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UMATILLA COUNTY RECORDS

STATE OF OREGON

In the Matter of Applying)
 Aggregate Resource Overlay) ORDINANCE NO. 2012-08
 Zone to Significant Aggregate)
 Site Owned by Rock It, LLC)

WHEREAS an application was received from Rock It, LLC, requesting Umatilla County to apply the Aggregate Resource Overlay Zone to an approximate 80 acre aggregate site located in the North Half of the Northwest Quarter of Section 27, Township 4 North, Range 27, described as that portion of Parcel 1, Partition Plat 2011-01, located North of Interstate 84;

WHEREAS the site previously had been found to be significant and added to the Goal 5 Aggregate Resources Inventory as a significant resource, by Ordinance No. 2010-07, adopted October 6, 2010, nunc pro tunc February 17, 1998;

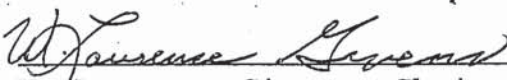
WHEREAS the Umatilla County Planning Commission held a public hearing on March 22, 2012, to review the application and recommended that the Board of Commissioners apply the Aggregate Resource Overlay Zone to the site;

WHEREAS the Board of Commissions held a public hearing on April 19, 2012, to consider the proposed amendment, and voted for the approval of the request to apply the Aggregate Resource Overlay Zone to the site.

NOW, THEREFORE the Board of Commissioners of Umatilla County ordains that the Aggregate Resource Overlay Zone shall be applied to that portion of Parcel 1, Partition Plat 2011-01, located North of Interstate 84 and lying within the North Half of the Northwest Quarter of Section 27, Township 4 North, Range 27, E.W.M.

DATED this 19th day of April, 2012.

UMATILLA COUNTY BOARD OF COMMISSIONERS



 W. Lawrence Givens, Chair



Dennis D. Doherty

Dennis D. Doherty, Commissioner

William S. Hansell

William S. Hansell, Commissioner



ATTEST:
OFFICE OF COUNTY RECORDS

Steve Chandler

Records Officer



**UMATILLA COUNTY BOARD OF COMMISSIONERS
FINDINGS AND CONCLUSIONS
ZONE MAP AMENDMENT REQUEST, #Z-294-11
PLAN TEXT AMENDMENT REQUEST, #T-11-045
MAP #4N 27 27, TAX LOT #300, Account #148052**

1. APPLICANT: Wade Aylett, 74854 Washington Ave, Irrigon, OR 97844
2. OWNER: Rock It, LLC, 74854 Washington Ave, Irrigon, OR 97844
3. REQUEST: The request is to establish a Goal 5 Large Significant Site to extract aggregate. A rezone will also occur to apply the Aggregate Resource Overlay Zone to the aggregate site. The aggregate site boundary is that portion of Tax Lot 300 that lies north of Interstate 84. The proposed site is listed on the County's Inventory of Significant Sites.
4. LOCATION: The property is located east of the Umatilla-Morrow County line adjacent to Interstate 84, Ordinance Road and Gun Club Lane.
5. SITUS: There is no situs address for this property.
6. ACREAGE: Tax Lot 300 is 80 acres.
7. PROP CODE: Property Codes are assigned by the County Assessor as to what type of use that is present on the property. Property Code 551 has been assigned to this property, which means "Farm, Conforming Zone, Improved and Farm Deferral."
8. TAX CODE: The Tax Code is assigned by the County Tax Office. Each Code Area has various taxing rates depending upon the services provided. The Tax Code for this parcel is 07-12, which has the following taxing definitions: General County, Umatilla Co Bond, School Dist #8 Hermiston School Dist #8 Hermiston Bond, Education Service Dist (ESD), BMCC, BMCC Bond, Port Of Umatilla, Fire Dist 4 Hermiston (7-404) Cemetery Dist 8 Hermiston, West Umatilla Vector Control, Umatilla Special Library Dist, School Dist #8 Hermiston Bond -2, West Umatilla Vector Control L/O-2
9. COMP PLAN: North/South Agricultural Region Plan Designation
10. ZONING: Exclusive Farm Use (EFU, 160 acre minimum).
11. ACCESS: The property has access from Ordinance Road (#1323).
12. ROAD TYPE: Ordinance Road, (#1323), is a paved County roadway.
13. EASEMENTS: A 40 foot easement is listed along the southeast boundary of the parcel.

It should be noted that a gravel roadway has been used which is located within the right of way of the Northern Pacific Railroad and known as “Gun Club Lane”. No formal easement has been recorded to allow “Gun Club Lane” to be valid and legally usable by the public.

- 14. LAND USE: The property is zoned for farm use and is being used for agricultural purposes.
- 15. ADJACENT USE: Properties surrounding the subject property are also zoned EFU, and are used in similar ways as is the subject property – irrigated cropland. The Umatilla Army Depot is located north of the Northern Pacific Railroad ROW.
- 16. LAND FORM: Columbia River Plateau
- 17. SOIL TYPES: The subject property contains non-high value soil types. High Value Soils are defined in UCDC 152.003 as Land Capability Class I and II. Thus, the soils on this property are not high-value.

