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BEFORE THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON

An Ordinance Amending Ordinance No. PL-15, the Deschutes County Zoning Ordinance of 1979, As Amended, Revising Provisions Concerning Surface Mining, Declaring an Emergency and Setting an Effective Date. *

ORDINANCE NO. 90-014

THE BOARD OF COUNTY COMMISSIONERS OF DESCHUTES COUNTY, OREGON, ORDAINS as follows:

Section 1. Paragraphs 34A, 34B, and 126A, Section 1.030 of Ordinance No. PL-15, Definitions, are hereby renumbered 34C, 34D, and 126D, respectively.

Section 2. Section 1.030 of Ordinance No. PL-15, Definitions, is amended by the addition of the following:

"28A. DEQ. The Oregon Department of Environmental Quality."

"28B. DOGAMI. The Oregon Department of Geology and Mineral Industries."

"33B. Dust Sensitive Use. Real property normally used as a residence, school, church, hospital or similar use. Property used in industrial or agricultural activities is not 'dust-sensitive' unless it meets the above criteria in more than an incidental manner."

"34A. ESEE. The letters stand for "economic, social, environmental, and energy." ESEE means the economic, social, environmental and energy "consequences," as defined in the Oregon Administrative Rules, Section 660-16-005, that might result from prohibiting, restricting, or fully allowing a "conflicting" use. A conflicting use is one which could negatively impact or be negatively impacted by the Goal 5 resource."

"68C. Mineral. Includes, but is not limited to, soil, select fill, coal, clay, stone, sand, gravel, aggregate, pumice, cinders, metallic ore, and any other inorganic solid excavated from a natural deposit in the earth for commercial, industrial or constructional use."

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MARY SUE PENHOLLOW
COUNTY CLERK

"68D. Mitigation. The minimizing or offsetting of impacts by the provision of on- or off-site improvement or compensation which benefits impacted property owners, resources and the public interest. Mitigation measures include, but are not limited to, the provision of additional fish and wildlife habitat, conservation easements, on- and off-site screening and buffering, compensation for the maintenance of existing off-site screening, fees in lieu of improvements, and similar arrangements which are agreed to in writing by the affected parties, and which relate to and are necessitated by a surface mining development or operation."

"76A. Noise Sensitive Use. Real property normally used for sleeping or normally used as schools, churches, hospitals or public libraries. Property used in industrial or agricultural activities is not 'noise-sensitive' unless it meets the above criteria in more than an incidental manner."

"80A. Overburden. Earth or rock that lies above a natural deposit of a mineral."

"100A. Reclamation. The employment in a surface mining operation of procedures designed to minimize, as much as practical, the disruption of the surface mining operation and to provide for rehabilitation of any such surface resources adversely affected by such mining operations through the rehabilitation of plant cover, soil stability, water resource and other measures appropriate to the subsequent beneficial use of mined and reclaimed lands."

"121A. Stream, Perennial. Includes the following rivers and streams in Deschutes County: Alder Creek; Bottle Creek; Bridge Creek; Brush Draw; Bull Creek; Cache Creek; Charlton Creek; Cultus Creek; Cultus River; Deer Creek; Deschutes River; Dry Creek; Fall Creek; First Creek; Full Creek; Goose Creek; Indian Ford Creek; Jack Creek; Kaleetan Creek; Lake Creek-Middle Fork; Little Deschutes River; Metolius Creek; Park Creek-East Fork; Park Creek-West Fork; Paulina Creek; Pole Creek; Rock Creek; Snow Creek; Soap Creek; Soda Crater Creek; Spring Creek; Squaw Creek; Squaw Creek-North Fork; Three Creek; Todd Lake Creek; Trout Creek; Tumalo Creek; Tumalo Creek-North Fork; Tumalo Creek-Middle Fork; and Tumalo Creek-South Fork."

"126A. Surface Mining, Minerals. Includes, but is not limited to, soil, select fill, coal, clay, stone, sand, gravel, aggregate, pumice, cinders, metallic ore, and any other inorganic solid excavated from a natural

deposit in the earth for commercial, industrial or construction use."

"126B. Surface Mining, Operator. Any person or entity engaged in surface mining."

"126C. Surface Mining, Processing. Processing includes crushing, washing, milling and screening as well as batching and blending of mineral aggregate into asphaltic concrete and portland cement concrete. (NOTE: Processing of mineral and aggregate material into secondary products, such as building materials, is allowed in industrial zones and may be sited as part of a limited use combining zone in conformance with all plan amendment and zone change requirements of the county comprehensive plan and zoning ordinance.)"

Section 3. Section 1.030 of Ordinance No. PL-15, Definitions, Surface Mining, is amended to read as follows:

"126. Surface Mining.

1. Includes:

- a. all or any part of the process of mining by removal of the overburden and extraction of natural mineral deposits thereby exposed by any method including, open pit mining operations, auger mining operations, processing, surface impacts of underground mining, production of surface mining refuse and the construction of adjacent or off-site borrow pits, except those constructed for access roads;
- b. mining which involves more than 1,000 cubic yards of material or excavation prior to mining of a surface area of more than one acre.

2. Does not include:

- a. the construction of adjacent or off-site borrow pits which are used for access roads to the surface mine.
- b. excavations of sand, gravel, clay, rock or other similar materials conducted by a landowner or tenant on the landowner's property for the primary purpose of construction, reconstruction or main-

tenance of access roads and excavation or grading operations conducted in the process of farming or cemetery operations, on-site road construction and other on-site construction, or non-surface impacts of underground mines;

- c. batching and blending of mineral and aggregate into asphaltic concrete or portland cement concrete."

