Josephine County
2006 Ordinances

No.	Date Signed	Effective Date	Description
2006-001	3-8-06	**6-6-06**	An Ordinance amending the Josephine County Rural Land Development Code (Ord. 94-4), to add and replace definitions contained in Article 11 regarding riparian terms; and to amend Article 72.040.B (Stream Setbacks) by adding and replacing language to expand uses allowed within stream setbacks, and also to specify procedures for granting variances for certain uses; and to amend Article 42.030 (Initiation of Site Plan Review) by replacing the language in subsection 5 with new language regarding mitigation plans.
2006-002	3-29-06	**6-27-06**	An Ordinance amending the Goals & Policies of the Comprehensive Plan for Josephine County (Ord 81-11) to amend Goal 7 (Natural Resources) to modify language relating to aggregate resources; to amend Goal 10, Policy 1.K regarding implementation of the Mineral and Aggregate Resource Zone and to further amend Goal 10 regarding the implementation of the Limited Development Zone by adding Policy 1.L; and to amend the Rural Land Development Code (Ord. 94-4) to add and replace definitions contained in Article 11; to replace Article 66.1 (Mineral and Aggregate Resource Zone), and to replace Articles 72.040.A (Significant Mineral and Aggregate Site Setback Area) and Article 91 (Standards for Development of Aggregate Operations).
2006-003	4-5-06	**7-4-06**	An Ordinance amending the Goals & Policies of the Comprehensive Plan for Josephine County (Ord 81-11) to amend Goal 7 (Natural Resources), to modify language relating to Policy 6 (Wildlife Sites), and to amend Goal 11 (Amending the Comprehensive Plan) to modify language contained in Policy 3.E (Non-Resource Land Criteria); and, to amend the Rural Land Development Code (Ord. 94-4) to replace and modify language contained in Articles 46.050.E (Non-Resource Land Criteria), 69.2 (Deer Overlay), and 72.040.C (Rookery or Nest Sites).
2006-04	12/27/06	**03/27/07**	An Ordinance amending the Comprehensive Plan Map of Josephine County (Ordinance 81-11, as amended) from Forest to Residential and amending the Zoning Map of Josephine County (Ordinance 85-1, as amended) from Woodlot Resource to Rural Residential (5-acre minimum), and also amending the Josephine County Deer Winter Range Map to remove the subject property from an area designated as critical deer winter habitat (Ord 85-29) for property identified in the Josephine County Assessor's Records as Map# **36-05-05, Tax Lots 200 & 300.** Property Owners: David and Antoinette Sumner.

Planning

BEFORE THE BOARD OF COUNTY COMMISSIONERS FOR JOSEPHINE COUNTY

Ordinance No. 2006 – 001

AN ORDINANCE AMENDING THE JOSEPHINE COUNTY RURAL LAND DEVELOPMENT CODE (ORD. 94-4) TO ADD AND REPLACE DEFINITIONS CONTAINED IN ARTICLE 11 REGARDING RIPARIAN TERMS; AND TO AMEND ARTICLE 72.040.B (STREAM SETBACKS) BY ADDING AND REPLACING LANGUAGE TO EXPAND USES ALLOWED WITHIN STREAM SETBACKS, AND ALSO TO SPECIFY PROCEDURES FOR GRANTING VARIANCES FOR CERTAIN USES; AND TO AMEND ARTICLE 42.030 (INITIATION OF SITE PLAN REVIEW) BY REPLACING THE LANGUAGE IN SUBSECTION 5 WITH NEW LANGUAGE REGARDING MITIGATION PLANS.

WHEREAS, in accordance with the procedures of the Josephine County Comprehensive Plan (hereinafter called Plan) at Goal 11, Policy 1, and the Rural Land Development Code (hereinafter called Code) at Article 46, the Board of County Commissioners, as a part of the county's periodic review agreement with the state of Oregon, conducted public hearings regarding revisions to the county's statewide Goal 5 program for the protection of riparian resources; and

WHEREAS, as a result of this public process, the Board of County Commissioners adopted Ordinance 2000-8 to implement the revised program for riparian resources, and submitted this ordinance to the Oregon Department of Land Conservation and Development pursuant to its periodic review responsibilities; and

WHEREAS, on December 31, 2003, the Oregon Department of Land Conservation and Commission advised Josephine County that the riparian components of Ordinance 2000-8 were acknowledged to comply with Oregon Administrative Rule 660-023-0090 (Riparian Corridors); and

WHEREAS, the Department's order specifies the county must address the remand order by submitting products that comply with its requirements by December 31, 2004; and

NOW, THEREFORE, based on the foregoing authority and procedures, the Board of County Commissioners for Josephine County, Oregon, hereby takes the following legislative action to amend the Plan and Code by deleting and replacing certain provisions within the county's Rural Land Development Code as set forth herein.

Section 1. Adoption

I. Section 11.030, *DEFINITIONS*, shall be amended by the inclusion of new definitions and deletion of an existing definition as follows:

NEW DEFINITIONS

RIPARIAN AREA: The area adjacent to a river, lake, stream, or wetland consisting of the area of transition from an aquatic ecosystem to a terrestrial ecosystem.

RIPARIAN CORRIDOR. A space that surrounds a riparian area that includes the water areas, fish habitat, adjacent riparian areas, and wetlands that are within the riparian area setback boundary.

RIPARIAN AREA BOUNDARY. A line located a certain distance back from the ordinary high water line for riparian areas in which certain uses or activities are prohibited and/or regulated to protect or enhance beneficial riparian attributes. The area within a riparian area boundary or boundaries is considered the riparian corridor setback area. See Article 72.040.B (*Riparian Corridor Setbacks*).

ORDINARY HIGH WATER LINE (OHWL). A line on the bank or shore of a riparian area to which high water ordinarily rises annually in season. The OHWL excludes exceptionally high water levels caused by large flood events. The OHWL shall be used to designate the upland edge of a riparian area for the purpose of measuring riparian corridor setbacks. The OHWL may be determined in the field by observing the following physical characteristics:

A. The location of a clear, natural line impressed on the shore;

B. Changes from riparian to upland vegetation (e.g., from willows to oak or fir trees);

C. Changes in the texture of sediment deposits or the character of soils (e.g., from sand, sand and cobble, cobble and gravel to upland soils);

D. The location below which fine debris (such as, needles, seeds, leaves, cones) are no longer present;

E. The location at which water-carried litter or debris, water stained leaves and water lines on tree trunks become apparent; and/or

F. Any other appropriate physical or scientific evidence that is credible to show the place where high water ordinarily rises annually in season.

DELETED DEFINITION

~~TOP OF BANK. The elevation at which water overflows the natural banks of streams or other waters of this state and begins to inundate the upland. In the absence of physical evidence, the two-year recurrence interval high water line may be used to approximate the top of bank.~~

II. Replace the existing Subsection B of Article 72 (Heights, Setbacks & Accessory Structures) with the following new Subsection B:

ARTICLE 72 - HEIGHTS, SETBACKS & ACCESSORY STRUCTURES

72.040 - SPECIAL SETBACK REQUIREMENTS

Special use and structure siting restrictions shall apply to development within the following protected areas:

* * * * *

B. **Riparian Corridor Setback Area.** Development within riparian corridors shall be limited as follows:

1. **SETBACK DISTANCES.** The riparian corridor setback area shall be 50' wide for Class 1 Streams and 25' wide for Class 2 Streams (based upon stream classifications established and maintained by the Oregon Department of Fish and Wildlife).

2. **RIPARIAN CORRIDOR DEVELOPMENT.** Development within a riparian corridor setback area by fill or excavation, by placement of structures, by construction of impervious surfaces, or by removal of vegetation (with or without other development) is generally prohibited, except as listed in subsections 2.a through 2.j below. Approval of the following activities shall require a pre-application review pursuant to Article 42.030 (*Initiation of Site Plan Review*), and must be authorized by a development permit pursuant to Article 41.020 (*Development Permits*), prior to development. A riparian area mitigation plan may be required.

   a. Streets, roads, and paths;

   b. Drainage facilities, utilities, and irrigation pumps;

   c. Water-related and water-dependent uses, such as boat ramps, landings, docks, platforms for irrigation equipment, push up dams;

   d. Replacement of existing structures with structures in the same location that do not disturb additional riparian surface area;

   e. Reclamation activities intended to enhance riparian habitat;

   f. Improvements to fish habitat or fish passage;

   g. Aggregate mining between the banks of the stream;

   h. Forest practices in the farm or forest resource zones where the forest practice is authorized by a permit issued under the Oregon Forest Practices Act;

   i. On-going trimming and/or maintenance programs for the improvement of riparian and non-riparian vegetation; and

   j. Removal of non-native vegetation when replaced with native plant species.

