

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

In the Matter of Amending the Columbia County)
Comprehensive Plan and the Columbia County)
Zoning Ordinance regarding the Implementation)
of the 1996 Administrative Rules for Aggregate)
--Statewide Land Use Goal 5)
Ordinance No. 98-01

The Board of County Commissioners ordains as follows:

SECTION 1. TITLE.

This ordinance shall be known as Ordinance No. 98-01.

SECTION 2. AUTHORITY.

This ordinance is adopted pursuant to the authority of ORS 203.035, and 197.628 through 197.646.

SECTION 3. PURPOSE.

The purpose of these amendments is to adopt a process for inventorying and designating significant sites for aggregate pursuant to Oregon Administrative Rules 660-23-180 (1996). The amendments include the weighing of conflicts to determine whether mining is to be permitted, and to identify areas which create conflicts and/or are impacted by mining activity.

SECTION 4. FINDINGS.

1. The Board of County Commissioners finds that the amendments attached are consistent with the provisions of OAR 660-23-010, -030, and -180.
2. The Board of County Commissioners finds that the amendments comply with the provisions of the Columbia County Periodic Review Work Task Item 1, as amended November 12, 1997.
3. The Board of County Commissioners adopts as supplemental findings the staff responses to testimony submitted to the Columbia County Planning Commission, dated March 10, 1998. A copy of the findings is attached hereto, labeled Attachment "A", and incorporated herein by this reference.
4. The Board of County Commissioners further adopts as supplemental findings the staff response to testimony submitted to the Board of County Commissioners at its hearing on the matter, dated March 25, 1998. A copy of the findings is attached hereto, labeled Attachment "B" and incorporated herein by this reference.
5. The Board of County Commissioners adopts the findings of fact and conclusions of law found in the staff report dated March 10, 1998, which is attached hereto, labeled Attachment "C" and incorporated herein by this reference.
6. The Board of County Commissioners finds and concludes that the amendments attached will implement the 1996 Goal 5 rules regarding aggregate in Columbia County.

SECTION 5. RESCISSION, AMENDMENT, ADOPTION.

1. Those provisions of the Columbia County Comprehensive Plan and the Columbia County Zoning Ordinance which are in conflict with the provisions as stated in this ordinance, are rescinded.
2. The amendments include: amendments to the Columbia County Comprehensive Plan (Attachment "D", the creation of a new Section 1030 of the Columbia County Zoning Ordinance (Attachment "E"), and amendments to Section 1040 of the Columbia County Zoning Ordinance (Attachment "F"). All attached hereto, and incorporated herein by this reference, are adopted.
3. The amendments as shown in Attachments "D" through "F" shall be incorporated into the Comprehensive Plan and Zoning Ordinance, as appropriate.

SECTION 6. APPEALS.

Appeals of this ordinance shall be to the Oregon Land Conservation and Development Commission, as an appeal of a periodic review work program task, pursuant to ORS 197.197.644(2).

SECTION 7. SEVERABILITY.

The provisions of this ordinance are severable. If any provision of this ordinance is determined to be invalid by a review body of competent jurisdiction, such provision shall be considered a separate, distinct and independent provision and the decision shall not affect the validity of the remaining portions hereof.

DATED this first day of April, 1998.

BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

Approved as to form:

By: Joan Ancora Briggs
Office of County Counsel

Attest:

By: Jan Suenhalgh
Recording Secretary

By: James Galbraith
Chair

By: [Signature]
Commissioner

By: Jack Peterson
Commissioner

First Reading: March 11, 1998
Second Reading: April 1, 1998
Final Reading: April 1, 1998
Effective Date: June 29, 1998

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MEMO

To: Board of County Commissioners
From: Anne Corcoran Briggs
Subject: Staff response to testimony presented during the Goal 5 hearings before the Columbia County Planning Commission
Date: March 10, 1998

The Columbia County Planning Commission held two hearings regarding the proposed amendments to adopt the 1996 Oregon Administrative Rules regarding aggregate. The Commission also held the record open for written testimony. The record before the Board of County Commissioners includes the testimony provided. On March 2, 1998, the Commission moved to recommend to the Board of County Commissioners the staff draft with some minor amendments.

Staff has compiled a response to the testimony presented to the Planning Commission. It is divided into five sections: responses to concerns about compliance with statutes and Statewide Land Use Goals; responses to comments regarding amendments to the Comprehensive Plan, responses to comments regarding amendments to CCZO 1030, responses to comments regarding amendments to CCZO 1040, and general comments. Each response identifies the parties who raised the issue. This memorandum serves as findings in support of the version of the ordinance presented to the Board of County Commissioners.

COMPLIANCE WITH STATUTES AND STATEWIDE LAND USE GOALS:

1. Mining near an airport must comply with ORS 836.600 through 836.630.

Testimony presented by: Port of St. Helens. Supported by the City of Scappoose and the Scappoose Planning Commission.

Staff Response: The relevant provisions of Chapter 285, Oregon Laws of 1995 were repealed by the Oregon legislature in 1997. Therefore, the statutory authority to promulgate rules pursuant to the 1995 laws has been rescinded. Chapter 859, Oregon Laws of 1997, codified in ORS 836.600 through 836.630, replaces much of the earlier statute. Implementing rules have yet to be adopted. Staff does not recommend referring to an obsolete statute in the local ordinances. The proposed language incorporates the intent of OAR 660-23-180(4)(b)(C): that one of the conflicts to mining which must be considered is "safety conflicts with existing public airports due to bird attractants, i.e., open water impoundments." When an application for a site which includes such a conflict is received by the county, all applicable statutes, rules and ordinances will be considered by the decision-makers. Rather than tie the general ordinance provisions to a specific statute or rule, staff prefers to retain the proposed language.

Alternative: Staff recommends the language be amended as follows: "safety conflicts with existing public airports due to bird attractants, i.e., open water impoundments, shall be addressed according to the processes established in statute or administrative rule."

2. CCZO 1036.3 should have additional language to ensure consistency with other Statewide Land Use Goals.

Testimony presented by: Port of St. Helens. Supported by City of Scappoose, Scappoose Planning Commission.

Staff Response: The proposed draft complies with the provisions of the Goal 5 rule. It is not clear whether the Goal 5 rule permits additional conflict criteria, even if they are intended to comply with other applicable goals. OAR 660-23-180(2)(c) provides that "local governments shall follow the requirements of [OAR 660-23-180](4) of this rule in deciding whether to authorize the mining of a significant mineral or aggregate resource site." It does not leave much flexibility for additions. Staff recommends that no changes be made to the draft.

3. The proposed amendments fail to comply with all of the Statewide Planning Goals. The City believes that Goal 1 (Citizen Involvement), Goal 2 (Land Use Planning and the Exceptions Process), Goal 3 (Agricultural Lands), Goal 5 (Open Spaces, Scenic and Historic Areas, and Natural Resources), Goal 6 (Air, Water, and Land Resources Quality), Goal 9 (Economy), Goal 10 (Housing), Goal 12 (Transportation), and Goal 14 (Urbanization) apply to the proposed amendments, and that the County needs to make findings as to how each of them have been addressed and satisfied.

Testimony Presented by: City of Scappoose. Supported by the Scappoose Planning Commission and the Port of St. Helens

Staff Response: LUBA has ruled that legislative amendments should be supported by findings so that a review body has the opportunity to examine the rationale behind the decision. To a certain extent, the staff responses in these memos form the basis for such findings.

In response to the specific comments as to the effect of the proposed amendments on the Statewide Land Use Goals, staff responds as follows:

- a. Goal 1 (Citizen Involvement). The County has followed its procedure for adopting legislative amendments to its code, providing an opportunity for interested parties to submit comments regarding the draft. The City has not provided sufficient information to show that the County has failed to comply with

this goal.

- b. Goal 2 (Land Use Planning and the Exceptions Process). The County has provided the City with an opportunity to comment on the proposed draft, consistent with the provisions of the Urban Growth Area Management Agreement. The County record before the Planning Commission will remain open until March 2, 1998, to allow the City Planning Commission an opportunity to submit comments regarding the proposed amendments. The proposed amendments do not permit surface mining on any particular site. Instead, the proposed amendments set up a process for review of applications for such activities consistent with the 1996 Goal 5 amendments. Staff does not believe that the proposed amendments will result in a conflict with the provisions of the Scappoose Comprehensive Plan, or the Urban Growth Area Management Agreement.
- c. Goal 3 (Agricultural Lands). The City testified that the County's Agricultural Policy #2, which requires all land not subject to a valid exception to be preserved through exclusive farm use zoning. While it would certainly benefit the City to have this automatic procedural requirement in place, removing the requirement will not cause the County's comprehensive plan to be inconsistent with the Goal 3.
- d. Goal 5 (Open Spaces, Scenic and Historic Areas, and Natural Resources). The City argues that by adopting the Goal 5 rules regarding aggregate, the County violates other provisions of Goal 5. Mr. Bennett used the example that a significant, yet uninventoried, cultural site could be lost to surface mining if it is not identified prior to an application for mining on a particular site. Staff agrees that such a possibility exists, and have discussed the matter with DLCDC. According to those persons involved in the drafting of the state rules, the limitation on conflicts to known and inventoried significant goal 5 resources was a deliberate policy choice on the part of the Land Conservation and Development Commission. County staff prefers not to re-argue this policy point at the local level, in the context of these amendments. Rather, staff is committed to participating in an amendment process at the state level to address these matters in the future.
- e. Goal 6 (Air, Land and Water Quality). Other than a general reference to a conflict, the City gives no specific example of how the proposed amendments violate this goal.
- f. Goal 9 (Economy of the State), Goal 10 (Housing), Goal 12 (Transportation) and

Goal 14 (Urbanization). The City testified that by approving the proposed amendments the County will permit a surface mine adjacent to the Scappoose Airport, in violation of the County's comprehensive plan, and implementing ordinances. Staff reiterates that the proposed amendments do not add any particular site to the inventory of significant aggregate sites, nor does it rezone any property for surface mining. The state rules regarding the process for accepting and reviewing applications for such activities are being amended. The City has not shown how the proposed draft violates Goal 9, Goal 10, Goal 12 or Goal 14.

COLUMBIA COUNTY COMPREHENSIVE PLAN:

- 1. Agricultural Lands Policy 2 (p. 40 of the Comprehensive Plan) should be retained to protect agricultural resources.**

Testimony presented by: Columbia County Farm Bureau, Columbia County Soil and Water Conservation District, Port of St. Helens, City of Scappoose, Scappoose Planning Commission. Opposed by DLCD, Northwest Aggregates, Inc., Morse Brothers, Ken Jillson.

Staff Response: When the original Surface Mining zone text was adopted by the Board of County Commissioners, the uses were developed to reflect the actual uses which occur on property where surface mining occurs. There was no relationship between the Surface Mining zone and the other resource zones, specifically the County's farm and forest zones.

In Oregon's unincorporated areas, the Statewide Land Use Goals provide for two default land classifications: farm and forest. Generally speaking, property is considered to be farmland if, in western Oregon, it is comprised of the U.S. Natural Resource Conservation Service (NRCS, formerly SCS) Soil Classifications I-IV. If the land contains these soil classifications, they are zoned for farm use, unless an exception to Statewide Land Use Goal 3 (Agricultural Lands) is taken. That is, unless the land is "built", "irrevocably committed", or there is some over-riding policy reason ("reasons" exception) for designating the land for other uses, the property is zoned agricultural. These agricultural zones are known generically as "exclusive farm use" zones.

Activities in exclusive farm use zones in most counties, including Columbia County, are governed by ORS 215.283. The statute permits some farm-related and some non-farm uses on agricultural land. The non-farm uses described in ORS 215.283 do not need to undergo an "exceptions" process to be permitted. Some uses are allowed outright, others may be permitted through a conditional use process. Mineral exploration, mining,

crushing or stockpiling of aggregate and other mineral resources, processing of aggregate into asphalt or Portland cement, and certain other processing are listed as uses allowed in EFU zones without an exception.

As the land use system has evolved, certain conventions have become standard for dealing with the relationship between lands zoned for agricultural use, and those zoned for non-farm/non-forest resource use, such as mining. DLCD has long held the position that if a county has an acknowledged non-farm/non-forest zone such as the Surface Mining zone, that zone changes from an exclusive farm use zone to the Surface Mining zone may occur only if:

- 1) The uses in the zone to be applied are consistent with some or all of the uses permitted by ORS 215.283, or
- 2) An exception to Statewide Land Use Goals 3 and/or 4 is taken.

This convention was incorporated into Columbia County's comprehensive plan as Agricultural Lands Policy 2. Thus, when Lone Star applied for a plan amendment and zone change from PA-38 (the County's exclusive farm use zone) to Surface Mining, the staff and Planning Commission determined that an exception to Goal 3 was necessary.

The proposed draft incorporating the 1996 Goal 5 amendments into the local ordinances bring the uses permitted in the Surface Mining zone in conformance with those uses permitted by ORS 215.283. The result is that there is no longer a need to require that an applicant who wishes to rezone property from an exclusive farm use zone to a zone that is consistent with ORS 215.283 submit to the exception process as well. This portion of the proposed draft has been reviewed and endorsed by DLCD. Indeed, this action has been specifically included in the County's Periodic Review Work Tasks.

Those who want to retain the current Comprehensive Plan language argue that the County should retain the requirement for an exception to protect the County's valuable farm land. By implication, they argue that the state Goal 5 process does not sufficiently protect farm land from being converted to surface mining, if there is a significant deposit on a site. The exception requirement would supplement the Goal 5 analysis to ensure such protection. Under the Port/City recommendation, the decision maker must first review an application to determine if a site containing significant aggregate reserves should be designated for mining purposes using Goal 5 criteria and balancing. If the application survives that scrutiny, then if a zone change from PA-38 to Surface Mining is necessary to permit mining, then the application must include either a "committed" or "reasons" exception. Theoretically, this could be done, but the Goal 3 exception is essentially a duplication of the Goal 5 balancing process. The differences are in the presumptions underlying the analysis. The Goal 5 rules essentially say, all things being equal, if there

is a significant aggregate site whose adverse impacts can be addressed, then the site shall be protected for mining. The Goal 3 exception process essentially says that agricultural land may not be used for other purposes, unless the proposed activity must be sited on a certain location, or the activity cannot occur elsewhere in the county on property more suitably zoned for that activity.

