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BEFORE THE BOARD OF COMMISSIONERS STATE OF OREGON, COUNTY OF JACKSON

ORDINANCE NO.	2007-19
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AN ORDINANCE AMENDING THE COMPREHENSIVE PLAN TO ADD PROPERTIES TO THE INVENTORY OF SIGNIFICANT AGGREGATE RESOURCE SITES AND ADOPTING AN IMPACT AREA. AND PROTECTION PROGRAM FOR THE SITE. THE SUBJECT PROPERTIES ARE IDENTIFIED ON THE TAX ASSESSOR'S PLAT MAPS AS TOWNSHIP 36 SOUTH, RANGE 2 WEST, SECTION 21, TAX LOTS 1303 &1400 AND TOWNSHIP 36 SOUTH, RANGE 2 WEST, SECTION 27, TAX LOT 2600 (ONLY THAT PORTION WEST OF UPTON SLOUGH) AND TOWNSHIP 36 SOUTH, RANGE 2 WEST, SECTION 28, TAX LOTS 100 (ONLY THAT PORTION WEST OF UPTON SLOUGH), 800, 900, 1101, 1200, 1300, 1500, 1700, 1800 AND 2604 AND LOCATED IN AN AREA SITUATED NORTH OF THE EXIT 35 INTERCHANGE AND EAST OF BLACKWELL ROAD, SOUTH OF HIGH BANKS ROAD AND NORTH OF GIBBON ROAD. OWNED BY LINCOLN TRUST COMPANY (CONTRACT ROCK 'N' READY MIX INC.), PAUL AND DEANNA MEDINA, AND MICHAEL AND SHANNON HILTON. FILE LRP2005-00003.

RECITALS:

- 1. Pursuant to Chapter 197 and 215 of the Oregon Revised Statutes, and in conformance with the Statewide Planning Goals, Jackson County's Comprehensive Plan (JCCP) and implementing ordinances have been acknowledged by the Oregon Land Conservation and Development Commission (LCDC).
- 2. On March 24, 2005 an application for a Comprehensive Plan Map Amendment and Zoning Map Amendment was submitted by the agent, Craig A. Stone and Associates, for the applicant, Rock-n-Ready Mix LLC. After initial review by staff, the application was deemed incomplete on April 28, 2005. The applicant provided the requested supplemental materials and the application was then deemed complete by staff on June 29, 2005.

PROCEDURAL FINDINGS:

1. A notice of the proposed amendment was provided to DLCD more than 45 days prior to the initial public hearing. A notice was published on Sunday, October 16, 2005 in the Medford Mail Tribune that a first evidentiary hearing was scheduled before the Jackson County Planning Commission on October 27, 2005 at 9:00 a.m in the Jackson County Auditorium. That public hearing was conducted and continued by the Planning Commission to January 23, 2006 at 9:00 a.m. in the Jackson County Auditorium. That public hearing was conducted and a site visit was scheduled and conducted on

1-ORDINANCE- SIGNIFICANCE DETERMINATION; File LRP2005-00003 Craig A. Stone and Associates, Agent; Rock-n-Ready Mix LLC, Applicant

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February 23, 2006. A continued public hearing was scheduled for March 9, 2006 at 9:00 a.m. in the Jackson County Auditorium.

- 2. On March 9, 2006, a public hearing was conducted and the Planning Commission heard testimony, received evidence into the record and continued the public hearing to April 27, 2006 at 9:00 a.m. That public hearing was conducted and the Planning Commission deliberated to arrive at a recommendation based upon the applicable criteria.
- 3. On July 27, 2006, the Jackson County Planning Commission signed a recommendation to approve the ordinance presented herein following its motion and unanimous decision to recommend approval of the same.
- 4. A notice of public hearing was sent to the applicant, property owners within 1500 feet of the subject properties, and those demanding notice on September 5, 2006 that the application was scheduled before the Board of Commissioners on September 25, 2006 at 1:30 p.m.. A media notice was sent to the Medford Mail Tribune and a copy was sent to the Ashland Daily Tidings and Upper Rogue Independent. Legal notice was published in the Sunday, September 10, 2006 edition of the Medford Mail Tribune.
- 5. On September 25, 2006, the Board of Commissioners held a public hearing to consider the recommendation by the Planning Commission and they received evidence and testimony on this application. The public hearing was continued to September 27, 2006.
- 6. On September 27, 2006, the Jackson County Board of Commissioners held a public hearing to consider the recommendation by the Planning Commission and they received evidence and testimony on this application. The public hearing was continued to October 25, 2006 at 1:30 p.m. in the Jackson County Auditorium.
- 7. On October 25, 2006, the Jackson County Board of Commissioners deliberated on matters relating to compliance with Federal and State regulatory agencies, specifically: DOGAMI, the Army Corps of Engineers, and the Department of State Lands. No decision was made and the deliberation was postponed pending additional evidence and testimony on compliance with these Agencies' regulatory requirements.
- 8. A notice of public hearing was sent to the applicant, property owners within 1500 feet of the subject properties, and those demanding notice on February 7, 2007 that a public hearing was scheduled before the Board of Commissioners on February 28, 2007 to accept evidence and testimony specifically related to compliance with Federal and State regulatory agencies, specifically: DOGAMI, the Army Corps of Engineers, and the Department of State Lands. Legal notice was published in the Sunday, February 18, 2007 edition of the Medford Mail Tribune.
- 9. On February 28, 2007, the Jackson County Board of Commissioners held a public hearing to reopen the record and accept evidence and testimony specifically related to compliance with Federal and State regulatory agencies, specifically: DOGAMI, the Army Corps of Engineers, and the Department of State Lands. No decision was made and the deliberation was postponed pending additional evidence and testimony on the Department of State Lands consent order. The public

2-ORDINANCE- SIGNIFICANCE DETERMINATION; File LRP2005-00003 Craig A. Stone and Associates, Agent; Rock-n-Ready Mix LLC, Applicant

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hearing was continued to April 11, 2007.

- 10. On April 11, 2007, the Jackson County Board of Commissioners held a public hearing to re-open the record and accept evidence and testimony specifically related to compliance with the Department of State Lands consent order. No decision was made and the deliberation was postponed pending additional evidence and testimony that the Applicant was in substantial compliance with the Department of State Lands consent order.
- 11. A notice of public hearing was sent to the applicant, property owners within 1500 feet of the subject properties, and those demanding notice on May 10, 2007 that a public hearing was scheduled before the Board of Commissioners on February 28, 2007 to accept evidence and testimony into the record specifically related to demonstration of substantial compliance with the Department of State Lands consent order. Legal notice was published in the Sunday, May 20, 2007 edition of the Medford Mail Tribune.
- 12. On May 30, 2007, the Jackson County Board of Commissioners held a public hearing to re-open the record and accept evidence and testimony specifically related to demonstration of substantial compliance with the Department of State Lands consent order. Based upon the evidence, the Board of Commissioners decided by motion and vote that decisions on the merits of the application were not precluded due to any outstanding violations issues. The public hearing was continued to June 13, 2007 at 1:30 p.m. in the Jackson County Auditorium.
- 13. On June 13, 2007, the Jackson County Board of Commissioners held a public meeting and deliberated to a decision on the above captioned land use application.

Now, Therefore, the Board of County Commissioners of Jackson County hereby make the following findings and conclusions:

SECTION 1. FINDINGS OF FACT

Based upon the evidence and argument presented, the Board makes the following findings of fact with respect to this application. Where factual conflicts arose, the Board has resolved them consistent with these findings.

- 1.1 The Board of Commissioners hereby incorporates and adopts as its own the Findings of Fact and Conclusions of Law relied upon by the Planning Commission as stated in their Recommendation for Approval, except as supplemented pursuant Section 1.2 and 1.3 below. The same is attached hereto as Exhibit "A". To the extent there is any discrepancy between the findings incorporated by this paragraph and the Board's express findings in Exhibit B, *infra*, the express findings of the Board shall govern.
- 1.2 The Board of Commissioners hereby incorporates and adopts as its own, the supplementary Findings of Fact and Conclusions of Law offered by Applicant's Attorney, attached hereto as Exhibit "B".
- 1.3 The Board of Commissioners hereby incorporates and adopts Applicant's rebuttal at

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Planning Commission Record Pages 771 to 782, 1511 to 1520, and 1555 to 1572 as its own resolution of issues raised by the Opponents and the same are attached hereto as Exhibit "C". To the extent there is any discrepancy between the findings incorporated by this paragraph and the Board's express findings in Exhibit B, the express findings of the Board shall govern.

SECTION 2. LEGAL FINDINGS

- 2.1 The Board of Commissioners finds that all notices were legally and properly published and sent to necessary persons and affected agencies.
- 2.2 The Board of Commissioners finds that the subject property affected by this ordinance are described as Township 36 South, Range 2 West, Section 21 tax lots 1303 and 1400, Section 28 tax lots 100 (portion west of Upton Slough), 200 (portion west of Upton Slough), 800, 900, 1101, 1200, 1300, 1500, 1700, 1800, and 2604 and that portion of tax lot 2600 west of Upton Slough in Section 27. The subject property is adjacent to Blackwell Road and surrounds the existing Rock-n-Ready operation and extends east across Bear Creek to Upton Slough.
- 2.3 The Board of Commissioners finds that it has followed all required procedures in the Land Development Ordinance, the Comprehensive Plan, and State of Oregon requirements and that the rights of affected agencies and property owners have not been substantially prejudiced.
- **SECTION 3. CONCLUSIONS:** Based on the evidence and arguments relied upon by the Commission in the record, the Board of Commissioners concludes that the proposed amendments are in compliance with the Jackson County Land Development Ordinance, the Statewide Planning Goals, Oregon Administrative Rules, and the Jackson County Comprehensive Plan. Where factual conflicts arose, the Jackson County Board of Commissioners has resolved them consistent with these conclusions.
 - 3.1 Statewide Planning Goals: Based upon the findings of fact and conclusions of law enumerated in Sections 1.1 to 1.3 above and attached hereto as Exhibits "A-C", the Board of Commissioners concludes the subject properties constitute a significant Goal 5 aggregate resources and herewith adopts a protection program in compliance with the Statewide Planning Goals.
 - 3.2 Comprehensive Plan and Transportation System Plan: Based upon the findings of fact and conclusions of law enumerated in Sections 1.1 to 1.3 above and attached hereto as Exhibits "A-C", the Board of Commissioners concludes that this application complies with all aspects of the Comprehensive Plan that function as approval criteria for the designation of a significant aggregate resource under the County's Goal 5 aggregate program.
 - 3.3 Jackson County Land Development Ordinance: Based upon the findings of fact and conclusions of law enumerated in Sections 1.1 to 1.3 above and attached hereto as Exhibits "A-C", the Board of Commissioners concludes that the proposed designation as a significant aggregate resource complies with the Jackson County Land Development Ordinance.

- 3.4 Oregon Administrative Rules: The Board of Commissioners incorporates and adopts applicant's purpose and intent statement at Planning Commission Record Page 148 as being sufficient to explain the basis under Oregon Administrative Rule for which the County can and does apply OAR 660-016 to aggregate by and through demonstration of compliance with its Comprehensive Plan. Based upon the findings of fact and conclusions of law enumerated in Sections 1.1 to 1.3 above and attached hereto as Exhibits "A-C", the Board of Commissioners concludes that designation of the subject properties as a significant Goal 5 aggregate resource has proceeded in accordance with all administrative rules to the extent the same are directly applicable to the determination of a significant Goal 5 aggregate resource.
- 3.5 The Board of Commissioners concludes that proper public notices were given.

SECTION 4. DECISION

The Board of County Commissioners of Jackson County ordains as follows:

- 4.1 Based on the record, testimony of the public hearing, the Planning Commission Recommendation for Approval, and Exhibits "A-C", herein attached and incorporated herein, the Board of Commissioners adds the subject properties (Depicted in Exhibit D) to the County's Goal 5 inventory of significant aggregate sites, adopts the ESEE analysis contained in Exhibit "A", and adopts a protection program as follows:
- a) A 1500-foot impact area is established to balance the aggregate resource against the competing Goal 5 resources and conflicting uses. A map of the impact area is contained in Exhibit E. Aggregate uses on the site shall be substantially consistent with the site and operations master plan approved in conjunction with the subject application together with those additional conditions adopted through the ESEE process; changes to the site plan and/or operations master plan that require discretion shall demonstrate proposed changes remain consistent with the results of the ESEE analysis.
- b) New conflicting uses in the impact area shall require a covenant recognizing impacts that may occur as a result of aggregate mining.
- 4.2 Invalidity of a section or part of this ordinance shall not affect the validity of the remaining sections or parts of sections.

APPROVED this 25th day of July , 2007, at Medford, Oregon.

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	JACKSON COUNTY BOA	ARD OF COMMISSIONERS
	Q lin	Suit
	Dennis C. W. Smith, Coai	r ,
	Jack Walker, Commission	ier
	Dave Gilmour, Commission	ner
APPROVED AS TO FORM:	ATTEST:	
	Donna Bladel	
County Counsel	By: Recording Secretary	
	Board of Appeals (LUBA). iled. This decision is being UBA appeal period will expi ontact LUBA for specific ap	You must appeal this mailed on ire on peal information. They are

EXHIBIT A

BEFORE THE JACKSON COUNTY PLANNING COMMISSION STATE OF OREGON, COUNTY OF JACKSON

IN THE MATTER OF AN APPLICATION FOR A CONSOLIDATED REVIEW OF A MINOR **COMPREHENSIVE PLAN MAP AMENDMENT** TO CHANGE THE COMPREHENSIVE PLAN MAP FROM AGRICULTURAL LAND TO AGGREGATE RESOURCE LAND, A MINOR ZONING MAP AMENDMENT TO CHANGE THE ZONING DISTRICT FROM THE EXCLUSIVE FARM USE (EFU) DISTRICT TO THE AGGREGATE REMOVAL (AR) DISTRICT, THE **DESIGNATION OF A SITE AS A SIGNIFICANT** AGGREGATE RESOURCE AND **ESTABLISHMENT OF GOAL 5 PROTECTION** MEASURES, AND APPROVAL OF A SITE PLAN AND OPERATIONS MASTER PLAN SUFFICIENT TO IMPLEMENT THE ZONING DISTRICT, AND FINAL DEVELOPMENT PERMIT APPROVALS FOR A PORTION OF THE SITE AND OPERATIONS MASTER PLAN ON PARCELS LOCATED IN TOWNSHIP 36 SOUTH RANGE 2 WEST SECTIONS 21, 27 AND 28. EXISTING AR ZONED AREA IS APPROXIMATELY 116 ACRES. PROPOSED **EXPANSION WILL ADD APPROXIMATELY 163** ACRES.

RECOMMENDATION FOR APPROVAL

Applicant: Rock-n-Ready Mix, LLC Owners: Paul and Deanne Medina,

Michael and Sharon Hilton, Rock-n-Ready Mix,

Inc.

Jackson County Planning Commission 1) Recommends adoption of an ordinance amending the Comprehensive Plan that adds the subject properties that are not currently on the inventory of significant aggregate resource site to said inventory and adopts an impact area and protection program for these new sites, see attached Exhibits B and F. 2) Recommends adoption of an ordinance to amend Ordinance 95-61 that allows aggregate operations in accordance with the approved site and operations master plan (this ordinance does not allow aggregate extraction of proposed Pit 2a). 3) Recommends adoption of an ordinance amending the Comprehensive Plan Map to designate all of the subject properties Aggregate Resource Land (only those portions of Tax Lots 100, 200 in Section 28 and 2600 in Section 27 west of the Upton Slough), see attached Exhibit C. 4) recommends an order be approved by the Board of Commissioners to amend the zoning map to change the zoning designation from Exclusive Farm Use (EFU) to Aggregate Removal (AR) for all of Tax Lots 1303 in Section 21, 1101/2604, 1700, and 1800 in Section 28 and for those portions of Tax Lots 100, 200 in Section 28 and 2600 in Section 27, see attached Exhibit D, subject to the approved site and operations master plan (See applicant's Exhibit 4 at Record Page 330, attached conditions of approval, and attached Exhibit E).

RECITALS:

- 1. Pursuant to Chapter 197 and 215 of the Oregon Revised Statutes, and in conformance with the Statewide Planning Goals, Jackson County's Comprehensive Plan (JCCP) and implementing ordinances have been acknowledged by the Oregon Land Conservation and Development Commission (LCDC).
- 2. On March 24, 2005 an application for a Comprehensive Plan Map Amendmentt and Zoning Map Amendment was submitted by the agent, Craig A. Stone and Associates, for the owner, Rock-n-Ready Mix LLC. After initial review by staff, the application was deemed incomplete on April 28, 2005. The applicant provided the requested supplemental materials and the application was then deemed complete by staff on June 29, 2005.
- 3. A notice of the proposed amendment was provided to DLCD more than 45 days prior to the initial public hearing. The application was scheduled before the Jackson County Planning Commission for a properly noticed first evidentiary hearing on October 27, 2005 at 9:15 a.m in the Jackson County Auditorium. That public hearing was continued. Another properly noticed public hearing was held for January 23, 2006 at 9:15 in the Jackson County Auditorium. That public hearing was also continued. A third properly noticed public hearing was held on March 9, 2006 at 9:15 a.m. in the Jackson County Auditorium.

Now, therefore,

The Jackson County Planning Commission finds, concludes, and RECOMMENDS as follows:

SECTION 1. FINDINGS OF FACT:

Based upon the evidence and arguments presented, the Planning Commission makes the following findings of fact with respect to this application. Where factual conflicts arose, the Planning Commission has resolved them consistent with these findings.

- 1.1 The Planning Commission finds that proper legal notice was sent on to the applicant, property owners within 1500 feet of the subject property and affected agencies on August 23, 2005. A media notice was sent to the Medford Mail Tribune on August 31, 2005, and a copy was sent to the Ashland Daily Tidings and Upper Rogue Independent. Legal notice was published in the Sunday, October 16, 2005 edition of the Medford Mail Tribune.
- 1.2 The Planning Commission finds that the subject property is described as Township 36 South, Range 2 West, Section 21 tax lots 1303 and 1400, Section 28 tax lots 100 (portion west of Upton Slough), 200 (portion west of Upton Slouth), 800, 900, 1200, 1300, 1700, 1800, 1900, and 1101/2604 and that portion of tax lot 2600 west of Upton Slough in Section 27. The subject property is adjacent to Blackwell Road and surrounds the existing Rock-n-Ready operation and extends east across Bear Creek to Upton Slough.
- 1.3 The Planning Commission finds that it has followed all required procedures in the Land Development Ordinance, the Comprehensive Plan, and State of Oregon requirements and that the rights of affected agencies and property owners have not been substantially prejudiced. The Planning Commission finds that the record contains no procedural objections that were raised with sufficient specificity to provide the Commission an opportunity to respond.

SECTION 2. LEGAL FINDINGS: To recommend approval of an Official Comprehensive Plan Map and Zoning Map amendment, the Planning Commission must find that the amendment is consistent with the Jackson County Land Development Ordinance (JCLDO) Chapter 3.7, which requires compliance with the Statewide Planning Goals, Oregon Administrative Rules, Jackson County Land Development Ordinance and the Jackson County Comprehensive Plan (JCCP).

The Planning Commission incorporates and adopts the findings of fact and conclusions of law in the updated Staff Report attached as Exhibit A. These findings demonstrate that the application is in compliance with the Statewide Planning Goals, Oregon Administrative Rules, the Jackson County Comprehensive Plan, and the Jackson County Land Development Ordinance.

SECTION 3. CONCLUSIONS: Based on the evidence and arguments relied upon by the Commission in the record, the Planning Commission concludes that the proposed amendments are in compliance with the Jackson County Land Development Ordinance, the Statewide Planning Goals, Oregon Administrative Rules, and the Jackson County Comprehensive Plan. Where factual conflicts arose, the Jackson County Planning Commission has resolved them consistent with these conclusions.

- 3.1 Statewide Planning Goals: Based upon the findings of fact and conclusions of law in the updated staff report attached hereto as Exhibit A, the Planning Commission concludes that this application complies with the Statewide Planning Goals.
- 3.2 Comprehensive Plan and Transportation System Plan: Based upon the findings of fact and conclusions of law in the updated staff report attached hereto as Exhibit A, the Planning Commission concludes that this application complies with all aspects of the Comprehensive Plan that function as approval criteria for the subject application as approved.
- 3.3 Jackson County Land Development Ordinance: The Planning Commission concludes that this application complies with the Jackson County Land Development Ordinance in accordance with the findings of fact and conclusions of law in the updated Staff Report attached hereto as Exhibit A.

- 3.4 Oregon Administrative Rules: The Planning Commission incorporates and adopts applicant's purpose and intent statement at Record Page 148 as being sufficient to explain the basis under Oregon Administrative Rule for which the County can and does apply OAR 660-016 to aggregate by and through demonstration of compliance with its Comprehensive Plan. The Planning Commission incorporates and adopts the findings of fact and conclusions of law in the Staff Report attached hereto as Exhibit A to demonstrate compliance with all administrative rules to the extent the same are directly applicable to the recommended map amendments.
- 3.5 The Planning Commission concludes that proper public notices were given.

SECTION 4. RECOMMENDATION: The Jackson County Planning Commission:

- 1) Recommends adoption of an ordinance amending the Comprehensive Plan to add the subject properties that are not currently on the list of significant aggregate resource sites to Jackson County's inventory of "Significant Goal 5 Resource Sites", as shown on the attached map entitled "Exhibit B PC Recommended New Goal 5 Aggregate Site" (Exhibit B).
- 2) Recommends a 1,500 foot impact area around areas added to Jackson County's inventory of "Significant Goal 5 Resource Sites". The proposed 1,500 foot impact area and the existing 1,500 foot impact area around tax lot 1900 are shown on the attached map "Impact Areas: Existing and Proposed" (Exhibit C).
- 3) Recommends adoption of an ordinance amending the Comprehensive Plan Map to designate all of the subject properties Aggregate Resource Land that are not currently so designated (only those portions of Tax Lots 100, 200 in Section 28 and 2600 in Section 27 west of the Upton Slough), as shown on the attached map "PC Recommended Aggregate Resource Lands" (Exhibit D).
- 4) Recommends adoption of an ordinance to amend Ordinance 95-61 that allows aggregate operations in accordance with the approved site and operations master plan as shown on the attached map "Exhibit E PC Approved Site and Operations Master Plan" (Exhibit E) and applicants updated Exhibit 4, entitled "Exhibit 4 Jackson County Land Development Ordinance Standards and Applicable Requirements For Approval Of The Requested Aggregate Site And Operations Master Plan", Sections I, II, and IV (Exhibit F). This ordinance does not allow aggregate extraction of proposed Pit 2a.
- 5) Recommends an ordinance be approved by the Board of Commissioners to amend the zoning map to change the zoning designation from Exclusive Farm Use (EFU) to Aggregate Removal (AR) for all of Tax Lots 1303, 1101/2604, 1700, and 1800 in Section 28 and for those portions of Tax Lots 100, 200 in Section 28 and 2600 in Section 27 subject to the approved site and operations master plan.
- 6) Recommends an order be approved by the Board of Commissioners approving land development permits for a Type 3 permit for aggregate operations in the Bear Creek Greenway (ASC)82-2, Site Plan Review for Aggregate Operations (future review will be required for Pit 4), and a Floodplain Review Permit for aggregate operations in the floodplain and floodway of Bear Creek (future review will be required for Pit 4.

This recommendation for APPROVAL	adopted this 2 17 Hday of	JULY	_, 2006, at
Medford, Oregon.			

JACKSON COUNTY PLANNING COMMISSION

(Vote: Y=Yes; N=No; A=Abstain)

Reëve Hennion, Chair

absent

Don Greene, Vice-Chair

Elizabeth Fujas, Commissioner

absent

Richard B. Thierolf, Jr., Commissioner

Byron Williams, Commissioner

ATTEST:

Heather Couch, Secretary

EXHIBIT A

JACKSON COUNTY ROAD, PARKS AND PLANNING SERVICES COMPREHENSIVE PLAN AMENDMENT STAFF REPORT WITH PLANNING COMMISSION AMENDMENTS

APPLICANT: Rock 'N' Ready Mix, LLC

FILE: LRP2005-00003

6968 Blackwell Road

Central Point, OR 97502

AGENT: Craig Stone & Associates

OWNER:

Rock 'N' Ready Mix, Inc., Michael

712 Cardley Ave.

Medford, OR 97504

D. Lindeman IRA Rollover Acct.. Michael R. & Shannon L. Hilton. Michael M. & Jodi L. Medina,

Paul J. & Deanna L. Medina, and

Michael D. Lindeman

LEGAL DESCRIPTION:

TWP 36 South RANGE 2 West SECTION 21 TAX LOT(S) 1303, 1400

TWP 36 South RANGE 2 West SECTION 27 TAX LOT(S) 2600

TWP 36 South RANGE 2 West SECTION 28 TAX LOT(S) 100, 200, 800, 900, 1101, 1200, 1300.

1500, 1700, 1800, 1900, and 2604

APPLICATION REQUEST: A Minor Comprehensive Plan Map and Zoning Map Amendment to change the Comprehensive Plan Map designation from Agricultural Land to Aggregate Resource Land and the zoning district from Exclusive Farm Use (EFU) to Aggregate Removal (AR), designation as a significant aggregate resource and ESEE analysis to determine the level of Statewide Planning Goal 5 protection, Site Plan Review for aggregate operations, Floodplain Review for development within the 100 year floodplain, and Type 3 review for development within the Bear Creek Greenway (Area of Special Concern 82-2) on 348.56 acres in Township 36 South, Range 2 West, Section 21, Tax lots 1303 and 1400, Section 27, Tax Lot 2600. and Section 28, Tax Lots 100, 200, 800, 900, 1101, 1200, 1300, 1500, 1700, 1800, 1900, and 2604.

LOCATION: Located on Blackwell Road, beginning approximately 0.3 miles north of the intersection of Interstate 5 and Blackwell Road to approximately 1 mile north of the same intersection.

BACKGROUND: An application was received by Jackson County from Craig Stone and Associates, agent for the applicant, Rock 'N' Ready Mix, LLC, on March 24, 2005. The proposal is a Minor Comprehensive Plan Map and Zoning Map Amendment to change the Comprehensive Plan Map designation from Agricultural Land to Aggregate Resource Land and the zoning district from Exclusive Farm Use (EFU) to Aggregate Removal (AR), designation as a significant aggregate resource and ESEE analysis to determine the level of Statewide Planning Goal 5 protection, Site Plan Review for aggregate operations, Floodplain Review for development within the 100 year floodplain, and Type 3 review for development within the Bear Creek Greenway (Area of Special Concern 82-2). The application was deemed incomplete on April 28. 2005. The applicant submitted the required elements and the application was deemed complete on June 29, 2005. Public Hearings before the Jackson County Planning Commission were held on October 27. 2005, January 26, 2006, and March 9, 2006 in the Jackson County Auditorium and site visit February 23, 2006.

KEY ISSUES:

Determine if the aggregate resources qualify as a significant Goal 5 aggregate resource.
Determine what level of protection is justified by the ESEE analysis.
Determine whether the application meets the criteria to allow aggregate mining.
Determine whether the application meet the criteria for development within the floodplain and
floodway.
Determine whether the application meets Type 3 criteria for development within the Bear Creek
Greenway.

I. FACTS:

- 1) Location: The property is located on Blackwell Road, beginning approximately 0.3 miles north of the Interstate 5/Blackwell Road/HWY 99 interchange to approximately 1 mile north of the same interchange.
- 2) Access: Current access is from 6960 Blackwell Road (362W18, tax lot 1800), a county owned and maintained road. Two additional accesses were proposed by the Applicant. One from 6508 Blackwell Road (362W28, tax lot 1500) and a right-in at (362W28, tax lot 1700).

3) Acreage:

MAP ID 362W21-1303 362W21-1400 362W27-2600 362W28-100 362W28-200 362W28-800	ACREAGE 4.01 9.70 61.31 61.38 36.90 2.30
362W28-900 362W28-1101 362W28-1200 362W28-1300 362W28-1500 362W28-1700 362W28-1800 362W28-1900 362W28-1900	2.30 8.40 21.55 3.70 3.80 1.60 1.24 35.62 78.31 15.98
TOTAL:	345.80 acres ¹

¹The applicant determined the total acreage to be 348.56 acres. Upon reviewing the acreage for each parcel in Assessment records, it was determined that the total acreage is actually 345.80 acres.

4)	Assessment:		
	MAP ID	PROP. CLASS	DEFINITION
	362W21-1303	400	Vacant, H & B use tract land, zoning not significant
	362W21-1400	400	41 19 41 19 11 29 11
	362W27-2600	559	Manufactured structure, H & B use farm land, receiving farm deferral, zoned EFU
	362W28-100	559	Manufactured structure, H & B use farm land, receiving farm deferral, zoned EFU
	362W28-200	550	Vacant, H & B use farm, receiving farm deferral, zoned EFU
	362W28-800	401	Improved, H & B use tract, zoning not significant
	362W28-900	401	(C 3) (C 3) (C 3)
	362W28-1101	400	Vacant, H & B use tract land, zoning not significant
	362W28-1200	409	Manufactured structure, H & B use tract, zoning not significant
	362W28-1300	409	« » « » «
	362W28-1500	409	61 31 (1 31 41 3) 61
	362W28-1700	109	Manufactured structure, improved, zoned residential
	362W28-1800	401	Improved, H & B use tract, zoning not significant
	362W28-1900	401	и н н н н
	362W28-2604	400	Vacant, H & B use tract land, zoning not significant

220.9 acres receive a special assessment as farm land.

5) Lot Legality: Lot legality for these parcels was reviewed and established in 1998. A Memo dated July, 22, 1998 from Dody Talbott, Planning Technician II, determined the legality of each tax lot and is used as the official lot legality determination for this application.

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362W21-1303	Per file 92-90-LLA, this tax lot is part of 362W28, tax lot 1900. Tax lots 1900 and 1303 are considered a single, legal parcel.
362W21-1400	This tax lot was created by Volume 421, Page 222, recorded in 1956 and is considered a legal parcel.

362W27-2600	OR 70-11899 described tax lot 2600 with 362W28, tax lot 1100. OR 81-18853 separated tax lot 1101 from tax lot 2600 without the required review and approval from Jackson County. A letter dated February 27, 1990 indicated Planning would not penalize tax lot 2600 for the illegal division that occurred in 1981. This tax lot is considered a legal parcel based upon the Planning Director's ruling.
362W28-100	This parcel was created by Volume 224, Page 443 of the official records in the County Clerk's Office in 1940 and is considered a legal parcel.
362W28-200	This parcel was created by Volume 245, Page 434 of the official records in the County Clerk's Office in 1943 and is considered a legal parcel.
362W28-800	Prior to 1973, this parcel contained part of tax lot 900. Tax lot 900 was created in its current configuration by Volume 305, Page 266 of the official records in the County Clerk's Office in 1948, leaving tax lot 800 as a residual parcel in its current configuration. Therefore, the date of creation for tax lot 800 is 1948 and is considered a legal parcel.
362W28-900	This parcel was created by Volume 305, Page 266 of the official records in the County Clerk's Office in 1948 and is considered a legal parcel.
362W28-1101	OR 81-18853 separated tax lot 1101 from 362W27, tax lot 2600, without the required review and approval from Jackson County. The property owner could consolidate this tax lot and tax lot 2604 with tax lot 1800. A condition of approval to require consolidation of tax lots 1101 and 2604 with tax lot 1800 is recommended.
362W28-1200	This parcel was created by Volume 570, Page 166 of the official records in the County Clerk's Office in 1952 and is considered a legal parcel.
362W28-1300	This parcel was created by OR 69-11035 in 1969 and is considered a legal parcel.
362W28-1500	This parcel was created by Volume 422, Page 479 of the official records in the County Clerk's Office in 1952 and is considered a legal parcel.

362W28-1700	This parcel was created by Volume 555, Page 368 of the official records in the County Clerk's Office in 1963 and is considered a legal parcel.
362W28-1800	This parcel was created by OR 66-04539 in 1966 and is considered a legal parcel.
362W28-1900	This parcel was created by OR 69-11799 in 1969 and is considered a legal parcel.
382W28-2604	Since at least 1963, 362W28, tax lot 2600 and 2604 were a single parcel east of Blackwell Road. OR 89-07502 segregated tax lot 2604 from 2600 without the required review and approval from Jackson County. A letter dated August 20, 1996 advised the property owner that no permits or requests for development would be approved on this parcel, and recommended consolidating tax lot 2604 with an adjacent parcel. Tax lots 2604 and 1101 could be consolidated with tax lot 1101. A condition of approval to require consolidation of tax lots 1101 and 2604 with tax lot 1800 is recommended.

- 6) Fire Protection: The parcel is within Jackson County Fire District No. 3.
- 7) Irrigation: The subject properties are within the Rogue River Valley Irrigation District. Irrigation water is used for some production activities, although irrigation water is not required to support the extraction area uses and activities, according to the applicant. Evidence of a water right for the production activities has been provided by the applicant.

8) Zoning:

- A) Subject Property: Exclusive Farm Use (EFU), Aggregate Removal (AR)
- B) North: Exclusive Farm Use (EFU), Aggregate Removal (AR)
- C) East: Exclusive Farm Use (EFU)
- D) South: Exclusive Farm Use (EFU)
- E) West: Rural Residential (RR-5), Exclusive Farm Use (EFU), Urban Residential (UR-1), Interchange Commercial (IC)
- 9) Land Use: Land uses for these parcels include field and dairy farming, aggregate extraction, aggregate processing, aggregate stockpiling, concrete recycling, concrete batch plant, accessory uses to aggregate operations, and residential uses.

- 10) Site Characteristics: Outside of the riparian area of Bear Creek, the subject properties are gently sloping. There is a bench on tax lots 100, 200, and 2600 near the eastern borders of these tax lots. The riparian areas typically consist of Oregon ash and willow with an understory of reed canary grass. Areas east of Bear Creek appear to be in farm use, particularly field and dairy farming.
- 11) Soils: Over 60% of the soil types for these properties are considered Prime Farmland (NRCS) or High Value Farmland (OAR 660-033-0020(8)) soils. All of the soil types are considered Agricultural Land (OAR 660-033-0020(1)), regardless of zoning district. A map of the soil types and percentages of soil types is provided in the record. None of the soil types could be considered Forest Land.
- 15) Water: The subject properties are within the Rogue river Valley Irrigation District. Irrigation water is used for some production activities and evidence of a water right for this purpose has been provided. The applicant states that irrigation water will not be required to support the extraction area uses and activities.
- Wetlands: There are numerous wetlands associated with Bear Creek, Willow Creek, Jackson Creek, and the irrigation canal along the eastern borders of tax lots 100, 200, and 2600. The applicant has supplied a wetland report for tax lots 1800, 1101, and 2604. A GIS map depicting the National Wetlands Inventory Sams Valley Map is included in the record.
- 17) Area of Special Concern: Portions of these properties are within Area of Special Concern (ASC) 82-2, Bear Creek Greenway. These properties are also within the Air Quality Maintenance Area for Jackson County. A portion of tax lots 800 and 900 near Blackwell Road is within Central Point's Area of Mutual Concern.
- 18) Past Planning Actions: Aggregate extraction began on all or part of tax lot 1101 about 1960. On December 21, 1995, ordinance 95-61 was signed changing the official Comprehensive Plan and Zoning Map from Exclusive Farm Use to Aggregate Resource on tax lot 1900, although limiting aggregate extraction to the east side of Bear Creek and outside of the Bear Creek Greenway Overlay. This comprehensive plan and zoning map amendment was part of Periodic Review Task 14. In 1997, file 1996-2-CUPA, a conditional use permit on tax lots 1800 and 800 for aggregate mining, stockpiling, processing and operations in connection with aggregate mining on tax lot 1101, was conditionally approved. On August 31, 1999, the Hearings Officer approved file 1998-1-SPRA for aggragate operations on tax lots 1101 and 2604.

Numerous code violations associated with the aggregate operations. Per Gary Saltonstall, Code Compliance officer, these violations have been cleared.

19) Affected Agency and Property Owner Notification: On August 23, 2005 agencies and property owners were notified of the proposed zone change, floodplain review, and site plan review for aggregate operations. Numerous responses were received. Specific agency

comments are shown below. Property owner comments are identified in a general fashion below agency comments.

- A) Jackson County Roads and Parks recommends a traffic study to evaluate the need for a left turn land and a right turn deceleration lane at the road approach. If turn lands are warranted, Roads and Parks recommends denial until the turn lanes are provided. A Road Approach Permit for any new or improved driveway off Blackwell Road is required. Additionally, Roads and Parks requested all existing trees, especially those near the waterway, be retained.
- B) Jackson County Fire District #3 states all Fire Code requirements will be applied to this project, including addressing, access, and possible on-site water for fire suppression.
- C) Rogue Valley Sewer Services responded stating there are several sewer mains on the subject properties and any aggregate removal operations in this area must take adequate precautions to prevent damage to the pipeline. They also indicated the operating plan does provide adequate protection to the pipe.
- D) A letter from Karen Smith, Special Projects Manager for Roads, Parks and Planning Services, states Rock 'N' Ready's reclamation plan would consider future extension of the Greenway trail and a perpetual trail easement to take effect at the time Pit 2 is reclaimed would serve this purpose well. Also indicated was that an easement would assure effective balance between the conflicting goal 5 resources of Aggregate and the Bear Creek Greenway over time.
- E) An email from Gary Saltonstall, Jackson County Code Compliance officer, dated 9-23-05, states there are no code violation cases with Rock 'N' Ready at this time.
- F) An email from Dan Dorrell, ODOT, stated that if Rock 'N' Ready was not increasing their truck fleet, ODOT would not need a capacity analysis on any state facility.
- G) From the many property owner responses, the concerns that property owners have include, noise, dust, traffic safety, smell from the asphalt plant, viewshed, decrease in land values, affect on water table and wells, affect on Bear Creek and other streams, affect on the Rogue Valley Sewer Service pipelines, affect on the rural way of life in the area, and the loss of farm land.

II. APPLICABLE CRITERIA ADDRESSED:

In order to approve an amendment to the Official Comprehensive Plan Map and Zoning Map Amendment, determination of Goal 5 protection, site plan review for aggregate operations, floodplain review for development within the 100 year floodplain, and an development within the Bear Creek Greenway², the County must find that the amendment is consistent with:

- 1) Compliance with Statewide Planning Goals: Goal 1, Citizen Involvement; Goal 2, Land Use Planning; Goal 3, Agricultural Land; Goal 4, Forest Land; Goal 5, Open Spaces and Natural Resources; Goal 6, Air, Water and Land Resource Quality; Goal 7, Areas Subject to Natural Hazards; Goal 8, Recreational Needs; Goal 9, Economic Development; Goal 10, Housing; Goal 11, Public Facilities and Services; Goal 12, Transportation; Goal 13, Energy Conservation; and, Goal 14, Urbanization. Compliance with Oregon Administrative Rule (OAR) 660, Division 16 and Division 12.
- 2) Compliance with the following elements of the Jackson County Comprehensive Plan: Map Designations (Aggregate Resource Land), Aggregate and Mineral Resources, and Transportation (Transportation System Plan).
- 3) Compliance with the following sections of the Jackson County Land Development Ordinance: 3.1.4, 3.7.3(C), 4.4.5, 4.4.8, 7.1.1(B), and 7.1.2.

The following sets forth the legal references upon which the Commission has reached its recommendations and issued orders for dependent land use permits:

1) COMPLIANCE WITH STATEWIDE PLANNING GOALS AND OREGON ADMINISTRATIVE RULES:

The purpose of reviewing plan and zoning map amendments against Statewide Planning Goals and Oregon Administrative Rules is to assure that changes made in the County's acknowledged plan are also acknowledgeable.

A) Goal 1, Citizen Involvement: The goal is to develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process.

FINDING: The quasi-judicial procedure allows affected citizens and agencies to participate in the planning process. This goal is satisfied through this process.

²The Planning Commission recognizes that alternative interpretations of the applicable criteria with respect to the Bear Creek Greenway overlay are possible, but because the criteria can be found to be met the Planning Commission does not reach the legal arguments as to applicability raised by the Applicant.

B) Goal 2, Land Use Planning: The goal is to establish a land use planning process and policy framework as a bases for all decisions and actions related to use of land and to assure an adequate factual base for such decisions and actions.

FINDING: The proposed application and quasi-judicial process provides a framework for which the application can be reviewed. The Commissioners must find that the evidence supports the proposed zone change and proposed development. The specific Statewide Planning Goals are administered through the criteria identified in the acknowledged Jackson County Comprehensive Plan and Land Development Ordinance (LDO). Goal 2 is satisfied through this quasi-judicial process. No exception to any Statewide Planning Goal is requested or required.

C) Goal 3, Agricultural Lands: The goal is to preserve and maintain agricultural lands.

FINDING: The subject properties are zoned Exclusive Farm Use (EFU) and are protected under Goal 3. All of the soil types on the properties are considered Agricultural Land, according to OAR 660-033-0020(1). 60% of the soil types are considered High Value Farm Land. Aggregate mining is permitted in the EFU zoning district through a Conditional Use Permit on sites designated significant Goal 5 resources. The proposal to identify the properties as a significant Goal 5 resource and develop Goal 5 protection based upon an ESEE analysis by the applicant is the process which Goal 5 aggregate resources are balanced against Goal 3 agricultural resources. The ESEE analysis provides a balance of protection between Goal 3 and Goal 5 resources. Based upon the ESEE Analysis herein below and the evidence and testimony in the record, the Planning Commission finds protection of this significant Goal 5 resource does not conflict with Goal 3.

D) Goal 4, Forest Lands: The goal is to conserve forest lands.

FINDING: The soil class rating for forest production all of the soil types is 0. The applicant indicates the area is not considered Forest Land and is not near designated Forest Land. The applicant states the designation of the site for aggregate resource will have no significant impact on the conservation of forest lands in Jackson County. The Planning Commission concurs with the applicant's findings and adopts them as a basis to satisfy Goal 4 thereto.

E) Goal 5, Open Spaces, Scenic and Historic Areas and Natural Resources: The goal is to conserve open space and protect natural and scenic resources.

FINDING: The applicant has provided evidence regarding quality and quantity of the aggregate resources on the properties. The evidence suggests there is a significant Goal 5 aggregate resource on the properties. The Planning Commission finds the County's Goal 5 program for aggregate is acknowledged by the State of Oregon and the Planning Commission finds it has completed the Goal 5 process in accordance with this program and found the evidence and ESEE analysis sufficient to determine the location, quality, and

quantity of the aggregate resource establishes a significant Goal 5 aggregate resource and should be included on the County's Inventory of Signigicant Goal 5 aggregate resources.

F) Goal 6, Air, Water and Land Resources Quality: The goal is to maintain and improve the quality of the air, water and land resources of the state.

FINDING: The applicant states that, based upon the ESEE analysis, the County's aggregate operation standards and proposed conditions of approval are sufficient to minimize adverse affects on air, water, and land resources quality. The Planning Commission incorporates and adopts the applicant's findings thereto and further finds that compliance with applicable State agency regulations will assure compliance with Goal 6.

G) Goal 7, Areas Subject to Natural Hazards: The goal is to protect people and property from natural hazards.

FINDING: The Planning Commission finds that the only natural hazard to which the property is subject is flood hazards. This area contains a significant area of FEMA mapped floodplain associated with Bear Creek, Jackson Creek, and Willow Creek. Goal 7 as it applies to flood hazards is administered through the Comprehensive Plan and Section 7.1.2 of the LDO. The Planning Commission incorporates its findings of fact and conclusions of law demonstrating compliance with the applicable floodplain development standards in Section 7.1.2 herein below and based thereupon conclude Goal 7 is met.

H) Goal 8, Recreational Needs: The goal is to satisfy the recreational needs of the citizens of the state and visitors and, where appropriate, to provide for the siting of necessary recreational facilities including destination resorts.

FINDING: The Bear Creek Greenway runs through these properties and is part of Area of Special Concern 82-2 in the LDO and is an identified Goal 5 resource. The Planning Commission incorporates and adopts the ESEE analysis below and together with applicant's stipulation to provide a Greenway easement Goal 8 is found to be met.

I) Goal 9, Economic Development: The goal is to provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens.

FINDING: The applicant states the ESEE analysis addresses the economic consequences of allowing mining on the subject properties and the analysis outcome is that mining these sites is critical for economic development in Jackson County.

The Planning Commission finds economic development in Jackson County would be enhanced by the proposed aggregate operations on the subject properties because of the continued availability of aggregate products processed by this operation. Goal 9 is met.

J) Goal 10, Housing: The goal is to provide for the housing needs of citizens of the state.

FINDING: The applicant states the approval of the proposed mining operation assures future aggregate supply near future housing markets and this supports the Comprehensive Plan Housing Element's policies consistent with Statewide Planning Goal 10. The Planning Commission concurs with this assessment. Goal 10 is met.

K) Goal 11, Public Facilities and Services: The goal is to plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development.

FINDING: The applicant states impacts to public safety facilities and services will be minimal and the only critical utility services for an aggregate operation are water and electricity. Water needs for the operation are provided by an existing water right from Rogue River Irrigation District and is sufficient to provide for the water needs of the operation. Electricity is already available onsite. The Planning Commission concurs with the applicant's findings. Goal 11 is met.

H) Goal 12, Transportation: The goal is to provide and encourage a safe, convenient and economic transportation system.

FINDING: The Planning Commission incorporates and adopts its findings of fact and conclusions of law herein below demonstrating compliance with the Transportation System Plan facility adequacy test and the Oregon Transportation Planning Rule as being sufficient to conclude Goal 12 is met.

I) Goal 13, Energy Conservation: The goal is to conserve energy.

FINDING: The applicant indicates the ESEE analysis demonstrates that allowing mining near major markets will support Goal 13. Based upon applicant's findings, the Planning Commission finds the existing mining operation and the proposed operation are near major markets for aggregate and the proposed aggregate operation will not increase energy requirements in this area or for the County as a whole. Goal 13 is met.

J) **Goal 14, Urbanization:** The goal is to provide for an orderly and efficient transition from rural to urban land use.

FINDING: The applicant states the proposed mining operation helps to assure a future aggregate supply near urbanizing areas of White City, Central Point, Eagle Point and Medford and approval of the aggregate operation supports urbanization policies consistent with Goal 14. Based upon this locational finding, the Planning Commission Goal 14 is met.

K) Oregon Administrative Rule (OAR) 660, Division 16, Requirements and Application Procedures for Complying with Statewide Goal 5.

FINDING: OAR 660, Division 16 is addressed through the County's adopted and acknowledged Comprehensive Plan Map Designation Element and Mineral and Aggregate Resources Element, and the Land Development Ordinance. The Planning Commission incorporates and adopts applicant's purpose and intent statement at Record Page 148 as sufficient legal basis under which the County may and does apply Division 16 as implemented by the Jackson County Comprehensive Plan herein.

L) OAR 660-012-0060, TRANSPORTATION PLANNING, Plan and Land Use Regulation Amendments

FINDING: OAR 660, Division 12 is addressed through the County's adopted and acknowledged Comprehensive Plan Transportation Element and Transportation System Plan (TSP). The Planning Commission incorporates and adopts the evidence provided by applicant's Traffic Engineer and the opinion of the County Engineer and applicant's findings of fact and conclusions of law demonstrating compliance with OAR 660-012-0060.

2) JACKSON COUNTY COMPREHENSIVE PLAN:

This section addresses those plan elements and policies which are applicable to the requested map amendment.

A) Map Designations Element: Aggregate Resource Land

- i) <u>Map Designation Criteria:</u>
 - a) Significance Determination. The County shall analyze information relating to the location, quality and quantity of mineral and aggregate deposits. Information necessary to demonstrate the significance of a resource shall include:
 - (1) A map and other written documentation sufficient to accurately identify the location and perimeter of the mineral or aggregate resource; and
 - (2) Information demonstrating that the resource deposit meets or can meet applicable city, County, state, or federal quality specifications for the intended use(s). Oregon Department of Transportation quality specifications for aggregate include: (1) the Los Angeles Rattler test for abrasion (AASHTO T96, OSHD TM 211—loss of not more than 30 percent by weight), (2) the Oregon Air Degradation test (OSHD TM 208—loss of not more than 20 percent by weight), and (3) the Sodium Sulfate Soundness test (OSHD TM 206—not more than 12 percent by weight). Information may consist of laboratory test

- data or the determination of a certified, licensed or registered geology professional, or other qualified person; and
- (3) Information demonstrating the quantity of the resource deposit as determined by exploratory test data or other calculation compiled and attested to by a certified, licensed or registered geology professional, or other qualified person.

FINDING: Maps have been submitted showing the location and perimeter of the aggregate resource. Evidence was initially submitted by the applicant from The Galli Group, Geotechnical Consulting, regarding quantity and later supplemented by evidence submitted by Kuper Consulting LLC, engineering geologists at record page 853 to 892; this evidence is incorporated and adopted by the Planning Commission. Policy 4, Subsection D of the Aggregate and Mineral Resources Element of the Comprehensive Plan states "For an aggregate site to be determined significant, the resource must possess a minimum of 100,000 cubic yards of minable reserves. This standard is not absolute; the county may consider the significance of a site based on unique circumstances even though the volume threshold may not be met." The Planning Commission incorporates and adopts as its finding with respect to resource quantity applicable to the entire project site the expert opinion of applicant's consulting geologist that, "there is approximately 4.0 million cubic yards of aggregate resource estimated to occur on the Rock-n-Ready property [subject application area]. Therefore the property exceeds the quantity criteria of 100,000 cubic yards required in the Jackson County Comprehensive Plan" (Record Page 864).

Three reports were submitted from the Oregon Department of Transportation Materials Laboratory for material from the subject properties, dated January 8, 2004. These tests noted the materials complied with ODOT quality specifications. The applicant states these standards are for bridge construction. The test results show the samples meet the criteria stated above for ODOT quality test OSHD TM 206, OSHD TM 208, and OSHD TM 211, as identified in the Map Designations Element and the Aggregate and Mineral Resources Element. The tests show the samples meet the criteria as a significant resource in the Comprehensive Plan. The samples were taken from the current aggregate operations stockpiles. This initial evidence was supplemented by evidence submitted by Kuper Consulting LLC, engineering geologists at record page 853 to 892; this evidence is incorporated and adopted by the Planning Commission. The Planning Commission finds there is substantial evidence in the record to find the site includes aggregate of sufficient quality to meet Jackson County Goal 5 aggregate resource requirements.

ii) Inventory. Based on the analysis of information relating to the location, quality and quantity of mineral and aggregate deposits, the County shall determine the inventory status of the resource site. Each site considered by the County shall be placed on one of three inventories based on the following criteria:

- a) If the resource site does not meet the definition of a significant resource in the Land Development Ordinance, the County shall include the site on an inventory of "Nonsignificant Sites"; or
- b) If information is not available to determine whether the resource site meets the definition of a significant resource as defined in the Land Development Ordinance, the County shall include the site on an inventory of "Potential Sites." Sites shall remain on the "Potential sites" inventory until such time as information is available to determine whether the resource site is significant; or
- c) If the resource site meets the definition of a significant resource, the County shall include the site on an inventory of "Significant Goal 5 Resource Sites."

FINDING: Based upon the quality and quantity information submitted by the applicant's experts herewith incorporated and adopted that the entire site is a cohesive geologic unit with substantial high quality reserves, all properties in the subject application that are not currently designated as significant aggregate resources are appropriately added to the Jackson County inventory of "Significant Goal 5 Resource Sites" as per the map attached to the Planning Commission's recommendation as Exhibit B.

iii) Identify Impact Area. For each site determined to be significant and to be included on the inventory of "Significant Goal 5 Resource Sites", the Impact Area shall be identified and mapped. The Impact Area shall be 1,500 feet unless increased or decreased based on analysis and findings developed in the course of the Goal 5 process.

FINDING: The Planning Commission finds the record contains testimony and evidence regarding the appropriate location of the impact area and ESEE analysis contents and that the Commission has developed analysis and findings in the course of the Goal 5 process as provided herein below and finds that there is nothing in its adopted analysis or findings upon which to base, much less require, an expansion or contraction of the impact area. Moreover, the Planning Commission incorporates and adopts applicant's record summary, argument, and conclusion at Record Pages 1567 to 1569 and the argument in Bullet Point 3 at Record Page 781 as adequate basis to explain why evidence in the record does not require the impact area be expanded.

- iv) Identify Conflicting Uses. For each site determined to be significant and to be included on the inventory of "Significant Goal 5 Resource Sites", conflicting uses, as defined in the Land Development Ordinance, shall be identified.
 - a) The identification of conflicting uses and other Goal 5 resources shall include uses in existence at the time of review, as well as the potential for the establishment of new conflicting uses. Identification of

potential conflicting uses shall be accomplished by analyzing the uses allowed in the adjacent zone(s).

b) If no conflicting uses are identified, the impact area designation shall not be applied to the property surrounding the resource site.

"To be identified as a conflicting use, the allowed aor allowable use must have a negative impact on the Goal 5 resource site. But also consistently with the rule's working, the negative impacts that a local government may consider in that regard are not limited to legal burdens that might arise from nuisance and trespass actions. Rather, the local government may consider any negative impacts of an allowable use, which can include, but is not limited to, impacts of a social, legal, economic, and environmental nature." Section 13.3(6)(a) defines a conflicting use as "A use which, if allowed, could adversely affect operations at a mineral and aggregate site, or could be adversely affected by extraction and processing activities at a significant mineral and aggregate site." Jackson County's definition of "conflicting use" does not agree with the Court of Appeal's decision in Hegele v. Crook County. Jackson County must use the Court of Appeal's decision regarding the definition of a "conflicting use", which is an allowed or allowable use that has a negative impact on a Goal 5 resource site.

The applicant has identified conflicting use on an area-wide basis and then two site-specific ESEE analyses that focus on specific conflicting uses that exist or have the potential to develop within a 1,500 foot impact area. The latter is based upon the natural division that Bear Creek has on the area and will be east and west of Bear Creek. Below are the identified conflicting uses on an area-wide basis.

Area-wide Conflicting Uses

Riparian Corridors of Bear Creek, Jackson Creek, and Willow Creek - Identified Goal 5 resources (Class 1 streams). Potential negative impacts on the aggregate site include limiting of mining areas and increasing removal and processing operation costs.

Wetlands - Bear Creek (Riverine), Various Palustrine Wetlands, and Vernal Pools in East and NE portion of the area. Potential negative impacts on the aggregate site include limiting of mining areas and increasing removal and processing operation costs. Wetlands are identified as a 1B resource (insufficient data)..Mining operations were not identified as a conflicting use for wetlands in Jackson County's Goal 5 Background Document.

Groundwater Resources. The applicant states there are no groundwater quantity or problems known to exist beyond those generally present in the lower Bear Creek Basin. Groundwater resources are identified as a 1B resource (insufficient data) in the Goal 5 Document. Staff finds a potential exists to determine this is a conflicting use because of the possibility of a reduction in the amount of water output for wells

in the area. A reduction in water output in a well could result in litigation for the applicant and an increase in costs associated with aggregate operations.

Oregon Recreational Trails - Bear Creek Greenway. This is an identified Goal 5 resource. The applicant states this section of the trail is proposed, according to the Goal 5 Document and that no conflicts would be present if Greenway construction does not occur until completion of operation. The applicant also states the potential negative impacts on the aggregate site would be increased operations costs and complaint management.

Scenic Views and Sites - Bear Creek Greenway and Class 1 streams (Bear Creek, Jackson Creek, and Willow Creek). These are identified Goal 5 resources. Potential negative impacts on the aggregate site are limiting the mining areas and increased operation costs.

Residential Development - Residential zones and scattered farm and non-farm dwellings. Potential negative impacts on the aggregate site include increased operation costs, complaint management, reduced operating hours, and traffic conflicts.

Commercial Development - Interchange Commercial (IC) zoning district development, including but not limited to hotel/motel accommodations, eating and drinking establishments, campground/RV parks, parks/playgrounds, public safety services, and farm stands, bed and breakfast establishments. Potential negative impacts on the aggregate site are complaint management, reduced operating hours and traffic conflicts.

Farm Uses. The applicant indicates there are no noise and dust sensitive farm uses present in the area, primarily orchards and vineyards. Staff finds there is a nursery within the 1,500 foot impact area, as well as a dairy operation and an elk farm. These farm uses could by affected by the aggregate operations because of noise and dust impacts. The potential negative impacts on the aggregate site are reduction of elimination of the mining areas, additional buffering and landscaping, and increased dust and noise control measures.

Other Non-residential and Non-farm Uses. The applicant identifies some uses that are not present within the impact area such as golf courses, parks, schools, and day-care facilities, although these are not specifically limited types of non-residential and non-farm uses that could occur in the impact area. Potential negative impacts on the aggregate site include a reduction or elimination of mining areas, additional buffering and landscaping, and increased dust and noise control measures.

East Side of Bear Creek Conflicting Uses: The zoning districts are EFU and AR.

Residential Development. According to the applicant in Table 4 of their Exhibit 1, there are approximately 7 existing dwellings within the 1,500 foot existing and proposed impact areas. There are 5 properties which may have a potential for residential development. Potential negative impacts on the aggregate site include increased operation costs, complaint management, reduced operating hours, and traffic conflicts.

Goal 5 Resources - The existing Goal 5 resources include the Bear Creek Greenway, Bear Creek riparian area, wetlands, and intact vernal pools (wetlands), and adjacent aggregate operations. Potential negative impacts on aggregate operations are limiting the mining areas, increased operation costs, and complaint management.

Farm Uses. Existing farm uses include field farming and dairy farming. Potential farm uses would include the same activities as well as those activities included in the definition of "farm use" in the LDO, including wineries and vineyards. The potential negative impacts on the aggregate site are reduction or elimination of the mining areas, additional buffering and landscaping, and increased dust and noise control measures.

Groundwater Resources. Existing wells are associated with residences as well as farm uses. Those residences within the impact area can be assumed to have wells within the impact area. A potential of 5 other wells on the vacant properties may also be assumed. Potential negative impacts on aggregate operations are litigation resulting from a reduction in water output for a well and an increase in costs associated with aggregate operations.

Commercial Development. Commercial development is not know to exist within the impact area east of Bear Creek. Commercial activities in conjunction with farm use are possible for future development. Potential negative impacts on the aggregate site are complaint management, reduced operating hours and traffic conflicts.

Other Non-farm and Non-residential uses. No existing uses appear to be occurring within the impact area. The potential does exist for uses such as golf courses, parks, schools, and day-care facilities. Potential negative impacts on the aggregate site include a reduction or elimination of mining areas, additional buffering and landscaping, and increased dust and noise control measures.

West Side of Bear Creek: Zoning districts include EFU, AR, OSR, RR-5, UR-1, GI, and IC.

Residential Development. There are approximately 27 dwellings located within the 1,500 foot impact area. There are approximately 10 dwellings that could potentially be built. Potential negative impacts on the aggregate site include increased operation costs, complaint management, reduced operating hours, and traffic conflicts.

Goal 5 Resources - The existing Goal 5 resources include the Bear Creek Greenway, Bear Creek riparian area, Willow Creek riparian, Jackson Creek riparian area, and wetlands and adjacent aggregate operations. Potential negative impacts on aggregate operations are limiting the mining areas, increased operation costs, and complaint management.

Farm Uses. Existing farm uses include a nursery, field farming, an elk farm, and other farming not specifically known. Potential farm uses would include the same activities as well as those activities included in the definition of "farm use" in the LDO, including wineries and vineyards. The potential negative impacts on the aggregate site are reduction or elimination of the mining areas, additional buffering and landscaping, and increased dust and noise control measures.

Commercial Development. Existing commercial development includes a small market, trucking company, nursery, and motocross track. There is a tax lot within the GI zoning district with many industrial buildings, although it is not known what types of activities are occurring within these buildings. There are 2 tax lots within the IC zoning district that are currently vacant. The potential exists for future commercial development within the GI and IC zoning districts. Potential negative impacts on the aggregate site are complaint management, reduced operating hours and traffic conflicts.

Other Non-farm and Non-residential uses. No existing uses appear to be occurring within the impact area. The potential does exist for uses such as golf courses, parks, schools, and day-care facilities. Potential negative impacts on the aggregate site include a reduction or elimination of mining areas, additional buffering and landscaping, and increased dust and noise control measures.

Groundwater Resources. Existing wells are associated with residences as well as farm uses. Those residences within the impact area can be assumed to have wells within the impact area. Potential negative impacts on aggregate operations are litigation resulting from a reduction in water output for a well and an increase in costs associated with aggregate operations.

- Analysis of Conflicting Uses. For each site determined to be significant, the economic, social, environmental and energy (ESEE) consequences of conflicting uses shall be analyzed.
 - a) The analysis shall be limited to uses and Goal 5 resources identified pursuant subsection D.
 - b) The analysis shall consider the consequences associated with protecting the mineral or aggregate resource, as well as extracting and processing the resource.

- c) The analysis shall determine the relative value or use of the mineral or aggregate resource site as compared to existing or potential conflicting uses.
- d) The analysis shall consider the consequences for both existing and potential conflicts, and shall consider opportunities to avoid and mitigate conflicts. The analysis shall examine:
 - The consequences of allowing conflicting uses fully, notwithstanding the possible effects on surface mining operations;
 - (2) The consequences of allowing surface mining operations fully, notwithstanding the possible effects on conflicting uses;
 - (3) The consequences of protecting conflicting Goal 5 resources.

FINDING: The applicant has completed ESEE analyses based upon area-wide and site-specific areas east and west of Bear Creek. While the area-wide analysis is helpful, the Planning Commission concentrates on only the site-specific areas east and west of Bear Creek and the ESEE analysis and consequences of allowing conflicting uses fully, allowing surface mining fully, and consequences of protecting conflicting Goal 5 resources. The Planning Commission adopts and incorporates the applicant's review and analysis of conflicting uses, except as amended by the Commission's deliberations. Based upon that review and analysis, together with the requirements of the Land Development Ordinance and any additional discretionary conditions, the Planning Commission adopts the following ESEE analysis sufficient to implement Goal 5 for the site:

East Side of Bear Creek

Economic Consequences of Allowing Conflicting Uses Fully:

The economic consequences of limiting or eliminating aggregate operations are lost employment and increased scarcity of the commodity. The reduction or loss in production at these facilities would reduce employment opportunities and require other aggregate operations to replace the aggregate that is lost from this operation, with possible increase in costs because of the distance to markets.

Economic Consequences of Allowing Surface Mining Operations Fully:

Allowing aggregate operations to expand would cause farming operations to be reduced. There is a family run dairy operation as well as small to medium scale ranching and field farming activities. Because a portion of land owned by the Medina dairy farm is included in this proposal, the expectation is that

the loss of farm land will be offset by money received from the sale of the property used for aggregate operations and reinvested in the dairy farm without a significant increase cost or changes in farming practices. The Hilton property, tax lot 2600 in Section 28, will lose approximately one third of property to aggregate extraction and will result in at least a minor loss in farm income. The costs to other ranching and field farming activities will not be significantly increased nor will the aggregate operations force a significant change in farming practices.

Economic Consequences of Protecting other Goal 5 Resources:

The identified Goal 5 resources for the subject properties are the Bear Creek Greenway, Bear Creek and its riparian area, wetlands, and an area of intact vernal pools (wetlands). The intact vernal pools are not within the extraction area for aggregate operations and would not be affected. The wetlands and vernal pools are regulated by Division of State Lands and are designated a 1B resource, resources sites considered to be potentially important, but inadequate information is available to complete the Goal 5 process. The Bear Creek Greenway is an Outstanding Scenic Stream Corridor and is designated as a 3C area, which specifically limits conflicting uses. The riparian area of Bear Creek is administered through the LDO, Section 8.6.

The economic consequences of protecting these Goal 5 resources, which would limit the extent of aggregate operations, would reduce income for the operations as well as the amount of aggregate materials available for development purposes. Aggregate materials would need to come from other sites which could increase the market value of the aggregate products for Jackson County as a whole.

Social Consequences of Allowing Conflicting Uses Fully:

The Planning Commission finds the aesthetic impacts from farm uses, limited residential development, commercial development in conjunction with farm use, and the presence of protected Goal 5 resources are more desirable than the impacts from aggregate operations.

Social Consequences of Allowing Surface Mining Operations Fully:

The social consequences of allowing expanded aggregate mining are noise, dust, and viewshed for conflicting uses, basically aesthetic values would be impacted by the aggregate mining. There are only 7 residences within the 1,500 foot impact area and parties to this application own 3 of these residences. The other residences are located over 1,200 feet from the nearest extraction area. There is already a large gravel pit to the north on tax lot 1300 in Section.21. Because of the topographic bench to the east and the

Bear Creek riparian corridor to the west, aesthetic impacts will be relatively slight. As aggregate removal and machinery move further below grade, aesthetic impacts will be reduced. Conditions which may help to mitigate the social impacts due to expanding the aggregate operations would include a protected riparian area from the banks of Bear Creek (applicant has proposed a 100 foot or more of setback from the stream bank), and an easement through the area for the Bear Creek Greenway (applicant has proposed such an easement).

Social Consequences of Protecting other Goal 5 Resources fully:

As was stated above, the presence of Goal 5 resources creates a more desirable aesthetic impact for this area than allowing the expansion of aggregate operations. The Bear Creek riparian area, wetlands, and vernal pools (wetlands) help to enhance aesthetic values of this area.

Environmental Consequences of Allowing Conflicting Uses Fully:

While farming activities are not generally associated with adverse environmental impacts, many farming uses are unregulated and could cause considerable environmental damage over time. Residential development, commercial activities in conjunction with farm use, golf courses, schools, etc., also have the potential for environmental damage, particularly to Bear Creek.

Environmental Consequences of Allowing Surface Mining Operations Fully:

Expanding the aggregate operations could have adverse environmental consequences to the Bear Creek riparian corridor, including impacts to hydrophytic vegetation, water quality, and fish habitat. Mitigation proposed by the applicant is a 100 foot or more setback from the banks of Bear Creek. Another mitigation measure could include aggressive riparian planting of the protected riparian area, as approved by Oregon Department of Fish and Wildlife (ODFW). Mining activities in Oregon include many environmental controls and regulations to reduce environmental impacts which are required by Department of Geology and Mineral Industries (DOGAMI), Department of Environmental Quality (DEQ), and ODFW.

There are also two Rogue Valley Sewer Service mainlines on the subject properties and failure of the mining operation to protect the waste disposal lines could have considerable environmental impacts. The applicant has proposed to RVSS a plan to protect the lines, including 50 foot mining setbacks from the lines.

Environmental Consequences of Protecting other Goal 5 Resources:

Protecting the identified Goal 5 resources would limit the area allowed for mining and possibly increase operational costs associated with mining. The Bear Creek riparian corridor, Bear Creek Greenway, wetlands, and vernal pool (wetlands) are environmental resources, with the Bear Creek Greenway being associated with the Bear Creek riparian corridor. Protecting these resources would limit adverse environmental impacts associated with aggregate operations.

Energy Consequences of Allowing Conflicting Uses Fully:

The expanded aggregate operations for the east side of Bear Creek include hauling and conveying aggregate over Bear Creek to take advantage of the existing processing facilities without additional energy inputs. Prohibiting or limiting aggregate extraction would require a new processing site and would not take advantage of the haul road and approved bridge infrastructure. A processing facility on the east side of Bear Creek would add distance to every load of aggregate hauled out of this operation, increasing energy costs and inputs.

Energy Consequences of Allowing Surface Mining Operations Fully:

Aside from post-mining reclamation inputs and mitigation inputs during mining operations, no adverse energy consequences are identified.

Energy Consequences of Protecting other Goal 5 Resources:

Protection of the identified Goal 5 resources could result in prohibiting expanded aggregate extraction from the east side of Bear Creek, not including tax lot 1900, which has been rezoned to allow extraction and processing. Prohibiting or limiting extraction would require a new processing site and increasing the transportation costs from production facility to market.

Relative Value or Use of the Aggregate Resource Site as Compared to Existing or Potential Conflicting Uses:

There are no acute land use conflicts in the area and the relative value of all ESEE factors for expanding aggregate extraction east of Bear Creek are strongly weighted towards allowing aggregate extraction over other existing or potential conflicting uses. There is a substantial quantity of high grade aggregate material to be used in concrete and asphaltic concrete production and with mitigation measures, adverse impacts to conflicting uses could be reduced to an acceptable level. OAR 660-016-00005 states, in part, "Where conflicting uses have been identified, Goal 5 resources may impact those sites." This indicates that the aggregate operations may indeed have an impact on conflicting uses within the impact area. The Planning Commission

finds the value of the aggregate resource does outweigh impacts to conflicting uses within the 1,500 foot impact area and that there is not substantial evidence in the record that explains how the outcome of the ESEE analysis would change significantly if the 1,500 impact area were altered.

With regards to other Goal 5 resources, under Policy 4 of the Comprehensive Plan Aggregate and Mineral Resources Element, "L" states "When analyzing the ESEE consequences of potential conflicts between significant mineral or aggregate resource and another significant Goal 5 resource, the county shall consider the protection program adopted for the conflicting resource. Conflicts with other natural resources shall not be the basis for mining restrictions unless the county has included or includes the conflicting resource on the inventory of significant Goal 5 resources, and has adopted or adopts a resource protection program." The Bear Creek Greenway and the Bear Creek riparian corridor are the only non-aggregate Goal 5 resources designated as significant resources in this area. With stipulations offered by the applicant for a Greenway trail easement and compliance with all applicable LDO standards and site-specific conditions required by the Planning Commission, the ESEE analysis is balanced toward allowing all aspects of the mining operation as depicted on the approved site and operations master plan map as amended by the Planning Commission (See Exhibit E attached to the Planning Commission's Recommendation); the applicant requested an amendment to Ordinance 95-61 to that would allow mining of Pit 2a and the Planning Commission finds that the potential for environmental and social impacts associated with this portion of the amendment request to that ordinance outweighs the value of aggregate mining in this area and based thereupon does not recommend an amendment to the ordinance to allow the mining of Pit 2a at this time.

The Planning Commission finds the aggregate resource and operations on the east side of Bear Creek should be designated a significant resource requiring protection under Jackson County's Goal 5 program for aggregate subject to applicable standards contained in the Land Development Ordinance, attached site specific conditions of approval, and approved site and operations master plan (See Exhibit E attached to the Planning Commission's Recommendation and Sections I, II, and IV of applicant's Exhibit 4 beginning at Record Page 330).

West Side of Bear Creek

Economic Consequences Allowing Conflicting Uses Fully:

Eliminating or limiting aggregate operations would result in lost employment opportunities and reducing the available aggregate resource in this area. This could cause an increase in transportation costs if material must be replaced

from another site that may not have existing infrastructure in place. There are several vacant and undeveloped parcels controlled by Rock 'N' Ready and providing Goal 5 protection and AR zoning for these lots will open opportunities for extraction and accessory aggregate operations where they now serve only to prevent incompatible uses from siting near the aggregate operations.

Economic Consequences of Allowing Surface Mining Operations Fully:

When tax lot 1900 was rezoned to AR by Ordinance 95-61, no extraction was allowed west of Bear Creek. There may be lost economic opportunities from noise and dust sensitive uses should extraction activities be allowed west of Bear Creek. There is a single vacant residentially zoned tax lot within the impact area applied through Ordinance 95-61. A Conditional Use Permit (Type 3 application) and approval of that application would be required to build a dwelling on that tax lot. The lost opportunities for new residential development would be minimal.

There are, however, existing residential development that could experience an increase in noise, dust, and viewshed impacts due to extraction and new processing activities on the west side of Bear Creek. The applicant has proposed six foot landscaped berms along Blackwell Road and around Pit 3, which will help reduce noise and viewshed impacts, and dust control procedures. There will be an increase in impacts, however slight or adverse, to existing residential development regardless of mitigation measures proposed by the applicant and incorporated as conditions of approval. The Planning Commission finds that these impacts are likely to be most acute in the southwest corner of the proposal (TL's 800, 900, 1200, 1300, and 1500) because of the immediate vicinity of two residential units zoned for residential use.

With regards to farm uses in this area, the EFU lands are well suited to agricultural production, but the predominant farm uses are not noise or dust sensitive. West of Bear Creek, there area three farming operations currently in production. South of the existing extraction operation on tax lots 1101/2604 is the Von der Helen farm, which is a field farming operation. These farming activities appear to have continued without changes over the last six years and that the mining activities and extraction areas on tax lots 800, 900, 1200, 1300, and 1500 would expected to result in a net decrease from the current impacts from mining operations on tax lots 1101/2604, which will be reclaimed prior to opening Pit 4. Southwest of the existing extraction area is the Hong farm, which is also a field farming operation and appear to be similar to the Von der Helen operations. There appear to have been no change in farming activities due to existing aggregate operations in the last six years. There will be a modest increase in current impacts from aggregate operations and

accessory mining activities associated with proposed Pit 3 following reclamation of the pit on tax lot 1101/2604.

The third farming operation involves the Walker elk ranching operation. The operation breeds and raises elk and includes properties on the west and east sides of Blackwell Road. The portion of the ranching operations east of Blackwell Road on tax lot 2600 in Section 28 will be most impacted by the proposed AR zoning and aggregate operations. This tax lot has aggregate hauling and extraction on the east boundary with the principal extraction area to the southeast. North and northeast of tax lot 2600 are the existing preprocessing area, stockpiling areas, and the concrete batch plant. To the west of these existing operations are the proposed pre-processing areas, stockpiling areas, and an asphaltic batch plant. The accessory mining activities and extraction area associated with Pit 3 will cause no net increase in current impacts from existing mining operations because the screening will have reached maturity prior to extraction in accordance with the phasing plan. A 200 foot setback from aggregate operations on tax lot 1800 has been maintained as well as a similar setback on tax lot 1700. This buffering has been sufficient for the elk ranch over the past six years and that approval of the proposed mining operations and AR zoning would not be expected to result in new impacts that would significantly increase the cost of or significantly alter the ranching operations. The proposed AR zoning is unlikely to significantly increase the cost of farming practices or force a significant change in the farming practices on other less intensive agricultural operations in the existing and proposed impact areas west of Bear Creek.

There will be impacts to existing farming operations in this area. Mitigation measures such as dust control and landscaped berms proposed by the applicant will help to reduce impacts on farming activities. Staff recommended a 200 foot setback from the elk ranch boundaries for aggregate extraction activities associated with Pit 3 in its initial report, similar to the setback maintained on tax lot 1800.

Economic consequences associated with the GI zoning districts in the area are expected to be no more than minimal because industrial uses are high impact uses that either do not conflict with aggregate uses or would conflict at level that could be addressed at the site design stage. With respect to commercial uses in the small IC zoned parcel there are some uses that could be considered conflicting uses allowed in that zone. However, these are generally uses that could locate elsewhere in the County where conflicts are less acute and there are still uses allowed in the zone where conflicts could be balanced through the County's standard site development approval process with minimal consequences.

Economic Consequences of Protecting other Goal 5 Resources:

The Goal 5 resources associated with the west side of Bear Creek include the Bear Creek Greenway, Bear Creek and Jackson Creek riparian areas, and wetlands. Protection of these Goal 5 resources would limit the extraction areas for Pit 3 particularly. The applicant states that the Comprehensive Plan Goal 5 Background Document, pages 23-26, conclude that aggregate operations are a permitted use in the Bear Creek Greenway, provided the aggregate operations are a permitted use in the primary zoning district. The Jackson County Land Development Ordinance requires a Type 3 approval process. This concurrent application has been conditionally approved. The Bear Creek riparian area is subject to development standards in the LDO requiring at least a 50 foot riparian setback. The evidence indicates this setback can feasibly be met and will be exceeded for all of Pit 2 along Bear Creek. Wetlands are regulated by the Division of State Lands and evidence from DSL regarding approval of development within these wetlands will be a condition of approval prior to development within the wetlands. The Planning Commission finds that mitigation can be provided through the concurrent Type 3 application, LDO requirements, and DSL review.