3. **EXCEPTIONS.** Exceptions may be granted to the general prohibition of uses specified in subsection 2 above. Requests for development shall require pre-application review procedures for site plan review as set forth in Article 42.030, but shall be judged using the following standards only:

a. The development will result in equal or better protection for the riparian area because the riparian area will be restored, buffered, or enhanced through other special measures; and

b. The exception will not authorize alterations to occupy more than 50 percent of the width of the riparian area measured from the upland edge of the corridor; or

c. An existing lot or parcel proposed for development is rendered not buildable by application of the riparian setback.

d. A riparian area mitigation plan shall be required for all circumstances covered by subsections a, b and c above. The requirement for a mitigation plan may be waived if both the county and the Oregon Department of Fish and Wildlife agree a mitigation plan is unnecessary.

e. Notice of all proposed exceptions, to include copies of proposed mitigation plans, if not waived, shall be given to the Oregon Department of Fish and Wildlife, the Division of State Lands, and the Department of Environmental Quality consistent with the notice requirements contained in Section 32.030 (*Mailed Notice*).

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III. Amend Article 42.030.A (*Initiation of Site Plan Review*), by adding the following underlined language:

42.030 - INITIATION OF SITE PLAN REVIEW

A. The following requests shall require a pre-application review for site plan review pursuant to Article 42 of this code:

1. The expansion, alteration or replacement of a use or structure lawfully established prior to being listed as a conditional use, or which was previously approved as a conditional use;

2. The resumption of conditional use activities within structures that have been destroyed by casualty;

3. Development permits within any commercial or industrial zone that involve the enlargement of existing structures or the construction of new structures or public facilities;

4. Permits for the exploration, mining and processing of aggregate or other minerals, including geothermal resources;

5. Development within a Floodway Hazard Area, <u>or development that requires review of a riparian corridor development mitigation plan required by Article 72 (*Special Setback Standards*), an erosion control plan and/or storm drainage facility pursuant to Article 83 (*Erosion Control & Storm Drainage Facilities*).</u>

or development that requires review of a wildfire hazard mitigation plan pursuant to Article 76 (*Wildfire Safety Standards*) or some other land use approval; and

6. Accessory structures that exceed the cumulative size limits contained in Section 72.060.

7. Any other request when the Director believes the facts and circumstances indicate a more comprehensive review afforded by site plan review is justified.

Section 3. Affirmation

Except as specifically amended by the provisions of this ordinance, the Josephine County Rural Land Development Code (Ord. 94-4), as previously adopted or amended, is hereby affirmed.

Section 4. Effective Date

First reading by the Board of County Commissioners this 15th day of February, 2006.

Second reading and adoption by the Board of County Commissioners at least thirteen days from the first reading on this 8 day of March, 2006. This ordinance shall take effect ninety days after its adoption by the Board of County Commissioners.

JOSEPHINE COUNTY BOARD OF COMMISSIONERS

Dwight F. Ellis, Chair

Jim Raffenburg, Vice-Chair

Jim Riddle, Commissioner

ATTEST:

Recording Secretary

APPROVED AS TO FORM:

Steven E. Rich, Legal Counsel

RECEIVED
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JOSEPHINE CO. PLANNING

BEFORE THE BOARD OF COUNTY COMMISSIONERS FOR JOSEPHINE COUNTY

Ordinance No. 2006 -002

AN ORDINANCE AMENDING THE GOALS AND POLICIES OF THE COMPREHENSIVE PLAN FOR JOSEPHINE COUNTY (ORD 81-11) TO AMEND GOAL 7 (NATURAL RESOURCES) TO MODIFY LANGUAGE RELATING TO AGGREGATE RESOURCES; TO AMEND GOAL 10, POLICY 1.K, REGARDING IMPLEMENTATION OF THE MINERAL AND AGGREGATE RESOURCE ZONE; AND TO FURTHER AMEND GOAL 10 REGARDING THE IMPLEMENTATION OF THE LIMITED DEVELOPMENT ZONE BY ADDING POLICY 1.L; AND TO AMEND THE RURAL LAND DEVELOPMENT CODE (ORD. 94-4) TO ADD AND REPLACE DEFINITIONS CONTAINED IN ARTICLE 11, TO REPLACE ARTICLE 66.1 (MINERAL AND AGGREGATE RESOURCE ZONE), AND TO REPLACE ARTICLES 72.040.A (SIGNIFICANT MINERAL & AGGREGATE SITE SETBACK AREA) AND ARTICLE 91 (STANDARDS FOR DEVELOPMENT OF AGGREGATE OPERATIONS).

WHEREAS, in accordance with the procedures of the Josephine County Comprehensive Plan (hereinafter called Plan) at Goal 11, Policy 1, and the Rural Land Development Code (hereinafter called Code) at Article 46, the Board of County Commissioners, as a part of Task 1 of the county's periodic review agreement with the state of Oregon, conducted public hearings regarding revisions to the county's statewide Goal 5 program for mineral and aggregate resources; and

WHEREAS, as a result of this public process, the Board of County Commissioners adopted Ordinance 2000-8 to implement the revised program for mineral and aggregate resources, and submitted this ordinance to the Oregon Department of Land Conservation and Development pursuant to its periodic review responsibilities; and

WHEREAS, on December 31, 2003, the Oregon Department of Land Conservation and Commission advised Josephine County that the mineral and aggregate components of Ordinance 2000-8 was acknowledged to comply Oregon Administrative Rule 660-023-0180 (Mineral and Aggregate Resources), except the provisions relating to impact area agreements deviated from the requirements of the administrative rule was not acknowledged because it lacked an Collaborative Problem Solving Agreement; and

WHEREAS, the Department's order specifies the county must address the remand order by submitting products that comply with its requirements by December 31, 2004; and

WHEREAS, the Oregon Land Conservation and Development Commission in June of 2004 adopted amendments to the Oregon Administrative Rule 660, Division 23, as it relates to mineral and aggregate resources, and the county further desires to implement these amendments into its plan and implementing ordinances;

NOW, THEREFORE, based on the foregoing authority and procedures, the Board of County Commissioners for Josephine County, Oregon, hereby takes the following legislative action to amend the Plan and Code by deleting and replacing certain provisions within the county's Goals and Policies of the Comprehensive Plan and Rural Land Development Code as set forth herein.

Section 1. Adoption

GOALS AND POLICIES OF THE COMPREHENSIVE PLAN

I. Replace the existing Overview statement and Policies 1.A through 1.C of Goal 7 (Preserve Valuable Limited Resources, Unique Natural Areas and Historic Features) with the following Overview statement and Policies 1.A through 1.E:

OVERVIEW

Josephine County is especially rich in natural and cultural resources that are important to the vitality of the local economy and the general livability of rural areas. These resources include mineral and aggregate deposits, riparian areas (rivers, streams, lakes, wetlands and adjoining land areas), groundwater resources, historic and archaeological sites, and scenic, recreation and wildlife areas. Many of these resources have been identified in inventories for their preservation and enhancement. It is therefore the purpose of this goal to develop policies, supported by implementing land use regulations, that will protect and enhance the county's natural and cultural resources in balance with individual property rights and competing land uses.

POLICIES

1. **Aggregate Resource Policies**

   A. ADMINISTRATIVE RULE IMPLEMENTATION. The policies contained within this goal implement the requirements for the mining of significant mineral and aggregate sites as authorized by Oregon Administrative Rule (OAR), Chapter 660, Division 23, entitled, Procedures and Requirements for Complying with Statewide Goal 5, except as modified under Collaborative Problem Solving Authority as described in subsection C below.

   B. BASE INFORMATION. The policies contained within this goal are based in part upon documentation contained in the publications Josephine County Goal 5 Resources: Issues and Opportunities in Policy Formation, by Kevin Preister (October, 1996); Applegate Resource Committee Interim Report (July, 1997); and Aggregate Resources in Josephine County—A Goal 5 Overview, by Grace M. Zilverberg, PhD (1995).[1] These publications are maintained in the Josephine County Planning Office library and are included in this policy by reference and are intended to provide important background information that may be helpful in applying aggregate resource policies.

   C. COLLABORATIVE REGIONAL PROBLEM SOLVING AUTHORITY. The standards and procedures for an Impact Area Agreement described within these

[1] The document *Aggregate Resources in Josephine County—A Goal 5 Overview*, by Grace M. Zilverberg, PhD (1995) contains recommendations and policies based on the old Goal 5 Rule, OAR 660-016. It is included for its background information and economic data only.

policies and implemented in the Rural Land Development Code (code) are derived from Collaborative Regional Problem Solving Authority pursuant to ORS 197.656.

D. DEFINITIONS. The administration of this goal requires the use of terms that must be understood to correctly apply county policies. The following definitions shall therefore apply wherever appropriate, and shall be added to the Rural Land Development Code:

[1] "Aggregate Resources" are naturally occurring concentrations of stone, rock, sand, gravel, decomposed granite, limestone, pumice, cinders and other naturally occurring solid materials commonly used in road building or other construction.

[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 OAR 660-023-0180.

[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 an aggregate site that meets the definition for a significant aggregate site and was lawfully operating, or was included on an inventory of significant aggregate sites in an acknowledged plan on, September 1, 1996.

[5] "Expansion Area" is an aggregate mining area contiguous to an existing site.

