Ordinance provides for approximately 71 allowable uses. These uses are grouped into nine categories because of commonalities in the types of uses. Similarly, within the FR district, the Jackson County Land Use Development Ordinance provides for 54 allowable uses. Again, staff finds that these uses are grouped into nine categories because of the similarity of the uses. The OSR zone is considered to be a forest resource zone and analysis of the forest resource zone uses (as they are grouped) will also cover any portions of the impact area which might cover OSR zone. There are no rural residential zones anywhere near the 1,500 foot impact area of the aggregate resource sites and the 1,500 foot impact area around the internal access road, as proposed by the applicant. This broad zoning district is not affected by the application or the impact area proposed by the applicant. Should the Board determine the 1,500 foot impact area will include the access point on Hwy 62, the RR-5 zoning district will be included. Staff would

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like to point out that rural residence uses are similar to the residential uses listed in both the EFU and the FR zones and if it is deemed necessary to analyze rural residential zone uses, the Board may incorporate and adopt the analysis below related to residential uses in the EFU and FR zones.

1. Mineral and Aggregate Oil and Gas Uses. The EFU, FR, and OSR districts allow mineral and aggregate, geothermal, and oil and gas uses, including exploration operations, mining, processing, batching and storage. These uses are not allowed in the RR-5 zoning district. Staff finds these uses are the same types of uses that are proposed on each of the four resource sites (A, C, D2 and E) for which Goal 5 has been requested and granted. These types of mineral, oil and geothermal extraction and processing activities, if allowed in an adjoining zone or, more specifically, the impact area, would create the same types of impacts that would be generated by the proposed mineral and aggregate extraction activities on the four resource sites on the McKenzie Freel aggregate property. The types of conflicts could include noise, dust, vibration, and alteration of the landscape. However, these uses, and their operational characteristics, are virtually identical to those of the mineral and aggregate extraction uses that have been analyzed for this application. Because of the similar effects of all of these uses, staff finds they can exist side-by-side and not have adverse effects on each other. Accordingly, staff concludes that these types of uses allowed in the adjoining zoning districts would not be conflicting uses if they were located onsite, in the impact area, or in the surrounding area of the mineral and aggregate resource sites we are protecting.

2. Farm and Forest Uses. Staff incorporates by reference the analysis under criteria I(D) (statewide Goals 3 and 4) below. The EFU, FR, and OSR districts include a number of farm and forest uses, including farm uses, buildings other than dwellings customarily provided in conjunction with farm uses, facility for processing farm crops, forest operations or practices (including reforestation), road construction and maintenance harvesting, application of chemicals, disposable/propagation or harvesting of forest products, temporary facilities for primary processing of forest products, temporary auxiliary structures for forest operation, physical alterations to land and auxiliary forest practices, permanent facilities for primary processing of forest practices, permanent facilities for primary processing of forest products, permanent logging equipment repair and storage, log scaling and weigh stations, forest management research experimentation facilities, and temporary forest labor camps. With regard to forest related uses, staff finds that the uses allowed in the zones are primarily related to the growing, harvesting and processing of timber. Growing, harvesting and processing of timber, particularly harvesting and processing, have many of the same impacts that potentially accompany mineral and aggregate resources, including noise, dust and traffic. Staff finds that all forestry uses must be accessory to forest practices, including harvesting, and, therefore, this group of forestry uses is generally subject to and compatible with many of the same types of operational effects as mineral and aggregate operations. Because the types of effects that are produced by the forest uses in this group and the types of effects that potentially could be created by mineral and aggregate extraction are similar in nature, we find and conclude that forest uses in this group would not adversely affect the rock extraction operation nor would rock extraction operations adversely affect forest uses in this group. Because the foresting uses are not particularly sensitive to the potential external effects of a mineral and aggregate operation, no limitation in quarry operations would be required nor to allow these uses to fully and properly function. Similarly, mineral and aggregate operations are not sensitive to the potential external effects of forestry operations, including harvesting, propagation and processing. No particular limitation would need to be placed on forestry uses for the mineral and aggregate operation to fully and properly function. Therefore, staff concludes that forestry uses allowable in the broad zoning districts of the impact area are not conflicting uses.

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Farm uses under the Jackson County Land Development Ordinance incorporate the definition of farm use in ORS 215.203, which defines farm use as current employment land for the primary purpose of obtaining profit in money by raising, harvesting and selling crops or the feeding, breeding, management and sale of, or the produce of, livestock, poultry, fur bearing animals, honey bees or for dairying and the sale of dairy products or any other agricultural or horticultural use or animal husbandry, or any combination thereof. Analysis of the impact area from topographical maps and from site visits is that the area, including the impact area, has severe topography, is steep, and is primarily covered in scrub and trees. Staff further finds, consistent with analysis of the topographic maps, reports and site visits, that the general surrounding area, including the impact area, has many rock outcroppings, which is why the applicant is requesting protection for the mineral and aggregate resource. Consistent with this analysis, view and findings, staff notes there are limited farm uses that are physically possible within the impact area and surrounding area of the McKenzie Freel aggregate property. During the public hearing process, many of the neighbors engaged in farm uses described the types of farm uses that can be practiced given the limitations of the land within the impact area and the surrounding area. These farm uses, include raising horses, raising and grazing cattle, a small scale goat operation for milk and breeding, small scale crops and general pastureland. The farm practices related to these farm uses include feeding of stock animals, fencing, grazing, calving and foaling, breeding, sperm collection, milking, haying, harvesting, tilling, fertilizing, irrigating and small scale/garden crop practices. Staff finds the mineral and aggregate extraction is not, under state statute, incompatible with the EFU uses. ORS 215.283 permits operations for exploration, as well as mining, crushing and stockpiling of aggregate and other mineral subsurface resources in EFU zones subject to the requirements of ORS 215.298. Extractive mineral and aggregate uses are statutorily authorized and recognized in exclusive farm use zones under state statute. Staff finds that ORS 215.298 requires a permit for mining more than 1,000 cubic yards of material or excavation preparatory to mining a surface area of more than one acre. The proposal before the Board is permission to protect and extract mineral and aggregate resources on the four separate sites of the McKenzie Freel aggregate property and, therefore, a permit is necessary. Staff finds that this matter is within the range of discretion we have as decision makers as contemplated under ORS 215.298. Staff further finds that the permit be granted only for a site included on the inventory in the county's acknowledged comprehensive plan. Staff finds that, these four resource sites on the McKenzie Freel aggregate property are included on the Jackson County's Aggregate Sites Inventory. Because these four sites are included on the Jackson County Aggregate Sites Inventory and because a permit could be granted through this application, the Board can conclude the requirements of ORS 215.298 are satisfied.

Notwithstanding that state statutory exclusive farm use land laws contemplate and allow the intersection of farm uses and practices with mineral and aggregate operations on EFU lands, the conflict analysis must look at the specific "on the ground" issues related to this particular application. As has been previously mentioned, in setting the impact area, only noise impacts associated with the mineral and aggregate extraction activity meaningfully serve to create potential conflicts and that other conflicts such as dust and transportation can be clearly controlled, mitigated or eliminated. The focus on the potential noise conflict is consistent with the thrust of the opponents' testimony in a public hearings process. That testimony focused on the fact that noise impacts from the mineral and aggregate operation would have adverse effects on animal breeding operations, including goats and horses. Opponents made general complaints about dust, but did not provide any evidence to indicate dust effects created by the mineral and aggregate resource site operations would adversely affect farm uses or farm practices. In any event, it can be concluded that dust will be adequately controlled on the site

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and does not provide a basis for a finding of conflicts. As indicated above, there was some generalized testimony with regard to water, but this testimony was more directed to residential uses rather than farm uses. Staff recognizes that irrigation is an important component of farm uses and farm practices, and from analysis of the record and view of the site, we know that an irrigation ditch traverses the McKenzie Freel aggregate property. However, no factual information has been provided that Goal 5 protection and operation of the mineral and aggregate resource sites on the McKenzie Freel aggregate property would have any negative impact on irrigation. There were generalized concerns about traffic on Highway 62, but no individuals directly linked their concerns about traffic safety to farm uses and farm practices. In any event, staff incorporates a discussion of traffic impacts from criterion I(D) (statewide Goal 12) below conclude it is safe and appropriate for mineral and aggregate activity to enter Highway 62 at the defined access point and that this access will not have a significant effect on accepted farm practices or force any changes in farm costs in the surrounding area. Staff further finds that the defined access point to Highway 62, as it will not adversely affect traffic on the road, will not affect any farm or forest traffic that is using Highway 62.

The Board is left with the opponents' allegations that noise would cause problems with their animal husbandry and breeding operations. In evaluating this issue, the analysis of Mr. Duble indicates the main noise sources in the area are the east/west extent of Butte Falls Highway and the north/south extent of Highway 62 near the McKenzie Freel aggregate property. Many of the individuals concerned about the effects of noise on their animal husbandry breeding operations are located very close to either Butte Falls Highway or Highway 62. Evidence submitted by the applicant shows that the noise environment for farming activities (specifically animal husbandry and breeding activities) within the surrounding area is dominated by the highways and not necessarily the proposed mineral and aggregate operation. The noise study demonstrates that quarry noise effects can be controlled to within DEQ standards within 1,500 feet from the proposed operations. The DEQ ambient degradation standard is significant in that it is designed to set noise levels that protect areas of human habitation. It is possible to conclude that the proposed operation's ability to control noise levels to this extent will adequately prevent conflicts with animal husbandry and breeding operations in the surrounding area. Staff also notes that farming uses and practices, including animal husbandry and breeding practices, are flexible and are subject to fluctuations in environmental characteristics, including noise. For a goat farmer or a horse breeding operation located near the road, it is possible for a nongravel truck to use jake brakes on a nearby highway or an airplane to fly over resulting in a temporary increase in the noise level. Staff believes the opponents engaged in animal husbandry and breeding operations in the area are successful and their operations, on a daily basis, deal in these types of environmental fluctuations, including changes in noise levels. Based on analysis of the potential impacts of the proposed use, the topography of the area, the distances involved and the effects on farm and forest uses from the existing noise sources of Butte Falls Highway and Highway 62, staff finds that allowing of the proposed use and its operation will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use, nor will the mineral extraction activities significantly increase the cost of accepted farm or forest practices devoted to farm or forest uses.

Staff finds there is always the possibility of some change or some increase of cost when an externality, such as a mineral and aggregate operation, is introduced into a general area. However, as stated above, farm operations, particularly animal husbandry and breeding operations, adjust to and adapt to these types of changing externalities on a daily basis. An appropriate analysis is whether or not there will be an underlying significant increase in the cost of accepted farming practices or a significant forced change in accepted farming

practices on surrounding lands. Significance is a limiting factor that requires an important consequential, considerable, noteworthy or serious effect on the accepted farm or forest practices and suggests something greater than everyday variation in environmental factors. To create a significant adverse effect on accepted farm or forest practices, or to create a significant increased cost or forced change to accepted farm or forest practices must, by itself or cumulatively, cause an important, material, substantive, meaningful or serious change in farm or forest practices or notable, important, material, substantive, meaningful or serious increase in the cost of accepted farm or forest practices. From the record before the Board showing that noise and other factors from the mineral and aggregate extraction operations can be controlled, we do not find the proposed use admits the possibility of significant forced changes in accepted farming practices or significant increased costs in accepted farming practices on surrounding lands. Staff incorporates the analysis of Goal 3 below.

In determining the extent of the term "surrounding lands," staff believes it is an important term and, as used in the findings, it refers to those lands within the 1,500 foot impact area that has been defined. From a review of topographic maps of the area and other evidence, and site visit, staff finds that the 1,500 foot area and lands included with the impact area that has been defined in this case, is the best definition for surrounding lands in this particular instance. However, in an abundance of caution, staff has extended the analysis of the surrounding lands to include goat and horse husbandry operations which are significantly beyond the 1,500 foot impact area to ensure that the Board analyzes all of the potential county zoning districts in the area and all of the potential farm uses and farm practices that were brought to the Board's attention in the public hearing. This would include, in addition to animal husbandry, timber production, pastureland, domestic livestock production and grazing, and small crop uses and their associated farm practices that are identified above. While staff believes that the quarry mineral and aggregate impacts will not extend beyond 1,500 feet and the Board has established this distance (with minor exceptions for the rezoned access road, if the Board should find this is an appropriate impact area) as the impact area, to assure that the Board fully analyzes the potential for changes to accepted farming and forestry practices or an increased cost of accepted farming and forest practices, staff has expanded the analysis to include uses that are found beyond the 1,500 foot impact area. However, this leads staff to the conclusion that there will be no significant increases in farm or forest costs nor significant forced changes in farm or forest practices even well beyond the 1,500 foot impact area that has been defined. Because there will be no significant increase in cost or forest changes in accepted farm or forest practices, staff finds that farm and forest uses on adjacent properties do not constitute a conflict with the proposed aggregate use. In analyzing whether or not the proposed use creates a conflict with farm (or forest) uses allowed by the county in EFU, FR, and OSR zones, staff will look at ORS 215.296. ORS 215.296(1) states "A use allowed under ORS 215.213 (2) or 215.283 (2) may be approved only where the local governing body or its designee finds that the use will not:

(a) Force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; or

(b) Significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use." ORS 215.296(2) states "An applicant for a use allowed under ORS 215.213 (2) or 215.283 (2) may demonstrate that the standards for approval set forth in subsection (1) of this section will be satisfied through the imposition of conditions. Any conditions so imposed shall be clear and objective." Staff believes this statute provides meaningful guidance for determining whether or not a mineral and aggregate use "conflicts" with farm or forest uses. In reaching a determination regarding such conflict, staff is persuaded that one measure of conflict is the significance test set out in ORS 215.296. However, staff believes the proposed use does not conflict with farm and forest uses without reliance on the

ORS 215.246 standard for reference. Staff finds that dust can be adequately controlled, that traffic could adequately be handled through the access point, and that noise is controlled within DEQ standards beyond 1,500 feet. Review of the concerns of the opponents coupled with a review of the proposed operation, leads staff to the conclusion that farm uses will not adversely affect the mining, and to the extent that it is relevant under the *Hegele* analysis that mining operations will have no effect on farming and forestry uses in the area. As such, this group of uses is not a conflict with the proposed mineral and aggregate use.

Staff incorporates by reference the analysis of Goal 4 in these findings. Staff finds that forest practices occur in the general area and these practices are predominantly related to small scale forest production. There are some timber management activities that occur on the McKenzie Freel property and surrounding lands. Staff finds that accepted forest practices in the area are planting, cultivating, and harvesting of trees and associated activities such as brush clearing, thinning and pruning. As concluded below with regard to Goal 4, staff does not believe there is any significant conflict between accepted forest uses and forest practices and the mineral and aggregate use that may be approved in this application. Staff finds that portions of the McKenzie Freel property not included in the protected aggregate resource zone, the impact areas and lands in the surrounding area will still be available for the planting, cultivating and harvesting of trees and associated activities in the event that landowners on those properties choose to pursue these forest related activities. Staff finds that the mineral and aggregate activity on the McKenzie Freel aggregate property will have no effect on forest practices on the property, in the impact areas or on surrounding lands.

3. Natural Resource Uses. Under the Jackson County Land Development Ordinance, natural resources uses in farm and forest districts as well as the RR-5 district, include the creation, restoration and enhancement of wetlands, propagation, cultivation and maintenance and harvesting aquatic or insect species, uses to conserve air, soil and water quality and to provide for fish and wildlife resources, and uninhabitable structures accessory to fish and wildlife enhancement. Staff finds that the area has relatively steep topography and is dry. As such, staff does not believe there is a reasonable possibility of restoration and enhancement of wetlands or propagation and harvesting of aquatic or insect species. Staff believes there is no reasonable basis for conflict with these uses. In the event such uses could be located within the impact area, which would be unlikely, the activities associated with the mineral and aggregate extraction operation would not adversely affect the creation of wetlands, propagation or harvesting of aquatic species or other natural resource uses as the primary impact that has been identified for the mineral and aggregate operations, noise, does not prevent these activities. Staff further finds that as part of the DOGAMI process, the applicant will berm topsoil for use in reclamation and, as such, will actively participate in soil conservation processes through the operation of the resource sites. Staff finds that nothing in the proposed operations, or preservation of the sites as Goal 5 resources, will prevent soil conservation activities on any property in the surrounding area or any property within the impact area. With regard to air and water quality and conservation uses, staff finds that the applicant has taken appropriate steps to protect air quality from dust impacts of its operations and to control stormwater to conserve and protect water quality. Staff finds that nothing in the proposed operation will prevent any uses to conserve air and water quality on the property, within the impact area or on surrounding lands. Within the impact area, there would be no restriction on any uninhabitable structures that are accessory to fish and wildlife enhancement, such as storage facilities, watering stations or other similar habitat related activities. Again, staff finds that noise, dust, traffic or water availability will not affect these uninhabitable uses in the unlikely event they were located in the impact area. Staff finds that nothing in the protection of the site or the operation of the mineral and aggregate extraction activities would prevent uninhabitable

structures accessory to fish and wildlife enhancement on the property, in the impact area or in the surrounding area, and conclude that uses to provide for fish and wildlife resources will not be adversely affected by the protection of the Goal 5 resources or by the mineral and aggregate extraction activities. Staff finds the record reflects some concern about wildlife habitat in the general area, particularly for winter range purposes. However, staff also finds that consistent with the ODF&W recommendations, the applicant has agreed to recommended conditions to protect these wildlife habitat values. Staff believes these conditions mitigate any potential conflict with uses to conserve wildlife and fishery sources. Because of the information from ODFW regarding winter range habitat for deer and elk populations, the winter range habitat, an identified Goal 5 resource, can be considered a conflicting use and will be addressed specifically in the ESEE analysis. Based on all these findings, staff concludes that there the only conflicting use is the winter range habitat for deer and elk, Area of Special Concern 90-1.

4. Residential Uses. Jackson County Land Development Ordinance provides numerous potentially allowable residential-type uses in EFU, FR, and OSR districts. These include dwellings provided in conjunction with the farm use, farm dwelling for a relative, accessory farm dwellings, ownership of record dwelling, temporary medical hardship dwelling, nonfarm dwelling, residential home, room and board arrangements, alteration, restoration and replacement of a lawfully established dwelling, historic dwelling replacement, registered child care facilities, certified group child care home, large tract forest dwelling, forest template dwelling, caretaker residence for public parks and fish hatcheries. It should also be noted that under the FR zone, temporary forest labor camps, a form of residential use is also allowed. This forest-related use is included as a "residential" use for the purposes of our analysis. The RR-5 district allows for a dwelling as a permitted use. The 4 properties located in the RR-5 district currently have dwellings. None of these properties are large enough to allow 2 permanent dwellings.

Staff finds that the applicant has taken steps to control the noise that might radiate from its operations offsite, including use of existing land forms (ridges and hummocks), construction of berms, and the location of the sites as far as possible away from neighboring properties. There is the possibility that within 1,500 feet of the four resource sites or the road that connects them, an allowable residential use could be located. There is an approved homesite on the Machado property that is within the 1,500 foot impact area (for the access road and site E). While residential uses are generally discouraged, the zoning districts in the surrounding area, such as farm resource, forest resource or open space resource land, admit the possibility that a residential use could be constructed in the 1,500 foot impact area. Because staff has found that the applicant may need up to 1,500 feet to control the noise or dust levels to within DEQ regulations, staff finds that residential uses, as a group, are a potential conflicting use in that it is possible for a residence to be constructed on a location where the noise could not be controlled within DEQ standards. Under the *Hegele* analysis, this could give rise to a regulatory or legal complaint. Because residential uses can be a conflicting use, the Board must determine the economic, social, environmental and energy consequences of the conflicting use. Under the *Hegele* analysis and Division 16, the Board must analyze both the impacts on the resource site and the impacts on the conflicting use in analyzing ESEE consequences. The ESEE analysis will follow the completion of the analysis of whether there are conflicts with other groups of uses as allowed in the underlying zoning districts in Jackson County.

5. Commercial Uses. The Jackson County Land Development Ordinance provides numerous potentially allowable commercial-type uses in EFU, FR, and OSR districts. These include commercial activities in conjunction with farm use, breeding, kenneling and training of greyhounds for racing, dog kennels, home occupation/home businesses, destination

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resorts, winery, and farm stands. The RR-5 zoning district includes many other potentially allowable commercial uses including wineries, animal clinics and hospitals, child care centers, emergency medical centers, medical/dental/optical clinics, broadcasting/recording studios, and guest ranches. The properties west of Hwy 62 would not be affected by truck noise because, as has been noted, Hwy 62 is a high ambient noise corridor and trucks entering onto the highway would not cause significantly more noise than the current traffic, as determined in the noise study. Dust would not be a concern in this area because the access road will be paved within 100 feet of the access point on Hwy 62 and the aggregate operations (site A) are 0.7 miles from Hwy 62. The Gap Study from Associated Transportation Engineering and Planning, Inc., states "As I indicated in my testimony, based on the appropriate traffic engineering standards and on-site studies, there are sufficient gaps in traffic to accommodate the trucks generated by the McKenzie Freel Development." A Mitigation Plan, page 706 of the record, identifies specific safety measures that could be required by ODOT for a new road approach permit. It should be noted that ODOT has the responsibility traffic safety regarding the access point to HWY 62.

With respect to the potentially allowable commercial uses for properties east of HWY 62, staff finds that none of these businesses is particularly noise sensitive, especially kenneling and breeding operations, commercial activities, such as wineries and farm stands. Staff finds it extremely unlikely that destination resort would be able to locate in the small portions of the impact area that are not located on the McKenzie Freel aggregate property, particularly given the steep terrain and lack of amenities. As previously indicated, dust and traffic impacts from the mineral and aggregate will be controlled and will not have an adverse effect on any commercial uses. Nothing has been brought to the attention of staff or the Board in testimony or in the record which would indicate that any of the commercial uses would have any adverse effects from the mineral and aggregate operation given the extremely small possibility that they could locate in the general vicinity. Based on these findings, staff concludes there is no conflict between the protection of mineral and aggregate resource sites, the proposed operation of those sites, and commercial uses through the underlying zoning designations on the site and in the surrounding area. In the event destination resorts would be deemed a noise-sensitive use that could create a conflict with the mineral and aggregate use under the *Hegele* analysis, staff incorporates herein and adopts by reference the analysis for residential uses and deems destination resorts as a residential use for purposes of these findings.

6. Transportation Uses. The Jackson County Land Development Ordinance provides numerous potentially allowable transportation-related uses in EFU, FR, OSR, and RR-5 districts. These include personal airports and helipads, expansion of airports, public highway projects, aids to navigation and aviation, construction modification of public roads and highways, including widening with existing right-of-ways, temporary public roads and detours, minor betterments of existing public roads and highways and related facilities, public road and highway related facilities, roads, highways and other transportation facilities not otherwise allowed in the EFU district, and parking for no more than seven log trucks. As previously indicated, staff finds no reason for there to be dust or traffic conflicts with any transportation-related uses. Construction of highway uses and even personal use airports can create dust and traffic considerations and are not inconsistent with proposed mineral and aggregate operations. In any event, staff has previously found that dust and traffic effects from the proposed rock operations can be mitigated or eliminated and, therefore, will not be the basis for conflicts. With regard to noise, as demonstrated by Mr. Duble's noise analysis, roadways in the area, including Highway 62 and Butte Falls Highway, are the main source of noise in the area. Based on this, staff finds that the mineral and aggregate operations would not have any adverse effect on the transportation uses allowed under the Jackson County LDO in a way that

would allow the transportation uses to bring regulatory or legal complaints against the mineral and aggregate use and thereby create a conflict under the *Hegele* analysis. Staff finds that the noise generation capabilities of transportation uses are similar to those of the mineral and aggregate uses, and the two uses would simply not conflict with each other. Staff further finds that fixed asset uses, such as aids to navigation and aviation, are not noise sensitive uses and would not have any effect on the gravel operation nor would the gravel operation have any effect upon them. Based on all these findings, staff concludes there is no conflict between the protection of the mineral and aggregate resource sites, the proposed operation of the sites, and transportation uses allowed through the underlying district designations on the site, in the impact area and in the surrounding area.

7. Utility/Solid Waste Disposal Facilities. The Jackson County LDO provides numerous potentially allowable utility/solid waste disposal facility uses in the EFU, FR, and OSR districts. These include the utility facilities necessary for public service, such as wetlands, waste treatment systems (but not including power generation facilities or tall transmission towers), telecommunication towers, tall transmission towers, solid waste disposal site, modification of waste related use, fire service facilities providing rural fire protection, irrigation canals, and accuracy structures and facilities associated with an irrigation district, utility facility service lines, commercial utility facilities for generating power, composting facilities, local distribution lines, new electrical transmission and gas/oil/geothermal distribution lines, television and microwave and radio communication facilities and transmission towers, utility facilities for generating power, towers and fire stations for forest fire protection, water intake facilities, canals and distribution lines for farm irrigation and ponds, water intake facilities and related treatment facilities and pumping stations for nonfarm use, and reservoir and water impoundments. The uses within the RR-5 district are transmission towers, minor utility facilities, small scale energy producing facilities, and recycle drop-boxes. Staff finds that dust and traffic issues can be adequately controlled and these are not the types of uses which would create a conflict with the utility/solid waste disposal facilities group contained in the LDO. Staff also finds that many of these utility uses (such for towers or transmission lines) are not affected by noise and, in and of themselves, could not affect a mineral and aggregate resource site. Staff finds to the extent that utility lines, service lines or irrigation canals would need to traverse the McKenzie Freel aggregate property, that the four sites (A, C, D2 and E) and the related haul road are small sites spread far apart allowing numerous opportunities for utility crossings in between and around the mineral and aggregate sites. Accordingly, staff sees no conflict with lines and towers and distributional types of utility facilities. There is an existing irrigation canal on the McKenzie Freel aggregate site that will remain in place and remain in use delivering water to the pasture portions of the McKenzie Freel aggregate property located to the west near Highway 62. Staff further finds that utility services, irrigation canals, composting facilities and solid waste facilities, and the like are not noise sensitive uses and a mineral and aggregate operation, and the noise from such operation, will not have any adverse effect on these uses. Conversely, staff finds that none of the effects from any of the utility based/solid waste disposal facility uses would have any adverse effect on the operation of the mineral and aggregate resource nor would mineral and aggregate operations create effects that would give rise to legal or regulatory actions against the mineral and aggregate activities. There are potentially two uses in the FR zone and one use in the EFU zone which could, conceivably, implicate humans. These are fire towers and fire stations for forest fire protection and fire stations for rural fire protection. However, due to lack of road infrastructure and the topography of the site, it is virtually inconceivable that these types of uses would be built anywhere near the Freel property, particularly in portions of the impact area that are located off of the McKenzie Freel aggregate property. These types of operations, if they were for some reason allowed near the four resource sites, would have no effect on the operation of the resource site. Staff would like to note that roads in the area are extremely poor

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making it virtually impossible for these types of rural fire-related protection facilities to be established anywhere near the proposed resource sites. In the event these fire suppression-related uses would be deemed noise sensitive uses that could create a conflict with the mineral and aggregate use under the *Hegele* analysis, staff would incorporate and adopt by reference the analysis for residential uses and deem the fire suppression uses to be residential uses for the purposes of these findings. Based on all these findings, staff concludes there is no conflict between the protection of the mineral and aggregate resource sites, the proposed operation of the sites, and utility/solid waste disposal facility uses allowed through the underlying district designations on the site, in the impact area and in the surrounding area.

8. Park/Public/Quasi-Public Uses. The Jackson County LDO provides numerous potentially allowable park/public/quasi-public uses in EFU, FR, and OSR districts. These include public/private schools and buildings, churches and cemeteries, private parks, playgrounds, hunting and fishing preserves, campgrounds, public parks and playgrounds, private accommodations for fishing occupied on a temporary basis, private seasonal accommodations for fee hunting operations, youth camps, firearm training facilities, government owned community centers operated primarily by and for residents for the local rural community, golf courses, living history museums, onsite filming and accessory activities, model aircraft takeoff and landing sites, extensions of existing county fairgrounds and related activities, operations for extraction and bottling of water, land application of biosolids, and land application of reclaimed water or process water. The uses in the RR-5 district include cemeteries, libraries, museums, expanding of existing campgrounds, country clubs, golf courses, public and private parks/playgrounds, public and private recreation/sports clubs, community halls, granges, town halls, public works buildings and facilities, churches, seminaries, public and private schools, and satellite campuses. Again, staff reaffirms that dust and traffic issues can be eliminated or mitigated by the proposed mineral and aggregate use and do not raise conflict issues with any of the proposed public park/public uses listed in the LDO. In addition, many of the listed uses simply do not conflict with the mineral and aggregate resource use nor the identified mineral and aggregate noise effects that potentially could create conflicts. For example, firearm training facilities, in their own right, would be noisy and unaffected by noise generated by mineral and aggregate use. Similarly, model aircraft landing sites generate their own noise and would be unaffected by the mineral and aggregate noise. Water bottling operations, biosolid land applications and reclaimed water application on land simply would have no effect on the mineral and aggregate operation and, conversely, the noise effects of the mineral and aggregate operation would have absolutely no effect to the ongoing successful operation of these types of uses under the *Hegele* analysis. Staff finds it inconceivable from a locational standpoint that there would be an expansion of existing county fairgrounds or related activities to any locations in the area and do not find this to be a conflict. However, it is theoretically possible that a private campground, golf course community center, living history museum, film location, public park, campground, private park, church or cemetery or private or public school could be located near the proposed resource site, although the possibility of this is extraordinarily small. Because the possibility exists, staff will treat these identified public/park/quasi-public uses as a conflict and will perform an ESEE analysis required under the Division 16 rule consistent with the analysis for residential uses.

9. Outdoor Gathering Uses. The Jackson County LDO provides that outdoor gatherings of less than 120 hours in any three-month period are uses that may be allowed in EFU, FR, OSR and WR districts. Staff reaffirms that dust and traffic issues potentially associated with the mineral and aggregate sites can be controlled and mitigated, and would not have any affect on outdoor gathering uses. The issue is whether noise generated by the proposed mineral and aggregate uses, notwithstanding the significant control efforts that have

been put into place by the applicant, would create a *Hegele* conflict with outdoor gathering uses. First, given the lack of roads in the area and the steep terrain, it is very unlikely a large or small outdoor gathering use would occur anywhere near the proposed resource sites on the McKenzie Freel aggregate property. Having said this, it is theoretically possible that an outdoor prayer gathering or rural music gathering could wish to locate on a temporary basis near the mineral and aggregate site and could theoretically obtain the appropriate permits. If this were to occur, it is possible that noise generated by the mineral and aggregate activities could have some effect on the outdoor gathering giving rise to a regulatory or legal action against the mineral and aggregate use. Notwithstanding that staff considers this possibility extremely remote, outdoor gathering uses can be considered to be conflicting uses and staff will examine the ESEE consequences of such uses below and include them as residential uses in the ESEE analysis.

### **C. Criterion: 660-16-0005(2), Analysis of Economic, Social, Environmental and Energy Consequences**

Staff has identified three broad groups of uses (residential uses, outdoor gathering uses and public/private parks uses) which could, in theory, give rise to a conflicting use. That is, these uses, if allowed to locate within 1,500 feet of the mineral and aggregate uses on neighboring property, could negatively impact the Goal 5 resource site. Staff believes the lack of infrastructure, roads, and the steepness of the terrain in the areas that are affected by the impact area off the McKenzie Freel aggregate property make it difficult to locate these types of uses within the impact areas. However, because it is theoretically possible, Jackson County is instructed by the Goal 5 Division 16 rule to perform an economic, social, environmental and energy consequence analysis (ESEE). Division 16 provides that where conflicting uses have been identified, the Goal 5 resource site may impact those uses and, as such, both the impacts on the resource site and on the conflicting use must be considered in analyzing ESEE consequences. Staff will also analyze the applicability of statewide planning goals at this stage in the process.

#### **1. Economic Consequences Analysis.**

a. Impacts on the resource of allowing conflicting uses. If any one of the identified uses, residential uses, the parks uses, and outdoor gathering uses (hereinafter "conflicting use groups") is allowed in close proximity to the Goal 5 mineral and aggregate resource, we find it could potentially have a significant adverse economic effect on the resource. For example, if a farm dwelling, resort, campground, cemetery, church or outdoor gathering were located adjacent to any one of the sites or within those portions of the impact areas that touch on adjacent properties, the resource site might not be able to meet DEQ noise regulations without extensive changes in the operations. This might include creating sound walls or berms and, in a worst case scenario, shutting down the mineral and aggregate operation because of the inability to comply with the noise regulations. If these conflicting use groups were allowed within the impact areas, staff find it likely there could be significant economic effects to the resource, including changes in hours of operation, significant costs to alter operations, shrinking of the size of the mineral resource that could be extracted, or even a complete shutdown of the mineral and aggregate operation, nullifying the use of the Goal 5 resource. If a noise sensitive park, church, school, residence or outdoor gathering or other use from the conflicting use groups were allowed within small portions of the impact area on adjoining properties, it would be extremely difficult, if not impossible, to design an extraction plan that would yield the fullest

utilization of the mineral and aggregate resource or even to potentially obtain a small portion of the resource on the Goal 5 resource site. Jackson County needs long-term, reliable sources of high quality mineral and aggregate material. If conflicting uses were allowed in such location as to prevent or limit operation of one or more of the sites on the McKenzie Freel aggregate property, the owner would suffer a significant economic setback and the community would be denied access to much needed and highly valuable mineral and aggregate materials that help economic growth. This would be a significant and overwhelming negative economic effect.

A single residence has been approved by Jackson County and is located within the 1,500 foot impact area of site E and the eastern limit of the access road. The residence is located on 351E(6), tax lot 2700, but has not been built as yet. The consequences of allowing this residence to be built are the same as stated above.

b. Impacts on the conflicting uses of allowing the resource use. We find that there are no existing conflicting uses located within the impact area of the four identified mineral and aggregate resource sites or the impact area proposed by the applicant for the connecting internal access road. However, should the Board determine the impact area of the access road to extend to the west side of Hwy 62, staff finds there are several residences located within 1,500 feet of the access road approach onto Hwy 62. As has been stated previously, the ambient noise of the Hwy 62 corridor is high enough such that the quarry related truck noise will not exceed the ambient noise level and should be masked by the background noise of Hwy 62 (Exhibit 62, pg. 532, current record). As such, staff finds that the addition of quarry truck traffic from the aggregate operations would not create additional economic consequences to properties east of Hwy 62 due to the existing noise corridor and ambient noise levels for Hwy 62 traffic. Regarding potential conflicting uses not currently existing, staff finds that any conflicting use that could occur would move to the area with full knowledge of the existence of the mineral and aggregate sites and the potential noise effects. The question then becomes whether it would be an economically rational decision for an individual to build a residence, campground, private school, church, park, playground, outdoor gathering or other use from the conflicting use groups within those small portions of the neighboring properties that are within the 1,500 foot impact area. We find there are significant portions of each and every property east of Hwy 62 affected by an impact area designation that are outside the 1,500 foot impact area perimeter from any of the four mineral and aggregate resource sites, as well as the internal truck path. As such, an individual wishing to build a residence, church, private school, campground, park or public place, golf course, living history museum, or conduct an outdoor gathering or any of the other uses within the conflicting use groups, would have several locational options to choose from on any existing parcel. The ability to move the conflicting use to another location on the same parcel greatly reduces the economic impact on the conflicting use were the mineral and aggregate site to be approved, located and operated. Staff also finds that those portions of the adjoining properties that would be covered by the impact area and, therefore, would potentially suffer an adverse economic impact from the operations of the mineral and aggregate extraction sites, are located farthest away from the existing road infrastructure, namely Butte Falls Highway. As such, to build in close proximity to the mineral and aggregate sites would require an additional economic expenditure in the form of road construction costs. An individual wishing to build or conduct a use within the conflicting use groups could reduce the economic costs by locating outside the impact area and thereby shortening the access road requirements and costs. Staff also finds that for typical farming and forestry operations on the portions of the adjoining properties that would be affected by the impact area, normal grazing activities and forestry activities can continue, much as they do now, notwithstanding the noise potentially produced by the mineral and aggregate operations. The ability to use these areas on adjoining properties that are covered with the impact area for

alternative economically valuable uses within the farm and forest zone also lessens the economic impact of allowing the resource use. In sum, staff finds that economic consequences can be avoided, that economic costs can be lessened, and there still exists economic use of the properties. Outside the 1,500 foot impact area, noise and dust impacts can be controlled and DEQ standards can be met and there would be little or no economic impact on any of the proposed uses. We also understand that just because the DEQ standard (such as the noise standard) is met, that not all potential economic impact is eliminated. Under the ambient degradation standard, the noise levels in the general area may go up, notwithstanding that the elevated levels are within DEQ standards. While the DEQ ambient degradation standard clearly protects health and human welfare and compliance with that standard is significant, staff finds there could be an economic impact from a slightly more noise general environment within or without the impact area. The economic effects of this incremental rise in general noise levels is very difficult to quantify. The record demonstrates that a major noise impact in the general area is created by Butte Falls Highway and Highway 62 and that the roads have consistent noise whereas the mineral and aggregate operations have defined hours. Staff finds that residents in the area are constantly subjected to noise levels from these highways and that the overall noise environment is not a pristine noise environment and as such, staff believes that the economic cost of a slightly elevated noise level during quarry operating hours is not significant. While the mineral and aggregate operations might slightly increase the noise levels, the economic cost to neighbors in the vicinity would not appear to be overwhelming.

c. Impacts of protecting conflicting Goal 5 resources. The only identified Goal 5 resource is Area of Special Concern 90-1, lands on which development can affect survival of Black-tailed deer or Roosevelt elk herds. Comments from Oregon Dept. of Wildlife (ODFW) indicate their concern for the loss of big game winter habitat, which results in lower deer population numbers and reduced bull and buck ratios (Packet #2, pg. 195). However, ODFW has identified limiting conditions which would minimize wildlife impacts from the use of the aggregate sites. The economic impacts of fully protecting the winter range habitat would be the loss of this significant aggregate resource resulting in an economic loss to the county, as well as the operator, because this resource would not be available for building and infrastructure improvements. Staff believes that using the ODFW conditions limiting the aggregate activities would have a minimal impact on big game winter habitat and allow the aggregate activities to operate without a substantial economic loss to Jackson County as a whole.

d. Conclusion. When balancing between the economic costs to the resource (potentially the inability to use the resource or operated in an economically sound manner) with the economic impacts from noise and dust from the site, staff believes the analysis clearly supports the protection and operation of the mineral and aggregate resource site. If the mineral and aggregate resource site were unable to operate or able to operate without extraordinary noise, dust, and winter range habitat controls that made the rock costs ineffective, the operator would suffer an economic loss, but more importantly, the county would suffer an economic loss because the mineral and aggregate resource would not be available in the county for infrastructure improvements. We contrast this with a potentially small and difficult to qualify loss in economic value of existing uses or future uses from the conflicting use groups that would be constructed within the impact area where the sound level would increase, albeit within DEQ standards. Staff concludes that the activities on the mineral and aggregate resource sites can be developed and operated with a minimum amount of offsite noise and dust and intrusion of adjoining properties. Staff further finds that the public benefit of having the availability of a mineral and aggregate resource and the economic contribution that this resource makes to the county, outweighs the small and largely undefinable economic cost to landowners in the area who might wish to place a noise sensitive use from the conflicting use

groups within the impact area or in the general vicinity where it might be exposed to a slightly higher noise environment. Staff also believes the control of dust will allow the aggregate operations to meet DEQ standards and the ODFW conditions will minimize impacts to winter range habitat. As such, staff believes the economic considerations of the ESEE analysis tips clearly in favor of preserving the resource and allowing its operation because it provides for the greater economic good of the entire community.

## 2. Social Consequences Analysis.

a. Impacts on the resource of allowing conflicting uses. Staff finds there could be social impacts created that would negatively affect the resource if uses in the conflicting use groups were allowed in close proximity to the proposed mineral and aggregate resources. Primarily, we believe the most significant social cost to the landowner and the mineral and aggregate operator would be related to attempts to mitigate noise and dust operations to the satisfaction of neighbors through modifications to the operation that potentially increase the cost of aggregate extraction. The most probable social impact in fully allowing conflicting uses near the resource site would be to prevent or limit the site's use because of social dissatisfaction from the neighbors. If conflicting use groups were allowed next to the resource sites, it is possible that the resources could not be used because existing regulations controlling the operation of the site, particularly noise standards, might be impossible to meet at the site and that these regulations would be aired and enforced through social pressure. Staff finds this social disruption could result in an increase in the price of aggregate materials with a loss of at least a portion of high quality aggregate resource at the site and make that site unavailable for a wide variety of uses in the county, including road and infrastructure construction. Aggregate materials have high social utility in the county and are a critical part of infrastructure, as well as commercial, industrial and residential construction. Staff finds that an increase in the price or a decrease in the supply of high quality aggregate, such as that at the proposed site, would have a negative social impact in the greater county area potentially through increased prices of infrastructure, homes, highways and other products which depend on aggregate materials. This could implicate social costs by limiting the county's citizens' ability to afford these products and services and potentially reduce their standard of living.

b. Impacts on conflicting uses of allowing the resource use. Staff finds that all proposed effects, including noise, from the mineral and aggregate resource have been analyzed and can be controlled. Staff finds that the applicant has done a good job of locating the sites and using natural features, and committing to the use of manmade berms to reduce the social effects of the site, including noise that would potentially radiate to adjoining properties and the view of the properties from other sites. In considering the social impacts on conflicting uses, staff incorporates the discussion of the economic considerations of this ESEE analysis. In addition, staff finds that if the impacts associated with the proposed operation are not properly controlled, there could be social impacts on residences near the mineral and aggregate resource, such as neighbor dissatisfaction and unrest. However, staff finds the nature of the resource sites, their location, the surrounding uses, the topographic features and the control mechanisms in place, as well as the noise studies that have been provided, all serve to reduce significant adverse social effects. The record demonstrates the credible and persuasive evidence that DEQ noise standards, which are designed to protect residences and human health, can be met by the operation at nearly all residences in the area. The one exception is the approved homesite on the Machado property, 351E(6), tax lot 2700. This homesite is approximately 1,400 feet from the boundary of site E. The noise study did not include this homesite location and additional noise reduction measures may be needed to meet DEQ standards. Staff also recognizes that noise produced by the mineral and aggregate operations

may be within DEQ standards but actually increase ambient noise levels. This increase in ambient noise levels, consistent with the economic analysis, is difficult to quantify from a social point of view, but is, nonetheless, a social consequence. Views from neighboring houses, while not identified for protection, are part of the social ambience in the area and staff recognizes that the rock-neighbor conflicts can be detrimental to this social ambience. These conflicts pit neighbors against neighbors and people have legitimate concerns about the ongoing social utility of their homes, including peaceful enjoyment of the homes and the views that they see from the windows and porches. However, the Board should weigh the social benefits to the county as a whole from having a high quality source of mineral and aggregate material available for all types of infrastructure and expansion uses in the county versus real, but smaller individual social impacts related to changes in the immediate environment where many of the opponents live. Many neighbors have stated that no one likes to see a gravel pit in his or her immediate area. However, staff recognizes that rock has a significant social utility and must be obtained at locations where high quality rock is located and where they are close to the market to reduce costs. The County is required to balance between the greater social utility of the mineral and aggregate resource and the personal social costs of individuals whose environment undergo change as a result of the protection of the mineral and aggregate resource.

c. Impacts of protecting conflicting Goal 5 resources. Fully protecting the winter range habitat for Black-tailed deer and Roosevelt elk herds have a positive social impact on the surrounding area, mostly outside of the impact areas. Seeing wildlife, whether up close or at a distance, is an edifying social experience desired by most people. Testimony by residents in the area have indicated concerns that the elk and deer will not stay in this area, specifically the McKenzie Freel properties, because of the proposed aggregate operations. This would have a negative social impact in this area. It should be noted that there are no existing residences east of Hwy 62 that are within the impact areas proposed by the applicant. There is a single approved homesite southeast of site E which has not been built as yet. Any social impact resulting from aggregate activities would be experienced by residents outside of the impact areas. ODFW has stated that their conditions limiting certain aspects of the aggregate operations would have a minimal impact on the winter range habitat on the McKenzie Freel properties.

d. Conclusion. This is among the most difficult of all decisions that must be made by the Board, but staff believes that the greater social good of having a confirmed source of high quality mineral and aggregate outweighs the potential social impacts that have been identified by the neighbors immediately in the area. Staff finds that there will be real, but limited, adverse social impacts in the immediate area (much less social impacts in the impact area itself). These will be offset by a significant social benefit to the entire community from preserving the Goal 5 resource site and allowing extraction of the resource. As such, staff believes that the social considerations of the ESEE analysis tips slightly in favor of allowing protection of the Goal 5 resource.

### 3. Environmental Consequences Analysis.

a. Impacts on the resource of allowing conflicting uses. Staff finds that the identified uses from the conflicting use groups would generally not have an environmental impact on the aggregate resource unless the conflicting uses were allowed in such close proximity to the resource site (i.e., the impact area). If conflicting use groups were allowed in the impact area, the environmental impacts on the resource would be severe and the resource potentially could not be used or its use would be severely restricted due to increased difficulties with environmental compliance (primarily noise compliance), due to the proximity of conflicting

uses. Staff incorporates by reference the discussion under the economic and social considerations of the ESEE analysis and adds that conflicting use groups generally do not have a significant environmental effect on the proposed mineral and aggregate use. However, if they are allowed to locate within the impact area and thereby cause the extraction operations to fall out of noise or dust compliance, they would have a significant adverse environmental effect on the resource in that resource operations could not meet environmental noise regulations.

b. Impacts on the conflicting uses of allowing the resource use. In this analysis, staff has determined that the proposed aggregate operations could potentially have an environmental impact in the form of noise upon uses within the conflicting use groups which could locate nearby, particularly within the impact area. Staff reaffirms that other alleged impacts of the proposed uses including dust and transportation will not have adverse environmental consequences because they can be controlled and mitigated. Applicant's noise expert indicates that outside of 1,500 feet from the proposed extraction areas, mineral and aggregate operations can meet DEQ's standards. Staff believes this is significant in that the DEQ standards are designed to protect human health and human habitation areas, and protecting these types of values helps mitigate and eliminate environmental conflicts. Oregon uses an ambient degradation standard that allows for some increase of noise in the environment. Therefore, even though DEQ standards are met, it is possible that there would be an adverse environmental effect due to an increase in the ambient noise level. However, staff believes that DEQ, in establishing the ambient degradation levels, has provided a mechanism that adequately protects environmental values and the applicant is not required to go beyond those protections. While there might be a change (e.g., a rise) in the overall noise level, the most important environmental factor is compliance with the DEQ regulations. The applicant has demonstrated that this can occur within 1,500 feet of any of its operating sites or the access road. The applicant has used land forms and has incorporated berms and strategic locations of stockpiles into its site plans to reduce and mitigate these environmental issues. Staff believes the applicant's proactive approach in this matter is an important consideration in the environmental analysis.

Staff also finds that there are no inventoried view sheds and, therefore, the interference with views is not a conflict. However, from an environmental standpoint (and similarly from a social standpoint), there will be an effect on the view of some of the neighbors in the area. Given the nature of mineral and aggregate extraction, regardless of where a mineral and aggregate site would be located in Jackson County, a neighbor would be able to express concern about the degradation of their environmental (or social or economic) view values. The contention of some opponents that mineral and aggregate sites should be moved so far away from the urban areas that no one lives nearby is difficult, if not impossible to accomplish. Staff finds that transportation costs greatly increase the cost of aggregate and it is not in the best interests of citizens in Jackson County to locate mineral and aggregate resources a significant distance outside the market area. The reason for this is the environmental nature. Rock resources move by trucks and the more distance that is added (to escape environmental, social and economic consequences to the views of adjoining properties) creates an equal and opposite environmental, social and economic consequence: the use of significantly more fossil fuel that powers the trucks that deliver the mineral and aggregate material. Staff finds that the McKenzie Free aggregate property is close to a significant and growing portion of the Jackson County area. If a site is determined to be significant, there is a need to protect the mineral and aggregate resources in the county. Staff further finds that if the County were to require that a mineral and aggregate site have no effect on the view of any person, that resource would be located well beyond the market area and significant additional amounts of fuel would be

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necessary to move the product to market. This would cause a separate type of environmental consequence that we are avoiding by locating the sites closer to the market area.

c. Impacts of protecting conflicting Goal 5 resources. Fully protecting the winter range habitat leave this area in the same environmental conditions as currently exist. This would certainly be a best case scenario for area residents. The extraction and processing activities would not occur within the proposed sites, nor would the internal access road be built and used. There would be no environmental degradation of the area, which would preserve the viewshed as well as the deer and elk habitat. However, this would create an economic loss for the County due to the loss of a significant aggregate resource. The ODFW recommended conditions to minimize impacts to the winter range habitat is a balanced approach to protect both Goal 5 resources.

d. Conclusion. With regard to the environmental considerations of the ESEE analysis, staff finds there must be a balance between environmental impacts on neighboring properties and environmental impacts caused by moving mineral and aggregate operations to locations that are farther and farther away. While there are environmental consequences potentially in terms of noise, view, and winter range habitat, these consequences can be mitigated by the operator's proposal and they are outweighed by negative environmental consequences if there were a requirement to move the mineral and aggregate operations farther and farther away from the market area. As such, staff finds that the environmental considerations of the ESEE analysis tips slightly in favor of preserving the mineral and aggregate resource.

#### 4. Energy Consequences Analysis.

a. Impacts on the resource of allowing conflicting uses. It is difficult to conceptualize how there would be adverse energy consequences to a mineral and aggregate resource by allowing uses from the conflicting use groups to be located in the near vicinity of the quarry areas. However, conflicting uses located nearby could cause operational changes in the aggregate extraction operations that could make them less efficient and more energy consumptive. As referenced above in the environmental analysis which staff incorporates herein, locating conflicting uses near the resource sites could potentially cause greater energy impacts, particularly through fuel consumption by haul trucks that might be required to travel greater distances to bring the aggregate material to market from more distant locations.

b. Impacts on conflicting uses of allowing the resource use. Again, it is difficult to conceptualize how there would be adverse energy consequences to any use from the conflicting use groups if the mineral and aggregate resource site is allowed to go forward. Conceivably, existing neighbors (or new construction) would wish to replace single pane windows with double paned windows to counteract noise effects. This would potentially consume more energy by manufacturing new windows, but also could save energy in terms of increased efficiency of double paned windows. Similarly, it is possible that neighbors could attempt to berm or landscape their properties in a way to reduce the view of the mineral and aggregate sites or some of the potential operating effects. This, conceivably, could increase energy consumption directly related to the energy necessary to construct the berms.

c. Impacts of protecting conflicting Goal 5 resources. Fully protecting winter range habitat would remove the ability to mine and process a significant aggregate resource located in an area close to the resource and potentially increase energy costs associated with mining, processing, and hauling aggregate farther from the market area.

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c. Conclusion. Because transportation of mineral and aggregate materials is very energy dependent, staff believes that the consideration of the energy consequences of the ESEE analysis tips slightly in favor of allowing the proposed use.

5. Relative Value Analysis. The Map Designations Element requires an analysis of the relative value of the use of the mineral or aggregate resource site as compared to existing or potential uses. The applicant has estimated the sites would produce 5.4 million cubic yards of aggregate material over the lifetime of the operation. OAR 660-016-00005 states "*Where conflicting uses have been identified, Goal 5 resource sites may impact those uses.*" The impacts to conflicting uses can be mitigated to meet state and local requirements and standards based upon evidence in the record, except for the approved homesite on the Machado property. Because impacts can be limited by approval conditions, staff believes the relative value of the aggregate resources outweighs potential loss of value through impacts to conflicting uses.

#### **D. Criterion: Statewide Planning Goals**

As part of our Goal 5 analysis, the applicability and requirements of other statewide planning goals must be addressed. Each of the statewide planning goals are addressed below.

##### **Goal 1**

Goal 1 requires the development of a citizen involvement program that ensures the opportunity for citizens to be involved in all phases of the planning process. Jackson County has planning and zoning documents that provide specific mechanisms for notice and citizen involvement both on a group and individual basis. In this particular land use application, there have been numerous hearings over a ten-year period before the Jackson County Board of Commissioners, and that in 2005 there have been several public hearings that were well attended by a wide variety of individuals who have expressed their comments and concerns. This has included private citizens, lawyers representing citizens, state agencies and others. Staff finds that public notice was provided and a significant number of individuals have participated in the process, both in support of the application and in opposition to the application with both oral and written testimony. Staff believes that the procedures followed were in compliance with the county's land use regulations and such regulations have provided ample opportunity for citizen involvement in all phases of this application and, accordingly, staff finds compliance with statewide planning Goal 1.

##### **Goal 2**

Goal 2 requires that a land use planning process and policy framework be established as the basis for all decision and actions related to use of land and also requires that there be an adequate factual basis for decisions and actions in the land use planning process. We find that with regard to the Goal 5 process, Jackson County is in periodic review and has been in periodic review with regard to the McKenzie Freel aggregate property for more than ten years. This process has been guided primarily by Oregon Administration Rules Chapter 660, Division 16. The County has also received additional significant guidance from the Department of Land Conservation and the Land Conservation and Development Commission. As set forth in this findings document, Jackson County has, as part of this procedure, listed the criterion under which the decision is made. Staff finds that no party has objected to the criteria that have been identified nor suggested any other criterion that should be included. As such, Jackson

County is following an established land use planning process as the basis for the Board's decision and, with these findings, the County is addressing all of the approval criteria that apply under that planning process. In addition, as required by the Goal 5 Administrative Rule, Jackson County is addressing all of the statewide goals. Because Jackson County is in a periodic review process and proceeding to identify sites under the Goal 5 portion of that periodic review process, staff finds that an exception under statewide Goal 2 is not required. For all these reasons, the application and process complies with statewide Goal 2.

### Goal 3

The purpose of Goal 3 is to preserve and maintain agricultural lands. Staff finds that farm uses under the goal include those set forth in ORS 215.203, but the counties may authorize certain nonfarm uses as defined in state statute, and refined by LCDC and court cases that such uses will not have significant adverse effects on accepted farm or forest practices, or force significant changes on accepted farm or forest practices in the surrounding area. Staff finds that all of the activities being considered relating to mineral and aggregate protection and mining are allowed in an exclusive farm use (EFU) zone, subject to the standards of ORS 216.296. Staff has made findings with regard to ORS 215.296 and incorporates those findings herein by reference. Staff has also addressed and made findings with regard to ORS 215.298 and incorporates those findings herein by reference. Staff has reviewed the property for which this use is requested and much of the surrounding property in the general area is designated as Exclusive Farm Use property. Based on the analysis of the record presented in this matter, staff believes that the proposed land use action is consistent with Goal 3 and satisfies the requirements of Goal 3. Staff bases this conclusion on the following findings and analysis.

First, as set forth in these findings and incorporated herein by reference, staff has found the proposed use will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use, nor will the land use action significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use. Consistent with this analysis, staff finds that aggregate mining, crushing, processing and stockpiling are all uses permitted on EFU land under ORS 215.283(2). Because there are no significant adverse effects or forced costs on accepted farm and forest practices, the Board may, consistent with Goal 3, permit this use.

Second, the EFU district in the county under which the entire McKenzie Freeland aggregate property is designated fully allows mineral and aggregate uses, including mining, crushing, stockpiling, aggregate consistent with ORS 215.283(2). Staff further finds that the proposed mineral and aggregate use of the property is ultimately an interim use. Once the mineral and aggregate resources are fully extracted, consistent with State statute, the property must be reclaimed upon completion of the aggregate extraction on the site. While the record reflects that the length of time the mineral and aggregate extraction operation will be on the site is dependent on market forces, it is clear that mineral and aggregate use is not -- and cannot be -- a permanent use. Mineral and aggregate mining by its very nature is extractive and consumptive and cannot continue indefinitely on a single parcel of land. Recognizing this, the Board can find the property should be reclaimed for purposes of propagation and harvesting of basic farm or forest products (e.g., grazing land or small tree production) or wildlife habitat. The reasoning in requiring this is that propagation and harvesting of farm/forest products and wildlife habitat are specific uses and are statutorily allowed and encouraged in both farm and forest zones within the state of Oregon. The required form of reclamation (the propagation and harvesting of farm/forest products and/or development of wildlife habitat) is intended to be broad

enough to include use of the land upon reclamation for growing trees, including cultured Christmas trees, as defined in state statute, as an outright permitted farm use. We find that reclamation to farm/forest propagation or to wildlife habitat is feasible and appropriate for this site and we find as part of the DOGAMI reclamation process, the applicant has agreed to stockpile overburden that can be replaced as part of the reclamation process and serve as substrate for the propagation and harvesting of farm/forest products or wildlife habitat. The mineral and aggregate uses are interim uses between existing potential farm/forest/wildlife uses that occur on the property at the present time, and the future farm/forest/wildlife uses (allowed and encouraged in the EFU zone/district) which would be required to occur on the property in the future. In addition, staff finds that the approval allows only one resource site to be in operation at a time. This will allow the owner to continue to use the property for current farm/forest/wildlife uses well into the future as initial mining sites are opened and reclaimed consistent with the Board's decision. Staff further finds that the approval of the rezone and allowing aggregate operations does not allow an urban use nor permits any extension of urban services. The applicant has indicated that electricity is currently available on the property and that electrical generation will occur with onsite generators. A condition of approval require the use of porta-potties, as is common at most construction and quarry sites. This eliminates any argument that there is urbanization occurring that is inconsistent with Goal 3. Based on all of these reasons, staff believes the Board can conclude that the proposed use is consistent with statewide Goal 3, that the requirements of statewide Goal 3 are met by the county's approved land use action, and Goal 3 weighs in favor of the county's decision in this matter.