There is some question as to whether the Goal 5 rules permit the additional layer of review implicit in the Goal 3 exception process, because OAR 660-23-180(4)(e) provides:

“Additional land use review (i.e., site plan review), if required by the local government, shall not exceed the minimum review necessary to assure compliance with these [Goal 5] requirements, and shall not provide opportunities to deny mining for reasons unrelated to these requirements, or attach additional approval requirements...”

Staff believes that the Goal 5 process provides for sufficient analysis and weighing of the benefits/conflicts with agricultural use through the ESEE process. In the Goal 5 ESEE process, the County governing body has the ability, based on the evidence, to decide that the loss of agricultural lands, or the conflicts between agricultural uses on or near the site are such that mining should not be allowed, despite the existence of a significant aggregate deposit. There is no need to add another level of analysis to the review. Therefore, the proposed draft uses language from Statewide Land Use Goal 3 to show compliance with state policy, and with the intent of the PA-38 zone, which is to protect farm activity consistent with those uses identified in ORS 215.283.

2. **As an alternative, the current Agricultural Lands Policy 2 should be amended as follows: “If the County proposes to convert agricultural lands (as defined by Statewide Land Use Goal 3) to urbanizable land, the County shall follow the procedures and requirements for exceptions to the Agricultural Lands goal, pursuant to Goal 2. Except for new or expanded operations for the mining, crushing, stockpiling or processing of aggregate within 5000 feet of a runway of a public use airport, those uses which are permitted by ORS 215.283(1) or (2) shall not require an exception to the Agricultural Lands Goal.”**

Testimony presented by: Port of St. Helens, City of Scappoose. Supported by Scappoose Planning Commission

Staff Response: Staff does not believe that a process established to consider uses in relation to agricultural lands should be cobbled to the local comprehensive plan and zoning ordinance to benefit the Scappoose Airport. Staff crafted the amendments to

“level the playing field,” by eliminating those provisions in the comprehensive plan which did more to derail consideration of the policy issues than to clarify. For example, staff has also recommended that the Surface Mining Goals and Policy #5 be amended to delete a reference to “700 acres in the Scappoose area” being designated for Surface Mining. In addition, the aggregate inventory list deletes the reference to the Meier site as an “inactive” aggregate site. The result is intended to make sure that when an application to list a site on the inventory and to change the zoning designation to Surface Mining, the issues are addressed using the process outlined in administrative rule.

The administrative rule is quite specific in its requirements. It is intended that those uses which may interfere with the designation of a significant site for aggregate use be weighed through the ESEE process. It does not permit a local government to make a policy decision to add layers of review beyond certain circumscribed boundaries. See OAR 660-23-180(2).

In addition, it does not make sense to use the agricultural lands policies and procedures to benefit a non-farm use.

3. **Surface Mining Policy 3 (p. 221 of the Comprehensive Plan) should be amended as follows:** “Pay special attention to any development adjacent to mineral and aggregate resources and take the necessary steps to minimize the impacts of these developments consistent with the adopted program to achieve Goal 5.” [Items underlined to be added.]

Testimony presented by: Port of St. Helens

Staff Response: Staff has no objection to this addition.

4. **Add a Surface Mining Policy 17, as follows:**

“Coordinate with affected cities and ensure that proposed plan amendments to authorize new or expanded mining operations do not take a city’s acknowledged comprehensive plan or land use regulations out of compliance with statewide planning goals.”

Proposed by the Port of St. Helens. Supported by: City of Scappoose and the City of Scappoose Planning Commission and Mike Sheehan, representing the South County area of the Scappoose-Spitzenberg CPAC. Opposed by: Morse Brothers, Northwest Aggregates, Inc., Ken Jillson

Staff Response: Statewide Land Use Goal 2 requires coordination with other

governments during the planning process. This occurs in two ways: through the negotiation and implementation of an Urban Growth Area Management Agreement and through notice and opportunities to comment during the County's consideration of an application on a particular site. The former may limit the range of actions available to the County; the latter generally does not. Staff recommends that any language that may circumscribe the county's decision making on a land use matter be either incorporated into the Urban Growth Area Management Agreement, or be addressed in the weighing process of an application to permit surface mining on a particular site. Staff does not support the addition of Policy 17.

5. **The draft Comprehensive Plan provisions add a Table XVI-2. Will a site automatically go on the list of significant sites if the requisite geologist report is received? It is important to decide what the intent of Table XVI-2 is and how sites will be listed.**

Testimony presented by: Morse Brothers.

Staff Response: An aggregate site can be placed on the County's inventory (Table XVI-2) in two ways. Each is a different form of a Comprehensive Plan Amendment. First, an application is filed by the owner or operator of a particular site, with appropriate fee, for a Plan Amendment. The proposed Section 1030 of the Zoning Ordinance sets out the process followed for such an application. If approved, the Comprehensive Plan Map and Zoning Map are changed to reflect the new designation and the Comprehensive Plan text is amended by adding the site to the inventory, including the site on Table XVI - 2. Second, the County forwards a site or sites through a Legislative Process for a Comprehensive Plan Amendment. The process is generally the same as for an individual amendment application: proposed Section 1030 has to be followed through to the end of approving or denying the site for mining. Again, if approved the Comprehensive Plan map and text is amended as above.

The Surface Mining Zone would be applied to the site and, as necessary, the Surface Mining Impact Overlay Zone would be applied to surrounding lands, at the time either of the two above processes are completed.

6. **Amend Comprehensive Plan "Decision Regarding the Mining of Significant Sites" as follows: "For significant mineral and aggregate sites, the county will determine whether mining will allowed during periodic review of the comprehensive plan or in response to a Post Acknowledgment Plan Amendment request by applying the provisions of OAR 660-23-180(4) and (5), which include the following general steps."**

Testimony presented by: Northwest Aggregates, Inc.

Staff Response: Staff has no objection to this amendment.

7. **On page 1 of the draft Comprehensive Plan provisions, Purpose of the Plan, ... retain the strike out , but add - "and the."**

Testimony presented by: Morse Brothers

Staff Response: Staff has no objection to this amendment.

8. **On the third page of the proposed draft, the last sentence in the first paragraph raises the question: "What is the relationship between the comprehensive plan and the zoning ordinance as it relates to the designation of sites for surface mining?" "How does it implement the Goal 5 process?"**

Recommends the following addition: "Unless otherwise provided, the following steps shall be followed with regard to a Goal 5 resource:"

Testimony presented by: Morse Brothers

Staff Response: Staff has no objection to this amendment. To further clarify, staff proposes to add "plan map and zoning map" to that last sentence, so that a reader is not confused with a text amendment.

9. **Comprehensive Plan Draft, 1st sentence of page 5 is unclear.**

Testimony presented by: Morse Brothers, Northwest Aggregates, Inc.

Staff Response: Staff has re-written the sentence to: **"Aggregate deposits located in Columbia County are of generally good quality."** A typographical error needed correcting.

10. **Comprehensive Plan Draft page 6, at the end of 1, ... "in the Willamette Valley " should be stricken.**

Testimony presented by: Morse Brothers

Staff Response: Staff has no objection to this amendment.

11. **Comprehensive Plan Draft page 6, under 4, a comma is need(ed)...**

Staff Response: Staff will correct the typographical error.

12. **On page 8, the second full sentence refers to Table XVI-2. ...**

Staff Response: A site must satisfy both location, quality and quantity, plus be approved for mining through the Goal 5 process to get on the Table XVI-2 list. For reference, OAR 660-23-180(2)(a) states: "When a local government conducts an inventory of mineral and aggregate sites ... It shall follow the requirements of OAR 660-23-030 as modified..." Subsection 030 requires the local government to "complete the Goal 5 process for all sites included on the resource list". Staff agrees that Table XVI-1 should have clearer indications of what the end uses are.

COLUMBIA COUNTY ZONING ORDINANCE SECTION 1030

1. **Section 1030 needs corrections to the documents to refer to section, subsection, paragraph, rather than the generic term section.**

Testimony presented by: Jon Jinings, DLCD

Staff Response: The text will be changed to make those clarifications.

2. **Delete Section 1031.4**

Testimony presented by: Northwest Aggregates, Inc.

Staff Response: CCZO 1031.4 was incorporated into the purpose statement to show that only those sites which are significant will be zoned for surface mining. Other sites may be mined, if they have aggregate to suit more limited needs. However, they will be permitted only through a conditional use permit process. Staff recommends that the language be retained.

3. **Section 1031.5 is confusing. It could be read to mean that impacts on developments inside cities cannot even be considered. However, the Port agrees with staff that the Surface Mining Impact Overlay Zone should not apply inside the urban growth boundaries of incorporated cities. The Port recommends that this language be clarified as to its scope."**

Testimony presented by: Port of St. Helens

Staff Response: CCZO 1031.5 reflects the limits of the County's authority to regulate in the incorporated areas. The County does not have regulatory authority in the City limits

outside of an agreement between the city and the County to regulate, or as a condition of approval on an application where the condition is either proposed by the city, or approved by the city through its own regulatory process. The provisions regarding the imposition of a surface mining overlay zone within an urban growth boundary is found in CCZO 1037.6. Staff recommends that no changes be made.

4. **After Section 1032.1, add a definition for “approved land uses.”**

Testimony presented by: Morse Brothers, Inc.

Staff Response: The language in OAR 660-023-180 pertaining to “approved land uses” is by no means a definition. There are many ways that a land use is “approved”; and, to define this term would be cumbersome. Staff prefers to allow interpretation at the time of application to guide decision makers as whether a particular land use is approved or not.

5. **Section 1032.2. Suggests changing the definition of “conflicting use”.**

Testimony presented by: Morse Brothers, Inc.

Staff Response Staff prefers to retain the Goal 5 rule language.

6. **At Section 1032.11, change water-lain to “alluvial.”**

Testimony presented by: Morse Brothers, Inc.

Staff Response: Staff prefers to retain the Goal 5 rule language

7. **Section 1032.12. Change definition of “impact area” to read: “Impact area” is a geographical area within which conflicting uses could adversely affect or be adversely affected by a significant Goal 5 resource.”**

Testimony presented by: Port of St. Helens

Staff Response: The draft duplicates the definition found in OAR 660-23-010(3). Staff prefers to retain the Rule language.

8. **At Section 1033.1, strike out the end phrase “which implements the process described in OAR 660-23-180.”**

Testimony presented by: Morse Brothers, Inc.

Staff Response: Staff has no objection to this amendment.

9. **CCZO 1033.3 “Nothing in this section shall prevent the County...” DLCD recommends that this subsection be amended to clarify that the additional standards are intended to protect either “significant aggregate resources” or “significant Goal 5 resources included on an acknowledged inventory.”**

Testimony presented by: Jon Jinings, DLCD

Staff Response: Staff recommends the language be amended to read “Nothing in this section shall prevent the County from adopting additional clear and objective standards to protect significant Goal 5 resources included in an acknowledged inventory from some or all conflicting uses in addition to the minimum required standards in the surface mining zone.”

10. **Amend CCZO 1033.3 as follows: “Nothing in this section shall prevent the county from adopting standards to protect significant aggregate and mineral resources from some or all conflicting uses in addition to the minimum required standards in the surface mining zone.”**

Testimony presented by: Northwest Aggregates, Inc.

Staff Response: The purpose of the provision is to ensure a balance is established between all significant, inventoried Goal 5 resources. This may be accomplished by additional standards. Adopting the language proposed by Northwest Aggregates would focus on only one of the Goal 5 resources. Therefore, staff recommends that CCZO 1033.3 be amended as shown above.

11. **At Section 1033.3, what does this phrase mean? ... This phrase should be stricken.**

Testimony presented by: Morse Brothers, Inc.

Staff Response: This phrase clarifies that at some point in the future the County may want to adopt additional standards for protection of significant Goal 5 resources. The County could probably adopt additional standards in the future without this Subsection; however, staff would like to retain this language, though modified by other comments, for clarification.

12. **Section 1033.4 contains Comprehensive Plan language. It has no place in the Zoning Ordinance.**

Testimony presented by: Morse Brothers, Inc.

Staff Response: Staff wanted to make it clear that any function of amending its inventory of significant aggregate sites to its Comprehensive plan shall follow the guidelines in this Section 1030. Staff agrees this language belongs in the comprehensive plan; but we think it is appropriate here as well.

13. **Amend Section 1033.6 to add “Unless otherwise provided in OAR 660-23-180...”**

Testimony presented by: Northwest Aggregates, Inc.

Staff Response: Staff prefers to have the local code stand on its own as much as possible. This is especially true when the administrative rules change relatively often. Therefore, staff prefers not to include the reference to administrative rules.

14. **Section 1033.7 amend language to add “existing and approved land” uses to new off-site conflicting uses.**

Testimony presented by: Morse Brothers, Inc.

Staff Response: Staff prefers to retain the Goal 5 rule language.

15. **Delete Section 1034.2 and replace it with “a conceptual reclamation plan for the site.”**

Testimony presented by: Northwest Aggregates, Inc.

Staff Response: The Columbia County Surface Mining Ordinance requires the submittal of a reclamation plan prior to approval of an operating permit. The current language is consistent with the language in the Surface Mining Ordinance. Staff prefers that the zoning ordinance remain consistent.

16. **Amend Section 1034.4... “ Identification of all existing or approved conflicting uses within the impact area(s) proposed to satisfy the purposes of 1036.1 and 1037.5. Identification of all proposals to minimize any conflicts with approved uses within the identified impact area(s).”**

Testimony presented by: Northwest Aggregates, Inc..