Soil Name, Unit Number, Description	Land Capability Class	
	Dry	Irrigated
14B: Burbank loamy fine sand, 0 to 5 percent slopes	7e	4e
74B: Quincy fine sand, 0 to 5 percent slopes	7e	4e
76B: Quincy loamy fine sand, gravelly substratum, 0 to 5 percent slopes	7e	4e

Soil Survey of Umatilla County Area, 1989, NRCS. The suffix on the Land Capability Class designations are defined as “e” – erosion prone, “c” – climate limitations, “s” soil limitations and “w” – water (*Survey, page. 172*).

- 18. BUILDINGS: There are no buildings on this property.
- 19. UTILITIES: The parcel is served by Umatilla Electric with electrical power.
- 20. WATER/SEWER: There are no domestic wells or septic systems on the property.
- 21. RURAL FIRE: The property is not within a rural fire district.
- 22. IRRIGATION: The property is not within an irrigation district. There are water rights issued by the Oregon Water Resources Department.
- 23. FLOODPLAIN: The property is NOT in a floodplain. The property is found in Zone D (“Undetermined flooding”) which is NOT a special flood hazard. The Community Number for Umatilla County is #41059C and the Panel Number that covers this area is #0575-G effective September 3, 2010. The Panel is not printed.

24. NOTICES SENT: Notices was sent on March 7, 2012 to adjacent property owners and affected government agencies.
25. PUBLIC HEARING: A public hearing was conducted before the Umatilla County Planning Commission on Thursday, March 22, 2012 where the Planning Commission recommended approval, with a subsequent hearing before the County Board of Commissioners on April 19, 2012.
26. AGENCIES: Department of Land Conservation and Development, Department of Agriculture, Department of Geology and Mineral Industries, Oregon Water Resource Department, Oregon Department of Transportation, Umatilla Army Depot, County Assessor, County Public Works, Morrow County Planning
27. COMMENTS/EXHIBITS: Comments were received from the following:

Email received on March 22, 2012 from Layne E. Womack, Associate Planner, Morrow County expressing concern about the DOGAMI permit as it relates to processing equipment within the permit boundaries.

NOTE: The Umatilla County Development Code has not been updated with the Division 23 Rules dealing with Aggregate. The Oregon Administrative Rules 660-023-0180 to establish a Goal 5 Large Significant Site will be directly applied per OAR 660-023-180 (9).

28. STANDARDS OF THE OREGON ADMINISTRATIVE RULES, DIVISION 23 FOR GOAL 5 LARGE SIGNIFICANT SITES are found in OAR 660-023-0180 (3), (5), & (7). The standards for approval are provided in underlined text and the responses are indicated in standard text.

A description of the proposal was given by the applicant as follows and is helpful to understand the scope of the development as the review criteria are addressed.

“Aggregate is important to the community to secure that products needed for construction and growth of our communities will be available in the future. The parcel of land in which we are trying to permit is an ideal location for an aggregate site. There is an immense amount of aggregate and sand materials used in building roads, foundations and such.

We are setting the operation up to where we would start mining on the southwest corner of the parcel. It will be set back from the property line fifty feet. There will be berms built to insure safety. There will be a hopper set in a hole with an adjustable conveyor. The product will be dug out with a front loader, placed in the hopper, which will then send it to an adjacent land where it will be processed.

On the northwest corner we would like to put our scale house and office there.

This mining operation will not cause any changes in traffic, as to the fact that we already have a gravel business down the road and the traffic will be the same as is now.

To avoid any conflicts with surrounding roads we will have a setback of fifty feet on every property line.

There will be no dust; we will control the dust with use of water (water trucks and sprinklers).

The noise will be greatly minimized due to the fact that we will only have loaders and a hopper and conveyor running, plus it will be down in a pit.

There are minimal buildings within fifteen hundred feet, we will minimize any conflicts with them by the fact that we will have the mining operation down in a pit, we will use dust control, and noise will be minimized.

We will adhere to all rules and conditions set by DOGAMI. As in the reclamation of the land, and standards and practices set for a gravel operation.

I have been in contact with the director of public affairs for the army depot. He has informed me that the buildings within the fifteen hundred feet impact zone are warehouse buildings. There would be no conflict with these buildings because there will be no dust. We will be eliminating dust by using water trucks and sprinklers when necessary. The noise will be minimal. We will only have one conveyor and hopper at that site.

On the land to the south east there is a cluster of old pig farming sheds. There is also a shop located on the land also. There will be no conflict with this building.

On the land to the south west side in Morrow County there is a residence located on this land. There will be no conflict with this residence. We will eliminate dust with water trucks and sprinklers. There will be no noise due to the fact that there will be a hopper and conveyor only at that site.

There is also another gravel pit the same distance away in Morrow County from this residence, no conflict has ever [occurred] with this residence.”