Section 4. Section 4.100 of Ordinance No. PL-15, Surface Mining Zone - SM, is amended to read as follows:

- "1. Purpose. The purposes of the Surface Mining Zone are:
 - A. To implement the goals and policies of the county comprehensive plan;
 - B. To allow the development and use of identified deposits of mineral and aggregate resources consistent with Statewide Planning Goal 5;
 - C. To protect the health and safety of the public and of residents of property adjoining surface mines, and the value of uses and natural resources identified in the comprehensive plan as conflicting with surface mines, in accordance with Goal 5.
 - D. To provide that all land and water resources affected by surface mining operations within the county receive the protection and reclamation necessary for their intended subsequent use.
 - E. To provide for cooperation between private parties and governmental entities in order to carry out the purposes of this ordinance, the county comprehensive plan and state and federal regulations.
- "2. Application of Ordinance. Except as provided in Section 16 of this Ordinance, the setbacks, operation standards and conditions set forth in Section 4.100(9), (11) and (14) of this Ordinance, respectively, apply to every surface mining site and activity to the extent that setbacks, standards and conditions are not expressly provided for in the site-specific ESEE analysis within the surface

mining element of the comprehensive plan. When there is a conflict between the site-specific ESEE analysis and the provisions of this Ordinance, the site-specific ESEE analysis shall control.

- "3. Uses Permitted Outright. The following uses are permitted outright without site plan review:
- A. Farm uses as defined in this Ordinance.
 - B. Forest uses as defined in this Ordinance.
 - C. One temporary or portable residence when necessary to house a caretaker or a night watchman.
- "4. Uses Permitted Outright Subject to Site Plan Review. The following uses are permitted outright subject to site plan review as provided in this Section:
- A. Extraction of minerals.
 - B. Stockpiling and storage of minerals.
 - C. Screening, washing and sizing of minerals.
 - D. Sale of minerals and mineral products extracted and produced on the parcel or contiguous parcels in the same ownership.
 - E. Buildings, structures, apparatus, equipment and appurtenances necessary for the above uses to be carried on.
- "5. Conditional Uses Permitted.
- A. The following uses are permitted subject to the conditions set forth in Article VIII of this Ordinance:
 - a. Public uses consistent with or dependent upon outright uses allowed in the SM zone.
 - b. Operations and exploration of geothermal resources.
 - B. The following uses are permitted subject to site plan review and the setbacks, standards and conditions set forth in Section 4.100(9), (11) and (14), respectively, of this Ordinance.

nance, and are not subject to the conditions in Article VIII of this Ordinance:

- a. Expansion or replacement of a pre-existing legal dwelling.
 - b. Crushing of mineral and aggregate materials on sites designated for crushing in the ESEE analysis in the surface mining element of the comprehensive plan.
 - c. Sale of minerals and mineral products extracted or produced on parcels other than the subject parcel or contiguous parcels in the same ownership.
 - d. Batching and blending of mineral and aggregate into asphaltic concrete or portland cement concrete.
- "6. Dimensional Standards. In the SM Zone, no existing parcel shall be reduced in size and no additional parcels shall be created by partition, subdivision or otherwise.
- "7. Site Plan Review. Site plan review and final approval of a site plan shall be required before the commencement of any use which requires site plan review under Section 4.100(4) and 4.100(5)(B) of this Ordinance, and before any expansion of a pre-existing or nonconforming site under Section 4.100(16) of this Ordinance.
- "8. Site Plan Application. The applicant shall submit the following information for site plan review and approval:
- A. An application in a format established by the county and satisfying all requirements of the County Uniform Land Use Action Procedures Ordinance.
 - B. All information required for a site reclamation plan by DOGAMI.
 - C. A map or diagram showing that all minimum use setbacks required in Section 4.100(9) of this Ordinance are met.
 - D. A description of how all operation standards set forth in Section 4.100(11) of this Ordinance are met.

- E. A description of all potential impacts of the mining activities identified by the ESEE analysis for the specific site and how those impacts are addressed.

"9. Minimum Use Setbacks.

- A. Except as otherwise provided in this section, all surface mining activities and uses, including structures, shall be located and conducted at least 250 feet from a noise-sensitive or dust-sensitive use or structure. Exceptions to this standard shall be allowed for the following:
- a. Access roads approved as part of site plan review.
 - b. Dwellings located on the parcel on which the surface mining is to occur, including replacements or expansions thereof.
 - c. Pursuant to a written agreement for a lesser setback made between the owner of the noise-sensitive or dust-sensitive use or structure located within 250 feet of the proposed surface mining activity and the owner or operator of the proposed surface mine. Such agreement shall be notarized and recorded in the Deschutes County Book of Records and shall run with the land. Such agreement shall be submitted and considered at the time of site plan review or site plan modification.
- B. Storage and processing of mineral and aggregate material, and storage of operational equipment which creates noise and dust, shall not be allowed closer than one-quarter mile from any noise or dust sensitive use or structure existing on the effective date of Ordinance No. 90-014, unless the applicant demonstrates that:
- a. Due to the parcel size, topography, existing vegetation or location of conflicting uses or resources, there is no on-site location for the storage and processing of material or storage of equipment which will have less noise or dust impact; and

- b. All noise control and air quality standards of this Ordinance can be met by the proposed use for which the exception is requested.
- C. Additional setbacks may be determined as part of the site reclamation review process. Additional setbacks also may be required by DOGAMI.

"10. Procedure Upon Filing of Site Plan.