Social Consequences of Allowing Conflicting Uses Fully:

The Planning Commission finds that farm uses, particularly near Pit 3, have been operating without the appearance of significant adverse impacts associated with current mining operations. Eliminating or limiting mining on the west side of Bear Creek would reduce affects of dust on farm uses and the deterioration of the viewshed due to mining operations.

Commercial development in the appropriate zoning districts would affect the mining operations should their presence limit or eliminate mining operations. Eliminating or limiting mining on the west side of Bear Creek would reduce affects of dust on commercial development and the deterioration of the viewshed due to mining operations, as well as a reduction affects produced by noise of the aggregate operation.

Eliminating or limiting mining on the west side of Bear Creek would reduce affects of dust and noise on residential development and the deterioration of the viewshed due to mining operations. The proposed dust control measures and landscaped berms would help reduce affects on residential and commercial development as well as farm uses

Social Consequences of Allowing Surface Mining Operations Fully:

The primary social consequences of allowing expanded aggregate operations fully would be dust, noise, deterioration of the viewshed, and smells from the asphaltic concrete batch plant. The applicant states the most serious land use conflicts would be on dwellings. There are approximately 25 residences

located within the impact area. Many of the social consequences are already occurring due to the existing aggregate operations on tax lot 1800, tax lots 1101/2604, and tax lot 1300 in Section 21 (Crater Sand & Gravel). Significant land use conflict intensification in not expected because of existing mining operations. The aesthetic impacts from the proposed aggregate operations on the west side of Bear Creek have the potential to be significant. This is because the existing residences are mostly concentrated on the east slope of the small hill on the west side of Blackwell Road, which overlooks the subject properties and proposed aggregate operations. Without screening, these residences would experience significant visual impacts. The applicant has proposed landscaped berms along Blackwell Road to help reduce noise and visual impacts, although the noise and visual impacts cannot be mitigated entirely.

Social Consequences of Protecting Goal 5 Resources:

Significant Goal 5 resources on the subject properties are the Bear Creek Greenway and the Bear Creek, Willow Creek and Jackson Creek riparian corridors. The applicant has proposed a setback from the banks of Bear Creek to protect the riparian corridor. This setback is approximately 100 feet from the bank, although not through the entire corridor on the subject parcels. The LDO provides for a minimum setback of 50 feet from the bank. The social consequences would be on the viewshed for the riparian corridor. The mining operations would not be affected significantly and the proposed setback by the applicant is greater than required by the LDO. Minimal impacts to the aggregate operations would occur if the riparian corridor of Bear Creek were fully protected. Staff recommended a similar setback from the banks of Jackson Creek be determined as a condition of approval in the initial staff report. At least a 50 foot setback from the bank should be required.

The Bear Creek Greenway has a limited area west of Bear Creek. Pit 4 would be most affected should the Greenway be protected fully, although the affect would be minimal. Protecting the Greenway fully would not significantly affect the mining operations on the west side of Bear Creek.

Environmental Consequences of Allowing Conflicting Uses Fully:

Reclamation of the aggregate pits on the west side of Bear Creek will create new waterfowl habitat and the extension of the Bear Creek Greenway. Limiting or eliminating aggregate operations may encourage the conversion of lands to alternative uses that may be more conflicting than aggregate operation.

The environmental consequences of allowing conflicting uses fully would be the protection of the stream corridors, fish habitat, and affects of dust and noise. The proposed mitigation measures for dust control, landscaped berms to reduce noise, and setbacks from stream banks will help to reduce these consequences to levels required by federal, state, and local agencies.

Environmental Consequences of Allowing Surface Mining Operations Fully:

Adverse environmental impacts are most likely to occur in the Bear Creek, Willow Creek, and Jackson Creek riparian corridor. Hydrophytic vegetation, water quality, and fish habitat could all be negatively impacted.

The Planning Commission finds that although negative impacts could occur by the expansion of aggregate operations to the west side of Bear Creek, requirements and regulations from federal, state, and local governmental agencies must be complied with prior to the beginning of operations. These requirements help reduce adverse environmental impacts.

Environmental Consequences of Protecting other Goal 5 Resources Fully:

The significant Goal 5 resources which are protected are the Bear Creek Greenway and the riparian areas for Bear Creek, Jackson Creek, and Willow Creek. Limiting or eliminating mining to protect these resources could restrict mining to the east side of Bear Creek and allow only existing operations to continue on the west side of Bear Creek. The balance for protecting conflicting Goal 5 resources is found in the LDO requirements for riparian corridor protection and the Type 3 review process for the Bear Creek Greenway. The Planning Commission finds that these resource protection programs in the LDO provide the proper balance between conflicting Goal 5 resources.

Energy Consequences of Allowing Conflicting Uses Fully:

The Planning Commission finds that allowing conflicting uses fully by limiting or elimination expanded aggregate operations to the west side of Bear Creek could increase energy requirements to mine, process, and distribute aggregate materials to needed construction sites. This is due to locating aggregate operations in areas which are not as well situated to provide for efficient aggregate extraction, processing, and distribution.

Energy Consequences of Allowing Surface Mining Operations Fully:

Aside from post-mining reclamation and mining inputs during mining operations, no adverse energy consequences area anticipated.

Energy Consequences of Protecting other Goal 5 Resources Fully:

Protecting Goal 5 resources fully could limit or eliminate mining operations on the west side of Bear Creek. The energy consequences could increase energy requirements to mine, process, and distribute aggregate materials because of locating aggregate operations in other areas. Goal 5 resource are protected through requirements for development within riparian corridors and the Bear Creek Greenway.

Relative Value or Use of the Aggregate Resource Site as Compared to Existing or Potential Conflicting Uses:

The Goal 5 language in Division 16 states "In conjunction with the inventory of mineral and aggregate resources, sites for removal and processing of such resources should be identified and protected." Prohibition of any extraction west of Bear Creek, failure to recognize the area west of Bear Creek as a significant aggregate resource site, and protecting existing operations and activities would not result in a balance that is consistent with Jackson County's aggregate policies and Statewide Planning Goal 5. This area west of Bear Creek has a greater concentration of conflicting land uses. Full preservation of the proposed aggregate resources and mining operations with little or no limitations would also result in a balance that is not consistent with Jackson County's aggregate policies and Goal 5. The Map Designations Element of the Comprehensive Plan specifically provides for balance between allowing conflicting uses fully and allowing aggregate mining operations fully by the incorporation of site development requirements into the ordinance designating the significant site.

As the Planning Commission deliberated through ESEE analysis process, the Commission found that some, but not all, of the applicant's requests applicable to the west side of Bear Creek represent an adequate balance of conflicting uses. The more northern portion of the requests applicable to Tax Lots 1700, 1800, 1900 (amendment of ordinance 95-61), 1400 and 1303 were found to meet the requirements of Jackson County's aggregate program with conditions of approval, proposed phasing plan, and screening. However, the Planning Commission's analysis raised concerns regarding the timing and extent of conflicting uses in the southwest corner of the project area. The Planning Commission recognizes that this area is intended in the Master Site and Operations Plan proposed by the applicant to be mined in the distant future and that land use changes in the interim may reduce the acute conflicting uses that presently exist. The Commission further recognizes that the site contains significant aggregate reserves such that failure to provide any protection under the Comprehensive Plan would not adequately balance this valuable resource against the conflicting uses in the area. Thus, the Planning Commission elects to balance the conflicting uses for Tax Lots 800.

900, 1200, 1300, and 1500 by designating the site significant, establishing an impact area, and designating these lots Aggregate Resource Land on the Comprehensive Plan, but not by rezoning these parcels to Aggregate Removal at the present time, because the Commission finds the level of social and economic impacts on the two immediately adjacent residences, and the elk farm to a lesser degree, too acute to warrant re-zoning at this time.

With regards to other Goal 5 resources, under Policy 4 of the Comprehensive Plan Aggregate and Mineral Resources Element, "L" states "When analyzing the ESEE consequences of potential conflicts between significant mineral or aggregate resource and another significant Goal 5 resource, the county shall consider the protection program adopted for the conflicting resource. Conflicts with other natural resources shall not be the basis for mining restrictions unless the county has included or includes the conflicting resource on the inventory of significant Goal 5 resources, and has adopted or adopts a resource protection program." The Bear Creek Greenway and the Bear Creek riparian corridor are the only Goal 5 resources designated as significant resources in this area. The applicant states that the Comprehensive Plan Goal 5 Background Document, pages 23-26 conclude that aggregate operations are a permitted use in the Bear Creek Greenway, provided the aggregate operations are a permitted use in the primary zoning district. The Jackson County Land Development Ordinance requires a Type 3 approval process. This concurrent application has been conditionally approved. The Bear Creek riparian area is subject to development standards in the LDO requiring at least a 50 foot riparian setback. The applicant indicates this setback can feasibly be met and will be exceeded for most of the site along Bear Creek.

The Planning Commission finds the aggregate resource and operations on the west side of Bear Creek should be designated a significant resource requiring protection under Jackson County's Goal 5 program for aggregate subject to applicable standards contained in the Land Development Ordinance, attached site specific conditions of approval, and approved site and operations master plan for the area re-zoned to Aggregate Removal and that the areas not re-zoned at this time will benefit from protection as a significant resource subject to additional approvals that may occur at such time as the conflicting use conditions can be addressed in a manner acceptable to the County.

ESEE CONCLUSIONS

Based upon the applicant's land use review and analysis and with those amendments discussed herein above, the Planning Commission concludes its foregoing ESEE analysis will adequately balance the relative value of conflicting uses and the aggregate resource sufficient to satisfy and implement Jackson County's Goal 5 program for aggregate for the subject The subject properties are designated a '3C' site; the '3C' program determines that both the resource site and the conflicting uses are important relative to each other, and that the ESEE consequences should be balanced so as to allow the conflicting uses in a limited way so as to protect the resource site. Based upon its ESEE analysis above, the Planning Commission concludes the proposed aggregate uses east of Bear Creek will be relatively unconstrained by conflicting land uses, but should be balanced against competing Goal 5 resources, specifically the Bear Creek Greenway and the Bear Creek riparian corridor and is therefore protected as a '3C' site and the same will be accomplished through adherence to the approved site and operations master plan, requirements of the LDO, and discretionary conditions adopted by the Planning Commission. Based upon its ESEE analysis above, the Planning Commission concludes the proposed extraction area west of Bear Creek is more constrained by conflicting land uses, but should be balanced against competing Goal 5 resources and conflicting land uses subject to applicable standards contained in the Land Development Ordinance, attached site specific conditions of approval, and approved site and operations master plan for the area re-zoned to Aggregate Removal and that the areas not re-zoned at this time will benefit from protection as a significant resource subject to additional approvals that may occur at such time as the conflicting use conditions can be addressed in a manner acceptable to the County.

- vi) Decision on Program to Provide Goal 5 Protection. Based on the analysis of ESEE consequences, the County shall make a determination on the level of protection to be afforded each site. Each determination shall constitute a decision to comply with Goal 5 for the specific site, and shall be incorporated into the Comprehensive Plan, and reflected on the County zoning maps, as appropriate. The County shall make one of the following determinations:
 - a) Protect the resource site fully, allow surface mining. To implement this decision the County shall apply the Aggregate Removal zone. Development and use of the mineral or aggregate resource shall be governed by the standards within the Land Development Ordinance. As part of the final decision, the County shall adopt site-specific policies prohibiting the establishment of conflicting uses within the area designated as the Impact Area surrounding the Extraction Area.
 - b) Balance protection of the resource site and conflicting uses, allow surface mining. To implement this decision, the County shall apply the Aggregate Removal zone. Development and use of the mineral or aggregate resource shall be governed by the standards in the Land Development Ordinance and any other site-specific requirements designed to avoid or mitigate the consequences of conflicting uses

and adopted as part of the final decision. Development of conflicting uses within the Impact Area shall be regulated by the Land Development Ordinance and any other site-specific requirements designed to avoid or mitigate impacts on the resource site and adopted as part of the final decision.

c) Allow conflicting uses, do not allow surface mining. To implement this decision, the County shall not apply the Aggregate Removal zoning district. The site will not be afforded protection from conflicting uses, and surface mining shall not be permitted except through the permit review process in the Land Development Ordinance.

FINDING: The Based upon the applicant's land use review and analysis and with those amendments discussed herein above, the Planning Commission concludes its foregoing ESEE analysis will adequately balance the relative value of conflicting uses and the aggregate resource sufficient to satisfy and implement Jackson County's Goal 5 program for aggregate for the subject properties. The subject properties are designated a '3C' site; the '3C' program determines that both the resource site and the conflicting uses are important relative to each other, and that the ESEE consequences should be balanced so as to allow the conflicting uses in a limited way so as to protect the resource site. Based upon its ESEE analysis above, the Planning Commission concludes the proposed aggregate uses east of Bear Creek will be relatively unconstrained by conflicting land uses, but should be balanced against competing Goal 5 resources, specifically the Bear Creek Greenway and the Bear Creek riparian corridor and is therefore protected as a '3C' site and the same will be accomplished through adherence to the approved site and operations master plan. requirements of the LDO, and discretionary conditions adopted by the Planning Commission. Based upon its ESEE analysis above, the Planning Commission concludes the proposed extraction area west of Bear Creek is more constrained by conflicting land uses, but should be balanced against competing Goal 5 resources and conflicting land uses subject to applicable standards contained in the Land Development Ordinance, attached site specific conditions of approval, and approved site and operations master plan for the area re-zoned to Aggregate Removal and that the areas not re-zoned at this time will benefit from protection as a significant resource subject to additional approvals that may occur at such time as the conflicting use conditions can be addressed in a manner acceptable to the County.

vii) Establishment of Zoning District:

The Aggregate Removal (AR) zoning district will be applied when an aggregate site plan consistent with the requirements of this Section has been approved by the County. The site plan will be adopted by ordinance concurrent with the map designation amendment and zone change application. The approving ordinance will serve as the development ordinance for land uses on the subject property.

FINDING: The Planning Commission interprets this criterion to require the adoption of a site and operations plan that contains sufficient specificity to complete the ESEE analysis and implement a Goal 5 protection program for the site. The Planning Commission finds that such a plan was offered by the applicant, has been amended by the Commission through the Goal 5 review, and the Commission has approved such a plan; the approved plan is constituted by the plan map attached to the Planning Commission's Recommendation as Exhibit E, the attached conditions of approval, and Sections I, II and IV of applicant's Exhibit 4.

B) Aggregate and Mineral Resources Element

i) Policy 1:

Minerals are recognized as a nonrenewable and necessary resource that must be protected from incompatible development and be available for mining.

FINDING: The Planning Commission finds that the location, quality, and quantity data indicate the aggregate resources on the subject properties are a significant Goal 5 aggregate resource. A Goal 5 protection program compliant with OAR 660, Division 16 is included in this report.

ii) Policy 2:

The County shall protect and conserve aggregate resources, reduce conflicts between aggregate operations and adjacent land uses, and ensure that aggregate resources are available for current and future use.

FINDING: The Comprehensive Plan findings supporting this policy state that sensitive agricultural areas are often located near key deposits of concrete aggregates, sand, and gravel, on high and low floodplains and terrace lands. One of the specific areas identified in these findings is the lower Bear Creek floodplain. This area contains one of the largest deposits of sand and gravel within an economical distance of the urbanizable areas of White City, Central Point, and Medford. These same floodplains are also classified as agricultural land by statewide planning goal definition. The ESEE analysis shows the subject properties are not constrained by noise and dust sensitive agricultural operations on surrounding lands, although aggregate operation may impact adjacent agricultural activities. The Planning Commission incorporates and adopts its ESEE analysis above and finds it is a site specific analysis that will protect and conserve aggregate resources, reduce conflicts between aggregate operations and adjacent land uses, and ensure that aggregate resources are available for current and future use.

iii) Policy 3:

Emphasis will be placed on the zoning of lands for aggregate resource purposes near each urban center and key rural community in the County.

FINDING: The Planning Commission finds the subject properties are well situated near the urban centers of White City, Central Point, and Medford.

iv) Policy 4:

When an aggregate site is no longer suited for aggregate operations, a change from aggregate resource zoning to another zoning designation is desirable. The proposed zoning must be consistent with the Comprehensive Plan ordinances, and reclamation plan.

FINDING: The Planning Commission finds that is has contemplated uses such as Greenway trail extension and future reclamation of the site, but that application of this policy with respect to specific land uses will be deferred until the depletion of aggregate resources is more readily anticipated.

v) Provisions A through U are criteria that are implemented through various other sections of the Jackson County Comprehensive Plan and Land Development Ordinance, and ESEE process.

FINDING: The Planning Commission incorporates and adopts applicant's conclusions of law addressing provisions A through U except as amended in the ESEE analysis above, sufficient to find the minor Comprehensive Plan Map amendment complies with these criteria.

C) Transportation Element

The Jackson County Transportation Plan (TSP) is acknowledged as being consistent with the Transportation Planning Rule. Applicable policies of the TSP are addressed below.

i) Safety Policies

a) The County will provide a transportation system that supports emergency access for emergency vehicles and provides for evacuation in the event of a wildfire hazard or other emergency.

Strategies:

(1) Establish and maintain land development ordinance regulations that assure minimum emergency vehicle access standards are provided for all development. These standards should provide base-line safety protections that are related to

the total amount of development that would use the access in the event of an emergency.

FINDING: Emergency vehicle access standards are addressed in the site plan review and a condition of approval will require compliance with the standards of Section 8.7 of the LDO.

b) Public Safety will be a primary consideration in the planning, design, and maintenance of all Jackson County Transportation Systems. (RTP 16-4)

FINDING: A Traffic Impact Study has been submitted for access from Blackwell Road. The conclusions of the study require a southbound left turn lane from Blackwell Road when the asphaltic batch plant is built. The left turn lane will be located at the existing access. A new access road is proposed 1,400 feet south of the existing access. The new access to the asphaltic batch plant will be a "Right Turn In Only." This new access will be a one-way street circulation for a more efficient and safe operation. Trucks will exit from the existing main entrance.

Jackson County Roads has reviewed the Traffic Impact Study and concurs with its findings. In its deliberation, the Planning Commission determined it appropriate to get preliminary approval of the left-turn lane and determine the need for any new right of way prior to design and installation of the berms along Blackwell Road and the conditions of approval reflect the same. The Planning Commission incorporates and adopts the findings of applicant's TIS as evidence sufficient to establish minimum transportation safety standards will be maintained.

c) Maintain clear vision areas (sight triangle) adjacent to intersections so as not to obstruct the necessary views of motorists, bicyclists, and pedestrians. (RTP 16-3)

Strategies:

(1) Maintain development ordinance regulations that will assure adequate sight distances at intersections.

FINDING: The Traffic Impact Study states there is adequate sight distance at the existing main entrance.

ii) Transportation and Land Use Coordination Policies

a) The County will prohibit new or expanded development proposals with the potential to prevent placement of, or significantly increase the cost of, designated transportation connections in the TSP.

Strategies:

(1) Establish and maintain development review procedures that will prevent conflicts between development and future transportation facilities and connections.

FINDING: The TIS states that the proposal will not conflict with future transportation facilities and connections, specifically the Seven Oaks Interchange, which has an approved and funded up-grade with a completion date scheduled for the fall of 2008.

b) Plan amendments, zone changes and type 3 and 4 land use permits need to demonstrate that adequate transportation planning has been done to support the proposed land use.

Strategies:

- (1) Inside urban growth boundaries, demonstration of adequate transportation facilities for a land-use action should defer to the city's adopted Transportation System Plan; this deference should occur in accordance with any applicable provisions in the Urban Growth Management Agreement between the particular city and the County. Absent an adopted Transportation System Plan for the applicable city, land use actions related to transportation planning and transportation project decisions will be based on the Jackson County Transportation System Plan; application of the County TSP in this situation should account for any applicable provisions in the Urban Growth Management Agreement between the particular city and the County.
- (2) Ensure that legislative land use changes will not result in land uses that are incompatible with the public transportation facilities they will use through compliance with, and direct application of, OAR 660 Division 12.
- (3) Ensure that quasi-judicial comprehensive plan changes, zone changes and type 3 and 4 land use permits will not result in land uses that are incompatible with the public transportation facilities they will use. To meet this requirement, criteria "i, ii and iii" below must be demonstrated to be met through a Transportation Impact Study (TIS) completed by a registered professional engineer with expertise in transportation. Compliance with criteria "i, ii and iii" will be considered sufficient to demonstrate compliance with the Transportation Planning Rule. The TIS requirement may be waived if the Planning Director and the County Engineer administratively concur in writing that sufficient specific evidence is provided

from affected transportation management agencies that the cumulative effect of approving the proposed plan amendment, zone change or type 3 or 4 land use permit, along with the potential for similar approvals on similarly situated parcels within 2 miles (.75 miles in the MPO) of the subject parcel (or portion of the parcel that is requesting the land use change or permit), will not significantly affect a transportation facility identified in State, regional or local transportation plans (RTP 6-1).

- (a) Approval of the proposed changes and the cumulative impact of the potential for similar approvals on parcels within 2 miles (.75 miles in the MPO) of the subject parcel would not change the functional classification of an existing or planned transportation facility nor would it change standards implementing the functional classification system (unless the change can be made in conjunction with a TSP amendment pursuant to policy 4.3.3-D).
- (b) Approval of the proposed changes and the cumulative impact of the potential for similar approvals on parcels within 2 miles (.75 miles in the MPO) of the subject parcel would not allow types or levels of land uses that would result in levels of travel or access inconsistent with the functional classification of a transportation facility (unless a functional class change is made pursuant to policy 4.3.3-D).
- (c) Approval of the proposed land use changes and the cumulative impact of the potential for similar approvals on parcels within 2 miles (.75 miles in the MPO) of the subject parcel would not cause a facility to exceed the adopted performance standards for facilities used by the subject parcel. A facility used by the subject parcel is defined as any facility where approval of the proposed land use changes and the cumulative impact of the potential for similar approvals on parcels within 2 miles (.75 miles in the MPO) of the subject parcel would increase traffic on a facility by more than 3% of the total capacity for collectors and/or 2% of

the total capacity for arterials and state highways. ODOT may determine that the subject parcel, beyond this definition and in accordance with the Oregon Highway Plan, will use additional state facilities.

FINDING: Jackson County has signed a capacity analysis waiver dated August 26, 2005. The waiver stipulates to a safety analysis, which has been completed and submitted. The proposed Comprehensive Plan map and Zoning Map Amendment will not change the functional classification of any existing or planned transportation facility nor will it change standards implementing the County's functional classification system. The left turn lane mitigation will assure the project will not create or worsen a safety problem on Blackwell Road.

- (4) Projects proposed in the TSP towards the end of the planning horizon cannot be relied on for quasi-judicial plan amendments, zone changes or type 3 and 4 land use permits. TSP projects on state highways cannot be relied on unless in an adopted STIP. TSP planned projects may have to be altered or cancelled at a later time to meet changing budgets or unanticipated conditions such as environmental constraints. However, quasi-judicial plan amendments, zone changes or type 3 and 4 land use permits may demonstrate compliance with strategy "c." based on planned facility improvements under the following circumstances (and provided that an additional comprehensive plan amendment is not required as part of project development such as an ESEE):
 - (a) For ODOT facilities within the MPO, projects that are in the short and/or medium range Regional Transportation Plan (RTP) Tier 1 project list. For ODOT facilities outside the MPO, projects that are programmed into the STIP. (An alternate strategy for an ODOT facility may be to coordinate with ODOT on a change to the applicable Highway Plan requirements)
 - (b) For County facilities outside the MPO and local county facilities in the MPO, projects that are in the financially constrained TSP projects list and are in either the short and/or medium range Tier 1 lists.
 - (c) For regionally significant County facilities within the MPO, the facility must be in either the short and/or medium range RTP Tier 1 lists.

FINDING: This criteria does not apply to this application.

(5) If a concurrent quasi-judicial TSP amendment is submitted (See Policy 4.3.3-D) with the proposed comprehensive plan amendments and/or zone changes, the actions may be considered together. If the TSP amendment can be made then any changes included in the TSP amendment may be counted under section d for compliance with section c.

FINDING: This criterion does not apply.

c) Regardless of whether adequate capacity exists, changes in land use and new or expanded development proposals will not be approved if they will create, or would worsen, a safety problem on a public transportation system or facility. If a problem would be created or worsened without mitigation, then a mitigation plan that resolves the safety concern must also be approved and included in the proposal in order for the land use change and/or development proposal to be approved. Where a safety concern exists, study by a registered professional engineer with expertise in transportation will be considered to determine if a problem would be created or worsened.

FINDING: The TIS identifies a traffic safety concern and proposes mitigation by creating a southbound left turn lane into the existing main entrance once the asphaltic concrete batch plant is completed and a new access road with a "Right Turn In Only" for efficient and safe operation. Jackson County Roads has reviewed the Traffic Impact Study and concurs with its findings. In its deliberation, the Planning Commission determined it appropriate to get preliminary approval of the left-turn lane and determine the need for any new right of way prior to design and installation of the berms along Blackwell Road and the conditions of approval reflect the same. The Planning Commission incorporates and adopts the findings of applicant's TIS as evidence sufficient to establish minimum transportation safety standards will be maintained.

3) COMPLIANCE WITH THE LAND DEVELOPMENT ORDINANCE

A) **Section 3.7:** Any amendment must comply with all applicable Statewide Planning Goals, Oregon Administrative Rules and the Comprehensive Plan as a whole.

FINDING: Findings have been made regarding the Statewide Planning Goals, Oregon Administrative Rules and the Comprehensive Plan as they apply to this application. The Planning Commission finds the proposed land use changes comply with the adopted and acknowledged Comprehensive Plan and incorporate and adopt the Commission's findings of fact and conclusions of law demonstrating compliance with the Statewide Planning Goals Oregon Administrative Rules and the Comprehensive plan herein above.

Section 3.7.3(C), Minor Comprehensive Plan or Zoning Map Amendments (Quasi-Judicial) establishes procedures, standards, and criteria for minor map amendments.

i) Adequate public safety, transportation, and utility facilities and services can be provided to the subject property. In the case of a minor zoning map amendment, adequate transportation facilities must exist or be assured.

FINDING: The only critical utility services for the aggregate operation are water and electricity. The applicant has an existing water right from the Rogue River Irrigation District to provide for the water needs of the operation. Electricity is available onsite. The operation accesses a collector road, Blackwell Road and the existing capacity of Blackwell Road will not be exceeded by the proposed aggregate operations.

ii) The minor map amendment will not prevent implementation of any area of special concern or restrictions specified for that area in Chapter 7 or the adopting ordinance creating it, or both.

FINDING: The Planning Commission finds that portions of the subject properties contain Area of Special Concern 82-2, the Bear Creek Greenway. Aggregate operations and the Bear Creek Greenway are competing Goal 5 resources. An ESEE analysis is required to balance competing Goal 5 resources. The Planning Commission finds that ASC 82-2 is principally concerned with the protection and preservation of riparian area to help facilitate Greenway trail extension and that with the stipulated easement offered by the applicant and the setbacks in the approved site and operations master plan this goal is served in accordance with the site-specific ESEE analysis above. The Planning Commission recognizes applicant's argument that the Goal 5 Background Document includes an ESEE analysis for the Bear Creek Greenway and that analysis determined aggregate operations are a permitted use in the Bear Creek Greenway. However, the current LDO indicates that aggregate operations must go through a Type 3 review. The Planning Commission finds that the applicant has submitted a Type 3 review addressing applicable criteria and that this application can be conditionally approved and the same is accomplished in this report herein below. The Planning Commission thus finds that, because a Type 3 application can be approved for the site, the legal esoteric argumentation regarding the applicability of the Type 3 criteria need not be reached and the Planning Commission thus concludes the criterion is met based upon demonstration of compliance with the Type 3 criteria as addressed herein.

iii) On resource zoned lands outside urban growth boundaries, the entire parcel is included in the minor Comprehensive Plan Map unless the purpose of the amendment conforms with the criteria of Policy 1 of the Comprehensive Map Designations Element.

FINDING: Some of the subject properties east of Bear Creek are resource zoned parcels for which the applicant requested only a portion of the parcel be designated

Aggregate Resource and rezoned to Aggregate Removal (Tax Lots 100, 200, and 2600 west of the irrigation ditch). Policy 1 of the Map Designations Element allows for a portion of a resource zoned parcel to obtain a new Comprehensive Plan map designation and be rezoned if it is to implement protection of a Goal 5 resource and in this case the change is from one resource designation to another (Agricultural Land to Aggregate Resource Land).

iv) Map amendments outside urban growth boundaries and urban unincorporated communities that will result in a minimum residential lot size smaller than 10 acres meet the requirements for an exception to Statewide Planning Goal 14.

FINDING: This proposal will not result in a minimum residential lot size smaller than 10 acres.

v) Any minor Zoning Map amendment is consistent with the Comprehensive Plan Map designation.

FINDING: The Planning Commission herewith incorporate and adopt their findings of fact, ESEE analysis, and conclusions of law demonstrating the subject properties (or portions thereof in the case of TL 100, 200 and 2600) are appropriately designated Aggregate Resource. Through the ESEE process, the Planning Commission has concluded that Tax Lots 800, 900, 1200, 1300, and 1500 are not appropriately zoned Aggregate Removal at this time. All other parcels are appropriately designated Aggregate Removal and the same is consistent with the Aggregate Resource Comprehensive Plan Map designation herein approved.

vi) In the case of a minor Comprehensive Plan Map amendment, community benefit as a result of the minor map amendment is clearly demonstrated.

FINDING: The location, quality, and quantity of the aggregate resource has been shown to meet the criteria as a significant Goal 5 aggregate resource. Policy 2 of the Aggregate and Mineral Resources element establishes protection of aggregate resources through the Goal 5 process as a benefit to the community as a matter of policy. Based upon the Planning Commission's conclusion that the subject property is a Goal 5 aggregate resource worthy of protection and all analysis, evidence, and findings thereto, the Planning Commission finds that a community benefit is clearly demonstrated by operation of established policy.

vii) In determining the appropriateness of the proposed redesignation, the White City or Jackson County Planning Commission and Board of Commissioners will consider any factors relevant to the proposal, which may include: topography, geology, hydrology, soil characteristics, climate, vegetation, wildlife, water quality, historical or archaeological resources, scenic resources, noise, open space, existing site grading, drainage, adverse impacts on other

property in the vicinity, and any other factors deemed to be relevant to the application.

FINDING: The Planning Commission finds that the record is extensive and that all factors relevant to the proposal have been addressed through the ESEE analysis and hearings process.

- B) Type 3 Approval Criteria, Section 3.1.4(B)
 - i) The County may issue Type 3 and 4 Permits only upon finding that the proposed use is in conformance with any applicable development approval criteria or standards of the Comprehensive Plan, and all applicable standards of this Ordinance, and that all of the following criteria have been met:

FINDING: The Planning Commission recognizes the applicant's argument that the Goal 5 Background Document includes an ESEE analysis for the Bear Creek Greenway and that analysis determined aggregate operations are a permitted use in the Bear Creek Greenway. However, the current LDO indicates that aggregate operations must go through a Type 3 review. The Planning Commission finds that the applicant has submitted findings of fact and conclusions of law addressing the Type 3 review criteria. The Planning Commission thus finds that, because a Type 3 application can be approved for the site in accordance with its findings of fact and conclusions of law hereinbelow, the legal esoteric argumentation regarding the applicability of the Type 3 criteria need not be reached and the Planning Commission thus concludes the criterion is met based upon demonstration with Compliance with the Type 3 criterion. The Planning Commission herewith incorporates and adopts applicant's conclusions of law with respect to geographic applicability of the Greenway provisions to that specific area identified as ASC 82-2 on the 1982 zoning maps at Record Page 343. Based upon its findings of fact and conclusions of law provided elsewhere herein, the Planning Commission finds it has addressed all applicable LDO requirements and has identified and determined compliance with those Comprehensive Plan provisions that operate as approval criterion.

(1) The proposed use will cause no significant adverse impact on existing or approved adjacent uses in terms of scale, site design, and operating characteristics (e.g., hours of operation, traffic generation, lighting, noise, odor, dust, and other external impacts). In cases where there is a finding of overriding public interest, this criterion may be deemed met when significant incompatibility resulting from the use will be mitigated or offset to the maximum extent practicable.

FINDING: The record demonstrates that, with approval of the requested Comprehensive Plan Map amendments and zoning map amendments as approved by the Planning Commission, that portion of the Greenway where the proposed uses will be located will be

surrounded by aggregate operations that can be expected to be similar with respect to scale, site design, and operating characteristics such that significant adverse impacts are not expected.

The Planning Commission finds that a date for completion of this section of the Greenway is unknown and is not anticipated within the near future. The focus has been on completing the Greenway from Ashland to Central Point. At this point in time, the aggregate operations near or within the mapped Greenway will cause no adverse impacts to the Greenway because it does not currently exist and it is not known if it will ever be completed through this area. A letter from Karen Smith, Special Projects Manager, states that a perpetual trail easement would assure an effective balance between the conflicting Goal 5 resources of aggregate and the Bear Creek Greenway. The reclamation of Pit 2 on the east side of Bear Creek will create waterfowl habitat and wetlands, which would enhance the viewshed from any proposed Greenway trail. Staff recommends that a perpetual trail easement be required as a condition of approval to allow a trail to be built through the subject properties, should the Greenway trail be extended to this area.

(2) Adequate public facilities (e.g., transportation) are available or can be made available to serve the proposed use;

FINDING: Water and electricity are the only critical facilities for the aggregate operations. A water right with the Rogue River Irrigation District currently exists and electricity exists onsite. A Traffic Impact Study has been completed and the conclusion of that study requires a southbound left turn lane at the existing main entrance shall be built when the proposed asphaltic batch plant is completed. This will be a condition of approval for this review.

(3) The proposed use is not a conflicting use certified in an adopted Goal 5 ESEE applicable to the parcel, or if an identified conflicting use, one that can be mitigated to substantially reduce or eliminate impacts;

FINDING: The Planning Commission finds the aggregate resources in this area and the Bear Creek Greenway are both conflicting uses already certified as such in adopted Goal 5 ESEE analyses. The Planning Commission construes this criterion as a protection measure for Goal 5 resources from non-Goal 5 conflicting uses. The criterion includes no provision to balance competing Goal 5 resources that mutually conflict with one another. This criterion does not, however, preclude the County from certifying a site-specific ESEE analysis that balances impacts to competing Goal 5 resources, consistent with the Goal. The Planning Commission incorporates and adopts its ESEE analysis herein above as a site specific ESEE analysis that balances the Bear Creek Greenway and Aggregate Resources and that the site and operations master plan approved herein will allow mining with certain restrictions to assure protection of the Bear Creek Greenway. The Planning Commission finds that ASC 82-2 is principally concerned with the protection and preservation of riparian area to help facilitate Greenway trail extension and that with the stipulated easement offered by the applicant and the setbacks in the approved site and operations master plan this goal is served in accordance with the site-specific ESEE analysis above.

(4) The applicant has identified and can demonstrate due diligence in pursuing all Federal, State, and local permits required for development of the property; and

FINDING: The Planning Commission finds the record contains extensive evidence concerning the pursuit of required Federal, State, and local permits for the proposed aggregate operation expansion. To-date, the record contains no substantial evidence that the applicant cannot feasibly obtain any required permit and obtainment of the same will be required as a condition of approval.

(5) On land outside urban growth boundaries and urban unincorporated communities, the proposed use will either provide primarily for the needs of rural residents and therefore requires a rural setting in order to function properly, or else the nature of the use (e.g., an aggregate operation) requires a rural setting, even though the use may not provide primarily for the needs of rural residents. Churches and schools however are not subject to this criterion.

FINDING: The requested aggregate use require a rural setting, as indicated in the text of the criterion.

CONCLUSION: Based upon its findings above herein incorporated and adopted, the Planning Commission concludes that, with the proposed conditions of approval, the application complies with the Type 3 criteria of Section 3.1.4(B).

C) Site Plan Review for Aggregate Operation in an Aggregate Removal Zoning District. Section 4.4.5 and 4.4.8

Section 4.4.5

The use may be approved only where the use:

- i) Will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; and
- ii) Will not significantly increase the cost of accepted farm or forest practices on lands devoted to farm or forest use.

FINDING: Aggregate operations have existed in the area for many years. The Planning Commission finds that the evidence indicates that there appears to have been no changes in the farming practices over the last six years due to the existing operations.

Section 4.4.8

Prior to commencement of new or expanded operations for mining, crushing, stockpiling or processing of aggregate or other mineral resources, evidence shall be submitted showing that the operation will comply with the following operating standards, in addition to any requirements and conditions that were placed on the site at the time it was designated AR, or that were otherwise required through the Goal 5 process, or approved through a mining permit issued by the County. In AR zones, if the Board Ordinance designating the site AR required a higher level of review than shown in Table 4.4-1, the review and noticing requirements of the Board Ordinance will be used.

 All necessary County and state permits have been obtained, and a current Department of Geology and Mineral Industries (DOGAMI) operating permit has been issued. Equipment testing necessary to obtain permits is allowed.

FINDING: A condition of approval will require that all necessary County and state permit have been obtained and a current DOGAMI operating permit has been issued.

ii) All facets of the operation will be conducted in a manner that complies with applicable DEQ air quality, water quality and noise standards, and in conformance with the requirements of the DOGAMI permit for the site.

FINDING: This will be a condition of approval.

iii) A site reclamation plan, approved by DOGAMI, has been submitted for inclusion in Planning Department records. Such plan must return the land to natural condition, or return it to a state compatible with land uses allowed in the zoning district or otherwise identified through the Goal 5 review process.

FINDING: This will be a condition of approval.

iv) A written statement from the County Road Department and/or ODOT has been submitted verifying that the public roads that will be used by haul trucks have adequate capacity and are, or will be, improved to a standard that will accommodate the maximum potential level of use created by the operation. The property owner or operator is responsible for making all necessary road improvements, or must pay a fair share for such improvements if agreed to by the County Road Department or ODOT.

FINDING: A letter from Jackson County Roads states that the use meets capacity requirements for Blackwell Road. A Traffic Impact Study requires a southbound left turn lane be built at the existing main entrance when the proposed asphaltic concrete batch plant is built and the applicant has stipulated to construction of the same.

- v) On-site roads and private roads from the operating area to a public road have been designed and constructed to accommodate the vehicles and equipment that will use them, and meet the following standards:
 - (1) All access roads within 100 feet of a paved public road are paved, unless the operator demonstrates that other methods of dust control will be implemented.
 - (2) All unpaved roads that will provide access to the site or that are within the operating area will be maintained in a dust-free condition at all points within 250 feet of a dwelling or other identified conflicting use.

FINDING: The Planning Commission finds that the initial staff report had identified a concern that the applicant was attempting to subvert the paving requirements. The Planning Commission finds based upon the site plans and testimony at the hearing that this is not the case and that all required paving will be provided and in addition the applicant has stipulated to exceed the paving requirements for main haul roads to minimize air quality impacts and the same are appropriate. The above requirements together with applicant's stipulations will be made conditions of approval.

vi) If the operation will include blasting, the operator has developed a procedure to ensure that a notice will be mailed or delivered to the owners and occupants of all residences within one-half mile of the site at least three working days before the blast. The notice must provide information concerning the date and time that blasting will occur, and must designate a responsible contact person for inquiries or complaints. Failure to notify neighbors and the County before blasting is a violation of this Ordinance for which a citation may be issued. Notice will be deemed sufficient if the operator can show that the notices were mailed or delivered, even if one or more of the households within the notice area did not receive the notice.

FINDING: This will be a condition of approval.

vii) The operation is insured for a minimum of \$500,000 against liability and tort arising from surface mining, processing, or incidental activities conducted by virtue of any law, ordinance, or condition. Insurance shall be kept in full force and effect during the period of such activities. Evidence of a prepaid policy of such insurance which is in effect for a period of one year shall be deposited with the County prior to commencing any operations. The owner or operator shall annually provide the County with evidence that the policy has been renewed.

FINDING: Evidence of insurance has been submitted. This criterion is met.

- viii) The operation will observe the following minimum setbacks except where the operation is lawfully preexisting and encroachment within the prescribed setbacks has already occurred:
 - (1) No extraction or removal of aggregate/minerals will occur within 25 feet of the right-of-way of public roads or easements of private roads.
 - (2) Processing equipment, batch plants, and manufacturing and fabricating plants will not be operated within 50 feet of another property or a public road right-of-way, or within 200 feet of a residence or residential zoning district, unless written consent of the property owner(s) has been obtained.

FINDING: These setbacks will be conditions of approval.

ix) If the aggregate removal and surface mining operation will take place within the Floodplain Overlay the requirements of Section 7.1.2 have been met.

FINDING: Based upon the Planning Commissions findings of fact and conclusions of law addressing Section 7.1.2 incorporated and adopted herein, the requirements of Section 7.1.2 can feasibly be and will be met with appropriate conditions of approval.

- x) Mining and processing activities, including excavated areas, stockpiles, equipment and internal roads, will be screened from the view of dwellings, scenic resources protected under ASC 90-9, and any other conflicting use identified through the Goal 5 process or Type 3 review. Screening may be natural or may consist of earthen berms or vegetation which is added to the site. If vegetation is added, it shall consist of alternating rows of conifer trees planted six feet on center and a height of six feet at the commencement of the operation. An exemption to the screening requirements may be granted when the operator demonstrates any of the following:
 - (1) Supplied screening cannot obscure the operation due to local topography.
 - (2) There is insufficient overburden to create berms, and planted vegetation will not survive due to soil, water, or climatic conditions.
 - (3) The operation is temporary and will be removed, or the site will be reclaimed within 18 months of commencement.
 - (4) The owner of the property containing the use from which the operation must be screened, has signed and recorded a restrictive deed declaration acknowledging and accepting that the operation will be visible and that the operator will not be required to provide screening.

FINDING: The Planning Commission finds are only a few dwellings from which the operation east of Bear Creek may be visible and these dwellings are located on a steep bench that topographically precludes effective screening. The applicant offers no screening on the east side of Bear Creek other than the screening supplied by the preservation of the Bear Creek riparian corridor. This meets the exemption criteria for screening for the operations on the east side of Bear Creek..

The applicant proposes to build earthen berms topped with the prescribed vegetative screening along property lines depicted on the site plan for the area west of Bear Creek. By phasing the extraction and allowing the screening to fill in prior to mining in the area west of Bear Creek, the operation will be screened in accordance with this standard. Because the Planning Commission denied the zoning map amendment applicable to the southwest corner of the project, the screening initially proposed by the applicant in this area is not required. The Planning Commission deliberated regarding the location and adequacy of the screening and concluded the proposed screening is adequate, but should not be constructed until right-of-way dedications, if any, for construction of the left-turn lane are known. The topography west of Blackwell Road is such that all dwellings on this hill may not be completely screened, according to the exemption above. A condition of approval requires the applicant to provide screening as depicted on the site plan and in compliance with the plan showing the configuration of a typical berm.

xi) Existing trees and other natural vegetation adjacent to any public park, residential zoning district, or parcel on which a dwelling is situated will be preserved for a minimum width of 25 feet along the boundary of the property on which the operation is located.

FINDING: This will be a condition of approval.

- xii) Operations will observe the following hours of operation:
 - (1) Mining, processing, and hauling from the site are restricted to the hours of 6 a.m. to 7 p.m. Monday through Saturday. The hours of operation do not apply to hauling for public works projects.
 - (2) Neither mining, processing, nor hauling from the site will take place on Sundays or the following legal holidays: New Year's Day, Memorial Day, July 4, Labor Day, Thanksgiving Day, and Christmas Day.
 - (3) An exemption to the hours of operation may be requested. Notice of the proposed change in operating hours must be provided to all property owners within 1,000 feet radius of the aggregate removal or surface mining operation, to residences within one-half mile of the site, and to owners of property

adjacent to private site access roads. If no request for a public hearing is made within 12 calendar days of mailing said notice, the operating hours can be changed as requested by the operator. If a request is made for a public hearing, adjustment of standard operating hours shall be determined by the Hearings Officer, subject to findings that the proposal is consistent with the best interests of public health, safety, and welfare and that the operation will not conflict with other land uses.

FINDING: These will be conditions of approval.

CONCLUSION: The Planning Commission concludes that the proposed aggregate operations can feasibly and will be required meet the criteria of Sections 4.4.5 and 4.4.8. through imposition of appropriate conditions of approval. The Planning Commission incorporates and adopts the applicant's argument and conclusions at Record Page 1565 with respect to applicability of site development plan review criteria and based thereupon concludes the above criteria constitutes the only applicable criteria.

D) Section 7.1.2, Floodplain Review

- The scientific and engineering report prepared by the Federal Emergency Management Agency (FEMA) entitled The Flood Insurance Study for Jackson County, dated April 1, 1982 or as hereafter amended, along with accompanying Flood Insurance Rate Maps (FIRM) and Flood Boundary and Floodway Maps (FBFM), are hereby adopted by reference and declared to be a part of this Section. These documents will be the means for establishing the location of the 100-year floodplain. The Flood Insurance Study is on file with the County.
- ii) The floodway has been established as shown on the FIRM or Floodway Boundary and Floodway Maps (FBFM). A floodway will be presumed to exist in the Approximate A zone, as shown on the FIRM. An applicant may offer evidence establishing the location of the floodway where one has not been established. This evidence will be prepared in accordance with accepted engineering practices and must be certified by an Oregon registered professional engineer. Such evidence may be accepted or rejected by the County. It will be presumed that the floodway is equally distributed on either side of the centerline of the stream. Along the Applegate River the requirements of Section 7.1.2(F)(7)(d) shall be used in lieu of the floodway determination of this Section.

FINDING: The applicant has submitted a flood study by the Galli Group, Geotechincal Consultants, William Galli, P.E. The project includes a bridge across Bear Creek, which went through a Type 1 review that was later rescinded by Jackson County. The project includes

fill and removal in the floodplain in association with aggregate Pits 2 (Pit 4 will be engineered and the same approved prior to extraction in that area), as well as a proposed road on the east side of Bear Creek. The applicant's engineer used the HEC-RAS flood analysis software to calculate flood elevations along Bear Creek through the Rock 'N' Ready site in accordance with generally accepted engineering practices. The floodplain and floodway boundaries as shown on the FIRM panels are different than those determined by recent flood study. This flood study was updated to respond to appropriate technical concerns raised in the hearings process. However, the Planning Commission finds that the record is clear that the site includes both floodway and floodplain development and thus requires demonstration of compliance the Floodplain Development standards of this section which is not mapping exercise but rather involves demonstration of compliance with standards that pertain to water surface elevations and velocities. The applicant has stipulated to complete a Letter of Map Revision through FEMA to assure a consistent regulatory framework. The Planning Commission finds the LOMA (or similar FEMA process) is an appropriate discretionary condition due to the size and extent of the project but the Commission does not interpret the code to require, nor is there express code language that requires, the LOMA be completed in order to demonstrate compliance with the County's floodplain development regulations as a matter of law.

iii) Determining Base Flood Elevation

- (1) In areas where base flood elevation profiles are available from the FIRM or from the Flood Insurance Study profiles, the base flood elevation at the proposed building site will be extrapolated from the elevations that are immediately upstream and downstream from the location of the proposed use.
- (2) When base flood elevation data has not been provided by FEMA, the applicant will employ an Oregon registered professional engineer to prepare a report certifying the base flood elevation, examples of which are described in FEMA publication FEMA 265, Managing Floodplain Development in Approximate Zone A Areas: A Guide For Obtaining And Developing Base (100-Year) Flood Elevations (Detailed Methods Chapter). The report will set forth the elevation of the 100-year flood, and will cite the evidence relied upon in making such determination. The calculated base flood elevation may be from mean sea level or may be based on an assumed elevation when tied to a benchmark. The location of the benchmark will be described in the report and shown on a map that must be included with the report. The report may be accepted or rejected by the County.
- (3) Where base flood elevation data has not been provided by FEMA, in lieu of a report by an Oregon registered professional engineer as outlined in (2) above, the applicant may choose to elevate a structure at least three feet above the highest adjacent natural grade, provided

that the structure is not located in the presumed floodway as described in Section 7.1.2(C)(2) and all riparian setbacks will be met. Elevation Certificate documentation described in 7.1.2(B)(4) is required. All other development standards of Section 7.1.2(F) will be met. Use of this elevation standard could result in increased flood insurance premium rates.

FINDING: The Planning Commission finds the updated flood study water surface elevations submitted by the Galli Group are compared to FEMA water surface elevations at Record Pages 910 and 911 and the Planning Commission adopts and incorporates this evidence as sufficient to find the special flood study water surface elevation data prepared by the Galli Group is substantially consistent with the FEMA water surface elevations for the project area. The Planning Commission finds the special study applicable to site prepared by the Galli Group constitutes a higher resolution refinement of the FEMA water surface elevations sufficient to determine compliance with the criteria for approval of a floodplain development permit

iv) Criteria for Approval

Prior to approval of floodplain review, the County will determine all of the following:

- (1) That all applicable development standards of Section 7.1.2(F) can feasibly be met;
- (2) That applications have been submitted or all necessary permits have been obtained from those federal, state, or local governmental agencies from which approval is required by law. Copies of all permits must be submitted to the County prior to initiation of the development.

FINDING: Development standards of Section 7.1.2(F) can and must be met and a condition of approval will require that applications have been submitted or all necessary permits have been obtained from those federal, state, or local governmental agencies from which approval is required by law. Copies of all permits must be submitted to the County prior to initiation of the development. The Planning Commission finds the record contains conflicting evidence regarding permits that may or may not be required; however, the Planning Commission finds the record contains no substantial evidence that is explicit and specific which indicates that a particular permit is in fact required for which the applicant has not applied nor is there substantial evidence that a required permit cannot feasibly be obtained. Moreover, the Commission finds the applicant has demonstrated due diligence sufficient to find that, if a regulatory agency determines an additional permit is required, there is no reason to believe the applicant will not apply for such permit in due course.

v) Floodway Development

All encroachments, including fill, roadways or bridges are prohibited (1) unless certification by an Oregon registered professional engineer is provided demonstrating that the encroachment will not result in any increase in flood levels during the occurrence of the 100-year flood (no-rise analysis and certification). Culverts used in stream crossings where floodways are mapped and/or 100-year floodplain elevations have been determined will require a no-rise analysis and certification. Culverts used in stream crossings where base flood elevations and floodways have not been determined (Approximate A zone) will be of sufficient size to minimize the rise of flood waters within the presumed floodway. Evidence must be provided by an Oregon registered professional engineer showing the size of the proposed culvert will pass the flood waters of the 100-year flood. Culverts and bridges must be anchored so that they will resist being washed out during a flood event. Culverts and bridges must also meet the riparian protection standards in Section 8.6.3 of this Ordinance.

FINDING: A No-Rise Declaration has been submitted by the Galli Group, William F. Galli, P.E and Mr. Galli's testimony is that through revisions to the study the no-rise condition remains. The declaration states that the project should be considered a NO RISE condition as it will not cause a rise in the Base Flood Elevations on sites upstream or downstream of the applicant's property and will cause only incidental rises on-site for which the applicant has agreed to indemnify the County and FEMA. Based upon these considerations and the evidence of record, the Planning Commission finds the no-rise declaration standard is met.

vi) Fill in the Floodplain

Prior to placement of fill within the 100-year floodplain a report from an Oregon registered professional engineer determining the effect the placement of fill will have on the 100-year floodplain will be submitted.

- (1) Where base flood elevations have been determined, the fill cannot cumulatively raise the base flood elevation more than one foot at any given point. The report will reference the Flood Insurance Study for Jackson County, Table 3 (Floodway Data), for a specific reach of a stream. The increase in the base flood water surface elevation, as shown in this table, will not be more than one foot.
- (2) Where base flood elevations have not been determined, the fill cannot raise the base flood elevation more than one foot at any given point. (See 7.1.2(D)(2))
- (3) The fill will be engineered to resist erosion by flood waters.

FINDING: The engineer states that any rise caused by the bridge or fill in the floodplain will not cause adverse impacts to this or other parcels in the area. The pre- and post development base flood elevations are less than 1 foot and meet the criteria. A condition of approval will require any fill to be engineered to resist erosion by flood waters. The Planning Commission finds the above criteria are met.

vii) Aggregate Removal

- (1) Aggregate removal or surface mining operations within the 100-year floodplain or floodway will not cause an increase in flooding potential or stream bank erosion adjacent to, upstream or downstream from the operation.
- (2) All mining and processing equipment and stockpiles of mined or processed materials will be removed from the site during the period of December 1 through April 30, unless the operation will be protected by a dike that is of sufficient width and height to prevent flood waters from inundating the site.

FINDING: An Oregon Registered engineer has submitted a No-Rise Declaration stating the development will not cause a rise in the Base Flood Elevations on sites upstream or downstream of the applicant's property. The Planning Commission finds the project, as approved (No mining of Pit 2a), will not allow any new aggregate removal or mining operations within the 100-year floodway except for the stream crossing proposed on Tax Lot 1900. Based upon this finding and the no-rise declaration, the Planning Commission concludes the project will not cause an increase in flooding potential or stream bank erosion due to floodway encroachments as the only floodway encroachment is a bridge that could be permitted for a range of other non-aggregates uses and the above criterion should be interpreted consistent with the approval standards for all stream crossings. The Planning Commission finds that aggregate removal and surface mining operations in the 100-year floodplain have been engineered with protective dike features of sufficient height to prevent pit inundation based upon engineering and hydrologic analysis in the record prepared by applicant's registered professional engineer incorporated and adopted herein. Based upon this engineering evidence, the Planning Commission finds that the fill placed in the floodplain to construct the protective dikes will not cause the base flood elevation to rise by more than one foot and that this is the standard under which the County determines that fill in the floodplain will not increase flooding potential. With respect to stream bank erosion, the Planning Commission finds that the evidence establishes that the applicant proposes substantial setbacks from the banks of Bear Creek, that the engineering analysis does not identify substantial increases to flow velocities, and that DOGAMI carefully evaluates potential stream bank erosion issues and a condition of approval will require the applicant to comply with any additional erosion prevention measures required by DOGAMI. Based upon this finding, the the Planning Commission finds the project will not increase stream bank erosion potential. The Planning Commission finds the existing concrete processing area was lawfully established and is considered a lawful nonconforming use.

CONCLUSION: Based upon the foregoing findings of fact incorporated and adopted herein, the Planning Commission concludes the proposed development within the floodplain and floodway meet the criteria or can feasibly meet the criteria of Section 7.1.2, with conditions of approval. Portions of Pit 4 (TL 1900, 1400, and 1303) is within the 100 year floodplains of Willow Creek and Bear Creek. The Planning Commission is not issuing final site plan review or floodplain development permits for Pit 4 at this time; a condition of approval will require a floodplain review prior to beginning aggregate for that pit. A condition of approval will require a landscape plan approved by Oregon Department of Fish and Wildlife for riparian areas disturbed by development (bridge crossing).

E) Section 7.1.1(B), ASC 82-2 Bear Creek Greenway

i) Description

This area consists of the lands identified on the official Bear Creek Greenway Maps.

ii) Special Regulations or Development Standards

The County refers to The Bear Creek Greenway Plan: Management Policies and Guidelines (1982) and the Bear Creek Greenway Plan: Ashland to Central Point (1988) for guidance on uses appropriate to the Greenway. The County will, to the extent of its legal authority, provide for the implementation of these plans during the development review process, through the implementation of the use restrictions set forth below, and in some cases by attaching special conditions to development approvals.

iii) Uses Permitted

Notwithstanding the provisions of Table 6.2-1, 4.2-1, 4.3-1 or 4.4-1, the following use restrictions will apply in this area.

- (1) <u>Type 1</u>: The following uses are permitted under a Type 1 approval process within ASC 82-2 provided the use is permitted as a Type 1 use within the underlying zone:
 - (a) Open space and parks.
 - (b) Agriculture.
 - (c) Fishing and hunting reserves where compatible with other
 - (d) Utility facilities necessary for public service provided such facilities are underground.

- (e) Sedimentation ponds when used in conjunction with aggregate removal operations.
- (f) Pedestrian, equestrian and bicycle trails.
- (g) Riparian enhancement.
- (2) *Type 3*

All other uses within the primary zoning district will be subject to a Type 3 permit approval process. Type 3 permits requested within the ASC 82-2 will be consistent with the Bear Creek Greenway Plan and related documents.

FINDING: These criteria are addressed in Section 3(B) of the staff report.

III. ULTIMATE CONCLUSION:

Based upon the evidence and testimony in the record and the foregoing findings of fact and conclusions of law, the Planning Commission has deliberated and found the subject application to comply with the applicable requirements for a minor Comprehensive Plan map amendment, minor zoning map amendment subject to the site and operations master plan (as modified by the Commission's deliberations), a Type 3 permit for aggregate operations in the Bear Creek Greenway, (approval of the bridge crossing and incidental modifications in accordance with the approved site and operations master plan), final site plan approval (as amended by the Commission's deliberations), and floodplain development permit for all aspects of the operation for which final site plan approval is granted by the Planning Commission.

JACKSON COUNTY COMPREHENSIVE PLANNING MANAGER

By: Michael W. Mattson, Planner II

Date: __5_-28--06

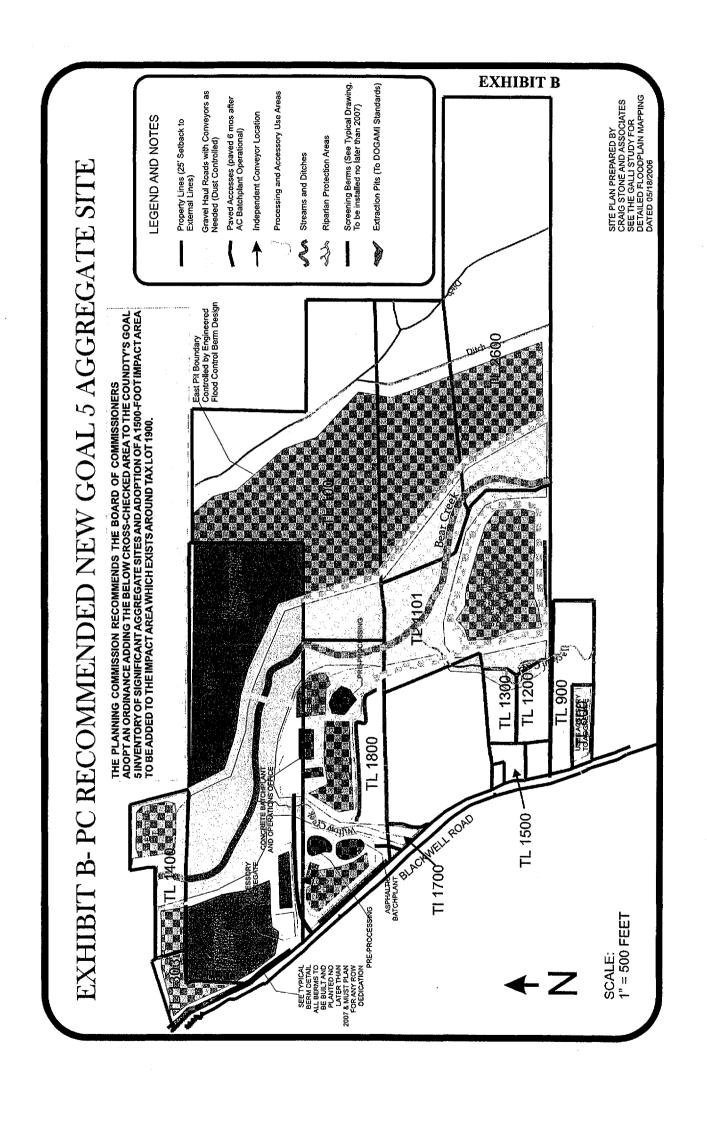
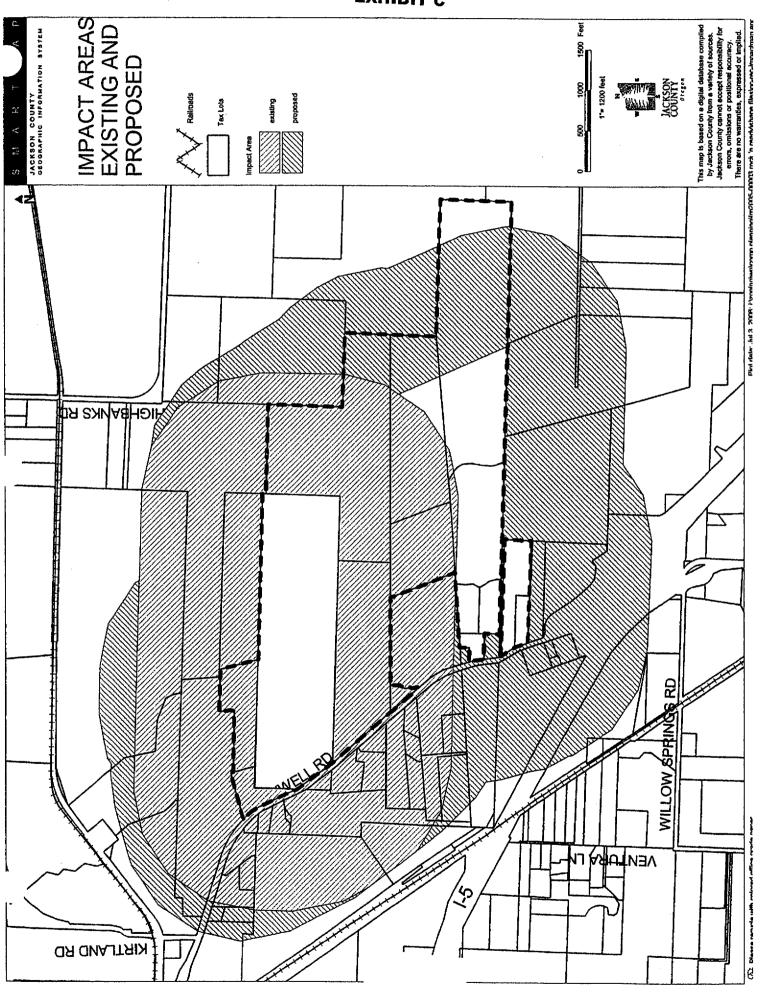
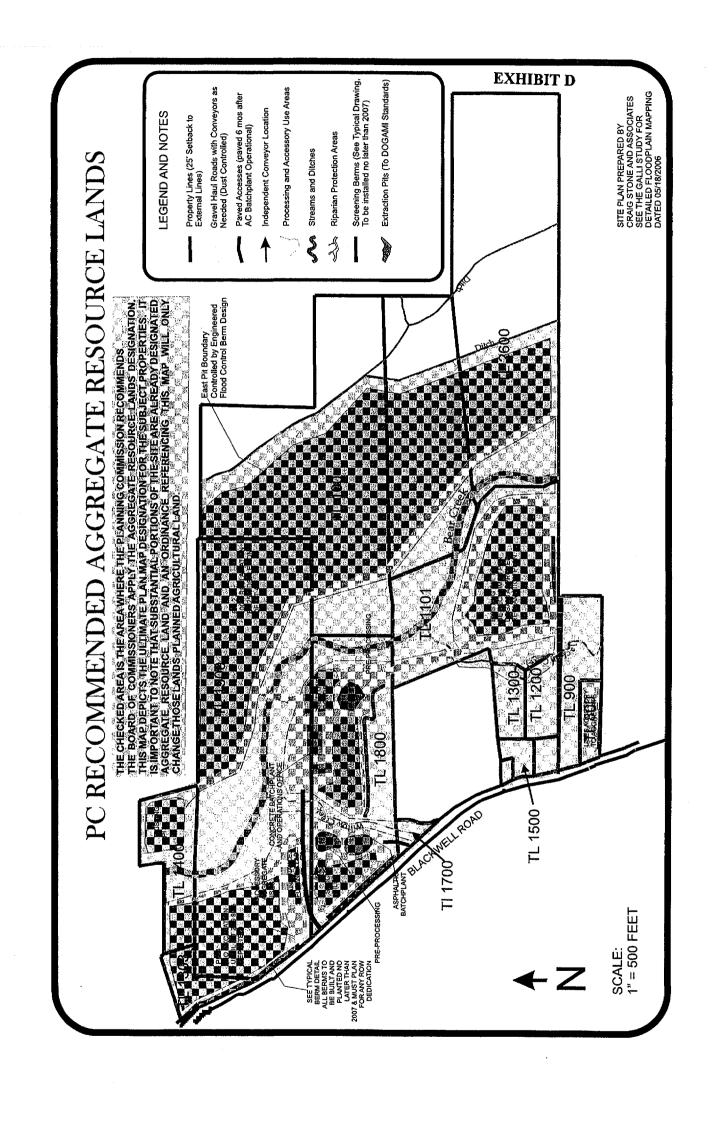


EXHIBIT C





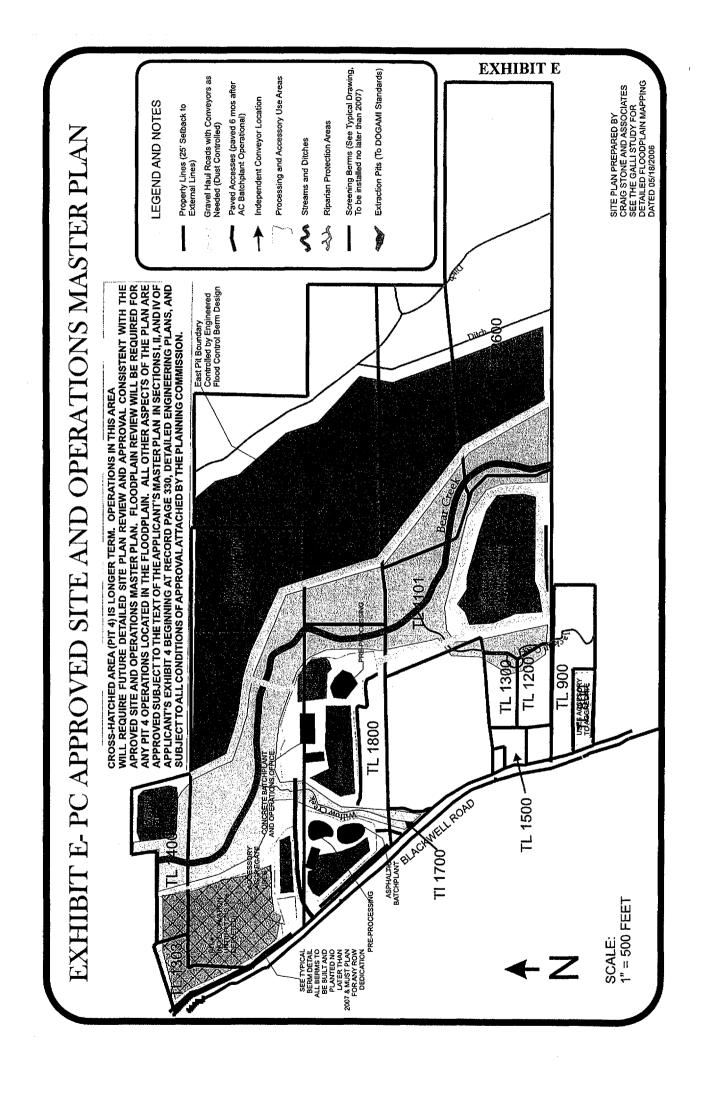


EXHIBIT F

EXHIBIT 4

JACKSON COUNTY LAND DEVELOPMENT ORDINANCE STANDARDS AND APPLICABLE REQUIREMENTS FOR APPROVAL OF THE REQUESTED AGGREGATE SITE AND OPERATIONS MASTER PLAN

MASTER PLAN OVERVIEW

The site and operations master plan will govern all future aggregate operations on the site in accordance with applicable conditions of approval. By phasing the extraction operations, the plan maximizes the aggregate resource potential when balanced against conflicting land uses and competing Goal 5 resources. Exhibit 4 and the approved plans together constitute the site and operations master plan. The site and operations master plan governs operations for the site and all previous site and operations plans and any conditions so attached are replaced by this plan. In the event there is a conflict between the site plan maps and written master site plan and operations plan text herein contained, the text shall govern. Special conditions attached.

II

MASTER PLAN CHARACTERISTICS

SITE PLAN CHARACTERISTICS:

- 1. Existing Vegetation: Except where stream crossings are proposed, the existing riparian vegetation areas will be retained. Some lands west of the RVSS mainline are expected to be reclaimed by riparian vegetation as lands to the east are converted to aggregate from the existing farm uses. Native trees include White Alder, Black Cottonwood, Hemlock, and various Willow species.
- 2. Screening and Berming: A six-foot berm crowned with alternating conifer rows six-feet on-center will be constructed and planted where berms are depicted on the site plan in the setback locations. In addition to the trees, the berms will be planted with low growing drought tolerant native grasses. The applicant will stipulate to establishing these berms and plantings no later than 2007, following timely approval

of the master plan. The trees will be established with irrigation and will be fertilized during the first three years.

- 3. Existing and Proposed Structures: The plan identifies which general areas will contain which types of aggregate uses. The Technical Detail Plan depicts existing building outlines. No new structures are proposed at this time, but the need for new structures may arise in the future. Any new or remodeled structures will be placed in an appropriate area as indicated on the Site and Operations Master Plan or else a revision to this plan will be required. In either case, such future structural needs can be accommodated with no more than a Type 1 review by Planning Staff and with issuance of applicable building permits.
- 4. Extraction Areas: Pit slopes will be in accordance with current DOGAMI specifications, an example the slope angles are depicted in the operating permit request to DOGAMI for Pit 2 and 2A. Pits will be excavated so that storm drainage will drain into the pit.
 - a) Overburden: Ranges in depth from approximately 2 to 12 feet.
 - b) Aggregate Types: Sand, Gravel and some Top Soil.
 - c) Depth of Extraction Areas: Up to 85 feet to bedrock, but in a range of 50 to 65 feet in most locations.
 - d) Extraction Sequencing: The site plan includes an extraction-phasing plan. This plan is intended to provide time for the vegetative screening to be established prior to extraction operations west of Bear Creek. No extraction in Pit 4 shall occur until Pit 2 is at least 90 percent depleted. Reclamation of Pit 2 will be completed prior to 25 percent depletion of Pit 4. No extraction will occur in Pit 3 until Pit 4 is at least 90 percent depleted.
- 5. Riparian Setbacks: A minimum 50-foot riparian setback for all operations (except stream crossing locations) will be maintained from the banks of Jackson Creek and Willow Creek. A minimum 100-foot riparian setback for all operations (except stream crossing locations) will be maintained from the banks of Bear Creek. These riparian areas provide a critical function in the aggregate operation by providing the final filtering and cooling discharges from dewatering activities prior to entry into the stream system.
- 6. Wetland Protections: Wetlands identified on the NWI wetlands inventory and/or in the wetlands report prepared by Scoles and Associates will be protected by a fifty foot setback or will be mitigated in accordance with wetland mitigation requirements and procedures of the Division of State Lands.

- 7. Stockpiling Areas: No stockpiling will occur in the floodway. No new stockpiling locations are proposed or will be established in the floodplain.
- 8. Internal Road System: The system of haul roads within the site is designed to efficiently move aggregate around the site. The base for the Haul Road on the east side of the RVSS mainline will also serve as a dyke to prevent inundation of the pits on that side of Bear Creek in the event of a 100-year flood. Two new accesses are proposed from Blackwell Road. One is on Tax Lot 1500. This access will serve only as a personnel and equipment access and will not provide for hauling along Blackwell Road. A new access is proposed for Tax Lot 1700 to provide a right-in access for internal circulation through the asphaltic batch plant.
- 9. Conveyor System: The conveyor system within the site is designed to efficiently move aggregate around the site. Conveyors may be installed along any haul road, processing and/or pit areas depicted on the site plan. Conveyors may also be installed in locations specified for conveyors on the plans. Conveyors are especially advantageous in riparian areas where they have significantly less impact than would result from a haul road in a similar area because of the narrower footprint. Also, conveyors emit less dust than truck hauling and can be more energy efficient.
- 10. RVSS Mainline Protections: A fifty-foot setback will be maintained for all extraction activities from the RVSS mainlines.

11. Processing:

- a) Batch Plants: A conditional use permit in 1996 approved a Portland cement concrete batch plant and Asphaltic Batch Plant. The Concrete Batch plant will remain in its current location. An asphaltic batch plant was also approved as part of the 1996 conditional use permit. This batch plant has never been constructed. The site plan proposes to keep the batch plant on Tax Lot 1800, but it will be relocated west of Willow Creek to provide for efficient truck movements and processing for future asphaltic concrete operations.
- b) Dewatering: All pits will be dewatered. Dewatering discharge areas will be constructed and sited in accordance with the construction and location methods specified by DOGAMI and ODFW. The Technical Detail Plan shows the location of these facilities as currently proposed.
- c) Washing and Pre-processing: Gravel and sand must be washed and sorted prior to mixing into concrete. Some aggregates must also be crushed. These activities are proposed to remain in their current location for the Portland cement concrete processing. Additional facilities are proposed to be added around and to support the asphaltic concrete processing operations.

¹ Floodplain as mapped by Applicant's Geotechnical Engineer.

- d) Settling Ponds: Wash water must be settled in order to allow sediments to fallout. The site plan will continue to utilize existing settling facilities.
- 12. Water, Sanitation and Utilities: Water for concrete production is obtained from the Rogue River Irrigation District, see Exhibit 22. Existing sanitation is by pre-existing on-site systems and portable units. A transformer has been constructed on-site and the existing service is expected to be sufficient for planned future operations.

OPERATING PLAN CHARACTERISTICS:

- A. Extraction Methods: Extraction will be by scraper and excavator. All equipment is 1998 or newer. The newer generation of equipment produces less noise and diesel emissions when compared to older equipment. Some overburden is stockpiled as required by DOGAMI for reclamation and will be used to construct screening berms. Electric pumps are used to dewater the pits.
- **B.** Hauling and Stockpiling: Loaders are used to stockpile, transport aggregates short distances, load bins for processing, load dump trucks for hauling, and load conveyors. Hauling is done by dump truck and/or by conveyor. The master plan contemplates a significant expansion of the conveyor system to increase efficiency and reduce diesel and dust emissions. A 4,000 gallon water truck is present on-site for dust prevention on haul roads and other aspects of the operation.
- C. Concrete Recycling: Applicant uses the heavy equipment to stockpile, crush and recycle concrete into recycled aggregate for a variety of construction applications
- **D.** Hours of Operations: Applicant has and will continue to limit operating hours in accordance with JCLDO requirements from 6:00 a.m. to 7:00 p.m. Monday through Saturday, except for public works projects. The applicant has and will continue to observe operation restrictions for specified legal holidays in accordance with JCLDO requirements.
- **E. Lab Testing:** Two employees are engaged in concrete testing operations. Scientific equipment is used to test concrete and raw aggregates produced at the site. Public works projects require these tests to assure materials used in infrastructures are of a high quality and represent responsible expenditure of public funds. The lab is currently located on Tax Lot 800, but may be moved in the future to Tax Lot 1900.
- F. Concrete Batch Plant Operations: Delivery of Portland cement is by semi-truck. The concrete batch plant mixes water with Portland cement from a 600-barrel silo and aggregate to create slurry. This slurry is then loaded into concrete mixing trucks from above. The trucks are all 1998 or newer, which produce less noise and emissions when compared to earlier model trucks

- **G.** Asphaltic Batch Plant Operations: Asphalt will be delivered by semi-truck when asphaltic concrete production begins. Liquid asphalt, a petroleum product, is pumped up into a silo where it is heated and mixed with water and aggregate. This mixture is then loaded in dump trucks for off-site delivery.
- H. Office and Administration: An operations office is located on Tax Lot 1800 immediately adjacent to the concrete batch plant. This office includes the dispatch center where deliveries are coordinated as well as some accounting and operations management. The office on Tax Lot 800 is used for clerical and other ancillary administrative activities associated with the aggregate operations.
- I. Responsible Party: The existing operation designates Wes Norton, President of Rock-n-Ready Mix, as the responsible party for all matters pertaining to permits, land use actions, and conditions attached thereto. Applicant reserves the right to designate a new individual as the responsible party such as would result from a change in corporate ownership or management or other applicable circumstance.