OAR 660-023-0180 Mineral and Aggregate Resources

(3) [Large Significant Sites] An aggregate resource site shall be considered significant if adequate information regarding the quantity, quality, and location of the resource demonstrates that the site meets any one of the criteria in subsections (a) through (c) of this section, except as provided in subsection (d) of this section:

(a) A representative set of samples of aggregate material in the deposit on the site meets applicable Oregon Department of Transportation (ODOT) specifications for base rock for air degradation, abrasion, and soundness, and the estimated amount of material is more than 2,000,000 tons in the Willamette Valley, or more than 500,000 tons outside the Willamette Valley; The Umatilla County Board of Commissioners finds that the proposed site was placed on the County's Inventory of Significant Sites in 1997 via #Z-259-97. The County found that the site was significant because the rock sampling met the standard of ODOT rock specifications and more than 500,000 tons of rock is present and will be extracted.

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

(a) [Impact Area] The local government shall determine an impact area for the purpose of identifying conflicts with proposed mining and processing activities. The impact area shall be large enough to include uses listed in subsection (b) of this section and shall be limited to 1,500 feet from the boundaries of the mining area, except where factual information indicates significant potential conflicts beyond this distance. For a proposed expansion of an existing aggregate site, the impact area shall be measured from the perimeter of the proposed expansion area rather than the boundaries of the existing aggregate site and shall not include the existing aggregate site. The Umatilla County Board of Commissioners finds that an Impact Area was designated which is a buffer of 1,500 feet from the boundary of that portion of the parcel lying north of Interstate 84. A map is part of the file. This criterion is met.

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

(A) Conflicts due to noise, dust, or other discharges with regard to those existing and approved uses and associated activities (e.g., houses and schools) that are sensitive to such discharges; The Umatilla County Board of Commissioners finds that within the Impact Area there are no schools and only one home site. The home is located in Morrow County on the very edge of the Impact Area. The home is southwest of the parcel and from all indications the prevailing winds¹ travel from the west and southwest pushing any

¹ Data retrieved from the Western Regional Climate Center, Historical Climate Information at <http://www.wrcc.dri.edu/htmlfiles/westwinddir.html>

dust or other discharge away from the home. Little dust should be generated since the operation will employ a conveyor and hopper system to move the material from this parcel to an adjacent property for processing. Truck movement will be at a minimum where dust generation from haul roads will occur but will not be prevalent. Nonetheless, haul roads are to be watered regularly to prevent dust movement. The extraction area will be watered regularly through the use of water trucks and sprinklers as detailed by the applicant.

The impact of noise on adjacent property is unknown at this time. There was no noise data provided in terms of ambient noise levels and possible noise levels during the extraction process. Certainly a certain increased level of noise will be experienced during extraction. Processing (crushing, batching, screening) will not take place on this site. Thus, the noise levels will not increase in relation to processing. The applicant indicated that noise will be minimal during extraction since the operation will be subsurface. Of course, there will be some time when extraction will be at the surface while topsoil is moved around and the extraction process begins. A front-end loader will be used to move material into the hopper, trucks will be used to move topsoil and other material and noise will be generated by the conveyor/hopper equipment. Thus, noise will be increased in relation to this proposal. The applicant must adhere to the DEQ Noise Standard as found in OAR 340-035-0035 *Noise Control Regulations for Industry and Commerce*. The mitigation measure specified by the applicant to decrease the impacts of noise on adjacent property is the use of an earthen berm along the south and east side of the property and the pit will eventually become subsurface. Since there is only one "noise sensitive property"² in the Impact Area, a home southwest of the subject mining operation, an increase in noise may not adversely impact the residents of the home. If there are complaints dealing with noise then a Noise Study may be required to verify what noise levels are being experienced and whether or not the noise levels exceed the DEQ Noise Standard for industrial development. The cost of the Noise Study would be the responsibility of the mine operator. Additional review by the County would be required if noise complaints are received.

(B) Potential conflicts to local roads used for access and egress to the mining site within one mile of the entrance to the mining site unless a greater distance is necessary in order to include the intersection with the nearest arterial identified in the local transportation plan. Conflicts shall be determined based on clear and objective standards regarding sight distances, road capacity, cross section elements, horizontal and vertical alignment, and

The explanation on the web page states: "Prevailing wind direction is based on the hourly data from 1992-2002 and is defined as the direction with the highest percent of frequency. Many of these locations have very close secondary maximum which can lead to noticeable differences month to month."

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

similar items in the transportation plan and implementing ordinances. Such standards for trucks associated with the mining operation shall be equivalent to standards for other trucks of equivalent size, weight, and capacity that haul other materials; The Umatilla County Board of Commissioners finds that the roads within a one mile area are either County roads or State Highways. Ordinance Road is paved and meets with the on ramps onto Interstate 84. Interstate 84 is a four lane paved roadway. Both Ordinance Road and Interstate 84 are paved, well maintained roadways and have the capacity to handle heavy truck traffic and additional trips each day. Currently, truck traffic uses this same route out of the adjoining rock quarry. The applicant stated in the application materials that all extraction and equipment will be setback from all property liens at a distance of 50 feet. This setback will assist to protect the local roads from noise and dust.

