

BEFORE THE LAND USE HEARINGS OFFICER
CLACKAMAS COUNTY, OREGON

Regarding an Application for a Conditional Use Permit to extract aggregate from the subject property and transport it through internal roads to the adjacent property to the east where Eagle Creek Rock Products will provide processing at its existing mining operation.

Case File No: Z0114-23-C
(Eagle Creek Rock Products)

A. SUMMARY

1. The subject property is located at 25528 SE Frog Pond Lane, Eagle Creek, OR 97022 in unincorporated Clackamas County, outside of the Urban Growth Boundary. The subject site encompasses one tax lot, identified as T3S, R4E, Section 06, Tax Lot 25528, located approximately 1,000 feet north of the intersection of SE Frog Pond Ln. and SE Abbott Miller Rd. The site totals approximately 10.5 acres in size and is zoned RRF5-5, Rural Residential Farm Forest 5-Acre. This application requests a Conditional Use Permit for extraction-only surface mining at the subject property. The applicant has also submitted an application in File No. Z0113-23-C, a substantially similar application, for a Conditional Use Permit for extraction-only surface mining on property located at 25620 SE Talons Road, Eagle Creek, OR 97022.
2. The mined aggregate is proposed to be transferred via internal private access roads to the existing processing site at the adjacent Eagle Creek Rock Products LLC property for crushing, screening, and washing of rock that is then transported off site. Current use of the property is vacant land. There are no mapped “natural features” present on the subject property other than Currin Creek, located on the SW of the property (PF01G), and a tributary to Currin Creek that is identified as R4SBC on the Statewide Wetlands Inventory.
3. The subject property is owned by Eagle Creek Gravel LLC. The applicant is Stacy Jansik who, together with his brother Travis Jansik, operates the existing Eagle Creek Rock Products LLC commercial sand and gravel operation. The existing Eagle Creek Rock Products LLC operation is accessed via SE Talons Rd. The subject property lies adjacent to the existing Eagle Creek Rock Products LLC operation and will be accessed internally. No truck access to transport the aggregate from the proposed surface mining site is planned via SE Frog Pond Lane or to the south of the subject property on SE Talons Rd.
4. On June 15, 2023, the Hearings Officer conducted a public hearing to receive testimony and evidence about this conditional use application (File No. Z0114-23-C) to extract aggregate from the subject property and transport it to the adjacent property where Eagle Creek Rock Products LLC will provide processing at its existing mining operation. The Hearings Officer approved the application, subject to conditions of approval.

B. HEARING AND RECORD HIGHLIGHTS

1. The Hearings Officer received testimony and evidence at the June 15, 2023 public hearing about this application, including submittals identified as Exhibits 1-7. All exhibits and records of testimony are filed with the Planning Division, Clackamas County Department of

Transportation and Development. The public hearing was conducted virtually over the Zoom platform. At the beginning of the hearing, the Hearings Officer made the declaration required by ORS 197.763. The Hearings Officer disclaimed any *ex parte* contacts, bias, or conflicts of interest. The Hearings Officer stated that the only relevant criteria were those identified in the County's staff report, that participants should direct their comments to those criteria, and failure to raise all arguments may result in waiver of arguments at subsequent appeal forums.

2. At the hearing, County Planner Joy Fields discussed the applications for both File Nos. Z0113-23-C and Z0114-23-C, and the related staff reports and exhibits for each application, providing a presentation and related discussion, and recommended approval of both applications with conditions if certain potential impacts can be adequately mitigated as required through ZDO Section 1203. Ms. Fields explained that with respect to File No. Z0113-23-Conditional use for mining, the applicant is proposing to extract aggregate from the subject property and transport it to the adjacent property to the north where Eagle Creek Rock Products will provide processing at the existing mining operation. Ms. Fields further explained that with respect to File No. Z0114-23-Conditional use for mining, the applicant is proposing to extract aggregate from the subject property and transport it through internal roads to the adjacent property to the east where Eagle Creek Rock Products will provide processing at the existing mining operation. Ms. Fields pointed out that no truck access to the proposed mining site is planned via SE Frog Pond Lane. Each of these similar applications were discussed at the combined hearing. (Exhibit 7)
3. Ms. Fields shared a slide and provided relevant background information concerning each of these applications. Ms. Fields pointed to the location of the properties at the terminus of SE Talons Rd., with the site comprising 160+ acres total ownership/leased area in mining and rock processing. Ms. Fields pointed out that a residence is located on the parcel adjacent to Frog Pond Ln. [File No. Z0114-23-C]. Ms. Fields noted that this area is south of Oregon City and west of Hwy 223 and is in mixed use, with farm activities, small woodlots, and rural residential home sites scattered throughout. [The existing Eagle Creek Rock Products operation is a verified non-conforming use that has also been on site for many years.] (Exhibit 7)
4. Ms. Fields further noted that the zone designation for both sites is RRFF-5, Rural Residential Farm and Forest. Ms. Fields also shared slides of an area map, an aerial image, and topographical maps, showing the zoning, the two subject properties and area parcels/tax lots/rough dimensions/acreage and rough locations of existing structures, and also the Eagle Creek Rock Products, LLC existing sites and on-site structures. These slides also show Hwy 224, the access via SE Folsom Rd., the locations of SE Talons Rd. and SE Frog Pond Ln., and a creek (Currin Creek) crossing several of these parcels including a corner of the site for the Z0114-23-C application. Ms. Fields provided slides of Tax Maps and Site Plans for File Nos. Z0113-23 and Z0114-23, providing discussion of the applicant's proposals, and pointing out areas that are currently part of an undeveloped public right-of-way to be vacated and included in the mining operation. Ms. Fields provided discussion concerning a proposed condition from County Engineering that, if the current right-of-way at the end of SE Talons Rd. is vacated, a turnaround would be required. (Exhibit 7)
5. Ms. Fields shared slides and provided discussion of the ZDO criteria reviewed by staff, and staff findings with respect to these requirements, particularly discussing the conditional use criteria contained in ZDO Section 1203 as detailed in the staff report, and provided additional discussion concerning the staff recommendations that these two applications be approved with conditions. Ms. Fields facilitated additional discussion regarding impacts to waterways and

groundwater, a condition requiring evaluation by DOGAMI concerning possible impairment to area wells (referencing concerns raised by the property owner to the north) and stream recharge, as well as impacts along SE Talons Rd., and additional discussion and consideration regarding impacts to noise and other impacts along SE Talons Rd., and proposed mitigation. (Exhibit 7)

6. Ken Sandblast, applicant's Land Use Consultant, appeared on behalf of applicant and affirmed Ms. Fields' presentation, the County's staff report, and noted that the applicant does not have any dispute with the recommended conditions of approval. Mr. Sandblast also affirmed that there will be no access from the proposal site to SE Frog Pond Lane, with the operation continuing its use of SE Talons Rd. for access. Mr. Sandblast also referred to Ms. Fields' comments concerning groundwater and neighboring wells, agreeing that permitting requirements from DOGAMI will address these concerns.
7. Stacy Jansik, applicant, and his brother Travis Jansik (who together operate Eagle Creek Rock Products) appeared and provided additional information concerning their operation, describing successful reclamation projects on other properties following quarrying of the aggregate. The Jansik's agree that signs in front of the gate marking it as a "No Parking" area, a "No Idling" area, and posting hours of operation will help mitigate the impacts of their proposal on their neighbors. The Jansiks report that before they resumed operations at the site, SE Talons Rd. was being maintained by neighbors, whereas now they are working at doing most of the maintenance work on the road, filling in potholes as weather permits, mowing the berms, and keeping the road watered to keep the dust down. They also discussed the culvert, noting it was likely installed prior to 1971 and that the bridge across the culvert had rotted. They replaced it with a steel plate, reinforced by concrete, with the gravel road going across it. The Jansiks assert that the culverts underneath are still intact, and they work to keep them clear so that the water passes freely. The Jansiks further report that the water they use on site comes from their on-site washing ponds.
8. Several members of the general public appeared and provided comments and testimony in support of approval of this application, including Beverly Rapp, Kenji King, Teresa Lenchitsky, and Terry Emmert.
9. Beverly Rapp is a neighbor residing on property on SE Talons Rd. across from the site and adjacent to the proposed additional site that is the subject of application File No. Z0113-23-C. Ms. Rapp asked several questions concerning the timeline for installing the berms, and whether the berms would include the areas adjacent to her property. Mr. Sandblast and the Jansiks responded to her questions by stating that they have started work on the berms, particularly for the south side property, and are awaiting approvals and completion of the DOGAMI review process before completing the berms.
10. Kenji King is a neighbor who owns and resides on property located on SE Frog Pond Lane adjacent to the proposed additional site that is the subject of application File No. Z0114-23-C (directly north of the site) as well as a second property with a manufactured home he uses as a rental. Mr. King states that the Jansik's gravel pit operation have been decent neighbors, but he is concerned that the property lines for the Z0113-23-C proposal site go right up to his shop, and he is concerned that the closer proximity of the gravel pit operation with its noise, dust, and uncertainty, will negatively affect his property values. Mr. King also reported that the well for his rental property is not very deep and, in the summer months, the water quality already goes down and has a sulfur smell, and if the property values decrease he may not be able to sell it. Mr. King is very concerned that the proposed expansion of the gravel pit operation will affect area aquifers. Mr. King further reports that Currin Creek, which flows

through the culvert under SE Talons Rd., also traverses the existing gravel pit and extends through the subject site in File No. Z0114-23-C, and under SE Frog Pond Ln. as well.