[6] "Impact Area" is a geographic area within which conflicting uses could adversely affect a significant Goal 5 resource.

[7] "Inventory or Resource List" is an acknowledged survey, map or description of one or more resource sites that is prepared or adopted by the county that includes information about location, resource values and features associated with the listed sites (includes plan inventories adopted under OAR 660-016. A resource site may consist of a parcel or lot or portion thereof or may include an area consisting of two or more continuous lots or parcels.

[8] "Mineral Resources" are solid materials and substances such as soil, coal, clay, stone, sand, gravel and metallic ore excavated for commercial, industrial or construction use from natural deposits, but does not include materials and substances described as aggregate resources.

[9] "Mining" is the extraction and processing of mineral or aggregate resources as defined in ORS 215.298 for farmland, and in ORS 517.750 for land other than farmland.

[10] "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.

[11] "Mining Area" is the area of a site within which mining is permitted or proposed, excluding undisturbed buffer areas or areas where mining is not authorized.

[12] "PAPA" is a post-acknowledgment plan amendment. The term encompasses actions taken in accordance with ORS 197.610 through 197.625, including amendments to an acknowledged comprehensive plan or land use regulation and the adoption of any new plan or land use regulation. The term does not include periodic review actions taken in accordance with ORS 197.628 through 197.650.

[13] "Processing of Mineral Aggregate" includes, but is not limited to, crushing, washing, milling and screening as well as the batching and blending of mineral aggregate into asphalt and Portland cement concrete located within the operating permit area.

[14] "Protect" means to adopt land use regulations for a significant mineral or aggregate site in order to authorize mining of the site. For purposes of deciding upon a program to protect a significant site as part of the ESEE analysis, "protect" also means to limit or prohibit new conflicting uses within the impact area of the site.

E. BASIC MINERAL AND AGGREGATE POLICY. It is extremely important to the economy of Josephine County to have a stable and adequate supply of mineral and aggregate materials. It is also known that mining and hauling frequently involve significant impacts on nearby existing and future land uses and public facilities. These impacts may adversely affect the quality of rural residential uses and other natural resources. It is the basic policy of Josephine County to effectively address these conflicts during the permitting of new and expanded significant mineral and aggregate mining in ways that are consistent with the requirements of OAR 660-023-0180, and which also honor and protect the county's exceptional rural environment. This basic policy shall be guided by the following sub-policies:

[1] Application of Policies. The policies contained in this goal shall be applied to all mineral and aggregate sites that are found to be significant pursuant to OAR 660-023, or which were previously acknowledged on a county inventory of significant sites, but are subsequently authorized to

mine pursuant to OAR 660-023-0040 or 660-023-0180 . Not all policies apply to both significant mineral and aggregate resources. The applicability of individual policies to significant mineral and/or aggregate resource shall be noted in each policy.

[2] Mineral and Aggregate Resource Zone. A new plan and zone category shall be established in county Goal 10 (*Plan Categories and Zones*), called the Mineral and Aggregate Resource Zone (MARZ). This zone shall be used to implement the county's mineral and aggregate resource program for significant sites authorized pursuant to OAR 660-023-0180, except that significant sites may be authorized within Farm Zones as described in Section [3](c) below.

[3] Significant Aggregate Sites. An aggregate resource site shall be considered significant if adequate information regarding the quantity, quality, and location of the resource demonstrates that the site meets the requirements found below in subsections (a) or (b), except as qualified by subsection (c):

[a] A representative set of samples of aggregate materials in the deposit meet:

[i] The applicable Oregon Department of Transportation (ODOT) specifications for base rock for air degradation, abrasion and soundness; and

[ii] The estimated amount of material is more than 500,000 tons; or

(iii) The aggregate site was on an inventory of significant aggregate sites in an acknowledged plan on September 1, 1996.

[b] Notwithstanding subsections (i) and (ii) above, except for an expansion area of an existing site if the operator of the site had an enforceable property interest in the expansion area on March 1, 1996, an aggregate site is not significant if more than 35 percent of the proposed mining area consists of soil classified as Class I, Class II, or of a combination of Class I and Class II or Unique soil on Natural Resource and Conservation Service (NRCS) maps on June 11, 2004.

[c] Notwithstanding subsection [3](a) above, an aggregate site on land zoned Exclusive Farm or Farm Resource (Farm Zones) is significant if:

[i] The quantity of material proposed to be mined from the site is estimated to be 500,000 tons or less; and

[ii] The site does not consist of soils as described in subsection [3](b) immediately above; or

(iii) A local land use permit that allows mining on the site was issued prior to April 3, 2003, and the permit is in effect at the time of the significance determination.

[4] Significant Mineral Sites. Mineral resource sites shall be considered significant when:

[a] The site is listed as a significant mineral site in the county's 1985 inventory of significant mineral sites (Ordinance 85-12); or

[b] The site is designated as a significant mineral resource site pursuant to the requirements of OAR 660-023-0030.

[5] Inventories for Significant Mineral and Aggregate Sites. The county shall maintain its existing inventories of significant mineral and aggregate sites by adding or deleting sites as needed and appropriate pursuant to these policies. It shall be the policy of the county to delete sites when they cannot be accurately located or become depleted.

[6] Approval of Significant Aggregate Sites in Farm Zones. Applications to mine aggregate sites on lands zoned Exclusive Farm or Farm Resource, where the quantity of material proposed for mining is estimated to be less than 500,000 tons, shall be reviewed using conditional use procedures, standards and criteria as set forth in the Rural Land Development Code, subject to the following rules:

[a] The site must be placed on the county's inventory of significant sites; and

[b] The conditional use permit shall not allow mining of more than 500,000 tons of aggregate material; and

[c] The conditional use permit shall determine the post-mining use of the property and provide for this use through post-mining zoning. For sites on Class I, II and unique farmland, the permit shall adopt regulations to limit post-mining use to farm uses listed in 215.283(1), fish and wildlife habitat or wetland mitigation banking. Post-mining regulations shall be coordinated with the Oregon Department of Mining and Mineral Industries unless exempted by the Department.

The mining of significant aggregate sites pursuant to this subsection shall not be subject to the basic aggregate policies applying OAR 660-023-180 requirements for minimizing or resolving existing and new conflicting uses or obtaining an Impact Area Agreement, but shall be subject to the

operating standards implemented through Article 91 of the Rural Land Development Code.

[7] Existing Conflicting Uses. The mining of other significant mineral and aggregate sites shall be permitted as follows:

[a] AGGREGATE MINING. The mining of significant aggregate resource sites shall be permitted only when conflicts with existing land uses within the impact area have been minimized or allowed or limited after analyzing the ESEE consequences as required in OAR 660-023-0180. Other significant Goal 5 resources 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 of the application, shall be considered an existing land use for the purpose of minimizing conflicts.

[b] MINERAL MINING. The mining of significant mineral resource sites shall be permitted using the procedures for the ESEE Decision Process contained in OAR 660-023-0040.

[8] New Conflicting Uses. The standard ESEE process in OAR 660-023-0040 and 660-023-0050 shall be used for new mineral or aggregate mining proposals to determine whether to allow, limit, or prevent new conflicting uses within the impact area of the site. This policy shall apply only to significant mineral or aggregate sites which are designated and permitted under the requirements of OAR 660-023-0180.

[9] Operating Standards. The county shall implement clear and objective development and operation standards for the approval of mineral or aggregate mining and processing sites located in the Mineral and Aggregate Resource Zone, and in other zones where mineral and aggregate mining and processing are allowed. These standards shall be implemented in Article 91 of the Rural Land Development Code.

[10] Impact Area Agreements (IAA). It is the policy of Josephine County to encourage communication and cooperation between mineral or aggregate owners and/or operators and landowners within impact areas in a way that allows those most affected by mining to resolve the resulting conflicts. This policy shall be guided by the following sub-policies:

[a] This policy does not apply to sites that were on an acknowledged county inventory of significant mineral or aggregate sites as of September 1, 1996, and which are subsequently authorized through conditional use or site plan review procedures only. Property owners and/or operators of significant mineral sites on any date, or significant aggregate sites before the 1996 date, may elect to use the rules and procedures contained in OAR 660-023-0180, in which case the requirements for an IAA shall apply.

[b] The specific standards and procedures for obtaining an IAA shall be developed within the code in the Article 66.1 (MARZ). These standards and procedures shall require a good faith effort by the mine owner and/or operator to complete an IAA, but mining shall not be denied solely because the owner and/or operator fails to reach an IAA after following required procedures.

[c] The IAA may include terms and conditions that relate to existing and new conflicting uses and the operation and development standards contained in Article 91 of the RLDC. The terms and conditions of the IAA may modify, eliminate or add to the standards contained in Article 91. The IAA, however, shall not replace the county's responsibility to minimize conflicts or evaluate ESEE consequence as required by OAR 660-023-0180. Nevertheless, the county review body may consider the IAA in performing its minimization and ESEE responsibilities and give the document weight as it deems appropriate. The terms and conditions from the IAA may be incorporated in the county's findings and decision to allow, limit or not allow mining.

