

CHAPTER 17.120
SPECIFIC CONDITIONAL USES
Article III. Mineral and Aggregate Resource Operations

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17.120.410 PURPOSE. The purpose of this section is to provide definitions, criteria and development standards applicable to applications for new or expanding mineral and aggregate resource operations that either (A) do not qualify as a “significant” site pursuant to OAR 660-23-180(3) and OAR 660-23-180(4) or (B) qualify as a “significant” site and the county determines mining should be allowed. These provisions also apply to conditional use descriptions similar to mineral and aggregate resource operations such as operations conducted for mining and processing of aggregate and other minerals; mineral resource development sites; sand and gravel resource sites; mining, pits and quarry facilities.

17.120.420 DEFINITIONS. As used in MCC 17.120.410 through 17.120.470, the following definitions apply:

- A. “Aggregate resources” means crushed or uncrushed gravel, stone, rock, or sand of a quality typically used in concrete or road construction.
- 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 660-23-180(5)(b) and (7).
- C. “Existing site” means an aggregate site that is lawfully operating, or is included on an inventory in the comprehensive plan on September 1, 1996.
- D. “Expansion area” means an aggregate mining area contiguous to an existing site.
- E. "Farmland" means land planned and zoned for exclusive farm use pursuant to Goal 3 and OAR chapter 660, division 033.
- F. “Mineral resources” are those materials and substances described in ORS 517.750(7) that includes soil, coal, clay, stone, sand, gravel, metallic ore and any other solid material or substance excavated for commercial, industrial or construction use but excluding materials and substances described as aggregate resources.
- G. “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.

- H. “Mining” means the extraction and processing of mineral or aggregate resources, as defined in ORS 215.298(3) for farmland and in ORS 517.750 for land other than farmland.
- I. “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 OAR 660-23-180(2)(d), "protect" also means to limit or prohibit new conflicting uses within the impact area of the site.
- J. “Significant site” means an aggregate resource site that satisfies the criteria in OAR 660-23-180(3) or (4) regarding location, quality, and quantity of the resource.

17.120.425 EXEMPTIONS. The following uses, activities and facilities do not require approval from the county. Operators or land owners claiming any of these exemptions may be asked to provide a copy of an exemption certificate issued by DOGAMI.

- A. Excavations of sand, gravel, clay, rock, or other materials conducted by the landowner or tenant for the primary purpose of construction, reconstruction or maintenance of access roads on the same parcel or on an adjacent parcel that is under the same ownership as the parcel that is being excavated.
- B. Cemetery operations.
- C. On-site construction operations within a county-approved building site.
- D. In EFU, SA, FT, and TC zones, exploratory or preparation to mining excavations for mineral and aggregate resources or surface mining that involve 1,000 cubic yards or less and/or disturbance of one acre or less of ground located more than 500 feet from the property boundary.
- E. Excavation operations conducted within a road right-of-way or other easement for the primary purpose of road or utility construction, reconstruction or maintenance.

17.120.430 APPLICATION REQUIREMENTS. An application for a new or expanding mineral or aggregate site shall be adequate if it includes:

- A. A Comprehensive Plan Amendment application for an aggregate resource under OAR 660-23-180(3) that includes:
 - 1. Information regarding quantity, quality, and location sufficient to determine whether the site is significant pursuant to OAR 660-23-180(3); and
 - 2. A Post Acknowledge Plan Amendment (PAPA) determination, pursuant to OAR 660-23-180(5) including:
 - a. A conceptual site reclamation plan;
 - b. A traffic impact assessment for the area within one mile of the entrance to the mining area;
 - c. Proposals to minimize any conflicts with existing uses preliminarily identified by the applicant within a 1,500-foot impact area; and
 - d. A site plan indicating the location, hours of operation, and other pertinent information for all proposed mining and associated uses.
- B. A Comprehensive Plan amendment and conditional use application for an aggregate resource under OAR 660-23-180(4) that includes:
 - 1. Information sufficient to determine whether the aggregate resource site is significant pursuant to OAR 660-23-180(4) and information pursuant to OAR 660-23-180(6) that includes:

- a. A conceptual site reclamation plan;
- b. A site plan indicating the location, hours of operation, and other pertinent information for all proposed mining and associated uses and the maximum amount of mined aggregate material specified under OAR 660-23-180(4)(a).