(C) Safety conflicts with existing public airports due to bird attractants, i.e., open water impoundments as specified under OAR chapter 660, division 013; The Umatilla County Board of Commissioners finds that there are no public airports within the Impact Area. The closest public airport is located some 5 miles northeast of the mine operation. Thus, no conflicts are recognized in terms of public airports and the proposed mining operation.

(D) Conflicts with other Goal 5 resource sites within the impact area that are shown on an acknowledged list of significant resources and for which the requirements of Goal 5 have been completed at the time the PAPA is initiated; The Umatilla County Board of Commissioners finds that the other Goal 5 resource within the Impact Area is the undeveloped rock pit that was part of the 1997 application #Z-259-97. There are no known conflicts with the undeveloped Goal 5 aggregate resource. Certainly the impacts of a rock pit would not adversely impact a similar Goal 5 resource. Thus, no conflicts exist between the proposed aggregate site and other Goal 5 resources.

Additionally, the Umatilla Basin Water Commission has undertaken a recharge project that will place water subsurface to increase water storage and will raise the water table in this general area. The water recharge project is termed a farm use since the water will be used predominantly for irrigation. It is uncertain if the water recharge project will be impacted by the aggregate site at this time. Nonetheless, a Covenant Not to Sue agreement will be recorded to allow the water recharge project to continue in the event the water table rises and impacts the aggregate site.

(E) Conflicts with agricultural practices; and The Umatilla County Board of Commissioners finds that the agricultural crops in the Impact Area are those that will not be adversely impacted by the mining operation. A description of these crops was given as follows:

“The crops that are within the fifteen hundred feet impact zone of the parcel are wheat, field corn, potatoes, and blueberries. We will minimize any conflicts with this agriculture by providing dust control. There will already be very little dust as to the fact that our rock processing plant will not be on the parcel. The pit will only contain a hopper, conveyor, and front loader. We will use water trucks and

sprinklers to keep dust down.”

The potential conflicts to agricultural practices stems from the possibility of dust movement onto adjacent cropland. The vast majority of the aggregate will be extracted via a front-end loader and the aggregate will be moved to the processing site through the use of a conveyor/hopper system. Haul roads and heavy trucks will not be continuously used which usually causes large amounts of dust. There will be some truck movement, but not as much as would typically be experienced in a mining operation. As stated above, the applicant will mitigate dust movement through the regular watering of the haul roads by water trucks and the extraction area will be watered through the use of sprinklers.

(F) Other conflicts for which consideration is necessary in order to carry out ordinances that supersede Oregon Department of Geology and Mineral Industries (DOGAMI) regulations pursuant to ORS 517.780; The Umatilla County Board of Commissioners finds there are no other conflicts to be considered at this time.

(c) [If conflicts exist, measures to minimize] The local government shall determine reasonable and practicable measures that would minimize the conflicts identified under subsection (b) of this section. To determine whether proposed measures would minimize conflicts to agricultural practices, the requirements of ORS 215.296 shall be followed rather than the requirements of this section. If reasonable and practicable measures are identified to minimize all identified conflicts, mining shall be allowed at the site and subsection (d) of this section is not applicable. If identified conflicts cannot be minimized, subsection (d) of this section applies. The Umatilla County Board of Commissioners finds that conflicts from dust and noise will be present from this mining operation on the noise sensitive property, roads and agricultural practices. Mitigation measures are outlined to minimize conflicts due to dust and noise for dwellings, roads and agricultural practices:

1. Haul roads will be watered regularly with the use of water trucks.
2. Extraction areas will be watered regularly with the use of a sprinkler system.
3. Noise will be minimized through the installation of earthen berms near the southern property line (along Interstate 84) and the eastern property boundary near Ordinance Road. The berm will be 8 feet tall and sloped to be 25 feet wide at the base. The berm will be planted and eventually used during reclamation.
4. In the event the aggregate site impacts the water recharge project, a Covenant Not to Sue Agreement will be recorded to prevent legal issues.

The use of these mitigation measures should be able to resolve the conflicts outlined. The County may have to address conflicts in the future if the mining operation produces greater conflicts or other conflicts than outlined. Further review may be required if these mitigation measures are not adequate to meet the conflict or if other conflicts are found to exist.

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

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

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

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

The Umatilla County Board of Commissioners finds that the recognized conflicts determined in paragraph (b) of this section can be mitigated. This criterion is not applicable.

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

(A) For which the PAPA application does not provide information sufficient to determine clear and objective measures to resolve identified conflicts;

(B) Not requested in the PAPA application; or

(C) For which a significant change to the type, location, or duration of the activity shown on the PAPA application is proposed by the operator.

The Umatilla County Board of Commissioners finds that no other amendment to the Comprehensive Plan is necessary to further this proposal. The Significant Site Inventory already has the site listed and no conflicting uses were identified that would cause special development criteria to be specified.

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

regarding the regulation and reclamation of mineral and aggregate sites, except where exempt under ORS 517.780. The Umatilla County Board of Commissioners finds that the post mining uses must comply with the EFU Zone and the DOGAMI Reclamation Plan requirements.