11. Teresa Lenchitsky is a neighbor residing on property on SE Talons Rd. near the gate to the existing quarry site. Ms. Lenchitsky reports that she has lived there since before the rock quarry started, describing the Jansiks as amazing neighbors who are just trying to make a living. Ms. Lenchitsky does note that the quarry operations cause dust, describing it as thick on her house and on her outdoor living spaces, and also observes that the trucks drive too fast along SE Talons Rd. She is hoping the berms will extend to her side of the existing quarry operation, as currently she sees and hears the trucks and the dumping of gravel, etc. The Jansiks responded to Ms. Lenchitsky's concerns, assuring her that the plan is to berm her side also, and when completed there will be a reclamation of the site.
12. Terry Emmert's mailing address is 11811 SE Hwy 212, Clackamas, Oregon. Mr. Emmert is the owner/manager of Eagle Creek Gravel, LLC and appeared and provided a statement of support for the two proposals, reporting that the Jansiks have been great neighbors at another site, that he has great confidence in Stacy and Travis Jansik and that is the reason he supports their proposals here and is willing to work with them. Mr. Emmert notes that we all need gravel for roads and a variety of things, and it is an important resource.
13. At the conclusion of the public hearing, the Hearings Officer made a statement asking whether any party or member of the public wanted an opportunity to provide additional evidence, arguments, or testimony, explaining that the record would be left open for a minimum of 7 days for the purpose of allowing all parties the opportunity to submit additional evidence, arguments, or testimony for consideration in this matter, if requested. No one requested that the record be left open, and the applicant waived the period for final written argument. The Hearings Officer ordered the record closed at 4:00 pm on June 15, 2023, leaving time for County staff to upload the remainder of Exhibits 1-7 discussed at the hearing.

C. PREHEARING COMMENTS, SUBMITTALS, FACTS

1. The application includes a completed land use application form, site plan, application fee and completed supplemental application addressing the criteria in Section 1203 of the ZDO. The application also includes a description of the proposed use and vicinity map. The application was initially submitted on March 21, 2023. Following submission of additional requested information the application was deemed complete April 19, 2023. The subject property is not located inside an urban growth boundary. The 150-day deadline for final action on the application pursuant to ORS 215.427(1) is September 18, 2023.
2. The subject property is not located in a public surface water district. Surface water is regulated to Section 1008 of the ZDO and administered by the DTD Engineering Division. The subject property is not located in a public or private water district. Water for adjacent residential uses is provided by private wells. The subject property is not located in a public or private sewer district. Sewage disposal for the adjacent residences is accommodated by on-site septic systems. The site's fire protection is provided by Estacada Main Station #110.
3. The County requested responses to the application from: a) Department of Transportation and Development (DTD), Traffic Engineering (TE); b) Department of Geology and Mineral Industries (DOGAMI); c) Estacada Main Station #110; d) Eagle Creek – Barton CPO; e) Clackamas River Watershed Council, and; f) Property Owners within 2,640 feet.
4. The County received written comments from Ira (Andy) and Beverly Rapp, who own and reside on property located at 25650 SE Talons Road, Eagle Creek, OR 97022, with their

property directly south and adjacent to the existing Eagle Creek Rock Products site. The Rapps asked several questions and expressed a number of concerns in their written comments, also providing several photos to illustrate their questions and concerns. The Rapps point to requirements for a 50-foot setback to the property, yet note that the area adjacent to their own property is used for a parking lot and storage area (providing photos), asserting the setback area should not be used in this way and impacts their privacy, with related questions concerning the requirement for installation of a berm. The Rapps note that the applicant has been using a watering truck to minimize dust and report that this seems to be working, but question how the containment of potential dust within 300 feet of off-site dwellings is going to be accomplished, reporting that the existing road does not provide enough room to allow for this, providing photos. (Exhibit 4)

5. In their written comments the Rapps also assert that the existing bridge on SE Talons Road is not sufficient for the weight of the trucks used by applicant, reporting that the bridge/culvert collapsed a couple years ago and Eagle Creek Rock Products fixed it by placing a steel plate over the water and then covering it with gravel. The Rapps expressed concern that this is only a temporary fix and, should the bridge collapse again they will be stranded. The Rapps suggest a permanent fix such as replacing the culvert and upgrading the bridge, providing photos showing the crossing. (Exhibit 4)
6. The Rapps also report experiencing issues with trucks parking at the gate entrance to the existing Eagle Creek Rock Products site as early as 6:00 am, idling their motors until the gravel pit opens at 7:30 am, causing excessive noise that at times has rattled their windows and doors. The Rapps also report having had to ask truck drivers waiting for the gate to open to move so that they could leave their own property. The Rapps assert there should be signage placed at the gate listing the hours and requiring drivers to respect the quiet time for residents. The Rapps further point to SE Talons Road, noting it is a substandard gravel road that is not two lanes wide for its entire length and has no posted speed limit. The Rapps request that the applicants ask drivers to maintain a speed limit of no more than 15 mph on this road to minimize dust and allow for safe passage along the road. The Rapps' written comments also express concerns about road repairs during the winter months, and discuss issues with erosion and water management that have been addressed by the applicant in the past but may require active ongoing observation. (Exhibit 4)
7. The County received written comments from Kenji and Jennifer King, who own two properties near the proposed mining site: one property at 24360 SE Frog Pond Lane and the other at 25360 SE Frog Pond Lane, Eagle Creek, OR 97022. These two properties are adjacent to the property that is the subject of the applicant's proposed mining site in application Z0114-23-C. The Kings submitted written comments opposed to approval of application Z0114-23-C, asserting that if the subject site is opened for mining, then their property values would drop severely, making them unable to sell. The Kings describe their current home's location as secluded and quiet with the existing gravel pit a fair distance from their home, and buffered by a large patch of trees. The Kings also report that the gravel pit was not active when they bought the property and the area was very quiet. The Kings contend that approval of application Z0114-23-C would put the gravel pit right next to their rental home at the 24360 address, making it impossible to sell. The Kings further report that the well for their rental property is not very deep and that there is a noticeable change in water quality during the summer as the water table drops, contending that the current mining operation contributes to this issue and asserting that approving the mining on the adjacent site will likely compromise the well for their rental home. (Exhibit 6)

8. Kenneth Kent, County Development Engineering, submitted written comments on behalf of County Development Engineering staff with a number of facts and findings, and proposed conditions. These written comments were submitted subsequent to completion of the staff report prepared by Ms. Fields, but were referenced in her report as staff findings. Mr. Kent submitted the following proposed Facts and Findings: (Exhibit 5)
- a. “The applicant has proposed conditional use applications on two parcels for aggregate mining, with processing of materials on the adjacent Eagle Creek Rock Products site. The proposed development is subject to the provisions of *Clackamas County Zoning and Development Ordinance (ZDO)* section 1007 pertaining to roads and connectivity, section 1015 pertaining to parking and site circulation, ZDO Section 1006 and the Clackamas County Roadway Standards Chapter 4 pertaining to surface water management and erosion control.”
 - b. “The existing Eagle Creek Rock Products processing facility is located at the terminus of SE Talons Road. SE Talons Road is a non-maintained local access road, located within a 50-foot wide public right-of-way. A portion of the public right-of-way abuts the north and south sides of Tax Lots 34E05 03400 and 03500 (Z0113-23-C), and the applicant is proposing a right-of-way vacation to incorporate those portions of the right-of-way into the mining site. The existing SE Talons Road right-of-way extends approximately 2,688 feet north from SE Folsom Road, and then turns 90 degrees and extends approximately 423 east to a former rail right-of-way now owned by the Oregon Parks and Recreation Department. With Eagle Creek to the north, and the former rail right-of-way to the east, SE Talons Road in its current configuration is not needed. With vacation of the right-of-way, it will be necessary to provide for a public turnaround at the end of the roadway. A half hammerhead turnaround is an acceptable design.”
 - c. “Consistent with *ZDO* Section 1007, development applications are required to bring the roadway frontage up to current standards, including, but not necessarily limited to, right-of-way width, road width and storm drainage facilities. In addition, Roadway Standards Section 225.4 requires adequate off-site roadway facilities to serve development. Although, the applicant has indicated that the number of employees, onsite equipment, and trucks hauling product on SE Talon Road will not increase from current levels, the expanded mining areas will extend the duration of the processing operation and thereby impacts to the roadway. In order to safely accommodate trucks on SE Talons Road, a minimum improved road width of 20 feet is needed. The applicant will be required to verify the existing width and condition of SE Talons Road from the project site out to SE Folsom Road. Where necessary, the applicant will be required to add gravel to provide the minimum road width, as well as repair pot holes, as well as return the road to as good or better condition when mining on the subject parcels has ceased.”
 - d. “The proposed surfacing mining operations will involve transportation of materials to the existing processing facilities over private access roads within the site, with no trucks or equipment related to mining accessing SE Talons Road or SE Frog Pond Lane. The applicant will be required to construct gravel access road to the minimum standards of Roadway Standards Drawing R100.”
 - e. “The Department of Transportation and Development, Engineering Division is the surface water authority for the proposed project. The stormwater management plan for the proposed site improvements will require compliance with Clackamas County Roadway Standards Chapter 4.”