Staff Response: Staff has no objection to this amendment. However, this provision is intended to require more than just a cursory mitigation proposal. A detailed plan to

address the identified conflicts will be necessary to ensure a complete application.

17. **After Section 1034.4, add a definition of "existing use."**

Testimony presented by: Morse Brothers, Inc.

Staff Response: Staff prefers to avoid interpreting Goal 5 Rules promulgated by LCDC in the County's implementation of aggregate portion of Goal 5. An existing use is just what it says.

18. **Amend Section 1034.5... Amend to include only rule language.**

Testimony presented by: Northwest Aggregates, Inc.

Staff Response: The Columbia County Surface Mining Ordinance requires the information described in the current ordinance language. Staff believes the local ordinance more clearly spells out the requirements than the administrative rule language, and retains consistency with local regulations.

19. **Delete Sections 1034.6, 1034.7, 1034.8, 1034.9, 1034.10, 1034.11.**

Testimony presented by: Northwest Aggregates, Inc.

Staff Response: OAR 660-23-180(6)(e) permits the County to establish clear and objective standards for reclamation. The requirements in CCZO 1034.6 through 1034.11 are pertinent for reviewing the application, as Columbia County has the responsibility for reviewing substantially similar information with regard to an operating permit under the Surface Mining Ordinance. Staff prefers to retain the current language.

20. **At Section 1035.1, the drafting technique needs to be changed. ... so that it is clear that one has to meet the first criterion and any one of the next three criteria.**

Testimony presented by: Morse Brothers, Inc.

Staff Response: Staff feels the existing language is clear by using AND after the first criterion and using OR after the next three.

21. **Amend Section 1035.3... Delete "and is Permitted to be mined"**

Testimony presented by: Northwest Aggregates, Inc.

Staff Response: Staff has no objection to this amendment.

22. **CCZO 1035.3 Duplicate the language in OAR 660-23-180(3)(c) or retain language proposed in February 2, 1998 draft: "The aggregate site is on an inventory in the Comprehensive Plan and is permitted to be mined as of September 1, 1996; OR"**

The February 2, 1998 draft language may be preferable because Columbia County did not have a document entitled "inventory of significant aggregate sites" in their Comprehensive Plan on September 1, 1996. They did, however, have a document entitled "Active Aggregate Sites with Active Mining and Land Reclamation Permits."

Testimony presented by: Lisa Smith, Planner, City of Scappoose

Staff Response: Sites listed on the County's list of aggregate sites constituted the County's significant aggregate inventory, and were permitted to be mined as of acknowledgment in 1985. No sites were added to that list since acknowledgment. Since the list falls into the category described by the administrative rule, staff prefers to use the rule language. The text will be amended to duplicate the rule.

23. **Section 1035.5 is not a subordinate section and is not appropriate as meeting the introductory language after the colon.**

Testimony presented by: Morse Brothers, Inc.

Staff Response: Staff feels that 1035.5 is subordinate to the first sentence of 1035 and that it further explains .2,.3 and .4. The present language is reflective of the Rule; staff prefers to keep the present language.

24. **Criteria for Decision (CCZO 1036.1)**

Testimony Presented by: Port of St. Helens

Staff Response: Staff proposed a time limit of ten days 1036.1 B) to enable the county comply with the Goal 5 rule's requirement that the County make a final decision on an application regarding aggregate within 180 days after receipt of a complete application (OAR 660-23-180(4)). Staff intended that persons who wished to identify conflicts in addition to those supplied in the application do so within ten days after the first evidentiary hearing on the matter. This provides the applicant and the decision maker an opportunity to fully examine the new conflicts and for the County to be able to make its decision on as complete a record as possible. The language in 1036.1 B) may not make

the time frame clear. Staff recommends that the language be amended to reflect that the deadline for submittal of the information regarding conflicts be after the first evidentiary hearing. The ten day number is not cast in stone, but thirty days may make it difficult for the County to address the conflict concerns in a timely manner. Staff recommends that no more than twenty days after the first evidentiary hearing be considered as the deadline for identification of conflicts. *Note: The Planning Commission recommendation changes the 10 day period to 14 days from the date of the first evidentiary hearing.*

25. **Section 1036.1 is not consistent with ORS 836.623(2)(b)-(d).**

Testimony presented by: Port of St. Helens

Staff Response: The proposed draft language does not conflict with ORS 836.623. To the extent that one or more of the measures described in ORS 836.623 needs to be applied to a specific site, that should be dealt with if and when an application for surface mining is submitted. See also, answer to comment #1 under "General Compliance with Statutes and Statewide Land Use Goals.

26. **Because of the wording of Section 1036.1, the word "or" should be added at the end of 1036.1(B).**

Testimony presented by: Port of St. Helens

Staff Response: CCZO 1036.1(B) is the end of a subsection. CCZO 1036.1(A) provides that 1036.1(B) may be an alternative. Staff would be happy to correct a typographical error, but staff is not sure to what Mr. Greenfield is referring.

27. **Amend Section 1036.1... Add "existing and approved" conflicts.**

Testimony presented by: Northwest Aggregates, Inc.

Staff Response: Staff has no objection to this amendment.

28. **Section 1036.1(B) does not follow after the "unless" at the end of Section 1036.1; the use of "significant potential for conflict" is incorrect. Should be revised.**

Testimony presented by: Morse Brothers, Inc.

Staff Response: Staff has no objection to making these two clarifications.

29. **Section 1036.1(B). The March 2, 1998 draft version is confusing and should be rewritten.**

Testimony presented by: Port of St. Helens

Staff Response: Staff will correct the grammatical errors in the first sentence. As for the last sentence, the text is supposed to make it clear that documentation supporting an expanded impact area should be submitted to the County within 14 days of the first evidentiary hearing on the application.

30. **CCZO 1036.3 should have additional language to ensure consistency with other Statewide Land Use Goals.**

Testimony presented by: Port of St. Helens. Supported by the City of Scappoose, the Scappoose Planning Commission. Opposed by DLCD.

Staff Response: The proposed draft complies with the provisions of the Goal 5 rule. It is not clear whether the Goal 5 rule permits additional conflict criteria, even if they are intended to comply with other applicable goals. OAR 660-23-180(2)(c) provides that "local governments shall follow the requirements of [OAR 660-23-180](4) of this rule in deciding whether to authorize the mining of a significant mineral or aggregate resource site." It does not leave much flexibility for additions. Staff recommends that no changes be made to the draft.

31. **Section 1036.3(B), use "transportation conflicts" instead of "conflicts".**

Testimony presented by: Morse Brothers, Inc.

Staff Response: Staff has no objection with this amendment.

32. **CCZO 1036.3 (C) "Safety conflicts with existing public airports..." DLCD recommends that the County duplicate the rule language referring to Chapter 285, Oregon Laws of 1995, or to defer to the airport rule, or to remove the proposed language and simply rely upon the airport rule and/or current legislation.**

Testimony presented by: Jon Jinings, DLCD

Staff Response: The relevant provisions of Chapter 285, Oregon Laws of 1995 were repealed by the Oregon legislature in 1997. Therefore, the statutory authority to promulgate rules pursuant to the 1995 laws has been rescinded. Chapter 859, Oregon Laws of 1997, codified in ORS 836.600 through 836.630, replaces much of the earlier

statute. Implementing rules have yet to be adopted. Staff does not recommend referring to an obsolete statute in the local ordinances. The proposed language incorporates the intent of OAR 660-23-180(4)(b)(C): that one of the conflicts to mining which must be considered is "safety conflicts with existing public airports due to bird attractants, i.e., open water impoundments." When an application for a site which includes such a conflict is received by the county, all applicable statutes, rules and ordinances will be considered by the decision-makers. Rather than tie the general ordinance provisions to a specific statute or rule, staff prefers to retain the proposed language.

Alternative: Staff recommends the language be amended as follows: "safety conflicts with existing public airports due to bird attractants, i.e., open water impoundments, shall be addressed according to the processes established in statute or administrative rule."

33. **Delete Section 1036.3(F)**

Testimony presented by: Northwest Aggregates, Inc.

Staff Response: OAR 660-23-180(4)(b)(F) permits the County to adopt regulations which either identify or mitigate conflicts when the County has regulations which supersede ORS 517.780. Columbia County is the only county in the state which regulates surface mining activities which are otherwise regulated by DOGAMI pursuant to ORS 517.780. Staff recommends that the language in the draft ordinance be retained.

34. **Section 1036.4, the second paragraph... Delete the reference to ORS 215.296.**

Testimony presented by: Morse Brothers, Inc.

Staff Response: Staff has no objection to this amendment.

35. **CCZO 1036.4(C) "The actual mining area..." DLCD recommends revising or removing this criterion, as the Department of Agriculture has identified a situation where applying ORS 215.296 criteria may be appropriate.**

Testimony presented by: Jon Jinings, DLCD

Staff Response: Staff recommends deletion of this provision.

36. **Section 1036.4(C), this is not a subparagraph flowing ... it should be reoriented.**

Testimony presented by: Morse Brothers, Inc.

Staff Response: This paragraph is to be stricken as per state comments, above.

37. **Section 1036.5. The Port supports this new language, but it should not be limited to the issue of existing conflicts. Conflicts with a city's ability to implement its acknowledged plan, including its Goal 9 element, also must be considered. This requires consideration of anticipated conflicts as well as existing ones.**

Testimony presented by: Port of St. Helens

Staff Response: OAR 660-23-180(4)(b) describes those items which may be considered when addressing the conflicts between a significant aggregate site and other approved land uses. The rule does not contemplate consideration of uses which are planned for, but not yet approved. While staff agrees that the planning function should include some consideration of anticipated conflicts based on comprehensive plan provisions, the rule does not provide that flexibility. Staff prefers to retain the draft language.

38. **Amend Section 1036.5 by substituting "made" for "weighed"...**

Testimony presented by: Northwest Aggregates, Inc.

Staff Response: Staff has no objection; however, this subsection is going to be re-written because Section 1048.2 language will be inserted.

39. **CCZO 1037. The draft language does not reflect the rule language.**

Testimony presented by: Port of St. Helens

Staff Response: Staff agrees that the draft language does not reflect the rule language. Staff will amend the draft to duplicate the language in ORS 660-23-180(4)(g).

40. **CCZO 1037.1 "Where mining is allowed..."**

Testimony presented by: Jon Jinings, DLCD

Staff Response: DLCD is concerned that the phrase "conditional use permit" will require additional review which is outside the scope of the Goal 5 rule. Staff acknowledges that the wording is somewhat awkward, but wants to retain the language to show that permitting surface mining may be done through a zoning designation, or for a permit for mining in zones where mining is otherwise allowed, such as through a conditional use permit. Staff is aware that the rules do not permit additional processes outside of the Goal 5 ESEEs which may deny mining activities.

41. **Section 1037.1. I find it difficult to understand what this paragraph is attempting. Why are “implementing ordinances” being amended? ...**

Testimony presented by: Morse Brothers, Inc.

Staff Response: Staff will try to make this paragraph more clear. We think clarity will be reached if the term “map” is inserted after plan and change implementing ordinances to zoning map. Staff will re-work this paragraph.

42. **CCZO 1037.2 “Such additional land..” DLCD is concerned that the phrase “conditional use permit” will add a layer of discretionary review which is not permitted by administrative rule. The Department asks that these subsections be clarified and specifically linked to both administrative rule provisions and other relevant sections of the zoning ordinance. In addition, the County will have to identify when an additional land use review process is required.**

Staff Response: The administrative rules do not fit easily into the County’s zoning framework. Staff added the “conditional use permit” phrase to reflect that there may be circumstances where a wholesale zone change may not be the preferred mechanism to identify an acknowledged significant site where mining may be permitted. For example, in certain circumstances, the retention of an agricultural or forest designation may be preferable to address conflicts with adjacent uses, or to limit the activity on the inventory site to mining alone, and not any other use. It is not anticipated that a separate conditional use permit process be used in addition to the Goal 5 process. Staff will continue to work with DLCD to craft the appropriate language to reflect this intent.

As for the circumstances when additional land use review will be required, staff envisions two circumstances which will require additional review: 1) when the use proposed, in addition to mining, such as an affiliated industrial use, is normally subject to site design review; and 2) when the applicant has not obtained an operating permit or a limited exemption certificate pursuant to the Surface Mining Ordinance. Again, staff will continue to work with DLCD to craft the appropriate language to reflect this intent.

Alternative: Staff recommends deleting the references to conditional use permits or alternative zoning designations.

43. **Section 1037.3--the first sentence should be amended to include where in the Comprehensive Plan the “post mining use” will be provided for.**

Testimony presented by Morse Brothers, Inc.

Staff Response: At the very least, the post mining use will be included in Table XVI-2.

44. **Amend the last sentence of Section 1037.5... insert “or lesser” after greater; insert “allowed” after “identified and”**

Testimony presented by: Northwest Aggregates, Inc. Opposed by Port of St. Helens.

Staff Response: OAR 660-23-180(4)(a) provides: “The impact area shall be large enough to include uses listed in OAR 660-23-180(4)(b) of this section and shall be limited to 1,500 feet from the boundaries of the mining areas...” It is not entirely clear if the rule permits the establishment of an impact area of less than 1500 feet. Therefore, staff is amenable to amending the draft to reflect the other amendments, but not to include the phrase “or lesser”. If a party wants to establish a lesser boundary, there is flexibility in the ordinance to craft private agreements to mitigate the conflicts.

45. **Amend Section 1037.5... OAR 660-23-040 instead of OAR 660-23-940.**

Testimony presented by: Northwest Aggregates, Inc., Morse Brothers, Inc.

Staff Response: The typographical error will be corrected.