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II. Replace the existing Policies 1.K (Mineral and Aggregate Resource Zone) of Goal 10 (To Depict a Land Use Pattern to Guide Future Uses, to Implement the Desires of the County and to Meet the Requirements of the State of Oregon) with the following new Policy 1.K, and add a new 1.L (Limited Development Zone), as follows:

K. MINERAL AND AGGREGATE RESOURCE ZONE (MARZ). Properties which have been designated significant mineral or aggregate resource sites, and which have been approved for mining in compliance with the requirements of Oregon Administrative Rule 660-023-0180, shall be placed in the Mineral and Aggregate Resource Zone (MARZ). Significant aggregate sites located within the Farm Zones that qualify for review using conditional use procedures shall not be placed in the MARZ.

L. LIMITED DEVELOPMENT ZONE (LD). The Limited Development zone is intended to include lands that are suited for recreational activities, such as parks, campgrounds, lodges, resorts, natural history education programs and facilities, wildlife preserves or rehabilitation facilities, gun, archery and paint ball clubs, bicycle and motorcycle race parks, and other similar activities. Other compatible resource and non-resource uses may also be appropriate for this zone. Suitable lands in existing farm and forest zones may qualify for Limited Development zoning when such lands are shown to be non-resource. The minimum parcel size for this zone shall be 20 acres, but larger parcel sizes are encouraged when needed to keep development from exceeding the carrying capacity features at the site, or to achieve compatibility with nearby resource uses.

RURAL LAND DEVELOPMENT CODE

I. Section 11.030, *DEFINITIONS*, shall be amended by the inclusion of new definitions and the replacement of certain existing definitions as follows:

NEW DEFINITIONS

ESEE. An analysis of the given economic, social, environmental and energy consequences that result from allowing, limiting or prohibiting a particular land use. In some cases, the ESEE is used to assure the least impactive site will be devoted to a use not allowed by one or more statewide Planning Goals. In other situations, the ESEE is used by decision-makers after it is determined that conflicts between a proposed use and existing or allowed uses within an impact area cannot be minimized. When this happens, the ESEE is used to identify the consequences that will result from allowing, limiting or not allowing the proposed use. In all situations, the decision-maker must weigh the results from the ESEE analysis in reaching its decision. Certain aspects of the statewide Planning Goals 2 (*Land Use Planning*), 5 (*Open Spaces, Scenic and Historic Areas and Natural Resources*), 12 (*Transportation*) and 14 (*Urbanization*) require some level of ESEE analysis.

ESEE CONSEQUENCES. 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.

EXISTING SITE. An aggregate site that meets the definition for a significant aggregate site and was lawfully operating, or was included on an inventory of significant aggregate sites in an acknowledged plan, on September 1, 1996.

EXPANSION AREA. An aggregate mining area contiguous to an existing site.

INVENTORY OR RESOURCE LIST. An acknowledged survey, map or description of one or more resource sites that is prepared or adopted by the county that includes information about location, resource values and features associated with the listed sites (includes plan inventories adopted under OAR 660-016). A resource site may consist of a parcel or lot or portion thereof or may include an area consisting of two or more continuous lots or parcels.

MINERAL RESOURCES. Solid materials and substances such as soil, coal, clay, stone, sand, gravel and metallic ore excavated for commercial, industrial or construction use from natural deposits, but does not include materials and substances described as aggregate resources.

MINIMIZE A CONFLICT. 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.

PROCESSING OF MINERAL AGGREGATE. Includes, but is not limited to, crushing, washing, milling and screening as well as the batching and blending of mineral aggregate into asphalt and Portland cement concrete located within the operating permit area.

REPLACEMENT DEFINITIONS

AGGREGATE RESOURCES. Naturally occurring concentrations of stone, rock, sand, gravel, decomposed granite, limestone, pumice, cinders and other naturally occurring solid materials commonly used in road building or other construction.

CONFLICTING USE. 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 OAR 660-023-0180.

IMPACT AREA. A geographic area within which conflicting uses could adversely affect a significant Goal 5 resource.

MINING. The extraction and processing of mineral or aggregate resources as defined in ORS 215.298 for farmland, and in ORS 517.750 for land other than farmland.

PAPA. A "post-acknowledgment plan amendment." The term encompasses actions taken in accordance with ORS 197.610 through 197.625, including amendments to an acknowledged comprehensive plan or land use regulation and the adoption of any new plan or land use regulation. The term does not include periodic review actions taken in accordance with ORS 197.628 through 197.650.

PROTECT. To adopt land use regulations for a significant mineral or aggregate site in order to authorize mining of the site. For purposes of deciding upon a program to protect a significant site as part of the ESEE analysis, "protect" also means to limit or prohibit new conflicting uses within the impact area of the site.

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II. Replace the existing Article 66.1, *Mineral & Aggregate Resource Zone (MARZ)* with the following new Article 66.1:

ARTICLE 66.1 - MINERAL & AGGREGATE RESOURCE ZONE (MARZ)

66.110 - PURPOSE

The purpose of this zone is to implement the objectives of Josephine County Comprehensive Plan Goal 7, Policy 1, regarding the mining of significant mineral and aggregate resources within Josephine County. Lands that have been designated as a significant mineral or aggregate site and approved for mining pursuant to the requirements of Oregon Administrative Rule (OAR) 660-023-0180 (*Mineral and Aggregate Resources*), must be placed within the MARZ. Significant aggregate sites located within the Farm Zones that qualify for review using conditional use procedures shall not be placed in the MARZ.

66.120 - OUTRIGHT USES

The following uses shall be allowed outright on lands in the MARZ. No permit or authorization is required to conduct these uses. Structures placed in conjunction with outright uses shall be permitted using Ministerial Review Procedures (Article 22), be subject to the applicable

development standards of 66.180, and require a Development Permit (Article 41) for final approval.

A. Agriculture, farming, and related farm use, as defined in ORS 215.203

B. Conservation and management of fish and wildlife resources

C. Fish and wildlife habitat enhancement

D. Forest operations or forest practices including, but not limited to, reforestation of forest land, road construction and maintenance, harvest of forest tree species, application of chemicals, and the disposal of slash where such uses pertain to commercial forest activity:

1. If the volume of wood exceeds 8 commercial truck loads per day, any access road, service road, or unpaved public road, while used for log-hauling, shall receive daily dust abatement or shall be treated with an oil surfacing by the operator, for a distance of 500 feet from a surfaced road or highway or residence located on adjoining property;

2. If more than one commercial log-hauling operation uses the road for log hauling purposes, all operators shall be jointly responsible for dust abatement as previously described

E. Temporary on-site structures and physical alterations to the land which are auxiliary to and used during the term of a particular forest operation or practice. Alterations include but are not limited to those made for the purposes of mineral exploration, mining, gravel extraction and processing, landfills, dams, reservoirs, road construction or recreational facilities:

1. For the purposes of this subsection, "auxiliary" means a use or alteration of a structure or land which provides help or is directly associated with the conduct of a particular forest practice. An auxiliary structure is located on site, is temporary in nature, and is not designed to remain for the forest's entire growth cycle. An auxiliary structure is removed when a particular forest practice has concluded

F. The creation of, restoration of or enhancement of wetlands

G. Uses to conserve soil, air and water quality and watershed management

66.130 - PERMITTED USES

The following uses, with accessory uses, shall be permitted using Ministerial Review Procedures (Article 22), unless Site Plan Review is required (Article 42), in which case uses shall be permitted using Quasi-Judicial Review Procedures (Article 22). Uses shall also meet the applicable development standards listed in Section 66.180. In all cases except farm uses, a Development Permit shall be required for final approval (Article 41).

A. Exploration for mineral and aggregate resources as defined in ORS Chapter 517

B. Mining and processing of mineral and aggregate resources subject to the conditions under which mining is permitted in the MARZ approval, or the Special Property Development Standards contained in Article 91.030 (*Special Property Development Standards for Aggregate Operations)*

C. Private hunting and fishing operations without any lodging accommodations

D. Single-family dwelling (legal dwellings existing at the time of the land is zoned in the MARZ only)

E. Temporary, portable facilities for the primary processing of forest products

F. Uninhabitable structures accessory to fish and wildlife enhancement

G. Water intake facilities, canals and distribution lines for farm irrigation and ponds

66.140 - CONDITIONAL USES

The following uses, with accessory uses, shall be authorized using Quasi-Judicial Review Procedures (Article 22), subject to the requirements for Conditional Uses (Article 45) and Site Plan Review (Article 42). All uses shall also meet the applicable development standards listed in Section 66.180 of this Article. A Development Permit (Article 41) shall be required for final approval.