- f. “ZDO Section 1007.07 requires that development is served by a transportation system that has adequate capacity to handle any increased vehicle trips generated by new development. The applicant provided a Transportation Analysis Letter, by Lancaster Mobley, dated January 22, 2023 indicating that there will be no change in the average daily vehicle trips as a result of the expanded mining area. The Engineering staff finds that the capacity of the roadway and intersections serving the project site will continue to operate within standards, satisfying the provisions of Section 1007.07.”
9. In his written comments Mr. Kent also submitted several recommended conditions of approval based on the requirements detailed in the County’s Comprehensive Plan and Zoning and Development Ordinance, largely intended to illustrate to the applicant specific details regarding the required improvements.

D. FINDINGS AND DISCUSSION

The evidence presented is reliable, probative and substantial evidence upon which to base a determination in these matters. This application is being processed as a Type III Permit, pursuant to Clackamas County Zoning and Development Ordinance (ZDO) Section 1307. The Type III procedure is quasi-judicial in nature, and involves land use actions governed by standards and approval criteria that require the use of discretion and judgment. The issues associated with the land use action may be complex and the impacts significant, and conditions of approval may be imposed to mitigate the impacts and ensure compliance with this Ordinance and the Comprehensive Plan. The Type III procedure is a quasi-judicial review process where the review authority receives testimony, reviews the application for conformance with the applicable standards and approval criteria, and issues a decision. This application is subject to Clackamas County Zoning and Development Ordinance (ZDO) Section(s) 316, 818, 1002, 1005, 1006, 1007, 1010, 1021, 1203; and the Comprehensive Plan. Clackamas County Planning and Zoning Staff have reviewed these Sections of the ZDO and Comprehensive Plan in conjunction with this proposal and make the following findings and conclusions: *[These findings and conclusions were reviewed, modified, and/or adopted by the Hearings Officer, with comments denoted by boldface type in italics.]*

BACKGROUND INFORMATION, SITE AND AREA DESCRIPTION AND SERVICES:

1. Background:

The applicant Stacy Jansik submitted two separate, but substantially similar Conditional use Permits to conduct surface mining of aggregate material to be processed at the adjacent Eagle Creek mining operation. Each application was reviewed by the County, and a joint land use hearing is being held. The application file no. Z0114-23-C, is reviewed here. The second application, file no. Z0113-23-C, is reviewed in a different staff report due to separate environmental concerns and separate access to the proposed site. While Z0113-23-C is reviewed in a separate land use decision and staff report, it is largely identical to this one.

At the end of Talons Rd, Eagle Creek Rock Products currently has a processing site located on parcels 34E06D 00100, 00200, 00300 & 34E05 02301 that was subject to the non-conforming use verification completed in 1999 through Z0531-99. The applicant is proposing to excavate aggregate material from the top 60-70 feet of the property’s surface to process at the adjacent mining operation.

2. Project Summary by Applicant:

The subject property is located at 25528 SE Frog Pond Ln in unincorporated Clackamas County, outside of the Urban Growth Boundary. The subject site encompasses tax lot identified as Tax Map 34E06D, Tax Lot 2800. The site totals 10.5 acres in size and is zoned RRFF-5, Rural Residential Farm Forest 5-Acre. This application requests a Conditional Use Permit for extraction-only surface mining at the subject property. The mined aggregate is proposed to be transferred via internal private access roads to the adjacent Eagle Creek Rock Products property for processing.

3. Site Description: Property is almost 10.5-acres according to Tax Assessor's office. Current use is a single family home.

4. Natural Features: The property is vacant. There are no mapped "natural features" present as meant here other than Currin Creek, located on the SW of the property (PF01G), and a tributary to Currin Creek that is identified as R4SBC on the Statewide Wetlands Inventory.

5. Surrounding Conditions: This area between to the north is the gravel and mining operation. Properties to the south are rural residential lots with single-family homes.

6. Service Providers:

A. Surface Water: The subject property is not located in a public surface water district. Surface water is regulated pursuant to Section 1008 of the ZDO and administered by the DTD Engineering Division.

B. Water: The subject property is not located in a public or private water district. Water for adjacent residential uses are provided by a wells.

C. Sewer: The subject property is not located in a public or private sewer district. Sewage disposal is for the adjacent residences are accommodated by an on-site septic system.

D. Fire Protection: Estacada Main Station #110

7. Responses Requested:

A. Department of Transportation and Development (DTD), Traffic Engineering (TE)

B. Department of Geology and Mineral Industries (DOGAMI)

C. Estacada Main Station #110

D. Eagle Creek - Barton CPO

E. Clackamas River Watershed Council

F. Property Owners within 2,640 feet

8. Responses received:

A. DTD, TE; comments received will be incorporated throughout and included as Exhibit #4

B. Rapp, area land owner

C. King, area land owner

9. Previous Land Use actions:

- Z0531-99-NCU: Non-conforming use verification identified Court Case no 76-12-211 found the commercial sand and gravel operation including extraction and processing of that included crushing, screening, and washing rock, was established on adjacent properties (34E06D 00100, 00200, 00300 & 34E05 02301) prior to zoning.

- ZPAC0029-21: Pre-application for Conditional Use Application.

PART 1. SUBMITTAL REQUIREMENTS – CONDITIONAL USE PERMIT

1. Subsection 1203.02 of the Zoning and Development Ordinance lists the information that must be included in a complete application for a conditional use permit.

Finding: This application includes a completed land use application form, site plan, application fee and completed supplemental application addressing the criteria in Section 1203 of the ZDO. The application also includes a description of the proposed use and vicinity map. All the submittal requirements under Subsection 1203.04 are included in the application. The application was submitted on 3/21/23. Following review, the application was deemed complete 4/19/23.

Finding: The submittal requirements of Subsection 1203.02 are met. *The Hearings Officer concurs.*

2. Subsection 818.01 SUBMITTAL REQUIREMENTS. In addition to the submittal requirements identified in Subsections 1203.02 and 1307.07(C), an application for a permit for surface mining shall include:
 - A. Site plan, drawn to a scale of not less than one inch equals 600 feet, showing:
 1. Lot lines, dimensions, and area of the subject property;
 2. Location of all bodies of water, wetlands, roads, railroads, and utility facilities within or adjacent to the subject property;
 3. Contour lines with intervals identified;
 4. Locations and dimensions of existing and proposed structures;
 5. Location of existing and proposed driveways and parking areas;
 6. The boundaries of the mining site;
 7. Areas for excavation;
 8. Areas for processing and stockpiling;
 9. Areas for settling ponds and washing plants;
 - B. A description of the present use of the subject property;
 - C. The starting date of the mining and expected life of the mining operation;
 - D. A description of each mineral to be mined and the estimated quantity to be extracted;
 - E. A description of the mining methods and types of equipment to be used;
 - F. The characterization of the groundwater and surface water based on available wells, drill logs, springs, and surface drainages within one mile of the proposed mining operation;
 - G. A surface water management plan to provide protection against contamination of groundwater and discharge of sediments into adjacent waterways. This plan must include provisions for settling ponds, diversion dikes, and channels, or other facilities as may be required;
 - H. An erosion control plan detailing ground cover plantings and other methods of controlling erosion of surfaces affected by the mining;

Finding: The application materials provided includes materials that touches upon each required item and additional details can be verified as conditioned. These criteria can be met as conditioned.

