

CHAPTER 174

MINERAL AND AGGREGATE OVERLAY (MA) ZONE

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174.010. PURPOSE. The purpose and intent of the Mineral and Aggregate Overlay (MA) Zone is:

- (A) To allow the development and use of mineral and aggregate resources;
- (B) To provide uniform standards for extraction and processing of mineral and aggregate resources;
- (C) To balance conflicts between mining operations and new and existing surrounding conflicting uses;
- (D) To ensure the rehabilitation and restoration of mining sites; and
- (E) To protect mineral and aggregate resources for future use consistent with Comprehensive Plan goals and policies and Statewide Planning Goal 5.

174.015. DEFINITIONS.

CONFLICTING USE. As used under OAR 660-16-005, a conflicting use is a use which, if allowed, could negatively impact a Goal 5 resource site. It is the responsibility of the County to identify conflicts with significant Goal 5 resource sites. This is done primarily by examining the uses allowed in the underlying zoning districts in which the resource site is located.

ESEE ANALYSIS. Refers to the County's response to the requirements in OAR 660-16-005 and 660-16-010 which direct local jurisdictions to analyze the Economic, Social, Environmental and Energy (ESEE) consequences of the identified conflicts with the inventoried resource sites.

It is the function of the ESEE analysis to resolve conflicts between the inventoried mineral and aggregate site(s) and any other identified conflicting uses, including those occurring as a result of any other applicable provisions in the Comprehensive Plan and this ordinance.

The ESEE analysis documents the county's decision to prohibit, restrict or fully allow conflicting uses on or near the inventoried resource site(s) is intended to serve as the County's "program to achieve the Goal" under Statewide Planning Goal 5.

The ESEE analysis:

- (A) Shall identify the resource site's Extraction and Impact Areas as defined in Section 174.015 of this Chapter; and
- (B) May describe site-specific development standards, including, but not limited to, setbacks, screening, road grading, and other requirements to protect and resolve conflicts with the inventoried resource site(s).

The ESEE analysis is referred to in this ordinance by reference under several subsections.

EXTRACTION AREA. The area within which mineral and aggregate extraction, processing and storage may take place under the provisions of this Chapter (see Appendix "A").

IMPACT AREA. An area determined on a case-by-case basis through the ESEE analysis, within which sensitive uses are limited or regulated (see Appendix "A").

MINERAL AND AGGREGATE. Includes 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.

MINING. All or any part of the process of mining by the removal of overburden and the extraction of natural mineral deposits thereby exposed by any method including open-pit mining operations, auger mining operations, blasting, 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 use as access roads.

PROCESSING. Includes, but is not limited to, extraction, washing, crushing, milling, screening, handling, conveying, batching and blending into asphalt or portland cement, and transportation of mineral and aggregate materials.

SENSITIVE USE. A use or structure considered sensitive to dust, odor, vibration and/or noise, such as a residence, school, park, or hospital. Industrial, agricultural and forestry activities are not sensitive uses unless the activity includes an accessory residential use.

SIGNIFICANT RESOURCE SITE. Includes resource sites which meet or exceed location, quality and quantity criteria set forth under Section 174.110 of this Chapter and are so designated by the County through a legislative or quasi-judicial process.

174.020. APPLICATION OF OVERLAY ZONE. The provisions of this Chapter shall apply to all lands zoned Mineral and Aggregate Overlay. Nothing in this Chapter shall constitute a waiver or suspension of the provisions of any underlying zone or concurrent overlay zone. Any conflicts between the provisions of this Chapter and the provisions of other chapters of this Ordinance, Comprehensive Plan Goals and Policies and the Statewide Planning Goals shall be resolved through the ESEE analysis.

The Mineral and Aggregate Overlay Zone consists of two distinct areas, the Extraction area and the Impact area.

- (A) **EXTRACTION AREA.** The Mineral and Aggregate Extraction Area shall be applied to any site which has been identified as a significant resource area (3A or 3C) in the Comprehensive Plan Inventory or through the MA Overlay Zone designation procedure, outlined in Section 174.100. The area may consist of one or more taxlots or portion(s) of single taxlots, and may be applied to contiguous properties under different ownership. The size of the Extraction Area shall be determined by the ESEE, but there shall be a minimum distance of 750' between any existing Sensitive Use to the extraction area boundary.

This distance may be decreased subject to a written agreement between the owner of the Sensitive Use and the owner or operator of the mining operation. This agreement shall be notarized and recorded on the property deed. However, in no case shall the Extraction Area boundary be less than 100 feet from the Sensitive Use (see example in Appendix "A").