- A. Each application for site plan review and approval shall be processed in accordance with the County Uniform Land Use Action Procedures Ordinance.
- B. The planning director or hearings body shall review the site plan application and shall grant or deny site plan approval based on the proposed site plan's conformance with the ESEE analysis for the site contained in the surface mining element of the comprehensive plan and the applicable setbacks, standards and conditions set forth in Section 4.100(9), (11) and (14) of this Ordinance, respectively. The planning director or hearings body may require the applicant to make such modifications to the site plan as are necessary to fulfill the requirements of the site-specific ESEE analysis and the applicable setbacks, standards and conditions in this Ordinance. The planning director or hearings body shall not deny site plan approval unless the requirements of the ESEE analysis and setbacks, standards and conditions of this Ordinance are not or cannot be satisfied by the proposed site plan.
- C. To the extent practicable, the planning director or hearings body shall review the site plan application in conjunction with the review of the applicant's site reclamation plan by DOGAMI.

- "11. General Operation Standards. Prior to the commencement of any surface mining activity, and no later than site plan review if such review is required under this Section, the applicant shall demonstrate that the following standards are or can be met by the surface mining operation:

A. Access.

- a. All on-site roads used in the mining operation, and access roads from the site to a public road maintained by a government agency, are designed and constructed to accommodate the vehicles and equipment which will use them, and shall meet the following minimum standards:
 1. All access roads within 100 feet of a paved county road or state highway are paved unless the applicant demonstrates that other methods of dust control, including application of oil or water, will be implemented in a manner which provides for the safety and maintenance of the county road or state highway.
 2. Roads within the surface mining parcel which are used as part of the surface mining operation are constructed and maintained in a manner by which all applicable DEQ standards for vehicular noise control and ambient air quality are or can be satisfied.
 3. All roads used for mining are paved and will be adequately maintained at all points within 250 feet of a dwelling or other dust-sensitive use existing on the effective date of Ordinance No. 90-014.
- b. Improvements or fees in lieu of improvements of public roads, county roads and state highways may be required when the planning director or hearings body, in consultation with the appropriate road authority, determines that the increased traffic on the roads resulting from the surface mining activity will damage the road sufficiently to warrant off-site improvement. If a fee in lieu of improvements is required, the amount of the fee shall reflect the applicant's pro-rata share of the actual total cost of the capital expenditure of the road construction or reconstruction project necessitated by and benefiting the surface mining operation. Discounts for taxes and fees already paid for such

improvements, such as road taxes for vehicles and for property already dedicated or improved, shall be applied.

B. Screening.

- a. The site is screened to meet the standards specified in paragraph (b) below, unless one of the exceptions in paragraph (f) below applies.
- b. Performance Standard. When screening is required by paragraph (a), it obscures the view of the screened uses from the protected uses with the methods and to the extent described in paragraph (e) below.
- c. Protected Uses.
 1. Noise-sensitive or dust-sensitive uses existing on the effective date of Ordinance No. 90-014.
 2. Public parks and waysides.
 3. Frontage on roads designated by the county comprehensive plan as collectors, arterials and highways.
 4. Areas zoned Landscape Management Combining.
 5. Those portions of state and federal scenic waterways from which the surface mining activity is visible from the perspective of a person standing at the high water mark on either bank of the waterway.
- d. Screened Uses.
 1. All equipment stored on the site.
 2. All crushing and processing equipment.
 3. All excavated areas except: areas where reclamation is occurring; roadways existing on the effective date of Ordinance No. 90-014; new roadways approved as part of the site plan; material ex-

cavated to create berms; and material excavated to change the level of the mining site to an elevation which provides natural screening.

e. Types of Screening.

1. Natural Screening. Existing vegetation or other landscape features which are located on the surface mining site within 50 feet of the boundary of the site, and which obscure the view of the screened uses from the protected uses, shall be preserved and maintained.

2. Supplied Screening. Supplied vegetative screening is screening not already existing and which is added to the site, such as hardy plant species. Plantings shall not be required to exceed either a density of six feet on center or a height of six feet at the commencement of mining. Supplied earthen screening shall consist of berms covered with earth and stabilized with ground cover.

f. Exceptions. Supplied screening shall not be required when and to the extent that any of the following circumstances occurs:

1. The natural topography of the site offers sufficient screening to meet the performance standard in paragraph (b).

2. Supplied screening cannot meet the performance standard in paragraph (b) due to topography.

3. The applicant demonstrates that supplied screening cannot reliably be established or cannot survive for a ten-year period due to soil, water or climatic conditions.

4. Screened uses that are visible from the protected uses will be concluded and will either be removed or reclaimed within 18 months.

5. The surface miner and the owner or authorized representative of the owner of the protected use execute and record in the Deschutes County Book of Records a mitigation agreement that waives screening requirements and describes and adopts an alternate program or technique.
- g. Continued Maintenance. Vegetative screening shall be maintained and replaced as necessary to assure the required screening throughout the duration of the mining activity.
- C. Air Quality. The discharge of contaminants and dust created by the mining operation and accessory uses to mining does not exceed any applicable DEQ ambient air quality and emissions standards.
- D. Erosion Control. Sedimentation and erosion resulting from the mining operation does not affect any perennial stream so as to violate DEQ's water quality standards.
- E. Streams and Drainage. Unless agreed to, in writing, by the adjoining property owner(s), existing natural drainages on the site are not changed in a manner which substantially interferes with drainage patterns on adjoining property or which drains waste materials or waste water onto adjoining property or perennial streams. Where the surface mining site abuts a lake, perennial stream or other perennial body of water, all existing vegetation within 100 feet of the mean high water mark shall be retained unless mining activity is allowed within this area by the site-specific ESEE analysis in the surface mining element of the comprehensive plan.
- F. Equipment Removal. All surface mining equipment and related structures will be removed from a mining site within 30 days of completion of all mining and reclamation.
- G. Flood Plain. Any mining operations conducted in a flood plain, as defined in this Ordinance, will satisfy all applicable conditional use criteria of Section 4.210(3) through (6) of this Ordinance.