The Hearings Officer concurs that these criteria can be met as conditioned.

PART 2. CONDITIONAL USE PERMIT

1. **Subsection 1203.03** of the Zoning and Development Ordinance lists six criteria that must be satisfied in order to approve this Conditional Use.

- A. **Subsection 1203.03(A):** *The use is listed as a conditional use in the zoning district in which the subject property is located.*

Section 316, RRFF-5: The subject property is zoned RRFF-5, Rural Residential District. Section 316 of the ZDO controls land uses in the underlying RRFF-5 zoning district. Table 316-1 lists the uses that are allowed and identifies that “Operations Conducted for the Exploration, Mining, or Processing of Geothermal Resources or Other Subsurface Resources are a Conditional Use in the RRFF-5 Zoning District.

Finding: This criterion is satisfied. *The Hearings Officer concurs.*

- B. **Section 1203.03(B):** *The characteristics of the subject property are suitable for the proposed use considering size, shape, location, topography, existence of improvements and natural features.*

Finding:

1. Size: The site is approximately 10.5-acres in size. The submitted site plans and narrative demonstrate the property is of sufficient size to accommodate the proposed surface area, along with screening and circulation.
2. Shape: The property is approximately triangular in shape. Combined with size, the shape does not present any significant limitation to the proposed use of the site.
3. Topography: The subject property can be described as gently rolling - not an impediment to the proposed use.
4. Location: The site is located along the eastern side of Frog Pond Ln. Staff is unaware of any particular locational issues that would adversely affect the use.
5. Improvements: The subject property is vacant.
6. Natural Features: Currin Creek is Located on the SW of the property (PF01G). The property also contains a tributary to Currin Creek that is identified as R4SBC on the Statewide Wetlands Inventory.
7. Summary: The location, size, shape, topographic, natural and developed characteristics of the property are suitable to accommodate the proposed use.

This criterion is met. *The Hearings Officer concurs that these criteria are met.*

- C. **Section 1203.03(C):** *The proposed use is consistent with Subsection 1007.07, and safety of the transportation system is adequate to serve the proposed use.*

1. Subsection 1007.07: Transportation Facilities Concurrency

- a) Subsection 1007.07(A) shall apply to the following development applications: design review, subdivisions, partitions, and conditional uses.
- b) Subsection 1007.07(B): “Approval of a development shall be granted only if the capacity of transportation facilities is adequate or will be made adequate in a timely manner”
- c) Subsection 1007.07(C): As used in Subsection 1007.07(B), adequate means a maximum volume-to-capacity ratio (v/c), or a minimum level of service (LOS), as established by Comprehensive Plan Tables 5-2a, Motor Vehicle Capacity Evaluation Standards for the Urban Area, and 5-2b, Motor Vehicle Capacity Evaluation Standards for the Rural Area.
- d) Subsection 1007.07(D): For the purpose of calculating capacity as required by Subsections 1007.07(B) and (C), the following standards shall apply: 1. The methods of calculating v/c and LOS are established by the Clackamas County Roadway Standards. 2. The adequacy standards shall apply to all roadways and intersections within the impact area of the proposed development. The impact area shall be identified pursuant to the Clackamas County Roadway Standards
- e) Subsection 1007.07(E): As used in Subsection 1007.07(B), timely means:

[The relevant portion states:] “Alternatively, timely means that necessary improvements will be constructed by the applicant or through another mechanism, such as a local improvement district. Under this alternative:

- a. Prior to issuance of a certificate of occupancy for a conditional use or a development subject to design review and prior to recording of the final plat for a subdivision or partition, the applicant shall do one of the following:*
 - i. Complete the necessary improvements; or*
 - ii. For transportation facilities under the jurisdiction of the County, the applicant shall provide the county with a deposit, letter of credit, performance bond, or other surety satisfactory to county staff pursuant to Section 1311, Completion of Improvements, Sureties, and Maintenance. For transportation facilities under the jurisdiction of the state, a city, or another county, the applicant shall comply with the respective jurisdiction’s requirements for guaranteeing completion of necessary improvements. This option is only available if the jurisdiction has a mechanism in place for providing such a guarantee.”*

Finding: Under ZDO Section 1007.07(B) the conditional uses proposed are subject to the concurrency requirements since the expansion of the mining operation involves additional properties and thus the development is not a modification on the same property. The traffic analysis letter provided with the application notes that the road is currently classified as substandard and is partially gravel. Additionally, the traffic

analysis letter was based on the understanding that the number of employees and trucks going to the site is not anticipated to increase with the addition of the 7.6 acres of resource extraction because the mining of the new areas are proposed to replace the aggregate extracted from the existing site. The traffic engineer that completed the traffic analysis estimated that there will continue to be 25-75 vehicle trips per day and the proposal will not increase that number of vehicle trips, or types of trips, and thus the level of service and capacity of the existing system are anticipated to stay the same. Thus, there is no needed improvements that would be compared to the five-year Capital Improvement Program. Staff will confirm with the Transportation and Engineering Division comments that the analysis provided is accurate. These criterion can be met as conditioned.

The Hearings Officer notes that County Transportation and Engineering staff confirmed that this analysis is correct, reporting in its findings in Exhibit 5: “The Engineering staff finds that the capacity of the roadway and intersections serving the project site will continue to operate within standards, satisfying the provisions of Section 1007.07.” Further, the discussion with the applicant at the hearing corroborates the finding that the proposal here will not result in an increase to the number of vehicle trips, or types of trips, as the applicant seeks to maintain the current scope of the gravel quarry operation while incorporating new parcels. The Hearings Officer concurs in the above discussion and analysis, as supplemented by Exhibit 5, finding that these criteria can be met as conditioned.

- f) Subsection 1007.07(F): As used in Subsection 1007.07(E), necessary Subsection 1007.07(E), necessary improvements are:
1. Improvements identified in a transportation impact study as being required in order to comply with the adequacy standard identified in Subsection 1007.07(C).
 - a. A determination regarding whether submittal of a transportation impact study is required shall be made based on the Clackamas County Roadway Standards, which also establish the minimum standards to which a transportation impact study shall adhere.
 - b. If a transportation impact study is not required, County traffic engineering or transportation planning staff shall identify necessary improvements or the applicant may opt to provide a transportation impact study
- g) Subsection 1007.07(G). Notwithstanding Subsections 1007.07(D) and (F)(1)(a), motor vehicle capacity calculation methodology, impact area identification, and transportation impact study requirements are established by the ODOT Transportation Analysis Procedures Manual for roadways and intersections under the jurisdiction of the State of Oregon.
- h) Subsection 1007.07(H). As an alternative to compliance with Subsection 1007.07(B), the applicant may make a voluntary substantial contribution to the transportation system.

Finding: The applicant reviewed and confirmed with the Transportation and Engineering Division that a transportation impact study was not required. However, the applicant provided a traffic analysis letter. The traffic analysis letter reviewed the safety data at the intersections of SE Frog Pond Ln and SE Folsom Rd in addition to the intersection of SE Folsom Rd and Hwy 211. The traffic engineer that completed the traffic analysis found no significant trends and determined that the proposal will not increase safety issues on the roads or at the intersections. Thus, there is no needed improvements that would be needed in relation to the proposal. Using the AASHTO sight distance standards, the traffic analysis found no need to mitigate deficient site distances. Staff will confirm with the Transportation and Engineering Division comments that the analysis provided is accurate. These criterion can be met as conditioned. *The Hearings Officer concurs.*

- D. **Section 1203.03(D):** “The proposed use will not alter the character of the surrounding area in a manner that substantially limits, impairs or precludes the use of surrounding properties for the primary uses allowed in the zoning district(s) in which surrounding properties are located.”

Finding:

1. The site is in the RRFF-5 Zoning District and surrounded by other properties in the same zone. Area land use is mixed, to include properties in farm and forest use along with rural residential home-sites. Primary uses allowed in the RRFF-5 Zoning District are listed in Table 316-01, and include farm and forest uses or rural residential development.

In the RRFF-5 District, the evaluation of compliance with Subsection 1203.01(D) shall include consideration of impacts on dwellings even though adjacent properties are currently involved in mining.

This criterion does not require the use to not have any impacts, but instead the impacts must not *substantially limit*, impair or preclude the use of surrounding properties for the allowed primary uses. *[Emphasis added by Hearings Officer]*

2. The applicant points out “The site is located in an area with existing aggregate resource. In addition, the site is adjacent to an existing aggregate mining and processing operation, minimizing transport of the raw materials to a processing site. As the site will be an expansion resource site for the existing adjacent operation, no additional equipment will be required to process the material.”