- (B) **IMPACT AREA.** The Mineral and Aggregate Impact Area shall be applied to properties or portions of properties adjacent to and immediately surrounding an Extraction Area. The width of the Impact Area shall be determined through the ESEE analysis prior to application of the MA Overlay Zone, based on the type of mineral or aggregate resource to be extracted as well as physical features of the area which may cause a larger or smaller area to be affected. The minimum width of the impact area shall be 750 feet from the Extraction Area boundary unless a reduced distance is justified, based on the ESEE analysis (see example in Appendix "A").

174.030. EXEMPTIONS. The following activities are exempt from the requirements of this Chapter, in accordance with ORS 517.750 (15) and ORS 215.298. Operators or owners claiming any of these exemptions may be asked to establish the validity of the exemption.

- (A) In zones qualified under ORS 215 and Statewide Planning Goal 3, mining less than 1000 cubic yards of material or excavation preparatory to mining of a surface area of less than one acre. In other zones, mining less than 5000 cubic yards of material or activities affecting less than one acre of land within a period of 12 consecutive calendar months.
- (B) Excavations of sand, gravel, clay, rock or other similar materials conducted by a landowner or tenant of a parcel for the primary purpose of reconstruction or maintenance of on-site access roads.

- (C) Excavation or grading operations conducted in the process of farming, forestry or cemetery operations.
- (D) On-site road construction or other on-site construction or nonsurface impacts of underground mines.

174.040. PRE-EXISTING AND NONCONFORMING USES. Mineral and aggregate sites which have a valid DOGAMI and/or county permit on the effective date of this Chapter all be considered pre-existing sites. Pre-existing sites may continue to operate under the standards of Section 120.400. However, any expansion of a mineral and aggregate activity on a pre-existing site beyond the boundaries of the surface mining area covered by the DOGAMI or county permit, or any activity requiring a new DOGAMI or county permit, shall require a new Conditional Use permit in accordance with Section 119 of this Ordinance.

The lawful use of any building, structure or land on the effective date of this Chapter shall be considered a nonconforming use. Any enlargement, alteration or other change in use, or cessation of the nonconforming use shall be in accordance with Section 114 of the Polk County Zoning Ordinance and the requirements of this Chapter.

174.050. PERMITTED USES - EXTRACTION AREAS. Any permitted use or conditional use allowed in the underlying zone, except Sensitive Uses as defined in Section 174.015, may be permitted in the MA Extraction Area subject to the underlying zone criteria and as otherwise authorized by the ESEE analysis.

The following uses may be permitted in the MA Extraction Area subject to Site Plan approval in accordance with Section 174.080:

- (A) Mining or extraction of rock, clay, soil, sand, gravel, or other mineral or aggregate material.
- (B) Stockpiling and storage of mineral and aggregate materials.
- (C) Processing of:
 - (1) Materials, including crushing, washing, milling, screening, sizing, batching of portland cement; and
 - (2) Batching or blending of mineral and aggregate into asphaltic concrete, except within 2 miles of a planted commercial vineyard.
- (D) Buildings, structures and equipment directly related to the above permitted uses.
- (E) One temporary manufactured home for a caretaker or watchman in conjunction with a mineral and aggregate activity. The manufactured home shall meet the setbacks of the underlying zone, and shall be removed when the aggregate operation ceases, unless allowed in accordance with the requirements of the underlying zone.
- (F) Storage of transportation equipment or storage of machinery or equipment used in conjunction with the on-site mineral and aggregate activity.
- (G) Sale of products extracted and processed on-site from a mineral and aggregate operation.

174.060. DEVELOPMENT STANDARDS - EXTRACTION AREA. A development plan shall be submitted to the County Planning Department for any activity allowed in Section 174.050. The development plan shall provide the necessary documents, permits, and maps to demonstrate compliance with the following standards and requirements:

- (A) Screening and Fencing
 - (1) An earthen berm or vegetative screening which, at maturity, shall be established to fully screen the view of any mineral and aggregate activity and all related equipment from any public road, public park, or residence within 1000 feet. Where screening is shown through the ESEE analysis to be

unnecessary because of topography or other features of the site, the screening requirements may be waived by the Planning Director.

- (2) Fencing or approved barrier type shrubs (e.g., blackberries) shall be required to eliminate any safety hazards that use of the site may create. Fencing, if used, shall be of cyclone type and a minimum of 6 feet high.

(B) Access

- (1) All private access roads from mineral and aggregate sites to public roads shall be paved or graveled. If graveled, the access road shall be graded and maintained as needed to minimize dust.
- (2) Improvement 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 the 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.
- (3) Any internal road at a mineral and aggregate site within 250 feet of a Sensitive Use shall be paved or graveled, and shall be maintained at all times to reduce noise and dust in accordance with County or DEQ standards specified in the ESEE analysis.
- (4) An effective vehicular barrier or gate shall be required at all access points to the site.