- H. Noise. Noise created by a mining operation, vehicles, equipment or accessory uses which is audible off the site does not exceed DEQ noise control standards, due to topography or other natural features, or by use of methods to control and minimize off-site noise, including, but not limited to: installation of earth berms; placing equipment below ground level; limiting hours of operation; using a size or type of vehicle or equipment which has been demonstrated to meet applicable DEQ noise control standards; relocation of access roads, and other measures customarily used in the surface mining industry to meet DEQ noise standards.
- I. Hours of Operation.
- a. Mineral and aggregate extraction, processing and equipment operation is limited to the following operating hours:
1. Surface mining sites located within one-half mile of any noise-sensitive or dust-sensitive use or structure existing on the effective date of Ordinance No. 90-014:

7:00 am to 6:00 pm - Monday through Friday
8:00 am to 5:00 pm - Saturday
 2. All other sites:

7:00 am to 10:00 pm - Monday through Saturday
- b. No surface mining activity will be conducted on Sundays or the following legal holidays: New Year's Day, Memorial Day, July 4th, Labor Day, Thanksgiving Day, Christmas Day.
- J. Drilling and Blasting.
- a. Drilling and blasting are allowed under the site-specific ESEE analysis in the surface mining element of the comprehensive plan.

b. Drilling and blasting which are to be conducted within one-half mile of any noise-sensitive or dust-sensitive use or structure or agricultural use involving the raising of animals meet or can meet the following standards:

1. DEQ noise control standards for blasting.

2. A plan addressing the potential for earth movement, flying rocks and other effects on surrounding uses has been submitted to and approved by the County and DOGAMI.

3. Blasting will be restricted to the hours of 9:00 a.m. to 5:00 p.m., Monday through Friday, and no blasting will occur on Saturdays, Sundays or legal holidays identified in subsection (I)(b) above.

4. A plan has been submitted to and approved by the County describing how the operator will notify the owners and inhabitants of the protected uses identified in paragraph (b) of this subsection which are located within one-half mile of the blasting site of proposed blasting by written notice: (a) delivered in a manner calculated to be received by each person entitled to notice at least 48 hours prior to the time the blasting activity will occur; (b) containing a statement providing that the recipient property owner must provide the notice to tenants and inhabitants on the subject property; (c) in the case of ongoing blasting, given at least once each month and specifying the days and hours that blasting will occur; and (d) retained by the operator, along with a list of persons notified, for at least one year after blasting occurs. (NOTE: The Planning Director shall make available for the operator's inspection zoning maps showing the parcels located within one-half mile of the blasting site.)

- K. Extraction Site Size. The size of the area in which extraction is taking place as part of a surface mine does not exceed five acres. For the purpose of this Ordinance, the extraction site size does not include access roads, equipment storage areas, processing equipment sites, stockpiles, areas where reclamation is in progress and similar accessory uses which are necessary to the mining operation. An exception to this standard may be allowed as part of site plan review if the applicant demonstrates that mining techniques normally associated with the specific type of mining in question and commonly used in the surface mining industry require a larger extraction site size.
- L. Fish and Wildlife Protection.
- a. Fish and wildlife values and habitat required by the site-specific ESEE analysis to be conserved and protected are conserved and protected, by use of methods including, but not limited to: seasonal operations and access road closures; retention of or creation of vegetative cover and riparian habitat; and erection of fencing or other barriers to protect wildlife from steep extraction site slopes.
 - b. Mitigation, as defined in this Ordinance, will be provided to compensate for any loss of fish and wildlife habitat caused by the surface mining activity which habitat is required to be protected by the site-specific ESEE analysis. When mitigation is provided, the type and effectiveness of mitigation required has been determined by the planning director or hearings body to be appropriate, from available evidence and, in consultation with the Oregon Department of Fish and Wildlife.
- M. Surface water management is provided in a manner which meets all applicable DEQ water quality standards and DOGAMI requirements, and which demonstrates that all water necessary for the proposed operation of the surface mine, including dust control, landscaping and processing of material, has been

appropriated to the surface mining site and is legally available for such use. The applicant must provide written documentation of any water rights from the respective water district and Oregon Watermaster's office prior to any mining of the site.

- N. Storage of equipment, structures and other materials at the site is limited to that which is necessary and appurtenant to the mining operation or other uses permitted on the site.
- O. A security plan for the subject site has been submitted and approved by the County and DOGAMI which addresses the following issues:
 - a. lighting;
 - b. fencing;
 - c. gates at access points;
 - d. water impoundments;
 - e. sloping; and
 - f. security of vehicles and equipment.
- P. All impacts of the mining activities identified in the ESEE analysis for the specific site are addressed and have been resolved at the time of site plan approval or before the start of mining activity.