Staff notes that a previous land use application for expanding mining operations onto a nearby site was denied due concerns regarding traffic at the intersection of SE Folsom Rd which would still be utilized for the existing mining operation and is proposed to serve the expanded site as well a (Z0233-88-C).

Staff feels discussion is warranted regarding noise and traffic associated with this proposal, particularly as this came to us subsequent to a denied land use application and neighbor testimony regarding traffic and noise.

Further discussion is required for this criterion.

From Hearings Officer:

In making a determination concerning ZDO 1203.03(D), the hearings officer must first make a determination identifying the character of the surrounding area, then conduct an inquiry to determine whether the proposed use would: (1) substantially limit; (2) substantially impair; or (3) substantially preclude, the primary identified uses on properties within the surrounding area, essentially altering the character of the surrounding area.

First, I find no real question of fact presented that the character of the surrounding area is farm and forest use along with rural residential use, together with the existing uses by the Eagle Creek Rock Products operation. In other words, I find that the quarry is part of the existing character of this area. Therefore, given that the actual primary uses of the surrounding property are farm and forest, rural residential, and mining, the effects of the applicant's proposal on these uses must be considered. I find no evidence that the proposed mining use impacts farm or forest uses, or the existing mining use. The continued use of the original site for activities related to the quarry are not at issue here: the two applications being considered here are for an expansion related to this existing use to include aggregate mining on two adjacent properties. Thus, it is the impacts to rural residential use of the proposed expanded use to include these additional sites that must be evaluated. Specifically, whether approval of the applicant's proposals at either site will alter the rural residential character in a manner that substantially limits, impairs, or precludes these primary allowed farm, forest, and rural residential uses. The fact that a proposed use may cause inconveniences and annoyances is not enough to deny an application.

I find the following areas of potential impact: roads, dust, noise, sight, and water. Mr. King also asserted that approval of the proposed mining activity in File No. Z0114-23-C would adversely affect his property values. Alleged property value impacts are not relevant to the applicable approval criteria. The Land Use Board of Appeals ("LUBA") held that "[p]otential loss of property value does not affect the use of surrounding properties for residential and other primary uses within the meaning of ZDO 1203.01(D). . ." Tylka v. Clackamas County, 34 Or LUBA 14 (1998).

1) Roads: there are existing impacts to the local road that the applicant currently addresses by making repairs, filling potholes, and using water to keep down dust. The applicant is not proposing any changes to its use of the road and I find that these impacts are adequately addressed, noting further that the applicant will be required to improve the gravel road to 20 feet, complete with storm drainage facilities, build a half hammerhead or similar turnaround at the end of SE Talons Rd. and keep the road repaired to an "as good or better" standard when the mining has ceased. Related to the roads is the impacts from trucks on SE Talons Rd., particularly idling before the gates to the facility are open and blocking neighbors' access. I find these impacts are adequately addressed by the conditions requiring posting of signage marking the area as "No Idling" and "No Parking" and posting of business hours.

2) Dust, Noise and Sight: Similarly, there are existing impacts to local rural residential use related to dust, noise, and sight related to the operation of the existing rock quarry. Ms. Rapp and Ms. Lenchitsky both referred to these existing impacts, and Mr. King noted these will become more of an impact to his property if the mining proposal in File No. Z0114-23-C related to the Frog Pond Ln. site is approved, as it will move the quarry operation closer to his home and his rental property. These impacts will be lessened (but not eliminated) by the installation of berms and the plantings required to help screen the quarry activities from these neighboring residential uses. I find that, with the mitigation required by the conditions discussed at the hearing, these impacts will remain annoyances, but will not substantially limit, substantially impair, or substantially preclude these primary identified residential uses on properties within the surrounding area.

3) Water: Mr. King pointed to possible adverse affects to the water quality of his well. With respect to water quality and wells on adjacent propeties, I refer to the discussion concerning DOGAMI permitting requirements and evalation of impacts on groundwater, and find that these potential impacts will be adequately addressed through that process. I also note the discussion concerning the Jansiks' use of water on site from existing washing ponds, rather than wells.

The Hearings Officer finds that, as conditioned, this criterion is satisfied.

- E. **Section 1203.03(E):** *“The proposal satisfies the goals and policies of the Comprehensive Plan that apply to the proposed use.”*

Finding: The applicant states:

As noted in the Clackamas County Comprehensive Plan’s Natural Resource Chapter, “aggregate supplies are integral to the general economic development in the County;” yet, the supply near the urban area is limited. This application proposes the extraction of aggregate resource that will be processed at an adjacent existing mining operation, and reclamation of the site in accordance with applicable requirements of Clackamas County and DOGAMI. As such, this proposed conditional use application for surface mining supports the goals and policies of the Comprehensive Plan.

Additional applicable policies from Comprehensive Plan are included below:

- 3.J.4 The county shall use the site plan review process for the Mineral and Aggregate Overlay District solely for determining whether an application to mine complies with the site-specific program developed through the county’s Goal 5 analysis or complies with other standards of the Zoning and Development Ordinance.
- 3.J.8 The county will coordinate its planning and permitting processes for mineral and aggregate resources with the Oregon Department of Geologic and Mineral Industries (DOGAMI) and Oregon Department of State Lands (DSL). 3.J.8.1 To assist state agency permit decisions, the county will identify postmining land uses as part of any program to protect a significant mineral or aggregate resource site. 3.J.8.2 The county recognizes the jurisdiction of DOGAMI for the purpose of mined land reclamation pursuant to ORS 517.750 to 517.900 and the rules adopted thereunder. 3.J.8.3 Unless

specifically authorized by ORS 517.830(3), DOGAMI should delay its final decision on approval of a reclamation plan and issuance of an operating permit, as those terms are defined by statute and rule, until all issues concerning local land use are decided by the county. 3.J.8.4 No mining or processing activity, as defined by the Zoning and Development Ordinance, shall begin until the county has issued a final land use decision and the permittee provides copies of an approved reclamation plan and operating permit issued by DOGAMI or DSL.

- 3.J.9 The county shall resolve issues relating to mine truck use of public roads as directed in county transportation plans and policies. The county reserves the right to make agreements with aggregate operators about the use of county roads independent from its decisions in Goal 5 analysis.

The criteria discussed above for submittals, mining, roadways, and transportation concurrency provide information indicating these policies are met, or met as conditioned related to DOGAMI and DSL. This criterion is met as conditioned. ***The Hearings Officer concurs in the above analysis and findings that these criteria are met as conditioned.***

- 5.Q.5 (Chapter 5, Transportation System Plan): “Access Standards shall be implemented through the Zoning and Development Ordinance and the County Roadway Standards. Where access management standards are adopted by the County in Special Transportation Plans, those standards shall apply.”

Finding: Planning staff defers to comments submitted from Traffic Engineering.

This criterion is met with conditions. ***The Hearings Officer reviewed and considered the referenced comments submitted from County Transportation and Engineering Development Staff (Exhibit 5), in addition to the staff report, concurring in the submitted facts and findings and related analysis, adopting the proposed conditions of approval and finding that these criteria can be met as conditioned.***

- F. **Section 1203.03(F)**: *The proposed use complies with any applicable requirements of the zoning district and overlay zoning district(s) in which the subject property is located, Section 800 (further below, under Part 3 of this report), and Section 1000.*

Sections: 1000, 1002, 1003, 1004, 1005, 1006, 1007, 1009, 1010, 1015, 1021, were reviewed.

2. ZDO SECTION 1000: DEVELOPMENT STANDARDS:

Because a surface mining operation is an industrial use pursuant to ZDO 202, staff reviewed the following 1000 Sections that were applicable to industrial uses pursuant to Table 1001-1. Sections of the zoning criterion that were reviewed and apply to the subject development are included below:

A. 1002 PROTECTION OF NATURAL FEATURES

Finding: Staff reviewed 2022 aerial images of the subject property along with electronic records of the site and found evidence of a detached single-family home on the property and the potential of a small tributary located at the south of the property. The surface mining proposed is not on or near steep slopes or significant landforms, and the site is outside the deer and elk winter range. However, there appears to be a stream mapped by the Statewide Wetlands Inventory at the southern end of the property. Therefore, these criterion can be met as conditioned.¹ The Hearings Officer concurs, noting that the related condition of approval addresses this finding.

B. 1003 HAZARDS TO SAFETY

Finding: Staff reviewed electronic records of the site and found no steep slopes. The surface mining is proposed to cover the entire site except for the 50 foot buffers to the east and south along with the earth berms within those buffers. There are no known hazards to safety identified in ZDO 1003 that will be impacted by this project. These criterion are therefore not applicable to the project proposed through Z0114-23 and are included here for informational purposes only.