IV

STIPULATIONS OFFERED BY APPLICANT

- 1. Applicant will submit a request for Letter of Map Revision for FIRM Panels 313 and 314 no later than nine months following final approval of this site and operations master plan. Applicant further stipulates to modify the technical detail plan as necessary to comply with the ultimate map revisions approved by FEMA.
- 2. Applicant will stipulate to construction and planting of all new berms depicted on the site plan no later than 2007. All trees will be irrigated in accordance with generally accepted landscape planting practices.
- 3. Access roads depicted in black on the site plan will be paved no later than six months following start-up of asphaltic batch plan operations.
- 4. Applicant will stipulate to aggregate extraction and operations for Pit 2 substantially in conformance with the technical Detail Plan prepared by the Galli Group and such submitted materials to DOGAMI. Setbacks, pit flood control protections and such other items depicted on this plan will be observed.
- 5. Applicant will stipulate to preparation and administrative approval by the County of a technical detail plan similar to that prepared and depicted in Exhibit 5 prior to extraction in Pit 4.
- 6. Applicant will stipulate to the following Pit extraction sequencing. Pit 2 is scheduled for extraction immediately following approval of this plan. Pit 4 is the next scheduled extraction area, but no extraction will take place until Pit 2 is 90 percent depleted.
- 7. Applicant will stipulate to 100% reclamation of Pit 2 prior to 25 percent depletion of Pit 4.
- 8. Applicant will adhere to the Master Plan Characteristics contained herein, and as modified through conditions of approval by the Board of Commissioners.

EXHIBIT B

JACKSON COUNTY BOARD OF COMMISSIONERS EXPRESS FINDINGS IN SUPPORT OF ORDINANCES:

2007-19

2007-20

2007-21

2007-22

And Order #433-07

Planning File LRP 2005-00003

I. Nature of Application

This application was filed by Craig Stone and Associates as agent for the applicant, Rock 'N' Ready Mix, LLC ("applicant") on March 24, 2005. The application requests the following: (1) a Minor Comprehensive Plan Map and Zoning Map Amendment to change the Comprehensive Plan Map designation from Agricultural Land to Aggregate Resource Land and the zoning district from Exclusive Farm Use (EFU) to Aggregate Removal (AR); (2) designation as a significant aggregate resource and ESEE analysis to determine the level of Statewide Planning Goal 5 protection; (3) Site Plan Review for aggregate operations; (4) Floodplain Review for development within the 100 year floodplain; and (5) Type 3 review for development within the Bear Creek Greenway (Area of Special Concern 82-2).

The applications were deemed incomplete on April 28, 2005. The applicant submitted the required supplemental materials and the application was deemed complete on June 29, 2005. Public hearings before the Jackson County Planning Commission were held on October 27, 2005, January 26, 2006, and March 9, 2006 in the Jackson County Auditorium, and the Planning Commission issued a recommendation of approval on July 27, 2006.

The Jackson County Board of Commissioners ("Board") held a properly noticed and advertised public hearing to consider the recommendation of the Planning Commission on September 27, 2006. On October 25, 2006, the Board deliberated on matters related to the applicant's compliance with applicable rules adopted by state and federal regulatory agencies, specifically the Department of Geology and Mineral Industries (DOGAMI), the Army Corps of Engineers ("Corps"), and the Oregon Department of State Lands (DSL). The Board's deliberations were postponed to allow the applicant to provide additional evidence and testimony demonstrating compliance with the regulatory requirements of those agencies.

As described in the Ordinances adopted by the Board, additional properly noticed hearings were held before the Board on February 28, 2007, April 11, 2007 and May 30, 2007.

The subject matter of those hearings was limited to the applicant's compliance with the rules of identified state and federal agencies, specifically including compliance with the Consent Order between (DSL) and applicant intended to resolve the alleged violation of the Oregon Removal-Fill Law. The Board deliberated to a decision on the applications at a properly noticed and advertised meeting on June 13, 2007, and now adopts these approval findings in support of its decision, along with the other items specifically adopted and incorporated by reference as part of the Board's final decision.

II. Adoption of Planning Commission Findings

The Board adopts and incorporates by reference the findings of the Jackson County Planning Commission as set forth in its recommendation for approval and findings dated July 27, 2006. To the extent there is any discrepancy between these findings and the findings of the Planning Commission, the express findings of the Board provided herein shall govern.

III. Additional Findings of the Board of County Commissioners

In addition to adoption of the Planning Commission's findings in its recommendation of approval, the Board adopts the following findings of fact and conclusions of law in support of its decision to approve the applications at issue. These findings address applicable approval criteria and issues that were raised in the proceedings before the Board.

A. Responses to Specific Issues Raised by Opponents

During the hearing process before the Planning Commission, the applicant retained two additional consultants to respond to claims that the applicant's technical information and engineering was not adequate. The first consultant, Kuper Consulting, Inc. ("Kuper") was charged with responding to and refuting opponent's contentions that the site is not a significant mineral and aggregate site under Goal 5. Kuper's analysis was presented to and evaluated by the Commission. Based on that analysis, the Planning Commission recommended that all tax lots associated with the application be designated as a significant Goal 5 resource and placed on the County's Goal 5 inventory. The Board of Commissioners agrees with the Planning Commission's conclusion that the entire site is a significant Goal 5 mineral and aggregate resource.

The second consultant brought in by the applicant is Northwest Hydraulic Consultants ("nhc"). Jeff Johnson, an engineer certified in Oregon with extensive experience in floodplain development, engineering and regulation, works for nhc and was responsible for evaluating and supplementing the applicant's previous testimony relating to floodplain impacts, possible impacts up-and-downstream and engineering generally. NHC is one of two contract consultants working for the Federal Emergency Management Agency (FEMA) on floodplain hydraulic matters in the northwest, and Mr. Johnson demonstrated his technical expertise and credibility on such matters. Mr. Johnson was charged by the applicant with responding to opponent's contentions that the applicant's engineering was inadequate. Mr. Johnson's testimony was relied upon by the Planning Commission, and the Board of Commissioners adopts the Planning Commission's conclusions on these issues. Mr. Johnson also testified directly to the Board on these issues at the September 25, 2006 hearing, and the Board finds that his testimony was both technically valid and credible.

In written materials submitted to the Board, Rogue Aggregates' attorney identified certain specific concerns and objections to the application. These objections are set out below, and addressed in findings immediately following each objection.

1. Issues Regarding Compliance with State and Federal Agency Rules

The majority of the proceedings before the Board of Commissioners focused on issues surrounding the applicant's compliance with applicable rules and consent orders issued by DOGAMI, the Army Corps of Engineers, and the Oregon Department of State Lands. Rogue Aggregate argued that approval of the applications was prohibited under Sections 1.7 and 1.8 of the Jackson County Land Development Ordinance (LDO). Opponents of the project, including Rogue Aggregates in particular, contended that the Board must reject or deny the application under LDO 1.8.2(B), which prohibits approval of applications where "local, state or federal land use enforcement action has been initiated on the property, or other reliable evidence of such a pending actions."

Findings: During the hearings held on September 25 and 27, and on October 25, 2006, the Board received testimony regarding allegations of possible enforcement actions taken against the applicant by the DSL, the Corps, and DOGAMI. The enforcement actions related to alleged violations of the state Removal-Fill Law, Section 404 of the Clean Water Act and the state's mining and reclamation program. DOGAMI had issued a notice of violation (NOV) to the applicant dated July 18, 2006. The Corps issued a Cease and Desist letter to the applicant dated May 26, 2006. However, DSL had not issued any such order or otherwise indicated formally that a violation of its program had occurred. Ultimately, the Board required the applicant to provide evidence that any existing violations or enforcement actions had been resolved.

The applicant and the involved agencies provided the Board with the following evidence in writing:

- 1. A letter from DOGAMI dated December 4, 2006 (Exhibit 69, BOC record) stating that "DOGAMI conducted inspections on October 4th, November 1st and November 16th to monitor progress in the correction of the violations listed in the July 18, 2006 Notice of Violation (NOV). Those inspections have confirmed that Rock N' Ready is in full compliance with the July 18, 2006 NOV."
- 2. In a letter from the Corps dated January 25, 2006 (Exhibit 68, BOC record), the Corps determined that they had no jurisdiction over the alleged actions. Specifically, the Corps wrote that the work investigated was either exempt under Section 404(f) of the Clean Water Act or above the ordinary high water mark, which is the landward extent of Corps jurisdiction under the Clean Water Act. The letter states that the Corps has closed its file on this matter.
- 3. In a letter from DSL dated April 17, 2006 (Exhibit 78, BOC record), DSL states that the applicant "has made substantial progress and taken the appropriate and effective steps to resolve this matter, and is in compliance with the provisions of the Department's Consent Order."

Given the evidence provided, the Board concludes that the enforcement actions initiated by DOGAMI and the Corps are sufficiently resolved to ensure compliance with the relevant code sections.

Given the written testimony provided by DSL, the Board concludes that the DSL enforcement action has been sufficiently resolved to ensure compliance with the relevant code sections. As concluded by the Board during the May 30, 2007 hearing, any and all present cited enforcement actions and/or violations by the applicant have been resolved to the degree

necessary to ensure consistency with LDO Sections 1.7 and 1.8. Having resolved all issues associated with enforcement actions and violations at the May 30, 2007 hearing, at its next meeting on June 13, 2007 the Board deliberated and reached a final decision to approve the applications.

Furthermore, the Board of Commissioners concludes that LDO Sections 1.7 and 1.8 must be interpreted in a manner that leaves the last sentence of LDO Section 1.5.1 with meaning. Section 1.5.1 provides that, "standards imposed by other permitting agencies will be implemented and enforced by those agencies." Section 1.5.1 makes clear that it is not for the The Board of Commissioners concludes that they have responded to violation issues of "other permitting agencies" by withholding issuance of new development permits consistent with LDO Sections 1.7 and 1.8, but have provided an opportunity to submit evidence in response to the violation issues. The evidence now demonstrates that the Application is in compliance with the standards imposed by such other permitting agencies, and thus, the Board of Commissioners are bound to recognize the procedures to implement and enforce those agencies' standards consistent with LDO Section 1.5.1.

2. Compatibility With Rogue Aggregate Operations

Rogue Aggregates contends that the applicant's proposal is incompatible with Rogue Aggregates' existing operations and facilities. Rogue Aggregates asserts that it is within the impact area as evidenced by the downstream impacts of the recent flooding. Significant adverse impacts are allowed only when there is an "overriding public interest" for which the impacts can be mitigated to the extent practicable, which Rogue Aggregates argues has not been demonstrated.[JH1]

Findings: Rogue Aggregate's contention that its site should be included in the "impact area" is based on their allegation that the applicant's existing Pit 1 operation is somehow responsible for the failure of its culverted road crossing. The Planning Commission found otherwise and limited the Impact Area to the 1,500-foot distance from the proposed mining site as established in the County Code. The Board of Commissioners agrees with and adopts that conclusion as its own. The Board finds that Rogue Aggregates' complaints regarding the applicant's existing operation at Pit 1 having an adverse impact on its site are inaccurate. How Pit 1 was engineered or designed is not an issue that is currently before the Board as part of its review of the present applications.

Further, the Board finds that two engineers retained by the applicant, Bill Galli and Jeff Johnson, independently reviewed Rogue Aggregates' culverted road crossing and concluded that regardless of upstream activities, the crossing was doomed to fail. Mr. Johnson noted that the culverts could pass only a fraction of the total flow that Bear Creek could deliver during a moderate to major flood even if the culverts remained clear of sediment. Therefore, the crossing had to rely upon overtopping to pass flood flows, and the damage reveals that the crossing could not handle the overtopping.

Based on the evidence presented, the Board finds that the applicant's site and its Pit 1 operation did not provide the sediments that clogged the Rogue Aggregate road crossing. The evidence indicates that the applicant was not mining within Bear Creek, but was mining behind a

berm that separates Pit 1 from Bear Creek. Consequently, its normal operations would have caused no increase in turbidity or sedimentation downstream. Deposition of a 5- to 6-foot deep layer of sediment at Rogue's crossing, as it did during the December 1, 2005 flood event, would require that velocities near the crossing decrease significantly. Velocities did decrease because the crossing acted like a dam, because the culverts were not large enough culverts to pass the volume of water carried by Bear Creek. In addition, the crossing is located at a sharp bend in the stream. Therefore, significant sediment deposition as a point bar formed naturally along the inside portion of the bend. Backwater influences from the Rogue River may have also had an influence on stream velocities.

The applicant submitted evidence sufficient to establish that it has not operated on the water side of the Bear Creek bank and is not responsible for erosion along the bank line itself. There are hundreds of locations that are contributing sediment to Bear Creek. Bear Creek continues upstream for approximately 30 miles, and there are hundreds of miles of tributaries beyond that, many of which have ongoing erosion and undercutting along the banks. Bear Creek and its tributaries contain substantial stretches of eroding bank line that provide sediment of large and small grain size into the waterway. If Rogue's culverts were blocked by sediments from upstream, there is no evidence that it was specifically the result of any activity conducted by the applicant. However, the implication of the muddy water seen in high water events in Bear Creek is that areas upstream of the applicant's operation erode and contribute to the sediment captured at the depositional area where Rogue built its culverted road crossing.

The problems at Rogue's culverted road crossing took place during the December 1, 2005 flood event. However, Bear Creek did not overtop Pit 1 until the December 30, 2005 flood, after the incident at Rogue's culverted road crossing. Rogue Aggregate provided photos implying that flooding at Pit 1 and the applicant's subsequent emergency repair caused their sedimentation problems. However, the events are unrelated because there cannot be a connection between what occurred at Rogue's culverted road crossing on December 1st and what occurred at the applicant's pit on December 30th and afterwards.

Finally, the applicant submitted a photo showing the actual location of the material that was washed out when the breach in the Pit 1 berm was created. As can be seen in that photo, the sediments were retained within Pit 1 and could hardly have caused any problems for Rogue Aggregate or any other downstream user.

With respect to the application presently before the Board and previously evaluated by the Planning Commission, the Board agrees with and adopts the recommendation of the Planning Commission that the testimony from Mr. Johnson demonstrates that the work proposed under this application will not adversely affect properties either upstream or downstream (including the Crater Sand & Gravel and the Rogue Aggregates operations)

3. Adequacy of Information Regarding Site Operations

Rogue Aggregates contends that neither the applicant's Site Development Plan nor its proposed bridge design contain sufficient detail to demonstrate compliance with the various code requirements, and do not provide sufficient detail regarding site operations, mine phasing, and reclamation.

Findings: For the reasons explained in the Planning Commission's findings, the Board of Commissioners finds that these code requirements are met. The Board finds that sufficient detail regarding the bridge design was provided by Bill Galli in his testimony to the Planning Commission. Support for Mr. Galli's position is in the record and was accepted by the Planning Commission, and is adopted by the Board. The additional work conducted by Mr. Johnson of *nhc* confirms that conclusion, was accepted by the Planning Commission and is adopted by the Board. The applicant's amended DOGAMI operating permit application contains the necessary mining details not just for TL 1900 but also for tax lots 100 and 200.

4. Coordination with Potentially Affected Agencies

Rogue Aggregates contends that the applicant has not coordinated with all potentially affected local, state and federal agencies or demonstrated that it is feasible to obtain the necessary permits for the master plan.

Findings: Evidence in the record establishes that the applicant's representatives, including Bill Galli of the Galli Group, coordinated with ODFW, DSL and DOGAMI while the initial application to the County was being developed. Mr. Galli's testimony to that fact was made to and accepted by the Planning Commission. The Board also finds that Mr. Johnson and Dorian Kuper coordinated with DOGAMI staff during the preparation of the application to DOGAMI regarding mining on TL 1900, 100 and 200. They and others also coordinated with ODFW and DOGAMI to prepare the Pit 1 restoration plan, as indicated by Ms. Kuper's amended operating permit submitted to DOGAMI.

5. Reliance on Maps Regarding Location of Floodplain

Rogue Aggregates contends that only approved FEMA and FIRM maps can be considered by the County, and that any changes to these maps used in support of the application must be approved prior to submitting the application.

Findings: The Board finds that this argument is incorrect, for the reasons addressed in Mr. Johnson's report titled "Flood Protection Design & River Engineering Investigation for Proposed Pit 2 and Bridge" and the same is herewith incorporated and adopted. As explained by Mr. Johnson, who is one of two consultants in the northwest contracted to work with FEMA on such issues, the FEMA floodway may need to be refined to allow the County to review the effects of the proposed bridge on the floodplain, but a formal review by FEMA is not necessary. As noted by Mr. Johnson, where the "effective" FEMA study misrepresents the flood risk along, for example, Bear Creek, then it would be prudent (not required) to revise the FEMA study. The Board accepts Mr. Johnson's testimony that the FEMA maps are more conservative because they are based on higher 100-year flood values than actually exist today, and that the "location of the floodplain and the floodway could be refined using new and more accurate topographic information, but again this does not require a formal FEMA map update." (Pages 10-11).

6. Consistency with Greenway Plan

Rogue Aggregates contends that a Type 3 permit must be "consistent with" the Greenway Plan, and therefore no mining activities should be allowed within Bear Creek Greenway as it "seems impossible" that there is an overriding public interest given the public characteristics of

the Greenway and the intensity of the proposed uses. The code also prohibits map amendments that will prevent implementation of any area of special concern such as the Bear Creek Greenway.

Findings: The Planning Commission correctly determined that the primary purpose of Area of Special Concern (ASC) 82-2 is to protect and preserve the riparian area to help facilitate a Greenway trail extension. Because the proposed operations will be set back from the Greenway, the applicant has stipulated that it will provide a perpetual trail easement. The Board of Commissioners notes that the purpose of ASC 82-2 is met and the trail will not be precluded by the proposed aggregate operations. Additionally, if and when the trail is constructed in the area, the reclamation of Pit 2 on the east side of Bear Creek will create waterfowl habitat and wetlands, enhancing the viewshed from the Greenway trail. The Board adopts the Planning Commission's interpretation of this section of the County Code to mean that the requirement that the proposed use is not a conflicting use certified in an adopted Goal 5 ESEE means that Goal 5 resources, such as the Greenway, are to be protected from non-Goal 5 resources. Because both the Bear Creek Greenway and the proposed aggregate operations are Goal 5 resources, the Board may adopt an ESEE analysis that balances the competing Goal 5 resources. Accordingly, the Board finds that the ESEE analysis balances the Bear Creek Greenway and Aggregate Resources in the Goal 5 analysis for the Minor Comprehensive Plan Map and Zoning Map Amendments.

B. Exhibits Accepted/Rejected by the Board

On April 11, 2007, the Board of Commissioners held a public hearing to accept evidence and testimony into the record specifically related to compliance with DOGAMI, the Army Corps of Engineers, and the Department of State Lands violations. Prior to this hearing, two violations had been identified from DOGAMI and the Army Corps of Engineers. Evidence in the form of exhibits was submitted clearing these two violations. Evidence was also submitted identifying a violation from Department of State Lands. A decision on the merits of the application was postponed pending additional evidenc and testimony that the Applicant was in substantial compliance with the Department of State Lands consent order.

Exhibits were discussed relative to their compliance with the Board's specific criteria for submission of evidence regarding clearance of the two violations from DOGAMI and the Army Corps of Engineers. The Board of Commissioners decided, by motion and vote, to accept Exhibits # 68, 69, 70, 76 and 77 into the record to be considered by the Board for this application. The Board rejected Exhibits # 71, 72, 73, 74, 75 and 81 as evidence to be considered by the Board. These exhibits did not meet the specific criteria determined by the Board regarding the clearance of violations from DOGAMI and the Army Corps of Engineers.

On May 30, 2007, the Board of Commissioners held a public hearing to accept evidence and testimony into the record specifically related to demonstration of substantial compliance with the Department of State Lands consent order. Exhibit 82 was specifically rejected because it did not meet the criteria determined by the Board with regards to the substantial compliance with the Department of State Lands consent order and would not be used as evidence used by the Board to reach a decision on this application. All other numbered exhibits were accepted as part of the record as evidence to determine compliance with the criteria for this application.

III. Conclusion

Based upon the evidence and testimony in the record and the foregoing findings of fact and conclusions of law, the Board of Commissioners concludes that the subject application complies with the applicable requirements for a minor Comprehensive Plan map amendment, minor zoning map amendment subject to the site and operations master plan (as modified), a Type 3 permit for aggregate operations in the Bear Creek Greenway, (approval of the bridge crossing and incidental modifications in accordance with the approved site and operations master plan), final site plan approval (as amended in these proceedings), and floodplain development permit for all aspects of the operation for which final site plan approval is granted.

CRAIG A STONE & ASSOCIATES, LTD.

EXHIBIT C

712 Cardley Avenue • Medford, Oregon 97504-6124
Telephone: (541) 779-0569 • Fax: (541) 779-0114 • E-mail: cstone@cstoneassociates.com

RECEIVED

JAN 1 8 2006 JACKSON COUNTY PLANNING

January 16, 2006

JACKSON COUNTY PLANNING COMMISSION c/o Jackson County Planning Department County Courthouse 10 South Oakdale Medford, OR 97501

RE: REBUTTAL

Planning Action LRP2005-00003 Rock-n-Ready Mix LLC: Applicant

Dear Jackson County Planning Commission:

Following the close of public testimony at the October 27, 2005 public hearing on the above captioned matter, the Planning Commission ("Commission") left the record open and continued the public hearing. Opposition to the application was presented by the Applicant's competitor Rogue Aggregates, Inc. This letter serves as preliminary rebuttal to the arguments made by their Attorney at that proceeding.

Applicants Rebuttal:

1. Letter to Jackson County Planning Commission from Todd Sadlo, Attorney for Opponent Rogue Aggregates, Inc., dated October 27, 2005.

The Opponent's Attorney addresses certain issues in numerical fashion; these are cited verbatim below, where each is followed by Applicant's rebuttal.

Objection 1: The applicant has proposed a bridge across Bear Creek that would be composed of a railroad car and two flatcar ramps, on the north and south banks of the creek. The County's development code requires that the proposed bridge be subject to review in these proceedings, and does not allow separate approval through a "Land Use Interpretation," without notice and opportunity for a hearing. The applicant is constructing abridge footings now, even though the staff approval states that it is "voidable" if the application you are now considering is not approved. The entire proposal before you should be tabled until all information regarding the proposed bridge is presented to the Planning Commission for review and approval as part of this Post-Acknowledgement Plan Amendment. If what is in the application packet about the bridge is all there is, it is not enough to address the potential risks and impacts to the creek and downstream landowners.

Rebuttal: The above described land use permit has been rescinded, without contest from Rock-n-Ready Mix LLC. by the County. For this reason, this objection has no bearing on the proceeding at this time.

Notwithstanding this fact, the objection fails to identify the LDO provision(s) upon which Opponent's Attorney relies in his conclusion that, "the County's development code requires that the proposed bridge be subject to review in these proceedings and does not allow separate approval..." The code section prohibiting the pursuit of multiple land use applications subject to different levels of review for a permitted use is not identified; the parcel where the bridge is located is planned Aggregate Resource and zoned Aggregate Removal and the bridge is proposed as an accessory structure thereto.

Objection 2: On behalf of Rogue Aggregates, Chris Lidstone & Associates have reviewed the proposal, and have concluded that there is insufficient evidence in the record to support that applicant's bridge design or 'no net floodwater rise' conclusions. The applicant states that the regulatory FEMA deck is inaccurate and has asserted to the County that it is proposing a new "pre-development condition" as a basis for its proposed Conditional Letter or Map Revision (CLOMR) or a Letter of Map Revision (LOMR). The application has put the cart before the horse. The applicant has not provided "input data" nor modeling assumptions for an acceptable hydraulic modeling study. The difference between FEMA and the post-development condition ranges for 0.69 feet to 2.8 feet, which is a significant difference that calls into question the applicant's claim of "no net rise."

Rebuttal: As to whether the Galli calculated flood deck is consistent with the FEMA calculated flood deck, this issue is addressed below under Objection 5a.

The Applicant does not state that the regulatory FEMA deck is inaccurate. At record page 189, Applicant asserts that the differences in the Galli calculated water surface elevations and the FEMA calculated elevations are small, and that this discrepancy is sufficiently small to allow the County to apply the Galli calculated water surface elevations. For this reason, the assertion by Opponent's Attorney that the applicant has characterized the regulatory FEMA deck as inaccurate overstates the Findings of Fact offered by the applicant with the initial submittal. The Galli study has almost twice the resolution of the FEMA study to provide the County a study that accurately reflects current conditions at the site. Increased precision can reasonably be expected to result in site-specific variances not captured in the FEMA study. It is the responsibility of the County to weigh the evidence and conclude whether the overall variance is small enough to be considered substantially equivalent to the FEMA study.

The assertion that "input data" has not been provided neglects substantial evidence in the record. Record page 222 to 223 contains a detailed discussion of the methodology used to calculate the flow volumes (Q_{100}) . If Opponent's Geotechnical Engineer, Chris Lidstone, believes these calculations and/or modeling assumptions to be in error then he should provide a detailed technical review of the calculations for the Commission to consider.

Objection 3: The applicant contends that it has performed calculations and has met with ODFW concerning construction of the bridge, that all work will be performed above the Ordinary High Water Mark (OHWM) (two-year flood event), and that, therefore, no permits are required from DSL or the Corps of Engineers. To the contrary, no calculations have been provided regarding the location of the Ordinary High Water Mark, nor has the applicant provided a letter or concurrence for ODFW. If the OHWM calculation used by the applicant is incorrect, a flood event

could dislodge the bridge, which would create havoc for all downstream landowners and in particular Rogue Aggregate's conveyors and other facilities.

We have good reason to be concerned. Based on our preliminary review of available data, the railroad car span will range from 90 to 120 feet, depending on which drawing is relied upon. There is no protection proposed that would protect the footings located below the Ordinary High Water Mark. Hydraulic conditions at the bridge are such that the river will continue to move, raising serious concerns regarding erosion and scour at the bridge footings during a flood event. If the bridge were to fail during a flood event, the bridge, and materials eroded from the footings and banks, will end up in the vicinity of downstream channel improvements recently constructed be Rogue Aggregates.

Rebuttal: It appears this testimony is directed at the Floodplain Development standards in JCLDO 7.1.2(E) and (F) in a general way and the same are addressed below.

JCLDO 7.1.2(E) relates to state and federal permits, where required. Determination of the Ordinary High Water Line is not a County requirement, but does relate to the need for DSL/Corp of Engineers permitting requirements. At the time of the initial hearing, a response from DSL regarding the need for a permit had not been received by the County. Applicant can feasibly and will obtain a DSL/Corp permit if these agencies determine one is required; no such permit appears necessary based upon Galli's determination of the OHWM location depicted in Galli's Figure 7 at record page 214.

JCLDO 7.1.2(F) pertains to development standards in the floodplain and floodway. JCLDO 7.1.2(F)(c) requires, "bridges to be anchored so that they will resist being washed out during a flood." At record page 203, Applicant's registered professional Geotechnical Engineer states, "The two main bridge piers were designed such that forces from streamflow, floating debris, bridge dead load, vehicle live load and braking load of vehicles can be adequately resisted." Record pages 214 to 220 provide detailed engineering drawings and specifications for bridge construction. Opponent's Attorney's speculation as to bridge design adequacy does not constitute substantial evidence in the record.

Objection 4: The applicant's proposed ESEE analysis and other proposed findings are mostly bald assertions, and are not supported by any substantive data or studies. Based on what has been submitted to date, the only conclusion that can reasonably be drawn from a proper ESEE analysis is that the risk of harm to Bear Creek, the Rogue, and all downstream owners, is unacceptable and tips the scales against approval. At this point, there is not enough evidence for a reasonable person to use as the basis for a decision to approve. The burden is on the applicant, and the burden to justify approval has not been met.

Rebuttal: This objection is general in nature and is not stated with sufficient specificity to afford the Planning Commission an opportunity to respond as required by law and stated by the Chair of the Jackson County Planning Commission prior to opening the public hearing on this application. Opponent's Attorney states, "the only conclusions that can reasonably be drawn from a proper ESEE is that risk of harm to Bear Creek, the Rogue [River] and all downstream owners is unacceptable and tips the scales against approval." This conclusion is reached without identifying what additional uses must be

included and/or additional information necessary for the County to complete the ESEE process.

Objection 5a: Insufficient information regarding flood profiles, and inadequate support for conclusory flood certification provided with the application;

Rebuttal: Opponent's Attorney and Opponent's Geotechnical Engineer both raised concerns that the Galli calculated flood deck and regulatory FEMA flood deck were too disparate to be considered consistent, and that this discrepancy was too large to demonstrate compliance with the standards in section 7.1.2 as is argued in Applicant's initial submittal. Applicants appreciate this testimony and agree that the hydrologic engineering for the project must be based on sound and generally accepted hydrologic engineering practices. Since the hearing, applicant's Geotechnical Engineer has revisited this issue and the applicant expects to have revised hydrology analysis that addresses this concern available for the Commission to review at the hearing scheduled for January 26, 2006.

Objection 5b: Insufficient information regarding the proposed berm along the sewer line, and how it will impact the base flood;

Rebuttal: This objection is not raised with sufficient specificity to allow the Commission an opportunity to respond; it is not clear from this objection how the Opponent's Attorney reaches the conclusion that the information in the record is insufficient. As a matter of past practice, the submitted information is at least as detailed as the County has relied upon to approve numerous floodplain development permits over the years. The record shows that the berm was modeled in the HEC-RAS analysis, in accordance with generally accepted engineering practices for hydrologic modeling. Also, the berm construction schematics are provided at record page 323 and have been designed by a registered professional Geotechnical Engineer in accordance with the County's floodplain review requirements which constitute the relevant substantive approval criteria.

Objection 5c: Insufficient explanation of the location of the ordinary high water line, which is key to determining proper bridge design and permits required. There is also insufficient information regarding the design, height, and potential impacts on flood velocities and erosion potential of the bridge and berms that would be located in the floodplain and floodway as part of the proposal;

Rebuttal: This objection is not raised with sufficient specificity to allow the Commission an opportunity to respond, it is not clear from this objection how the Opponent's Attorney reaches the conclusion that the information in the record is insufficient. As a matter of past practice, the submitted information is at least as detailed as the County has relied upon to approve numerous floodplain development permits over the years. The bridge and berm were modeled in the HEC-RAS analysis, in accordance with generally accepted engineering practices for hydrologic modeling. The berm and bridge construction schematics are provided in the record and have been designed by a registered professional Geotechnical Engineer in accordance with generally accepted engineering practices to demonstrate compliance with the relevant substantive approval criteria contained in the County's floodplain development standards.

Objection 5d: Insufficient information regarding erosion control techniques to be employed to prevent day-to-day erosion and potential catastrophic flooding events. Channel and bank instability, channel avulsion and meander cut-off are all important issues that must be addressed to protect Bear Creek, the Rogue River, and downstream landowners. No geomorphic study has been provided. The importance of this information is magnified by the applicant's proposal for berm construction and stockpiling of overburden within the floodplain;

Rebuttal: Jackson County has adopted standards for floodplain and riparian area development (LDO Sections 7.1.2). It is unclear what, if any, approval standard this objection is intended to address. A geomorphic study is not a submittal requirement nor has the assertion that one is necessary been raised with sufficient specificity. No explanation or legal argument is provided to establish why the County's floodplain standards are inadequate and why such a study is therefore necessary in this instance to assure the risk posed by a 100-year flood event will not exceed the risk generally accepted by Jackson County for floodplain and floodway development. The standards in JLDO Section 7.1.2 regulate fill within the floodplain as is proposed for the berm/haul road to protect the extraction on the east side of the project from inundation.

The project generally avoids riparian areas altogether. It is unclear where the source of erosion potential is expected to occur by the Opponent's Attorney. The objection incorrectly states that overburden is proposed to be stockpiled in the floodplain. With the flood management measures proposed herein, there are no new stockpiling areas proposed in the floodplain as the same is plainly stated at the top of Record Page 332 and as depicted on the Site Master Plan.

Objection 5e: Insufficient information has been presented to establish appropriate setbacks from Bear Creek. For example, there is a potential for river 'capture' by the existing pit which, as part of the proposal is to be used as a settling pond. The pond will at most times be filled with turbid water and is located within the meander zone of Bear Creek, on a major meander. "Capture" or overtopping would cause the release of highly turbid water into Bear Creek and the Rogue River, fouling sandbars and otherwise harming the Rogue River fishery;

Rebuttal: Minimum setbacks from Bear Creek are established by the LDO at 50-feet. In most all locations, the project proposes setbacks of substantially more than 50-feet and the project complies with all the riparian protection standards in JCLDO Section 8.6 as depicted on the Master Site Plan. The only indication as to the point of this objection is the example provided with respect to capture of the proposed settling pond in Existing Pit #1. DOGAMI raised concerns with the use of this area as a settling pond and this portion of the proposal has now been revised to eliminate this feature. For this reason, the example provided by opponent's attorney is now without practical meaning.

Objection 5f: Insufficient and conflicting information regarding the configuration of mining cells on the east and north side of Bear Creek. The application materials are geared to 35 acres of tax lot 1900, and provide little to no information regarding mining plans to the south, in a total ownership area of 345.80 acres;

Rebuttal: This objection is not directed at any particular approval criteria and is not stated with sufficient specificity to afford the Planning Commission an opportunity to

respond as required by law and stated by the Chair of the Jackson County Planning Commission prior to opening the public hearing on this application. Detailed information on the configuration of mining cells are not required by the County's Aggregate Site Plan standards. These standards require only general location and operating parameters. The project includes more detailed mining plans for Tax Lot 1900 because it is planned and zoned aggregate and, as part of this site plan review, mining is expected to commence immediately following approval. The more detailed information on Tax Lot 1900 is provided consistent with the currently pending DOGAMI permit application. Although the Applicant believes there is sufficient information for the proposed mining operations east of Bear Creek to demonstrate compliance with the County's standards, if the Commission believes a detailed site plan review is appropriate prior to extraction on Tax Lots 100, 200 and 2600 then applicant will accept a reasonable condition requiring the same. The initial submittal recognizes that mining west of Bear Creek is many years in the future and that both detailed hydrologic analysis and detailed site plan review will be required prior to any extraction west of Bear Creek.

Objection 5g: Insufficient delineation of wetlands and vernal pools. The applicant's wetland study says nothing about the north and the east bank of Bear Creek, where mining expansion is proposed. Without a proper delineation of such resources, it is impossible in this case to properly weigh potential environmental impacts, as required by the ESEE process;

Rebuttal: Applicant had originally proposed to defer wetland identification following approval of this land use application because the National Wetlands Inventory Maps, upon which the County relies, do not identify substantial wetlands in the area proposed for extraction. Deferral of detailed wetlands identification was originally proposed because these detailed studies are valid for a limited time period. As a practical matter, wetlands must be identified at sometime prior to mining operations proceeding. Because the opponent raised this issue, the applicant engaged Terra Science Inc. to identify potential wetlands impacts and a preliminary report is expected to be available at the next scheduled hearing. However, it should be noted the Opponent's Attorney has not explained how as a matter of law any necessary DSL/Corp of Engineering Permits could not feasibly be obtained. Moreover, wetlands, as a matter of law, cannot serve as a basis for mining restrictions pursuant to Provision 12 of Jackson County's aggregate program because the County has not included wetlands on its inventory of significant Goal 5 resources and no protection program for wetlands has been adopted by Jackson County.

Objection 5h: Insufficient delineation for Bear Creek riparian areas, insufficient setbacks, and a lack of coherent explanation of steps that will be taken to protect and improve the existing riparian area, which has been partially cleared and graded by the applicant;

Rebuttal: With respect to riparian protections and development the County has adopted and acknowledged protections and they are found in LDO Section 8.6. Opponent's Attorney has failed to explain how the use of aerial photos followed by on-the-ground verification is inadequate. No area was identified where the proposed site-plan depicts a location where the applicable setback of 50 feet will not be maintained. The Conclusions of Law offered for adoption by applicant at Record Page 331 clearly states that no existing overstory vegetation will be removed in the prescribed 50-foot setback and the only understory vegetation that will be removed is at the stream crossing location where

it is unavoidable and allowed as a matter of code. With respect to operational issues to assure the prescribed setbacks for existing and proposed operational areas are observed, applicant agrees that conditions assuring the same are appropriate and applicant will accept reasonable conditions to accomplish the same¹.

Objection 5i: Insufficient analysis of potential fish capture and mortality in the proposed settling ponds and new ponds as they are constructed;

Rebuttal: This objection is partially mooted with respect to the proposed settling pond, because this component of the proposal has been removed. Notwithstanding this revision, this objection ignores the facts. Fish capture and mortality at the existing Pit #1 was a concern raised by DOGAMI and ODFW as part of the operating permit for this site. The land use at this Pit #1 is already permitted by Jackson County with a condition that mining depth exceeding 25 feet be approved through an amendment to the DOGAMI permit. The DOGAMI permit amendment for Pit #1 has now been issued and this amendment included fish escapement features approved by DOGAMI in coordination with ODFW. The objections reference to new ponds is not stated with sufficient specificity to determine the mining feature being referenced; new pits include flood control features engineered to prevent pit capture by a 100-year flood event.

Objection 5j: Insufficient evidentiary support for numerous statements made in the ESEE, regarding, especially, economic and environmental consequences of allowing or prohibiting the use:

Rebuttal: This objection is not directed at any particular approval criteria and where opponent's attorney fails to identify the numerous statements in the ESEE, regarding especially, economic and environmental consequences this objection is not stated with sufficient specificity to afford the Planning Commission an opportunity to respond as required by law and stated by the Chair of the Jackson County Planning Commission prior to opening the public hearing on this application. It is not even clear whether this objection refers to economic and environmental consequences of allowing or prohibiting uses in the impact area or whether it refers to allowing or prohibiting the proposed aggregate use.

Objection 5k: Insufficient information regarding proposed reclamation plans. The County cannot be expected to make a coherent decision about the long term environmental consequences of the of the proposal without knowing the proposed duration of mining and without seeing a more detailed conceptual reclamation plan;

Rebuttal: Neither Jackson County's aggregate program nor its standards require the duration of the operation to be explicitly defined as a pre-requisite to determine long-term environmental consequences. The assertion that this is necessary is Opponent's Attorney's opinion and no such requirement is established in the County's aggregate program. Notwithstanding this matter of law, applicant expects the total project area to be mined over the next 25 to 35 years. With regards to more detail in the reclamation

¹ If this objection was intended to address criteria relating to protection of the Bear Creek Greenway see rebuttal to objection 5(r) below.

plan, the applicant welcomes any details the Commission believes is necessary and will provide the same.

Objection 5I: Complete lack of a coherent set of conditions or other "program to achieve Goal 5," as required by law. Applicant's Exhibit 4 is not adequate;

Rebuttal: The County has an adopted and acknowledged program to achieve Goal 5 and it is located in the Aggregate Element and Aggregate Map Designations of the Comprehensive Plan and Section 4.4 of the JCLDO. Compliance with these provisions achieves Goal 5 for aggregate in Jackson County. Conditions of approval can be and are frequently placed on aggregate operations as part of the County's aggregate program, but development and attachment of such conditions are the responsibility of Jackson County through the ESEE process.

Notwithstanding the above technical arguments, Applicant concurs that a set of conditions to obtain Goal 5 is likely appropriate. As stated in Applicant's letter dated June 29 at Record Page 559, Applicant viewed work on a set of conditions prior to the first evidentiary hearing as premature where the Planning Commission may make changes to the ESEE offered by the applicant and the fact that there is another hearing before the Board of Commissioners in which new evidence may be offered and any objections to proposed conditions may be raised. With a positive recommendation, Applicant expects to work with Jackson County Planning Staff to prepare a set of appropriate conditions consistent with the Planning Commission's recommendation and its corresponding deliberation.

Objection 5m: Insufficient explanation by the applicant of numerous past violations, that affect the credibility of the applicant and detract from a finding that it is feasible for the applicant to carry out the proposal in compliance with law. The applicant has since 1998 been under numerous DOGAMI "notices of violation" and has also been subject to DEQ and Country enforcement actions;

Rebuttal: There are no violations at this time. Violations have nothing to do with whether a sand and gravel deposit is a significant resource. If, through approval of the operating permit, the Planning Commission has concerns regarding compliance with code requirements and discretionary conditions, then the Commission has the authority to attach conditions for regular inspection by County Staff and when key components of the Master Plan are initiated. The Applicant will accept reasonable conditions of approval requiring the same.

Objection 5n: Insufficient justification for conclusions regarding the quantity, quality, and location of the resource. The source of the boring log information, how it was collected, and who collected it, is not presented in the conclusions made. Quantity estimates are based on a new pit depth of 50-60 feet while DOGAMI has limited the existing pit depth to 25-feet. No basis is provided for the applicant's expectation that pits are twice as deep will be allowed. Quality information is not based on any samples that were taken from areas that the applicant proposes to mine on the north and east bank of Bear Creek;

Rebuttal: In the interest of assuring that the entire site is designated a significant resource, the applicant has engaged the services of Dorian Kuper, Engineering Geologist



from Kuper Consulting LLC, to supplement the quality information and refine the quantity estimates submitted to-date; this supplemental evidence is expected to be available at the next scheduled hearing.

Opponent's attorney explicitly refers to the need to justify the quality of aggregate reserves on the north bank of Bear Creek. This objection ignores established fact; the Jackson County Board of Commissioners already designated the quantity and quality of the aggregate reserves on Tax Lot 1900 (north bank) as significant. This is plainly stated in County Ordinance 95-61, which was adopted as part of the County's periodic review for aggregate and was acknowledged by DLCD without objection.

With respect to the boring log information already submitted to the record and estimates of quantity on the Medina site (Tax Lots 100 and 200), this information was collected and quantity estimated by Knife River Corporation, a subsidiary of MDU Resources Group (Rogue Aggregate's parent company). Based upon the oral testimony of Paul Medina, the owner of the subject property, this analysis was performed by Rogue Aggregates' subsidiary company while they were attempting to acquire rights to mine the Medina property. Opponents' Attorney is questioning the validity of the quantity estimate prepared by his client's subsidiary.

With respect to pit depth and quantity of minable reserves, mining depth is a matter of engineering feasibility and associated permitting from DOGAMI. The DOGAMI permit for Pit #1 has been amended to allow depths in excess of 25 feet. Moreover, the applications to both DOGAMI and the County herein request approval to full minable reserve depth and quantity estimates are based upon the same. As a practical matter this argument is without substance; even if estimates were arbitrarily restricted to 25 feet, the record indicates the resource is still larger than Jackson County's threshold standard of 100,000 cubic yards.

Objection 50: Lack of a traffic study:

Rebuttal: This objection ignores substantial evidence in the record. A detailed study for transportation system safety is provided at Record Page 578. This study identifies needed improvements to assure safe system operations. Neither ODOT traffic engineering staff nor Jackson County traffic engineering staff determined that a detailed capacity analysis was necessary to conclude the proposed land use changes will not significantly affect a transportation facility. A letter from Jackson County Road stating the same is provided at Record Page 572. The expert opinion of Applicant's registered professional traffic engineer Robert Kortt is provided in a letter, dated December 15, 2005, that the trip generation analysis previously submitted to the record is correct and on this basis a detailed capacity analysis is not necessary to conclude the proposal will not significantly affect a transportation facility.

Objection 5p: Insufficient information addressing potential groundwater impacts. The applicant is proposing to dewater a very large pit or pits to a depth of 50-60 feet. The applicant has provided a single page of narrative, without any supporting documentation, addressing potential groundwater impacts of the proposal, which is inadequate;

Rebuttal: As a matter of law, this objection cannot serve as a basis for mining restrictions pursuant to Provision 12 of Jackson County's aggregate program because this

area is not within an area where a Goal 5 protection program for groundwater resources has been adopted and the site is not located in ASC 90-8 which is the County's only adopted protection program for groundwater resources (see also Page 111 of the County's adopted and acknowledged Goal 5 background document). The Opponent's Attorney has identified no well or other impact related to ground water to his client's property that can reasonably be expected to be result from the proposed operation.

As a practical matter, both the applicant and DOGAMI want to assure that neighboring residences continue to have sufficient well water. On his own volition, Applicant has in the past drilled a well on the adjacent property to the south when problems with that well were encountered. The DOGAMI review of Pit 2 on tax lot 1900 includes a condition for well monitoring on the Medina well on a regular basis. As this permit is extended to include the balance of the Medina and Hilton property, the County can expect similar conditions to be placed on any other wells for which DOGAMI has concerns. For this reason, applicant will accept a similar condition for any wells identified in this proceeding that the Commission believes there is reasonable likelihood of adverse affect.

Objection 5q: The applicant proposes to construct a "high channel" ditch as a permanent feature on the floodplain, between a proposed permanent 100-year-elevation bern and the existing sewer mainline through the property. The proposal states that the ditch will be lined with "Reno mattresses" (articulated concrete blocks). Minimal information has been provided regarding the hydraulic design of this major floodplain feature. There is insufficient data to review, data necessary to establish the long-term integrity of the proposed channel, and addressing its potential for avulsion, sedimentation, erosion, and impacts to the Bear Creek Greenway and downstream landowners; and

Rebuttal: In response to testimony at the earlier hearing, Applicant's Geotechnical Engineer has re-examined the floodplain analysis. This examination identified an anomaly in the analysis that that may eliminate the need to construct this feature altogether. Applicant expects a revised floodplain analysis addressing this issue will be available at the next scheduled hearing.

Objection 5r: The proposal's treatment of the Bear Creek Greenway is not appropriate. The Greenway is an "Area of Special Concern" and is the subject' of management policies and guidelines that are not addressed by the proposal. Although the development ordinance directs you to promote Greenway polices 'to the extent of your legal authority,' (7.1.1(B)(2)), the applicant has proposed no greenway mitigation.

Rebuttal: Notwithstanding the below legal technicalities, the applicant believes good planning should incorporate important features like Bear Creek Greenway where appropriate. The statement by Opponent's Attorney that the applicant has offered no Greenway mitigation is unfounded. Applicant's site plan leaves 500-foot wide reaches of riparian area as undisturbed greenway area. Applicant has offered a public easement to take effect following mining operations east of Bear Creek in accordance with a request submitted by the Greenway Program manager. Considering Applicant's offer to dedicate almost a mile of private property for public purposes, Applicant finds the Opponent's Attorney's assertion that no mitigation has been offered absurd.

This objection identifies no policies in the Greenway Plan that the Opponent's Attorney believes operate as an approval standard. No legal analysis is provided upon which a conclusion can be reached that treatment of the Greenway is inappropriate.

2. In addition to those objections raised in the Letter to Jackson County Planning Commission from Todd Sadlo, Attorney for Opponent Rogue Aggregates, Inc., dated October 27, 2005, he raised the following objections/issues in oral testimony on October 27, 2005.

Oral Objection #1: Opponent's Attorney stated that the Applicant had included some conflicting uses that may not pose a substantial threat to the aggregate resource and then proceeded to assert that, on this basis, the Commission should include his Client's property within the conflicting use area. The principal rationale for the request to be included in the impact area was the threat posed by increased risk of flood damage to his client's property.

Rebuttal: This objection and request to be included in the impact area is absurd for the following reasons:

- Opponents request to be included in the impact area is without precedent or legal basis. Nowhere in the County's Aggregate Element of the Comprehensive Plan or in the history of its application, in Goal 5, in Division 16, in Division 23 nor in the Jackson County LDO is one sand and gravel operation identified as a conflicting use with another sand and gravel operation. The Applicant is unaware of any case law to support this assertion. This objection and request is raised without any legal analysis where substantive criteria or procedures in the ESEE process is identified and relied upon to designate one aggregate operation as a conflicting use with another aggregate operation. Nowhere in the application is this point conceded by the applicant. Quite the contrary, the conflicting use tables offered by the applicant at record pages 156 and 161 clearly state that the applicant does not identify adjacent aggregate uses as potential conflicting uses.
- Opponent's Attorney's argument is backwards in precisely the way that both the Staff and the Planning Commission cautioned the entire audience at the hearing with respect to the legal requirements for the County's Goal 5 Aggregate Program. Opponent's Attorney has made no compelling argument and offered no substantial evidence as to how this resource site is adversely affected by the uses on his client's property 2,000 feet away.
- The potential risk cited by the Opponent's Attorney as the basis for inclusion in the impact area was primarily related to the bridge improvement. This improvement is located on Tax Lot 1900 which is planned and zoned for aggregate uses. The ESEE process for this parcel is complete and an impact area is already established for this parcel by operation of Ordinance 95-61, which was completed as part of Jackson County's periodic review. The principal requests related to the subject application applicable to Tax Lot 1900 are the floodplain development approval and site and operations master plan approval. The only component of the Plan Amendment and ESEE applicable to Tax Lot 1900 are the restrictions on mining west of Bear Creek and restrictions on mining in the Bear Creek Greenway overlay area. Neither of these restrictions in that adopted and

acknowledged ESEE were based upon floodplain issues nor were they related to other aggregate operations in the area.

Respectfully Submitted,

CRAIG A. STONE & ASSOCIATES, LTD.

Jay Harland Consulting Planner RECEIVED

MAR 16 2006 JACKSON COUNTY PLANNING



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March 15, 2006

VIA FIRST CLASS MAIL

Jackson County Planning Commission c/o Jackson County Planning Department County Courthouse 10 South Oakdale Medford, OR 97501

Re: File LRP 2005-0003: Rock 'N Ready Comp Plan Amendment, Site Plan Review and Zone Change

Dear Chair Hennion and Commission Members:

This Firm represents Rock 'N Ready Mix, LLC, the applicant in the above-referenced land use application. This letter is intended to respond to issues and allegations made by Rogue Aggregate ("Rogue") and its representatives at the Planning Commission hearing on February 9, 2006. At that time, the Planning Commission directed that the record be held open for seven days for new evidence and testimony. This letter and the attached materials are submitted under that direction.

It is clear from the oral testimony and the binder provided by Rogue that its goal is to avoid meaningful commentary on the proposed activities and to attempt to confuse the Planning Commission with irrelevancies, misrepresentations, and inferences. Generally, we believe Rogue's intent is to delay the proposal and to add to the expense of permitting for the applicant. Rogue's testimony thus far contains little to no factual evidence or analysis relative to the criteria. Rather, it relies on past resolved violations, unsubstantiated allegations that the existing operation has harmed Rogue's operation and, generally, trying to cast doubt on Rock 'N Ready engineering consultant. Rogue also makes the usual demands for additional detail, more studies

[59913-0001/PA060710.017]

ANCHORAGE - BEIJING - BELLEVUE - BOISE - CHICAGO - DENVER - HONG KONG - LOS ANGELES MENLO PARK - OLYMPIA - PHOENIX - PORTLAND - SAN FRANCISCO - SEATTLE - WA"

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and more information. Rogue's testimony does not relate to specific criteria or explain why Rock 'N Ready's testimony, provided by a registered Oregon engineer, is not sufficient to meet the relevant criteria. They simply claim it is not sufficient to meet their criteria.

In response to Rogue's comments, Rock 'N Ready retained Jeff Johnson of Northwest Hydraulic Consultants (NHC). Mr. Johnson has extensive experience in such situations and NHC is a major contractor to FEMA. Mr. Johnson substantially refutes Rogue's testimony regarding the likelihood of downstream impacts, sedimentation from Rock 'N Ready and their culverted road crossing. As an engineer certified in Oregon and given his experience in such matters his testimony constitutes expert testimony and is substantial evidence supporting Rock 'N Ready's application.

Immediately below, we would like to correct some of Rogue's testimony presentation on February 9, 2006, and at other times during the county's public hearing process. Additional rebuttal testimony is being prepared by Jay Harland, Bill Galli and Dave Paradis. Please include all this testimony into the record for this matter.

1. Department of State Lands (DSL) and Corps of Engineers (Corps) Permitting.

Rogue's Testimony: Rogue contends that Rock 'N Ready deliberately avoided the DSL and Corps regulatory processes. Rogue's allegation implies that by doing so, Rock 'N Ready did something sinister and apparently would like the County to believe that a substantive engineering evaluation was avoided. Rogue also contends that the HEC-RAS analysis misidentified the ordinary high water level ("OHW"). Rogue also offers a letter from the Corps to Copeland Sand and Gravel regarding their application implying that a similar process is necessary for its bridge.

Response: Yes, Rock 'N Ready deliberately avoided the state and federal permit processes. It was their legal obligation to do so. The basic criteria used by both agencies is to require applicants to demonstrate that impacts to aquatic resources be the only practicable way to conduct the project. (See Attachment 1 the definition of "mitigation.") Since it was obviously practicable for Rock 'N Ready to place the footings above OHW and, therefore, outside the aquatic resource regulated by DSL and the Corps, the law required them to so. In such a situation, no permit is necessary from either agency.

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Neither DSL nor the Corps evaluates the engineering of any proposed application. Consequently, in spite of the inferences from Rogue, by avoiding the permit process, not only did Rock 'N Ready meet their legal obligations, but they did not avoid a substantive engineering review. The Removal-Fill Law under which DSL acts and Section 404 of the Clean Water Act under which the Corps acts are environmental statutes. By placing the footings above the regulatory jurisdictional line, the agencies' concern about environmental impacts to the aquatic resource are resolved.

OHW is defined by both DSL and the Corps – see Attachment 2. In neither case is the two-year flood level or engineering calculations like the HEC-RAS analysis mentioned. By definition, OHW is determined by field observations and not mechanical or mathematical calculations.

The Corps' letter to Copeland is not relevant to this situation. That letter was in response to a permit application requesting authorization to place fill material below OHW within their jurisdiction. The Rock 'N Ready bridge avoids fill in the Corps jurisdiction. The point being that Rock 'N Ready followed the law by avoiding the impacts in the first instance.

2. Pit Capture

Rogue's Testimony: Rogue refers to Pit 1 as having been captured by Bear Creek.

Response: Pit 1 has not been "captured" by Bear Creek. However, during the December 30, 2005 flood event, it was overtopped as planned by both Rock 'N Ready and the Oregon Department of Geology and Mineral Industry ("DOGAMI"). The primary difficulty at that time was that the fish channel intended to allow water into the pit had not been completed. DOGAMI had concurred with that decision.

The phrase "pit capture" means that the stream has shifted and flows through the mined pit. The stream usually enters the pit upstream by eroding or breaking through the stream bank itself and/or any berms intended to prevent the pit from being overtopped. The stream then fills the pit with water and exits downstream after eroding a new channel. The pit then becomes a feature of the stream, in effect, the pit becomes a deep, widened area within the stream. In the case of Pit 1, it

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remains a unique feature separated from Bear Creek by the established setback. Bear Creek does not run through Pit 1, has not been captured by Bear Creek and is not part of Bear Creek. Consequently, referring to Pit 1 as having been captured by Bear Creek grossly misprepresents the situation.

3. Failure of Rogue's Culverted Road Crossing.

Rogue's Testimony: Events at Rock 'N Ready's Pit 1 somehow caused Rogue's culverted road crossing to fail.

Response: Two Oregon registered engineers have independently reviewed Rogue's culverted road crossing and both concluded that regardless of upstream activities, the crossing was doomed to fail. Mr. Johnson notes that the culverts could pass only a fraction of the total flow that Bear Creek could deliver during a moderate to major flood even if the culverts remained clear of sediment. Therefore, the crossing had to rely upon overtopping to pass flood flows. Clearly the damage reveals that it could not handle the overtopping.

Although Rogue would like the Planning Commission to believe that material specifically from Rock 'N Ready's bankline provided the sediments that blocked their culverts, that position is unsupportable. In order for a 5-to 6-ft deep layer of sediment to deposit at Rogue's crossing, as it did during the December 1st flood, velocities near the crossing had to decrease significantly. Velocities did decrease because the crossing acted like a dam, for the culverts were not large enough culverts to pass the volume of water carried by Bear Creek. In addition, the crossing is located at a sharp bend in the stream. Therefore, significant sediment deposition in the form of a point bar was inevitable along the inside portion of the bend. Backwater influences from the Rogue River may have also had an influence on velocities. Rock 'N Ready has not operated on the water side of the Bear Creek bank and is not responsible for erosion along the bank line itself. There are hundreds of locations that are contributing sediment to Bear Creek and to single out the reach along Rock 'N Ready is intentionally misleading and inappropriate. Bear Creek continues upstream for approximately 30 miles, and there are hundreds of miles of tributaries beyond that, many of which have ongoing erosion and undercutting along the banks. As explained by Mr. Galli, Bear Creek and its tributaries contain substantial stretches of eroding bank line that provide sediment of large and small grain size into the waterway. If Rogue's culverts were blocked by sediments from upstream, there is no evidence that it was specifically the result of any activity conducted by Rock N Ready. However,

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the implication of the muddy water seen in every high water event in the Bear Creek is that areas upstream erode and contribute to the sediment captured at depositional area where Rogue built its culverted road crossing.

Finally, it has been pointed out that the problems at Rogue's culverted road crossing took place during the December 1st flood event. Rock 'N Ready Pit 1 was not overtopped during that event. That didn't happen until the December 30th flood. Rogue provided pictures implying that the flooding of Pit 1 caused their sedimentation problems. This can not be. Obviously, there is no connection between what occurred at Rogue's culverted road crossing on December 1st and what occurred at Rock 'N Ready's pit on December 30th.

Rogue would like the Planning Commission to believe that their testimony demonstrates that downstream impacts from Rock 'N Ready's proposal will occur. However, it does not. What it does do is demonstrate Rogue's failure to fully consider the amount of sediment being carried by Bear Creek, the depositional nature of their crossing site and the volume of water Bear Creek is capable of conveying. Because Rogue's testimony is rebutted by two Oregon certified engineers, the Planning Commission should reject Rogue's implications of down stream effects from the proposed or past work.

4. FEMA Mapping

Rogue Testimony: Rogue contends that the FEMA maps must be modified and approved by FEMA prior to authorizing the proposed project.

Response: Although FEMA must approve any change in their maps, no modification is necessary in this case. FEMA published a Flood Insurance Rate Map (FIRM) and a Floodway map for this reach of Bear Creek. As required by FEMA, Jackson County is using these maps to regulate development within the floodplain. Mr. Galli has demonstrated that the proposed project complies with FEMA standards associated with the existing FEMA maps. Therefore, there is no need or plan at this time to change the existing FEMA maps.

For your general information the FEMA maps were developed to provide a "high-altitude" view of flood risk along the channel. For the proposed project, the designers felt that the FEMA maps did not provide enough detail to allow them to design flood protection features. Therefore, they constructed a much more

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detailed hydraulic model of the project area to provide the data they needed. This model will not produce flood hazard data identical to that shown on the FEMA FIRMs, but it does not need to.

If at some time in the future, there is a need to update the FEMA FIRMs, the new model could be used to do so. Rock 'N Ready would be willing to share it with whomever would be tasked with updating the maps.

5. DOGAMI Permit

Rogue Testimony. Rogue contends that DOGAMI effectively denied Rock 'N Ready's application for mining a 350-acre area by issuing a permit for only 6 to 8 acres. Rogue's testimony implies that DOGAMI finds Rock 'N Ready's engineering suspect and consequently has not approved Rock 'N Ready's request.

Response: Rogue's testimony is factually incorrect. Rock 'N Ready's application to DOGAMI relates to Tax Lot 1900, which is about 35 acres. (See Attachment 3). Tax Lot 1900 is already zoned by the County for aggregate mining and has been determined to be a significant mineral and aggregate resource by the County under Ordinance 95-61. As a result, a request for approval to mine on Tax Lot 1900 could be submitted to DOGAMI. Among the things that Rogue fails to mention is that DOGAMI is not in a position to evaluate an application for mining on areas where mining is not allowed by the local government. Consequently, the larger area presently zoned for exclusive farm use and not yet determined by the County to be a significant Goal 5 resource or otherwise zoned for mining is not available for submission to DOGAMI. Rogue's testimony is a deliberate attempt to mislead the Planning Commission and is factually incorrect. Moreover, it is not relevant to any criteria for any of the requests presently before the Planning Commission and should be ignored for all those reasons.

6. There is no Downstream Conflict

Rogue's Testimony: Rogue would like the County to extend the impact area associated with its Goal 5 evaluation to include its site. Rogue contends that must be done because they have raised a conflict.

Response: Rogue claims Rock 'N Ready is ignoring the downstream conflict they raise. However, the reality is that Bill Galli has demonstrated that the

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effect of the operation will not travel further than Rock 'N Ready's property line. Independently, NHC notes that "it is our opinion that there will be no significant change in flow velocities, direction or depths within the RA reach due to changes at the Rock 'N Ready site." NHC also notes that the existing rail road bridge would dampen any significant effects downstream of that bridge. This further decreases the likelihood of downstream effects.

Simply raising a concern is not enough, it must be a real potential concern supported by substantial evidence. In this case, it is not. Because Rogue has not met its burden to demonstrate that a conflict exists, the County has no reason to expand its impact area.

We believe that the Planning Commission has substantial evidence in the record supporting a positive recommendation on Rock 'N Ready's application. Opposition testimony from, among others, Rogue has been refuted by Bill Galli and Jeff Johnson and others. We appreciate your efforts to sort through to complex and often confusing testimony.

Very truly yours,

Frank M. Flynn

FMF:sag

Definition of Mitigation - OAR 141-085-0010 (129)

- (129) "Mitigation" means the reduction of adverse effects of a proposed project by considering, in the following order:
 - (a) Avoiding the impact altogether by not taking a certain action or parts of an action;
 - (b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation;
 - (c) Rectifying the impact by repairing, rehabilitating or restoring the affected environment;
 - (d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action by monitoring and taking appropriate corrective measures; and
 - (e) Compensating for the impact by replacing or providing comparable substitute wetlands or other waters.

[59913-0001-000000/PA060740.067]

Attachment I

DSL Definition of Ordinary High Water Line

OAR 141-085-0010 (150) — "Ordinary High Water Line" (OHWL) means the line on the bank or shore to which the high water ordinarily rises annually in season (ORS 274.005). The OHWL excludes exceptionally high water levels caused by large flood events (e.g. 100 year events). OHWL is indicated in the field by the following physical characteristics:

- (a) Clear, natural line impressed on the shore:
- (b) Change in vegetation (riparian (e.g. willows) to upland (e.g. oak, fir) dominated);
- (c) Textural change of depositional sediment or changes in the character of the soil (e.g. from sand, sand and cobble, cobble to gravel to upland soils);
- (d) Elevation below which no fine debris (needles, leaves, cones, seeds) occurs;
- (e) Presence of litter and debris, water-stained leaves, water lines on tree trunks; and/or
- (f) Other appropriate means that consider the characteristics of the surrounding areas.

Corps Definition of Ordinary High Water

The Corps defines ordinary high water at 33 CFR 328.3 (e) as: that line on the shore established by the fluctuations of water and indicated by physical characteristics such as clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.

DSL Jurisdiction OAR 141-085-0015

Removal-Fill Jurisdiction by Volume of Material and Location of Activity

(1) The Department's determination as to whether a removal-fill authorization is required depends primarily upon a project's position relative to waters of the state and the volume of the fill and/or removal and the project purpose. Uplands are generally not subject to these rules except when they are used for compensatory wetland mitigation or compensatory mitigation sites.

[59913-0001/PA060670.036]

Attachment 2

- (2) To be subject to the requirements of the removal-fill law, the removal or fill must be within "waters of the state." The types of waters of the state and the physical limits of removal-fill jurisdiction are as follows:
 - (a) Estuaries and tidal bays, to the elevation of highest measured tide;
 - (b) The Pacific Ocean, from the line of extreme low tide seaward to the limits of the territorial sea,
 - (c) Rivers, intermittent and perennial streams, lakes, ponds and all other bodies of water (except wetlands) subject to these rules, to the ordinary high water line, or absent readily identifiable field indicators, the bankfull stage;
 - (d) Wetlands (defined in OAR 141-085-0010), within the wetland boundary delineated in accordance with OAR 141-090-0005 to 0055.
 - (e) "Other Bodies of Water," as used in ORS 196.800(14) are the following artificially created waters which are considered "waters of the state":

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RECEIVED

March 21, 2006

MAR 2.3 2006 JACKSON COUNTY PLANNING

JACKSON COUNTY PLANNING COMMISSION c/o Jackson County Planning Department County Courthouse 10 South Oakdale Medford, OR 97501

RE: Final Written Argument

Planning Action LRP2005-00003 Rock-n-Ready Mix LLC: Applicant

Dear Jackson County Planning Commission:

Following the close of public testimony at the March 9, 2006 public hearing on the above captioned matter, the Planning Commission ("Commission") afforded the applicant seven additional days from the date the record closed on March 16, 2006 for final written argument. Opposition to the application was presented by the Applicant's competitors Rogue Aggregates, Inc and Crater Sand and Gravel. This letter constitutes Applicant's final written argument on this matter as it appears before the Jackson County Planning Commission. This argument is intended to operate within the decision making framework laid forth in the letter entitled *Decision Making Process* dated March 15, 2006 and found at Record Pages 1506 to 1510. The substance of this memo is repeated below for ease of reference:

Decision #1. Final Site Plan Permit/Floodplain Permit/Aggregate Hauling across the Bear Creek Greenway for lands Planned and Zoned AR where no plan amendment and/or zone change is requested. (The area applicable to this decision is the cross-hatched area on Applicant's Request Key Map #2 located on Tax Lot 1900 at Record Page 808)

This decision applies to those portions of Tax Lot 1900 where no plan amendment is requested; this decision is a permit action. The opponent's have failed to identify any Comprehensive Plan amendment criteria that are directly applicable to this permit request, as such the decision is strictly governed by standards and criteria contained in the LDO.

With respect to the floodplain development permit and site plan permit, the level of detail necessary to make this decision is rather mechanical. The recommended approach is to go through each floodplain development standard and each aggregate site plan standard individually to answer one of two questions. Does substantial evidence in the record demonstrate compliance with each standard? If not, is there substantial evidence that

demonstrates compliance can be obtained through imposition of clear and objective conditions of approval? If the answer to either of these questions is yes for all relevant standards and criteria, then the burden of proof has been met by the applicant and the Commission should, as a matter of the County's established aggregate policy, pass a separate motion to approve each permit request.

With respect to the Greenway criteria, the Commission must first decide the extent to which these criteria are applicable. To the extent the Commission believes they are applicable, an evaluation of each criterion should be performed for the stream crossing as this is the only area in the Greenway where no plan amendment is requested and two questions should be answered. Does substantial evidence in the record demonstrate compliance with each standard? If not, is there substantial evidence that demonstrates compliance can be obtained through imposition of clear and objective conditions of approval? If the answer to either of these questions is yes for all relevant standards and criteria, then the burden of proof has been met by the applicant and the Commission, should as a matter of the County's established aggregate policy, pass a separate motion for approving the aggregate hauling use in the Greenway.

If the Commission approves all three of these permit requests by motion, then staff should be directed to prepare an order approving these permit requests with an attached map that depicts the geographic applicability of the order for approval.

Decision #2. Comprehensive Plan Map amendment to modify the ESEE analysis and the corresponding conditions attached to Ordinance 95-61 (Request Key Map #5 at Record Page 811).

Significance is established. No modification to the impact area is requested. The Commission need only revisit the conflicts analysis as they pertain to Pit 2A and Pit 4 on Tax Lot 1900. The Commission must determine, based upon substantial evidence in the record, whether the proposed mining operation with the stipulated phasing plan, screening, future demonstration of compliance with County floodplain regulations, and aggregate site plan standards will adequately balance identified conflicting uses. The Commission may elect to add site specific conditions to balance the aggregate resource against conflicting uses. If the Commission determines that the requested amendments cannot be allowed without expansion of the impact area, due to new conflicts identified, then deny the requested amendments on the basis that the applicant has not requested an amendment to the impact area and the ESEE cannot be amended without expansion of the impact area for which the Applicant has not requested.

Decision #3. Significance of Proposed Areas to be Added to the Aggregate Inventory (These areas are identified on Request Key Map #4)

Based upon substantial evidence in the record, determine whether the site meets the County's test for a significant aggregate resource site. By separate motion, vote on the significance of the resource site and make a recommendation to the Board of

Commissioners that the lands depicted on Request Key Map #4 be added to the County's list of significant aggregate resources.

Decision #4. Identify Conflicting Uses and Establish Impact Area for new sites identified as significant resources pursuant to Decision #3 above.

Review the evidence in the record. The Commission should begin with those conflicting uses identified in Applicant's initial submittal. The Commission should then deliberate as to whether there are additional conflicting uses that have not been identified by the This evaluation should seek to identify causal relationships between conflicting uses and impacts directly associated with new Goal 5 aggregate areas. For example, there are no impacts to the Bear Creek Greenway related to the portion of Pit 2 on Tax Lot 100 of the Medina Property because all operations are proposed to occur outside the riparian area and are not in any mapped Greenway overlay area. The Commission should review the record for potential conflicting uses outside the 1500-foot impact area and the Commission must determine whether any such conflicts are significant to an extent that modification of the impact area is necessary. Any modification of the impact area must be based on the impacts to the Goal 5 resource and establish the causal relationship between the site proposed for inclusion on the County's aggregate inventory and the identified conflicting uses outside the standard 1500-foot impact area. By separate motion and vote, recommend to the Board of Commissioners an impact area and a list of conflicting uses to be evaluated in the ESEE analysis.

Decision #5. Complete the ESEE process for new sites identified as significant resources pursuant to Decisions #3 and #4 above.

It is recommended the Commission begin with the ESEE analysis prepared by the applicant and then modify it as necessary-pursuant to Decisions #3 and #4 above. Modifications to the Applicant's ESEE analysis should evaluate the ESEE consequences and balance conflicting land uses and competing Goal 5 resource sites. When balancing conflicts, it is recommended the Commission begin with an evaluation of the adopted LDO standards, the stipulations offered by the applicant, and the site plan and operations master plan as a means to balance the conflicts. If the Commission believes the adopted standard is somehow inadequate the Commission can and should evaluate potential sitespecific conditions to balance the conflicts. At this stage in the decision making process, the Commission is not required to make any determination as to whether the development permit requests included with this consolidated application comply with the LDO development standards or any site specific conditions; the Commission need only determine that compliance with the standards and site specific conditions as applicable will adequately balance identified conflicting uses. When the conflicts analysis is complete, by motion and vote, recommend the Board of Commissioners adopt the Planning Commission's ESEE analysis and amend the Comprehensive Plan Map in accordance with the results of the ESEE analysis.

Decision #6. Evaluate the site and operations master plan as a means to implement the ESEE results and zone those lands AR where the results of the ESEE analysis are balanced toward aggregate extraction.

At the most recent hearing, Opponent Rogue Aggregates asserted that the County cannot approve a general site plan without all specific mining details. For a site this large and an operation this complex with a substantial duration, this is impractical and is not required as matter of code. The hypertechnical ultra-rigid code interpretation offered by the Opponents is not representative of the County's past practice in its application of the County's Goal 5 program for aggregate and the same have not been changed substantially for many years. Site detail conditions, such as providing the pit grading cross-sections approved by DOGAMI to the County, can feasibly be provided and may be attached as conditions of approval to the site and operations master plan.

The Commission must evaluate the site and operations master plan in relation to the ESEE results. Any changes to the site and operations master plan, or conditions thereto, which are necessary to carry out the ESEE consequences analysis should be laid forth and clearly relate to the portion of the plan they affect. With these amendments incorporated, the Commission should by motion and vote adopt the site and operations master plan and zone all areas planned Aggregate Resource pursuant to Decision #5 above to Aggregate Removal (AR). This action should be implemented by an order to which the following condition may be attached to assure consistency with the Zoning Map and Comprehensive Plan Map:

The Planning Commission's decision approving the requested Zoning Map Amendment is subject to a final decision approving the requested Comprehensive Plan Map amendment. A final decision is defined as either a decision by the Board of Commissioners that is not appealed or a decision that is appealed resulting in an approval of the requested amendment.

Decision #7. Final Site Plan Permit/Floodplain Permit/Aggregate Hauling across the Bear Creek Greenway for lands where the Aggregate Resource Plan designation and Aggregate Removal zoning district is recommended by the Planning Commission. (The area applicable to this decision is the cross-hatched area on Applicant's Request Key Map #2 not located on Tax Lot 1900 at Record Page 808)

With respect to the floodplain development permit and site plan permit, the level of detail necessary to make this decision is rather mechanical. The recommended approach is to go through each floodplain development standard, each aggregate site plan standard, and any site specific conditions attached from the ESEE analysis to answer one of two questions. Does substantial evidence in the record demonstrate compliance with each standard? If not, is there substantial evidence that demonstrates compliance can be obtained through imposition of clear and objective conditions of approval? If the answer to either of these questions is yes for all relevant standards and criteria, then the burden of proof has been met by the applicant and the Commission should, as a matter of the County's established aggregate policy, pass a separate motion to approve each permit request.

With respect to the Greenway criteria, the Commission must first decide the extent to which these criteria are applicable. To the extent the Commission believes they are applicable, an evaluation of each criterion should be performed for those areas where hauling or extraction are proposed for mapped Greenway areas. Does substantial evidence in the record demonstrate compliance with each standard? If not, is there substantial evidence that demonstrates compliance can be obtained through imposition of clear and objective conditions of approval? If the answer to either of these questions is yes for all relevant standards and criteria, then the burden of proof has been met by the applicant and the Commission should, as a matter of the County's established aggregate policy, pass a separate motion for approving the aggregate hauling and/or extraction located in the Greenway area.

If the Commission approves all three of these permit requests by motion, then staff should be directed to prepare an order approving these permit requests with an attached map that depicts the geographic applicability of the order for approval and make it subject to the following condition:

The Planning Commission's decision approving the requested Floodplain Development Permit, Aggregate Site Master Plan, and Type 3 permit for aggregate operations in the Bear Creek Greenway is subject to final decisions approving the requested Comprehensive Plan Map amendment and Zoning Map amendment. Final decisions are defined as either a decision by the Board of Commissioners that is not appealed or a decision that is appealed resulting in an approval of the requested amendment.

The Applicant hopes that letter, combined with this argument, will aid the Commission in making its recommendation to the Board of Commissioners. Consistent with the Commission's direction, this letter does not present new evidence but relies on testimony and evidence already in the County's record. Rock N Ready Mix, LLC [the Applicant] requests that this letter be included in the County's record for this matter.