"12. Partial Approval. A portion of a parcel may be approved for surface mining, stockpiles or processing without site plan review of the entire parcel. Partial approval shall be granted if applicant demonstrates that the following criteria are or can be met:

- a. The portion of the parcel receiving approval can be mined and reclaimed separately from the remainder of the site; and
- b. The plan for the portion of the site satisfies all requirements for site plan review; and
- c. All surface mining site plan and reclamation requirements of the county and the DOGAMI for the approved portion of the site are completed prior to the start of mining on the remainder of the property. Initial seeding in conformance with a reclamation plan shall

be deemed adequate to fulfill the completion portion of this subsection.

"13. Site Reclamation Plan. Prior to the start of mining activity, a site reclamation plan shall be submitted and approved which demonstrates that the mineral and aggregate extraction site can be reclaimed for a subsequent beneficial land use consistent with the designation of such subsequent use in the surface mining element of the comprehensive plan.

- A. When a site reclamation plan is required by DOGAMI, the site reclamation plan shall be approved by DOGAMI. To the extent practicable, review of the site reclamation plan shall be conducted jointly between by DOGAMI and the county.
- B. When a site reclamation plan is not required by DOGAMI, the site reclamation plan shall be approved by the county in conjunction with the site plan review described in Section 7 of this Ordinance. The county shall review such site reclamation plans for consistency with the site-specific ESEE analysis in the surface mining element of the comprehensive plan and the standards and conditions set forth in Section 4.100(11) and (14) of this Ordinance. The county also shall follow the applicable DOGAMI standards and criteria for a site reclamation plan.

"14. Conditional Use Criteria. The criteria set forth in this section shall be the only conditional use criteria applicable to the surface mining activities described below. Compliance with these criteria shall be demonstrated at the time of site plan review.

- A. Crushing. When a site has been designated for crushing of mineral and aggregate materials under the site-specific ESEE analysis in the surface mining element of the comprehensive plan, the following conditions apply:
 - a. If a crusher is to be located less than one-half mile from a noise-sensitive use or structure existing on the effective date of Ordinance No. 90-014, the applicant shall demonstrate through a noise report from a qualified, registered

sound engineer or similarly qualified professional, that the crusher can meet all applicable DEQ industrial and commercial noise control standards as designed and located, or by methods including, but not limited to: modification or muffling of the crusher; placement of the crusher below grade or behind berms.

- b. If a crusher is to remain on the site for longer than 60 days in any eighteen-month period, the applicant shall demonstrate that it will be screened in accordance with Section 11(B) of this Ordinance.

B. Expansion or Replacement of Pre-Existing Dwelling. The following conditions apply:

- a. The expansion or replacement does not reduce the amount of mineral and aggregate resource available on the subject site.
- b. The replaced dwelling or expansion is located and designed to minimize the impacts of the surface mining operation on the inhabitants of the dwelling.

C. Sale of Products Extracted or Produced on Parcels Other Than the Subject Parcel. The following conditions shall apply:

- a. The portion of the site where the products will be stored and sold is at least one-half mile from a noise or dust-sensitive use or structure existing on the effective date of Ordinance No. 90-014.
- b. The access from the point where the products are stored and sold to a public road is not within one-half mile of any noise or dust-sensitive use or structure existing on the effective date of Ordinance No. 90-014.

D. Processing of Aggregate Into Asphaltic Concrete or Portland Cement Concrete. The following conditions shall apply:

- a. The processing operation is located more than two miles from a planted vineyard existing on the effective date of Ordinance No. 90-014.
- b. The processing operation meets or can meet all applicable DEQ ambient air quality standards and emission standards for asphalt, asphaltic concrete or portland cement plants.
- c. If the processing operation is located less than one-half mile from a noise-sensitive use or structure existing on the effective date of Ordinance No. 90-014, the applicant shall demonstrate through a noise report from a qualified, registered sound engineer or similarly qualified professional, that the processing operation can meet all applicable DEQ noise control standards for industry and commerce as designed and located, or by use of methods including, but not limited to: modification or muffling of equipment; location of the processing operation below grade or behind berms.
- d. The point where the vehicles transporting asphalt, portland cement and the raw materials for such products access a public road is not within one-half mile of any noise-sensitive or dust-sensitive use or structure existing on the effective date of Ordinance No. 90-014.
- e. Processing operations temporarily located in conjunction with a specific street, road or highway project will be removed from the site within 30 days of the completion of the project. (NOTE: Batch plants are allowed in industrial zones and may be sited as part of a limited use combining zone in conformance with all plan amendment and zone change requirements of the county comprehensive plan and zoning ordinance.)

"15. Failure to Comply. If the planning director or designee determines that surface mining activity which has received site plan approval is not being conducted in compliance with the setbacks, standards or conditions set forth in Section 4.100(9),

(11) and (14) of this Ordinance, respectively, or the site plan, the planning director or designee may institute enforcement proceedings to require such compliance. Enforcement may include citing for an infraction, injunction proceedings, and any other measures permitted under Article XII of this Ordinance.

"16. Pre-existing Sites, Nonconforming Sites and Registration.

- A. Except for pre-existing and nonconforming sites, this Ordinance shall apply to all surface mining activities which occur on or after the effective date of Ordinance No. 90-014.
- B. Pre-existing Sites. Mineral and aggregate sites which have a valid DOGAMI permit or exemption and/or county permit on the effective date of Ordinance No. 90-014, and which are zoned SM, are 'pre-existing sites.'
- C. Nonconforming Sites. Mineral and aggregate sites which have a valid DOGAMI permit or exemption and/or county permit on the effective date of Ordinance No. 90-014, and which are not zoned SM, are "nonconforming sites."
- D. Registration. Operators of all pre-existing and nonconforming sites shall register the sites with the planning division within one hundred eighty (180) days of the effective date of Ordinance No. 90-014. The registration shall include a copy of the operator's permit or exemption and a map or legal description showing the boundaries of the surface mining area covered by the permit or exemption.
- E. Expansion.
 - a. Any expansion of the surface mining activity on a pre-existing site beyond the boundaries of the surface mining area covered by the DOGAMI permit or exemption or county permit, or any surface mining activity requiring a new DOGAMI or County permit, shall comply with all applicable requirements of this Ordinance.