(g) [Issuing a zoning permit] 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. The Umatilla County Board of Commissioners finds that the mining operation is limited to the boundary of the parcel located north of Interstate 84. A specific boundary is set for the aggregate site and the volume of rock can exceed 500,000 tons. Once the aggregate site is exhausted no further mining can occur without further authorizations. The extraction of aggregate from the site can occur without any further permitting and if the mining operation is inactive for a period greater than one year then a zoning permit is necessary to re-activate the mining operation.

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

The process to determine how to protect the site from other uses/conflicts is to conduct an ESEE Analysis. OAR 660-023-0040 & 0050 will be addressed.

660-023-0040 ESEE Decision Process

(1) Local governments shall develop a program to achieve Goal 5 for all significant resource sites based on an analysis of the economic, social, environmental, and energy (ESEE) consequences that could result from a decision to allow, limit, or prohibit a conflicting use. This rule describes four steps to be followed in conducting an ESEE analysis, as set out in detail in sections (2) through (5) of this rule. Local governments are not required to follow these steps sequentially, and some steps anticipate a return to a previous step. However, findings shall demonstrate that requirements under each of the steps have been met, regardless of the sequence followed by the local government. The ESEE analysis need not be lengthy or complex, but should enable reviewers to gain a clear understanding of the conflicts and the consequences to be expected. The steps in the standard ESEE process are as follows:

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

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

(2) Identify conflicting uses. Local governments shall identify conflicting uses that exist, or could occur, with regard to significant Goal 5 resource sites. To identify these uses, local governments shall examine land uses allowed outright or conditionally within the zones applied to the resource site and in its impact area. Local governments are not required to consider allowed uses that would be unlikely to occur in the impact area because existing permanent uses occupy the site. The following shall also apply in the identification of conflicting uses: The subject parcel is surrounded on the west, south and east by Exclusive Farm use zoning and the property to the north is within the US Army Depot. The US Army Depot will eventually be transferred to private/public ownership and zoning will be applied to the land. It is assumed that since the area within the noted Impact Area of the proposed aggregate site is developed with warehousing that the zoning most likely will be industrial. It is uncertain what the zoning will be and so the future zoning of the Army Depot will not be addressed.

The permitted and conditional uses available in the Exclusive Farm Use Zone are found in Umatilla County Development Code Chapter 152.056, 058, 059 and 152.060. A listing is shown below of uses that may be possible within the Impact Area (possible conflicting uses are shown in bold)

UCDC 152.056 - EFU Permitted Uses –

Outright

- (A) Farm Use
- (B) Harvesting of a forest product.
- (C) On-site filing
- (D) Temporary public roads
- (E) Projects specifically identified in the TSP
- (F) Landscaping
- (G) Emergency measures
- (H) Construction of a road
- (I) Utility facility service lines
- (J) Maintenance or minor betterment of existing Transmission lines
- (K) The transport o biosolids
- (L) Reconstruction of roads
- (M) Irrigation canals
- (N) Minor betterment of roads

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

UCDC 152.058 - EFU Permitted Uses –

Zoning Permit

UCDC 152.059 - EFU Permitted Uses –

Land Use Decisions

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

UCDC 152.060 - EFU Conditional Uses

- (A) Commercial activities in conjunction with farm use
- (B) Mining
- (C) Private Parks, private playgrounds, private hunting and fishing preserves and private campgrounds**
- (D) Public parks**
- (E) Golf Courses**
- (F) Commercial utility facilities for the purpose of generating power for public

- use
- (G) Personal Use Airports
- (H) Home occupations
- (I) Community centers
- (J) Hardship Dwellings**
- (K) Dog kennels
- (L) A site for the disposal of solid waste
- (M) The propagation, cultivation, maintenance and harvesting of aquatic species.
- (N) Construction of additional passing lanes
- (O) Reconstruction of additional passing lanes
- (P) Improvement of public roads
- (Q) Destination Resorts
- (R) Living History Museum
- (S) Bottling of water
- (T) On-Site filming
- (U) Construction of highways
- (V) Residential houses**
- (W) Transmission or communication towers
- (X) Expansion of existing county firgrounds
- (Y) Room and board**
- (Z) Wildlife habitat
- (AA) Aerial fireworks display
- (BB) Composting facilities
- (CC) Uses compatible with the TSP
- (DD) Public or private schools**

The uses in the EFU Zone that if located within the Impact Area may conflict with the aggregate site are as follows:

- Churches
- Community Centers
- Dwellings – farm and non-farm dwellings, hardship dwelling, residential home, room and board
- Private and Public Parks and Playgrounds
- Golf Courses
- Public or Private Schools

(a) If no uses conflict with a significant resource site, acknowledged policies and land use

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

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

The Umatilla County Board of Commissioners finds that there are uses that have the potential of conflicting with the aggregate site if located within the Impact Area as detailed above. There are no active Goal 5 resources within the Impact Area. As mentioned previously, the land south of Interstate 84 that is within the Impact Area is listed on the Inventory of Significant Sites but is not being mined nor has a valid permit to allow mining.