The below list details the evidence submitted to-date by the Applicant in support of this application:

•	Exhibit 13	Application for Minor Comprehensive Plan Map Amendment and Zoning Map Amendment	
•	Exhibit 14	Floodplain Finding of Fact	
•	Exhibit 15	Geotechnical and hydrologic report, The Galli Group	
•	Exhibits 16-18	Site and Operations Master Plan	
•	Exhibits 19-39	Detail Evidence to Support Exhibits 13-19	
•	Exhibit 50	Traffic Impact Study	
•	Exhibit 100	Rebuttal Letter Responding to Opponents Objections	
•	Exhibit 101	Testimony from Applicant's Traffic Engineer	
•	Exhibit 116	Bridge Cross-Section Figure- Galli Group	
•	Exhibit 117	Ordinary High Water Level Discussion and Data- Galli Group	
•	Exhibit 118	Bridge Pier Stability Bear Creek Sta 1969 – Galli Group	
•	Exhibit 119	HEC RAS Evaluation Bear Creek - Galli Group	
•	Exhibit 120	HEC-RAS Input Data – Galli Group	
•	Exhibit 121	HEC-RAS Output Data – Galli Group	
•	Exhibit 122	No Rise Certificate – Galli Group	
•	Exhibit 123	Streamback Migration Study Bear Creek @TL 1900-Galli	
	Group		
•	Exhibit 124	Channel Stability and Offsite Affects of Proposed Project-Galli	
	Group		
•	Exhibit 125	Water Surface Profiles – Galli Group	
•	Exhibit 126	Access Road Berm Design Considerations - Galli Group	
•	Exhibit 133	Peer Review Testimony from Jeff Johnson	
•	Exhibit 149	Response from David Paradis clarfying violation history	
•	Exhibit 150	Written Response to Issues Raised by Lidstone-Galli Group	

Applicants Final Written Argument:

This application was initiated through the County's quasi-judicial land use process. As a result, the policies and standards governing this application are in the existing County Comprehensive Plan and Land Development Ordinance. The Commission is charged with applying the existing policies and standards that have been evaluated and approved by the Board of Commissioners. This application does not request and the Commission cannot apply new or different standards or policies.

1. Floodplain Development Standards

Record Summary: The record includes conflicting testimony regarding legal interpretation of the County's floodplain regulations and technical demonstration of compliance with the County's floodplain and floodway development standards.

With respect to technical evidence, Applicant's registered professional engineer licensed in the State of Oregon, William Galli, has analyzed the proposed project and has testified it will have no downstream impacts. Mr. Galli, who has extensive experience work on bear Creek and other waterways in Jackson County, has provided substantial written and oral testimony on many aspects of the proposal. Applicant's registered professional engineer has reevaluated his analysis to address technical concerns raised during the hearing process. Opponents' testimony asserts that substantial downstream impacts are likely to be caused by Rock-n-Ready operations on property owned by Rogue Aggregates and that hydraulic analysis and sediment transport analysis must be conducted from the Applicant's property to its confluence with Bear Creek. Applicant's engaged Jeff Johnson of Northwest Hydraulic Consultants, Inc. as an expert with extensive experience in hydraulic analysis. Mr. Johnson, another Oregon certified engineer with extensive experience evaluating impacts to waterways and hydrologic impacts from mining activities, conducted a limited peer review of the flood analysis prepared and submitted to-date by The Galli Group and made two critical statements at record pages 1398 and 1399 that agreed with earlier statements made by Mr. Galli:

"The existing railroad grade just upstream from RA [Rogue Aggregates] serves as a major hydraulic control during large floods. Water ponds behind the railroad fill which effectively dampens out any significant impact." Mr. Johnson additionally stated, "To suggest that RNR [Rock-n-Ready] activities are a major source of their [sedimentation] problem in our opinion is misleading and inappropriate, rather the sources of the sediment that enter the reach come from hundreds of source both big and small along the entire length of Bear Creek and its tributaries."

Mr. Lidstone responds to Mr. Johnson's comments from Record Page 1482 to 1492. This response questions the validity of Mr. Johnson's testimony based upon speculations made by Mr. Lidstone regarding information that Mr. Johnson had at the time his testimony was prepared. This speculation does not constitute substantial evidence and has no effect on Mr. Johnson's expert testimony on the above quoted matters. Mr. Lidstone and Mr. Galli have differing opinions as to whether the Galli calculated 100-year flood elevations can be considered consistent with the adopted FEMA Flood Study. No substantial evidence has been submitted to the Record that contends the FEMA Flood Study is inaccurate for this stretch of Bear Creek. Applicant has contended since the beginning of this proceeding that the FEMA Maps have significant inaccuracies for a portion of the Rock-n-Ready reach of Bear Creek and Opponent's have offered no substantial conflicting evidence.

With respect to legal interpretation of Chapter 7.1.2, Opponent's have offered an interpretation that the LDO requires a Letter of Map Revision (LOMR) or at least a Conditional Letter of Map Revision (CLOMR). Opponent's attorney has cited FEMA regulations as a basis for this assertion; no coherent legal analysis exists in the record that explains how these Federal regulations operate as an approval standard for a quasi-judicial local land use decision. Applicants have advanced the legal position that a Letter of Map Revision is not a preemptory requirement and that the local code can and should be interpreted to allow a site-specific detailed HEC-RAS floodplain analysis that demonstrates compliance with the County's floodplain criteria and development standards.

Applicant's Argument: Determination of Floodplain and Floodway boundary locations is a two-dimensional exercise upon which the County determines whether the floodplain development and floodway development criteria apply to a project. The evidence establishes that the stream crossing is subject to the Floodway Development standards in 7.1.2(F)(7)(c). The evidence establishes that other portions the operation are located in the 100-year mapped floodplain area and are therefore subject to the County's Floodplain Development standards. Because there is no dispute that the County's floodplain and floodway regulations apply to the project, the maps have limited practical effect on the decision making process because the criteria for approval of a floodplain development permit is based upon compliance with development standards that relate development impacts to changes in water surface elevations and to a lesser extend water velocities.

LDO Section 7.1.2(D) describes methods for determining flood elevations. For flood hazard areas with established flood elevations, these provisions provide clear direction for a project involving a particular building permit at a distinct location. By the language and context of LDO 7.1.2(D), the methods discussed in the LDO Section 7.1.2(D) have limited applicability for an aggregate operation with a bridge crossing and engineered flood control berms that extend for a considerable stream length. For this reason, interpretation of LDO Section 7.1.2(D) is appropriate. A detailed hydraulic model has been prepared by the Applicant's Registered Professional Engineer. The existing conditions base flood elevation profiles are provided at Record Page 910. This graph plainly shows that the site-specific HEC-RAS model is substantially consistent with the more generalized FEMA water surface profiles. The downstream water surface elevation of this model is an input that comes directly from the FEMA Flood Study elevations. Because the site-specific HEC-RAS model utilizes the Flood Study flood elevations as a principal model input and the model itself has been developed by FEMA, it is appropriately applied in evaluating 100-year flood impacts consistent with the methods for establishing base flood elevations described in LDO Section 7.1.2(D) as it is applicable to this project.

If the reasoning in the above two paragraphs is acceptable to the Planning Commission, then the Planning Commission can and should proceed to evaluate compliance with the criteria based upon the same reasoning. A floodplain development permit requires demonstration of compliance with the following two criteria, each is addressed below:

E) Criteria for Approval

Prior to approval of floodplain review, the County will determine all of the following:

1) That all applicable development standards of Section 7.1.2(F) can feasibly be met;

The Planning Commission identifies the following developments standards of 7.1.2(F) apply to the project:

F) Development Standards

7) Floodway Development

All encroachments, including fill, roadways or bridges are prohibited unless certification by an Oregon registered professional engineer is provided demonstrating that the encroachment will not result in any increase in flood levels during the occurrence of the 100-year flood (no-rise analysis and certification). Culverts used in stream crossings where floodways are mapped and/or 100-year floodplain elevations have been determined will require a no-rise analysis and certification. Culverts used in stream crossings where base flood elevations and floodways have not been determined (Approximate A zone) will be of sufficient size to minimize the rise of flood waters within the presumed floodway. Evidence must be provided by an Oregon registered professional engineer showing the size of the proposed culvert will pass the flood waters of the 100-year flood. Culverts and bridges must be anchored so that they will resist being washed out during a flood event. Culverts and bridges must also meet the riparian protection standards in Section 8.6.3 of this Ordinance.

An Oregon Registered Professional Engineer, William Galli has performed a no-rise analysis and testified in writing and orally that the only floodway encroachment proposed is the bridge and that it will not cause a rise in the 100-year flood condition off-site and will cause only an incidental rise within the project for which the applicant is willing to accept responsibility for any damages resulting from this minor rise, Record Pages 1542-1545. With respect to riparian habitat protections, Applicant has demonstrated the standards in Section 8.6.3 have been met or can feasibly be met through imposition of a condition of approval requiring submittal and staff approval of a final landscape plan approved by ODF&W; no evidence substantial evidence conflicts with this conclusion. The stream crossing component of the floodplain development permit request is a permitted use in the applicable AR zoning district and is not dependent on the requested map amendments and thus requires no analysis or consideration in the Goal 5 process.

Fill in the Floodplain
 Prior to placement of fill within the 1

Prior to placement of fill within the 100-year floodplain a report from an Oregon registered professional engineer determining the effect the placement of fill will have on the 100-year floodplain will be submitted.

- a) Where base flood elevations have been determined, the fill cannot cumulatively raise the base flood elevation more than one foot at any given point. The report will reference the Flood Insurance Study for Jackson County, Table 3 (Floodway Data), for a specific reach of a stream. The increase in the base floodwater surface elevation, as shown in this table, will not be more than one foot.
- b) Where base flood elevations have not been determined, the fill cannot raise the base flood elevation more than one foot at any given point. (See 7.1.2(D)(2))
- c) The fill will be engineered to resist erosion by floodwaters.

Based upon the evidence in the Record, all bridge construction and flood control measures for the aggregate operations have been professionally engineered. The HEC-

¹ The Planning Commission acknowledges there is an incidental rise in water surface elevation projected in the HEC-RAS analysis immediately upstream of the bridge. The applicant's stipulation to record a waiver of remonstrance from the pursuit of damages against the County and/or FEMA from flood damages for the Applicant's properties adjacent to the crossing is sufficient to protect the County's financial and legal interest in this regard.

RAS 100-year flood event analysis at Record Page 1545 demonstrates that the proposed fill (road berm) will not increase 100-year flood elevations more than one-foot at any location. A considerable portion of the proposed fill in the floodplain is located on Tax Lot 1900 in an area planned and zoned AR; the aggregate use in this area is permitted in the applicable zoning district and is not dependent on the requested map amendments and thus requires no analysis or consideration in the Goal 5 process.

10) Aggregate Removal

- Aggregate removal or surface mining operations within the 100-year floodplain or floodway will not cause an increase in flooding potential or stream bank erosion adjacent to, upstream or downstream from the operation.
- b) All mining and processing equipment and stockpiles of mined or processed materials will be removed from the site during the period of December 1 through April 30, unless the operation will be protected by a dike that is of sufficient width and height to prevent flood waters from inundating the site.

Based upon the Record, all bridge construction and flood control measures for the aggregate operations have been professionally engineered and meet the applicable standards for fill and stream crossings pursuant to Sections 7 and 8 above. Because all other new operations will be located outside the mapped floodplain or in areas protected by the engineered flood control road berm, other operations will not increase flooding potential as matter of deduction. With respect to stream bank erosion potential, the post-development water velocities and elevations have been shown to meet applicable development standards as detailed above and will therefore minimize the potential for increased stream bank erosion. The existing concrete processing area is a lawfully established nonconforming use in the floodplain.

2) That applications have been submitted or all necessary permits have been obtained from those federal, state, or local governmental agencies from which approval is required by law. Copies of all permits must be submitted to the County prior to initiation of the development.

The record establishes that the bridge design was required to avoid the need for DSL/COE permits and the record does not establish failure to obtain or apply for a necessary permit.

Conclusion: Based upon the above argument and the evidence in the Record, The Planning Commission can conclude that the Record demonstrates compliance with the County's floodplain development criteria. The Commission can further conclude that the floodplain development permit has limited applicability to the concurrent Goal 5 review process because most all of the floodplain development is located on a portion of the site where the Goal 5 process is complete and no Comprehensive Plan Map amendment is requested or needed (Portions of Tax Lot 1900 not subject to the restrictions on extraction in Ordinance 95-61).

2. Aggregate Site Plan Review

Record Summary: Applicant submitted an overall site and operations master plan and more detailed plans for those areas where final site plan approval is requested for near-term operations, See Exhibits 16 and 18 at Record Pages 330-345. Modifications to the original plans have been made principally to accommodate engineered flood control features along Upton Slough and to remove settling ponds in existing Pit #1. Opponents have argued that the site plan does not meet the County's requirements, lacks essential details and that it is inappropriate to expect the County to develop and apply conditions of approval.

Applicant's Argument: Opponents misconstrue the applicable law at Record Page 1468. Opponents advance the position that the Applicant's seek a Type 4 Permit that requires compliance with Type 4 site development plan review criteria. This is not the case. The Applicant requests a Comprehensive Plan Map amendment and map amendments are subject to a Type 4 process, but one that is subject to independent criteria found in LDO Section 3.7. Aggregate Site Plan reviews are Type 1 permit actions on AR zoned lands that are subject to aggregate-specific site development criteria and standards. Opponent's interpretation on the applicability of the Type 4 Permit criteria and corresponding site-development criteria is not supported by the context and language of the code which is clearly directed at non-aggregate site development, is contrary to the County's past pattern and practice, and is likely pre-empted as a matter of law under the Hegele decision.

The criteria and standards that apply are found in LDO Section 4.4.8(A). The introductory paragraph to these standards is important in understanding the applicability of review requirements for significant Goal 5 aggregate sites. This paragraph expressly references the Goal 5 process and review levels applied when a site was zoned AR through the Goal 5 process. The record includes substantial evidence that the standards of Section 4.4.8(A) for all areas where final site plan approval is requested are met or can be met through the imposition of clear and objective conditions. One important standard is the requirement for a DOGAMI operating permit; the language and context of the code anticipates that this will be a condition of approval for any aggregate site plan and the administrative rules for DOGAMI call for the DOGAMI permit review to occur after any Comprehensive Plan Map amendments are in place. For areas where site and operations master plan approval only is requested, the site plan serves to guide the ESEE process, but initiation of mining in these areas will be conditioned on future detailed Type 1 site plan review and approval.

Conclusion: Based upon the above argument and the evidence in the Record, The Planning Commission can conclude that the record demonstrates compliance with the County's Aggregate Site Plan review standards where final site plan review is requested. The Planning Commission has sufficient evidence to conclude it is in the County's interest to have a site and operations master plan for the entire site for the purposes of adopting and implementing a Goal 5 protection program for the portion of the site where a Comprehensive Plan Map amendment is requested and that there is nothing in the County's Goal 5 program that prohibits such adoption.

3. Bear Creek Greenway

Record Summary: Applicant has identified multiple plan, LDO, and mapping issues that make clear determination of criteria related to the Greenway difficult. Notwithstanding these issues, Applicant has offered to stipulate to dedication of a public use easement to facilitate ultimate Greenway trail planning for this portion of the Greenway. This stipulation has received written support from the County's Greenway Program manager Karen Smith at Record Page 650. Applicant's position has consistently been that this is good planning and will serve both the Applicants and the County's long-term Greenway goals. The Applicant has provided map analysis to locate the Greenway in relation to proposed operations; these maps indicate that, with the exception of Pit 2A, only minor Greenway impacts will occur and several acres that are not located in the Greenway will have no operations in them. The site visit demonstrated that the mining area is well setback from the actual riparian area that would normally be considered *Greenway*. Opponents have argued Applicant's offer to dedicate private land for public purposes is inadequate, that this project will do irreparable harm to the Greenway Program and Plan and have argued the Type 3 criteria cannot be met.

Applicant's Argument: The Greenway Program and Plan is principally an acquisition plan to create a non-motorized alternative transportation corridor and serves a secondary riparian protection function. The Applicant's stipulation that would allow the County to acquire the rights of public use at no cost is a substantial step toward any ultimate Greenway trail extension in this area in the future. If the Plan Amendment is approved, then the only existing and approved land uses around the Greenway are major aggregate uses with generally the same scale, site design, and operating characteristics so adverse impacts must necessarily be insignificant.

Conclusion: Based upon the above argument and the Conclusions of Law at Record Pages 343 to 344, The Planning Commission can conclude that the record demonstrates compliance with the Type 3 criteria related to the Bear Creek Greenway to the extent it is applicable.

4. Amendments to Ordinance 95-61

Record Summary: Applicants have requested an amended ESEE analysis to modify the mining restrictions placed on Tax Lot 1900 in Ordinance 95-61; no amendment to the impact area has been requested. These amendments would allow for mining in the Bear Creek Greenway area (Pit 2A) as a balance to the additional Greenway areas that will be retained in a natural state on Tax Lots 100, 200 and 2600 as depicted on Applicant's site plan. The other amendment requested is the restriction on mining west of Bear Creek. In the original ESEE analysis, the property owner simply stated they had no intention to mine this area. The owner, at that time, offered no screening as mitigation. The restriction contained in Ordinance 95-61 arose from concerns related to groundwater and aesthetic impacts.

Applicant's Argument: With respect to the Greenway Overlay restrictions, which are limited to extraction in Pit 2A, the record demonstrates that substantial lands adjacent to the Greenway Overlay on Tax Lots 100, 200 and 2600 will be unmined and left in a natural state. If these lands are used to balance the removal of Greenway restrictions to mine Pit 2A, when combined with Applicant's stipulation to dedicate an easement for eventual Greenway Trail construction, the Planning Commission has adequate factual basis to amend the ESEE analysis and allow mining in Pit 2A subject to future Type 1 site plan and floodplain development permit approvals.

-1566-

With respect to the mining restrictions west of Bear Creek on Tax Lot 1900, the original ESEE analysis relied on comments regarding ground-water impacts for irrigation and aesthetic impacts. The record demonstrates that the Applicant has stipulated to provide screening and extraction phasing to substantially reduce aesthetic impacts and the Commission could increase the screening requirements at its discretion. With respect to groundwater effects on irrigation, this area now has a demonstrated history of farm uses continuing uninterrupted immediately adjacent to an aggregate extraction operations. Moreover, there are no significant agricultural operations in this immediate vicinity and these should therefore not serve as a basis for mining restrictions. If the Commission has concerns about groundwater impacts, a clear an objective condition requiring well monitoring and well deepening can be attached to the approval and applicant will accept a reasonable condition requiring the same.

Conclusion: The Record contains additional evidence sufficient to revisit the ESEE conflicts analysis adopted through Ordinance 95-61 and the Commission has the authority to amend the ESEE conflicts analysis as requested and apply any conditions it deems appropriate to balance the Aggregate Goal 5 resource against the Greenway Goal 5 resource in this area.

5. Significance of Proposed Goal 5 Aggregate Resource

Record Summary: Applicant provided evidence that the site is a significant aggregate resource in the initial application. Opponents questioned the validity of these studies prepared by one of their parent companies subsidiary companies. Applicant provided additional geologic evidence at Record Pages 852 to 893, prepared by Kuper Consulting LLC, that the site is a significant resource. No substantial conflicting evidence has been offered by Opponents that this is not a significant aggregate resource.

Applicant's Argument: The record contains substantial evidence that this is a significant aggregate resource.

Conclusion: Based upon the evidence in the Record, this is a significant resource that requires the County to complete the ESEE process to determine an appropriate level of protection.

6. Impact Area and Identification of Conflicting Uses for New Significant Aggregate Resources

Record Summary: Staff's memo at Record Page 1179 provides guidance on establishing the Impact Area and Identifying Conflicting Uses. Applicant's initial submittal identified conflicting uses in the standard 1500-foot impact area and evaluated conflicting uses outside the impact area that would warrant expansion of the impact area. Applicant did not request expansion of the impact area to protect their significant aggregate resource. Opponents, Rogue Aggregates, have argued that the impact area must be extended down to the Rogue River due principally to potential increases in sedimentation and flood hazards. Expert testimony and analysis has been provided by two Oregon Registered Professional Engineers William Galli and Jeff Johnson that the railroad crossing is a major flood control feature between the Rock-n-Ready Mix site and the Rogue Aggregates Site. These engineers have both testified

that this feature minimizes the likelihood that 100-year flood hazards below the railroad bridge could be impacted by development changes above the railroad bridge. The FEMA flood study is explicit; 100-year flood elevations downstream of Kirtland Bridge are controlled by the Rogue River, See Record Page 194. With respect to sedimentation, all new Pits must meet current County Floodplain standards and receive approval from DOGAMI. New near-term operations such as Pit 2 includes flood control features that have been professionally engineered to prevent pit capture that would lead to increased sedimentation potential and Applicant will accept reasonable conditions of approval for final design submittals to accomplish the same for future pits.

Applicant's Argument: Opponents, Rogue Aggregates, are the only land users outside the 1500-foot impact area requesting designation as a conflicting use and requesting inclusion in the impact area based thereupon. Opponents rationale for inclusion in the impact area is based primarily on testimony by Chris Lidstone that Rogue Aggregates operations, and especially their recently constructed culvert stream crossing will be adversely impacted by protection of Applicant's significant aggregate resources. In addition to the arguments provided by the Applicant at record page 781, this request is not appropriate based upon the following facts:

- 1. Opponents have failed to explain why the Floodplain Development standards in LDO Section 7.1.2 cannot be relied upon to reduce land use conflicts sufficient to protect this significant aggregate resource. Moreover, it is unreasonable to base a decision to expand the impact area, under the Goal 5 process, based on flood hazard concerns for a culvert stream crossing that did not meet the LDO code requirement to pass a 100-year flood event as required by the plain and unambiguous language of LDO Section 7.1.2(F)(7)(c) which states, "Evidence must be provided by an Oregon registered professional engineer showing the size of the proposed culvert will pass the flood waters of the 100-year flood." Moreover, these culverts were constructed based upon a Type 1 floodplain permit where the "no-rise" analysis and certification dealt strictly with Bear Creek and included no analysis or certification regarding the Rogue River which controls the 100-year flood elevations at the location of this crossing as is plainly stated in the adopted FEMA Flood Insurance study at Record Page 194.
- 2. There is no evidence that the Rogue Aggregates failed culvert stream crossing will negatively affect those areas proposed to be included on the County's inventory of significant Goal 5 resource sites. The Record contains no substantial evidence that refutes expert testimony provided by two Oregon Registered Professional Engineers that the hydraulic control of the railroad bridge assures the 100-year flood hazard risks below the railroad bridge are unlikely to significantly affect or be affected by development above the railroad bridge.
- 3. Most all of the significant aggregate resource areas where new operations are proposed are located outside the 100-year floodplain (operations areas within the 100-year floodplain have engineered flood control features) and no new operations are proposed in the floodway. On the east side of Bear Creek, all new operations are located behind a major public infrastructure feature- a 54-inch RVSS interceptor. Applicant's plans were reviewed by RVSS Engineer Carl

Tappert and he states, "The current operating plan [plan as initially submitted] for Rock-n-Ready does provide adequate protection to the pipe."

Conclusion: Based upon the evidence in the Record, the Planning Commission can conclude that the standard 1500-foot impact area is sufficient to protect the resource.

7. ESEE Analysis for New Significant Sites West of Bear Creek

Record Summary: Applicant provided an ESEE analysis for the Commission's consideration. Staff prepared an ESEE analysis based upon that offered by the Applicant. The Robertsons have provided evidence and testimony regarding impacts associated with mining Pit 3 adjacent to their rural residence. Other written testimony has been received from residences on the hill west of Blackwell Road. At the initial hearing, Opponents attorney Todd Sadlo raised objections regarding the ESEE offered by the Applicant which were rebutted at Record Pages 771-782.

Applicant's Argument: Applicant recognizes the acute conflicts between those residences immediately adjacent to Pit 3, but believes the screening, phasing and conveying methods will be sufficient to minimize impacts when mining of this site will actually occur many years in the future. The Commission membership includes a registered landscape architect and the Commission may wish to rely on his expertise to impose additional screening requirements along Blackwell Road if the Commission believes the screening offered by the applicant is insufficient to reduce land use conflicts associated with aggregate operations west of Bear Creek. Because the Opponent's request for inclusion in the impact area is not supported by the facts, the rebuttal provided at Record Pages 771-782 adequately address all objections raised to date on the adequacy of the ESEE analysis offered by the Applicant.

Conclusion: Based upon the evidence in the Record, the Planning Commission can recommend the Board of Commissioners adopt the ESEE analysis offered by the applicant with amendments recommended in the Staff report and developed during deliberation sufficient to protect the resource in this area from conflicting land uses and to balance competing Goal 5 resources. The Planning Commission can and should direct staff to work with the Applicant to prepare a set of conditions based upon its recommended ESEE analysis.

8. ESEE Analysis for New Significant Sites East of Bear Creek

Record Summary: Applicant provided an ESEE analysis for the Commission's consideration. Staff prepared an ESEE analysis based upon that offered by the Applicant. Opponents have argued that the ESEE must address land use conflicts based upon their concern that protection of the resource will increase the risk associated with flood hazards.

Applicant's Argument: If Opponent's request for inclusion in the impact area is rejected, then there is limited testimony or substantial evidence that would require significant alteration of the ESEE analysis prepared by the Applicant. If the Commission does not concur with the Applicant's argument above and elects to include Rogue Aggregates property in the impact area and analyze other Aggregate Operations as conflicting uses, then the Applicant requests the following protections be required on the

subject property as well as any downstream aggregate operators in the impact area to reduce land use conflicts:

• New or substantially reconstructed stream crossings require demonstration by an Oregon Registered Professional Engineer that the cross-sectional flow area under the culvert or bridge be capable of passing the 100-year flood event.

Conclusion: Based upon the evidence in the Record, the Planning Commission can recommend the Board of Commissioners adopt the ESEE analysis offered by the applicant with amendments recommended in the Staff report and developed during deliberation sufficient to protect the resource in this area from conflicting land uses and to balance competing Goal 5 resources. The Planning Commission can and should direct staff to work with the Applicant to prepare a set of conditions based upon its recommended ESEE analysis.

9. Comprehensive Plan Amendment Criteria and Zoning Map Amendment Criteria

Record Summary: Applicant provided detailed Finding of Fact and Conclusions of Law addressing all Comprehensive Plan Map and Zoning Map amendment criteria. If the Planning Commission concurs with the above conclusions, there is no substantial evidence or argument in the record that conflicts with the Findings of Fact and Conclusions of Law, with any necessary revisions to accommodate the Commission's recommended ESEE, offered by the Applicant in the initial application.

Applicant's Argument: Applicant's original Findings of Fact and Conclusions of Law are sufficient to warrant approval of the requested map amendments in accordance with the Commission's recommended ESEE.

Conclusion: Based upon the evidence in the Record, the Planning Commission can recommend the Board of Commissioners amend the Comprehensive Plan Map and Zoning Map in accordance with the Commission's recommended ESEE analysis.

Application of Jackson County's Aggregate Policy

Record Summary: Opponents' have argued that the County must deny or substantially delay protection of a significant and substantial aggregate resource principally based upon conflicting evidence and testimony for a floodplain development permitting issue where the concerns amount to engineering calculations regarding a few inches of water surface elevation in a 100-year flood event and sediment transport volumes that represent a fraction of the total sediment transported by Bear Creek in significant high-water events. The Applicant has maintained that the hyper-technical arguments offered by the Opponent are not required as a matter of law and that such an interpretation does not serve the County's established aggregate policies to ensure an adequate supply of aggregate resources for current and future use.

Applicant's Argument: Precise engineering details are not necessary for any component of the request except the floodplain development permit itself. The LDO contains standards for floodplain and floodway development to assure the risks associated with flood hazards will not be increased to unacceptable levels. The County's floodplain standards do not eliminate any potential for flood hazard for low lying areas along Bear Creek and the Rogue River and any expectation to that effect on the part of the Opponents is unfounded. The County can and does rely on its development standards to amend the Comprehensive Plan in accordance with generally accepted planning practice and theory and such reliance for the requested Comprehensive Plan Map amendment is legally defensible.

There is substantial evidence in the record that this is a significant and recoverable resource and the overall level of conflicting uses for the area are low. Under such circumstances, Policy 2 of the Aggregate Element of the Jackson County Comprehensive Plan directs the County as follows:

POLICY #2: THE COUNTY SHALL PROTECT AND CONSERVE AGGREGATE RESOURCES, REDUCE CONFLICTS BETWEEN AGGREGATE OPERATIONS AND ADJACENT LAND USES, AND ENSURE THAT AGGREGATE RESOURCES ARE AVAILABLE FOR CURRENT AND FUTURE USE.

Policy #2 is straightforward. The record substantiates that the site contains a significant and recoverable resource. The record also demonstrates that the number and concentration of conflicting land uses is relatively low for an aggregate site of this size that is near the key urban centers of Central Point, White City, and Medford, See Table 3, 4, and 5 in Record Pages 150 to 165. The Applicant has sought to minimize the potential for impacts to its neighbors by having the project professionally engineered, cooperating and responding to legitimate design concerns, and seeking additional technical review to assure the project meets all applicable standards. To that end, the record demonstrates that downstream impacts due to the proposed actives will not extend beyond the Applicant's property because water surface elevations and velocities will not be substantially altered by the project, see Record Page 1545. In addition, two Oregon certified engineers had noted that the railroad bridge located downstream limits the possibility of downstream effects from the proposal. Consequently, the County can find

that conflicts with adjacent uses will not extend beyond the County's 1,500 foot impact area.

Opponents have also raised issues regarding past violations and their dissatisfaction with DOGAMI approved design and reclamation plan for Pit 1. The Applicant is not under a violation situation with the County or DOGAMI at this time. Pit 1 is an approved land use that is predominantly zoned AR and its inclusion in the master plan serves only to provide the Applicant with a consistent and coherent set of regulations under which to operate. Testimony regarding Pit 1 has limited or no applicability to this proceeding.

Conclusion: The record substantiates that the Comprehensive Plan Amendment can be approved without violating any express provisions of the LDO, the Jackson County Comprehensive Plan and/or State of Oregon rules, laws, and/or goals. For the above reasons, the Planning Commission should consider the balance of the final written argument as the means by which the Commission can implement the County's established aggregate policy.

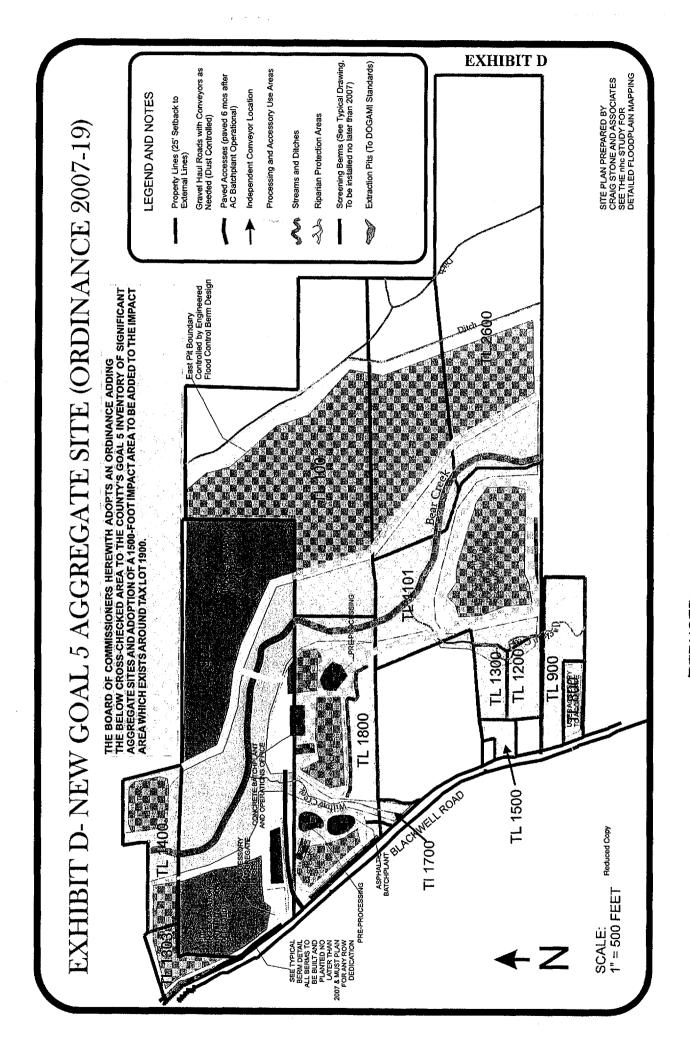
With approval of this application, the Applicant requests the Commission direct staff to work with the Applicant to develop conditions of approval that will implement the Commission's decisions on the above matters. The Applicant further requests the Commission direct staff to coordinate with the Applicant on the preparation of its orders and recommendations for approval on this matter.

Respectfully Submitted,

CRAIG A. STONE & ASSOCIATES, LTD.

Jay Harland

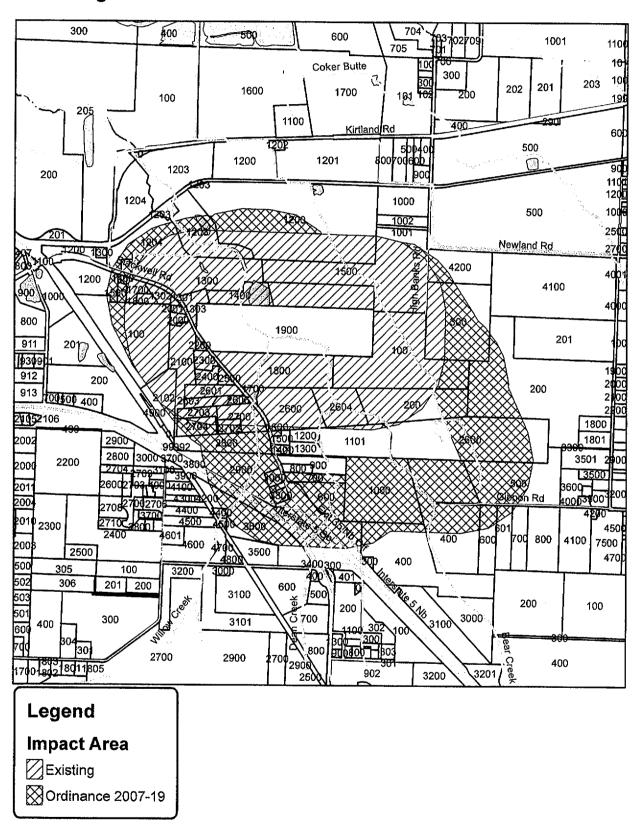
Consulting Planner



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EXHIBIT E

Impact Area for Ordinance 2007-19 Planning File LRP 2005-00003



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BEFORE THE BOARD OF COMMISSIONERS STATE OF OREGON, COUNTY OF JACKSON

ORDINANCE NO.	2007-20	
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AN ORDINANCE AMENDING THE COMPREHENSIVE PLAN TO ADOPT AN UPDATED ESEE ANALYSIS ON PROPERTY ALREADY DESIGNATED A SIGNIFICANT AGGREGATE RESOURCE AND PLANNED AGGREGATE RESOURCE LAND THROUGH ORDINANCE 95-61. THIS ORDINANCE AMENDS ORDINANCE 95-61 TO ALLOW MINING WEST OF BEAR CREEK AND TO PERMIT AGGREGATE OPERATIONS ON THE SITE TO OCCUR SUBSTANTIALLY IN CONFORMANCE WITH THE SITE AND OPERATIONS MASTER PLAN THAT HAS BEEN PROPOSED AND APPROVED IN PLANNING FILE LRP2005-00003 FOR THE ENTIRE SITE. THE SUBJECT PROPERTY IS IDENTIFIED ON THE TAX ASSESSOR'S PLAT MAPS AS TOWNSHIP 36 SOUTH, RANGE 2 WEST, SECTION 28, TAX LOT 1900 AND LOCATED IN AN AREA A HALF MILE NORTH OF THE EXIT 35 INTERCHANGE AND EAST OF BLACKWELL ROAD, OWNED BY LINCOLN TRUST COMPANY (CONTRACT ROCK 'N' READY MIX INC.). FILE LRP2005-00003

RECITALS:

- 1. Pursuant to Chapter 197 and 215 of the Oregon Revised Statutes, and in conformance with the Statewide Planning Goals, Jackson County's Comprehensive Plan (JCCP) and implementing ordinances have been acknowledged by the Oregon Land Conservation and Development Commission (LCDC).
- 2. On March 24, 2005 an application for a Comprehensive Plan Map Amendment and Zoning Map Amendment was submitted by the agent, Craig A. Stone and Associates, for the applicant, Rock-n-Ready Mix LLC. After initial review by staff, the application was deemed incomplete on April 28, 2005. The applicant provided the requested supplemental materials and the application was then deemed complete by staff on June 29, 2005.

PROCEDURAL FINDINGS:

1. A notice of the proposed amendment was provided to DLCD more than 45 days prior to the initial public hearing. A notice was published on Sunday, October 16, 2005 in the Medford Mail Tribune that a first evidentiary hearing was scheduled before the Jackson County Planning Commission on October 27, 2005 at 9:00 a.m. in the Jackson County Auditorium. That public hearing was conducted and continued by the Planning Commission to January 23, 2006 at 9:00 a.m. in the Jackson County Auditorium. That public hearing was conducted and a site visit was scheduled and conducted on February 23, 2006. A continued public hearing was scheduled for March 9, 2006 at 9:00 a.m. in the Jackson County Auditorium.

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- 2. On March 9, 2006, a public hearing was conducted and the Planning Commission heard testimony, received evidence into the record and continued the public hearing to April 27, 2006 at 9:00 a.m. That public hearing was conducted and the Planning Commission deliberated to arrive at a recommendation based upon the applicable criteria.
- 3. On July 27, 2006, the Jackson County Planning Commission signed a recommendation to approve the ordinance presented herein following its motion and unanimous decision to recommend approval of the same.
- 4. A notice of public hearing was sent to the applicant, property owners within 1500 feet of the subject properties, and those demanding notice on September 5, 2006 that the application was scheduled before the Board of Commissioners on September 25, 2006 at 1:30 p.m.. A media notice was sent to the Medford Mail Tribune and a copy was sent to the Ashland Daily Tidings and Upper Rogue Independent. Legal notice was published in the Sunday, September 10, 2006 edition of the Medford Mail Tribune.
- 5. On September 25, 2006, the Board of Commissioners held a public hearing to consider the recommendation by the Planning Commission and they received evidence and testimony on this application. The public hearing was continued to September 27, 2006.
- 6. On September 27, 2006, the Jackson County Board of Commissioners held a public hearing to consider the recommendation by the Planning Commission and they received evidence and testimony on this application. The public hearing was continued to October 25, 2006 at 1:30 p.m. in the Jackson County Auditorium.
- 7. On October 25, 2006, the Jackson County Board of Commissioners deliberated on matters relating to compliance with Federal and State regulatory agencies, specifically: DOGAMI, the Army Corps of Engineers, and the Department of State Lands. No decision was made and the deliberation was postponed pending additional evidence and testimony on compliance with these Agencies' regulatory requirements.
- 8. A notice of public hearing was sent to the applicant, property owners within 1500 feet of the subject properties, and those demanding notice on February 7, 2007 that a public hearing was scheduled before the Board of Commissioners on February 28, 2007 to accept evidence and testimony specifically related to compliance with Federal and State regulatory agencies, specifically: DOGAMI, the Army Corps of Engineers, and the Department of State Lands. Legal notice was published in the Sunday, February 18, 2007 edition of the Medford Mail Tribune.
- 9. On February 28, 2007, the Jackson County Board of Commissioners held a public hearing to reopen the record and accept evidence and testimony specifically related to compliance with Federal and State regulatory agencies, specifically: DOGAMI, the Army Corps of Engineers, and the Department of State Lands. No decision was made and the deliberation was postponed pending additional evidence and testimony on the Department of State Lands consent order. The public hearing was continued to April 11, 2007.
- 10. On April 11, 2007, the Jackson County Board of Commissioners held a public hearing to re-open

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the record and accept evidence and testimony specifically related to compliance with the Department of State Lands consent order. No decision was made and the deliberation was postponed pending additional evidence and testimony that the Applicant was in substantial compliance with the Department of State Lands consent order.

- 11. A notice of public hearing was sent to the applicant, property owners within 1500 feet of the subject properties, and those demanding notice on May 10, 2007 that a public hearing was scheduled before the Board of Commissioners on February 28, 2007 to accept evidence and testimony into the record specifically related to demonstration of substantial compliance with the Department of State Lands consent order. Legal notice was published in the Sunday, May 20, 2007 edition of the Medford Mail Tribune.
- 12. On May 30, 2007, the Jackson County Board of Commissioners held a public hearing to re-open the record and accept evidence and testimony specifically related to demonstration of substantial compliance with the Department of State Lands consent order. Based upon the evidence, the Board of Commissioners decided by motion and vote that decisions on the merits of the application were not precluded due to any outstanding violations issues. The public hearing was continued to June 13, 2007 at 1:30 p.m. in the Jackson County Auditorium.
- 13. On June 13, 2007, the Jackson County Board of Commissioners held a public meeting and deliberated to a decision on the above captioned land use application.

Now, Therefore, the Board of County Commissioners of Jackson County hereby make the following findings and conclusions:

SECTION 1. FINDINGS OF FACT

Based upon the evidence and argument presented, the Board makes the following findings of fact with respect to this application. Where factual conflicts arose, the Board has resolved them consistent with these findings.

- 1.1 The Board of Commissioners hereby incorporates and adopts as its own the Findings of Fact and Conclusions of Law relied upon by the Planning Commission as stated in their Recommendation for Approval, except as supplemented pursuant Section 1.2 and 1.3 below. The same is attached hereto as Exhibit "A". To the extent there is any discrepancy between the findings incorporated by this paragraph and the Board's express findings in Exhibit B, *infra*, the express findings of the Board shall govern.
- 1.2 The Board of Commissioners hereby incorporates and adopts as its own, the supplementary Findings of Fact and Conclusions of Law offered by Applicant's Attorney, attached hereto as Exhibit "B".
- 1.3 The Board of Commissioners hereby incorporates and adopts Applicant's rebuttal at Planning Commission Record Pages 771 to 782, 1511 to 1520, and 1555 to 1572 as its own resolution of issues raised by the Opponents and the same are attached hereto as Exhibit "C". To the extent there is any discrepancy between the findings incorporated by this paragraph and

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the Board's express findings in Exhibit B, the express findings of the Board shall govern.

SECTION 2. LEGAL FINDINGS

- 2.1 The Board of Commissioners finds that all notices were legally and properly published and sent to necessary persons and affected agencies.
- 2.2 The Board of Commissioners finds that the subject property affected by this ordinance is described as Township 36 South, Range 2 West, Section 28 tax lots 1900.
- 2.3 The Board of Commissioners finds that it has followed all required procedures in the Land Development Ordinance, the Comprehensive Plan, and State of Oregon requirements and that the rights of affected agencies and property owners have not been substantially prejudiced.
- **SECTION 3. CONCLUSIONS:** Based on the evidence and arguments relied upon by the Commission in the record, the Board of Commissioners concludes that the proposed amendments are in compliance with the Jackson County Land Development Ordinance, the Statewide Planning Goals, Oregon Administrative Rules, and the Jackson County Comprehensive Plan. Where factual conflicts arose, the Jackson County Board of Commissioners has resolved them consistent with these conclusions.
 - 3.1 Statewide Planning Goals: Based upon the findings of fact and conclusions of law enumerated in Sections 1.1 to 1.3 above and attached hereto as Exhibits "A-C", the Board of Commissioners concludes that it has re-evaluated the ESEE analysis for the site and determined the value of the aggregate on the west side of Bear Creek is sufficient to allow mining, provided the screening from Blackwell Road is installed per the approved master plan, in compliance with the Statewide Planning Goals.
 - 3.2 Comprehensive Plan and Transportation System Plan: Based upon the findings of fact and conclusions of law enumerated in Sections 1.1 to 1.3 above and attached hereto as Exhibits "A-C", the Board of Commissioners concludes that this application complies with all aspects of the Comprehensive Plan that function as approval criteria for adoption of an updated ESEE to allow mining west of Bear Creek and on the property in substantial conformance with the approved site and operations master plan.
 - 3.3 Jackson County Land Development Ordinance: Based upon the findings of fact and conclusions of law enumerated in Sections 1.1 to 1.3 above and attached hereto as Exhibits "A-C", the Board of Commissioners concludes that the updated ESEE analysis complies with the Jackson County Land Development Ordinance.
 - 3.4 Oregon Administrative Rules: The Board of Commissioners incorporates and adopts applicant's purpose and intent statement at Planning Commission Record Page 148 as being sufficient to explain the basis under Oregon Administrative Rule for which the County can and does apply OAR 660-016 to aggregate by and through demonstration of compliance with its Comprehensive Plan. Based upon the findings of fact and conclusions of law enumerated in

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Sections 1.1 to 1.3 above and attached hereto as Exhibits "A-C", the Board of Commissioners concludes that the updated ESEE analysis and decision on the subject property has proceeded in accordance with all administrative rules to the extent the same are directly applicable to an ESEE update amendment.

3.5 The Board of Commissioners concludes that proper public notices were given.

SECTION 4. DECISION

The Board of County Commissioners of Jackson County ordains as follows:

- 4.1 Based on the record, testimony of the public hearing, the Planning Commission Recommendation for Approval, and Exhibits "A-C", herein attached and incorporated herein, the Board of Commissioners adopts the ESEE analysis contained in Exhibit "A" and allows mining on Tax Lot 1900 in substantial conformance with the approved site and operations master plan. Aggregate uses on the site shall be substantially consistent with the site and operations master plan approved in conjunction with the subject application together with those additional conditions adopted through the ESEE process; changes to the site plan and/or operations master plan that require discretion shall demonstrate proposed changes remain consistent with the results of the ESEE analysis.
- 4.2 Invalidity of a section or part of this ordinance shall not affect the validity of the remaining sections or parts of sections.

APPROVED this 25th day of _	July .	2007, at Medford, Oregon
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	JACKSON COUNTY BOARD OF COMMISSIONERS
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	Dennis C. W. Smith, Chair
	The Well
	Jack Walker, Commissioner
	1)n/1 ((d)
	Dave Gilmour, Commissioner
APPROVED AS TO FORM:	ATTEST:
	Donna Bladele
County Counsel	By: Recording Secretary
may be appealed to the Oregon Land Use decision within 21 days of the date it is ma, 2007, and the L, 2007. Please c	inance is the final decision on this action. This decision Board of Appeals (LUBA). You must appeal this liled. This decision is being mailed on UBA appeal period will expire on ontact LUBA for specific appeal information. They are 35, Salem, Oregon 97301-2552. They can be reached at

6-ORDINANCE- AMENDMENT TO 95-61; File LRP2005-00003 Craig A. Stone and Associates, Agent; Rock-n-Ready Mix LLC, Applicant

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EXHIBIT A

BEFORE THE JACKSON COUNTY PLANNING COMMISSION STATE OF OREGON, COUNTY OF JACKSON

IN THE MATTER OF AN APPLICATION FOR A CONSOLIDATED REVIEW OF A MINOR COMPREHENSIVE PLAN MAP AMENDMENT TO CHANGE THE COMPREHENSIVE PLAN MAP FROM AGRICULTURAL LAND TO AGGREGATE RESOURCE LAND, A MINOR ZONING MAP AMENDMENT TO CHANGE THE ZONING DISTRICT FROM THE EXCLUSIVE FARM USE (EFU) DISTRICT TO THE AGGREGATE REMOVAL (AR) DISTRICT, THE DESIGNATION OF A SITE AS A SIGNIFICANT AGGREGATE RESOURCE AND ESTABLISHMENT OF GOAL 5 PROTECTION MEASURES, AND APPROVAL OF A SITE PLAN AND OPERATIONS MASTER PLAN SUFFICIENT TO IMPLEMENT THE ZONING DISTRICT, AND FINAL DEVELOPMENT PERMIT APPROVALS FOR A PORTION OF THE SITE AND OPERATIONS MASTER PLAN ON PARCELS LOCATED IN TOWNSHIP 36 SOUTH RANGE 2 WEST SECTIONS 21, 27 AND 28. EXISTING AR ZONED AREA IS APPROXIMATELY 116 ACRES. PROPOSED **EXPANSION WILL ADD APPROXIMATELY 163** ACRES.

Applicant: Rock-n-Ready Mix, LLC Owners: Paul and Deanne Medina, Michael and Sharon Hilton, Rock-n-Ready Mix, Inc. RECOMMENDATION FOR APPROVAL

1-RECOMMENDATION; File LRP2005-00003 Craig A. Stone and Associates Ltd., Agent; Rock-n-Ready Mix LLC, Applicant Jackson County Planning Commission 1) Recommends adoption of an ordinance amending the Comprehensive Plan that adds the subject properties that are not currently on the inventory of significant aggregate resource site to said inventory and adopts an impact area and protection program for these new sites, see attached Exhibits B and F. 2) Recommends adoption of an ordinance to amend Ordinance 95-61 that allows aggregate operations in accordance with the approved site and operations master plan (this ordinance does not allow aggregate extraction of proposed Pit 2a). 3) Recommends adoption of an ordinance amending the Comprehensive Plan Map to designate all of the subject properties Aggregate Resource Land (only those portions of Tax Lots 100, 200 in Section 28 and 2600 in Section 27 west of the Upton Slough), see attached Exhibit C. 4) recommends an order be approved by the Board of Commissioners to amend the zoning map to change the zoning designation from Exclusive Farm Use (EFU) to Aggregate Removal (AR) for all of Tax Lots 1303 in Section 21, 1101/2604, 1700, and 1800 in Section 28 and for those portions of Tax Lots 100, 200 in Section 28 and 2600 in Section 27, see attached Exhibit D, subject to the approved site and operations master plan (See applicant's Exhibit 4 at Record Page 330, attached conditions of approval, and attached Exhibit E).

RECITALS:

- 1. Pursuant to Chapter 197 and 215 of the Oregon Revised Statutes, and in conformance with the Statewide Planning Goals, Jackson County's Comprehensive Plan (JCCP) and implementing ordinances have been acknowledged by the Oregon Land Conservation and Development Commission (LCDC).
- 2. On March 24, 2005 an application for a Comprehensive Plan Map Amendmentt and Zoning Map Amendment was submitted by the agent, Craig A. Stone and Associates, for the owner, Rock-n-Ready Mix LLC. After initial review by staff, the application was deemed incomplete on April 28, 2005. The applicant provided the requested supplemental materials and the application was then deemed complete by staff on June 29, 2005.
- 3. A notice of the proposed amendment was provided to DLCD more than 45 days prior to the initial public hearing. The application was scheduled before the Jackson County Planning Commission for a properly noticed first evidentiary hearing on October 27, 2005 at 9:15 a.m in the Jackson County Auditorium. That public hearing was continued. Another properly noticed public hearing was held for January 23, 2006 at 9:15 in the Jackson County Auditorium. That public hearing was also continued. A third properly noticed public hearing was held on March 9, 2006 at 9:15 a.m. in the Jackson County Auditorium.

Now, therefore,

The Jackson County Planning Commission finds, concludes, and RECOMMENDS as follows:

SECTION 1. FINDINGS OF FACT:

Based upon the evidence and arguments presented, the Planning Commission makes the following findings of fact with respect to this application. Where factual conflicts arose, the Planning Commission has resolved them consistent with these findings.

2-RECOMMENDATION; File LRP2005-00003 Craig A. Stone and Associates Ltd., Agent; Rock-n-Ready Mix LLC, Applicant

- 1.1 The Planning Commission finds that proper legal notice was sent on to the applicant, property owners within 1500 feet of the subject property and affected agencies on August 23, 2005. A media notice was sent to the Medford Mail Tribune on August 31, 2005, and a copy was sent to the Ashland Daily Tidings and Upper Rogue Independent. Legal notice was published in the Sunday, October 16, 2005 edition of the Medford Mail Tribune.
- 1.2 The Planning Commission finds that the subject property is described as Township 36 South, Range 2 West, Section 21 tax lots 1303 and 1400, Section 28 tax lots 100 (portion west of Upton Slough), 200 (portion west of Upton Slouth), 800, 900, 1200, 1300, 1700, 1800, 1900, and 1101/2604 and that portion of tax lot 2600 west of Upton Slough in Section 27. The subject property is adjacent to Blackwell Road and surrounds the existing Rock-n-Ready operation and extends east across Bear Creek to Upton Slough.
- 1.3 The Planning Commission finds that it has followed all required procedures in the Land Development Ordinance, the Comprehensive Plan, and State of Oregon requirements and that the rights of affected agencies and property owners have not been substantially prejudiced. The Planning Commission finds that the record contains no procedural objections that were raised with sufficient specificity to provide the Commission an opportunity to respond.

SECTION 2. LEGAL FINDINGS: To recommend approval of an Official Comprehensive Plan Map and Zoning Map amendment, the Planning Commission must find that the amendment is consistent with the Jackson County Land Development Ordinance (JCLDO) Chapter 3.7, which requires compliance with the Statewide Planning Goals, Oregon Administrative Rules, Jackson County Land Development Ordinance and the Jackson County Comprehensive Plan (JCCP).

The Planning Commission incorporates and adopts the findings of fact and conclusions of law in the updated Staff Report attached as Exhibit A. These findings demonstrate that the application is in compliance with the Statewide Planning Goals, Oregon Administrative Rules, the Jackson County Comprehensive Plan, and the Jackson County Land Development Ordinance.

SECTION 3. CONCLUSIONS: Based on the evidence and arguments relied upon by the Commission in the record, the Planning Commission concludes that the proposed amendments are in compliance with the Jackson County Land Development Ordinance, the Statewide Planning Goals, Oregon Administrative Rules, and the Jackson County Comprehensive Plan. Where factual conflicts arose, the Jackson County Planning Commission has resolved them consistent with these conclusions.

- 3.1 Statewide Planning Goals: Based upon the findings of fact and conclusions of law in the updated staff report attached hereto as Exhibit A, the Planning Commission concludes that this application complies with the Statewide Planning Goals.
- 3.2 Comprehensive Plan and Transportation System Plan: Based upon the findings of fact and conclusions of law in the updated staff report attached hereto as Exhibit A, the Planning Commission concludes that this application complies with all aspects of the Comprehensive Plan that function as approval criteria for the subject application as approved.
- 3.3 Jackson County Land Development Ordinance: The Planning Commission concludes that this application complies with the Jackson County Land Development Ordinance in accordance with the findings of fact and conclusions of law in the updated Staff Report attached hereto as Exhibit A.

3-RECOMMENDATION; File LRP2005-00003 Craig A. Stone and Associates Ltd., Agent; Rock-n-Ready Mix LLC, Applicant

- 3.4 Oregon Administrative Rules: The Planning Commission incorporates and adopts applicant's purpose and intent statement at Record Page 148 as being sufficient to explain the basis under Oregon Administrative Rule for which the County can and does apply OAR 660-016 to aggregate by and through demonstration of compliance with its Comprehensive Plan. The Planning Commission incorporates and adopts the findings of fact and conclusions of law in the Staff Report attached hereto as Exhibit A to demonstrate compliance with all administrative rules to the extent the same are directly applicable to the recommended map amendments.
- 3.5 The Planning Commission concludes that proper public notices were given.

SECTION 4. RECOMMENDATION: The Jackson County Planning Commission:

- 1) Recommends adoption of an ordinance amending the Comprehensive Plan to add the subject properties that are not currently on the list of significant aggregate resource sites to Jackson County's inventory of "Significant Goal 5 Resource Sites", as shown on the attached map entitled "Exhibit B PC Recommended New Goal 5 Aggregate Site" (Exhibit B).
- 2) Recommends a 1,500 foot impact area around areas added to Jackson County's inventory of "Significant Goal 5 Resource Sites". The proposed 1,500 foot impact area and the existing 1,500 foot impact area around tax lot 1900 are shown on the attached map "Impact Areas: Existing and Proposed" (Exhibit C).
- 3) Recommends adoption of an ordinance amending the Comprehensive Plan Map to designate all of the subject properties Aggregate Resource Land that are not currently so designated (only those portions of Tax Lots 100, 200 in Section 28 and 2600 in Section 27 west of the Upton Slough), as shown on the attached map "PC Recommended Aggregate Resource Lands" (Exhibit D).
- 4) Recommends adoption of an ordinance to amend Ordinance 95-61 that allows aggregate operations in accordance with the approved site and operations master plan as shown on the attached map "Exhibit E PC Approved Site and Operations Master Plan" (Exhibit E) and applicants updated Exhibit 4, entitled "Exhibit 4 Jackson County Land Development Ordinance Standards and Applicable Requirements For Approval Of The Requested Aggregate Site And Operations Master Plan", Sections 1, 11, and IV (Exhibit F). This ordinance does not allow aggregate extraction of proposed Pit 2a.
- 5) Recommends an ordinance be approved by the Board of Commissioners to amend the zoning map to change the zoning designation from Exclusive Farm Use (EFU) to Aggregate Removal (AR) for all of Tax Lots 1303, 1101/2604, 1700, and 1800 in Section 28 and for those portions of Tax Lots 100, 200 in Section 28 and 2600 in Section 27 subject to the approved site and operations master plan.
- 6) Recommends an order be approved by the Board of Commissioners approving land development permits for a Type 3 permit for aggregate operations in the Bear Creek Greenway (ASC)82-2, Site Plan Review for Aggregate Operations (future review will be required for Pit 4), and a Floodplain Review Permit for aggregate operations in the floodplain and floodway of Bear Creek (future review will be required for Pit 4.

This recommendation for APPROVAL	adopted this 2 174 day of	July	2006, at
Medford, Oregon.			

JACKSON COUNTY PLANNING COMMISSION (Vote: Y=Yes; N=No; A=Abstain)

Reeve Hennion, Chair

Don Greene, Vice-Chair

Elizabeth Fujas, Commissioner

Richard B. Thierolf, Jr., Commissioner

Byron Williams, Commissioner

ATTEST:

Heather Couch, Secretary

EXHIBIT A

JACKSON COUNTY ROAD, PARKS AND **PLANNING SERVICES** COMPREHENSIVE PLAN AMENDMENT STAFF REPORT WITH PLANNING COMMISSION AMENDMENTS

APPLICANT: Rock 'N' Ready Mix, LLC

FILE: LRP2005-00003

6968 Blackwell Road

Central Point, OR 97502

AGENT: Craig Stone & Associates

712 Cardley Ave.

Medford, OR 97504

D. Lindeman IRA Rollover Acct., Michael R. & Shannon L. Hilton, Michael M. & Jodi L. Medina, Paul J. & Deanna L. Medina, and

Michael D. Lindeman

OWNER: Rock 'N' Ready Mix, Inc., Michael

LEGAL DESCRIPTION:

TWP 36 South RANGE 2 West SECTION 21 TAX LOT(S) 1303, 1400

TWP 36 South RANGE 2 West SECTION 27 TAX LOT(S) 2600

TWP 36 South RANGE 2 West SECTION 28 TAX LOT(S) 100, 200, 800, 900, 1101, 1200, 1300,

1500, 1700, 1800, 1900, and 2604

APPLICATION REQUEST: A Minor Comprehensive Plan Map and Zoning Map Amendment to change the Comprehensive Plan Map designation from Agricultural Land to Aggregate Resource Land and the zoning district from Exclusive Farm Use (EFU) to Aggregate Removal (AR), designation as a significant aggregate resource and ESEE analysis to determine the level of Statewide Planning Goal 5 protection, Site Plan Review for aggregate operations, Floodplain Review for development within the 100 year floodplain, and Type 3 review for development within the Bear Creek Greenway (Area of Special Concern 82-2) on 348.56 acres in Township 36 South, Range 2 West, Section 21, Tax lots 1303 and 1400, Section 27, Tax Lot 2600, and Section 28, Tax Lots 100, 200, 800, 900, 1101, 1200, 1300, 1500, 1700, 1800, 1900, and 2604.

LOCATION: Located on Blackwell Road, beginning approximately 0.3 miles north of the intersection of Interstate 5 and Blackwell Road to approximately 1 mile north of the same intersection.

BACKGROUND: An application was received by Jackson County from Craig Stone and Associates, agent for the applicant, Rock 'N' Ready Mix, LLC, on March 24, 2005. The proposal is a Minor Comprehensive Plan Map and Zoning Map Amendment to change the Comprehensive Plan Map designation from Agricultural Land to Aggregate Resource Land and the zoning district from Exclusive Farm Use (EFU) to Aggregate Removal (AR), designation as a significant aggregate resource and ESEE analysis to determine the level of Statewide Planning Goal 5 protection, Site Plan Review for aggregate operations, Floodplain Review for development within the 100 year floodplain, and Type 3 review for development within the Bear Creek Greenway (Area of Special Concern 82-2). The application was deemed incomplete on April 28, 2005. The applicant submitted the required elements and the application was deemed complete on June 29, 2005. Public Hearings before the Jackson County Planning Commission were held on October 27, 2005, January 26, 2006, and March 9, 2006 in the Jackson County Auditorium and site visit February 23, 2006.

KEY ISSUES:

_	Determine if the aggregate resources quality as a significant Goal 5 aggregate resource.	
	Determine what level of protection is justified by the ESFF analysis.	

Determine whether the application meets the criteria to allow aggregate mining.

- Determine whether the application meet the criteria for development within the floodplain and floodway.
- Determine whether the application meets Type 3 criteria for development within the Bear Creek Greenway.

ı. FACTS:

- Location: The property is located on Blackwell Road, beginning approximately 0.3 miles 1) north of the Interstate 5/Blackwell Road/HWY 99 interchange to approximately 1 mile north of the same interchange.
- 2) Access: Current access is from 6960 Blackwell Road (362W18, tax lot 1800), a county owned and maintained road. Two additional accesses were proposed by the Applicant. One from 6508 Blackwell Road (362W28, tax lot 1500) and a right-in at (362W28, tax lot 1700).

3) Acreage:

MAP ID	ACREAGE
362W21-1303	4.01
362W21-1400	9.70
362W27-2600	61.31
362W28-100	61.38
362W28-200	36.90
362W28-800	2.30
362W28-900	8.40
362W28-1101	21.55
362W28-1200	3.70
362W28-1300	3.80
362W28-1500	1.60
362W28-1700	1.24
362W28-1800	35.62
362W28-1900	78.31
362W28-2604	<u>15.98</u>
TOTAL:	345.80 acres ¹

¹The applicant determined the total acreage to be 348.56 acres. Upon reviewing the acreage for each parcel in Assessment records, it was determined that the total acreage is actually 345.80 acres.

Assessment:	•	
MAP ID	PROP. CLASS	DEFINITION
362W21-1303	400	Vacant, H & B use tract land, zoning not significant
362W21-1400	400	u n u n u n
362W27-2600	559	Manufactured structure, H & B use farm land, receiving farm deferral, zoned EFU
362W28-100	559	Manufactured structure, H & B use farm land, receiving farm deferral, zoned EFU
362W28-200	550	Vacant, H & B use farm, receiving farm deferral, zoned EFU
362W28-800	401	Improved, H & B use tract, zoning not significant
362W28-900	401	K # K 11 K 23 K
362W28-1101	400	Vacant, H & B use tract land, zoning not significant
362W28-1200	409	Manufactured structure, H & B use tract, zoning not significant
362W28-1300	409	a n a n a n a
362W28-1500	409	a ii a i
362W28-1700	109	Manufactured structure, improved, zoned residential
362W28-1800	401	Improved, H & B use tract, zoning not significant
362W28-1900	401	a n a n a
362W28-2604	400	Vacant, H & B use tract land, zoning not significant

220.9 acres receive a special assessment as farm land.

5) Lot Legality: Lot legality for these parcels was reviewed and established in 1998. A Memo dated July, 22, 1998 from Dody Talbott, Planning Technician II, determined the legality of each tax lot and is used as the official lot legality determination for this application.

MAP ID

4)

362W21-1303	Per file 92-90-LLA, this tax lot is part of 362W28, tax lot 1900. Tax lots 1900 and 1303 are considered a single, legal parcel.
362W21-1400	This tax lot was created by Volume 421, Page 222, recorded in 1956

and is considered a legal parcel.

362W27-2600	OR 70-11899 described tax lot 2600 with 362W28, tax lot 1100. OR 81-18853 separated tax lot 1101 from tax lot 2600 without the required review and approval from Jackson County. A letter dated February 27, 1990 indicated Planning would not penalize tax lot 2600 for the illegal division that occurred in 1981. This tax lot is considered a legal parcel based upon the Planning Director's ruling.
362W28-100	This parcel was created by Volume 224, Page 443 of the official records in the County Clerk's Office in 1940 and is considered a legal parcel.
362W28-200	This parcel was created by Volume 245, Page 434 of the official records in the County Clerk's Office in 1943 and is considered a legal parcel.
362W28-800	Prior to 1973, this parcel contained part of tax lot 900. Tax lot 900 was created in its current configuration by Volume 305, Page 266 of the official records in the County Clerk's Office in 1948, leaving tax lot 800 as a residual parcel in its current configuration. Therefore, the date of creation for tax lot 800 is 1948 and is considered a legal parcel.
362W28-900	This parcel was created by Volume 305, Page 266 of the official records in the County Clerk's Office in 1948 and is considered a legal parcel.
362W28-1101	OR 81-18853 separated tax lot 1101 from 362W27, tax lot 2600, without the required review and approval from Jackson County. The property owner could consolidate this tax lot and tax lot 2604 with tax lot 1800. A condition of approval to require consolidation of tax lots 1101 and 2604 with tax lot 1800 is recommended.
362W28-1200	This parcel was created by Volume 570, Page 166 of the official records in the County Clerk's Office in 1952 and is considered a legal parcel.
362W28-1300	This parcel was created by OR 69-11035 in 1969 and is considered a legal parcel.
362W28-1500	This parcel was created by Volume 422, Page 479 of the official records in the County Clerk's Office in 1952 and is considered a legal parcel.

362W28-1700	This parcel was created by Volume 555, Page 368 of the official records in the County Clerk's Office in 1963 and is considered a legal parcel.
362W28-1800	This parcel was created by OR 66-04539 in 1966 and is considered a legal parcel.
362W28-1900	This parcel was created by OR 69-11799 in 1969 and is considered a legal parcel.
382W28-2604	Since at least 1963, 362W28, tax lot 2600 and 2604 were a single parcel east of Blackwell Road. OR 89-07502 segregated tax lot 2604 from 2600 without the required review and approval from Jackson County. A letter dated August 20, 1996 advised the property owner that no permits or requests for development would be approved on this parcel, and recommended consolidating tax lot 2604 with an adjacent parcel. Tax lots 2604 and 1101 could be consolidated with tax lot 1101. A condition of approval to require consolidation of tax lots 1101 and 2604 with tax lot 1800 is recommended.

- 6) Fire Protection: The parcel is within Jackson County Fire District No. 3.
- 7) Irrigation: The subject properties are within the Rogue River Valley Irrigation District. Irrigation water is used for some production activities, although irrigation water is not required to support the extraction area uses and activities, according to the applicant. Evidence of a water right for the production activities has been provided by the applicant.
- 8) Zoning:
 - A) Subject Property: Exclusive Farm Use (EFU), Aggregate Removal (AR)
 - B) North: Exclusive Farm Use (EFU), Aggregate Removal (AR)
 - C) East: Exclusive Farm Use (EFU)
 - D) South: Exclusive Farm Use (EFU)
 - E) West: Rural Residential (RR-5), Exclusive Farm Use (EFU), Urban Residential (UR-1), Interchange Commercial (IC)
- 9) Land Use: Land uses for these parcels include field and dairy farming, aggregate extraction, aggregate processing, aggregate stockpiling, concrete recycling, concrete batch plant, accessory uses to aggregate operations, and residential uses.

- 10) **Site Characteristics:** Outside of the riparian area of Bear Creek, the subject properties are gently sloping. There is a bench on tax lots 100, 200, and 2600 near the eastern borders of these tax lots. The riparian areas typically consist of Oregon ash and willow with an understory of reed canary grass. Areas east of Bear Creek appear to be in farm use, particularly field and dairy farming.
- 11) Soils: Over 60% of the soil types for these properties are considered Prime Farmland (NRCS) or High Value Farmland (OAR 660-033-0020(8)) soils. All of the soil types are considered Agricultural Land (OAR 660-033-0020(1)), regardless of zoning district. A map of the soil types and percentages of soil types is provided in the record. None of the soil types could be considered Forest Land.
- 15) Water: The subject properties are within the Rogue river Valley Irrigation District. Irrigation water is used for some production activities and evidence of a water right for this purpose has been provided. The applicant states that irrigation water will not be required to support the extraction area uses and activities.
- Wetlands: There are numerous wetlands associated with Bear Creek, Willow Creek, Jackson Creek, and the irrigation canal along the eastern borders of tax lots 100, 200, and 2600. The applicant has supplied a wetland report for tax lots 1800, 1101, and 2604. A GIS map depicting the National Wetlands Inventory Sams Valley Map is included in the record.
- Area of Special Concern: Portions of these properties are within Area of Special Concern (ASC) 82-2, Bear Creek Greenway. These properties are also within the Air Quality Maintenance Area for Jackson County. A portion of tax lots 800 and 900 near Blackwell Road is within Central Point's Area of Mutual Concern.
- 18) Past Planning Actions: Aggregate extraction began on all or part of tax lot 1101 about 1960. On December 21, 1995, ordinance 95-61 was signed changing the official Comprehensive Plan and Zoning Map from Exclusive Farm Use to Aggregate Resource on tax lot 1900, although limiting aggregate extraction to the east side of Bear Creek and outside of the Bear Creek Greenway Overlay. This comprehensive plan and zoning map amendment was part of Periodic Review Task 14. In 1997, file 1996-2-CUPA, a conditional use permit on tax lots 1800 and 800 for aggregate mining, stockpiling, processing and operations in connection with aggregate mining on tax lot 1101, was conditionally approved. On August 31, 1999, the Hearings Officer approved file 1998-1-SPRA for aggragate operations on tax lots 1101 and 2604.

Numerous code violations associated with the aggregate operations. Per Gary Saltonstall, Code Compliance officer, these violations have been cleared.

19) Affected Agency and Property Owner Notification: On August 23, 2005 agencies and property owners were notified of the proposed zone change, floodplain review, and site plan review for aggregate operations. Numerous responses were received. Specific agency

comments are shown below. Property owner comments are identified in a general fashion below agency comments.

- A) Jackson County Roads and Parks recommends a traffic study to evaluate the need for a left turn land and a right turn deceleration lane at the road approach. If turn lands are warranted, Roads and Parks recommends denial until the turn lanes are provided. A Road Approach Permit for any new or improved driveway off Blackwell Road is required. Additionally, Roads and Parks requested all existing trees, especially those near the waterway, be retained.
- B) Jackson County Fire District #3 states all Fire Code requirements will be applied to this project, including addressing, access, and possible on-site water for fire suppression.
- C) Rogue Valley Sewer Services responded stating there are several sewer mains on the subject properties and any aggregate removal operations in this area must take adequate precautions to prevent damage to the pipeline. They also indicated the operating plan does provide adequate protection to the pipe.
- D) A letter from Karen Smith, Special Projects Manager for Roads, Parks and Planning Services, states Rock 'N' Ready's reclamation plan would consider future extension of the Greenway trail and a perpetual trail easement to take effect at the time Pit 2 is reclaimed would serve this purpose well. Also indicated was that an easement would assure effective balance between the conflicting goal 5 resources of Aggregate and the Bear Creek Greenway over time.
- E) An email from Gary Saltonstall, Jackson County Code Compliance officer, dated 9-23-05, states there are no code violation cases with Rock 'N' Ready at this time.
- F) An email from Dan Dorrell, ODOT, stated that if Rock 'N' Ready was not increasing their truck fleet, ODOT would not need a capacity analysis on any state facility.
- G) From the many property owner responses, the concerns that property owners have include, noise, dust, traffic safety, smell from the asphalt plant, viewshed, decrease in land values, affect on water table and wells, affect on Bear Creek and other streams, affect on the Rogue Valley Sewer Service pipelines, affect on the rural way of life in the area, and the loss of farm land.

II. APPLICABLE CRITERIA ADDRESSED:

In order to approve an amendment to the Official Comprehensive Plan Map and Zoning Map Amendment, determination of Goal 5 protection, site plan review for aggregate operations, floodplain review for development within the 100 year floodplain, and an development within the Bear Creek Greenway², the County must find that the amendment is consistent with:

- 1) Compliance with Statewide Planning Goals: Goal 1, Citizen Involvement; Goal 2, Land Use Planning; Goal 3, Agricultural Land; Goal 4, Forest Land; Goal 5, Open Spaces and Natural Resources; Goal 6, Air, Water and Land Resource Quality; Goal 7, Areas Subject to Natural Hazards; Goal 8, Recreational Needs; Goal 9, Economic Development; Goal 10, Housing; Goal 11, Public Facilities and Services; Goal 12, Transportation; Goal 13, Energy Conservation; and, Goal 14, Urbanization. Compliance with Oregon Administrative Rule (OAR) 660, Division 16 and Division 12.
- 2) Compliance with the following elements of the Jackson County Comprehensive Plan: Map Designations (Aggregate Resource Land), Aggregate and Mineral Resources, and Transportation (Transportation System Plan).
- 3) Compliance with the following sections of the Jackson County Land Development Ordinance: 3.1.4, 3.7.3(C), 4.4.5, 4.4.8, 7.1.1(B), and 7.1.2.

The following sets forth the legal references upon which the Commission has reached its recommendations and issued orders for dependent land use permits:

1) COMPLIANCE WITH STATEWIDE PLANNING GOALS AND OREGON ADMINISTRATIVE RULES:

The purpose of reviewing plan and zoning map amendments against Statewide Planning Goals and Oregon Administrative Rules is to assure that changes made in the County's acknowledged plan are also acknowledgeable.

A) Goal 1, Citizen Involvement: The goal is to develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process.

FINDING: The quasi-judicial procedure allows affected citizens and agencies to participate in the planning process. This goal is satisfied through this process.

²The Planning Commission recognizes that alternative interpretations of the applicable criteria with respect to the Bear Creek Greenway overlay are possible, but because the criteria can be found to be met the Planning Commission does not reach the legal arguments as to applicability raised by the Applicant.

B) Goal 2, Land Use Planning: The goal is to establish a land use planning process and policy framework as a bases for all decisions and actions related to use of land and to assure an adequate factual base for such decisions and actions.

FINDING: The proposed application and quasi-judicial process provides a framework for which the application can be reviewed. The Commissioners must find that the evidence supports the proposed zone change and proposed development. The specific Statewide Planning Goals are administered through the criteria identified in the acknowledged Jackson County Comprehensive Plan and Land Development Ordinance (LDO). Goal 2 is satisfied through this quasi-judicial process. No exception to any Statewide Planning Goal is requested or required.

C) Goal 3, Agricultural Lands: The goal is to preserve and maintain agricultural lands.

FINDING: The subject properties are zoned Exclusive Farm Use (EFU) and are protected under Goal 3. All of the soil types on the properties are considered Agricultural Land, according to OAR 660-033-0020(1). 60% of the soil types are considered High Value Farm Land. Aggregate mining is permitted in the EFU zoning district through a Conditional Use Permit on sites designated significant Goal 5 resources. The proposal to identify the properties as a significant Goal 5 resource and develop Goal 5 protection based upon an ESEE analysis by the applicant is the process which Goal 5 aggregate resources are balanced against Goal 3 agricultural resources. The ESEE analysis provides a balance of protection between Goal 3 and Goal 5 resources. Based upon the ESEE Analysis herein below and the evidence and testimony in the record, the Planning Commission finds protection of this significant Goal 5 resource does not conflict with Goal 3.

D) Goal 4, Forest Lands: The goal is to conserve forest lands.

FINDING: The soil class rating for forest production all of the soil types is 0. The applicant indicates the area is not considered Forest Land and is not near designated Forest Land. The applicant states the designation of the site for aggregate resource will have no significant impact on the conservation of forest lands in Jackson County. The Planning Commission concurs with the applicant's findings and adopts them as a basis to satisfy Goal 4 thereto.

E) Goal 5, Open Spaces, Scenic and Historic Areas and Natural Resources: The goal is to conserve open space and protect natural and scenic resources.

FINDING: The applicant has provided evidence regarding quality and quantity of the aggregate resources on the properties. The evidence suggests there is a significant Goal 5 aggregate resource on the properties. The Planning Commission finds the County's Goal 5 program for aggregate is acknowledged by the State of Oregon and the Planning Commission finds it has completed the Goal 5 process in accordance with this program and found the evidence and ESEE analysis sufficient to determine the location, quality, and

quantity of the aggregate resource establishes a significant Goal 5 aggregate resource and should be included on the County's Inventory of Signigicant Goal 5 aggregate resources.