#### Goal 4

Goal 4 directs the conservation and maintenance of the state's forest land base and the state's forest economy and provides for the conservation of forest land to make economically efficient forest practices possible, and to ensure that growing and harvesting of tree species is the leading use on land consistent with some management of soil, water, air and wildlife resources, and to provide for recreational opportunities and agriculture. Staff finds that the property in question is within the EFU district and Jackson County, and that forest and wildlife uses are allowed within the EFU district. Staff further finds that mineral and aggregate extraction of processing are allowed on mixed farm/forest land under state statute. In addition, staff finds that the Goal 4 administrative rule also allows for mining and processing mineral and aggregate resources under standards addressed in these findings. The underlying district in this matter, the EFU district in Jackson County, also allows mineral and aggregate mining and processing. Staff incorporates the analysis for discussion of Goal 3 herein by reference. Because the use is permitted in forest zones, as well as mixed farm forest zones, and a requirement will be reclamation of the aggregate sites to farm/forest/wildlife uses, staff finds that Goal 4 mitigates in favor of protecting the site for rock extraction. The proposed use will not have any effect on accepted farm or forest practices on surrounding lands and staff incorporates the prior discussion relative to ORS 215.296 herein. In addition, staff finds that out of the very large McKenzie Freel aggregate property, only four small sites totaling 117 acres will be affected by mineral and aggregate extraction. Small trees are present on portions of the McKenzie Freel aggregate property surrounding the exact mineral and aggregate extraction sites. The proposed mineral and aggregate extraction activity will not significantly increase the cost of accepted forest practices nor force changes in accepted forest practices on surrounding lands. Staff incorporates herein the discussion of fire hazards below and concludes that the proposed use will not significantly increase fire hazards, fire suppression costs or increase risks to fire suppression personnel. Many forest practices (such as logging, road construction, slash disposal) in and of themselves create many of the same impacts as mineral and aggregate extraction. Staff finds that internal pathways that must be built to service the mineral and

aggregate site to extract the rock may assist in forestry related activities, including timber harvesting, replanting and fire suppression, by providing alternative means of access to the property. Staff further finds that the property will be required to be returned to farm/forest propagation or habitat uses that are consistent with Goal 4 forest lands. Staff finds that rather than increasing fire hazards, risk to fire personnel and fire suppression costs, the proposed use will decrease these hazards and risks. Until an area is actually stripped for mining, it will remain essentially in its present condition. Staff finds this creates no increase in fire hazards, fire suppression costs or risks to fire suppression personnel over existing conditions. More importantly, once the land is stripped for rock extraction, topsoil and vegetation are removed and fire hazards and risks are greatly reduced because less flammable material is available on the site. Staff further finds that the proposed operation will provide the stockpile and buffer areas and these areas will provide significant nonvegetative buffers on the property to help alleviate fire danger. It should be noted that mineral and aggregate operations have equipment on the premises that can be used in fire suppression and, in this manner, will actually help decrease the possibility of wildfires in the area. This persuades staff to conclude that the approved mineral and aggregate use is consistent with conservation of forest lands under a long-term planning perspective. Goal 4 also requires the uses on forest land be consistent with sound management of soil, air, water, fish and wildlife resources. Staff finds that a required reclamation plan will require soil resources on the site to be preserved and replaced through the DOGAMI reclamation process. Staff further finds that the applicant will handle all stormwater onsite so that siltation and offsite issues related to water quality are not problematic. As has been discussed above, the resources will be protected by controlling dust on the site and that water resources on the site will be protected by use of water in strict compliance with Oregon's statutory commercial/industrial exemptions. There are no identified fish resources on the site that would be affected by the proposed site. Staff further finds that conditions of approval that were suggested by the Oregon Department of Fish and Wildlife to mitigate any adverse effect on wildlife will be required to be met by the operator. Staff finds that with these conditions, including seasonal closure of portions of the site, the use is fully consistent with wildlife habitat use well into the future. For all these reasons, staff believes the land use action meets the requirements of conserving forest lands and maintains the forest lands base to protect the state's economy consistent with sound management of soil, water, air and fish and wildlife resources. Staff believes the Board can find that Goal 4 mitigates in favor of protecting the site from mineral and aggregate use.

**Goal 5**

Goal 5 requires the protection of natural resources and the conservation of scenic, historic areas and open spaces. Staff finds that the mineral and aggregate resource is a significant Goal 5 resource and that this process is the periodic review process to gain compliance and acknowledgment of the Goal 5 element of the county's comprehensive plan. Staff finds the Black-tailed deer and Roosevelt elk winter range habitat are the only other identified Goal 5 resources within the impact area. ODFW has determined conditions that will minimize impacts to the winter range habitat and staff recommends the Board include these conditions as conditions of approval should the Board approve the proposed rezoned and aggregate use. Several individuals claimed the scenic view for this area should be protected, but staff has found that there are no protected Goal 5 scenic areas either within the impact areas or in the general area. Staff finds that the pertinent Goal 5 resources for this analysis are the determined significant aggregate resource and the identified big game winter range habitat, and that ODFW has determined the aggregate operations will have minimal impact on the winter range habitat if their specific conditions for the operation are adopted as part of the approval for the proposed rezone and aggregate operation.

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Finally, with regard to Goal 5, staff emphasizes that this report is responding to specific work tasks directed to us by LCDC and DLCD. Specifically, Remand #2 from DLCD requires Jackson County to review and reassess the impact area analysis for the mineral and aggregate resource only. There is not any other work task that is before the Board related to any other Goal 5 resource. Staff finds that this application is following OAR Chapter 660, Division 16 rules of the LCDC that are applicable to Jackson County in this matter and that it is staff's determination that all of the requirements of Goal 5 can be met to protect the four mineral and aggregate locations on the McKenzie Freel aggregate property. Staff finds that the record supports this decision and, accordingly, staff believes that Goal 5 can be met

**Goal 6**

Statewide planning Goal 6 is directed to maintain and improve the quality of air, water and resources of the state. With regard to air quality, staff finds the operator will be required, pursuant to a condition of approval, to obtain the appropriate DEQ air quality permit for any crushing unit that will be used on the site. Staff finds that compliance with this permit is possible and such compliance will maintain and improve the quality of air resources in the state. The applicant has analyzed the dust issues related to the operation of the mineral and aggregate sites and has proposed a comprehensive series of mechanisms to minimize, mitigate and eliminate dust associated with operations on the site. A condition of approval directs the applicant to take certain steps will serve to significantly reduce, mitigate and eliminate dust issues associated with the mineral and aggregate operation. Staff finds that this maintains and improves the quality of air resources of the state. With regard to water, staff finds that there are no discharges from the mineral and aggregate site. Staff further finds that the applicant will control stormwater runoff onsite in conformance with the DOGAMI permit. A condition of approval will direct the applicant to ensure this outcome. Staff further finds that applicant may use water resources to assist in the control of dust. The water use has been analyzed by the applicant and that the amount of water necessary to control dust (the principal use of the water on the site), will be obtained in one of three ways: onsite exempt, commercial/industrial well taking 5,000 gallons a day, trucking water in from an available source that stores tanks on the site, or application for change of use of existing irrigation rights already serving the McKenzie Freel aggregate property. Staff finds that each of these uses of water is technically possible and within the bounds of the state statutory mechanism that controls water use. Staff finds that compliance with state statutory mechanisms maintains and improves the quality of water resources in the state. Staff further finds that the applicant has analyzed noise issues related to the proposed mineral and aggregate operation. Staff finds that the applicant will use existing land forms (ridge lines and hummocks), and will use strategically placed stockpiles and berms to maintain compliance with DEQ standards. Staff incorporates the analysis of conflicting uses, the impact area and ESEE consequences above. Staff finds that applicant's noise study shows the location of the sites and operational controls developed in consideration of state noise regulations ensure that the noise emanating from the site will be in compliance with the regulatory regime and, therefore, the noise environment will be maintained through consistency with state regulations and statutes. Staff further finds that applicant will be required to reclaim the extraction sites consistent with the DOGAMI regulations through a condition of approval which requires reclamation of the property in compliance with DOGAMI standards. The applicant has indicated the site will be reclaimed for farm/forest/wildlife habitat uses that are consistent with the overall land uses in the general vicinity. Staff finds that such reclamation will maintain and improve the land resources of the state. The applicant has proposed no sewage infrastructure for the site and the sanitary needs of workers and visitors to the site will be taken care of with porta-potties as is customary at many mineral and aggregate operations. Staff finds

the use of porta-potties will help improve and maintain the quality of air, water and land resources of the state. Staff further finds that compliance with DEQ and DOGAMI standards confirms that any discharges on the site will not exceed the carrying capacity of resources in the area considering the long-range needs, will not, with allowable regulatory and statutory requirements, degrade air, water and land resources nor threaten the availability of such resources to other users in the area.

Mineral and aggregate resources are locationally specific and they constitute an important land resource in the state. The Board has found these sites have high quality rock and are close to the market area in Jackson County. Staff finds it is appropriate to protect the extraction of rock while ensuring that reclamation will occur on the site. Staff finds that this use of the land and reclamation, together with the environmental controls that are proposed and required by conditions of the approval, meet the purposes of Goal 6 which are designed to maintain and improve the quality of land, air and water resources in the state. For these reasons, the Board can conclude that the proposed application meets the requirements of statewide land use planning Goal 6 and that Goal 6 mitigates in favor of the proposed use.

**Goal 7**

Goal 7 requires that life and property be protected from natural hazards. Staff finds there are no identified and inventoried natural hazards in the general area with the exception of normal fire hazards that are present in rural wooded areas. Staff finds that the site generally has thin soil which overlies a significant deposit of valuable rock. Staff finds the proposed operation will be required, by a condition of approval and by state law, to obtain a reclamation permit from DOGAMI. Part of this reclamation permit requires stabilization of overburden and control extraction within the quarry. Staff finds these are adequate safeguards to ensure that the resource sites themselves will not become a hazard. From a site visit by the Board and staff, staff notes the area is dry and there is no evidence that the proposed site would be subject to stream flooding (there are no streams near the proposed extraction sites), erosion (steps shall be taken under the DOGAMI regulations to control overburden stability and erosion), landslides (slope control by DOGAMI will eliminate slide potentials), earthquake potential, weak soils or other specific geologic hazard. Staff also finds that as a condition of approval, the applicant will be required to handle stormwater onsite by reducing or eliminating any possibility of offsite erosion from stormwater sources. Staff further finds that the applicant will reduce wildfire potential and incorporate herein the findings regarding fire hazard issues. This is because existing and combustible vegetation must be removed on the extraction areas to gain access to the mineral and aggregate deposit. Staff finds this eliminates fuel and creates fire breaks in the area. Staff further finds that the applicant will improve the road into the area which would assist in firefighting efforts in the event there was a lightning caused fire or other type of fire event. Staff finds that the applicant will, by condition, have a water truck on site for assistance in fighting wildfires, if necessary. The applicant will have equipment on site which can be used in response to fire which may occur from other sources and this will insist in reducing the risk and effect of wildfires. Based on all these findings, the Board can conclude the proposed application will not adversely affect life or property with regard to natural disasters or hazards and that our approval protects life and property from natural hazards. Accordingly, staff believes the proposed rezone and aggregate use complies with Goal 7 and Goal 7 weighs in favor of protecting the site for mineral and aggregate uses.

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**Goal 8**

Goal 8 requires that the recreational needs of the citizens of the state and visitors be satisfied and, where appropriate, to provide for the siting of necessary recreational facilities, including destination resorts. Staff finds that no destination resort is proposed for the area and a destination resort is generally inconsistent with the eligible areas identified under Goal 8, particularly the requirement that destination resorts are not allowed within especially sensitive big game habitat. Nearly the entire area east of Hwy 62 is within an especially sensitive big game habitat for Black-tailed deer or Roosevelt elk herds. This requirement, as well as other requirements of the LDO, Section 7.1.5, makes it highly unlikely that a destination resort can locate in this general area. There is a small area west of Hwy 62 that is within the 1,500 foot impact area for the access point with Hwy 62, but none of the parcels are large enough for a destination resort, either large or small.

The ability to site a mineral and aggregate operation on the McKenzie Freel aggregate property, which is close to the market area, means that another area of the county which could potentially be more appropriately used for recreation or for destination resorts. While staff understands the County does not trade the use on one property for the use on another property in Jackson County, it should be noted the practical benefits of approving this particular mineral and aggregate operation includes less demand on other areas of the county which might more appropriately serve the recreational needs of the citizens of the state and visitors. Staff also finds that the applicant has located the individual resource sites in a manner that uses natural ridge lines to block the view of the site from state Highway 62 which serves as a gateway to Crater Lake. Staff finds that the area is generally well developed with homes on rural lands and that the applicant has appropriately sited and located the mineral and aggregate extraction areas in such a manner to reduce the effect on recreational traffic and visitors to the state traveling on Highway 62. Staff further finds that while the property is private, the possibility for hunting continues to exist on the site notwithstanding an approval of the mineral and aggregate application. The availability for hunting, if only for the property owner, helps satisfies the recreational needs of the citizens of the state. Based on all these findings, staff believes the proposed application will not adversely affect the ability of Jackson County or the state of Oregon to satisfy the recreational needs of the citizens of the state, in compliance with Goal 8.

**Goal 9**

Goal 9 requires that adequate opportunities throughout the state be provided for a variety of economic activities vital to the health, welfare and prosperity to the state's citizens. Staff finds that the proposed application provides significant benefit to the economy of both Jackson County and the state. Rock resources of the quality found at this site are needed in Jackson County to help with construction, infrastructure development and economic growth. Staff finds that rock is an essential building block for the county and state economies as it is necessary for infrastructure projects (streets, roads, sewers, etc.) and is an essential construction material in the residential, commercial and industrial sectors. Rock is required for base purposes for all types of buildings and that rock is incorporated in construction through concrete, base materials and asphalt roads and in many other ways. Staff finds that rock products are essential to a healthy growing economy in the county and state. Staff finds that the four sites on the McKenzie Freel aggregate property have a large quantity of good quality rock material that will be available to the county for significant period and, therefore, will be a significant economic asset to the county. Development of the rock resource will create a payroll and, more importantly, will preserve a stable supply of rock for the future use of the county and state. Staff finds that failure to preserve good quality rock sites that are favorably situated to

serve market areas can ultimately lead to higher prices and undependable levels of supply. This could directly or indirectly increase the costs of roads in the county, the affordability of homes in the county, and the amount of county tax revenue that must be used to purchase road construction and repair materials. Staff finds protecting the four sites on the McKenzie Freel aggregate property ultimately protects a mineral and aggregate resource with the ability to serve Jackson County with quality rock materials that are important to the county's economic well-being. Staff further finds that portions of the site that are not used for mineral and aggregate extraction will continue to be used for other types of economic uses (e.g., agriculture and forestry uses) and may continue to be used even while the rock operation is ongoing. The site will be reclaimed and will be available to assist in the improvement of the economy through forest, farm and wildlife habitat related uses in the future. Consistent with our ESEE analysis above, staff believes the economic benefits of protecting the four resource sites outweigh the countervailing economic costs. For all these reasons, staff believes that Goal 9 is met and further concludes that an approval of the four sites on the McKenzie Freel aggregate property will have a positive effect on the economy of the county and state. Staff believes that Goal 9 strongly supports the protection and use of this resource site.

**Goal 10**

Goal 10 requires provision of the housing needs for the citizens of the state. Goal 10 generally guides buildable land determinations and housing assistance determinations which are not relevant in this Goal 5 proceeding. However, staff believes that mineral and aggregate resources are a critical component providing for the housing needs of the citizens of Jackson County and the state in that mineral and aggregate resources are a fundamental building block for infrastructure and houses, including concrete sidewalks, asphalt streets and general housing construction. Staff finds that preservation and protection of the four mineral and aggregate sites on the McKenzie Freel aggregate property will provide a necessary basic resource that assists in providing for the housing needs for the citizens of the state. For all these reasons, staff finds that Goal 10, to the extent it applies in this application, is satisfied and that the goal generally mitigates in favor of the proposed use.

**Goal 11**

Goal 11 requires planning, development and timely order and efficient arrangement for public facilities and services to serve as a framework for urban and rural development. Goal 11 generally provides the jurisdiction should plan and develop public facilities frameworks for urban and rural development. Staff finds that the proposed use does not require a significant level of public services and does not believe Goal 11 applies to this application. Nonetheless, in the event this goal would be deemed applicable, staff makes the following findings. Staff finds the proposed use is a rural use for a number of reasons. First of all, rock extraction is a locationally specific use and rock extraction must occur where the resource is located. In Jackson County, staff finds that available rock resources are primarily and predominantly found in rural areas. Nearly all of the rock and extraction activities within the county are located outside the urban growth boundaries, and certain future opportunities for locating new rock extraction areas are generally located outside urban growth boundaries. Staff finds that in Jackson County it is a general standard in the industry for an operator to have crushing and processing facilities at the point of gravel extraction. While some of the mineral and aggregate material from the four sites may be used in the urban area, the material location where material is ultimately used does not, in and of itself, define whether an activity is urban or rural in nature. Staff finds that rock resources in the county are predominantly located outside the urban areas and that processing activities normally occur at the site where the rock is



located and, accordingly, staff believes that the proposed use is a rural type development. Staff finds that electrical power is available on the McKenzie Freel aggregate property and that the applicant has indicated an electrical generator will be used for the electrical needs for the gravel mining operation, thus eliminating the need for utility extensions. Staff further finds that adequate water can be made available from an onsite well (within the statutory exemption) or that adequate water can be trucked to the site, or that an application for change of use may be made to convert irrigation water that is currently available on the site for use in mineral extraction purposes. Staff finds that porta-potties will be used onsite and there is no need for any kind of sewage or other sanitary infrastructure. Staff finds that the proposed site will be served by a private internal access road which connects directly to state Highway 62. Staff incorporates the analysis of Goal 12 below and finds that the intersection with Highway 62 can be made to be fully adequate for the proposed use and that Highway 62 has ample capacity to safely provide for traffic generated by the proposed use. Staff finds that transportation, water, sewage and electricity are the facilities and services which are needed for this type of rural use. Staff further finds that adequate levels of these services facilities are presently available, or will be available, under conditions that would imposed to serve the proposed rural mineral and aggregate extraction use without the need for any additional infrastructure development. Based on these factors, staff finds that to the extent applicable, Goal 11 is satisfied by the proposed use and the goal mitigates in favor of the proposed use.

### Goal 12

Statewide Goal 12 requires supervision and encouragement of a safe, economic and convenient transportation system. As an initial matter, staff finds that mineral and aggregate is a key raw material that is used to produce transportation facilities, such as roads, railroads, airports, sidewalks and bikeways. The protection of adequate supplies of mineral and aggregate resources significantly advances the county's ability, and the state's ability, to have raw material available for construction of these types of transportation systems. Staff finds it is in the best interests of the citizens of the county to have mineral and aggregate resources available to assist in the development of transportation systems.

Goal 12 is implemented by transportation planning rule, OAR 660-012-0000. The transportation planning rule provides that amendments to comprehensive plans, which significantly affect a transportation facility, shall assure that allowed land uses are consistent with identified function, capacity and performance standards of the facility. This application is an amendment to the Jackson County Comprehensive Plan and, therefore, must determine whether or not the proposed use significantly affects a transportation facility; in this case, Highway 62. The transportation planning rule defines when a plan or land use regulation amendment significant affects the transportation facility. That occurs if: (a) the amendment changes the functional classification of an existing or planned transportation facility; (b) the amendment changes standards implementing the functional classification system; (c) the amendment allows types or levels of land uses that would result in levels of travel or access which are inconsistent with the functional classification of a transportation facility, or (d) the amendment would reduce the performance standards of the facility below the minimum accepted level identified in the TSP. Evidence submitted by the applicant and ODOT indicates that the proposed amendment protecting Goal 5 mineral and aggregate resources and allowing their extraction does not change or have any effect on the functional classification of Highway 62 or any other existing or planned transportation facility. Highway 62 will continue to be a state highway functioning as a major arterial/state regional highway. Staff finds that applicant's use of Highway 62 is consistent with the performance standards of that facility. Staff further finds that the applicant's use does not change the standards implementing the functional

classification system. Those standards remain in place and under those standards, Highway 62 remains an arterial/state regional highway and properly functions within appropriate performance standards. Staff believes that Jackson County would not, should the Board approve the rezone and aggregate operations, allow levels or types of uses that would result in levels of travel or access which are inconsistent with the functional classification of the transportation facility. Staff finds that ODOT, who has jurisdiction over the intersection of the internal access road from the McKenzie Freel aggregate property and Highway 62, has concluded that access is consistent with the functional classification of Highway 62 and that any safety problems associated with the access can be mitigated adequately. Accordingly, staff finds that an approval of the rezoning of the sites and internal access road does not allow types of land uses which would result in levels of traffic or access which are inconsistent with the functional classification of Highway 62, the sole transportation facility involved in the decision. Staff finds that the volume to capacity standard has been analyzed for the proposed use relative to Highway 62 by the applicant's traffic engineer, Mr. Karl Birky. Mr. Birky concludes that performance standards of Highway 62 will be largely unaffected by the proposed use, the access for the proposed use, and truck traffic and other traffic generated by the proposed use. Opponents provided a traffic critique (not a traffic study) from Hardey Engineering (Part of Exhibit 72, starting on page 596 of the current record). The critique identified several issues with the traffic study, including a lack of supporting data based upon traffic near the proposed site, the study does not appear to analyze the impacts for deceleration lanes into the project site and acceleration lanes for turning onto the highway, the potential traffic for the proposed use was not accurately reflected in the study, impact of vehicles was analyzed for volume to capacity and not delay, the driveway was not analyzed for volume to capacity, and an intersection analysis was not performed for delay at the driveway. Mr. Birky responded answering these issues as well as proposing a mitigation plan for the entrance to Hwy 62 (Exhibit 78, pages 645-649). The detailed mitigation plan is important for addressing safety issues that arise under the county's provisions that are related to Goal 12. Staff incorporates by reference the discussion of the county transportation standards below. A Gap Study was submitted by Richard L. Woelk, P.E and T.E., to address the safety of the access point onto Hwy 62 (Exhibit 93, pages 696 to 708 of the current record). Gap analysis allows traffic engineers to analyze how vehicles entering a highway may be efficiently and safely introduced into the traffic flow. This study determined that all traffic from the aggregate operations could safely depart the access point and provided a revised mitigation plan. Mr. Woelk states *"We believe that the list of mitigation alternatives provides direct guidance to ODOT, who has jurisdiction over the McKenzie Freel access, to properly select the most effective measure or measures to protect transportation efficiency and safety."* In a letter dated May 3, 2005 from Dan Dorrell, District 8 Traffic Engineer, ODOT, Mr. Dorrell states *"Consistent with Mr. Pyles' testimony at the hearing on March 30, 2005 and my comments at the April 27, 2005 hearing, we believe that impacts can be mitigated. The applicant has contacted ODOT, and we have discussed preliminary mitigation strategies. Some of these strategies include, additional signage, an activated flashing light mechanism, and the possibility of a raised access ramp, and possibly implementing Transportation Demand Management (TDM) after a gap study is completed. Under OAR 734-051, the ODOT permit can be addressed after the County decision is completed. As such, we would request that a County decision contain the following condition language: 'The applicant shall provide proof of a valid ODOT Road Approach Permit prior to operational use of the site and the access to Highway 62.'" Staff finds that the proposed condition from ODOT, the traffic study from Mr. Birky, and the recommended revised conditions from Mr. Woelk's Gap Study effectively determine that Goal 12 is satisfied. Based on these factors, staff finds that adequate transportation facilities are in place for the proposed use and that these transportation facilities can be made safe for the proposed use and for other users in addition to the proposed use.*

**Goal 13**

Goal 13 requires the county to analyze any energy considerations for the proposed land use with the goal of conserving energy. Staff finds the proposed site is located close to the north Jackson County market area where a significant amount of growth is occurring. Locating mineral and aggregate sites that are reasonably close to major market areas in the county reduces the amount of transportation necessary to move the rock material to where it will be used and, therefore, saves energy. Staff further finds that proximity and direct access to a state highway provides an excellent transportation facility for the distribution of rock from the four sites on the McKenzie Freel aggregate property. The use of state highways tends to make truck transportation more efficient because state highways are generally designed for more efficient travel (e.g., fewer stops, easier curves, etc.) as opposed to most county roads. The availability of a state highway will reduce the energy used by rock delivery trucks. Staff incorporates the findings under the energy portion of the ESEE analysis. For all of these reasons, staff believes that the requirements of Goal 13 are met and that Goal 13 weighs in favor of our decision to protect the aggregate and mineral resource sites.

**Goal 14**

Goal 14 requires the county to provide for an orderly and efficient transition from rural to urban land use to accommodate the population and urban employment inside urban growth boundaries, to ensure efficient use of land and to provide for livable communities. As previously discussed under Goal 11 above, staff finds the proposed land uses are a typically located on rural lands in Jackson County. Staff finds that mineral and aggregate extraction sites in the county typically require large acreages and large parcel sizes that are not consistent with urban uses. Staff further finds that in Jackson County, most processing occurs at the site where extraction takes place. Material to be used from the site is used in both urban and rural areas but the end use of the product itself is not determined whether the use is rural or urban in nature. Staff finds that the general practice in Jackson County is that rock extraction and associated processing (e.g., crushing) are located in rural areas and the activities are predominantly rural in character. Based on all these factors, staff finds that gravel extraction and processing activity is a rural resource activity and nothing in this process permits a change in any use from rural to urban.

Staff further finds that Goal 14, as amended on April 28, 2005, requires additional considerations of accommodating urban population and urban employment, and ensuring efficient use of the land and providing for livable communities. Staff incorporates the analysis of Goal 9 above. Consistent with the findings in Goal 9 above, mineral and aggregate materials are a fundamental building block for streets, roads, residential, commercial and industrial properties that are essential to accommodate urban population. Consistent with the findings of Goal 9 above, available supplies of mineral and aggregate material from rural resource areas allows the county to accommodate urban population and continue to have urban employment inside the urban growth boundary. While the efficient use of land in Goal 14 is primarily directed to proper inventory balance for urban uses, urbanizeable land and urban growth boundaries, the location of four small quarry areas on the larger McKenzie Freel aggregate property is an efficient use of land that allows the mineral and aggregate resource to be extracted while allowing a majority of the property to continue to be used for ranching and foresting activities.

Finally, while the emphasis in Goal 14 on livable communities is generally related to urban planning and intelligent development in urbanizable areas, approval of this proposed

rural use provides access to a construction material that will serve as a fundamental building block for livable urban areas. Accordingly, staff finds that to the extent Goal 14 applies in this matter, it is satisfied through approval of this rezone and aggregate operations.

**Other Statewide Goals**

Staff finds that Goal 15 related to the Willamette River greenway, Goal 16 related to estuarine resources, Goal 17 related to coastal shorelands, Goal 18 related to beaches and dunes, and Goal 19 related to ocean resources do not apply in this matter.

**II. JACKSON COUNTY COMPREHENSIVE PLAN**

**A. Criterion: Jackson County Comprehensive Plan, Map Designation Elements**

**1. Aggregate and Mineral Resources Policies**

Under the Jackson County comprehensive plan aggregate and mineral resources element, the goal is to protect aggregate resources from incompatible development and to ensure aggregate is available for use. Staff finds, as discussed below, that Jackson County is in a periodic review process proceeding through Goal 5 protection for mineral and aggregate resources on the McKenzie Freel aggregate property and the County is proceeding under the provisions of OAR 660, Division 16 as instructed by LCDC and DLCD. Staff finds the sites A, C, D2, and E are significant aggregate resources which require the County to determine a level of protection for the sites. The Board must determine the level of protection for these sites based upon an ESEE analysis of conflicting uses within a determined impact area. The level of protection determined by the Board must meet the above goal to protect aggregate resources from incompatible development and to ensure aggregate is available for use.

**Aggregate and Mineral Resources Policy 1**

This policy directs the County to recognize that minerals are a nonrenewable and necessary resource that must be protected from incompatible development and made available for mining. This policy is specific to mineral resources and not aggregate resources. The applicant has not identified mineral resources associated with the proposed sites and this policy does not apply to this application.

**Aggregate and Mineral Resources Policy 2**

Policy 2 requires the county to protect and conserve aggregate resources and reduce conflicts between aggregate operations and adjacent land uses, and ensure that aggregate resources are available for current and future use. Should the Board decide to allow surface mining, a 3C decision would allow a balance of protecting the resource sites and conflicting uses. Through this decision, the sites would be allowed to be mined subject to specific conditions. These conditions are important because they serve to mitigate the potential for conflicts between aggregate operations and adjacent land uses. The purpose of these conditions is not to eliminate conflicts, but to reduce conflicts and the proposed conditions allow for mining the aggregate resource as well as ensure that any conflicts meet state and local

standards and requirements. The applicant has used physical features such as ridges and naturally existing hummocks, to screen the actual mining sites and the effects from operating at those sites, from adjacent land uses. Staff finds that the applicant's operational plan includes significant use of stockpiles and construction of berms to further reduce conflicts between aggregate operations and adjacent land uses. Through a combination of the applicant's planning efforts and the proposed conditions, the potential for conflicts between aggregate resources and adjacent lands is reduced and the County may fully protect the aggregate resource using only slight limits on adjacent lands. Staff incorporates by reference herein Criterion V ("Program to Achieve the Goal") below. Staff finds that 3C decision would ensure that aggregate resources are available for current and future use and reduces the conflict between aggregate operations and adjacent uses. Policy 2 could be met through a 3C decision by the Board.

**Aggregate and Mineral Resources Policy 3**

Policy 3 requires emphasis to be placed on the zoning of lands for aggregate resources near each urban center and key rural communities in the county. Staff finds that the north valley area of Jackson County, including Eagle Point and Shady Cove, are growing urban centers in the county. In this matter, the location of the four mineral and aggregate resource sites on the McKenzie Freel aggregate property ideally situates the mineral and aggregate resources near this market area and may provide a current and long-term source of valuable mineral and aggregate materials to support growth and expansion in the north valley area, including the centers of Eagle Point and Shady Cove. Staff finds and conclude that the four resource sites on the McKenzie Freel aggregate property are consistent with the requirement of Policy 3.

**Aggregate and Mineral Resources Policy 4**

Policy 4 requires that when an aggregate site is no longer suited for aggregate operations, a change from aggregate resource zoning to another zoning designation is desirable. Policy 4 further requires that the proposed zoning must be consistent with the comprehensive plan ordinances and reclamation plan. Staff finds, as more fully set forth in Criterion IV ("Program to Achieve the Goal") below, that should the Board approve the rezone and aggregate operations, the applicant will be required to obtain the appropriate reclamation permit from DOGAMI, together with reclamation bonds, to ensure the site is reclaimed in accordance with this policy. As indicated by the applicant, when the aggregate resource is exhausted on the site, the site should be reclaimed to basic farm/forest/wildlife habitat uses such as grazing, forest production or habitat. These uses are completely consistent with the comprehensive plan designation and zoning districts in the area (EFU, FR, OSR, and WR). Farm/forest/wildlife uses are outright allowed uses in all of these zoning districts. The applicant believes that because the reclaimed use to basic farm/forest/wildlife uses is consistent with both the current comprehensive plan designations and the aggregate mineral and aggregate resources designation (AR), there is no need to change aggregate resources zoning to another designation in this particular case. Because the proposed post-reclamation uses are consistent with both EFU and AR activities and standards, the applicant believes a zone change back to EFU is not required by Policy 4. Staff finds that the language in Policy 4 to rezone a property, based upon consistency with the Map Designations Element and other relevant sections of the comprehensive plan, is a recommendation rather than a requirement. Staff believes Policy 4 can be met without requiring the property to be rezoned.

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There are numerous implementation strategies which allow the county's Mineral and Aggregate Resources Policies to be achieved. Each is addressed below.

Implementation strategy (a). This implementation strategy provides that the county shall protect significant mineral and aggregate resources consistent with statewide planning Goal 5 and shall use the Administrative Rule Chapter 660, Division 16 process to achieve compliance. Staff finds that the County has followed OAR 660, Division 16, including all of the guidance provided by DLCDC and LCDC through the periodic review process with regard to the designation of impact areas and our overall analysis of conflicts. Accordingly, staff finds that the County has complied with implementation strategy (a).

Implementation strategy (b). Implementation strategy (b) requires the county to maintain an inventory of mineral and aggregate resource sites. The strategy refers to several types of inventories: significant sites, potential sites and "other" sites. Staff notes there has been some controversy in the public hearing process as to whether or not the county has an inventory or inventories or whether the inventory was eliminated by prior decision in other land use proceedings. Staff finds that the county has an inventory of significant aggregate resource sites, sites which are currently zoned AR. Previous decisions regarding this application have determined this site to be a significant aggregate resource, although denying rezoning the sites to AR. Sites A, C, D2, and E are currently on Jackson County's inventory of significant aggregate resource sites. Even if the Board were to assume that the county does not have an inventory of any type at this point, the Goal 5 process set out in OAR 660, Division 16 provides that the county shall inventory as part of the Goal 5 process. If the county is deemed not to have any inventories, Jackson County is using the Goal 5 process to establish a significant site inventory and enter into that inventory the four mineral and aggregate sites on the McKenzie Freel property. Accordingly, staff finds that implementation strategy (b) is met.

Implementation strategy (c). This implementation strategy requires the location of the site to be identified and that the site must contain recoverable resource material. The strategy also confirms that a site may consist of several portions of property and does not necessarily need to include all mineral and aggregate reserves if those reserves are located on land that is irrevocably committed to other uses which are incompatible with surface mining. Staff finds that the applicant has located the mineral and aggregate resource with adequate specificity. Staff believes there is no material difference between the location of the mineral and aggregate sites as they are currently identified in these findings and the location of the same sites as initially identified to the county by geologist B.G. Hicks in 1995. In any event, staff finds that as a condition of approval, the applicant will be required to survey the sites and fix their boundaries in a manner that does not exceed 20 acres for site A, 18 acres for Site C, 38 acres for Site D2 and 41 acres for Site E. Staff finds this is sufficient and appropriate identification for the sites and that each of the sites contain a recoverable source of material as shown by Mr. Hicks' professional report. Staff also finds that all of the four resource sites are located on McKenzie Freel aggregate property and we further find that there are no portions of any of the four resource sites, nor of the impact area around each of the four sites, nor of the access road or its impact area that are irrevocably committed to other land uses that are incompatible to surface mining. It should be noted that there is an approved homesite location which is within the 1,500 foot impact area for Site E and the furthest eastern point of the access road. DEQ standards for noise have not been shown by the applicant to be met for this location. Staff incorporates the findings above with regard to the conflict identification of the impact area and ESEE analysis, and finds that the location of the aggregate resources are appropriately located on lands that are not irrevocably committed to incompatible uses. Accordingly, staff believes implementation strategy (c) is met.

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Implementation Strategy (d). This implementation strategy makes suggestions as to when a mineral and aggregate resource site will be deemed significant. There are two parts to this implementation strategy. The first portion provides a standard: that the county may consider a mineral and aggregate site to be significant if it has a minimum of 100,000 yards of material. This volume threshold is not absolute. Staff finds that each of the sites on the McKenzie Freel aggregate property has many multiples in excess of 100,000 cubic yards. Accordingly, we find that under the implementation strategy, the suggested significance threshold is met.

This implementation strategy also requires the county to protect a variety of large reserves to serve a regional market. Staff finds that in reviewing large reserves, this implementation strategy provides that it is appropriate to look to Oregon Department of Transportation specifications which may include the Los Angeles rattler test, the Oregon Air Degradation test and the Sodium Sulfate soundness test. Staff interprets this implementation strategy to find that this is an aspirational suggestion in the implementation strategy and no site is required to meet all three of the tests. Staff finds that the mineral and aggregate material from each of the McKenzie Freel four resource sites meets the Los Angeles rattler test and, therefore, the sites qualify as significant aggregate resources under this strategy. Because each of the four sites has in excess of 100,000 cubic yards and meets the ODOT specification for construction grade material, staff determines the sites are significant aggregate resources. It should be noted that the Board has previously determined these sites to be significant aggregate resources in previous decisions. For all these reasons, we find that implementation strategy (d) is met.

Implementation strategy (e). Staff finds that operations on the McKenzie Freel property will extract aggregate and mineral resources and, therefore, there is no need to apply this strategy and look at a nonaggregate mineral on a case-by-case basis.

Implementation strategy (f). This implementation strategy provides presumptive significance for sites owned by governmental agencies. Because this site is not owned by a government agency, staff finds that this implementation strategy does not apply.

Implementation strategy (g). This implementation strategy provides guidance for the county to consider expansion at existing significant resource sites. Staff finds that this is the initial siting action for each of the four sites on the McKenzie Freel aggregate property and that this particular implementation strategy related to expansion does not apply.

Implementation strategy (h). We find that this implementation strategy refers to "grandfathered" aggregate operations. Staff finds the Goal 5 process for this application does not involve "grandfathering" and this implementation strategy does not apply.

Implementation strategy (i). Staff finds that this implementation strategy refers to "other sites" inventory. As has been previously indicated, the four resource sites on the McKenzie Freel aggregate property are placed on the county's significant sites inventory and, accordingly, this implementation strategy dealing with "other sites" is not applicable.

Implementation strategy (j). This particular implementation strategy deals with sites on the "potential sites" inventory. Staff finds the four resource sites on the McKenzie Freel aggregate property are on the significant sites inventory with the county and, therefore, this implementation strategy related to "potential sites" is not applicable.

Implementation strategy (k). This strategy addresses the sites that are determined to be significant and requires the county to complete the Goal 5 process and determine the level of protection for the sites. The implementation strategy further suggests that if the final decision concerning the site is to fully preserve or partially protect the site from conflicting uses, the site shall be zoned with an aggregate resource (AR) designation. Staff finds that the Board has determined that each of the four sites on the McKenzie Freel aggregate property is significant and each of the sites has been placed on the county's significant sites inventory. Staff further finds that through this application process, we are completing the Goal 5 process as required by OAR 660, Division 16 and LCDC/DLCD guidance to identify conflicting uses, analyze the ESEE consequences of conflicting uses and designating a level of protection. Accordingly, staff finds that implementation strategy (k) is can be met following a decision by the Board regarding the level of protection accorded to aggregate resource.

Implementation strategy (l). This implementation strategy suggests that when conflicts are identified with other significant Goal 5 resources, the county shall consider the protection program for those other resources. Staff finds the only identified Goal 5 resource is the especially sensitive winter range habitat for Black-tailed deer and Roosevelt elk, Area of Special Concern 90-1. This habitat has also been identified as a conflicting use. Staff finds the conditions requested by ODFW to minimize impacts to this habitat should be adopted as conditions of approval, should the Board approve the rezone and aggregate operations plan. By adopting the ODFW conditions, staff believes this implementation strategy can be satisfied.

Implementation strategy (m). This implementation strategy provides that the county, as part of the ESEE analysis and for any site currently zoned for exclusive farm or forest use, shall make findings related to ORS 215.296 standards, namely that the use will not force a significant change in, or a significant increase in the cost of, accepted farm or forestry practices on surrounding lands. Staff incorporates the findings above with regard to Goals 3 and 4, and with regard to the conflicts analysis as those set forth herein. Staff affirms the findings that the proposed use will not force a significant change in or significantly increase the cost of accepted farming or forestry practices on surrounding lands. The implementation strategy also suggests consideration of whether or not the proposed use will significantly increase fire hazard or significantly increase fire suppression costs, or significantly increase risks to fire suppression personnel. Staff incorporates the findings above with regard to fire control and suppression issues. Staff finds that the proposed quarry operations will decrease fire hazards, decrease fire suppression costs and decrease risks to fire suppression personnel. First, as a necessary incident to mining, vegetation will be removed and the mining area surface will be disturbed exposing bare ground. This removes fuel and provides significant fuel breaks which decrease fire hazards. Staff also finds that stockpile areas and berm areas will provide a minimum of a 100 foot fuel break and all fuels will be eliminated in the stockpile areas and the fire hazard will be greatly reduced. There will be ultimately four separate sites which are strategically placed across the McKenzie Freel property which will provide significant fuel breaks based on removal of surface vegetation, disturbing the ground to allow extraction and stockpiling of mineral and aggregate resources. Staff further finds that a road will need to be developed into each of the four sites and this road may serve a combined purpose of providing for fire access. This road will reduce fire suppression costs and reduce risk to fire suppression personnel by allowing them access (and exit) to areas that are currently not available. Staff also finds that the operator will have heavy equipment on site, including a water truck. The availability of this equipment reduces fire hazard, reduces fire suppression costs and reduces risk to fire suppression personnel. The applicant will provide roadway signage indicating the location of the access road. This will assist in fire suppression and response. Staff further finds that there



are no buildings which are scheduled to be constructed on the site and any mechanical equipment, such as a crusher, will be surrounded by a significant expanse of stripped ground that is at least 100 feet in each direction with no combustible material. For all these reasons, staff believes that implementation strategy (m) is satisfied.

Implementation strategy (n). This particular implementation strategy addresses a situation where a mineral and aggregate resource site would span multiple jurisdictional boundaries. Staff finds each of the four resource sites, together with the entire McKenzie Freeland aggregate property is completely in Jackson County and, therefore, this particular implementation strategy does not apply.

Implementation strategy (o). This implementation strategy requires that if there is a new conflicting use that is allowed within an impact area surrounding a mineral and aggregate site, that measures necessary to resolve conflicts must be used, including setbacks, insulation screening or similar measures. The Jackson County Land Development Ordinance provides additional setbacks and restrictive covenants to help resolve identified conflicts. The Board may find it necessary to establish additional restrictions to resolve these conflicts. Accordingly, staff believes that implementation strategy (o) can be satisfied.

Implementation strategy (p). This implementation strategy provides that the county may impose conditions to lessen conflicts that are identified. Staff finds that conditions are proposed, should the Board approve the rezone and aggregate operations plan, and that these conditions have been developed specifically through the Goal 5 process to address potential conflicts or issues that have been identified in the public hearings process. Staff finds that implementation strategy (p) may be satisfied should the Board choose to impose conditions to lessen conflicts.

Implementation strategy (q). This implementation strategy provides that the county, as part of the Goal 5 process, must determine the appropriate post-mining use of the site. Staff finds that the appropriate post-mining use of the site is reclamation to achieve farm/forest/wildlife uses and have recommended to the Board a condition of approval reflecting reclamation of the sites for farm/forest/wildlife uses. Staff notes that the final reclamation requirements will be implemented by DOGAMI consistent with implementation strategy (r) below. Accordingly, staff finds that implementation strategy (q) can be satisfied.

Implementation strategy (r). This implementation strategy requires the county to recognize the jurisdiction of DOGAMI over mine land reclamation. Should rezone and aggregate operations plan be approved, the applicant will be required to obtain the appropriate DOGAMI reclamation permit pursuant to ORS Chapter 517 prior to operation of the site. The county fully recognizes the jurisdiction and expertise of DOGAMI with regard to reclamation issues. Accordingly, staff finds that implementation strategy (r) can be satisfied.

Implementation strategy (s). This implementation strategy provides that as a general rule, the county will require DOGAMI to delay its reclamation plan decision until after the county has made a land use decision. This implementation strategy is authorized under ORS Chapter 517 and, the applicant would seek a DOGAMI permit after receiving land use approval from the county. DOGAMI has, therefore, delayed its final decision until after the county decides all comprehensive plan amendments and site plan approvals that are contained in this application. Accordingly, staff finds that implementation strategy (s) can be satisfied.

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Implementation strategy (t). This implementation strategy indicates that no surface mining or processing activity shall commence without land use approval from the county and a reclamation plan and operating permit issued by DOGAMI. Staff finds that should this rezone and aggregate operations plan be approved, land use approval will have been obtained. A reclamation plan and operating permit are part of the conditions of approval prior to beginning aggregate operations. Accordingly, staff finds that this implementation strategy can be satisfied.

Implementation strategy (u) This provision provides that land may not be rezoned from aggregate resource until the aggregate resource is depleted and the site has been reclaimed. Should this rezone and aggregate operations plan be approved by the Board, staff recognizes that this strategy as a condition of approval, although rezoning of the property following depletion of the resource is a recommendation to the applicant and not a requirement, according to Policy 4 of the Aggregate and Mineral Resources Element. Accordingly, staff finds that this implementation strategy can be satisfied.

#### **B. Criterion: Map Designation Element, Aggregate Resource Land**

The purpose of the Aggregate Resource land map designation element is to provide for the protection of aggregate resources. The Aggregate Resource designation is intended to protect resources from incompatible uses, particularly residential uses, which might adversely affect extraction, crushing and transportation of the resource. Staff finds that the four resource sites on the McKenzie Freel aggregate property are located near urban market areas of the county but are distant enough not to have negative impacts on urban communities. Staff finds that the McKenzie Freel aggregate property is surrounded mostly by resource lands, not urban properties or communities. There are a few properties west of Hwy 62 that are zoned RR-5, but are still no considered urban properties or communities. Staff finds that the map designation criteria (Aggregate Resource Land, paragraph 3, subparts A, B, C, D, E, F, as well as subpart 4), parallel the requirements of the Goal 5 process as set out in OAR 660, Division 16. Accordingly, staff incorporates by reference the findings and analysis above. Staff finds that the aggregate sites have already been determined as significant aggregate resources in previous decisions by the Board, based on the analysis of information about the location, quality and quantity of material aggregate resource deposits and these sites have been placed on the county's significant site inventory; the Board has determined a 1,500 foot impact area around the aggregate sites and the internal access road, although the applicant has requested a decrease in the impact area as shown on the attached Map 1; conflicting uses have been identified, including both existing and potential uses; and staff has analyzed conflicting uses, including the economic, social and environmental (ESEE) consequences related to the conflicting uses that were identified at the site. Staff and the applicant have analyzed opportunities to avoid and mitigate conflicts and recommendations regarding conditions of approval have been made to avoid and mitigate conflicts. We further find through the Goal 5 process we are applying the AR zoning district to the four resource sites as well as to the internal truck path that connects the sites to Highway 62. Based on all these findings, staff finds that the requirements of the map designations element, aggregate resource land of the comprehensive plan, have been addressed in this report.

#### **C. Criterion: Transportation System Plan Policies**

**1. 4.1.4 Safety Policies.** The county's transportation system plan safety policies 4.1.4-A require that the county provide a transportation system that supports emergency access for emergency vehicles and provides for evacuation in the event of wildlife hazard or emergency. The transportation system plan indicates that strategies to achieve this

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policy include developing regulations that ensure minimum emergency vehicle access standards and provide, for all development, baseline safety protections related to the total amount of development that would use an access in the event of emergency. Staff finds that access to the four protected resource sites on the McKenzie Freel aggregate property will be via a direct connection to state Highway 62. Staff finds that the access road intersection with Highway 62 will be reviewed by ODOT who has responsibility for all safety issues at the access point. A Gap Study submitted by the applicant has determined the safety of the access point, with recommended conditions for ODOT. Staff also finds that the access road to the four sites on the McKenzie Freel aggregate property is designed for use by heavy trucks. As a condition of approval, the access road will be required to meet emergency vehicle access standards of Section 9.5.4 of the LDO. That property will remain in use for ongoing farming and forestry activities. Staff finds that establishment of a road for the mineral and aggregate purpose, as we have indicated above with regard to fire access, will greatly increase all emergency vehicle access on the McKenzie Freel property. Accordingly, staff believes, with the proposed condition of approval, that the proposed road access system for the four protected mineral and aggregate sites supports emergency access for emergency vehicles and provides for evacuation in the event of a wildlife hazard or other emergency consistent with the strategies and plans established by the county.

Safety policy 4.1.4-B requires that public safety will be a primary consideration in the planning, design and maintenance of Jackson County transportation systems. Staff finds that the strategies to reach this goal include special traffic studies around schools and large employment centers, coordination with other agencies to promote traffic safety (including pedestrian and bicycle safety education), active enforcement of state motor vehicle codes to increase traffic safety, and encouragement of commercial vehicle regulations that improve safety.

Staff believes that public safety is a significant concern of each County Commissioner and public safety with regard to access at the site has been carefully reviewed prior to making our decision. The applicant has provided a Traffic Impact Study and a Gap Study, each of which determined that, with conditions, the access point can be designed to meet safety requirements of ODOT, who has ultimate responsibility for the safety of access to Hwy 62. Staff incorporates the findings with regard to Goal 12 above. The applicant has coordinated carefully with ODOT, the entity that has jurisdiction over the intersection of the mineral and aggregate access road and Highway 62, and ODOT has responded requesting the applicant to require proof to Jackson County of a valid ODOT Road Approach Permit prior to operational use of the site and access to Hwy 62. Staff finds that the applicant has provided a traffic mitigation plan for safety purposes and one of the key elements of that plan is to work with county and state enforcement agencies to ensure the motor vehicle codes, particularly the speed limits, are enforced along Highway 62 near the McKenzie Freel aggregate property to ensure traffic safety. We find there are no particular bicycle or pedestrian regulations that apply to state Highway 62 at the McKenzie Freel aggregate property. Finally, truck drivers hauling rock must have commercial drivers' licenses and they work under special requirements to ensure operating safety. Based on all of these findings, staff believes that public safety is a primary consideration and the strategies for ensuring public safety have been complied with in this application.

Safety Policy 4.1.4-C requires maintenance of clear vision areas adjacent to intersections and sets forth strategies that require the county to maintain ordinance regulations that ensure adequate sight distance at intersections. Staff finds that the intersection of the internal truck path from the McKenzie Freel aggregate property with Highway 62 has sufficient

and adequate sight distance in both directions. Accordingly, staff believes that the proposed use maintains clear vision areas and this safety policy and implementing strategy are satisfied.

**2. 4.3 Integration and 4.3.1 Transportation Land Use Coordination Policies.**

Integration and land use coordination policies of the County Comprehensive Plan (4.3.1-A) require the county to prohibit new or expanded development that could have the potential to prevent the placement, or significantly increase the cost of, designated transportation connections in the TSP. The implementing strategy requires the county to establish and maintain development review procedures that will prevent conflicts between development and future transportation facilities and connections. Staff finds there are no future or proposed transportation facilities or connections on Highway 62 in the general vicinity of the McKenzie Freel aggregate property. Staff further finds that approving mineral and aggregate operations that will provide a single access to Highway 62 is not an action that will prevent the placement of, or significantly increase the cost of, designated transportation connections. Accordingly, staff finds that this policy and implementing strategy do not apply.

Transportation policy and coordination policy 4.3.1-B provides that plan amendments need to demonstrate adequate transportation planning has been done to support the proposed land use.

Implementation strategy (a) applies only inside urban growth boundaries and requires the county to defer to the appropriate city TSP or base decisions on the Jackson County TSP if there is no adopted or applicable city TSP. Staff finds that the proposed use is outside the urban growth boundary and this implementation strategy is not applicable.

Implementation strategy (b) requires that legislative land use changes will not result in land uses that are incompatible with public transportation facilities through compliance with, and in direct application of, the Goal 12 transportation rule. Staff finds this is not a legislative land use change and this implementation strategy does not apply to this application.

Implementation strategy (c) requires the county to ensure that quasi-judicial comprehensive plan changes will not result in land uses that are incompatible with the public transportation facilities they will use. The strategy establishes three criteria which must be demonstrated to be met through a Transportation Impact Study completed by a registered professional engineer with expertise in transportation. Compliance with the three criteria will be considered sufficient to demonstrate compliance with the transportation planning rule. This provision also provides that the planning director and county engineer may waive the requirements of this implementation strategy under certain circumstances. Staff finds the applicant has formally requested a waiver of the transportation impact study. Because Jackson County does not have jurisdiction of Hwy 62, the planning director and county engineer cannot grant the requested waiver. The applicant has provided a Transportation Impact Study prepared by Mr. Karl Birky, a registered engineer with expertise in transportation and traffic issues, which is discussed below with respect to the applicable criteria.

The first criterion is that approval of the proposed land use change and the cumulative impact of potential or similar approvals on parcels within two miles of the subject parcel would not change the functional classification of an existing plan or planned transportation facility nor would it change the standards implementing the functional classification system. Findings previously found under the analysis of the statewide transportation rule that the proposed use will not change the functional classification nor change the standards implementing functional classification systems. Evidence submitted by the

applicant's engineer, Mr. Birky, and Mr. Hribernick and Mr. Stark, attorney's for the applicant, contains an analysis of the possibility for siting similar mineral and aggregate approvals within a two mile radius of the McKenzie Freel aggregate property. These exhibits find that because of the small property ownerships in the general vicinity, the proximity of some parcels to the Rogue River, the lack of alternative highway infrastructure and the existence of other mineral and aggregate operations, there is virtually no potential for a similar approval within two miles of the McKenzie Freel aggregate property. The applicant states that to provide a reasonably sized mineral and aggregate operation would require a minimum of 500 acres of property. Within a two-mile radius of the McKenzie Freel aggregate property, there are only six properties greater than 200 acres in size and two parcels greater than 500 acres in size. As indicated in the analysis of potential or similar quarry uses, there are significant problems with each of the larger sites. The applicant's conclusion is that the overall lack of transportation facilities necessary to reach Highway 62 and small property ownerships in the area make it virtually impossible for a similar mineral and aggregate operation to be located within two miles of the McKenzie Freel aggregate property.

The Traffic Impact Study analysis of Mr. Birky states that in addition to noting it has taken more than 10 years to reach a final decision on approval of the four resource sites on the McKenzie Freel aggregate property (i.e., no additional rock quarry is likely to be quickly approved), Mr. Birky also concludes that even if a gravel site were developed within two miles of the McKenzie Freel aggregate property and if such a second gravel site were of comparable size and trip generation to the proposed use, the transportation facility under consideration (Highway 62) would nonetheless continue to function at an acceptable level with twice the volume anticipated from the mineral extraction activities on the McKenzie Freel aggregate property. Mr. Birky concludes, that in the unlikely event that a second similarly sized mineral and aggregate site were located within two miles of the McKenzie Freel aggregate property, traffic from both uses would not change the functional classification of Highway 62 nor change the standards that implement the functional classification. Accordingly, the applicant concludes that implementing strategy criteria (i) is met with regard to application approval of the rezone and aggregate operations, even considering the cumulative impact of the potential for similar approvals on parcels within two miles of the McKenzie Freel aggregate property will not change the functional classification of Highway 62 nor will it change the standards implementing the functional classification system.

Implementing strategy criterion (ii) requires that the proposed use, with consideration of the cumulative impact for potential and similar approvals on parcels within two miles of the McKenzie Freel aggregate property, will not allow types or levels of land uses that would result in levels of travel or access that are inconsistent with the functional classification of a transportation facility, in this case, Highway 62. The analysis by Mr. Birky finds that even if another rock extraction site were to be approved in the area and if such approval would be of similar size and scope and resulted in the addition of the same amount of traffic on Highway 62 as is expected from the McKenzie Freel aggregate property, there would not be a change in the functional classification of Highway 62 and the level of traffic on Highway 62 would not be inconsistent with the functional classification of Highway 62 as an ODOT regional highway. Simply put, the applicant's engineer finds this mineral and aggregate approval, considered in conjunction with any potential for similar approvals within two miles (which we find highly unlikely), will not change the functional classification of Highway 62. Accordingly, the applicant believes that this implementation strategy, criterion (ii) is satisfied by the proposed application.

Criterion (iii) requires that an approval of the proposed use, in consideration of the cumulative impact of potential or similar approvals on parcels within two miles of the

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McKenzie Freel aggregate property, will not cause a transportation facility (in this case, Highway 62) to exceed the adopted performance standard of such facility. Criterion (iii) goes on to establish that an increase of less than two percent of the total capacity for arterial and state highways, based on the cumulative impact of the McKenzie Freel aggregate property approval and the potential for similar approvals on parcels within two miles, does not violate the criterion. Mr. Birky finds that the only transportation facility under consideration is Highway 62, as it is the only access point for the approved uses from the McKenzie Freel aggregate property. The analysis indicates that even using an extremely conservative measurement (average daily trips or "ADT") for traffic on Highway 62, that the proposed worst case truck traffic levels from the activities on the McKenzie Freel aggregate property would generate less than one percent of the trips currently used on the roadway. Accordingly, under criterion (iii) and using an extremely conservative measurement, more than twice as many trips – that is another approval of a mineral and aggregate facility of similar size and traffic volume – could be approved and not violate the county's standard. More importantly, the county's standard does not refer to an increase of two percent over existing ADT, but rather an increase of two percent of the total capacity for a state highway. Mr. Birky's analysis finds that ODOT calculates highway capacity by using the highway capacity manual and this manual provides that a directional two-lane highway has a capacity of 1,700 vehicles per lane per hour. Given the proper standard of total capacity, the county could permit three additional quarries of equal size to the McKenzie Freel approval and the cumulative traffic generated by the four quarries (the McKenzie Freel aggregate property operations and three others) would not exceed two percent of the hourly capacity of one lane of Highway 62. Simply stated, the applicant believes there is no possibility that within a two mile radius of the McKenzie Freel aggregate property that three additional mineral and aggregate sites of similar size and traffic generation would be approved. Even if this were the case, the applicant believes that all of this traffic cumulatively added to the road, in addition to the McKenzie Freel aggregate property traffic, would not exceed capacity of a single lane of Highway 62. The applicant indicates that two lanes of traffic would have twice the capacity and that under the standard in the county ordinance ("total capacity"), there is no possibility that there could ever be enough gravel-related approvals within a two mile radius of the McKenzie Freel property to ever adversely affect criterion (iii) (two percent of total capacity of Highway 62). The applicant believes that the exhibits in the record conclusively demonstrate that implementation strategy criteria (i), (ii) and (iii) can be met and that the proposed land use is not incompatible with the public transportation facility that it will use, namely Highway 62.

Implementation strategy (d) prevents a use from relying on projects proposed in the transportation system plan toward the end of the planning horizon. Staff finds that the McKenzie Freel mineral and aggregate application does not rely on any proposed project in the transportation system plan and this implementation strategy does not apply.

Implementation strategy (e) provides that if a transportation system amendment is necessary, it may be submitted concurrently with our proposed comprehensive plan amendment. The applicant believes and concludes that there is no significant effect on any transportation facility by the proposed land use, that the proposed land use is not incompatible with the public transportation facility that will be used by the trucks from the use (Highway 62) and, therefore, no transportation system plan amendment is required. The applicant does not believe that implementation strategy (e) does not apply to this application.

### 3. Transportation and Land Use Coordination Policy 4.3.1-C

This policy provides that Jackson County will establish and maintain land development ordinance regulations to protect and improve the transportation system. The

implementing strategies require the county to amend the land development ordinance to address deficiencies identified in the transportation planning rule and also that development ordinance regulations should require onsite improvements, such as frontage improvements, dedicated right-of-way, and other improvements to be constructed to applicable county standards. Staff finds that approving the proposed land use would not serve to identify a deficiency in the transportation planning rule nor will it require Jackson County to amend any ordinance to address such a deficiency. Staff finds that ODOT has jurisdiction over the access point on Hwy 62 and a mitigation plan has been submitted with conditions to protect the safety of the access point. ODOT has requested that, should Jackson County approve the rezone and aggregate operations plan, a condition of approval require the applicant to obtain a valid ODOT Road Approach Permit prior to operational use of the site and the access to Hwy 62. Staff also has recommended to the Board that the internal access road meet the requirements for emergency vehicle access of Section 9.5.4 of the 2004 Land Development Ordinance. Staff believes for the above reasons, this section is satisfied.

#### 4. Transportation and Land Use Coordination Policy 4.3.1-D

This coordination policy requires the county to look beyond whether adequate capacity exists and provides that a land use proposal will not be approved if it creates or worsens a safety problem on a public transportation system or facility. The policy also provides that if a safety problem is created or worsened without mitigation, then a mitigation plan that resolves the safety concern must also be approved and included in the proposal in order for the land use development proposal to be approved. The policy provides that a study by a registered professional traffic engineer will be considered to determine if a problem would be created or worsened. A Traffic Impact Study by Mr. Birky and a Gap Study by Mr. Woelk have been submitted to address safety concerns. Mr. Birky under this county standard, any change or any new access to an existing road could never be approved in Jackson County without a mitigation plan because such change in access, by definition, creates a potential safety problem on a public transportation system or facility. Staff agrees with Mr. Birky that this is because turning movements by vehicles create inherent risk factors and even one additional automobile or one additional turning movement would tend to increase the risk factor and, therefore, "decrease" safety. Based on this analysis, it could be argued that even one truck trip exiting the McKenzie Freel aggregate property onto Highway 62, although perfectly safe, would arguably have the potential for "creating" or "worsening" a safety problem. Staff also agrees with Mr. Birky that one of the significant safety problems along this particular stretch of Highway 62 is that traffic speeds are significantly above the posted speed limit of 55 mph. Information in the record indicates that more than 70 percent of the traffic on Highway 62 is exceeding the posted speed limit. Staff is in agreement with Mr. Birky that this is a significant traffic safety issue and believes that it is appropriate under implementation strategy (c) of Transportation System Plan Safety Policy 4.1.4-B to make an effort to actively enforce county and state motor vehicle codes, including speed limits, to increase traffic safety along this stretch of road. Included in Mr. Birky's mitigation plan is an emphasis on the applicant working cooperatively with Oregon State Police and with the Jackson County Sheriff to enter into a traffic enforcement program to reduce traffic speeds on Highway 62 in the general area of the McKenzie Freel aggregate property. Staff believes that traffic flowing at the posted speed is a significant measure for improving traffic safety in this stretch of road, with, or without, the addition of quarry truck traffic.