(3) Determine the impact area. Local governments shall determine an impact area for each significant resource site. The impact area shall be drawn to include only the area in which allowed uses could adversely affect the identified resource. The impact area defines the geographic limits within which to conduct an ESEE analysis for the identified significant resource site. The Umatilla County Board of Commissioners finds that an Impact Area was defined as 1,500 feet from the aggregate site boundary.

(4) Analyze the ESEE consequences. Local governments shall analyze the ESEE consequences that could result from decisions to allow, limit, or prohibit a conflicting use. The analysis may address each of the identified conflicting uses, or it may address a group of similar conflicting uses. A local government may conduct a single analysis for two or more resource sites that are within the same area or that are similarly situated and subject to the same zoning. The local government may establish a matrix of commonly occurring conflicting uses and apply the matrix to particular resource sites in order to facilitate the analysis. A local government may conduct a single analysis for a site containing more than one significant Goal 5 resource. The ESEE analysis must consider any applicable statewide goal or acknowledged plan requirements, including the requirements of Goal 5. The analyses of the ESEE consequences shall be adopted either as part of the plan or as a land use regulation. There are five (5) prosperities in the Impact Area zoned Exclusive Farm use (EFU). Within the ordinance for the EFU Zone, there are over 40 permitted uses and some 30 conditional uses. Most future uses are compatible with the mining operation. The only uses that might be considered incompatible are future dwellings. In addition, certain other uses are allowed either through a land use decision or conditional use process, including public and private schools, churches and community centers. These uses are similar to dwellings in their consequences. Parks, playgrounds, hunting and fishing preserves, campgrounds and golf courses could be considered incompatible with mining.

Thus, two categories of possible conflicting future uses in the Impact Area are identified as:

- Dwellings (which include churches, schools, community centers)
- Parks (which include campgrounds, playgrounds, golf courses, hunting and fishing preserves and recreational areas)

The ESSE Analysis follows:

(a) Economic Consequences of Future Uses

Dwelling Uses

Prohibiting future dwellings in the Impact Area may decrease the value of land in the EFU Zone. Those property owners in the Impact Area could locate the dwelling to be outside of the Impact Area, thus, resulting in no change of the overall value. There is only one very small parcel that is completely contained within the Impact Area. Prohibiting dwellings may have some impact on future County revenue because development increases the amount of money available to the County. Prohibiting dwellings could have some beneficial impact on the mining operation in that there would be less money spent in the event there are conflicts arising out of future dwellings occupying areas adjacent to the aggregate operation. However, the mitigation measures placed for the resource use (namely dust control, equipment location siting) will be constructed in any case.

Allowing future dwellings could cause an increase in operating expense to the aggregate operation for conflicts that might arise. Allowing future dwellings will maintain property value.

Limiting the dwellings serves no useful purpose because the number of dwellings is already limited by the underlying zoning and the only limitation might be a waiver of future objections to the operations (such as a Covenant Not to Sue Agreement) a step that appears unnecessary given the mitigation measures of the operation itself.

Parks Uses

Prohibiting future parks uses within the Impact Area may reduce the variety of uses available to the area, but has no significant economic impact on or to the mining operation. Allowing the future parks does not infringe on the mining operation, maintains the opportunity for further development on the existing adjacent lands and enables the best use of the land as based on future determinations of owners

Limiting future parks uses is likely as a natural event because developing these types of

uses within close proximity to Interstate 84 is likely undesirable. Limiting parks in the Impact Area might avoid some conflicts, but because of the low density (one house existing and limited future development) and the large irrigated croplands, there is little likelihood that limiting parks will have economic consequences on the mining site. Allowing parks uses provided under existing zoning has the least economic consequences to all involved.

(b) Social Consequences

Dwelling Uses

Whether dwellings, churches, community centers or schools are allowed prohibited or limited will have no social consequences, except that if dwellings are allowed, there may be impacts on schools, but the number of future dwellings that can be allowed is so minimal that it is unlikely to make a statistical difference.

Parks Uses

Likewise, there are no identified social consequences of allowing, prohibiting or limiting the use of parks, campgrounds, golf courses, recreational area or other similar uses within the Impact Area.

(c) Environmental Consequences

Dwelling Uses

The environmental consequences of allowing future dwelling uses in the Impact Area would be that these uses are receptors for noise, generated by the mining operation, for dust generated by the mining operation, these uses would generate additional traffic, which could conflict with truck usage in the area. However, since the site will be subsurface for the most part and all processing will take place on an adjoining property there should be a minimal noise concern. There will be little dust because of the method of extraction and conveying the material onto the adjoining property. There will be truck movement and haul roads will be watered regularly. Whether the rock is moved by conveyor or truck, there is likely to be little dust impacting on the allowed future dwellings.

There would be little impact from prohibiting future dwelling uses because mitigation measures for noise and dust will be utilized. It is conceivable that some dwellings might be constructed at a location that would view the site. Prohibiting a future dwelling for this reason seems excessive where reorientation of the future dwelling would eliminate or minimize unwanted views.