- b. Any expansion of the surface mining activity on a nonconforming site beyond the boundaries of the surface mining area covered by the DOGAMI permit or exemption or county permit, or any surface mining activity requiring a new DOGAMI or County permit, shall comply with the provisions of Section 6.010 of this Ordinance.

"17. Use Permits. Following site plan approval and prior to commencement of any surface mining activities on the site, the planning director or designee shall physically review the site for conformance with the site plan. When it is determined by the planning director or designee that all elements of the approved site plan required for mining have been completed and the reclamation plan has received final approval, the planning director or designee shall issue a use permit. No mining activity shall commence prior to the issuance of such use permit.

"18. Monitoring. The planning director or designee shall periodically visit the surface mining site to monitor the surface mining operation. If the planning director or designee determines that the operation is not in compliance with the approved site plan and all setbacks, standards and conditions set forth in Section 4.100(9), (11) and (14) of this Ordinance, a citation for an infraction shall be issued.

"19. Nuisances. Violations of the surface mining site plan, or the setbacks, standards and conditions set forth in section 4.100 (9), (11) and (14) of this Ordinance, respectively, are hereby declared nuisances, and abatement action may be taken as specified in Article XII of this Ordinance.

"20. Termination of the Surface Mining Zoning and Surrounding Surface Mining Impact Area Combining Zoning.

- A. When a surface mining site has been fully or partially mined, and the operator demonstrates that a significant resource no longer exists on the site, and that the site has been reclaimed in accordance with the reclamation plan approved by DOGAMI or the reclamation provisions of this Ordinance, the property shall be rezoned to the subsequent

use zone identified in the surface mining element of the comprehensive plan.

- B. Concurrent with such rezoning, any surface mining impact area combining zone which surrounds the rezoned surface mining site shall be removed. Rezoning shall be subject to Article X and all other applicable sections of this Ordinance, the comprehensive plan and the county Uniform Land Use Action Procedures Ordinance."

Section 5. Section 4.110, Surface Mining Reserve Zone, is repealed and replaced by the following:

"Section 4.110. SURFACE MINING IMPACT AREA COMBINING ZONE - SMIA ZONE.

- "1. Purpose. The purpose of the SMIA zone is to protect the surface mining resources of Deschutes County from new development which conflicts with the removal and processing of a mineral and aggregate resource while allowing owners of property near a surface mining site reasonable use of their property.
- "2. Location. The SMIA zone shall apply to all property located within one-half mile of the boundary of a surface mining zone. However, the SMIA zone shall not apply to any property located within an urban growth boundary, city or other county. The extent and location of the SMIA zone shall be designated at the time the adjacent surface mining zone is designated.
- "3. Application of Provisions. The standards set forth in this section shall apply in addition to those specified in this Ordinance for the underlying zone. If a conflict in regulations or standards occurs, the provisions of this section shall govern.
- "4. Uses Permitted Outright. Uses permitted outright shall be those identified in the underlying zone(s) with which the SMIA Zone is combined.
- "5. Conditional Uses Permitted. Uses permitted conditionally shall be those identified as conditional uses in the underlying zone(s) with which the SMIA Zone is combined and shall be subject to all conditions of the underlying zone(s) as well as the conditions of the SMIA Zone.

- "6. Dimensional Standards. In the SMIA Zone, the lot size shall be that prescribed in the underlying zone.
- "7. Setbacks. The setbacks shall be the same as those prescribed in the underlying zone, except as follows:
- A. No noise-sensitive or dust-sensitive use or structure established or constructed after the designation of the SMIA Zone shall be located within 250 feet of any surface mining zone, except as provided in subsection 12 of this section; and
 - B. No noise-sensitive or dust-sensitive use or structure established or constructed after the designation of the SMIA zone shall be located within one-quarter mile of any existing or proposed surface mining processing or storage site, unless the applicant demonstrates that the proposed use will not prevent the adjacent surface mining operation from meeting the setbacks, standards and conditions set forth in Section 4.100(9), (11) and (14) of this Ordinance, respectively.
 - C. Additional setbacks in the SMIA zone may be required as part of the site plan review under subsection 10 of this section.
- "8. Use Limitations. No dwellings or additions to dwellings or other noise-sensitive or dust-sensitive uses or structures shall be erected in any SMIA Zone without first obtaining site plan approval under the standards and criteria set forth in subsections (8) through (12) below.
- "9. Specific Use Standards. The following standards shall apply in the SMIA zone:
- A. New dwellings, new noise-sensitive and dust-sensitive uses or structures, and additions to dwellings or noise and dust-sensitive uses or structures in existence on the effective date of Ordinance No. 90-014 which exceed 10% of the size of the existing dwelling or use, shall be subject to the criteria established in subsection 10 below.

"10. Site Plan Review and Approval Criteria.