46. **CCZO Section 1037.6 would require the imposition of an impact overlay zone, and would require that the overlay area be identical to that which is described as an impact area for conflicts analysis. The Port prefers that the impacts be identified and addressed on a case by case basis, rather than have the impact overlay zone add restrictions which may not be appropriate.**

Testimony presented by: Port of St. Helens

CCZO 1037.6 “Where mining is allowed...” DLCD recommends amending the language to reflect that the impact area may be 1500 feet or greater.

Testimony presented by: Jon Jinings, DLCD

Staff Response: Staff received oral comments from one party that there may be circumstances where an impact area may not suit the needs of either the operator or the affected neighboring uses. There has been testimony from others where the concept of an impact overlay zone is generally not acceptable. Staff proposed an impact overlay zone for two reasons: 1) because that seems to be the standard process for addressing conflicting uses; and 2) because an impact overlay zone will set out the specific standards or activities which will be allowed after surface mining is permitted. An overlay zone is

prospective and prescriptive. The alternative would be to conduct an impact review and set conditions of approval on a site by site basis. The site by site analysis may be more responsive to the particular needs and concerns of the applicant/operator and the neighbors, but can result in inconsistent application and administration of conflicting uses in the identified impact area. Staff recommends that an alternative to the Overlay Zone designation be available to permit the parties to craft creative responses to conflicts between future uses and surface mining.

47. **The Port objects to the imposition of the Surface Mining Overlay Zone (CCZO 1037.6)**

Testimony presented by: Port of St. Helens. Supported by: Scappoose CPAC, City of Scappoose.

Staff Response: See staff response to 42, above.

48. **CCZO 1038.2 “the area as defined...” DLCD notes that the terms are not defined.**

Testimony presented by: Jon Jinings, DLCD

Staff Response: The “impact area”, as defined in the Goal 5 rule, will be included in the definitions in CCZO 1032.

49. **Section 1038.3(B), I do not know what the first sentence is about. It appears...**

Testimony presented by: Morse Brothers, Inc.

Staff Response: This sentence states that the Review Authority, in this case the Planning Director, will determine if the new conflicting use, if sited as proposed, would render the surface mining activity out of compliance with the conditions of approval granted at the time of approval; then, the new proposed conflicting use must reduce that impact enough so that compliance is still there, through construction standards or site improvements. Staff feels the paragraph is clear.

50. **Section 1038.4 in the fifth line, add “and is” after vibration sensitive.**

Testimony presented by Morse Brothers, Inc.

Staff Response: Staff has no objection to this amendment.

COLUMBIA COUNTY ZONING ORDINANCE SECTION 1040

1. **CCZO 1040. The Port recommends that the text be amended to prohibit sanitary landfills, landfills or solid waste transfer stations within 10,000 feet of a public use airport.**

Testimony presented by: Port of St. Helens

Staff Response: Staff has no objection to this amendment.

2. **Section 1042, Permitted Uses; the introductory portion of this section needs to be changed radically. The premise is that a recitation of all previous requirements is again unnecessary...**

Testimony presented by: Morse Brothers

Staff Response: This is the introductory paragraph of Columbia County's existing Zoning Ordinance, acknowledged by LCDC. If not necessary to change it to bring the Ordinance into compliance with the new Goal 5 Rules, staff would suggest keeping it as written. Also, there are many people who read only this section, and think they can proceed with mining activities without further review if their property is zoned SM.

3. **Amend Section 1042 by deleting Sections 1042.1 through 1042.8 and adding only the following uses: Mining, crushing or stockpiling of aggregate..., temporary processing of aggregate into asphalt or Portland cement..., and current employment of land for agricultural purposes.**

Testimony presented by: Northwest Aggregates, Inc.

Staff Response: The language proposed by Northwest Aggregates, Inc. duplicates the language found in ORS 215.283(1). The uses as listed in CCZO 1042 have been acknowledged and are consistent with the uses of ORS 215.283(1), they are just organized somewhat differently. DLCDC does not object to the draft as shown, and staff does not object to making the proposed changes, if the Board prefers to duplicate statutory language.

4. **Amend Section 1043 by deleting Sections 1043.1 through 1043.8 to merely permit "processing, as defined by ORS 517.750 of aggregate into asphalt or Portland cement other than on a temporary basis to exceed 60 days."**

Testimony presented by: Northwest Aggregates, Inc.

Staff Response: The uses permitted by CCZO 1043.1 through 1043.4 are permitted as conditional uses in agricultural zones. The uses were acknowledged in 1985, and may provide for some flexibility in reclamation of the site without resorting to a zone change after mining has occurred. While there may be some benefit to having a zone which is limited to only surface mining and closely related uses, staff recommends that the language, as proposed, be retained.

5. **CCZO 1040. The Port recommends that the text be amended to prohibit sanitary landfills, landfills or solid waste transfer stations within 10,000 feet of a public use airport.**

Testimony presented by: Port of St. Helens

Staff Response: Staff has no objection to this amendment.

6. **CCZO 1044. The Port recommends more stringent operating standards be adopted.**

Testimony presented by: Port of St. Helens

Staff Response: Staff agrees that amendments to CCZO 1044 and the Surface Mining Ordinance need to be made to ensure a comprehensive and coordinated regulation of surface mining throughout the county. The proposed amendments seek only to implement the Goal 5 rule to establish a framework for decision making regarding the siting of surface mines. This satisfies the Periodic Review Work Task. Staff recommends that amendments to CCZO 1044 and the Surface Mining Ordinance be addressed outside of periodic review.

7. **CCZO 1048. "SM Zone Change Criteria" DLCD recommends deleting this section, as it has been superseded by the Goal 5 rule.**

Testimony presented by: Jon Jinings, DLCD. Supported by Northwest Aggregates and Morse Brothers. Port of St. Helens prefers to retain CCZO 1048.

Staff Response: Staff agrees to delete CCZO 1048.1 and 1048.3. Staff recommends retaining CCZO 1048.2, as it explains what the decision maker is to weigh in reviewing the criteria established in the administrative rule. However, the location of the criteria in its present location is confusing. If the Planning Commission agrees that the language should be retained, then the language should be moved to CCZO 1036. (1036.5).

Note: The draft proposal recommended to the Board from the Planning Commission included amendments to the operating standards of CCZO 1044. Staff recommends that those changes

be considered in a more comprehensive review of the County's Surface Mining Ordinance, as many of the operating standards duplicate the operating standards in the zoning ordinance.

GENERAL COMMENTS

1. **The Zoning Ordinance and the Surface Mining Ordinance both need to be revised to eliminate conflicts.**

Testimony presented by: Scappoose Spitzenberg CPAC, City of Scappoose, Scappoose Planning Commission, Port of St. Helens

Staff Response: The Columbia County Surface Mining Ordinance regulates the operation and reclamation of surface mines in the County. In essence, the ordinance replaces the role the Department of Geology and Mineral Industries plays in all other counties in the state. Staff recognizes that amendments to the Surface Mining Ordinance are needed to ensure consistency among local code provisions. However, staff recommends an incremental approach rather than a global one, because the operation and regulation of surface mines will have to address broader policy issues than those identified in Goal 5. Staff prefers not to enter into those policy discussions at this time. The County has the ability to decline to adopt suggested legislative amendments. ORS 197.620(1).

In 1996, the Board of County Commissioners appointed a Surface Mining Ordinance Task Force. The draft which the task force reviewed was created in May 1996. It does not include any amendments which would connect to the 1996 Goal 5 Rules, which became effective September 1996. The task force met twice, and could not reach consensus on some of the major policy issues. When two new commissioners were elected to the Board of County Commissioners in 1997, the Board directed staff to address other matters which the Board felt were of a higher priority. Staff does not feel that there is a working draft of the Surface Mining Ordinance amendments which is ready for public hearing and Board adoption.

Mr. Sheehan submitted a copy of a letter from the Department of Land Conservation and Development to me regarding the inclusion of amendments to the Surface Mining Ordinance in the Periodic Review Program. In June 1996, the new Goal 5 amendments had yet to be adopted. In addition, the County's work task for aggregate included general amendments to all ordinance provisions dealing with Surface Mining. Since the time of that letter, circumstances have changed considerably. Perhaps the most important change has been the amendment of the County's work task to amend the ordinances to implement the new Goal 5 rule, and to delete the requirement for a Goal 3 amendment for surface mining. Currently, there is no periodic review requirement to amend the surface mining ordinance. Staff agrees amendments need to be made to clarify the relationship

between the plan, the zoning ordinance and the surface mining ordinance, but again, prefers that the Surface Mining Ordinance amendments take place after the Goal 5 amendments have been addressed.

2. **The Comprehensive Plan should be amended to include sites which were determined by be significant by the County Planning Commission in 1996.**

Testimony presented by: Agnes Petersen, Ken Jillson

Staff Response: Both Ms. Petersen and Mr. Jillson submitted copies of the documentation presented to the Planning Commission in 1996 to support the inclusion of sites they have an interest in on the County's significant site inventory. Like amendments to the Surface Mining Ordinance, amendments to include significant sites on the County Comprehensive Plan inventory list are more involved than they seem on the surface, and should be addressed outside the scope of these amendments.

3. **The proposed draft amendments do not adequately consider their effects on existing Urban Growth Management Agreements.**

Testimony presented by: City of Scappoose, Scappoose Planning Commission and the Port of St. Helens.

Staff Response: The proposed amendments are intended to implement the 1996 Goal 5 rule. They are not intended to amend the zoning for a particular site, nor to eliminate the provisions for coordination which are included in the Urban Growth Management Agreements and the Comprehensive Plan. The concerns expressed by the City reflect the impact of a zone change on a particular property. Staff believes that the proposed draft does not create a conflict between the Comprehensive Plan, the zoning ordinance, and the Urban Growth Management agreements.

4. **The proposed amendments do not address conflicts which have or will arise between the Scappoose Drainage Improvement District and Northwest Aggregates, Inc.**

Testimony presented by: Scappoose Drainage Improvement District.

Staff Response: Staff agrees that the issues raised by the District should be dealt with during an application for surface mining for property located within the District. Staff also believes that the County's flexibility to deal with the conflicts may be limited by the scope of the state rules. Staff encourages a dialogue between the parties and LCDC for amendments to the rule to permit the county to consider the concerns as part of a conflict review and ESEE during the application process.

Board of County Commissioners

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March 10, 1998

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MEMO

To: Board of County Commissioners
From: Anne Corcoran Briggs
Subject: Responses to Written and Oral Testimony Presented to the Board of County Commissioners regarding proposed Ordinance 98-01
Date: April 1, 1998

This memorandum summarizes staff response to testimony presented to the Board of County Commissioners in writing and at the public hearing held before the Board on March 25, 1998. The memorandum only addresses new information or comments. Many of the comments made to the Board reiterate testimony presented to the Planning Commission. The staff response to those comments may be found in a memorandum to you dated March 10, 1998. A copy of this memorandum and the March 10, 1998 memorandum have been included in the ordinance package as findings in support of the draft text.

Most of the testimony was directed toward the compatibility of surface mining with airport uses, specifically, whether establishing a process which may allow an avenue to permit mining near the Scappoose Airport is in the best interests of the County. Extensive citations to the City of Scappoose's Comprehensive Plan and to the Airpark Master Plan have been made to support this contention. Staff believes that it is in the best interests of the County to abide by the Goal 5 rule language as much as possible. Many of the issues raised regarding conflicts between airport uses and surface mining can be addressed using the processes established through these ordinance amendments. Staff does not believe it is in the best interests of the County, through these proceedings, to make the policy decision to exclude any potentially significant aggregate sites from evaluation under the Goal 5 conflicting use analysis procedure as to whether or not mining should be allowed. Staff directs the Board to the March 10, 1997 memorandum for a more detailed response.

This memorandum is divided into four sections: responses to concerns about compliance with statutes and the Statewide Land Use Goals; Columbia County Zoning Ordinance Section 1030; Columbia County Zoning Ordinance Section 1040; and General Comments.

COMPLIANCE WITH STATUTES AND STATEWIDE LAND USE GOALS

1. **The proposed ordinance fails to comply with ORS 197.005(1), (2), (4), and (5), 197.010(1), 197.015(5) and 197.175.**

Testimony presented by: City of Scappoose

Staff Response: The statutes referenced are legislative findings, policy statements, definitions, and the general duty the County has to adopt land use ordinances consistent

with Statewide Land Use Goals. The City argues that adoption of these rules will conflict with these statutory policies. The proposed draft incorporates, in most cases, verbatim, the language adopted by the Land Conservation and Development Commission in the 1996 Goal 5 amendments. If the actions of the Commission were against state law, they should have been challenged in 1996. What is being presented to the Board of County Commissioners is a framework for decision-making, consistent with the Goal 5 rules. All of the arguments about consistency with the City's comprehensive plan and the Airport economic development program are based on the premise that by adopting the proposed amendments, the County is somehow permitting aggregate development near the Airport. The proposed ordinance text does not do that. If an application is submitted which adversely affects existing and permitted uses, or adversely affects airport uses, they can be addressed through the ESEE analysis at the time that site is being considered. Staff believes it is premature to assume that these ordinance amendments will cause a conflict with the City or the Port of St. Helens' activities. The assertion that the proposed amendments conflict with the statutes listed above is not supported by the evidence.

2. **The proposed ordinance fails to comply with 197.040, 197.251 and 197.712.**

Testimony presented by: City of Scappoose, Port of St. Helens

Staff Response: The statutes listed apply to the duties of the Land Conservation and Development Commission (LCDC), not to the Board of County Commissioners for Columbia County. The City argues that the Goal 5 rules do not comply with Goal 5 or other Statewide Land Use Goals. The Port argues that the Goal 5 rules do not adequately comply with Goal 2. These arguments should have been made in an appeal of the adoption of the 1996 Goal 5 rules by LCDC. The proceedings of the Board of County Commissioners are not the forum for this discussion.

