

# TITLE 9

## COMMUNITY DEVELOPMENT

### Subtitle 2 — Land Development Code Division 6 — Miscellaneous Development Code Provisions

#### CHAPTER 939

#### MINING PERMITS AND USES CODE

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#### I. GENERAL PROVISIONS

#### 939.010 Subchapter title

This Chapter, LCC 939.010 to 939.999, shall be known and may be cited as the “Linn County Mining Permit and Uses Code” or simply as the “Mining Permit and Uses Code.”

[Adopted 99-156 §12 eff 6/30/99]

#### 939.020 Statement of purpose

The purpose of this Chapter is:

(A) to identify and protect significant sand, gravel, rock, stone and related aggregate resources to ensure the continued availability of aggregates at reasonable costs for the overall development of Linn County;

(B) to coordinate the development and utilization of significant aggregate resources with other land uses to minimize conflicts;

(C) to establish standards of development and operation for significant aggregate resource extraction and processing sites;

(D) to prohibit the use of land in the Aggregate Resource Overlay (ARO) for uses incompatible with the extraction and processing of significant aggregate resources (see LCC 931.700 to 931.755);

(E) to provide for the agricultural and forest use of land in the ARO prior to the development of extraction and processing activities; and

(F) to provide for the reclamation, rehabilitation and beneficial final use of aggregate resource sites in a manner compatible with the surrounding land use pattern.

[Adopted 99-156 §12 eff 6/30/99]

### 939.030 Definitions

As used in this Chapter:

(A) “**Aggregate resources**” means naturally occurring concentrations of stone, rock, sand and gravel, decomposed granite, lime, pumice, cinders, and other naturally occurring solid materials commonly used in construction and road building.

(B) “**Conflicting use**” means 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 (5) (b) and OAR 660-023-0180 (7).

(C) “**Development permit**” means a permit approved by the decision maker and issued by the Director granting authority to the permittee to initiate some or all aspects of mining of aggregate at the site specified in the permit. The term does not include a text amendment to the *Comprehensive Plan* whereby the *Plan* is amended to include the site in any category described in this Chapter. A development permit may be issued pursuant to LCC 921.552 for sites receiving Goal 5 protection, or pursuant to LCC 921.562 for sites not receiving Goal 5 protection.

(D) “**ESEE analysis**” means the consideration and balancing of the positive and negative economic, social, environmental and energy consequences of a decision to allow, limit, or prohibit a conflicting use, following the process in OAR 660-023-0040. Based on the results of the ESEE analysis, the decision maker determines a level of protection for the resource and adopts *Comprehensive Plan* provisions and regulations to achieve the designated level of protection.

(E) “**ESEE consequences**” are the positive and negative economic, social, environmental, and energy (ESEE) affects that could result from a decision to allow, limit, or prohibit a conflicting use.

(F) “**Existing site**” means a significant aggregate site that is lawfully operating, or is included in the aggregate inventory in the *Comprehensive Plan*, on September 1, 1996.

(G) “**Expansion area**” means a resource proposed aggregate mining area contiguous to an existing site in which mining approval is being sought under this Chapter.

(H) “**Farmland**” means land planned and zoned for exclusive farm use pursuant to Goal 3 and OAR chapter 660, division 033.

(I) “**Future potential use**” means a use that is not adopted or approved at the time an application under this Chapter is deemed complete by the Director.

(J) “**Goal 5 process**” means the planning process for mineral and aggregate resources identified in OAR 660-023-0180. Depending on the circumstances the process may include, but is not limited to, one or more of the following: the identification of resource sites; the determination of site significance; the identification of conflicting uses; the identification of measures to minimize conflicts; analysis of ESEE consequences; and adoption of a program to protect the resource. The term does not include a determination to issue a development permit pursuant to LCC 921.560 to 921.569 even if part of the Goal 5 process as described in this Chapter is considered.

(K) “**Goal 5 protection**” means those conditions and terms imposed on the mining of a site determined to be significant under LCC 939.130 and that has completed the Goal 5 process as set forth in LCC 939.110 to 939.200 and has been added to Appendix 5, 6, or 8 in LCC Chapter 905 (Land Use Element Code).

(L) “**Impact area**” means a geographic area within which conflicting uses could adversely affect a significant Goal 5 aggregate resource.

(M) “**Inventory**” is a survey, map, or description of one or more resource sites that is

prepared by a local government, state or federal agency, private citizen, or other organization and that includes information about the resource values and features associated with such sites. As a verb, “inventory” means to collect, prepare, compile, or refine information about one or more resource sites (see **resource list**).

(N) “**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.

(O) “**Mining**” means the extraction and processing of aggregate resources, in the manner provided under paragraph (1).

(1) The term includes 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, 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.

(2) The term does not include excavations of sand, gravel, clay, rock or other similar materials conducted by a landowner or tenant on the landowner or tenant’s property for the primary purpose of reconstruction or maintenance of access roads and excavation or grading operations conducted in the process of farming or cemetery operations, on-site road construction or other on-site construction or nonsurface impacts of underground mines.