- A. Site plan review and approval, pursuant to the County Uniform Land Use Action Procedures Ordinance, shall be required for all uses in the SMIA zone prior to the commencement of any construction or use.
- B. The planning director or hearings body may grant or deny site plan approval and may require such modifications to the site plan as are determined to be necessary to meet the setbacks, standards and conditions described above.
- C. The site plan shall be approved if the planning director or hearings body finds that the site plan is consistent with the site-specific ESEE analysis in the surface mining element of the comprehensive plan and that the proposed use will not prevent the adjacent surface mining operation from meeting the setbacks, standards and conditions set forth in Sections 4.100(9), (11) and (14), of this Ordinance, respectively.

"11. Waiver of Remonstrance. The applicant for site plan approval in the SMIA Zone shall sign and record in the Deschutes County Book of Records a statement declaring that the applicant and his successors will not now or in the future complain about the allowed surface mining activities on the adjacent surface mining site.

"12. Development Agreement and Performance Bond. As a condition of site plan approval, the applicant may be required to execute a development agreement with the county and performance bond or other form of security approved by the county to ensure full and faithful performance of any improvements required to meet the setbacks, standards and conditions set forth above. Any bond shall be for 110 percent the dollar amount of the improvement costs.

"13. Exemptions. The following shall be exempt from this section:

- A. Uses in the SMIA zone which are not within one-half mile of any identified resource in the SM zone after all reclamation has occurred.

- B. Continuation and maintenance of a conforming or nonconforming use established prior to the effective date of Ordinance No. 90-014.
- C. The employment of land for farm or forest use.
- D. Additions to a dwelling existing on the effective date of Ordinance No. 90-014 which are completely screened from the surface mining site by the existing dwelling."

Section 22. Section 4.120(3)(L) of Ordinance No. PL-15, Rural Residential, RR-10. Conditional Uses Permitted, is hereby repealed.

Section 23. Section 4.010(3)(B) of Ordinance No. PL-15, Exclusive Farm Use, EFU-320, Conditional Uses Permitted, is amended to read as follows:

"B. Operations conducted for exploration, mining and processing of geothermal resources as defined by ORS 522.005; exploration and extraction of natural gas or oil; surface mining mineral and aggregate resources exclusively for on-site personal, farm or forest use, or in conjunction with maintenance of irrigation canals."

Section 24. Section 4.020(3)(B) of Ordinance No. PL-15, Exclusive Farm Use, EFU-80, Conditional Uses Permitted, is amended to read as follows:

"B. Operations conducted for exploration, mining and processing of geothermal resources as defined by ORS 522.005; exploration and extraction of natural gas or oil; surface mining mineral and aggregate resources exclusively for on-site personal, farm or forest use, or in conjunction with maintenance of irrigation canals."

Section 25. Section 4.030(3)(I) of Ordinance No. PL-15, Exclusive Farm Use, EFU-40, Conditional Uses Permitted, is amended to read as follows:

"I. Operations conducted for exploration, mining and processing of geothermal resources as defined by ORS 522.005; exploration and extraction of natural gas or oil; surface mining mineral and aggregate resources exclusively for on-site personal, farm or forest use, or in conjunction with maintenance of irrigation canals."

Section 26. Section 4.040(3)(D) of Ordinance No. PL-15, Exclusive Farm Use, EFU-20, Conditional Uses Permitted, is amended to read as follows:

"D. Operations conducted for exploration, mining and processing of geothermal resources as defined by ORS 522.005; exploration and extraction of natural gas or oil; surface mining mineral and aggregate resources exclusively for on-site personal, farm or forest use, or in conjunction with maintenance of irrigation canals."

Section 27. Section 4.060(3)(H) of Ordinance No. PL-15, Multiple Use Agricultural, MUA, Conditional Uses Permitted, is amended to read as follows:

"H. Operations conducted for exploration, mining and processing of geothermal resources as defined by ORS 522.005; exploration and extraction of natural gas or oil; surface mining mineral and aggregate resources exclusively for on-site personal, farm or forest use, or in conjunction with maintenance of irrigation canals."

Section 28. Section 4.070(3)(B) of Ordinance No. PL-15, Forest Use, F-1, Conditional Uses Permitted, is amended by the addition of the following:

"B. Operations conducted for exploration, mining and processing of geothermal resources as defined by ORS 522.005; exploration and extraction of natural gas or oil; surface mining mineral and aggregate resources exclusively for on-site personal, farm or forest use, or in conjunction with maintenance of irrigation canals."

Section 29. Section 4.080(3)(B) of Ordinance No. PL-15, Forest Use, F-2, Conditional Uses Permitted, is amended to read as follows:

"B. Operations conducted for exploration, mining and processing of geothermal resources as defined by ORS 522.005; exploration and extraction of natural gas or oil; surface mining mineral and aggregate resources exclusively for on-site personal, farm or forest use, or in conjunction with maintenance of irrigation canals."

Section 30. Section 4.085(3)(B) of Ordinance No. PL-15, Forest Use, F-3, Conditional Uses Permitted, is amended to read as follows:

"B. Operations conducted for exploration, mining and processing of geothermal resources as defined by ORS 522.005; exploration and extraction of natural gas or oil; surface mining mineral and aggregate resources exclusively for on-site personal, farm or forest use, or in conjunction with maintenance of irrigation canals."

Section 31. Section 4.010(3) of Ordinance No. PL-15, Exclusive Farm Use, EFU-320, Conditional Uses Permitted, is amended by the addition of the following:

"Q. Storage, crushing and processing of minerals, including the processing of aggregate into asphaltic concrete or portland cement concrete, when such uses are in conjunction with the maintenance or construction of public roads or highways."