F) Goal 6, Air, Water and Land Resources Quality: The goal is to maintain and improve the quality of the air, water and land resources of the state.

FINDING: The applicant states that, based upon the ESEE analysis, the County's aggregate operation standards and proposed conditions of approval are sufficient to minimize adverse affects on air, water, and land resources quality. The Planning Commission incorporates and adopts the applicant's findings thereto and further finds that compliance with applicable State agency regulations will assure compliance with Goal 6.

G) Goal 7, Areas Subject to Natural Hazards: The goal is to protect people and property from natural hazards.

FINDING: The Planning Commission finds that the only natural hazard to which the property is subject is flood hazards. This area contains a significant area of FEMA mapped floodplain associated with Bear Creek, Jackson Creek, and Willow Creek. Goal 7 as it applies to flood hazards is administered through the Comprehensive Plan and Section 7.1.2 of the LDO. The Planning Commission incorporates its findings of fact and conclusions of law demonstrating compliance with the applicable floodplain development standards in Section 7.1.2 herein below and based thereupon conclude Goal 7 is met.

H) Goal 8, Recreational Needs: The goal is to satisfy the recreational needs of the citizens of the state and visitors and, where appropriate, to provide for the siting of necessary recreational facilities including destination resorts.

FINDING: The Bear Creek Greenway runs through these properties and is part of Area of Special Concern 82-2 in the LDO and is an identified Goal 5 resource. The Planning Commission incorporates and adopts the ESEE analysis below and together with applicant's stipulation to provide a Greenway easement Goal 8 is found to be met.

Goal 9, Economic Development: The goal is to provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens.

FINDING: The applicant states the ESEE analysis addresses the economic consequences of allowing mining on the subject properties and the analysis outcome is that mining these sites is critical for economic development in Jackson County.

The Planning Commission finds economic development in Jackson County would be enhanced by the proposed aggregate operations on the subject properties because of the continued availability of aggregate products processed by this operation. Goal 9 is met.

J) Goal 10, Housing: The goal is to provide for the housing needs of citizens of the state

FINDING: The applicant states the approval of the proposed mining operation assures future aggregate supply near future housing markets and this supports the Comprehensive Plan Housing Element's policies consistent with Statewide Planning Goal 10. The Planning Commission concurs with this assessment. Goal 10 is met.

K) Goal 11, Public Facilities and Services: The goal is to plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development.

FINDING: The applicant states impacts to public safety facilities and services will be minimal and the only critical utility services for an aggregate operation are water and electricity. Water needs for the operation are provided by an existing water right from Rogue River Irrigation District and is sufficient to provide for the water needs of the operation. Electricity is already available onsite. The Planning Commission concurs with the applicant's findings. Goal 11 is met.

H) **Goal 12, Transportation:** The goal is to provide and encourage a safe, convenient and economic transportation system.

FINDING: The Planning Commission incorporates and adopts its findings of fact and conclusions of law herein below demonstrating compliance with the Transportation System Plan facility adequacy test and the Oregon Transportation Planning Rule as being sufficient to conclude Goal 12 is met.

f) Goal 13, Energy Conservation: The goal is to conserve energy.

FINDING: The applicant indicates the ESEE analysis demonstrates that allowing mining near major markets will support Goal 13. Based upon applicant's findings, the Planning Commission finds the existing mining operation and the proposed operation are near major markets for aggregate and the proposed aggregate operation will not increase energy requirements in this area or for the County as a whole. Goal 13 is met.

J) Goal 14, Urbanization: The goal is to provide for an orderly and efficient transition from rural to urban land use.

FINDING: The applicant states the proposed mining operation helps to assure a future aggregate supply near urbanizing areas of White City, Central Point, Eagle Point and Medford and approval of the aggregate operation supports urbanization policies consistent with Goal 14. Based upon this locational finding, the Planning Commission Goal 14 is met.

K) Oregon Administrative Rule (OAR) 660, Division 16, Requirements and Application Procedures for Complying with Statewide Goal 5.

FINDING: OAR 660, Division 16 is addressed through the County's adopted and acknowledged Comprehensive Plan Map Designation Element and Mineral and Aggregate Resources Element, and the Land Development Ordinance. The Planning Commission incorporates and adopts applicant's purpose and intent statement at Record Page 148 as sufficient legal basis under which the County may and does apply Division 16 as implemented by the Jackson County Comprehensive Plan herein.

L) OAR 660-012-0060, TRANSPORTATION PLANNING, Plan and Land Use Regulation Amendments

FINDING: OAR 660, Division 12 is addressed through the County's adopted and acknowledged Comprehensive Plan Transportation Element and Transportation System Plan (TSP). The Planning Commission incorporates and adopts the evidence provided by applicant's Traffic Engineer and the opinion of the County Engineer and applicant's findings of fact and conclusions of law demonstrating compliance with OAR 660-012-0060.

2) JACKSON COUNTY COMPREHENSIVE PLAN:

This section addresses those plan elements and policies which are applicable to the requested map amendment.

A) Map Designations Element: Aggregate Resource Land

- i) Map Designation Criteria:
 - a) Significance Determination. The County shall analyze information relating to the location, quality and quantity of mineral and aggregate deposits. Information necessary to demonstrate the significance of a resource shall include:
 - (1) A map and other written documentation sufficient to accurately identify the location and perimeter of the mineral or aggregate resource; and
 - (2) Information demonstrating that the resource deposit meets or can meet applicable city, County, state, or federal quality specifications for the intended use(s). Oregon Department of Transportation quality specifications for aggregate include: (1) the Los Angeles Rattler test for abrasion (AASHTO T96, OSHD TM 211—loss of not more than 30 percent by weight), (2) the Oregon Air Degradation test (OSHD TM 208—loss of not more than 20 percent by weight), and (3) the Sodium Sulfate Soundness test (OSHD TM 206—not more than 12 percent by weight). Information may consist of laboratory test

- data or the determination of a certified, licensed or registered geology professional, or other qualified person; and
- (3) Information demonstrating the quantity of the resource deposit as determined by exploratory test data or other calculation compiled and attested to by a certified, licensed or registered geology professional, or other qualified person.

FINDING: Maps have been submitted showing the location and perimeter of the aggregate resource. Evidence was initially submitted by the applicant from The Galli Group, Geotechnical Consulting, regarding quantity and later supplemented by evidence submitted by Kuper Consulting LLC, engineering geologists at record page 853 to 892; this evidence is incorporated and adopted by the Planning Commission. Policy 4, Subsection D of the Aggregate and Mineral Resources Element of the Comprehensive Plan states "For an aggregate site to be determined significant, the resource must possess a minimum of 100,000 cubic yards of minable reserves. This standard is not absolute; the county may consider the significance of a site based on unique circumstances even though the volume threshold may not be met." The Planning Commission incorporates and adopts as its finding with respect to resource quantity applicable to the entire project site the expert opinion of applicant's consulting geologist that, "there is approximately 4.0 million cubic yards of aggregate resource estimated to occur on the Rock-n-Ready property [subject application area]. Therefore the property exceeds the quantity criteria of 100,000 cubic yards required in the Jackson County Comprehensive Plan" (Record Page 864).

Three reports were submitted from the Oregon Department of Transportation Materials Laboratory for material from the subject properties, dated January 8, 2004. These tests noted the materials complied with ODOT quality specifications. The applicant states these standards are for bridge construction. The test results show the samples meet the criteria stated above for ODOT quality test OSHD TM 206, OSHD TM 208, and OSHD TM 211, as identified in the Map Designations Element and the Aggregate and Mineral Resources Element. The tests show the samples meet the criteria as a significant resource in the Comprehensive Plan. The samples were taken from the current aggregate operations stockpiles. This initial evidence was supplemented by evidence submitted by Kuper Consulting LLC, engineering geologists at record page 853 to 892; this evidence is incorporated and adopted by the Planning Commission. The Planning Commission finds there is substantial evidence in the record to find the site includes aggregate of sufficient quality to meet Jackson County Goal 5 aggregate resource requirements.

ii) Inventory. Based on the analysis of information relating to the location, quality and quantity of mineral and aggregate deposits, the County shall determine the inventory status of the resource site. Each site considered by the County shall be placed on one of three inventories based on the following criteria:

- a) If the resource site does not meet the definition of a significant resource in the Land Development Ordinance, the County shall include the site on an inventory of "Nonsignificant Sites"; or
- b) If information is not available to determine whether the resource site meets the definition of a significant resource as defined in the Land Development Ordinance, the County shall include the site on an inventory of "Potential Sites." Sites shall remain on the "Potential sites" inventory until such time as information is available to determine whether the resource site is significant; or
- c) If the resource site meets the definition of a significant resource, the County shall include the site on an inventory of "Significant Goal 5 Resource Sites."

FINDING: Based upon the quality and quantity information submitted by the applicant's experts herewith incorporated and adopted that the entire site is a cohesive geologic unit with substantial high quality reserves, all properties in the subject application that are not currently designated as significant aggregate resources are appropriately added to the Jackson County inventory of "Significant Goal 5 Resource Sites" as per the map attached to the Planning Commission's recommendation as Exhibit B.

iii) Identify Impact Area. For each site determined to be significant and to be included on the inventory of "Significant Goal 5 Resource Sites", the Impact Area shall be identified and mapped. The Impact Area shall be 1,500 feet unless increased or decreased based on analysis and findings developed in the course of the Goal 5 process.

FINDING: The Planning Commission finds the record contains testimony and evidence regarding the appropriate location of the impact area and ESEE analysis contents and that the Commission has developed analysis and findings in the course of the Goal 5 process as provided herein below and finds that there is nothing in its adopted analysis or findings upon which to base, much less require, an expansion or contraction of the impact area. Moreover, the Planning Commission incorporates and adopts applicant's record summary, argument, and conclusion at Record Pages 1567 to 1569 and the argument in Bullet Point 3 at Record Page 781 as adequate basis to explain why evidence in the record does not require the impact area be expanded.

- iv) Identify Conflicting Uses. For each site determined to be significant and to be included on the inventory of "Significant Goal 5 Resource Sites", conflicting uses, as defined in the Land Development Ordinance, shall be identified.
 - a) The identification of conflicting uses and other Goal 5 resources shall include uses in existence at the time of review, as well as the potential for the establishment of new conflicting uses. Identification of

potential conflicting uses shall be accomplished by analyzing the uses allowed in the adjacent zone(s).

b) If no conflicting uses are identified, the impact area designation shall not be applied to the property surrounding the resource site.

FINDING: In Hegele v. Crook County (190 Or. App. 376, 78 P.3d 1254), the decision states "To be identified as a conflicting use, the allowed aor allowable use must have a negative impact on the Goal 5 resource site. But also consistently with the rule's working, the negative impacts that a local government may consider in that regard are not limited to legal burdens that might arise from nuisance and trespass actions. Rather, the local government may consider any negative impacts of an allowable use, which can include, but is not limited to, impacts of a social, legal, economic, and environmental nature." Section 13.3(6)(a) defines a conflicting use as "A use which, if allowed, could adversely affect operations at a mineral and aggregate site, or could be adversely affected by extraction and processing activities at a significant mineral and aggregate site." Jackson County's definition of "conflicting use" does not agree with the Court of Appeal's decision in Hegele v. Crook County. Jackson County must use the Court of Appeal's decision regarding the definition of a "conflicting use", which is an allowed or allowable use that has a negative impact on a Goal 5 resource site.

The applicant has identified conflicting use on an area-wide basis and then two site-specific ESEE analyses that focus on specific conflicting uses that exist or have the potential to develop within a 1,500 foot impact area. The latter is based upon the natural division that Bear Creek has on the area and will be east and west of Bear Creek. Below are the identified conflicting uses on an area-wide basis.

Area-wide Conflicting Uses

Riparian Corridors of Bear Creek, Jackson Creek, and Willow Creek - Identified Goal 5 resources (Class 1 streams). Potential negative impacts on the aggregate site include limiting of mining areas and increasing removal and processing operation costs.

Wetlands - Bear Creek (Riverine), Various Palustrine Wetlands, and Vernal Pools in East and NE portion of the area. Potential negative impacts on the aggregate site include limiting of mining areas and increasing removal and processing operation costs. Wetlands are identified as a 1B resource (insufficient data). Mining operations were not identified as a conflicting use for wetlands in Jackson County's Goal 5 Background Document.

Groundwater Resources. The applicant states there are no groundwater quantity or problems known to exist beyond those generally present in the lower Bear Creek Basin. Groundwater resources are identified as a 1B resource (insufficient data) in the Goal 5 Document. Staff finds a potential exists to determine this is a conflicting use because of the possibility of a reduction in the amount of water output for wells

in the area. A reduction in water output in a well could result in litigation for the applicant and an increase in costs associated with aggregate operations.

Oregon Recreational Trails - Bear Creek Greenway. This is an identified Goal 5 resource. The applicant states this section of the trail is proposed, according to the Goal 5 Document and that no conflicts would be present if Greenway construction does not occur until completion of operation. The applicant also states the potential negative impacts on the aggregate site would be increased operations costs and complaint management.

Scenic Views and Sites - Bear Creek Greenway and Class 1 streams (Bear Creek, Jackson Creek, and Willow Creek). These are identified Goal 5 resources. Potential negative impacts on the aggregate site are limiting the mining areas and increased operation costs.

Residential Development - Residential zones and scattered farm and non-farm dwellings. Potential negative impacts on the aggregate site include increased operation costs, complaint management, reduced operating hours, and traffic conflicts.

Commercial Development - Interchange Commercial (IC) zoning district development, including but not limited to hotel/motel accommodations, eating and drinking establishments, campground/RV parks, parks/playgrounds, public safety services, and farm stands, bed and breakfast establishments. Potential negative impacts on the aggregate site are complaint management, reduced operating hours and traffic conflicts.

Farm Uses. The applicant indicates there are no noise and dust sensitive farm uses present in the area, primarily orchards and vineyards. Staff finds there is a nursery within the 1,500 foot impact area, as well as a dairy operation and an elk farm. These farm uses could by affected by the aggregate operations because of noise and dust impacts. The potential negative impacts on the aggregate site are reduction of elimination of the mining areas, additional buffering and landscaping, and increased dust and noise control measures.

Other Non-residential and Non-farm Uses. The applicant identifies some uses that are not present within the impact area such as golf courses, parks, schools, and day-care facilities, although these are not specifically limited types of non-residential and non-farm uses that could occur in the impact area. Potential negative impacts on the aggregate site include a reduction or elimination of mining areas, additional buffering and landscaping, and increased dust and noise control measures.

East Side of Bear Creek Conflicting Uses: The zoning districts are EFU and AR.

Residential Development. According to the applicant in Table 4 of their Exhibit 1, there are approximately 7 existing dwellings within the 1,500 foot existing and proposed impact areas. There are 5 properties which may have a potential for residential development. Potential negative impacts on the aggregate site include increased operation costs, complaint management, reduced operating hours, and traffic conflicts.

Goal 5 Resources - The existing Goal 5 resources include the Bear Creek Greenway, Bear Creek riparian area, wetlands, and intact vernal pools (wetlands), and adjacent aggregate operations. Potential negative impacts on aggregate operations are limiting the mining areas, increased operation costs, and complaint management.

Farm Uses. Existing farm uses include field farming and dairy farming. Potential farm uses would include the same activities as well as those activities included in the definition of "farm use" in the LDO, including wineries and vineyards. The potential negative impacts on the aggregate site are reduction or elimination of the mining areas, additional buffering and landscaping, and increased dust and noise control measures.

Groundwater Resources. Existing wells are associated with residences as well as farm uses. Those residences within the impact area can be assumed to have wells within the impact area. A potential of 5 other wells on the vacant properties may also be assumed. Potential negative impacts on aggregate operations are litigation resulting from a reduction in water output for a well and an increase in costs associated with aggregate operations.

Commercial Development. Commercial development is not know to exist within the impact area east of Bear Creek. Commercial activities in conjunction with farm use are possible for future development. Potential negative impacts on the aggregate site are complaint management, reduced operating hours and traffic conflicts.

Other Non-farm and Non-residential uses. No existing uses appear to be occurring within the impact area. The potential does exist for uses such as golf courses, parks, schools, and day-care facilities. Potential negative impacts on the aggregate site include a reduction or elimination of mining areas, additional buffering and landscaping, and increased dust and noise control measures.

West Side of Bear Creek: Zoning districts include EFU, AR, OSR, RR-5, UR-1, GI, and IC.

Residential Development. There are approximately 27 dwellings located within the 1,500 foot impact area. There are approximately 10 dwellings that could potentially be built. Potential negative impacts on the aggregate site include increased operation costs, complaint management, reduced operating hours, and traffic conflicts.

Goal 5 Resources - The existing Goal 5 resources include the Bear Creek Greenway, Bear Creek riparian area, Willow Creek riparian, Jackson Creek riparian area, and wetlands and adjacent aggregate operations. Potential negative impacts on aggregate operations are limiting the mining areas, increased operation costs, and complaint management.

Farm Uses. Existing farm uses include a nursery, field farming, an elk farm, and other farming not specifically known. Potential farm uses would include the same activities as well as those activities included in the definition of "farm use" in the LDO, including wineries and vineyards. The potential negative impacts on the aggregate site are reduction or elimination of the mining areas, additional buffering and landscaping, and increased dust and noise control measures.

Commercial Development. Existing commercial development includes a small market, trucking company, nursery, and motocross track. There is a tax lot within the GI zoning district with many industrial buildings, although it is not known what types of activities are occurring within these buildings. There are 2 tax lots within the IC zoning district that are currently vacant. The potential exists for future commercial development within the GI and IC zoning districts. Potential negative impacts on the aggregate site are complaint management, reduced operating hours and traffic conflicts.

Other Non-farm and Non-residential uses. No existing uses appear to be occurring within the impact area. The potential does exist for uses such as golf courses, parks, schools, and day-care facilities. Potential negative impacts on the aggregate site include a reduction or elimination of mining areas, additional buffering and landscaping, and increased dust and noise control measures.

Groundwater Resources. Existing wells are associated with residences as well as farm uses. Those residences within the impact area can be assumed to have wells within the impact area. Potential negative impacts on aggregate operations are litigation resulting from a reduction in water output for a well and an increase in costs associated with aggregate operations.

- v) Analysis of Conflicting Uses. For each site determined to be significant, the economic, social, environmental and energy (ESEE) consequences of conflicting uses shall be analyzed.
 - a) The analysis shall be limited to uses and Goal 5 resources identified pursuant subsection D.
 - b) The analysis shall consider the consequences associated with protecting the mineral or aggregate resource, as well as extracting and processing the resource.

- c) The analysis shall determine the relative value or use of the mineral or aggregate resource site as compared to existing or potential conflicting uses.
- d) The analysis shall consider the consequences for both existing and potential conflicts, and shall consider opportunities to avoid and mitigate conflicts. The analysis shall examine:
 - (1) The consequences of allowing conflicting uses fully, notwithstanding the possible effects on surface mining operations;
 - (2) The consequences of allowing surface mining operations fully, notwithstanding the possible effects on conflicting uses;
 - (3) The consequences of protecting conflicting Goal 5 resources.

FINDING: The applicant has completed ESEE analyses based upon area-wide and site-specific areas east and west of Bear Creek. While the area-wide analysis is helpful, the Planning Commission concentrates on only the site-specific areas east and west of Bear Creek and the ESEE analysis and consequences of allowing conflicting uses fully, allowing surface mining fully, and consequences of protecting conflicting Goal 5 resources. The Planning Commission adopts and incorporates the applicant's review and analysis of conflicting uses, except as amended by the Commission's deliberations. Based upon that review and analysis, together with the requirements of the Land Development Ordinance and any additional discretionary conditions, the Planning Commission adopts the following ESEE analysis sufficient to implement Goal 5 for the site:

East Side of Bear Creek

Economic Consequences of Allowing Conflicting Uses Fully:

The economic consequences of limiting or eliminating aggregate operations are lost employment and increased scarcity of the commodity. The reduction or loss in production at these facilities would reduce employment opportunities and require other aggregate operations to replace the aggregate that is lost from this operation, with possible increase in costs because of the distance to markets.

Economic Consequences of Allowing Surface Mining Operations Fully:

Allowing aggregate operations to expand would cause farming operations to be reduced. There is a family run dairy operation as well as small to medium scale ranching and field farming activities. Because a portion of land owned by the Medina dairy farm is included in this proposal, the expectation is that

the loss of farm land will be offset by money received from the sale of the property used for aggregate operations and reinvested in the dairy farm without a significant increase cost or changes in farming practices. The Hilton property, tax lot 2600 in Section 28, will lose approximately one third of property to aggregate extraction and will result in at least a minor loss in farm income. The costs to other ranching and field farming activities will not be significantly increased nor will the aggregate operations force a significant change in farming practices.

Economic Consequences of Protecting other Goal 5 Resources:

The identified Goal 5 resources for the subject properties are the Bear Creek Greenway, Bear Creek and its riparian area, wetlands, and an area of intact vernal pools (wetlands). The intact vernal pools are not within the extraction area for aggregate operations and would not be affected. The wetlands and vernal pools are regulated by Division of State Lands and are designated a 1B resource, resources sites considered to be potentially important, but inadequate information is available to complete the Goal 5 process. The Bear Creek Greenway is an Outstanding Scenic Stream Corridor and is designated as a 3C area, which specifically limits conflicting uses. The riparian area of Bear Creek is administered through the LDO, Section 8.6.

The economic consequences of protecting these Goal 5 resources, which would limit the extent of aggregate operations, would reduce income for the operations as well as the amount of aggregate materials available for development purposes. Aggregate materials would need to come from other sites which could increase the market value of the aggregate products for Jackson County as a whole.

Social Consequences of Allowing Conflicting Uses Fully:

The Planning Commission finds the aesthetic impacts from farm uses, limited residential development, commercial development in conjunction with farm use, and the presence of protected Goal 5 resources are more desirable than the impacts from aggregate operations.

Social Consequences of Allowing Surface Mining Operations Fully:

The social consequences of allowing expanded aggregate mining are noise, dust, and viewshed for conflicting uses, basically aesthetic values would be impacted by the aggregate mining. There are only 7 residences within the 1,500 foot impact area and parties to this application own 3 of these residences. The other residences are located over 1,200 feet from the nearest extraction area. There is already a large gravel pit to the north on tax lot 1300 in Section 21. Because of the topographic bench to the east and the

Bear Creek riparian corridor to the west, aesthetic impacts will be relatively slight. As aggregate removal and machinery move further below grade, aesthetic impacts will be reduced. Conditions which may help to mitigate the social impacts due to expanding the aggregate operations would include a protected riparian area from the banks of Bear Creek (applicant has proposed a 100 foot or more of setback from the stream bank), and an easement through the area for the Bear Creek Greenway (applicant has proposed such an easement).

Social Consequences of Protecting other Goal 5 Resources fully:

As was stated above, the presence of Goal 5 resources creates a more desirable aesthetic impact for this area than allowing the expansion of aggregate operations. The Bear Creek riparian area, wetlands, and vernal pools (wetlands) help to enhance aesthetic values of this area.

Environmental Consequences of Allowing Conflicting Uses Fully:

While farming activities are not generally associated with adverse environmental impacts, many farming uses are unregulated and could cause considerable environmental damage over time. Residential development, commercial activities in conjunction with farm use, golf courses, schools, etc., also have the potential for environmental damage, particularly to Bear Creek.

Environmental Consequences of Allowing Surface Mining Operations Fully:

Expanding the aggregate operations could have adverse environmental consequences to the Bear Creek riparian corridor, including impacts to hydrophytic vegetation, water quality, and fish habitat. Mitigation proposed by the applicant is a 100 foot or more setback from the banks of Bear Creek. Another mitigation measure could include aggressive riparian planting of the protected riparian area, as approved by Oregon Department of Fish and Wildlife (ODFW). Mining activities in Oregon include many environmental controls and regulations to reduce environmental impacts which are required by Department of Geology and Mineral Industries (DOGAMI), Department of Environmental Quality (DEQ), and ODFW.

There are also two Rogue Valley Sewer Service mainlines on the subject properties and failure of the mining operation to protect the waste disposal lines could have considerable environmental impacts. The applicant has proposed to RVSS a plan to protect the lines, including 50 foot mining setbacks from the lines.

Environmental Consequences of Protecting other Goal 5 Resources:

Protecting the identified Goal 5 resources would limit the area allowed for mining and possibly increase operational costs associated with mining. The Bear Creek riparian corridor, Bear Creek Greenway, wetlands, and vernal pool (wetlands) are environmental resources, with the Bear Creek Greenway being associated with the Bear Creek riparian corridor. Protecting these resources would limit adverse environmental impacts associated with aggregate operations.

Energy Consequences of Allowing Conflicting Uses Fully:

The expanded aggregate operations for the east side of Bear Creek include hauling and conveying aggregate over Bear Creek to take advantage of the existing processing facilities without additional energy inputs. Prohibiting or limiting aggregate extraction would require a new processing site and would not take advantage of the haul road and approved bridge infrastructure. A processing facility on the east side of Bear Creek would add distance to every load of aggregate hauled out of this operation, increasing energy costs and inputs.

Energy Consequences of Allowing Surface Mining Operations Fully:

Aside from post-mining reclamation inputs and mitigation inputs during mining operations, no adverse energy consequences are identified.

Energy Consequences of Protecting other Goal 5 Resources:

Protection of the identified Goal 5 resources could result in prohibiting expanded aggregate extraction from the east side of Bear Creek, not including tax lot 1900, which has been rezoned to allow extraction and processing. Prohibiting or limiting extraction would require a new processing site and increasing the transportation costs from production facility to market.

Relative Value or Use of the Aggregate Resource Site as Compared to Existing or Potential Conflicting Uses:

There are no acute land use conflicts in the area and the relative value of all ESEE factors for expanding aggregate extraction east of Bear Creek are strongly weighted towards allowing aggregate extraction over other existing or potential conflicting uses. There is a substantial quantity of high grade aggregate material to be used in concrete and asphaltic concrete production and with mitigation measures, adverse impacts to conflicting uses could be reduced to an acceptable level. OAR 660-016-00005 states, in part, "Where conflicting uses have been identified, Goal 5 resources may impact those sites." This indicates that the aggregate operations may indeed have an impact on conflicting uses within the impact area. The Planning Commission

finds the value of the aggregate resource does outweigh impacts to conflicting uses within the 1,500 foot impact area and that there is not substantial evidence in the record that explains how the outcome of the ESEE analysis would change significantly if the 1,500 impact area were altered.

With regards to other Goal 5 resources, under Policy 4 of the Comprehensive Plan Aggregate and Mineral Resources Element, "L" states "When analyzing the ESEE consequences of potential conflicts between significant mineral or aggregate resource and another significant Goal 5 resource, the county shall consider the protection program adopted for the conflicting resource. Conflicts with other natural resources shall not be the basis for mining restrictions unless the county has included or includes the conflicting resource on the inventory of significant Goal 5 resources, and has adopted or adopts a resource protection program." The Bear Creek Greenway and the Bear Creek riparian corridor are the only non-aggregate Goal 5 resources designated as significant resources in this area. With stipulations offered by the applicant for a Greenway trail easement and compliance with all applicable LDO standards and site-specific conditions required by the Planning Commission, the ESEE analysis is balanced toward allowing all aspects of the mining operation as depicted on the approved site and operations master plan map as amended by the Planning Commission (See Exhibit E attached to the Planning Commission's Recommendation); the applicant requested an amendment to Ordinance 95-61 to that would allow mining of Pit 2a and the Planning Commission finds that the potential for environmental and social impacts associated with this portion of the amendment request to that ordinance outweighs the value of aggregate mining in this area and based thereupon does not recommend an amendment to the ordinance to allow the mining of Pit 2a at this time.

The Planning Commission finds the aggregate resource and operations on the east side of Bear Creek should be designated a significant resource requiring protection under Jackson County's Goal 5 program for aggregate subject to applicable standards contained in the Land Development Ordinance, attached site specific conditions of approval, and approved site and operations master plan (See Exhibit E attached to the Planning Commission's Recommendation and Sections I, II, and IV of applicant's Exhibit 4 beginning at Record Page 330).

West Side of Bear Creek

Economic Consequences Allowing Conflicting Uses Fully:

Eliminating or limiting aggregate operations would result in lost employment opportunities and reducing the available aggregate resource in this area. This could cause an increase in transportation costs if material must be replaced

from another site that may not have existing infrastructure in place. There are several vacant and undeveloped parcels controlled by Rock 'N' Ready and providing Goal 5 protection and AR zoning for these lots will open opportunities for extraction and accessory aggregate operations where they now serve only to prevent incompatible uses from siting near the aggregate operations.

Economic Consequences of Allowing Surface Mining Operations Fully:

When tax lot 1900 was rezoned to AR by Ordinance 95-61, no extraction was allowed west of Bear Creek. There may be lost economic opportunities from noise and dust sensitive uses should extraction activities be allowed west of Bear Creek. There is a single vacant residentially zoned tax lot within the impact area applied through Ordinance 95-61. A Conditional Use Permit (Type 3 application) and approval of that application would be required to build a dwelling on that tax lot. The lost opportunities for new residential development would be minimal.

There are, however, existing residential development that could experience an increase in noise, dust, and viewshed impacts due to extraction and new processing activities on the west side of Bear Creek. The applicant has proposed six foot landscaped berms along Blackwell Road and around Pit 3, which will help reduce noise and viewshed impacts, and dust control procedures. There will be an increase in impacts, however slight or adverse, to existing residential development regardless of mitigation measures proposed by the applicant and incorporated as conditions of approval. The Planning Commission finds that these impacts are likely to be most acute in the southwest corner of the proposal (TL's 800, 900, 1200, 1300, and 1500) because of the immediate vicinity of two residential units zoned for residential use.

With regards to farm uses in this area, the EFU lands are well suited to agricultural production, but the predominant farm uses are not noise or dust sensitive. West of Bear Creek, there area three farming operations currently in production. South of the existing extraction operation on tax lots 1101/2604 is the Von der Helen farm, which is a field farming operation. These farming activities appear to have continued without changes over the last six years and that the mining activities and extraction areas on tax lots 800, 900, 1200, 1300, and 1500 would expected to result in a net decrease from the current impacts from mining operations on tax lots 1101/2604, which will be reclaimed prior to opening Pit 4. Southwest of the existing extraction area is the Hong farm, which is also a field farming operation and appear to be similar to the Von der Helen operations. There appear to have been no change in farming activities due to existing aggregate operations in the last six years. There will be a modest increase in current impacts from aggregate operations and

accessory mining activities associated with proposed Pit 3 following reclamation of the pit on tax lot 1101/2604.

The third farming operation involves the Walker elk ranching operation. The operation breeds and raises elk and includes properties on the west and east sides of Blackwell Road. The portion of the ranching operations east of Blackwell Road on tax lot 2600 in Section 28 will be most impacted by the proposed AR zoning and aggregate operations. This tax lot has aggregate hauling and extraction on the east boundary with the principal extraction area to the southeast. North and northeast of tax lot 2600 are the existing preprocessing area, stockpiling areas, and the concrete batch plant. To the west of these existing operations are the proposed pre-processing areas, stockpiling areas, and an asphaltic batch plant. The accessory mining activities and extraction area associated with Pit 3 will cause no net increase in current impacts from existing mining operations because the screening will have reached maturity prior to extraction in accordance with the phasing plan. A 200 foot setback from aggregate operations on tax lot 1800 has been maintained as well as a similar setback on tax lot 1700. This buffering has been sufficient for the elk ranch over the past six years and that approval of the proposed mining operations and AR zoning would not be expected to result in new impacts that would significantly increase the cost of or significantly alter the ranching operations. The proposed AR zoning is unlikely to significantly increase the cost of farming practices or force a significant change in the farming practices on other less intensive agricultural operations in the existing and proposed impact areas west of Bear Creek.

There will be impacts to existing farming operations in this area. Mitigation measures such as dust control and landscaped berms proposed by the applicant will help to reduce impacts on farming activities. Staff recommended a 200 foot setback from the elk ranch boundaries for aggregate extraction activities associated with Pit 3 in its initial report, similar to the setback maintained on tax lot 1800.

Economic consequences associated with the GI zoning districts in the area are expected to be no more than minimal because industrial uses are high impact uses that either do not conflict with aggregate uses or would conflict at level that could be addressed at the site design stage. With respect to commercial uses in the small IC zoned parcel there are some uses that could be considered conflicting uses allowed in that zone. However, these are generally uses that could locate elsewhere in the County where conflicts are less acute and there are still uses allowed in the zone where conflicts could be balanced through the County's standard site development approval process with minimal consequences.

Economic Consequences of Protecting other Goal 5 Resources:

The Goal 5 resources associated with the west side of Bear Creek include the Bear Creek Greenway, Bear Creek and Jackson Creek riparian areas, and wetlands. Protection of these Goal 5 resources would limit the extraction areas for Pit 3 particularly. The applicant states that the Comprehensive Plan Goal 5 Background Document, pages 23-26, conclude that aggregate operations are a permitted use in the Bear Creek Greenway, provided the aggregate operations are a permitted use in the primary zoning district. The Jackson County Land Development Ordinance requires a Type 3 approval process. This concurrent application has been conditionally approved. The Bear Creek riparian area is subject to development standards in the LDO requiring at least a 50 foot riparian setback. The evidence indicates this setback can feasibly be met and will be exceeded for all of Pit 2 along Bear Creek. Wetlands are regulated by the Division of State Lands and evidence from DSL regarding approval of development within these wetlands will be a condition of approval prior to development within the wetlands. The Planning Commission finds that mitigation can be provided through the concurrent Type 3 application, LDO requirements, and DSL review.

Social Consequences of Allowing Conflicting Uses Fully:

The Planning Commission finds that farm uses, particularly near Pit 3, have been operating without the appearance of significant adverse impacts associated with current mining operations. Eliminating or limiting mining on the west side of Bear Creek would reduce affects of dust on farm uses and the deterioration of the viewshed due to mining operations.

Commercial development in the appropriate zoning districts would affect the mining operations should their presence limit or eliminate mining operations. Eliminating or limiting mining on the west side of Bear Creek would reduce affects of dust on commercial development and the deterioration of the viewshed due to mining operations, as well as a reduction affects produced by noise of the aggregate operation.

Eliminating or limiting mining on the west side of Bear Creek would reduce affects of dust and noise on residential development and the deterioration of the viewshed due to mining operations. The proposed dust control measures and landscaped berms would help reduce affects on residential and commercial development as well as farm uses

Social Consequences of Allowing Surface Mining Operations Fully:

The primary social consequences of allowing expanded aggregate operations fully would be dust, noise, deterioration of the viewshed, and smells from the asphaltic concrete batch plant. The applicant states the most serious land use conflicts would be on dwellings. There are approximately 25 residences

located within the impact area. Many of the social consequences are already occurring due to the existing aggregate operations on tax lot 1800, tax lots 1101/2604, and tax lot 1300 in Section 21 (Crater Sand & Gravel). Significant land use conflict intensification in not expected because of existing mining operations. The aesthetic impacts from the proposed aggregate operations on the west side of Bear Creek have the potential to be significant. This is because the existing residences are mostly concentrated on the east slope of the small hill on the west side of Blackwell Road, which overlooks the subject properties and proposed aggregate operations. Without screening, these residences would experience significant visual impacts. The applicant has proposed landscaped berms along Blackwell Road to help reduce noise and visual impacts, although the noise and visual impacts cannot be mitigated entirely.

Social Consequences of Protecting Goal 5 Resources:

Significant Goal 5 resources on the subject properties are the Bear Creek Greenway and the Bear Creek, Willow Creek and Jackson Creek riparian corridors. The applicant has proposed a setback from the banks of Bear Creek to protect the riparian corridor. This setback is approximately 100 feet from the bank, although not through the entire corridor on the subject parcels. The LDO provides for a minimum setback of 50 feet from the bank. The social consequences would be on the viewshed for the riparian corridor. The mining operations would not be affected significantly and the proposed setback by the applicant is greater than required by the LDO. Minimal impacts to the aggregate operations would occur if the riparian corridor of Bear Creek were fully protected. Staff recommended a similar setback from the banks of Jackson Creek be determined as a condition of approval in the initial staff report. At least a 50 foot setback from the bank should be required.

The Bear Creek Greenway has a limited area west of Bear Creek. Pit 4 would be most affected should the Greenway be protected fully, although the affect would be minimal. Protecting the Greenway fully would not significantly affect the mining operations on the west side of Bear Creek.

Environmental Consequences of Allowing Conflicting Uses Fully:

Reclamation of the aggregate pits on the west side of Bear Creek will create new waterfowl habitat and the extension of the Bear Creek Greenway. Limiting or eliminating aggregate operations may encourage the conversion of lands to alternative uses that may be more conflicting than aggregate operation.

The environmental consequences of allowing conflicting uses fully would be the protection of the stream corridors, fish habitat, and affects of dust and noise. The proposed mitigation measures for dust control, landscaped berms to reduce noise, and setbacks from stream banks will help to reduce these consequences to levels required by federal, state, and local agencies.

Environmental Consequences of Allowing Surface Mining Operations Fully:

Adverse environmental impacts are most likely to occur in the Bear Creek, Willow Creek, and Jackson Creek riparian corridor. Hydrophytic vegetation, water quality, and fish habitat could all be negatively impacted.

The Planning Commission finds that although negative impacts could occur by the expansion of aggregate operations to the west side of Bear Creek, requirements and regulations from federal, state, and local governmental agencies must be complied with prior to the beginning of operations. These requirements help reduce adverse environmental impacts.

Environmental Consequences of Protecting other Goal 5 Resources Fully:

The significant Goal 5 resources which are protected are the Bear Creek Greenway and the riparian areas for Bear Creek, Jackson Creek, and Willow Creek. Limiting or eliminating mining to protect these resources could restrict mining to the east side of Bear Creek and allow only existing operations to continue on the west side of Bear Creek. The balance for protecting conflicting Goal 5 resources is found in the LDO requirements for riparian corridor protection and the Type 3 review process for the Bear Creek Greenway. The Planning Commission finds that these resource protection programs in the LDO provide the proper balance between conflicting Goal 5 resources.

Energy Consequences of Allowing Conflicting Uses Fully:

The Planning Commission finds that allowing conflicting uses fully by limiting or elimination expanded aggregate operations to the west side of Bear Creek could increase energy requirements to mine, process, and distribute aggregate materials to needed construction sites. This is due to locating aggregate operations in areas which are not as well situated to provide for efficient aggregate extraction, processing, and distribution.

Energy Consequences of Allowing Surface Mining Operations Fully:

Aside from post-mining reclamation and mining inputs during mining operations, no adverse energy consequences area anticipated.

Energy Consequences of Protecting other Goal 5 Resources Fully:

Protecting Goal 5 resources fully could limit or eliminate mining operations on the west side of Bear Creek. The energy consequences could increase energy requirements to mine, process, and distribute aggregate materials because of locating aggregate operations in other areas. Goal 5 resource are protected through requirements for development within riparian corridors and the Bear Creek Greenway.

Relative Value or Use of the Aggregate Resource Site as Compared to Existing or Potential Conflicting Uses:

The Goal 5 language in Division 16 states "In conjunction with the inventory of mineral and aggregate resources, sites for removal and processing of such resources should be identified and protected." Prohibition of any extraction west of Bear Creek, failure to recognize the area west of Bear Creek as a significant aggregate resource site, and protecting existing operations and activities would not result in a balance that is consistent with Jackson County's aggregate policies and Statewide Planning Goal 5. This area west of Bear Creek has a greater concentration of conflicting land uses. Full preservation of the proposed aggregate resources and mining operations with little or no limitations would also result in a balance that is not consistent with Jackson County's aggregate policies and Goal 5. The Map Designations Element of the Comprehensive Plan specifically provides for balance between allowing conflicting uses fully and allowing aggregate mining operations fully by the incorporation of site development requirements into the ordinance designating the significant site.

As the Planning Commission deliberated through ESEE analysis process, the Commission found that some, but not all, of the applicant's requests applicable to the west side of Bear Creek represent an adequate balance of conflicting uses. The more northern portion of the requests applicable to Tax Lots 1700, 1800, 1900 (amendment of ordinance 95-61), 1400 and 1303 were found to meet the requirements of Jackson County's aggregate program with conditions of approval, proposed phasing plan, and screening. However, the Planning Commission's analysis raised concerns regarding the timing and extent of conflicting uses in the southwest corner of the project area. The Planning Commission recognizes that this area is intended in the Master Site and Operations Plan proposed by the applicant to be mined in the distant future and that land use changes in the interim may reduce the acute conflicting uses that presently exist. The Commission further recognizes that the site contains significant aggregate reserves such that failure to provide any protection under the Comprehensive Plan would not adequately balance this valuable resource against the conflicting uses in the area. Thus, the Planning Commission elects to balance the conflicting uses for Tax Lots 800, 900, 1200, 1300, and 1500 by designating the site significant, establishing an impact area, and designating these lots Aggregate Resource Land on the Comprehensive Plan, but not by rezoning these parcels to Aggregate Removal at the present time, because the Commission finds the level of social and economic impacts on the two immediately adjacent residences, and the elk farm to a lesser degree, too acute to warrant re-zoning at this time.

With regards to other Goal 5 resources, under Policy 4 of the Comprehensive Plan Aggregate and Mineral Resources Element, "L" states "When analyzing the ESEE consequences of potential conflicts between significant mineral or aggregate resource and another significant Goal 5 resource, the county shall consider the protection program adopted for the conflicting resource. Conflicts with other natural resources shall not be the basis for mining restrictions unless the county has included or includes the conflicting resource on the inventory of significant Goal 5 resources, and has adopted or adopts a resource protection program." The Bear Creek Greenway and the Bear Creek riparian corridor are the only Goal 5 resources designated as significant resources in this area. The applicant states that the Comprehensive Plan Goal 5 Background Document, pages 23-26 conclude that aggregate operations are a permitted use in the Bear Creek Greenway, provided the aggregate operations are a permitted use in the primary zoning district. The Jackson County Land Development Ordinance requires a Type 3 approval process. This concurrent application has been conditionally approved. The Bear Creek riparian area is subject to development standards in the LDO requiring at least a 50 foot riparian setback. The applicant indicates this setback can feasibly be met and will be exceeded for most of the site along Bear Creek.

The Planning Commission finds the aggregate resource and operations on the west side of Bear Creek should be designated a significant resource requiring protection under Jackson County's Goal 5 program for aggregate subject to applicable standards contained in the Land Development Ordinance, attached site specific conditions of approval, and approved site and operations master plan for the area re-zoned to Aggregate Removal and that the areas not re-zoned at this time will benefit from protection as a significant resource subject to additional approvals that may occur at such time as the conflicting use conditions can be addressed in a manner acceptable to the County.

ESEE CONCLUSIONS

Based upon the applicant's land use review and analysis and with those amendments discussed herein above, the Planning Commission concludes its foregoing ESEE analysis will adequately balance the relative value of conflicting uses and the aggregate resource sufficient to satisfy and

implement Jackson County's Goal 5 program for aggregate for the subject The subject properties are designated a '3C' site; the '3C' program determines that both the resource site and the conflicting uses are important relative to each other, and that the ESEE consequences should be balanced so as to allow the conflicting uses in a limited way so as to protect the resource site. Based upon its ESEE analysis above, the Planning Commission concludes the proposed aggregate uses east of Bear Creek will be relatively unconstrained by conflicting land uses, but should be balanced against competing Goal 5 resources, specifically the Bear Creek Greenway and the Bear Creek riparian corridor and is therefore protected as a '3C' site and the same will be accomplished through adherence to the approved site and operations master plan, requirements of the LDO, and discretionary conditions adopted by the Planning Commission. Based upon its ESEE analysis above, the Planning Commission concludes the proposed extraction area west of Bear Creek is more constrained by conflicting land uses, but should be balanced against competing Goal 5 resources and conflicting land uses subject to applicable standards contained in the Land Development Ordinance, attached site specific conditions of approval, and approved site and operations master plan for the area re-zoned to Aggregate Removal and that the areas not re-zoned at this time will benefit from protection as a significant resource subject to additional approvals that may occur at such time as the conflicting use conditions can be addressed in a manner acceptable to the County.

- vi) Decision on Program to Provide Goal 5 Protection. Based on the analysis of ESEE consequences, the County shall make a determination on the level of protection to be afforded each site. Each determination shall constitute a decision to comply with Goal 5 for the specific site, and shall be incorporated into the Comprehensive Plan, and reflected on the County zoning maps, as appropriate. The County shall make one of the following determinations:
 - a) Protect the resource site fully, allow surface mining. To implement this decision the County shall apply the Aggregate Removal zone. Development and use of the mineral or aggregate resource shall be governed by the standards within the Land Development Ordinance. As part of the final decision, the County shall adopt site-specific policies prohibiting the establishment of conflicting uses within the area designated as the Impact Area surrounding the Extraction Area.
 - b) Balance protection of the resource site and conflicting uses, allow surface mining. To implement this decision, the County shall apply the Aggregate Removal zone. Development and use of the mineral or aggregate resource shall be governed by the standards in the Land Development Ordinance and any other site-specific requirements designed to avoid or mitigate the consequences of conflicting uses

and adopted as part of the final decision. Development of conflicting uses within the Impact Area shall be regulated by the Land Development Ordinance and any other site-specific requirements designed to avoid or mitigate impacts on the resource site and adopted as part of the final decision.

c) Allow conflicting uses, do not allow surface mining. To implement this decision, the County shall not apply the Aggregate Removal zoning district. The site will not be afforded protection from conflicting uses, and surface mining shall not be permitted except through the permit review process in the Land Development Ordinance.

FINDING: The Based upon the applicant's land use review and analysis and with those amendments discussed herein above, the Planning Commission concludes its foregoing ESEE analysis will adequately balance the relative value of conflicting uses and the aggregate resource sufficient to satisfy and implement Jackson County's Goal 5 program for aggregate for the subject properties. The subject properties are designated a '3C' site; the '3C' program determines that both the resource site and the conflicting uses are important relative to each other, and that the ESEE consequences should be balanced so as to allow the conflicting uses in a limited way so as to protect the resource site. Based upon its ESEE analysis above, the Planning Commission concludes the proposed aggregate uses east of Bear Creek will be relatively unconstrained by conflicting land uses, but should be balanced against competing Goal 5 resources, specifically the Bear Creek Greenway and the Bear Creek riparian corridor and is therefore protected as a '3C' site and the same will be accomplished through adherence to the approved site and operations master plan, requirements of the LDO, and discretionary conditions adopted by the Planning Commission. Based upon its ESEE analysis above, the Planning Commission concludes the proposed extraction area west of Bear Creek is more constrained by conflicting land uses, but should be balanced against competing Goal 5 resources and conflicting land uses subject to applicable standards contained in the Land Development Ordinance, attached site specific conditions of approval, and approved site and operations master plan for the area re-zoned to Aggregate Removal and that the areas not re-zoned at this time will benefit from protection as a significant resource subject to additional approvals that may occur at such time as the conflicting use conditions can be addressed in a manner acceptable to the County.

vii) Establishment of Zoning District:

The Aggregate Removal (AR) zoning district will be applied when an aggregate site plan consistent with the requirements of this Section has been approved by the County. The site plan will be adopted by ordinance concurrent with the map designation amendment and zone change application. The approving ordinance will serve as the development ordinance for land uses on the subject property.

FINDING: The Planning Commission interprets this criterion to require the adoption of a site and operations plan that contains sufficient specificity to complete the ESEE analysis and implement a Goal 5 protection program for the site. The Planning Commission finds that such a plan was offered by the applicant, has been amended by the Commission through the Goal 5 review, and the Commission has approved such a plan; the approved plan is constituted by the plan map attached to the Planning Commission's Recommendation as Exhibit E, the attached conditions of approval, and Sections I, II and IV of applicant's Exhibit 4.

B) Aggregate and Mineral Resources Element

i) Policy 1:

Minerals are recognized as a nonrenewable and necessary resource that must be protected from incompatible development and be available for mining.

FINDING: The Planning Commission finds that the location, quality, and quantity data indicate the aggregate resources on the subject properties are a significant Goal 5 aggregate resource. A Goal 5 protection program compliant with OAR 660, Division 16 is included in this report.

ii) Policy 2:

The County shall protect and conserve aggregate resources, reduce conflicts between aggregate operations and adjacent land uses, and ensure that aggregate resources are available for current and future use.

FINDING: The Comprehensive Plan findings supporting this policy state that sensitive agricultural areas are often located near key deposits of concrete aggregates, sand, and gravel, on high and low floodplains and terrace lands. One of the specific areas identified in these findings is the lower Bear Creek floodplain. This area contains one of the largest deposits of sand and gravel within an economical distance of the urbanizable areas of White City, Central Point, and Medford. These same floodplains are also classified as agricultural land by statewide planning goal definition. The ESEE analysis shows the subject properties are not constrained by noise and dust sensitive agricultural operations on surrounding lands, although aggregate operation may impact adjacent agricultural activities. The Planning Commission incorporates and adopts its ESEE analysis above and finds it is a site specific analysis that will protect and conserve aggregate resources, reduce conflicts between aggregate operations and adjacent land uses, and ensure that aggregate resources are available for current and future use.

iii) Policy 3:

Emphasis will be placed on the zoning of lands for aggregate resource purposes near each urban center and key rural community in the County.

FINDING: The Planning Commission finds the subject properties are well situated near the urban centers of White City, Central Point, and Medford.

iv) Policy 4:

When an aggregate site is no longer suited for aggregate operations, a change from aggregate resource zoning to another zoning designation is desirable. The proposed zoning must be consistent with the Comprehensive Plan ordinances, and reclamation plan.

FINDING: The Planning Commission finds that is has contemplated uses such as Greenway trail extension and future reclamation of the site, but that application of this policy with respect to specific land uses will be deferred until the depletion of aggregate resources is more readily anticipated.

v) Provisions A through U are criteria that are implemented through various other sections of the Jackson County Comprehensive Plan and Land Development Ordinance, and ESEE process.

FINDING: The Planning Commission incorporates and adopts applicant's conclusions of law addressing provisions A through U except as amended in the ESEE analysis above, sufficient to find the minor Comprehensive Plan Map amendment complies with these criteria.

C) Transportation Element

The Jackson County Transportation Plan (TSP) is acknowledged as being consistent with the Transportation Planning Rule. Applicable policies of the TSP are addressed below.

i) Safety Policies

a) The County will provide a transportation system that supports emergency access for emergency vehicles and provides for evacuation in the event of a wildfire hazard or other emergency.

Strategies:

(1) Establish and maintain land development ordinance regulations that assure minimum emergency vehicle access standards are provided for all development. These standards should provide base-line safety protections that are related to the total amount of development that would use the access in the event of an emergency.

FINDING: Emergency vehicle access standards are addressed in the site plan review and a condition of approval will require compliance with the standards of Section 8.7 of the LDO.

b) Public Safety will be a primary consideration in the planning, design, and maintenance of all Jackson County Transportation Systems.(RTP 16-4)

FINDING: A Traffic Impact Study has been submitted for access from Blackwell Road. The conclusions of the study require a southbound left turn lane from Blackwell Road when the asphaltic batch plant is built. The left turn lane will be located at the existing access. A new access road is proposed 1,400 feet south of the existing access. The new access to the asphaltic batch plant will be a "Right Turn In Only." This new access will be a one-way street circulation for a more efficient and safe operation. Trucks will exit from the existing main entrance.

Jackson County Roads has reviewed the Traffic Impact Study and concurs with its findings. In its deliberation, the Planning Commission determined it appropriate to get preliminary approval of the left-turn lane and determine the need for any new right of way prior to design and installation of the berms along Blackwell Road and the conditions of approval reflect the same. The Planning Commission incorporates and adopts the findings of applicant's TIS as evidence sufficient to establish minimum transportation safety standards will be maintained.

c) Maintain clear vision areas (sight triangle) adjacent to intersections so as not to obstruct the necessary views of motorists, bicyclists, and pedestrians. (RTP 16-3)

Strategies:

(1) Maintain development ordinance regulations that will assure adequate sight distances at intersections.

FINDING: The Traffic Impact Study states there is adequate sight distance at the existing main entrance.

ii) Transportation and Land Use Coordination Policies

a) The County will prohibit new or expanded development proposals with the potential to prevent placement of, or significantly increase the cost of, designated transportation connections in the TSP.

Strategies:

(1) Establish and maintain development review procedures that will prevent conflicts between development and future transportation facilities and connections.

FINDING: The TIS states that the proposal will not conflict with future transportation facilities and connections, specifically the Seven Oaks Interchange, which has an approved and funded up-grade with a completion date scheduled for the fall of 2008.

b) Plan amendments, zone changes and type 3 and 4 land use permits need to demonstrate that adequate transportation planning has been done to support the proposed land use.

Strategies:

- (1) Inside urban growth boundaries, demonstration of adequate transportation facilities for a land-use action should defer to the city's adopted Transportation System Plan; this deference should occur in accordance with any applicable provisions in the Urban Growth Management Agreement between the particular city and the County. Absent an adopted Transportation System Plan for the applicable city, land use actions related to transportation planning and transportation project decisions will be based on the Jackson County Transportation System Plan; application of the County TSP in this situation should account for any applicable provisions in the Urban Growth Management Agreement between the particular city and the County.
- (2) Ensure that legislative land use changes will not result in land uses that are incompatible with the public transportation facilities they will use through compliance with, and direct application of, OAR 660 Division 12.
- (3) Ensure that quasi-judicial comprehensive plan changes, zone changes and type 3 and 4 land use permits will not result in land uses that are incompatible with the public transportation facilities they will use. To meet this requirement, criteria "i, ii and iii" below must be demonstrated to be met through a Transportation Impact Study (TIS) completed by a registered professional engineer with expertise in transportation. Compliance with criteria "i, ii and iii" will be considered sufficient to demonstrate compliance with the Transportation Planning Rule. The TIS requirement may be waived if the Planning Director and the County Engineer administratively concur in writing that sufficient specific evidence is provided

from affected transportation management agencies that the cumulative effect of approving the proposed plan amendment, zone change or type 3 or 4 land use permit, along with the potential for similar approvals on similarly situated parcels within 2 miles (.75 miles in the MPO) of the subject parcel (or portion of the parcel that is requesting the land use change or permit), will not significantly affect a transportation facility identified in State, regional or local transportation plans (RTP 6-1).

- (a) Approval of the proposed changes and the cumulative impact of the potential for similar approvals on parcels within 2 miles (.75 miles in the MPO) of the subject parcel would not change the functional classification of an existing or planned transportation facility nor would it change standards implementing the functional classification system (unless the change can be made in conjunction with a TSP amendment pursuant to policy 4.3.3-D).
- (b) Approval of the proposed changes and the cumulative impact of the potential for similar approvals on parcels within 2 miles (.75 miles in the MPO) of the subject parcel would not allow types or levels of land uses that would result in levels of travel or access inconsistent with the functional classification of a transportation facility (unless a functional class change is made pursuant to policy 4.3.3-D).
- (c) Approval of the proposed land use changes and the cumulative impact of the potential for similar approvals on parcels within 2 miles (.75 miles in the MPO) of the subject parcel would not cause a facility to exceed the adopted performance standards for facilities used by the subject parcel is defined as any facility where approval of the proposed land use changes and the cumulative impact of the potential for similar approvals on parcels within 2 miles (.75 miles in the MPO) of the subject parcel would increase traffic on a facility by more than 3% of the total capacity for collectors and/or 2% of

the total capacity for arterials and state highways. ODOT may determine that the subject parcel, beyond this definition and in accordance with the Oregon Highway Plan, will use additional state facilities.

FINDING: Jackson County has signed a capacity analysis waiver dated August 26, 2005. The waiver stipulates to a safety analysis, which has been completed and submitted. The proposed Comprehensive Plan map and Zoning Map Amendment will not change the functional classification of any existing or planned transportation facility nor will it change standards implementing the County's functional classification system. The left turn lane mitigation will assure the project will not create or worsen a safety problem on Blackwell Road.

- (4) Projects proposed in the TSP towards the end of the planning horizon cannot be relied on for quasi-judicial plan amendments, zone changes or type 3 and 4 land use permits. TSP projects on state highways cannot be relied on unless in an adopted STIP. TSP planned projects may have to be altered or cancelled at a later time to meet changing budgets or unanticipated conditions such as environmental constraints. However, quasi-judicial plan amendments, zone changes or type 3 and 4 land use permits may demonstrate compliance with strategy "c." based on planned facility improvements under the following circumstances (and provided that an additional comprehensive plan amendment is not required as part of project development such as an ESEE):
 - (a) For ODOT facilities within the MPO, projects that are in the short and/or medium range Regional Transportation Plan (RTP) Tier 1 project list. For ODOT facilities outside the MPO, projects that are programmed into the STIP. (An alternate strategy for an ODOT facility may be to coordinate with ODOT on a change to the applicable Highway Plan requirements)
 - (b) For County facilities outside the MPO and local county facilities in the MPO, projects that are in the financially constrained TSP projects list and are in either the short and/or medium range Tier 1 lists.
 - (c) For regionally significant County facilities within the MPO, the facility must be in either the short and/or medium range RTP Tier 1 lists.

FINDING: This criteria does not apply to this application.

(5) If a concurrent quasi-judicial TSP amendment is submitted (See Policy 4.3.3-D) with the proposed comprehensive plan amendments and/or zone changes, the actions may be considered together. If the TSP amendment can be made then any changes included in the TSP amendment may be counted under section d for compliance with section c.

FINDING: This criterion does not apply.

c) Regardless of whether adequate capacity exists, changes in land use and new or expanded development proposals will not be approved if they will create, or would worsen, a safety problem on a public transportation system or facility. If a problem would be created or worsened without mitigation, then a mitigation plan that resolves the safety concern must also be approved and included in the proposal in order for the land use change and/or development proposal to be approved. Where a safety concern exists, study by a registered professional engineer with expertise in transportation will be considered to determine if a problem would be created or worsened.

FINDING: The TIS identifies a traffic safety concern and proposes mitigation by creating a southbound left turn lane into the existing main entrance once the asphaltic concrete batch plant is completed and a new access road with a "Right Turn In Only" for efficient and safe operation. Jackson County Roads has reviewed the Traffic Impact Study and concurs with its findings. In its deliberation, the Planning Commission determined it appropriate to get preliminary approval of the left-turn lane and determine the need for any new right of way prior to design and installation of the berms along Blackwell Road and the conditions of approval reflect the same. The Planning Commission incorporates and adopts the findings of applicant's TIS as evidence sufficient to establish minimum transportation safety standards will be maintained.

3) COMPLIANCE WITH THE LAND DEVELOPMENT ORDINANCE

A) Section 3.7: Any amendment must comply with all applicable Statewide Planning Goals, Oregon Administrative Rules and the Comprehensive Plan as a whole.

FINDING: Findings have been made regarding the Statewide Planning Goals, Oregon Administrative Rules and the Comprehensive Plan as they apply to this application. The Planning Commission finds the proposed land use changes comply with the adopted and acknowledged Comprehensive Plan and incorporate and adopt the Commission's findings of fact and conclusions of law demonstrating compliance with the Statewide Planning Goals Oregon Administrative Rules and the Comprehensive plan herein above.

Section 3.7.3(C), <u>Minor Comprehensive Plan or Zoning Map Amendments (Quasi-Judicial)</u> establishes procedures, standards, and criteria for minor map amendments.

 Adequate public safety, transportation, and utility facilities and services can be provided to the subject property. In the case of a minor zoning map amendment, adequate transportation facilities must exist or be assured.

FINDING: The only critical utility services for the aggregate operation are water and electricity. The applicant has an existing water right from the Rogue River Irrigation District to provide for the water needs of the operation. Electricity is available onsite. The operation accesses a collector road, Blackwell Road and the existing capacity of Blackwell Road will not be exceeded by the proposed aggregate operations.

ii) The minor map amendment will not prevent implementation of any area of special concern or restrictions specified for that area in Chapter 7 or the adopting ordinance creating it, or both.

FINDING: The Planning Commission finds that portions of the subject properties contain Area of Special Concern 82-2, the Bear Creek Greenway. Aggregate operations and the Bear Creek Greenway are competing Goal 5 resources. An ESEE analysis is required to balance competing Goal 5 resources. Commission finds that ASC 82-2 is principally concerned with the protection and preservation of riparian area to help facilitate Greenway trail extension and that with the stipulated easement offered by the applicant and the setbacks in the approved site and operations master plan this goal is served in accordance with the site-specific ESEE analysis above. The Planning Commission recognizes applicant's argument that the Goal 5 Background Document includes an ESEE analysis for the Bear Creek Greenway and that analysis determined aggregate operations are a permitted use in the Bear Creek Greenway. However, the current LDO indicates that aggregate operations must go through a Type 3 review. The Planning Commission finds that the applicant has submitted a Type 3 review addressing applicable criteria and that this application can be conditionally approved and the same is accomplished in this report herein below. The Planning Commission thus finds that, because a Type 3 application can be approved for the site, the legal esoteric argumentation regarding the applicability of the Type 3 criteria need not be reached and the Planning Commission thus concludes the criterion is met based upon demonstration of compliance with the Type 3 criteria as addressed herein.

iii) On resource zoned lands outside urban growth boundaries, the entire parcel is included in the minor Comprehensive Plan Map unless the purpose of the amendment conforms with the criteria of Policy 1 of the Comprehensive Map Designations Element.

FINDING: Some of the subject properties east of Bear Creek are resource zoned parcels for which the applicant requested only a portion of the parcel be designated

Aggregate Resource and rezoned to Aggregate Removal (Tax Lots 100, 200, and 2600 west of the irrigation ditch). Policy 1 of the Map Designations Element allows for a portion of a resource zoned parcel to obtain a new Comprehensive Plan map designation and be rezoned if it is to implement protection of a Goal 5 resource and in this case the change is from one resource designation to another (Agricultural Land to Aggregate Resource Land).

iv) Map amendments outside urban growth boundaries and urban unincorporated communities that will result in a minimum residential lot size smaller than 10 acres meet the requirements for an exception to Statewide Planning Goal 14.

FINDING: This proposal will not result in a minimum residential lot size smaller than 10 acres.

v) Any minor Zoning Map amendment is consistent with the Comprehensive Plan Map designation.

FINDING: The Planning Commission herewith incorporate and adopt their findings of fact, ESEE analysis, and conclusions of law demonstrating the subject properties (or portions thereof in the case of TL 100, 200 and 2600) are appropriately designated Aggregate Resource. Through the ESEE process, the Planning Commission has concluded that Tax Lots 800, 900, 1200, 1300, and 1500 are not appropriately zoned Aggregate Removal at this time. All other parcels are appropriately designated Aggregate Removal and the same is consistent with the Aggregate Resource Comprehensive Plan Map designation herein approved.

vi) In the case of a minor Comprehensive Plan Map amendment, community benefit as a result of the minor map amendment is clearly demonstrated.

FINDING: The location, quality, and quantity of the aggregate resource has been shown to meet the criteria as a significant Goal 5 aggregate resource. Policy 2 of the Aggregate and Mineral Resources element establishes protection of aggregate resources through the Goal 5 process as a benefit to the community as a matter of policy. Based upon the Planning Commission's conclusion that the subject property is a Goal 5 aggregate resource worthy of protection and all analysis, evidence, and findings thereto, the Planning Commission finds that a community benefit is clearly demonstrated by operation of established policy.

vii) In determining the appropriateness of the proposed redesignation, the White City or Jackson County Planning Commission and Board of Commissioners will consider any factors relevant to the proposal, which may include: topography, geology, hydrology, soil characteristics, climate, vegetation, wildlife, water quality, historical or archaeological resources, scenic resources, noise, open space, existing site grading, drainage, adverse impacts on other

property in the vicinity, and any other factors deemed to be relevant to the application.

FINDING: The Planning Commission finds that the record is extensive and that all factors relevant to the proposal have been addressed through the ESEE analysis and hearings process.

- B) Type 3 Approval Criteria, Section 3.1.4(B)
 - i) The County may issue Type 3 and 4 Permits only upon finding that the proposed use is in conformance with any applicable development approval criteria or standards of the Comprehensive Plan, and all applicable standards of this Ordinance, and that all of the following criteria have been met:

FINDING: The Planning Commission recognizes the applicant's argument that the Goal 5 Background Document includes an ESEE analysis for the Bear Creek Greenway and that analysis determined aggregate operations are a permitted use in the Bear Creek Greenway. However, the current LDO indicates that aggregate operations must go through a Type 3 review. The Planning Commission finds that the applicant has submitted findings of fact and conclusions of law addressing the Type 3 review criteria. The Planning Commission thus finds that, because a Type 3 application can be approved for the site in accordance with its findings of fact and conclusions of law hereinbelow, the legal esoteric argumentation regarding the applicability of the Type 3 criteria need not be reached and the Planning Commission thus concludes the criterion is met based upon demonstration with Compliance with the Type 3 criterion. The Planning Commission herewith incorporates and adopts applicant's conclusions of law with respect to geographic applicability of the Greenway provisions to that specific area identified as ASC 82-2 on the 1982 zoning maps at Record Page 343. Based upon its findings of fact and conclusions of law provided elsewhere herein, the Planning Commission finds it has addressed all applicable LDO requirements and has identified and determined compliance with those Comprehensive Plan provisions that operate as approval criterion.

(1) The proposed use will cause no significant adverse impact on existing or approved adjacent uses in terms of scale, site design, and operating characteristics (e.g., hours of operation, traffic generation, lighting, noise, odor, dust, and other external impacts). In cases where there is a finding of overriding public interest, this criterion may be deemed met when significant incompatibility resulting from the use will be mitigated or offset to the maximum extent practicable.

FINDING: The record demonstrates that, with approval of the requested Comprehensive Plan Map amendments and zoning map amendments as approved by the Planning Commission, that portion of the Greenway where the proposed uses will be located will be

surrounded by aggregate operations that can be expected to be similar with respect to scale, site design, and operating characteristics such that significant adverse impacts are not expected.

The Planning Commission finds that a date for completion of this section of the Greenway is unknown and is not anticipated within the near future. The focus has been on completing the Greenway from Ashland to Central Point. At this point in time, the aggregate operations near or within the mapped Greenway will cause no adverse impacts to the Greenway because it does not currently exist and it is not known if it will ever be completed through this area. A letter from Karen Smith, Special Projects Manager, states that a perpetual trail easement would assure an effective balance between the conflicting Goal 5 resources of aggregate and the Bear Creek Greenway. The reclamation of Pit 2 on the east side of Bear Creek will create waterfowl habitat and wetlands, which would enhance the viewshed from any proposed Greenway trail. Staff recommends that a perpetual trail easement be required as a condition of approval to allow a trail to be built through the subject properties, should the Greenway trail be extended to this area.

(2) Adequate public facilities (e.g., transportation) are available or can be made available to serve the proposed use;

FINDING: Water and electricity are the only critical facilities for the aggregate operations. A water right with the Rogue River Irrigation District currently exists and electricity exists onsite. A Traffic Impact Study has been completed and the conclusion of that study requires a southbound left turn lane at the existing main entrance shall be built when the proposed asphaltic batch plant is completed. This will be a condition of approval for this review.

(3) The proposed use is not a conflicting use certified in an adopted Goal 5 ESEE applicable to the parcel, or if an identified conflicting use, one that can be mitigated to substantially reduce or eliminate impacts;

FINDING: The Planning Commission finds the aggregate resources in this area and the Bear Creek Greenway are both conflicting uses already certified as such in adopted Goal 5 ESEE analyses. The Planning Commission construes this criterion as a protection measure for Goal 5 resources from non-Goal 5 conflicting uses. The criterion includes no provision to balance competing Goal 5 resources that mutually conflict with one another. This criterion does not, however, preclude the County from certifying a site-specific ESEE analysis that balances impacts to competing Goal 5 resources, consistent with the Goal. The Planning Commission incorporates and adopts its ESEE analysis herein above as a site specific ESEE analysis that balances the Bear Creek Greenway and Aggregate Resources and that the site and operations master plan approved herein will allow mining with certain restrictions to assure protection of the Bear Creek Greenway. The Planning Commission finds that ASC 82-2 is principally concerned with the protection and preservation of riparian area to help facilitate Greenway trail extension and that with the stipulated easement offered by the applicant and the setbacks in the approved site and operations master plan this goal is served in accordance with the site-specific ESEE analysis above.

(4) The applicant has identified and can demonstrate due diligence in pursuing all Federal, State, and local permits required for development of the property; and

FINDING: The Planning Commission finds the record contains extensive evidence concerning the pursuit of required Federal, State, and local permits for the proposed aggregate operation expansion. To-date, the record contains no substantial evidence that the applicant cannot feasibly obtain any required permit and obtainment of the same will be required as a condition of approval.

(5) On land outside urban growth boundaries and urban unincorporated communities, the proposed use will either provide primarily for the needs of rural residents and therefore requires a rural setting in order to function properly, or else the nature of the use (e.g., an aggregate operation) requires a rural setting, even though the use may not provide primarily for the needs of rural residents. Churches and schools however are not subject to this criterion.

FINDING: The requested aggregate use require a rural setting, as indicated in the text of the criterion.

CONCLUSION: Based upon its findings above herein incorporated and adopted, the Planning Commission concludes that, with the proposed conditions of approval, the application complies with the Type 3 criteria of Section 3.1.4(B).

C) Site Plan Review for Aggregate Operation in an Aggregate Removal Zoning District. Section 4.4.5 and 4.4.8

Section 4.4.5

The use may be approved only where the use:

- i) Will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; and
- ii) Will not significantly increase the cost of accepted farm or forest practices on lands devoted to farm or forest use.

FINDING: Aggregate operations have existed in the area for many years. The Planning Commission finds that the evidence indicates that there appears to have been no changes in the farming practices over the last six years due to the existing operations.

Section 4.4.8

Prior to commencement of new or expanded operations for mining, crushing, stockpiling or processing of aggregate or other mineral resources, evidence shall be submitted showing that the operation will comply with the following operating standards, in addition to any requirements and conditions that were placed on the site at the time it was designated AR, or that were otherwise required through the Goal 5 process, or approved through a mining permit issued by the County. In AR zones, if the Board Ordinance designating the site AR required a higher level of review than shown in Table 4.4-1, the review and noticing requirements of the Board Ordinance will be used.

 All necessary County and state permits have been obtained, and a current Department of Geology and Mineral Industries (DOGAMI) operating permit has been issued. Equipment testing necessary to obtain permits is allowed.

FINDING: A condition of approval will require that all necessary County and state permit have been obtained and a current DOGAMI operating permit has been issued.

ii) All facets of the operation will be conducted in a manner that complies with applicable DEQ air quality, water quality and noise standards, and in conformance with the requirements of the DOGAMI permit for the site.

FINDING: This will be a condition of approval.

iii) A site reclamation plan, approved by DOGAMI, has been submitted for inclusion in Planning Department records. Such plan must return the land to natural condition, or return it to a state compatible with land uses allowed in the zoning district or otherwise identified through the Goal 5 review process.

FINDING: This will be a condition of approval.

iv) A written statement from the County Road Department and/or ODOT has been submitted verifying that the public roads that will be used by haul trucks have adequate capacity and are, or will be, improved to a standard that will accommodate the maximum potential level of use created by the operation. The property owner or operator is responsible for making all necessary road improvements, or must pay a fair share for such improvements if agreed to by the County Road Department or ODOT.

FINDING: A letter from Jackson County Roads states that the use meets capacity requirements for Blackwell Road. A Traffic Impact Study requires a southbound left turn lane be built at the existing main entrance when the proposed asphaltic concrete batch plant is built and the applicant has stipulated to construction of the same.

- v) On-site roads and private roads from the operating area to a public road have been designed and constructed to accommodate the vehicles and equipment that will use them, and meet the following standards:
 - (1) All access roads within 100 feet of a paved public road are paved, unless the operator demonstrates that other methods of dust control will be implemented.
 - (2) All unpaved roads that will provide access to the site or that are within the operating area will be maintained in a dust-free condition at all points within 250 feet of a dwelling or other identified conflicting use.

FINDING: The Planning Commission finds that the initial staff report had identified a concern that the applicant was attempting to subvert the paving requirements. The Planning Commission finds based upon the site plans and testimony at the hearing that this is not the case and that all required paving will be provided and in addition the applicant has stipulated to exceed the paving requirements for main haul roads to minimize air quality impacts and the same are appropriate. The above requirements together with applicant's stipulations will be made conditions of approval.

vi) If the operation will include blasting, the operator has developed a procedure to ensure that a notice will be mailed or delivered to the owners and occupants of all residences within one-half mile of the site at least three working days before the blast. The notice must provide information concerning the date and time that blasting will occur, and must designate a responsible contact person for inquiries or complaints. Failure to notify neighbors and the County before blasting is a violation of this Ordinance for which a citation may be issued. Notice will be deemed sufficient if the operator can show that the notices were mailed or delivered, even if one or more of the households within the notice area did not receive the notice.

FINDING: This will be a condition of approval.

vii) The operation is insured for a minimum of \$500,000 against liability and tort arising from surface mining, processing, or incidental activities conducted by virtue of any law, ordinance, or condition. Insurance shall be kept in full force and effect during the period of such activities. Evidence of a prepaid policy of such insurance which is in effect for a period of one year shall be deposited with the County prior to commencing any operations. The owner or operator shall annually provide the County with evidence that the policy has been renewed.

FINDING: Evidence of insurance has been submitted. This criterion is met.

- viii) The operation will observe the following minimum setbacks except where the operation is lawfully preexisting and encroachment within the prescribed setbacks has already occurred:
 - (1) No extraction or removal of aggregate/minerals will occur within 25 feet of the right-of-way of public roads or easements of private roads.
 - (2) Processing equipment, batch plants, and manufacturing and fabricating plants will not be operated within 50 feet of another property or a public road right-of-way, or within 200 feet of a residence or residential zoning district, unless written consent of the property owner(s) has been obtained.

FINDING: These setbacks will be conditions of approval.

ix) If the aggregate removal and surface mining operation will take place within the Floodplain Overlay the requirements of Section 7.1.2 have been met.

FINDING: Based upon the Planning Commissions findings of fact and conclusions of law addressing Section 7.1.2 incorporated and adopted herein, the requirements of Section 7.1.2 can feasibly be and will be met with appropriate conditions of approval.

- x) Mining and processing activities, including excavated areas, stockpiles, equipment and internal roads, will be screened from the view of dwellings, scenic resources protected under ASC 90-9, and any other conflicting use identified through the Goal 5 process or Type 3 review. Screening may be natural or may consist of earthen berms or vegetation which is added to the site. If vegetation is added, it shall consist of alternating rows of conifer trees planted six feet on center and a height of six feet at the commencement of the operation. An exemption to the screening requirements may be granted when the operator demonstrates any of the following:
 - (1) Supplied screening cannot obscure the operation due to local topography.
 - (2) There is insufficient overburden to create berms, and planted vegetation will not survive due to soil, water, or climatic conditions.
 - (3) The operation is temporary and will be removed, or the site will be reclaimed within 18 months of commencement.
 - (4) The owner of the property containing the use from which the operation must be screened, has signed and recorded a restrictive deed declaration acknowledging and accepting that the operation will be visible and that the operator will not be required to provide screening.

FINDING: The Planning Commission finds are only a few dwellings from which the operation east of Bear Creek may be visible and these dwellings are located on a steep bench that topographically precludes effective screening. The applicant offers no screening on the east side of Bear Creek other than the screening supplied by the preservation of the Bear Creek riparian corridor. This meets the exemption criteria for screening for the operations on the east side of Bear Creek.