(3) The term includes: stockpiling and movement of aggregate materials, and the operations or activities necessary to abandon a mining area.

(P) “**Mining area**” means the geographic area containing an identified significant aggregate site within which some or all aspects of mining is permitted. The mining area may consist of one or more properties or portions of properties, and may

include two or more contiguous properties under different ownership. The mining area does not include undisturbed buffer areas or areas on a property where mining is not authorized.

(Q) “**Noise or dust sensitive use**” means a conflicting use that is primarily used for year-round habitation. Residences, churches, hospitals, schools, public libraries, and campgrounds are considered noise or dust sensitive uses during their period of use. A forest use or a farm use is not noise or dust sensitive uses unless the use is so:

(1) defined in state law, or

(2) determined based on analysis and findings adopted through the Goal 5 planning process.

(R) “**Operator**” includes owner.

(S) “**PAPA**” is a “**post-acknowledgment plan amendment**.” The term encompasses actions taken in accordance with ORS 197.610 to 197.625, including amendments to Linn County’s acknowledged *Comprehensive Plan* or Land Development Code 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 to 197.650.

(T) “**Processing**” means the activities described in ORS 517.750 (10). Processing includes, but is not limited to, crushing, washing, milling and screening, as well as the batching and blending of mineral aggregate into asphalt or portland cement concrete within the operating permit area.

(U) “**Program**” or “**program to achieve the goal**” is a plan or course of proceedings and action either to prohibit, limit, or allow uses that conflict with significant Goal 5 aggregate resources, adopted as part of the *Comprehensive Plan* and Land Development Code (e.g., zoning standards, easements, cluster developments, preferential assessments, or acquisition of land or development rights).

(V) “**Protect**” means to adopt land use regulations for a significant aggregate site in order to authorize mining of the site and to limit or prohibit new conflicting uses within the impact area of the site.

(W) “**Resource site**” or “**site**,” for purposes of completing the Goal 5 process under this Chapter, is a particular area where resources are located. A site may consist of one or more properties or portions of properties, and may include two or more contiguous properties under different ownership.

(X) “**Resource list**” means a list that includes the description, maps, and other information about significant Goal 5 aggregate resource sites within Linn County and is adopted by the County as a part of its *Comprehensive Plan* or as a land use regulation. The *Plan* inventories following LCC Chapter 905 (Land Use Element Code) are resource lists.

(Y) “**Significant site**” means a site listed on one of the *Comprehensive Plan* significant aggregate inventories following LCC Chapter 905 (Land Use Element Code).

(Z) “**Thickness of aggregate layer**” means the depth of the water-lain deposit of sand, stones, and pebbles of sand-sized fraction or larger, minus the depth of the topsoil and non-aggregate overburden.

[Adopted 99-156 §12 eff 6/30/99 (OAR 660-023-010 and 660-023-0180 (1)) and 11-356 §1 eff 10/12/11]

### **939.050 Application for a development permit authorizing mining of aggregate**

(A) A person may apply for a development permit authorizing mining of aggregate as set forth in this section. The issuance of the development permit authorizing the initiation of mining is subject to LCC 921.540 to 921.569.

(B) *One-step process*. A single application shall be required which shall consist of:

(1) if a site is already on Appendix 5, 6, or 7 of LCC Chapter 905 (Land Use Element Code), a request for a development permit, which if authorized to be issued shall result in an authorization to initiate some or all aspects of mining pursuant to this Chapter; or

(2) if a site is already on Appendix 4 or 8 of LCC Chapter 905, a request for a development permit, which if authorized to be issued shall result in an authorization to initiate some or all

aspects of mining pursuant to LCC 921.560 to 921.569.

(3) if the site is not on one of the inventories of LCC Chapter 905, a request for:

(a) an amendment to the *Comprehensive Plan* text, and, if required under this Chapter, an amendment to the Land Development Code Zoning Map; and

(b) a development permit, which if authorized, shall authorize the initiation of some or all aspects of mining pursuant to this Chapter, or to LCC 921.560 to 921.569 based on the findings made in this Chapter.

(C) *Contents*. The application shall contain:

(1) the information required by LCC 921.040;

(2) Information regarding the location, quality, and quantity of the aggregate resource;

(3) A conceptual site reclamation plan;

(4) A traffic impact assessment within one mile of the entrance to the mining area;

(5) An indication of whether the applicant intends to haul material to another authorized site for processing, and if so, a proposal for hauling;

(6) A map indicating the initial 1,500 foot impact area and location and type of existing and potential conflicting uses;

(7) Proposals to minimize any conflicts with existing uses preliminarily identified by the applicant within a 1,500-foot impact area; and

(8) A site development plan as described in subsection (D) of this section.

(D) *Site development plan*. The applicant shall submit the information and materials set forth in this subsection to the Director as part of the application for a development permit authorizing the mining of aggregate resources.