C. A conditional use application for sites in non-agriculture zones and not required to qualify as significant that includes:

1. A conceptual site reclamation plan unless specified as exempted;
2. A site plan indicating the location, hours of operation, and other pertinent information for all proposed mining and associated uses including the specified maximum amount of mined aggregate material;
3. Information required under the appropriate zone and in MCC 17.120.450(E).

17.120.435 HEARING NOTICE. In lieu of the notice requirements in MCC 17.111.040 and 17.111.050, the following notice provisions apply to public hearings conducted on comprehensive plan amendment applications for establishment of a mineral and aggregate operation:

- A. Mailed Notice. Notice of the public hearing on an application for an aggregate site shall be mailed to all owners of property, any portion of which is within 1,500 feet of the subject property, at least 20 days prior to the date of the hearing.
- B. Posted Notice. The applicant shall post a sign within the right-of-way of public roads abutting the subject property, within 100 feet of where the side lot lines of the subject property intersect the public road right-of-way. In addition, a sign shall be posted just inside the right-of-way of the portion of a public road no closer than 1,500 feet from and within one-half mile of the boundary of the subject property. Signs shall be posted at least 20 days prior to the date of the public hearing, and be visible from a passing vehicle. The signs shall indicate, in letters at least four inches high, "Notice of Proposed Change in Land Use", "Mineral/Aggregate site", "(Planning Division phone number)", "Marion County Planning." The applicant shall submit a certification that the notice was posted in the prescribed manner.

17.120.440 ALLOWABLE USES. The following uses may be allowed. The approval shall specify which of these uses is allowed.

- A. Mining or quarrying operations for the extraction of rock, clay, soil, sand, or gravel.
- B. The following uses when in conjunction with a mineral and aggregate resource extraction operation:
 1. Processing, crushing, washing, sizing and screening of mineral and aggregate resources;
 2. Stockpiling of mineral and aggregate materials and earth products;
 3. Offices, shops or other accessory structures used for the management and maintenance of resource extraction and processing equipment;
 4. Sale of mineral and aggregate resources, asphalt, cement treated base, and concrete;
 5. Asphalt batch plants, cement treated base pug plants and/or concrete batch plants;
 6. Storage of equipment or machinery and maintenance facilities related to mineral and aggregate resource extraction processing or transportation equipment, provided that independent commercial storage or commercial maintenance facilities open to the general public or not directly related to resource extraction shall not be allowed unless permitted in the underlying zone;

7. Transportation facilities and loading facilities related to mineral and aggregate resource mining and/or processing; and
8. Other incidental mineral and aggregate resource related activities including buildings, structures and other apparatus.

17.120.450 REVIEW CRITERIA. The following criteria must be met in order to grant approval for a mineral and aggregate operation, in addition to any criteria in the applicable zone:

- A. The proposed uses, activities and facilities are included in Section MCC 17.120.440;
- B. A permit for mining of aggregate on farmland shall be issued only for a site included on an inventory in an acknowledged comprehensive plan as required under ORS 215.298(2);
- C. For sites that qualify as significant under the requirements of OAR 660-23-180(3)(a) through (d), the county has completed the requirements of OAR 660-23-180(5)(a) through (g); or
- D. For sites that qualify as significant under the requirements of OAR 660-23-180(4)(a) through (c), the county has completed the requirements of OAR 660-23-180(6)(a) through (d);
- E. For sites that do not qualify as significant, only the following criteria apply:
 1. The proposed use, as conditioned, will not substantially limit, impair, or preclude the use of surrounding properties for the uses permitted in the applicable zone;
 2. The proposed use, as conditioned, will not have a significant adverse effect on air or water quality;
 3. Adequate public and utility facilities and services to serve the use are available or will be made available prior to establishment of the use;
- F. New uses that batch and blend mineral and aggregate into asphalt cement may not be authorized within two miles of a planted vineyard. Planted vineyard means one or more vineyards totaling 40 acres or more that are planted as of the date the application for batching and blending is filed, pursuant to OAR 660-033-130(15).