A. Caretaker or night watchman's manufactured dwelling when used in conjunction with the uses listed in Articles 66.120 (*Outright Uses*) 66.130 (*Permitted Uses*) and 66.140 (*Conditional Uses*)

B. Cement and asphalt batching, rock processing and crushing (requested independently of a mining operation approved under Article 66.150, and subject to the special property development standards for aggregate operations specified in Article 91.030 of this code)

C. Dog kennels

D. Home occupation (in conjunction with existing legal single-family dwelling only)

E. Log scaling and weight stations

F. Permanent facility for the primary processing of forest products

G. Personal use landing strips used in conjunction with a use permitted by this Section

H. Propagation, cultivation, maintenance and harvesting of aquatic species

I. Public and private utilities

J. Solid waste disposal at site approved by the governing body of the county and for which a permit has been granted under ORS 459.245 by the Department of Environmental Quality together with equipment, facilities or buildings necessary for its operation

66.150 – PLACING LAND WITHIN THE MINERAL AND AGGREGATE RESOURCE ZONE

Only lands that are determined to be a significant mineral and aggregate site (including on-site buffer areas in the control of the mine operator or owner), and which have been authorized for mining pursuant to OAR 660-023-0180 (*Mineral and Aggregate Resources*), shall be placed within the MARZ. Significant aggregate sites approved within Farm Zones because the material to be mined is 500,000 tons or less shall not be placed in the MARZ. An application to designate lands within the MARZ shall meet the following requirements:

A. **Application Requirements.** An application to amend the comprehensive plan and zone maps shall be submitted with the required fees. The application content shall comply with Article 46.030 (*Plan Amendment Application Requirements*) and with OAR 660-23-180 (*Post-Acknowledgment Plan Amendment Application Requirements*). The application shall demonstrate compliance with the criteria contained in Article 46.040 (*Plan Amendment Review Criteria*) and OAR 660-023-0180 (*Definition of Significant Site; Impact Area Conflict Minimization/Resolution; Limitation of New Conflicting Uses*).

B. **Impact Area Agreement.** In addition to the application requirements specified in Section A immediately above, the application shall include an Impact Area Agreement (IAA), if possible. The IAA, at a minimum, shall:

1. Establish an impact area that complies with the requirements of OAR 660-023-0180.

2. Describe the existing and potential uses within the impact area that will be adversely affected by proposed mining operations consistent with OAR 660-023-0180.

3. Contain agreed measures that are designed to minimize conflicts between the proposed mining operation and existing uses within the impact area.

4. Contain an agreement about whether new conflicting uses will be allowed, limited or prevented, and how this will be accomplished.

5. Contain an agreed list of operational standards for the mining operation. The standards may be the same or different from those contained in Article 91.030 (*Special Property Development Standards for Mineral and Aggregate Operations*), but they shall not conflict with the requirements of OAR 660-023-0180).

6. Contain an agreed post-mining use of the site that complies with OAR 660-0230-0180.

7. Contain a process for modifying the agreement and/or resolving questions about the meaning or performance of the agreement.

8. Specify the duration of the agreement.

9. The IAA shall be binding between the operator and all property owners within the impact area who sign the agreement. As between the aggregate operator and property owners within the impact area who do not sign the agreement, the operation shall be subject to the provisions of Article 72.040.A (*Significant Aggregate Site Protection Area*), Article 91.030 (*Special Property Development Standards for Mineral and Aggregate Operations*), and provisions for limiting or preventing new conflicting uses within the impact area adopted in compliance with OAR 660-023-0180. When less than all of the impact area property owners sign the agreement, and a conflict exists between the standards specified in the IAA and the standards required by Articles 72.040.A and 91.030, and it is not possible to perform both standards, the standards required by this code shall be performed.

10. The IAA shall not replace the county's responsibility to address requirements to minimize conflicts or evaluate ESEE consequence for existing or new uses as required by OAR 660-023-0180. Nevertheless, the county review body may consider the IAA in performing its minimization and ESEE responsibilities and give the document the weight it deems appropriate. The terms and conditions from the IAA may be incorporated in the county's findings and decision to allow, limit or not allow mining.

11. The IAA may be submitted with the application to mine or any time within 30 days after a completed application is accepted by the county.

C. **Failure to Obtain an Impact Area Agreement**. If the mine operator is unable to enter into an impact area agreement with any of the property owners within the impact area, documentation of the operator's efforts to reach such an agreement shall be submitted to the Planning Director with the application or within 30 days from the time when a completed application is accepted by the county. The documentation shall include:

1. Copies of certified mail receipts to all impact area property owners showing the arrangement of at least three meetings between the mine operator and impact area property owners; and,

2. Copies of written or recorded minutes from the meetings described in subsection 1 above, together with a written itemization of the time, date, location, list of attendees. The minutes shall accurately represent the discussion and shall document any issues raised by parties and any response to these issues; and,

3. The review body may require a written report by an independent and qualified professional mediator setting forth the history of the meetings and other relevant communications between the participants, to include a explanation and analysis of the unresolved issues.

D. **Significant Riparian Corridors.** Mining proposals considered under this Section shall demonstrate that all conflicts with acknowledged significant riparian corridors have been minimized or resolved by an ESEE analysis. In addition to the notice requirements otherwise required by Chapters 2 and 4 of this code, written notice shall be

given to the Oregon Departments of Geology and Mineral Industries (DOGAMI), Division of State Lands (DSL), Environmental Quality (DEQ) and Fish and Wildlife (ODFW) for mining proposals that will impact an acknowledged significant riparian corridor.

66.160 - SPECIAL MULTI-AGENCY REVIEW CONFERENCE

In addition to the requirements for a pre-application review contained in Article 21, the applicant is encouraged to hold a conference with the planning office and DOGAMI, DSL, DEQ and ODFW to determine the scope of issues, the need for any special studies (such as archaeologic surveys, sensitive species inventories, or a channel stability analysis), and coordination of the application between involved agencies regarding the application. A goal of this conference is to minimize the applicant's expense during the initial county approval process while making all application materials available to affected state agencies.

66.170 - SITE RECLAMATION

No mining operation authorized pursuant to this Article shall commence without the operator furnishing to the Planning Director a copy of a DOGAMI operating permit and approved reclamation plan, or a certificate of exemption, issued pursuant to the requirements of ORS 517.750 through 517.900 (*Reclamation of Mining Lands*) and implementing administrative rules. The county shall defer to DOGAMI regarding all aspects of the reclamation plan and its administration. However, the reclamation plan shall be substantially consistent with the conceptual reclamation plan presented to the county during the application process to comply with OAR 660-023-0180 (*Mineral and Aggregate Resources*). For these reasons the applicant is encouraged to make concurrent applications with the county and DOGAMI.

66.180 - GENERAL PROPERTY DEVELOPMENT STANDARDS

All uses authorized by the Article are subject to certain additional permit, process and property development standards that are contained elsewhere in this Code. The following is a list of Articles that are or may be applicable:

A. **Permit Review Requirements**

Basic Review Provisions – Article 20

Pre-Application Review – Article 21

Permit Review Procedures – Article 22

Basic Application Requirements – Article 40

Administration of Permits – Article 41

Site Plan Review – Article 42

Variances – Article 44

Conditional Uses – Article 45

B. **Property Development Standards**

Access - See Article 81

Aggregate Standards - See Article 91

Deer Overlay - See Article 69.2

Erosion and Sediment Control - See Article 83

Flood Hazard Overlay - See Article 69.1

Minimum Lot Size – *No Requirement*

Parking - See Article 75

Setback Requirements - See Section 72.040

Utilities - See Article 85

Water Standards - See Article 84

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III. Replace the existing Subsection A of Article 72 (Heights, Setbacks & Accessory Structures) with the following new Subsection A:

ARTICLE 72 - HEIGHTS, SETBACKS & ACCESSORY STRUCTURES

72.040 - SPECIAL SETBACK REQUIREMENTS

Special use and structure siting restrictions shall apply to development within the following protected areas:

A. **Significant Mineral & Aggregate Site Setback Area.** The following special setback rules apply to significant mineral and aggregate sites existing on the county's acknowledged inventories as of April 18, 2001, unless different measures are established pursuant OAR 660-023-0180 or an Impact Area Agreement (IAA) that complies with the requirements of Article 66.150.B of this code. In applying significant aggregate site setbacks, the following rules shall apply:

1. The setback area shall be 500' in all directions from the mining area. This setback area shall apply only to significant mineral and aggregate sites that are or have been in lawful operation, and only where the mine owner or operator provides the planning office with a scaled map that accurately depicts the mining area. New or modified conflicting uses shall not permitted within the setback area unless authorized by this Section.

2. When significant mineral or aggregate sites have not been lawfully mined, the following rules shall apply:

   a. The mining area must be located at least 500' from the nearest existing conflicting use. In order for mining to be authorized, the owner or operator must provide a mining area map that demonstrates the mining area is located at least 500' from all existing conflicting uses.

b. Once mining is authorized, new or modified conflicting uses and structures shall be prohibited within the setback area unless modified as provided herein.

3. The requirements of subsection 1 and 2 above may be modified or waived by an IAA or a program to minimize impacts or resolve conflicts has been adopted pursuant to the requirements of Article 66.150.

4. In all cases where new or modified conflicting uses or structures are authorized within the setback area, the permit shall not be issued until the developing owner executes and records a restrictive covenant that specifies the owner waives the right to object to the mining or processing of mineral and/or aggregate resources at the site.