The applicant has also submitted a Gap Study by Mr. Woelk. The purpose of the gap analysis is to analyze how vehicles entering a highway may be efficiently and safely introduced into the traffic flow on that highway. Mr. Woelk states "*The data from our gap study indicate that the trucks generated by the McKenzie Freel project, in fact, have plenty of properly-*

sized gaps and can properly and safely enter Highway 62." A revised mitigation plan was also submitted as part of the Gap Study. Mr. Woelk states "The suggested mitigation measures are intelligent and appropriate traffic engineering mechanisms to promote and assure safety in access situations involving large trucks. We believe that the list of mitigation alternatives provides direct guidance to ODOT, who has jurisdiction over the McKenzie Freel access, to properly select the most effective measure or measures to protect transportation efficiency and safety." As required under this policy, the applicant has submitted a mitigation plan. Staff has reviewed the mitigation plan, and finds its recommendations to ODOT sufficient to mitigate and resolve safety concerns that have been raised with regard to truck traffic that would be entering and exiting the McKenzie Freel aggregate property from Highway 62, based upon the conclusions of the applicant's traffic engineer. The mitigation plan has the following elements:

As a condition of approval, applicant will obtain from ODOT a new approach permit under the *Change of Use Approach* criteria of Oregon's Access Management Standards (OAR 738-051-0045). As part of that application, applicant will address the safety factors set out in OAR 734-051-0080(8)(d)(D)(9) and (10). Applicant will agree to at least one of the following mechanisms and will agree to as many of the following mechanisms as are required by ODOT, who has jurisdiction over the intersection:

(1) Installation of adequate and properly sized warning signage for both northbound and southbound traffic.

(2) Installation of a closed-loop automated warning system with flashing lights that is activated by truck traffic at the access point and which warns motorists, both northbound and southbound on Highway 62, that heavy trucks are entering the highway.

(3) Cooperatively develop and enter a traffic education program with the appropriate state and county entities to achieve greater awareness of the posted speed limit of Highway 62 in the general area of the proposed site. This may include intermittent use of non-enforcement radar speed education boxes.

(4) Create and provide to all drivers entering the site, a driver education program and continuing education about traffic safety issues.

(5) Make appropriate improvements to the access road where it connects to Highway 62 to ensure a flat entrance for trucks entering the highway and adequate width along the access road to allow incoming and outgoing traffic to easily pass..

(6) Pave the first 400 feet of the access road to the east of Highway 62 to operate a wheel cleaning facility to ensure there is no track-out of materials onto Highway 62 that would contribute to safety problems.

Should the Board approve the rezone and aggregate operations plan, staff recommends the Board adopt these conditions as a recommendation to ODOT to ensure the safety of the access point on Hwy 62. The Board may decide to include other measures to ensure safety of the access point. The Board should note that ODOT has jurisdiction over road approaches to Hwy 62 and will require whatever safety measures they feel are appropriate and necessary for this intersection. As such, staff believes that this policy can be satisfied.

**5. Transportation and Land Use Coordination Policy 4.3.1-E**

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Staff finds that this policy relates to identification of future urban growth boundary expansions and requires certain transportation planning components and strategies as part of future urban growth boundary expansions. Nothing in this application is related to an urban growth expansion and that no urban growth expansion or urban reserve area expansion is contemplated in this application. Accordingly, staff finds that this policy is not applicable.

**6. 4.3.3 Area Specific Policies and Quasi-Judicial TSP Amendments**

(a) Area Specific Policies 4.3.3-A and 4.3.3-B. These portions of the Jackson County Comprehensive Plan require the county to work cooperatively with the Oregon Department of Transportation and other entities to plan a direct route between White City and Interstate 5 to improve freight truck mobility and to complete analysis for a Highway 62 expressway. Staff finds that these particular area specific policies have no application to this application and that the potential White City freight truck route and expressway are significantly to the south of Eagle Point and the north valley market area for the McKenzie Freel aggregate property. While it is possible, in the future, for trucks from the McKenzie Freel aggregate property to use a White City/Interstate 5 freight truck route or a Highway 62 expressway, nothing in this application prohibits the county from continuing to work with all interested parties to establish such routes. Staff concludes that these area specific policies are not applicable to this approval.

(b) Area Specific Policy 4.3.3-C. This area-specific policy includes direction to the county to support planning for alternative truck transportation routes through historic downtown Jacksonville. Staff finds that Jacksonville is on the opposite side of the City of Medford and the approval that we were granting on the McKenzie Freel aggregate property does not implicate planning support for a Jacksonville bypass. Staff finds that this area specific policy is not applicable.

(c) Area Specific Policy 4.3.3-D. This specific policy provides that Jackson County will consider TSP amendments in quasi-judicial proceedings only under certain circumstances and provides strategies to guide the county in making that determination. Staff finds that no transportation system plan amendment is proposed or implicated for the McKenzie Freel aggregate property. Staff finds that this area specific policy does not apply.

**D. Criterion: 4.3.4 Environmental and Scenic Resource Policies**

Policies 4.3.4-A and 4.3.4-B. This policy requires the county to support exploration and innovation for alternative travel modes and fuel sources. The policy also provides that Jackson County will remain committed to the maintenance and development of an environmentally sensitive transportation plan. Finally, the implementing strategy provides that goal exceptions are required for transportation facilities on rural land that do not meet the requirements of the Transportation Planning Rule, OAR 660-012-0065.

As a general matter, heavy trucks are necessary to bring mineral and aggregate resources to market. As such, the proposed use on the McKenzie Freel aggregate property is consistent with reduced reliance on fossil fuels and an environmentally sensitive transportation system because the location of the resource is closer to the market area and, therefore, reduces truck trips and miles traveled on state and county roads.

With regard to implementing strategy (a), staff finds that mineral and aggregate extraction and processing is specifically allowed under ORS 215.283(2). (See ORS

215.283(2)(b)(B.) Staff further finds that the internal access path connecting the four mineral resource sites with Highway 62 is accessory transportation improvement, as defined in OAR 660-012-0065(2)(d). The access road is incidental to the allowable mining, crushing and stockpiling uses in that it provides safe and efficient access to the allowable use. Consistent with the provisions of the transportation planning rule (OAR 660-012-0065(3)), staff finds that the internal truck path and access to Highway 62 is consistent with Goals 3, 4, 11 and 14, and with the transportation planning rule, OAR 660-012-0065. Staff further finds that the internal truck path and access road are a necessary condition of this development and integral to allowing the mineral and aggregate resource to reach the market. Staff finds that the access road, an accessory transportation improvement, would be approved through the same procedures, standards and requirements applicable to the principal use (mining, crushing or stockpiling) to which the road is an accessory and which principal uses are specifically authorized under 215.283(2)(b)(B). Accordingly, staff finds that an exception is not required as the access road is an accessory transportation improvement which meets the requirements of OAR 660-012-0065.

### III. JACKSON COUNTY LAND USE DEVELOPMENT ORDINANCE

#### A. Criterion: Amendments to the Comprehensive Plan or Zoning Map

We find that any comprehensive plan amendment must comply with applicable Statewide Planning Goals, all administrative rules and the Jackson County comprehensive plan as a whole. We incorporate our findings above as though fully set forth herein and find that we have determined that Statewide Planning Goals, the Oregon Administrative Rules and the Jackson County comprehensive plan, as a whole, are complied with by the approval that we are granting. In addition, we find additional specific approval criteria apply under the Jackson County Land Development Ordinance (LDO).

**1. Criterion 3.7.3(C)(1).** This criteria provides that adequate public safety, transportation and utility facilities and services must be provided to the subject property and adequate transportation facilities must be assured. Staff incorporates by reference the analysis under both Goals 11 and 12 and the analysis under the transportation system plan policies above. The findings are that public safety and transportation are adequate or can be made adequate through conditions for the proposed use. As referenced in previous findings, adequate utilities facilities and services can be provided through the existence of electrical power to the McKenzie Freel aggregate property, the use of onsite generators to power electrical crushing equipment and the use of porta-potties for sanitary services. Staff confirms that ample water is available from one of three separate mechanisms on site for dust control purposes. Staff finds that adequate utility facilities and services are provided and that transportation and public safety can be assured.

**2. Criterion 3.7.3(C)(2).** This criterion requires that the land use amendment not prevent implementation of any area of special concern restrictions specified for that area or the county's ability to adopt an ordinance creating such a special area. The proposed aggregate sites and most of the internal access road is within Area of Special Concern 90-1, lands on which development can affect survival of Black-tailed deer or Roosevelt elk herds, Section 7.1.1(C). Staff finds the requirements of 7.1.1(C)(6)(b), *ODFW Approved Alternate Siting Plan* can be met through conditions. A letter from ODFW, Exhibit 72 of Packet 2, contains conditions which will minimize wildlife impacts to the deer and elk winter range habitat. These conditions have been outline previously in this report. An additional condition of approval which applies to the proposed use is that new private roads will be gated between November

and April (where permitted by law) to protect wintering deer and elk. These conditions will meet the purpose of Section 7.1.1(C)(6). Accordingly, this criterion is satisfied.

**3. Criterion 3.7.3(C)(3).** The application does not include the entire McKenzie Freel aggregate property in the comprehensive plan map change. Staff finds that the approval site is outside the urban growth boundary. Staff further finds that the McKenzie Freel aggregate property is entirely in an EFU district. As such, the general rule is that the entire parcel must be included in the comprehensive plan map amendment unless the purpose of the amendment conforms with the criteria of Policy 1 of the Comprehensive Map Designations Element. We find that Policy 1 of the Map Designation Element specifically provides as follows:

*"Amending the map designation of only a portion of a resource designation parcel or tract will not be considered unless the purpose is to limit uses to those justified through the Goal 2 Exceptions procedure, to implement protection of a Goal 5 resource, to establish industrial lands consistent with the provisions of this Plan, or to implement an unincorporated community plan or urban growth management agreement."*

Staff finds that proposed application implements protection of specific Goal 5 mineral and aggregate resources on the McKenzie Freel aggregate property. As such, staff finds that, should the Board approve the rezone and aggregate operations plan, the approval would be in compliance with Policy 1 of the Comprehensive Plan Map Designations Element and that the Board may designate solely the mineral and aggregate related portions of the McKenzie Freel aggregate property with the AR designation.

**4. Criterion 3.7.3(C)(4).** This criterion provides that map amendments outside the urban growth boundaries that will result in a minimum lot size smaller than 10 acres must meet the requirements for Goal 14 exception. Staff finds the application is not creating any new lots. Staff finds that this criterion does not apply.

**5. Criterion 3.7.3(C)(5).** This criterion provides that a zoning map amendment must be consistent with the Comprehensive Plan Map designation. Should the Board find the approval criteria for this Comprehensive Plan Map and Zoning Map Amendment has been met, the amendment would satisfy this standard.

**6. Criterion 3.7.3(C)(6).** This criterion provides that in a Comprehensive Plan Map amendment situation, a community benefit as a result of the map amendment and the community benefit must be clearly demonstrated. We find that neighbors in the general vicinity of the proposed mineral and aggregate sites have expressed concern about noise and traffic effects, dust effects and effects on views in the area. In the conflicts analysis and ESEE portions of these findings, which are incorporated by reference, staff has attempted to acknowledge these concerns and at the same time balance the concerns against the community benefit that will result from having a high quality mineral and aggregate resource identified in a north valley portion of the county. Consistent with the ESEE analysis and conflicts analysis above, the community benefit created by identification and protection of a mineral and aggregate resource on the McKenzie Freel aggregate property outweighs the concerns of the individual opponents in the area related to dust, traffic, noise and views. Consistent with the analysis above, we find that the applicant has taken appropriate steps to

minimize or eliminate these potential negative effects and, should the Board approve the rezone and aggregate operations as conditioned, the approval will provide significant community benefits in excess of any identified negative effects. Staff finds that there is a clear community benefit that will result from an approval of the proposed rezone and aggregate operations plan that we are granting.

**7. Criterion 3.78.3(C)(7).** This criterion lists a number of relevant factors, including topography, geology, hydrology, soil characteristics, climate, vegetation, wildlife, water quality, historical or archaeological resources, scenic resources, noise, open space, existing site grading, drainage, adverse impacts on other properties in the vicinity and any other factors deemed relevant to the application that may be considered in a comprehensive plan change. The relevant factors are discussed below.

Staff finds that the topography has been considered in a number of respects. First, the topography of the area provides access to high quality rock materials. Second, the topography has been used by the applicant to screen the extraction site to the extent possible from the uses in the vicinity. Third, the open topography of the area serves to reduce noise impacts because of a large distance between noise sources and receivers.

With regard to geology, evidence has been submitted determining the sites contain a high quality mineral and aggregate resource and are a significant aggregate resource.

With regard to hydrology, control of run-off from the site can be accomplished onsite through a DOGAMI permit. The applicant has considered extraction of well water through a commercial/industrial 5,000 gallon per day exemption.

With regard to soil characteristics, there is a thin layer of soil that overlies most of the property and the hard basalt underneath which provides the mineral and aggregate resources.

Vegetation has been discussed previously, including removal of vegetation for fire control reasons and use of existing vegetation to screen quarry operations.

The wildlife habitat has been examined and ODFW has determined that through conditions, there will be minimal wildlife impacts from the aggregate operations.

Water quality, in particular run-off from the site, will be preserved through the permitting process with DOGAMI and the applicant shall control all storm water onsite to preserve water quality.

Scenic resources and the affects that have on the views currently enjoyed by neighboring properties has been discussed though the conflicts analysis and ESEE analysis. The way that the resource sites are located will help reduce scenic conflicts and topography will help reduce adverse effects on scenic resources.

Staff and the applicants have extensively considered noise and incorporate herein the analysis, conclusions and findings contained in the conflicts analysis, ESEE analysis and Goal 6.

Open space has been discussed, both in terms of distance between properties and noise receivers and the corresponding effect that the open space has on reducing noise

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impacts, as well as the use of open space on the McKenzie Freel aggregate property to provide appropriate buffer space with the least adverse effect to any of the neighboring properties.

Staff has considered the proposed site grading and applicant's use of existing land forms to screen operations on the site to the extent possible.

The applicant will be required to control storm water onsite to eliminate drainage problems.

There has been a significant amount of discussion considering the adverse impacts on other properties in the vicinity, including noise, dust, traffic and visual impacts. We incorporate by reference the consideration of adverse impacts in the conflicts analysis and ESEE analysis.

**B. Criterion: Aggregate Removal (AR) District Section 4.4**

**1. 4.4.5 General Review Criteria**

These General Review Criteria contain the requirement that the proposed mineral and aggregate resource use will not force a significant change nor significantly increase costs of accepted farm or forest practices on surrounding lands devoted to farm or forest use. This is the same standard that is contained in ORS 215.296 and in the Comprehensive Plan, Aggregate and Mineral Resources Implementation Strategy M. Staff incorporates by reference the analysis above under Goal 3, the conflicting use analysis, as well as the analysis under Jackson County Comprehensive Plan Aggregate and Mineral Resources Implementation Strategy M. Staff reaffirms the conclusion that the proposed aggregate use will not force significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use and that the proposed use will not significantly increase the cost to accepted farm or forest practices on lands devoted to farm or forest use. Staff finds that these general review criteria are satisfied.

**2. 4.4.8 Mineral, Aggregate, Oil and Gas Use Regulations**

This provision of section of Jackson County Land Development Ordinance is intended to make sure that all necessary operating permits, approvals, reclamation plans and site preparation measures are taken care of before commencement of the mining, crushing, stockpiling or processing of mineral and aggregate resources. The applicable criteria are addressed below.

*1. All necessary County and state permits have been obtained, and a current Department of Geology and Mineral Industries (DOGAMI) operating permit has been issued. Equipment testing necessary to obtain permits is allowed.*

This will be a condition of approval.

*2. All facets of the operation will be conducted in a manner that complies with applicable DEQ air quality, water quality and noise standards, and in conformance with the requirements of the DOGAMI permit for the site.*

This will be a condition of approval.

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3. *A site reclamation plan, approved by DOGAMI, has been submitted for inclusion in Planning Department records. Such plan must return the land to natural condition, or return it to a state compatible with land uses allowed in the zoning district or otherwise identified through the Goal 5 review process.*

Prior to initiating the aggregate operations, a DOGAMI site reclamation plan will be submitted to the Planning Department. The plan must return the land to natural condition, or return it to a state compatible with land uses allowed in the zoning district or otherwise identified through the Goal 5 review process. The Goal 5 review process has determined that upon depletion of the aggregate resource, the land will be use for farm, forest, and/or wildlife habitat.

4. *A written statement from the County Road Department and/or ODOT has been submitted verifying that the public roads that will be used by haul trucks have adequate capacity and are, or will be, improved to a standard that will accommodate the maximum potential level of use created by the operation. The property owner or operator is responsible for making all necessary road improvements, or must pay a fair share for such improvements if agreed to by the County Road Department or ODOT.*

This will be a condition of approval.

5. *On-site roads and private roads from the operating area to a public road have been designed and constructed to accommodate the vehicles and equipment that will use them, and meet the following standards:*

a) *All access roads within 100 feet of a paved public road are paved, unless the operator demonstrates that other methods of dust control will be implemented.*

b) *All unpaved roads that will provide access to the site or that are within the operating area will be maintained in a dust-free condition at all points within 250 feet of a dwelling or other identified conflicting use.*

The applicant has indicated a willingness to pave the access road within 400 feet of Hwy 62 to control track-out onto Hwy 62, should ODOT require this condition. Staff find this to be a reasonable and prudent condition to control track-out and recommends the Board require the applicant to pave the access road within 400 feet of Hwy 62.

A condition of approval will require the internal access road to be maintained in a dust-free condition at all points within 250 feet of a dwelling or other identified conflicting use.

6. *If the operation will include blasting, the operator has developed a procedure to ensure that a notice will be mailed or delivered to the owners and occupants of all residences within one-half mile of the site at least three working days before the blast. The notice must provide information concerning the date and time that blasting will occur, and must designate a responsible contact person for inquiries or complaints. Failure to notify neighbors and the County before blasting is a violation of this Ordinance for which a citation may be issued. Notice will be deemed sufficient if the operator can show that the notices were mailed or delivered, even if one or more of the households within the notice area did not receive the notice.*

The aggregate operation will include blasting and this will be a condition of approval.

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7. *The operation is insured for a minimum of \$500,000 against liability and tort arising from surface mining, processing, or incidental activities conducted by virtue of any law, ordinance, or condition. Insurance shall be kept in full force and effect during the period of such activities. Evidence of a prepaid policy of such insurance which is in effect for a period of one year shall be deposited with the County prior to commencing any operations. The owner or operator shall annually provide the County with evidence that the policy has been renewed.*

Prior to initiating aggregate operations, the operator shall provide proof of insurance for a minimum of \$500,000 against liability and tort arising from surface mining, processing, or incidental activities conducted by virtue of any law, ordinance, or condition. Insurance shall be kept in full force and effect during the period of such activities. Evidence of a prepaid policy of such insurance which is in effect for a period of one year shall be deposited with the County prior to commencing any operations. The owner or operator shall annually provide the County with evidence that the policy has been renewed.

8. *The operation will observe the following minimum setbacks except where the operation is lawfully preexisting and encroachment within the prescribed setbacks has already occurred:*

- a) *No extraction or removal of aggregate/minerals will occur within 25 feet of the right-of-way of public roads or easements of private roads.*
- b) *Processing equipment, batch plants, and manufacturing and fabricating plants will not be operated within 50 feet of another property or a public road right-of-way, or within 200 feet of a residence or residential zoning district, unless written consent of the property owner(s) has been obtained.*

This will be a condition of approval.

9. *If the aggregate removal and surface mining operation will take place within the Floodplain Overlay the requirements of Section 7.1.2 have been met.*

The aggregate operations will not occur within a mapped 100 year floodplain and this requirement does not apply.

10. *Mining and processing activities, including excavated areas, stockpiles, equipment and internal roads, will be screened from the view of dwellings, scenic resources protected under ASC 90-9, and any other conflicting use identified through the Goal 5 process or Type 3 review. Screening may be natural or may consist of earthen berms or vegetation which is added to the site. If vegetation is added, it shall consist of alternating rows of conifer trees planted six feet on center and a height of six feet at the commencement of the operation. An exemption to the screening requirements may be granted when the operator demonstrates any of the following:*

- a) *Supplied screening cannot obscure the operation due to local topography.*
- b) *There is insufficient overburden to create berms, and planted vegetation will not survive due to soil, water, or climatic conditions.*
- c) *The operation is temporary and will be removed, or the site will be reclaimed within 18 months of commencement.*

*d) The owner of the property containing the use from which the operation must be screened, has signed and recorded a restrictive deed declaration acknowledging and accepting that the operation will be visible and that the operator will not be required to provide screening.*

Section 4.4.8(A)(10) requires consideration for screening of mining and processing activities from dwellings, identified scenic resources with overlay protection, and other conflicting uses identified in through the Goal 5 process. Staff finds that no properties in the area are protected under an ACS 90-9 overlay, although adjacent stretches of Highway 62 are characterized by ODOT as a scenic highway. The applicant has used existing ridge lines to screen the mining and processing activities from view of Highway 62 to the west. Staff incorporates the discussion analysis of scenic view issues and conflict analysis in the ESEE analysis. Staff further finds that applicant will use existing topographical features such as ridges and existing hummocks to screen the extraction site to the greatest extent possible. However, because of the layout of the McKenzie Freel property and the steep slopes of that property, as well as the steep slopes on the southerly side of Butte Falls Highway, staff finds it is impossible to screen mining and processing activities on the McKenzie Freel aggregate property from the view of dwellings, protected scenic resources (if any) and other conflicting uses identified in the Goal 5 process. Staff finds that that under provisions of LDO 4.4.8(A)(10) that an exemption may be granted to screening requirements when the operator demonstrates that screening cannot obscure the operation due to local topography. Staff finds, as indicated above, that such screening is impossible due to the topography of both the McKenzie Freel aggregate property and the surrounding properties. As such, the Board may grant an exemption from the screening requirements under this provision. However, staff further finds that the applicant has indicated that it will use strategically located stockpiles and will construct berms on each of the mining and processing sites and these berms and stockpiles should be located as indicated on the applicant's site plan. Staff finds that should the Board grant an exemption from the screening requirements under this provision, a condition will require the operator to use existing topographic features, combined with the use of berms and stockpiles as shown on the applicant's site plan, to provide screening.

*11. Existing trees and other natural vegetation adjacent to any public park, residential zoning district, or parcel on which a dwelling is situated will be preserved for a minimum width of 25 feet along the boundary of the property on which the operation is located.*

This will be required as a condition of approval.

*12. Operations will observe the following hours of operation:*

*a) Mining, processing, and hauling from the site are restricted to the hours of 6 a.m. to 7 p.m. Monday through Saturday. The hours of operation do not apply to hauling for public works projects.*

*b) Neither mining, processing, nor hauling from the site will take place on Sundays or the following legal holidays: New Year's Day, Memorial Day, July 4, Labor Day, Thanksgiving Day, and Christmas Day.*

*c) An exemption to the hours of operation may be requested. Notice of the proposed change in operating hours must be provided to all property owners within 1,000 feet radius of the aggregate removal or surface mining operation, to residences within one-half*

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*mile of the site, and to owners of property adjacent to private site access roads. If no request for a public hearing is made within 12 calendar days of mailing said notice, the operating hours can be changed as requested by the operator. If a request is made for a public hearing, adjustment of standard operating hours shall be determined by the Hearings Officer, subject to findings that the proposal is consistent with the best interests of public health, safety, and welfare and that the operation will not conflict with other land uses.*

The applicant has proposed hours of operation from 0700 to 1800, Monday through Saturday, with no operation on Sundays or the following holidays: New Year's Day, Memorial Day, July 4, Labor Day, Thanksgiving Day and Christmas Day. The hours of operation do not apply to hauling for public works projects. An exemption to the hours of operation may be requested. Notice of the proposed change in operating hours must be provided to all property owners within 1,000 feet radius of the aggregate removal or surface mining operation, to residences within one-half mile of the site, and to owners of property adjacent to private site access roads. If no request for a public hearing is made within 12 calendar days of mailing said notice, the operating hours can be changed as requested by the operator. If a request is made for a public hearing, adjustment of standard operating hours shall be determined by the Hearings Officer, subject to findings that the proposal is consistent with the best interests of public health, safety, and welfare and that the operation will not conflict with other land uses.

Jackson County may permit emergency extraction under the requirements of Section 4.4.8(B) of the 2004 Land Development Ordinance.

#### **V. PROGRAM TO ACHIEVE THE GOAL**

OAR 660-016-0010 and the Map Designation Element for Aggregate Resource Land, along with guidance from DLCD and LCDC, requires Jackson County to develop a Program to Achieve the Goal based on the facts before the county, the analysis of those facts, and determination of the economic, social, environmental and energy consequences. The Map Designations Element text is found below.

**Decision on Program to Provide Goal 5 Protection.** Based on the analysis of ESEE consequences, the County shall make a determination on the level of protection to be afforded each site. Each determination shall constitute a decision to comply with Goal 5 for the specific site, and shall be incorporated into the Comprehensive Plan, and reflected on the County zoning maps, as appropriate. The County shall make one of the following determinations:

i) Protect the resource site fully, allow surface mining. To implement this decision the County shall apply the Aggregate Removal zone. Development and use of the mineral or aggregate resource shall be governed by the standards within the Land Development Ordinance. As part of the final decision, the County shall adopt site-specific policies prohibiting the establishment of conflicting uses within the area designated as the Impact Area surrounding the Extraction Area.

ii) Balance protection of the resource site and conflicting uses, allow surface mining. To implement this decision, the County shall apply the Aggregate Removal zone. Development and use of the mineral or aggregate resource shall be governed by the standards in the Land Development Ordinance and any other site-specific requirements designed to avoid or mitigate the consequences of conflicting uses and adopted as part of the final decision. Development of conflicting uses within the Impact Area shall be regulated by the

Land Development Ordinance and any other site-specific requirements designed to avoid or mitigate impacts on the resource site and adopted as part of the final decision.

iii) Allow conflicting uses, do not allow surface mining. To implement this decision, the County shall not apply the Aggregate Removal zoning district. The site will not be afforded protection from conflicting uses, and surface mining shall not be permitted except through the permit review process in the Land Development Ordinance.

The Board has a substantial amount of evidence in the record to determine the level of protection for the significant aggregate resource on the McKenzie Freel property. Sites A, C, D2, and E have been designated significant aggregate resources in previous decisions by the Board and the remand before the Board does not require a review of the significance determination. The impact area has been identified as 1,500 feet around the aggregate sites as well as the internal access road. The applicant has requested the Board reduce the impact area as shown on Map 1. The Board may reduce the impact area based upon substantial evidence in the record and developed in the course of the Goal 5 process. *Substantial evidence* is considered "that which a reasonable mind might accept as adequate to support a conclusion." *Richardson v. Perales*, 402 U.S. 389, 401 (1971). Following determination of the impact area, the Board must then identify conflicting uses within the impact areas that may negatively impact the aggregate resource. These identified conflicting uses must then be analyzed to determine the economic, social, environmental and energy consequences. Should the Board determine that the record contains substantial evidence showing the applicable criteria are met with regards to Oregon Revised Statutes, Oregon Administrative Rules, the Jackson County Comprehensive Plan, and the Jackson County Land Development Ordinance, staff recommends the Board choose a "3C" decision. This provides for a balance between protection of the resource sites and conflicting uses, and to allow surface mining. Staff requests the Board adopt the conditions attached to this report as part of the decision. The Board may desire to add, delete, or change the conditions, as determined to balance the protection of the resource sites and the conflicting uses.

Should the Board approve this application, staff will prepare an Ordinance reflecting that decision. Should the Board deny rezoning the sites and internal access road to Aggregate Resource Land, staff will prepare an Ordinance reflecting that decision.

JACKSON COUNTY PLANNING DIRECTOR

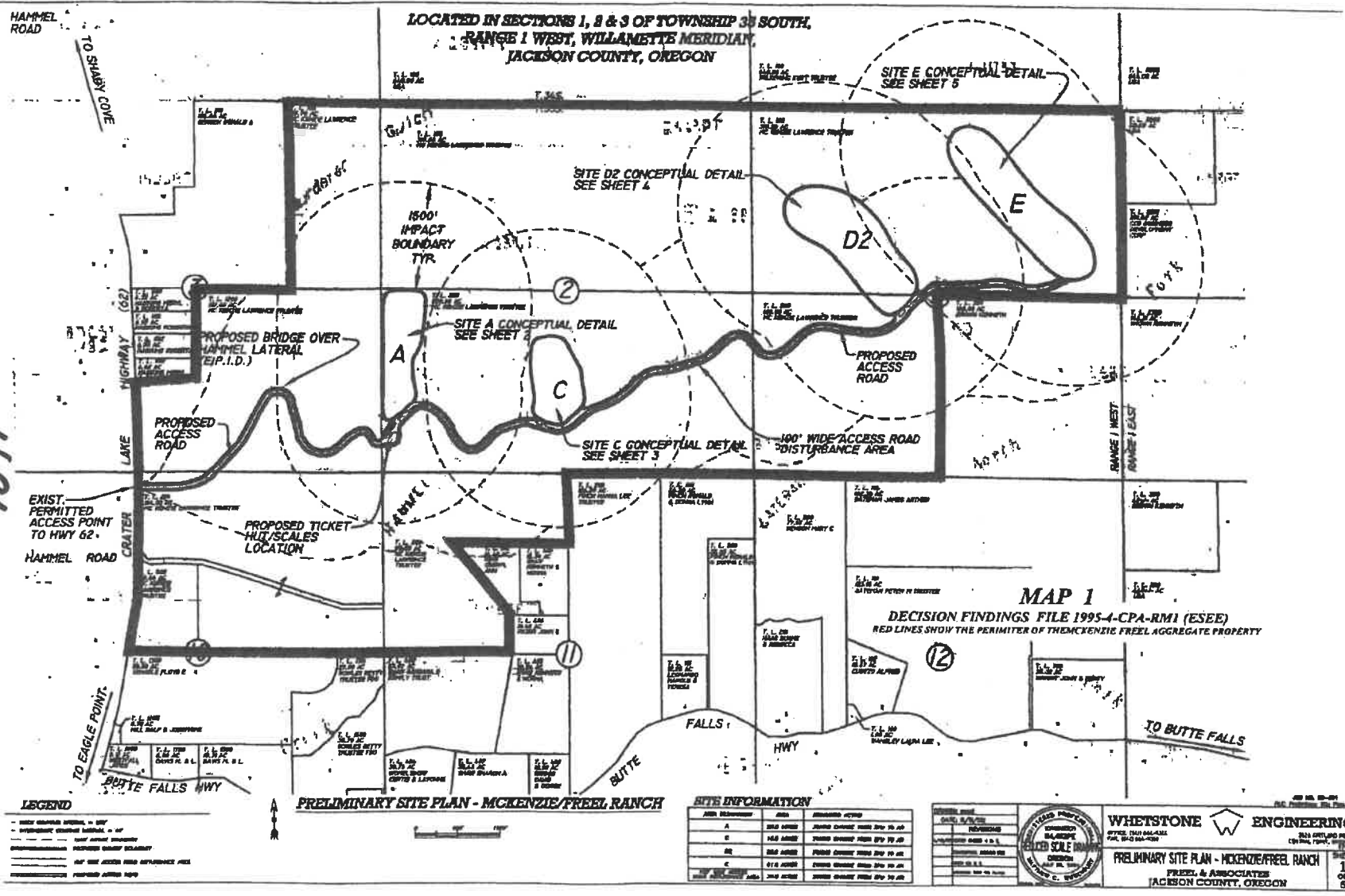


BY: Michael W. Mattson, Planner II

12-30-05

DATE

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 Offered by: STAFF  
 Date: 12-30-05  
 Received by: [Signature]

WHETSTONE ENGINEERING  
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PRELIMINARY SITE PLAN - MCKENZIE/FREEL RANCH  
 FREEL & ASSOCIATES  
 JACKSON COUNTY, OREGON

1 OF 5

**BEFORE THE BOARD OF COMMISSIONER**

**STATE OF OREGON, COUNTY OF JACKSON**

**ORDINANCE NO. 2006-7**

**AN ORDINANCE APPROVING AN AMENDMENT TO CHANGE THE COMPREHENSIVE PLAN MAP DESIGNATION FROM AGRICULTURAL LAND TO AGGREGATE RESOURCE LAND AND THE ZONING MAP FROM EXCLUSIVE FARM USE (EFU) TO AGGREGATE REMOVAL (AR) ON PORTIONS OF PROPERTY DESCRIBED AS TOWNSHIP 35 SOUTH, RANGE 1 WEST, SECTION 1, TAX LOTS 100 AND 200, TOWNSHIP 35 SOUTH, RANGE 1 WEST, SECTION 2, TAX LOTS 100 AND 200, TOWNSHIP 35 SOUTH, RANGE 1 WEST, SECTION 3, TAX LOTS 100 AND 1200, TOWNSHIP 35 SOUTH, RANGE 1 WEST, SECTION 10, TAX LOTS 100 AND 502, AND TOWNSHIP 35 SOUTH, RANGE 1 WEST, SECTION 11, TAX LOT 300. THIS ORDINANCE IS IN RESPONSE TO THE REMAND FROM THE OREGON COURT OF APPEALS AND THE LAND CONSERVATION AND DEVELOPMENT COMMISSION OF BOARD ORDER #412-01, DENYING A ZONE CHANGE TO SITES A, C, D2, AND E. THIS MATTER IS PART OF TASK #14 OF JACKSON COUNTY'S PERIODIC REVIEW. THE PROPERTY OWNERS SEEK TO MINE AND PROCESS AGGREGATE FROM FOUR(4) SITES ON THE PROPERTY, REFERRED TO AS SITES A, C, D2 AND E. THE PROPOSED OPERATION WOULD ACCESS THE PUBLIC ROAD SYSTEM VIA HIGHWAY 62 APPROXIMATELY 5,500 FEET NORTH OF THE BUTTE FALLS HIGHWAY. THE PROPERTY IS KNOWN AS THE MCKENZIE-FREEL AGGREGATE PROPERTY. THE LOCATION OF THE PROPERTY IS EAST OF HWY 62 AND NORTH OF BUTTE FALLS HWY. THE PROPERTY OWNERS ARE LAWRENCE N. MCKENZIE AND KATHLEEN L. MCKENZIE, CO-TRUSTEES OF THE MCKENZIE COMMUNITY PROPERTY TRUST, CHARLES D. FREEL, TRUSTEE OF THE CHARLES D. FREEL TRUST, CHARLES D. FREEL, JEANNE M. FREEL, LAWRENCE N. MCKENZIE, AND KATHLEEN L. MCKENZIE. FILE 1995-4-CPA-RM1 (ESEE).**

**RECITALS:**

1. Pursuant to Chapter 197 and 215 of the Oregon Revised Statutes, and in conformance with the Statewide Planning Goals, Jackson County's Comprehensive Plan (JCCP) and implementing ordinances have been acknowledged by the Oregon Land Conservation and Development Commission (LCDC).
2. Statewide Planning Goal 5 requires counties to conserve open space and protect natural and scenic resources, including mineral and aggregate resources. Oregon Administrative Rule (OAR) 660, Division 16, establishes the procedure for completing an inventory, analyzing conflicts, and implementing a program to protect significant and potentially significant aggregate sites, by evaluating the environmental, social, economic and energy (ESEE) consequences of either re-zoning or not re-zoning property as Aggregate Resource.

**1-ORDINANCE; File 1995-4-CPA-RM1 (ESEE)**

3. JCLDO Section 3.7.3 states that a minor map amendment must conform to the Statewide Planning Goals, Oregon Administrative Rules, and the Comprehensive Plan as a whole.
4. In 1996, the Land Conservation and Development Commission adopted OAR 660, Division 023, to establish procedures and criteria for inventorying and evaluating Goal 5 resources, including aggregate resources. At that time, Jackson County had been in Periodic Review for over nine years, and many of the completed tasks involved Goal 5 resources. Jackson County elected to continue working under OAR 660, Division 16 for all aggregate resources, and to delay adoption of OAR 660, Division 23 regulations until the next periodic review, as provided for in OAR 660-023-250(7).
5. On April 11, 1994, the Department of Land Conservation and Development (DLCD) approved the Jackson County Periodic Review Work Program, including 22 tasks. Task 14, Central County ESEE Analyses included eight potential aggregate resource sites. The McKenzie Family Trust property was evaluated as part of Task 14.
6. The Jackson County Planning Commission held properly advertised public hearings on May 25 and June 5, 1995, to consider information supplied by the property owner supporting an Aggregate Resource zoning designation for five sites on property located east of Highway 62 and north of Butte Falls Highway. The Planning Commission continued their public hearings for deliberation to June 22, 1995.
7. Based on testimony received at the hearings and submitted into the Record, the Planning Commission voted to recommend that four of the five sites (A, C, D2 and E) be found significant and included on the Jackson County Aggregate Sites Inventory, but because the conflicting uses outweighed the significance of the aggregate material, the property should not be re-zoned to Aggregate Resource.
8. The Board of County Commissioners held a properly advertised public hearing on August 29, 1995, and conducted a field trip to the property on September 29, 1995. On October 12, 1995, the Board deliberated to a decision to protect the aggregate resources by placing the sites (A, C, D2 and E) on the Jackson County Aggregate Sites Inventory.
9. Based on testimony received at the hearing and evidence submitted into the Record, the Board concluded that the Environmental, Social, Economic and Energy (ESEE) consequences created by noise and dust generation, wildlife habitat degradation, and decreased traffic safety would outweigh the value of the aggregate. The Board signed Order #460-95 on December 21, 1995.
10. The property owner filed an objection to Board Order #460-95 with DLCD on January 16, 1996. On December 15, 1997, DLCD remanded the Board's decision to Jackson County, finding that the County had failed to:
  - A. Adequately define or describe the "impact area" to be affected by mining aggregate resources;
  - B. Acknowledge that the impacts resulting from mining could be mitigated; and,
  - C. Sufficiently protect an identified Goal 5 aggregate resource.

11. After several public hearings before the Board of Commissioners, the Board deliberated to a decision, again denying the rezoning of sites A, C, D2, and E and concluding to not allow mineral and aggregate extraction. On November 21, 2001, the Board of Commissioners signed Order #412-01. The order also concluded that sites D2 and E were significant and already on the Jackson County Aggregate Site Inventory and that sites A and C were significant and should be placed on the Jackson County Aggregate Site Inventory. The order also denied the requested zone change to Aggregate Resource.

12. On December 4, 2001, Jackson County submitted Order #412-01 to DLCD regarding completion of Periodic Review Task #14. Several objections to Jackson County's Order #412-01 were received from the applicant's attorneys on December 24, 2001.

13. After review of Jackson County's Periodic Review Task #14 and objections to Order #412-01, DLCD issued a remand order, Order #00140, to Jackson County. This remand order is attached as Exhibit "A" (Exhibit 6 of the current record). DLCD concluded "*Since the county's delineated impact area was not supported by substantial evidence and there were not four distinct impact areas for the four resource sites, it is the department's conclusion that the ESEE consequences analysis is not adequate to support the Board's decision and therefore, does not satisfy OAR 660-16-0000(5)(c)*" (Exhibit 6, page 35 of current record). The remand order sustained or partially sustained 11 of 13 objections to Board Order #412-01 and its exhibits (see Exhibit 6, pages 23-37 of current record).

14. DLCD's remand Order #00140 was appealed to LCDC and LCDC affirmed the remand on September 26, 2002 (LCDC No. 02-WKTASK-001430) (see Exhibit 5 of current record). LCDC's decision was appealed the Oregon Court of Appeals (CA A119831 and on August 25, 2004, the Court of Appeals affirmed without opinion LCDC's decision (see Exhibit 4 of current record).

15. The remand issues include:

A. Jackson County did not clearly map impact areas for each of the sites. The county delineated one undifferentiated impact area for the four aggregate sites, rather than four individual impact areas. The county followed an improper procedure to reach an improper result regarding the impact area (see current record, pages 28-29).

B. The impact area was not supported by substantial evidence in the record (see current record, pages 29-30).

C. Jackson County failed to reconcile potential impacts from mining through application of mitigation measures (see current record, page 30).

D. Jackson County failed to base conclusions on substantial evidence contained in the record (see current record, page 30).

E. Jackson County failed to give adequate consideration to possible mitigation measures or conditions of approval that could serve to mitigate traffic safety conflicts (see current record, pages 31-34).

F. Jackson County cannot rely on what could or could not be done in a conditional use

**3-ORDINANCE; File 1995-4-CPA-RM1 (ESEE)**

application. This analysis is irrelevant to the Goal 5 process and may not be considered by the county (see current record, page 34).

G. When need is considered, it should be based on long-term local, regional, and statewide needs for that type of resource and should not be limited to simply jurisdictional boundaries. In addition, lack of need, by itself, cannot be used to justify not protecting a significant aggregate resource site (see current record, pages 34-35).

H. The county's conflict analysis and subsequent decision to allow the conflicting uses fully while not protecting the aggregate sites with the AR zone are not supported by an adequate ESEE consequences analysis (see current record, page 35).

I. Commissioner Smith attended nearly all the hearings in this matter, but abstained from participation and did not vote on this matter.

**Now, Therefore,** the Board of County Commissioners of Jackson County hereby make the following findings and conclusions:

### **SECTION 1. FINDINGS OF FACT**

Based upon the evidence and argument presented, the Board makes the following findings of fact with respect to remand of this application under DLCD Periodic Review Work Task #14 Remand Order No. 001400 as affirmed by LCDC and the Court of Appeals. Where factual conflicts arose, the Board has resolved them consistent with these findings.

1.1 The Board of Commissioners finds that proper public notice was given for the public hearings (c.f. current record, Exhibits 10, 59, 82 and 84).

1.2 The Board of Commissioners hereby adopts, as its own, the Staff Report, dated December 30, 2005, with replacement pages (current record, Exhibit 100, pages 797-798), and staff findings within the report, attached hereto and incorporated herein as Exhibit "A" and as modified herein.

### **SECTION 2. LOCATION, QUALITY AND QUANTITY**

2.1 In the event it would be deemed necessary for the Board to address this issue, we find that the location, quality and quantity of the mineral and aggregate resource on the property is clearly established.

2.1.1 We agree with and adopt staff's analysis, findings and conclusions regarding the location of sites A, C, D2 and E (see current record, Exhibit 96, pages 721-722).

2.1.2 Based on the uncontroverted data provided by registered engineering geologist, we find that each site (A, C, D2 and E) has more than 100,000 cubic yards of mineral and aggregate material that is of good quality equal to the volcanic mineral and aggregate resources commonly used in the Jackson County area for base coarse rock and aggregate for concrete and asphalt (see current record pages 294-306, prior record; packet #2, pages 12-39; packet #3, pages 92-99 both incorporated into the current record;

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and current record Exhibit 79, page 650). We incorporate our findings and conclusions below related to the impact area.

### **SECTION 3. FINDINGS: IDENTIFYING CONFLICTING USES**

3.1 The Board of Commissioners approves and adopts the analysis, findings and conclusions of staff related to identification of four conflicts related to the four mineral and aggregate locations, A, C, D2 and E, on the McKenzie Freel property (see staff report, current record page 726). Consistent with the administrative record in this matter and staff analysis, we find there are broad groups of uses, residential uses, outdoor gathering uses, and public/private park uses which could give rise to a conflicting use (see staff conclusion, page 742 of current record). That is, if these uses were allowed to locate within 1,500 feet of the mineral and aggregate uses on neighboring property, they could negatively impact the Goal 5 resource site. The staff points out that the physical aspects of the land in the general area would make it difficult to locate these types of uses within a reasonable distance from the four mineral and aggregate sites on the McKenzie Freel property. However, it is theoretically possible that these uses could be located and we, therefore, consider them as conflicting uses. Consistent with staff analysis, findings and conclusions, Oregon Administrative Rule Division 16 provides that where conflicting uses have been identified, the impacts on both the resource site and on the conflicting use must be, and have been, considered in analyzing the ESEE consequences. We incorporate our findings in this regard from Section 5 below.

### **SECTION 4. FINDINGS: IMPACT AREA**

4.1 The Board of Commissioners finds, consistent with OAR 660 Division 16 and the Jackson County Comprehensive Plan (JCCP) Map Designations Element for Aggregate Resource Land, that for each mineral and aggregate site determined to be significant and included on the Jackson County Aggregate Sites Inventory, an impact area shall be identified and mapped. That impact area shall be 1,500 feet unless increased or decreased based on analysis and findings developed in the course of the Goal 5 process. The Board does not believe it is necessary to increase the impact areas around mining sites A, C, D2 and E greater than 1,500 feet and we adopt staff's analysis, findings and conclusion in this regard (see current record, pages 723-742). The Board finds the 1,500 feet impact area around sites A, C, D2, and E is proper based upon the following:

4.1.1 We find that proponent's noise studies demonstrate that noise from any of the mining activities on any of the four significant mineral and aggregate resource sites (A, C, D2 and E) can be appropriately controlled to within DEQ standards within 1,500 feet of the proposed operations (see current record, Exhibit 28, pages 202-289; Exhibit 53, pages 477-481; Exhibit 62, pages 530-535; Exhibit 81, pages 652-656). We note that opponents provided noise commentary on the noise studies conducted by the applicant, but they did not perform their own noise study (see Exhibit 56, pages 486-488; Exhibit 39, pages 451-453 and pages 611-613 of current record). A careful review, analysis and consideration of the noise studies persuades us that noise emanating from any of these sites (A, C, D2 and E) can be properly controlled and DEQ's protective standards can be met at 1,500 feet under the proposed operations. We further find that mitigation measures will allow DEQ's noise standards to be met and that we have imposed

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mitigation measures, through conditions of approval on the aggregate mining operations, that will minimize or eliminate identified conflicts related to noise.

4.1.2 We find that the applicant submitted a comprehensive dust analysis, including mechanisms controlling dust, such as the Washington State Department of Ecology Techniques for Dust Prevention and Suppression. We further find that applicant analyzed dust sources and water necessary to control dust sources and demonstrated the availability of three separate sources for water regarding dust control purposes. Applicant's analysis convinces us that all dust sources from the operation can be mitigated and controlled, and the dust impacts do not require us to expand the 1,500 foot impact area (see current record, Exhibit 17, pages 177-182). We further find and conclude that dust can be controlled on the site and we have added conditions to ensure that dust is controlled.

4.1.3 We adopt, as our own, staff's analysis of viewshed conflicts (see current record, Exhibit 96, page 726).

4.1.4 Transportation. We find that the final identified conflict is transportation. Applicant provided significant transportation analysis and a mitigation plan (see current record, Exhibit 79, pages 645-649; Exhibit 87, pages 673-692). Opponents provided an alternative report that was not a full traffic study (see current record, pages 596-610). Applicant then provided a supplemental gap study prepared by registered professional traffic engineer (see current record, Exhibit 93, pages 696-708). Written comment from Oregon Department of Transportation confirmed that any adverse transportation effects can be mitigated (see current record, Exhibit 37, pages 448-449). After analyzing all evidence, we are persuaded that Highway 62 has adequate capacity, that there are adequate gaps for trucks to enter the highway, and sight distance and other issues provide no transportation-related basis for expanding the impact area beyond 1,500 feet.

4.2 The Board of Commissioners finds the impact area around the access road serving all of the mining sites has been determined to be 1,500 feet in proximity to sites A, C, D2 and E. The Board also finds that the record contains substantial evidence that the impact area should be reduced, starting near the west side of site A and decreasing to a point where the access road intersects with Hwy. 62, as shown on current record Exhibit 97, page 783, and attached hereto and incorporated herein as Exhibit "B".

4.2.1 The Board of Commissioners finds that the impact area around the access road serving all of the mine sites is determined to be 1,500 feet for that portion of the access road in and between sites A, C, D2 and E. The Board also finds the 1,500 foot impact area is not necessary for the entire length of the access road from site A traveling westward to the intersection of the access road with Hwy. 62. We find that the impact produced on this road is primarily noise and applicant's noise expert substantiates that as a truck travels west from site A toward Hwy. 62, the noise environment from Hwy. 62 controls and diminishes the impact area. Under the analysis of applicant's noise expert, the 1,500 foot impact area should be tapered to decrease in width and be reduced to the point of a triangle where the haul road reaches Hwy. 62. Additionally,

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applicant's noise expert indicates that there is no reason for the impact area from the haul road to cross over Hwy.62 (see current record, Exhibit 62, pages 530-533). We find that opponent's noise consultant is in agreement with this analysis (see current record, page 612). Accordingly, we find and conclude that as proposed by staff and as shown on the attached Exhibit "B", the impact area associated with the haul road shall taper to a point where the haul road meets Hwy. 62 and not cross Hwy. 62.

#### **SECTION 5. FINDINGS: ESEE ANALYSIS**

5.1 After reviewing the evidence and the arguments presented and carefully weighing a number of facts including allowable uses, conflicting uses, impacts, impact areas and others, the Board of County Commissioners hereby adopts the analysis of economic, social, environmental and energy consequences prepared by staff as set out on pages 742-749 of the record. We also find and conclude that the mineral and aggregate sites that we are approving may produce approximately 5.4 million cubic yards of material over the lifetime of operation and that impacts on other uses in the area, and conflicting uses, can be mitigated, through operational requirements and the conditions we have proposed. We find this is true for all uses and potential uses, including an approved but currently unconstructed home site in the area. Because the impacts on conflicting uses can be minimized by mitigation measures in compliance with federal and state regulations and local conditions prescribed herein, we find and conclude the relative value of the aggregate resource outweighs any loss of value resulting from potential remaining impacts on conflicting uses.

#### **SECTION 6. FINDINGS: COUNTY STANDARDS**

6.1 We find that this application implicates certain policies and implementation strategies of the comprehensive plan including, among others, mineral and aggregate resources policies and strategies, transportation system plan policies and strategies, transportation and land use coordination policies and strategies, and the environmental and scenic resources policies. We also find that the application implicates that Jackson County Land Use Development Ordinance provisions, including amendments to comprehensive plan and zoning map criteria, aggregate removal criteria, among others. Based on our review of the record, the evidence in the record and our analysis, the Board of Commissioners hereby adopts, as its own, the staff's findings and conclusions related to the county standards as set forth in the staff report at pages 760-781 of the current record.

#### **SECTION 7. FINDINGS: STATEWIDE GOALS**

7.1 After carefully examining the evidence in the record and arguments of the parties, the Board of Commissioners hereby adopts, as its own, the staff report conclusions and analysis relating to statewide planning goals found at pages 749-760 of the record.

#### **SECTION 8. FINDINGS: OTHER STATE STANDARDS**

8.1 Because this is an application that involves EFU property, the provisions of 215.296, 215.298 and 215.283 are implicated. After careful analysis of the record in this matter, the Board of Commissioners hereby adopts, as its own, portions of the staff report related to these statewide standards, including pages 733-737, 750-752 and 764 of the current record.

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**SECTION 9. FINDINGS: PROGRAM TO ACHIEVE THE GOAL**

9.1 Based on our analysis of all the record, reviewing the staff report and weighing the various decision factors for our analysis, including the ESEE analysis, the Board finds and concludes that sites A, C, D2 and E shall be included on the Jackson County's inventory of "Significant Goal 5 Resource Sites". We further find and conclude, based on the record before us and our analysis of the ESEE consequences, both the resource use and the conflicting uses are important, relative to each other, and a balanced decision should be reached to protect the resource site, but also allow conflicting uses in a limited way. Accordingly, we adopt a "3C" decision under OAR 660-016-0010(3). We find that we are fully protecting and fully allowing operation of a mineral and aggregate resource site, subject to the conditions attached to this approval. Mineral and aggregate uses allowed include mining, crushing, stockpiling, transportation, and all incidental uses necessary thereto, on sites A, C, D2 and E as limited by the conditions herein. We further find that outside the impact area that we have defined on Exhibit "B", all uses and activities allowed under the appropriate zoning and comprehensive plan requirements, are still allowed, consistent with the requirements of the Comprehensive Plan and the Jackson County Land Use Development Ordinance. Consistent with the implementation strategy (o) of the Aggregate and Mineral Resources Policy for the Jackson County Comprehensive Plan, if a new use is allowed within the impact area that is a conflicting use as identified in this approval, measures necessary to resolve conflicts must be used, including setbacks, insulation, screening or similar devices. The mechanism to implement this conflict resolution is the Jackson County Land Use Development Ordinance which provides additional setbacks and restrictive covenants. The Board determines that in the event an identified conflicting use wishes to be located within the impact area as identified in this approval, that restrictive covenants recognizing the right of ongoing mineral and aggregate operations shall be executed by the party proposing the conflicting use as part of the county's permit process.

**SECTION 10. CONCLUSIONS**

10.1 The Board of Commissioners concludes that proper public notice was given.

10.2 The Board concludes that sites A, C, D2 and E are significant aggregate resources and are added to Jackson County's inventory of "Significant Goal 5 Resource Sites".

10.3 The Board accepts and adopts the staff report (current record, Exhibit 96) attached as Exhibit "A" hereto.

10.4 The Board establishes the impact area as set forth in the staff report (current record, Exhibit 97, page 783) and as set forth on attached Exhibit "B" hereto.

10.5 The Board further concludes that operations for the mineral and aggregate extraction and related activities, as detailed in the site plan for aggregate operations submitted by the applicant, are appropriate on the site and are approved.

10.6 The Board hereby adopts the conditions contained in current record, Exhibit 77, pages 642-644 and Exhibit 98, pages 793-796, including the suggested conditions for the ODOT change of use criteria permit and other conditions determined by the Board through deliberations. These conditions are attached as Exhibit "C". We conclude that the conditions are feasible and serve to mitigate or eliminate conflict.

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10.7 The Board concludes that the application meets the requirements of, meets all the standards of, and is consistent with statewide planning goals, Oregon Administrative Rules, Jackson County Land Use Development Ordinance, Jackson County Comprehensive Plan, and any applicable state statutes.

**SECTION 11. DECISION**

The Board of County Commissioners of Jackson County ordains as follows:

11.1. Based on the record of the public hearing and the recommendation of the staff, attached hereto and incorporated as Exhibit "A", the Board of Commissioners approves a change in the Comprehensive Plan designation from Agricultural Land to Aggregate Resource land and a change in the zoning designation from Exclusive Farm Use (EFU) to Aggregate Removal (AR) on the identified properties. The Board further designates the impact area consistent with the staff report (current record, Exhibit 97, page 783) as attached in Exhibit "B".

11.2 The Board further adopts the conditions as set forth in the current record, Exhibit 77 and Exhibit 99, and other conditions determined by the Board through deliberations, and these conditions are attached hereto as Exhibit "C".

11.3 Invalidation of a section or part of this ordinance shall not affect the validity of the remaining sections or parts of sections.


APPROVED this 7<sup>th</sup> day of June, 2006, at Medford, Oregon.

**JACKSON COUNTY BOARD OF COMMISSIONERS**

Dave Gilmour,   
\_\_\_\_\_

Chair APPROVED AS TO FORM:

ATTEST:

  
\_\_\_\_\_  
County Counsel

Donna Bladek  
\_\_\_\_\_  
By: Recording Secretary

The Board of County Commissioner's Ordinance is the final county decision on this action. Pursuant to ORS 197.825 and OAR 660-025-0140, an individual may object to this decision to the

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Department of Land Conservation and Development in writing no later than 21 days from the date this notice was mailed by the local government. This decision is being mailed on \_\_\_\_\_ 2006 and the objection period will expire on \_\_\_\_\_, 2006. Please contact the Department of Land Conservation and Development for specific objection information. They are located at 635 Capitol Street N.E., Suite 150, Salem, Oregon 97301-2540. They can be reached at (503) 373-0050.

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**1995-4-CPA-RM1(ESEE)  
STAFF REPORT TO  
JACKSON COUNTY BOARD OF COMMISSIONERS**

EXHIBIT A

**Request:** This application requests amendment of the Jackson Comprehensive Plan Map designation from Agricultural land to Aggregate Resource Land and the Zoning Map from Exclusive Farm Use (EFU) to Aggregate Removal (AR) to allow mineral and aggregate extraction at four sites on the McKenzie Freel aggregate property. A Site Plan Review to allow aggregate operations is also requested in order to change the Zoning Map from Exclusive Farm Use (EFU) to Aggregate Removal (AR). This matter is part of Task #14 of Jackson County's Periodic Review.

**Location:** The application location consists of four separate aggregate removal extraction areas (totaling approximately 117 acres) and an internal truck path (connecting the sites with Highway 62) on portions of property described as Township 35 South, Range 1 West, Section 1, Tax Lots 100 and 200; Township 35 South, Range 1 West, Section 2, Tax Lots 100 and 200; Township 35 South, Range 1 West, Section 3, Tax Lots 100 and 1200; Township 35 South, Range 1 West, Section 10, Tax Lots 100 and 502; and Township 35 South, Range 1 West, Section 11, Tax Lot 300. The property ownership, the four gravel extraction sites (site A consisting of 20 acres; site C consisting of 18 acres; site D2 consisting of 38 acres and site E consisting of 41 acres), and the connecting internal truck path are set forth in Map 1 that is incorporated by reference herein. The property is commonly known as the McKenzie Freel aggregate property and is generally located east of Highway 62 and north of Butte Falls Highway.

**Property Owners:** Lawrence N. McKenzie and Kathleen L. McKenzie, Co-Trustees of the McKenzie Community Property Trust; Charles D. Freel, Trustee of the Charles D. Freel Trust; Charles D. Freel, Jeanne M. Freel, Lawrence N. McKenzie and Kathleen L. McKenzie.

**Procedural History:** In the spring of 1994, DLCD authorized Jackson County's periodic work program which included more than 20 tasks. One of those tasks, Task #14, included the evaluation of eight potential resource sites under the existing administrative rule for Goal 5 resources, OAR 660, Division 16. The McKenzie Freel aggregate property contained four of the potential aggregate resource sites to be evaluated as part of Work Task #14. After public hearings on May 25 and June 5, 1995, the Jackson County Planning Commission determined, on June 22, 1995, that sites A, C, D2 and E of the McKenzie Freel aggregate property were significant under the Division 16 rules, but recommended that the property not be rezoned as an aggregate resource because of adverse effects on conflicting uses. The Jackson County Board of Commissioners held a public hearing on August 29, 1995, made a site visit on September 29, 1995, and on October 12, 1995 determined to add sites A, C, D2 and E of the McKenzie Freel aggregate property to the Jackson County aggregate site's inventory of significant resources, but not allow aggregate resource extraction nor the change to aggregate resource zoning because of adverse effects on conflicting uses. The Jackson County Board of Commissioners signed Order #460-95 on December 21, 1995 denying the zone change to Aggregate Resource on portions of the McKenzie Freel aggregate resource property and fully allowed the conflicting uses, a "3B" decision under OAR 660-0016-0010. As part of periodic review, the property owners timely filed an objection with DLCD in January 1996. After analysis and deliberation, DLCD remanded Jackson County's decision (Remand #1) finding that the county had failed to adequately describe the impact area to be affected by mining aggregate resources, that the county had failed to acknowledge the impacts resulting from mining could be mitigated, and that the county had failed to sufficiently protect an identified Goal 5 resource.