(1) The name and address of the extraction operator, property owner, and applicant, if different from the mining operator or property owner.

(2) The location (township, range, section, tax-lot[s]) and size of the resource site.

(3) An aerial photograph of the resource site that was photographed less than 12 months

prior to submission of the application. Older photographs may be submitted if accompanied by a signed declaration by the applicant stating that no substantial changes have occurred.

(4) Provisions for safety fence as required under LCC 934.354 (C).

(5) Measures, if any, required by federal and state agencies to meet applicable environmental quality standards and minimize impacts on fish and wildlife habitat.

(6) Proposed final use as permitted in LCC 933.190.

(7) A reclamation plan approved by Oregon Department of Geology and Mineral Industries (DOGAMI) that results in the proposed final use or Oregon Division of State Lands (DSL) conditions of operation.

(8) A surface water management plan as required by DOGAMI or DSL.

(9) Past and present use of the land, including agricultural and forest resource uses.

(10) Types and location of vegetative screening to be used.

(11) Types, location, and sizes of equipment to be used.

(12) The full extent and nature of the operation, such as blasting, crushing, or asphaltic compounding.

(13) A reproducible map at a scale of 1 inch equals 400 feet, unless a different scale is approved by the Director, which depicts the general land area within a one-mile radius and identifies:

(a) The property under the applicant's control;

(b) The land areas proposed for extraction, processing and storage of topsoil or aggregate;

(c) Location of all uses within 1500 feet of the resource site boundaries;

(d) Location of on-site haul roads and proposed access point(s);

(e) Location and names of all structures, roads, railroads and utility facilities within 1500 feet of the resource site;

(f) Required setback areas;

(g) Identification of soil types in the resource site, if available; if not available, identification of the soil types adjoining the resource site; and

(h) Phasing of mining activity, if applicable.

(14) A digital copy of the map required under item (13).

(15) Proposed months, days and hours of mining operation.

(16) The resource site owner or authorized agent of the owner shall file a truck route plan with the Roadmaster indicating all proposed haul routes for any equipment used in the preparation, exploration, or mining of the site, including proposals to haul material to another authorized site for processing. The truck route plan shall also include a proposal for the rehabilitation and restoration of any county roads, or any local access roads, which may be damaged or diminished in quality due to the conducting of such preparation, exploration, or mining activities.

(17) Evidence that:

(a) The Roadmaster has approved a truck haul plan including all routing, paving and access to the resource site and to and from any other approved site if material is hauled to the other site for processing; and

(b) the Roadmaster has made a finding that the development will not have significant adverse impacts on the quality of county roads, or local access roads in the area, or

(c) verification that a performance security meeting the requirements of LCC 933.110 has been filed.

(18) Other pertinent information for all proposed mining and associated uses.

[Adopted 99-156 §12 eff 6/30/99 (OAR 660-023-0180 (6); amd 2000-119 §3 eff 3/28/00; amd 11-356 §1 eff 10/12/11)]

### **939.060 Goal 5 process; generally**

(A) The Goal 5 process is set forth in LCC 939.110 to 939.200. The process is illustrated generally in Appendix 1 following this Chapter. The process involves following the steps set forth in this section to determine whether and under

what conditions aggregate extraction and processing may occur:

(1) STEP 1 — determine adequacy of information provided in the application with regard to the location, quality, and quantity of the aggregate resource (LCC 939.110);

(2) STEP 2 — determine site significance and classification (LCC 939.120);

(3) STEP 3 — identify impact area and all conflicts with existing uses (LCC 939.130);

(4) STEP 4 — determine whether conflicts can be minimized (LCC 939.140);

(5) STEP 5 — analyze ESEE consequences if significant conflicts can not be minimized (LCC 939.150);

(6) STEP 6 — approve the mining of the aggregate resource (LCC 939.160);

(7) STEP 7 — determine the post-mining use (LCC 939.170);

(8) Step 8 — identify conflicts from new conflicting uses (LCC 939.180);

(9) STEP 9 — analyze ESEE consequences and decide whether to allow new conflicting uses (LCC 939.190); and

(10) STEP 10 — adopt final decision and implementing amendments to the *Comprehensive Plan* and Land Development Code (LCC 939.200).

(B) Except as provided in LCC 939.200 (A) (1) (a), the decision maker must complete the Goal 5 process within 180 days after an application filed under this Chapter is deemed complete under LCC 939.110.

(C) The decision maker is not required to follow strictly the order of the process as set forth in LCC 939.130, so long as such review or determination does not significantly adversely affect the outcome of the Goal 5 process.

[Adopted 99-156 §12 eff 6/30/99 (OAR 660, Division 23)]

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## II. GOAL 5 PROCESS

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### **939.110 STEP 1 — determine adequacy of information provided in the application**

(A) *STEP 1* — The first step in the Goal 5 aggregate process requires the Director to determine whether an application filed under this Chapter may be deemed complete under LCC 921.060 and this section.