C. 1004 HISTORIC PROTECTION

Finding: Staff reviewed electronic records of the site and found no evidence of historic resources on the subject property. Therefore, none of the known Historic Landmarks or known historic resources of Clackamas County identified in ZDO 1004 will be impacted by this project. These criterion are therefore not applicable to the project proposed through Z0114-23 and are included here for informational purposes only.

D. 1005, SITE AND BUILDING DESIGN:

Section 1005 of the ZDO sets forth the standards, requirements and considerations that pertain to additional techniques to meet sustainability goals. Staff has reviewed Section 1005 and finds the following criteria apply:

a. Subsection1005.05, Outdoor Lighting:

1. Subsection1005.05(A), Outdoor lighting devices:

A. Outdoor lighting devices:

- i. *“Shall be architecturally integrated with the character of the associated structures, site design and landscape.*
- ii. *Shall not direct light skyward.*
- iii. *Shall direct downward and shield light; or direct light specifically toward walls, landscape elements or other similar features, so that light is directed within the boundaries of the subject property;*

¹ The original Staff Report submitted in file no. Z0114-23-C erroneously included the findings for this section in file no. Z0113-23-C. The Hearings Officer included the correct staff finding here.

- iv. *Shall be suitable for the use they serve, e.g. bollard lights along walkways, pole mounted lights for parking lots;*
- v. *Shall be compatible with the scale and intensity of uses they are serving. Height of pole mounted fixtures shall not exceed 25 feet or the height of the tallest structure onsite, whichever is less; and*
- vi. *At entrances, shall be glare-free. Entrance lighting may not exceed a height of 12 feet and must be directed downward.”*

Finding: The applicant is silent on site lighting. A condition is warranted requiring any future outdoor lighting associated with the proposed expansion of the surface mining operation. *All fixtures shall be downward directed and shielded and will be compatible and appropriate for the use, location and overall style of the building and property.*

If additional lighting will be installed, the applicant shall submit an outdoor lighting design plan prior to installation for review and approval by the Planning and Zoning Division.

[Finding]: These standards of Section 1005 can be met. *The Hearings Officer concurs, adopting the proposed related condition of approval.*

E. 1006, UTILITIES, STREET LIGHTS, WATER SUPPLY, SEWAGE DISPOSAL, SURFACE WATER MANAGEMENT, AND EROSION CONTROL:

Section 1006 of the ZDO sets forth the standards, requirements and considerations that pertain to utility lines and facilities.

a. Subsection 1006.05 – Water Supply Standards Outside The Portland Metropolitan Urban Growth Boundary And Mount Hood Urban Area.

- i. The provisions of this section apply outside the Portland Metropolitan Urban Growth Boundary and the Mount Hood urban area. Applicants for any development permit shall specify a lawful water source for the proposed development, such as a public or community water system, certificated water right or exempt-use well.

Finding: The applicant is silent on water used to water the roads for dust reduction. The applicant does state “No installation of water service is needed or planned for the proposed surface mining activity on the site. *And* no development is proposed on the site. The proposed aggregate surface mining will not require public or community water service.” A condition is warranted requiring any water uses associated with the proposed expansion of the surface mining operation. *A lawful water source for the proposed development, such as a public or community water system, certificated water right or exempt-use well shall be used if water service is needed. The Hearings Officer agrees, finding that as conditioned this criterion can be met.*

b. Subsection 1006.07 - Subsurface Sewage Disposal Standards:

All development proposing subsurface sewage disposal shall receive approval for the system from the Clackamas County Septic & Onsite Wastewater System Programs prior to submittal of a land use application to the County for development.

Finding: The subject property is not located in a public sanitary sewer district. The applicant notes that “this application proposes use of the site for extraction-only surface mining. No new development or processing of the aggregate is proposed to occur on the subject site.” Without the addition of a building with a bathroom, staff do not anticipate that there will be a need for a septic or onsite wastewater system, unless it is required by a DOGAMI or DEQ permit. This criterion is met. *The Hearings Officer concurs in this finding.*

c. Subsection 1006.08 - Surface Water Management Standards:

- i. “All developments shall provide for positive drainage and adequate conveyance of storm and surface water runoff from roofs, footings, foundations, and other impervious or near-impervious surfaces to an appropriate discharge point and shall:
 1. Comply with the requirements of any special districts with surface water management regulatory jurisdiction; or
 2. The requirements of Section 1008 and the County Roadway Standards in areas not under the jurisdiction of a surface water management regulatory authority.
- ii. Installation of stormwater management and conveyance facilities shall be coordinated with the extension of necessary water and sanitary sewer services.
- iii. Approval of a development shall be granted only if the applicant provides a preliminary statement of feasibility from the surface water management regulatory authority. The statement shall verify that adequate surface water management, treatment and conveyance is available to serve the development or can be made available through improvements completed by the developer or the system owner.
 1. The service provider may require a preliminary storm water management plan, storm drainage report, natural resource assessment and buffer analysis prior to signing the preliminary statement of feasibility.
 2. In those areas that are not within a surface water management district, the preliminary statement of feasibility shall be signed by the Surface Water Management Agency of Clackamas County (SWMACC).
 3. The statement shall be dated no more than one year prior to the date a complete land use application is filed and need not reserve surface water treatment and conveyance system capacity for the development.

Finding: Clackamas County is the surface water management authority for the area including the subject site. Drainage facilities shall be designed and constructed in conformance with *Clackamas County Roadway Standards* Chapter 4, providing water quality treatment and conveyance to a suitable outfall. Surface water issues will be dealt with through Traffic Engineering. The applicant submitted a Preliminary Statement of Feasibility signed by Traffic Engineering indicating it is feasible for the site to handle additional surface water from this use. The standards of Section 1006 can be met as conditioned. ***The Hearings Officer concurs in this finding.***

d. **1007, ROADS AND CONNECTIVITY:**

Finding: No new roads are proposed and the traffic analysis provided showed no new trips or traffic would occur with the proposed use. Applicable sections were addressed further above and these criterion can be met as conditioned. ***The Hearings Officer concurs, finding that these criteria can be met as conditioned.***

e. **1009, LANDSCAPING**

Finding: Staff reviewed the application materials and aerial images that show the subject property predominantly vacant. The applicant is proposing a 50 foot buffer with an earthen berm to provide screening, buffering and landscape coverage. Additional information on the type of landscaping proposed on the earth berm including the plant species, and height of berm plus plants is needed. The applicant did not identify on the site plan the % of the site that would be covered by the landscaped berm. These criterion can be met as conditioned. ***The Hearings Officer concurs, finding that these criteria can be met as conditioned.***

f. **1010, SIGNS:**

Finding: Applicant is silent on this point. The standards of Section 1010 can be met as conditioned. The signs recommended to identify the hours of operation and the idle free zone would be exempt from the need for a sign permit if they are three square feet or less in size. ***The Hearings Officer concurs, finding that these standards can be met as conditioned.***

g. **1015, PARKING AND LOADING:**

Findings: Applicant plans to use SE Talons Road to access proposed surface mining expansion, as shown on submitted site plans and the number of visits or trips generated are not expected to increase. The applicant also indicates that type of equipment on site will not be changing.

ZDO Section 1015 requires adequate on site circulation for the parking and maneuvering of all vehicles anticipated to use the site. For uses outside the UGB, parking and maneuvering areas require a surface of screened gravel or better. Location of internal roads for maneuvering are anticipated to be identified in the additional permits obtained from DOGAMI for this proposed use.

Planning staff are deferring to the comments provided by the Transportation and

Engineering staff regarding onsite circulation. As conditioned these standards can be met. *The Hearings Officer adopts these findings, together with findings contained in the comments provided by the Transportation and Development Engineering Staff (Exhibit 5), finding that as conditioned these standards can be met.*

- h. **1021, SOLID WASTE AND RECYCLABLE MATERIAL COLLECTION:** outlines the standards for refuse and recycling for commercial developments.

Finding: the expansion of the surface mining to the subject site is not anticipated to generate any solid waste or recyclable material. While the employees that work on site, or the truck drivers that visit the site to transport processed material to other locations, may generate a small amount of waste, the current disposal system is anticipated to be sufficient. These criterion are met. *The Hearings Officer concurs that these criteria are met.*

Summary: as discussed, above, and conditioned, the applicant can comply with all required sections listed under Section 1000. *The Hearings Officer concurs that, as conditioned, the applicant can comply with these sections.*

PART 3. OTHER DEVELOPMENT STANDARDS

Other Applicable Sections of the ZDO: Other applicable standards and Sections of the ZDO applicable to this application are addressed below.

1. **Section 316– RRFF-5 Zone.** Table 316-1 lists “*Operations Conducted for the Exploration, Mining, or Processing of Geothermal Resources or Other Subsurface Resources, subject to Section 818*”.