Section 32. Section 4.020(3) of Ordinance No. PL-15, Exclusive Farm Use, EFU-80, Conditional Uses Permitted, is amended by the addition of the following:

"Q. Storage, crushing and processing of minerals, including the processing of aggregate into asphaltic concrete or portland cement concrete, when such uses are in conjunction with the maintenance or construction of public roads or highways."

Section 33. Section 4.030(3) of Ordinance No. PL-15, Exclusive Farm Use, EFU-40, Conditional Uses Permitted, is amended by the addition of the following:

"Q. Storage, crushing and processing of minerals, including the processing of aggregate into asphaltic concrete or portland cement concrete, when such uses are in conjunction with the maintenance or construction of public roads or highways."

Section 34. Section 4.040(3) of Ordinance No. PL-15, Exclusive Farm Use, EFU-20, Conditional Uses Permitted, is amended by the addition of the following:

"R. Storage, crushing and processing of minerals, including the processing of aggregate into asphaltic concrete or portland cement concrete, when such uses are in conjunction with the maintenance or construction of public roads or highways."

Section 35. Section 4.060(3) of Ordinance No. PL-15, Multiple Use Agricultural, MUA-10, Conditional Uses Permitted, is amended by the addition of the following:

"U. Storage, crushing and processing of minerals, including the processing of aggregate into asphaltic concrete or portland cement concrete, when such uses are in conjunction with the maintenance or construction of public roads or highways."

Section 36. Section 4.080(3) of Ordinance No. PL-15, Forest Use, F-2, Conditional Uses Permitted, is amended by the addition of the following:

"P. Storage, crushing and processing of minerals, including the processing of aggregate into asphaltic concrete or portland cement concrete, when such uses are in conjunction with the maintenance or construction of public roads or highways."

Section 37. Section 4.085(3) of Ordinance No. PL-15, Forest Use, F-3, Conditional Uses Permitted, is amended by the addition of the following:

"P. Storage, crushing and processing of minerals, including the processing of aggregate into asphaltic concrete or portland cement concrete, when such uses are in conjunction with the maintenance or construction of public roads or highways."

Section 38. Section 4.220(3)(G) of Ordinance No. PL-15, Rural Industrial, R-I, Conditional Uses Permitted, is amended to read as follows:

"G. Storage, crushing and processing of minerals, including the processing of aggregate into asphaltic concrete or portland cement concrete."

Section 39. Section 8.050 of Ordinance No. PL-15, Specific Use Standards, is amended by the addition of the following:

"24. Surface Mining of Resources Exclusively for On-Site Personal, Farm or Forest Use or Maintenance of Irrigation Canals. These uses are subject to the following standards:

- A. An application shall be filed containing the following information:
 - a. A detailed explanation of the project and why the surface mining activity is necessary.
 - b. A site plan drawn to scale and accompanied by such drawings, sketches and descriptions as are necessary to describe and illustrate the proposed surface mining.

- B. A conditional use permit shall not be issued unless the applicant demonstrates at the time of site plan review that the following conditions are or can be met:
- a. The surface mining is necessary to conduct or maintain a use allowed in the zone district in which the property is located.
 - b. Erosion will be controlled during and after the surface mining.
 - c. The surface mining activity can meet all applicable DEQ noise control standards and ambient air quality and emission standards.
 - d. Sufficient water is available to support approved methods of dust control and vegetation enhancement.
 - e. The surface mining does not adversely impact other resources or uses on the site or adjacent properties, including, but not limited to, farm use, forest use, recreational use, historic use and fish and wildlife habitat as designed or through mitigation measures required to minimize these impacts.
- C. If the surface mining actively involves the maintenance or creation of man-made lakes, water impoundments or ponds, the applicant shall also demonstrate, at the time of site plan review, that the following conditions are or can be met:
- a. There is adequate water legally available to the site to maintain the water impoundment and to prevent stagnation.
 - b. The soil characteristics or proposed lining of the impoundment are adequate to contain the proposed water and will not result in the waste of water.
 - c. Where the impoundment bank slope is steeper than 3 feet horizontal to 1 foot vertical, or where the depth is 6 feet or deeper, the perimeter of the impoundment is adequately protected by methods such as fences or access barriers and controls.
 - d. The surface mining does not adversely affect any drainages, all surface water drainage is

contained on site, and existing watercourses or drainages are maintained so as not to adversely affect any surrounding properties."

Section 40. Section 8.050 of Ordinance No. PL-15, Specific Use Standards, is amended by the addition of the following:

"25. Storage, Crushing and Processing of Minerals in Conjunction With the Maintenance or Construction of Public Roads or Highways. A conditional use permit for these uses shall be subject to the following standards:

- A. An application shall be filed containing the following information:
 - a. A detailed explanation of the project, including the duration and operation characteristics of the site.
 - b. A site plan drawn to scale and accompanied by such drawings, sketches and descriptions as are necessary to describe and illustrate the proposed project.
- B. A conditional use permit for storage, crushing and processing of minerals to be used in conjunction with maintenance and construction of public roads and highways shall be subject to all applicable general operation standards established by Section 4.100(11) of this Ordinance, except Section 4.100(11), paragraphs J, K and L."


Section 41. This Ordinance being necessary for the immediate preservation of the public peace, health, and safety, an emergency is declared to exist, and this Ordinance takes effect on July 16, 1990.

DATED this 12th day of July, 1990.

BOARD OF COUNTY COMMISSIONERS
OF DESCHUTES COUNTY, OREGON


LOIS BRISTOW PRANTE, Commissioner


TOM THROOP, Chair


DICK MAUDLIN, Commissioner

ATTEST:


Recording Secretary

FLOW CHART FOR SURFACE MINING

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