(B) The Director shall deem an application filed under this Chapter complete if the application contains:

(1) the information required by LCC 939.050;

(2) A description of the quality of the resource, including a statement of compliance with federal, state or local standards issued by a certified lab according to the following applicable methods:

(a) Resistance to Abrasion (AASHTO Designation T96, ASTM Designation C131, OSHD Test Method 211);

(b) Sodium Sulfate Soundness (OSHD Test Method 206);

(c) Oregon Air Degradation (OSHD Test Method 208); or

(d) Other test appropriate for the type of resource;

(3) a conceptual site reclamation plan;

(4) a traffic impact assessment within one mile of the entrance to the mining area pursuant to LCC 939.130 (B) (4) (b);

(5) proposals to minimize any conflicts with existing uses preliminarily identified by the applicant within a 1,500-foot impact area; and

(6) a site development plan as described in LCC 939.050.

(C) Information on location, quantity, and quality must be reliable information, such as:

(1) an engineer's or geologist's report; or

(2) drill results, including depth.

(D) *If application is deemed complete* — go to *STEP 2*. If the Director deems the application complete, the Director shall next determine whether the site is significant pursuant to LCC 939.120.

(E) *If application is not deemed complete* — go to *STEP 10*. If the Director determines that the application is not complete for the sole reason that

the applicant is unable to provide information adequate to make the determination required by subsection (B) (2) of this section, the Director shall:

- (1) return the application to the applicant; and
- (2) set the matter before the decision maker to proceed pursuant to LCC 939.200 (A) (1) (a).

[Adopted 99-156 §12 eff 6/30/99 (OAR 660-023-0180 (6); amd 2000-119 §3 eff 3/28/00; amd 11-356 §1 eff 10/12/11)]

### **939.120 STEP 2 — determine site significance and classification**

(A) *STEP 2* — The Director shall determine whether an aggregate resource site is a significant or a non-significant site pursuant to this section.

(B) An aggregate resource site shall be significant if adequate information regarding the location, quality, and quantity of the resource demonstrates that the site meets the following criteria:

- (1) A representative set of samples of aggregate material in the deposit on the site meets Oregon Department of Transportation (ODOT) specifications for base rock for air degradation, abrasion, and sodium sulfate soundness; and
- (2) The estimated amount of material is more than 1.5 million cubic yards or 2 million tons; or
- (3) The aggregate site was listed on an inventory of significant aggregate sites in the *Comprehensive Plan* on September 1, 1996.

(C) Notwithstanding subsections (1) through (3) of this section, and except for an expansion area of an existing site if the operator of the existing site had an enforceable property interest in the expansion area on March 1, 1996, an aggregate site is not significant if the following criteria apply:

- (1) More than 35 percent of the proposed mining area consists of soil classified as Class I on Natural Resource Conservation Service (NRCS) maps on June 11, 2004; or
- (2) More than 35 percent of the proposed mining area consists of soil classified as Class II, or of a combination of Class II and Class

I or Unique soil, on NRCS maps available on June 11, 2004, unless the average thickness of the aggregate layer within the mining area exceeds 17 feet.

(D) Notwithstanding Section (C) of LCC 939.120 a local government may also determine that an aggregate resource site on farmland is significant if subsections (1) and (2) of this section apply or if subsection (3) of this section applies:

- (1) The quantity of material proposed to be mined from the site is estimated to be 2,000,000 tons of aggregate material or less; and
- (2) Not more than 35 percent of the proposed mining area consists of soil
  - (a) Classified as Class I on Natural Resource and Conservation Service (NRCS) maps available on June 11, 2004; or
  - (b) Classified as Class II, or of a combination of Class II and Class I or Unique soil, on NRCS maps available on June 11, 2004, unless the average thickness of the aggregate layer within the mining area exceeds the amounts specified in subsection (2) of LCC 939.120 (C); or
  - (3) 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.

(E) *If non-significant site — go to STEP 10.* If the Director determines that the site is a non-significant site under this section, the Director shall set the matter before the decision maker to proceed pursuant to LCC 939.200 (A) (1) (b).

(F) *If significant site — go to STEP 3.* If the Director determines that the site is a significant site under this section, the Director shall proceed to LCC 939.130.

[Adopted 99-156 §12 eff 6/30/99 (OAR 660-023-0180 (2) (b) and (3); amd 2000-119 §3 eff 3/28/00; amd 11-356 §1 eff 10/12/11)]

### **939.130 STEP 3 — identify impact area and all conflicts with existing uses**

(A) *STEP 3A — Identify an impact area and known conflicts within it.* The Director shall:

(1) Identify an impact area for the purpose of identifying conflicts with proposed mining and processing activities.

(a) The impact area shall be large enough to include uses listed in subsection (B) of this section and shall be limited to 1,500 feet from the boundaries of the proposed mining area, except where factual information is adequate to indicate significant potential conflicts beyond this distance.

(b) For a proposed expansion of an existing site, the impact area shall be measured from the perimeter of the proposed expansion area rather than the boundaries of the existing site and shall not include the existing site.