After Remand #1, Jackson County Board of Commissioners held an additional public hearing on November 3, 1999 to consider additional public input on the matter. Additional hearings were held in January and February 2000. On November 21, 2001, Jackson County Board of Commissioners concluded that aggregate sites D2 and E on the McKenzie Freel aggregate property were already on the Jackson County Aggregate Site Inventory and that aggregate sites A and C on the McKenzie Freel aggregate property should be placed on the same inventory. The Jackson County Board of Commissioners again denied the requested change to Aggregate Resource zoning based on the Board's determination, at that time, to allow conflicting uses fully and to not protect the mineral and aggregate resource. The county's second decision was again a "3B" decision under OAR 660-016-0010. The county's negative decision was made final through Order #412-01 signed on November 21, 2001. In December 2001, Jackson County submitted Order #412-01 to DLCD as evidence it had completed Periodic Review Work Task #14 related to aggregate resources. Owners of the McKenzie Freel aggregate property timely filed objections to the county's Order and Periodic Review Work Task response with DLCD.

After review of the county's Order, DLCD, on June 3, 2002, issued a remand order, Order No. 00140, (Remand #2) to Jackson County. In sum, nearly all of the McKenzie Freel objections were upheld by DLCD. The upheld objections included the following: that Jackson County failed to properly delineate the impact area, that Jackson County failed to properly determine that "conflicting uses" could be minimized or mitigated, and that the county's determination of the impact area and the county's decision to allow conflicting uses fully (the "3B" decision) rather than to limit conflicting uses (a "3C" decision) was not supported by substantial evidence. In its conclusion to Remand Order #2, DLCD stated: "Based on the record, the county has not provided substantial evidence to support its periodic review decision to deny a zone change and protection under Statewide Planning Goal 5 for the four significant McKenzie Family Trust/David Freel aggregate sites." DLCD ordered Jackson County to revisit its decision and withheld approval of Periodic Review Work Task #14. Opponents of the mineral and aggregate resource site filed exceptions to DLCD's Remand Order #2 to LCDC. After a public hearing, LCDC fully affirmed DLCD's Remand Order #2 (LCDC #02-WKTASK-001430). Opponents of the McKenzie Freel aggregate resource sites appealed LCDC's final decision to the Oregon Court of Appeals (CA A119831) arguing that the county, not DLCD or LCDC, had full authority to interpret the facts under the periodic review statute. On August 25, 2004, the Court of Appeals rejected the opponents' position and affirmed LCDC's decision in all respects without opinion. Periodic Review Goal 5 Work Task #14 was subsequently remanded to Jackson County by formal letter from DLCD establishing a new submittal date for Jackson County to address the requirements of Remand #2.

Subsequent to Remand #2, Jackson County held numerous public hearings on the issue, including March 30, April 27, May 4 and May 11, 2005. Opponents raised various procedural issues and additional public hearings were held by the Jackson County Board of Commissioners on June 15, 2005. Further procedural issues were raised by the opponents. To assure that all parties had sufficient time to address all issues, the Jackson County Board of Commissioners provided substantial time for all parties to respond in writing as part of the public hearing process, allowing opponents' responses through August 3, 2005, and providing the applicants an additional seven days (until August 10, 2005) to submit additional material in writing. On the day set by the Board, opponents raised additional procedural issues. The Board set the matter over until November 2, 2005 to provide all parties additional time to provide evidence and testimony on traffic safety issues. After the public hearing on November 2, 2005, the record was kept open to allow all parties time to provide written evidence and argument

related to traffic safety issues. A public hearing is scheduled for January 11, 2006, at which time no new information or testimony will be accepted and the Jackson County Board of Commissioners will consider the evidence and deliberate.

An additional procedural matter arose as part of the county's determination subsequent to Remand #2. Commissioner Dennis C.W. Smith was elected to the Jackson County Board of Commissioners in November 2004. Prior to his election, he had been an opponent of the McKenzie Freel application and had testified against the application. As an elected member of the Board of Commissioners, Mr. Smith would be required to participate in a matter that he had previously opposed in the public hearing process. The applicant and applicant's counsel were informed of this development by the County Counsel's office. The applicant, through its attorney on the record at a public hearing, formally waived any objection to Commissioner's Smith participation as a decision maker in the county proceedings subsequent to Remand #2.

At the second hearing subsequent to Remand #2 on April 27, 2005, the opponents objected to the continuing participation of Commissioner Smith and filed a formal motion to disqualify Commissioner Smith from further involvement in the case. As reflected in the record, Commissioner Smith, at each subsequent public hearing, explained the circumstances of his participation in the prior hearings in this matter, explained that he could impartially review the evidence, and further explained that, in an abundance of caution, he would attend the hearings, listen to the evidence, but not participate in the decision unless required to do so under the "rule of necessity." Commissioner Smith attended all public hearings subsequent to Remand #2 but abstained from voting or participation in any portion of the hearings. As reflected in our decision, Commissioner Smith abstained from the final decision and, because the other two commissioners voted for approval, his participation was not required under the "rule of necessity."

Commissioner Walker has experienced some health issues that made it difficult for him to attend all of the public hearings. However, as Commissioner Walker indicated on the record, he fully reviewed all of the evidence submitted, listened to the tapes of the hearings that he did not attend, participated in a hearing via telephone, and watched portions of the hearings that he did not attend on television.

**Applicable Criteria:** Consistent with posting, mail and published notice, Jackson County publicly announced and established the following applicable approval criteria for this matter:

1. The Oregon Administrative Rules (OAR 660, Division 16)
2. Jackson County Comprehensive Plan, Map Designations Element-Aggregate Resources Land; Aggregate and Mineral Resources Element Policies 1, 2, 3 and 4; Transportation System Plan Policies 4.1.4, 4.3.1, 4.3.3 and 4.3.4; and
3. Jackson County Land Development Ordinance, Sections 3.7.3(C), 4.4.5 and 4.4.8.

No person or party objected to these listed criteria nor did any person or party provide any additional criteria which the person or party claimed to be applicable to this decision. The Jackson County Board of Commissioners must find that the information before the Board demonstrates the request satisfies all the approval criteria that apply to the matter as more specifically described below.

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## I. OREGON ADMINISTRATIVE RULES - OAR 660, DIVISION 16

### A. Criterion: 660-016-0000, Inventory Goal 5 Resources

Division 16 of the Oregon Administrative Rules requires Jackson County to inventory Goal 5 resources. The inventory process for statewide planning Goal 5 begins with the collection of available data from as many sources as possible. The inventory of a Goal 5 resource must include a determination of the location, quality and quantity of each resource site, including a description or map of the boundaries, and the impact area to be affected, if different. Determination of quality requires some consideration of the resource site's relative value and determination of quantity requires consideration of the relative abundance of the resource. Jackson County has twice concluded (in 1995 and again in 2001) that sites A, C, D2 and E of the McKenzie Freel aggregate property are significant Goal 5 mineral and aggregate resources, and that the four sites should be placed on the Jackson County Aggregate Sites Inventory. The county's findings in this regard have been twice affirmed by DLCD, and during Remand #2, were affirmed by LCDC and the Oregon Court of Appeals. No party has raised objection to the determination of the location of the resource other than to express concern that the areas indicated in the most recent site map have "migrated" from what was originally proposed in 1995. No objection was made to the location of the pits as defined in the maps before the Board at the time of prior consideration or when the matter was before DLCD, LCDC or the Court of Appeals. LCDC, as affirmed by the Court of Appeals, did not articulate any issue with regard to the location of the four quarry sites A, C, D2 and E. As such, staff finds that the prior work with regard to the location of the sites has been accepted and approved by DLCD and LCDC, has not been objected to by any party, and that the location of the sites is materially the same as prior maps, the county staff reports and the maps accompanying the prior decisions of the county. In determining the location of the sites, a description of the areas has been included showing site A being 20 acres, site C being 18 acres, site D2 being 38 acres and site E being 41 acres. This is consistent with how the sites were originally proposed by the applicant in 1995 (staff notes that site D1 was dropped from the application and is no longer being considered). The location of the sites is shown on topographic maps and has been shown on such maps since 1995. The Aggregate Resource Report provided by consulting engineering geologist B.G. Hicks, identifies each of the four sites (A, C, D2 and E) and shows photographic evidence of their general locations, shows map evidence of their general locations, and describes the size of each of the four sites consistent with the more detailed maps currently before the Board prepared in July 2001 by Whetstone Engineering. Importantly, staff finds that the location of each of the four sites is contained in staff reports and prior county decision documents, and that the location of each of the four sites (A, C, D2 and E) is substantially similar to, and consistent with, the mapped locations of the four sites (A, C, D2 and E) in prior county documents. Staff finds that all this evidence is sufficient to allow us to properly determine the location of the mineral and aggregate resource on the McKenzie Freel aggregate property for the purposes of establishing a Goal 5 inventory. To assure the accurate location of the sites, a condition of approval will require a survey of the sites. Such survey shall be provided to the County Planning Department and shall be consistent with the size and location of site A (20 acres), site C (18 acres), site D2 (38 acres), and site E (41 acres) shown on the site plans we presently have before the Board.

The opponents have provided the testimony of a surveyor to contend that there is a small difference between the properties as initially submitted in 1995 and properties as they appear on the site plans we have before us today. Staff finds that this does not serve to call into question the location of the mineral and aggregate resource on the McKenzie Freel aggregate

property. The opponent's information confirms that the sites are, and have always been, in substantially the same location on the McKenzie Freel aggregate property. Staff further finds that sufficient safeguards are in place and verify the size of each of the four sites and their actual location consistent with the requirements of this approval criterion and consistent with how the sites were initially presented and have been reviewed through a 10-year process. As discussed below, the Board has assessed an impact area for each of the four mineral and aggregate sites (A, C, D2 and E), as well as an impact area for the haul road that connects the sites to Highway 62. Staff incorporates herein the findings under criteria I(B), I(C) and I(D) below in this regard. Based on the facts before the Board and above findings, staff concludes the location is properly established for each of the four mineral and aggregate resource sites (A, C, D2 and E) on the McKenzie Freel aggregate property.

With regard to quality and quantity, staff finds that the determination of significance for McKenzie Freel aggregate property sites (A, C, D2 and E) in both 1995 and 2001, included an assessment of quality and quantity of the mineral and aggregate resource. No party has objected to the determination that all four of the sites are significant and that DLCD, LCDC and the Oregon Court of Appeals did not remand the matter for a redetermination of the findings that all four sites are significant and appropriately placed on the Jackson County Aggregate Site Inventory based both on the quality and quantity of the resource. Accordingly, staff finds that determination of the significance of sites A, C, D2, and E has been decided previously and does not need to be reviewed again. However, in the event further analysis would be deemed necessary, staff finds the record contains the report and application information of B.G. Hicks, a registered engineering geologist. Mr. Hicks' report addresses the quality and quantity of mineral and aggregate resource on each of the four sites (A, C, D2 and E) on the McKenzie Freel aggregate property. Mr. Hicks is the only registered professional to provide information regarding quality and quantity and that no contrary professional information about quality or quantity was provided. Consistent with Mr. Hicks' report, the proposed aggregate resource areas on the McKenzie Freel property are located in areas that are indicative of underlying hard, durable and high-strength rock. The zone in which the four aggregate resource sites are located produces excellent quality base course rock used throughout the Bear Creek and Rogue River Valleys. The rock at the four sites was examined and tested and is of the same quality as other volcanic rock used throughout the Bear Creek/Rogue Valleys for base course rock and aggregate (concrete and asphaltic uses). The rock in areas A, C, D2 and E fully complies with the Los Angeles rattler test (an aggressive test which yields a value that approximates the relative durability and soundness of the rock resource). This test is an ODOT specification for construction grade aggregate material as required for a determination of significance in the Jackson County Aggregate and Mineral Resources Element. The estimated volume of rock for area A is approximately 1.4 million cubic yards, area C is approximately 1.2 million cubic yards, area D2 is approximately 912,000 cubic yards, and area E is approximately 1.9 million cubic yards. The Aggregate and Mineral Resources Element requires that for a determination of significance, the resource must possess a minimum of 100,000 cubic yards. Staff finds that each of the sites (A, C, D2 and E) contains a significant quantity of rock and that the quantity at each site is greater than 100,000 cubic yards. The rock is of the same quality relative to other volcanic rock used throughout the Jackson County area. The testimony of several individuals, including Ms. Mary Savage, indicated that good rock for construction and building purposes in Jackson County has become less abundant and new sources need to be protected. The rock at each of the four sites is of good quality (that is the same quality as other rock used throughout the county). Staff finds that the four separate sites, each with more than 100,000 cubic yards of available high quality material, is a significant Goal 5 mineral and aggregate resource within the county.

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Under OAR 660-016-0000(5), once the location of the resource and the quality and quantity of the resource has been determined, there are three options. Those options are: (1) not include the four sites on the county inventory; (2) delay the Goal 5 process, or (3) include the four sites on the county Aggregate Sites Inventory. In 1995 and again in 2001, the Board determined it was appropriate to include all four sites (A, C, D2 and E) of the McKenzie Freel aggregate property on the county's Aggregate Sites Inventory. As indicated above, no one has objected to this determination and staff finds that there is sufficient information available as to the location, quality and quantity of the four aggregate resource sites on the McKenzie Freel aggregate property. Staff finds that each is significant, and continues to believe that each is significant and important as a result of the review of the data and analysis throughout the Remand #2 process. The location of sites (A, C, D2 and E) as shown on attached Map 1, is consistent with the evidence considered in this proceeding and the maps that were prepared by Whetstone Engineering on July 2001. The mineral and aggregate resource at each site is of good quality, at least equal to the volcanic mineral and aggregate resources commonly used in the Jackson County area for base course rock and aggregate for concrete and asphalt. Staff further finds that each of the sites has more than 100,000 cubic yards of quality mineral and aggregate material. As such, the Board can conclude that both the quality and quantity of each of the four sites is significant and, consistent with prior decisions, all four sites (A, C, D2 and E) should be listed on the county's Aggregate Sites Inventory.

An argument has been made that the county does not have an Aggregate Sites Inventory. Whatever the merits of that argument, the Board is empowered under the statute and administration regulations to create an inventory. The county's inventory, whether it is presently in existence or whether it is created with this decision, should contain sites A, C, D2 and E of the McKenzie Freel aggregate property.

#### **B. Criterion: 660-016-0005, Identifying Conflicting Uses**

Once a site (or in this case, four sites) is included on the mineral and aggregate inventory, Jackson County must proceed through the remainder of the Goal 5, Division 16 process as required by both the Administrative Rules and the guidance provided by DLCD and LCDC. The next step in the analysis under OAR 660-016-0005 is to identify conflicts with the inventoried Goal 5 resource sites. Under this provision of the Administrative Rule, it is the responsibility of the Board to identify conflicts with the identified Goal 5 resource sites A, C, D2 and E on the McKenzie Freel aggregate property. The rule defines a conflicting use as one which, if allowed, could negatively impact a Goal 5 resource site. Since Jackson County last addressed this issue (November 2001) and the matter was remanded back to the county via DLCD's remand order (Remand #2 after the Court of Appeals' rejection of the opponents' appeal), an intervening legal case has been decided by the Oregon Court of Appeals which has a direct effect on how the county must identify conflicting uses. In November 2003, the Court of Appeals decided *Hegele v. Crook County*. In the *Hegele* case, the Court of Appeals interpreted OAR 660-016-0005 (related to the identification of conflicts) to provide that the local government may consider only other allowable uses that have a negative impact *on* the Goal 5 resource. Prior analysis for identifying conflicts was based on the idea that the Division 16 rule provided a "two-way" conflict analysis; that is, the conflicting use was deemed to be one which could either negatively impact the Goal 5 resource or one which could receive a negative impact from the Goal 5 use. This approach is clearly disallowed under the *Hegele* case and for the purposes of identifying conflicts, staff and the Board must identify only those allowable uses that present conflicts which could have an adverse effect on the Goal 5 resources (sites A, C, D2 and E).

As suggested in the *Hegele* case, the opponents at various public hearings before the Board of Commissioners raised a variety of social protests and legal protests in an attempt to demonstrate that their existing or potential uses could adversely affect the four Goal 5 resource sites on the McKenzie Freel aggregate property. Some opponents testified that they would complain to regulatory agencies, would socially protest, and would use the court system to sue the operator. The opponents argued that these are negative impacts on the Goal 5 resource. Staff believes this line of argument generated by Hegele is unfortunate and is largely unpersuaded that these types of activities would have any meaningful adverse impact on any of the four Goal 5 resources on the McKenzie Freel aggregate property. Staff finds the operator has provided evidence, which is credible, that it can control noise, dust and other discharges from the site in compliance with regulatory standards and in this regard, that finding is incorporated under this criterion below as well as criteria I(D), Goal 6 below. Staff finds because the applicant can control discharges, such as noise, in compliance with regulatory standards, regulatory complaints, lawsuits or other social pressures would be largely ineffective and have little effect or impact on the Goal 5 resource and the operation of the Goal 5 resource. Staff finds that all businesses, including the mineral and aggregate business, must comply with regulatory standards and such businesses' compliance with the standards are subject to complaint and review processes through regulatory agencies (or the courts) that may be initiated by complainants. As such, regulatory compliance is a normal cost for any business, including a mineral and aggregate extraction business. Staff questions how threats of complaints and litigation can negatively affect the mineral and aggregate operation in a location where the operation has demonstrated that it may successfully meet regulatory requirements.

Staff has reviewed the record carefully and that with regard to noise, dust and other discharges, the proposed application can feasibly meet all regulatory requirements. These findings are incorporated from criteria I(B), I(C) and I(D) below. The logical progression of this analysis (following the conclusion that there will be no adverse effects from nearby uses on the four resources sites [A, C, D2 and E] because all regulatory standards can, and will, be met) would be that there are no conflicting uses that have been identified which would adversely or negatively impact the proposed four Goal 5 resource sites on the McKenzie Freel aggregate property. This logical progression seems somewhat forced given that a mineral and aggregate operation is a rural-based industrial-type operation that has more potential for conflict with surrounding uses than other passive Goal 5 resources, such as historic resources, scenic resources and the like. Mindful of the Court of Appeals' admonition in *Hegele* that the "two-way" approach may present little practical difference as compared to the strict analysis of impact "on" the Goal 5 resource, staff has reviewed carefully the issues that have been raised by the opponents, particularly noise. In this regard, staff finds while other alleged impacts such as dust and traffic are fully mitigated and do not rise to the level of a conflict, the possibility exists that notwithstanding the applicant's full ability to control noise effects within allowed regulatory standards, that complaints about noise could have a negative impact on the resource site by causing the applicant to spend dollars to defend regulatory or court-based complaints.

Staff believes, as demonstrated in this findings document, that the appropriate decision is to preserve the resource site. However, because of the potential for noise impacts, staff also believes it is appropriate to consider the existing (and potential) residential uses in the area as conflicting uses based on the possibility of noise complaints and, therefore, Jackson County is required to complete the impact area designation and the economic, social and environmental energy analysis of the consequences of locating the resource site on the McKenzie Freel aggregate property as provided in OAR 660-016-0005. Staff finds that the Division 16 Goal 5 process, as interpreted by the Court of Appeals in *Hegele*, is virtually unworkable but would be inappropriately implemented by the county without examination and

weighing of these potential noise-based impacts. As such, it is assumed that complaints from residential-type uses "could" negatively impact the four protected resource sites through regulatory and legal channels if such an allowable use or potential use were to exist in an adjacent zoning district near the four approved Goal 5 sites.

As an initial point of departure for the analysis in identifying conflicting uses, it should be noted that the applicant has purposefully and appropriately located the resource sites (A, C, D2 and E) on portions of its property which allow operational effects to be largely buffered by the applicant's own property. Applicant has used east/west ridges and existing topographic features to the south to screen the proposed uses from properties to the west and to reduce noise to the west and south where virtually all of the potential conflicting residential uses are located. Applicant has also used the large size of its property to place the four resource sites in locations that provide a significant buffer area (in almost all cases at least 1,500 feet) on its own property. Staff finds that this allows for buffer space to reduce any negative effects of the proposed operations by using the applicant's own property as opposed to using the Goal 5 process to place impact areas predominantly on the property of others. Staff believes this is a sound approach to siting uses, such as mineral and aggregate extraction operations, that may have impacts that flow offsite.

Under the Division 16 Goal 5 process, the requirement is to set out an impact area to be affected, if that area is different from each of the four resource sites themselves. It is recognized that, in the past, the county has incorrectly established the impact area and that a significant portion of the DLCD's Remand #2 is related to the county's prior decisions with regard to the impact area. After careful review of the entire record and a thorough analysis of the guidance provided by DLCD in Remand #2, staff finds that county must reassess the prior work with regard to impact areas, reduce the size of the impact areas to more realistically reflect the extent of potential conflicts as provided in the evidentiary record, and provide individualized impact areas for each of the resource sites (A, C, D2, E and the connecting road) on the McKenzie Freel aggregate property.

As has been discussed above with regards to the *Hegele* case, the way the sites are located and their location on the interior of the McKenzie Freel aggregate property serve greatly to reduce any possibility that allowable uses on adjoining property could have an adverse effect on the mineral and aggregate extraction operations through regulatory or legal complaints. Nonetheless, for purposes of the discussion and to ensure a complete evaluation of all economic, social, environmental and energy consequences of our approval of the four Goal 5 resource sites, it is assumed that allowable uses *could* have an adverse effect on each of the resource sites in the manner suggested by opponents with regard to noise issues only. Other external effects of the potential mineral and aggregate operation, such as dust to traffic, can be fully mitigated and do not rise to the level of a conflict. This requires the Board to identify and assess conflicting uses, as well as identify an impact area.

As with significance, staff finds that while the Administrative Rules at OAR 660, Division 23 do not apply in this case, they provide some guidance with regard to the appropriate size of an impact area for each of the four resource areas. OAR 660-023-0180(5)(a) indicates in a nonbinding manner that the impact area 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. The Jackson County Land Comprehensive Plan Map Designation Element for Aggregate Resource Land states "*For each site determined to be significant and to be included on the inventory of 'Significant Goal 5 Resource Sites', the Impact Area shall be identified and mapped. The Impact Area shall be 1,500 feet unless increased or decreased*

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*based on analysis and findings developed in the course of the Goal 5 process.* In examining and weighing the evidence, the Board reached the determination that a 1,500 foot impact area is appropriate around each of the four resource sites and the applicant recommends a modified 1,500 impact area is appropriate for the rezoned internal road that will allow the mineral and aggregate materials to be hauled from each of the four resource sites to Highway 62. In determining this 1,500 foot distance, staff has reviewed and considered the effects and impacts that were testified to by the opponents of the application. Many individuals spoke sincerely and earnestly about their concerns approving aggregate operations in the area would have on their existing uses or potentially allowable uses in the general area. Until the last hearings, these objections were universally articulated from the standpoint that the mineral and aggregate use would adversely affect the residential and farming uses in the area and not the other way around. Only belatedly did individuals argue, under the *Hegele* standard, that lawsuits and regulatory threats based on quarry impacts could be used by property owners in the area to adversely affect activities at the resource site and, therefore, create an impact on the resource site. Nonetheless, whether the opponents articulated conflicts from the resource use on their existing or other allowable uses in the area, or whether they, under the proper *Hegele* standard, describe regulatory steps they would take based on activities at the quarry which would have an impact on the resource site, the identified conflicts to be generated were generally four in nature: (1) a quarry would interrupt existing pastoral views; (2) the quarry would cause increased traffic problems; (3) the quarry would create dust effects; and (4) the quarry would have noise effects. In determining the appropriate size for an impact area, staff will analyze the potential reach of any impacts from the quarry on any of the four identified conflicts that would potentially allow an established use (or potential use) in the area, to bring a legal or regulatory complaint against the quarries that would result in an adverse impact on the quarry.

With regard to pastoral views, staff finds there are no designated Goal 5 scenic views or view sheds near the McKenzie Freel aggregate property. Portions of Highway 62, because of the connection to Crater Lake, are designated as scenic highway, but that this designation does not spring from land use regulations. The location of the four resource sites (on the east side of existing ridge lines) largely blocks the view of the sites to the west, in the direction of Highway 62. Absent a view or view shed protected by land use regulations (e.g., an identified protected Goal 5 view), it would be difficult to determine that the complaints about view shed rise to establish a conflict that would adversely affect the proposed use. It is understood that the quarries will effect a change in the view, just as other approvable land uses on the McKenzie Freel aggregate property, such as a building structure, timber harvesting, or even a natural event as a fire, would also significantly affect the view. As such, while staff understands the neighbors concerns related to the views they now enjoy of the McKenzie Freel aggregate property, staff does not feel that a change in such views by siting and protecting four mineral and aggregate sites, is a conflict and a mechanism that allows the Board to meaningfully establish an impact area greater than 1,500 feet. Unless there is a designated Goal 5 scenic area for which the Land Development Ordinance requires addressing the criteria for the designated scenic area, staff does not believe that views, and interference with views, would give rise to conflicts and, as such, cannot serve as a basis for delineating an impact area greater than 1,500 feet.

With regard to traffic, staff incorporates the discussion under Goal 12 in criterion I(D) below. Many opponents raised issues related to traffic impacts that would be created by the trucks that move the mineral and aggregate materials from the four resource sites on the McKenzie Freel aggregate property to the market areas in Jackson County. While staff is mindful of traffic safety issues, staff is also aware that the applicant has previously held an approved access permit issued by Oregon Department of Transportation, that the Oregon

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Department of Transportation has jurisdiction over access to Highway 62, not the county, and that ODOT has indicated that any adverse effects at the access point can be mitigated. In assessing how traffic conflicts may help form the impact area, it is appropriate to look by analogy to Division 23 regulations. Again, the Division 23 regulations do not control, but OAR 660-023-0180(5)(b)(B) focuses the conflict analysis for traffic on the use of local roads and indicates that local roads, if used for access and egress to the mining site, must be considered as potential conflict sources within one mile of the entrance to the mine site. The rule further provides guidance that conflicts are to be analyzed to include the intersection with the nearest arterial. In this particular case, the applicant has been able to maintain all internal truck traffic from the four proposed mineral and aggregate sites on internal truck paths on its own property to the point at which the internal paths intersect a state highway. Staff further finds that the applicant has provided evidence there is adequate site distance and road capacity with regard to the access point on Highway 62 and trucks gaining access to that highway. As such, staff does not believe that complaints about traffic are an appropriate way to delineate an impact area greater than 1,500 feet for these particular resource sites.

Opponents also indicated that dust from the quarry operations on the four identified resource sites would adversely affect their quality of life and their agricultural operations. Staff finds that the applicant has demonstrated that it has sufficient water and the ability to control dust from its operations through an Air Contaminant Discharge Permit on any crusher located at the site, through good housekeeping measures and through the use of water trucks to moisten work and travel areas. The applicant has analyzed the daily water needs for dust suppression purposes and identified three mechanisms for providing water: an onsite exempt commercial well under ORS 537.545, a change of use of its existing irrigation water under ORS 540 or by trucking in water to onsite storage tanks. Staff finds that the applicant has adequately analyzed and defined the amount of water that would be necessary to control dust from all aspects of the mineral and aggregate operation. The applicant has submitted materials prepared by the State of Washington, Department of Ecology with regard to dust suppression and the applicant has agreed to adopt the methodologies for reducing dust, including obtaining and maintaining a permit for a crusher that is used at the facility, and gravel the truck path roads and staging areas to reduce dust, reducing truck speed, constructing wind breaks such as berms or stockpiles, striping surface vegetation only when necessary, and using water to dampen traffic areas. Staff finds that the applicant has evaluated dust concerns and is committed to steps that will mitigate and eliminate dust effects from proposed operations. Attached, as a condition of approval, is a detailed list of conditions that will need to be followed by the applicant operator and which will be sufficient to mitigate and/or eliminate dust effects from the operation. Evidence has been submitted to indicate dust effects will be reduced to levels that meet regulatory standards. For these reasons, staff finds that opponents concerns about dust do not provide a mechanism for establishing a conflicting use nor an impact area greater than 1,500 feet because adverse effects related to dust, if any, will be controlled on site and mitigated to meet regulatory standards by a series of dust prevention techniques.

With regard to noise, staff finds that the applicant submitted detailed noise studies and used those studies to address issues that were raised during the public hearings. Staff also finds that the opponents submitted comments which critiqued the applicant's noise study and conclusions. The applicant submitted subsequent findings responding to the critique of the noise study. The noise study was authored by Mr. Al Duble, an acoustical engineer with wide experience in analyzing noise issues for a variety of industrial facilities. Based on Mr. Duble's reports and supplements, which staff finds credible, DEQ standards can be met at all existing neighboring residences and, more importantly, DEQ standards can be met at 1,500 feet or more from any of the resource sites (A, C, D2 and E) the quarry operations associated

with those sites. Mr. Duble's analysis indicates that predominant noise sources in the general area of the McKenzie Freel aggregate property are Highway 62 to the west and Butte Falls Road to the south, not operations at the quarry sites A, C, D2 and E. Based on the data and analysis provided by Mr. Duble, staff believes that noise impacts can be controlled to within DEQ regulatory standards at a distance of no more than 1,500 feet from each of the four resource sites and the connecting internal truck path. Staff finds that noise compliance at no more than 1,500 feet provides the outside limit of the impact area and the appropriate impact area, as discussed below, is 1,500 feet.

For the purposes of establishing an impact area, that noise is generated from quarry operations and that noise can be the basis for regulatory and legal complaints. The operation of quarry extraction activities and transportation related with each of the four resource sites (A, C, D2 and E) can be contained within DEQ standards at 1,500 feet from the perimeter of the identified sites. Staff finds that it may be possible to control noise at a closer distance, but the applicant, and the applicant's noise expert, have presented credible evidence that the noise can be properly mitigated and controlled to be within DEQ standards at 1,500 feet. Based on the *Hegele* standard, any noise recipient farther from the individual sites (A, C, D2 and E) than 1,500 feet would not have a legal or regulatory claim because the use would be in compliance with regulatory standards beyond 1,500 feet. Conversely, although there are no existing noise sensitive uses within 1,500 feet of any of the individual resource sites, if such an allowable use were allowed within 1,500 feet of any of the proposed four resource sites (A, C, D2 and E) there could be the possibility of a regulatory or legal claim that could adversely affect the operation of the boring activities at the resource sites. For this reason, staff believes that the 1,500 foot impact area is appropriate and should be established around each of the four resource sites (A, C, D2 and E).

Staff has evaluated the evidence in this matter and finds the credible evidence provided by the applicant's noise expert confirms the suggested impact areas contained in the Jackson County Land Comprehensive Plan Map Designation Element, 1,500 feet, is appropriate. As indicated above, staff finds that the 1,500 foot individual impact area around each of the resource sites (A, C, D2 and E) is primarily contained on the McKenzie Freel property, although there are properties not owned by the applicant which are partially within the 1,500 feet impact. Staff also finds that there are no existing residences within 1,500 feet of any of the four resource sites (A, C, D2 and E). There is, however, an approved homesite within the 1,500 feet impact area for resource site E (351E(6), tax lot 2700, file ZON2004-00127).

Staff has also reviewed the evidence submitted with regard to the impact area for the internal haul road between the four resource sites and Highway 62, which would be rezoned with an AR designation as part of this application. In the initial deliberations during the public hearing regarding the appropriate extent of the impact area around the internal access road, the Board indicated it would be appropriate to have the 1,500 foot impact area in each direction from the access road, including the portion of the road where it leaves resource site A until its intersection at the access point on Highway 62. The applicant has requested the impact area be changed as the access road nears Highway 62. The applicant has indicated, because of information provided by Mr. Duble, that as traffic travels the access road from east to west toward the Highway 62 access point, noise effects from traffic on the access road increasingly compete with the noise effects from Highway 62. Highway 62 is the louder and more consistent noise source and that as traffic on the internal access road approaches Highway 62, the noise impacts from traffic traveling on the access road begin to be overwhelmed by the noise effects from Highway 62. The opponents' noise commenter, Mr. Standlee, agrees with Mr. Duble's analysis in this regard, according to the applicant. As



such, the applicant does not believe it is appropriate to put a full 1,500 foot impact area around the access road. Rather, the impact area around the rezoned AR access road should "taper" and be reduced to zero at the point where the access road intersects Highway 62. A schematic of the access road impact area is provided on Map 1 and shows this "taper" approach. The applicant specifically asks the Board to decline to place an impact area on the westerly side of Highway 62 at the point where the access road intersects Highway 62. Based on the evidence in the record, the applicant believes the dominant noise source at that point is emanating from Highway 62 and not the transportation along the resource access road through the McKenzie Freel aggregate property. The applicant would further note to the Board that at each of the four resource sites, the access road effectively becomes part of the resource site and the access road at those points is included in the 1,500 foot impact area for the resource site. The applicant would like the Board to also note that with the exception of the portion of the access road between resource sites D2 and E, and two other small locations (one immediately east of site C and one midpoint between sites A and C), that no point on the access road is less than 1,500 feet of the McKenzie Freel aggregate property boundary, meaning that the 1,500 foot impact area for the access road remains largely on the McKenzie Freel aggregate property. The applicant believes this is important because the noise "conflicts" are eliminated within 1,500 feet and that if the 1,500 foot impact area is on the McKenzie Freel property, there is no possibility that the owner of that property would construct a residence or noise sensitive use within the 1,500 foot zone. Even if this were to occur, the applicant indicates that the DEQ noise regulations allow for an exception from the regulations for noise sensitive property owned or controlled by the person who controls or owns the noise source. As such, the applicant believes there is no possibility for conflict related to noise on the portions of the impact area located on the McKenzie Freel aggregate property.

In Exhibit 62, pages 530-533 of the current record, Mr. Duble states *"With Highway 62 noise at this distance (at 50 feet) averaging L50 = 62 dBA and L10 = 70 dBA, quarry-related truck noise will not exceed the ambient noise and should be masked by the background noise from Highway 62. Even the closest residence to the haul road access point (Jones) should be masked by highway noise for both highway and haul truck noise. The measurement results of 58 dBA traffic noise at 1500 feet from the highway shows that even trucks traveling at 45 mph should not exceed the L50 background noise. The net result is that any extension of the 1500 foot impact area to the West of highway 62 is NOT needed or justified. In addition, the impact area should not cross over onto the Hawkins property (on the East side of highway 62 to the north of the haul road access point). Placing the impact area on these properties is NOT justified based on noise considerations."* The Board will need to determine that the noise study and conclusion is substantial evidence to reduce the 1,500 foot impact area around the access road as shown on Map 1. Mr. Duble's conclusion also states that the aggregate operations can be made to operate in complete compliance with DEQ standards, with a few minor controls. Controls to minimize noise impacts are:

1. Grade the onsite haul truck roads so that there is a minimum rise in grade, so that the rise is more gradual.
2. Instruct truck drivers to avoid using truck engine jake brakes on downhill legs.
3. Construct berms at the edge of each processing area so that they are between the processing areas and the residential sites. The berm height should be a minimum of 4 feet from the top of any crusher cone or screen part, or approximately 8 feet above the grade of the crushing equipment lowest elevation, dependent on the height of the equipment.

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4. Restrict operating hours to 0700 to 1800 hours, Monday through Saturday, with no operation on Federal holidays.
5. Install a residential quality exhaust muffler on the diesel generator. Locate the generator trailer at all processing sites so that its open end points away from the residences.
6. Locate the rock crusher and screens at the lowest possible elevation at each processing site.
7. Locate the rock storage piles between the crushing equipment and the sensitive residences. If possible, route the haul dump trucks so they can be loaded by the front-loader behind a rock storage pile and the berm.
8. If blasting is required, notify neighbors at the five nearest residences when blasting will occur. Choose a blast day when wind velocity will be minimum. Blasting should use the minimum explosive necessary, blast hole stemming and at least 17 milisecond delay between holes.
9. Operate only one quarry site at a time.
10. Because of the location of the building site for 351E(6), tax lot 2700, once operations are established at Site E, a follow-up noise study should be performed to determine which mitigation measures will be used to insure DEQ compliance.

Staff finds that #8 above does not comply with requirements for blasting in the LDO. #8 should state "If the operation will include blasting, the operator must develop a procedure to ensure that a notice will be mailed or delivered to the owners and occupants of all residences within one-half mile of the site at least three working days before the blast. The notice must provide information concerning the date and time that blasting will occur, and must designate a responsible contact person for inquiries or complaints. Failure to notify neighbors and the County before blasting is a violation of this Ordinance for which a citation may be issued. Notice will be deemed sufficient if the operator can show that the notices were mailed or delivered, even if one or more of the households within the notice area did not receive the notice." 1 through 10, including the revised #8, should be conditions of approval if the Board should approve this amendment and Site Plan Review for mining operations. It should be noted that condition #10 does not show that mitigation measures determined through a future noise study can meet DEQ compliance.

The applicant has further indicated that berming is available, if necessary, for the portion of the access road between resource sites D2 and E (or on the small section of the road immediately to the east of site C and midpoint between sites A and C) that can, and will, control the noise level to within DEQ requirements at 1,500 feet. The applicant believes that noise is an impact that would have the possibility of providing a *Hegele*-based impact on the resource sites from allowable uses on adjoining property to the four resource sites. However, the quarry noise can be controlled at 1,500 feet to meet DEQ's standards, thereby removing the possibility of a *Hegele*-based legal or regulatory complaint that would adversely affect the resource site. As such, the applicant believes the appropriate impact area is 1,500 feet from around each of the four resource sites (A, C, D2, E and the internal access road) with a tapering of the impact area for the access road traveling west from site A to its intersection with Highway 62. The tapering, consistent with Map 1, shall initially begin at 1,500 feet and be reduced to zero as the access road intersects with Highway 62.

Staff would like to discuss three other potential conflicts that were raised by opponents. First, some opponents claim there would be an adverse effect on water supplies in the area. Staff construes this argument to assert that if the applicant takes the regulatory

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exemption amount (5,000 gallons a day), there may be an adverse effect on wells in the area. Staff finds that 5,000 gallons a day translates to approximately 3.5 gallons per minute. This amount is a statutory exemption and any landowner has the ability, for an improved industrial or commercial use, to drill a well and extract up to 5,000 gallons per day under this regulatory exemption. Staff finds that a regulatory exemption would not be allowed if there were adverse effects associated with this level of water use. There has been no evidence submitted which indicates that allowing the statutorily exempt level of water use would have any adverse effects on wells in the area. The applicant has indicated a willingness, if necessary, to truck in water for dust suppression uses on the property. Staff does not find opponents' complaints about water to be persuasive or to rise to a level of conflict which would adversely affect the mineral and aggregate resource sites.

Opponents also indicated there may be some siltation that would go into local streams from activities on the site. Staff has reviewed documentation regarding how the sites will be developed and how they will be bermed on the downhill side. Applicant further states that as part of the Department of Geology and Mineral Industry process, it will obtain a permit that requires it to maintain all runoff water onsite. Because the runoff water will be contained onsite, we do not find this situation to be a conflict that will permit an allowable use to make legal regulatory claims that will adversely affect the resource use.

The record contains some testimony with regard to adverse effects on wildlife, particularly winter range in the area. The aggregate sites are within Area of Special Concern 90-1, lands on which development can affect survival of Black-tailed deer or Roosevelt elk herds. This is an identified Goal 5 resource. The applicant specifically withdrew site D1 to address the concerns about wildlife. There is persuasive evidence in the record from the Oregon Department of Fish and Wildlife stating that if certain conditions were adopted, the activities at the four resource sites (A, C, D2 and E) would be mitigated and there would be minimal wildlife impacts. The conditions include:

1. Sites A and C will have a seasonal closure from January 1 through March 31. Loading and hauling of rock could be permitted during this time period.
2. No approval be given for site D1 as this is critical deer winter range browse (D1 has been removed from consideration of this application).
3. Sites D2 and E have a seasonal closure from November 1 through March 31.
4. Habitat improvement mitigation projects in the form of controlled burns be conducted on 130 or more acres.

Staff recommends these be adopted as conditions of approval. Staff finds that wildlife conflicts can be mitigated by the adoption of the above conditions. As such, staff believes that complaints about conflicting uses with wildlife value do not serve as an appropriate basis for defining an impact area beyond 1,500 feet because they can be mitigated.

Under OAR Division 16 and the Jackson County Comprehensive Plan Map Designations Element for Aggregate Resource Land, it is Jackson County's responsibility, within the confines of the *Hegele* analysis, to identify conflicts with each of the four inventoried Goal 5 resource sites. This is done primarily by examining all uses that are allowed in broad zoning districts established by Jackson County. A conflicting use, as defined in the *Hegele* decision, is one which, if allowed, could negatively impact a Goal 5 resource site. Within 1,500 feet a portion of the four resource sites (A, C, D2 and E) and within the applicants proposed 1,500 feet

of the access road (with the tapered impact area for the access road between Highway 62 on the west and resource site A on the east), there are only three zoning districts: EFU (Exclusive Farm Use), FR (Forest Resource), and OSR (Open Space Reserve). The FR and OSR zoning districts considered to be a single zoning district, FR, and uses allowed within these districts are the same and will not be addressed separately. Should the Board determine that the impact area for the internal access road will include the area 1,500 feet from the entrance of the access road to Hwy 62, the RR-5 (Rural Residential, 5 acre minimum area) would be included in the conflicting use analysis. The potential uses allowed by Jackson County within each of these broad zoning districts will be examined to identify conflicts with the four inventoried resource sites (A, C, D2 and E) and the internal access road. After categorizing the potential uses that could conflict with the resource site, staff will determine the economic, social, environmental and energy consequences ("ESEE") of the conflicting uses. The impacts on the resource site and on the conflicting use will be considered as part of the ESEE analysis. In addition, staff will consider the applicability and requirements of other statewide planning goals as part of the ESEE analysis.

An examination of the potential allowable uses within the impact area that we have described is guided by the county's land development ordinance and the uses listed therein for EFU, FR, and OSR zones. Staff recognizes that certain uses must go through different review types (type 1 through type 4) but for the purposes of this analysis, it will be presumed that all listed uses are "allowable," and could be located, within the impact area. In the Jackson County Land Development Ordinance, some allowable uses with similar characteristics are combined into groups. Because the characteristics are similar, staff will analyze the groups rather than the individual uses. The impact area on the McKenzie Freel aggregate property itself is within the EFU zone and potentially on the McKenzie Freel aggregate property there are allowable uses that could give rise to a conflict. However, the applicant is the owner of the property and the applicant has persuasively presented its case that it wishes the impact area to be predominantly located on its own property. The property owner has voluntarily submitted to restrictions that would allow the mineral and aggregate operation to succeed and that this, logically, is not consistent with the property owner exerting "conflicts" from its own property to adversely affect the rezoning that it seeks. More to the point, we also find the impact area has been delineated solely based on the potential for noise impacts. Under DEQ noise regulations, the owner of the property may obtain a waiver of the DEQ noise regulations for a noise source on its own property. As such, we find that there is a regulatory mechanism that eliminates noise-based conflicts on the owner's property. In any event, we also note that other properties in the area are zoned EFU and our analysis for those EFU properties would be equally applicable to the McKenzie Freel aggregate property, were such analysis necessary.

Within the EFU zone in Jackson County, the Land Use Development Ordinance provides for approximately 71 allowable uses. These uses are grouped into nine categories because of commonalities in the types of uses. Similarly, within the FR district, the Jackson County Land Use Development Ordinance provides for 54 allowable uses. Again, staff finds that these uses are grouped into nine categories because of the similarity of the uses. The OSR zone is considered to be a forest resource zone and analysis of the forest resource zone uses (as they are grouped) will also cover any portions of the impact area which might cover OSR zone. There are no rural residential zones anywhere near the 1,500 foot impact area of the aggregate resource sites and the 1,500 foot impact area around the internal access road, as proposed by the applicant. This broad zoning district is not affected by the application or the impact area proposed by the applicant. Should the Board determine the 1,500 foot impact area will include the access point on Hwy 62, the RR-5 zoning district will be included. Staff would

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like to point out that rural residence uses are similar to the residential uses listed in both the EFU and the FR zones and if it is deemed necessary to analyze rural residential zone uses, the Board may incorporate and adopt the analysis below related to residential uses in the EFU and FR zones.

1. Mineral and Aggregate Oil and Gas Uses. The EFU, FR, and OSR districts allow mineral and aggregate, geothermal, and oil and gas uses, including exploration operations, mining, processing, batching and storage. These uses are not allowed in the RR-5 zoning district. Staff finds these uses are the same types of uses that are proposed on each of the four resource sites (A, C, D2 and E) for which Goal 5 has been requested and granted. These types of mineral, oil and geothermal extraction and processing activities, if allowed in an adjoining zone or, more specifically, the impact area, would create the same types of impacts that would be generated by the proposed mineral and aggregate extraction activities on the four resource sites on the McKenzie Freel aggregate property. The types of conflicts could include noise, dust, vibration, and alteration of the landscape. However, these uses, and their operational characteristics, are virtually identical to those of the mineral and aggregate extraction uses that have been analyzed for this application. Because of the similar effects of all of these uses, staff finds they can exist side-by-side and not have adverse effects on each other. Accordingly, staff concludes that these types of uses allowed in the adjoining zoning districts would not be conflicting uses if they were located onsite, in the impact area, or in the surrounding area of the mineral and aggregate resource sites we are protecting.

2. Farm and Forest Uses. Staff incorporates by reference the analysis under criteria I(D) (statewide Goals 3 and 4) below. The EFU, FR, and OSR districts include a number of farm and forest uses, including farm uses, buildings other than dwellings customarily provided in conjunction with farm uses, facility for processing farm crops, forest operations or practices (including reforestation), road construction and maintenance harvesting, application of chemicals, disposable/propagation or harvesting of forest products, temporary facilities for primary processing of forest products, temporary auxiliary structures for forest operation, physical alterations to land and auxiliary forest practices, permanent facilities for primary processing of forest practices, permanent facilities for primary processing of forest products, permanent logging equipment repair and storage, log scaling and weigh stations, forest management research experimentation facilities, and temporary forest labor camps. With regard to forest related uses, staff finds that the uses allowed in the zones are primarily related to the growing, harvesting and processing of timber. Growing, harvesting and processing of timber, particularly harvesting and processing, have many of the same impacts that potentially accompany mineral and aggregate resources, including noise, dust and traffic. Staff finds that all forestry uses must be accessory to forest practices, including harvesting, and, therefore, this group of forestry uses is generally subject to and compatible with many of the same types of operational effects as mineral and aggregate operations. Because the types of effects that are produced by the forest uses in this group and the types of effects that potentially could be created by mineral and aggregate extraction are similar in nature, we find and conclude that forest uses in this group would not adversely affect the rock extraction operation nor would rock extraction operations adversely affect forest uses in this group. Because the foresting uses are not particularly sensitive to the potential external effects of a mineral and aggregate operation, no limitation in quarry operations would be required nor to allow these uses to fully and properly function. Similarly, mineral and aggregate operations are not sensitive to the potential external effects of forestry operations, including harvesting, propagation and processing. No particular limitation would need to be placed on forestry uses for the mineral and aggregate operation to fully and properly function. Therefore, staff concludes that forestry uses allowable in the broad zoning districts of the impact area are not conflicting uses.

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Farm uses under the Jackson County Land Development Ordinance incorporate the definition of farm use in ORS 215.203, which defines farm use as current employment land for the primary purpose of obtaining profit in money by raising, harvesting and selling crops or the feeding, breeding, management and sale of, or the produce of, livestock, poultry, fur bearing animals, honey bees or for dairying and the sale of dairy products or any other agricultural or horticultural use or animal husbandry, or any combination thereof. Analysis of the impact area from topographical maps and from site visits is that the area, including the impact area, has severe topography, is steep, and is primarily covered in scrub and trees. Staff further finds, consistent with analysis of the topographic maps, reports and site visits, that the general surrounding area, including the impact area, has many rock outcroppings, which is why the applicant is requesting protection for the mineral and aggregate resource. Consistent with this analysis, view and findings, staff notes there are limited farm uses that are physically possible within the impact area and surrounding area of the McKenzie Freel aggregate property. During the public hearing process, many of the neighbors engaged in farm uses described the types of farm uses that can be practiced given the limitations of the land within the impact area and the surrounding area. These farm uses, include raising horses, raising and grazing cattle, a small scale goat operation for milk and breeding, small scale crops and general pastureland. The farm practices related to these farm uses include feeding of stock animals, fencing, grazing, calving and foaling, breeding, sperm collection, milking, haying, harvesting, tilling, fertilizing, irrigating and small scale/garden crop practices. Staff finds the mineral and aggregate extraction is not, under state statute, incompatible with the EFU uses. ORS 215.283 permits operations for exploration, as well as mining, crushing and stockpiling of aggregate and other mineral subsurface resources in EFU zones subject to the requirements of ORS 215.298. Extractive mineral and aggregate uses are statutorily authorized and recognized in exclusive farm use zones under state statute. Staff finds that ORS 215.298 requires a permit for mining more than 1,000 cubic yards of material or excavation preparatory to mining a surface area of more than one acre. The proposal before the Board is permission to protect and extract mineral and aggregate resources on the four separate sites of the McKenzie Freel aggregate property and, therefore, a permit is necessary. Staff finds that this matter is within the range of discretion we have as decision makers as contemplated under ORS 215.298. Staff further finds that the permit be granted only for a site included on the inventory in the county's acknowledged comprehensive plan. Staff finds that, these four resource sites on the McKenzie Freel aggregate property are included on the Jackson County's Aggregate Sites Inventory. Because these four sites are included on the Jackson County Aggregate Sites Inventory and because a permit could be granted through this application, the Board can conclude the requirements of ORS 215.298 are satisfied.

Notwithstanding that state statutory exclusive farm use land laws contemplate and allow the intersection of farm uses and practices with mineral and aggregate operations on EFU lands, the conflict analysis must look at the specific "on the ground" issues related to this particular application. As has been previously mentioned, in setting the impact area, only noise impacts associated with the mineral and aggregate extraction activity meaningfully serve to create potential conflicts and that other conflicts such as dust and transportation can be clearly controlled, mitigated or eliminated. The focus on the potential noise conflict is consistent with the thrust of the opponents' testimony in a public hearings process. That testimony focused on the fact that noise impacts from the mineral and aggregate operation would have adverse effects on animal breeding operations, including goats and horses. Opponents made general complaints about dust, but did not provide any evidence to indicate dust effects created by the mineral and aggregate resource site operations would adversely affect farm uses or farm practices. In any event, it can be concluded that dust will be adequately controlled on the site

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and does not provide a basis for a finding of conflicts. As indicated above, there was some generalized testimony with regard to water, but this testimony was more directed to residential uses rather than farm uses. Staff recognizes that irrigation is an important component of farm uses and farm practices, and from analysis of the record and view of the site, we know that an irrigation ditch traverses the McKenzie Freel aggregate property. However, no factual information has been provided that Goal 5 protection and operation of the mineral and aggregate resource sites on the McKenzie Freel aggregate property would have any negative impact on irrigation. There were generalized concerns about traffic on Highway 62, but no individuals directly linked their concerns about traffic safety to farm uses and farm practices. In any event, staff incorporates a discussion of traffic impacts from criterion I(D) (statewide Goal 12) below conclude it is safe and appropriate for mineral and aggregate activity to enter Highway 62 at the defined access point and that this access will not have a significant effect on accepted farm practices or force any changes in farm costs in the surrounding area. Staff further finds that the defined access point to Highway 62, as it will not adversely affect traffic on the road, will not affect any farm or forest traffic that is using Highway 62.

The Board is left with the opponents' allegations that noise would cause problems with their animal husbandry and breeding operations. In evaluating this issue, the analysis of Mr. Duble indicates the main noise sources in the area are the east/west extent of Butte Falls Highway and the north/south extent of Highway 62 near the McKenzie Freel aggregate property. Many of the individuals concerned about the effects of noise on their animal husbandry breeding operations are located very close to either Butte Falls Highway or Highway 62. Evidence submitted by the applicant shows that the noise environment for farming activities (specifically animal husbandry and breeding activities) within the surrounding area is dominated by the highways and not necessarily the proposed mineral and aggregate operation. The noise study demonstrates that quarry noise effects can be controlled to within DEQ standards within 1,500 feet from the proposed operations. The DEQ ambient degradation standard is significant in that it is designed to set noise levels that protect areas of human habitation. It is possible to conclude that the proposed operation's ability to control noise levels to this extent will adequately prevent conflicts with animal husbandry and breeding operations in the surrounding area. Staff also notes that farming uses and practices, including animal husbandry and breeding practices, are flexible and are subject to fluctuations in environmental characteristics, including noise. For a goat farmer or a horse breeding operation located near the road, it is possible for a nongravel truck to use jake brakes on a nearby highway or an airplane to fly over resulting in a temporary increase in the noise level. Staff believes the opponents engaged in animal husbandry and breeding operations in the area are successful and their operations, on a daily basis, deal in these types of environmental fluctuations, including changes in noise levels. Based on analysis of the potential impacts of the proposed use, the topography of the area, the distances involved and the effects on farm and forest uses from the existing noise sources of Butte Falls Highway and Highway 62, staff finds that allowing of the proposed use and its operation will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use, nor will the mineral extraction activities significantly increase the cost of accepted farm or forest practices devoted to farm or forest uses.

Staff finds there is always the possibility of some change or some increase of cost when an externality, such as a mineral and aggregate operation, is introduced into a general area. However, as stated above, farm operations, particularly animal husbandry and breeding operations, adjust to and adapt to these types of changing externalities on a daily basis. An appropriate analysis is whether or not there will be an underlying significant increase in the cost of accepted farming practices or a significant forced change in accepted farming

practices on surrounding lands. Significance is a limiting factor that requires an important consequential, considerable, noteworthy or serious effect on the accepted farm or forest practices and suggests something greater than everyday variation in environmental factors. To create a significant adverse effect on accepted farm or forest practices, or to create a significant increased cost or forced change to accepted farm or forest practices must, by itself or cumulatively, cause an important, material, substantive, meaningful or serious change in farm or forest practices or notable, important, material, substantive, meaningful or serious increase in the cost of accepted farm or forest practices. From the record before the Board showing that noise and other factors from the mineral and aggregate extraction operations can be controlled, we do not find the proposed use admits the possibility of significant forced changes in accepted farming practices or significant increased costs in accepted farming practices on surrounding lands. Staff incorporates the analysis of Goal 3 below.

In determining the extent of the term "surrounding lands," staff believes it is an important term and, as used in the findings, it refers to those lands within the 1,500 foot impact area that has been defined. From a review of topographic maps of the area and other evidence, and site visit, staff finds that the 1,500 foot area and lands included with the impact area that has been defined in this case, is the best definition for surrounding lands in this particular instance. However, in an abundance of caution, staff has extended the analysis of the surrounding lands to include goat and horse husbandry operations which are significantly beyond the 1,500 foot impact area to ensure that the Board analyzes all of the potential county zoning districts in the area and all of the potential farm uses and farm practices that were brought to the Board's attention in the public hearing. This would include, in addition to animal husbandry, timber production, pastureland, domestic livestock production and grazing, and small crop uses and their associated farm practices that are identified above. While staff believes that the quarry mineral and aggregate impacts will not extend beyond 1,500 feet and the Board has established this distance (with minor exceptions for the rezoned access road, if the Board should find this is an appropriate impact area) as the impact area, to assure that the Board fully analyzes the potential for changes to accepted farming and forestry practices or an increased cost of accepted farming and forest practices, staff has expanded the analysis to include uses that are found beyond the 1,500 foot impact area. However, this leads staff to the conclusion that there will be no significant increases in farm or forest costs nor significant forced changes in farm or forest practices even well beyond the 1,500 foot impact area that has been defined. Because there will be no significant increase in cost or forest changes in accepted farm or forest practices, staff finds that farm and forest uses on adjacent properties do not constitute a conflict with the proposed aggregate use. In analyzing whether or not the proposed use creates a conflict with farm (or forest) uses allowed by the county in EFU, FR, and OSR zones, staff will look at ORS 215.296. ORS 215.296(1) states "A use allowed under ORS 215.213 (2) or 215.283 (2) may be approved only where the local governing body or its designee finds that the use will not:

- (a) Force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; or
- (b) Significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use." ORS 215.296(2) states "An applicant for a use allowed under ORS 215.213 (2) or 215.283 (2) may demonstrate that the standards for approval set forth in subsection (1) of this section will be satisfied through the imposition of conditions. Any conditions so imposed shall be clear and objective." Staff believes this statute provides meaningful guidance for determining whether or not a mineral and aggregate use "conflicts" with farm or forest uses. In reaching a determination regarding such conflict, staff is persuaded that one measure of conflict is the significance test set out in ORS 215.296. However, staff believes the proposed use does not conflict with farm and forest uses without reliance on the



ORS 215.246 standard for reference. Staff finds that dust can be adequately controlled, that traffic could adequately be handled through the access point, and that noise is controlled within DEQ standards beyond 1,500 feet. Review of the concerns of the opponents coupled with a review of the proposed operation, leads staff to the conclusion that farm uses will not adversely affect the mining, and to the extent that it is relevant under the *Hegele* analysis that mining operations will have no effect on farming and forestry uses in the area. As such, this group of uses is not a conflict with the proposed mineral and aggregate use.

Staff incorporates by reference the analysis of Goal 4 in these findings. Staff finds that forest practices occur in the general area and these practices are predominantly related to small scale forest production. There are some timber management activities that occur on the McKenzie Freel property and surrounding lands. Staff finds that accepted forest practices in the area are planting, cultivating, and harvesting of trees and associated activities such as brush clearing, thinning and pruning. As concluded below with regard to Goal 4, staff does not believe there is any significant conflict between accepted forest uses and forest practices and the mineral and aggregate use that may be approved in this application. Staff finds that portions of the McKenzie Freel property not included in the protected aggregate resource zone, the impact areas and lands in the surrounding area will still be available for the planting, cultivating and harvesting of trees and associated activities in the event that landowners on those properties choose to pursue these forest related activities. Staff finds that the mineral and aggregate activity on the McKenzie Freel aggregate property will have no effect on forest practices on the property, in the impact areas or on surrounding lands.

3. Natural Resource Uses. Under the Jackson County Land Development Ordinance, natural resources uses in farm and forest districts as well as the RR-5 district, include the creation, restoration and enhancement of wetlands, propagation, cultivation and maintenance and harvesting aquatic or insect species, uses to conserve air, soil and water quality and to provide for fish and wildlife resources, and uninhabitable structures accessory to fish and wildlife enhancement. Staff finds that the area has relatively steep topography and is dry. As such, staff does not believe there is a reasonable possibility of restoration and enhancement of wetlands or propagation and harvesting of aquatic or insect species. Staff believes there is no reasonable basis for conflict with these uses. In the event such uses could be located within the impact area, which would be unlikely, the activities associated with the mineral and aggregate extraction operation would not adversely affect the creation of wetlands, propagation or harvesting of aquatic species or other natural resource uses as the primary impact that has been identified for the mineral and aggregate operations, noise, does not prevent these activities. Staff further finds that as part of the DOGAMI process, the applicant will berm topsoil for use in reclamation and, as such, will actively participate in soil conservation processes through the operation of the resource sites. Staff finds that nothing in the proposed operations, or preservation of the sites as Goal 5 resources, will prevent soil conservation activities on any property in the surrounding area or any property within the impact area. With regard to air and water quality and conservation uses, staff finds that the applicant has taken appropriate steps to protect air quality from dust impacts of its operations and to control stormwater to conserve and protect water quality. Staff finds that nothing in the proposed operation will prevent any uses to conserve air and water quality on the property, within the impact area or on surrounding lands. Within the impact area, there would be no restriction on any uninhabitable structures that are accessory to fish and wildlife enhancement, such as storage facilities, watering stations or other similar habitat related activities. Again, staff finds that noise, dust, traffic or water availability will not affect these uninhabitable uses in the unlikely event they were located in the impact area. Staff finds that nothing in the protection of the site or the operation of the mineral and aggregate extraction activities would prevent uninhabitable

structures accessory to fish and wildlife enhancement on the property, in the impact area or in the surrounding area, and conclude that uses to provide for fish and wildlife resources will not be adversely affected by the protection of the Goal 5 resources or by the mineral and aggregate extraction activities. Staff finds the record reflects some concern about wildlife habitat in the general area, particularly for winter range purposes. However, staff also finds that consistent with the ODF&W recommendations, the applicant has agreed to recommended conditions to protect these wildlife habitat values. Staff believes these conditions mitigate any potential conflict with uses to conserve wildlife and fishery sources. Because of the information from ODFW regarding winter range habitat for deer and elk populations, the winter range habitat, an identified Goal 5 resource, can be considered a conflicting use and will be addressed specifically in the ESEE analysis. Based on all these findings, staff concludes that there the only conflicting use is the winter range habitat for deer and elk, Area of Special Concern 90-1.