(C) Hours of Operation

- (1) Drilling and blasting shall be restricted to the hours of 9:00 am to 5:00 pm, Monday through Friday. No blasting or drilling shall occur on Saturdays, Sundays, or any recognized legal holiday.
- (2) Mineral and aggregate extraction, processing and equipment operation located within 750 feet or as established by the ESEE analysis of any Sensitive Use is restricted to the hours of 7:00 am to 6:00 pm Monday through Friday, and 8:00 am to 5:00 pm Saturday. All other sites are limited to operating hours of 7:00 am to 10:00 pm Monday through Saturday. No operation shall occur on Sundays or recognized legal holidays.
- (3) An increase in operating time limits shall be granted for all activities except blasting if:
 - (a) There are no Sensitive Uses within 750 feet of the mining site; or if
 - (b) There are Sensitive Uses within 750 feet, the increased activity will not exceed noise standards established by the County or DEQ; and
 - (c) The operator shall notify the owners and occupants of all Sensitive Uses within 750 feet or the distance established by the ESEE analysis by first class mail which is mailed at least 96 hours prior to the date and approximate time of the activity for which the operator receives an exception.
- (4) The operating time limits may be waived in the case of an emergency as determined by the County governing body.

- (D) Environmental Standards
 - (1) DEQ Standards. Mineral and aggregate extraction, processing and other operations shall conform to the all applicable environmental standards of the County and State. Any crusher, asphalt, concrete, ready-mix or other machinery shall submit an approved DEQ permit(s) at the time of development plan application.
 - (2) DOGAMI Standards. Mineral and aggregate extraction, processing, other operations and site reclamation shall conform to the requirements of the Department of Geology and Mineral Industries (DOGAMI). The County will not recognize a Department of Geology and Mineral Industries Mined Land Reclamation (MLR) permit until County approval of the mining application under this Chapter has been issued.
- (E) Equipment Removal. All surface mining equipment, machinery, vehicles, buildings and related structures accessory to the mineral and aggregate activity shall be removed from the site within 30 days of completion of all mining, processing and reclamation, except for structures which are permitted uses in the underlying zone.
- (F) Performance Agreement.
 - (1) The operator of a mineral and aggregate site shall provide the County sufficient evidence on an annual basis that the operator has in full force and effect with DOGAMI the bond or security deposit required by ORS 517.810 to assure conformance with the State-required reclamation plan.
 - (2) Mineral and aggregate operations shall be insured for \$500,000.00 against liability and tort arising from production activities or operations incidental thereto conducted or carried on by virtue of any law, ordinance or condition, and such insurance shall be kept in full force and effect during the period of such operations. A prepaid policy of such insurance which is effective for a period of one year shall be deposited with the County prior to commencing any mineral and aggregate operations. The owner or operator shall annually provide the County with evidence that the policy has been renewed.
- (G) Significant Resource Area Protection. Conflicts between inventoried mineral and aggregate resource sites and significant fish and wildlife habitat, riparian areas and wetlands, and ecologically and scientifically significant natural areas protected by the Significant Resource Areas Overlay Zone in accordance with Chapter 182 of this Ordinance and identified on the Significant Resource Areas Map, shall be balanced as determined in by the site-specific ESEE analysis.
- (H) Site Reclamation. A reclamation plan shall be submitted concurrently with the development plan required in Section 174.070. The reclamation plan shall include a schedule showing the planned order and sequence of reclamation, shall assure that the site will be restored or rehabilitated for the land uses specified in the underlying zone consistent with the site specific Goal 5 program, and shall meet DOGAMI requirements.
- (I) Water Management.
 - (1) All surface water shall be managed to provide protection against sediment discharge into streams, rivers and lakes. Existing natural drainages on the site shall not be 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 mineral and aggregate operation abuts a lake, river, or perennial stream, all existing vegetation within 100 feet of the mean high water mark shall be retained unless otherwise authorized in accordance with the ESEE analysis and the development plan.

- (2) All water required for the mineral and aggregate operation, including dust control, landscaping and processing of material, shall be legally available and appropriated for such use. The applicant shall provide written documentation of water rights from the State Department of Water Resources and/or local water district prior to any site operation.
- (J) Flood Plain. Any MA Extraction Area located wholly or in part in a Special Flood Hazard Area as shown on the Federal Insurance Rate Map (FIRM) shall receive approval in accordance with Section 178 of this Ordinance prior to any site operation.