(2) Prepare a map showing the impact area and proposed mining area; and

(3) Identify known conflicting uses.

(4) Prepare a staff report containing the determinations made under LCC 939.110, 939.120, and subsection (A) of this section along with any supporting findings; and

(5) Set the matter before the decision maker to complete the Goal 5 process. The decision maker may approve, modify, or deny any determination of the Director required by LCC 939.120, or this subsection. If the decision maker modifies or denies a determination made by the Director which is required under those provisions, the decision maker shall make a new determination consistent with those provisions before completing the Goal 5 process.

(B) *STEP 3B — Identify all conflicts from existing and approved uses in the impact area.*

(1) The decision maker shall identify all existing or approved land uses within the impact area that will be adversely affected by proposed mining.

(2) The decision maker shall also specify conflicts from existing or approved uses that are able to be reasonably predicted.

(3) For purposes of this subsection, “**approved land uses**” are dwellings allowed by a residential zone on existing platted lots and other uses for which conditional or final approvals have been granted by Linn County.

(4) The consideration of conflicts that could be caused by the mining of a significant aggregate site shall be limited to:

(a) Conflicts due to noise, dust, or other discharges with regard to those existing and approved uses and associated activities (e.g., houses and schools) that are sensitive to such discharges;

(b) Potential conflicts to local roads used for access and egress to the mining site within one mile of the entrance to the mining site, unless a greater distance is necessary to include the intersection with the nearest arterial identified in the Transportation Plan.

(i) Conflicts with local roads shall be determined based on clear and objective standards regarding sight distances, road capacity, cross section elements, horizontal and vertical alignment, and similar items in the Transportation Plan and County Code.

(ii) Standards for trucks associated with the mining operation shall be equivalent to standards for other trucks of equivalent size, weight, and capacity which haul other materials;

(c) Safety conflicts with existing public airports due to bird attractants, i.e., open water impoundments specified under OAR chapter 660, division 013;

(d) Conflicts with other Goal 5 resource sites within the impact area that are shown on an acknowledged list of significant resources and for which the requirements of Goal 5 have been completed at the time the *Plan* amendment is initiated;

(e) Conflicts with agricultural practices; and

(f) Other conflicts for which consideration is necessary in order to carry out ordinances that supersede Oregon Department of Geology and Mineral Industries (DOGAMI) regulations pursuant to ORS 517.780.

(C) *STEP 3C* —For an aggregate site on farmland that is determined to be significant under LCC 939.120 (D), the requirements of LCC 939.130 (A) & (B) are not applicable, except for



LCC 939.130(B)(f), and the requirements of LCC 939.150 and 939.190 are not applicable. Instead, the decision maker shall determine whether mining is permitted by a conditional use permit.

(D) *If there are conflicts — go to STEP 4.* If the decision maker identifies conflicts, the decision maker shall proceed as set forth in LCC 939.140.

(E) *If there are no conflicts — go to STEP 6* If the decision maker identifies no conflicts, the decision maker shall proceed as set forth in LCC 939.160.

(F) If the decision maker finds that the application is consistent with STEP 3C, proceed to STEP 10.

[Adopted 99-156 §12 eff 6/30/99 (OAR 660-023-0180 (2) (3), (4) (a) and (b); and 11-356 §1 eff 10/12/11)]

#### **939.140 STEP 4 — determine whether conflicts can be minimized**

(A) *STEP 4 — Determine whether conflicts can be minimized.* The decision maker shall determine whether the conflicts identified pursuant to LCC 939.130 can be minimized by reasonable and practicable measures. Such measures shall be clear and objective.

(1) *If conflicts can not be minimized — go to STEP 5.* If the decision maker finds that all the conflicts identified by the decision maker can not be minimized by reasonable and practicable measures, the decision maker shall proceed as set forth in LCC 939.150.

(2) *If conflict can be minimized — go to STEP 6.* If the decision maker finds that all the conflicts identified by the decision maker can be minimized, the decision maker shall identify the reasonable and practicable measures that would minimize the conflicts. The decision maker shall next proceed as set forth in LCC 939.160.

(B) In making the determination whether proposed measures would minimize conflicts with agricultural practices, the decision maker shall consider only the requirements of ORS 215.296.

(C) Recording a waiver of remonstrance in compliance with LCC 933.150 (B), is evidence that a conflict has been minimized under LCC

939.140, or resolved under LCC 939.150 or 939.190.

[Adopted 99-156 §12 eff 6/30/99 (OAR 660-023-0180 (c) and (e))]

#### **939.150 STEP 5 — analyze ESEE consequences if significant conflicts can not be minimized**

(A) *STEP 5 — Identify and resolve conflicts through ESEE analysis.* Limited to any conflicts identified in LCC 939.140 that could not be minimized, the decision maker shall determine the ESEE consequences of either protecting the resource by allowing mining without or with limitations, or not protecting the resource and prohibit mining or permit mining under a permit pursuant to LCC 921.560 to 921.569. The determination shall be based on weighing the identified ESEE consequences, with consideration of the following:

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

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

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

(B) *If the site should be protected and mining authorized — go to STEP 6.* If, based on the ESEE analysis required under this section, the decision maker determines that the site should be given Goal 5 protections and mining should be approved with or without limitations, the decision maker shall proceed as set forth in LCC 939.160.