Finding: The applicant is proposing to extract aggregate through surface mining the aggregate on site.

The minimum yard depths in the RRFF-5 zone are a minimum of:

30 feet from the front property line which runs along S. Talon Road

10 feet from the side property lines

30 feet from the rear property line (10 feet for accessory structures)

Finding: These dimensional standards are met as shown. As established in Table 316-1, a mining application is a Conditional Use. *The Hearings Officer concurs in the above findings.*

2. **Section 818, Mining**

818.02 STANDARDS Surface mining shall comply with the following standards:

- A. Access: An on-site access or service road used for mining shall be dust free at all points within 300 feet of an off-site road or off-site dwelling. If the mining is the primary cause of traffic on an unpaved off-site road, that road shall be dust free at all points within 300 feet of off-site dwellings.

Finding: The applicant notes that they “will take measures such as use of a watering truck and installation of a landscaped berm to ensure the containment of potential dust within 300 feet of off-site dwellings.” Testimony from an adjacent neighbor indicates that the applicant is currently watering the road to reduce dust but there is concern that the applicant may not be able to meet the 300 foot distance because the road does not allow enough room for this. Staff interpret this to be a concern that the gravel access road is too close to dwellings to be the sole containment used. As conditioned this criterion can be met. *The Hearings Officer concurs that, as conditioned, this criterion can be met.*

- B. Screening: Screening of the mining site may be required to obscure the view or minimize dust or other annoyance. If screening is required, it shall be done pursuant to Subsection **1009.04 SCREENING AND BUFFERING**

- 1009.04.A. Screening shall be used to eliminate or reduce the visual impacts of the following: 1. Service areas and facilities, such as loading areas and receptacles for solid waste or recyclable materials; 2. Storage areas; 3. Ground-mounted rainwater collection facilities with a storage capacity of more than 100 gallons; 4. Parking lots within or adjacent to an Urban Low Density Residential, VR-5/7, VR-4/5, RA-1, RA-2, RR, RRF-5, FF-10, FU-10, or HR District; and 5. Any other area or use, as required by this Ordinance.
- 1009.04.B. Screening shall be accomplished by the use of sight-obscuring evergreen plantings, vegetated earth berms, masonry walls, sight-obscuring fences, proper siting of disruptive elements, building placement, or other design techniques.
- 1009.04.C. Screening shall be required to substantially block any view of material or equipment from any point located on a street or accessway adjacent to the subject property. Screening from walkways is required only for receptacles for solid waste or recyclable materials. A sight-obscuring fence at least six feet in height and up to a maximum of 10 feet in height shall be required around the material or equipment.
- 1009.04.D. Buffering shall be used to mitigate adverse visual impacts, dust, noise, or pollution, and to provide for compatibility between dissimilar adjoining uses. Special consideration shall be given to buffering between residential uses and commercial or industrial uses, and in visually sensitive areas.
- 1009.04.E. Buffering shall be accomplished by one of the following: 1. A landscaping strip with a minimum width of 15 feet and planted with: a. A minimum of one row of deciduous and evergreen trees staggered and spaced a maximum of 30 feet apart; b. A perennial, evergreen planting with sufficient foliage to obscure vision and which will grow to form a continuous hedge a minimum of six feet in height within two years of planting; and c. Low-growing evergreen shrubs and evergreen ground cover covering the balance of the area;

Finding: The applicant states “As shown on the attached Mining and Operations Plan, Sheet 1-3 of Exhibit A, the landscaped berm is proposed to be located along the perimeter of the site where it is adjacent to other uses. No berm is proposed for the portion of the

property line that is shared with the Eagle Creek Rock Products site, as access and excavation will occur along that portion of the property line.” The details provided on sheets 1-3 did not specify the types of plantings that will be used on the earth berm. Therefore, a condition is recommended that will require information on the height of the berm and they type of plants proposed on the berm. These criterion can be met as conditioned. ***The Hearings Officer concurs that these criteria can be met as conditioned.***

- C. Noise: Sound created by the mining operation and audible off the subject property shall not exceed the maximum permitted by the Oregon Department of Environmental Quality (DEQ). Various methods of sound control may be required, such as installation of earth berms, strategic location of stockpiles, and limiting hours of operation.

Finding: The applicant states “The Applicant will address noise generated by the excavation through the installation of earth berms. Other measures, as may be required through the DEQ permit process, will be implemented as applicable.” A copy of required DEQ permits and more information on the berm are recommended as conditions of approval. These criterion can be met as conditioned. ***The Hearings Officer concurs that these criterion can be met as conditioned.***

- D. Air Quality: The discharge of contaminants created by the mining operation shall not exceed the DEQ air quality standards.

Finding: The applicant states “The Applicant will meet all DEQ air quality standards as may be required through the DEQ permit process.” These criterion can be met as conditioned. ***The Hearings Officer concurs that these criterion can be met as conditioned.***

- E. Toxic Materials: Toxic materials shall be handled in a manner that prevents environmental degradation, ensures the safety and health of persons involved in the mining and reclamation operations and the general public, and complies with the requirements of applicable state and federal agencies.

Finding: The applicant states “All materials used in the mining operation will be handled in a manner deemed appropriate by applicable state and federal agencies.” A copy of required DEQ permits and DOGAMI permit and reclamation plan are recommended as conditions of approval. These criterion can be met as conditioned. ***The Hearings Officer concurs that these criterion can be met as conditioned.***

- F. Protection of Adjacent Land: Excavation shall be away from the lot line a distance adequate to maintain a fence on the lot line and such additional distance as is necessary to allow a normal safe angle of repose during operations, ensure lateral support of adjacent lots and public rights-of-way, and provide the slopes identified in the reclamation plan for the depth of final excavation. Other provisions to ensure protection of adjacent lots and public rights-of-way from steep banks, deep holes, or other hazards during the mining and reclamation phases shall be required as necessary. In addition, the distance between

the excavation and rivers, streams, lakes, and other bodies of water shall be adequate to maintain bank integrity and streamside vegetation.

Finding: The applicant states “subject site will be fenced and/or bermed as needed to minimize hazards and protect adjacent properties, as addressed in Subsection 1009.04 below.” The site plan provides a 100’ buffer from Currin Creek. However, the site plan and narrative do not include any buffer from the potential tributary/wetland that is indicated near the southern property boundary. Staff identified the potential tributary/wetland from the topography, vegetation shown in the aerial image, and Statewide Wetland Inventory data. The earth berm along the west of the property also protects the adjacent properties. More information on the landscaping proposed on the berm, and a wetland delineation is recommended as a condition of approval *The Hearings Officer concurs that these criterion can be met as conditioned.*

- G. Reclamation Plan: Reclamation shall be done in accordance with a reclamation plan approved by the Oregon Department of Geology and Mineral Industries, and the subsequent beneficial use of mined areas shall comply with this Ordinance.

Finding: The applicant states “The proposed reclamation plan is attached as Sheet 1-4 of Exhibit A. The Applicant proposes to fill the subject site with overburden and clean imported fill to a level approximating the existing grade of the subject site. The Applicant will meet applicable DOGAMI requirements for reclamation and subsequent use of mined areas through the DOGAMI operating permit process.” Staff found that the reclamation plan provided in the application on sheet 1-4 did not provide detailed information related to groundwater, or revegetation. However, staff anticipate that the DOGAMI reclamation plan will contain additional information. These criterion can be met as conditioned. *The Hearings Officer concurs that these criterion can be met as conditioned.*

Applicable provisions from Section 818 are met as shown or can be conditioned. *The Hearings Officer concurs, finding that applicable provisions from Section 818 are met as shown or can be met as conditioned.*

E. CONDITIONS OF APPROVAL

The conditions listed are necessary to ensure that approval criteria for this land use permit are satisfied. Where a condition relates to a specific approval criterion, the code citation for that criterion follows in parenthesis. It shall be the responsibility of the property owner(s) to comply with the limitation of any approval resulting from the decision described herein.