4. Residential Uses. Jackson County Land Development Ordinance provides numerous potentially allowable residential-type uses in EFU, FR, and OSR districts. These include dwellings provided in conjunction with the farm use, farm dwelling for a relative, accessory farm dwellings, ownership of record dwelling, temporary medical hardship dwelling, nonfarm dwelling, residential home, room and board arrangements, alteration, restoration and replacement of a lawfully established dwelling, historic dwelling replacement, registered child care facilities, certified group child care home, large tract forest dwelling, forest template dwelling, caretaker residence for public parks and fish hatcheries. It should also be noted that under the FR zone, temporary forest labor camps, a form of residential use is also allowed. This forest-related use is included as a "residential" use for the purposes of our analysis. The RR-5 district allows for a dwelling as a permitted use. The 4 properties located in the RR-5 district currently have dwellings. None of these properties are large enough to allow 2 permanent dwellings.

Staff finds that the applicant has taken steps to control the noise that might radiate from its operations offsite, including use of existing land forms (ridges and hummocks), construction of berms, and the location of the sites as far as possible away from neighboring properties. There is the possibility that within 1,500 feet of the four resource sites or the road that connects them, an allowable residential use could be located. There is an approved homesite on the Machado property that is within the 1,500 foot impact area (for the access road and site E). While residential uses are generally discouraged, the zoning districts in the surrounding area, such as farm resource, forest resource or open space resource land, admit the possibility that a residential use could be constructed in the 1,500 foot impact area. Because staff has found that the applicant may need up to 1,500 feet to control the noise or dust levels to within DEQ regulations, staff finds that residential uses, as a group, are a potential conflicting use in that it is possible for a residence to be constructed on a location where the noise could not be controlled within DEQ standards. Under the *Hegele* analysis, this could give rise to a regulatory or legal complaint. Because residential uses can be a conflicting use, the Board must determine the economic, social, environmental and energy consequences of the conflicting use. Under the *Hegele* analysis and Division 16, the Board must analyze both the impacts on the resource site and the impacts on the conflicting use in analyzing ESEE consequences. The ESEE analysis will follow the completion of the analysis of whether there are conflicts with other groups of uses as allowed in the underlying zoning districts in Jackson County.

5. Commercial Uses. The Jackson County Land Development Ordinance provides numerous potentially allowable commercial-type uses in EFU, FR, and OSR districts. These include commercial activities in conjunction with farm use, breeding, kenneling and training of greyhounds for racing, dog kennels, home occupation/home businesses, destination

resorts, winery, and farm stands. The RR-5 zoning district includes many other potentially allowable commercial uses including wineries, animal clinics and hospitals, child care centers, emergency medical centers, medical/dental/optical clinics, broadcasting/recording studios, and guest ranches. The properties west of Hwy 62 would not be affected by truck noise because, as has been noted, Hwy 62 is a high ambient noise corridor and trucks entering onto the highway would not cause significantly more noise than the current traffic, as determined in the noise study. Dust would not be a concern in this area because the access road will be paved within 100 feet of the access point on Hwy 62 and the aggregate operations (site A) are 0.7 miles from Hwy 62. The Gap Study from Associated Transportation Engineering and Planning, Inc., states *"As I indicated in my testimony, based on the appropriate traffic engineering standards and on-site studies, there are sufficient gaps in traffic to accommodate the trucks generated by the McKenzie Freel Development."* A Mitigation Plan, page 706 of the record, identifies specific safety measures that could be required by ODOT for a new road approach permit. It should be noted that ODOT has the responsibility traffic safety regarding the access point to HWY 62.

With respect to the potentially allowable commercial uses for properties east of HWY 62, staff finds that none of these businesses is particularly noise sensitive, especially kenneling and breeding operations, commercial activities, such as wineries and farm stands. Staff finds it extremely unlikely that destination resort would be able to locate in the small portions of the impact area that are not located on the McKenzie Freel aggregate property, particularly given the steep terrain and lack of amenities. As previously indicated, dust and traffic impacts from the mineral and aggregate will be controlled and will not have an adverse effect on any commercial uses. Nothing has been brought to the attention of staff or the Board in testimony or in the record which would indicate that any of the commercial uses would have any adverse effects from the mineral and aggregate operation given the extremely small possibility that they could locate in the general vicinity. Based on these findings, staff concludes there is no conflict between the protection of mineral and aggregate resource sites, the proposed operation of those sites, and commercial uses through the underlying zoning designations on the site and in the surrounding area. In the event destination resorts would be deemed a noise-sensitive use that could create a conflict with the mineral and aggregate use under the *Hegele* analysis, staff incorporates herein and adopts by reference the analysis for residential uses and deems destination resorts as a residential use for purposes of these findings.

6. Transportation Uses. The Jackson County Land Development Ordinance provides numerous potentially allowable transportation-related uses in EFU, FR, OSR, and RR-5 districts. These include personal airports and helipads, expansion of airports, public highway projects, aids to navigation and aviation, construction modification of public roads and highways, including widening with existing right-of-ways, temporary public roads and detours, minor betterments of existing public roads and highways and related facilities, public road and highway related facilities, roads, highways and other transportation facilities not otherwise allowed in the EFU district, and parking for no more than seven log trucks. As previously indicated, staff finds no reason for there to be dust or traffic conflicts with any transportation-related uses. Construction of highway uses and even personal use airports can create dust and traffic considerations and are not inconsistent with proposed mineral and aggregate operations. In any event, staff has previously found that dust and traffic effects from the proposed rock operations can be mitigated or eliminated and, therefore, will not be the basis for conflicts. With regard to noise, as demonstrated by Mr. Duble's noise analysis, roadways in the area, including Highway 62 and Butte Falls Highway, are the main source of noise in the area. Based on this, staff finds that the mineral and aggregate operations would not have any adverse effect on the transportation uses allowed under the Jackson County LDO in a way that

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would allow the transportation uses to bring regulatory or legal complaints against the mineral and aggregate use and thereby create a conflict under the *Hegele* analysis. Staff finds that the noise generation capabilities of transportation uses are similar to those of the mineral and aggregate uses, and the two uses would simply not conflict with each other. Staff further finds that fixed asset uses, such as aids to navigation and aviation, are not noise sensitive uses and would not have any effect on the gravel operation nor would the gravel operation have any effect upon them. Based on all these findings, staff concludes there is no conflict between the protection of the mineral and aggregate resource sites, the proposed operation of the sites, and transportation uses allowed through the underlying district designations on the site, in the impact area and in the surrounding area.

7. Utility/Solid Waste Disposal Facilities. The Jackson County LDO provides numerous potentially allowable utility/solid waste disposal facility uses in the EFU, FR, and OSR districts. These include the utility facilities necessary for public service, such as wetlands, waste treatment systems (but not including power generation facilities or tall transmission towers), telecommunication towers, tall transmission towers, solid waste disposal site, modification of waste related use, fire service facilities providing rural fire protection, irrigation canals, and accuracy structures and facilities associated with an irrigation district, utility facility service lines, commercial utility facilities for generating power, composting facilities, local distribution lines, new electrical transmission and gas/oil/geothermal distribution lines, television and microwave and radio communication facilities and transmission towers, utility facilities for generating power, towers and fire stations for forest fire protection, water intake facilities, canals and distribution lines for farm irrigation and ponds, water intake facilities and related treatment facilities and pumping stations for nonfarm use, and reservoir and water impoundments. The uses within the RR-5 district are transmission towers, minor utility facilities, small scale energy producing facilities, and recycle drop-boxes. Staff finds that dust and traffic issues can be adequately controlled and these are not the types of uses which would create a conflict with the utility/solid waste disposal facilities group contained in the LDO. Staff also finds that many of these utility uses (such for towers or transmission lines) are not affected by noise and, in and of themselves, could not affect a mineral and aggregate resource site. Staff finds to the extent that utility lines, service lines or irrigation canals would need to traverse the McKenzie Freel aggregate property, that the four sites (A, C, D2 and E) and the related haul road are small sites spread far apart allowing numerous opportunities for utility crossings in between and around the mineral and aggregate sites. Accordingly, staff sees no conflict with lines and towers and distributional types of utility facilities. There is an existing irrigation canal on the McKenzie Freel aggregate site that will remain in place and remain in use delivering water to the pasture portions of the McKenzie Freel aggregate property located to the west near Highway 62. Staff further finds that utility services, irrigation canals, composting facilities and solid waste facilities, and the like are not noise sensitive uses and a mineral and aggregate operation, and the noise from such operation, will not have any adverse effect on these uses. Conversely, staff finds that none of the effects from any of the utility based/solid waste disposal facility uses would have any adverse effect on the operation of the mineral and aggregate resource nor would mineral and aggregate operations create effects that would give rise to legal or regulatory actions against the mineral and aggregate activities. There are potentially two uses in the FR zone and one use in the EFU zone which could, conceivably, implicate humans. These are fire towers and fire stations for forest fire protection and fire stations for rural fire protection. However, due to lack of road infrastructure and the topography of the site, it is virtually inconceivable that these types of uses would be built anywhere near the Freel property, particularly in portions of the impact area that are located off of the McKenzie Freel aggregate property. These types of operations, if they were for some reason allowed near the four resource sites, would have no effect on the operation of the resource site. Staff would like to note that roads in the area are extremely poor

making it virtually impossible for these types of rural fire-related protection facilities to be established anywhere near the proposed resource sites. In the event these fire suppression-related uses would be deemed noise sensitive uses that could create a conflict with the mineral and aggregate use under the *Hegele* analysis, staff would incorporate and adopt by reference the analysis for residential uses and deem the fire suppression uses to be residential uses for the purposes of these findings. Based on all these findings, staff concludes there is no conflict between the protection of the mineral and aggregate resource sites, the proposed operation of the sites, and utility/solid waste disposal facility uses allowed through the underlying district designations on the site, in the impact area and in the surrounding area.

8. Park/Public/Quasi-Public Uses. The Jackson County LDO provides numerous potentially allowable park/public/quasi-public uses in EFU, FR, and OSR districts. These include public/private schools and buildings, churches and cemeteries, private parks, playgrounds, hunting and fishing preserves, campgrounds, public parks and playgrounds, private accommodations for fishing occupied on a temporary basis, private seasonal accommodations for fee hunting operations, youth camps, firearm training facilities, government owned community centers operated primarily by and for residents for the local rural community, golf courses, living history museums, onsite filming and accessory activities, model aircraft takeoff and landing sites, extensions of existing county fairgrounds and related activities, operations for extraction and bottling of water, land application of biosolids, and land application of reclaimed water or process water. The uses in the RR-5 district include cemeteries, libraries, museums, expanding of existing campgrounds, country clubs, golf courses, public and private parks/playgrounds, public and private recreation/sports clubs, community halls, granges, town halls, public works buildings and facilities, churches, seminaries, public and private schools, and satellite campuses. Again, staff reaffirms that dust and traffic issues can be eliminated or mitigated by the proposed mineral and aggregate use and do not raise conflict issues with any of the proposed public park/public uses listed in the LDO. In addition, many of the listed uses simply do not conflict with the mineral and aggregate resource use nor the identified mineral and aggregate noise effects that potentially could create conflicts. For example, firearm training facilities, in their own right, would be noisy and unaffected by noise generated by mineral and aggregate use. Similarly, model aircraft landing sites generate their own noise and would be unaffected by the mineral and aggregate noise. Water bottling operations, biosolid land applications and reclaimed water application on land simply would have no effect on the mineral and aggregate operation and, conversely, the noise effects of the mineral and aggregate operation would have absolutely no effect to the ongoing successful operation of these types of uses under the *Hegele* analysis. Staff finds it inconceivable from a locational standpoint that there would be an expansion of existing county fairgrounds or related activities to any locations in the area and do not find this to be a conflict. However, it is theoretically possible that a private campground, golf course community center, living history museum, film location, public park, campground, private park, church or cemetery or private or public school could be located near the proposed resource site, although the possibility of this is extraordinarily small. Because the possibility exists, staff will treat these identified public/park/quasi-public uses as a conflict and will perform an ESEE analysis required under the Division 16 rule consistent with the analysis for residential uses.

9. Outdoor Gathering Uses. The Jackson County LDO provides that outdoor gatherings of less than 120 hours in any three-month period are uses that may be allowed in EFU, FR, OSR and WR districts. Staff reaffirms that dust and traffic issues potentially associated with the mineral and aggregate sites can be controlled and mitigated, and would not have any affect on outdoor gathering uses. The issue is whether noise generated by the proposed mineral and aggregate uses, notwithstanding the significant control efforts that have

been put into place by the applicant, would create a *Hegele* conflict with outdoor gathering uses. First, given the lack of roads in the area and the steep terrain, it is very unlikely a large or small outdoor gathering use would occur anywhere near the proposed resource sites on the McKenzie Freel aggregate property. Having said this, it is theoretically possible that an outdoor prayer gathering or rural music gathering could wish to locate on a temporary basis near the mineral and aggregate site and could theoretically obtain the appropriate permits. If this were to occur, it is possible that noise generated by the mineral and aggregate activities could have some effect on the outdoor gathering giving rise to a regulatory or legal action against the mineral and aggregate use. Notwithstanding that staff considers this possibility extremely remote, outdoor gathering uses can be considered to be conflicting uses and staff will examine the ESEE consequences of such uses below and include them as residential uses in the ESEE analysis.

### **C. Criterion: 660-16-0005(2), Analysis of Economic, Social, Environmental and Energy Consequences**

Staff has identified three broad groups of uses (residential uses, outdoor gathering uses and public/private parks uses) which could, in theory, give rise to a conflicting use. That is, these uses, if allowed to locate within 1,500 feet of the mineral and aggregate uses on neighboring property, could negatively impact the Goal 5 resource site. Staff believes the lack of infrastructure, roads, and the steepness of the terrain in the areas that are affected by the impact area off the McKenzie Freel aggregate property make it difficult to locate these types of uses within the impact areas. However, because it is theoretically possible, Jackson County is instructed by the Goal 5 Division 16 rule to perform an economic, social, environmental and energy consequence analysis (ESEE). Division 16 provides that where conflicting uses have been identified, the Goal 5 resource site may impact those uses and, as such, both the impacts on the resource site and on the conflicting use must be considered in analyzing ESEE consequences. Staff will also analyze the applicability of statewide planning goals at this stage in the process.

#### 1. Economic Consequences Analysis.

a. Impacts on the resource of allowing conflicting uses. If any one of the identified uses, residential uses, the parks uses, and outdoor gathering uses (hereinafter "conflicting use groups") is allowed in close proximity to the Goal 5 mineral and aggregate resource, we find it could potentially have a significant adverse economic effect on the resource. For example, if a farm dwelling, resort, campground, cemetery, church or outdoor gathering were located adjacent to any one of the sites or within those portions of the impact areas that touch on adjacent properties, the resource site might not be able to meet DEQ noise regulations without extensive changes in the operations. This might include creating sound walls or berms and, in a worst case scenario, shutting down the mineral and aggregate operation because of the inability to comply with the noise regulations. If these conflicting use groups were allowed within the impact areas, staff find it likely there could be significant economic effects to the resource, including changes in hours of operation, significant costs to alter operations, shrinking of the size of the mineral resource that could be extracted, or even a complete shutdown of the mineral and aggregate operation, nullifying the use of the Goal 5 resource. If a noise sensitive park, church, school, residence or outdoor gathering or other use from the conflicting use groups were allowed within small portions of the impact area on adjoining properties, it would be extremely difficult, if not impossible, to design an extraction plan that would yield the fullest

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utilization of the mineral and aggregate resource or even to potentially obtain a small portion of the resource on the Goal 5 resource site. Jackson County needs long-term, reliable sources of high quality mineral and aggregate material. If conflicting uses were allowed in such location as to prevent or limit operation of one or more of the sites on the McKenzie Freel aggregate property, the owner would suffer a significant economic setback and the community would be denied access to much needed and highly valuable mineral and aggregate materials that help economic growth. This would be a significant and overwhelming negative economic effect.

A single residence has been approved by Jackson County and is located within the 1,500 foot impact area of site E and the eastern limit of the access road. The residence is located on 351E(6), tax lot 2700, but has not been built as yet. The consequences of allowing this residence to be built are the same as stated above.

b. Impacts on the conflicting uses of allowing the resource use. We find that there are no existing conflicting uses located within the impact area of the four identified mineral and aggregate resource sites or the impact area proposed by the applicant for the connecting internal access road. However, should the Board determine the impact area of the access road to extend to the west side of Hwy 62, staff finds there are several residences located within 1,500 feet of the access road approach onto Hwy 62. As has been stated previously, the ambient noise of the Hwy 62 corridor is high enough such that the quarry related truck noise will not exceed the ambient noise level and should be masked by the background noise of Hwy 62 (Exhibit 62, pg. 532, current record). As such, staff finds that the addition of quarry truck traffic from the aggregate operations would not create additional economic consequences to properties east of Hwy 62 due to the existing noise corridor and ambient noise levels for Hwy 62 traffic. Regarding potential conflicting uses not currently existing, staff finds that any conflicting use that could occur would move to the area with full knowledge of the existence of the mineral and aggregate sites and the potential noise effects. The question then becomes whether it would be an economically rational decision for an individual to build a residence, campground, private school, church, park, playground, outdoor gathering or other use from the conflicting use groups within those small portions of the neighboring properties that are within the 1,500 foot impact area. We find there are significant portions of each and every property east of Hwy 62 affected by an impact area designation that are outside the 1,500 foot impact area perimeter from any of the four mineral and aggregate resource sites, as well as the internal truck path. As such, an individual wishing to build a residence, church, private school, campground, park or public place, golf course, living history museum, or conduct an outdoor gathering or any of the other uses within the conflicting use groups, would have several locational options to choose from on any existing parcel. The ability to move the conflicting use to another location on the same parcel greatly reduces the economic impact on the conflicting use were the mineral and aggregate site to be approved, located and operated. Staff also finds that those portions of the adjoining properties that would be covered by the impact area and, therefore, would potentially suffer an adverse economic impact from the operations of the mineral and aggregate extraction sites, are located farthest away from the existing road infrastructure, namely Butte Falls Highway. As such, to build in close proximity to the mineral and aggregate sites would require an additional economic expenditure in the form of road construction costs. An individual wishing to build or conduct a use within the conflicting use groups could reduce the economic costs by locating outside the impact area and thereby shortening the access road requirements and costs. Staff also finds that for typical farming and forestry operations on the portions of the adjoining properties that would be affected by the impact area, normal grazing activities and forestry activities can continue, much as they do now, notwithstanding the noise potentially produced by the mineral and aggregate operations. The ability to use these areas on adjoining properties that are covered with the impact area for

alternative economically valuable uses within the farm and forest zone also lessens the economic impact of allowing the resource use. In sum, staff finds that economic consequences can be avoided, that economic costs can be lessened, and there still exists economic use of the properties. Outside the 1,500 foot impact area, noise and dust impacts can be controlled and DEQ standards can be met and there would be little or no economic impact on any of the proposed uses. We also understand that just because the DEQ standard (such as the noise standard) is met, that not all potential economic impact is eliminated. Under the ambient degradation standard, the noise levels in the general area may go up, notwithstanding that the elevated levels are within DEQ standards. While the DEQ ambient degradation standard clearly protects health and human welfare and compliance with that standard is significant, staff finds there could be an economic impact from a slightly more noise general environment within or without the impact area. The economic effects of this incremental rise in general noise levels is very difficult to quantify. The record demonstrates that a major noise impact in the general area is created by Butte Falls Highway and Highway 62 and that the roads have consistent noise whereas the mineral and aggregate operations have defined hours. Staff finds that residents in the area are constantly subjected to noise levels from these highways and that the overall noise environment is not a pristine noise environment and as such, staff believes that the economic cost of a slightly elevated noise level during quarry operating hours is not significant. While the mineral and aggregate operations might slightly increase the noise levels, the economic cost to neighbors in the vicinity would not appear to be overwhelming.

c. Impacts of protecting conflicting Goal 5 resources. The only identified Goal 5 resource is Area of Special Concern 90-1, lands on which development can affect survival of Black-tailed deer or Roosevelt elk herds. Comments from Oregon Dept. of Wildlife (ODFW) indicate their concern for the loss of big game winter habitat, which results in lower deer population numbers and reduced bull and buck ratios (Packet #2, pg. 195). However, ODFW has identified limiting conditions which would minimize wildlife impacts from the use of the aggregate sites. The economic impacts of fully protecting the winter range habitat would be the loss of this significant aggregate resource resulting in an economic loss to the county, as well as the operator, because this resource would not be available for building and infrastructure improvements. Staff believes that using the ODFW conditions limiting the aggregate activities would have a minimal impact on big game winter habitat and allow the aggregate activities to operate without a substantial economic loss to Jackson County as a whole.

d. Conclusion. When balancing between the economic costs to the resource (potentially the inability to use the resource or operated in an economically sound manner) with the economic impacts from noise and dust from the site, staff believes the analysis clearly supports the protection and operation of the mineral and aggregate resource site. If the mineral and aggregate resource site were unable to operate or able to operate without extraordinary noise, dust, and winter range habitat controls that made the rock costs ineffective, the operator would suffer an economic loss, but more importantly, the county would suffer an economic loss because the mineral and aggregate resource would not be available in the county for infrastructure improvements. We contrast this with a potentially small and difficult to qualify loss in economic value of existing uses or future uses from the conflicting use groups that would be constructed within the impact area where the sound level would increase, albeit within DEQ standards. Staff concludes that the activities on the mineral and aggregate resource sites can be developed and operated with a minimum amount of offsite noise and dust and intrusion of adjoining properties. Staff further finds that the public benefit of having the availability of a mineral and aggregate resource and the economic contribution that this resource makes to the county, outweighs the small and largely undefinable economic cost to landowners in the area who might wish to place a noise sensitive use from the conflicting use

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groups within the impact area or in the general vicinity where it might be exposed to a slightly higher noise environment. Staff also believes the control of dust will allow the aggregate operations to meet DEQ standards and the ODFW conditions will minimize impacts to winter range habitat. As such, staff believes the economic considerations of the ESEE analysis tips clearly in favor of preserving the resource and allowing its operation because it provides for the greater economic good of the entire community.

## 2. Social Consequences Analysis.

a. Impacts on the resource of allowing conflicting uses. Staff finds there could be social impacts created that would negatively affect the resource if uses in the conflicting use groups were allowed in close proximity to the proposed mineral and aggregate resources. Primarily, we believe the most significant social cost to the landowner and the mineral and aggregate operator would be related to attempts to mitigate noise and dust operations to the satisfaction of neighbors through modifications to the operation that potentially increase the cost of aggregate extraction. The most probable social impact in fully allowing conflicting uses near the resource site would be to prevent or limit the site's use because of social dissatisfaction from the neighbors. If conflicting use groups were allowed next to the resource sites, it is possible that the resources could not be used because existing regulations controlling the operation of the site, particularly noise standards, might be impossible to meet at the site and that these regulations would be aired and enforced through social pressure. Staff finds this social disruption could result in an increase in the price of aggregate materials with a loss of at least a portion of high quality aggregate resource at the site and make that site unavailable for a wide variety of uses in the county, including road and infrastructure construction. Aggregate materials have high social utility in the county and are a critical part of infrastructure, as well as commercial, industrial and residential construction. Staff finds that an increase in the price or a decrease in the supply of high quality aggregate, such as that at the proposed site, would have a negative social impact in the greater county area potentially through increased prices of infrastructure, homes, highways and other products which depend on aggregate materials. This could implicate social costs by limiting the county's citizens' ability to afford these products and services and potentially reduce their standard of living.

b. Impacts on conflicting uses of allowing the resource use. Staff finds that all proposed effects, including noise, from the mineral and aggregate resource have been analyzed and can be controlled. Staff finds that the applicant has done a good job of locating the sites and using natural features, and committing to the use of manmade berms to reduce the social effects of the site, including noise that would potentially radiate to adjoining properties and the view of the properties from other sites. In considering the social impacts on conflicting uses, staff incorporates the discussion of the economic considerations of this ESEE analysis. In addition, staff finds that if the impacts associated with the proposed operation are not properly controlled, there could be social impacts on residences near the mineral and aggregate resource, such as neighbor dissatisfaction and unrest. However, staff finds the nature of the resource sites, their location, the surrounding uses, the topographic features and the control mechanisms in place, as well as the noise studies that have been provided, all serve to reduce significant adverse social effects. The record demonstrates the credible and persuasive evidence that DEQ noise standards, which are designed to protect residences and human health, can be met by the operation at nearly all residences in the area. The one exception is the approved homesite on the Machado property, 351E(6), tax lot 2700. This homesite is approximately 1,400 feet from the boundary of site E. The noise study did not include this homesite location and additional noise reduction measures may be needed to meet DEQ standards. Staff also recognizes that noise produced by the mineral and aggregate operations

may be within DEQ standards but actually increase ambient noise levels. This increase in ambient noise levels, consistent with the economic analysis, is difficult to quantify from a social point of view, but is, nonetheless, a social consequence. Views from neighboring houses, while not identified for protection, are part of the social ambience in the area and staff recognizes that the rock-neighbor conflicts can be detrimental to this social ambience. These conflicts pit neighbors against neighbors and people have legitimate concerns about the ongoing social utility of their homes, including peaceful enjoyment of the homes and the views that they see from the windows and porches. However, the Board should weigh the social benefits to the county as a whole from having a high quality source of mineral and aggregate material available for all types of infrastructure and expansion uses in the county versus real, but smaller individual social impacts related to changes in the immediate environment where many of the opponents live. Many neighbors have stated that no one likes to see a gravel pit in his or her immediate area. However, staff recognizes that rock has a significant social utility and must be obtained at locations where high quality rock is located and where they are close to the market to reduce costs. The County is required to balance between the greater social utility of the mineral and aggregate resource and the personal social costs of individuals whose environment undergo change as a result of the protection of the mineral and aggregate resource.

c. Impacts of protecting conflicting Goal 5 resources. Fully protecting the winter range habitat for Black-tailed deer and Roosevelt elk herds have a positive social impact on the surrounding area, mostly outside of the impact areas. Seeing wildlife, whether up close or at a distance, is an edifying social experience desired by most people. Testimony by residents in the area have indicated concerns that the elk and deer will not stay in this area, specifically the McKenzie Freel properties, because of the proposed aggregate operations. This would have a negative social impact in this area. It should be noted that there are no existing residences east of Hwy 62 that are within the impact areas proposed by the applicant. There is a single approved homesite southeast of site E which has not been built as yet. Any social impact resulting from aggregate activities would be experienced by residents outside of the impact areas. ODFW has stated that their conditions limiting certain aspects of the aggregate operations would have a minimal impact on the winter range habitat on the McKenzie Freel properties.

d. Conclusion. This is among the most difficult of all decisions that must be made by the Board, but staff believes that the greater social good of having a confirmed source of high quality mineral and aggregate outweighs the potential social impacts that have been identified by the neighbors immediately in the area. Staff finds that there will be real, but limited, adverse social impacts in the immediate area (much less social impacts in the impact area itself). These will be offset by a significant social benefit to the entire community from preserving the Goal 5 resource site and allowing extraction of the resource. As such, staff believes that the social considerations of the ESEE analysis tips slightly in favor of allowing protection of the Goal 5 resource.

### 3. Environmental Consequences Analysis.

a. Impacts on the resource of allowing conflicting uses. Staff finds that the identified uses from the conflicting use groups would generally not have an environmental impact on the aggregate resource unless the conflicting uses were allowed in such close proximity to the resource site (i.e., the impact area). If conflicting use groups were allowed in the impact area, the environmental impacts on the resource would be severe and the resource potentially could not be used or its use would be severely restricted due to increased difficulties with environmental compliance (primarily noise compliance), due to the proximity of conflicting

uses. Staff incorporates by reference the discussion under the economic and social considerations of the ESEE analysis and adds that conflicting use groups generally do not have a significant environmental effect on the proposed mineral and aggregate use. However, if they are allowed to locate within the impact area and thereby cause the extraction operations to fall out of noise or dust compliance, they would have a significant adverse environmental effect on the resource in that resource operations could not meet environmental noise regulations.

b. Impacts on the conflicting uses of allowing the resource use. In this analysis, staff has determined that the proposed aggregate operations could potentially have an environmental impact in the form of noise upon uses within the conflicting use groups which could locate nearby, particularly within the impact area. Staff reaffirms that other alleged impacts of the proposed uses including dust and transportation will not have adverse environmental consequences because they can be controlled and mitigated. Applicant's noise expert indicates that outside of 1,500 feet from the proposed extraction areas, mineral and aggregate operations can meet DEQ's standards. Staff believes this is significant in that the DEQ standards are designed to protect human health and human habitation areas, and protecting these types of values helps mitigate and eliminate environmental conflicts. Oregon uses an ambient degradation standard that allows for some increase of noise in the environment. Therefore, even though DEQ standards are met, it is possible that there would be an adverse environmental effect due to an increase in the ambient noise level. However, staff believes that DEQ, in establishing the ambient degradation levels, has provided a mechanism that adequately protects environmental values and the applicant is not required to go beyond those protections. While there might be a change (e.g., a rise) in the overall noise level, the most important environmental factor is compliance with the DEQ regulations. The applicant has demonstrated that this can occur within 1,500 feet of any of its operating sites or the access road. The applicant has used land forms and has incorporated berms and strategic locations of stockpiles into its site plans to reduce and mitigate these environmental issues. Staff believes the applicant's proactive approach in this matter is an important consideration in the environmental analysis.

Staff also finds that there are no inventoried view sheds and, therefore, the interference with views is not a conflict. However, from an environmental standpoint (and similarly from a social standpoint), there will be an effect on the view of some of the neighbors in the area. Given the nature of mineral and aggregate extraction, regardless of where a mineral and aggregate site would be located in Jackson County, a neighbor would be able to express concern about the degradation of their environmental (or social or economic) view values. The contention of some opponents that mineral and aggregate sites should be moved so far away from the urban areas that no one lives nearby is difficult, if not impossible to accomplish. Staff finds that transportation costs greatly increase the cost of aggregate and it is not in the best interests of citizens in Jackson County to locate mineral and aggregate resources a significant distance outside the market area. The reason for this is the environmental nature. Rock resources move by trucks and the more distance that is added (to escape environmental, social and economic consequences to the views of adjoining properties) creates an equal and opposite environmental, social and economic consequence: the use of significantly more fossil fuel that powers the trucks that deliver the mineral and aggregate material. Staff finds that the McKenzie Freel aggregate property is close to a significant and growing portion of the Jackson County area. If a site is determined to be significant, there is a need to protect the mineral and aggregate resources in the county. Staff further finds that if the County were to require that a mineral and aggregate site have no effect on the view of any person, that resource would be located well beyond the market area and significant additional amounts of fuel would be

necessary to move the product to market. This would cause a separate type of environmental consequence that we are avoiding by locating the sites closer to the market area.

c. Impacts of protecting conflicting Goal 5 resources. Fully protecting the winter range habitat leave this area in the same environmental conditions as currently exist. This would certainly be a best case scenario for area residents. The extraction and processing activities would not occur within the proposed sites, nor would the internal access road be built and used. There would be no environmental degradation of the area, which would preserve the viewshed as well as the deer and elk habitat. However, this would create an economic loss for the County due to the loss of a significant aggregate resource. The ODFW recommended conditions to minimize impacts to the winter range habitat is a balanced approach to protect both Goal 5 resources.

d. Conclusion. With regard to the environmental considerations of the ESEE analysis, staff finds there must be a balance between environmental impacts on neighboring properties and environmental impacts caused by moving mineral and aggregate operations to locations that are farther and farther away. While there are environmental consequences potentially in terms of noise, view, and winter range habitat, these consequences can be mitigated by the operator's proposal and they are outweighed by negative environmental consequences if there were a requirement to move the mineral and aggregate operations farther and farther away from the market area. As such, staff finds that the environmental considerations of the ESEE analysis tips slightly in favor of preserving the mineral and aggregate resource.

#### 4. Energy Consequences Analysis.

a. Impacts on the resource of allowing conflicting uses. It is difficult to conceptualize how there would be adverse energy consequences to a mineral and aggregate resource by allowing uses from the conflicting use groups to be located in the near vicinity of the quarry areas. However, conflicting uses located nearby could cause operational changes in the aggregate extraction operations that could make them less efficient and more energy consumptive. As referenced above in the environmental analysis which staff incorporates herein, locating conflicting uses near the resource sites could potentially cause greater energy impacts, particularly through fuel consumption by haul trucks that might be required to travel greater distances to bring the aggregate material to market from more distant locations.

b. Impacts on conflicting uses of allowing the resource use. Again, it is difficult to conceptualize how there would be adverse energy consequences to any use from the conflicting use groups if the mineral and aggregate resource site is allowed to go forward. Conceivably, existing neighbors (or new construction) would wish to replace single pane windows with double paned windows to counteract noise effects. This would potentially consume more energy by manufacturing new windows, but also could save energy in terms of increased efficiency of double paned windows. Similarly, it is possible that neighbors could attempt to berm or landscape their properties in a way to reduce the view of the mineral and aggregate sites or some of the potential operating effects. This, conceivably, could increase energy consumption directly related to the energy necessary to construct the berms.

c. Impacts of protecting conflicting Goal 5 resources. Fully protecting winter range habitat would remove the ability to mine and process a significant aggregate resource located in an area close to the resource and potentially increase energy costs associated with mining, processing, and hauling aggregate farther from the market area.

c. Conclusion. Because transportation of mineral and aggregate materials is very energy dependent, staff believes that the consideration of the energy consequences of the ESEE analysis tips slightly in favor of allowing the proposed use.

5. Relative Value Analysis. The Map Designations Element requires an analysis of the relative value of the use of the mineral or aggregate resource site as compared to existing or potential uses. The applicant has estimated the sites would produce 5.4 million cubic yards of aggregate material over the lifetime of the operation. OAR 660-016-00005 states "*Where conflicting uses have been identified, Goal 5 resource sites may impact those uses.*" The impacts to conflicting uses can be mitigated to meet state and local requirements and standards based upon evidence in the record, except for the approved homesite on the Machado property. Because impacts can be limited by approval conditions, staff believes the relative value of the aggregate resources outweighs potential loss of value through impacts to conflicting uses.

#### **D. Criterion: Statewide Planning Goals**

As part of our Goal 5 analysis, the applicability and requirements of other statewide planning goals must be addressed. Each of the statewide planning goals are addressed below.

##### **Goal 1**

Goal 1 requires the development of a citizen involvement program that ensures the opportunity for citizens to be involved in all phases of the planning process. Jackson County has planning and zoning documents that provide specific mechanisms for notice and citizen involvement both on a group and individual basis. In this particular land use application, there have been numerous hearings over a ten-year period before the Jackson County Board of Commissioners, and that in 2005 there have been several public hearings that were well attended by a wide variety of individuals who have expressed their comments and concerns. This has included private citizens, lawyers representing citizens, state agencies and others. Staff finds that public notice was provided and a significant number of individuals have participated in the process, both in support of the application and in opposition to the application with both oral and written testimony. Staff believes that the procedures followed were in compliance with the county's land use regulations and such regulations have provided ample opportunity for citizen involvement in all phases of this application and, accordingly, staff finds compliance with statewide planning Goal 1.

##### **Goal 2**

Goal 2 requires that a land use planning process and policy framework be established as the basis for all decision and actions related to use of land and also requires that there be an adequate factual basis for decisions and actions in the land use planning process. We find that with regard to the Goal 5 process, Jackson County is in periodic review and has been in periodic review with regard to the McKenzie Freel aggregate property for more than ten years. This process has been guided primarily by Oregon Administration Rules Chapter 660, Division 16. The County has also received additional significant guidance from the Department of Land Conservation and the Land Conservation and Development Commission. As set forth in this findings document, Jackson County has, as part of this procedure, listed the criterion under which the decision is made. Staff finds that no party has objected to the criteria that have been identified nor suggested any other criterion that should be included. As such, Jackson

County is following an established land use planning process as the basis for the Board's decision and, with these findings, the County is addressing all of the approval criteria that apply under that planning process. In addition, as required by the Goal 5 Administrative Rule, Jackson County is addressing all of the statewide goals. Because Jackson County is in a periodic review process and proceeding to identify sites under the Goal 5 portion of that periodic review process, staff finds that an exception under statewide Goal 2 is not required. For all these reasons, the application and process complies with statewide Goal 2.

### Goal 3

The purpose of Goal 3 is to preserve and maintain agricultural lands. Staff finds that farm uses under the goal include those set forth in ORS 215.203, but the counties may authorize certain nonfarm uses as defined in state statute, and refined by LCDC and court cases that such uses will not have significant adverse effects on accepted farm or forest practices, or force significant changes on accepted farm or forest practices in the surrounding area. Staff finds that all of the activities being considered relating to mineral and aggregate protection and mining are allowed in an exclusive farm use (EFU) zone, subject to the standards of ORS 216.296. Staff has made findings with regard to ORS 215.296 and incorporates those findings herein by reference. Staff has also addressed and made findings with regard to ORS 215.298 and incorporates those findings herein by reference. Staff has reviewed the property for which this use is requested and much of the surrounding property in the general area is designated as Exclusive Farm Use property. Based on the analysis of the record presented in this matter, staff believes that the proposed land use action is consistent with Goal 3 and satisfies the requirements of Goal 3. Staff bases this conclusion on the following findings and analysis.

First, as set forth in these findings and incorporated herein by reference, staff has found the proposed use will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use, nor will the land use action significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use. Consistent with this analysis, staff finds that aggregate mining, crushing, processing and stockpiling are all uses permitted on EFU land under ORS 215.283(2). Because there are no significant adverse effects or forced costs on accepted farm and forest practices, the Board may, consistent with Goal 3, permit this use.

Second, the EFU district in the county under which the entire McKenzie Freeland aggregate property is designated fully allows mineral and aggregate uses, including mining, crushing, stockpiling, aggregate consistent with ORS 215.283(2). Staff further finds that the proposed mineral and aggregate use of the property is ultimately an interim use. Once the mineral and aggregate resources are fully extracted, consistent with State statute, the property must be reclaimed upon completion of the aggregate extraction on the site. While the record reflects that the length of time the mineral and aggregate extraction operation will be on the site is dependent on market forces, it is clear that mineral and aggregate use is not – and cannot be – a permanent use. Mineral and aggregate mining by its very nature is extractive and consumptive and cannot continue indefinitely on a single parcel of land. Recognizing this, the Board can find the property should be reclaimed for purposes of propagation and harvesting of basic farm or forest products (e.g., grazing land or small tree production) or wildlife habitat. The reasoning in requiring this is that propagation and harvesting of farm/forest products and wildlife habitat are specific uses and are statutorily allowed and encouraged in both farm and forest zones within the state of Oregon. The required form of reclamation (the propagation and harvesting of farm/forest products and/or development of wildlife habitat) is intended to be broad

enough to include use of the land upon reclamation for growing trees, including cultured Christmas trees, as defined in state statute, as an outright permitted farm use. We find that reclamation to farm/forest propagation or to wildlife habitat is feasible and appropriate for this site and we find as part of the DOGAMI reclamation process, the applicant has agreed to stockpile overburden that can be replaced as part of the reclamation process and serve as substrate for the propagation and harvesting of farm/forest products or wildlife habitat. The mineral and aggregate uses are interim uses between existing potential farm/forest/wildlife uses that occur on the property at the present time, and the future farm/forest/wildlife uses (allowed and encouraged in the EFU zone/district) which would be required to occur on the property in the future. In addition, staff finds that the approval allows only one resource site to be in operation at a time. This will allow the owner to continue to use the property for current farm/forest/wildlife uses well into the future as initial mining sites are opened and reclaimed consistent with the Board's decision. Staff further finds that the approval of the rezone and allowing aggregate operations does not allow an urban use nor permits any extension of urban services. The applicant has indicated that electricity is currently available on the property and that electrical generation will occur with onsite generators. A condition of approval require the use of porta-potties, as is common at most construction and quarry sites. This eliminates any argument that there is urbanization occurring that is inconsistent with Goal 3. Based on all of these reasons, staff believes the Board can conclude that the proposed use is consistent with statewide Goal 3, that the requirements of statewide Goal 3 are met by the county's approved land use action, and Goal 3 weighs in favor of the county's decision in this matter.

#### Goal 4

Goal 4 directs the conservation and maintenance of the state's forest land base and the state's forest economy and provides for the conservation of forest land to make economically efficient forest practices possible, and to ensure that growing and harvesting of tree species is the leading use on land consistent with some management of soil, water, air and wildlife resources, and to provide for recreational opportunities and agriculture. Staff finds that the property in question is within the EFU district and Jackson County, and that forest and wildlife uses are allowed within the EFU district. Staff further finds that mineral and aggregate extraction of processing are allowed on mixed farm/forest land under state statute. In addition, staff finds that the Goal 4 administrative rule also allows for mining and processing mineral and aggregate resources under standards addressed in these findings. The underlying district in this matter, the EFU district in Jackson County, also allows mineral and aggregate mining and processing. Staff incorporates the analysis for discussion of Goal 3 herein by reference. Because the use is permitted in forest zones, as well as mixed farm forest zones, and a requirement will be reclamation of the aggregate sites to farm/forest/wildlife uses, staff finds that Goal 4 mitigates in favor of protecting the site for rock extraction. The proposed use will not have any effect on accepted farm or forest practices on surrounding lands and staff incorporates the prior discussion relative to ORS 215.296 herein. In addition, staff finds that out of the very large McKenzie Freel aggregate property, only four small sites totaling 117 acres will be affected by mineral and aggregate extraction. Small trees are present on portions of the McKenzie Freel aggregate property surrounding the exact mineral and aggregate extraction sites. The proposed mineral and aggregate extraction activity will not significantly increase the cost of accepted forest practices nor force changes in accepted forest practices on surrounding lands. Staff incorporates herein the discussion of fire hazards below and concludes that the proposed use will not significantly increase fire hazards, fire suppression costs or increase risks to fire suppression personnel. Many forest practices (such as logging, road construction, slash disposal) in and of themselves create many of the same impacts as mineral and aggregate extraction. Staff finds that internal pathways that must be built to service the mineral and

aggregate site to extract the rock may assist in forestry related activities, including timber harvesting, replanting and fire suppression, by providing alternative means of access to the property. Staff further finds that the property will be required to be returned to farm/forest propagation or habitat uses that are consistent with Goal 4 forest lands. Staff finds that rather than increasing fire hazards, risk to fire personnel and fire suppression costs, the proposed use will decrease these hazards and risks. Until an area is actually stripped for mining, it will remain essentially in its present condition. Staff finds this creates no increase in fire hazards, fire suppression costs or risks to fire suppression personnel over existing conditions. More importantly, once the land is stripped for rock extraction, topsoil and vegetation are removed and fire hazards and risks are greatly reduced because less flammable material is available on the site. Staff further finds that the proposed operation will provide the stockpile and buffer areas and these areas will provide significant nonvegetative buffers on the property to help alleviate fire danger. It should be noted that mineral and aggregate operations have equipment on the premises that can be used in fire suppression and, in this manner, will actually help decrease the possibility of wildfires in the area. This persuades staff to conclude that the approved mineral and aggregate use is consistent with conservation of forest lands under a long-term planning perspective. Goal 4 also requires the uses on forest land be consistent with sound management of soil, air, water, fish and wildlife resources. Staff finds that a required reclamation plan will require soil resources on the site to be preserved and replaced through the DOGAMI reclamation process. Staff further finds that the applicant will handle all stormwater onsite so that siltation and offsite issues related to water quality are not problematic. As has been discussed above, the resources will be protected by controlling dust on the site and that water resources on the site will be protected by use of water in strict compliance with Oregon's statutory commercial/industrial exemptions. There are no identified fish resources on the site that would be affected by the proposed site. Staff further finds that conditions of approval that were suggested by the Oregon Department of Fish and Wildlife to mitigate any adverse effect on wildlife will be required to be met by the operator. Staff finds that with these conditions, including seasonal closure of portions of the site, the use is fully consistent with wildlife habitat use well into the future. For all these reasons, staff believes the land use action meets the requirements of conserving forest lands and maintains the forest lands base to protect the state's economy consistent with sound management of soil, water, air and fish and wildlife resources. Staff believes the Board can find that Goal 4 mitigates in favor of protecting the site from mineral and aggregate use.

#### Goal 5

Goal 5 requires the protection of natural resources and the conservation of scenic, historic areas and open spaces. Staff finds that the mineral and aggregate resource is a significant Goal 5 resource and that this process is the periodic review process to gain compliance and acknowledgment of the Goal 5 element of the county's comprehensive plan. Staff finds the Black-tailed deer and Roosevelt elk winter range habitat are the only other identified Goal 5 resources within the impact area. ODFW has determined conditions that will minimize impacts to the winter range habitat and staff recommends the Board include these conditions as conditions of approval should the Board approve the proposed rezoned and aggregate use. Several individuals claimed the scenic view for this area should be protected, but staff has found that there are no protected Goal 5 scenic areas either within the impact areas or in the general area. Staff finds that the pertinent Goal 5 resources for this analysis are the determined significant aggregate resource and the identified big game winter range habitat, and that ODFW has determined the aggregate operations will have minimal impact on the winter range habitat if their specific conditions for the operation are adopted as part of the approval for the proposed rezoned and aggregate operation.



Finally, with regard to Goal 5, staff emphasizes that this report is responding to specific work tasks directed to us by LCDC and DLCD. Specifically, Remand #2 from DLCD requires Jackson County to review and reassess the impact area analysis for the mineral and aggregate resource only. There is not any other work task that is before the Board related to any other Goal 5 resource. Staff finds that this application is following OAR Chapter 660, Division 16 rules of the LCDC that are applicable to Jackson County in this matter and that it is staff's determination that all of the requirements of Goal 5 can be met to protect the four mineral and aggregate locations on the McKenzie Freel aggregate property. Staff finds that the record supports this decision and, accordingly, staff believes that Goal 5 can be met

### Goal 6

Statewide planning Goal 6 is directed to maintain and improve the quality of air, water and resources of the state. With regard to air quality, staff finds the operator will be required, pursuant to a condition of approval, to obtain the appropriate DEQ air quality permit for any crushing unit that will be used on the site. Staff finds that compliance with this permit is possible and such compliance will maintain and improve the quality of air resources in the state. The applicant has analyzed the dust issues related to the operation of the mineral and aggregate sites and has proposed a comprehensive series of mechanisms to minimize, mitigate and eliminate dust associated with operations on the site. A condition of approval directs the applicant to take certain steps will serve to significantly reduce, mitigate and eliminate dust issues associated with the mineral and aggregate operation. Staff finds that this maintains and improves the quality of air resources of the state. With regard to water, staff finds that there are no discharges from the mineral and aggregate site. Staff further finds that the applicant will control stormwater runoff onsite in conformance with the DOGAMI permit. A condition of approval will direct the applicant to ensure this outcome. Staff further finds that applicant may use water resources to assist in the control of dust. The water use has been analyzed by the applicant and that the amount of water necessary to control dust (the principal use of the water on the site), will be obtained in one of three ways: onsite exempt, commercial/industrial well taking 5,000 gallons a day, trucking water in from an available source that stores tanks on the site, or application for change of use of existing irrigation rights already serving the McKenzie Freel aggregate property. Staff finds that each of these uses of water is technically possible and within the bounds of the state statutory mechanism that controls water use. Staff finds that compliance with state statutory mechanisms maintains and improves the quality of water resources in the state. Staff further finds that the applicant has analyzed noise issues related to the proposed mineral and aggregate operation. Staff finds that the applicant will use existing land forms (ridge lines and hummocks), and will use strategically placed stockpiles and berms to maintain compliance with DEQ standards. Staff incorporates the analysis of conflicting uses, the impact area and ESEE consequences above. Staff finds that applicant's noise study shows the location of the sites and operational controls developed in consideration of state noise regulations ensure that the noise emanating from the site will be in compliance with the regulatory regime and, therefore, the noise environment will be maintained through consistency with state regulations and statutes. Staff further finds that applicant will be required to reclaim the extraction sites consistent with the DOGAMI regulations through a condition of approval which requires reclamation of the property in compliance with DOGAMI standards. The applicant has indicated the site will be reclaimed for farm/forest/wildlife habitat uses that are consistent with the overall land uses in the general vicinity. Staff finds that such reclamation will maintain and improve the land resources of the state. The applicant has proposed no sewage infrastructure for the site and the sanitary needs of workers and visitors to the site will be taken care of with porta-potties as is customary at many mineral and aggregate operations. Staff finds

the use of porta-potties will help improve and maintain the quality of air, water and land resources of the state. Staff further finds that compliance with DEQ and DOGAMI standards confirms that any discharges on the site will not exceed the carrying capacity of resources in the area considering the long-range needs, will not, with allowable regulatory and statutory requirements, degrade air, water and land resources nor threaten the availability of such resources to other users in the area.

Mineral and aggregate resources are locationally specific and they constitute an important land resource in the state. The Board has found these sites have high quality rock and are close to the market area in Jackson County. Staff finds it is appropriate to protect the extraction of rock while ensuring that reclamation will occur on the site. Staff finds that this use of the land and reclamation, together with the environmental controls that are proposed and required by conditions of the approval, meet the purposes of Goal 6 which are designed to maintain and improve the quality of land, air and water resources in the state. For these reasons, the Board can conclude that the proposed application meets the requirements of statewide land use planning Goal 6 and that Goal 6 mitigates in favor of the proposed use.

### Goal 7

Goal 7 requires that life and property be protected from natural hazards. Staff finds there are no identified and inventoried natural hazards in the general area with the exception of normal fire hazards that are present in rural wooded areas. Staff finds that the site generally has thin soil which overlies a significant deposit of valuable rock. Staff finds the proposed operation will be required, by a condition of approval and by state law, to obtain a reclamation permit from DOGAMI. Part of this reclamation permit requires stabilization of overburden and control extraction within the quarry. Staff finds these are adequate safeguards to ensure that the resource sites themselves will not become a hazard. From a site visit by the Board and staff, staff notes the area is dry and there is no evidence that the proposed site would be subject to stream flooding (there are no streams near the proposed extraction sites), erosion (steps shall be taken under the DOGAMI regulations to control overburden stability and erosion), landslides (slope control by DOGAMI will eliminate slide potentials), earthquake potential, weak soils or other specific geologic hazard. Staff also finds that as a condition of approval, the applicant will be required to handle stormwater onsite by reducing or eliminating any possibility of offsite erosion from stormwater sources. Staff further finds that the applicant will reduce wildfire potential and incorporate herein the findings regarding fire hazard issues. This is because existing and combustible vegetation must be removed on the extraction areas to gain access to the mineral and aggregate deposit. Staff finds this eliminates fuel and creates fire breaks in the area. Staff further finds that the applicant will improve the road into the area which would assist in firefighting efforts in the event there was a lightning caused fire or other type of fire event. Staff finds that the applicant will, by condition, have a water truck on site for assistance in fighting wildfires, if necessary. The applicant will have equipment on site which can be used in response to fire which may occur from other sources and this will insist in reducing the risk and effect of wildfires. Based on all these findings, the Board can conclude the proposed application will not adversely affect life or property with regard to natural disasters or hazards and that our approval protects life and property from natural hazards. Accordingly, staff believes the proposed rezone and aggregate use complies with Goal 7 and Goal 7 weighs in favor of protecting the site for mineral and aggregate uses.

**Goal 8**

Goal 8 requires that the recreational needs of the citizens of the state and visitors be satisfied and, where appropriate, to provide for the siting of necessary recreational facilities, including destination resorts. Staff finds that no destination resort is proposed for the area and a destination resort is generally inconsistent with the eligible areas identified under Goal 8, particularly the requirement that destination resorts are not allowed within especially sensitive big game habitat. Nearly the entire area east of Hwy 62 is within an especially sensitive big game habitat for Black-tailed deer or Roosevelt elk herds. This requirement, as well as other requirements of the LDO, Section 7.1.5, makes it highly unlikely that a destination resort can locate in this general area. There is a small area west of Hwy 62 that is within the 1,500 foot impact area for the access point with Hwy 62, but none of the parcels are large enough for a destination resort, either large or small.

The ability to site a mineral and aggregate operation on the McKenzie Freel aggregate property, which is close to the market area, means that another area of the county which could potentially be more appropriately used for recreation or for destination resorts. While staff understands the County does not trade the use on one property for the use on another property in Jackson County, it should be noted the practical benefits of approving this particular mineral and aggregate operation includes less demand on other areas of the county which might more appropriately serve the recreational needs of the citizens of the state and visitors. Staff also finds that the applicant has located the individual resource sites in a manner that uses natural ridge lines to block the view of the site from state Highway 62 which serves as a gateway to Crater Lake. Staff finds that the area is generally well developed with homes on rural lands and that the applicant has appropriately sited and located the mineral and aggregate extraction areas in such a manner to reduce the effect on recreational traffic and visitors to the state traveling on Highway 62. Staff further finds that while the property is private, the possibility for hunting continues to exist on the site notwithstanding an approval of the mineral and aggregate application. The availability for hunting, if only for the property owner, helps satisfies the recreational needs of the citizens of the state. Based on all these findings, staff believes the proposed application will not adversely affect the ability of Jackson County or the state of Oregon to satisfy the recreational needs of the citizens of the state, in compliance with Goal 8.

**Goal 9**

Goal 9 requires that adequate opportunities throughout the state be provided for a variety of economic activities vital to the health, welfare and prosperity to the state's citizens. Staff finds that the proposed application provides significant benefit to the economy of both Jackson County and the state. Rock resources of the quality found at this site are needed in Jackson County to help with construction, infrastructure development and economic growth. Staff finds that rock is an essential building block for the county and state economies as it is necessary for infrastructure projects (streets, roads, sewers, etc.) and is an essential construction material in the residential, commercial and industrial sectors. Rock is required for base purposes for all types of buildings and that rock is incorporated in construction through concrete, base materials and asphalt roads and in many other ways. Staff finds that rock products are essential to a healthy growing economy in the county and state. Staff finds that the four sites on the McKenzie Freel aggregate property have a large quantity of good quality rock material that will be available to the county for significant period and, therefore, will be a significant economic asset to the county. Development of the rock resource will create a payroll and, more importantly, will preserve a stable supply of rock for the future use of the county and state. Staff finds that failure to preserve good quality rock sites that are favorably situated to

serve market areas can ultimately lead to higher prices and undependable levels of supply. This could directly or indirectly increase the costs of roads in the county, the affordability of homes in the county, and the amount of county tax revenue that must be used to purchase road construction and repair materials. Staff finds protecting the four sites on the McKenzie Freel aggregate property ultimately protects a mineral and aggregate resource with the ability to serve Jackson County with quality rock materials that are important to the county's economic well-being. Staff further finds that portions of the site that are not used for mineral and aggregate extraction will continue to be used for other types of economic uses (e.g., agriculture and forestry uses) and may continue to be used even while the rock operation is ongoing. The site will be reclaimed and will be available to assist in the improvement of the economy through forest, farm and wildlife habitat related uses in the future. Consistent with our ESEE analysis above, staff believes the economic benefits of protecting the four resource sites outweigh the countervailing economic costs. For all these reasons, staff believes that Goal 9 is met and further concludes that an approval of the four sites on the McKenzie Freel aggregate property will have a positive effect on the economy of the county and state. Staff believes that Goal 9 strongly supports the protection and use of this resource site.

#### Goal 10

Goal 10 requires provision of the housing needs for the citizens of the state. Goal 10 generally guides buildable land determinations and housing assistance determinations which are not relevant in this Goal 5 proceeding. However, staff believes that mineral and aggregate resources are a critical component providing for the housing needs of the citizens of Jackson County and the state in that mineral and aggregate resources are a fundamental building block for infrastructure and houses, including concrete sidewalks, asphalt streets and general housing construction. Staff finds that preservation and protection of the four mineral and aggregate sites on the McKenzie Freel aggregate property will provide a necessary basic resource that assists in providing for the housing needs for the citizens of the state. For all these reasons, staff finds that Goal 10, to the extent it applies in this application, is satisfied and that the goal generally mitigates in favor of the proposed use.

#### Goal 11

Goal 11 requires planning, development and timely order and efficient arrangement for public facilities and services to serve as a framework for urban and rural development. Goal 11 generally provides the jurisdiction should plan and develop public facilities frameworks for urban and rural development. Staff finds that the proposed use does not require a significant level of public services and does not believe Goal 11 applies to this application. Nonetheless, in the event this goal would be deemed applicable, staff makes the following findings. Staff finds the proposed use is a rural use for a number of reasons. First of all, rock extraction is a locationally specific use and rock extraction must occur where the resource is located. In Jackson County, staff finds that available rock resources are primarily and predominantly found in rural areas. Nearly all of the rock and extraction activities within the county are located outside the urban growth boundaries, and certain future opportunities for locating new rock extraction areas are generally located outside urban growth boundaries. Staff finds that in Jackson County it is a general standard in the industry for an operator to have crushing and processing facilities at the point of gravel extraction. While some of the mineral and aggregate material from the four sites may be used in the urban area, the material location where material is ultimately used does not, in and of itself, define whether an activity is urban or rural in nature. Staff finds that rock resources in the county are predominantly located outside the urban areas and that processing activities normally occur at the site where the rock is

located and, accordingly, staff believes that the proposed use is a rural type development. Staff finds that electrical power is available on the McKenzie Freel aggregate property and that the applicant has indicated an electrical generator will be used for the electrical needs for the gravel mining operation, thus eliminating the need for utility extensions. Staff further finds that adequate water can be made available from an onsite well (within the statutory exemption) or that adequate water can be trucked to the site, or that an application for change of use may be made to convert irrigation water that is currently available on the site for use in mineral extraction purposes. Staff finds that porta-potties will be used onsite and there is no need for any kind of sewage or other sanitary infrastructure. Staff finds that the proposed site will be served by a private internal access road which connects directly to state Highway 62. Staff incorporates the analysis of Goal 12 below and finds that the intersection with Highway 62 can be made to be fully adequate for the proposed use and that Highway 62 has ample capacity to safely provide for traffic generated by the proposed use. Staff finds that transportation, water, sewage and electricity are the facilities and services which are needed for this type of rural use. Staff further finds that adequate levels of these services facilities are presently available, or will be available, under conditions that would imposed to serve the proposed rural mineral and aggregate extraction use without the need for any additional infrastructure development. Based on these factors, staff finds that to the extent applicable, Goal 11 is satisfied by the proposed use and the goal mitigates in favor of the proposed use.