(C) *If the site should not be protected by Goal 5 — go to STEP 10.* If, based on the ESEE analysis required under this section, the decision maker determines that the site should not be protected by Goal 5, the decision whether to permit mining or not shall be made by the decision maker as set forth in LCC 939.200 (A) (1)(f).

(D) Recording a waiver of remonstrance in compliance with LCC 933.150 (B), is evidence that a conflict has been minimized under LCC 939.140, or resolved under LCC 939.150 or 939.190.

**939.160 STEP 6 — approve the mining of the aggregate resource**

(A) *STEP 6 — Approve the mining.* The decision maker shall protect the resource site and approve an application for mining if:

(1) no conflicts were identified under LCC 939.130, or

(2) all identified conflicts with a significant aggregate resource site are minimized pursuant to LCC 939.140, or

(3) based on an ESEE analysis, conducted pursuant to LCC 939.150, mining is permitted with or without limitations.

(B) *Go to STEP 7.* After the decision maker approves an aggregate site for mining of aggregate, the decision maker shall proceed as set forth in LCC 939.170.

[Adopted 99-156 §12 eff 6/30/99 (OAR 660-023-0180 (4))]

**939.170 STEP 7 — determine the post-mining use of site**

(A) *STEP 7 — Post-mining use and reclamation.* At the time the determination under LCC 939.160 is made, the decision maker shall:

(1) determine the post-mining use of the site.

(2) proceed as set forth in LCC 939.180 (*STEP 8*).

(B) For significant aggregate sites on Class I, II soils and unique farmland, the post-mining use shall be limited to farm uses under ORS 215.203, uses listed under ORS 215.283 (1), and fish and wildlife habitat uses, including wetland mitigation banking.

(C) The County and applicant shall coordinate with DOGAMI regarding the regulation and reclamation of aggregate sites, except where exempt under ORS 517.780.

[Adopted 99-156 §12 eff 6/30/99 (OAR 660-023-0180 (4) (f); amd 11-356 §1 eff 10/12/11)]

**939.180 STEP 8 — identify conflicts from potential future uses**

(A) *STEP 8 — Determine all conflicts from potential future uses in the impact area.* The decision maker shall:

(1) Identify future potential uses which, if allowed, would conflict with the proposed mining;

(2) Identify predicted conflicts from those future potential uses.

(B) The consideration of future potential uses shall be limited to those land uses that, if approved, would be allowed outright in the underlying zoning district.

(C) *Go to STEP 9.* The decision maker shall next proceed as set forth in LCC 939.190.

[Adopted 99-156 §12 eff 6/30/99 (OAR 660-023-0180 (5))]

**939.190 STEP 9 — analyze ESEE consequences and determine whether to allow a future potential use**

*STEP 9 — Analyze future potential uses and determine whether to allow the use.*

(A) The decision maker shall determine whether to allow, limit, or prevent a future potential use identified in LCC 939.180. To make this determination, the decision maker shall apply the standard ESEE process set forth in OAR 660-023-0040 and 660-023-0050.

(B) Recording a waiver of remonstrance in compliance with LCC 933.150 (B), is evidence that a conflict has been minimized under LCC 939.140, or resolved under LCC 939.150 or 939.190.

(C) *Go to STEP 10.* The decision maker shall next proceed as set forth in the applicable provisions of LCC 939.200.

[Adopted 99-156 §12 eff 6/30/99 (OAR 660-023-0180 (5))]

**939.200 STEP 10 — adopt final decision and implementing amendments**

(A) *STEP 10A — Amend the Comp Plan to carry out the decision.* The decision maker shall implement the determinations made under this Chapter by amending the *Comprehensive Plan* as set forth in paragraphs (1) and (2) of this subsection.

(1) *Inventories*. The decision maker shall amend the appropriate appendices following LCC Chapter 905 (Land Use Element Code) to include the site on an inventory and to include any supporting analyses pursuant to this paragraph.