The applicant proposes to build earthen berms topped with the prescribed vegetative screening along property lines depicted on the site plan for the area west of Bear Creek. By phasing the extraction and allowing the screening to fill in prior to mining in the area west of Bear Creek, the operation will be screened in accordance with this standard. Because the Planning Commission denied the zoning map amendment applicable to the southwest corner of the project, the screening initially proposed by the applicant in this area is not required. The Planning Commission deliberated regarding the location and adequacy of the screening and concluded the proposed screening is adequate, but should not be constructed until right-of-way dedications, if any, for construction of the left-turn lane are known. The topography west of Blackwell Road is such that all dwellings on this hill may not be completely screened, according to the exemption above. A condition of approval requires the applicant to provide screening as depicted on the site plan and in compliance with the plan showing the configuration of a typical berm.

xi) Existing trees and other natural vegetation adjacent to any public park, residential zoning district, or parcel on which a dwelling is situated will be preserved for a minimum width of 25 feet along the boundary of the property on which the operation is located.

FINDING: This will be a condition of approval.

- xii) Operations will observe the following hours of operation:
 - (1) Mining, processing, and hauling from the site are restricted to the hours of 6 a.m. to 7 p.m. Monday through Saturday. The hours of operation do not apply to hauling for public works projects.
 - (2) Neither mining, processing, nor hauling from the site will take place on Sundays or the following legal holidays: New Year's Day, Memorial Day, July 4, Labor Day, Thanksgiving Day, and Christmas Day.
 - (3) An exemption to the hours of operation may be requested. Notice of the proposed change in operating hours must be provided to all property owners within 1,000 feet radius of the aggregate removal or surface mining operation, to residences within one-half mile of the site, and to owners of property

adjacent to private site access roads. If no request for a public hearing is made within 12 calendar days of mailing said notice, the operating hours can be changed as requested by the operator. If a request is made for a public hearing, adjustment of standard operating hours shall be determined by the Hearings Officer, subject to findings that the proposal is consistent with the best interests of public health, safety, and welfare and that the operation will not conflict with other land uses.

FINDING: These will be conditions of approval.

CONCLUSION: The Planning Commission concludes that the proposed aggregate operations can feasibly and will be required meet the criteria of Sections 4.4.5 and 4.4.8. through imposition of appropriate conditions of approval. The Planning Commission incorporates and adopts the applicant's argument and conclusions at Record Page 1565 with respect to applicability of site development plan review criteria and based thereupon concludes the above criteria constitutes the only applicable criteria.

D) Section 7.1.2, Floodplain Review

- The scientific and engineering report prepared by the Federal Emergency Management Agency (FEMA) entitled The Flood Insurance Study for Jackson County, dated April 1, 1982 or as hereafter amended, along with accompanying Flood Insurance Rate Maps (FIRM) and Flood Boundary and Floodway Maps (FBFM), are hereby adopted by reference and declared to be a part of this Section. These documents will be the means for establishing the location of the 100-year floodplain. The Flood Insurance Study is on file with the County.
- The floodway has been established as shown on the FIRM or Floodway Boundary and Floodway Maps (FBFM). A floodway will be presumed to exist in the Approximate A zone, as shown on the FIRM. An applicant may offer evidence establishing the location of the floodway where one has not been established. This evidence will be prepared in accordance with accepted engineering practices and must be certified by an Oregon registered professional engineer. Such evidence may be accepted or rejected by the County. It will be presumed that the floodway is equally distributed on either side of the centerline of the stream. Along the Applegate River the requirements of Section 7.1.2(F)(7)(d) shall be used in lieu of the floodway determination of this Section.

FINDING: The applicant has submitted a flood study by the Galli Group, Geotechincal Consultants, William Galli, P.E. The project includes a bridge across Bear Creek, which went through a Type 1 review that was later rescinded by Jackson County. The project includes

fill and removal in the floodplain in association with aggregate Pits 2 (Pit 4 will be engineered and the same approved prior to extraction in that area), as well as a proposed road on the east side of Bear Creek. The applicant's engineer used the HEC-RAS flood analysis software to calculate flood elevations along Bear Creek through the Rock 'N' Ready site in accordance with generally accepted engineering practices. The floodplain and floodway boundaries as shown on the FIRM panels are different than those determined by recent flood study. This flood study was updated to respond to appropriate technical concerns raised in the hearings process. However, the Planning Commission finds that the record is clear that the site includes both floodway and floodplain development and thus requires demonstration of compliance the Floodplain Development standards of this section which is not mapping exercise but rather involves demonstration of compliance with standards that pertain to water surface elevations and velocities. The applicant has stipulated to complete a Letter of Map Revision through FEMA to assure a consistent regulatory framework. Commission finds the LOMA (or similar FEMA process) is an appropriate discretionary condition due to the size and extent of the project but the Commission does not interpret the code to require, nor is there express code language that requires, the LOMA be completed in order to demonstrate compliance with the County's floodplain development regulations as a matter of law.

iii) Determining Base Flood Elevation

- (1) In areas where base flood elevation profiles are available from the FIRM or from the Flood Insurance Study profiles, the base flood elevation at the proposed building site will be extrapolated from the elevations that are immediately upstream and downstream from the location of the proposed use.
- When base flood elevation data has not been provided by FEMA, the applicant will employ an Oregon registered professional engineer to prepare a report certifying the base flood elevation, examples of which are described in FEMA publication FEMA 265, Managing Floodplain Development in Approximate Zone A Areas: A Guide For Obtaining And Developing Base (100-Year) Flood Elevations (Detailed Methods Chapter). The report will set forth the elevation of the 100-year flood, and will cite the evidence relied upon in making such determination. The calculated base flood elevation may be from mean sea level or may be based on an assumed elevation when tied to a benchmark. The location of the benchmark will be described in the report and shown on a map that must be included with the report. The report may be accepted or rejected by the County.
- (3) Where base flood elevation data has not been provided by FEMA, in lieu of a report by an Oregon registered professional engineer as outlined in (2) above, the applicant may choose to elevate a structure at least three feet above the highest adjacent natural grade, provided

that the structure is not located in the presumed floodway as described in Section 7.1.2(C)(2) and all riparian setbacks will be met. Elevation Certificate documentation described in 7.1.2(B)(4) is required. All other development standards of Section 7.1.2(F) will be met. Use of this elevation standard could result in increased flood insurance premium rates.

FINDING: The Planning Commission finds the updated flood study water surface elevations submitted by the Galli Group are compared to FEMA water surface elevations at Record Pages 910 and 911 and the Planning Commission adopts and incorporates this evidence as sufficient to find the special flood study water surface elevation data prepared by the Galli Group is substantially consistent with the FEMA water surface elevations for the project area. The Planning Commission finds the special study applicable to site prepared by the Galli Group constitutes a higher resolution refinement of the FEMA water surface elevations sufficient to determine compliance with the criteria for approval of a floodplain development permit

iv) Criteria for Approval

Prior to approval of floodplain review, the County will determine all of the following:

- (1) That all applicable development standards of Section 7.1.2(F) can feasibly be met;
- (2) That applications have been submitted or all necessary permits have been obtained from those federal, state, or local governmental agencies from which approval is required by law. Copies of all permits must be submitted to the County prior to initiation of the development.

FINDING: Development standards of Section 7.1.2(F) can and must be met and a condition of approval will require that applications have been submitted or all necessary permits have been obtained from those federal, state, or local governmental agencies from which approval is required by law. Copies of all permits must be submitted to the County prior to initiation of the development. The Planning Commission finds the record contains conflicting evidence regarding permits that may or may not be required; however, the Planning Commission finds the record contains no substantial evidence that is explicit and specific which indicates that a particular permit is in fact required for which the applicant has not applied nor is there substantial evidence that a required permit cannot feasibly be obtained. Moreover, the Commission finds the applicant has demonstrated due diligence sufficient to find that, if a regulatory agency determines an additional permit is required, there is no reason to believe the applicant will not apply for such permit in due course.

v) Floodway Development

(1) All encroachments, including fill, roadways or bridges are prohibited unless certification by an Oregon registered professional engineer is provided demonstrating that the encroachment will not result in any increase in flood levels during the occurrence of the 100-year flood (no-rise analysis and certification). Culverts used in stream crossings where floodways are mapped and/or 100-year floodplain elevations have been determined will require a no-rise analysis and certification. Culverts used in stream crossings where base flood elevations and floodways have not been determined (Approximate A zone) will be of sufficient size to minimize the rise of flood waters within the presumed floodway. Evidence must be provided by an Oregon registered professional engineer showing the size of the proposed culvert will pass the flood waters of the 100-year flood. Culverts and bridges must be anchored so that they will resist being washed out during a flood event. Culverts and bridges must also meet the riparian protection standards in Section 8.6.3 of this Ordinance.

FINDING: A No-Rise Declaration has been submitted by the Galli Group, William F. Galli, P.E and Mr. Galli's testimony is that through revisions to the study the no-rise condition remains. The declaration states that the project should be considered a NO RISE condition as it will not cause a rise in the Base Flood Elevations on sites upstream or downstream of the applicant's property and will cause only incidental rises on-site for which the applicant has agreed to indemnify the County and FEMA. Based upon these considerations and the evidence of record, the Planning Commission finds the no-rise declaration standard is met.

vi) Fill in the Floodplain

Prior to placement of fill within the 100-year floodplain a report from an Oregon registered professional engineer determining the effect the placement of fill will have on the 100-year floodplain will be submitted.

- (1) Where base flood elevations have been determined, the fill cannot cumulatively raise the base flood elevation more than one foot at any given point. The report will reference the Flood Insurance Study for Jackson County, Table 3 (Floodway Data), for a specific reach of a stream. The increase in the base flood water surface elevation, as shown in this table, will not be more than one foot.
- (2) Where base flood elevations have not been determined, the fill cannot raise the base flood elevation more than one foot at any given point. (See 7.1.2(D)(2))
- (3) The fill will be engineered to resist erosion by flood waters.

FINDING: The engineer states that any rise caused by the bridge or fill in the floodplain will not cause adverse impacts to this or other parcels in the area. The pre- and post development base flood elevations are less than 1 foot and meet the criteria. A condition of approval will require any fill to be engineered to resist erosion by flood waters. The Planning Commission finds the above criteria are met.

vii) Aggregate Removal

- (1) Aggregate removal or surface mining operations within the 100-year floodplain or floodway will not cause an increase in flooding potential or stream bank erosion adjacent to, upstream or downstream from the operation.
- (2) All mining and processing equipment and stockpiles of mined or processed materials will be removed from the site during the period of December 1 through April 30, unless the operation will be protected by a dike that is of sufficient width and height to prevent flood waters from inundating the site.

FINDING: An Oregon Registered engineer has submitted a No-Rise Declaration stating the development will not cause a rise in the Base Flood Elevations on sites upstream or downstream of the applicant's property. The Planning Commission finds the project, as approved (No mining of Pit 2a), will not allow any new aggregate removal or mining operations within the 100-year floodway except for the stream crossing proposed on Tax Lot 1900. Based upon this finding and the no-rise declaration, the Planning Commission concludes the project will not cause an increase in flooding potential or stream bank erosion due to floodway encroachments as the only floodway encroachment is a bridge that could be permitted for a range of other non-aggregates uses and the above criterion should be interpreted consistent with the approval standards for all stream crossings. The Planning Commission finds that aggregate removal and surface mining operations in the 100-year floodplain have been engineered with protective dike features of sufficient height to prevent pit inundation based upon engineering and hydrologic analysis in the record prepared by applicant's registered professional engineer incorporated and adopted herein. Based upon this engineering evidence, the Planning Commission finds that the fill placed in the floodplain to construct the protective dikes will not cause the base flood elevation to rise by more than one foot and that this is the standard under which the County determines that fill in the floodplain will not increase flooding potential. With respect to stream bank erosion, the Planning Commission finds that the evidence establishes that the applicant proposes substantial setbacks from the banks of Bear Creek, that the engineering analysis does not identify substantial increases to flow velocities, and that DOGAMI carefully evaluates potential stream bank erosion issues and a condition of approval will require the applicant to comply with any additional erosion prevention measures required by DOGAMI. Based upon this finding, the the Planning Commission finds the project will not increase stream bank erosion potential. The Planning Commission finds the existing concrete processing area was lawfully established and is considered a lawful nonconforming use.

CONCLUSION: Based upon the foregoing findings of fact incorporated and adopted herein, the Planning Commission concludes the proposed development within the floodplain and floodway meet the criteria or can feasibly meet the criteria of Section 7.1.2, with conditions of approval. Portions of Pit 4 (TL 1900, 1400, and 1303) is within the 100 year floodplains of Willow Creek and Bear Creek. The Planning Commission is not issuing final site plan review or floodplain development permits for Pit 4 at this time; a condition of approval will require a floodplain review prior to beginning aggregate for that pit. A condition of approval will require a landscape plan approved by Oregon Department of Fish and Wildlife for riparian areas disturbed by development (bridge crossing).

E) Section 7.1.1(B), ASC 82-2 Bear Creek Greenway

i) Description

This area consists of the lands identified on the official Bear Creek Greenway Maps.

ii) Special Regulations or Development Standards

The County refers to The Bear Creek Greenway Plan: Management Policies and Guidelines (1982) and the Bear Creek Greenway Plan: Ashland to Central Point (1988) for guidance on uses appropriate to the Greenway. The County will, to the extent of its legal authority, provide for the implementation of these plans during the development review process, through the implementation of the use restrictions set forth below, and in some cases by attaching special conditions to development approvals.

iii) Uses Permitted

Notwithstanding the provisions of Table 6.2-1, 4.2-1, 4.3-1 or 4.4-1, the following use restrictions will apply in this area.

- (1) <u>Type 1</u>: The following uses are permitted under a Type 1 approval process within ASC 82-2 provided the use is permitted as a Type 1 use within the underlying zone:
 - (a) Open space and parks.
 - (b) Agriculture.
 - (c) Fishing and hunting reserves where compatible with other uses.
 - (d) Utility facilities necessary for public service provided such facilities are underground.

- (e) Sedimentation ponds when used in conjunction with aggregate removal operations.
- (f) Pedestrian, equestrian and bicycle trails.
- (g) Riparian enhancement.
- (2) Type 3

All other uses within the primary zoning district will be subject to a Type 3 permit approval process. Type 3 permits requested within the ASC 82-2 will be consistent with the Bear Creek Greenway Plan and related documents.

FINDING: These criteria are addressed in Section 3(B) of the staff report.

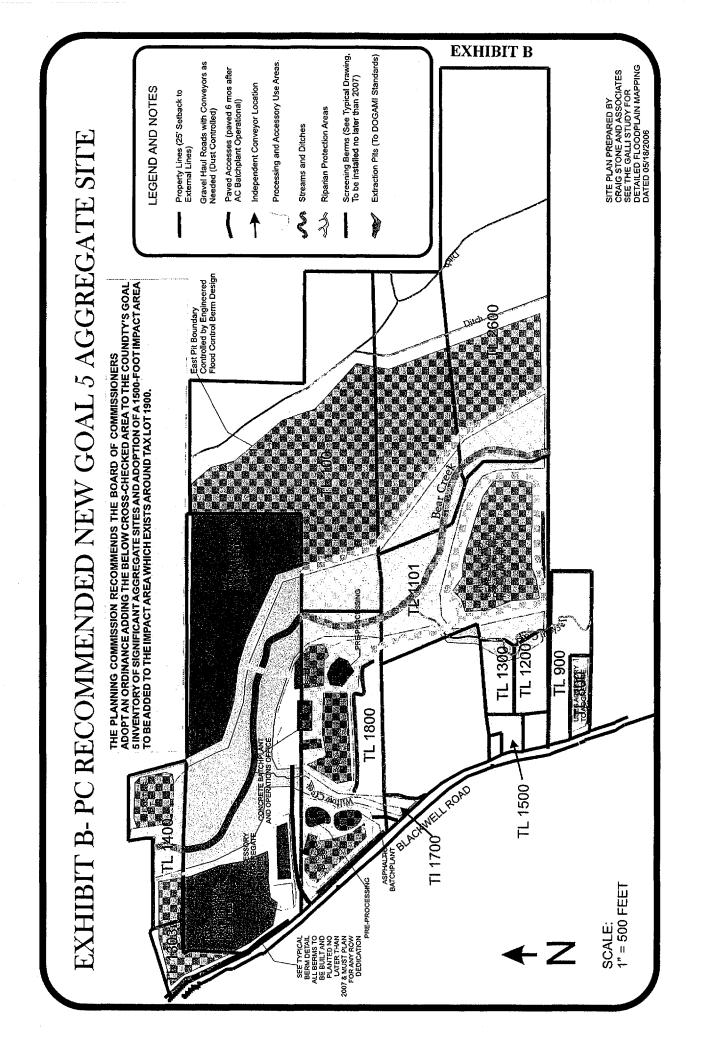
III. ULTIMATE CONCLUSION:

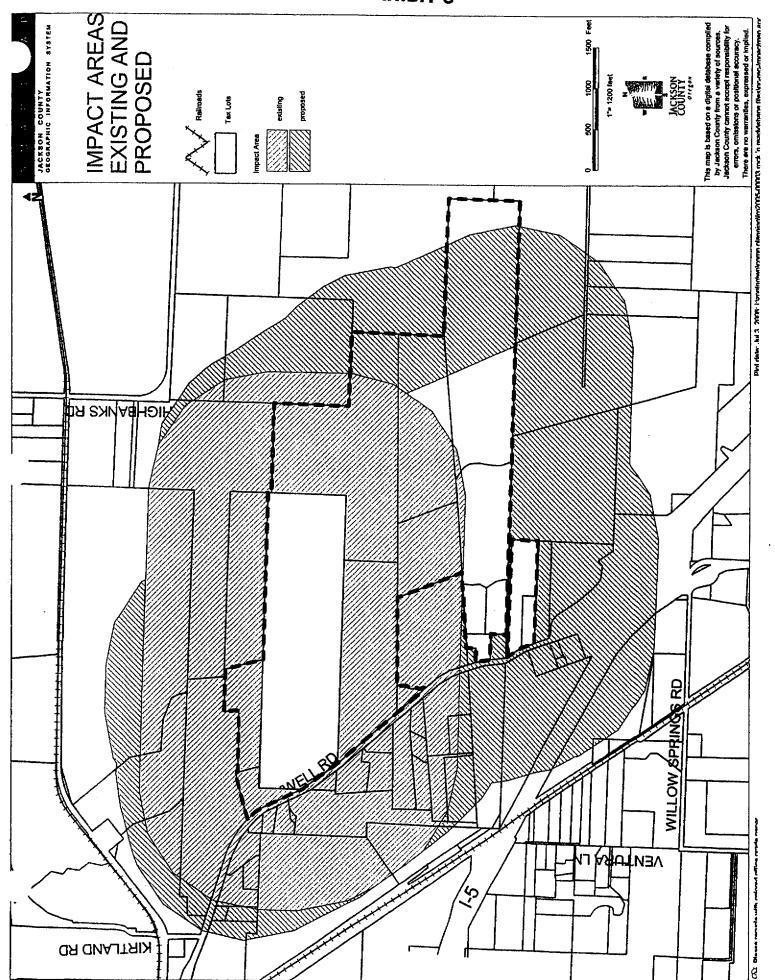
Based upon the evidence and testimony in the record and the foregoing findings of fact and conclusions of law, the Planning Commission has deliberated and found the subject application to comply with the applicable requirements for a minor Comprehensive Plan map amendment, minor zoning map amendment subject to the site and operations master plan (as modified by the Commission's deliberations), a Type 3 permit for aggregate operations in the Bear Creek Greenway, (approval of the bridge crossing and incidental modifications in accordance with the approved site and operations master plan), final site plan approval (as amended by the Commission's deliberations), and floodplain development permit for all aspects of the operation for which final site plan approval is granted by the Planning Commission.

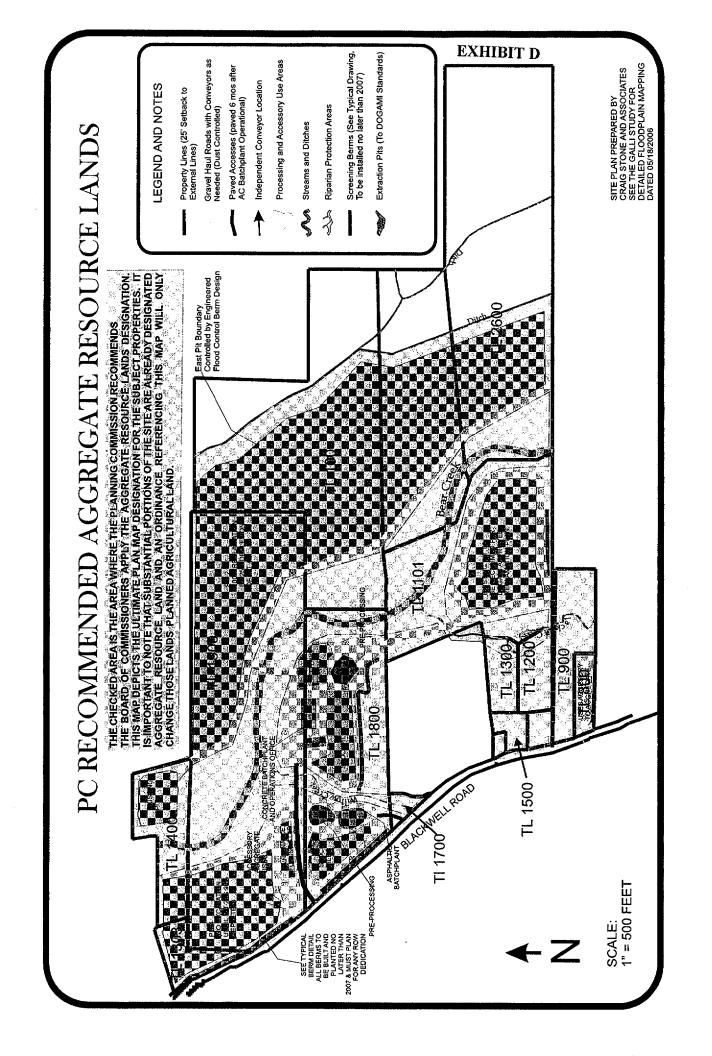
JACKSON COUNTY COMPREHENSIVE PLANNING MANAGER

By: Michael W. Mattson, Planner II

Date: 5 - 23 - 06







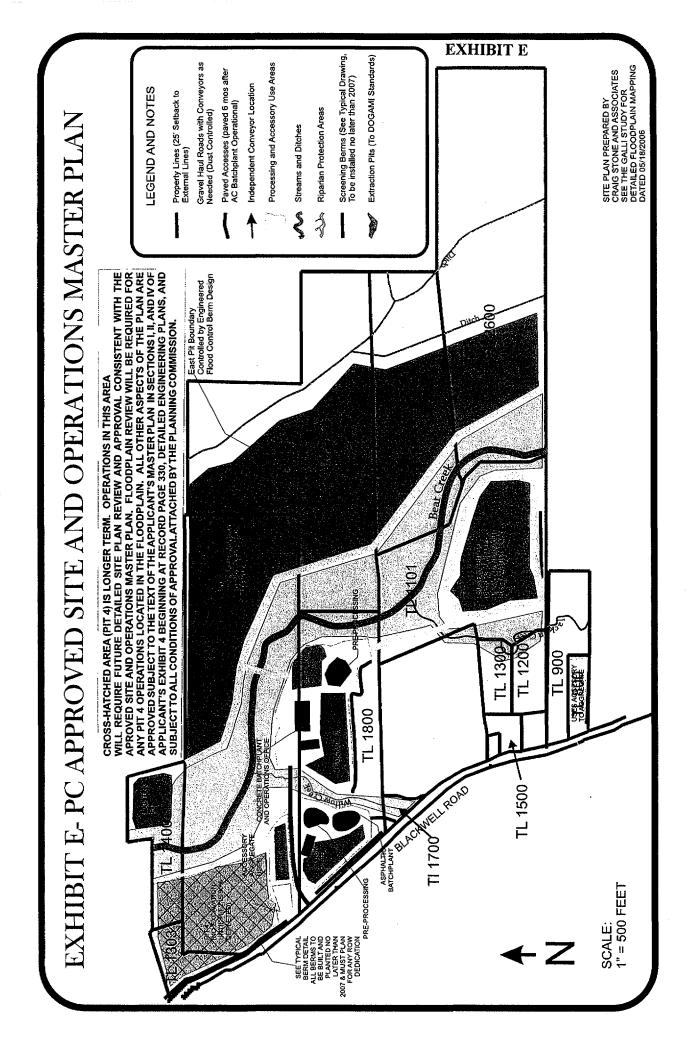


EXHIBIT F

EXHIBIT 4

JACKSON COUNTY LAND DEVELOPMENT ORDINANCE STANDARDS AND APPLICABLE REQUIREMENTS FOR APPROVAL OF THE REQUESTED AGGREGATE SITE AND OPERATIONS MASTER PLAN

1

MASTER PLAN OVERVIEW

The site and operations master plan will govern all future aggregate operations on the site in accordance with applicable conditions of approval. By phasing the extraction operations, the plan maximizes the aggregate resource potential when balanced against conflicting land uses and competing Goal 5 resources. Exhibit 4 and the approved plans together constitute the site and operations master plan. The site and operations master plan governs operations for the site and all previous site and operations plans and any conditions so attached are replaced by this plan. In the event there is a conflict between the site plan maps and written master site plan and operations plan text herein contained, the text shall govern. Special conditions attached.

MASTER PLAN CHARACTERISTICS

SITE PLAN CHARACTERISTICS:

- 1. Existing Vegetation: Except where stream crossings are proposed, the existing riparian vegetation areas will be retained. Some lands west of the RVSS mainline are expected to be reclaimed by riparian vegetation as lands to the east are converted to aggregate from the existing farm uses. Native trees include White Alder, Black Cottonwood, Hemlock, and various Willow species.
- 2. Screening and Berming: A six-foot berm crowned with alternating conifer rows six-feet on-center will be constructed and planted where berms are depicted on the site plan in the setback locations. In addition to the trees, the berms will be planted with low growing drought tolerant native grasses. The applicant will stipulate to establishing these berms and plantings no later than 2007, following timely approval

of the master plan. The trees will be established with irrigation and will be fertilized during the first three years.

- 3. Existing and Proposed Structures: The plan identifies which general areas will contain which types of aggregate uses. The Technical Detail Plan depicts existing building outlines. No new structures are proposed at this time, but the need for new structures may arise in the future. Any new or remodeled structures will be placed in an appropriate area as indicated on the Site and Operations Master Plan or else a revision to this plan will be required. In either case, such future structural needs can be accommodated with no more than a Type 1 review by Planning Staff and with issuance of applicable building permits.
- **4. Extraction Areas:** Pit slopes will be in accordance with current DOGAMI specifications, an example the slope angles are depicted in the operating permit request to DOGAMI for Pit 2 and 2A. Pits will be excavated so that storm drainage will drain into the pit.
 - a) Overburden: Ranges in depth from approximately 2 to 12 feet.
 - b) Aggregate Types: Sand, Gravel and some Top Soil.
 - c) Depth of Extraction Areas: Up to 85 feet to bedrock, but in a range of 50 to 65 feet in most locations.
 - d) Extraction Sequencing: The site plan includes an extraction-phasing plan. This plan is intended to provide time for the vegetative screening to be established prior to extraction operations west of Bear Creek. No extraction in Pit 4 shall occur until Pit 2 is at least 90 percent depleted. Reclamation of Pit 2 will be completed prior to 25 percent depletion of Pit 4. No extraction will occur in Pit 3 until Pit 4 is at least 90 percent depleted.
- 5. Riparian Setbacks: A minimum 50-foot riparian setback for all operations (except stream crossing locations) will be maintained from the banks of Jackson Creek and Willow Creek. A minimum 100-foot riparian setback for all operations (except stream crossing locations) will be maintained from the banks of Bear Creek. These riparian areas provide a critical function in the aggregate operation by providing the final filtering and cooling discharges from dewatering activities prior to entry into the stream system.
- 6. Wetland Protections: Wetlands identified on the NWI wetlands inventory and/or in the wetlands report prepared by Scoles and Associates will be protected by a fifty foot setback or will be mitigated in accordance with wetland mitigation requirements and procedures of the Division of State Lands.

- 7. Stockpiling Areas: No stockpiling will occur in the floodway. No new stockpiling locations are proposed or will be established in the floodplain.
- 8. Internal Road System: The system of haul roads within the site is designed to efficiently move aggregate around the site. The base for the Haul Road on the east side of the RVSS mainline will also serve as a dyke to prevent inundation of the pits on that side of Bear Creek in the event of a 100-year flood. Two new accesses are proposed from Blackwell Road. One is on Tax Lot 1500. This access will serve only as a personnel and equipment access and will not provide for hauling along Blackwell Road. A new access is proposed for Tax Lot 1700 to provide a right-in access for internal circulation through the asphaltic batch plant.
- 9. Conveyor System: The conveyor system within the site is designed to efficiently move aggregate around the site. Conveyors may be installed along any haul road, processing and/or pit areas depicted on the site plan. Conveyors may also be installed in locations specified for conveyors on the plans. Conveyors are especially advantageous in riparian areas where they have significantly less impact than would result from a haul road in a similar area because of the narrower footprint. Also, conveyors emit less dust than truck hauling and can be more energy efficient.
- 10. RVSS Mainline Protections: A fifty-foot setback will be maintained for all extraction activities from the RVSS mainlines.

11. Processing:

- a) Batch Plants: A conditional use permit in 1996 approved a Portland cement concrete batch plant and Asphaltic Batch Plant. The Concrete Batch plant will remain in its current location. An asphaltic batch plant was also approved as part of the 1996 conditional use permit. This batch plant has never been constructed. The site plan proposes to keep the batch plant on Tax Lot 1800, but it will be relocated west of Willow Creek to provide for efficient truck movements and processing for future asphaltic concrete operations.
- b) Dewatering: All pits will be dewatered. Dewatering discharge areas will be constructed and sited in accordance with the construction and location methods specified by DOGAMI and ODFW. The Technical Detail Plan shows the location of these facilities as currently proposed.
- c) Washing and Pre-processing: Gravel and sand must be washed and sorted prior to mixing into concrete. Some aggregates must also be crushed. These activities are proposed to remain in their current location for the Portland cement concrete processing. Additional facilities are proposed to be added around and to support the asphaltic concrete processing operations.

¹ Floodplain as mapped by Applicant's Geotechnical Engineer.

- d) Settling Ponds: Wash water must be settled in order to allow sediments to fallout. The site plan will continue to utilize existing settling facilities.
- 12. Water, Sanitation and Utilities: Water for concrete production is obtained from the Rogue River Irrigation District, see Exhibit 22. Existing sanitation is by pre-existing on-site systems and portable units. A transformer has been constructed on-site and the existing service is expected to be sufficient for planned future operations.

OPERATING PLAN CHARACTERISTICS:

- A. Extraction Methods: Extraction will be by scraper and excavator. All equipment is 1998 or newer. The newer generation of equipment produces less noise and diesel emissions when compared to older equipment. Some overburden is stockpiled as required by DOGAMI for reclamation and will be used to construct screening berms. Electric pumps are used to dewater the pits.
- **B.** Hauling and Stockpiling: Loaders are used to stockpile, transport aggregates short distances, load bins for processing, load dump trucks for hauling, and load conveyors. Hauling is done by dump truck and/or by conveyor. The master plan contemplates a significant expansion of the conveyor system to increase efficiency and reduce diesel and dust emissions. A 4,000 gallon water truck is present on-site for dust prevention on haul roads and other aspects of the operation.
- C. Concrete Recycling: Applicant uses the heavy equipment to stockpile, crush and recycle concrete into recycled aggregate for a variety of construction applications
- **D.** Hours of Operations: Applicant has and will continue to limit operating hours in accordance with JCLDO requirements from 6:00 a.m. to 7:00 p.m. Monday through Saturday, except for public works projects. The applicant has and will continue to observe operation restrictions for specified legal holidays in accordance with JCLDO requirements.
- E. Lab Testing: Two employees are engaged in concrete testing operations. Scientific equipment is used to test concrete and raw aggregates produced at the site. Public works projects require these tests to assure materials used in infrastructures are of a high quality and represent responsible expenditure of public funds. The lab is currently located on Tax Lot 800, but may be moved in the future to Tax Lot 1900.
- **F. Concrete Batch Plant Operations:** Delivery of Portland cement is by semi-truck. The concrete batch plant mixes water with Portland cement from a 600-barrel silo and aggregate to create slurry. This slurry is then loaded into concrete mixing trucks from above. The trucks are all 1998 or newer, which produce less noise and emissions when compared to earlier model trucks

- **G.** Asphaltic Batch Plant Operations: Asphalt will be delivered by semi-truck when asphaltic concrete production begins. Liquid asphalt, a petroleum product, is pumped up into a silo where it is heated and mixed with water and aggregate. This mixture is then loaded in dump trucks for off-site delivery.
- H. Office and Administration: An operations office is located on Tax Lot 1800 immediately adjacent to the concrete batch plant. This office includes the dispatch center where deliveries are coordinated as well as some accounting and operations management. The office on Tax Lot 800 is used for clerical and other ancillary administrative activities associated with the aggregate operations.
- I. Responsible Party: The existing operation designates Wes Norton, President of Rock-n-Ready Mix, as the responsible party for all matters pertaining to permits, land use actions, and conditions attached thereto. Applicant reserves the right to designate a new individual as the responsible party such as would result from a change in corporate ownership or management or other applicable circumstance.

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STIPULATIONS OFFERED BY APPLICANT

- Applicant will submit a request for Letter of Map Revision for FIRM Panels 313 and 314 no later than nine months following final approval of this site and operations master plan. Applicant further stipulates to modify the technical detail plan as necessary to comply with the ultimate map revisions approved by FEMA.
- 2. Applicant will stipulate to construction and planting of all new berms depicted on the site plan no later than 2007. All trees will be irrigated in accordance with generally accepted landscape planting practices.
- 3. Access roads depicted in black on the site plan will be paved no later than six months following start-up of asphaltic batch plan operations.
- 4. Applicant will stipulate to aggregate extraction and operations for Pit 2 substantially in conformance with the technical Detail Plan prepared by the Galli Group and such submitted materials to DOGAMI. Setbacks, pit flood control protections and such other items depicted on this plan will be observed.
- 5. Applicant will stipulate to preparation and administrative approval by the County of a technical detail plan similar to that prepared and depicted in Exhibit 5 prior to extraction in Pit 4.
- 6. Applicant will stipulate to the following Pit extraction sequencing. Pit 2 is scheduled for extraction immediately following approval of this plan. Pit 4 is the next scheduled extraction area, but no extraction will take place until Pit 2 is 90 percent depleted.
- 7. Applicant will stipulate to 100% reclamation of Pit 2 prior to 25 percent depletion of Pit 4.
- 8. Applicant will adhere to the Master Plan Characteristics contained herein, and as modified through conditions of approval by the Board of Commissioners.

EXHIBIT B

JACKSON COUNTY BOARD OF COMMISSIONERS EXPRESS FINDINGS IN SUPPORT OF ORDINANCES:

2007-19

2007-20

2007-21

2007-22

And Order #433-07

Planning File LRP 2005-00003

I. Nature of Application

This application was filed by Craig Stone and Associates as agent for the applicant, Rock 'N' Ready Mix, LLC ("applicant") on March 24, 2005. The application requests the following: (1) a Minor Comprehensive Plan Map and Zoning Map Amendment to change the Comprehensive Plan Map designation from Agricultural Land to Aggregate Resource Land and the zoning district from Exclusive Farm Use (EFU) to Aggregate Removal (AR); (2) designation as a significant aggregate resource and ESEE analysis to determine the level of Statewide Planning Goal 5 protection; (3) Site Plan Review for aggregate operations; (4) Floodplain Review for development within the 100 year floodplain; and (5) Type 3 review for development within the Bear Creek Greenway (Area of Special Concern 82-2).

The applications were deemed incomplete on April 28, 2005. The applicant submitted the required supplemental materials and the application was deemed complete on June 29, 2005. Public hearings before the Jackson County Planning Commission were held on October 27, 2005, January 26, 2006, and March 9, 2006 in the Jackson County Auditorium, and the Planning Commission issued a recommendation of approval on July 27, 2006.

The Jackson County Board of Commissioners ("Board") held a properly noticed and advertised public hearing to consider the recommendation of the Planning Commission on September 27, 2006. On October 25, 2006, the Board deliberated on matters related to the applicant's compliance with applicable rules adopted by state and federal regulatory agencies, specifically the Department of Geology and Mineral Industries (DOGAMI), the Army Corps of Engineers ("Corps"), and the Oregon Department of State Lands (DSL). The Board's deliberations were postponed to allow the applicant to provide additional evidence and testimony demonstrating compliance with the regulatory requirements of those agencies.

As described in the Ordinances adopted by the Board, additional properly noticed hearings were held before the Board on February 28, 2007, April 11, 2007 and May 30, 2007.

II. Adoption of Planning Commission Findings

The Board adopts and incorporates by reference the findings of the Jackson County Planning Commission as set forth in its recommendation for approval and findings dated July 27, 2006. To the extent there is any discrepancy between these findings and the findings of the Planning Commission, the express findings of the Board provided herein shall govern.

III. Additional Findings of the Board of County Commissioners

In addition to adoption of the Planning Commission's findings in its recommendation of approval, the Board adopts the following findings of fact and conclusions of law in support of its decision to approve the applications at issue. These findings address applicable approval criteria and issues that were raised in the proceedings before the Board.

A. Responses to Specific Issues Raised by Opponents

During the hearing process before the Planning Commission, the applicant retained two additional consultants to respond to claims that the applicant's technical information and engineering was not adequate. The first consultant, Kuper Consulting, Inc. ("Kuper") was charged with responding to and refuting opponent's contentions that the site is not a significant mineral and aggregate site under Goal 5. Kuper's analysis was presented to and evaluated by the Commission. Based on that analysis, the Planning Commission recommended that all tax lots associated with the application be designated as a significant Goal 5 resource and placed on the County's Goal 5 inventory. The Board of Commissioners agrees with the Planning Commission's conclusion that the entire site is a significant Goal 5 mineral and aggregate resource.

The second consultant brought in by the applicant is Northwest Hydraulic Consultants ("nhc"). Jeff Johnson, an engineer certified in Oregon with extensive experience in floodplain development, engineering and regulation, works for nhc and was responsible for evaluating and supplementing the applicant's previous testimony relating to floodplain impacts, possible impacts up-and-downstream and engineering generally. NHC is one of two contract consultants working for the Federal Emergency Management Agency (FEMA) on floodplain hydraulic matters in the northwest, and Mr. Johnson demonstrated his technical expertise and credibility on such matters. Mr. Johnson was charged by the applicant with responding to opponent's contentions that the applicant's engineering was inadequate. Mr. Johnson's testimony was relied upon by the Planning Commission, and the Board of Commissioners adopts the Planning Commission's conclusions on these issues. Mr. Johnson also testified directly to the Board on these issues at the September 25, 2006 hearing, and the Board finds that his testimony was both technically valid and credible.

In written materials submitted to the Board, Rogue Aggregates' attorney identified certain specific concerns and objections to the application. These objections are set out below, and addressed in findings immediately following each objection.

1. Issues Regarding Compliance with State and Federal Agency Rules

The majority of the proceedings before the Board of Commissioners focused on issues surrounding the applicant's compliance with applicable rules and consent orders issued by DOGAMI, the Army Corps of Engineers, and the Oregon Department of State Lands. Rogue Aggregate argued that approval of the applications was prohibited under Sections 1.7 and 1.8 of the Jackson County Land Development Ordinance (LDO). Opponents of the project, including Rogue Aggregates in particular, contended that the Board must reject or deny the application under LDO 1.8.2(B), which prohibits approval of applications where "local, state or federal land use enforcement action has been initiated on the property, or other reliable evidence of such a pending actions."

Findings: During the hearings held on September 25 and 27, and on October 25, 2006, the Board received testimony regarding allegations of possible enforcement actions taken against the applicant by the DSL, the Corps, and DOGAMI. The enforcement actions related to alleged violations of the state Removal-Fill Law, Section 404 of the Clean Water Act and the state's mining and reclamation program. DOGAMI had issued a notice of violation (NOV) to the applicant dated July 18, 2006. The Corps issued a Cease and Desist letter to the applicant dated May 26, 2006. However, DSL had not issued any such order or otherwise indicated formally that a violation of its program had occurred. Ultimately, the Board required the applicant to provide evidence that any existing violations or enforcement actions had been resolved.

The applicant and the involved agencies provided the Board with the following evidence in writing:

- 1. A letter from DOGAMI dated December 4, 2006 (Exhibit 69, BOC record) stating that "DOGAMI conducted inspections on October 4th, November 1st and November 16th to monitor progress in the correction of the violations listed in the July 18, 2006 Notice of Violation (NOV). Those inspections have confirmed that Rock N' Ready is in full compliance with the July 18, 2006 NOV."
- 2. In a letter from the Corps dated January 25, 2006 (Exhibit 68, BOC record), the Corps determined that they had no jurisdiction over the alleged actions. Specifically, the Corps wrote that the work investigated was either exempt under Section 404(f) of the Clean Water Act or above the ordinary high water mark, which is the landward extent of Corps jurisdiction under the Clean Water Act. The letter states that the Corps has closed its file on this matter.
- 3. In a letter from DSL dated April 17, 2006 (Exhibit 78, BOC record), DSL states that the applicant "has made substantial progress and taken the appropriate and effective steps to resolve this matter, and is in compliance with the provisions of the Department's Consent Order."

Given the evidence provided, the Board concludes that the enforcement actions initiated by DOGAMI and the Corps are sufficiently resolved to ensure compliance with the relevant code sections.

Given the written testimony provided by DSL, the Board concludes that the DSL enforcement action has been sufficiently resolved to ensure compliance with the relevant code sections. As concluded by the Board during the May 30, 2007 hearing, any and all present cited enforcement actions and/or violations by the applicant have been resolved to the degree

necessary to ensure consistency with LDO Sections 1.7 and 1.8. Having resolved all issues associated with enforcement actions and violations at the May 30, 2007 hearing, at its next meeting on June 13, 2007 the Board deliberated and reached a final decision to approve the applications.

Furthermore, the Board of Commissioners concludes that LDO Sections 1.7 and 1.8 must be interpreted in a manner that leaves the last sentence of LDO Section 1.5.1 with meaning. Section 1.5.1 provides that, "standards imposed by other permitting agencies will be implemented and enforced by those agencies." Section 1.5.1 makes clear that it is not for the The Board of Commissioners concludes that they have responded to violation issues of "other permitting agencies" by withholding issuance of new development permits consistent with LDO Sections 1.7 and 1.8, but have provided an opportunity to submit evidence in response to the violation issues. The evidence now demonstrates that the Application is in compliance with the standards imposed by such other permitting agencies, and thus, the Board of Commissioners are bound to recognize the procedures to implement and enforce those agencies' standards consistent with LDO Section 1.5.1.

2. Compatibility With Rogue Aggregate Operations

Rogue Aggregates contends that the applicant's proposal is incompatible with Rogue Aggregates' existing operations and facilities. Rogue Aggregates asserts that it is within the impact area as evidenced by the downstream impacts of the recent flooding. Significant adverse impacts are allowed only when there is an "overriding public interest" for which the impacts can be mitigated to the extent practicable, which Rogue Aggregates argues has not been demonstrated.[JH1]

Findings: Rogue Aggregate's contention that its site should be included in the "impact area" is based on their allegation that the applicant's existing Pit 1 operation is somehow responsible for the failure of its culverted road crossing. The Planning Commission found otherwise and limited the Impact Area to the 1,500-foot distance from the proposed mining site as established in the County Code. The Board of Commissioners agrees with and adopts that conclusion as its own. The Board finds that Rogue Aggregates' complaints regarding the applicant's existing operation at Pit 1 having an adverse impact on its site are inaccurate. How Pit 1 was engineered or designed is not an issue that is currently before the Board as part of its review of the present applications.

Further, the Board finds that two engineers retained by the applicant, Bill Galli and Jeff Johnson, independently reviewed Rogue Aggregates' culverted road crossing and concluded that regardless of upstream activities, the crossing was doomed to fail. Mr. Johnson noted that the culverts could pass only a fraction of the total flow that Bear Creek could deliver during a moderate to major flood even if the culverts remained clear of sediment. Therefore, the crossing had to rely upon overtopping to pass flood flows, and the damage reveals that the crossing could not handle the overtopping.

Based on the evidence presented, the Board finds that the applicant's site and its Pit 1 operation did not provide the sediments that clogged the Rogue Aggregate road crossing. The evidence indicates that the applicant was not mining within Bear Creek, but was mining behind a

berm that separates Pit 1 from Bear Creek. Consequently, its normal operations would have caused no increase in turbidity or sedimentation downstream. Deposition of a 5- to 6-foot deep layer of sediment at Rogue's crossing, as it did during the December 1, 2005 flood event, would require that velocities near the crossing decrease significantly. Velocities did decrease because the crossing acted like a dam, because the culverts were not large enough culverts to pass the volume of water carried by Bear Creek. In addition, the crossing is located at a sharp bend in the stream. Therefore, significant sediment deposition as a point bar formed naturally along the inside portion of the bend. Backwater influences from the Rogue River may have also had an influence on stream velocities.

The applicant submitted evidence sufficient to establish that it has not operated on the water side of the Bear Creek bank and is not responsible for erosion along the bank line itself. There are hundreds of locations that are contributing sediment to Bear Creek. Bear Creek continues upstream for approximately 30 miles, and there are hundreds of miles of tributaries beyond that, many of which have ongoing erosion and undercutting along the banks. Bear Creek and its tributaries contain substantial stretches of eroding bank line that provide sediment of large and small grain size into the waterway. If Rogue's culverts were blocked by sediments from upstream, there is no evidence that it was specifically the result of any activity conducted by the applicant. However, the implication of the muddy water seen in high water events in Bear Creek is that areas upstream of the applicant's operation erode and contribute to the sediment captured at the depositional area where Rogue built its culverted road crossing.

The problems at Rogue's culverted road crossing took place during the December 1, 2005 flood event. However, Bear Creek did not overtop Pit 1 until the December 30, 2005 flood, after the incident at Rogue's culverted road crossing. Rogue Aggregate provided photos implying that flooding at Pit 1 and the applicant's subsequent emergency repair caused their sedimentation problems. However, the events are unrelated because there cannot be a connection between what occurred at Rogue's culverted road crossing on December 1st and what occurred at the applicant's pit on December 30th and afterwards.

Finally, the applicant submitted a photo showing the actual location of the material that was washed out when the breach in the Pit 1 berm was created. As can be seen in that photo, the sediments were retained within Pit 1 and could hardly have caused any problems for Rogue Aggregate or any other downstream user.

With respect to the application presently before the Board and previously evaluated by the Planning Commission, the Board agrees with and adopts the recommendation of the Planning Commission that the testimony from Mr. Johnson demonstrates that the work proposed under this application will not adversely affect properties either upstream or downstream (including the Crater Sand & Gravel and the Rogue Aggregates operations)

3. Adequacy of Information Regarding Site Operations

Rogue Aggregates contends that neither the applicant's Site Development Plan nor its proposed bridge design contain sufficient detail to demonstrate compliance with the various code requirements, and do not provide sufficient detail regarding site operations, mine phasing, and reclamation.

Findings: For the reasons explained in the Planning Commission's findings, the Board of Commissioners finds that these code requirements are met. The Board finds that sufficient detail regarding the bridge design was provided by Bill Galli in his testimony to the Planning Commission. Support for Mr. Galli's position is in the record and was accepted by the Planning Commission, and is adopted by the Board. The additional work conducted by Mr. Johnson of *nhc* confirms that conclusion, was accepted by the Planning Commission and is adopted by the Board. The applicant's amended DOGAMI operating permit application contains the necessary mining details not just for TL 1900 but also for tax lots 100 and 200.

4. Coordination with Potentially Affected Agencies

Rogue Aggregates contends that the applicant has not coordinated with all potentially affected local, state and federal agencies or demonstrated that it is feasible to obtain the necessary permits for the master plan.

Findings: Evidence in the record establishes that the applicant's representatives, including Bill Galli of the Galli Group, coordinated with ODFW, DSL and DOGAMI while the initial application to the County was being developed. Mr. Galli's testimony to that fact was made to and accepted by the Planning Commission. The Board also finds that Mr. Johnson and Dorian Kuper coordinated with DOGAMI staff during the preparation of the application to DOGAMI regarding mining on TL 1900, 100 and 200. They and others also coordinated with ODFW and DOGAMI to prepare the Pit 1 restoration plan, as indicated by Ms. Kuper's amended operating permit submitted to DOGAMI.

5. Reliance on Maps Regarding Location of Floodplain

Rogue Aggregates contends that only approved FEMA and FIRM maps can be considered by the County, and that any changes to these maps used in support of the application must be approved prior to submitting the application.

Findings: The Board finds that this argument is incorrect, for the reasons addressed in Mr. Johnson's report titled "Flood Protection Design & River Engineering Investigation for Proposed Pit 2 and Bridge" and the same is herewith incorporated and adopted. As explained by Mr. Johnson, who is one of two consultants in the northwest contracted to work with FEMA on such issues, the FEMA floodway may need to be refined to allow the County to review the effects of the proposed bridge on the floodplain, but a formal review by FEMA is not necessary. As noted by Mr. Johnson, where the "effective" FEMA study misrepresents the flood risk along, for example, Bear Creek, then it would be prudent (not required) to revise the FEMA study. The Board accepts Mr. Johnson's testimony that the FEMA maps are more conservative because they are based on higher 100-year flood values than actually exist today, and that the "location of the floodplain and the floodway could be refined using new and more accurate topographic information, but again this does not require a formal FEMA map update." (Pages 10-11).

6. Consistency with Greenway Plan

Rogue Aggregates contends that a Type 3 permit must be "consistent with" the Greenway Plan, and therefore no mining activities should be allowed within Bear Creek Greenway as it "seems impossible" that there is an overriding public interest given the public characteristics of

the Greenway and the intensity of the proposed uses. The code also prohibits map amendments that will prevent implementation of any area of special concern such as the Bear Creek Greenway.

Findings: The Planning Commission correctly determined that the primary purpose of Area of Special Concern (ASC) 82-2 is to protect and preserve the riparian area to help facilitate a Greenway trail extension. Because the proposed operations will be set back from the Greenway, the applicant has stipulated that it will provide a perpetual trail easement. The Board of Commissioners notes that the purpose of ASC 82-2 is met and the trail will not be precluded by the proposed aggregate operations. Additionally, if and when the trail is constructed in the area, the reclamation of Pit 2 on the east side of Bear Creek will create waterfowl habitat and wetlands, enhancing the viewshed from the Greenway trail. The Board adopts the Planning Commission's interpretation of this section of the County Code to mean that the requirement that the proposed use is not a conflicting use certified in an adopted Goal 5 ESEE means that Goal 5 resources, such as the Greenway, are to be protected from non-Goal 5 resources. Because both the Bear Creek Greenway and the proposed aggregate operations are Goal 5 resources, the Board may adopt an ESEE analysis that balances the competing Goal 5 resources. Accordingly, the Board finds that the ESEE analysis balances the Bear Creek Greenway and Aggregate Resources in the Goal 5 analysis for the Minor Comprehensive Plan Map and Zoning Map Amendments.

B. Exhibits Accepted/Rejected by the Board

On April 11, 2007, the Board of Commissioners held a public hearing to accept evidence and testimony into the record specifically related to compliance with DOGAMI, the Army Corps of Engineers, and the Department of State Lands violations. Prior to this hearing, two violations had been identified from DOGAMI and the Army Corps of Engineers. Evidence in the form of exhibits was submitted clearing these two violations. Evidence was also submitted identifying a violation from Department of State Lands. A decision on the merits of the application was postponed pending additional evidenc and testimony that the Applicant was in substantial compliance with the Department of State Lands consent order.

Exhibits were discussed relative to their compliance with the Board's specific criteria for submission of evidence regarding clearance of the two violations from DOGAMI and the Army Corps of Engineers. The Board of Commissioners decided, by motion and vote, to accept Exhibits # 68, 69, 70, 76 and 77 into the record to be considered by the Board for this application. The Board rejected Exhibits # 71, 72, 73, 74, 75 and 81 as evidence to be considered by the Board. These exhibits did not meet the specific criteria determined by the Board regarding the clearance of violations from DOGAMI and the Army Corps of Engineers.

On May 30, 2007, the Board of Commissioners held a public hearing to accept evidence and testimony into the record specifically related to demonstration of substantial compliance with the Department of State Lands consent order. Exhibit 82 was specifically rejected because it did not meet the criteria determined by the Board with regards to the substantial compliance with the Department of State Lands consent order and would not be used as evidence used by the Board to reach a decision on this application. All other numbered exhibits were accepted as part of the record as evidence to determine compliance with the criteria for this application.

III. Conclusion

Based upon the evidence and testimony in the record and the foregoing findings of fact and conclusions of law, the Board of Commissioners concludes that the subject application complies with the applicable requirements for a minor Comprehensive Plan map amendment, minor zoning map amendment subject to the site and operations master plan (as modified), a Type 3 permit for aggregate operations in the Bear Creek Greenway, (approval of the bridge crossing and incidental modifications in accordance with the approved site and operations master plan), final site plan approval (as amended in these proceedings), and floodplain development permit for all aspects of the operation for which final site plan approval is granted.

CRAIG A STONE & ASSOCIATES, LTD.

EXHIBIT C

712 Cardley Avenue ● Medford, Oregon 97504-6124
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JAN 1 8 2006

JACKSON COUNTY PLANNING

January 16, 2006

JACKSON COUNTY PLANNING COMMISSION c/o Jackson County Planning Department County Courthouse 10 South Oakdale Medford, OR 97501

RE: REBUTTAL

Planning Action LRP2005-00003 Rock-n-Ready Mix LLC: Applicant

Dear Jackson County Planning Commission:

Following the close of public testimony at the October 27, 2005 public hearing on the above captioned matter, the Planning Commission ("Commission") left the record open and continued the public hearing. Opposition to the application was presented by the Applicant's competitor Rogue Aggregates, Inc. This letter serves as preliminary rebuttal to the arguments made by their Attorney at that proceeding.

Applicants Rebuttal:

1. Letter to Jackson County Planning Commission from Todd Sadlo, Attorney for Opponent Rogue Aggregates, Inc., dated October 27, 2005.

The Opponent's Attorney addresses certain issues in numerical fashion; these are cited verbatim below, where each is followed by Applicant's rebuttal.

Objection 1: The applicant has proposed a bridge across Bear Creek that would be composed of a railroad car and two flatcar ramps, on the north and south banks of the creek. The County's development code requires that the proposed bridge be subject to review in these proceedings, and does not allow separate approval through a "Land Use Interpretation," without notice and opportunity for a hearing. The applicant is constructing abridge footings now, even though the staff approval states that it is "voidable" if the application you are now considering is not approved. The entire proposal before you should be tabled until all information regarding the proposed bridge is presented to the Planning Commission for review and approval as part of this Post-Acknowledgement Plan Amendment. If what is in the application packet about the bridge is all there is, it is not enough to address the potential risks and impacts to the creek and downstream landowners.

Rebuttal: The above described land use permit has been rescinded, without contest from Rock-n-Ready Mix LLC. by the County. For this reason, this objection has no bearing on the proceeding at this time.

Notwithstanding this fact, the objection fails to identify the LDO provision(s) upon which Opponent's Attorney relies in his conclusion that, "the County's development code requires that the proposed bridge be subject to review in these proceedings and does not allow separate approval..." The code section prohibiting the pursuit of multiple land use applications subject to different levels of review for a permitted use is not identified; the parcel where the bridge is located is planned Aggregate Resource and zoned Aggregate Removal and the bridge is proposed as an accessory structure thereto.

Objection 2: On behalf of Rogue Aggregates, Chris Lidstone & Associates have reviewed the proposal, and have concluded that there is insufficient evidence in the record to support that applicant's bridge design or 'no net floodwater rise' conclusions. The applicant states that the regulatory FEMA deck is inaccurate and has asserted to the County that it is proposing a new "pre-development condition" as a basis for its proposed Conditional Letter or Map Revision (CLOMR) or a Letter of Map Revision (LOMR). The application has put the cart before the horse. The applicant has not provided "input data" nor modeling assumptions for an acceptable hydraulic modeling study. The difference between FEMA and the post-development condition ranges for 0.69 feet to 2.8 feet, which is a significant difference that calls into question the applicant's claim of "no net rise."

Rebuttal: As to whether the Galli calculated flood deck is consistent with the FEMA calculated flood deck, this issue is addressed below under Objection 5a.

The Applicant does not state that the regulatory FEMA deck is inaccurate. At record page 189, Applicant asserts that the differences in the Galli calculated water surface elevations and the FEMA calculated elevations are small, and that this discrepancy is sufficiently small to allow the County to apply the Galli calculated water surface elevations. For this reason, the assertion by Opponent's Attorney that the applicant has characterized the regulatory FEMA deck as inaccurate overstates the Findings of Fact offered by the applicant with the initial submittal. The Galli study has almost twice the resolution of the FEMA study to provide the County a study that accurately reflects current conditions at the site. Increased precision can reasonably be expected to result in site-specific variances not captured in the FEMA study. It is the responsibility of the County to weigh the evidence and conclude whether the overall variance is small enough to be considered substantially equivalent to the FEMA study.

The assertion that "input data" has not been provided neglects substantial evidence in the record. Record page 222 to 223 contains a detailed discussion of the methodology used to calculate the flow volumes (Q₁₀₀). If Opponent's Geotechnical Engineer, Chris Lidstone, believes these calculations and/or modeling assumptions to be in error then he should provide a detailed technical review of the calculations for the Commission to consider.

Objection 3: The applicant contends that it has performed calculations and has met with ODFW concerning construction of the bridge, that all work will be performed above the Ordinary High Water Mark (OHWM) (two-year flood event), and that, therefore, no permits are required from DSL or the Corps of Engineers. To the contrary, no calculations have been provided regarding the location of the Ordinary High Water Mark, nor has the applicant provided a letter or concurrence for ODFW. If the OHWM calculation used by the applicant is incorrect, a flood event

could dislodge the bridge, which would create havoc for all downstream landowners and in particular Rogue Aggregate's conveyors and other facilities.

We have good reason to be concerned. Based on our preliminary review of available data, the railroad car span will range from 90 to 120 feet, depending on which drawing is relied upon. There is no protection proposed that would protect the footings located below the Ordinary High Water Mark. Hydraulic conditions at the bridge are such that the river will continue to move, raising serious concerns regarding erosion and scour at the bridge footings during a flood event. If the bridge were to fail during a flood event, the bridge, and materials eroded from the footings and banks, will end up in the vicinity of downstream channel improvements recently constructed be Rogue Aggregates.

Rebuttal: It appears this testimony is directed at the Floodplain Development standards in JCLDO 7.1.2(E) and (F) in a general way and the same are addressed below.

JCLDO 7.1.2(E) relates to state and federal permits, where required. Determination of the Ordinary High Water Line is not a County requirement, but does relate to the need for DSL/Corp of Engineers permitting requirements. At the time of the initial hearing, a response from DSL regarding the need for a permit had not been received by the County. Applicant can feasibly and will obtain a DSL/Corp permit if these agencies determine one is required; no such permit appears necessary based upon Galli's determination of the OHWM location depicted in Galli's Figure 7 at record page 214.

JCLDO 7.1.2(F)(c) requires, "bridges to be anchored so that they will resist being washed out during a flood." At record page 203, Applicant's registered professional Geotechnical Engineer states, "The two main bridge piers were designed such that forces from streamflow, floating debris, bridge dead load, vehicle live load and braking load of vehicles can be adequately resisted." Record pages 214 to 220 provide detailed engineering drawings and specifications for bridge construction. Opponent's Attorney's speculation as to bridge design adequacy does not constitute substantial evidence in the record.

Objection 4: The applicant's proposed ESEE analysis and other proposed findings are mostly bald assertions, and are not supported by any substantive data or studies. Based on what has been submitted to date, the only conclusion that can reasonably be drawn from a proper ESEE analysis is that the risk of harm to Bear Creek, the Rogue, and all downstream owners, is unacceptable and tips the scales against approval. At this point, there is not enough evidence for a reasonable person to use as the basis for a decision to approve. The burden is on the applicant, and the burden to justify approval has not been met.

Rebuttal: This objection is general in nature and is not stated with sufficient specificity to afford the Planning Commission an opportunity to respond as required by law and stated by the Chair of the Jackson County Planning Commission prior to opening the public hearing on this application. Opponent's Attorney states, "the only conclusions that can reasonably be drawn from a proper ESEE is that risk of harm to Bear Creek, the Rogue [River] and all downstream owners is unacceptable and tips the scales against approval." This conclusion is reached without identifying what additional uses must be

included and/or additional information necessary for the County to complete the ESEE process.

Objection 5a: Insufficient information regarding flood profiles, and inadequate support for conclusory flood certification provided with the application;

Rebuttal: Opponent's Attorney and Opponent's Geotechnical Engineer both raised concerns that the Galli calculated flood deck and regulatory FEMA flood deck were too disparate to be considered consistent, and that this discrepancy was too large to demonstrate compliance with the standards in section 7.1.2 as is argued in Applicant's initial submittal. Applicants appreciate this testimony and agree that the hydrologic engineering for the project must be based on sound and generally accepted hydrologic engineering practices. Since the hearing, applicant's Geotechnical Engineer has revisited this issue and the applicant expects to have revised hydrology analysis that addresses this concern available for the Commission to review at the hearing scheduled for January 26, 2006.

Objection 5b: Insufficient information regarding the proposed berm along the sewer line, and how it will impact the base flood;

Rebuttal: This objection is not raised with sufficient specificity to allow the Commission an opportunity to respond; it is not clear from this objection how the Opponent's Attorney reaches the conclusion that the information in the record is insufficient. As a matter of past practice, the submitted information is at least as detailed as the County has relied upon to approve numerous floodplain development permits over the years. The record shows that the berm was modeled in the HEC-RAS analysis, in accordance with generally accepted engineering practices for hydrologic modeling. Also, the berm construction schematics are provided at record page 323 and have been designed by a registered professional Geotechnical Engineer in accordance with the County's floodplain review requirements which constitute the relevant substantive approval criteria.

Objection 5c: Insufficient explanation of the location of the ordinary high water line, which is key to determining proper bridge design and permits required. There is also insufficient information regarding the design, height, and potential impacts on flood velocities and erosion potential of the bridge and berms that would be located in the floodplain and floodway as part of the proposal;

Rebuttal: This objection is not raised with sufficient specificity to allow the Commission an opportunity to respond; it is not clear from this objection how the Opponent's Attorney reaches the conclusion that the information in the record is insufficient. As a matter of past practice, the submitted information is at least as detailed as the County has relied upon to approve numerous floodplain development permits over the years. The bridge and berm were modeled in the HEC-RAS analysis, in accordance with generally accepted engineering practices for hydrologic modeling. The berm and bridge construction schematics are provided in the record and have been designed by a registered professional Geotechnical Engineer in accordance with generally accepted engineering practices to demonstrate compliance with the relevant substantive approval criteria contained in the County's floodplain development standards.

Objection 5d: Insufficient information regarding erosion control techniques to be employed to prevent day-to-day erosion and potential catastrophic flooding events. Channel and bank instability, channel avulsion and meander cut-off are all important issues that must be addressed to protect Bear Creek, the Rogue River, and downstream landowners. No geomorphic study has been provided. The importance of this information is magnified by the applicant's proposal for berm construction and stockpiling of overburden within the floodplain;

Rebuttal: Jackson County has adopted standards for floodplain and riparian area development (LDO Sections 7.1.2). It is unclear what, if any, approval standard this objection is intended to address. A geomorphic study is not a submittal requirement nor has the assertion that one is necessary been raised with sufficient specificity. No explanation or legal argument is provided to establish why the County's floodplain standards are inadequate and why such a study is therefore necessary in this instance to assure the risk posed by a 100-year flood event will not exceed the risk generally accepted by Jackson County for floodplain and floodway development. The standards in JLDO Section 7.1.2 regulate fill within the floodplain as is proposed for the berm/haul road to protect the extraction on the east side of the project from inundation.

The project generally avoids riparian areas altogether. It is unclear where the source of erosion potential is expected to occur by the Opponent's Attorney. The objection incorrectly states that overburden is proposed to be stockpiled in the floodplain. With the flood management measures proposed herein, there are no new stockpiling areas proposed in the floodplain as the same is plainly stated at the top of Record Page 332 and as depicted on the Site Master Plan.

Objection 5e: Insufficient information has been presented to establish appropriate setbacks from Bear Creek. For example, there is a potential for river 'capture' by the existing pit which, as part of the proposal is to be used as a settling pond. The pond will at most times be filled with turbid water and is located within the meander zone of Bear Creek, on a major meander. "Capture" or overtopping would cause the release of highly turbid water into Bear Creek and the Rogue River, fouling sandbars and otherwise harming the Rogue River fishery;

Rebuttal: Minimum setbacks from Bear Creek are established by the LDO at 50-feet. In most all locations, the project proposes setbacks of substantially more than 50-feet and the project complies with all the riparian protection standards in JCLDO Section 8.6 as depicted on the Master Site Plan. The only indication as to the point of this objection is the example provided with respect to capture of the proposed settling pond in Existing Pit #1. DOGAMI raised concerns with the use of this area as a settling pond and this portion of the proposal has now been revised to eliminate this feature. For this reason, the example provided by opponent's attorney is now without practical meaning.

Objection 5f: Insufficient and conflicting information regarding the configuration of mining cells on the east and north side of Bear Creek. The application materials are geared to 35 acres of tax tot 1900, and provide little to no information regarding mining plans to the south, in a total ownership area of 345.80 acres;

Rebuttal: This objection is not directed at any particular approval criteria and is not stated with sufficient specificity to afford the Planning Commission an opportunity to

respond as required by law and stated by the Chair of the Jackson County Planning Commission prior to opening the public hearing on this application. Detailed information on the configuration of mining cells are not required by the County's Aggregate Site Plan standards. These standards require only general location and operating parameters. The project includes more detailed mining plans for Tax Lot 1900 because it is planned and zoned aggregate and, as part of this site plan review, mining is expected to commence immediately following approval. The more detailed information on Tax Lot 1900 is provided consistent with the currently pending DOGAMI permit application. Although the Applicant believes there is sufficient information for the proposed mining operations east of Bear Creek to demonstrate compliance with the County's standards, if the Commission believes a detailed site plan review is appropriate prior to extraction on Tax Lots 100, 200 and 2600 then applicant will accept a reasonable condition requiring the same. The initial submittal recognizes that mining west of Bear Creek is many years in the future and that both detailed hydrologic analysis and detailed site plan review will be required prior to any extraction west of Bear Creek.

Objection 5g: Insufficient delineation of wetlands and vernal pools. The applicant's wetland study says nothing about the north and the east bank of Bear Creek, where mining expansion is proposed. Without a proper delineation of such resources, it is impossible in this case to properly weigh potential environmental impacts, as required by the ESEE process;

Rebuttal: Applicant had originally proposed to defer wetland identification following approval of this land use application because the National Wetlands Inventory Maps, upon which the County relies, do not identify substantial wetlands in the area proposed for extraction. Deferral of detailed wetlands identification was originally proposed because these detailed studies are valid for a limited time period. As a practical matter, wetlands must be identified at sometime prior to mining operations proceeding. Because the opponent raised this issue, the applicant engaged Terra Science Inc. to identify potential wetlands impacts and a preliminary report is expected to be available at the next scheduled hearing. However, it should be noted the Opponent's Attorney has not explained how as a matter of law any necessary DSL/Corp of Engineering Permits could not feasibly be obtained. Moreover, wetlands, as a matter of law, cannot serve as a basis for mining restrictions pursuant to Provision 12 of Jackson County's aggregate program because the County has not included wetlands on its inventory of significant Goal 5 resources and no protection program for wetlands has been adopted by Jackson County.

Objection 5h: Insufficient delineation for Bear Creek riparian areas, insufficient setbacks, and a lack of coherent explanation of steps that will be taken to protect and improve the existing riparian area, which has been partially cleared and graded by the applicant;

Rebuttal: With respect to riparian protections and development the County has adopted and acknowledged protections and they are found in LDO Section 8.6. Opportent's Attorney has failed to explain how the use of aerial photos followed by on-the-ground verification is inadequate. No area was identified where the proposed site-plan depicts a location where the applicable setback of 50 feet will not be maintained. The Conclusions of Law offered for adoption by applicant at Record Page 331 clearly states that no existing overstory vegetation will be removed in the prescribed 50-foot setback and the only understory vegetation that will be removed is at the stream crossing location where

it is unavoidable and allowed as a matter of code. With respect to operational issues to assure the prescribed setbacks for existing and proposed operational areas are observed, applicant agrees that conditions assuring the same are appropriate and applicant will accept reasonable conditions to accomplish the same.

Objection 5i: Insufficient analysis of potential fish capture and mortality in the proposed settling ponds and new ponds as they are constructed;

Rebuttal: This objection is partially mooted with respect to the proposed settling pond, because this component of the proposal has been removed. Notwithstanding this revision, this objection ignores the facts. Fish capture and mortality at the existing Pit #1 was a concern raised by DOGAMI and ODFW as part of the operating permit for this site. The land use at this Pit #1 is already permitted by Jackson County with a condition that mining depth exceeding 25 feet be approved through an amendment to the DOGAMI permit. The DOGAMI permit amendment for Pit #1 has now been issued and this amendment included fish escapement features approved by DOGAMI in coordination with ODFW. The objections reference to new ponds is not stated with sufficient specificity to determine the mining feature being referenced; new pits include flood control features engineered to prevent pit capture by a 100-year flood event.

Objection 5j: Insufficient evidentiary support for numerous statements made in the ESEE, regarding, especially, economic and environmental consequences of allowing or prohibiting the use;

Rebuttal: This objection is not directed at any particular approval criteria and where opponent's attorney fails to identify the numerous statements in the ESEE, regarding especially, economic and environmental consequences this objection is not stated with sufficient specificity to afford the Planning Commission an opportunity to respond as required by law and stated by the Chair of the Jackson County Planning Commission prior to opening the public hearing on this application. It is not even clear whether this objection refers to economic and environmental consequences of allowing or prohibiting uses in the impact area or whether it refers to allowing or prohibiting the proposed aggregate use.

Objection 5k: Insufficient information regarding proposed reclamation plans. The County cannot be expected to make a coherent decision about the long term environmental consequences of the of the proposal without knowing the proposed duration of mining and without seeing a more detailed conceptual reclamation plan;

Rebuttal: Neither Jackson County's aggregate program nor its standards require the duration of the operation to be explicitly defined as a pre-requisite to determine long-term environmental consequences. The assertion that this is necessary is Opponent's Attorney's opinion and no such requirement is established in the County's aggregate program. Notwithstanding this matter of law, applicant expects the total project area to be mined over the next 25 to 35 years. With regards to more detail in the reclamation

¹ If this objection was intended to address criteria relating to protection of the Bear Creek Greenway see rebuttal to objection 5(r) below.

plan, the applicant welcomes any details the Commission believes is necessary and will provide the same.

Objection 5I: Complete lack of a coherent set of conditions or other "program to achieve Goal 5," as required by law. Applicant's Exhibit 4 is not adequate:

Rebuttal: The County has an adopted and acknowledged program to achieve Goal 5 and it is located in the Aggregate Element and Aggregate Map Designations of the Comprehensive Plan and Section 4.4 of the JCLDO. Compliance with these provisions achieves Goal 5 for aggregate in Jackson County. Conditions of approval can be and are frequently placed on aggregate operations as part of the County's aggregate program, but development and attachment of such conditions are the responsibility of Jackson County through the ESEE process.

Notwithstanding the above technical arguments, Applicant concurs that a set of conditions to obtain Goal 5 is likely appropriate. As stated in Applicant's letter dated June 29 at Record Page 559, Applicant viewed work on a set of conditions prior to the first evidentiary hearing as premature where the Planning Commission may make changes to the ESEE offered by the applicant and the fact that there is another hearing before the Board of Commissioners in which new evidence may be offered and any objections to proposed conditions may be raised. With a positive recommendation, Applicant expects to work with Jackson County Planning Staff to prepare a set of appropriate conditions consistent with the Planning Commission's recommendation and its corresponding deliberation.

Objection 5m: Insufficient explanation by the applicant of numerous past violations, that affect the credibility of the applicant and detract from a finding that it is feasible for the applicant to carry out the proposal in compliance with law. The applicant has since 1998 been under numerous DOGAMI "notices of violation" and has also been subject to DEQ and Country enforcement actions;

Rebuttal: There are no violations at this time. Violations have nothing to do with whether a sand and gravel deposit is a significant resource. If, through approval of the operating permit, the Planning Commission has concerns regarding compliance with code requirements and discretionary conditions, then the Commission has the authority to attach conditions for regular inspection by County Staff and when key components of the Master Plan are initiated. The Applicant will accept reasonable conditions of approval requiring the same.

Objection 5n: Insufficient justification for conclusions regarding the quantity, quality, and location of the resource. The source of the boring log information, how it was collected, and who collected it, is not presented in the conclusions made. Quantity estimates are based on a new pit depth of 50-60 feet while DOGAMI has limited the existing pit depth to 25-feet. No basis is provided for the applicant's expectation that pits are twice as deep will be allowed. Quality information is not based on any samples that were taken from areas that the applicant proposes to mine on the north and east bank of Bear Creek;

Rebuttal: In the interest of assuring that the entire site is designated a significant resource, the applicant has engaged the services of Dorian Kuper, Engineering Geologist

from Kuper Consulting LLC, to supplement the quality information and refine the quantity estimates submitted to-date; this supplemental evidence is expected to be available at the next scheduled hearing.

Opponent's attorney explicitly refers to the need to justify the quality of aggregate reserves on the north bank of Bear Creek. This objection ignores established fact; the Jackson County Board of Commissioners already designated the quantity and quality of the aggregate reserves on Tax Lot 1900 (north bank) as significant. This is plainly stated in County Ordinance 95-61, which was adopted as part of the County's periodic review for aggregate and was acknowledged by DLCD without objection.

With respect to the boring log information already submitted to the record and estimates of quantity on the Medina site (Tax Lots 100 and 200), this information was collected and quantity estimated by Knife River Corporation, a subsidiary of MDU Resources Group (Rogue Aggregate's parent company). Based upon the oral testimony of Paul Medina, the owner of the subject property, this analysis was performed by Rogue Aggregates' subsidiary company while they were attempting to acquire rights to mine the Medina property. Opponents' Attorney is questioning the validity of the quantity estimate prepared by his client's subsidiary.

With respect to pit depth and quantity of minable reserves, mining depth is a matter of engineering feasibility and associated permitting from DOGAMI. The DOGAMI permit for Pit #1 has been amended to allow depths in excess of 25 feet. Moreover, the applications to both DOGAMI and the County herein request approval to full minable reserve depth and quantity estimates are based upon the same. As a practical matter this argument is without substance; even if estimates were arbitrarily restricted to 25 feet, the record indicates the resource is still larger than Jackson County's threshold standard of 100,000 cubic yards.

Objection 50: Lack of a traffic study:

Rebuttal: This objection ignores substantial evidence in the record. A detailed study for transportation system safety is provided at Record Page 578. This study identifies needed improvements to assure safe system operations. Neither ODOT traffic engineering staff nor Jackson County traffic engineering staff determined that a detailed capacity analysis was necessary to conclude the proposed land use changes will not significantly affect a transportation facility. A letter from Jackson County Road stating the same is provided at Record Page 572. The expert opinion of Applicant's registered professional traffic engineer Robert Kortt is provided in a letter, dated December 15, 2005, that the trip generation analysis previously submitted to the record is correct and on this basis a detailed capacity analysis is not necessary to conclude the proposal will not significantly affect a transportation facility.