### Goal 12

Statewide Goal 12 requires supervision and encouragement of a safe, economic and convenient transportation system. As an initial matter, staff finds that mineral and aggregate is a key raw material that is used to produce transportation facilities, such as roads, railroads, airports, sidewalks and bikeways. The protection of adequate supplies of mineral and aggregate resources significantly advances the county's ability, and the state's ability, to have raw material available for construction of these types of transportation systems. Staff finds it is in the best interests of the citizens of the county to have mineral and aggregate resources available to assist in the development of transportation systems.

Goal 12 is implemented by transportation planning rule, OAR 660-012-0000. The transportation planning rule provides that amendments to comprehensive plans, which significantly affect a transportation facility, shall assure that allowed land uses are consistent with identified function, capacity and performance standards of the facility. This application is an amendment to the Jackson County Comprehensive Plan and, therefore, must determine whether or not the proposed use significantly affects a transportation facility; in this case, Highway 62. The transportation planning rule defines when a plan or land use regulation amendment significant affects the transportation facility. That occurs if: (a) the amendment changes the functional classification of an existing or planned transportation facility; (b) the amendment changes standards implementing the functional classification system; (c) the amendment allows types or levels of land uses that would result in levels of travel or access which are inconsistent with the functional classification of a transportation facility, or (d) the amendment would reduce the performance standards of the facility below the minimum accepted level identified in the TSP. Evidence submitted by the applicant and ODOT indicates that the proposed amendment protecting Goal 5 mineral and aggregate resources and allowing their extraction does not change or have any effect on the functional classification of Highway 62 or any other existing or planned transportation facility. Highway 62 will continue to be a state highway functioning as a major arterial/state regional highway. Staff finds that applicant's use of Highway 62 is consistent with the performance standards of that facility. Staff further finds that the applicant's use does not change the standards implementing the functional

classification system. Those standards remain in place and under those standards, Highway 62 remains an arterial/state regional highway and properly functions within appropriate performance standards. Staff believes that Jackson County would not, should the Board approve the rezone and aggregate operations, allow levels or types of uses that would result in levels of travel or access which are inconsistent with the functional classification of the transportation facility. Staff finds that ODOT, who has jurisdiction over the intersection of the internal access road from the McKenzie Freel aggregate property and Highway 62, has concluded that access is consistent with the functional classification of Highway 62 and that any safety problems associated with the access can be mitigated adequately. Accordingly, staff finds that an approval of the rezoning of the sites and internal access road does not allow types of land uses which would result in levels of traffic or access which are inconsistent with the functional classification of Highway 62, the sole transportation facility involved in the decision. Staff finds that the volume to capacity standard has been analyzed for the proposed use relative to Highway 62 by the applicant's traffic engineer, Mr. Karl Birky. Mr. Birky concludes that performance standards of Highway 62 will be largely unaffected by the proposed use, the access for the proposed use, and truck traffic and other traffic generated by the proposed use. Opponents provided a traffic critique (not a traffic study) from Hardey Engineering (Part of Exhibit 72, starting on page 596 of the current record). The critique identified several issues with the traffic study, including a lack of supporting data based upon traffic near the proposed site, the study does not appear to analyze the impacts for deceleration lanes into the project site and acceleration lanes for turning onto the highway, the potential traffic for the proposed use was not accurately reflected in the study, impact of vehicles was analyzed for volume to capacity and not delay, the driveway was not analyzed for volume to capacity, and an intersection analysis was not performed for delay at the driveway. Mr. Birky responded answering these issues as well as proposing a mitigation plan for the entrance to Hwy 62 (Exhibit 78, pages 645-649). The detailed mitigation plan is important for addressing safety issues that arise under the county's provisions that are related to Goal 12. Staff incorporates by reference the discussion of the county transportation standards below. A Gap Study was submitted by Richard L. Woelk, P.E and T.E., to address the safety of the access point onto Hwy 62 (Exhibit 93, pages 696 to 708 of the current record). Gap analysis allows traffic engineers to analyze how vehicles entering a highway may be efficiently and safely introduced into the traffic flow. This study determined that all traffic from the aggregate operations could safely depart the access point and provided a revised mitigation plan. Mr. Woelk states *"We believe that the list of mitigation alternatives provides direct guidance to ODOT, who has jurisdiction over the McKenzie Freel access, to properly select the most effective measure or measures to protect transportation efficiency and safety."* In a letter dated May 3, 2005 from Dan Dorrell, District 8 Traffic Engineer, ODOT, Mr. Dorrell states *"Consistent with Mr. Pyles' testimony at the hearing on March 30, 2005 and my comments at the April 27, 2005 hearing, we believe that impacts can be mitigated. The applicant has contacted ODOT, and we have discussed preliminary mitigation strategies. Some of these strategies include, additional signage, an activated flashing light mechanism, and the possibility of a raised access ramp, and possibly implementing Transportation Demand Management (TDM) after a gap study is completed. Under OAR 734-051, the ODOT permit can be addressed after the County decision is completed. As such, we would request that a County decision contain the following condition language: 'The applicant shall provide proof of a valid ODOT Road Approach Permit prior to operational use of the site and the access to Highway 62.'" Staff finds that the proposed condition from ODOT, the traffic study from Mr. Birky, and the recommended revised conditions from Mr. Woelk's Gap Study effectively determine that Goal 12 is satisfied. Based on these factors, staff finds that adequate transportation facilities are in place for the proposed use and that these transportation facilities can be made safe for the proposed use and for other users in addition to the proposed use.*

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**Goal 13**

Goal 13 requires the county to analyze any energy considerations for the proposed land use with the goal of conserving energy. Staff finds the proposed site is located close to the north Jackson County market area where a significant amount of growth is occurring. Locating mineral and aggregate sites that are reasonably close to major market areas in the county reduces the amount of transportation necessary to move the rock material to where it will be used and, therefore, saves energy. Staff further finds that proximity and direct access to a state highway provides an excellent transportation facility for the distribution of rock from the four sites on the McKenzie Freel aggregate property. The use of state highways tends to make truck transportation more efficient because state highways are generally designed for more efficient travel (e.g., fewer stops, easier curves, etc.) as opposed to most county roads. The availability of a state highway will reduce the energy used by rock delivery trucks. Staff incorporates the findings under the energy portion of the ESEE analysis. For all of these reasons, staff believes that the requirements of Goal 13 are met and that Goal 13 weighs in favor of our decision to protect the aggregate and mineral resource sites.

**Goal 14**

Goal 14 requires the county to provide for an orderly and efficient transition from rural to urban land use to accommodate the population and urban employment inside urban growth boundaries, to ensure efficient use of land and to provide for livable communities. As previously discussed under Goal 11 above, staff finds the proposed land uses are a typically located on rural lands in Jackson County. Staff finds that mineral and aggregate extraction sites in the county typically require large acreages and large parcel sizes that are not consistent with urban uses. Staff further finds that in Jackson County, most processing occurs at the site where extraction takes place. Material to be used from the site is used in both urban and rural areas but the end use of the product itself is not determined whether the use is rural or urban in nature. Staff finds that the general practice in Jackson County is that rock extraction and associated processing (e.g., crushing) are located in rural areas and the activities are predominantly rural in character. Based on all these factors, staff finds that gravel extraction and processing activity is a rural resource activity and nothing in this process permits a change in any use from rural to urban.

Staff further finds that Goal 14, as amended on April 28, 2005, requires additional considerations of accommodating urban population and urban employment, and ensuring efficient use of the land and providing for livable communities. Staff incorporates the analysis of Goal 9 above. Consistent with the findings in Goal 9 above, mineral and aggregate materials are a fundamental building block for streets, roads, residential, commercial and industrial properties that are essential to accommodate urban population. Consistent with the findings of Goal 9 above, available supplies of mineral and aggregate material from rural resource areas allows the county to accommodate urban population and continue to have urban employment inside the urban growth boundary. While the efficient use of land in Goal 14 is primarily directed to proper inventory balance for urban uses, urbanizeable land and urban growth boundaries, the location of four small quarry areas on the larger McKenzie Freel aggregate property is an efficient use of land that allows the mineral and aggregate resource to be extracted while allowing a majority of the property to continue to be used for ranching and foresting activities.

Finally, while the emphasis in Goal 14 on livable communities is generally related to urban planning and intelligent development in urbanizable areas, approval of this proposed

rural use provides access to a construction material that will serve as a fundamental building block for livable urban areas. Accordingly, staff finds that to the extent Goal 14 applies in this matter, it is satisfied through approval of this rezone and aggregate operations.

**Other Statewide Goals**

Staff finds that Goal 15 related to the Willamette River greenway, Goal 16 related to estuarine resources, Goal 17 related to coastal shorelands, Goal 18 related to beaches and dunes, and Goal 19 related to ocean resources do not apply in this matter.

**II. JACKSON COUNTY COMPREHENSIVE PLAN**

**A. Criterion: Jackson County Comprehensive Plan, Map Designation Elements**

**1. Aggregate and Mineral Resources Policies**

Under the Jackson County comprehensive plan aggregate and mineral resources element, the goal is to protect aggregate resources from incompatible development and to ensure aggregate is available for use. Staff finds, as discussed below, that Jackson County is in a periodic review process proceeding through Goal 5 protection for mineral and aggregate resources on the McKenzie Freel aggregate property and the County is proceeding under the provisions of OAR 660, Division 16 as instructed by LCDC and DLCD. Staff finds the sites A, C, D2, and E are significant aggregate resources which require the County to determine a level of protection for the sites. The Board must determine the level of protection for these sites based upon an ESEE analysis of conflicting uses within a determined impact area. The level of protection determined by the Board must meet the above goal to protect aggregate resources from incompatible development and to ensure aggregate is available for use.

**Aggregate and Mineral Resources Policy 1**

This policy directs the County to recognize that minerals are a nonrenewable and necessary resource that must be protected from incompatible development and made available for mining. This policy is specific to mineral resources and not aggregate resources. The applicant has not identified mineral resources associated with the proposed sites and this policy does not apply to this application.

**Aggregate and Mineral Resources Policy 2**

Policy 2 requires the county to protect and conserve aggregate resources and reduce conflicts between aggregate operations and adjacent land uses, and ensure that aggregate resources are available for current and future use. Should the Board decide to allow surface mining, a 3C decision would allow a balance of protecting the resource sites and conflicting uses. Through this decision, the sites would be allowed to be mined subject to specific conditions. These conditions are important because they serve to mitigate the potential for conflicts between aggregate operations and adjacent land uses. The purpose of these conditions is not to eliminate conflicts, but to reduce conflicts and the proposed conditions allow for mining the aggregate resource as well as ensure that any conflicts meet state and local



standards and requirements. The applicant has used physical features such as ridges and naturally existing hummocks, to screen the actual mining sites and the effects from operating at those sites, from adjacent land uses. Staff finds that the applicant's operational plan includes significant use of stockpiles and construction of berms to further reduce conflicts between aggregate operations and adjacent land uses. Through a combination of the applicant's planning efforts and the proposed conditions, the potential for conflicts between aggregate resources and adjacent lands is reduced and the County may fully protect the aggregate resource using only slight limits on adjacent lands. Staff incorporates by reference herein Criterion V ("Program to Achieve the Goal") below. Staff finds that 3C decision would ensure that aggregate resources are available for current and future use and reduces the conflict between aggregate operations and adjacent uses. Policy 2 could be met through a 3C decision by the Board.

### **Aggregate and Mineral Resources Policy 3**

Policy 3 requires emphasis to be placed on the zoning of lands for aggregate resources near each urban center and key rural communities in the county. Staff finds that the north valley area of Jackson County, including Eagle Point and Shady Cove, are growing urban centers in the county. In this matter, the location of the four mineral and aggregate resource sites on the McKenzie Freel aggregate property ideally situates the mineral and aggregate resources near this market area and may provide a current and long-term source of valuable mineral and aggregate materials to support growth and expansion in the north valley area, including the centers of Eagle Point and Shady Cove. Staff finds and conclude that the four resource sites on the McKenzie Freel aggregate property are consistent with the requirement of Policy 3.

### **Aggregate and Mineral Resources Policy 4**

Policy 4 requires that when an aggregate site is no longer suited for aggregate operations, a change from aggregate resource zoning to another zoning designation is desirable. Policy 4 further requires that the proposed zoning must be consistent with the comprehensive plan ordinances and reclamation plan. Staff finds, as more fully set forth in Criterion IV ("Program to Achieve the Goal") below, that should the Board approve the rezone and aggregate operations, the applicant will be required to obtain the appropriate reclamation permit from DOGAMI, together with reclamation bonds, to ensure the site is reclaimed in accordance with this policy. As indicated by the applicant, when the aggregate resource is exhausted on the site, the site should be reclaimed to basic farm/forest/wildlife habitat uses such as grazing, forest production or habitat. These uses are completely consistent with the comprehensive plan designation and zoning districts in the area (EFU, FR, OSR, and WR). Farm/forest/wildlife uses are outright allowed uses in all of these zoning districts. The applicant believes that because the reclaimed use to basic farm/forest/wildlife uses is consistent with both the current comprehensive plan designations and the aggregate mineral and aggregate resources designation (AR), there is no need to change aggregate resources zoning to another designation in this particular case. Because the proposed post-reclamation uses are consistent with both EFU and AR activities and standards, the applicant believes a zone change back to EFU is not required by Policy 4. Staff finds that the language in Policy 4 to rezone a property, based upon consistency with the Map Designations Element and other relevant sections of the comprehensive plan, is a recommendation rather than a requirement. Staff believes Policy 4 can be met without requiring the property to be rezoned.

There are numerous implementation strategies which allow the county's Mineral and Aggregate Resources Policies to be achieved. Each is addressed below.

Implementation strategy (a). This implementation strategy provides that the county shall protect significant mineral and aggregate resources consistent with statewide planning Goal 5 and shall use the Administrative Rule Chapter 660, Division 16 process to achieve compliance. Staff finds that the County has followed OAR 660, Division 16, including all of the guidance provided by DLCD and LCDC through the periodic review process with regard to the designation of impact areas and our overall analysis of conflicts. Accordingly, staff finds that the County has complied with implementation strategy (a).

Implementation strategy (b). Implementation strategy (b) requires the county to maintain an inventory of mineral and aggregate resource sites. The strategy refers to several types of inventories: significant sites, potential sites and "other" sites. Staff notes there has been some controversy in the public hearing process as to whether or not the county has an inventory or inventories or whether the inventory was eliminated by prior decision in other land use proceedings. Staff finds that the county has an inventory of significant aggregate resource sites, sites which are currently zoned AR. Previous decisions regarding this application have determined this site to be a significant aggregate resource, although denying rezoning the sites to AR. Sites A, C, D2, and E are currently on Jackson County's inventory of significant aggregate resource sites. Even if the Board were to assume that the county does not have an inventory of any type at this point, the Goal 5 process set out in OAR 660, Division 16 provides that the county shall inventory as part of the Goal 5 process. If the county is deemed not to have any inventories, Jackson County is using the Goal 5 process to establish a significant site inventory and enter into that inventory the four mineral and aggregate sites on the McKenzie Freel property. Accordingly, staff finds that implementation strategy (b) is met.

Implementation strategy (c). This implementation strategy requires the location of the site to be identified and that the site must contain recoverable resource material. The strategy also confirms that a site may consist of several portions of property and does not necessarily need to include all mineral and aggregate reserves if those reserves are located on land that is irrevocably committed to other uses which are incompatible with surface mining. Staff finds that the applicant has located the mineral and aggregate resource with adequate specificity. Staff believes there is no material difference between the location of the mineral and aggregate sites as they are currently identified in these findings and the location of the same sites as initially identified to the county by geologist B.G. Hicks in 1995. In any event, staff finds that as a condition of approval, the applicant will be required to survey the sites and fix their boundaries in a manner that does not exceed 20 acres for site A, 18 acres for Site C, 38 acres for Site D2 and 41 acres for Site E. Staff finds this is sufficient and appropriate identification for the sites and that each of the sites contain a recoverable source of material as shown by Mr. Hicks' professional report. Staff also finds that all of the four resource sites are located on McKenzie Freel aggregate property and we further find that there are no portions of any of the four resource sites, nor of the impact area around each of the four sites, nor of the access road or its impact area that are irrevocably committed to other land uses that are incompatible to surface mining. It should be noted that there is an approved homesite location which is within the 1,500 foot impact area for Site E and the furthest eastern point of the access road. DEQ standards for noise have not been shown by the applicant to be met for this location. Staff incorporates the findings above with regard to the conflict identification of the impact area and ESEE analysis, and finds that the location of the aggregate resources are appropriately located on lands that are not irrevocably committed to incompatible uses. Accordingly, staff believes implementation strategy (c) is met.

Implementation Strategy (d). This implementation strategy makes suggestions as to when a mineral and aggregate resource site will be deemed significant. There are two parts to this implementation strategy. The first portion provides a standard: that the county may consider a mineral and aggregate site to be significant if it has a minimum of 100,000 yards of material. This volume threshold is not absolute. Staff finds that each of the sites on the McKenzie Freel aggregate property has many multiples in excess of 100,000 cubic yards. Accordingly, we find that under the implementation strategy, the suggested significance threshold is met.

This implementation strategy also requires the county to protect a variety of large reserves to serve a regional market. Staff finds that in reviewing large reserves, this implementation strategy provides that it is appropriate to look to Oregon Department of Transportation specifications which may include the Los Angeles rattler test, the Oregon Air Degradation test and the Sodium Sulfate soundness test. Staff interprets this implementation strategy to find that this is an aspirational suggestion in the implementation strategy and no site is required to meet all three of the tests. Staff finds that the mineral and aggregate material from each of the McKenzie Freel four resource sites meets the Los Angeles rattler test and, therefore, the sites qualify as significant aggregate resources under this strategy. Because each of the four sites has in excess of 100,000 cubic yards and meets the ODOT specification for construction grade material, staff determines the sites are significant aggregate resources. It should be noted that the Board has previously determined these sites to be significant aggregate resources in previous decisions. For all these reasons, we find that implementation strategy (d) is met.

Implementation strategy (e). Staff finds that operations on the McKenzie Freel property will extract aggregate and mineral resources and, therefore, there is no need to apply this strategy and look at a nonaggregate mineral on a case-by-case basis.

Implementation strategy (f). This implementation strategy provides presumptive significance for sites owned by governmental agencies. Because this site is not owned by a government agency, staff finds that this implementation strategy does not apply.

Implementation strategy (g). This implementation strategy provides guidance for the county to consider expansion at existing significant resource sites. Staff finds that this is the initial siting action for each of the four sites on the McKenzie Freel aggregate property and that this particular implementation strategy related to expansion does not apply.

Implementation strategy (h). We find that this implementation strategy refers to "grandfathered" aggregate operations. Staff finds the Goal 5 process for this application does not involve "grandfathering" and this implementation strategy does not apply.

Implementation strategy (i). Staff finds that this implementation strategy refers to "other sites" inventory. As has been previously indicated, the four resource sites on the McKenzie Freel aggregate property are placed on the county's significant sites inventory and, accordingly, this implementation strategy dealing with "other sites" is not applicable.

Implementation strategy (j). This particular implementation strategy deals with sites on the "potential sites" inventory. Staff finds the four resource sites on the McKenzie Freel aggregate property are on the significant sites inventory with the county and, therefore, this implementation strategy related to "potential sites" is not applicable.

Implementation strategy (k). This strategy addresses the sites that are determined to be significant and requires the county to complete the Goal 5 process and determine the level of protection for the sites. The implementation strategy further suggests that if the final decision concerning the site is to fully preserve or partially protect the site from conflicting uses, the site shall be zoned with an aggregate resource (AR) designation. Staff finds that the Board has determined that each of the four sites on the McKenzie Freel aggregate property is significant and each of the sites has been placed on the county's significant sites inventory. Staff further finds that through this application process, we are completing the Goal 5 process as required by OAR 660, Division 16 and LCDC/DLCD guidance to identify conflicting uses, analyze the ESEE consequences of conflicting uses and designating a level of protection. Accordingly, staff finds that implementation strategy (k) can be met following a decision by the Board regarding the level of protection accorded to aggregate resource.

Implementation strategy (l). This implementation strategy suggests that when conflicts are identified with other significant Goal 5 resources, the county shall consider the protection program for those other resources. Staff finds the only identified Goal 5 resource is the especially sensitive winter range habitat for Black-tailed deer and Roosevelt elk, Area of Special Concern 90-1. This habitat has also been identified as a conflicting use. Staff finds the conditions requested by ODFW to minimize impacts to this habitat should be adopted as conditions of approval, should the Board approve the rezone and aggregate operations plan. By adopting the ODFW conditions, staff believes this implementation strategy can be satisfied.

Implementation strategy (m). This implementation strategy provides that the county, as part of the ESEE analysis and for any site currently zoned for exclusive farm or forest use, shall make findings related to ORS 215.296 standards, namely that the use will not force a significant change in, or a significant increase in the cost of, accepted farm or forestry practices on surrounding lands. Staff incorporates the findings above with regard to Goals 3 and 4, and with regard to the conflicts analysis as those set forth herein. Staff affirms the findings that the proposed use will not force a significant change in or significantly increase the cost of accepted farming or forestry practices on surrounding lands. The implementation strategy also suggests consideration of whether or not the proposed use will significantly increase fire hazard or significantly increase fire suppression costs, or significantly increase risks to fire suppression personnel. Staff incorporates the findings above with regard to fire control and suppression issues. Staff finds that the proposed quarry operations will decrease fire hazards, decrease fire suppression costs and decrease risks to fire suppression personnel. First, as a necessary incident to mining, vegetation will be removed and the mining area surface will be disturbed exposing bare ground. This removes fuel and provides significant fuel breaks which decrease fire hazards. Staff also finds that stockpile areas and berm areas will provide a minimum of a 100 foot fuel break and all fuels will be eliminated in the stockpile areas and the fire hazard will be greatly reduced. There will be ultimately four separate sites which are strategically placed across the McKenzie Freel property which will provide significant fuel breaks based on removal of surface vegetation, disturbing the ground to allow extraction and stockpiling of mineral and aggregate resources. Staff further finds that a road will need to be developed into each of the four sites and this road may serve a combined purpose of providing for fire access. This road will reduce fire suppression costs and reduce risk to fire suppression personnel by allowing them access (and exit) to areas that are currently not available. Staff also finds that the operator will have heavy equipment on site, including a water truck. The availability of this equipment reduces fire hazard, reduces fire suppression costs and reduces risk to fire suppression personnel. The applicant will provide roadway signage indicating the location of the access road. This will assist in fire suppression and response. Staff further finds that there

are no buildings which are scheduled to be constructed on the site and any mechanical equipment, such as a crusher, will be surrounded by a significant expanse of stripped ground that is at least 100 feet in each direction with no combustible material. For all these reasons, staff believes that implementation strategy (m) is satisfied.

Implementation strategy (n). This particular implementation strategy addresses a situation where a mineral and aggregate resource site would span multiple jurisdictional boundaries. Staff finds each of the four resource sites, together with the entire McKenzie Freeland aggregate property is completely in Jackson County and, therefore, this particular implementation strategy does not apply.

Implementation strategy (o). This implementation strategy requires that if there is a new conflicting use that is allowed within an impact area surrounding a mineral and aggregate site, that measures necessary to resolve conflicts must be used, including setbacks, insulation screening or similar measures. The Jackson County Land Development Ordinance provides additional setbacks and restrictive covenants to help resolve identified conflicts. The Board may find it necessary to establish additional restrictions to resolve these conflicts. Accordingly, staff believes that implementation strategy (o) can be satisfied.

Implementation strategy (p). This implementation strategy provides that the county may impose conditions to lessen conflicts that are identified. Staff finds that conditions are proposed, should the Board approve the rezone and aggregate operations plan, and that these conditions have been developed specifically through the Goal 5 process to address potential conflicts or issues that have been identified in the public hearings process. Staff finds that implementation strategy (p) may be satisfied should the Board choose to impose conditions to lessen conflicts.

Implementation strategy (q). This implementation strategy provides that the county, as part of the Goal 5 process, must determine the appropriate post-mining use of the site. Staff finds that the appropriate post-mining use of the site is reclamation to achieve farm/forest/wildlife uses and have recommended to the Board a condition of approval reflecting reclamation of the sites for farm/forest/wildlife uses. Staff notes that the final reclamation requirements will be implemented by DOGAMI consistent with implementation strategy (r) below. Accordingly, staff finds that implementation strategy (q) can be satisfied.

Implementation strategy (r). This implementation strategy requires the county to recognize the jurisdiction of DOGAMI over mine land reclamation. Should rezone and aggregate operations plan be approved, the applicant will be required to obtain the appropriate DOGAMI reclamation permit pursuant to ORS Chapter 517 prior to operation of the site. The county fully recognizes the jurisdiction and expertise of DOGAMI with regard to reclamation issues. Accordingly, staff finds that implementation strategy (r) can be satisfied.

Implementation strategy (s). This implementation strategy provides that as a general rule, the county will require DOGAMI to delay its reclamation plan decision until after the county has made a land use decision. This implementation strategy is authorized under ORS Chapter 517 and, the applicant would seek a DOGAMI permit after receiving land use approval from the county. DOGAMI has, therefore, delayed its final decision until after the county decides all comprehensive plan amendments and site plan approvals that are contained in this application. Accordingly, staff finds that implementation strategy (s) can be satisfied.

Implementation strategy (t). This implementation strategy indicates that no surface mining or processing activity shall commence without land use approval from the county and a reclamation plan and operating permit issued by DOGAMI. Staff finds that should this rezone and aggregate operations plan be approved, land use approval will have been obtained. A reclamation plan and operating permit are part of the conditions of approval prior to beginning aggregate operations. Accordingly, staff finds that this implementation strategy can be satisfied.

Implementation strategy (u) This provision provides that land may not be rezoned from aggregate resource until the aggregate resource is depleted and the site has been reclaimed. Should this rezone and aggregate operations plan be approved by the Board, staff recognizes that this strategy as a condition of approval, although rezoning of the property following depletion of the resource is a recommendation to the applicant and not a requirement, according to Policy 4 of the Aggregate and Mineral Resources Element. Accordingly, staff finds that this implementation strategy can be satisfied.

### **B. Criterion: Map Designation Element, Aggregate Resource Land**

The purpose of the Aggregate Resource land map designation element is to provide for the protection of aggregate resources. The Aggregate Resource designation is intended to protect resources from incompatible uses, particularly residential uses, which might adversely affect extraction, crushing and transportation of the resource. Staff finds that the four resource sites on the McKenzie Freel aggregate property are located near urban market areas of the county but are distant enough not to have negative impacts on urban communities. Staff finds that the McKenzie Freel aggregate property is surrounded mostly by resource lands, not urban properties or communities. There are a few properties west of Hwy 62 that are zoned RR-5, but are still no considered urban properties or communities. Staff finds that the map designation criteria (Aggregate Resource Land, paragraph 3, subparts A, B, C, D, E, F, as well as subpart 4), parallel the requirements of the Goal 5 process as set out in OAR 660, Division 16. Accordingly, staff incorporates by reference the findings and analysis above. Staff finds that the aggregate sites have already been determined as significant aggregate resources in previous decisions by the Board, based on the analysis of information about the location, quality and quantity of material aggregate resource deposits and these sites have been placed on the county's significant site inventory; the Board has determined a 1,500 foot impact area around the aggregate sites and the internal access road, although the applicant has requested a decrease in the impact area as shown on the attached Map 1; conflicting uses have been identified, including both existing and potential uses; and staff has analyzed conflicting uses, including the economic, social and environmental (ESEE) consequences related to the conflicting uses that were identified at the site. Staff and the applicant have analyzed opportunities to avoid and mitigate conflicts and recommendations regarding conditions of approval have been made to avoid and mitigate conflicts. We further find through the Goal 5 process we are applying the AR zoning district to the four resource sites as well as to the internal truck path that connects the sites to Highway 62. Based on all these findings, staff finds that the requirements of the map designations element, aggregate resource land of the comprehensive plan, have been addressed in this report.

### **C. Criterion: Transportation System Plan Policies**

**1. 4.1.4 Safety Policies.** The county's transportation system plan safety policies 4.1.4-A require that the county provide a transportation system that supports emergency access for emergency vehicles and provides for evacuation in the event of wildlife hazard or emergency. The transportation system plan indicates that strategies to achieve this

policy include developing regulations that ensure minimum emergency vehicle access standards and provide, for all development, baseline safety protections related to the total amount of development that would use an access in the event of emergency. Staff finds that access to the four protected resource sites on the McKenzie Freel aggregate property will be via a direct connection to state Highway 62. Staff finds that the access road intersection with Highway 62 will be reviewed by ODOT who has responsibility for all safety issues at the access point. A Gap Study submitted by the applicant has determined the safety of the access point, with recommended conditions for ODOT. Staff also finds that the access road to the four sites on the McKenzie Freel aggregate property is designed for use by heavy trucks. As a condition of approval, the access road will be required to meet emergency vehicle access standards of Section 9.5.4 of the LDO. That property will remain in use for ongoing farming and forestry activities. Staff finds that establishment of a road for the mineral and aggregate purpose, as we have indicated above with regard to fire access, will greatly increase all emergency vehicle access on the McKenzie Freel property. Accordingly, staff believes, with the proposed condition of approval, that the proposed road access system for the four protected mineral and aggregate sites supports emergency access for emergency vehicles and provides for evacuation in the event of a wildlife hazard or other emergency consistent with the strategies and plans established by the county.

Safety policy 4.1.4-B requires that public safety will be a primary consideration in the planning, design and maintenance of Jackson County transportation systems. Staff finds that the strategies to reach this goal include special traffic studies around schools and large employment centers, coordination with other agencies to promote traffic safety (including pedestrian and bicycle safety education), active enforcement of state motor vehicle codes to increase traffic safety, and encouragement of commercial vehicle regulations that improve safety.

Staff believes that public safety is a significant concern of each County Commissioner and public safety with regard to access at the site has been carefully reviewed prior to making our decision. The applicant has provided a Traffic Impact Study and a Gap Study, each of which determined that, with conditions, the access point can be designed to meet safety requirements of ODOT, who has ultimate responsibility for the safety of access to Hwy 62. Staff incorporates the findings with regard to Goal 12 above. The applicant has coordinated carefully with ODOT, the entity that has jurisdiction over the intersection of the mineral and aggregate access road and Highway 62, and ODOT has responded requesting the applicant to require proof to Jackson County of a valid ODOT Road Approach Permit prior to operational use of the site and access to Hwy 62. Staff finds that the applicant has provided a traffic mitigation plan for safety purposes and one of the key elements of that plan is to work with county and state enforcement agencies to ensure the motor vehicle codes, particularly the speed limits, are enforced along Highway 62 near the McKenzie Freel aggregate property to ensure traffic safety. We find there are no particular bicycle or pedestrian regulations that apply to state Highway 62 at the McKenzie Freel aggregate property. Finally, truck drivers hauling rock must have commercial drivers' licenses and they work under special requirements to ensure operating safety. Based on all of these findings, staff believes that public safety is a primary consideration and the strategies for ensuring public safety have been complied with in this application.

Safety Policy 4.1.4-C requires maintenance of clear vision areas adjacent to intersections and sets forth strategies that require the county to maintain ordinance regulations that ensure adequate sight distance at intersections. Staff finds that the intersection of the internal truck path from the McKenzie Freel aggregate property with Highway 62 has sufficient

and adequate sight distance in both directions. Accordingly, staff believes that the proposed use maintains clear vision areas and this safety policy and implementing strategy are satisfied.

**2. 4.3 Integration and 4.3.1 Transportation Land Use Coordination Policies.**

Integration and land use coordination policies of the County Comprehensive Plan (4.3.1-A) require the county to prohibit new or expanded development that could have the potential to prevent the placement, or significantly increase the cost of, designated transportation connections in the TSP. The implementing strategy requires the county to establish and maintain development review procedures that will prevent conflicts between development and future transportation facilities and connections. Staff finds there are no future or proposed transportation facilities or connections on Highway 62 in the general vicinity of the McKenzie Freel aggregate property. Staff further finds that approving mineral and aggregate operations that will provide a single access to Highway 62 is not an action that will prevent the placement of, or significantly increase the cost of, designated transportation connections. Accordingly, staff finds that this policy and implementing strategy do not apply.

Transportation policy and coordination policy 4.3.1-B provides that plan amendments need to demonstrate adequate transportation planning has been done to support the proposed land use.

Implementation strategy (a) applies only inside urban growth boundaries and requires the county to defer to the appropriate city TSP or base decisions on the Jackson County TSP if there is no adopted or applicable city TSP. Staff finds that the proposed use is outside the urban growth boundary and this implementation strategy is not applicable.

Implementation strategy (b) requires that legislative land use changes will not result in land uses that are incompatible with public transportation facilities through compliance with, and in direct application of, the Goal 12 transportation rule. Staff finds this is not a legislative land use change and this implementation strategy does not apply to this application.

Implementation strategy (c) requires the county to ensure that quasi-judicial comprehensive plan changes will not result in land uses that are incompatible with the public transportation facilities they will use. The strategy establishes three criteria which must be demonstrated to be met through a Transportation Impact Study completed by a registered professional engineer with expertise in transportation. Compliance with the three criteria will be considered sufficient to demonstrate compliance with the transportation planning rule. This provision also provides that the planning director and county engineer may waive the requirements of this implementation strategy under certain circumstances. Staff finds the applicant has formally requested a waiver of the transportation impact study. Because Jackson County does not have jurisdiction of Hwy 62, the planning director and county engineer cannot grant the requested waiver. The applicant has provided a Transportation Impact Study prepared by Mr. Karl Birky, a registered engineer with expertise in transportation and traffic issues, which is discussed below with respect to the applicable criteria.

The first criterion is that approval of the proposed land use change and the cumulative impact of potential or similar approvals on parcels within two miles of the subject parcel would not change the functional classification of an existing plan or planned transportation facility nor would it change the standards implementing the functional classification system. Findings previously found under the analysis of the statewide transportation rule that the proposed use will not change the functional classification nor change the standards implementing functional classification systems. Evidence submitted by the



applicant's engineer, Mr. Birky, and Mr. Hribernick and Mr. Stark, attorney's for the applicant, contains an analysis of the possibility for siting similar mineral and aggregate approvals within a two mile radius of the McKenzie Freel aggregate property. These exhibits find that because of the small property ownerships in the general vicinity, the proximity of some parcels to the Rogue River, the lack of alternative highway infrastructure and the existence of other mineral and aggregate operations, there is virtually no potential for a similar approval within two miles of the McKenzie Freel aggregate property. The applicant states that to provide a reasonably sized mineral and aggregate operation would require a minimum of 500 acres of property. Within a two-mile radius of the McKenzie Freel aggregate property, there are only six properties greater than 200 acres in size and two parcels greater than 500 acres in size. As indicated in the analysis of potential or similar quarry uses, there are significant problems with each of the larger sites. The applicant's conclusion is that the overall lack of transportation facilities necessary to reach Highway 62 and small property ownerships in the area make it virtually impossible for a similar mineral and aggregate operation to be located within two miles of the McKenzie Freel aggregate property.

The Traffic Impact Study analysis of Mr. Birky states that in addition to noting it has taken more than 10 years to reach a final decision on approval of the four resource sites on the McKenzie Freel aggregate property (i.e., no additional rock quarry is likely to be quickly approved), Mr. Birky also concludes that even if a gravel site were developed within two miles of the McKenzie Freel aggregate property and if such a second gravel site were of comparable size and trip generation to the proposed use, the transportation facility under consideration (Highway 62) would nonetheless continue to function at an acceptable level with twice the volume anticipated from the mineral extraction activities on the McKenzie Freel aggregate property. Mr. Birky concludes, that in the unlikely event that a second similarly sized mineral and aggregate site were located within two miles of the McKenzie Freel aggregate property, traffic from both uses would not change the functional classification of Highway 62 nor change the standards that implement the functional classification. Accordingly, the applicant concludes that implementing strategy criteria (i) is met with regard to application approval of the rezone and aggregate operations, even considering the cumulative impact of the potential for similar approvals on parcels within two miles of the McKenzie Freel aggregate property will not change the functional classification of Highway 62 nor will it change the standards implementing the functional classification system.

Implementing strategy criterion (ii) requires that the proposed use, with consideration of the cumulative impact for potential and similar approvals on parcels within two miles of the McKenzie Freel aggregate property, will not allow types or levels of land uses that would result in levels of travel or access that are inconsistent with the functional classification of a transportation facility, in this case, Highway 62. The analysis by Mr. Birky finds that even if another rock extraction site were to be approved in the area and if such approval would be of similar size and scope and resulted in the addition of the same amount of traffic on Highway 62 as is expected from the McKenzie Freel aggregate property, there would not be a change in the functional classification of Highway 62 and the level of traffic on Highway 62 would not be inconsistent with the functional classification of Highway 62 as an ODOT regional highway. Simply put, the applicant's engineer finds this mineral and aggregate approval, considered in conjunction with any potential for similar approvals within two miles (which we find highly unlikely), will not change the functional classification of Highway 62. Accordingly, the applicant believes that this implementation strategy, criterion (ii) is satisfied by the proposed application.

Criterion (iii) requires that an approval of the proposed use, in consideration of the cumulative impact of potential or similar approvals on parcels within two miles of the

McKenzie Freel aggregate property, will not cause a transportation facility (in this case, Highway 62) to exceed the adopted performance standard of such facility. Criterion (iii) goes on to establish that an increase of less than two percent of the total capacity for arterial and state highways, based on the cumulative impact of the McKenzie Freel aggregate property approval and the potential for similar approvals on parcels within two miles, does not violate the criterion. Mr. Birky finds that the only transportation facility under consideration is Highway 62, as it is the only access point for the approved uses from the McKenzie Freel aggregate property. The analysis indicates that even using an extremely conservative measurement (average daily trips or "ADT") for traffic on Highway 62, that the proposed worst case truck traffic levels from the activities on the McKenzie Freel aggregate property would generate less than one percent of the trips currently used on the roadway. Accordingly, under criterion (iii) and using an extremely conservative measurement, more than twice as many trips – that is another approval of a mineral and aggregate facility of similar size and traffic volume – could be approved and not violate the county's standard. More importantly, the county's standard does not refer to an increase of two percent over existing ADT, but rather an increase of two percent of the total capacity for a state highway. Mr. Birky's analysis finds that ODOT calculates highway capacity by using the highway capacity manual and this manual provides that a directional two-lane highway has a capacity of 1,700 vehicles per lane per hour. Given the proper standard of total capacity, the county could permit three additional quarries of equal size to the McKenzie Freel approval and the cumulative traffic generated by the four quarries (the McKenzie Freel aggregate property operations and three others) would not exceed two percent of the hourly capacity of one lane of Highway 62. Simply stated, the applicant believes there is no possibility that within a two mile radius of the McKenzie Freel aggregate property that three additional mineral and aggregate sites of similar size and traffic generation would be approved. Even if this were the case, the applicant believes that all of this traffic cumulatively added to the road, in addition to the McKenzie Freel aggregate property traffic, would not exceed capacity of a single lane of Highway 62. The applicant indicates that two lanes of traffic would have twice the capacity and that under the standard in the county ordinance ("total capacity"), there is no possibility that there could ever be enough gravel-related approvals within a two mile radius of the McKenzie Freel property to ever adversely affect criterion (iii) (two percent of total capacity of Highway 62). The applicant believes that the exhibits in the record conclusively demonstrate that implementation strategy criteria (i), (ii) and (iii) can be met and that the proposed land use is not incompatible with the public transportation facility that it will use, namely Highway 62.

Implementation strategy (d) prevents a use from relying on projects proposed in the transportation system plan toward the end of the planning horizon. Staff finds that the McKenzie Freel mineral and aggregate application does not rely on any proposed project in the transportation system plan and this implementation strategy does not apply.

Implementation strategy (e) provides that if a transportation system amendment is necessary, it may be submitted concurrently with our proposed comprehensive plan amendment. The applicant believes and concludes that there is no significant effect on any transportation facility by the proposed land use, that the proposed land use is not incompatible with the public transportation facility that will be used by the trucks from the use (Highway 62) and, therefore, no transportation system plan amendment is required. The applicant does not believe that implementation strategy (e) does not apply to this application.

### 3. Transportation and Land Use Coordination Policy 4.3.1-C

This policy provides that Jackson County will establish and maintain land development ordinance regulations to protect and improve the transportation system. The

implementing strategies require the county to amend the land development ordinance to address deficiencies identified in the transportation planning rule and also that development ordinance regulations should require onsite improvements, such as frontage improvements, dedicated right-of-way, and other improvements to be constructed to applicable county standards. Staff finds that approving the proposed land use would not serve to identify a deficiency in the transportation planning rule nor will it require Jackson County to amend any ordinance to address such a deficiency. Staff finds that ODOT has jurisdiction over the access point on Hwy 62 and a mitigation plan has been submitted with conditions to protect the safety of the access point. ODOT has requested that, should Jackson County approve the rezone and aggregate operations plan, a condition of approval require the applicant to obtain a valid ODOT Road Approach Permit prior to operational use of the site and the access to Hwy 62. Staff also has recommended to the Board that the internal access road meet the requirements for emergency vehicle access of Section 9.5.4 of the 2004 Land Development Ordinance. Staff believes for the above reasons, this section is satisfied.

#### 4. Transportation and Land Use Coordination Policy 4.3.1-D

This coordination policy requires the county to look beyond whether adequate capacity exists and provides that a land use proposal will not be approved if it creates or worsens a safety problem on a public transportation system or facility. The policy also provides that if a safety problem is created or worsened without mitigation, then a mitigation plan that resolves the safety concern must also be approved and included in the proposal in order for the land use development proposal to be approved. The policy provides that a study by a registered professional traffic engineer will be considered to determine if a problem would be created or worsened. A Traffic Impact Study by Mr. Birky and a Gap Study by Mr. Woelk have been submitted to address safety concerns. Mr. Birky under this county standard, any change or any new access to an existing road could never be approved in Jackson County without a mitigation plan because such change in access, by definition, creates a potential safety problem on a public transportation system or facility. Staff agrees with Mr. Birky that this is because turning movements by vehicles create inherent risk factors and even one additional automobile or one additional turning movement would tend to increase the risk factor and, therefore, "decrease" safety. Based on this analysis, it could be argued that even one truck trip exiting the McKenzie Freel aggregate property onto Highway 62, although perfectly safe, would arguably have the potential for "creating" or "worsening" a safety problem. Staff also agrees with Mr. Birky that one of the significant safety problems along this particular stretch of Highway 62 is that traffic speeds are significantly above the posted speed limit of 55 mph. Information in the record indicates that more than 70 percent of the traffic on Highway 62 is exceeding the posted speed limit. Staff is in agreement with Mr. Birky that this is a significant traffic safety issue and believes that it is appropriate under implementation strategy (c) of Transportation System Plan Safety Policy 4.1.4-B to make an effort to actively enforce county and state motor vehicle codes, including speed limits, to increase traffic safety along this stretch of road. Included in Mr. Birky's mitigation plan is an emphasis on the applicant working cooperatively with Oregon State Police and with the Jackson County Sheriff to enter into a traffic enforcement program to reduce traffic speeds on Highway 62 in the general area of the McKenzie Freel aggregate property. Staff believes that traffic flowing at the posted speed is a significant measure for improving traffic safety in this stretch of road, with, or without, the addition of quarry truck traffic.

The applicant has also submitted a Gap Study by Mr. Woelk. The purpose of the gap analysis is to analyze how vehicles entering a highway may be efficiently and safely introduced into the traffic flow on that highway. Mr. Woelk states "*The data from our gap study indicate that the trucks generated by the McKenzie Freel project, in fact, have plenty of property-*

*sized gaps and can properly and safely enter Highway 62.*" A revised mitigation plan was also submitted as part of the Gap Study. Mr. Woelk states *"The suggested mitigation measures are intelligent and appropriate traffic engineering mechanisms to promote and assure safety in access situations involving large trucks. We believe that the list of mitigation alternatives provides direct guidance to ODOT, who has jurisdiction over the McKenzie Freel access, to properly select the most effective measure or measures to protect transportation efficiency and safety."* As required under this policy, the applicant has submitted a mitigation plan. Staff has reviewed the mitigation plan, and finds its recommendations to ODOT sufficient to mitigate and resolve safety concerns that have been raised with regard to truck traffic that would be entering and exiting the McKenzie Freel aggregate property from Highway 62, based upon the conclusions of the applicant's traffic engineer. The mitigation plan has the following elements:

As a condition of approval, applicant will obtain from ODOT a new approach permit under the *Change of Use Approach* criteria of Oregon's Access Management Standards (OAR 738-051-0045). As part of that application, applicant will address the safety factors set out in OAR 734-051-0080(8)(d)(D)(9) and (10). Applicant will agree to at least one of the following mechanisms and will agree to as many of the following mechanisms as are required by ODOT, who has jurisdiction over the intersection:

- (1) Installation of adequate and properly sized warning signage for both northbound and southbound traffic.
- (2) Installation of a closed-loop automated warning system with flashing lights that is activated by truck traffic at the access point and which warns motorists, both northbound and southbound on Highway 62, that heavy trucks are entering the highway.
- (3) Cooperatively develop and enter a traffic education program with the appropriate state and county entities to achieve greater awareness of the posted speed limit of Highway 62 in the general area of the proposed site. This may include intermittent use of non-enforcement radar speed education boxes.
- (4) Create and provide to all drivers entering the site, a driver education program and continuing education about traffic safety issues.
- (5) Make appropriate improvements to the access road where it connects to Highway 62 to ensure a flat entrance for trucks entering the highway and adequate width along the access road to allow incoming and outgoing traffic to easily pass.
- (6) Pave the first 400 feet of the access road to the east of Highway 62 to operate a wheel cleaning facility to ensure there is no track-out of materials onto Highway 62 that would contribute to safety problems.

Should the Board approve the rezone and aggregate operations plan, staff recommends the Board adopt these conditions as a recommendation to ODOT to ensure the safety of the access point on Hwy 62. The Board may decide to include other measures to ensure safety of the access point. The Board should note that ODOT has jurisdiction over road approaches to Hwy 62 and will require whatever safety measures they feel are appropriate and necessary for this intersection. As such, staff believes that this policy can be satisfied.

##### 5. Transportation and Land Use Coordination Policy 4.3.1-E

Staff finds that this policy relates to identification of future urban growth boundary expansions and requires certain transportation planning components and strategies as part of future urban growth boundary expansions. Nothing in this application is related to an urban growth expansion and that no urban growth expansion or urban reserve area expansion is contemplated in this application. Accordingly, staff finds that this policy is not applicable.

#### **6. 4.3.3 Area Specific Policies and Quasi-Judicial TSP Amendments**

(a) Area Specific Policies 4.3.3-A and 4.3.3-B. These portions of the Jackson County Comprehensive Plan require the county to work cooperatively with the Oregon Department of Transportation and other entities to plan a direct route between White City and Interstate 5 to improve freight truck mobility and to complete analysis for a Highway 62 expressway. Staff finds that these particular area specific policies have no application to this application and that the potential White City freight truck route and expressway are significantly to the south of Eagle Point and the north valley market area for the McKenzie Freel aggregate property. While it is possible, in the future, for trucks from the McKenzie Freel aggregate property to use a White City/Interstate 5 freight truck route or a Highway 62 expressway, nothing in this application prohibits the county from continuing to work with all interested parties to establish such routes. Staff concludes that these area specific policies are not applicable to this approval.

(b) Area Specific Policy 4.3.3-C. This area-specific policy includes direction to the county to support planning for alternative truck transportation routes through historic downtown Jacksonville. Staff finds that Jacksonville is on the opposite side of the City of Medford and the approval that we were granting on the McKenzie Freel aggregate property does not implicate planning support for a Jacksonville bypass. Staff finds that this area specific policy is not applicable.

(c) Area Specific Policy 4.3.3-D. This specific policy provides that Jackson County will consider TSP amendments in quasi-judicial proceedings only under certain circumstances and provides strategies to guide the county in making that determination. Staff finds that no transportation system plan amendment is proposed or implicated for the McKenzie Freel aggregate property. Staff finds that this area specific policy does not apply.

#### **D. Criterion: 4.3.4 Environmental and Scenic Resource Policies**

Policies 4.3.4-A and 4.3.4-B. This policy requires the county to support exploration and innovation for alternative travel modes and fuel sources. The policy also provides that Jackson County will remain committed to the maintenance and development of an environmentally sensitive transportation plan. Finally, the implementing strategy provides that goal exceptions are required for transportation facilities on rural land that do not meet the requirements of the Transportation Planning Rule, OAR 660-012-0065.

As a general matter, heavy trucks are necessary to bring mineral and aggregate resources to market. As such, the proposed use on the McKenzie Freel aggregate property is consistent with reduced reliance on fossil fuels and an environmentally sensitive transportation system because the location of the resource is closer to the market area and, therefore, reduces truck trips and miles traveled on state and county roads.

With regard to implementing strategy (a), staff finds that mineral and aggregate extraction and processing is specifically allowed under ORS 215.283(2). (See ORS

215.283(2)(b)(B.) Staff further finds that the internal access path connecting the four mineral resource sites with Highway 62 is accessory transportation improvement, as defined in OAR 660-012-0065(2)(d). The access road is incidental to the allowable mining, crushing and stockpiling uses in that it provides safe and efficient access to the allowable use. Consistent with the provisions of the transportation planning rule (OAR 660-012-0065(3)), staff finds that the internal truck path and access to Highway 62 is consistent with Goals 3, 4, 11 and 14, and with the transportation planning rule, OAR 660-012-0065. Staff further finds that the internal truck path and access road are a necessary condition of this development and integral to allowing the mineral and aggregate resource to reach the market. Staff finds that the access road, an accessory transportation improvement, would be approved through the same procedures, standards and requirements applicable to the principal use (mining, crushing or stockpiling) to which the road is an accessory and which principal uses are specifically authorized under 215.283(2)(b)(B). Accordingly, staff finds that an exception is not required as the access road is an accessory transportation improvement which meets the requirements of OAR 660-012-0065.

### III. JACKSON COUNTY LAND USE DEVELOPMENT ORDINANCE

#### A. Criterion: Amendments to the Comprehensive Plan or Zoning Map

We find that any comprehensive plan amendment must comply with applicable Statewide Planning Goals, all administrative rules and the Jackson County comprehensive plan as a whole. We incorporate our findings above as though fully set forth herein and find that we have determined that Statewide Planning Goals, the Oregon Administrative Rules and the Jackson County comprehensive plan, as a whole, are complied with by the approval that we are granting. In addition, we find additional specific approval criteria apply under the Jackson County Land Development Ordinance (LDO).

**1. Criterion 3.7.3(C)(1).** This criteria provides that adequate public safety, transportation and utility facilities and services must be provided to the subject property and adequate transportation facilities must be assured. Staff incorporates by reference the analysis under both Goals 11 and 12 and the analysis under the transportation system plan policies above. The findings are that public safety and transportation are adequate or can be made adequate through conditions for the proposed use. As referenced in previous findings, adequate utilities facilities and services can be provided through the existence of electrical power to the McKenzie Freel aggregate property, the use of onsite generators to power electrical crushing equipment and the use of porta-potties for sanitary services. Staff confirms that ample water is available from one of three separate mechanisms on site for dust control purposes. Staff finds that adequate utility facilities and services are provided and that transportation and public safety can be assured.

**2. Criterion 3.7.3(C)(2).** This criterion requires that the land use amendment not prevent implementation of any area of special concern restrictions specified for that area or the county's ability to adopt an ordinance creating such a special area. The proposed aggregate sites and most of the internal access road is within Area of Special Concern 90-1, lands on which development can affect survival of Black-tailed deer or Roosevelt elk herds, Section 7.1.1(C). Staff finds the requirements of 7.1.1(C)(6)(b), *ODFW Approved Alternate Siting Plan* can be met through conditions. A letter from ODFW, Exhibit 72 of Packet 2, contains conditions which will minimize wildlife impacts to the deer and elk winter range habitat. These conditions have been outline previously in this report. An additional condition of approval which applies to the proposed use is that new private roads will be gated between November

and April (where permitted by law) to protect wintering deer and elk. These conditions will meet the purpose of Section 7.1.1(C)(6). Accordingly, this criterion is satisfied.

**3. Criterion 3.7.3(C)(3).** The application does not include the entire McKenzie Freel aggregate property in the comprehensive plan map change. Staff finds that the approval site is outside the urban growth boundary. Staff further finds that the McKenzie Freel aggregate property is entirely in an EFU district. As such, the general rule is that the entire parcel must be included in the comprehensive plan map amendment unless the purpose of the amendment conforms with the criteria of Policy 1 of the Comprehensive Map Designations Element. We find that Policy 1 of the Map Designation Element specifically provides as follows:

*"Amending the map designation of only a portion of a resource designation parcel or tract will not be considered unless the purpose is to limit uses to those justified through the Goal 2 Exceptions procedure, to implement protection of a Goal 5 resource, to establish industrial lands consistent with the provisions of this Plan, or to implement an unincorporated community plan or urban growth management agreement."*

Staff finds that proposed application implements protection of specific Goal 5 mineral and aggregate resources on the McKenzie Freel aggregate property. As such, staff finds that, should the Board approve the rezone and aggregate operations plan, the approval would be in compliance with Policy 1 of the Comprehensive Plan Map Designations Element and that the Board may designate solely the mineral and aggregate related portions of the McKenzie Freel aggregate property with the AR designation.

**4. Criterion 3.7.3(C)(4).** This criterion provides that map amendments outside the urban growth boundaries that will result in a minimum lot size smaller than 10 acres must meet the requirements for Goal 14 exception. Staff finds the application is not creating any new lots. Staff finds that this criterion does not apply.

**5. Criterion 3.7.3(C)(5).** This criterion provides that a zoning map amendment must be consistent with the Comprehensive Plan Map designation. Should the Board find the approval criteria for this Comprehensive Plan Map and Zoning Map Amendment has been met, the amendment would satisfy this standard.

**6. Criterion 3.7.3(C)(6).** This criterion provides that in a Comprehensive Plan Map amendment situation, a community benefit as a result of the map amendment and the community benefit must be clearly demonstrated. We find that neighbors in the general vicinity of the proposed mineral and aggregate sites have expressed concern about noise and traffic effects, dust effects and effects on views in the area. In the conflicts analysis and ESEE portions of these findings, which are incorporated by reference, staff has attempted to acknowledge these concerns and at the same time balance the concerns against the community benefit that will result from having a high quality mineral and aggregate resource identified in a north valley portion of the county. Consistent with the ESEE analysis and conflicts analysis above, the community benefit created by identification and protection of a mineral and aggregate resource on the McKenzie Freel aggregate property outweighs the concerns of the individual opponents in the area related to dust, traffic, noise and views. Consistent with the analysis above, we find that the applicant has taken appropriate steps to

minimize or eliminate these potential negative effects and, should the Board approve the rezone and aggregate operations as conditioned, the approval will provide significant community benefits in excess of any identified negative effects. Staff finds that there is a clear community benefit that will result from an approval of the proposed rezone and aggregate operations plan that we are granting.

**7. Criterion 3.78.3(C)(7).** This criterion lists a number of relevant factors, including topography, geology, hydrology, soil characteristics, climate, vegetation, wildlife, water quality, historical or archaeological resources, scenic resources, noise, open space, existing site grading, drainage, adverse impacts on other properties in the vicinity and any other factors deemed relevant to the application that may be considered in a comprehensive plan change. The relevant factors are discussed below.

Staff finds that the topography has been considered in a number of respects. First, the topography of the area provides access to high quality rock materials. Second, the topography has been used by the applicant to screen the extraction site to the extent possible from the uses in the vicinity. Third, the open topography of the area serves to reduce noise impacts because of a large distance between noise sources and receivers.

With regard to geology, evidence has been submitted determining the sites contain a high quality mineral and aggregate resource and are a significant aggregate resource.

With regard to hydrology, control of run-off from the site can be accomplished onsite through a DOGAMI permit. The applicant has considered extraction of well water through a commercial/industrial 5,000 gallon per day exemption.

With regard to soil characteristics, there is a thin layer of soil that overlies most of the property and the hard basalt underneath which provides the mineral and aggregate resources.

Vegetation has been discussed previously, including removal of vegetation for fire control reasons and use of existing vegetation to screen quarry operations.

The wildlife habitat has been examined and ODFW has determined that through conditions, there will be minimal wildlife impacts from the aggregate operations.

Water quality, in particular run-off from the site, will be preserved through the permitting process with DOGAMI and the applicant shall control all storm water onsite to preserve water quality.

Scenic resources and the affects that have on the views currently enjoyed by neighboring properties has been discussed though the conflicts analysis and ESEE analysis. The way that the resource sites are located will help reduce scenic conflicts and topography will help reduce adverse effects on scenic resources.

Staff and the applicants have extensively considered noise and incorporate herein the analysis, conclusions and findings contained in the conflicts analysis, ESEE analysis and Goal 6.

Open space has been discussed, both in terms of distance between properties and noise receivers and the corresponding effect that the open space has on reducing noise



impacts, as well as the use of open space on the McKenzie Freel aggregate property to provide appropriate buffer space with the least adverse effect to any of the neighboring properties.

Staff has considered the proposed site grading and applicant's use of existing land forms to screen operations on the site to the extent possible.

The applicant will be required to control storm water onsite to eliminate drainage problems.

There has been a significant amount of discussion considering the adverse impacts on other properties in the vicinity, including noise, dust, traffic and visual impacts. We incorporate by reference the consideration of adverse impacts in the conflicts analysis and ESEE analysis.

**B. Criterion: Aggregate Removal (AR) District Section 4.4**

**1. 4.4.5 General Review Criteria**

These General Review Criteria contain the requirement that the proposed mineral and aggregate resource use will not force a significant change nor significantly increase costs of accepted farm or forest practices on surrounding lands devoted to farm or forest use. This is the same standard that is contained in ORS 215.296 and in the Comprehensive Plan, Aggregate and Mineral Resources Implementation Strategy M. Staff incorporates by reference the analysis above under Goal 3, the conflicting use analysis, as well as the analysis under Jackson County Comprehensive Plan Aggregate and Mineral Resources Implementation Strategy M. Staff reaffirms the conclusion that the proposed aggregate use will not force significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use and that the proposed use will not significantly increase the cost to accepted farm or forest practices on lands devoted to farm or forest use. Staff finds that these general review criteria are satisfied.

**2. 4.4.8 Mineral, Aggregate, Oil and Gas Use Regulations**

This provision of section of Jackson County Land Development Ordinance is intended to make sure that all necessary operating permits, approvals, reclamation plans and site preparation measures are taken care of before commencement of the mining, crushing, stockpiling or processing of mineral and aggregate resources. The applicable criteria are addressed below.

*1. All necessary County and state permits have been obtained, and a current Department of Geology and Mineral Industries (DOGAMI) operating permit has been issued. Equipment testing necessary to obtain permits is allowed.*

This will be a condition of approval.

*2. All facets of the operation will be conducted in a manner that complies with applicable DEQ air quality, water quality and noise standards, and in conformance with the requirements of the DOGAMI permit for the site.*

This will be a condition of approval.

*3. A site reclamation plan, approved by DOGAMI, has been submitted for inclusion in Planning Department records. Such plan must return the land to natural condition, or return it to a state compatible with land uses allowed in the zoning district or otherwise identified through the Goal 5 review process.*

Prior to initiating the aggregate operations, a DOGAMI site reclamation plan will be submitted to the Planning Department. The plan must return the land to natural condition, or return it to a state compatible with land uses allowed in the zoning district or otherwise identified through the Goal 5 review process. The Goal 5 review process has determined that upon depletion of the aggregate resource, the land will be use for farm, forest, and/or wildlife habitat.