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IV. Replace the existing Article 91 (Standards for Development of Aggregate Operations) with the following new Article 91:

ARTICLE 91 - STANDARDS FOR DEVELOPMENT OF MINERAL AND AGGREGATE OPERATIONS

91.010 - PURPOSE

The purpose of this Article is to provide clear and objective development standards and review procedures for approval and operation of mineral and aggregate mining and processing sites located in any zone where these uses are authorized. The procedures, standards and other requirements identified in this Article apply to both mineral and aggregate sites unless specifically noted otherwise.

91.020 - REVIEW PROCEDURES

A. All applications for the mining or processing of mineral and/or aggregate resources in zones other than the Mineral and Aggregate Resource Zone (MARZ) and the Aggregate Resource Zone (AR) shall be processed as Conditional Use Permits (Article 45), with a Site Plan Review (Article 42), and shall utilize Quasi-judicial Review Procedures as set forth in Review Procedures (Article 22).

B. Mining or processing of aggregate resources in zones other than the MARZ (Article 66.1) which have been lawfully permitted by Josephine County and DOGAMI, but which have been inactive (see definition of inactive) for up to twelve years, may restart operation without issuance of a new conditional use permit, subject to the following:

1. Demonstration the owner or operator was issued and continuously renewed a DOGAMI surface mining permit for the mine area during the entire period of inactivity; or,

2. Demonstration the owner or operator has received and maintained a DOGAMI exemption from surface mining regulation during the period of inactivity; and,

3. The owner must apply for site plan review pursuant to Article 42.030, and a development permit must be issued authorizing the proposed mining.

C. Mining or processing of aggregate resources in zones other than the MARZ and the Aggregate Resource zone which have been inactive for twelve years or more must be authorized by a new conditional use permit (Article 45), subject to site plan review procedures (Article 42.030), before restarting operation. Mining may also be authorized by amending the zoning for the site to the MARZ, subject to the requirements of Article 66.1.

D. New mineral and aggregate batching or blending into asphalt cement shall not be permitted in Exclusive Farm Use Zones when the batching or blending site is within 2 miles of a planted vineyard. A planted vineyard is one or more vineyards totaling 40 acres or more that are planted as of the date the application for batching or blending is filed. Operations for batching or blending which are approved on or before October 3, 1989, including subsequent renewals, are exempt from this subsection.

91.030 - SPECIAL PROPERTY DEVELOPMENT STANDARDS FOR AGGREGATE OPERATIONS

Subject to the qualifications listed in this Section, the following standards shall be the minimum standards for the mining and processing of mineral and/or aggregate resources in all zones that permit these uses. Mining or processing authorized as a conditional use or by site plan review may impose additional and/or more stringent standards in order to achieve compliance with applicable criteria. Operations authorized pursuant to the MARZ shall include standards for operation with the zone. The standards for operation contained in this Article may be added to, modified or deleted by the implementation of the requirements contained in OAR 660-023-0180 or by an approved impact area agreement (IAA) adopted as part of the zoning decision (see, Section 66.150, *Placing Land Within the Mineral and Aggregate Resource Zone*). In all cases, applicable standards of operation must be clear and objective. The minimum standards for operation are:

A. A development permit shall be obtained before any mining and/or processing of mineral or aggregate resources. The applicant shall also obtain all other permits required by this code and other licensing or permitting entities having jurisdiction over the operation. The continuance of additional permits and approvals in good standing shall be a condition for the continuance of the county's development permit. The performance of the standards required by this Article shall also be necessary for the issuance and continuance of the development permit.

B. The access or service road(s) to and from the extraction site to a public road shall meet the following standards:

1. The applicable standards from Oregon Administrative Rules Chapter 340, Division 35, for vehicular noise control for a distance of 500 feet in all directions from any public road or conflicting use located along the access road.

2. The most current air quality standards from Oregon Administrative Rules Chapter 340, Divisions 20, 21, and 28, for ambient air quality for a distance 500 feet in all directions from any public road or conflicting use located along the access road if the mining traffic is the primary cause of the road dust. Where more than one mining operation uses the same road, all operators shall be proportionately responsible for the cost and management of dust abatement measures based on vehicle trips per day.

C. The extraction area shall be substantially screened from the view of existing conflicting uses, subject to the following specifications:

1. Mining and processing equipment, whether in use or in storage, shall be screened. Stockpiles of aggregate do not need to be screened and may be used for screening.

2. Screening may consist of natural vegetation and landscape features, or may be supplied by planting vegetation or placement of berms, fences or other similar development features. If vegetation is used as screening it shall be maintained alive.

3. Earthen berms shall be stabilized with ground cover.

4. Visual screening may not be required if the topography, growing conditions or other circumstances at the site make it impractical or otherwise unnecessary to shield the site from the view of conflicting uses.

D. On-site parking shall be provided for all employees, customers and official visitors.

E. A safety fence must be constructed to protect the extraction site from vehicular or pedestrian intrusion whenever the site is within 200 feet from a public road or an off-site residence, or where the quarry is developed with hazardous vertical cuts. The safety fence may consist of orange vinyl fence material commonly used at construction sites.

F. All mining and processing of mineral and/or aggregate resources shall meet and maintain the permit requirements of the Oregon Departments of Geology and Mineral Industries (DOGAMI), Division of State Lands (DSL), and Environmental Quality (DEQ).

G. All mining and processing of mineral and/or aggregate resources shall comply with OAR noise emission standards. Compliance for the purpose of issuing a development permit can be demonstrated by a report from an acoustical engineer attesting that the circumstances of the site and/or proposed mitigation will bring the site into compliance.

H. All mining and processing of mineral and/or aggregate resource sites shall meet the erosion control and site drainage standards contained in Article 83 (*Erosion Control & Storm Drain Facilities*) of this code, as well as any permit requirements imposed by DOGAMI, DSL, DEQ, or any other state or federal regulation.

I. The discharge of contaminants and dust caused from the mining and processing of mineral and/or aggregate resources shall comply with applicable DEQ ambient air quality and emission standards. The operator shall cease all mining and processing operation within one hour of the malfunction of any air pollution control equipment, and shall not resume operation until the malfunction has been corrected in compliance with applicable DEQ rules and standards.

J. Excavation and stockpiling shall be set back from property lines so that the lack of lateral support and the angle of repose of the geologic deposit will not undermine or intrude onto adjoining lands. An additional setback may be required to allow the placement and maintenance of fencing.

K. Mining and processing of mineral and/or aggregate resources shall be set back from the top of the bank of any stream in compliance with Article 72.040 (B) (*Special Setback Requirements*). Existing native vegetation shall be maintained in the setback area.

L. Mining and processing of mineral and/or aggregate resources within Flood Hazard Areas, as defined in Section 11.030 (*Terms Defined*), shall comply with the standards contained in Article 69.1 (*Flood Hazard Overlay*) of this code.

M. The hours of operation for the mining and processing of mineral and/or aggregate resources shall be 8 am and 6 pm for conditional uses, and 7 am to 9 pm for MARZ. The days of operation shall be Monday through Saturday, excluding the following holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day. Maintenance of equipment may take place at any time.

1. If the mine owner or operator so requests, the Planning Director shall authorize exceptions to the above operating hours and days for asphalt or concrete batch plants, subject to the following limitations:

   a. The additional hours must be a requirement of a state, local, or federal government contract; and

   b. Not more than three exceptions may be granted in a calendar year; and

   c. The total duration of exceptions may not exceed 90 days in a calendar year.

2. The Planning Director may authorize additional or different operating hours and time periods for asphalt or concrete batch plants than those specified above. Authorization must use quasi-judicial land use decision procedures specified in Article 22 (*Permit Review Procedures*), to include neighborhood notice and the right to appeal the decision for a *de novo* hearing.

N. The hours for blasting at the extraction site shall be limited to 10 am to 3 pm for operations authorized as conditional uses, and 7 am to 6 pm for operations authorized within the MARZ. The permitted days shall be Monday through Friday, excluding the

holidays listed in subsection M above. The mine operator shall provide advanced notification of all blasting subject to the following requirements:

1. The notification shall be given in writing to all property owners and/or occupants residing within the impact area (or 1500' if an impact area has not been established) at least 48 hours prior to blasting. The notice shall be delivered to a mail receptacle or to the residence or structure. The operator shall maintain a journal showing when and how notice was accomplished.

2. If blasting occurs on a predictable schedule, the operator may provide written monthly notice of the schedule delivered at least 48 hours before the first scheduled blast. The delivery and record keeping requirements specified in subsection 1 above shall also apply.

3. The notice shall specify the day or days and hour or hours of blasting.

O. Water used in the mining or processing of mineral and/or aggregate resources shall be appropriated from a source authorized by permit from the Oregon Department of Water Resources. With the exception of onsite process water released to onsite settling ponds turbid water shall not be released into lakes, ponds or watercourses.

P. Failure to perform or continue to perform any of the standards required by this Section shall render the development permit void and subject to any and all enforcement procedures contained in this code or as authorized by any other law, rule or civil authority.