17.120.460 STANDARDS FOR DEVELOPMENT AND OPERATION. Unless specifically deleted or modified as part of the post-acknowledgment plan amendment or conditional use approval the following standards and requirements apply:

- A. Dimensional Requirements.
 1. Lot Area: The minimum area shall be that area necessary to meet setback requirements.
 2. Setbacks for mineral and aggregate extraction shall be:
 - a. The extraction area must be at least 100 feet from any property line;
 - b. The extraction area must be at least 500 feet from a habitable building existing on adjacent property at the time the use is established;
 - c. When a site abuts another mineral and aggregate site, no setback for mineral and aggregate extraction is required along the common boundary line, unless such setback is determined by the county to be necessary.
 3. Setbacks for mineral and aggregate processing and loading shall be as follows:
 - a. One hundred feet from any property line; and

b. Five hundred feet from a habitable building existing on adjacent property at the time the processing operation is established;

4. Setbacks for offices, shops or other accessory structures shall be regulated by the zone in which the proposed operation is located.

5. Storage of overburden is allowed within setbacks. There shall be no setback for existing roads, internal truck paths or other transportation facilities. Any new roads, internal transportation or other transportation facilities shall not be located closer than 50 feet from a habitable building on adjacent property existing at the time storage commences.

6. Height. The maximum height of any structure, except mineral and aggregate processing and extraction equipment, shall be 85 feet.

B. Screening and Fencing.

1. Fencing shall be required only if the site is adjacent to an urban or rural residential zone. When fencing is required, it shall be of cyclone type, a minimum of six feet high. Any site owner or operator may voluntarily fence a site.

2. Existing deciduous and evergreen vegetation within required setback areas that screen visibility of the operation from adjacent property or public roads shall be retained unless located within a vision clearance area or determined by the county to be a public safety hazard.

C. Access.

1. Access to sites that do not qualify as significant, the following standards apply:

a. All private access roads connecting mineral and aggregate sites to public highways, roads or streets shall be paved or graveled. If graveled, the applicant shall provide a written agreement to the county to grade and treat the access road as needed during the period from June to September, or as determined in the conditional use, to reduce dust. If the access connects with a paved public road it shall be paved for a distance of 100 feet from the existing paved road.

b. If access from a mineral and aggregate site is by graveled public highways, roads or streets, the applicant shall provide a written agreement to the county to annually grade and treat the first 2,000 feet of such roadway, or as determined in the conditional use permit, to reduce dust impacts.

c. Vehicular barriers or gates shall be required at all vehicular access points to the site. The gate shall be located no closer than 85 feet to the public right-of-way unless a lesser distance is established as part of the conditional use permit.

d. The public roads used to access the site may be specified or otherwise regulated in the conditional use permit, including requirements for improvements at specific locations or on-going maintenance to address safety concerns.

2. For sites that qualify as significant, access requirements shall comply with OAR 660-23-180(5)(b)(B).

D. Hours of Operation.

1. Extraction, processing and transportation activity shall be allowed Monday through Friday between the hours of 6:00 a.m. through 6:00 p.m. Transportation activity shall be allowed Saturdays between the hours of 6:00 a.m. through 6:00 p.m. No extraction, processing or transportation activity is allowed on the following holidays: January 1, Memorial Day, July 4, Labor Day, Thanksgiving Day, and December 25.
2. Blasting shall be restricted to the hours of 9:30 a.m. to 4:30 p.m., Monday through Friday. No blasting shall occur on Saturdays, Sundays or the following holidays: January 1, Memorial Day, July 4, Labor Day, Thanksgiving Day, and December 25.
3. An owner or operator may request, and the director may grant, an exception to provide for additional hours of operation for a mineral and aggregate extraction and processing operations when additional hours of operation are needed to alleviate a public emergency. Public emergency includes:
 - a. Damage to public roads or structures that requires immediate repair.
 - b. Road construction or repair that is scheduled during nighttime hours to reduce traffic conflicts.