*4. A written statement from the County Road Department and/or ODOT has been submitted verifying that the public roads that will be used by haul trucks have adequate capacity and are, or will be, improved to a standard that will accommodate the maximum potential level of use created by the operation. The property owner or operator is responsible for making all necessary road improvements, or must pay a fair share for such improvements if agreed to by the County Road Department or ODOT.*

This will be a condition of approval.

*5. On-site roads and private roads from the operating area to a public road have been designed and constructed to accommodate the vehicles and equipment that will use them, and meet the following standards:*

*a) All access roads within 100 feet of a paved public road are paved, unless the operator demonstrates that other methods of dust control will be implemented.*

*b) All unpaved roads that will provide access to the site or that are within the operating area will be maintained in a dust-free condition at all points within 250 feet of a dwelling or other identified conflicting use.*

The applicant has indicated a willingness to pave the access road within 400 feet of Hwy 62 to control track-out onto Hwy 62, should ODOT require this condition. Staff find this to be a reasonable and prudent condition to control track-out and recommends the Board require the applicant to pave the access road within 400 feet of Hwy 62.

A condition of approval will require the internal access road to be maintained in a dust-free condition at all points within 250 feet of a dwelling or other identified conflicting use.

*6. If the operation will include blasting, the operator has developed a procedure to ensure that a notice will be mailed or delivered to the owners and occupants of all residences within one-half mile of the site at least three working days before the blast. The notice must provide information concerning the date and time that blasting will occur, and must designate a responsible contact person for inquiries or complaints. Failure to notify neighbors and the County before blasting is a violation of this Ordinance for which a citation may be issued. Notice will be deemed sufficient if the operator can show that the notices were mailed or delivered, even if one or more of the households within the notice area did not receive the notice.*

The aggregate operation will include blasting and this will be a condition of approval.

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7. *The operation is insured for a minimum of \$500,000 against liability and tort arising from surface mining, processing, or incidental activities conducted by virtue of any law, ordinance, or condition. Insurance shall be kept in full force and effect during the period of such activities. Evidence of a prepaid policy of such insurance which is in effect for a period of one year shall be deposited with the County prior to commencing any operations. The owner or operator shall annually provide the County with evidence that the policy has been renewed.*

Prior to initiating aggregate operations, the operator shall provide proof of insurance for a minimum of \$500,000 against liability and tort arising from surface mining, processing, or incidental activities conducted by virtue of any law, ordinance, or condition. Insurance shall be kept in full force and effect during the period of such activities. Evidence of a prepaid policy of such insurance which is in effect for a period of one year shall be deposited with the County prior to commencing any operations. The owner or operator shall annually provide the County with evidence that the policy has been renewed.

8. *The operation will observe the following minimum setbacks except where the operation is lawfully preexisting and encroachment within the prescribed setbacks has already occurred:*

- a) *No extraction or removal of aggregate/minerals will occur within 25 feet of the right-of-way of public roads or easements of private roads.*
- b) *Processing equipment, batch plants, and manufacturing and fabricating plants will not be operated within 50 feet of another property or a public road right-of-way, or within 200 feet of a residence or residential zoning district, unless written consent of the property owner(s) has been obtained.*

This will be a condition of approval.

9. *If the aggregate removal and surface mining operation will take place within the Floodplain Overlay the requirements of Section 7.1.2 have been met.*

The aggregate operations will not occur within a mapped 100 year floodplain and this requirement does not apply.

10. *Mining and processing activities, including excavated areas, stockpiles, equipment and internal roads, will be screened from the view of dwellings, scenic resources protected under ASC 90-9, and any other conflicting use identified through the Goal 5 process or Type 3 review. Screening may be natural or may consist of earthen berms or vegetation which is added to the site. If vegetation is added, it shall consist of alternating rows of conifer trees planted six feet on center and a height of six feet at the commencement of the operation. An exemption to the screening requirements may be granted when the operator demonstrates any of the following:*

- a) *Supplied screening cannot obscure the operation due to local topography.*
- b) *There is insufficient overburden to create berms, and planted vegetation will not survive due to soil, water, or climatic conditions.*
- c) *The operation is temporary and will be removed, or the site will be reclaimed within 18 months of commencement.*

*d) The owner of the property containing the use from which the operation must be screened, has signed and recorded a restrictive deed declaration acknowledging and accepting that the operation will be visible and that the operator will not be required to provide screening.*

Section 4.4.8(A)(10) requires consideration for screening of mining and processing activities from dwellings, identified scenic resources with overlay protection, and other conflicting uses identified in through the Goal 5 process. Staff finds that no properties in the area are protected under an ACS 90-9 overlay, although adjacent stretches of Highway 62 are characterized by ODOT as a scenic highway. The applicant has used existing ridge lines to screen the mining and processing activities from view of Highway 62 to the west. Staff incorporates the discussion analysis of scenic view issues and conflict analysis in the ESEE analysis. Staff further finds that applicant will use existing topographical features such as ridges and existing hummocks to screen the extraction site to the greatest extent possible. However, because of the layout of the McKenzie Freel property and the steep slopes of that property, as well as the steep slopes on the southerly side of Butte Falls Highway, staff finds it is impossible to screen mining and processing activities on the McKenzie Freel aggregate property from the view of dwellings, protected scenic resources (if any) and other conflicting uses identified in the Goal 5 process. Staff finds that that under provisions of LDO 4.4.8(A)(10) that an exemption may be granted to screening requirements when the operator demonstrates that screening cannot obscure the operation due to local topography. Staff finds, as indicated above, that such screening is impossible due to the topography of both the McKenzie Freel aggregate property and the surrounding properties. As such, the Board may grant an exemption from the screening requirements under this provision. However, staff further finds that the applicant has indicated that it will use strategically located stockpiles and will construct berms on each of the mining and processing sites and these berms and stockpiles should be located as indicated on the applicant's site plan. Staff finds that should the Board grant an exemption from the screening requirements under this provision, a condition will require the operator to use existing topographic features, combined with the use of berms and stockpiles as shown on the applicant's site plan, to provide screening.

*11. Existing trees and other natural vegetation adjacent to any public park, residential zoning district, or parcel on which a dwelling is situated will be preserved for a minimum width of 25 feet along the boundary of the property on which the operation is located.*

This will be required as a condition of approval.

*12. Operations will observe the following hours of operation:*

*a) Mining, processing, and hauling from the site are restricted to the hours of 6 a.m. to 7 p.m. Monday through Saturday. The hours of operation do not apply to hauling for public works projects.*

*b) Neither mining, processing, nor hauling from the site will take place on Sundays or the following legal holidays: New Year's Day, Memorial Day, July 4, Labor Day, Thanksgiving Day, and Christmas Day.*

*c) An exemption to the hours of operation may be requested. Notice of the proposed change in operating hours must be provided to all property owners within 1,000 feet radius of the aggregate removal or surface mining operation, to residences within one-half*

*mile of the site, and to owners of property adjacent to private site access roads. If no request for a public hearing is made within 12 calendar days of mailing said notice, the operating hours can be changed as requested by the operator. If a request is made for a public hearing, adjustment of standard operating hours shall be determined by the Hearings Officer, subject to findings that the proposal is consistent with the best interests of public health, safety, and welfare and that the operation will not conflict with other land uses.*

The applicant has proposed hours of operation from 0700 to 1800, Monday through Saturday, with no operation on Sundays or the following holidays: New Year's Day, Memorial Day, July 4, Labor Day, Thanksgiving Day and Christmas Day. The hours of operation do not apply to hauling for public works projects. An exemption to the hours of operation may be requested. Notice of the proposed change in operating hours must be provided to all property owners within 1,000 feet radius of the aggregate removal or surface mining operation, to residences within one-half mile of the site, and to owners of property adjacent to private site access roads. If no request for a public hearing is made within 12 calendar days of mailing said notice, the operating hours can be changed as requested by the operator. If a request is made for a public hearing, adjustment of standard operating hours shall be determined by the Hearings Officer, subject to findings that the proposal is consistent with the best interests of public health, safety, and welfare and that the operation will not conflict with other land uses.

Jackson County may permit emergency extraction under the requirements of Section 4.4.8(B) of the 2004 Land Development Ordinance.

#### **V. PROGRAM TO ACHIEVE THE GOAL**

OAR 660-016-0010 and the Map Designation Element for Aggregate Resource Land, along with guidance from DLCD and LCDC, requires Jackson County to develop a Program to Achieve the Goal based on the facts before the county, the analysis of those facts, and determination of the economic, social, environmental and energy consequences. The Map Designations Element text is found below.

**Decision on Program to Provide Goal 5 Protection.** Based on the analysis of ESEE consequences, the County shall make a determination on the level of protection to be afforded each site. Each determination shall constitute a decision to comply with Goal 5 for the specific site, and shall be incorporated into the Comprehensive Plan, and reflected on the County zoning maps, as appropriate. The County shall make one of the following determinations:

i) Protect the resource site fully, allow surface mining. To implement this decision the County shall apply the Aggregate Removal zone. Development and use of the mineral or aggregate resource shall be governed by the standards within the Land Development Ordinance. As part of the final decision, the County shall adopt site-specific policies prohibiting the establishment of conflicting uses within the area designated as the Impact Area surrounding the Extraction Area.

ii) Balance protection of the resource site and conflicting uses, allow surface mining. To implement this decision, the County shall apply the Aggregate Removal zone. Development and use of the mineral or aggregate resource shall be governed by the standards in the Land Development Ordinance and any other site-specific requirements designed to avoid or mitigate the consequences of conflicting uses and adopted as part of the final decision. Development of conflicting uses within the Impact Area shall be regulated by the

Land Development Ordinance and any other site-specific requirements designed to avoid or mitigate impacts on the resource site and adopted as part of the final decision.

iii) Allow conflicting uses, do not allow surface mining. To implement this decision, the County shall not apply the Aggregate Removal zoning district. The site will not be afforded protection from conflicting uses, and surface mining shall not be permitted except through the permit review process in the Land Development Ordinance.

The Board has a substantial amount of evidence in the record to determine the level of protection for the significant aggregate resource on the McKenzie Freel property. Sites A, C, D2, and E have been designated significant aggregate resources in previous decisions by the Board and the remand before the Board does not require a review of the significance determination. The impact area has been identified as 1,500 feet around the aggregate sites as well as the internal access road. The applicant has requested the Board reduce the impact area as shown on Map 1. The Board may reduce the impact area based upon substantial evidence in the record and developed in the course of the Goal 5 process. *Substantial evidence* is considered "that which a reasonable mind might accept as adequate to support a conclusion." *Richardson v. Perales*, 402 U.S. 389, 401 (1971). Following determination of the impact area, the Board must then identify conflicting uses within the impact areas that may negatively impact the aggregate resource. These identified conflicting uses must then be analyzed to determine the economic, social, environmental and energy consequences. Should the Board determine that the record contains substantial evidence showing the applicable criteria are met with regards to Oregon Revised Statutes, Oregon Administrative Rules, the Jackson County Comprehensive Plan, and the Jackson County Land Development Ordinance, staff recommends the Board choose a "3C" decision. This provides for a balance between protection of the resource sites and conflicting uses, and to allow surface mining. Staff requests the Board adopt the conditions attached to this report as part of the decision. The Board may desire to add, delete, or change the conditions, as determined to balance the protection of the resource sites and the conflicting uses.

Should the Board approve this application, staff will prepare an Ordinance reflecting that decision. Should the Board deny rezoning the sites and internal access road to Aggregate Resource Land, staff will prepare an Ordinance reflecting that decision.

JACKSON COUNTY PLANNING DIRECTOR



BY: Michael W. Mattson, Planner II

1-11-06

DATE



**CONDITIONS OF APPROVAL**

**EXHIBIT C**

1. Only one quarry location will be allowed to operate at a time.
2. Use of Jake brakes is prohibited at all times on the site.
3. On-site haul roads shall be constructed to minimize rise in grade.
4. Berms shall be constructed at the edge of each processing area so that they are positioned between the crusher processing area and residential sites (generally to the south). The berm height should be a minimum of 4 feet above the top of any crusher cone or screen part, or approximately 8 feet above the grade of the crushing equipments' lowest elevation, dependent on the height of the equipment.
5. Before operations at Site E commence, operator shall conduct an onsite noise study to determine whether berms are needed on the haul road between Site E and Site D2, and, if so needed, to what height they must be constructed to allow truck traffic to meet DEQ standards in effect at the date of this approval. This noise study shall also determine what noise control measures (e.g. berms, enclosures or screens for equipment, etc), if any, are needed to meet the DEQ standards in effect on the date of this approval for the building site on 351E(6), tax lot 2700 (currently known as the Machado property).
6. Hours of operation shall be 7 a.m. to 6 p.m., as proposed by the applicant, Monday through Saturday, with no operation on Sundays or the following holidays: New Year's Day, Memorial Day, July 4<sup>th</sup>, Labor Day, Thanksgiving Day, and Christmas Day. The hours of operation do not apply to hauling for public works projects. An exemption to the hours of operation may be requested. Notice of the proposed change in operating hours must be provided to all property owners within 1,000 feet radius of the aggregate removal or surface mining operation, to residences within one-half mile of the site, and to owners of property adjacent to private site access roads. If no request for a public hearing is made within 12 calendar days of mailing said notice, the operating hours can be changed as requested by the operator. If a request is made for a public hearing, adjustment of standard operating hours shall be determined by the Hearings Officer, subject to findings that the proposal is consistent with the best interests of public health, safety, and welfare and that the operation will not conflict with other land uses. Jackson County may permit emergency extraction under the requirements of Section 4.4.8(B) of the 2004 Land Development Ordinance.
7. The operator shall locate the diesel generator trailer at all processing sites so that its open end points away from the residences and install a residential quality exhaust muffler on the diesel generator.
8. The operator shall locate the rock crusher and screens at the lowest possible elevation at each processing site.
9. The operator shall locate the rock storage piles between the crushing equipment and nearby residences. If possible, operator should route the haul dump trucks so that they can be loaded by the front-loader behind a rock storage pile and berm.



10. If blasting is required, operator shall develop a procedure to ensure that a notice will be mailed or delivered to the owners and occupants of all residences within one-half mile of the site at least three working days before the blast. The notice must provide information concerning the date and time that blasting will occur and must designate a responsible contact person for inquiries or complaints. Failure to notify neighbors and the County before blasting is a violation of the LDO for which a citation may be issued. Notice will be deemed sufficient if the operator can show that the notices were mailed or delivered even if one or more of the households within the notice area did not receive the notice. Operator shall choose a blast day when wind velocity will be minimal. Blasting should use the minimum explosive necessary, blast hole stemming and at least a 17 millisecond delay between holes.
11. Gravel amendments shall be added to the main truck haul road and processing areas.
12. The crusher on site shall obtain and maintain a DEQ air contaminant discharge permit and comply with all permit conditions.
13. Truck speed on site shall be limited to no more than 15-25 mph.
14. The operator shall use water or dust binding agents to control dust on haul roads and processing areas. A water truck shall be available for dust control purposes at all times.
15. Operator shall provide proof of a valid ODOT Road Approach Permit. Operator will agree to at least one of the following mechanisms and will agree to as many of the following mechanisms as are required by ODOT, who has jurisdiction over the intersection:
  - A. Installation of adequate and properly sized warning signage for both northbound and southbound traffic.
  - B. Installation of a closed loop automated warning system with flashing lights that is activated by truck traffic at the access point and which warns motorists, both northbound and southbound on Highway 62, that heavy trucks are entering the highway.
  - C. Operator will cooperatively enter a traffic education program with the appropriate state and County entities to achieve a greater awareness of the posted speed limit of Highway 62 in the general area of the proposed site. This may include intermittent use of non-enforcement mobile radar speed control boxes.
  - D. Create, and provide to all drivers entering the site, a driver education program and continuing education about traffic safety issues.
  - E. Make appropriate improvements to the access road where it connects to Highway 62 to ensure the flat entrance for trucks entering the highway and adequate width along the access road to allowing incoming and outgoing truck traffic to easily pass.

- F. Pave the first 400 feet of the access road to the east of Highway 62 and operate a wheel cleaning facility to ensure there is no track out of materials onto Highway 62 that would contribute to safety problems.
16. Operator shall meet biannually with the County Road Engineer and a representative from ODOT to review access related issues to Highway 62 and cooperatively address any safety issues.
  17. Operator shall survey each resource site (A, C, D2 and E) and provide the Jackson County Planning director with copies of the survey data to fix the locations of the resource sites. Site A shall be no larger than 20 acres; Site C shall be no larger than 18 acres; Site D2 shall be no larger than 38 acres and Site E shall be no larger than 41 acres
  18. Operator shall obtain all appropriate County and state permits including DOGAMI operating permits, to include a storm water permit that requires all stormwater to be handled on site.
  19. For deer and elk habitat protection purposes, Sites A and C shall have an annual seasonal closure for extraction activities (blasting and crushing) from January 1 through March 31. Loading and hauling of rock from the sites is permitted during the closure period. Sites D2 and E shall have an annual seasonal closure for extraction activities (blasting and crushing) from November 1 through March 31. Again, loading and hauling of rock from the sites is permitted during the closure periods. Operator shall work with ODF&W for habitat improvement mitigation projects in the form of controlled burns to be conducted on 130 or more acres.
  20. Operator shall obtain and maintain insurance in the minimum amount of \$500,000 against liability and tort arising from surface mining, processing and incidental activities conducted by virtue of any law, ordinance or condition. Insurance shall be kept in full force and effect during the period of such activities. Evidence of a prepaid policy of such insurance which is in effect for a period of one year shall be deposited with the County prior to commencing any operations. The owner or operator shall annually provide the County with evidence that the policy has been renewed.
  21. Operator shall use porta-potties on site.
  22. All facets of the operation shall be conducted in compliance with applicable DEQ air quality, water quality and noise standards, and in conformance with the requirements of the DOGAMI permit for the site. An approved DOGAMI site reclamation plan will be submitted to the County prior to aggregate operations that provides for site reclamation to farm, forest and/or wildlife habitat uses. The plan must return the land to natural conditions, or return it to a state compatible with land uses allowed in the zoning district or otherwise identified through the Goal 5 review process. The Goal 5 review process has determined that upon completion of the aggregate resources, the land will be used for farm, forest and/or wildlife habitat.
  23. Operator shall provide the Planning Department with a written statement from the County Road Department and/or ODOT that verifies that the public roads that will be used by haul trucks have adequate capacity and are, or will be, improved to a standard that will accommodate the maximum potential level of use created by the operation. The

operator is responsible for making all necessary road improvements or must pay a fair share for such improvements if agreed to by the County Road Department or ODOT.

24. All internal access roads will be maintained in a dust-free condition at all points within 250 feet of a dwelling or other identified conflicting use.
25. No extraction or removal of aggregate/minerals will occur within 25 feet of the right-of-way of public roads or easements of private roads.
26. Processing equipment will not be operated within 50 feet of another property or a public road right-of-way or within 200 feet of a residence or residential zoning district, unless written consent of the property owner(s) has been obtained.
27. Existing trees and other natural vegetation adjacent to any public park, residential zoning district, or parcel on which a dwelling is situated will be preserved for a minimum width of 25 feet along the boundary of the property on which the operation is located.
28. The internal access road will be required to meet emergency vehicle access standards of Section 9.5.4 of the LDO.
29. New private roads within the deer and elk winter range habitat will be gated between November and April (where permitted by law) to protect wintering deer and elk.
30. A written statement from ODOT has been submitted verifying that the public roads that will be used by haul trucks have adequate capacity and are, or will be, improved to a standard that will accommodate the maximum potential level of use created by the operation. The property owner or operator is responsible for making all necessary road improvements, or must pay a fair share for such improvements if agreed to by ODOT.
31. The applicant will be required to submit a turning movement analysis, prepared by a registered professional traffic engineer, once every five years to Oregon Department of Transportation and Jackson County Roads Department.
32. Following cessation of all aggregate operations and reclamation of the sites, the property will be appropriately rezoned consistent with the Map Designations Element of the Comprehensive Plan.



## Arsenic

Arsenic is a naturally occurring element that is found in combination with either inorganic or organic substances to form many different compounds. Inorganic arsenic compounds are found in soils, sediments, and groundwater. These compounds occur either naturally or as a result of mining, ore smelting, and industrial use of arsenic. Organic arsenic compounds are found mainly in fish and shellfish. In the past, inorganic forms of arsenic were used in pesticides and paint pigment. They were also used as wood preservatives and as a treatment for a variety of ailments. Today, usage of arsenic-containing pesticides and wood preservatives is restricted.

### How People Are Exposed to Arsenic

People are most likely to be exposed to inorganic arsenic through drinking water and to a lesser extent through various foods. Water sources in some parts of the United States have higher naturally occurring levels of inorganic arsenic than other areas. Other sources of inorganic arsenic exposure include contact with contaminated soil or with wood preserved with arsenic.

People are exposed to organic arsenic by consuming seafood.

### How Arsenic Affects People's Health

Unusually large doses of inorganic arsenic can cause symptoms ranging from nausea, vomiting, and diarrhea to dehydration and shock. Long-term exposure to high levels of inorganic arsenic in drinking water has been associated with skin disorders and increased risks for diabetes, high blood pressure, and several types of cancer. Inorganic arsenic and arsenic compounds are considered to be cancer-causing chemicals. Forms of organic arsenic (for example, arsenobetaine) found in seafood are not known to be toxic to humans.

### Levels of Arsenic in the U.S. Population

In the *Fourth National Report on Human Exposure to Environmental Chemicals (Fourth Report)*, CDC scientists measured total arsenic and seven different forms of arsenic in the urine of 2,557 participants aged six years and older who took part in the National Health and Nutrition Examination Survey (NHANES) during 2003–2004. By measuring arsenic in urine, scientists can estimate the amount of arsenic that has entered people's bodies.

- Inorganic arsenic is converted in the body into the breakdown product (metabolite) called dimethylarsinic acid (DMA). DMA and arsenobetaine were found to be the major components of urinary total arsenic levels.

Finding a measurable amount of the different forms of arsenic in urine does not mean that the levels of arsenic cause an adverse health effect. Biomonitoring studies on levels of arsenic provide physicians and public health officials with reference values so that they can determine whether people have been exposed to higher levels of arsenic than are found in the general population. Biomonitoring data can also help scientists plan and conduct research on exposure and health effects.

**For More Information**

- Agency for Toxic Substances and Disease Registry (ATSDR)  
**Public Health Statement for Arsenic**  
<http://www.atsdr.cdc.gov/toxprofiles/phs2.html>
- Environmental Protection Agency  
**Consumer fact sheet on Arsenic**  
<http://www.epa.gov/safewater/arsenic/index.html>

November 2009

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The Centers for Disease Control and Prevention (CDC) protects people's health and safety by preventing and controlling diseases and injuries; enhances health decisions by providing credible information on critical health issues; and promotes healthy living through strong partnerships with local, national, and international organizations.

**RECEIVED**

SEP 15 2023

JACKSON COUNTY  
DEVELOPMENT SVCS



**O'CONNOR LAW** | LLC

541.702.5350 | 670 G STREET, SUITE B. JACKSONVILLE, OR 97530

September 14, 2023

VIA EMAIL AND HAND DELIVERY

Jackson County Development Services

Attn: Charles Bennett

[BennetCH@jacksoncounty.org](mailto:BennetCH@jacksoncounty.org)

**RE: Supplemental for Application No. 439-23-00001-LRP  
Freel Quarry – Aggregate Zone Change**

Dear Mr. Bennett,

This letter concerns the above application, which is for a proposed zone change for the Freel Quarry. The purpose of this letter is to address Jackson County Land Development Ordinance (“LDO”) Section 3.2.4, which relates to the existing site development plan that was approved by Jackson County for the subject property in 2012 in File No. SIT2012-00008.

The text of LDO 3.2.4 and accompanying findings are below.

**“Approval Criteria**

*“A site development plan reviewed under a Type 2-4 procedure may only be approved if affirmative findings can be made for all the criteria set forth below. The County will require adherence to sound planning principles, while allowing for design flexibility in the administration of these criteria:*

- “A) *The site development plan fully complies, or in the case of a lawful nonconformity complies to the maximum extent feasible, with all applicable requirements of this Ordinance, including the general development regulations of Chapters 8 and 9 and the dedications and improvement requirements of Chapter 10;*” [LDO 3.2.4(A)].

**Applicant’s Findings:** The Applicant respectfully contends that the existing site development plan as approved in File No. SIT2012-00008 complies with all the applicable requirements of the LDO, including Chapters 8 and 9, as evidenced by

- 509 -

Jackson County approving the said site plan in 2012. Chapter 10 relates to Land Division and is not applicable.

- “B) *On properties that are not zoned for farm or forest use, the site development plan adequately protects other property from the potential adverse effects of nonresidential uses;*” [LDO 3.2.4(B)].

**Applicant’s Findings:** The subject property is currently split-zoned Exclusive Farm Use (EFU) and Aggregate Resource (AR). Therefore, this provision is not applicable because it is zoned for farm use.

However, to the extent that this provision could apply because of the split-zoning, the Applicant respectfully contends that the existing site development plan as approved in File No. SIT2012-00008 adequately protects other properties from the potential adverse effects of non-residential uses. Specifically, there are various conditions of approval bound to the subject property, including from Jackson County Ordinance No. 2006-7, File No. SIT2012-00008, and the existing permit from the Oregon Department of Geology and Mineral Industries (“DOGAMI”). Further, the subject application proposes many conditions of approval.

The purpose of many of these conditions is to protect other properties from uses related to the Aggregate Resources, including extraction and transportation. For example, there are proposed limitations on how large the operation can be, the hours of use, sound limitations, limits on blasting, reclamation, etc. As a result, this provision is satisfied.

- “C) *The site design promotes a proper relationship between existing and proposed streets and highways within the vicinity in order to assure the safety and convenience of pedestrian and vehicular traffic; to ensure efficient traffic flow and control; to ensure easy access in cases of fire, catastrophe, and emergency; and so as not to create or contribute to undue traffic congestion on abutting public streets. An assessment of traffic impacts and identification of traffic impact mitigation measures may be required to demonstrate compliance with this criterion;*” [LDO 3.2.4(C)].

**Applicant’s Findings:** The Applicant respectfully contends that the existing site development plan as approved in File No. SIT2012-00008 complies with this provision. In particular, the existing site plan has various conditions of approval relating to the relationship between the subject property and adjacent streets, namely the existing internal access and Highway 62. These include maintaining permits from the Oregon Department of Transportation (“ODOT”), sweeping the intersection of the internal access with the highway, dust controls, and maintaining existing traffic controls, etc. The purpose of all of these is to assure the safety and convenience of

pedestrian and vehicular traffic; to ensure efficient traffic flow and control; to ensure easy access in cases of fire, catastrophe, and emergency; and so as not to create or contribute to undue traffic congestion on abutting public streets.

Lastly, the Applicant notes that Micah Horowitz, Senior Transportation Planner at the ODOT, has indicated his support for the subject application.

“D) *The property owner and applicant have agreed to record in the County Clerk's Office a deferred improvement agreement against the property for any future public road improvements that will be required as a result of the proposed development. Deferral of frontage improvements will be required under the following circumstances: (1) the land served by an existing road is zoned for more intensive development; and (2) only a minor part of potential traffic on the road would be generated by the proposed development. In both cases it will be necessary to obtain a binding commitment to make needed road improvements when warranted;*” [LDO 3.2.4(D)].

**Applicant's Findings:** The Applicant respectfully contends that this provision is not applicable because no new development is proposed. Further, ODOT has not indicated that any new road development is needed.

To the extent this provision is applicable, the Applicant agrees to record a deferred improvement agreement against the property for any future public road improvements that will be required as a result of the proposed development, if any.

“E) *The site is served by sewer or septic, water, fire protection and access sufficient to meet the needs for the use as determined by local service providers.*” [LDO 3.2.4(E)].

**Applicant's Findings:** The subject property is serviced by sufficient utilities to meet the needs for use levels, as indicated by Jackson County's approval of the site plan in 2012. A port-a-potty service, as required by existing conditions of approval, services the subject property. Water is trucked onto the site. The western portion of the property has fire service from Fire District #4 and the eastern portion by the Oregon Department of Forestry. Access is sufficient as determined by the County Roads Department and ODOT. Therefore, this provision is satisfied.

“F) *The development promotes a design that maintains pre-development flow rates (based on a 10-year, 24-hour rainfall level of 3.0 inches), reducing the impacts on the quality of surface and groundwater. To ensure that pre-development flows are maintained, planters, swales, or other vegetated surfaces or*



*mechanical facilities are required to naturally control the flow at the point of discharge. Stormwater facilities shall be sufficient to maintain peak flow rates at their pre-development levels. An assessment, prepared by an Oregon registered professional Engineer, certifying that the stormwater management system proposed is in compliance with this section shall be submitted as part of the application. A Final design of the stormwater management system prepared by an Oregon registered professional Engineer shall be submitted prior to the authorization of building permits.*

*“Development within the Rogue Valley Sewer Services (RVSS) Phase II boundary or those that require an approved Stormwater Pollution Control Plan and NPDES permit are subject to Section 8.8 of this Ordinance.” [LDO 3.2.4(F)].*

**Applicant’s Findings:** The subject property is outside the boundaries of RVSS Phase II. Stormwater facilities exist on the subject property pursuant to the existing site plan (File No. SIT2012-00008), which were developed by Matthew Dusenbury, an Oregon registered professional Engineer. As a result, those approved plans satisfy this provision. No new building permits are sought. The applicant has agreed to comply with all stormwater requirements of DOGAMI and the Oregon Department of Environmental Quality (“DEQ”). As a result, this provision is satisfied.

In conclusion, all the relevant provisions of LDO 3.2.4 were satisfied when the County Approved the 2012 site plan.

If you have any questions, please do not hesitate to contact me.

Yours most sincerely,

**O’CONNOR LAW, LLC**

*/s/ Garrett West*

Garrett K. West, OSB No. 174890  
west@PacificLand.law

GKW:



# Jackson County Oregon

Development Services  
10 South Oakdale Avenue, Room 100, Medford, OR 97501-2902

## RE-NOTICE OF TENTATIVE STAFF DECISION ON APPLICATION FOR A LAND USE PERMIT (FILE NO. SIT2012-00008)

SUBMITTED BY STAFF

Dear Jackson County Property Owner:

On November 19, 2012, Jackson County Development Services approved with conditions an application for a land use permit on the following described property: Township 35 South, Range 1W, Section 02/03, Tax Lot 100 off Highway 62 approximately 5,500 feet north of Butte Falls Highway. The Department's decision (File No. SIT2012-00008) tentatively approves the following use on the above-described property:

*A request for a land use permit to allow for an aggregate operation.*

The following approval criteria were applied in rendering this decision: 3.1.3, 4.4.5, 4.4.8, 7.1.1, 8.5.3(D), 8.6.3 and 9.5.5(A)(11) of the 2004 Jackson County Land Development Ordinance. You have the right to appeal this tentative Departmental decision. If appealed, the County's final decision will be made by the hearings body following a public hearing on the matter.

If you wish to appeal this decision, your written request, ***in conformance with and pursuant to Land Development Ordinance Section 2.7.5(D)(2)(c)***, must be received by the Department at the address listed below no later than December 3, 2012 @ 4 pm, and you must pay an appeal fee of \$250.00. If you prevail at the appeal hearing or upon a subsequent appeal, the initial hearing fee will be refunded to you.

This notice is dated November 19, 2012. The application, staff report, applicable criteria for decision and associated materials are available for inspection at the Department. Copies can be obtained at reasonable cost if requested. Additional information is available by contacting **Tracie Nickel** (Phone: 774-6951 at the Department, or at this address:

**Development Services  
Jackson County Courthouse  
10 South Oakdale Avenue, Rm 100  
Medford Oregon 97501-2902**

Jackson County residents outside the Medford toll free area can call 1-800-452-5021 and enter the following 4-digit extension: 6951.

Attachments: Zoning Map  
Site Plan Map (2 pages)  
Conditions (pgs. 8-12)

cc: Applicant/Agents (w/ complete staff report)

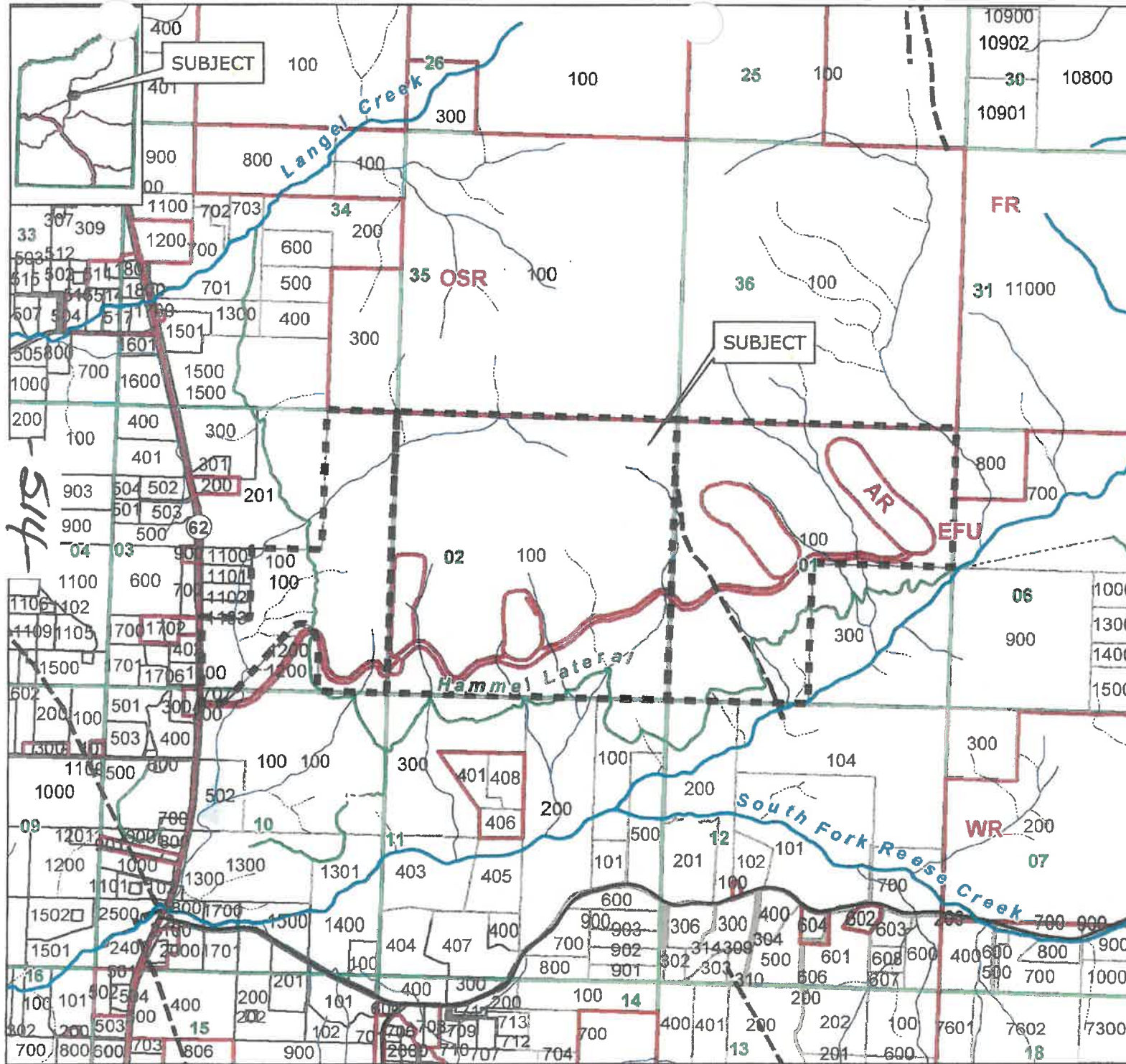
Jackson County Hearings Officer

File No. 439-23-00001-LRP Exhibit # 31.

Offered by: Staff

Date: 9-19-2023 Received by: Pc

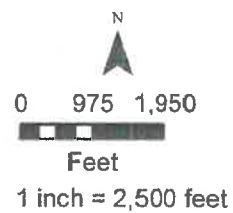
- 513 -



ZONING

APPLICANT:  
FREEL &  
ASSOCIATES, LLC  
35-1W-01 TL 100  
35-1W-02 TL 100  
35-1W-03 TL 100  
SIT2012-00008

- Applegate, Rogue, Bear Creek
- Rivers and Major Streams
- Named Streams
- Minor Streams
- Intermittent Streams
- Underground Streams
- Canals
- Canals - Tunnels / Siphons
- Faults
- County Zoning - Outline
- [1:160] Very Sensitive
- [1:40] Sensitive
- Existing
- All Lakes & Ponds

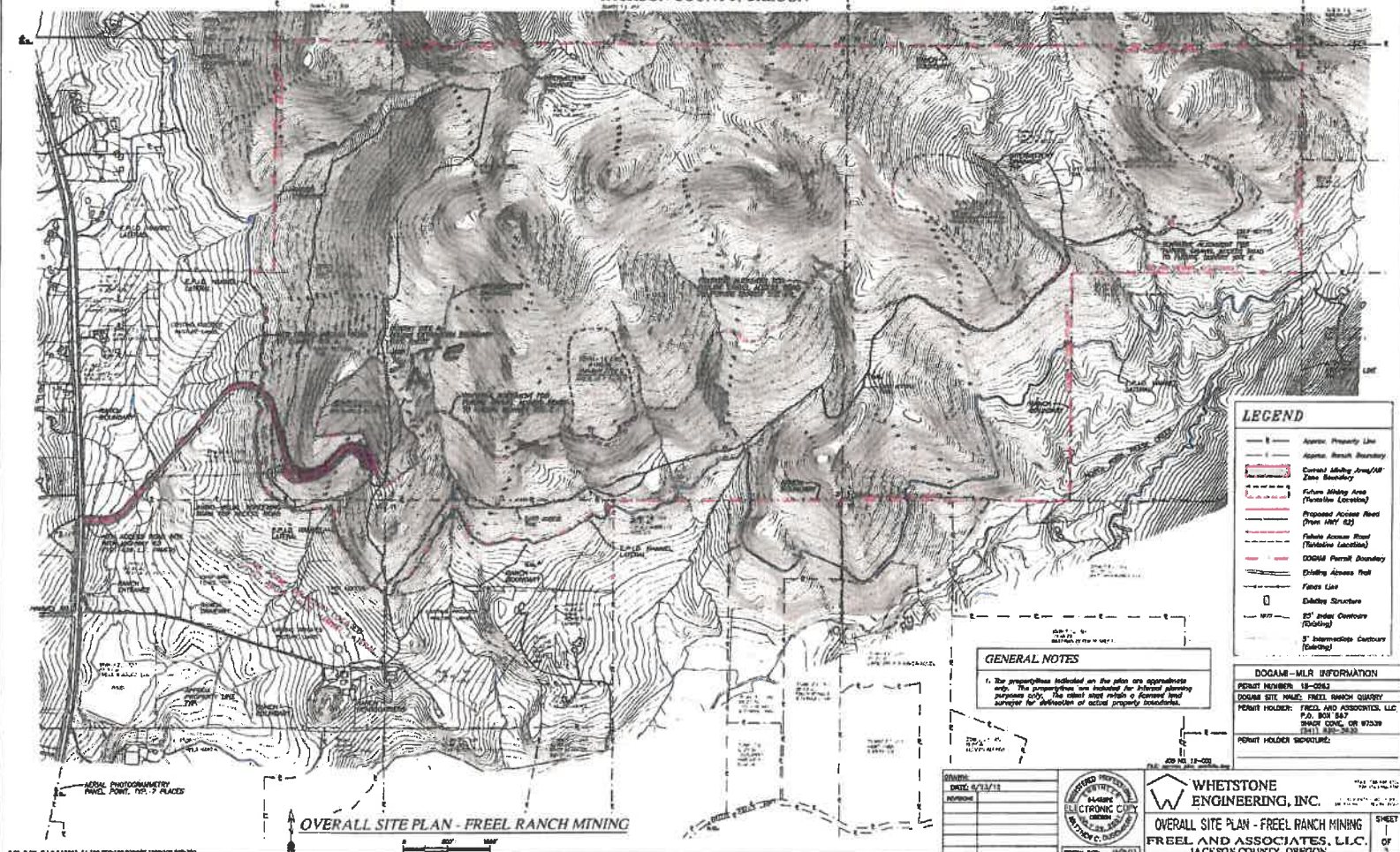


This map is based on a digital database compiled by Jackson County from a variety of sources. Jackson County cannot accept responsibility for errors, omissions, or positional accuracy. There are no warranties, expressed or implied.

Plot date 02/11/2012 Planning Maps, YatesCY

-515-

LOCATED IN SECTIONS 1,2,3,10 AND 11  
TOWNSHIP 35 SOUTH, RANGE 1 WEST, WILLAMETTE MERIDIAN,  
JACKSON COUNTY, OREGON



Conditionally Approved (X)  
 Approved ( )  
 Denied ( )

By: Jacie Date: 11/19/2012  
 Jackson County Planning & Development

aggregate operation  
 SITE A only

-516-

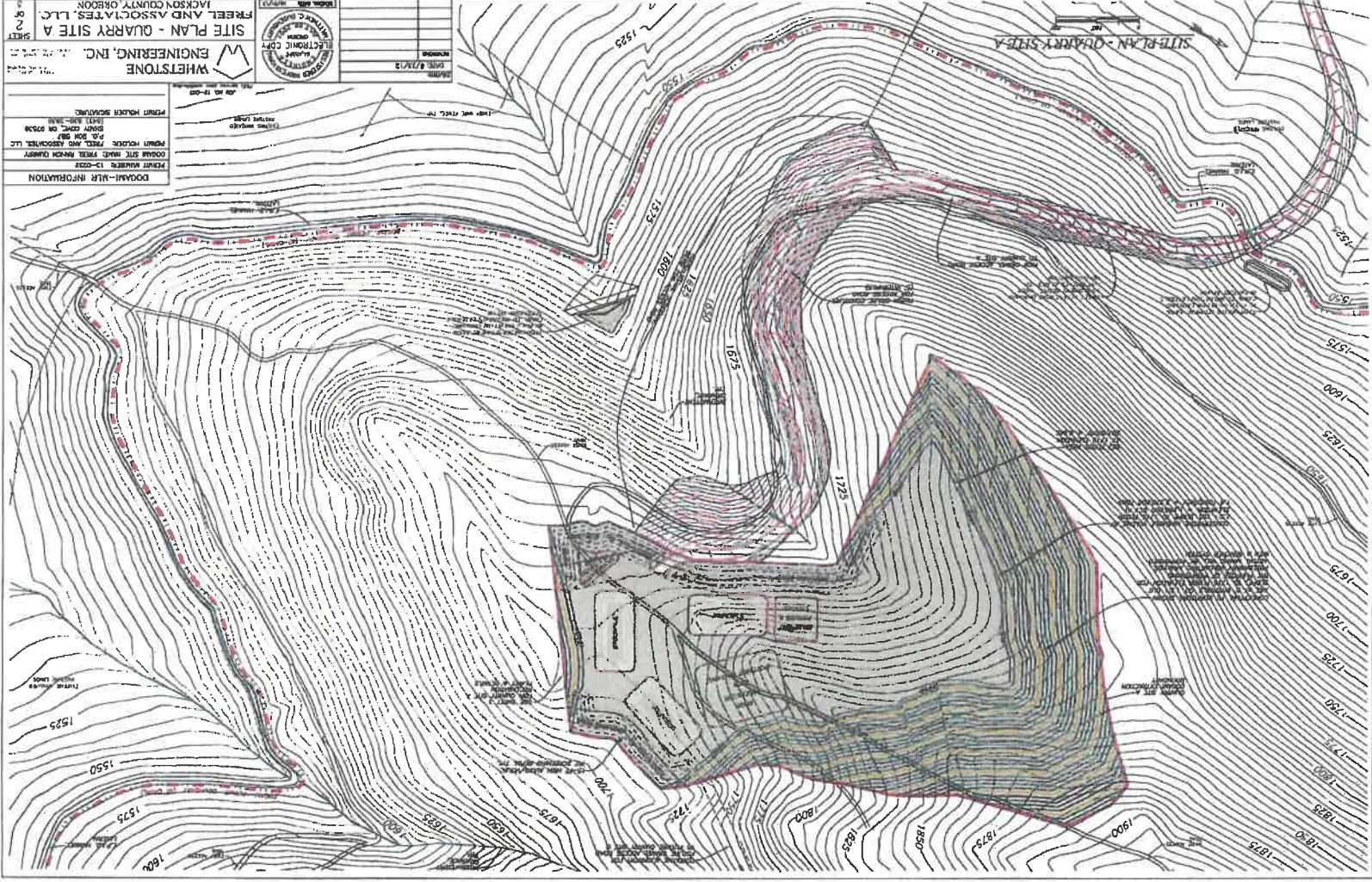
Conditionally Approved  
Approved  
Denied

By: *Joan* Date: 11/19/2012

Jackson County Planning & Development

Aggregate Operation Site A

2 of 2





**JACKSON COUNTY  
DEVELOPMENT SERVICES**

**TYPE 2 LAND USE DECISION**

**STAFF REPORT**

**DEVELOPMENT  
SERVICES**

**Tracie Nickel  
Planner III**

10 South Oakdale Ave.  
Medford, OR 97501  
Phone: (541) 774-6951  
Fax: (541) 774-6791  
nickettl@jacksoncounty.org

**OWNER:** Freel & Associates, LLC  
P. O. Box 587  
Shady Cove Oregon 97539

**FILE:** SIT2012-00008

**AGENT:** Snow Peak Consultants – Frank Schnitzer  
43062 Shingle Mill Road  
Lebanon, Oregon 97355

**AGENT:** Richard Stevens and Associates  
P. O. Box 4368  
Medford, Oregon 97501

**MAP DESCRIPTION:**

TWP: 35	RANGE: 1W	SECTION: 02/03	TAX	100/100
			LOT(s):	
TWP: 35	RANGE: 1W	SECTION: 01	TAX	100
			LOT:	

**LOCATION:** The property is located off Highway 62 approximately 5,500 feet north of Butte Falls Highway.

**NATURE OF APPLICATION:** A request for a land use permit for an aggregate operation.

**STAFF DECISION:** Approval with Conditions

**I. BACKGROUND INFORMATION**

- A. **Tract Size:** 1,343 acres
- B. **Lot Legality:** The subject property was lawfully created through file number SUB2009-00038 and recorded as P-13-2011, the final plat.
- C. **Zoning:** Aggregate Removal and Exclusive Farm Use

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- D. **Fire Protection:** None
- E. **Access:** Highway 62
- F. **Areas of Special Concern:** Deer and Elk Habitat
- G. **Current Land Use:** Farm Use
- H. **Zone Change:** On June 7, 2006, through Board Ordinance No. 2006-7, the Board of Commissioners approved an amendment to change the comprehensive plan map designation from agricultural land to aggregate resource land and the zoning map from exclusive farm use to aggregate removal on portions of property described as 35 South, Range 1 West, Sections 1, 2, and 3, tax lot 100 in all sections. As a result of the zone change conditions were imposed for all future aggregate removal operations. If approved and for efficiency those conditions will carry over into this decision along with any additional conditions that may be required.

## II. KEY ISSUES

- A. Compliance with Section 4.4.8.

## III. APPLICABLE CRITERIA

To approve this application, the County must determine that the application is in conformance with Section 3.1.3, 4.4.5, 4.4.8, 7.1.1, 8.5.3(D), 8.6.3 and 9.5.5(A)(11) of the Jackson County Land Development Ordinance (LDO).

## IV. FINDINGS OF CONFORMANCE WITH THE LAND DEVELOPMENT ORDINANCE

- 1) **Section 3.1.3** sets forth procedure and approval criteria for Type 2 Land Use Permits.

- A) **Procedures**  
*Applications for a Type 2 Land Use Permit will follow the applicable review procedure set forth in Section 2.7 as identified in Table 2.7-1.*
- B) **Approval Criteria**  
*A site development plan may be required pursuant to Section 3.2.4. If a site development plan is required, it shall comply with Section 3.2 and all other applicable provisions of this Ordinance.*

**FINDING/CONCLUSION:** Notice of decision and opportunity for hearing is required. Section 3.2.4 applies to commercial, industrial or public/semi-public uses. The proposal is for an aggregate operation, which according to the use table is a "mineral, aggregate, oil and gas use". Section 3.2 is not applicable to this application.

- 2) **Section 4.4.5** of the (LDO) establishes approval general review criteria for Type 2-4 Permits.

**FINDING/CONCLUSION:** On June 7, 2006 the Jackson County Board of Commissioners deemed this site to be a significant aggregate resource, therefore per the footnote for this section these criteria do not apply.

- 3) **4.4.8 Mineral, Aggregate, Oil and Gas Use Regulations** establishes the following requirements for approval of this request.

**A) Aggregate Mining and Processing**

1) *All necessary County and state permits have been obtained, and a current Department of Geology and Mineral Industries (DOGAMI) operating permit has been issued. Equipment testing necessary to obtain permits is allowed.*

**FINDING:** The applicant has provided evidence that all necessary County and state permits are being sought. Those permits include a grading permit for the access road, a DOGAMI permit, contracts for on-site water and any required DEQ permits. The DOGAMI permit has been submitted and has gone through the internal technical review process through application No. 15-02552. A reclamation plan has been approved, but is awaiting receipt of the security deposit. A condition of any approval shall require that **prior to operation** the applicant to show evidence that all necessary County and state permits have been obtained and a current DOGAMI operating permit has been issued.

2) *All facets of the operation will be conducted in a manner that complies with applicable DEQ air quality, water quality and noise standards, and in conformance with the requirements of the DOGAMI permit for the site.*

**FINDING:** The applicant agrees to this requirement. He enumerates in his findings specific measures for monitoring air quality, water quality and noise standards consistent with the DOGAMI permit. Ongoing compliance with this requirement can be made a condition of any approval.

3) *A site reclamation plan, approved by DOGAMI, has been submitted for inclusion in the Planning Division's records. Such plan must return the land to natural condition, or return it to a state compatible with land uses allowed in the zoning district or otherwise identified through the Goal 5 review process.*

**FINDING:** Through the Goal 5 review process it was determined that upon depletion of the aggregate resource, the land will be used for farm, forest and wildlife habitat. A condition of any approval will require the applicant to submit a site reclamation plan approved by DOGAMI. The applicant has provided evidence that a reclamation plan has been approved, but is awaiting receipt of the security deposit. This will be made a condition of any approval.



4) *A written statement from the County Road Department and/or ODOT has been submitted verifying that the public roads that will be used by haul trucks have adequate capacity and are, or will be, improved to a standard that will accommodate the maximum potential level of use created by the operation. The property owner or operator is responsible for making all necessary road improvements, or must pay a fair share for such improvements if agreed to by the County Road Department or ODOT.*

**FINDING:** A technical memorandum from ODOT dated 8/14/2012 states that the increase of 80 ADT will not cause any capacity problems for the adjoining state facility. Access to the highway system is currently allowed through an existing permit (08A35403) with no need for modification. Commenting on this particular action ODOT the requests the following conditions be imposed on this project:

- A) Installation of a closed loop automated warning system with flashing lights that is activated by truck traffic at the access point and which warns motorists both north and south bound on Highway 62, that heavy trucks are entering the highway.
- B) Make appropriate improvements to the access road where it connects to Highway 62 to ensure a flat entrance for trucks entering the highway and adequate width along the access road to allow incoming and outgoing truck traffic to easily pass.
- C) Coordinate permitting and location of warning signs with Adam Stallsworth (541) 774-6328.

Prior to operation the applicant/operator shall submit evidence in writing from ODOT verifying the above conditions have been satisfied.

5) *On-site roads and private roads from the operating area to a public road have been designed and constructed to accommodate the vehicles and equipment that will use them, and meet the following standards:*

- a) *All access roads within 100 feet of a paved public road are paved, unless the operator demonstrates that other methods of dust control will be implemented.*
- b) *All unpaved roads that will provide access to the site or that are within the operating area will be maintained in a dust-free condition at all points within 250 feet of a dwelling or other identified conflicting use.*

**FINDING:** The applicant agrees to pave all access roads within 100 feet of Highway 62. The nearest dwelling is 1,200 feet from the nearest point of access. Prior to operation the applicant shall submit evidence confirming the pave area has been constructed. With conditions imposed these standards can feasibly be met.

6) *If the operation will include blasting, the operator has developed a procedure to ensure that a notice will be mailed or delivered to the owners and occupants of all*

*residences within one-half (2) mile of the site at least three (3) working days before the blast. The notice must provide information concerning the date and time that blasting will occur, and must designate a responsible contact person for inquiries or complaints. Failure to notify neighbors and the County before blasting is a violation of this Ordinance for which a citation may be issued. Notice will be deemed sufficient if the operator can show that the notices were mailed or delivered, even if one (1) or more of the households within the notice area did not receive the notice.*

**FINDING:** The applicant agrees to notify the neighbors of blasting as described above. This standard can feasibly be met with conditions imposed.

7) *The operation is insured for a minimum of \$500,000 against liability and tort arising from surface mining, processing, or incidental activities conducted by virtue of any law, ordinance, or condition. Insurance shall be kept in full force and effect during the period of such activities. Evidence of a prepaid policy of such insurance which is in effect for a period of one (1) year shall be deposited with the County prior to commencing any operations. The owner or operator shall annually provide the County with evidence that the policy has been renewed.*

**FINDING:** The applicant has indicated compliance with this requirement is feasible. Evidence of insurance and continued insurance coverage shall be made a condition of any approval.

8) *The operation will observe the following minimum setbacks except where the operation is lawfully preexisting and encroachment within the prescribed setbacks has already occurred:*

- a) *No extraction or removal of aggregate/minerals will occur within 25 feet of the right-of-way of public roads or easements of private roads.*
- b) *Processing equipment, batch plants, and manufacturing and fabricating plants will not be operated within 50 feet of another property or a public road right-of-way, or within 200 feet of a residence or residential zoning district, unless written consent of the property owner(s) has been obtained.*

**FINDING:** Site A is located greater than 2,600 feet from the right-of-way of the public road. Processing on Site A is greater than 2,000 feet from the nearest dwelling. The applicant has demonstrated in the application this standard can feasibly be met.

9) *If the aggregate removal and surface mining operation will take place within the Floodplain Overlay the requirements of Section 7.1.2 have been met.*

**FINDING:** No part of the operation is proposed within a Special Flood Hazard Area (SFHA).

10) *Mining and processing activities, including excavated areas, stockpiles, equipment and internal roads, will be screened from the view of dwellings, scenic resources protected under ASC 90-9, and any other conflicting use identified through the*

*Goal 5 process or Type 3 review. Screening may be natural or may consist of earthen berms or vegetation which is added to the site. If vegetation is added, it shall consist of alternating rows of conifer trees planted six (6) feet on center and a height of six (6) feet at the commencement of the operation. An exemption to the screening requirements may be granted when the operator demonstrates any of the following:*

- a) Supplied screening cannot obscure the operation due to local topography.*
- b) There is insufficient overburden to create berms, and planted vegetation will not survive due to soil, water, or climatic conditions.*
- c) The operation is temporary and will be removed, or the site will be reclaimed within 18 months of commencement.*
- d) The owner of the property containing the use from which the operation must be screened, has signed and recorded a restrictive deed declaration acknowledging and accepting that the operation will be visible and that the operator will not be required to provide screening.*

**FINDING:** Staff found, through zone change process and as adopted by Ordinance 2006-7, no properties in the area protected under an ASC 90-9. The applicant has used existing ridge lines to screen the mining and processing activities from view of Highway 62 to the west. Staff further found through the zone change process the applicant will use existing topographical features such as ridges and existing hummocks to screen the extraction site to the greatest extent possible. Because of the layout of the Freel property and the steep slopes of that property, as well as the steep slopes on the southerly side of Butte Falls Highway, Staff found it impossible to fully screen mining and process activities on the Freel aggregate property from the view of dwellings, protected scenic resources (if any) and other conflicting uses identified in the Goal 5 process. As such, the Board granted an exemption from the screening requirement under this provision. However, Staff found that the applicant has indicated that he will use strategically located stockpiles and will construct berms on each of the mining and processing sites. A condition of approval for the zone change requires the applicant/operator to use existing topographic features, combined with the use of berms and stockpiles as shown on the applicant's site plan to provide screening. As a condition of approval for the zone change the Board also required berms be constructed at the edge of each processing area so that they are positioned between the crusher processing area and residential sites. The berm height should be a minimum of 4 feet above the top of any crusher cone or screen part or approximately 8 feet above the grade of the crushing equipment's lowest elevation, dependant on the height of the equipment. This will continue to be a condition of any approval.

*11) Existing trees and other natural vegetation adjacent to any public park, residential zoning district, or parcel on which a dwelling is situated will be preserved for a minimum width of 25 feet along the boundary of the property on which the operation is located.*

**FINDING:** The applicant states that the Freel and Associates, LLC Operating and Reclamation Plan commits to not removing any vegetation outside of the footprint of Quarry Site A for the life of the mine. This will be made a condition of any approval.

- 12) *Operations will observe the following hours of operation:*
- a) *Mining, processing, and hauling from the site are restricted to the hours of 6 a.m. to 7 p.m. Monday through Saturday. The hours of operation do not apply to hauling for public works projects.*
  - b) *Neither mining, processing, nor hauling from the site will take place on Sundays or the following legal holidays: New Year's Day, Memorial Day, July 4, Labor Day, Thanksgiving Day, and Christmas Day.*
  - c) *An exemption to the hours of operation may be requested. Notice of the proposed change in operating hours must be provided to all property owners within 1,000 feet radius of the aggregate removal or surface mining operation, to residences within one-half (2) mile of the site, and to owners of property adjacent to private site access roads. If no request for a public hearing is made within 12 calendar days of mailing said notice, the operating hours can be changed as requested by the operator. If a request is made for a public hearing, adjustment of standard operating hours shall be determined by the Hearings Officer, subject to findings that the proposal is consistent with the best interests of public health, safety, and welfare and that the operation will not conflict with other land uses.*

**FINDING:** Compliance with hours of operation will be made an on-going condition of any approval.

**4) Section 7.1.1 ASC 90-1 Deer and Elk Habitat**

**FINDING:** Site A is located within a wildlife habitat Area of Special Concern for the Big Butte Creek Unit. While mining activities can cause the loss of big game winter habitat, which result in lower deer population numbers and reduce bull and buck ratios, during the zone change process ODFW identified limiting conditions which would minimize wildlife impacts from the use of the aggregate site. Board Ordinance No. 2006-7 outlines mitigation measures as suggested by ODFW. With these mitigation measures it was found the quarry activities for Site A would have minimal impact on winter deer and elk habitat, especially if the quarry closed from January 1 through March 1 for all extraction activities. A condition of any approval shall require that Site A has an annual seasonal closure for extraction activities (blasting and crushing) from January 1 through March 31. Loading and hauling of rock from the sites is permitted during the closure period. Operator shall work with ODF&W for habitat improvement mitigation projects in the form of controlled burns to be conducted on 130 or more acres. With conditions imposed this standard can feasibly be met.