(a) *Application not complete — sites possibly significant (formerly 1B sites)*. If the Director determined that the application is not complete solely because the applicant was unable to provide information adequate to make the determination required by LCC 939.110 (B) (2), the decision maker shall amend Appendix 3, LCC Chapter 905 (Land Use Element Code) and add the site for which information is not adequate to make the determination under LCC 939.110 to the inventory entitled — “Inventory of Possibly Significant Sites (Formerly “1B” Sites).”<sup>1</sup>

(b) *Non-significant sites (formerly 1A sites)*. If the Director, based on location, quality and quantity information determines that an aggregate resource site is not significant, the decision maker shall amend Appendix 4, LCC Chapter 905 (Land Use Element Code) entitled — “Inventory of Non-significant Sites (Formerly “1A” Sites).”<sup>2</sup>

(c) *Significant sites without conflicts (formerly 2A sites)*. If the Director, based on location, quality and quantity information determines that an aggregate resource site is significant, and the decision maker has determined that the site is without conflicts, the decision maker shall amend Appendix 5, LCC Chapter 905 (Land Use Element Code) entitled — “Inventory of Significant Sites Without Conflicting Uses (Formerly “2A” Sites).”<sup>3</sup>

(d) *Significant sites with conflicts*

*that have been minimized*. If the decision maker is able to minimize the conflicts under LCC 939.140, the decision maker shall amend Appendix 6, LCC Chapter 905 (Land Use Element Code) and add the site for which all conflicts have been minimized under LCC 939.140 to the inventory entitled — “Inventory of Significant Sites With All Conflicts Minimized.”<sup>4</sup>

(e) *Significant sites with conflicts that can not be minimized but, based on an ESEE analysis, are to be protected by Goal 5 and approved for mining*. If a significant site has conflicts not able to be minimized but pursuant to an ESEE analysis is determined to receive Goal 5 protection for approved for mining, the decision maker shall amend LCC Chapter 905 (Land Use Element Code) to:

(i) add the site to Appendix 7 entitled — “Inventory of Significant Sites Protected by Goal 5 and Approved for Mining Pursuant to an ESEE Analysis (Formerly “3A” or “3C” Sites)”<sup>5</sup>; and

(ii) to add the ESEE analysis to the Appendix 8 entitled — “ESEE Analyses Justifying the Protection of an Site by Goal 5 and Granting Mining Approval.”

(f) *Significant sites with conflicts that can not be minimized but, based on an ESEE analysis, are not to be protected by Goal 5 or approved for mining*.

(i) If a significant site has conflicts not able to be minimized, but, pursuant to an ESEE analysis, is determined not to receive Goal 5 protection not to be approved for mining under Goal 5, the decision maker shall provide full protection to the conflicting use and shall amend LCC Chapter 905 (Land Use Element Code) to:

(I) add the site to Appendix 8 — entitled “Inventory of Significant Sites Not Protected by Goal 5 and Not Approved

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<sup>1</sup>Under the original Goal 5 rule these sites were referred to as “1B sites.”

<sup>2</sup>Under the original Goal 5 rule these sites were referred to as “1A sites.”

<sup>3</sup>Under the original Goal 5 rule these sites were referred to collectively as “1C” sites and, following ESEE analysis, each 1C site became classified as a “3A,” “3B,” or “3C” site.

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<sup>4</sup>The inventory of these sites is required by the September 1, 1996 amendments to the Goal 5 rule.

<sup>5</sup>The inventory of these sites is required by the September 1, 1996 amendments to the Goal 5 rule.

for Mining Pursuant to an ESEE Analysis (Formerly “3B” Sites)”<sup>6</sup>; and

(II) add the ESEE analysis to Appendix 8A entitled — “Inventory of Significant Sites Not Protected by Goal 5 and Not Approved for Mining Pursuant to an ESEE Analysis”<sup>7</sup>; and

(ii) Where mining is not protected pursuant to Goal 5, the ARO shall not be applied to the site.

(g) *Significant sites meeting LCC 939.120(D), and not to be protected by Goal 5.*

(i) If an aggregate site is determined to be significant under LCC 939.120(D) and not to receive Goal 5 protection, the decision maker shall amend LCC Chapter 905 (Land Use Element Code) to add the site to Appendix 9 — entitled “Inventory of Significant Sites Not Protected by Goal 5;

(ii) Mining may be approved under LCC 921.560 to 921.590; and

(iii) Where mining is not protected pursuant to Goal 5, the ARO shall not be applied to the site.

(2) If the decision maker makes a determination approving mining under subsections (A) (1) (c) to (A) (1) (e), the amendments set forth in the *Comprehensive Plan* shall include:

(a) a program to protect the resource;

(b) identified measures to minimize conflicts and any special conditions and regulations. Such measures, conditions, and regulations shall be clear and objective; and

(c) the approved post-mining use.

(B) *STEP 10B — Amend the Zoning Map to apply the ARO.* If the decision maker makes a determination approving mining under subsections (A) (1) (c) to (A) (1) (e), the decision maker shall amend the Land Development Code Zoning Map:

(1) To show the mining area. The extraction area shall be applied to significant sites where mining is permitted by the *Comprehensive Plan*. The mining area boundary as set forth in an application may be modified through the Goal 5 process to reduce conflicts with uses existing within the impact area.

(2) To show the impact area. The size of the impact area may be increased or decreased through application of the Goal 5 process.

(3) To apply an ARO to the impact area for sites receiving protection pursuant to Goal 5.

(C) The requirements of subsections (A) (2), (A) (3) and (B) of this section, do not apply to approval of mining under LCC 921.560 to 921.569.