174.070. APPLICATION PROCESS. Final development plan approval is required prior to the beginning of any mineral and aggregate activity listed in Section 174.050 (A), and before any expansion of a pre-existing or nonconforming site. The applicant shall provide the following at the time of application:

- (A) A development plan demonstrating that the development standards required in Section 174.060 can be met, including:
 - (1) Screening and Fencing;
 - (2) Access;
 - (3) Hours of Operation;
 - (4) Environmental Standards;
 - (5) Equipment Removal;
 - (6) Performance Agreement;
 - (7) Significant Resource Area Protection;
 - (8) Site Reclamation;
 - (9) Water Management; and
 - (10) Flood Plain.
- (B) A map or diagram showing the location and setbacks of all proposed mineral and aggregate activities and operations and the location and distance to all Sensitive Uses within the Impact Area.

174.080. SITE PLAN APPROVAL. The Planning Director shall review the completed application and shall grant or deny approval based on the ability of the proposal to conform with the ESEE analysis for the site and the development standards set forth in Section 174.060. The applicant may be required to make such modifications in the development plan as are necessary to meet the requirements of the ESEE analysis and development standards. Approval may only be granted to sites which are inventoried 3A or 3C under Statewide Planning Goal 5 and the Comprehensive Plan.

174.090. IMPACT AREA - USES AND STANDARDS. Any permitted use or conditional use allowed in the underlying zone, except Sensitive Uses, may be allowed in the MA Impact Area subject to the underlying zone criteria and as otherwise authorized by the ESEE analysis.

- (A) No new Sensitive Use shall be located within the Impact Area determined through the ESEE analysis unless agreed upon in writing by the owner of the Sensitive Use and the owner or operator of the mining operation. This agreement shall be notarized and recorded on the property deed. However, in no case shall the Sensitive Use be allowed less than 100 feet from the MA Extraction Area boundary;
- (B) The owner of a proposed new Sensitive Use shall sign and record in the county Deed Records an Aggregate Operation Easement, Waiver of Remonstrance and Indemnity which shall state that if the owner (or successors) of the new noise sensitive use

object to the allowed mineral and aggregate activities on the adjacent MA Extraction Area, the owner (or successors) of the new sensitive use shall indemnify the County and the resource owner and operator against all lost cost and expense including attorney's fees arising out of any remonstrance proceeding. The Aggregate Operation Easement, Waiver of Remonstrance and Indemnity shall run with the land, until such time as the operation ends and the site has been reclaimed in accordance with the approved reclamation plan. It shall be a requirement of the mineral and aggregate operator to release any restrictions, easements or waivers of remonstrance and indemnity;

- (C) The use will not interfere with or cause any adverse impact on a mineral and aggregate activity allowed under Section 174.050; and
- (D) The use will not prevent the adjacent mineral and aggregate activity from meeting the standards and conditions set forth in Section 174.060.

174.100. DESIGNATION OF OVERLAY ZONE. The Mineral and Aggregate Overlay Zone may be applied through the initial legislative planning process, the plan update process or through individual application for a comprehensive plan amendment and zone change. The boundary of the Overlay Zone shall be all property contained in the Mineral and Aggregate Extraction Area and Mineral and Aggregate Impact Area.

174.110. DETERMINATION OF SIGNIFICANCE. Only sites deemed significant shall be zoned Mineral and Aggregate (MA) Overlay. Mining and processing activities at sites not zoned MA may be allowed after conditional use approval under the criteria of Section 120.400. All sites which have not been evaluated for significance shall be classified "1-B" on the County inventory for purposes of Goal 5. All Polk County sites listed in the DOGAMI report dated October, 1981 (Open File Report 0-81-7) shall be incorporated into the County inventory and designated 1-B, pending case-by-case determinations of significance. The following criteria shall be used in determining significance:

- (A) Significant Aggregate Resources. An aggregate resource shall have at least 250,000 cubic yards of reserve and meet at least two of the following minimum requirements:
 - (1) Abrasion: Loss of not more than 35% by weight;
 - (2) Oregon Air Degradation: Loss of not more than 35% by weight;
 - (3) Sodium Sulphate Soundness: Not more than 17% by weight.
- (B) Other mineral resources. Significance of non-aggregate resources shall be determined on a case-by-case basis after consultation with DOGAMI.

174.120. TERMINATION OF MA ZONE. The Mineral and Aggregate Overlay Zone designation shall be removed by the owner or the County through the zone change process when:

- (A) The owner of the Mineral and Aggregate resource site submits evidence showing a significant resource no longer exists on the site;
- (B) The mineral and aggregate resource site has been reclaimed in accordance with the approved reclamation plan; and
- (C) The operator has caused to be released any operation easements, restrictions or waivers of remonstrance and indemnity relating to the application of this Ordinance.