**5) Section 8.5.3(D) Irrigation Ditches and Canals**

*On lands where irrigation district ditches or canals exist, applicants will not establish dwellings or out buildings, septic or drainfields, water wells, or any other obstruction within 30 feet or easement width whichever is greater from the center of the ditch or canal, on the side of the canal or ditch where the maintenance/access road is located.*

*Applicants will be required to sign a deed declaration to allow access and maintenance including:*

- 1) *Mechanical cleaning;*
- 2) *Brush and tree removal; and,*
- 3) *Any repairs deemed necessary to maintain proper water storage, diversion or carriage of water.*

*The County may waive or reduce this setback when the setback is otherwise impracticable due to the specific configuration or use of the property, and such a reduction will not impair maintenance functions as attested by the appropriate irrigation district, or in those cases where no district exists, by downstream users of the ditch.*

**FINDING:** An irrigation ditch easement is recorded at Volume 146 Page 286. This document meets the requirements of this section.

#### **6) Section 8.6.3 Review of Stream Crossing**

*All bridge and stream crossings and removal or fill operations may require a review for compliance with Section 7.1.2, Floodplain Overlay prior to issuance of any development permits. Such projects may be subject to ODFW review for impact on fish and wildlife habitat and the Oregon Division of State Lands (DSL) or Army Corps of Engineers may also require a permit for such operations. Any required state or federal permit must be obtained prior to issuance of County development permits.*

**FINDING:** GIS data shows the access road crossing a drainage or some sort of tributary that drains into the irrigation pond on the ranch property. No floodplain exists in the area of the stream crossing. As stated above stream crossings may be subject to ODFW review and DSL or Army Corps of Engineers may require permits for such operations. Notice of application was sent to all three of these agencies and no response was received by Staff. As a condition of approval the applicant shall obtain any required state or federal permits prior to the issuance of development permits.

#### **V. CONCLUSION**

The proposal has been found to be consistent with the Jackson County Comprehensive Plan and the Land Development Ordinance.

#### **VI. DECISION**

File SIT2012-00008, an application for a Type 2 land use decision to allow for mining of natural resources on property described as Township 35 South, Range 1 West, Section 02/03, Tax Lot 100, is hereby approved subject to the following conditions:

1. **Location:** Mineral extraction is limited to the area shown on the site plan included

with this decision.

2. **Prior to Operation, Permits:** All necessary Federal, State and local permits shall be obtained including a current Department of Geology and Mineral Industries (DOGAMI) operating permit.
3. **Prior to Operation, Site Reclamation Plan:** A site reclamation plan, approved by DOGAMI, has been submitted for inclusion in the Planning Division's records. Such plan must return the land to natural condition, or return it to a state compatible with land uses allowed in the zoning district or otherwise identified through the Goal 5 review process.
4. **Prior to Operation, ODOT requirements installation:** The operator shall, through written verification, show the following ODOT requirements have been satisfied.
  - A) Installation of a closed loop automated warning system with flashing lights that is activated by truck traffic at the access point and which warns motorists both north and south bound on Highway 62, that heavy trucks are entering the highway.
  - B) Make appropriate improvements to the access road where it connects to Highway 62 to ensure a flat entrance for trucks entering the highway and adequate width along the access road to allow incoming and outgoing truck traffic to easily pass.
  - C) Coordinate permitting and location of warning signs with Adam Stallsworth (541) 774-6328.
5. **Prior to Operation, Access Road:** The operator shall demonstrate all access roads within 100 feet of a paved public road are paved, unless the operator demonstrates that other methods of dust control are implemented.
6. **Prior to Operation, Insurance:** Evidence the operation is insured for a minimum of \$500,000 against liability and tort arising from surface mining, processing, or incidental activities conducted by virtue of any law, ordinance, or condition shall be submitted to development services to be included in this record. Insurance shall be kept in full force and effect during the period of such activities. Evidence of a prepaid policy of such insurance which is in effect for a period of one (1) year shall be deposited with the County **prior to commencing any operations**. The owner or operator shall annually provide the County with evidence that the policy has been renewed.
7. **Prior to Operation, Berms:** Berms shall be constructed at the edge of each processing area so that they are positioned between the crusher processing area and residential site (generally to the south). The berm height should be a minimum of 4 feet above the top of any crusher cone or screen part, or approximately 8 feet above the grade of the crushing equipments' lowest elevation, depending on the height of the equipment.
8. **Prior to Operation, Internal Access Road:** The applicant/operator shall provide

evidence that the internal access road meets the standards for Section 9.5.4 (currently Section 9.5.5 as applicable) of the LDO.

9. **On-Going, Blasting:** If blasting is required, the operator shall develop a procedure to ensure that a notice will be mailed or delivered to the owners and occupants of all residences within one-half ( $\frac{1}{2}$ ) mile of the site at least three (3) working days before the blast. The notice must provide information concerning the date and time that blasting will occur, and must designate a responsible contact person for inquiries or complaints. Failure to notify neighbors and the County before blasting is a violation of the LDO for which a citation may be issued. Notice will be deemed sufficient if the operator can show that the notices were mailed or delivered, even if one (1) or more of the households within the notice area did not receive the notice. Operator shall choose a blast day when wind velocity will be minimal. Blasting should use the minimum explosive necessary, blast hole stemming and at least a 17 millisecond delay between holes.
10. **On-Going DOGAMI requirements:** All facets of the operation will be conducted in a manner that complies with applicable DEQ air quality, water quality and noise standards, and in conformance with the requirements of the DOGAMI permit for the site.
11. **On-Going Setbacks from ROW and Other Properties:** No extraction or removal of aggregate/minerals will occur within 25 feet of the right-of-way of public roads. Processing equipment and batch plants will not be operated within 50 feet of another property or a public road right-of-way, or within 200 feet of a residence or residential zoning district, unless written consent of the property owner(s) has been obtained.
12. **On-Going Hours of Operation:** Operations will observe the following hours of operation:
  - a) Mining, processing, and hauling from the site are restricted to the hours of 6 a.m. to 7 p.m. Monday through Saturday. The hours of operation do not apply to hauling for public works projects.
  - b) Neither mining, processing, nor hauling from the site will take place on Sundays or the following legal holidays: New Year's Day, Memorial Day, July 4, Labor Day, Thanksgiving Day, and Christmas Day.
  - c) An exemption to the hours of operation may be requested. Notice of the proposed change in operating hours must be provided to all property owners within 1,000 feet radius of the aggregate removal or surface mining operation, to residences within one-half (2) mile of the site, and to owners of property adjacent to private site access roads. If no request for a public hearing is made within 12 calendar days of mailing said notice, the operating hours can be changed as requested by the operator. If a request is made for a public hearing, adjustment of standard operating hours shall be determined by the Hearings Officer, subject to findings that the proposal is consistent with the best interests of public health, safety, and welfare and that the operation will not conflict with other land uses.

13. **On-Going, Operations Jake brakes:** Use of Jake brakes is prohibited at all times on the site. Signs shall be posted on the access road, prior to operation.
14. **On-Going, Noise Mitigation:** The operator shall locate the diesel generator trailer at the processing site so that its open end points away from residences and install a residential quality exhaust muffler on the diesel generator.
15. **On-Going, Equipment Location/Elevation:** The operator shall locate the rock crusher and screens at the lowest possible elevation.
16. **On-Going, Rock Storage Piles:** The operator shall locate the rock storage piles between the crushing equipment and nearby residences. If possible, operator should route the haul dump trucks so that they can be loaded by the front-loader behind a rock storage pile and berm.
17. **On-Going, Dust Control:** Gravel amendments shall be added to the main truck haul road and processing area.
18. **On-Going, Truck Speed Limit:** Truck speed on site shall be limited to no more than 15-25 mph.
19. **On-Going, Dust Control:** The operator shall use water or dust binding agents to control dust on haul roads and processing areas. A water truck shall be available for dust control purposes at all times.
20. **On-Going, Bi-Annual Roads Safety Check:** Operator shall meet biannually with the County Road Engineer and representative from ODOT to review access related issues to Highway 62 and cooperatively address any safety issues.
21. **On-Going, Turn Movement Analysis:** The applicant/operator shall submit a turning movement analysis, prepared by a registered professional traffic engineer, once every five years to Oregon Department of Transportation and Jackson County Roads Department.
22. **On-Going, Deer and Elk Protection:** Site A shall have an annual seasonal closure for extraction activities (blasting and crushing) from January 1 through March 31. Loading and hauling of rock from the sites is permitted during the closure period. Operator shall work with ODF&W for habitat improvement mitigation projects in the form of controlled burns to be conducted on 130 or more acres.
23. **On-Going, Portable Toilets:** Operator shall use on site portable toilets.
24. **Expiration:** Pursuant to LDO Section 2.6.8 this approval is valid for four (4) years from the date of the final decision and will expire unless development has been initiated, as defined by LDO Section 13.3. This approval may be extended for an additional period not to exceed two (2) years on request.

This decision is limited to the County's review of applicable zoning rules and land use law, as outlined in the Jackson County Comprehensive Plan, the Jackson County Land Development



Ordinance, and the Oregon Administrative Rules and Oregon Revised Statutes relating to land use. Other County, State and Federal agencies may have regulatory review authority for development projects. The decision rendered herein neither implies nor guarantees compliance with the requirements of any other regulatory agency, nor does it guarantee that building or sanitation permits will be issued. It is the property owner's responsibility to ensure that the development complies with the requirements of any other regulatory agency or provisions of law prior to initiating development.

Notice of this decision is being sent to all property owners in the vicinity of this property. They, or the property owner, have the right to request a hearing within 12 days of the date of this decision. This decision will be final once the 12-day period has ended, provided a request for a hearing has not been received.

**JACKSON COUNTY PLANNING DIVISION**



By: Tracie Nickel  
Planner III

Date: November 19, 2012



# JACKSON COUNTY Oregon

## Development Services Comprehensive Planning

Charles Bennett  
Planner III

10 South Oakdale Ave.  
Medford, OR 97501  
Phone: (541) 774-6937  
Fax: (541) 774-6115  
bennetch@jacksoncounty.org

**To:** File: 439-21-00017-PRE  
**From:** Charles Bennett, Planner III  
**Subject:** Pre-Application Summary of Facts  
**Date:** June 24th, 2022

Below is a summary of facts for a Comprehensive Plan Map and Zoning Map amendment to change Comprehensive Plan Map from Agricultural land to Aggregate Resource land and the Zoning Map from Exclusive Farm Use (EFU) to Aggregate Removal (AR), and add a portion of the property (279 acres) to the County's Goal 5 inventory of Significant Aggregate Resources.

**Applicant:** Freel and Associates LLC

**Staff:** Charles Bennett- Planner III  
Dawn Rittiman-Planner III

**Acreage:** 1343.55

**Agents:** Dan O'Connor, O'Connor Law  
Kate McGuire, O'Connor Law

**Map ID:** 35-1W-01-100, 35-1W-02-100  
& 35-1W-03-100

**Applicant's Proposal:** Applicant proposes to modify application (439) 1995-4-CPA-RM1 to expand the Aggregate Removal (AR) Zoning designation by approximately 279 acres.

**Approval Criteria:** See Attachments

**Agency Comments:** See Attachments

**Procedures and Fees:** The purpose of this document, and the Pre-Application process in general, is to summarize the relevant issues and criteria that need to be addressed if and/or when a formal application is submitted for review. This is not to be construed as a decision to approve or deny the proposal. Costs associated with the Pre-Application conference are separate from the actual application costs, and must be paid before the County will accept an application for review. Cost plus overhead with deposit (currently **\$5,196**) must be submitted with the completed application.

The proposed application requires, at a minimum, one public hearing before the Jackson County Planning Commission to obtain a recommendation, and one public hearing before the

**SUBMITTED BY STAFF**

Jackson County Hearings Officer  
File No. 439-23-00001-LRP Exhibit # 32  
Offered by: Staff  
Date: 9-19-2023 Received by: AD

Board of Commissioners (BOC) to adopt a decision. Multiple hearings may be required if the complexity of the proposal requires extensive review by the Commission or Board members.

Staff is required, at a minimum, to: create, track, and log the application file; review the application to determine if adequate information has been provided to deem it complete; provide notice to and respond to inquiries from affected agencies and property owners; prepare a staff report and recommendation to the Planning Commission; attend the public hearing(s) for presentation and technical support; document the proceedings; prepare the Planning Commission's recommendation for adoption; schedule, notice, and prepare the public hearing(s) for the BOC's consideration; attend the BOC hearing(s); provide additional research and findings as needed; document and publish the final County decision; notify the State and other affected parties of the decision as required by law; and follow up as required to any appeal or remand of the decision.

Given the public notice requirements and limited number of available public hearing dates, the above process typically requires over six months to complete. The process is greatly expedited where an applicant provides thorough information relating to the property and surrounding area, and addresses completely how the proposal is consistent with state and local planning policies and approval criteria for the proposed amendment. The applicant should communicate frequently with staff to establish the level or extent of staff involvement expected or desired.

#### **Summary of Discussion Items:**

- Size of the Modification. Applicant first submitted a proposal to expand a majority of the subject property to AR zoning. After the initial meeting applicant reduced the proposal down to approximately 279 acres.
- A modified DOGAMI Permit will be required.
- No comments were received from ODFW or USFW. ODFW intended to be at the meeting, but ultimately did not attend the meeting nor provided comments at this time.
- The proposal requires a detailed aggregate "Significance Test".
- Jackson County has granted a TIS waiver, however an ODOT TIS waiver or study is still required.
- Applicant needs to consider visual impacts from highway 62.
- Amendment would be to the 95-4-CPA-RM-1 application and 439-SIT2012-00008. Carry-over of some conditions.
- Applicant to work out details on addressing/not addressing Site "E".
- Consideration of a Mitigation Plan-Phasing of sites to reduce impacts.
- A Site Plan for all pertinent information and all associated uses required.

RECEIVED

JAN 30 2023

JACKSON COUNTY  
DEVELOPMENT SVCS



O'CONNOR LAW | LLC

541.702.5350 | 670 G STREET, SUITE B, JACKSONVILLE, OR 97530

January 26, 2023

VIA FIRST-CLASS MAIL

Charles Bennett  
Jackson County Development Services  
10 South Oakdale Ave, Room #100  
Medford, Oregon 97501

**RE: Application No. 439-23-00001-LRP  
35-1-W-01-100; 35-1-W-02-100; 35-1-W-03-100**

Dear Mr. Bennett,

This firm represents Freel & Associates, LLC, the owner of those real properties described above. This correspondence follows a Type IV Zoning / Comprehensive Plan Map Amendment application submitted earlier this month regarding the properties. The purpose of this letter is to submit the following clarifications and corrections:

Page 6 of the application at No. 13 mistakenly indicates that there is a well on the properties. This is incorrect as there is no water well on the property. Instead, water is trucked in. The incorrect information related to the well came from the Oregon Water Resources Department's map, but that well is located on a neighboring property. Further, regarding No. 14 on page 6, there is no septic system on the properties. Porta-potties are used in lieu of a septic system.

Pages 29 and 58 of Exhibit "A" of the application mistakenly indicate that the first "100" feet of the access road from Highway 62 is now paved. This should read the first "600" feet are paved.

Thank you for the opportunity to clarify these points. Please reach out to our office with any questions.

Yours most sincerely,

O'CONNOR LAW, LLC

/s/ Garrett West

Garrett K. West, OSB No. 174890  
west@PacificLand.law

Jackson County Hearings Officer

File No. 439-23-00001-LRP Exhibit # 33

Offered by: Garrett West

Date: 9-19-2023 Received by: pc

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**Charles Bennett**

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**From:** Garrett West <west@pacificland.law>  
**Sent:** Friday, July 7, 2023 3:36 PM  
**To:** Charles Bennett  
**Subject:** EXT: Re: File No. 439-23-0001-LRP

**Categories:** Comp Planning

Hello Charles,

This email concerns the Freel Aggregate zone change application.

I see that our deadline to respond to your incompleteness letter is this Sunday and I think that means that it kicks it to Monday. If I have miscalculated the date, and the due date is today, please just deem the application complete. I just got the approval from ODOT for the traffic issues, which I'll be forwarding on to you with other supporting documents on Monday so we can wrap all this up.

Thanks, and have a great weekend!

Garrett West  
Associate Attorney  
670 G Street, Suite B  
Jacksonville, OR 97530  
Phone: (541) 702-5350



The information contained in this e-mail is intended only for the use of the designated recipients named above. This email, and any documents, files or previous e-mails attached to it, may be a confidential attorney-client communication or otherwise privileged and confidential. If you are not the intended recipient, you are hereby notified that you have received this transmittal in error, and that any review, dissemination, distribution or copying of the transmittal is STRICTLY PROHIBITED. If you have received this e-mail in error, please notify us immediately by telephone at 541.702.5350. Thank you.

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Jackson County Hearings Officer  
File No. 439-23-00001-LRP Exhibit # 34  
Offered by: Garrett West  
Date: 9-19-2023 Received by: PC



## Notice of Incomplete Application

### Development Services Comprehensive Planning

Charles Bennett  
Planner III

10 South Oakdale Ave.  
Medford, OR 97501  
Phone: (541) 774-6115  
Fax: (541) 774-6791  
bennetch@jacksoncounty.org

February 9, 2023

O'Connor Law  
Attn. Garrett West  
670 G Street, Suite B  
Jacksonville OR 97530

**RE: File No. 439-23-00001-LRP**

Dear Mr. West,

On January 10, 2023, you submitted a Minor Comprehensive Plan Map and Zoning Map Amendment application to our department. Additional information is required for your application to be deemed complete. Specifically, the following information is required:

1. Please submit an updated Traffic Impact Analysis.
2. Please submit evidence of a demonstrated effort to meet with neighboring properties.
3. Please submit an updated geology report that reflects the entire subject area.
4. Please address "Quarry Site E" in relation this proposal.

Your application will be considered incomplete until we receive the above information. Pursuant to Subsection 2.6.3(D) of the Jackson County Land Development Ordinance (LDO), you have 180 days from the time the application is received in which to submit the additional information or your application will be deemed withdrawn. If you prefer not to submit the requested information, please inform our office in writing, and your application will be accepted as is. Please be aware, however, that failure to submit adequate information showing how your application complies with all of the approval criteria may result in the application being denied. If your plans change you may withdraw your application at any time prior to the County rendering a decision and request a refund. Staff time plus overhead will be deducted from the application fee when a refund is requested.

If you would like to schedule a conference to meet with us to discuss your application, please call me at 774-6115.

Sincerely,

Charles Bennett  
Planner III

Jackson County Hearings Officer

File No. 439-23-00001-LRP Exhibit # 35

Offered by: Staff

Date: 9-19-2023 Received by: PC

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## Notice of Complete Application

### Development Services

**Charles Bennett**  
*Planner III*

10 South Oakdale Ave.  
Medford, OR 97501  
Phone: (541) 774-6115  
Fax: (541) 774-6791  
bennetch@jacksoncounty.org

August 7, 2023

O'Connor Law, LLC  
670 G St. Suite B  
Jacksonville, OR 97530

RE: File No. 439-23-00001-LRP

Dear Dan O'Connor,

The application identified above to change the Comprehensive Plan Map from Agricultural land to Aggregate Resource land and the Zoning Map from Exclusive Farm Use (EFU) to Aggregate Removal (AR), and add a portion of the property (279 acres) to the County's Goal 5 inventory of Significant Aggregate Resources on property legally described as 35-1W-02-100 has been deemed complete as of July 10, 2023.

September 28<sup>th</sup>, 2023 has been scheduled as the initial public hearing before the Jackson County Planning Commission for their consideration of your application. In the meantime, if you have any questions or concerns, please do not hesitate to call me at 774-6115.

Sincerely,

Charles Bennett  
*Planner III*

Jackson County Hearings Officer

File No. 439-23-00001-LRP Exhibit # 36

Offered by: Staff

Date: 9-19-2023 Received by: PC

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NOTARY PAGE

STATE OF OREGON )  
 )  
COUNTY OF JACKSON )

I, Patricia A. Campbell, being first duly sworn, depose and say that on behalf of Jackson County Development Services, I gave notice of public hearing described in the attached notice of hearing by mailing a copy thereof by regular mail (or delivered to county offices) to each of the following named persons at their respective last known addresses, to wit: (as attached)

Each of said copies of the notice was enclosed in a sealed envelope addressed to the persons at the addresses above set forth, with postage thereon fully prepaid and was deposited in the post office at Medford, Oregon, on September 7, 2023, a day at least 20 days prior to the date of hearing set forth in said notice.

Patricia A Campbell  
Signature

Personally appeared before me this 7<sup>th</sup> day of September, 2023, the above named, Patricia A. Campbell, who acknowledged the foregoing affidavit to be her voluntary act and deed.



Holly Marie Carothers  
Notary Public for Oregon  
My Commission Expires: January 19, 2027

NOTICE OF PUBLIC HEARING SENT TO: APPLICANT, AGENT, AFFECTED AGENCIES & PROPERTY OWNERS AS DESCRIBED IN 2004 LDO SECTION 2.7.5 (B)(2)(d) AND MEDIA.

NAME: FREEL & ASSOCIATES LLC

FILE NO: 439-23-00001-LRP

Jackson County Hearings Officer  
File No. 439-23-00001-LRP Exhibit # 37  
Offered by: Stapp  
Date: 9-19-2023 Received by: PC





## NOTICE OF PUBLIC HEARING

**NOTICE IS HEREBY GIVEN** that the Jackson County Planning Commission will hold a public hearing on **Thursday, September 28, 2023 at 9:00 a.m.** in the Jackson County Courthouse Auditorium. The purpose of the public hearing will be:

Consideration of an application for a Comprehensive Plan Map Change from Agricultural Land to Aggregate Resource Land and the Zoning Map Change from Exclusive Farm Use (EFU) to Aggregate Removal (AR), and add a portion of the property to the County's Goal 5 inventory of Significant Aggregate Resource Sites, and located at 16568 Highway 62, Eagle Point, OR. The property is further described as Township 35 South, Range 1 West, Section 01, 02 and 03 Tax Lots 100. The criteria for reviewing this application are attached. The application was submitted by Freel & Associates through their agent O'Connor Law Group. File No. 439-23-00001-LRP.

Oregon law and Section 2.7.6(E)(6) of the 2004 Jackson County Land Development Ordinance state that testimony, arguments, and evidence must be directed toward the approval criteria, or other criteria in the Ordinance which the person believes apply to the application. Failure to raise an issue at the hearing, in person or by letter, or failure to provide sufficient specificity to afford the hearing body an opportunity to respond to the issue precludes an appeal to the Land Use Board of Appeals (LUBA) based on that issue. A copy of the rules (Land Development Ordinance Section 2.8) governing conduct of the hearing and submission of evidence and testimony at the hearing may be inspected at the Planning Department at no cost any time prior to the hearing and can be provided at reasonable cost.

**A SIGN UP SHEET WILL BE PROVIDED AT THE HEARING AND WHEN YOUR NAME IS CALLED YOU MAY GIVE YOUR ORAL TESTIMONY. ORAL TESTIMONY IS LIMITED TO FIVE MINUTES PER PERSON. ADDITIONAL TESTIMONY (BEYOND THE FIVE MINUTE LIMIT) MAY BE SUBMITTED IN WRITING.**

**NOTICE TO MORTGAGEE, LIENHOLDER, VENDOR, OR SELLER: ORS CHAPTER 215 REQUIRES THAT IF YOU RECEIVE THIS NOTICE IT MUST BE PROMPTLY FORWARDED TO THE PURCHASER.**

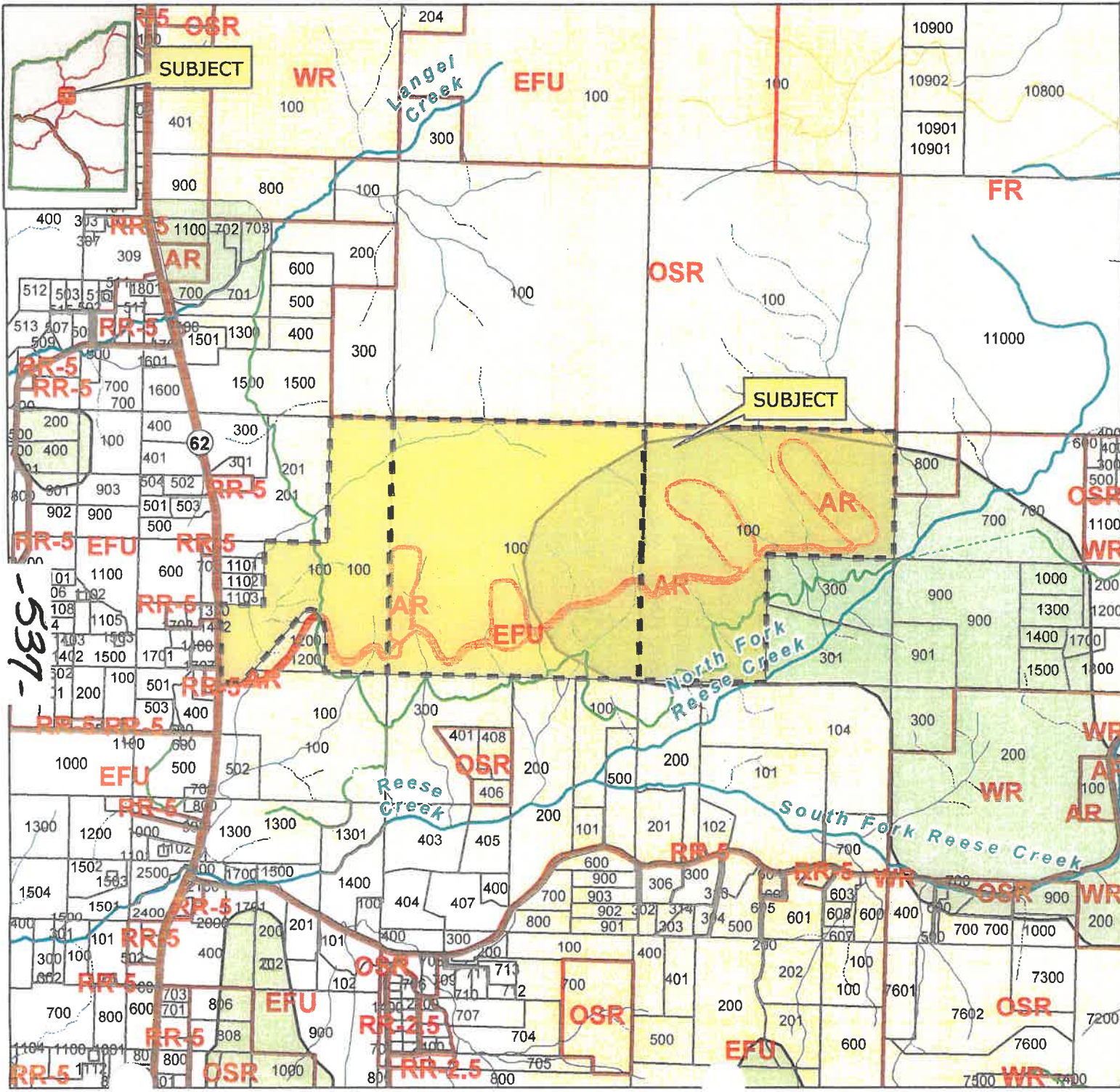
A copy of the application, all documents and evidence relied upon by the applicant and applicable criteria is available for inspection at no cost and will be provided at reasonable cost, if requested. A copy of the record will be available for inspection seven days prior to the hearing and will be provided at reasonable cost, if requested. Failure to specify which ordinance criteria an objection is based on also precludes your right of appeal to LUBA on that criterion. Additional information is available by contacting **Charles Bennett** at Development Services, Room 100, 10 South Oakdale, Medford, Oregon 97501. Telephone: Medford 541-774-6115.

Ted Zuk, Development Services Director  
JACKSON COUNTY PLANNING COMMISSION

*If an accommodation, auxiliary aid, or service is needed to participate in a County meeting, please contact the Human Resources Office at [hr@jacksoncounty.org](mailto:hr@jacksoncounty.org) or 541-774-6036 or TTY/TDD 711 or 800 735-2900. Requests made at least 48 hours prior to the meeting, preferably in writing, will assist County staff in providing the accommodation.*

Attachments: Zoning Map  
Tentative Site Plan  
Criteria

-536-



ZONING

APPLICANT:  
FREEL & ASSOCIATES  
35-1W-01 TL 100  
35-1W-02 TL 100  
35-1W-03 TL 100  
439-23-00001-LRP

Legend

- County Zoning - Outline
- Applegate, Rogue, Bear Creek
- Rivers and Major Streams
- Named Streams
- Minor Streams
- Intermittent Streams
- Underground Streams
- Canals
- Canals - Tunnels / Siphons
- Rivers
- [1:160] Very Sensitive
- [1:40] Sensitive
- Existing
- Aggregate Impact Areas

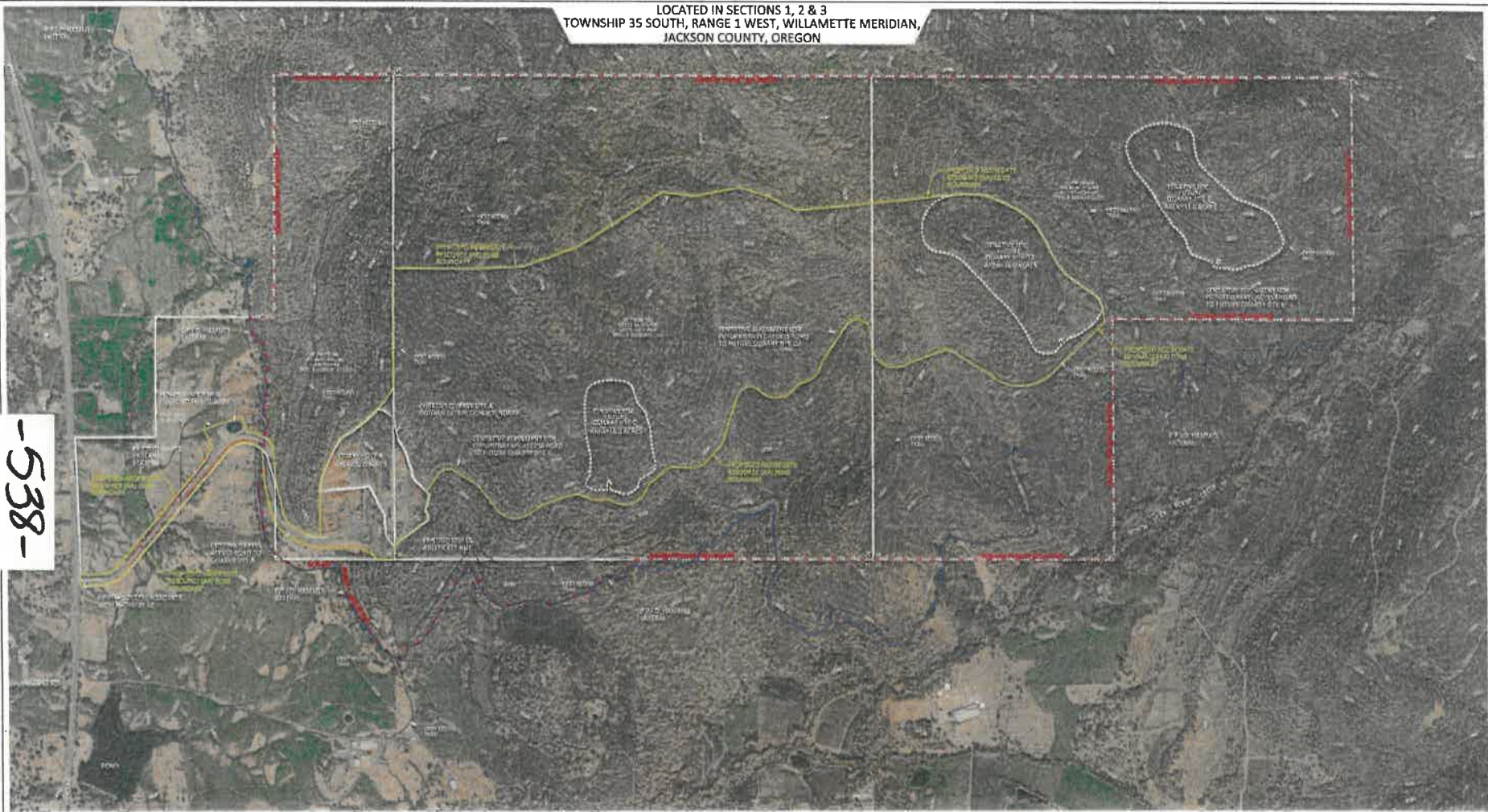


1 inch = 2,800 feet

This map is based on a digital database compiled by Jackson County from a variety of sources. Jackson County cannot accept responsibility for errors, omissions, or positional accuracy. There are no warranties, expressed or implied.

LOCATED IN SECTIONS 1, 2 & 3  
TOWNSHIP 35 SOUTH, RANGE 1 WEST, WILLAMETTE MERIDIAN,  
JACKSON COUNTY, OREGON

-538-



**SITE DATA**  
TOTAL SITE AREA = 3,372 ACRES (3 TALS LOTS)  
DOGAMI PERMIT BOUNDARY AREA = 1,136 ACRES  
CURRENT AIR ZONING BOUNDARY AREA = 156 ACRES  
PROPOSED AIR ZONING BOUNDARY AREA = 435 ACRES

**LEGEND**  
PROPERTY LINE  
DOGAMI/PERMIT BOUNDARY

**CONTOURS**  
MAJOR CONTOUR INTERVAL = 100'  
MINOR CONTOUR INTERVAL = 20'

**EXISTING GROUND MAJOR CONTOUR**  
EXISTING EXPOSURE  
MINOR CONTOUR

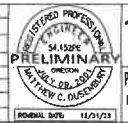
(DATA & BUILT LEGAL DATA PROVIDED ON 10 AUGUST 2001)  
CREATOR: GAVIN PARR-ASHLAND ZONE HORIZONTAL  
COORDINATE SYSTEM & HAYWARD VERTICAL DATUM  
OCTOBER 06, 2000 (NO PHOTO PROVIDED ON 10 MARCH  
2011) (REVISION: SHAWY PARR-ASHLAND ZONE HORIZONTAL  
COORDINATE SYSTEM)

TAB LOT 54496, 35 5V 01, 35 5V 02 & 35 5V 03

**PROPOSED SITE PLAN - W/ PROPOSED AGGREGATE RESOURCE (AR) BOUNDARY**  
**FREEL RANCH QUARRY**

**GENERAL NOTES**  
1. The assumptions indicated on the plan are approximate only. The assumptions are included for purposes of showing approximate work. The client shall retain a licensed land surveyor for delineation of actual property boundaries.

DOGAMI-MLR INFORMATION	
PERMIT NUMBER: 13-0502	DRAWN: mod
DATE: 03/04/22	
SITE NAME: FREEL RANCH QUARRY	
PERMIT HOLDER: FREL AND ASSOCIATES, LLC 1750 OLGA WATSON ROAD, SUITE 202-300 MEDFORD, OR 97504 541-753-2343	
PERMIT HOLDER SIGNATURE:	



**WHETSTONE ENGINEERING, INC.**  
PROPOSED SITE PLAN - W/ PROPOSED AR BOUNDARY - FREEL RANCH QUARRY  
**FREL AND ASSOCIATES, LLC**  
JACKSON COUNTY, OREGON

206 NO. 11 RD.  
P.O. BOX 1000  
MEDFORD, OR 97504  
OFFICE: (541) 864-6244  
WWW.WHETSTONE.COM  
813 ALASKA STREET  
CORVALLIS, OREGON 97331

Exhibit "F" Page 1 of 1  
SHEET 2 OF 2

**SUBMITTED BY APPLICANT**

**CRITERIA FOR A COMPREHENSIVE PLAN MAP AND ZONING MAP AMENDMENT TO CHANGE COMPREHENSIVE PLAN MAP FROM AGRICULTURAL LAND TO AGGREGATE RESOURCE LAND AND THE ZONING MAP FROM EXCLUSIVE FARM USE(EFU) TO AGGREGATE REMOVAL(AR), AND ADD A PORTION OF THE PROPERTY TO THE COUNTY'S GOAL 5 INVENTORY OF SIGNIFICANT AGGREGATE RESOURCE SITES**

**FILE: 439-23-00001-LRP**

**Statewide Planning Goals:** Goal 1, Citizen Involvement; Goal 2, Land Use Planning (Part II(c)); Goal 3, Agricultural Lands; Goal 4, Forest Lands; Goal 5, Natural Resources, Scenic and Historic Areas, and Open Spaces; Goal 6, Air, Water, Land Resources Quality; Goal 7, Areas Subject to Natural Disasters and Hazards; Goal 8, Recreational Needs; Goal 9, Economic Development; Goal 10, Housing; Goal 11, Public Facilities and Services; Goal 12, Transportation; Goal 13, Energy Conservation; and Goal 14, Urbanization

**Oregon Administrative Rules:** OAR 660-023-0030, OAR 660-023-0040, OAR 660-023-0050, OAR 660-023-0180, OAR-660-012-0060, OAR 660-016-0030

**Jackson County Comprehensive Plan:**

Map Designations Element, Aggregate Resource Land; Aggregate and Mineral Resources Element, Policies 1, 2 & 3; Transportation System Plan

**Jackson County Land Development Ordinance:** Sections; 3.1.4(B)(2), 3.7.3(C), 10.2.1.

**User's Guide (See JCLDO 2.6.3(A)):** Section 2.6

Jackson County Development Services  
10 South Oakdale Ave., Room 100  
Medford, Oregon 97501  
Phone: (541) 774-6900

439-23-00001-LRP

9/6/2023 8:49:40 AM

351W09 200 (3 lots) 439-23-00001-LRP  
ANDERSON RICK TRUSTEE  
374 HAMMEL RD  
EAGLE POINT, OR 97524

351W03 400 439-23-00001-LRP  
BRAUN LEROY F  
PO BOX 605  
EAGLE POINT, OR 97524

351W10 501 439-23-00001-LRP  
DODGE LAURIE D/JEFFREY S  
214 HAMMEL RD  
EAGLE POINT, OR 97524

351W03 503 439-23-00001-LRP  
ATWATER JANET C  
438 CRESCENT ST  
WALLA WALLA, WA 99362

351W10 300 (3 lots) 439-23-00001-LRP  
BREWER JENNIE E/PAUL SCOTT SR  
16571 HIGHWAY 62  
EAGLE POINT, OR 97524

351W11 200 439-23-00001-LRP  
FINCH NANNA LEE TRUSTEE FBO  
1545 BUTTE FALLS HWY  
EAGLE POINT, OR 97524

351W10 503 439-23-00001-LRP  
AYRES GARY L/AYRES CHARLOTTE  
310 HAMMEL RD  
EAGLE POINT, OR 97524

351W11 300 (6 lots) 439-23-00001-LRP  
COLLIER CARSON ET AL  
16550 HWY 62  
EAGLE POINT, OR 97524

351W11 200 439-23-00001-LRP  
FINCH TIMOTHY K  
1551 BUTTE FALLS HWY  
EAGLE POINT, OR 97524

351W03 504 439-23-00001-LRP  
BAAS GARY/KAREN  
17505 HIGHWAY 62  
EAGLE POINT, OR 97524

351W03 401 439-23-00001-LRP  
CRIMMEY JOSHUA ALLEN ET AL  
17645 HIGHWAY 62  
EAGLE POINT, OR 97524

APPLICANT (5 lots) 439-23-00001-LRP  
FREEL & ASSOCIATES LLC  
1750 DELTA WATERS RD 102-39  
MEDFORD, OR 97504

351W12 101 439-23-00001-LRP  
BATEMAN PETER M TRUSTEE  
2591 BUTTE FALLS HWY  
EAGLE POINT, OR 97524

351W12 102 439-23-00001-LRP  
CUOZZO ALFRED F  
2561 BUTTE FALLS HWY  
EAGLE POINT, OR 97524

351W03 1701 (2 lots) 439-23-00001-LRP  
GILBERT SHAELYN LEAH  
PO BOX 784  
EAGLE POINT, OR 97524

351W12 104 439-23-00001-LRP  
BATEMAN RANCH LLC  
MICHAEL S BATEMAN  
2963 BUTTE FALLS HWY  
EAGLE POINT, OR 97524

351W10 1300 (2 lots) 439-23-00001-LRP  
D ORIO FAMILY TRUST ET AL  
16300 HIGHWAY 62  
EAGLE POINT, OR 97524

351W10 900 439-23-00001-LRP  
GRANGER JAMES S/MARY E  
PO BOX 92  
SHADY COVE, OR 97539

351W03 300 (5 lots) 439-23-00001-LRP  
BERGEN DONALD I TRUSTEE ET AL  
2478 ALAMO COUNTRY CIR  
ALAMO, CA 94507

351W03 501 439-23-00001-LRP  
DEPIERO JANICE A/DAVID J  
17525 HWY 62  
EAGLE POINT, OR 97524

351W11 406 439-23-00001-LRP  
GREELEY DALE ALLEN/GREELEY BR  
1401 BUTTE FALLS HWY  
EAGLE POINT, OR 97524

351W03 700 439-23-00001-LRP  
BERGMAN ROCKY CLIFFORD  
17181 HWY 62  
EAGLE POINT, OR 97524

351W03 201 439-23-00001-LRP  
DIB IRREVOCABLE TRUST 11/13/1  
2478 ALAMO COUNTRY CIR  
ALAMO, CA 94507

351W04 1100 439-23-00001-LRP  
GRESSETT SAMUEL L & JODAY A RE  
FRANK DAN ET AL  
453 ROGUE AIR DR  
SHADY COVE, OR 97539

351W03 1700 439-23-00001-LRP  
BOGDANOFF DANIEL/PATTERSON-  
O  
124 ORCHARD LN  
SHADY COVE, OR 97539

351W10 700 439-23-00001-LRP  
DODENHOFF DALE A  
16301 HIGHWAY 62  
EAGLE POINT, OR 97524

351W12 201 439-23-00001-LRP  
HAAS DUANE L TRUSTEE ET AL  
2265 BUTTE FALLS HWY  
EAGLE POINT, OR 97524

- 540 -

Jackson County Development Services  
10 South Oakdale Ave., Room 100  
Medford, Oregon 97501  
Phone: (541) 774-6900

439-23-00001-LRP

9/6/2023 8:49:40 AM

351W11 500 (2 lots) 439-23-00001-LRP  
HADDEN FAMILY TRUST  
629 VILLAGE BLVD  
INCLINE VILLAGE, NV 89451

351W10 400 439-23-00001-LRP  
KIMICK KEVIN  
120 HAMMEL RD  
EAGLE POINT, OR 97524

351W03 1400 439-23-00001-LRP  
MARTINEN GREG/MARI  
16717 HIGHWAY 62  
EAGLE POINT, OR 97524

351W10 600 (4 lots) 439-23-00001-LRP  
HAMMEL RD LLC  
7420 SW HUNZIKER RD  
TIGARD, OR 97223

351W11 408 439-23-00001-LRP  
KING CHERYL A  
1407 BUTTE FALLS HWY  
EAGLE POINT, OR 97524

351W03 301 439-23-00001-LRP  
MAUCK STEPHEN E/HEATHER  
17710 HIGHWAY 62  
EAGLE POINT, OR 97524

351W03 1103 (4 lots) 439-23-00001-LRP  
HAWKINS MERYL DWAYNE TRUSTEE  
17210 HIGHWAY 62  
EAGLE POINT, OR 97524

351W11 401 439-23-00001-LRP  
KING CHERYL ANN  
1415 BUTTE FALLS HWY  
EAGLE POINT, OR 97524

351W04 900 439-23-00001-LRP  
MC BEE BRETT/BELLE M  
1768 HAMMEL RD  
EAGLE POINT, OR 97524

351W03 1702 439-23-00001-LRP  
HOLZHAUSER LINDA TRUSTEE ET A  
565 TEAKWOOD DR  
EAGLE POINT, OR 97524

351E06 700 439-23-00001-LRP  
KOSER ROBERT  
711 BENNETT AVE  
MEDFORD, OR 97504

341W34 1300 439-23-00001-LRP  
OUR FATHERS RANCH LLC  
SUMMERS HARRY S  
18340 HIGHWAY 62  
EAGLE POINT, OR 97524

351W12 200 439-23-00001-LRP  
HOUSE KAREN  
2299 BUTTE FALLS HWY  
EAGLE POINT, OR 97524

351W03 600 439-23-00001-LRP  
LACY JAMES  
17135 HIGHWAY 62  
EAGLE POINT, OR 97524

351W03 200 439-23-00001-LRP  
PECK ROBERT O  
17630 HIGHWAY 62  
EAGLE POINT, OR 97524

351W03 1707 439-23-00001-LRP  
HUBER SCOTT/PAMELA L  
4804 SEAVIEW AVE  
CASTRO VALLEY, CA 94546

351W03 900 439-23-00001-LRP  
LAMBRECHTSEN BENJAMIN J ET AL  
PO BOX 3356  
CENTRAL POINT, OR 97502

351E06 901 (2 lots) 439-23-00001-LRP  
RAM-SEA ROGUE LLC ET AL  
PO BOX 589  
GOLD HILL, OR 97525

351W03 1300 439-23-00001-LRP  
HUFTILL-BALZER TRUST ET AL  
35 GENEVA ST  
MEDFORD, OR 97504

351W03 1703 (2 lots) 439-23-00001-LRP  
LEHMAN LUKE  
C/O EMILIA LUSARDI  
17095 HIGHWAY 62 100  
EAGLE POINT, OR 97524

351E06 700 439-23-00001-LRP  
RIOS BRIGIDA/SAAVEDRA ANTONIO  
4755 BUTTE FALLS HWY  
EAGLE POINT, OR 97524

351W10 800 439-23-00001-LRP  
HURLEY JOHN TRUSTEE ET AL  
16235 HIGHWAY 62  
EAGLE POINT, OR 97524

351W11 101 439-23-00001-LRP  
LEONARDO HAROLD R/THERESA J  
1955 BUTTE FALLS HWY  
EAGLE POINT, OR 97524

351W04 1106 439-23-00001-LRP  
ROTAR JOHN J JR TRUSTEE ET AL  
1390 HAMMEL RD  
EAGLE POINT, OR 97524

351W09 300 439-23-00001-LRP  
JAMES COY D/DEBORAH A  
628 HAMMEL RD  
EAGLE POINT, OR 97524

351W04 1105 439-23-00001-LRP  
LONGENDYCK KYLE ET AL  
1300 HAMMEL RD  
EAGLE POINT, OR 97524

351W01 300 439-23-00001-LRP  
SAGERT JO R  
PO BOX 2559  
WHITE CITY, OR 97503

- 541 -

Jackson County Development Services  
10 South Oakdale Ave., Room 100  
Medford, Oregon 97501  
Phone: (541) 774-6900

439-23-00001-LRP

9/6/2023 8:49:40 AM

341W34 400 (3 lots) 439-23-00001-LRP  
SUMMERS HARRY S TRUSTEE ET AL  
18340 HWY 62  
EAGLE POINT, OR 97524

AA-G01 439-23-00001-LRP  
MICAH HOROWITZ, DEVELOPMENT  
REVIEW PLANNER  
ODOT REGION 3  
100 ANTELOPE ROAD  
WHITE CITY, OR 97503

JCPC 439-23-00001-LRP  
TOM LAVAGNINO  
2805 PAYNE RD  
MEDFORD, OR 97504

351W03 502 439-23-00001-LRP  
TATE MEGAN M ET AL  
17515 HIGHWAY 62  
EAGLE POINT, OR 97524

AA-G38 439-23-00001-LRP  
JOSH LEBOMBARD  
DLCD-SO OR REGIONAL REP  
37 N. CENTRAL AVE  
MEDFORD, OR 97501

JCPC 439-23-00001-LRP  
RICHARD B THIEROLF  
2 N OAKDALE AVE  
MEDFORD, OR 97501

351W04 1503 (2 lots) 439-23-00001-  
LRP  
TAYLOR MAX S  
1288 HAMMEL RD  
EAGLE POINT, OR 97524

AGENCY 439-23-00001-LRP  
AMANDA PUNTON  
DLCD COASTAL WATER QUALITY  
800 NE OREGON ST  
PORTLAND, OR 97232

JCPC 439-23-00001-LRP  
BRAD BENNINGTON  
PO BOX 1896  
JACKSONVILLE, OR 97530

351W03 500 439-23-00001-LRP  
TERBECK THOMAS  
14790 HIGHWAY 62  
EAGLE POINT, OR 97524

AGENCY 439-23-00001-LRP  
VAUGHN BALZER  
DOGMI  
229 BROADALBIN ST SW  
ALBANY, OR 97321

JCPC 439-23-00001-LRP  
JON ELLIOTT  
21 FLORENCE AVE  
MEDFORD, OR 97504

351E06 800 (4 lots) 439-23-00001-LRP  
BLM  
3040 BIDDLE ROAD  
MEDFORD, OR 97504

AGENT 439-23-00001-LRP  
DANIEL O'CONNOR  
O'CONNOR LAW GROUP  
760 G STREET, STE B  
JACKSONVILLE, OR 97530

JCPC 439-23-00001-LRP  
SARAH WALLEN DALEY  
560 N KEENE WAY  
MEDFORD, OR 97504

351W03 1402 439-23-00001-LRP  
WARD RONNIE C/KRISTINE L  
16739 HIGHWAY 62  
EAGLE POINT, OR 97524

STAFF 439-23-00001-LRP  
TED ZUK, DIRECTOR  
DEVELOPMENT SERVICES

351E06 900 (2 lots) 439-23-00001-LRP  
WRIGHT DEREK M  
4655 BUTTE FALLS HWY  
EAGLE POINT, OR 97524

STAFF 439-23-00001-LRP  
SHANDELL CLARK  
PLANNING MANAGER  
DEVELOPMENT SERVICES

AA-E02 439-23-00001-LRP  
EAGLE POINT IRRIGATION DIST  
PO BOX 157  
EAGLE POINT, OR 97524

STAFF 439-23-00001-LRP  
CHARLES BENNETT  
PLANNER

AA-F02 439-23-00001-LRP  
WYLAN EDWARDS  
OREGON DEPT OF FISH & WILDLIFE  
1495 E GREGORY RD  
CENTRAL POINT, OR 97502

STAFF 439-23-00001-LRP  
PETE PHILBRICK  
CO COUNSEL

# NOTICE OF PUBLIC HEARING

**NOTICE IS HEREBY GIVEN** that the Jackson County Planning Commission will hold a public hearing on **Thursday, September 28, 2023 at 9:00 a.m.** in the Jackson County Courthouse Auditorium. The purpose of the public hearing will be:

Consideration of an application for a Comprehensive Plan Map Change from Agricultural Land to Aggregate Resource Land and the Zoning Map Change from Exclusive Farm Use (EFU) to Aggregate Removal (AR), and add a portion of the property to the County's Goal 5 inventory of Significant Aggregate Resource Sites, and located at 16568 Highway 62, Eagle Point, OR. The property is further described as Township 35 South, Range 1 West, Section 01, 02 and 03 Tax Lots 100. The application was submitted by Freel & Associates through their agent O'Connor Law Group. File No. 439-23-00001-LRP.

Oregon law and Section 2.7.6(E)(6) of the 2004 Jackson County Land Development Ordinance state that testimony, arguments, and evidence must be directed toward the approval criteria, or other criteria in the Ordinance which the person believes apply to the application. Failure to raise an issue at the hearing, in person or by letter, or failure to provide sufficient specificity to afford the hearing body an opportunity to respond to the issue precludes an appeal to the Land Use Board of Appeals (LUBA) based on that issue (ORS 197.763). A copy of the rules (Chapter 2 of the Land Development Ordinance) governing conduct of the hearing and submission of evidence and testimony at the hearing may be inspected at the Planning Department at no cost any time prior to the hearing and can be provided at reasonable cost.

**A SIGN UP SHEET WILL BE PROVIDED AT THE HEARING AND WHEN YOUR NAME IS CALLED YOU MAY GIVE YOUR ORAL TESTIMONY. ORAL TESTIMONY IS LIMITED TO FIVE MINUTES PER PERSON. ADDITIONAL TESTIMONY (BEYOND THE FIVE MINUTE LIMIT) MAY BE SUBMITTED IN WRITING.**

A copy of the application, all documents and evidence relied upon by the applicant and applicable criteria is available for inspection at no cost and will be provided at reasonable cost, if requested. A copy of the record will be available for inspection seven days prior to the hearing and will be provided at reasonable cost, if requested. Failure to specify which ordinance criteria an objection is based on also precludes your right of appeal to LUBA on that criterion. Additional information is available by contacting **Charles Bennett** at Development Services, Room 100, 10 South Oakdale, Medford, Oregon 97501. Telephone: Medford 774-6115.

Ted Zuk, Development Services Director  
JACKSON COUNTY PLANNING COMMISSION

*If an accommodation, auxiliary aid, or service is needed to participate in a County meeting, please contact the Human Resources Office at [hr@jacksoncounty.org](mailto:hr@jacksoncounty.org) or 541-774-6036 or TTY/TDD 711 or 800 735-2900. Requests made at least 48 hours prior to the meeting, preferably in writing, will assist County staff in providing the accommodation.*

---

TO BE PUBLISHED IN THE **WEDNESDAY, SEPTEMBER 13, 2023**, EDITION OF THE ROGUE RIVER PRESS

**BILL TO: Jackson Co Dev Services, 10 S. Oakdale Ave. Rm 100, Medford, OR 97501**

cc: Legal Notices - (**JACKSON CO DEV SERVICES**)  
Upper Rogue Independent, PO Box 900, Eagle Point OR 97524  
Router - Planning Department  
Public/Legal Notices Board





# Oregon

Tina Kotek, Governor

## Department of Land Conservation and Development

Community Services Division

635 Capitol Street NE, Suite 150

Salem, Oregon 97301-2540

Phone: 503-373-0050

Fax: 503-378-5518

[www.oregon.gov/LCD](http://www.oregon.gov/LCD)

Charles Bennet  
Jackson County Planning  
10 South Oakdale Ave, Room 100  
Medford, OR 97501



Letter sent via email to [BennetCH@jacksoncounty.org](mailto:BennetCH@jacksoncounty.org)

September 27, 2023

RE: PAPA 004-23, Local # 439-23-00001-LRP

Dear Mr. Bennett,

The following comments and suggestions are in follow-up to the conversation we had last week on the Freel & Associates LLC application to expand the area of an existing aggregate quarry. Please include this letter in the record for this application.

### *Process clarification*

Jackson County's zoning code is consistent with the standards in DLCD's Goal 5 aggregate rule, OAR 660-023-0180 for, identifying significant aggregate sites and determining if mining can be allowed on such sites. OAR 660-023-0180 supersedes the standard Goal 5 review process in OAR 660-023-0030 through 0050 for most of the review process steps. OAR 660-023-0180(5)(d) requires an analysis like that described in OAR 660-023-0040, only if the applicant does not demonstrate that all impacts to *existing and approved uses* in the impact area can be minimized through site design and operational practices. If mining is allowed, OAR 660-023-0180(7) requires that the process steps in OAR 660-023-0040 and 0050 be used for determining how *new uses* authorized near the quarry will be conditioned so they will not conflict with mining activity authorized by the county.

### *Comments*

The staff report for this plan amendment contains the review steps required, and some additional review steps in consideration of OAR 660-023-0030 through 0050 (a.k.a. the standard Goal 5 process) that are not required. I raise this issue only to set the stage for identifying possible deficiencies in the application. OAR 660-023-0180(5)(b) sets sidebars on what the county can and must consider in an impact analysis when determining if mining can be authorized. To make the review process easy to follow and link findings back to the impact analysis, it's helpful to list potential impacts and then explain what measures will be used to minimize each impact. For instance, if an application states simply that a certain practice will be used to lessen noise from the mining operation, there may not be enough information to evaluate whether all noise sensitive uses in the impact area will experience the same benefit from the mitigating practice. Additional information on the level of noise, the rate of noise dissipation and the

Jackson County Hearings Officer

File No. 439-23-00001-LRP Exhibit # 38.

Offered by: Amarda Puxton, DLCD

Date: 9-27-2023 Received by: PC

544-

distance between a noise generating activity and each noise sensitive use might be needed to determine whether proposed measures are sufficient to minimize all impacts.

Regarding potential noise impacts that could result from the proposal, detailed information was provided in the application for the existing quarry in a noise impact study, dated March 2005, (*Exhibit P – McKenzie-Freel Ranch Rock Quarry Proposal, Noise Impact Study*). This type of information has not been included in the application for the expansion area.

One challenge with the applicant incorrectly organizing information using the standard Goal 5 process is that the impact analysis required under OAR 660-023-0180(5)(b) was conflated with OAR 660-023-0040(5). On Page 50 of *Exhibit A, Supplemental Findings*, the applicant states that the analysis of conflicting uses required by the county's aggregate resource review standard (3)(D), [*Jackson County Comprehensive Plan Map Designation Element*] "Mirrors the standards of OAR 660-023-0040(5). This is incorrect. Standard (3)(D) allows an applicant to demonstrate that identified potential impacts can be minimized. The ability to minimize impacts is demonstrated by describing specific site-plan and operational measures that will be employed. OAR 660-023-0040, an analysis of the economic, social, environmental and energy consequences of a decision to allow, limit, or prohibit conflicting uses (ESEE analysis) is only applied to conflicts that cannot be minimized.

When addressing impacts to big game habitat, in response to review standard (3)(D), the applicant quotes from the ESEE analysis they provided,

The subject property is within the Deer and Elk Winter Range Overlay, but that zone is adequately protected by both the [Land Development Ordinance] and state law. Any future applications for a new or expanded use would be required to address this relevant provision associated with protecting deer and elk habitat.

The applicant does not explain how they will ensure that impacts will be minimized if an expansion of the county's aggregate mining zone is approved, and because impacts are dismissed, the ESEE analysis doesn't address the consequences of expanding the quarry's footprint and impact area into big game habitat.

Although I have attempted to comment on the review process for Freel & Associates LLC's application, I must say that this has been a difficult task because the application is very confusing. On page 19 of *Exhibit A, Supplemental Findings*, the applicant proposes to move the boundary of the subject site northward, yet on page 27 of the *Supplemental Findings* it states that the subject site is not an expansion area. Although the application states repeatedly that it does not propose any actual mining operations, it also contends that the impact mitigating measures approved for the existing site will be used as mining operations progress through the site, and presumably, the expansion area.

Several findings in the county's staff report include the statement, "The applicant proposes to continue to phase each new site so that no greater adverse impacts or activity occurs more than under existing circumstances." While this logic applies to the processing and hauling of material within the boundaries of a previously approved site, even when material originates from an expansion area, the logic does not

apply to excavation, processing, and hauling that will occur in an expansion area itself. This distinction is reflected in the following sections of OAR 660-023-0180(5),

(b) The local government shall determine existing or approved land uses within the impact area *that will be adversely affected by proposed mining operations and shall specify the predicted conflicts . . .* (Emphasis added)

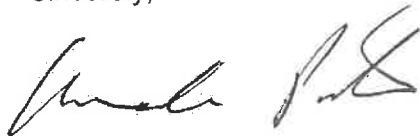
(c) The local government shall determine reasonable and practicable measures that would minimize the conflicts identified under subsection (b) of this section . . .

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

Overall, it seems that, although the application is extensive and contains much information relevant to the review process, there is not sufficient information for the county to confirm that all impacts from mining activity in the expansion area can be minimized.

Please contact me if you have any questions about the points I raise above, or about Oregon Administrative Rules that apply to aggregate resources and local authorization to mine these resources.

Sincerely,



Amanda Punton  
Natural Resource Specialist

cc: Josh LeBombard, DLCD Southern Oregon Regional Representative  
File for Jackson County PAPA 004-23