COLUMBIA COUNTY ZONING ORDINANCE SECTION 1030

1. **The proposed conflicts analysis in CCZO 1036.1 and 1036.2 do not permit the County to analyze consistency with planned uses identified in the City of Scappoose's Comprehensive Plan.**

Testimony provided by: City of Scappoose, City of Columbia City, and Port of St. Helens

Staff Response: The proposed language in CCZO 1036.1 and 1036.2 are taken from OAR 660-23-180(4)(b), which limits the conflicts analysis to existing and proposed uses. Staff believes that the language in the rule, and as adopted by local code, is broad enough

to include in a conflicts analysis those uses which are permitted outright in zones designated for certain activities at the time an application for a plan amendment/zone change for surface mining is submitted.

A more detailed response to this argument may be found in the March 10, 1998 staff memorandum.

2. **CCZO 1036.5. Language should be added to read:**

“Notwithstanding any other provision of this subsection, however, in the event that conflicts cannot be minimized with existing and approved uses, and with future uses provided for in an acknowledged comprehensive plan, within airport boundaries at airports protected under ORS 836.600 or 836.630, the mining at the site shall not be allowed.”

Testimony presented by: Christopher Thomas, representing Transwestern Aviation

Staff Response: This language essentially makes the policy decision to prohibit mining at the Meier site if conflicting uses cannot be minimized. Staff does not recommend that this language be adopted, as it makes a decision regarding an application on a particular site in the context of legislative amendments to establish a process for decision making.

3. **CCZO 1036.5(B). To be consistent with the 1996 Goal 5 rules, the word “practical” should be changed to “practicable.”**

Testimony presented by: Jon Jinings, DLCD

Staff Response: The language in CCZO 106.5(B) will be amended to “practicable.”

COLUMBIA COUNTY ZONING ORDINANCE SECTION 1040

1. **CCZO 1042.7. ORS 215.283(2)(i) provides an opportunity to establish a facility for the primary processing of forest products. To maintain consistency with the statute, it will be necessary to expand the proposed language to depict the situation described in the statute.**

Testimony presented by: Jon Jinings, DLCD

Staff Response: The language in CCZO 1042.7 will be amended to include the statutory language.

2. **CCZO 1043. The County should retain the language which permits a residence for a caretaker, operator or property owner. (CCZO 1043.5)**

Testimony presented by: Ken Jillson

Staff Response: The provision to allow for a dwelling as described in CCZO 1043 does not comply with the uses listed in ORS 215.283. Part of the rationale to amend CCZO 1040 was to ensure consistency with ORS 215.283, and eliminate the argument that a Goal 3 exception was necessary because the uses allowed in the Surface Mining zone exceeded those permitted in an agricultural zone. Staff recommends that the Board not retain CCZO 1043.5 (residence for a caretaker, operator or property owner.) Such uses lawfully established prior to state or local law prohibiting them may continue subject to the county's legal non-conforming use provisions.

GENERAL COMMENTS

1. **Columbia County failed to comply with statutory and ordinance requirements for the adoption of amendments to the Comprehensive Plan and Zoning Ordinance. The failure to adequately notice the first reading of the ordinance violates Goal 1 (Citizen Participation).**

Testimony presented by: City of Scappoose

Staff Response: Adoption of land use ordinances by Columbia County is governed by two sets of rules: ORS 203.045 and processes described in the Comprehensive Plan and Zoning Ordinance. The Comprehensive Plan requires that amendments to the Plan must go through the same review procedures as was done when the Plan was first acknowledged. Locally, it has been interpreted to mean that the draft is submitted to the CPACs for review and comment, a recommendation is made by the Planning Commission, and the amendments are reviewed and adopted by the Board of County Commissioners. Decisions by the Planning Commission and the Board of County Commissioners may be made after hearings are held on the items subject to review.

The Zoning Ordinance establishes much the same process, but adds notice requirements as well. Notice of legislative hearings on amendments must be published. Individual notice is not necessary, unless the Board requires that such notice be given. In this case, the Columbia County Planning Commission held two hearings on the matter, and held the record open for testimony for a month. Before the Board of County Commissioners adopted any ordinance provisions regarding this matter, notice was published in newspapers, individual notice was sent to 175 persons, and copies of the draft ordinance

were mailed to 31 persons.

ORS 203.045 provides that ordinances may be adopted in two ways:

- a. By reading the ordinance on two separate occasions at least 13 days apart. The first reading may be by title only, if no member of the governing body requests that the ordinance be read in full. An ordinance may be amended prior to final adoption, but all amendments have to be read fully and distinctly in an open meeting of the body, OR
- b. The entire governing body may declare an emergency, and the two readings may occur (once in full and once by title) at one meeting.

The statute does not require that the adoption of an ordinance be subject to public hearing, merely that the ordinance be adopted in a meeting of the governing body.

By reading the ordinance by title at the Board's regular meeting on March 11, 1998, staff was essentially covering all of the bases. The ordinance provides for an emergency clause, but if the Board prefers to adopt without the emergency clause, it may do so, provided that all of the changes which have been made to the ordinance from the first reading to the second reading have been read aloud fully and distinctly in an open meeting of that body. That means that prior to final adoption, all changes to the ordinance document that have been made from the first reading will have to be read into the record.

The Board of County Commissioners held a hearing on the proposed amendments pursuant to the provisions of the County's Comprehensive Plan and Zoning Ordinance. Notice of the hearings complied with the ordinance requirements. Staff has deleted the emergency clause in the final draft, as the Board did not adopt the ordinance at the March 25, 1998 meeting. At the point the Board does choose to adopt the amendments, the second reading should include a recitation of the changes made from the first reading. Then, the Board may vote on the ordinance. Since the ordinance will not be adopted with an emergency clause, the ordinance will become effective 90 days from the date of adoption. ORS 203.045. Staff believes that the ordinance adoption process is legal and correct.

Parties have had two months to present testimony in support of or in opposition to the proposal before the Board has taken action. The proposed text is substantially similar to that presented to the Columbia County Planning Commission on February 2, 1998. Opportunity has been given to testify regarding the amendments. Additional process is not necessary.

2. **Columbia County should adopt an ordinance similar to that considered by Union County. That ordinance proposal prohibits surface water impoundments within 5000 feet of an airport. The Union County proposal is supported by the FAA and ODOT.**

Staff Response: The Union County ordinance draft is being considered as an amendment to the County's airport overlay zone. According to testimony by Jon Jinings, DLCD, it is not clear whether the Department of Land Conservation and Development has endorsed the amendments, nor is it clear that the issues regarding mining and airport use are similar enough to warrant adopting the Union County provisions. Staff recommends that consideration of amendments such as those proposed in the Union County draft be considered in separate proceedings. The result of those amendments can be addressed during a review of an application for surface mining near an airport. The draft proposal (CCZO 1036.3(C)) permits the County to address conflicts between existing public airports during the application process. To alleviate some of the concerns of the Port and the City, staff recommends that the text of CCZO 1036.3(C) be amended as follows:

“C) Safety conflicts with existing public airports due to bird attractants, i.e., open water impoundments, shall be addressed according to processes described in statute, administrative rule, or in local ordinances enacted to implement statute and administrative rule.” (Language underlined to be added.)

3. **Columbia County should make a decision to support clean industrial uses by adopting policies which favor areas identified for new, employment-intensive, clean industrial uses in County or City comprehensive plans.**

Testimony presented by: Port of St. Helens, Transwestern Aviation, City of Scappoose, City of Columbia City

Staff Response: Staff does not recommend going beyond the parameters of the Goal 5 rule at this time. However, if the Board chooses such an action, staff recommends that amendments be incorporated into the County's Comprehensive Plan and Zoning Ordinance, as follows:

Add a new Comprehensive Plan Surface Mining Policy 17, and a new Industrial Development Policy 13 to read as follows:

“17. Avoid conflicts with future diverse, employment intensive, non-polluting industrial uses called for in acknowledged comprehensive plans by prohibiting new or expanded mining operations within 3,000 feet of areas designated by plans for such uses as of April 1, 1998.”

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“13. Avoid conflicts with future diverse, employment intensive, non-polluting industrial uses called for in acknowledged comprehensive plans by prohibiting new or expanded mining operations within 3,000 feet of areas designated by plans for such uses as of April 1, 1998.”

AND Add subsection .6 to proposed County Zoning Ordinance Section 1036

“.6 Notwithstanding any other provisions of this section, however, mining shall not be allowed at a site if:

“a. That proposed mining will be within 3,000 feet of an area designated by an acknowledged comprehensive plan for future diverse, employment intensive, non-polluting industrial uses as of April 1, 1998.”

CONCLUSION

Staff believes that the proposed amendments are consistent with applicable Statewide Land Use Goals and with the Goal 5 Rule (1996.) Staff recommends that the Board of County Commissioners adopt the March 12, 1997 ordinance text, with amendments limited to those shown above. If you have any questions regarding this matter, please let me know.

COLUMBIA COUNTY BOARD OF COMMISSIONERS
Staff Report
Text Amendment
March 10, 1998

FILE NUMBER: TA 98-6

APPLICANT: Columbia County
Land Development Services

REQUEST: To change the text of the Columbia County Comprehensive Plan and Zoning Ordinance to reflect changes in State Goal 5 Administrative Rule OAR 660-23.

BACKGROUND: This is Task 1 of the Periodic Review Program. Applicant wishes to change the text of the Columbia County Zoning Ordinance and Comprehensive Plan as attached:

FINDINGS:

This request is being processed under Sections 1606 and 1611 of the Zoning Ordinance. The pertinent sections of the ordinance are as follows:

"1606 Legislative Hearing: Requests to amend the text of the Zoning Ordinance...are legislative hearings. Legislative hearings shall be conducted in accordance with the following procedures:

- .1 A legislative amendment to the Zoning Ordinance Text or Map may be initiated at the request of the Board of Commissioners, a majority of the Commission, or the Director, or any citizen of the County may petition the Commission for such a change."

Finding 1: The Director is requesting attached changes.

Continuing with Section 1606 of the Zoning Ordinance:

- .2 Notice of a Legislative Hearing shall be published at least twice, 1 week apart in newspapers of general circulation in Columbia County. The last of these notices shall be published no

less than 10 calendar days prior to the Legislative Hearing. The mailing of notice to individual property owners is not required but shall be done if ordered by the Board of Commissioners."

Finding 2: A hearing notice was published in the St. Helens Chronicle and Scappoose Spotlight newspapers on January 14 and 21, 1998, both of which are more than 10 days prior to the Planning Commission hearing date of February 2, 1998. Notice to individual property owners was not required and was not done. A hearing notice was published on March 11 and 14, 1998 in the Chronicle; a hearing notice was published in the Spotlight, Independent, Chief and Columbia County Review on March 11, 1998, all of which is more than 10 days prior to the Board of Commissioners hearing date of March 25, 1998.

"1611 Notice of Legislative Hearing: The notice of a legislative hearing shall contain the following items:

- .1 Date, time and place of the hearing;
- .2 A description of the area to be rezoned or the changes to the text;
- .3 Copies of the statement for the proposed changes are available in the Planning Department. These proposed changes may be amended at the public hearing;
- .4 Interested parties may appear and be heard;
- .5 Hearings will be held in accordance with the provisions of the Zoning Ordinance."

Finding 3: All of the above were included in the Notice of Public Hearing published twice in the Chronicle newspaper.

COMMENTS:

**PERIODIC REVIEW
GOAL 5 - AGGREGATE AMENDMENTS
Text Amendment / TA 98-6**

**RECORD OF TESTIMONY RECEIVED
as of March 2, 1998, 4:30pm**

Date Received:	Received from:	What was received?
2/2/98 at hearing	Jon Jinings, Field Representative Department of Land Conservation & Development	Memorandum (2 pages)
2/2/98 at hearing	Jeff Bennett, Attorney Tarlow Jordan & Schrader Attorney for City of Scappoose	Letter (3 pages)
2/2/98 at hearing	Mark Greenfield, Attorney Attorney for Port of St. Helens	Letter (8 pages) Attachments: →Letter from Don Otterman, City of Scappoose, dated 7/16/96 (3 pages) →Ordinance No. 581 (62 pages)
2/5/98 in mail	Lisa Smith, Planner City of Scappoose	Submittal of "attached report" as referenced in letter from Tarlow Jordan & Schrader: <u>Wildlife Strikes to Civil Aircraft in the United States 1992-1996</u> (39 pages)
2/13/98 in mail	Steven Abel, Attorney Stoel Rives LLP Attorneys Attorney for Northwest Aggregates, Inc.	Letter (3 pages) Attachments: →Proposed Amendments (4 pages)
2/17/98 at CPAC meeting	Bruce Hugo	Letter dated 9/29/97 (1 page) Attachments: →Response to letter by Glen Higgins (5 pages)

Date Received:	Received from:	What was received?
2/18/98 at counter	David Brian Williamson, Attorney Williamson and Williamson Attorney for Loren Ellis, Jr. & Sons	Letter (1 page)
2/18/98 at hearing	Agnes Peterson, Owner Tide Creek Rock, Inc.	→Tide Creek Rock, Inc. Significance Determination Goal 5 Mineral and Agg. Resource Evaluation dated May 1995 →HG Schlicker & Associates Goal 5 Mineral and Aggregate Periodic Review Phase II Inventory and Conflicting Uses Report
2/18/98 at hearing	Richard Lyon, Morse Bros.	Letter from: (9 pages) Steven Schell, Attorney Black Helterline LLP Law Offices Attorney for Morse Bros., Inc.
2/18/98 at hearing	Kenneth Jillson	Letter with attachments (4 pages) →St. Helens Rock Quarry Significance Determination Goal 5 Mineral & Agg. Resource Evaluation dated January 1996 →Goal 5 Mineral and Aggregate Periodic Review Phase II Inventory and Conflicting Uses Report dated August 2, 1996
2/18/98 at hearing	Mark Greenfield, Attorney Attorney for Port of St. Helens	Letter (8 pages) Attachments: →Letter from Don Otterman, City of Scappoose, dated 7/16/96 (3 pages) →Ordinance No. 581 (62 pages) →Letter from Composites Unlimited dated 10/28/96 (2 pages) →Letter from Sherpa Aircraft Manufacturing Inc. dated 10/24/96 (2 pages) →Letter from Port of St. Helens dated 10/15/96 (3 pages)
2/18/98 at hearing	Mike Sheehan, Scappoose-Spitzenberg CPAC, South County Neighborhood	Letter (2 pages) Attachment: →Letter from Janet Hohle, DLCD dated 6/6/96