91.040 - SITE RECLAMATION

No mining operation authorized pursuant to this Article shall commence without the operator furnishing to the Planning Director a copy of a DOGAMI operating permit and approved reclamation plan, or a certificate of exemption, issued pursuant to the requirements of ORS 517.750 through 517.900 (*Reclamation of Mining Lands*) and implementing administrative rules. The county shall defer to DOGAMI regarding all aspects of the reclamation plan and its administration. Reclaimed land uses for the site must be authorized by post-mining zoning.

91.050 - NOTICE

In addition to the notification requirements contained in Chapters 2, 3 and 4 of this code, all mining and processing applications that impact one or more acknowledged significant riparian corridors shall require written notice to DOGAMI, DSL, DEQ, and ODFW at least 30 days prior to final approval or the first public hearing, whichever comes first.

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Section 3. Affirmation

Except as specifically amended by the provisions of this ordinance, the Josephine County Comprehensive Plan (Ord. 81-11) and Rural Land Development Code (Ord. 94-4), as previously adopted or amended, are hereby affirmed.

Section 4. Effective Date

First reading by the Board of County Commissioners this 8 day of March, 2006.

Second reading and adoption by the Board of County Commissioners at least thirteen days from the first reading on this 29th day of March, 2006, This ordinance shall take effect ninety days after its adoption by the Board of County Commissioners.

JOSEPHINE COUNTY BOARD OF COMMISSIONERS

Chair

Vice-Chair

absent at signing
Commissioner

ATTEST:

Recording Secretary

APPROVED AS TO FORM:

Steven E. Rich, Legal Counsel

BEFORE THE BOARD OF COUNTY COMMISSIONERS FOR JOSEPHINE COUNTY

Ordinance No. 2006–003

AN ORDINANCE AMENDING THE GOALS AND POLICIES OF THE COMPREHENSIVE PLAN FOR JOSEPHINE COUNTY (ORD 81-11) TO AMEND GOAL 7 (NATURAL RESOURCES), TO MODIFY LANGUAGE RELATING TO POLICY 6 (WILDLIFE SITES), AND TO AMEND GOAL 11 (AMENDING THE COMPREHENSIVE PLAN) TO MODIFY LANGUAGE CONTAINED IN POLICY 3.E (NON-RESOURCE LAND CRITERIA); AND, TO AMEND THE RURAL LAND DEVELOPMENT CODE (ORD. 94-4) TO REPLACE AND MODIFY LANGUAGE CONTAINED IN ARTICLES 46.050.E (NON-RESOURCE LAND CRITERIA), 69.2 (DEER OVERLAY), AND 72.040.C (ROOKERY OR NEST SITES).

WHEREAS, Josephine County entered into a periodic review program agreement with the state of Oregon on January 10, 1995, which agreement covered nine work task groups involving various revisions to county land use plans, policies and implementing regulations; and

WHEREAS, Task Group #3 of the 1995 periodic review program requires the county to revise its policies and implementing regulations for deer winter range and other wildlife habitat regulations; and

WHEREAS, the county's periodic review work program has been amended a number of times since 1995; the last amendment being on April 10, 2000, which now lists the deer winter range and wildlife work as Task Group 2; and

WHEREAS, in accordance with the procedures of the Josephine County Comprehensive Plan (hereinafter called Plan) at Goal 11, Policy 1, and the Rural Land Development Code (hereinafter called Code) at Article 49, the Board of County Commissioners, as a part of Task 2 of the county's periodic review program with the state of Oregon, conducted public hearings regarding revisions to the county's statewide Goal 5 program for wildlife protection;

NOW, THEREFORE, based on the foregoing authority and procedures, the Board of County Commissioners for Josephine County, Oregon, hereby takes the following legislative action to amend the Plan and Code by deleting and replacing certain provisions within the county's Goals and Policies of the Comprehensive Plan and Rural Land Development Code as set forth herein.

Section 1. Adoption

GOALS AND POLICIES OF THE COMPREHENSIVE PLAN

I. Replace existing language in Goal 7 (Preserve Valuable Limited Resources), Policies 3 (Archeological Sites), 4 (Natural Areas), 5 (Natural Areas) and 6 (Wildlife Sites), at sub-policies A (Bird Habitat) and B (Deer Habitat) with the following new language:

3. **Archeological Sites.**

Prior to the land use development of archeological sites in Josephine County, the Board of County Commissioners shall encourage the identification and preservation of such sites. When an archeological site is identified by a qualified archaeologist, Josephine County will evaluate the site for significance and protection using the provisions and procedures of Article 93, *Archeological Resources*, of the Rural Land Development Code.

4. **Natural Areas.**

The Board of County Commissioners shall support the identification of significant natural areas and shall implement measures for evaluation and protection of sites as provided by federal or state rule or law.

5. **Historic Sites.**

Prior to the land use development of historic sites in Josephine County, the Board of County Commissioners shall encourage the identification and preservation of such sites. A Historic Review Committee shall be established to mitigate adverse impacts to primary historic sites by reviewing development proposals affecting such sites according to the provisions and procedures contained in Article 94, *Historic Buildings & Sites*, of the Rural Land Development Code.

6. **Wildlife Sites.**

A. BIRD HABITAT. The County shall encourage the identification and preservation of rookery or nest sites when the habitat has been documented as sensitive bird nesting, roosting or watering resource for osprey or great blue heron. Habitats documented on federal lands or within National Wild and Scenic River or Oregon State Scenic Waterway corridors shall be protected pursuant to federal and state requirements. Osprey and blue heron rookery sites located on private properties outside of the aforementioned scenic programs shall be inventoried and identified by the Oregon Department of Fish and Wildlife. All inventoried sites shall be protected by special setback restrictions as set forth in Article 72.040.C of the Rural Land Development Code.

B. DEER HABITAT. The County shall encourage the identification and preservation of critical deer habitat areas as follows:

[1] Critical deer habitat areas shall consist of lands below 2500' in elevation that have not already been committed to land uses that preclude management options for deer. These areas shall be identified in conjunction with the Oregon Department of Fish and Wildlife. The Josephine County Geographic Information Systems Program shall thereupon render and maintain the deer winter range habitat areas in

digitized data sets that can be maintained and displayed using a geographic information system computer mapping program. The data sets thus created are adopted into the county's comprehensive plan data base. The density of residential development within areas of critical deer habitat shall be restricted to achieve an overall density of one dwelling per 40 acres within any two square miles of land, as implemented by Article 69.2 of the Rural Land Development Code.

[2] The Deer Winter Range Map may be amended as it applies to specific lots or parcels when the application demonstrates the land is not critical black-tailed deer winter range habitat because:

[a] The land has not been used as winter habitat by significant black-tailed deer populations; and

[b] The land does not exhibit favorable black-tailed deer winter habitat characteristics, such as wedge leafed ceanothus, available overstory and water; or

[c] Even though the land exhibits favorable winter habitat described in (b) above, the land is isolated from migratory black-tailed deer herds due to legal and permanent development on the land and/or on surrounding lands (that is, "impacted" by development); and

[d] All of the foregoing circumstances are addressed by credible scientific and technical data, reports or other evidence from a credentialed expert in the field of big game habitat and management principles that demonstrates the land does not provide critical deer winter range habitat based upon consideration of factors (a), (b) and (c) as set forth above.

[3] Josephine County shall consult with local officials from the Oregon Department of Fish and Wildlife regarding all proposals to amend the Deer Winter Range Map. The county shall provide local officials with a copy of all scientific and technical data, reports and other evidence specified in subsection 2(d) above. The department may submit its own scientific and technical data, reports and other evidence and may object to the proposed change. The county must consider this evidence and information in taking action on the map amendment application.

[4] The Josephine County Geographic Information Systems Program shall render and maintain deer winter range areas in digitized data sets that can be maintained and displayed using a geographic information system computer program. The data sets thus created and maintained shall be adopted as a part of the Josephine County Comprehensive Plan.

II. Amend Goal 11, Policy 3(E), of the Josephine County Comprehensive Plan Goals and Policies (Non-Resource Land Criteria):

3. **Non-Resource Land Criteria.** Authorized lots or parcels (but not portions thereof) which have been zoned Woodlot Resource or Farm Resource may be designated as non-resource when the application demonstrates compliance with the following criteria and rules:

* * * *

E. If the land is designated as critical deer winter range habitat on the official 1985 Deer Winter Range map, as adopted or amended, then the land shall continue to be subject to the density restriction required by Article 69.2 (*Deer Overlay*) even though the new underlying zone may permit a higher density.

RURAL LAND DEVELOPMENT CODE

I. Amend Section 46.050 (*Non-Resource Land Criteria*) by deleting the language in subsection E and replacing it with the following new language:

46.050 – NON-RESOURCE LAND CRITERIA.

Authorized lots or parcels (but not portions thereof) which have been zoned Woodlot Resource or Farm Resource may be designated as non-resource when the application demonstrates compliance with the following criteria and rules:

* * * *

E. If the land is designated as critical deer winter range habitat on the official 1985 Deer Winter Range map, as adopted or amended, then the land shall continue to be subject to the density restriction required by Article 69.2 (*Deer Overlay*) even though the new underlying zone may permit a higher density.