[Adopted 99-156 §12 eff 6/30/99 (OAR 660-023-0180 (6); amd 2000-119 §3 eff 3/28/00 ; amd 11-356 §1 eff 10/12/11)]

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**Statutory References and Other Authorities:**  
ORS 197; 203; 215; 517; OAR 660, Div. 023

**Legislative History of Chapter 939:**

Adopted 99-156 §12 eff 6/30/99

Amendments to 99-156

#1 2000-119 §3 eff 3/28/00

#2 2011-356 §1 eff 10/12/11

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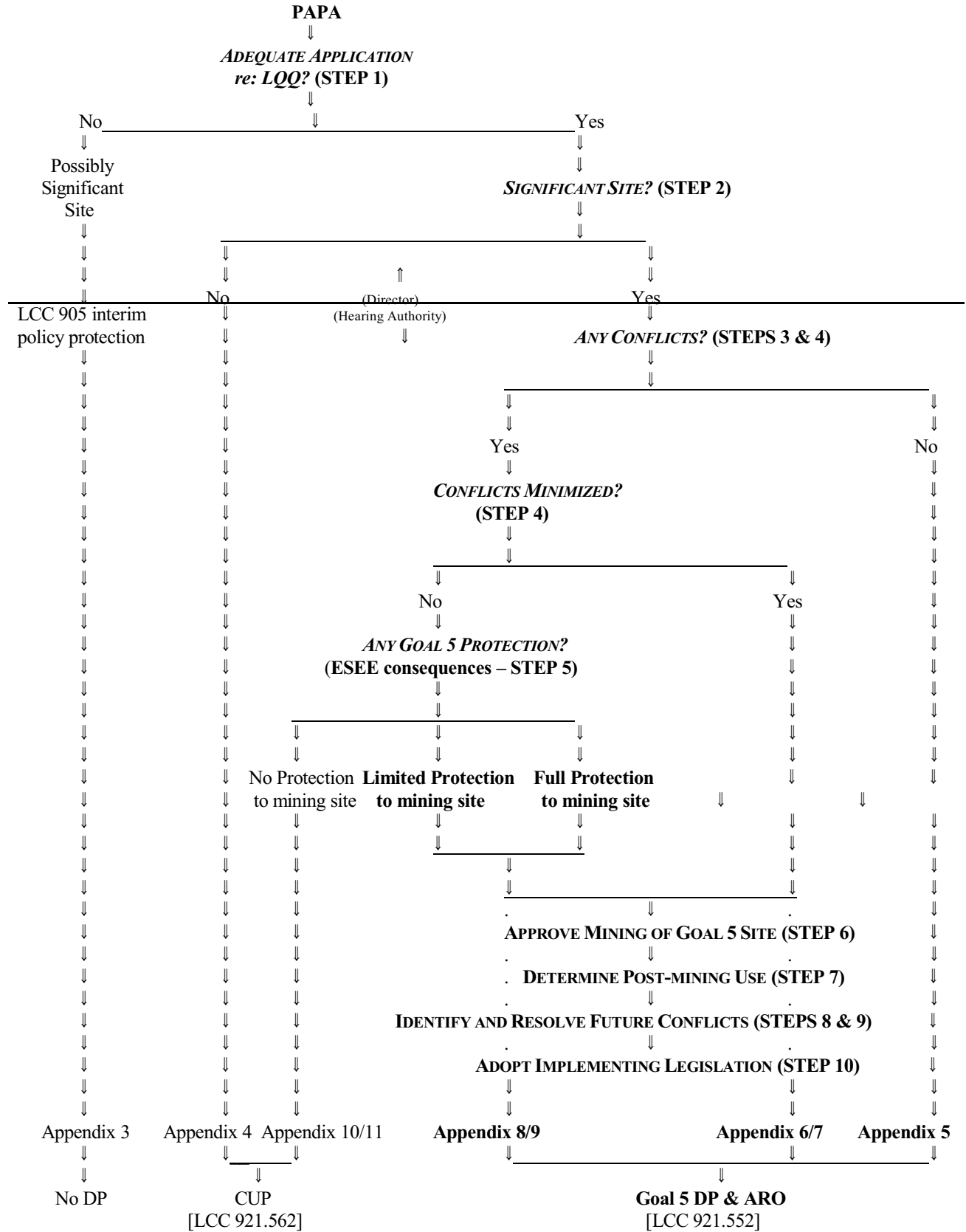
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<sup>6</sup>The inventory of these sites is required by the September 1, 1996 amendments to the Goal 5 rule.

<sup>7</sup>The inventory of these sites is required by the September 1, 1996 amendments to the Goal 5 rule.

**APPENDIX 1 — MINING PERMIT CHART (THE GOAL 5 PROCESS IS IN BOLD)**



*Appendix 1 to the Land Development Code*

***Land Development Code Zoning Map***

[see LCC 920.010 and 920.300]

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