Parks Uses

The environmental consequences of prohibiting, parks uses are to lessen the human impact on the surrounding land. Prohibiting the mining operation could create less disturbance to serene parks uses expansions, however, due to the existing land use patterns in the Impact Area; it is unlikely that such parks uses would be located in the area.

(d) Energy Consequences

Dwelling Uses

Prohibiting future dwellings uses in the Impact Area would limit consumption of gasoline, natural gas, or electricity in the immediate area, but such limitation is meaningless because people who might otherwise occupy any future dwelling uses would locate elsewhere. Allowing or limiting dwelling uses likewise has no negative energy effects.

Parks Uses

Prohibiting parks, recreational uses, campgrounds and golf course would not impact gasoline, natural gas, or electrical consumption because such uses would be located elsewhere and any uses would not be in a high enough volume to affect energy resources.

(5) Develop a program to achieve Goal 5. Local governments shall determine whether to allow, limit, or prohibit identified conflicting uses for significant resource sites. This decision shall be based upon and supported by the ESEE analysis. A decision to prohibit or limit conflicting uses protects a resource site. A decision to allow some or all conflicting uses for a particular site may also be consistent with Goal 5, provided it is supported by the ESEE analysis. One of the following determinations shall be reached with regard to conflicting uses for a significant resource site:

(a) A local government may decide that a significant resource site is of such importance compared to the conflicting uses, and the ESEE consequences of allowing the conflicting uses are so detrimental to the resource, that the conflicting uses should be prohibited.

(b) A local government may decide that both the resource site and the conflicting uses are important compared to each other, and, based on the ESEE analysis, the conflicting uses should be allowed in a limited way that protects the resource site to a desired extent.

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

These categories of conflicting future uses have been identified: dwelling uses and parks uses. The ESEE Analysis shows that owners of future uses may seek to restrict operations on the mining operation because of noise and dust impacts on them from the site. The creation of noise should be lessened since much of the extraction will occur subsurface and the processing (crushing) will happen off site. Additionally, earthen berms will be constructed along the exterior of the site adjacent to public roads which will also lessen noise onto adjacent property. Dust will be controlled by regular watering haul roads and the extraction site. Thus, paragraph 5 (c) will be applied to this future uses in the Impact Area - no limitation on these future uses is needed or appropriate to protect the mining operation.

Parks uses may have concern about noise, but again, it is unlikely that sensitive parks uses will be placed in close proximity to Interstate 84. Hence, no limitation on these possible conflicting future uses is necessary.

660-023-0050 Programs to Achieve Goal 5

(1) For each resource site, local governments shall adopt comprehensive plan provisions and land use regulations to implement the decisions made pursuant to OAR 660-023-0040(5). The plan shall describe the degree of protection intended for each significant resource site. The plan and implementing ordinances shall clearly identify those conflicting uses that are allowed and the specific standards or limitations that apply to the allowed uses. A program to achieve Goal 5 may include zoning measures that partially or fully allow conflicting uses (see OAR 660-023-0040(5) (b) and (c)). The Umatilla County Board of Commissioners finds that although the site is being protected that there are no specific requirements to protect the site from future uses since the ESEE Analysis showed that the future uses will not be impacted from the mining operation.

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

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

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

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

The Umatilla County Board of Commissioners finds that there are no standards to be applied to protect the mining operation more than what is typically required for development.

(3) In addition to the clear and objective regulations required by section (2) of this rule, except for aggregate resources, local governments may adopt an alternative approval process that includes land use regulations that are not clear and objective (such as a planned unit development ordinance with discretionary performance standards), provided such regulations:

(a) Specify that landowners have the choice of proceeding under either the clear and objective approval process or the alternative regulations; and

(b) Require a level of protection for the resource that meets or exceeds the intended level determined under OAR 660-023-0040(5) and 660-023-0050(1).

The Umatilla County Board of Commissioners finds that there are no alternative regulations specified to protect the mining operation.

29. STANDARDS OF THE UMATILLA County DEVELOPMENT CODE TO ESTABLISH AN AGGREGATE RESOURCE OVERLAY ZONE as found in UCDC 152.487 - 488. The standards for approval are provided in underlined text and the responses are indicated in standard text.

§ 152.487 CRITERIA FOR ESTABLISHING AN OVERLAY ZONE.

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

(1) The proposed overlay would be compatible with the Comprehensive Plan; The Umatilla County Board of Commissioners finds the proposal complies with the Comprehensive Plan, Chapter 8, and Policy 38 states:

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

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

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

Policy 38 (a) is met through the Goal 5 process. It was found that the future conflicting uses of the mining operation can be fully allowed. The two categories that an ESEE Analysis was conducted (dwellings and parks) were found to be fully allowed. The mining operation will mitigate dust and noise which should alleviate any negative impacts. The mining operation will adhere to DOGAMI rules for operation and reclamation of the site as required by 5(b).

(2) There is sufficient information supplied by the applicant to show that there exist quantities of aggregate material that would warrant the overlay; The Umatilla County Board of Commissioners finds that the proposed mining operation consists of some 80 acres and has been determined to be significant containing greater than 500,000 tons of aggregate. This criterion is met.