E. Environmental Standards.

1. Any crusher, asphalt batch plant or concrete plant, shall have a valid DEQ permit.
2. Owners or operators shall present evidence of the appropriate DEQ permits prior to commencing operations.
3. Owners or operators of mineral and aggregate operations shall comply with the Department of Environmental Quality ("DEQ") sound levels in OAR 340-35-035 for habitable buildings on nearby property.

F. Safety Standards. Access roads to all mineral and aggregate resource sites shall be gated and locked when not in operation.

G. Site Reclamation. A site reclamation plan shall be submitted prior to the public hearing. It shall be amended to conform to any conditions of county approval and be approved by DOGAMI prior to commencement of operations. DOGAMI approval shall be evidenced by a DOGAMI surface mining operating permit.

H. Performance Agreements.

1. The operator of a mineral and aggregate site shall provide the county with evidence that demonstrates the operator has in full force and effect the bond or security deposit with DOGAMI to assure conformance with the state-required reclamation plan. This information shall be provided to the county prior to commencing operations.
2. Mineral and aggregate operations shall be insured for \$100,000.00 against liability and tort arising from production activities or incidental operations conducted or carried on by virtue of any law, ordinance or condition, and the insurance shall be kept in full force and effect during the period of such operations.

Evidence of a prepaid policy of such insurance that 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.

- I. A landowner or operator shall hold a valid operating permit from the State Department of Geology and Mineral Industries (DOGAMI) for sites surface mined after July 1, 1972 as defined in ORS 215.298 and 517.750. A separate permit is required for each separate surface mining operation (per) ORS 517.790.

17.120.470 NON-CONFORMING MINERAL AND AGGREGATE OPERATIONS. Any existing mineral and aggregate related use operating under a conditional use permit shall continue to comply with the conditions of approval and the standards in MCC 17.120.400 through 17.120.460 as they existed on July 1, 1992, unless the conditions or standards are removed or modified as part of obtaining a new conditional use permit. The standards in MCC 17.120.460 do not apply to such uses.

- A. If a surface mining operation has stopped for a period of more than one year it shall not be deemed to be interrupted or abandoned for any period after July 1, 1972, if the following conditions apply:
 1. The owner or operator was issued and continuously renewed a state or local surface mining permit, or received and maintained a state or local exemption from surface mining regulation; and
 2. The surface mining use was not inactive for a period of 12 consecutive years or more. "Inactive" means no aggregate materials were excavated, crushed, removed, stockpiled or sold by the owner or operator of the surface mine.
 3. The applicant shall contact the Department of Geology & Mineral Industries to determine if the surface mining operation is still active and to obtain all the required permits.

17.120.480 SUPPLEMENTAL PROVISIONS

- A. Notwithstanding MCC 17.119.030, for significant sites where the county has determined there are no significant conflicts identified under the requirements of OAR 660-23-180 (5) or (6) that cannot be minimized, the county shall not:
 1. Deny mining at the site; or
 2. Impose approval requirements beyond those required to assure minimum compliance with OAR 660-23-180, except with regard to mining or processing activities:
 - a. For which the application does not provide information sufficient to determine clear and objective measures to resolve identified conflicts;
 - b. Not requested in the application; or
 - c. For which a significant change to the type, location, or duration of the activity shown on the application is proposed by the operator.
- B. For a significant site, the county shall render a final local decision within 180 days of accepting an application as complete.