Date Received:	Received from:	What was received?
2/18/98 at hearing	Jeff Bennett, Attorney Tarlow Jordan & Schrader Attorney for City of Scappoose	Letter (4 pages) Attachments: → <u>Wildlife Strikes to Civil Aircraft in the United States 1992-1996</u> → Public Hearing for Zone Change Report from The Scappoose Historical Society
2/20/98	Mark Greenfield, Attorney Attorney for Port of St. Helens	Letter (2 pages) with miscellaneous attachments
2/23/98	Gary B. Roth Bates and Roth Ranch	Letter (2 pages)
2/26/98	Karen Vaughan, Secretary Scappoose Drainage Improvements District	Letter (1 page)
2/27/98	Kay C. VanNatta, Chairman Columbia Soil & Water Conservation District	Letter (1 page)
3/2/98 at counter	Lisa Smith, Planner City of Scappoose	Memo with attachments: Letter from Scappoose Planning Commission with miscellaneous attachments
3/2/98 at counter	Copy of letter to Anne Briggs from Lisa Smith, City of Scappoose	Letter (1 page)
3/2/98	Mark Greenfield, Attorney Attorney for Port of St. Helens	Letter (3 pages)
3/2/98	Marie Gadotti Columbia County Farm Bureau	Letter (1 page)

CONCLUSION AND RECOMMENDATION:

Based upon the findings included in the staff responses to comments received, the testimony of the parties and all arguments presented, the **Planning Commission recommends Approval** of the legislative amendment to the text of the Columbia County Zoning Ordinance and the Comprehensive Plan. Said amendments create a procedure for reviewing, approving and protecting significant aggregate sites, consistent with State of Oregon Goal 5 Rules, effective September 1996.

**COMPREHENSIVE PLAN AMENDMENTS TO IMPLEMENT NEW GOAL 5 STATE
ADMINISTRATIVE RULES REGARDING SURFACE MINING
(OAR 660, DIVISION 23)**

I. TEXT AMENDMENTS TO THE COLUMBIA COUNTY COMPREHENSIVE PLAN

A. Amend Part V, AGRICULTURE, Goals and Policies, Policy #2, Page 40 to read as follows:

2. If the County proposes to convert agricultural lands (as defined by Statewide Land Use Goal 3) to urbanizable land, the County shall follow the procedures and requirements for exceptions to the Agricultural Lands goal, pursuant to Goal 2. Those uses which are permitted by ORS 215.283(1) or (2) shall not require an exception to the Agricultural Lands goal.

B. Amend Part XVI, GOAL 5: OPEN SPACE, SCENIC, AND HISTORIC AREAS, AND NATURAL AREAS.

1. Amend Pages 209-210 to read as follows:

GOAL 5: OPEN SPACE, SCENIC, AND HISTORIC AREAS, AND NATURAL AREAS.

PURPOSE OF PLAN:

To conserve open space and protect the identified natural and scenic resources in Columbia County as defined by Statewide Planning Goal Five and the related administrative rule.

GOAL FIVE REQUIREMENTS:

All Goal 5 resources except wilderness areas, Oregon Recreational trails and federal wild and scenic waterways are found within Columbia County. Therefore, in order to meet the requirements of the State Goal, the following resources must be evaluated according to the Goal 5 process referred to below:

1. Land needed for open space;
2. Mineral and aggregate resources;
3. Energy sources;
4. Fish and wildlife areas and habitat;

5. Ecologically and scientifically significant natural areas;
6. Outstanding scenic views and sites;
7. Water areas, wetlands, watersheds, and ground water resources;
8. Historic areas, sites, structures, and objects;
9. Cultural areas;
10. Potential and approved Oregon Recreational trails;
11. Potential and approved federal wild and scenic waterways and state scenic waterways;

Procedures, criteria and definitions necessary to inventory and evaluate Goal 5 resources and to develop land use programs to conserve and protect significant Goal 5 resources are specified in Oregon Administrative Rule (OAR) 660, Division 23 which became effective in September 1996. OAR 660, Division 23 provides standard procedures and requirements for all Goal 5 resource categories, including optional "safe harbor" provisions meeting certain requirements under the standard process and specific rules for each resource category. The rule explains how Columbia County must apply Goal 5 when conducting periodic review and amending the Columbia County Comprehensive Plan and land use regulations affecting Goal 5 resources in the County. Columbia County's adopted 1998 periodic review work program includes amendments to the Columbia County Comprehensive Plan and implementing ordinances addressing mineral and aggregate resources and sensitive lands and habitats. All amendments to the plan map or zoning map affecting Goal 5 resources shall comply with the following OAR 660, Division 23 procedures as codified in the Columbia County Zoning Ordinance.

1. Inventory the Goal 5 resource using the following steps as applicable. The nature and extent of the inventory process will depend on the type of Goal 5 resource and the scope of a particular post acknowledgment plan amendment (PAPA) or periodic review work task:
 - A. Collect information
 - B. Determine the adequacy of information.
 - C. Determine significance of the resources.
 - D. Adopt a list of significant resource sites into the comprehensive plan consistent with OAR 660-23-030, Comprehensive Plan Administrative Procedures Policy 5; and Citizen Involvement Policy 4.

2. Develop a program to achieve Goal 5 for all resources determined to be significant based on an analysis of economic, social, environmental, and energy (ESEE) consequences that could result from a decision to allow, limit, or prohibit conflicting use including the following steps:
 - A. Identify conflicting uses.
 - B. Determine the impact area.
 - C. Analyze the ESEE consequences.
 - D. Develop a program to achieve Goal 5 by allowing, limiting or prohibiting conflicting uses. The program shall consist of plan provisions and land use regulations which address the degree of protection for the significant resource site by adopting measures to be applied to conflicting uses.

OVERALL GOAL 5 POLICY STATEMENT:

1. Columbia County recognizes that forest operations for which notification is required by ORS 527.670(2) shall be governed by the Forest Practices Act.
 2. Columbia County shall rely upon the Forest Practices Act and any supplemental agreements between Fish and Wildlife Commission and the Board of Forestry to protect critical wildlife habitat sites; and
 3. Columbia County shall not apply the provisions of Sections 1120, 1180, 1185, and 1190 of the Zoning Ordinance to commercial forest operations covered by ORS 527.670(2).
2. Amend Pages 215-222 to read as follows:

SURFACE MINING

INVENTORY OF MINERAL AND AGGREGATE RESOURCES

Introduction:

Sand, gravel, and rock deposits exist along most of the alluvial plains adjacent to the Columbia River in the northeast section of the County. They exist as well in the Scappoose Bay areas, sometimes at depths of twenty (20) feet or more. Mines, quarries, placers, prospects, and occurrences or mineral resources in Columbia County are listed in the Key to Oregon Mineral Deposits Map, by the State of Oregon Department of Geology and Mineral Industries, dated 1964. While the information in this report is very general, and at most describes sites only by township, range, and section, it does identify the existence of the resources and therefore is shown below:

1. Bauxite - deposits are known to occur along the foothills in the eastern portion of the County.
2. Limonite - T5N, R2W, S31; T4N, R2W, S34, 27; T4N, R3W, S35; T5N, R3W, S24; T5N, R1W, S18.
3. Coal - T5N, R3W, S27; T4N, R4W, S23, 26.
4. Mineral Pigment - T4n, R3W, S35; T3N, R2W, S3.
5. Refractory Clays - T8N, R3W, S33.

Aggregate deposits located in Columbia County are of generally good quality. The quality of deposits existing in the Scappoose Bay area is said to be some of the highest in the State.

Aluminum ore deposits are of low-grade quality. However, through a refining process, these resources could prove economically feasible.

Limonite deposits in the Scappoose area are some of the most important in the State though these deposits contain far too little tonnage to be economically feasible.

Coal and shale deposits in the County are of low grade.

Inventory Process:

The County shall follow the process and apply the criteria contained in State Goal 5 and Oregon Administrative Rule 660 Division 23 for inventorying and evaluating mineral and aggregate resources and developing land use programs to conserve and protect significant mineral and aggregate resources.

Inventories of mineral and aggregate resources provide information necessary to locate and evaluate these resources and develop programs to protect them. An inventory of mineral and aggregate resources shall follow the process contained in OAR 660-23-180(2). Resources which are inventoried shall be evaluated to determine whether or not they are significant as defined in Oregon Administrative Rule.

Determination of Significance

A mineral and aggregate resource shall be deemed significant if it meets the definition of significance contained in OAR 660-23-180(3) as follows:

1. A representative set of samples of aggregate material in the deposit on the site meets Oregon Department of Transportation(ODOT) specifications for base rock for air degradation, abrasion, and sodium sulfate soundness, and the estimated amount of material is more than 2,000,000 tons.
2. The material meets local government standards establishing a lower threshold for significance than #1 above; or
3. The aggregate site is on an inventory or significant aggregate sites in an acknowledged plan on September 1, 1996.

4. Notwithstanding #1-#3 above, except for an expansion area of an existing site, if the operator of the existing site on March 1, 1996 had an enforceable property interest in the expansion area on that date, an aggregate site is not significant if the criteria in either a or b of the this subsection apply:

- a. More than 35 percent of the proposed mining area consists of soil classified as Class I on Natural Resource and Conservation Service(NRCS) maps in September 1996; or
- b. More than 35 percent of the proposed mining area consists of soil classified as Class II, or a combination of Class II and Class I or Unique soil on the NRCS maps available in September 1996, unless the average width of the aggregate layer within the mining area exceeds 60 feet.

Significant Mineral and Aggregate Sites.

Sites listed in Table XVI-1 were sites actively being mined in 1984 and have been determined to be significant in the acknowledged 1984 Columbia County Comprehensive Plan.

TABLE XVI-1
ACTIVE AGGREGATE SITES
 with
ACTIVE MINING AND LAND RECLAMATION PERMITS (1-20-84)

<u>Name</u>	<u>Location</u>
1. Backlund, Dick	5121-000-00200
2. B&B Excavating	4227-043-00900 4227-043-00901
3. B&B Construction	7404-020-00600
4. Cascade Aggregates	4131-000-00100 4131-000-01000 4132-000-00300 4132-000-00400 4032-000-00500
5. Crown Zellerbach	5305-000-00300
6. Deer Island Sand & Gravel	5106-000-00902 5107-000-00102 5108-000-00302

7.	Les Darr Trucking	5107-000-00101 5107-000-00300
8.	Floyd Graham	6212-000-01301
9.	Don Hooper, Inc.	7410-010-01000
10.	Kynsi Construction	7509-000-00300
11.	J. L. Ledgett Co.	7307-000-00300
12.	George Lammi	7509-000-00400
13.	Lakeside Industries	7218-010-00300
14.	J. L. Ledgett Logging	7303-000-00400
15.	O&T Rock Products, Inc.	6212-000-01100
16.	Oregon State Highway Division	5305-000-00400
17.	Peter-Billy-Glen Tree Farm, Inc.	4304-000-00100
18.	Parks & Palm Logging Co.	7408-011-00300 7408-011-00400 7409-020-01300 7409-020-01400
19.	Petersen, John (DBA: Tide Creek Rock Products)	6236-000-00500
20.	Swedetown Gravel & Rock	7422-000-00200
21.	Scappoose Sand & Gravel	3201-040-00600 3201-040-00700 3212-000-00100
22.	Sutter, Fred	7318-000-01300
23.	Watters Concrete Products	5133-000-00300
24.	Zimmerly, Paul	7411-000-01000 7411-040-00100

Sites may be added to the list of significant mineral and aggregate sites during Periodic Review or in conjunction with a Post-Acknowledgment Plan Amendment (PAPA) process by amendment of the Comprehensive Plan.

The list of significant sites which have been added to the inventory of significant sites is contained in Table XVI-2.

TABLE XVI-2
SIGNIFICANT AGGREGATE SITES & POST-MINING USE

(TO BE ADDED)

DECISION REGARDING THE MINING OF SIGNIFICANT SITES:

For significant mineral and aggregate sites, the County will determine whether mining will be allowed during Periodic Review of the Comprehensive Plan or in response to a Post Acknowledgment Plan Amendment request by applying the provisions of OAR 660-23-180(4) and (5) which include:

1. Identifying conflicting uses.
2. Determining the impact area.
3. Analyzing the economic, social, environmental and energy (ESEE) consequences of a decision to allow, limit, or prohibit a use which may conflict with surface mining.
4. Developing a program to achieve Goal 5 by allowing, limiting or prohibiting conflicting uses. The program shall consist of plan provisions and land use regulations which address the degree of protection for the significant resource site by adopting measures to be applied to conflicting uses.

Detailed procedures to carry out these steps are contained in Section 1030 of the Zoning Ordinance.

GOALS AND POLICIES:

GOAL:

To protect and utilize appropriately the mineral and aggregate resources of Columbia County.