(3) The proposed overlay is located at least 1,000 feet from properties zoned for residential use or designated on the Comprehensive Plan for residential; The Umatilla County Board of Commissioners finds that there are no residential zone district within 1,000 feet from the proposed mining operation. All parcels within the Impact Area (1,500 feet from the mining operation) are zoned EFU or are parcels within the US Army Depot. The area within the Impact Area on the Depot property is committed to industrial type uses (warehousing and railroad access).

(4) Adequate screening, either natural or man-made, is available for protecting the site from surrounding land uses. The Umatilla County Board of Commissioners finds that there will be earthen berms constructed along the southern and eastern boundary of the property. Additionally, much of the mining operation will occur subsurface with all processing occurring on an adjoining parcel. The aggregate will be conveyed from the subject parcel to the processing location.

(5) The site complies with OAR 660-023-0180. The Umatilla County Board of Commissioners finds that the standards found in OAR 660-023-0180 were found to be met by the proposed mining operation. This criterion is met.

§152.488 MINING REQUIREMENTS.

(A) All work done in an AR Overlay Zone shall conform to the requirements of the Department of Geology and Mineral Industries or its successor, or the applicable state statutes. The Umatilla County Board of Commissioners finds that this criterion will be a condition of approval.

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

(1) For each operation conducted in an AR Overlay Zone the applicant shall provide the Planning Department with a copy of the reclamation plan that is to be submitted under the county's reclamation ordinance; The Umatilla County Board of Commissioners finds that the reclamation plan requirements must meet the standards of DOGAMI and that a copy of the reclamation plan is to be submitted to the County Planning Department.

(2) Extraction and sedimentation ponds shall not be allowed within 25 feet of a public road or within 100 feet from a dwelling, unless the extraction is into an area that is above the grade of the road, then extraction may occur to the property line; The Umatilla County Board of Commissioners finds that these standards are to be applied. There are no existing dwellings that are within 100 feet from the property boundary where the mining operation will be established. The extraction hole shall not be within 25 feet of Ordinance Road.

(3) Processing equipment shall not be operated within 500 feet of an existing dwelling at the time of the application of the overlay zone. Dwellings built after an AR Overlay Zone is applied shall not be used when computing this setback. The Umatilla County Board of Commissioners finds that there are no dwellings within 500 feet. This criterion does not apply.

(4) All access roads shall be arranged in such a manner as to minimize traffic danger, nuisance to surrounding properties and eliminate dust. The Umatilla County Board of Commissioners find that the haul road will be the same as what is currently utilized – Gun Club Lane. Watering of the haul road is required to manage dust.

DECISION: THIS GOAL 5 LARGE SIGNIFICANT SITE AND THE ZONE MAP AMENDMENT TO APPLY THE AGGREGATE RESOURCES (AR) OVERLAY ZONE REQUEST COMPLES WITH THE STANDARDS OF THE UMATILLA COUNTY DEVELOPMENT CODE AND THE OREGON ADMINISTRATIVE RULE, SUBJECT TO THE FOLLOWING CONDITIONS:

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

1. Provide an updated site plan showing the location of the scale house, berms, haul roads conveyor/hopper equipment and extraction area.
2. Provide a Dust Control Plan explaining how exactly dust control will be provided at the extraction site and the haul roads. The application materials explained that sprinklers and a water truck will be the method of dust control. Show the location and when the various water sources will be used. Provide documentation from Oregon Water Resources that a water right can be used for dust control.
3. Obtain or verify from the Public Works Department an Access Permit for the driveways/roadways onto Ordinance Road.
4. Sign and record a Covenant Not to Sue Agreement. The Agreement will be provided by the County Planning Department.
5. Pay public notice costs.

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

6. Obtain a Zoning Permit from the Umatilla County Planning Department to place the scale house on the property with an approved site plan showing setbacks, existing structures, driveways, utilities, etc.
7. Obtain all other State permits necessary for development (i.e. building codes, DEQ On-site, etc.) including the following permits regarding the aggregate site:
 - a. DOGAMI. Comply with DOGAMI permit and Reclamation Plan requirements. A copy of the DOGAMI permit and Reclamation Plan is to be provided to the County Planning Department when issued.
 - b. DEQ. Obtain all necessary DEQ permits in relation to an aggregate site.
 - c. DEQ. Continue to meet the DEQ Noise Standard as found in OAR 340-035-0035(B). A detailed Noise Study may be required if complaints are received

which are credible. The cost of the Noise Study would be the responsibility of the mine operator.

8. The applicant shall remove all debris at the conclusion of mining operations and leave the extraction area in a safe and useable condition.
9. If lighting is added then shielding is required to prevent glare onto the adjoining properties and roadways.

Dated this the 19th day of April, 2012

UMATILLA COUNTY BOARD OF COMMISSIONERS





W. Lawrence Givens, Commissioner



Dennis D. Doherty, Commissioner



William S. Hansell, Commissioner

ATTEST:
OFFICE OF COUNTY RECORDS



RECORDS OFFICER