Objection 5p: Insufficient information addressing potential groundwater impacts. The applicant is proposing to dewater a very large pit or pits to a depth of 50-60 feet. The applicant has provided a single page of narrative, without any supporting documentation, addressing potential groundwater impacts of the proposal, which is inadequate;

Rebuttal: As a matter of law, this objection cannot serve as a basis for mining restrictions pursuant to Provision 12 of Jackson County's aggregate program because this

area is not within an area where a Goal 5 protection program for groundwater resources has been adopted and the site is not located in ASC 90-8 which is the County's only adopted protection program for groundwater resources (see also Page 111 of the County's adopted and acknowledged Goal 5 background document). The Opponent's Attorney has identified no well or other impact related to ground water to his client's property that can reasonably be expected to be result from the proposed operation.

As a practical matter, both the applicant and DOGAMI want to assure that neighboring residences continue to have sufficient well water. On his own volition, Applicant has in the past drilled a well on the adjacent property to the south when problems with that well were encountered. The DOGAMI review of Pit 2 on tax lot 1900 includes a condition for well monitoring on the Medina well on a regular basis. As this permit is extended to include the balance of the Medina and Hilton property, the County can expect similar conditions to be placed on any other wells for which DOGAMI has concerns. For this reason, applicant will accept a similar condition for any wells identified in this proceeding that the Commission believes there is reasonable likelihood of adverse affect.

Objection 5q: The applicant proposes to construct a "high channel" ditch as a permanent feature on the floodplain, between a proposed permanent 100-year-elevation berm and the existing sewer mainline through the property. The proposal states that the ditch will be lined with "Reno mattresses" (articulated concrete blocks). Minimal information has been provided regarding the hydraulic design of this major floodplain feature. There is insufficient data to review, data necessary to establish the long-term integrity of the proposed channel, and addressing its potential for avulsion, sedimentation, erosion, and impacts to the Bear Creek Greenway and downstream landowners; and

Rebuttal: In response to testimony at the earlier hearing, Applicant's Geotechnical Engineer has re-examined the floodplain analysis. This examination identified an anomaly in the analysis that that may eliminate the need to construct this feature altogether. Applicant expects a revised floodplain analysis addressing this issue will be available at the next scheduled hearing.

Objection 5r: The proposal's treatment of the Bear Creek Greenway is not appropriate. The Greenway is an "Area of Special Concern" and is the subject' of management policies and guidelines that are not addressed by the proposal. Although the development ordinance directs you to promote Greenway polices "to the extent of your legal authority," (7.1.1(B)(2)), the applicant has proposed no greenway mitigation.

Rebuttal: Notwithstanding the below legal technicalities, the applicant believes good planning should incorporate important features like Bear Creek Greenway where appropriate. The statement by Opponent's Attorney that the applicant has offered no Greenway mitigation is unfounded. Applicant's site plan leaves 500-foot wide reaches of riparian area as undisturbed greenway area. Applicant has offered a public easement to take effect following mining operations east of Bear Creek in accordance with a request submitted by the Greenway Program manager. Considering Applicant's offer to dedicate almost a mile of private property for public purposes, Applicant finds the Opponent's Attorney's assertion that no mitigation has been offered absurd.

This objection identifies no policies in the Greenway Plan that the Opponent's Attorney believes operate as an approval standard. No legal analysis is provided upon which a conclusion can be reached that treatment of the Greenway is inappropriate.

2. In addition to those objections raised in the Letter to Jackson County Planning Commission from Todd Sadlo, Attorney for Opponent Rogue Aggregates, Inc., dated October 27, 2005, he raised the following objections/issues in oral testimony on October 27, 2005.

Oral Objection #1: Opponent's Attorney stated that the Applicant had included some conflicting uses that may not pose a substantial threat to the aggregate resource and then proceeded to assert that, on this basis, the Commission should include his Client's property within the conflicting use area. The principal rationale for the request to be included in the impact area was the threat posed by increased risk of flood damage to his client's property.

Rebuttal: This objection and request to be included in the impact area is absurd for the following reasons:

- Opponents request to be included in the impact area is without precedent or legal basis. Nowhere in the County's Aggregate Element of the Comprehensive Plan or in the history of its application, in Goal 5, in Division 16, in Division 23 nor in the Jackson County LDO is one sand and gravel operation identified as a conflicting use with another sand and gravel operation. The Applicant is unaware of any case law to support this assertion. This objection and request is raised without any legal analysis where substantive criteria or procedures in the ESEE process is identified and relied upon to designate one aggregate operation as a conflicting use with another aggregate operation. Nowhere in the application is this point conceded by the applicant. Quite the contrary, the conflicting use tables offered by the applicant at record pages 156 and 161 clearly state that the applicant does not identify adjacent aggregate uses as potential conflicting uses.
- Opponent's Attorney's argument is backwards in precisely the way that both the Staff and the Planning Commission cautioned the entire audience at the hearing with respect to the legal requirements for the County's Goal 5 Aggregate Program. Opponent's Attorney has made no compelling argument and offered no substantial evidence as to how this resource site is adversely affected by the uses on his client's property 2,000 feet away.
- The potential risk cited by the Opponent's Attorney as the basis for inclusion in the impact area was primarily related to the bridge improvement. This improvement is located on Tax Lot 1900 which is planned and zoned for aggregate uses. The ESEE process for this parcel is complete and an impact area is already established for this parcel by operation of Ordinance 95-61, which was completed as part of Jackson County's periodic review. The principal requests related to the subject application applicable to Tax Lot 1900 are the floodplain development approval and site and operations master plan approval. The only component of the Plan Amendment and ESEE applicable to Tax Lot 1900 are the restrictions on mining west of Bear Creek and restrictions on mining in the Bear Creek Greenway overlay area. Neither of these restrictions in that adopted and

acknowledged ESEE were based upon floodplain issues nor were they related to other aggregate operations in the area.

Respectfully Submitted,

CRAIG A. STONE & ASSOCIATES, LTD.

Jay Harland

Consulting Planner

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MAR 16 2006 JACKSON COUNTY PLANNING



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March 15, 2006

VIA FIRST CLASS MAIL

Jackson County Planning Commission c/o Jackson County Planning Department County Courthouse 10 South Oakdale Medford, OR 97501

Re: File LRP 2005-0003: Rock 'N Ready Comp Plan Amendment, Site Plan Review and Zone Change

Dear Chair Hennion and Commission Members:

This Firm represents Rock 'N Ready Mix, LLC, the applicant in the above-referenced land use application. This letter is intended to respond to issues and allegations made by Rogue Aggregate ("Rogue") and its representatives at the Planning Commission hearing on February 9, 2006. At that time, the Planning Commission directed that the record be held open for seven days for new evidence and testimony. This letter and the attached materials are submitted under that direction.

It is clear from the oral testimony and the binder provided by Rogue that its goal is to avoid meaningful commentary on the proposed activities and to attempt to confuse the Planning Commission with irrelevancies, misrepresentations, and inferences. Generally, we believe Rogue's intent is to delay the proposal and to add to the expense of permitting for the applicant. Rogue's testimony thus far contains little to no factual evidence or analysis relative to the criteria. Rather, it relies on past resolved violations, unsubstantiated allegations that the existing operation has harmed Rogue's operation and, generally, trying to cast doubt on Rock 'N Ready engineering consultant. Rogue also makes the usual demands for additional detail, more studies

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and more information. Rogue's testimony does not relate to specific criteria or explain why Rock 'N Ready's testimony, provided by a registered Oregon engineer, is not sufficient to meet the relevant criteria. They simply claim it is not sufficient to meet their criteria.

In response to Rogue's comments, Rock 'N Ready retained Jeff Johnson of Northwest Hydraulic Consultants (NHC). Mr. Johnson has extensive experience in such situations and NHC is a major contractor to FEMA. Mr. Johnson substantially refutes Rogue's testimony regarding the likelihood of downstream impacts, sedimentation from Rock 'N Ready and their culverted road crossing. As an engineer certified in Oregon and given his experience in such matters his testimony constitutes expert testimony and is substantial evidence supporting Rock 'N Ready's application.

Immediately below, we would like to correct some of Rogue's testimony presentation on February 9, 2006, and at other times during the county's public hearing process. Additional rebuttal testimony is being prepared by Jay Harland, Bill Galli and Dave Paradis. Please include all this testimony into the record for this matter.

1. Department of State Lands (DSL) and Corps of Engineers (Corps) Permitting.

Rogue's Testimony: Rogue contends that Rock 'N Ready deliberately avoided the DSL and Corps regulatory processes. Rogue's allegation implies that by doing so, Rock 'N Ready did something sinister and apparently would like the County to believe that a substantive engineering evaluation was avoided. Rogue also contends that the HEC-RAS analysis misidentified the ordinary high water level ("OHW"). Rogue also offers a letter from the Corps to Copeland Sand and Gravel regarding their application implying that a similar process is necessary for its bridge.

Response: Yes, Rock 'N Ready deliberately avoided the state and federal permit processes. It was their legal obligation to do so. The basic criteria used by both agencies is to require applicants to demonstrate that impacts to aquatic resources be the only practicable way to conduct the project. (See Attachment 1 the definition of "mitigation.") Since it was obviously practicable for Rock 'N Ready to place the footings above OHW and, therefore, outside the aquatic resource regulated by DSL and the Corps, the law required them to so. In such a situation, no permit is necessary from either agency.

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Neither DSL nor the Corps evaluates the engineering of any proposed application. Consequently, in spite of the inferences from Rogue, by avoiding the permit process, not only did Rock 'N Ready meet their legal obligations, but they did not avoid a substantive engineering review. The Removal-Fill Law under which DSL acts and Section 404 of the Clean Water Act under which the Corps acts are environmental statutes. By placing the footings above the regulatory jurisdictional line, the agencies' concern about environmental impacts to the aquatic resource are resolved.

OHW is defined by both DSL and the Corps – see Attachment 2. In neither case is the two-year flood level or engineering calculations like the HEC-RAS analysis mentioned. By definition, OHW is determined by field observations and not mechanical or mathematical calculations.

The Corps' letter to Copeland is not relevant to this situation. That letter was in response to a permit application requesting authorization to place fill material below OHW within their jurisdiction. The Rock 'N Ready bridge avoids fill in the Corps jurisdiction. The point being that Rock 'N Ready followed the law by avoiding the impacts in the first instance.

2. Pit Capture

Rogue's Testimony: Rogue refers to Pit 1 as having been captured by Bear Creek.

Response: Pit 1 has not been "captured" by Bear Creek. However, during the December 30, 2005 flood event, it was overtopped as planned by both Rock 'N Ready and the Oregon Department of Geology and Mineral Industry ("DOGAMI"). The primary difficulty at that time was that the fish channel intended to allow water into the pit had not been completed. DOGAMI had concurred with that decision.

The phrase "pit capture" means that the stream has shifted and flows through the mined pit. The stream usually enters the pit upstream by eroding or breaking through the stream bank itself and/or any berms intended to prevent the pit from being overtopped. The stream then fills the pit with water and exits downstream after eroding a new channel. The pit then becomes a feature of the stream, in effect, the pit becomes a deep, widened area within the stream. In the case of Pit 1, it

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remains a unique feature separated from Bear Creek by the established setback. Bear Creek does not run through Pit 1, has not been captured by Bear Creek and is not part of Bear Creek. Consequently, referring to Pit 1 as having been captured by Bear Creek grossly misprepresents the situation.

3. Failure of Rogue's Culverted Road Crossing.

Rogue's Testimony: Events at Rock 'N Ready's Pit 1 somehow caused Rogue's culverted road crossing to fail.

Response: Two Oregon registered engineers have independently reviewed Rogue's culverted road crossing and both concluded that regardless of upstream activities, the crossing was doomed to fail. Mr. Johnson notes that the culverts could pass only a fraction of the total flow that Bear Creek could deliver during a moderate to major flood even if the culverts remained clear of sediment. Therefore, the crossing had to rely upon overtopping to pass flood flows. Clearly the damage reveals that it could not handle the overtopping.

Although Rogue would like the Planning Commission to believe that material specifically from Rock 'N Ready's bankline provided the sediments that blocked their culverts, that position is unsupportable. In order for a 5-to 6-ft deep layer of sediment to deposit at Rogue's crossing, as it did during the December 1st flood, velocities near the crossing had to decrease significantly. Velocities did decrease because the crossing acted like a dam, for the culverts were not large enough culverts to pass the volume of water carried by Bear Creek. In addition, the crossing is located at a sharp bend in the stream. Therefore, significant sediment deposition in the form of a point bar was inevitable along the inside portion of the bend. Backwater influences from the Rogue River may have also had an influence on velocities. Rock 'N Ready has not operated on the water side of the Bear Creek bank and is not responsible for erosion along the bank line itself. There are hundreds of locations that are contributing sediment to Bear Creek and to single out the reach along Rock 'N Ready is intentionally misleading and inappropriate. Bear Creek continues upstream for approximately 30 miles, and there are hundreds of miles of tributaries beyond that, many of which have ongoing erosion and undercutting along the banks. As explained by Mr. Galli, Bear Creek and its tributaries contain substantial stretches of eroding bank line that provide sediment of large and small grain size into the waterway. If Rogue's culverts were blocked by sediments from upstream, there is no evidence that it was specifically the result of any activity conducted by Rock 'N Ready. However,

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the implication of the muddy water seen in every high water event in the Bear Creek is that areas upstream erode and contribute to the sediment captured at depositional area where Rogue built its culverted road crossing.

Finally, it has been pointed out that the problems at Rogue's culverted road crossing took place during the December 1st flood event. Rock 'N Ready Pit 1 was not overtopped during that event. That didn't happen until the December 30th flood. Rogue provided pictures implying that the flooding of Pit 1 caused their sedimentation problems. This can not be. Obviously, there is no connection between what occurred at Rogue's culverted road crossing on December 1st and what occurred at Rock 'N Ready's pit on December 30th.

Rogue would like the Planning Commission to believe that their testimony demonstrates that downstream impacts from Rock 'N Ready's proposal will occur. However, it does not. What it does do is demonstrate Rogue's failure to fully consider the amount of sediment being carried by Bear Creek, the depositional nature of their crossing site and the volume of water Bear Creek is capable of conveying. Because Rogue's testimony is rebutted by two Oregon certified engineers, the Planning Commission should reject Rogue's implications of down stream effects from the proposed or past work.

4. FEMA Mapping

Rogue Testimony: Rogue contends that the FEMA maps must be modified and approved by FEMA prior to authorizing the proposed project.

Response: Although FEMA must approve any change in their maps, no modification is necessary in this case. FEMA published a Flood Insurance Rate Map (FIRM) and a Floodway map for this reach of Bear Creek. As required by FEMA, Jackson County is using these maps to regulate development within the floodplain. Mr. Galli has demonstrated that the proposed project complies with FEMA standards associated with the existing FEMA maps. Therefore, there is no need or plan at this time to change the existing FEMA maps.

For your general information the FEMA maps were developed to provide a "high-altitude" view of flood risk along the channel. For the proposed project, the designers felt that the FEMA maps did not provide enough detail to allow them to design flood protection features. Therefore, they constructed a much more

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detailed hydraulic model of the project area to provide the data they needed. This model will not produce flood hazard data identical to that shown on the FEMA FIRMs, but it does not need to.

If at some time in the future, there is a need to update the FEMA FIRMs, the new model could be used to do so. Rock 'N Ready would be willing to share it with whomever would be tasked with updating the maps.

5. DOGAMI Permit

Rogue Testimony. Rogue contends that DOGAMI effectively denied Rock 'N Ready's application for mining a 350-acre area by issuing a permit for only 6 to 8 acres. Rogue's testimony implies that DOGAMI finds Rock 'N Ready's engineering suspect and consequently has not approved Rock 'N Ready's request.

Response: Rogue's testimony is factually incorrect. Rock 'N Ready's application to DOGAMI relates to Tax Lot 1900, which is about 35 acres. (See Attachment 3). Tax Lot 1900 is already zoned by the County for aggregate mining and has been determined to be a significant mineral and aggregate resource by the County under Ordinance 95-61. As a result, a request for approval to mine on Tax Lot 1900 could be submitted to DOGAMI. Among the things that Rogue fails to mention is that DOGAMI is not in a position to evaluate an application for mining on areas where mining is not allowed by the local government. Consequently, the larger area presently zoned for exclusive farm use and not yet determined by the County to be a significant Goal 5 resource or otherwise zoned for mining is not available for submission to DOGAMI. Rogue's testimony is a deliberate attempt to mislead the Planning Commission and is factually incorrect. Moreover, it is not relevant to any criteria for any of the requests presently before the Planning Commission and should be ignored for all those reasons.

6. There is no Downstream Conflict

Rogue's Testimony: Rogue would like the County to extend the impact area associated with its Goal 5 evaluation to include its site. Rogue contends that must be done because they have raised a conflict.

Response: Rogue claims Rock 'N Ready is ignoring the downstream conflict they raise. However, the reality is that Bill Galli has demonstrated that the

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effect of the operation will not travel further than Rock 'N Ready's property line. Independently, NHC notes that "it is our opinion that there will be no significant change in flow velocities, direction or depths within the RA reach due to changes at the Rock 'N Ready site." NHC also notes that the existing rail road bridge would dampen any significant effects downstream of that bridge. This further decreases the likelihood of downstream effects.

Simply raising a concern is not enough, it must be a real potential concern supported by substantial evidence. In this case, it is not. Because Rogue has not met its burden to demonstrate that a conflict exists, the County has no reason to expand its impact area.

We believe that the Planning Commission has substantial evidence in the record supporting a positive recommendation on Rock 'N Ready's application. Opposition testimony from, among others, Rogue has been refuted by Bill Galli and Jeff Johnson and others. We appreciate your efforts to sort through to complex and often confusing testimony.

Very truly yours,

Frank M. Flynn

FMF:sag

Definition of Mitigation - OAR 141-085-0010 (129)

- (129) "Mitigation" means the reduction of adverse effects of a proposed project by considering, in the following order:
 - (a) Avoiding the impact altogether by not taking a certain action or parts of an action;
 - (b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation;
 - (c) Rectifying the impact by repairing, rehabilitating or restoring the affected environment;
 - (d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action by monitoring and taking appropriate corrective measures; and
 - (e) Compensating for the impact by replacing or providing comparable substitute wetlands or other waters.

DSL Definition of Ordinary High Water Line

OAR 141-085-0010 (150) — "Ordinary High Water Line" (OHWL) means the line on the bank or shore to which the high water ordinarily rises annually in season (ORS 274.005). The OHWL excludes exceptionally high water levels caused by large flood events (e.g. 100 year events). OHWL is indicated in the field by the following physical characteristics:

- (a) Clear, natural line impressed on the shore;
- (b) Change in vegetation (riparian (e.g. willows) to upland (e.g. oak, fir) dominated);
- (c) Textural change of depositional sediment or changes in the character of the soil (e.g. from sand, sand and cobble, cobble to gravel to upland soils);
- (d) Elevation below which no fine debris (needles, leaves, cones, seeds) occurs;
- (e) Presence of litter and debris, water-stained leaves, water lines on tree trunks; and/or
- (f) Other appropriate means that consider the characteristics of the surrounding areas.

Corps Definition of Ordinary High Water

The Corps defines ordinary high water at 33 CFR 328.3 (e) as: that line on the shore established by the fluctuations of water and indicated by physical characteristics such as clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.

DSL Jurisdiction

OAR 141-085-0015

Removal-Fill Jurisdiction by Volume of Material and Location of Activity

(1) The Department's determination as to whether a removal-fill authorization is required depends primarily upon a project's position relative to waters of the state and the volume of the fill and/or removal and the project purpose. Uplands are generally not subject to these rules except when they are used for compensatory wetland mitigation or compensatory mitigation sites.

Attachment 2

- (2) To be subject to the requirements of the removal-fill law, the removal or fill must be within "waters of the state." The types of waters of the state and the physical limits of removal-fill jurisdiction are as follows:
 - (a) Estuaries and tidal bays, to the elevation of highest measured tide;
 - (b) The Pacific Ocean, from the line of extreme low tide seaward to the limits of the territorial sea,
 - (c) Rivers, intermittent and perennial streams, lakes, ponds and all other bodies of water (except wetlands) subject to these rules, to the ordinary high water line, or absent readily identifiable field indicators, the bankfull stage;
 - (d) Wetlands (defined in OAR 141-085-0010), within the wetland boundary delineated in accordance with OAR 141-090-0005 to 0055.
 - (e) "Other Bodies of Water," as used in ORS 196.800(14) are the following artificially created waters which are considered "waters of the state":

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March 21, 2006

MAR 2:3 2006 JACKSON COUNTY PLANNING

JACKSON COUNTY PLANNING COMMISSION c/o Jackson County Planning Department County Courthouse 10 South Oakdale Medford, OR 97501

RE: Final Written Argument
Planning Action LRP2005-00003
Rock-n-Ready Mix LLC: Applicant

Dear Jackson County Planning Commission:

Following the close of public testimony at the March 9, 2006 public hearing on the above captioned matter, the Planning Commission ("Commission") afforded the applicant seven additional days from the date the record closed on March 16, 2006 for final written argument. Opposition to the application was presented by the Applicant's competitors Rogue Aggregates, Inc and Crater Sand and Gravel. This letter constitutes Applicant's final written argument on this matter as it appears before the Jackson County Planning Commission. This argument is intended to operate within the decision making framework laid forth in the letter entitled *Decision Making Process* dated March 15, 2006 and found at Record Pages 1506 to 1510. The substance of this memo is repeated below for ease of reference:

Decision #1. Final Site Plan Permit/Floodplain Permit/Aggregate Hauling across the Bear Creek Greenway for lands Planned and Zoned AR where no plan amendment and/or zone change is requested. (The area applicable to this decision is the cross-hatched area on Applicant's Request Key Map #2 located on Tax Lot 1900 at Record Page 808)

This decision applies to those portions of Tax Lot 1900 where no plan amendment is requested; this decision is a permit action. The opponent's have failed to identify any Comprehensive Plan amendment criteria that are directly applicable to this permit request, as such the decision is strictly governed by standards and criteria contained in the LDO.

With respect to the floodplain development permit and site plan permit, the level of detail necessary to make this decision is rather mechanical. The recommended approach is to go through each floodplain development standard and each aggregate site plan standard individually to answer one of two questions. Does substantial evidence in the record demonstrate compliance with each standard? If not, is there substantial evidence that

demonstrates compliance can be obtained through imposition of clear and objective conditions of approval? If the answer to either of these questions is yes for all relevant standards and criteria, then the burden of proof has been met by the applicant and the Commission should, as a matter of the County's established aggregate policy, pass a separate motion to approve each permit request.

With respect to the Greenway criteria, the Commission must first decide the extent to which these criteria are applicable. To the extent the Commission believes they are applicable, an evaluation of each criterion should be performed for the stream crossing as this is the only area in the Greenway where no plan amendment is requested and two questions should be answered. Does substantial evidence in the record demonstrate compliance with each standard? If not, is there substantial evidence that demonstrates compliance can be obtained through imposition of clear and objective conditions of approval? If the answer to either of these questions is yes for all relevant standards and criteria, then the burden of proof has been met by the applicant and the Commission, should as a matter of the County's established aggregate policy, pass a separate motion for approving the aggregate hauling use in the Greenway.

If the Commission approves all three of these permit requests by motion, then staff should be directed to prepare an order approving these permit requests with an attached map that depicts the geographic applicability of the order for approval.

Decision #2. Comprehensive Plan Map amendment to modify the ESEE analysis and the corresponding conditions attached to Ordinance 95-61 (Request Key Map #5 at Record Page 811).

Significance is established. No modification to the impact area is requested. The Commission need only revisit the conflicts analysis as they pertain to Pit 2A and Pit 4 on Tax Lot 1900. The Commission must determine, based upon substantial evidence in the record, whether the proposed mining operation with the stipulated phasing plan, screening, future demonstration of compliance with County floodplain regulations, and aggregate site plan standards will adequately balance identified conflicting uses. The Commission may elect to add site specific conditions to balance the aggregate resource against conflicting uses. If the Commission determines that the requested amendments cannot be allowed without expansion of the impact area, due to new conflicts identified, then deny the requested amendments on the basis that the applicant has not requested an amendment to the impact area and the ESEE cannot be amended without expansion of the impact area for which the Applicant has not requested.

Decision #3. Significance of Proposed Areas to be Added to the Aggregate Inventory (These areas are identified on Request Key Map #4)

Based upon substantial evidence in the record, determine whether the site meets the County's test for a significant aggregate resource site. By separate motion, vote on the significance of the resource site and make a recommendation to the Board of

Commissioners that the lands depicted on Request Key Map #4 be added to the County's list of significant aggregate resources.

Decision #4. Identify Conflicting Uses and Establish Impact Area for new sites identified as significant resources pursuant to Decision #3 above.

Review the evidence in the record. The Commission should begin with those conflicting uses identified in Applicant's initial submittal. The Commission should then deliberate as to whether there are additional conflicting uses that have not been identified by the This evaluation should seek to identify causal relationships between conflicting uses and impacts directly associated with new Goal 5 aggregate areas. For example, there are no impacts to the Bear Creek Greenway related to the portion of Pit 2 on Tax Lot 100 of the Medina Property because all operations are proposed to occur outside the riparian area and are not in any mapped Greenway overlay area. Commission should review the record for potential conflicting uses outside the 1500-foot impact area and the Commission must determine whether any such conflicts are significant to an extent that modification of the impact area is necessary. Any modification of the impact area must be based on the impacts to the Goal 5 resource and establish the causal relationship between the site proposed for inclusion on the County's aggregate inventory and the identified conflicting uses outside the standard 1500-foot impact area. By separate motion and vote, recommend to the Board of Commissioners an impact area and a list of conflicting uses to be evaluated in the ESEE analysis.

Decision #5. Complete the ESEE process for new sites identified as significant resources pursuant to Decisions #3 and #4 above.

It is recommended the Commission begin with the ESEE analysis prepared by the applicant and then modify it as necessary-pursuant to Decisions #3 and #4 above. Modifications to the Applicant's ESEE analysis should evaluate the ESEE consequences and balance conflicting land uses and competing Goal 5 resource sites. When balancing conflicts, it is recommended the Commission begin with an evaluation of the adopted LDO standards, the stipulations offered by the applicant, and the site plan and operations master plan as a means to balance the conflicts. If the Commission believes the adopted standard is somehow inadequate the Commission can and should evaluate potential sitespecific conditions to balance the conflicts. At this stage in the decision making process, the Commission is not required to make any determination as to whether the development permit requests included with this consolidated application comply with the LDO development standards or any site specific conditions; the Commission need only determine that compliance with the standards and site specific conditions as applicable will adequately balance identified conflicting uses. When the conflicts analysis is complete, by motion and vote, recommend the Board of Commissioners adopt the Planning Commission's ESEE analysis and amend the Comprehensive Plan Map in accordance with the results of the ESEE analysis.

Decision #6. Evaluate the site and operations master plan as a means to implement the ESEE results and zone those lands AR where the results of the ESEE analysis are balanced toward aggregate extraction.

At the most recent hearing, Opponent Rogue Aggregates asserted that the County cannot approve a general site plan without all specific mining details. For a site this large and an operation this complex with a substantial duration, this is impractical and is not required as matter of code. The hypertechnical ultra-rigid code interpretation offered by the Opponents is not representative of the County's past practice in its application of the County's Goal 5 program for aggregate and the same have not been changed substantially for many years. Site detail conditions, such as providing the pit grading cross-sections approved by DOGAMI to the County, can feasibly be provided and may be attached as conditions of approval to the site and operations master plan.

The Commission must evaluate the site and operations master plan in relation to the ESEE results. Any changes to the site and operations master plan, or conditions thereto, which are necessary to carry out the ESEE consequences analysis should be laid forth and clearly relate to the portion of the plan they affect. With these amendments incorporated, the Commission should by motion and vote adopt the site and operations master plan and zone all areas planned Aggregate Resource pursuant to Decision #5 above to Aggregate Removal (AR). This action should be implemented by an order to which the following condition may be attached to assure consistency with the Zoning Map and Comprehensive Plan Map:

The Planning Commission's decision approving the requested Zoning Map Amendment is subject to a final decision approving the requested Comprehensive Plan Map amendment. A final decision is defined as either a decision by the Board of Commissioners that is not appealed or a decision that is appealed resulting in an approval of the requested amendment.

Decision #7. Final Site Plan Permit/Floodplain Permit/Aggregate Hauling across the Bear Creek Greenway for lands where the Aggregate Resource Plan designation and Aggregate Removal zoning district is recommended by the Planning Commission. (The area applicable to this decision is the cross-hatched area on Applicant's Request Key Map #2 not located on Tax Lot 1900 at Record Page 808)

With respect to the floodplain development permit and site plan permit, the level of detail necessary to make this decision is rather mechanical. The recommended approach is to go through each floodplain development standard, each aggregate site plan standard, and any site specific conditions attached from the ESEE analysis to answer one of two questions. Does substantial evidence in the record demonstrate compliance with each standard? If not, is there substantial evidence that demonstrates compliance can be obtained through imposition of clear and objective conditions of approval? If the answer to either of these questions is yes for all relevant standards and criteria, then the burden of proof has been met by the applicant and the Commission should, as a matter of the County's established aggregate policy, pass a separate motion to approve each permit request.

With respect to the Greenway criteria, the Commission must first decide the extent to which these criteria are applicable. To the extent the Commission believes they are applicable, an evaluation of each criterion should be performed for those areas where hauling or extraction are proposed for mapped Greenway areas. Does substantial evidence in the record demonstrate compliance with each standard? If not, is there substantial evidence that demonstrates compliance can be obtained through imposition of clear and objective conditions of approval? If the answer to either of these questions is yes for all relevant standards and criteria, then the burden of proof has been met by the applicant and the Commission should, as a matter of the County's established aggregate policy, pass a separate motion for approving the aggregate hauling and/or extraction located in the Greenway area.

If the Commission approves all three of these permit requests by motion, then staff should be directed to prepare an order approving these permit requests with an attached map that depicts the geographic applicability of the order for approval and make it subject to the following condition:

The Planning Commission's decision approving the requested Floodplain Development Permit, Aggregate Site Master Plan, and Type 3 permit for aggregate operations in the Bear Creek Greenway is subject to final decisions approving the requested Comprehensive Plan Map amendment and Zoning Map amendment. Final decisions are defined as either a decision by the Board of Commissioners that is not appealed or a decision that is appealed resulting in an approval of the requested amendment.

The Applicant hopes that letter, combined with this argument, will aid the Commission in making its recommendation to the Board of Commissioners. Consistent with the Commission's direction, this letter does not present new evidence but relies on testimony and evidence already in the County's record. Rock N Ready Mix, LLC [the Applicant] requests that this letter be included in the County's record for this matter.

The below list details the evidence submitted to-date by the Applicant in support of this application:

•	Exhibit 13	Application for Minor Comprehensive Plan Map Amendment		
		and Zoning Map Amendment		
•	Exhibit 14	Floodplain Finding of Fact		
•	Exhibit 15	Geotechnical and hydrologic report, The Galli Group		
•	Exhibits 16-18	Site and Operations Master Plan		
•	Exhibits 19-39	Detail Evidence to Support Exhibits 13-19		
•	Exhibit 50	Traffic Impact Study		
•	Exhibit 100	Rebuttal Letter Responding to Opponents Objections		
•	Exhibit 101	Testimony from Applicant's Traffic Engineer		
•	Exhibit 116	Bridge Cross-Section Figure- Galli Group		
•	Exhibit 117	Ordinary High Water Level Discussion and Data- Galli Group		
•	Exhibit 118	Bridge Pier Stability Bear Creek Sta 1969 – Galli Group		
•	Exhibit 119	HEC RAS Evaluation Bear Creek - Galli Group		
•	Exhibit 120	HEC-RAS Input Data – Galli Group		
•	Exhibit 121	HEC-RAS Output Data – Galli Group		
•	Exhibit 122	No Rise Certificate – Galli Group		
•	Exhibit 123	Streamback Migration Study Bear Creek @TL 1900-Galli		
	Group			
•	Exhibit 124	Channel Stability and Offsite Affects of Proposed Project-Galli		
	Group			
•	Exhibit 125	Water Surface Profiles – Galli Group		
•	Exhibit 126	Access Road Berm Design Considerations - Galli Group		
•	Exhibit 133	Peer Review Testimony from Jeff Johnson		
•	Exhibit 149	Response from David Paradis clarfying violation history		
•	Exhibit 150	Written Response to Issues Raised by Lidstone-Galli Group		

Applicants Final Written Argument:

This application was initiated through the County's quasi-judicial land use process. As a result, the policies and standards governing this application are in the existing County Comprehensive Plan and Land Development Ordinance. The Commission is charged with applying the existing policies and standards that have been evaluated and approved by the Board of Commissioners. This application does not request and the Commission cannot apply new or different standards or policies.

1. Floodplain Development Standards

Record Summary: The record includes conflicting testimony regarding legal interpretation of the County's floodplain regulations and technical demonstration of compliance with the County's floodplain and floodway development standards.

With respect to technical evidence, Applicant's registered professional engineer licensed in the State of Oregon, William Galli, has analyzed the proposed project and has testified it will have no downstream impacts. Mr. Galli, who has extensive experience work on bear Creek and other waterways in Jackson County, has provided substantial written and oral testimony on many aspects of the proposal. Applicant's registered professional engineer has reevaluated his analysis to address technical concerns raised during the hearing process. Opponents' testimony asserts that substantial downstream impacts are likely to be caused by Rock-n-Ready operations on property owned by Rogue Aggregates and that hydraulic analysis and sediment transport analysis must be conducted from the Applicant's property to its confluence with Bear Creek. Applicant's engaged Jeff Johnson of Northwest Hydraulic Consultants, Inc. as an expert with extensive experience in hydraulic analysis. Mr. Johnson, another Oregon certified engineer with extensive experience evaluating impacts to waterways and hydrologic impacts from mining activities, conducted a limited peer review of the flood analysis prepared and submitted to-date by The Galli Group and made two critical statements at record pages 1398 and 1399 that agreed with earlier statements made by Mr. Galli:

"The existing railroad grade just upstream from RA [Rogue Aggregates] serves as a major hydraulic control during large floods. Water ponds behind the railroad fill which effectively dampens out any significant impact." Mr. Johnson additionally stated, "To suggest that RNR [Rock-n-Ready] activities are a major source of their [sedimentation] problem in our opinion is misleading and inappropriate, rather the sources of the sediment that enter the reach come from hundreds of source both big and small along the entire length of Bear Creek and its tributaries."

Mr. Lidstone responds to Mr. Johnson's comments from Record Page 1482 to 1492. This response questions the validity of Mr. Johnson's testimony based upon speculations made by Mr. Lidstone regarding information that Mr. Johnson had at the time his testimony was prepared. This speculation does not constitute substantial evidence and has no effect on Mr. Johnson's expert testimony on the above quoted matters. Mr. Lidstone and Mr. Galli have differing opinions as to whether the Galli calculated 100-year flood elevations can be considered consistent with the adopted FEMA Flood Study. No substantial evidence has been submitted to the Record that contends the FEMA Flood Study is inaccurate for this stretch of Bear Creek. Applicant has contended since the beginning of this proceeding that the FEMA Maps have significant inaccuracies for a portion of the Rock-n-Ready reach of Bear Creek and Opponent's have offered no substantial conflicting evidence.

With respect to legal interpretation of Chapter 7.1.2, Opponent's have offered an interpretation that the LDO requires a Letter of Map Revision (LOMR) or at least a Conditional Letter of Map Revision (CLOMR). Opponent's attorney has cited FEMA regulations as a basis for this assertion; no coherent legal analysis exists in the record that explains how these Federal regulations operate as an approval standard for a quasi-judicial local land use decision. Applicants have advanced the legal position that a Letter of Map Revision is not a preemptory requirement and that the local code can and should be interpreted to allow a site-specific detailed HEC-RAS floodplain analysis that demonstrates compliance with the County's floodplain criteria and development standards.

Applicant's Argument: Determination of Floodplain and Floodway boundary locations is a two-dimensional exercise upon which the County determines whether the floodplain development and floodway development criteria apply to a project. The evidence establishes that the stream crossing is subject to the Floodway Development standards in 7.1.2(F)(7)(c). The evidence establishes that other portions the operation are located in the 100-year mapped floodplain area and are therefore subject to the County's Floodplain Development standards. Because there is no dispute that the County's floodplain and floodway regulations apply to the project, the maps have limited practical effect on the decision making process because the criteria for approval of a floodplain development permit is based upon compliance with development standards that relate development impacts to changes in water surface elevations and to a lesser extend water velocities.

LDO Section 7.1.2(D) describes methods for determining flood elevations. For flood hazard areas with established flood elevations, these provisions provide clear direction for a project involving a particular building permit at a distinct location. By the language and context of LDO 7.1.2(D), the methods discussed in the LDO Section 7.1.2(D) have limited applicability for an aggregate operation with a bridge crossing and engineered flood control berms that extend for a considerable stream length. For this reason, interpretation of LDO Section 7.1.2(D) is appropriate. A detailed hydraulic model has been prepared by the Applicant's Registered Professional Engineer. The existing conditions base flood elevation profiles are provided at Record Page 910. This graph plainly shows that the site-specific HEC-RAS model is substantially consistent with the more generalized FEMA water surface profiles. The downstream water surface elevation of this model is an input that comes directly from the FEMA Flood Study elevations. Because the site-specific HEC-RAS model utilizes the Flood Study flood elevations as a principal model input and the model itself has been developed by FEMA, it is appropriately applied in evaluating 100-year flood impacts consistent with the methods for establishing base flood elevations described in LDO Section 7.1.2(D) as it is applicable to this project.

If the reasoning in the above two paragraphs is acceptable to the Planning Commission, then the Planning Commission can and should proceed to evaluate compliance with the criteria based upon the same reasoning. A floodplain development permit requires demonstration of compliance with the following two criteria, each is addressed below:

- E) Criteria for Approval Prior to approval of floodplain review, the County will determine all of the following:
 - 1) That all applicable development standards of Section 7.1.2(F) can feasibly be met;

The Planning Commission identifies the following developments standards of 7.1.2(F) apply to the project:

F) Development Standards

7) Floodway Development

c) All encroachments, including fill, roadways or bridges are prohibited unless certification by an Oregon registered professional engineer is provided demonstrating that the encroachment will not result in any increase in flood levels during the occurrence of the 100-year flood (no-rise analysis and certification). Culverts used in stream crossings where floodways are mapped and/or 100-year floodplain elevations have been determined will require a no-rise analysis and certification. Culverts used in stream crossings where base flood elevations and floodways have not been determined (Approximate A zone) will be of sufficient size to minimize the rise of flood waters within the presumed floodway. Evidence must be provided by an Oregon registered professional engineer showing the size of the proposed culvert will pass the flood waters of the 100-year flood. Culverts and bridges must be anchored so that they will resist being washed out during a flood event. Culverts and bridges must also meet the riparian protection standards in Section 8.6.3 of this Ordinance.

An Oregon Registered Professional Engineer, William Galli has performed a no-rise analysis and testified in writing and orally that the only floodway encroachment proposed is the bridge and that it will not cause a rise in the 100-year flood condition off-site and will cause only an incidental rise within the project for which the applicant is willing to accept responsibility for any damages resulting from this minor rise, Record Pages 1542-1545. With respect to riparian habitat protections, Applicant has demonstrated the standards in Section 8.6.3 have been met or can feasibly be met through imposition of a condition of approval requiring submittal and staff approval of a final landscape plan approved by ODF&W; no evidence substantial evidence conflicts with this conclusion. The stream crossing component of the floodplain development permit request is a permitted use in the applicable AR zoning district and is not dependent on the requested map amendments and thus requires no analysis or consideration in the Goal 5 process.

- 8) Fill in the Floodplain
 Prior to placement of fill within the 100-year floodplain a report from an Oregon registered professional engineer determining the effect the placement of fill will have on the 100-year floodplain will be
 - a) Where base flood elevations have been determined, the fill cannot cumulatively raise the base flood elevation more than one foot at any given point. The report will reference the Flood Insurance Study for Jackson County, Table 3 (Floodway Data), for a specific reach of a stream. The increase in the base floodwater surface elevation, as shown in this table, will not be more than one foot.
 - b) Where base flood elevations have not been determined, the fill cannot raise the base flood elevation more than one foot at any given point. (See 7.1.2(D)(2))
 - c) The fill will be engineered to resist erosion by floodwaters.

Based upon the evidence in the Record, all bridge construction and flood control measures for the aggregate operations have been professionally engineered. The HEC-

¹ The Planning Commission acknowledges there is an incidental rise in water surface elevation projected in the HEC-RAS analysis immediately upstream of the bridge. The applicant's stipulation to record a waiver of remonstrance from the pursuit of damages against the County and/or FEMA from flood damages for the Applicant's properties adjacent to the crossing is sufficient to protect the County's financial and legal interest in this regard.

RAS 100-year flood event analysis at Record Page 1545 demonstrates that the proposed fill (road berm) will not increase 100-year flood elevations more than one-foot at any location. A considerable portion of the proposed fill in the floodplain is located on Tax Lot 1900 in an area planned and zoned AR; the aggregate use in this area is permitted in the applicable zoning district and is not dependent on the requested map amendments and thus requires no analysis or consideration in the Goal 5 process.

10) Aggregate Removal

- a) Aggregate removal or surface mining operations within the 100-year floodplain or floodway will not cause an increase in flooding potential or stream bank erosion adjacent to, upstream or downstream from the operation.
- b) All mining and processing equipment and stockpiles of mined or processed materials will be removed from the site during the period of December 1 through April 30, unless the operation will be protected by a dike that is of sufficient width and height to prevent flood waters from inundating the site.

Based upon the Record, all bridge construction and flood control measures for the aggregate operations have been professionally engineered and meet the applicable standards for fill and stream crossings pursuant to Sections 7 and 8 above. Because all other new operations will be located outside the mapped floodplain or in areas protected by the engineered flood control road berm, other operations will not increase flooding potential as matter of deduction. With respect to stream bank erosion potential, the post-development water velocities and elevations have been shown to meet applicable development standards as detailed above and will therefore minimize the potential for increased stream bank erosion. The existing concrete processing area is a lawfully established nonconforming use in the floodplain.

2) That applications have been submitted or all necessary permits have been obtained from those federal, state, or local governmental agencies from which approval is required by law. Copies of all permits must be submitted to the County prior to initiation of the development.

The record establishes that the bridge design was required to avoid the need for DSL/COE permits and the record does not establish failure to obtain or apply for a necessary permit.

Conclusion: Based upon the above argument and the evidence in the Record, The Planning Commission can conclude that the Record demonstrates compliance with the County's floodplain development criteria. The Commission can further conclude that the floodplain development permit has limited applicability to the concurrent Goal 5 review process because most all of the floodplain development is located on a portion of the site where the Goal 5 process is complete and no Comprehensive Plan Map amendment is requested or needed (Portions of Tax Lot 1900 not subject to the restrictions on extraction in Ordinance 95-61).

Craig Stone and Associates, Ltd.

2. Aggregate Site Plan Review

Record Summary: Applicant submitted an overall site and operations master plan and more detailed plans for those areas where final site plan approval is requested for near-term operations, See Exhibits 16 and 18 at Record Pages 330-345. Modifications to the original plans have been made principally to accommodate engineered flood control features along Upton Slough and to remove settling ponds in existing Pit #1. Opponents have argued that the site plan does not meet the County's requirements, lacks essential details and that it is inappropriate to expect the County to develop and apply conditions of approval.

Applicant's Argument: Opponents misconstrue the applicable law at Record Page 1468. Opponents advance the position that the Applicant's seek a Type 4 Permit that requires compliance with Type 4 site development plan review criteria. This is not the case. The Applicant requests a Comprehensive Plan Map amendment and map amendments are subject to a Type 4 process, but one that is subject to independent criteria found in LDO Section 3.7. Aggregate Site Plan reviews are Type 1 permit actions on AR zoned lands that are subject to aggregate-specific site development criteria and standards. Opponent's interpretation on the applicability of the Type 4 Permit criteria and corresponding site-development criteria is not supported by the context and language of the code which is clearly directed at non-aggregate site development, is contrary to the County's past pattern and practice, and is likely pre-empted as a matter of law under the Hegele decision.

The criteria and standards that apply are found in LDO Section 4.4.8(A). The introductory paragraph to these standards is important in understanding the applicability of review requirements for significant Goal 5 aggregate sites. This paragraph expressly references the Goal 5 process and review levels applied when a site was zoned AR through the Goal 5 process. The record includes substantial evidence that the standards of Section 4.4.8(A) for all areas where final site plan approval is requested are met or can be met through the imposition of clear and objective conditions. One important standard is the requirement for a DOGAMI operating permit; the language and context of the code anticipates that this will be a condition of approval for any aggregate site plan and the administrative rules for DOGAMI call for the DOGAMI permit review to occur after any Comprehensive Plan Map amendments are in place. For areas where site and operations master plan approval only is requested, the site plan serves to guide the ESEE process, but initiation of mining in these areas will be conditioned on future detailed Type 1 site plan review and approval.

Conclusion: Based upon the above argument and the evidence in the Record, The Planning Commission can conclude that the record demonstrates compliance with the County's Aggregate Site Plan review standards where final site plan review is requested. The Planning Commission has sufficient evidence to conclude it is in the County's interest to have a site and operations master plan for the entire site for the purposes of adopting and implementing a Goal 5 protection program for the portion of the site where a Comprehensive Plan Map amendment is requested and that there is nothing in the County's Goal 5 program that prohibits such adoption.

3. Bear Creek Greenway

Record Summary: Applicant has identified multiple plan, LDO, and mapping issues that make clear determination of criteria related to the Greenway difficult. Notwithstanding these issues, Applicant has offered to stipulate to dedication of a public use easement to facilitate ultimate Greenway trail planning for this portion of the Greenway. This stipulation has received written support from the County's Greenway Program manager Karen Smith at Record Page 650. Applicant's position has consistently been that this is good planning and will serve both the Applicants and the County's tong-term Greenway goals. The Applicant has provided map analysis to locate the Greenway in relation to proposed operations; these maps indicate that, with the exception of Pit 2A, only minor Greenway impacts will occur and several acres that are not located in the Greenway will have no operations in them. The site visit demonstrated that the mining area is well setback from the actual riparian area that would normally be considered *Greenway*. Opponents have argued Applicant's offer to dedicate private land for public purposes is inadequate, that this project will do irreparable harm to the Greenway Program and Plan and have argued the Type 3 criteria cannot be met.

Applicant's Argument: The Greenway Program and Plan is principally an acquisition plan to create a non-motorized alternative transportation corridor and serves a secondary riparian protection function. The Applicant's stipulation that would allow the County to acquire the rights of public use at no cost is a substantial step toward any ultimate Greenway trail extension in this area in the future. If the Plan Amendment is approved, then the only existing and approved land uses around the Greenway are major aggregate uses with generally the same scale, site design, and operating characteristics so adverse impacts must necessarily be insignificant.

Conclusion: Based upon the above argument and the Conclusions of Law at Record Pages 343 to 344, The Planning Commission can conclude that the record demonstrates compliance with the Type 3 criteria related to the Bear Creek Greenway to the extent it is applicable.

4. Amendments to Ordinance 95-61

Record Summary: Applicants have requested an amended ESEE analysis to modify the mining restrictions placed on Tax Lot 1900 in Ordinance 95-61; no amendment to the impact area has been requested. These amendments would allow for mining in the Bear Creek Greenway area (Pit 2A) as a balance to the additional Greenway areas that will be retained in a natural state on Tax Lots 100, 200 and 2600 as depicted on Applicant's site plan. The other amendment requested is the restriction on mining west of Bear Creek. In the original ESEE analysis, the property owner simply stated they had no intention to mine this area. The owner, at that time, offered no screening as mitigation. The restriction contained in Ordinance 95-61 arose from concerns related to groundwater and aesthetic impacts.

Applicant's Argument: With respect to the Greenway Overlay restrictions, which are limited to extraction in Pit 2A, the record demonstrates that substantial lands adjacent to the Greenway Overlay on Tax Lots 100, 200 and 2600 will be unmined and left in a natural state. If these lands are used to balance the removal of Greenway restrictions to mine Pit 2A, when combined with Applicant's stipulation to dedicate an easement for eventual Greenway Trail construction, the Planning Commission has adequate factual basis to amend the ESEE analysis and allow mining in Pit 2A subject to future Type 1 site plan and floodplain development permit approvals.

With respect to the mining restrictions west of Bear Creek on Tax Lot 1900, the original ESEE analysis relied on comments regarding ground-water impacts for irrigation and aesthetic impacts. The record demonstrates that the Applicant has stipulated to provide screening and extraction phasing to substantially reduce aesthetic impacts and the Commission could increase the screening requirements at its discretion. With respect to groundwater effects on irrigation, this area now has a demonstrated history of farm uses continuing uninterrupted immediately adjacent to an aggregate extraction operations. Moreover, there are no significant agricultural operations in this immediate vicinity and these should therefore not serve as a basis for mining restrictions. If the Commission has concerns about groundwater impacts, a clear an objective condition requiring well monitoring and well deepening can be attached to the approval and applicant will accept a reasonable condition requiring the same.

Conclusion: The Record contains additional evidence sufficient to revisit the ESEE conflicts analysis adopted through Ordinance 95-61 and the Commission has the authority to amend the ESEE conflicts analysis as requested and apply any conditions it deems appropriate to balance the Aggregate Goal 5 resource against the Greenway Goal 5 resource in this area.

5. Significance of Proposed Goal 5 Aggregate Resource

Record Summary: Applicant provided evidence that the site is a significant aggregate resource in the initial application. Opponents questioned the validity of these studies prepared by one of their parent companies subsidiary companies. Applicant provided additional geologic evidence at Record Pages 852 to 893, prepared by Kuper Consulting LLC, that the site is a significant resource. No substantial conflicting evidence has been offered by Opponents that this is not a significant aggregate resource.

Applicant's Argument: The record contains substantial evidence that this is a significant aggregate resource.

Conclusion: Based upon the evidence in the Record, this is a significant resource that requires the County to complete the ESEE process to determine an appropriate level of protection.

6. Impact Area and Identification of Conflicting Uses for New Significant Aggregate Resources

Record Summary: Staff's memo at Record Page 1179 provides guidance on establishing the Impact Area and Identifying Conflicting Uses. Applicant's initial submittal identified conflicting uses in the standard 1500-foot impact area and evaluated conflicting uses outside the impact area that would warrant expansion of the impact area. Applicant did not request expansion of the impact area to protect their significant aggregate resource. Opponents, Rogue Aggregates, have argued that the impact area must be extended down to the Rogue River due principally to potential increases in sedimentation and flood hazards. Expert testimony and analysis has been provided by two Oregon Registered Professional Engineers William Galli and Jeff Johnson that the railroad crossing is a major flood control feature between the Rock-n-Ready Mix site and the Rogue Aggregates Site. These engineers have both testified

that this feature minimizes the likelihood that 100-year flood hazards below the railroad bridge could be impacted by development changes above the railroad bridge. The FEMA flood study is explicit; 100-year flood elevations downstream of Kirtland Bridge are controlled by the Rogue River, See Record Page 194. With respect to sedimentation, all new Pits must meet current County Floodplain standards and receive approval from DOGAMI. New near-term operations such as Pit 2 includes flood control features that have been professionally engineered to prevent pit capture that would lead to increased sedimentation potential and Applicant will accept reasonable conditions of approval for final design submittals to accomplish the same for future pits.

Applicant's Argument: Opponents, Rogue Aggregates, are the only land users outside the 1500-foot impact area requesting designation as a conflicting use and requesting inclusion in the impact area based thereupon. Opponents rationale for inclusion in the impact area is based primarily on testimony by Chris Lidstone that Rogue Aggregates operations, and especially their recently constructed culvert stream crossing will be adversely impacted by protection of Applicant's significant aggregate resources. In addition to the arguments provided by the Applicant at record page 781, this request is not appropriate based upon the following facts:

- 1. Opponents have failed to explain why the Floodplain Development standards in LDO Section 7.1.2 cannot be relied upon to reduce land use conflicts sufficient to protect this significant aggregate resource. Moreover, it is unreasonable to base a decision to expand the impact area, under the Goal 5 process, based on flood hazard concerns for a culvert stream crossing that did not meet the LDO code requirement to pass a 100-year flood event as required by the plain and unambiguous language of LDO Section 7.1.2(F)(7)(c) which states, "Evidence must be provided by an Oregon registered professional engineer showing the size of the proposed culvert will pass the flood waters of the 100-year flood." Moreover, these culverts were constructed based upon a Type I floodplain permit where the "no-rise" analysis and certification dealt strictly with Bear Creek and included no analysis or certification regarding the Rogue River which controls the 100-year flood elevations at the location of this crossing as is plainly stated in the adopted FEMA Flood Insurance study at Record Page 194.
- 2. There is no evidence that the Rogue Aggregates failed culvert stream crossing will negatively affect those areas proposed to be included on the County's inventory of significant Goal 5 resource sites. The Record contains no substantial evidence that refutes expert testimony provided by two Oregon Registered Professional Engineers that the hydraulic control of the railroad bridge assures the 100-year flood hazard risks below the railroad bridge are unlikely to significantly affect or be affected by development above the railroad bridge.
- 3. Most all of the significant aggregate resource areas where new operations are proposed are located outside the 100-year floodplain (operations areas within the 100-year floodplain have engineered flood control features) and no new operations are proposed in the floodway. On the east side of Bear Creek, all new operations are located behind a major public infrastructure feature- a 54-inch. RVSS interceptor. Applicant's plans were reviewed by RVSS Engineer Carl

Tappert and he states, "The current operating plan [plan as initially submitted] for Rock-n-Ready does provide adequate protection to the pipe."

Conclusion: Based upon the evidence in the Record, the Planning Commission can conclude that the standard 1500-foot impact area is sufficient to protect the resource.

7. ESEE Analysis for New Significant Sites West of Bear Creek

Record Summary: Applicant provided an ESEE analysis for the Commission's consideration. Staff prepared an ESEE analysis based upon that offered by the Applicant. The Robertsons have provided evidence and testimony regarding impacts associated with mining Pit 3 adjacent to their rural residence. Other written testimony has been received from residences on the hill west of Blackwell Road. At the initial hearing, Opponents attorney Todd Sadlo raised objections regarding the ESEE offered by the Applicant which were rebutted at Record Pages 771-782.

Applicant's Argument: Applicant recognizes the acute conflicts between those residences immediately adjacent to Pit 3, but believes the screening, phasing and conveying methods will be sufficient to minimize impacts when mining of this site will actually occur many years in the future. The Commission membership includes a registered landscape architect and the Commission may wish to rely on his expertise to impose additional screening requirements along Blackwell Road if the Commission believes the screening offered by the applicant is insufficient to reduce land use conflicts associated with aggregate operations west of Bear Creek. Because the Opponent's request for inclusion in the impact area is not supported by the facts, the rebuttal provided at Record Pages 771-782 adequately address all objections raised to date on the adequacy of the ESEE analysis offered by the Applicant.

Conclusion: Based upon the evidence in the Record, the Planning Commission can recommend the Board of Commissioners adopt the ESEE analysis offered by the applicant with amendments recommended in the Staff report and developed during deliberation sufficient to protect the resource in this area from conflicting land uses and to balance competing Goal 5 resources. The Planning Commission can and should direct staff to work with the Applicant to prepare a set of conditions based upon its recommended ESEE analysis.

8. ESEE Analysis for New Significant Sites East of Bear Creek

Record Summary: Applicant provided an ESEE analysis for the Commission's consideration. Staff prepared an ESEE analysis based upon that offered by the Applicant. Opponents have argued that the ESEE must address land use conflicts based upon their concern that protection of the resource will increase the risk associated with flood hazards.

Applicant's Argument: If Opponent's request for inclusion in the impact area is rejected, then there is limited testimony or substantial evidence that would require significant alteration of the ESEE analysis prepared by the Applicant. If the Commission does not concur with the Applicant's argument above and elects to include Rogue Aggregates property in the impact area and analyze other Aggregate Operations as conflicting uses, then the Applicant requests the following protections be required on the

subject property as well as any downstream aggregate operators in the impact area to reduce land use conflicts:

• New or substantially reconstructed stream crossings require demonstration by an Oregon Registered Professional Engineer that the cross-sectional flow area under the culvert or bridge be capable of passing the 100-year flood event.

Conclusion: Based upon the evidence in the Record, the Planning Commission can recommend the Board of Commissioners adopt the ESEE analysis offered by the applicant with amendments recommended in the Staff report and developed during deliberation sufficient to protect the resource in this area from conflicting land uses and to balance competing Goal 5 resources. The Planning Commission can and should direct staff to work with the Applicant to prepare a set of conditions based upon its recommended ESEE analysis.

9. Comprehensive Plan Amendment Criteria and Zoning Map Amendment Criteria

Record Summary: Applicant provided detailed Finding of Fact and Conclusions of Law addressing all Comprehensive Plan Map and Zoning Map amendment criteria. If the Planning Commission concurs with the above conclusions, there is no substantial evidence or argument in the record that conflicts with the Findings of Fact and Conclusions of Law, with any necessary revisions to accommodate the Commission's recommended ESEE, offered by the Applicant in the initial application.

Applicant's Argument: Applicant's original Findings of Fact and Conclusions of Law are sufficient to warrant approval of the requested map amendments in accordance with the Commission's recommended ESEE.

Conclusion: Based upon the evidence in the Record, the Planning Commission can recommend the Board of Commissioners amend the Comprehensive Plan Map and Zoning Map in accordance with the Commission's recommended ESEE analysis.

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Application of Jackson County's Aggregate Policy

Record Summary: Opponents' have argued that the County must deny or substantially delay protection of a significant and substantial aggregate resource principally based upon conflicting evidence and testimony for a floodplain development permitting issue where the concerns amount to engineering calculations regarding a few inches of water surface elevation in a 100-year flood event and sediment transport volumes that represent a fraction of the total sediment transported by Bear Creek in significant high-water events. The Applicant has maintained that the hyper-technical arguments offered by the Opponent are not required as a matter of law and that such an interpretation does not serve the County's established aggregate policies to ensure an adequate supply of aggregate resources for current and future use.

Applicant's Argument: Precise engineering details are not necessary for any component of the request except the floodplain development permit itself. The LDO contains standards for floodplain and floodway development to assure the risks associated with flood hazards will not be increased to unacceptable levels. The County's floodplain standards do not eliminate any potential for flood hazard for low lying areas along Bear Creek and the Rogue River and any expectation to that effect on the part of the Opponents is unfounded. The County can and does rely on its development standards to amend the Comprehensive Plan in accordance with generally accepted planning practice and theory and such reliance for the requested Comprehensive Plan Map amendment is legally defensible.

There is substantial evidence in the record that this is a significant and recoverable resource and the overall level of conflicting uses for the area are low. Under such circumstances, Policy 2 of the Aggregate Element of the Jackson County Comprehensive Plan directs the County as follows:

POLICY #2: THE COUNTY SHALL PROTECT AND CONSERVE AGGREGATE RESOURCES, REDUCE CONFLICTS BETWEEN AGGREGATE OPERATIONS AND ADJACENT LAND USES, AND ENSURE THAT AGGREGATE RESOURCES ARE AVAILABLE FOR CURRENT AND FUTURE USE.

Policy #2 is straightforward. The record substantiates that the site contains a significant and recoverable resource. The record also demonstrates that the number and concentration of conflicting land uses is relatively low for an aggregate site of this size that is near the key urban centers of Central Point, White City, and Medford, See Table 3, 4, and 5 in Record Pages 150 to 165. The Applicant has sought to minimize the potential for impacts to its neighbors by having the project professionally engineered, cooperating and responding to legitimate design concerns, and seeking additional technical review to assure the project meets all applicable standards. To that end, the record demonstrates that downstream impacts due to the proposed actives will not extend beyond the Applicant's property because water surface elevations and velocities will not be substantially altered by the project, see Record Page 1545. In addition, two Oregon certified engineers had noted that the railroad bridge located downstream limits the possibility of downstream effects from the proposal. Consequently, the County can find

that conflicts with adjacent uses will not extend beyond the County's 1,500 foot impact area.

Opponents have also raised issues regarding past violations and their dissatisfaction with DOGAMI approved design and reclamation plan for Pit 1. The Applicant is not under a violation situation with the County or DOGAMI at this time. Pit 1 is an approved land use that is predominantly zoned AR and its inclusion in the master plan serves only to provide the Applicant with a consistent and coherent set of regulations under which to operate. Testimony regarding Pit 1 has limited or no applicability to this proceeding.

Conclusion: The record substantiates that the Comprehensive Plan Amendment can be approved without violating any express provisions of the LDO, the Jackson County Comprehensive Plan and/or State of Oregon rules, laws, and/or goals. For the above reasons, the Planning Commission should consider the balance of the final written argument as the means by which the Commission can implement the County's established aggregate policy.

With approval of this application, the Applicant requests the Commission direct staff to work with the Applicant to develop conditions of approval that will implement the Commission's decisions on the above matters. The Applicant further requests the Commission direct staff to coordinate with the Applicant on the preparation of its orders and recommendations for approval on this matter.

Respectfully Submitted,

CRAIG A. STONE & ASSOCIATES, LTD.

Jay Harland

Consulting Planner

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BEFORE THE BOARD OF COMMISSIONERS STATE OF OREGON, COUNTY OF JACKSON

ORDIN	ANCE NO.	2007-21	

AN ORDINANCE AMENDING THE COMPREHENSIVE PLAN MAP TO CHANGE THE COMPREHENSIVE PLAN MAP DESIGNATION FROM AGRICULTURAL LAND TO AGGREGATE RESOURCE LAND FOR THE SUBJECT PROPERTIES FOR SUCH LANDS NOT CURRENTLY DESIGNATED AGGREGATE RESOURCE. THE SUBJECT PROPERTIES ARE IDENTIFIED ON THE TAX ASSESSOR'S PLAT MAPS AS TOWNSHIP 36 SOUTH, RANGE 2 WEST, SECTION 21, TAX LOT 1303 AND TOWNSHIP 36 SOUTH, RANGE 2 WEST, SECTION 27, TAX LOT 2600 (ONLY THAT PORTION WEST OF UPTON SLOUGH) AND TOWNSHIP 36 SOUTH, RANGE 2 WEST, SECTION 28, TAX LOTS 100 (ONLY THAT PORTION WEST OF UPTON SLOUGH), 200 (ONLY THAT PORTION WEST OF UPTON SLOUGH), 800, 900, 1101, 1200, 1300, 1500, 1700, 1800 AND 2604 AND LOCATED IN AN AREA BETWEEN NORTH OF THE EXIT 35 INTERCHANGE AND EAST OF BLACKWELL ROAD, SOUTH OF HIGH BANKS ROAD AND NORTH OF GIBBON ROAD. OWNED BY LINCOLN TRUST COMPANY (CONTRACT ROCK 'N' READY MIX INC.), PAUL AND DEANNA MEDINA, AND MICHAEL AND SHANNON HILTON. FILE LRP2005-00003.

RECITALS:

- 1. Pursuant to Chapter 197 and 215 of the Oregon Revised Statutes, and in conformance with the Statewide Planning Goals, Jackson County's Comprehensive Plan (JCCP) and implementing ordinances have been acknowledged by the Oregon Land Conservation and Development Commission (LCDC).
- 2. On March 24, 2005 an application for a Comprehensive Plan Map Amendment and Zoning Map Amendment was submitted by the agent, Craig A. Stone and Associates, for the applicant, Rock-n-Ready Mix LLC. After initial review by staff, the application was deemed incomplete on April 28, 2005. The applicant provided the requested supplemental materials and the application was then deemed complete by staff on June 29, 2005.

PROCEDURAL FINDINGS:

1. A notice of the proposed amendment was provided to DLCD more than 45 days prior to the initial public hearing. A notice was published on Sunday, October 16, 2005 in the Medford Mail Tribune that a first evidentiary hearing was scheduled before the Jackson County Planning Commission on October 27, 2005 at 9:00 a.m in the Jackson County Auditorium. That public hearing was conducted and continued by the Planning Commission to January 23, 2006 at 9:00 a.m. in the Jackson County Auditorium. That public hearing was conducted and a site visit was scheduled and conducted on

1-ORDINANCE- PLAN MAP DESIGNATION; File LRP2005-00003 Craig A. Stone and Associates, Agent; Rock-n-Ready Mix LLC, Applicant

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February 23, 2006. A continued public hearing was scheduled for March 9, 2006 at 9:00 a.m. in the Jackson County Auditorium.

- 2. On March 9, 2006, a public hearing was conducted and the Planning Commission heard testimony, received evidence into the record and continued the public hearing to April 27, 2006 at 9:00 a.m. That public hearing was conducted and the Planning Commission deliberated to arrive at a recommendation based upon the applicable criteria.
- 3. On July 27, 2006, the Jackson County Planning Commission signed a recommendation to approve the ordinance presented herein following its motion and unanimous decision to recommend approval of the same.
- 4. A notice of public hearing was sent to the applicant, property owners within 1500 feet of the subject properties, and those demanding notice on September 5, 2006 that the application was scheduled before the Board of Commissioners on September 25, 2006 at 1:30 p.m.. A media notice was sent to the Medford Mail Tribune and a copy was sent to the Ashland Daily Tidings and Upper Rogue Independent. Legal notice was published in the Sunday, September 10, 2006 edition of the Medford Mail Tribune.
- 5. On September 25, 2006, the Board of Commissioners held a public hearing to consider the recommendation by the Planning Commission and they received evidence and testimony on this application. The public hearing was continued to September 27, 2006.
- 6. On September 27, 2006, the Jackson County Board of Commissioners held a public hearing to consider the recommendation by the Planning Commission and they received evidence and testimony on this application. The public hearing was continued to October 25, 2006 at 1:30 p.m. in the Jackson County Auditorium.
- 7. On October 25, 2006, the Jackson County Board of Commissioners deliberated on matters relating to compliance with Federal and State regulatory agencies, specifically: DOGAMI, the Army Corps of Engineers, and the Department of State Lands. No decision was made and the deliberation was postponed pending additional evidence and testimony on compliance with these Agencies' regulatory requirements.
- 8. A notice of public hearing was sent to the applicant, property owners within 1500 feet of the subject properties, and those demanding notice on February 7, 2007 that a public hearing was scheduled before the Board of Commissioners on February 28, 2007 to accept evidence and testimony specifically related to compliance with Federal and State regulatory agencies, specifically: DOGAMI, the Army Corps of Engineers, and the Department of State Lands. Legal notice was published in the Sunday, February 18, 2007 edition of the Medford Mail Tribune.
- 9. On February 28, 2007, the Jackson County Board of Commissioners held a public hearing to reopen the record and accept evidence and testimony specifically related to compliance with Federal and State regulatory agencies, specifically: DOGAMI, the Army Corps of Engineers, and the Department of State Lands. No decision was made and the deliberation was postponed pending additional evidence and testimony on the Department of State Lands consent order. The public

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hearing was continued to April 11, 2007.

- 10. On April 11, 2007, the Jackson County Board of Commissioners held a public hearing to re-open the record and accept evidence and testimony specifically related to compliance with the Department of State Lands consent order. No decision was made and the deliberation was postponed pending additional evidence and testimony that the Applicant was in substantial compliance with the Department of State Lands consent order.
- 11. A notice of public hearing was sent to the applicant, property owners within 1500 feet of the subject properties, and those demanding notice on May 10, 2007 that a public hearing was scheduled before the Board of Commissioners on February 28, 2007 to accept evidence and testimony into the record specifically related to demonstration of substantial compliance with the Department of State Lands consent order. Legal notice was published in the Sunday, May 20, 2007 edition of the Medford Mail Tribune.
- 12. On May 30, 2007, the Jackson County Board of Commissioners held a public hearing to re-open the record and accept evidence and testimony specifically related to demonstration of substantial compliance with the Department of State Lands consent order. Based upon the evidence, the Board of Commissioners decided by motion and vote that decisions on the merits of the application were not precluded due to any outstanding violations issues. The public hearing was continued to June 13, 2007 at 1:30 p.m. in the Jackson County Auditorium.
- 13. On June 13, 2007, the Jackson County Board of Commissioners held a public meeting and deliberated to a decision on the above captioned land use application.

Now, Therefore, the Board of County Commissioners of Jackson County hereby make the following findings and conclusions:

SECTION 1. FINDINGS OF FACT

Based upon the evidence and argument presented, the Board makes the following findings of fact with respect to this application. Where factual conflicts arose, the Board has resolved them consistent with these findings.

- 1.1 The Board of Commissioners hereby incorporates and adopts as its own the Findings of Fact and Conclusions of Law relied upon by the Planning Commission as stated in their Recommendation for Approval, except as supplemented pursuant Section 1.2 and 1.3 below. The same is attached hereto as Exhibit "A". To the extent there is any discrepancy between the findings incorporated by this paragraph and the Board's express findings in Exhibit B, *infra*, the express findings of the Board shall govern.
- 1.2 The Board of Commissioners hereby incorporates and adopts as its own, the supplementary Findings of Fact and Conclusions of Law offered by Applicant's Attorney, attached hereto as Exhibit "B".
- 1.3 The Board of Commissioners hereby incorporates and adopts Applicant's rebuttal at Planning Commission Record Pages 771 to 782, 1511 to 1520, and 1555 to 1572 as its own

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resolution of issues raised by the Opponents and the same are attached hereto as Exhibit "C". To the extent there is any discrepancy between the findings incorporated by this paragraph and the Board's express findings in Exhibit B, the express findings of the Board shall govern.

SECTION 2. LEGAL FINDINGS

- 2.1 The Board of Commissioners finds that all notices were legally and properly published and sent to necessary persons and affected agencies.
- 2.2 The Board of Commissioners finds that the subject property affected by this ordinance are described as Township 36 South, Range 2 West, Section 21 tax lots 1303, Section 28, tax lots 100 (portion west of Upton Slough), 200 (portion west of Upton Slough), 800, 900, 1101, 1200, 1300, 1500, 1700, 1800, and 2604, and that portion of tax lot 2600 west of Upton Slough in Section 27. The subject property is adjacent to Blackwell Road and surrounds the existing Rockneady operation and extends east across Bear Creek to Upton Slough.
- 2.3 The Board of Commissioners finds that it has followed all required procedures in the Land Development Ordinance, the Comprehensive Plan, and State of Oregon requirements and that the rights of affected agencies and property owners have not been substantially prejudiced. The Board of Commissioners finds that the record contains no procedural objections that were raised with sufficient specificity to provide the Commission an opportunity to respond.
- **SECTION 3. CONCLUSIONS:** Based on the evidence and arguments relied upon by the Commission in the record, the Board of Commissioners concludes that the proposed amendments are in compliance with the Jackson County Land Development Ordinance, the Statewide Planning Goals, Oregon Administrative Rules, and the Jackson County Comprehensive Plan. Where factual conflicts arose, the Jackson County Board of Commissioners has resolved them consistent with these conclusions.
 - 3.1 Statewide Planning Goals: Based upon the findings of fact and conclusions of law enumerated in Sections 1.1 to 1.3 above and attached hereto as Exhibits "A-C", the Board of Commissioners concludes the subject properties constitute a significant Goal 5 aggregate resource and through this application process has adopted a protection program, and based upon the same, designates the subject property Aggregate Resource in compliance with the Statewide Planning Goals.
 - 3.2 Comprehensive Plan and Transportation System Plan: Based upon the findings of fact and conclusions of law enumerated in Sections 1.1 to 1.3 above and attached hereto as Exhibits "A-C", the Board of Commissioners concludes that this application complies with all aspects of the Comprehensive Plan that function as approval criteria for the designation of a significant aggregate resource and map amendment to Aggregate Resource under the County's Goal 5 aggregate program and the site is therefore appropriately designated Aggregate Resource.
 - 3.3 Jackson County Land Development Ordinance: Based upon the findings of fact and conclusions of law enumerated in Sections 1.1 to 1.3 above and attached hereto as Exhibits "A-

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- C", the Board of Commissioners concludes that the proposed designation of Aggregate Resource complies with the Jackson County Land Development Ordinance.
- 3.4 Oregon Administrative Rules: The Board of Commissioners incorporates and adopts applicant's purpose and intent statement at Record Page 148 as being sufficient to explain the basis under Oregon Administrative Rule for which the County can and does apply OAR 660-016 to aggregate by and through demonstration of compliance with its Comprehensive Plan. Based upon the findings of fact and conclusions of law enumerated in Sections 1.1 to 1.3 above and attached hereto as Exhibits "A-C", the Board of Commissioners concludes that designation of the subject properties as a significant Goal 5 aggregate resource has proceeded in accordance with all administrative rules to the extent the same are directly applicable to the determination of a significant Goal 5 aggregate resource and the site is therefore appropriately designated Aggregate Resource.
- 3.5 The Board of Commissioners concludes that proper public notices were given.

SECTION 4. DECISION

The Board of County Commissioners of Jackson County ordains as follows:

- 4.1 Based on the record, testimony of the public hearing, the Planning Commission Recommendation for Approval, and Exhibits "A-C", herein attached and incorporated, the Board of Commissioners designates the subject properties Aggregate Resource, excluding the portion of Tax Lots 100 and 200 in Section 28 and Tax Lot 2600 in Section 27 that are east of Upton Slough; the areas east of Upton Slough shall remain Agricultural Land as currently designated. The areas designated Aggregate Resource are depicted in Exhibit "F" attached hereto.
- 4.2 Invalidity of a section or part of this ordinance shall not affect the validity of the remaining sections or parts of sections.

APPROVED this 25th day of July , 2007, at Medford, Oregon.

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	JACKSON COUNTY BOARD OF COMMISSIONERS
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	Dennis C. W. Smith, Chair
	- Julian
	Jack Walker, Commissioner
	Dra 1/2
	Dave Gilmour, Commissioner
APPROVED AS TO FORM:	ATTEST:
The Contract of the Contract o	_ Donna Badek
County Counsel	By: Recording Secretary
may be appealed to the Oregon Land Use decision within 21 days of the date it is ma, 2007, and the L	UBA appeal period will expire on
	ontact LUBA for specific appeal information. They are 35, Salem, Oregon 97301-2552. They can be reached at

I:\ZONING\WP\Comp Planning\LRP2005-00003 Rock 'n Ready\BoC Review\BOC Ordinances & Exhibits\MapAmendmentordinance 2007-21.wpd

EXHIBIT A

BEFORE THE JACKSON COUNTY PLANNING COMMISSION STATE OF OREGON, COUNTY OF JACKSON

IN THE MATTER OF AN APPLICATION FOR A CONSOLIDATED REVIEW OF A MINOR COMPREHENSIVE PLAN MAP AMENDMENT TO CHANGE THE COMPREHENSIVE PLAN MAP FROM AGRICULTURAL LAND TO AGGREGATE RESOURCE LAND, A MINOR ZONING MAP AMENDMENT TO CHANGE THE ZONING DISTRICT FROM THE EXCLUSIVE FARM USE (EFU) DISTRICT TO THE AGGREGATE REMOVAL (AR) DISTRICT, THE **DESIGNATION OF A SITE AS A SIGNIFICANT** AGGREGATE RESOURCE AND **ESTABLISHMENT OF GOAL 5 PROTECTION** MEASURES, AND APPROVAL OF A SITE PLAN AND OPERATIONS MASTER PLAN SUFFICIENT TO IMPLEMENT THE ZONING DISTRICT. AND FINAL DEVELOPMENT PERMIT APPROVALS FOR A PORTION OF THE SITE AND OPERATIONS MASTER PLAN ON PARCELS LOCATED IN TOWNSHIP 36 SOUTH RANGE 2 WEST SECTIONS 21, 27 AND 28. EXISTING AR ZONED AREA IS APPROXIMATELY 116 ACRES. PROPOSED **EXPANSION WILL ADD APPROXIMATELY 163** ACRES.