POLICIES:

It is the policy of the County to:

1. Develop an on-going program to determine the quality, quantity, location, and type of mineral and aggregate resources in the County so that up-to-date material will be available to make informed decisions.
2. Consider the preservation of aggregate material in all its land use actions.
3. Pay special attention to any development adjacent to mineral and aggregate resources and take the necessary steps to minimize the impacts of development on these resources consistent with the adopted program to achieve Goal 5.
4. Recommend the establishment of an ad hoc committee to review inactive and undeveloped sites identified in the surface mining inventory and make recommendations as to whether or not the sites should be zoned Surface Mining (SM) and protected upon application of the Goal 5 process.
5. Designate as Surface Mining (SM) those sites with current active mining and land reclamation permits as of January 20, 1984. Change, upon completion of mining activities, those sites that will revert to uses as indicated in the reclamation plan or to uses compatible with surrounding lands.
6. Designate new mining deposits not shown on the existing inventory as Surface Mining when a report is obtained from a certified geologist, engineer/geologist, or qualified engineering testing firm verifying the location, type, quality, and quantity of the material and when other steps of the Goal 5 process are satisfied.
7. Encourage timely utilization of mining resources to protect the site from incompatible development on adjacent lands.
8. Require that all sites proposed for surface mining be inventoried for their archaeological significance in accordance with standards set by the State Archaeologist. If an archaeological site(s) is discovered, the Planning Commission shall hold a public hearing to review the site(s) and establish measures to mitigate potential conflicts as necessary.
9. Retain in its possession lands it now owns which contain aggregate material. The County may permit private operators to mine county materials.
10. Require that proposals for new extraction operations be accompanied by detailed plans of the method of operation and assurances that the area will be suitably reclaimed for uses designated by the plan.

11. Require that once mining and/or associated activities (i.e. rock crushing) have begun they shall be in accordance with state standards and any more stringent standards that the County may enact. In particularly sensitive areas, such as forestry, residential, agricultural, or wildlife habitat, the mining and associated operations shall be subject to more restrictive standards to keep noise, dust, erosion, and other hazards to a level compatible with the adjacent uses. Such standards may include requirements for barrier isolation, setbacks, operating times, concomitant reclamation, limits to active mining area, mining lifetime, water quality, and restrictions on-site processing.
12. Prohibit extraction of sand and gravel from rivers and streams unless appropriate regulating agencies such as the Oregon Department of Environmental Quality, Department of Fish and Wildlife, Oregon State Land Board, Division of State Lands, Corps of Engineers, and Columbia County are in agreement and there is no other economically feasible alternative.
13. Make all possible efforts to insure the retention of riparian habitat, the prevention of erosion and sedimentation, and maintenance of the water quality which exists prior to extraction operations.
14. Insure that extraction operations approved by the County and other regulating agencies do not screen and wash within any river or stream. In addition, settling ponds shall not discharge directly into any water course.
15. Require, as a minimum standard, that extractive industries have access to a public road with two-way capability. As allowed by ORS 487.905, the County may impose weight/load restrictions and may also require the operator to post an adequate surety bond for road repairs.
16. Encourage DOGAMI to conduct a comprehensive inventory of the mineral resources. Upon completion of this study, the County shall up-date zoning and other implementary ordinances to accommodate new found resources.
17. Avoid conflicts with future diverse, employment intensive, non-polluting industrial uses called for in acknowledged comprehensive plans by prohibiting new or expanded mining operations within 3,000 feet of areas designated by plans for such uses as of April 1, 1998.

Amend the Industrial Lands Policies, by adding the following:

13. Avoids conflicts with future diverse, employment intensive, non-polluting industrial uses called for in acknowledged comprehensive plans by

prohibiting new or expanded mining operations within 3,000 feet of areas designated by plans for such uses as of April 1, 1998.

Section 1030

AMENDMENTS TO PERMIT SURFACE MINING

1031 **Purpose:**

- .1 To protect mineral and aggregate resources for present and future use.
- .2 To provide for the development and utilization of deposits of aggregate and resource materials.
- .3 To provide a process to consider amendments to the comprehensive plan and implementing ordinances to permit surface mining consistent with OAR 660 Division 23 (1996).
- .4 To insure that aggregate resource sites which have been determined to be significant and which, based on the evidence in the record, the County finds suitable for protection from other conflicting uses, are zoned for surface mining.
- .5 This section does not apply to property located within the boundaries of incorporated cities, absent specific provisions in an agreement between the City and the County to apply some or all of the County's ordinance.

1032 **Definitions:** The following definitions of terms are applicable for Section 1030.

- .1 "Aggregate Resources" are natural occurring concentrations of stone, rock, sand and gravel, decomposed granite, lime, pumice, cinders, and other naturally occurring solid materials used in road building.
- .2 "Conflicting use" is a use or activity that is subject to land use regulations and that would interfere with, or be adversely affected by, mining or processing activities at a significant mineral or aggregate resource site, as specified in 1034.4, 1036.2 and 1037.5.
- .3 "ESEE consequences" are the positive and negative economic, social, environmental, and energy (ESEE) consequences that could result from a decision to allow, limit, or prohibit a conflicting use.
- .4 "Existing site" is a significant aggregate site that is lawfully

operating, or is included on an inventory in an acknowledged plan, on or before September 1, 1996.

- .5 Expansion area" is an aggregate mining area contiguous to an existing site.
- .6 "Mining" is the extraction and processing of mineral or aggregate resources, in the manner provided under ORS 215.298(3).
- .7 "Minimize a conflict" means to reduce an identified conflict to a level that is no longer significant. For those types of conflicts addressed by local, state, or federal standards (such as the Department of Environmental Quality standards for noise and dust levels) to "minimize a conflict" means to ensure conformance to the applicable standard.
- .8 "Mining area" is the area of a site within which mining is permitted or proposed, excluding undisturbed buffer areas or areas on a parcel where mining is not authorized.
- .9 "Processing" means the activities described in ORS 517.750(11).
- .10 "Protect" means to adopt land use regulations for a significant mineral or aggregate site in order to authorize mining of the site and to limit or prohibit new conflicting uses within the impact area of the site.
- .11 "Width of aggregate layer" means the depth of the water-lain deposit of sand, stones, and pebbles of sand-sized fraction or larger, minus the depth of the topsoil and non-aggregate overburden. ("Width" is thickness; thickness is measured by subtracting the depth of the bottom of the overburden layer from the depth of the bottom of the aggregate layer.)
- .12 "Impact area" is a geographic area within which conflicting uses could adversely affect a significant Goal 5 resource.

1033 **Process:** The following process shall be used to designate a site for surface mining activity:

- .1 All applications requesting a designation for surface mining activities must follow the requirements of Subsections 1033, 1034, 1035 and 1036.

- .2 Three zones specifically permit surface mining activity through a conditional use process: the Primary Agriculture Zone (PA-38), the Forest-Agriculture Zone (FA-19), and the Primary Forest Zone (PF-76). Surface mining may be permitted, but only conditionally, in these three other zones, if the applicant does not wish to seek the Surface Mining Zone (SM) and Goal 5 protection.
- .3 Nothing in this section shall prevent the County from adopting additional clear and objective standards to protect significant Goal 5 resources included in an acknowledged inventory from some or all conflicting uses in addition to the minimum required standards in the surface mining zone.
- .4 The County may update its inventory of significant aggregate sites and amend the Comprehensive Plan by following the process contained in OAR 660-23-180 and the Columbia County Comprehensive Plan.
- .5 The County shall follow the process described in this Section to determine whether an aggregate site is significant.
- .6 The County shall follow the process described in this Section to decide whether or not to authorize the mining of a significant mineral or aggregate site.
- .7 For a significant mineral and aggregate site where mining is allowed, the County shall decide on a program to protect the site from new off-site conflicting uses by following the standard ESEE process in OAR 660-23-040 and 660-23-050 with regard to such uses.

1034 **Application for Plan Amendment and Zone Change to Surface Mining (SM) Requesting Goal 5 Protection:**

An application submitted pursuant to this section may be scheduled for review after the Director has determined it complete. An application for a SM zone requesting Goal 5 protection shall contain the following information:

- .1 Information regarding location, quality and quantity of the resource, sufficient to determine whether the standards and conditions in Section 1035 are satisfied.
- .2 Plans for the reclamation of the site.

- .3 A traffic impact assessment within one mile of the entrance to the mining area sufficient to address criteria in Section 1036(3)(b).
- .4 Identification of all existing and approved conflicting uses within the impact area(s) proposed to satisfy the purposes of 1036.1 and 1037.5. Identification of all proposals to minimize any conflicts with approved uses within the impact area(s).
- .5 A site plan showing the location, area, dimensions, acreage, and legal description of the parcel to be developed or used, together with north point, scale, date of application, contours for all intended uses and phases, including incremental and total volumes of the resources to be mined.
- .6 The documentation, as applicable, required for any application for a site design review as set forth in Section 1550.
- .7 Provisions for landscaping and screen-planting of all parts of the site.
- .8 Provisions for preventing the collection and stagnation of water in all stages of the operation.
- .9 Plans, profiles, and cross-sections of all access roads.
- .10 All plans prepared and submitted shall be at a scale no smaller than one inch to 200 feet, with 5 foot contours, and such information shall be furnished for a distance of not less than 1500 feet beyond the site to determine the impact of the operation on adjacent and surrounding lands.
- .11 A proposal to comply with the operating standards described in Section 1044 and the Columbia County Surface Mining Ordinance.
- .12 A proposal to allow, limit or prevent future conflicting uses. The proposal may include, but is not limited to, a surface mining impact overlay zone as provided by Subsection 1038; site agreements with the owners of neighboring property within the impact area; or, other enforceable conditions on approval of post acknowledgment plan amendment to allow mining, which would address the impacts of future conflicting uses.

1035 **Criteria for Determining Significance:** An aggregate site shall be considered significant if adequate information regarding the quantity,

quality, and location of the resource demonstrates that the site meets the following criteria:

- .1 A representative set of samples of aggregate material in the deposit on the site meets Oregon Department of Transportation (ODOT) specifications for base rock for air degradation, abrasion, and sodium sulfate soundness; AND,
- .2 The estimated amount of material is more than 2,000,000 tons; OR,
- .3 The aggregate site is on an inventory of significant aggregate sites in the Comprehensive Plan, as of September 1, 1996; OR,
- .4 The operator of a site which is on the surface mining inventory wishes to expand the existing site, and on March 1, 1996 had an enforceable property interest in the expansion area.
- .5 Notwithstanding subsections .1 through .3 of this section, an aggregate site is not significant if more than 35% of the proposed mining area consists of soil classified as Class I on Natural Resource and Conservation Service (NRCS) maps as of September 1, 1996; OR, if more than 35% of the proposed mining area consists of soil classified as Class II, or of a combination of Class II or Class I or Unique soil on NRCS maps available as of September 1, 1996, unless the average width of the aggregate layer within the mining area exceeds 60 feet.

1036 **Criteria for Decision:** For a significant site, the County will make its decision whether mining is permitted based on the following process and criteria after receipt of a complete application:

- .1 An impact area large enough to include uses listed in subsection .3 below will be established for the purpose of identifying existing and approved conflicts with proposed mining and processing activities. An impact area established for the purposes of this subsection shall be 1500 feet from the proposed mining area unless:
 - A) It can be demonstrated by the applicant that all existing conflicting uses are located within a lesser distance, an impact area with an irregular distance may be established if it is found to be capable of accurately depicting the presence of existing conflicting uses suitable for the purposes of this section; OR,

- B) Factual data and information indicates a significant potential conflict exists beyond this distance. In that case, a larger area may be established for that conflicting use. The factual data and information for the expanded impact area must be submitted within 14 days after the first evidentiary hearing on the application.
- 2 All existing and approved land uses in the impact area shall be determined that will be adversely affected by the proposed mining operations, and the predicted conflict will be specified for each use.
 - 3 For determination of conflicts from the proposed mining of a significant aggregate site, only the following will be considered:
 - A) Conflicts due to noise, dust, or other discharges with regard to those existing and approved uses and associated activities (e.g., houses and schools) that are sensitive to such discharges.
 - B) Potential conflicts to local roads used for access and egress to the mining site within one mile of the entrance to the mining site unless a greater distance is necessary in order to include the intersection with the nearest arterial identified in the local transportation plan. Transportation conflicts shall be determined based on clear and objective standards regarding sight distances, road capacity, cross section elements, horizontal and vertical alignment, and similar items in the transportation plan and implementing ordinances. Such standards for trucks associated with the mining operation shall be equivalent to standards for other trucks of equivalent size, weight, and capacity that haul other materials.
 - C) Safety conflicts with existing public airports due to bird attractants, i.e., open water impoundments, shall be addressed according to the processes established in statute or administrative rule, or in local ordinances enacted to implement statute and administrative rule.
 - 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 application is initiated.
 - E) Conflicts with agricultural practices; and

F) Other conflicts for which consideration is necessary in order to carry out the provisions of the Columbia County Surface Mining Ordinance or ordinances pursuant to ORS 517.780.

- .4 Determine reasonable and practicable measures which can be required of the mining activity which minimize the conflicts identified in paragraph 1036.3, above. If reasonable and practical measures are identified to minimize all identified conflicts, mining shall be allowed at the subject site with the required conditions. If identified conflicts can not be minimized then Subsection .5 applies and ESEE analysis is required.

To determine whether proposed measures would minimize conflicts to agricultural practices, findings must be made that the mining activity would 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 and forest use.

- .5 For any existing conflicts that cannot be minimized, the ESEE consequences of either allowing, limiting, or not allowing mining at the site will be determined and analyzed. A determination shall be made that the benefits to the public outweigh the detriments suffered as a result of said conflicts. Using the ESEE analysis, a final decision will be made by determining:

A) The degree of adverse effect on existing land uses in 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.

- .6 Notwithstanding any other provisions of this section, however, mining shall not be allowed at a site if:

A) The proposed mining will be within 3,000 feet of an area designated by an acknowledged comprehensive plan for future diverse, employment intensive, non-polluting industrial uses as of

April 1, 1998.