II. Amend Article 69.2 (*Deer Overlay*) by deleting the all of the existing language and replacing it with new language, as follows:

ARTICLE 69.2 - DEER OVERLAY

69.210 – PURPOSE

The purpose of the Deer Overlay is to protect lands designated as critical deer winter range habitat from residential encroachment. During winter months deer living on high elevation ranges move to sensitive habitat areas below 2500' for cover, water and forage. It has been determined that the capacity of these lower ranges to support adequate levels of wintering deer decreases significantly when the density of residential dwellings exceeds one dwelling per 40 acres of winter range. The objective of the Deer Overlay is to identify lands located below

2500' that are not impacted by existing residential or other development. Areas of critical deer winter range shall be rendered into a digitized data set that can be maintained and displayed using a geographic information system. The areas thus identified and displayed shall be subject to the density limitations specified in Section 69.220 and the map amendment criteria contained in Section 69.230.

69.220 – DENSITY LIMITATIONS

In areas mapped as critical deer winter range, approvals for new dwellings shall include findings that show the proposed dwelling or dwellings will not cause the density of dwellings to exceed 32 dwellings per 2 square miles. The dwelling count shall not include dwellings that are located above 2500' elevation or in areas designated as impacted. The density calculation shall be achieved using one of the following methods:

A. Fixed Study Area Test. A circle having an area of 2 square miles (diameter of 4,212.83 feet) shall be reasonably centered on the subject property. Existing authorized dwellings located on deer winter range lands within the circle shall be counted. The number of counted dwellings, in addition to the proposed dwelling or dwellings, shall not exceed a density of 1 dwelling per 40 acres when considering the amount of deer winter range land only.

B. Expanded Study Area Test. A circle of any diameter shall be reasonably centered on the subject property until the circle encompasses 2 square miles of deer winter range lands. Existing authorized dwellings located on deer winter range lands within the circle shall be counted. The number of counted dwellings, to include the proposed dwelling or dwellings, shall not exceed 32.

69.230 – AMENDING THE DEER WINTER RANGE MAP

A. The Deer Winter Range Map may be amended as it applies to specific lots or parcels when the application demonstrates the land is not critical black-tailed deer winter range habitat because:

1. The land has not been used as winter habitat by significant black-tailed deer populations; and

2. The land does not exhibit favorable black-tailed deer winter habitat characteristics, such as wedge leafed ceanothus, available overstory and water; or

3. Even though the land exhibits favorable winter habitat described in (b) above, the land is isolated from migratory black-tailed deer herds due to legal and permanent development on the land and/or on surrounding lands (that is, "impacted" by development); and

4. All of the foregoing circumstances are addressed by credible scientific and technical data, reports or other evidence from an expert in the field of big game

habitat and management principles that demonstrates the land does not provide critical deer winter range habitat based upon consideration of factors (a), (b) and (c) as set forth above.

C. Josephine County shall consult with local officials from the Oregon Department of Fish and Wildlife regarding all proposals to amend the Deer Winter Range Map. The county shall provide local officials with a copy of all scientific and technical data, reports and other evidence specified in subsection 2(d) above. The department may submit its own scientific and technical data, reports and other evidence and may object. The county must consider this evidence and information in taking action on the map amendment application.

III. Amend Article 72 (*Heights, Setbacks & Accessory Structures*) by deleting the existing subsection 72.040.C and replacing it with the following new subsection:

ARTICLE 72 - HEIGHTS, SETBACKS & ACCESSORY STRUCTURES

72.040 - SPECIAL SETBACK REQUIREMENTS

Special use and structure siting restrictions shall apply to development within the following protected areas:

* * * * *

C. **Rookery or Nest Sites.** There shall be a structure setback of 300 feet from rookery or nest sites when the habitat has been documented on an inventory as a sensitive bird nesting, roosting or watering resource for osprey or great blue heron by the Oregon Department of Fish and Wildlife (ODFW), and the inventory has been furnished to Josephine County. A variance may be authorized to this setback requirement when adverse impacts to the rookery or nest site are resolved by an approved mitigation plan. The ODFW shall be given 30 day prior written notice of the proposed setback exception, to include a copy of the mitigation plan. The department may comment on the plan or object to the proposed development. The variance shall be processed using variance procedures as set forth in Article 44 (*Variances*), but shall be judged solely on whether the site continues to be a significant habitat site or whether the proposed plan adequately mitigates adverse impacts to the involved rookery or nest site.

Section 3. Affirmation

Except as specifically amended by the provisions of this ordinance, the Josephine County Comprehensive Plan (Ord. 81-11) and Rural Land Development Code (Ord. 94-4), as previously adopted or amended, are hereby affirmed.

Section 4. Effective Date

The first reading of this ordinance by the Board of County Commissioners occurred on the 22nd day of March, 2006.

The second reading and adoption of this ordinance by the Board of County Commissioners occurred on the 5th day of April, 2006, a date which is at least thirteen days from the first reading. This ordinance shall take effect ninety days after its adoption by the Board of County Commissioners.

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JOSEPHINE COUNTY BOARD OF COMMISSIONERS

Dwight F. Ellis, Chair

Absent at signing
Jim Raffenburg, Vice-Chair

Jim Riddle, Commissioner

ATTEST:

Recording Secretary

APPROVED AS TO FORM:

Steven E. Rich, Legal Counsel

BEFORE THE BOARD OF COMMISSIONERS FOR JOSEPHINE COUNTY, OREGON

ORDINANCE NO. 2006-04

AN ORDINANCE AMENDING THE COMPREHENSIVE PLAN MAP OF JOSEPHINE COUNTY (ORDINANCE 81-11 AS AMENDED), FROM FOREST TO RESIDENTIAL AND AMENDING THE ZONING MAP OF JOSEPHINE COUNTY (ORDINANCE 85-1 AS AMENDED), FROM WOODLOT RESOURCE TO RURAL RESIDENTIAL (5 ACRE MINIMUM), AND ALSO AMENDING THE JOSEPHINE COUNTY DEER WINTER RANGE MAP TO REMOVE THE SUBJECT PROPERTY FROM AN AREA DESIGNATED AS CRITICAL DEER WINTER HABITAT (ORD 85-29). THE SUBJECT PROPERTY IS IDENTIFIED IN THE JOSEPHINE COUNTY ASSESSOR'S RECORDS AS MAP T36, R5 , SECTION 5, TAX LOTS 200 AND 300. THE PROPERTY OWNERS ARE DAVID AND ANTOINETTE SUMNER.

WHEREAS, the Planning Commission held a hearing in August of 2003 and made a recommended decision to the Board of Commissioners as required by the county's comprehensive plan; and

WHEREAS, the Board of Commissioners also held public hearings on February 18, 2004, and December 22, 2004, and thereupon approved the plan and map amendments as described above; and

WHEREAS, the Board's decision was appealed to the Oregon Land Use Board of Appeals (LUBA) by Wayne McKy and Hal Anthony, which resulted in a remand decision; and

WHEREAS, the Board further considered the applications during remand hearings on August 9, October 4 and October 11, 2006, to consider LUBA's remand decision, after which the Board approved the requested plan and map amendments;

NOW, THEREFORE, based on the foregoing, the Board of County Commissioners of Josephine County Oregon, does ordain as follows:

SECTION 1: Comprehensive Plan Map Amendment

The Josephine County Comprehensive Plan Map is hereby amended from Forest to Residential for the property identified as Assessor's Map: Township 36, Range 5, Section 5, Tax Lots 200 and 300.

SECTION 2: Zone Map Amendment

The Josephine County Zoning Map is hereby amended from Woodlot Resource to Rural Residential (5 Acre Minimum) for property identified as Assessor's Map: Township 36, Range 5, Section 5, Tax Lots 200 and 300.

SECTION 3. Deer Winter Range Map Amendment

The Josephine County Deer Winter Range Map is hereby amended to remove the subject property from an area designated for "critical deer winter range habitat"on the county's Deer Winter Range Habitat map, the property being described as Assessor's Map: Township 36, Range 6, Section 5, Tax Lots 200 and 300.

SECTION 4: Affirmation

Except as otherwise provided herein, Josephine County Ordinances 81-11 and 85-1 are hereby affirmed as originally adopted, and heretofore amended.

SECTION 5: Effective Date

First reading by the Board of County Commissioners this 13th day of December, 2006.

Second reading and adoption by the Board of County Commissioners at least thirteen (13) days from the first reading this 27th day of December, 2006. This Ordinance shall take effect ninety (90) days after its adoption by the Board of County Commissioners.

JOSEPHINE COUNTY BOARD OF COMMISSIONERS

Dwight F. Ellis, Chair

Abstained
Jim Raffenburg, Vice Chair

Jim Riddle, Commissioner

ATTEST:

Angel Chipowich
Recording Secretary

APPROVED AS TO FORM:

Steven R. Rich, County Counsel