I reviewed and considered the entire record in this matter, including the staff report, Exhibits 1-7, proposed conditions of approval submitted by staff, the comments, arguments, responses, and discussion at the hearing. I also reviewed and considered the pre-hearing materials submitted, including the application, agency and public comments received prior to the public hearing, staff memorandum proposing certain changes to the proposed conditions, and additional comments related to the original findings and recommended conditions of approval

from the initial staff report. Upon review, I find the following conditions are designed to ensure that the requirements of this Conditional Use permit are met, adopting the following, with changes to proposed conditions of approval indicated by bold italicized text and/or strike through:

I. General Conditions:

- 1) Approval of this land use permit is based on the submitted written narrative and plan(s) dated 3/21/23. The application was deemed complete on 4/19/23. No work shall occur under this permit other than that which is specified within these documents. It shall be the responsibility of the property owner(s) to comply with this document(s) and the limitation of approval described herein.
- 2) The conditional use approval is valid for four years from the date of the final written decision. During this four year period, the approval shall be implemented, or the approval will become void. “Implemented” means all major development permits shall be obtained and maintained for the approved conditional use, or if no major development permits are required to complete the development contemplated by the approved conditional use, “implemented” means all other necessary County development permits (e.g. grading permit, building permit for an accessory structure) shall be obtained and maintained. A “major development permit” is:
 - a) A DOGAMI permit for a new/expansion of the mining operation and restoration plan; or
 - b) A permit issued by the Department of Environmental Quality for discharge of contaminants created by the expanded mining operation reviewed by the conditional use approval.
- 3) This Conditional Use approval is granted subject to the above and below stated conditions. Failure to comply with any of the conditions of approval constitutes a violation of this permit and may be cause for revocation of this approval.

II. Planning and Zoning Conditions: Joy Fields, (503) 742-4510, jfields@clackamas.us

- 1) Z0114-23-C Development of the subject property is subject to the provisions of ZDO Sec. 1002.04 and although the property on Frog Pond Lane only has one stream identified as a RSCA that is subject to Section 704, the Statewide Wetlands Inventory identifies another riverine system, R4SBC, as located on the property. The topography and vegetative growth along the southern portion of the property appears to support the presence of a stream or wetland on the property as shown on the Statewide Wetlands Inventory. Therefore, a wetland delineation of the property on Frog Pond Lane is needed to ensure the stream corridors and wetlands are correctly buffered from the proposed mining operation per ZDO 818.02 (F) and ZDO 1002.04.
- 2) Any outdoor lighting [ZDO 1005.05(A) and (B)] shall be located and designed so that it does not shine onto adjacent properties, upwards or right-of-ways. If additional lighting will be installed, the applicant will submit an outdoor lighting system design plan prior to installation of the outdoor lighting system for review and approval by Planning and Zoning Division.

- 3) All signs shall be in compliance with ZDO Section 1010.06 and 1010.13. Signs for the hours of operation and idle free zone are allowed in addition to signs permitted pursuant to Section 1010
- 4) Use of on-site sewage disposal facilities, if proposed, shall be subject to approval by Septic & Onsite Wastewater System Programs.
- 5) **Prior to commencement of use:** The applicant shall provide the Planning and Zoning Division with:
 - a. An erosion control plan showing how sediment will be contained and best management practices will be utilized per ZDO 818.01 (H).
 - b. Copies of any applicable DOGAMI permits such as a DOGAMI approved operating permit and reclamation plan per ZDO 818.02(G).
 - c. A copy of the DEQ permits to that include information on the sound generated from the mining operation per ZDO 818.02(C) and the air quality restrictions or mitigation efforts pursuant to DEQ air quality standards per ZDO 818.02(D).
 - d. Evidence of the road vacation to verify the property has been expanded to include the areas previously considered road and road right-of way and verify that the mining will meet the proposed 50' setbacks and not jeopardize adjacent land by using the road right-of-way per ZDO 818.02(F).
 - e. A photo of a sign(s) posted on the gate located on SE Talons Rd that indicates the hours of operation, *designates the area in front of the gate as a "No Parking" zone*, and identifies it is an idle free zone to project adjacent land from the noise of truck traffic per ZDO 818.02(F).
 - f. The applicant shall provide a landscaping plan for the site that shows the 25% landscaped area and includes the plants types and species proposed on the earth berm to provide the screening and buffering required per ZDO 1009.04(E).
 - g. Evidence of a lawful water source for the proposed development, such as a public or community water system, certificated water right or exempt-use well, or contract with a water hauler for the water used on site or if water service is needed future.

III. Engineering Division Conditions: Ken Kent, (503) 742-4673, kenken@clackams.us
<mailto:kenken@clackamas.or.us>

The following items are project requirements from the Department of Transportation and Development Engineering Division. These conditions of approval are not intended to include every engineering requirement necessary for the successful completion of this project, but are provided to illustrate to the applicant specific details regarding the required improvements that may prove helpful in determining the cost and scope of the project. These conditions are based upon the requirements detailed in the County's Comprehensive Plan (Comp Plan), the County's Zoning and

Development Ordinance (ZDO) and the County's Site Development and Roadway Construction Standards (Roadway Standards). Additional requirements, beyond those stated in the conditions of approval, may be required. The applicant may discuss the requirements of the project with staff at any time.

The requirements specifically required by the Comp Plan and the ZDO cannot be modified by the Development Engineering Division. However, the requirements detailed in these conditions of approval, derived from the Roadway Standards, are based upon nationally accepted standards and engineering judgment and may be modified pursuant to Section 170 of the Roadway Standards. The applicant is required to provide sufficient justification to staff in the request. Staff shall determine if a modification is warranted.

- 1) All frontage improvements in, or adjacent to Clackamas County right-of-way, and/or on-site transportation improvements, shall be in compliance with *Clackamas County Roadway Standards*.
- 2) The applicant shall obtain a Development Permit from Clackamas County Department of Transportation and Development prior to the initiation of any construction activities associated with the project. The applicant shall have an Engineer, registered in the State of Oregon, design and stamp the construction plans for all required improvements.
- 3) The applicant shall verify that SE Talons Road is improved to a minimum travel width of 20 feet from the project site to SE Folsom Road. Where the existing road width is less than 20 feet, the applicant shall improve the roadway to provide the minimum 20-foot width, including a gravel section with a minimum 14-inch depth, constructed per Standard Drawing C100.
- 4) The applicant shall provide photo/video evidence of the existing condition of SE Talons Road from the project site to SE Folsom Road prior to initiation of construction activities and surface mining. Any damage to the roadway caused by trucks during the period that mining is occurring under Z0113-23 and Z0114-23, shall be repaired to as good or better condition. At the time mining operation cease, operations and prior to final reclamation of the site, the applicant shall repair any damage, returning the roads to an as good or better condition.
- 5) The applicant shall design and construct the proposed site improvements, consisting of the following:
 - a. Adequate on-site circulation shall be provided for the maneuvering of all vehicles anticipated to use the expanded site area.
 - b. The access roads from the mining sites to the processing facility shall be a minimum of 12 feet, constructed per Roadway Standards, Drawing R100, with a minimum surface of screened gravel.
 - c. Storm drainage facilities shall be designed and constructed in conformance with Clackamas County Roadway Standards Chapter 4, providing water quality treatment and conveyance to a suitable outfall. The stormwater management plan shall provide verification that the existing stormwater facilities located on the Eagle Creek Road site have adequate capacity to handle and treat runoff from the mining sites and new internal haul roads.
 - d. Trucks and equipment hauling materials from the mining sites shall not access SE Frog Pond Lane or SE Talons Road.

- 6) Vacation of the SE Talons Road right-of-way shall include a public turnaround, per Standard Drawing C350, at a minimum providing a half hammerhead. The turnaround shall be located within public right-of-way. The roadway within the turnaround shall be include a minimum travel width of 20 feet, constructed per Standard Drawing C110, including a gravel section with a minimum 14-inch depth.
- 7) Prior to the issuance of a Development Permit, the applicant shall submit to Clackamas County Engineering Office:
 - a. Written approval from the Estacada Fire District #69 Fire Marshal shall be provided for the planned access, circulation, fire lanes and water source supply. The approval shall be in the form of site and utility plans stamped and signed by the Fire Marshal.
 - b. A set of street and site improvement construction plans, in conformance with *Clackamas County Roadway Standards* Section 140, and obtain written approval, in the form of a Development Permit.

F. DECISION

Based on the findings, discussion, conclusions, and record in this matter, the Hearings Officer APPROVES application Z0114-24-C for a Conditional Use Permit to extract aggregate from the subject property and transport it through internal roads to the adjacent property where Eagle Creek Rock Products will provide processing at its existing mining operation, subject to conditions of approval.

Dated: June 26, 2023



Carl D. Cox
Clackamas County Hearings Officer

APPEAL RIGHTS

ZDO 1307.10(F) provides that, with the exception of an application for an Interpretation, the Land Use Hearings Officer's decision constitutes the County's final decision for purposes of any appeal to the Land Use Board of Appeals (LUBA). State law and associated administrative rules promulgated by LUBA prescribe the period within which any appeal must be filed and the manner in which such appeal must be commenced. Presently, ORS 197.830(9) requires that any appeal to LUBA "shall be filed not later than 21 days after the date the decision sought to be reviewed becomes final." This decision is "final" for purposes of a LUBA appeal as of the date of the decision appearing by my signature.