1037 **Protection of Mining Activities Where Mining is Allowed**

- .1 Where mining is allowed through the process outlined in this ordinance, the plan map and zoning map 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.
- .2 Any additional land use review processes, like Site Design Review, shall not exceed the minimum review necessary to assure compliance with this Section and OAR 660 Division 23, and shall not provide opportunities to deny mining for reasons unrelated to this Section, or attach additional approval requirements, except with regard to mining or processing activities:
 - A) For which the Zone Change and Plan Amendment application does not provide information sufficient to determine clear and objective measures to resolve identified conflicts;
 - B) Which were not requested in the application;
 - C) For which a significant change to the type, location, or duration of the activity shown on the Zone Change and Plan Amendment application is proposed by the operator.
- .3 Where mining is allowed under the process included in this Section, a post mining use shall be determined and provided for in Table XVI-2 of the Comprehensive Plan and land use regulations. For significant aggregate sites on Class I, II and Unique farmland, the County 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.
- .4 The County 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 County.
- .5 Where mining is allowed under the process included in this Section, for a significant mineral and aggregate site, new

conflicting uses proposed within the specified impact area surrounding the mine shall be allowed, limited or not allowed, by following the standard ESEE process in OAR 660-23-040 and 660-23-050. For the purposes of this subsection, the impact area shall be a minimum of 1500 feet from the boundaries of the mining area unless a greater distance is identified and allowed under 1036.1.

- .6 Where mining is allowed under the process of this Section and a Surface Mining (SM) designation is approved for the site, a Surface Mining Impact Overlay (SMIO) zone shall be created surrounding the surface mining zone, except when the impact area(s) are located in an Urban Growth Boundary, and except where the County has no jurisdiction. The Surface Mining Impact Overlay Zone (SMIO) shall, at a minimum, encompass the same boundary as determined under 1036.1 The County shall establish specific conditions of approval for mining sites, and their designated impact areas which extend into an Urban Growth Area.
- .7 In lieu of having a Surface Mining Impact Overlay zone imposed on the impact area of an approved mining activity, the owner or operator of the mine and the property owners of the impact area may propose agreement(s) or other enforceable conditions on approval of mining activity, the provisions of which satisfy any and all negative impacts of the conflicting use to the mutual satisfaction of the operator and owners of properties with future conflicting uses. Such agreements or conditions shall be recorded with the County Clerks Office and run with the land, and shall be binding on all future owners, until reclamation is realized and mining activity ceases.

1038 **Surface Mining Impact Overlay Zone (SMIO)**

- .1 The purpose of the Surface Mining Impact Overlay Zone is to provide for the development and utilization of lands within the area of impact of a significant mineral and aggregate resource site, zoned Surface Mining (SM), in order to maintain that unique deposit of material for extraction and future uses of the SM Zone, to encourage compatible uses and to avoid the establishment of incompatible uses through location, design and notification.
- .2 The location of a Surface Mining Impact Overlay Zone will be designated at the time of designation of SM Zoned site. It will be the area defined as the impact area under Subsection 1032.2 and determined under 1034.4, 1036.1 and 1037.5. For existing SM

Zoned sites the owner or operator of the site shall apply for such designation within 2 years of enactment and final approval of this amendment.

- .3 Relationship to the standards of the underlying zoning districts. The provisions of the Surface Mining Impact Overlay District are intended to supplement the provisions of the underlying zoning districts. In addition to the development standards of the primary district, the establishment of noise, dust and vibration sensitive uses and the creation of new parcels within the Surface Mining Impact Overlay District (SMIO) shall be subject to the following:

A) Setbacks:

The location of new noise, dust or vibration sensitive uses, constructed after the establishment of the SMIO district, shall be situated on the parcel to minimize potential adverse effects of noise, dust or vibration. Their location shall take into consideration the surrounding topography and transportation system and, if necessary, setbacks greater than those required by the underlying district may be imposed by the review authority.

B) Noise, Dust and Vibration Reduction Measures:

Measures may be required of owners of new noise, dust or vibration sensitive uses constructed after the establishment of the SMIO district when determined by the review authority to be necessary to ensure compliance by surface mining operator with applicable regulations and conditions of the Operating Permit. Reduction measures may include, but not limited to, berms, walls, vegetative buffers, insulation, double pane windows, reflective siding, foundation washer insulation, orientation of windows. The nature and extent of the reduction measures shall be determined by the review authority.

C) Covenant Not To Sue:

Prior to issuance of any building permits for new noise, dust or vibration sensitive uses after the establishment of a SMIO District, the owner shall sign and record in the County Clerk's Office, a "Covenant Not To Sue" or other instrument which restricts present and future owners from remonstrating against or objecting to permitted mining activities allowed in the nearby SM District.

D) Creation of New Lots or Parcels:

A notation shall be placed on an instrument creating a new lot or parcel which states that the lot or parcel is within a Surface Mining

Impact Overlay District (SMIO) and is subject to the standards of Columbia County Zoning Ordinance Subsection 1038.

- .4 Land Use Approval and Permit Review:
Prior to the commencement of any development activity involving the construction of new structures or substantial modification of existing structures requiring a building permit for a use that is noise, dust or vibration sensitive and is allowed in the SMIO and its underlying district, the development activity must first be reviewed for compliance with applicable standards of this Section 1030 and underlying zoning district and be granted approval by the Director. The Director shall review plans submitted for a building permit and may request additional or amended plans, specifications or analysis prepared by an engineer or other qualified person, showing that the applicable standards are met or can be met by specified development standards. Review by the Director shall follow Section 1600 Staff Approval, subject to its notifications and appeal.

- .5 Required Findings:
The Director shall make the decision for approval with conditions within the Surface Mining Impact Overlay Zone (SMIO) based on the following findings:
 - A) The proposed use will not interfere with or cause an adverse impact on the lawfully established and lawfully operating mining operations;

 - B) The proposed use will not cause or threaten to cause the mining operation to violate any applicable standards of this section, or terms of any approved Surface Mining Zoning conditions, or terms of the Surface Mining Operating Permit.

 - C) Any setbacks or other requirements of this subsection shall be clear and objective.

- .6 Nonconforming uses and structures:
Nonconforming uses and structures legally existing on or before the effective date of this Section may continue provided that, should the uses or structures be modified so as to become more nonconforming, the owner of such structures or uses first obtain land use approval pursuant to this Subsection.

Section 1040 SURFACE MINING SM

1041 Purpose:

- .1 To provide for development and utilization of deposits of aggregate and resource materials.
- .2 To provide for the protection and utilization of these resources in a manner which does not conflict with other land uses.
- .3 To assure economy in handling and transportation costs by locating removal, processing, and storage activities in as close proximity to the point of end use as feasible.

1042 Permitted Uses: The following uses shall be permitted subject to compliance with Section 1044 and all other applicable rules, standards, or statutes governing such uses, including the Columbia County Comprehensive Plan, the Surface Mining and Land Reclamation Ordinance, the Zoning Ordinance of Columbia County, and Oregon Department of Environmental Quality rules governing sewage disposal, air, and water quality:

- .1 Removal, excavation, and processing of aggregate materials.
- .2 Equipment and structures, except residences, which are necessary or accessory to the operation of an aggregate site.
- .3 Storage of heavy equipment necessary for operation.
- .4 Agricultural practices.
- .5 Aggregate stockpiling.
- .6 Sedimentation ponds when used in conjunction with aggregate removal operations.
- .7 The managing, growing, processing and harvesting of timber and forest products, including the operation of accessory equipment used in the manufacturing, growing, and harvesting of forest products, as permitted in ORS 215.283(2)(i).
- .8 Concrete and asphalt batch plant on a temporary basis not to exceed 60 days.

1043 Conditional Uses: The following uses may be permitted if found in conformance with Section 1044 and Section 1503 of this Ordinance:

- .1 All permitted uses within the designated 100-year floodplain identified in Section 1042 (except item .2, if such uses are portable in nature; items .4 agricultural, and .7 forest uses) shall be reviewed by the Planning Commission to ensure floodplain requirements are met.
- .2 Sanitary landfill, landfill, or solid waste transfer station, except that sanitary landfill and solid waste transfer stations shall not be permitted within 10,000 feet of a runway of a public use airport.
- .3 Public or private parks and recreation areas may be permitted only in conjunction with reclamation of the site.
- .4 Buildings, structures, and uses of a public works, public service, or public utility nature when not necessary to the operation of an aggregate site.
- .5 Processing, as defined by ORS 517.750, of aggregate into asphalt or portland cement.
- .6 Dwellings in conformance with ORS 215.283.

1044 Operating Standards: All mineral resource operations, either permitted or allowed by conditional use, shall conform to the following standards:

- .1 The landowner and operator shall be jointly responsible for signing the application.
- .2 The operator and landowner must remain in compliance with, and be responsible for, all the requirements of affected agencies.
- .3 Lot or parcel size: The minimum parcel size for a permitted or conditional use shall be 2 acres.
- .4 Operating Setbacks: Each aggregate site within the district shall observe the following minimum setbacks:
 - A. No extraction or removal of aggregate is permitted within 50 feet of the right-of-way of public roads or easements of

private roads.

- 1044.4
- B. No extraction or removal of aggregate is permitted within 50 feet of another property, nor within 200 feet of a residence or zoning district which allows a residence as a permitted use, without written consent of the property owner(s).
 - C. Processing equipment and batch plants shall not be operated within 50 feet of another property without written consent of the property owner(s). Processing equipment and batch plants shall not operate within 50 feet of a public road right-of-way.
- .5 Operating Hours: Operation shall not start before 7:00 a.m., nor continue after 6:00 p.m. daily, except as authorized by Subsection 1046. The Department may exempt isolated aggregate sites from the established operating hours. Notice of the proposed change in operating hours must be provided to all property owners within a 1,000 foot radius of the aggregate site and to owners of property adjacent to private aggregate site access road. If no request for a public hearing is made within ten calendar days of mailing said notice, the operating hours shall be changed as requested by the aggregate operator. The Commission may, at any time, require resumption of standard operating hours. If a request is made for a public hearing, adjustment of standard operating hours shall be determined by the County. The Department may approve one period of extended operation beyond the 7:00 a.m. to 6:00 p.m. operating hours once every six months, not to exceed a two week period.
- .6 Visual Impacts: Existing trees and other natural vegetation adjacent to any public park, residential development, public road, or residential zoning district shall be preserved for a minimum width of 25 feet. Screening shall be provided at the boundary of the property on which the surface mining operation is located. If such trees and other vegetation are insufficient to provide a screen, such screening may be accomplished by one or more of the following:
- A. A sight-obscuring fence or wall;
 - B. A landscaped berm or preservation of a natural slope;
 - C. Use of native vegetation, or plants and trees with

demonstrated ability to thrive under the anticipated conditions.

1044.7 Access: The operation shall have access to a public road with two-way capacity. The County may impose weight/load restrictions and/or require the operator to post an adequate surety bond for road repairs. An on-site access or service road used for mining shall be dust-free at all points within 300 feet of a public road or residence off the property being mined.

.8 Noise: Each aggregate site shall operate with the applicable noise standards required by the Department of Environmental Quality or other state or federal agencies.

.9 Water Quality: All aggregate sites in the district shall be operated in a manner which will not create turbidity, cause siltation, deposit undesirable materials, or adversely affect water temperatures in any stream, drainage, or river. In addition, the operator shall not cause contamination of groundwater or change a stream channel unless the channel change has previously been approved by all applicable state and federal agencies. Provisions for settling ponds, diversion dikes, channels, and other structures may be required to protect these water resources.

.10 Archeological Sites:

A. Prior to excavation - All sites proposed for excavation shall be inventoried for their archaeological significance in accordance with standards set by the State Archaeologist. If an area proposed for excavation is found to contain an archaeological site(s), the Planning Commission shall hold a public hearing, in accordance with Section 1603, to review testimony regarding the site(s) and establish measures to mitigate potential conflicts as necessary.

The State Archaeologist shall be notified of such public hearings.

B. During Excavation - If an archaeological site(s) is found during excavation, all work which would impact the site shall halt immediately and the requirements outlined in Section 1044.10A shall be met.

- .11 Erosion: The erosion of surfaces affected by mining activities shall be controlled by plantings of ground cover and other modes which protect these surfaces.
- 1044.12 Slopes and Grading: Excavations, both above and below water level, shall be maintained in an operationally and environmentally safe condition by complying with standards established by the Oregon Safe Employment Act (ORS 654.001 to 654.295 and 654.991), the Oregon Safety and Health Act of 1970 (19 U.S.C. 651 et. seq.), the Department of Geology and Mineral Industries, and the regulations of other affected agencies.
- .13 Land Reclamation: A land owner or operator of an aggregate site shall, in advance of any excavation of aggregate materials, prepare and submit a site reclamation plan in accord with the requirements of the Surface Mining and Land Reclamation Ordinance. Reclamation must return the land to natural condition or return it to a state compatible with the livability, value, and appropriate development of the affected land and adjacent property. Reclamation shall begin within 12 months after mining activities cease on any segment of the area where mining has occurred and shall be completed within 3 years after mining activities cease. This does not apply to any land being used as plant site, stock pile, or work area for ongoing extracting mining operation.
- 1045 Modification of Standards: The above standards may be modified by the Planning Commission after public hearing and notification to property owners within 1,000 feet of the subject property and to owners adjacent to private aggregate site access roads. A Site Design Review for a Conditional Use in this zone may be processed concurrently with the Conditional Use Permit with a single hearing and a single fee which will be the higher of the 2 permit fees.
- 1046 Emergency Exceptions: The Department may permit the immediate initiation of a temporary aggregate operation which ordinarily would require an approved Conditional Use Permit, if necessary in the event of a natural disaster and to prevent potentially serious damage to property or threat to human life. The Department may permit the initiation of such an aggregate operation only when affected state agencies have issued necessary permits and have attested to the urgency of the situation. The Department may adjust operation standards as contained in Section 1044 to ensure the protection of human life and property. An aggregate operation approved under this section shall cease once the threat to

human life and property is no longer serious or imminent.