RECOMMENDATION FOR APPROVAL

Applicant: Rock-n-Ready Mix, LLC Owners: Paul and Deanne Medina,

Michael and Sharon Hilton, Rock-n-Ready Mix,

inc.

Jackson County Planning Commission 1) Recommends adoption of an ordinance amending the Comprehensive Plan that adds the subject properties that are not currently on the inventory of significant aggregate resource site to said inventory and adopts an impact area and protection program for these new sites, see attached Exhibits B and F. 2) Recommends adoption of an ordinance to amend Ordinance 95-61 that allows aggregate operations in accordance with the approved site and operations master plan (this ordinance does not allow aggregate extraction of proposed Pit 2a). 3) Recommends adoption of an ordinance amending the Comprehensive Plan Map to designate all of the subject properties Aggregate Resource Land (only those portions of Tax Lots 100, 200 in Section 28 and 2600 in Section 27 west of the Upton Slough), see attached Exhibit C. 4) recommends an order be approved by the Board of Commissioners to amend the zoning map to change the zoning designation from Exclusive Farm Use (EFU) to Aggregate Removal (AR) for all of Tax Lots 1303 in Section 21, 1101/2604, 1700, and 1800 in Section 28 and for those portions of Tax Lots 100, 200 in Section 28 and 2600 in Section 27, see attached Exhibit D, subject to the approved site and operations master plan (See applicant's Exhibit 4 at Record Page 330, attached conditions of approval, and attached Exhibit E).

RECITALS:

- 1. Pursuant to Chapter 197 and 215 of the Oregon Revised Statutes, and in conformance with the Statewide Planning Goals, Jackson County's Comprehensive Plan (JCCP) and implementing ordinances have been acknowledged by the Oregon Land Conservation and Development Commission (LCDC).
- 2. On March 24, 2005 an application for a Comprehensive Plan Map Amendmentt and Zoning Map Amendment was submitted by the agent, Craig A. Stone and Associates, for the owner, Rock-n-Ready Mix LLC. After initial review by staff, the application was deemed incomplete on April 28, 2005. The applicant provided the requested supplemental materials and the application was then deemed complete by staff on June 29, 2005.
- 3. A notice of the proposed amendment was provided to DLCD more than 45 days prior to the initial public hearing. The application was scheduled before the Jackson County Planning Commission for a properly noticed first evidentiary hearing on October 27, 2005 at 9:15 a.m in the Jackson County Auditorium. That public hearing was continued. Another properly noticed public hearing was held for January 23, 2006 at 9:15 in the Jackson County Auditorium. That public hearing was also continued. A third properly noticed public hearing was held on March 9, 2006 at 9:15 a.m. in the Jackson County Auditorium.

Now, therefore,

The Jackson County Planning Commission finds, concludes, and RECOMMENDS as follows:

SECTION 1. FINDINGS OF FACT:

Based upon the evidence and arguments presented, the Planning Commission makes the following findings of fact with respect to this application. Where factual conflicts arose, the Planning Commission has resolved them consistent with these findings.

- 1.1 The Planning Commission finds that proper legal notice was sent on to the applicant, property owners within 1500 feet of the subject property and affected agencies on August 23, 2005. A media notice was sent to the Medford Mail Tribune on August 31, 2005, and a copy was sent to the Ashland Daily Tidings and Upper Rogue Independent. Legal notice was published in the Sunday, October 16, 2005 edition of the Medford Mail Tribune.
- 1.2 The Planning Commission finds that the subject property is described as Township 36 South, Range 2 West, Section 21 tax lots 1303 and 1400, Section 28 tax lots 100 (portion west of Upton Slough), 200 (portion west of Upton Slouth), 800, 900, 1200, 1300, 1700, 1800, 1900, and 1101/2604 and that portion of tax lot 2600 west of Upton Slough in Section 27. The subject property is adjacent to Blackwell Road and surrounds the existing Rock-n-Ready operation and extends east across Bear Creek to Upton Slough.
- 1.3 The Planning Commission finds that it has followed all required procedures in the Land Development Ordinance, the Comprehensive Plan, and State of Oregon requirements and that the rights of affected agencies and property owners have not been substantially prejudiced. The Planning Commission finds that the record contains no procedural objections that were raised with sufficient specificity to provide the Commission an opportunity to respond.

SECTION 2. LEGAL FINDINGS: To recommend approval of an Official Comprehensive Plan Map and Zoning Map amendment, the Planning Commission must find that the amendment is consistent with the Jackson County Land Development Ordinance (JCLDO) Chapter 3.7, which requires compliance with the Statewide Planning Goals, Oregon Administrative Rules, Jackson County Land Development Ordinance and the Jackson County Comprehensive Plan (JCCP).

The Planning Commission incorporates and adopts the findings of fact and conclusions of law in the updated Staff Report attached as Exhibit A. These findings demonstrate that the application is in compliance with the Statewide Planning Goals, Oregon Administrative Rules, the Jackson County Comprehensive Plan, and the Jackson County Land Development Ordinance.

SECTION 3. CONCLUSIONS: Based on the evidence and arguments relied upon by the Commission in the record, the Planning Commission concludes that the proposed amendments are in compliance with the Jackson County Land Development Ordinance, the Statewide Planning Goals, Oregon Administrative Rules, and the Jackson County Comprehensive Plan. Where factual conflicts arose, the Jackson County Planning Commission has resolved them consistent with these conclusions.

- 3.1 Statewide Planning Goals: Based upon the findings of fact and conclusions of law in the updated staff report attached hereto as Exhibit A, the Planning Commission concludes that this application complies with the Statewide Planning Goals.
- 3.2 Comprehensive Plan and Transportation System Plan: Based upon the findings of fact and conclusions of law in the updated staff report attached hereto as Exhibit A, the Planning Commission concludes that this application complies with all aspects of the Comprehensive Plan that function as approval criteria for the subject application as approved.
- 3.3 Jackson County Land Development Ordinance: The Planning Commission concludes that this application complies with the Jackson County Land Development Ordinance in accordance with the findings of fact and conclusions of law in the updated Staff Report attached hereto as Exhibit A.

- 3.4 Oregon Administrative Rules: The Planning Commission incorporates and adopts applicant's purpose and intent statement at Record Page 148 as being sufficient to explain the basis under Oregon Administrative Rule for which the County can and does apply OAR 660-016 to aggregate by and through demonstration of compliance with its Comprehensive Plan. The Planning Commission incorporates and adopts the findings of fact and conclusions of law in the Staff Report attached hereto as Exhibit A to demonstrate compliance with all administrative rules to the extent the same are directly applicable to the recommended map amendments.
- 3.5 The Planning Commission concludes that proper public notices were given.

SECTION 4. RECOMMENDATION: The Jackson County Planning Commission:

- 1) Recommends adoption of an ordinance amending the Comprehensive Plan to add the subject properties that are not currently on the list of significant aggregate resource sites to Jackson County's inventory of "Significant Goal 5 Resource Sites", as shown on the attached map entitled "Exhibit B PC Recommended New Goal 5 Aggregate Site" (Exhibit B).
- 2) Recommends a 1,500 foot impact area around areas added to Jackson County's inventory of "Significant Goal 5 Resource Sites". The proposed 1,500 foot impact area and the existing 1,500 foot impact area around tax lot 1900 are shown on the attached map "Impact Areas: Existing and Proposed" (Exhibit C).
- 3) Recommends adoption of an ordinance amending the Comprehensive Plan Map to designate all of the subject properties Aggregate Resource Land that are not currently so designated (only those portions of Tax Lots 100, 200 in Section 28 and 2600 in Section 27 west of the Upton Slough), as shown on the attached map "PC Recommended Aggregate Resource Lands" (Exhibit D).
- 4) Recommends adoption of an ordinance to amend Ordinance 95-61 that allows aggregate operations in accordance with the approved site and operations master plan as shown on the attached map "Exhibit E PC Approved Site and Operations Master Plan" (Exhibit E) and applicants updated Exhibit 4, entitled "Exhibit 4 Jackson County Land Development Ordinance Standards and Applicable Requirements For Approval Of The Requested Aggregate Site And Operations Master Plan", Sections I, II, and IV (Exhibit F). This ordinance does not allow aggregate extraction of proposed Pit 2a.
- 5) Recommends an ordinance be approved by the Board of Commissioners to amend the zoning map to change the zoning designation from Exclusive Farm Use (EFU) to Aggregate Removal (AR) for all of Tax Lots 1303, 1101/2604, 1700, and 1800 in Section 28 and for those portions of Tax Lots 100, 200 in Section 28 and 2600 in Section 27 subject to the approved site and operations master plan.
- 6) Recommends an order be approved by the Board of Commissioners approving land development permits for a Type 3 permit for aggregate operations in the Bear Creek Greenway (ASC)82-2, Site Plan Review for Aggregate Operations (future review will be required for Pit 4), and a Floodplain Review Permit for aggregate operations in the floodplain and floodway of Bear Creek (future review will be required for Pit 4.

This recommendation for APPROVAL	adopted this 2 17 day of	July	2006,	al
Medford, Oregon.	·			

JACKSON COUNTY PLANNING COMMISSION

(Vote: Y=Yes; N=No; A=Abstain)

Reeve Hennion, Chair

absent

Don Greene, Vice-Chair

Elizabeth Fujas, Commissioner

WISH

Richard B. Thierolf, Jr., Commissioner

Byron Williams, Commissioner

ATTEST:

Heather Couch, Secretary

EXHIBIT A

JACKSON COUNTY ROAD, PARKS AND PLANNING SERVICES COMPREHENSIVE PLAN AMENDMENT STAFF REPORT WITH PLANNING COMMISSION AMENDMENTS

APPLICANT: Rock 'N' Ready Mix, LLC

6968 Blackwell Road Central Point, OR 97502

AGENT: Craig Stone & Associates OW

712 Cardley Ave. Medford, OR 97504 **FILE:** LRP2005-00003

OWNER: Rock 'N' Ready Mix, Inc., Michael

D. Lindeman IRA Rollover Acct., Michael R. & Shannon L. Hilton, Michael M. & Jodi L. Medina, Paul J. & Deanna L. Medina, and

Michael D. Lindeman

LEGAL DESCRIPTION:

TWP 36 South RANGE 2 West SECTION 21 TAX LOT(S) 1303, 1400
TWP 36 South RANGE 2 West SECTION 27 TAX LOT(S) 2600

TWP <u>36 South</u> RANGE <u>2 West</u> SECTION <u>28</u> TAX LOT(S) <u>100, 200, 800, 900, 1101, 1200, 1300, 1500, 1700, 1800, 1900, and 2604</u>

APPLICATION REQUEST: A Minor Comprehensive Plan Map and Zoning Map Amendment to change the Comprehensive Plan Map designation from Agricultural Land to Aggregate Resource Land and the zoning district from Exclusive Farm Use (EFU) to Aggregate Removal (AR), designation as a significant aggregate resource and ESEE analysis to determine the level of Statewide Planning Goal 5 protection, Site Plan Review for aggregate operations, Floodplain Review for development within the 100 year floodplain, and Type 3 review for development within the Bear Creek Greenway (Area of Special Concern 82-2) on 348.56 acres in Township 36 South, Range 2 West, Section 21, Tax lots 1303 and 1400, Section 27, Tax Lot 2600, and Section 28, Tax Lots 100, 200, 800, 900, 1101, 1200, 1300, 1500, 1700, 1800, 1900, and 2604.

LOCATION: Located on Blackwell Road, beginning approximately 0.3 miles north of the intersection of Interstate 5 and Blackwell Road to approximately 1 mile north of the same intersection.

BACKGROUND: An application was received by Jackson County from Craig Stone and Associates, agent for the applicant, Rock 'N' Ready Mix, LLC, on March 24, 2005. The proposal is a Minor Comprehensive Plan Map and Zoning Map Amendment to change the Comprehensive Plan Map designation from Agricultural Land to Aggregate Resource Land and the zoning district from Exclusive Farm Use (EFU) to Aggregate Removal (AR), designation as a significant aggregate resource and ESEE analysis to determine the level of Statewide Planning Goal 5 protection, Site Plan Review for aggregate operations, Floodplain Review for development within the 100 year floodplain, and Type 3 review for development within the Bear Creek Greenway (Area of Special Concern 82-2). The application was deemed incomplete on April 28, 2005. The applicant submitted the required elements and the application was deemed complete on June 29, 2005. Public Hearings before the Jackson County Planning Commission were held on October 27, 2005, January 26, 2006, and March 9, 2006 in the Jackson County Auditorium and site visit February 23, 2006.

KEY ISSUES:

Determine if the aggregate resources qualify as a significant Goal 5 aggregate resource.
Determine what level of protection is justified by the ESEE analysis.
Determine whether the application meets the criteria to allow aggregate mining.
Determine whether the application meet the criteria for development within the floodplain and
floodway
Determine whether the application meets Type 3 criteria for development within the Bear Creek
Greenway.

I. FACTS:

- Location: The property is located on Blackwell Road, beginning approximately 0.3 miles north of the Interstate 5/Blackwell Road/HWY 99 interchange to approximately 1 mile north of the same interchange.
- 2) Access: Current access is from 6960 Blackwell Road (362W18, tax lot 1800), a county owned and maintained road. Two additional accesses were proposed by the Applicant. One from 6508 Blackwell Road (362W28, tax lot 1500) and a right-in at (362W28, tax lot 1700).

3) Acreage:

MAP ID	ACREAGE
362W21-1303	4.01
362W21-1400	9.70
362W27-2600	61.31
362W28-100	61.38
362W28-200	36.90
362W28-800	2.30
362W28-900	8.40
362W28-1101	21.55
362W28-1200	3.70
362W28-1300	3.80
362W28-1500	1.60
362W28-1700	1.24
362W28-1800	35.62
362W28-1900	78.31
362W28-2604	<u> 15.98</u>
TOTAL:	345.80 acres ¹

¹The applicant determined the total acreage to be 348.56 acres. Upon reviewing the acreage for each parcel in Assessment records, it was determined that the total acreage is actually 345.80 acres.

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4)	Assessment:		
	MAP ID	PROP. CLASS	DEFINITION
	362W21-1303	400	Vacant, H & B use tract land, zoning not significant
	362W21-1400	400	
	362W27-2600	559	Manufactured structure, H & B use farm land, receiving farm deferral, zoned EFU
	362W28-100	559	Manufactured structure, H & B use farm land, receiving farm deferral, zoned EFU
	362W28-200	550	Vacant, H & B use farm, receiving farm deferral, zoned EFU
	362W28-800	401	Improved, H & B use tract, zoning not significant
	362W28-900	401	66 31 (6 37 46 31 46
	362W28-1101	400	Vacant, H & B use tract land, zoning not significant
	362W28-1200	409	Manufactured structure, H & B use tract, zoning not significant
	362W28-1300	409	46 33 66 33 65 35 46
	362W28-1500	409	H . H & H & H
	362W28-1700	109	Manufactured structure, improved, zoned residential
	362W28-1800	401	Improved, H & B use tract, zoning not significant
	362W28-1900	401	K H K D K H K
	362W28-2604	400	Vacant, H & B use tract land, zoning not significant

220.9 acres receive a special assessment as farm land.

5) **Lot Legality**: Lot legality for these parcels was reviewed and established in 1998. A Memo dated July, 22, 1998 from Dody Talbott, Planning Technician II, determined the legality of each tax lot and is used as the official lot legality determination for this application.

MAP ID

362W21-1303	Per file 92-90-LLA, this tax lot is part of 362W28, tax lot 1900. Tax lots 1900 and 1303 are considered a single, legal parcel.
362W21-1400	This tax lot was created by Volume 421, Page 222, recorded in 1956 and is considered a legal parcel.

362W27-2600	OR 70-11899 described tax lot 2600 with 362W28, tax lot 1100. OR 81-18853 separated tax lot 1101 from tax lot 2600 without the required review and approval from Jackson County. A letter dated February 27, 1990 indicated Planning would not penalize tax lot 2600 for the illegal division that occurred in 1981. This tax lot is considered a legal parcel based upon the Planning Director's ruling.
362W28-100	This parcel was created by Volume 224, Page 443 of the official records in the County Clerk's Office in 1940 and is considered a legal parcel.
362W28-200	This parcel was created by Volume 245, Page 434 of the official records in the County Clerk's Office in 1943 and is considered a legal parcel.
362W28-800	Prior to 1973, this parcel contained part of tax lot 900. Tax lot 900 was created in its current configuration by Volume 305, Page 266 of the official records in the County Clerk's Office in 1948, leaving tax lot 800 as a residual parcel in its current configuration. Therefore, the date of creation for tax lot 800 is 1948 and is considered a legal parcel.
362W28-900	This parcel was created by Volume 305, Page 266 of the official records in the County Clerk's Office in 1948 and is considered a legal parcel.
362W28-1101	OR 81-18853 separated tax lot 1101 from 362W27, tax lot 2600, without the required review and approval from Jackson County. The property owner could consolidate this tax lot and tax lot 2604 with tax lot 1800. A condition of approval to require consolidation of tax lots 1101 and 2604 with tax lot 1800 is recommended.
362W28-1200	This parcel was created by Volume 570, Page 166 of the official records in the County Clerk's Office in 1952 and is considered a legal parcel.
362W28-1300	This parcel was created by OR 69-11035 in 1969 and is considered a legal parcel.
362W28-1500	This parcel was created by Volume 422, Page 479 of the official records in the County Clerk's Office in 1952 and is considered a legal parcel.

362W28-1700	This parcel was created by Volume 555, Page 368 of the official records in the County Clerk's Office in 1963 and is considered a legal parcel.
362W28-1800	This parcel was created by OR 66-04539 in 1966 and is considered a legal parcel.
362W28-1900	This parcel was created by OR 69-11799 in 1969 and is considered a legal parcel.
382W28-2604	Since at least 1963, 362W28, tax lot 2600 and 2604 were a single parcel east of Blackwell Road. OR 89-07502 segregated tax lot 2604 from 2600 without the required review and approval from Jackson County. A letter dated August 20, 1996 advised the property owner that no permits or requests for development would be approved on this parcel, and recommended consolidating tax lot 2604 with an adjacent parcel. Tax lots 2604 and 1101 could be consolidated with tax lot 1101. A condition of approval to require consolidation of tax lots 1101 and 2604 with tax lot 1800 is recommended.

- 6) Fire Protection: The parcel is within Jackson County Fire District No. 3.
- 7) Irrigation: The subject properties are within the Rogue River Valley Irrigation District. Irrigation water is used for some production activities, although irrigation water is not required to support the extraction area uses and activities, according to the applicant. Evidence of a water right for the production activities has been provided by the applicant.

8) Zoning:

- A) Subject Property: Exclusive Farm Use (EFU), Aggregate Removal (AR)
- B) North: Exclusive Farm Use (EFU), Aggregate Removal (AR)
- C) East: Exclusive Farm Use (EFU)
- D) South: Exclusive Farm Use (EFU)
- E) West: Rural Residential (RR-5), Exclusive Farm Use (EFU), Urban Residential (UR-1), Interchange Commercial (IC)
- 9) Land Use: Land uses for these parcels include field and dairy farming, aggregate extraction, aggregate processing, aggregate stockpiling, concrete recycling, concrete batch plant, accessory uses to aggregate operations, and residential uses.

- 10) Site Characteristics: Outside of the riparian area of Bear Creek, the subject properties are gently sloping. There is a bench on tax lots 100, 200, and 2600 near the eastern borders of these tax lots. The riparian areas typically consist of Oregon ash and willow with an understory of reed canary grass. Areas east of Bear Creek appear to be in farm use, particularly field and dairy farming.
- 11) Soils: Over 60% of the soil types for these properties are considered Prime Farmland (NRCS) or High Value Farmland (OAR 660-033-0020(8)) soils. All of the soil types are considered Agricultural Land (OAR 660-033-0020(1)), regardless of zoning district. A map of the soil types and percentages of soil types is provided in the record. None of the soil types could be considered Forest Land.
- 15) Water: The subject properties are within the Rogue river Valley Irrigation District. Irrigation water is used for some production activities and evidence of a water right for this purpose has been provided. The applicant states that irrigation water will not be required to support the extraction area uses and activities.
- Wetlands: There are numerous wetlands associated with Bear Creek, Willow Creek, Jackson Creek, and the irrigation canal along the eastern borders of tax lots 100, 200, and 2600. The applicant has supplied a wetland report for tax lots 1800, 1101, and 2604. A GIS map depicting the National Wetlands Inventory Sams Valley Map is included in the record.
- 17) Area of Special Concern: Portions of these properties are within Area of Special Concern (ASC) 82-2, Bear Creek Greenway. These properties are also within the Air Quality Maintenance Area for Jackson County. A portion of tax lots 800 and 900 near Blackwell Road is within Central Point's Area of Mutual Concern.
- 18) Past Planning Actions: Aggregate extraction began on all or part of tax lot 1101 about 1960. On December 21, 1995, ordinance 95-61 was signed changing the official Comprehensive Plan and Zoning Map from Exclusive Farm Use to Aggregate Resource on tax lot 1900, although limiting aggregate extraction to the east side of Bear Creek and outside of the Bear Creek Greenway Overlay. This comprehensive plan and zoning map amendment was part of Periodic Review Task 14. In 1997, file 1996-2-CUPA, a conditional use permit on tax lots 1800 and 800 for aggregate mining, stockpiling, processing and operations in connection with aggregate mining on tax lot 1101, was conditionally approved. On August 31, 1999, the Hearings Officer approved file 1998-1-SPRA for aggragate operations on tax lots 1101 and 2604.

Numerous code violations associated with the aggregate operations. Per Gary Saltonstall, Code Compliance officer, these violations have been cleared.

19) Affected Agency and Property Owner Notification: On August 23, 2005 agencies and property owners were notified of the proposed zone change, floodplain review, and site plan review for aggregate operations. Numerous responses were received. Specific agency

comments are shown below. Property owner comments are identified in a general fashion below agency comments.

- A) Jackson County Roads and Parks recommends a traffic study to evaluate the need for a left turn land and a right turn deceleration lane at the road approach. If turn lands are warranted, Roads and Parks recommends denial until the turn lanes are provided. A Road Approach Permit for any new or improved driveway off Blackwell Road is required. Additionally, Roads and Parks requested all existing trees, especially those near the waterway, be retained.
- B) Jackson County Fire District #3 states all Fire Code requirements will be applied to this project, including addressing, access, and possible on-site water for fire suppression.
- C) Rogue Valley Sewer Services responded stating there are several sewer mains on the subject properties and any aggregate removal operations in this area must take adequate precautions to prevent damage to the pipeline. They also indicated the operating plan does provide adequate protection to the pipe.
- D) A letter from Karen Smith, Special Projects Manager for Roads, Parks and Planning Services, states Rock 'N' Ready's reclamation plan would consider future extension of the Greenway trail and a perpetual trail easement to take effect at the time Pit 2 is reclaimed would serve this purpose well. Also indicated was that an easement would assure effective balance between the conflicting goal 5 resources of Aggregate and the Bear Creek Greenway over time.
- E) An email from Gary Saltonstall, Jackson County Code Compliance officer, dated 9-23-05, states there are no code violation cases with Rock 'N' Ready at this time.
- F) An email from Dan Dorrell, ODOT, stated that if Rock 'N' Ready was not increasing their truck fleet, ODOT would not need a capacity analysis on any state facility.
- G) From the many property owner responses, the concerns that property owners have include, noise, dust, traffic safety, smell from the asphalt plant, viewshed, decrease in land values, affect on water table and wells, affect on Bear Creek and other streams, affect on the Rogue Valley Sewer Service pipelines, affect on the rural way of life in the area, and the loss of farm land.

II. APPLICABLE CRITERIA ADDRESSED:

In order to approve an amendment to the Official Comprehensive Plan Map and Zoning Map Amendment, determination of Goal 5 protection, site plan review for aggregate operations, floodplain review for development within the 100 year floodplain, and an development within the Bear Creek Greenway², the County must find that the amendment is consistent with:

- 1) Compliance with Statewide Planning Goals; Goal 1, Citizen Involvement; Goal 2, Land Use Planning; Goal 3, Agricultural Land; Goal 4, Forest Land; Goal 5, Open Spaces and Natural Resources; Goal 6, Air, Water and Land Resource Quality; Goal 7, Areas Subject to Natural Hazards; Goal 8, Recreational Needs; Goal 9, Economic Development; Goal 10, Housing; Goal 11, Public Facilities and Services; Goal 12, Transportation; Goal 13, Energy Conservation; and, Goal 14, Urbanization. Compliance with Oregon Administrative Rule (OAR) 660, Division 16 and Division 12.
- 2) Compliance with the following elements of the Jackson County Comprehensive Plan: Map Designations (Aggregate Resource Land), Aggregate and Mineral Resources, and Transportation (Transportation System Plan).
- 3) Compliance with the following sections of the Jackson County Land Development Ordinance: 3.1.4, 3.7.3(C), 4.4.5, 4.4.8, 7.1.1(B), and 7.1.2.

The following sets forth the legal references upon which the Commission has reached its recommendations and issued orders for dependent land use permits:

1) COMPLIANCE WITH STATEWIDE PLANNING GOALS AND OREGON ADMINISTRATIVE RULES:

The purpose of reviewing plan and zoning map amendments against Statewide Planning Goals and Oregon Administrative Rules is to assure that changes made in the County's acknowledged plan are also acknowledgeable.

A) Goal 1, Citizen Involvement: The goal is to develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process.

FINDING: The quasi-judicial procedure allows affected citizens and agencies to participate in the planning process. This goal is satisfied through this process.

²The Planning Commission recognizes that alternative interpretations of the applicable criteria with respect to the Bear Creek Greenway overlay are possible, but because the criteria can be found to be met the Planning Commission does not reach the legal arguments as to applicability raised by the Applicant.

B) Goal 2, Land Use Planning: The goal is to establish a land use planning process and policy framework as a bases for all decisions and actions related to use of land and to assure an adequate factual base for such decisions and actions.

FINDING: The proposed application and quasi-judicial process provides a framework for which the application can be reviewed. The Commissioners must find that the evidence supports the proposed zone change and proposed development. The specific Statewide Planning Goals are administered through the criteria identified in the acknowledged Jackson County Comprehensive Plan and Land Development Ordinance (LDO). Goal 2 is satisfied through this quasi-judicial process. No exception to any Statewide Planning Goal is requested or required.

C) Goal 3, Agricultural Lands: The goal is to preserve and maintain agricultural lands.

FINDING: The subject properties are zoned Exclusive Farm Use (EFU) and are protected under Goal 3. All of the soil types on the properties are considered Agricultural Land, according to OAR 660-033-0020(1). 60% of the soil types are considered High Value Farm Land. Aggregate mining is permitted in the EFU zoning district through a Conditional Use Permit on sites designated significant Goal 5 resources. The proposal to identify the properties as a significant Goal 5 resource and develop Goal 5 protection based upon an ESEE analysis by the applicant is the process which Goal 5 aggregate resources are balanced against Goal 3 agricultural resources. The ESEE analysis provides a balance of protection between Goal 3 and Goal 5 resources. Based upon the ESEE Analysis herein below and the evidence and testimony in the record, the Planning Commission finds protection of this significant Goal 5 resource does not conflict with Goal 3.

D) Goal 4. Forest Lands: The goal is to conserve forest lands.

FINDING: The soil class rating for forest production all of the soil types is 0. The applicant indicates the area is not considered Forest Land and is not near designated Forest Land. The applicant states the designation of the site for aggregate resource will have no significant impact on the conservation of forest lands in Jackson County. The Planning Commission concurs with the applicant's findings and adopts them as a basis to satisfy Goal 4 thereto.

E) Goal 5, Open Spaces, Scenic and Historic Areas and Natural Resources: The goal is to conserve open space and protect natural and scenic resources.

FINDING: The applicant has provided evidence regarding quality and quantity of the aggregate resources on the properties. The evidence suggests there is a significant Goal 5 aggregate resource on the properties. The Planning Commission finds the County's Goal 5 program for aggregate is acknowledged by the State of Oregon and the Planning Commission finds it has completed the Goal 5 process in accordance with this program and found the evidence and ESEE analysis sufficient to determine the location, quality, and

quantity of the aggregate resource establishes a significant Goal 5 aggregate resource and should be included on the County's Inventory of Signigicant Goal 5 aggregate resources.

F) Goal 6, Air, Water and Land Resources Quality: The goal is to maintain and improve the quality of the air, water and land resources of the state.

FINDING: The applicant states that, based upon the ESEE analysis, the County's aggregate operation standards and proposed conditions of approval are sufficient to minimize adverse affects on air, water, and land resources quality. The Planning Commission incorporates and adopts the applicant's findings thereto and further finds that compliance with applicable State agency regulations will assure compliance with Goal 6.

G) Goal 7, Areas Subject to Natural Hazards: The goal is to protect people and property from natural hazards.

FINDING: The Planning Commission finds that the only natural hazard to which the property is subject is flood hazards. This area contains a significant area of FEMA mapped floodplain associated with Bear Creek, Jackson Creek, and Willow Creek. Goal 7 as it applies to flood hazards is administered through the Comprehensive Plan and Section 7.1.2 of the LDO. The Planning Commission incorporates its findings of fact and conclusions of law demonstrating compliance with the applicable floodplain development standards in Section 7.1.2 herein below and based thereupon conclude Goal 7 is met.

H) Goal 8, Recreational Needs: The goal is to satisfy the recreational needs of the citizens of the state and visitors and, where appropriate, to provide for the siting of necessary recreational facilities including destination resorts.

FINDING: The Bear Creek Greenway runs through these properties and is part of Area of Special Concern 82-2 in the LDO and is an identified Goal 5 resource. The Planning Commission incorporates and adopts the ESEE analysis below and together with applicant's stipulation to provide a Greenway easement Goal 8 is found to be met.

I) Goal 9, Economic Development: The goal is to provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens.

FINDING: The applicant states the ESEE analysis addresses the economic consequences of allowing mining on the subject properties and the analysis outcome is that mining these sites is critical for economic development in Jackson County.

The Planning Commission finds economic development in Jackson County would be enhanced by the proposed aggregate operations on the subject properties because of the continued availability of aggregate products processed by this operation. Goal 9 is met.

J) Goal 10, Housing: The goal is to provide for the housing needs of citizens of the state.

FINDING: The applicant states the approval of the proposed mining operation assures future aggregate supply near future housing markets and this supports the Comprehensive Plan Housing Element's policies consistent with Statewide Planning Goal 10. The Planning Commission concurs with this assessment. Goal 10 is met.

K) Goal 11, Public Facilities and Services: The goal is to plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development.

FINDING: The applicant states impacts to public safety facilities and services will be minimal and the only critical utility services for an aggregate operation are water and electricity. Water needs for the operation are provided by an existing water right from Rogue River Irrigation District and is sufficient to provide for the water needs of the operation. Electricity is already available onsite. The Planning Commission concurs with the applicant's findings. Goal 11 is met.

H) Goal 12, Transportation: The goal is to provide and encourage a safe, convenient and economic transportation system.

FINDING: The Planning Commission incorporates and adopts its findings of fact and conclusions of law herein below demonstrating compliance with the Transportation System Plan facility adequacy test and the Oregon Transportation Planning Rule as being sufficient to conclude Goal 12 is met.

I) Goal 13, Energy Conservation: The goal is to conserve energy.

FINDING: The applicant indicates the ESEE analysis demonstrates that allowing mining near major markets will support Goal 13. Based upon applicant's findings, the Planning Commission finds the existing mining operation and the proposed operation are near major markets for aggregate and the proposed aggregate operation will not increase energy requirements in this area or for the County as a whole. Goal 13 is met.

J) Goal 14, Urbanization: The goal is to provide for an orderly and efficient transition from rural to urban land use.

FINDING: The applicant states the proposed mining operation helps to assure a future aggregate supply near urbanizing areas of White City, Central Point, Eagle Point and Medford and approval of the aggregate operation supports urbanization policies consistent with Goal 14. Based upon this locational finding, the Planning Commission Goal 14 is met.

K) Oregon Administrative Rule (OAR) 660, Division 16, Requirements and Application Procedures for Complying with Statewide Goal 5.

FINDING: OAR 660, Division 16 is addressed through the County's adopted and acknowledged Comprehensive Plan Map Designation Element and Mineral and Aggregate Resources Element, and the Land Development Ordinance. The Planning Commission incorporates and adopts applicant's purpose and intent statement at Record Page 148 as sufficient legal basis under which the County may and does apply Division 16 as implemented by the Jackson County Comprehensive Plan herein.

L) OAR 660-012-0060, TRANSPORTATION PLANNING, Plan and Land Use Regulation Amendments

FINDING: OAR 660, Division 12 is addressed through the County's adopted and acknowledged Comprehensive Plan Transportation Element and Transportation System Plan (TSP). The Planning Commission incorporates and adopts the evidence provided by applicant's Traffic Engineer and the opinion of the County Engineer and applicant's findings of fact and conclusions of law demonstrating compliance with OAR 660-012-0060.

2) JACKSON COUNTY COMPREHENSIVE PLAN:

This section addresses those plan elements and policies which are applicable to the requested map amendment.

A) Map Designations Element: Aggregate Resource Land

- i) <u>Map Designation Criteria</u>:
 - a) Significance Determination. The County shall analyze information relating to the location, quality and quantity of mineral and aggregate deposits. Information necessary to demonstrate the significance of a resource shall include:
 - (1) A map and other written documentation sufficient to accurately identify the location and perimeter of the mineral or aggregate resource; and
 - (2) Information demonstrating that the resource deposit meets or can meet applicable city, County, state, or federal quality specifications for the intended use(s). Oregon Department of Transportation quality specifications for aggregate include: (1) the Los Angeles Rattler test for abrasion (AASHTO T96, OSHD TM 211—loss of not more than 30 percent by weight), (2) the Oregon Air Degradation test (OSHD TM 208—loss of not more than 20 percent by weight), and (3) the Sodium Sulfate Soundness test (OSHD TM 206—not more than 12 percent by weight). Information may consist of laboratory test

- data or the determination of a certified, licensed or registered geology professional, or other qualified person; and
- (3) Information demonstrating the quantity of the resource deposit as determined by exploratory test data or other calculation compiled and attested to by a certified, licensed or registered geology professional, or other qualified person.

FINDING: Maps have been submitted showing the location and perimeter of the aggregate resource. Evidence was initially submitted by the applicant from The Galli Group, Geotechnical Consulting, regarding quantity and later supplemented by evidence submitted by Kuper Consulting LLC, engineering geologists at record page 853 to 892; this evidence is incorporated and adopted by the Planning Commission. Policy 4, Subsection D of the Aggregate and Mineral Resources Element of the Comprehensive Plan states "For an aggregate site to be determined significant, the resource must possess a minimum of 100,000 cubic yards of minable reserves. This standard is not absolute; the county may consider the significance of a site based on unique circumstances even though the volume threshold may not be met." The Planning Commission incorporates and adopts as its finding with respect to resource quantity applicable to the entire project site the expert opinion of applicant's consulting geologist that, "there is approximately 4.0 million cubic yards of aggregate resource estimated to occur on the Rock-n-Ready property [subject application area]. Therefore the property exceeds the quantity criteria of 100,000 cubic yards required in the Jackson County Comprehensive Plan" (Record Page 864).

Three reports were submitted from the Oregon Department of Transportation Materials Laboratory for material from the subject properties, dated January 8, 2004. These tests noted the materials complied with ODOT quality specifications. The applicant states these standards are for bridge construction. The test results show the samples meet the criteria stated above for ODOT quality test OSHD TM 206, OSHD TM 208, and OSHD TM 211, as identified in the Map Designations Element and the Aggregate and Mineral Resources Element. The tests show the samples meet the criteria as a significant resource in the Comprehensive Plan. The samples were taken from the current aggregate operations stockpiles. This initial evidence was supplemented by evidence submitted by Kuper Consulting LLC, engineering geologists at record page 853 to 892; this evidence is incorporated and adopted by the Planning Commission. The Planning Commission finds there is substantial evidence in the record to find the site includes aggregate of sufficient quality to meet Jackson County Goal 5 aggregate resource requirements.

ii) Inventory. Based on the analysis of information relating to the location, quality and quantity of mineral and aggregate deposits, the County shall determine the inventory status of the resource site. Each site considered by the County shall be placed on one of three inventories based on the following criteria:

- a) If the resource site does not meet the definition of a significant resource in the Land Development Ordinance, the County shall include the site on an inventory of "Nonsignificant Sites"; or
- b) If information is not available to determine whether the resource site meets the definition of a significant resource as defined in the Land Development Ordinance, the County shall include the site on an inventory of "Potential Sites." Sites shall remain on the "Potential sites" inventory until such time as information is available to determine whether the resource site is significant; or
- c) If the resource site meets the definition of a significant resource, the County shall include the site on an inventory of "Significant Goal 5 Resource Sites."

FINDING: Based upon the quality and quantity information submitted by the applicant's experts herewith incorporated and adopted that the entire site is a cohesive geologic unit with substantial high quality reserves, all properties in the subject application that are not currently designated as significant aggregate resources are appropriately added to the Jackson County inventory of "Significant Goal 5 Resource Sites" as per the map attached to the Planning Commission's recommendation as Exhibit B.

iii) Identify Impact Area. For each site determined to be significant and to be included on the inventory of "Significant Goal 5 Resource Sites", the Impact Area shall be identified and mapped. The Impact Area shall be 1,500 feet unless increased or decreased based on analysis and findings developed in the course of the Goal 5 process.

FINDING: The Planning Commission finds the record contains testimony and evidence regarding the appropriate location of the impact area and ESEE analysis contents and that the Commission has developed analysis and findings in the course of the Goal 5 process as provided herein below and finds that there is nothing in its adopted analysis or findings upon which to base, much less require, an expansion or contraction of the impact area. Moreover, the Planning Commission incorporates and adopts applicant's record summary, argument, and conclusion at Record Pages 1567 to 1569 and the argument in Bullet Point 3 at Record Page 781 as adequate basis to explain why evidence in the record does not require the impact area be expanded.

- iv) Identify Conflicting Uses. For each site determined to be significant and to be included on the inventory of "Significant Goal 5 Resource Sites", conflicting uses, as defined in the Land Development Ordinance, shall be identified.
 - a) The identification of conflicting uses and other Goal 5 resources shall include uses in existence at the time of review, as well as the potential for the establishment of new conflicting uses. Identification of

potential conflicting uses shall be accomplished by analyzing the uses allowed in the adjacent zone(s).

b) If no conflicting uses are identified, the impact area designation shall not be applied to the property surrounding the resource site.

FINDING: In Hegele v. Crook County (190 Or. App. 376, 78 P.3d 1254), the decision states "To be identified as a conflicting use, the allowed aor allowable use must have a negative impact on the Goal 5 resource site. But also consistently with the rule's working, the negative impacts that a local government may consider in that regard are not limited to legal burdens that might arise from nuisance and trespass actions. Rather, the local government may consider any negative impacts of an allowable use, which can include, but is not limited to, impacts of a social, legal, economic, and environmental nature." Section 13.3(6)(a) defines a conflicting use as "A use which, if allowed, could adversely affect operations at a mineral and aggregate site, or could be adversely affected by extraction and processing activities at a significant mineral and aggregate site." Jackson County's definition of "conflicting use" does not agree with the Court of Appeal's decision in Hegele v. Crook County. Jackson County must use the Court of Appeal's decision regarding the definition of a "conflicting use", which is an allowed or allowable use that has a negative impact on a Goal 5 resource site.

The applicant has identified conflicting use on an area-wide basis and then two site-specific ESEE analyses that focus on specific conflicting uses that exist or have the potential to develop within a 1,500 foot impact area. The latter is based upon the natural division that Bear Creek has on the area and will be east and west of Bear Creek. Below are the identified conflicting uses on an area-wide basis.

Area-wide Conflicting Uses

Riparian Corridors of Bear Creek, Jackson Creek, and Willow Creek - Identified Goal 5 resources (Class 1 streams). Potential negative impacts on the aggregate site include limiting of mining areas and increasing removal and processing operation costs.

Wetlands - Bear Creek (Riverine), Various Palustrine Wetlands, and Vernal Pools in East and NE portion of the area. Potential negative impacts on the aggregate site include limiting of mining areas and increasing removal and processing operation costs. Wetlands are identified as a 1B resource (insufficient data). Mining operations were not identified as a conflicting use for wetlands in Jackson County's Goal 5 Background Document.

Groundwater Resources. The applicant states there are no groundwater quantity or problems known to exist beyond those generally present in the lower Bear Creek Basin. Groundwater resources are identified as a 1B resource (insufficient data) in the Goal 5 Document. Staff finds a potential exists to determine this is a conflicting use because of the possibility of a reduction in the amount of water output for wells

in the area. A reduction in water output in a well could result in litigation for the applicant and an increase in costs associated with aggregate operations.

Oregon Recreational Trails - Bear Creek Greenway. This is an identified Goal 5 resource. The applicant states this section of the trail is proposed, according to the Goal 5 Document and that no conflicts would be present if Greenway construction does not occur until completion of operation. The applicant also states the potential negative impacts on the aggregate site would be increased operations costs and complaint management.

Scenic Views and Sites - Bear Creek Greenway and Class 1 streams (Bear Creek, Jackson Creek, and Willow Creek). These are identified Goal 5 resources. Potential negative impacts on the aggregate site are limiting the mining areas and increased operation costs.

Residential Development - Residential zones and scattered farm and non-farm dwellings. Potential negative impacts on the aggregate site include increased operation costs, complaint management, reduced operating hours, and traffic conflicts.

Commercial Development - Interchange Commercial (IC) zoning district development, including but not limited to hotel/motel accommodations, eating and drinking establishments, campground/RV parks, parks/playgrounds, public safety services, and farm stands, bed and breakfast establishments. Potential negative impacts on the aggregate site are complaint management, reduced operating hours and traffic conflicts.

Farm Uses. The applicant indicates there are no noise and dust sensitive farm uses present in the area, primarily orchards and vineyards. Staff finds there is a nursery within the 1,500 foot impact area, as well as a dairy operation and an elk farm. These farm uses could by affected by the aggregate operations because of noise and dust impacts. The potential negative impacts on the aggregate site are reduction of elimination of the mining areas, additional buffering and landscaping, and increased dust and noise control measures.

Other Non-residential and Non-farm Uses. The applicant identifies some uses that are not present within the impact area such as golf courses, parks, schools, and day-care facilities, although these are not specifically limited types of non-residential and non-farm uses that could occur in the impact area. Potential negative impacts on the aggregate site include a reduction or elimination of mining areas, additional buffering and landscaping, and increased dust and noise control measures.

East Side of Bear Creek Conflicting Uses: The zoning districts are EFU and AR.

Residential Development. According to the applicant in Table 4 of their Exhibit 1, there are approximately 7 existing dwellings within the 1,500 foot existing and proposed impact areas. There are 5 properties which may have a potential for residential development. Potential negative impacts on the aggregate site include increased operation costs, complaint management, reduced operating hours, and traffic conflicts.

Goal 5 Resources - The existing Goal 5 resources include the Bear Creek Greenway, Bear Creek riparian area, wetlands, and intact vernal pools (wetlands), and adjacent aggregate operations. Potential negative impacts on aggregate operations are limiting the mining areas, increased operation costs, and complaint management.

Farm Uses. Existing farm uses include field farming and dairy farming. Potential farm uses would include the same activities as well as those activities included in the definition of "farm use" in the LDO, including wineries and vineyards. The potential negative impacts on the aggregate site are reduction or elimination of the mining areas, additional buffering and landscaping, and increased dust and noise control measures.

Groundwater Resources. Existing wells are associated with residences as well as farm uses. Those residences within the impact area can be assumed to have wells within the impact area. A potential of 5 other wells on the vacant properties may also be assumed. Potential negative impacts on aggregate operations are litigation resulting from a reduction in water output for a well and an increase in costs associated with aggregate operations.

Commercial Development. Commercial development is not know to exist within the impact area east of Bear Creek. Commercial activities in conjunction with farm use are possible for future development. Potential negative impacts on the aggregate site are complaint management, reduced operating hours and traffic conflicts.

Other Non-farm and Non-residential uses. No existing uses appear to be occurring within the impact area. The potential does exist for uses such as golf courses, parks, schools, and day-care facilities. Potential negative impacts on the aggregate site include a reduction or elimination of mining areas, additional buffering and landscaping, and increased dust and noise control measures.

West Side of Bear Creek: Zoning districts include EFU, AR, OSR, RR-5, UR-1, GI, and IC.

Residential Development. There are approximately 27 dwellings located within the 1,500 foot impact area. There are approximately 10 dwellings that could potentially be built. Potential negative impacts on the aggregate site include increased operation costs, complaint management, reduced operating hours, and traffic conflicts.

Goal 5 Resources - The existing Goal 5 resources include the Bear Creek Greenway, Bear Creek riparian area, Willow Creek riparian, Jackson Creek riparian area, and wetlands and adjacent aggregate operations. Potential negative impacts on aggregate operations are limiting the mining areas, increased operation costs, and complaint management.

Farm Uses. Existing farm uses include a nursery, field farming, an elk farm, and other farming not specifically known. Potential farm uses would include the same activities as well as those activities included in the definition of "farm use" in the LDO, including wineries and vineyards. The potential negative impacts on the aggregate site are reduction or elimination of the mining areas, additional buffering and landscaping, and increased dust and noise control measures.

Commercial Development. Existing commercial development includes a small market, trucking company, nursery, and motocross track. There is a tax lot within the GI zoning district with many industrial buildings, although it is not known what types of activities are occurring within these buildings. There are 2 tax lots within the IC zoning district that are currently vacant. The potential exists for future commercial development within the GI and IC zoning districts. Potential negative impacts on the aggregate site are complaint management, reduced operating hours and traffic conflicts.

Other Non-farm and Non-residential uses. No existing uses appear to be occurring within the impact area. The potential does exist for uses such as golf courses, parks, schools, and day-care facilities. Potential negative impacts on the aggregate site include a reduction or elimination of mining areas, additional buffering and landscaping, and increased dust and noise control measures.

Groundwater Resources. Existing wells are associated with residences as well as farm uses. Those residences within the impact area can be assumed to have wells within the impact area. Potential negative impacts on aggregate operations are litigation resulting from a reduction in water output for a well and an increase in costs associated with aggregate operations.

- Analysis of Conflicting Uses. For each site determined to be significant, the economic, social, environmental and energy (ESEE) consequences of conflicting uses shall be analyzed.
 - The analysis shall be limited to uses and Goal 5 resources identified pursuant subsection D.
 - b) The analysis shall consider the consequences associated with protecting the mineral or aggregate resource, as well as extracting and processing the resource.

- c) The analysis shall determine the relative value or use of the mineral or aggregate resource site as compared to existing or potential conflicting uses.
- d) The analysis shall consider the consequences for both existing and potential conflicts, and shall consider opportunities to avoid and mitigate conflicts. The analysis shall examine:
 - (1) The consequences of allowing conflicting uses fully, notwithstanding the possible effects on surface mining operations;
 - (2) The consequences of allowing surface mining operations fully, notwithstanding the possible effects on conflicting uses;
 - (3) The consequences of protecting conflicting Goal 5 resources.

FINDING: The applicant has completed ESEE analyses based upon area-wide and site-specific areas east and west of Bear Creek. While the area-wide analysis is helpful, the Planning Commission concentrates on only the site-specific areas east and west of Bear Creek and the ESEE analysis and consequences of allowing conflicting uses fully, allowing surface mining fully, and consequences of protecting conflicting Goal 5 resources. The Planning Commission adopts and incorporates the applicant's review and analysis of conflicting uses, except as amended by the Commission's deliberations. Based upon that review and analysis, together with the requirements of the Land Development Ordinance and any additional discretionary conditions, the Planning Commission adopts the following ESEE analysis sufficient to implement Goal 5 for the site:

East Side of Bear Creek

Economic Consequences of Allowing Conflicting Uses Fully:

The economic consequences of limiting or eliminating aggregate operations are lost employment and increased scarcity of the commodity. The reduction or loss in production at these facilities would reduce employment opportunities and require other aggregate operations to replace the aggregate that is lost from this operation, with possible increase in costs because of the distance to markets.

Economic Consequences of Allowing Surface Mining Operations Fully:

Allowing aggregate operations to expand would cause farming operations to be reduced. There is a family run dairy operation as well as small to medium scale ranching and field farming activities. Because a portion of land owned by the Medina dairy farm is included in this proposal, the expectation is that

the loss of farm land will be offset by money received from the sale of the property used for aggregate operations and reinvested in the dairy farm without a significant increase cost or changes in farming practices. The Hilton property, tax lot 2600 in Section 28, will lose approximately one third of property to aggregate extraction and will result in at least a minor loss in farm income. The costs to other ranching and field farming activities will not be significantly increased nor will the aggregate operations force a significant change in farming practices.

Economic Consequences of Protecting other Goal 5 Resources:

The identified Goal 5 resources for the subject properties are the Bear Creek Greenway, Bear Creek and its riparian area, wetlands, and an area of intact vernal pools (wetlands). The intact vernal pools are not within the extraction area for aggregate operations and would not be affected. The wetlands and vernal pools are regulated by Division of State Lands and are designated a 1B resource, resources sites considered to be potentially important, but inadequate information is available to complete the Goal 5 process. The Bear Creek Greenway is an Outstanding Scenic Stream Corridor and is designated as a 3C area, which specifically limits conflicting uses. The riparian area of Bear Creek is administered through the LDO, Section 8.6.

The economic consequences of protecting these Goal 5 resources, which would limit the extent of aggregate operations, would reduce income for the operations as well as the amount of aggregate materials available for development purposes. Aggregate materials would need to come from other sites which could increase the market value of the aggregate products for Jackson County as a whole.

Social Consequences of Allowing Conflicting Uses Fully:

The Planning Commission finds the aesthetic impacts from farm uses, limited residential development, commercial development in conjunction with farm use, and the presence of protected Goal 5 resources are more desirable than the impacts from aggregate operations.

Social Consequences of Allowing Surface Mining Operations Fully:

The social consequences of allowing expanded aggregate mining are noise, dust, and viewshed for conflicting uses, basically aesthetic values would be impacted by the aggregate mining. There are only 7 residences within the 1,500 foot impact area and parties to this application own 3 of these residences. The other residences are located over 1,200 feet from the nearest extraction area. There is already a large gravel pit to the north on tax lot 1300 in Section 21. Because of the topographic bench to the east and the

Bear Creek riparian corridor to the west, aesthetic impacts will be relatively slight. As aggregate removal and machinery move further below grade, aesthetic impacts will be reduced. Conditions which may help to mitigate the social impacts due to expanding the aggregate operations would include a protected riparian area from the banks of Bear Creek (applicant has proposed a 100 foot or more of setback from the stream bank), and an easement through the area for the Bear Creek Greenway (applicant has proposed such an easement).

Social Consequences of Protecting other Goal 5 Resources fully:

As was stated above, the presence of Goal 5 resources creates a more desirable aesthetic impact for this area than allowing the expansion of aggregate operations. The Bear Creek riparian area, wetlands, and vernal pools (wetlands) help to enhance aesthetic values of this area.

Environmental Consequences of Allowing Conflicting Uses Fully:

While farming activities are not generally associated with adverse environmental impacts, many farming uses are unregulated and could cause considerable environmental damage over time. Residential development, commercial activities in conjunction with farm use, golf courses, schools, etc., also have the potential for environmental damage, particularly to Bear Creek.

Environmental Consequences of Allowing Surface Mining Operations Fully:

Expanding the aggregate operations could have adverse environmental consequences to the Bear Creek riparian corridor, including impacts to hydrophytic vegetation, water quality, and fish habitat. Mitigation proposed by the applicant is a 100 foot or more setback from the banks of Bear Creek. Another mitigation measure could include aggressive riparian planting of the protected riparian area, as approved by Oregon Department of Fish and Wildlife (ODFW). Mining activities in Oregon include many environmental controls and regulations to reduce environmental impacts which are required by Department of Geology and Mineral Industries (DOGAMI), Department of Environmental Quality (DEQ), and ODFW.

There are also two Rogue Valley Sewer Service mainlines on the subject properties and failure of the mining operation to protect the waste disposal lines could have considerable environmental impacts. The applicant has proposed to RVSS a plan to protect the lines, including 50 foot mining setbacks from the lines.

Environmental Consequences of Protecting other Goal 5 Resources:

Protecting the identified Goal 5 resources would limit the area allowed for mining and possibly increase operational costs associated with mining. The Bear Creek riparian corridor, Bear Creek Greenway, wetlands, and vernal pool (wetlands) are environmental resources, with the Bear Creek Greenway being associated with the Bear Creek riparian corridor. Protecting these resources would limit adverse environmental impacts associated with aggregate operations.

Energy Consequences of Allowing Conflicting Uses Fully:

The expanded aggregate operations for the east side of Bear Creek include hauling and conveying aggregate over Bear Creek to take advantage of the existing processing facilities without additional energy inputs. Prohibiting or limiting aggregate extraction would require a new processing site and would not take advantage of the haul road and approved bridge infrastructure. A processing facility on the east side of Bear Creek would add distance to every load of aggregate hauled out of this operation, increasing energy costs and inputs.

Energy Consequences of Allowing Surface Mining Operations Fully:

Aside from post-mining reclamation inputs and mitigation inputs during mining operations, no adverse energy consequences are identified.

Energy Consequences of Protecting other Goal 5 Resources:

Protection of the identified Goal 5 resources could result in prohibiting expanded aggregate extraction from the east side of Bear Creek, not including tax lot 1900, which has been rezoned to allow extraction and processing. Prohibiting or limiting extraction would require a new processing site and increasing the transportation costs from production facility to market.

Relative Value or Use of the Aggregate Resource Site as Compared to Existing or Potential Conflicting Uses:

There are no acute land use conflicts in the area and the relative value of all ESEE factors for expanding aggregate extraction east of Bear Creek are strongly weighted towards allowing aggregate extraction over other existing or potential conflicting uses. There is a substantial quantity of high grade aggregate material to be used in concrete and asphaltic concrete production and with mitigation measures, adverse impacts to conflicting uses could be reduced to an acceptable level. OAR 660-016-00005 states, in part, "Where conflicting uses have been identified, Goal 5 resources may impact those sites." This indicates that the aggregate operations may indeed have an impact on conflicting uses within the impact area. The Planning Commission

finds the value of the aggregate resource does outweigh impacts to conflicting uses within the 1,500 foot impact area and that there is not substantial evidence in the record that explains how the outcome of the ESEE analysis would change significantly if the 1,500 impact area were altered.

With regards to other Goal 5 resources, under Policy 4 of the Comprehensive Plan Aggregate and Mineral Resources Element, "L" states "When analyzing the ESEE consequences of potential conflicts between significant mineral or aggregate resource and another significant Goal 5 resource, the county shall consider the protection program adopted for the conflicting resource. Conflicts with other natural resources shall not be the basis for mining restrictions unless the county has included or includes the conflicting resource on the inventory of significant Goal 5 resources, and has adopted or adopts a resource protection program." The Bear Creek Greenway and the Bear Creek riparian corridor are the only non-aggregate Goal 5 resources designated as significant resources in this area. With stipulations offered by the applicant for a Greenway trail easement and compliance with all applicable LDO standards and site-specific conditions required by the Planning Commission, the ESEE analysis is balanced toward allowing all aspects of the mining operation as depicted on the approved site and operations master plan map as amended by the Planning Commission (See Exhibit E attached to the Planning Commission's Recommendation): the applicant requested an amendment to Ordinance 95-61 to that would allow mining of Pit 2a and the Planning Commission finds that the potential for environmental and social impacts associated with this portion of the amendment request to that ordinance outweighs the value of aggregate mining in this area and based thereupon does not recommend an amendment to the ordinance to allow the mining of Pit 2a at this time.

The Planning Commission finds the aggregate resource and operations on the east side of Bear Creek should be designated a significant resource requiring protection under Jackson County's Goal 5 program for aggregate subject to applicable standards contained in the Land Development Ordinance, attached site specific conditions of approval, and approved site and operations master plan (See Exhibit E attached to the Planning Commission's Recommendation and Sections I, II, and IV of applicant's Exhibit 4 beginning at Record Page 330).

West Side of Bear Creek

Economic Consequences Allowing Conflicting Uses Fully:

Eliminating or limiting aggregate operations would result in lost employment opportunities and reducing the available aggregate resource in this area. This could cause an increase in transportation costs if material must be replaced

from another site that may not have existing infrastructure in place. There are several vacant and undeveloped parcels controlled by Rock 'N' Ready and providing Goal 5 protection and AR zoning for these lots will open opportunities for extraction and accessory aggregate operations where they now serve only to prevent incompatible uses from siting near the aggregate operations.

Economic Consequences of Allowing Surface Mining Operations Fully:

When tax lot 1900 was rezoned to AR by Ordinance 95-61, no extraction was allowed west of Bear Creek. There may be lost economic opportunities from noise and dust sensitive uses should extraction activities be allowed west of Bear Creek. There is a single vacant residentially zoned tax lot within the impact area applied through Ordinance 95-61. A Conditional Use Permit (Type 3 application) and approval of that application would be required to build a dwelling on that tax lot. The lost opportunities for new residential development would be minimal.

There are, however, existing residential development that could experience an increase in noise, dust, and viewshed impacts due to extraction and new processing activities on the west side of Bear Creek. The applicant has proposed six foot landscaped berms along Blackwell Road and around Pit 3, which will help reduce noise and viewshed impacts, and dust control procedures. There will be an increase in impacts, however slight or adverse, to existing residential development regardless of mitigation measures proposed by the applicant and incorporated as conditions of approval. The Planning Commission finds that these impacts are likely to be most acute in the southwest corner of the proposal (TL's 800, 900, 1200, 1300, and 1500) because of the immediate vicinity of two residential units zoned for residential use.

With regards to farm uses in this area, the EFU lands are well suited to agricultural production, but the predominant farm uses are not noise or dust sensitive. West of Bear Creek, there area three farming operations currently in production. South of the existing extraction operation on tax lots 1101/2604 is the Von der Helen farm, which is a field farming operation. These farming activities appear to have continued without changes over the last six years and that the mining activities and extraction areas on tax lots 800, 900, 1200, 1300, and 1500 would expected to result in a net decrease from the current impacts from mining operations on tax lots 1101/2604, which will be reclaimed prior to opening Pit 4. Southwest of the existing extraction area is the Hong farm, which is also a field farming operation and appear to be similar to the Von der Helen operations. There appear to have been no change in farming activities due to existing aggregate operations in the last six years. There will be a modest increase in current impacts from aggregate operations and

accessory mining activities associated with proposed Pit 3 following reclamation of the pit on tax lot 1101/2604.

The third farming operation involves the Walker elk ranching operation. The operation breeds and raises elk and includes properties on the west and east sides of Blackwell Road. The portion of the ranching operations east of Blackwell Road on tax lot 2600 in Section 28 will be most impacted by the proposed AR zoning and aggregate operations. This tax lot has aggregate hauling and extraction on the east boundary with the principal extraction area to the southeast. North and northeast of tax lot 2600 are the existing preprocessing area, stockpiling areas, and the concrete batch plant. To the west of these existing operations are the proposed pre-processing areas, stockpiling areas, and an asphaltic batch plant. The accessory mining activities and extraction area associated with Pit 3 will cause no net increase in current impacts from existing mining operations because the screening will have reached maturity prior to extraction in accordance with the phasing plan. A 200 foot setback from aggregate operations on tax lot 1800 has been maintained as well as a similar setback on tax lot 1700. This buffering has been sufficient for the elk ranch over the past six years and that approval of the proposed mining operations and AR zoning would not be expected to result in new impacts that would significantly increase the cost of or significantly alter the ranching operations. The proposed AR zoning is uninery to significantly increase the cost of farming practices or force a significant change in the familiary practices on other less intensive agricultural operations in the existing and proposed impact areas west of Phan Creek.

There will be impacts to existing farming operations in this area. Mitigation measures such as dust control and landscaped berms proposed by the applicant will help to reduce impacts on farming activities. Staff recommended a 200 foot setback from the elk ranch boundaries for aggregate extraction activities associated with Pit 3 in its initial report, similar to the setback maintained on tax lot 1800.

Economic consequences associated with the GI zoning districts in the area are expected to be no more than minimal because industrial uses are high impact uses that either do not conflict with aggregate uses or would conflict at level that could be addressed at the site design stage. With respect to commercial uses in the small IC zoned parcel there are some uses that could be considered conflicting uses allowed in that zone. However, these are generally uses that could locate elsewhere in the County where conflicts are less acute and there are still uses allowed in the zone where conflicts could be balanced through the County's standard site development approval process with minimal consequences.

Economic Consequences of Protecting other Goal 5 Resources:

The Goal 5 resources associated with the west side of Bear Creek include the Bear Creek Greenway, Bear Creek and Jackson Creek riparian areas, and wetlands. Protection of these Goal 5 resources would limit the extraction areas for Pit 3 particularly. The applicant states that the Comprehensive Plan Goal 5 Background Document, pages 23-26, conclude that aggregate operations are a permitted use in the Bear Creek Greenway, provided the aggregate operations are a permitted use in the primary zoning district. The Jackson County Land Development Ordinance requires a Type 3 approval process. This concurrent application has been conditionally approved. The Bear Creek riparian area is subject to development standards in the LDO requiring at least a 50 foot riparian setback. The evidence indicates this setback can feasibly be met and will be exceeded for all of Pit 2 along Bear Creek. Wetlands are regulated by the Division of State Lands and evidence from DSL regarding approval of development within these wetlands will be a condition of approval prior to development within the wetlands. The Planning Commission finds that mitigation can be provided through the concurrent Type 3 application, LDO requirements, and DSL review.

Social Consequences of Allowing Conflicting Uses Fully:

The Planning Commission finds that farm uses, particularly near Pit 3, have been operating without the appearance of significant adverse impacts associated with current mining operations. Eliminating or limiting mining on the west side of Bear Creek would reduce affects of dust on farm uses and the deterioration of the viewshed due to mining operations.

Commercial development in the appropriate zoning districts would affect the mining operations should their presence limit or eliminate mining operations. Eliminating or limiting mining on the west side of Bear Creek would reduce affects of dust on commercial development and the deterioration of the viewshed due to mining operations, as well as a reduction affects produced by noise of the aggregate operation.

Eliminating or limiting mining on the west side of Bear Creek would reduce affects of dust and noise on residential development and the deterioration of the viewshed due to mining operations. The proposed dust control measures and landscaped berms would help reduce affects on residential and commercial development as well as farm uses

Social Consequences of Allowing Surface Mining Operations Fully:

The primary social consequences of allowing expanded aggregate operations fully would be dust, noise, deterioration of the viewshed, and smells from the asphaltic concrete batch plant. The applicant states the most serious land use conflicts would be on dwellings. There are approximately 25 residences

located within the impact area. Many of the social consequences are already occurring due to the existing aggregate operations on tax lot 1800, tax lots 1101/2604, and tax lot 1300 in Section 21 (Crater Sand & Gravel). Significant land use conflict intensification in not expected because of existing mining operations. The aesthetic impacts from the proposed aggregate operations on the west side of Bear Creek have the potential to be significant. This is because the existing residences are mostly concentrated on the east slope of the small hill on the west side of Blackwell Road, which overlooks the subject properties and proposed aggregate operations. Without screening, these residences would experience significant visual impacts. The applicant has proposed landscaped berms along Blackwell Road to help reduce noise and visual impacts, although the noise and visual impacts cannot be mitigated entirely.

Social Consequences of Protecting Goal 5 Resources:

Significant Goal 5 resources on the subject properties are the Bear Creek Greenway and the Bear Creek, Willow Creek and Jackson Creek riparian corridors. The applicant has proposed a setback from the banks of Bear Creek to protect the riparian corridor. This setback is approximately 100 feet from the bank, although not through the entire corridor on the subject parcels. The LDO provides for a minimum setback of 50 feet from the bank. The social consequences would be on the viewshed for the riparian corridor. The mining operations would not be affected significantly and the proposed setback by the applicant is greater than required by the LDO. Minimal impacts to the aggregate operations would occur if the riparian corridor of Bear Creek were fully protected. Staff recommended a similar setback from the banks of Jackson Creek be determined as a condition of approval in the initial staff report. At least a 50 foot setback from the bank should be required.

The Bear Creek Greenway has a limited area west of Bear Creek. Pit 4 would be most affected should the Greenway be protected fully, although the affect would be minimal. Protecting the Greenway fully would not significantly affect the mining operations on the west side of Bear Creek.

Environmental Consequences of Allowing Conflicting Uses Fully:

Reclamation of the aggregate pits on the west side of Bear Creek will create new waterfowl habitat and the extension of the Bear Creek Greenway. Limiting or eliminating aggregate operations may encourage the conversion of lands to alternative uses that may be more conflicting than aggregate operation.

The environmental consequences of allowing conflicting uses fully would be the protection of the stream corridors, fish habitat, and affects of dust and noise. The proposed mitigation measures for dust control, landscaped berms to reduce noise, and setbacks from stream banks will help to reduce these consequences to levels required by federal, state, and local agencies.

Environmental Consequences of Allowing Surface Mining Operations Fully:

Adverse environmental impacts are most likely to occur in the Bear Creek, Willow Creek, and Jackson Creek riparian corridor. Hydrophytic vegetation, water quality, and fish habitat could all be negatively impacted.

The Planning Commission finds that although negative impacts could occur by the expansion of aggregate operations to the west side of Bear Creek, requirements and regulations from federal, state, and local governmental agencies must be complied with prior to the beginning of operations. These requirements help reduce adverse environmental impacts.

Environmental Consequences of Protecting other Goal 5 Resources Fully:

The significant Goal 5 resources which are protected are the Bear Creek Greenway and the riparian areas for Bear Creek, Jackson Creek, and Willow Creek. Limiting or eliminating mining to protect these resources could restrict mining to the east side of Bear Creek and allow only existing operations to continue on the west side of Bear Creek. The balance for protecting conflicting Goal 5 resources is found in the LDO requirements for riparian corridor protection and the Type 3 review process for the Bear Creek Greenway. The Planning Commission finds that these resource protection programs in the LDO provide the proper balance between conflicting Goal 5 resources.

Energy Consequences of Allowing Conflicting Uses Fully:

The Planning Commission finds that allowing conflicting uses fully by limiting or elimination expanded aggregate operations to the west side of Bear Creek could increase energy requirements to mine, process, and distribute aggregate materials to needed construction sites. This is due to locating aggregate operations in areas which are not as well situated to provide for efficient aggregate extraction, processing, and distribution.

Energy Consequences of Allowing Surface Mining Operations Fully:

Aside from post-mining reclamation and mining inputs during mining operations, no adverse energy consequences area anticipated.

Energy Consequences of Protecting other Goal 5 Resources Fully:

Protecting Goal 5 resources fully could limit or eliminate mining operations on the west side of Bear Creek. The energy consequences could increase energy requirements to mine, process, and distribute aggregate materials because of locating aggregate operations in other areas. Goal 5 resource are protected through requirements for development within riparian corridors and the Bear Creek Greenway.

Relative Value or Use of the Aggregate Resource Site as Compared to Existing or Potential Conflicting Uses:

The Goal 5 language in Division 16 states "In conjunction with the inventory of mineral and aggregate resources, sites for removal and processing of such resources should be identified and protected." Prohibition of any extraction west of Bear Creek, failure to recognize the area west of Bear Creek as a significant aggregate resource site, and protecting existing operations and activities would not result in a balance that is consistent with Jackson County's aggregate policies and Statewide Planning Goal 5. This area west of Bear Creek has a greater concentration of conflicting land uses. Full preservation of the proposed aggregate resources and mining operations with little or no limitations would also result in a balance that is not consistent with Jackson County's aggregate policies and Goal 5. The Map Designations Element of the Comprehensive Plan specifically provides for balance between allowing conflicting uses fully and allowing aggregate mining operations fully by the incorporation of site development requirements into the ordinance designating the significant site.

As the Planning Commission deliberated through ESEE analysis process, the Commission found that some, but not all, of the applicant's requests applicable to the west side of Bear Creek represent an adequate balance of conflicting uses. The more northern portion of the requests applicable to Tax Lots 1700, 1800, 1900 (amendment of ordinance 95-61), 1400 and 1303 were found to meet the requirements of Jackson County's aggregate program with conditions of approval, proposed phasing plan, and screening. However, the Planning Commission's analysis raised concerns regarding the timing and extent of conflicting uses in the southwest corner of the project area. The Planning Commission recognizes that this area is intended in the Master Site and Operations Plan proposed by the applicant to be mined in the distant future and that land use changes in the interim may reduce the acute conflicting uses that presently exist. The Commission further recognizes that the site contains significant aggregate reserves such that failure to provide any protection under the Comprehensive Plan would not adequately balance this valuable resource against the conflicting uses in the area. Thus, the Planning Commission elects to balance the conflicting uses for Tax Lots 800,

900, 1200, 1300, and 1500 by designating the site significant, establishing an impact area, and designating these lots Aggregate Resource Land on the Comprehensive Plan, but not by rezoning these parcels to Aggregate Removal at the present time, because the Commission finds the level of social and economic impacts on the two immediately adjacent residences, and the elk farm to a lesser degree, too acute to warrant re-zoning at this time.

With regards to other Goal 5 resources, under Policy 4 of the Comprehensive Plan Aggregate and Mineral Resources Element, "L" states "When analyzing the ESEE consequences of potential conflicts between significant mineral or aggregate resource and another significant Goal 5 resource, the county shall consider the protection program adopted for the conflicting resource. Conflicts with other natural resources shall not be the basis for mining restrictions unless the county has included or includes the conflicting resource on the inventory of significant Goal 5 resources, and has adopted or adopts a resource protection program." The Bear Creek Greenway and the Bear Creek riparian corridor are the only Goal 5 resources designated as significant resources in this area. The applicant states that the Comprehensive Plan Goal 5 Background Document, pages 23-26 conclude that aggregate operations are a permitted use in the Bear Creek Greenway, provided the aggregate operations are a permitted use in the primary zoning district. The Jackson County Land Development Ordinance requires a Type 3 approval process. This concurrent application has been conditionally approved. The Bear Creek riparian area is subject to development standards in the LDO requiring at least a 50 foot riparian setback. The applicant indicates this setback can feasibly be met and will be exceeded for most of the site along Bear Creek.

The Planning Commission finds the aggregate resource and operations on the west side of Bear Creek should be designated a significant resource requiring protection under Jackson County's Goal 5 program for aggregate subject to applicable standards contained in the Land Development Ordinance, attached site specific conditions of approval, and approved site and operations master plan for the area re-zoned to Aggregate Removal and that the areas not re-zoned at this time will benefit from protection as a significant resource subject to additional approvals that may occur at such time as the conflicting use conditions can be addressed in a manner acceptable to the County.

ESEE CONCLUSIONS

Based upon the applicant's land use review and analysis and with those amendments discussed herein above, the Planning Commission concludes its foregoing ESEE analysis will adequately balance the relative value of conflicting uses and the aggregate resource sufficient to satisfy and implement Jackson County's Goal 5 program for aggregate for the subject properties. The subject properties are designated a '3C' site; the '3C' program determines that both the resource site and the conflicting uses are important relative to each other, and that the ESEE consequences should be balanced so as to allow the conflicting uses in a limited way so as to protect the resource site. Based upon its ESEE analysis above, the Planning Commission concludes the proposed aggregate uses east of Bear Creek will be relatively unconstrained by conflicting land uses, but should be balanced against competing Goal 5 resources, specifically the Bear Creek Greenway and the Bear Creek riparian corridor and is therefore protected as a '3C' site and the same will be accomplished through adherence to the approved site and operations master plan, requirements of the LDO, and discretionary conditions adopted by the Planning Commission. Based upon its ESEE analysis above, the Planning Commission concludes the proposed extraction area west of Bear Creek is more constrained by conflicting land uses, but should be balanced against competing Goal 5 resources and conflicting land uses subject to applicable standards contained in the Land Development Ordinance, attached site specific conditions of approval, and approved site and operations master plan for the area re-zoned to Aggregate Removal and that the areas not re-zoned at this time will benefit from protection as a significant resource subject to additional approvals that may occur at such time as the conflicting use conditions can be addressed in a manner acceptable to the County.

- vi) Decision on Program to Provide Goal 5 Protection. Based on the analysis of ESEE consequences, the County shall make a determination on the level of protection to be afforded each site. Each determination shall constitute a decision to comply with Goal 5 for the specific site, and shall be incorporated into the Comprehensive Plan, and reflected on the County zoning maps, as appropriate. The County shall make one of the following determinations:
 - a) Protect the resource site fully, allow surface mining. To implement this decision the County shall apply the Aggregate Removal zone. Development and use of the mineral or aggregate resource shall be governed by the standards within the Land Development Ordinance. As part of the final decision, the County shall adopt site-specific policies prohibiting the establishment of conflicting uses within the area designated as the Impact Area surrounding the Extraction Area.
 - b) Balance protection of the resource site and conflicting uses, allow surface mining. To implement this decision, the County shall apply the Aggregate Removal zone. Development and use of the mineral or aggregate resource shall be governed by the standards in the Land Development Ordinance and any other site-specific requirements designed to avoid or mitigate the consequences of conflicting uses

and adopted as part of the final decision. Development of conflicting uses within the Impact Area shall be regulated by the Land Development Ordinance and any other site-specific requirements designed to avoid or mitigate impacts on the resource site and adopted as part of the final decision.

c) Allow conflicting uses, do not allow surface mining. To implement this decision, the County shall not apply the Aggregate Removal zoning district. The site will not be afforded protection from conflicting uses, and surface mining shall not be permitted except through the permit review process in the Land Development Ordinance.

FINDING: The Based upon the applicant's land use review and analysis and with those amendments discussed herein above, the Planning Commission concludes its foregoing ESEE analysis will adequately balance the relative value of conflicting uses and the aggregate resource sufficient to satisfy and implement Jackson County's Goal 5 program for aggregate for the subject properties. The subject properties are designated a '3C' site; the '3C' program determines that both the resource site and the conflicting uses are important relative to each other, and that the ESEE consequences should be balanced so as to allow the conflicting uses in a limited way so as to protect the resource site. Based upon its ESEE analysis above, the Planning Commission concludes the proposed aggregate uses east of Bear Creek will be relatively unconstrained by conflicting land uses, but should be balanced against competing Goal 5 resources, specifically the Bear Creek Greenway and the Bear Creek riparian corridor and is therefore protected as a '3C' site and the same will be accomplished through adherence to the approved site and operations master plan, requirements of the LDO, and discretionary conditions adopted by the Planning Commission. Based upon its ESEE analysis above, the Planning Commission concludes the proposed extraction area west of Bear Creek is more constrained by conflicting land uses, but should be balanced against competing Goal 5 resources and conflicting land uses subject to applicable standards contained in the Land Development Ordinance, attached site specific conditions of approval, and approved site and operations master plan for the area re-zoned to Aggregate Removal and that the areas not re-zoned at this time will benefit from protection as a significant resource subject to additional approvals that may occur at such time as the conflicting use conditions can be addressed in a manner acceptable to the County.

vii) Establishment of Zoning District:

The Aggregate Removal (AR) zoning district will be applied when an aggregate site plan consistent with the requirements of this Section has been approved by the County. The site plan will be adopted by ordinance concurrent with the map designation amendment and zone change application. The approving ordinance will serve as the development ordinance for land uses on the subject property.

FINDING: The Planning Commission interprets this criterion to require the adoption of a site and operations plan that contains sufficient specificity to complete the ESEE analysis and implement a Goal 5 protection program for the site. The Planning Commission finds that such a plan was offered by the applicant, has been amended by the Commission through the Goal 5 review, and the Commission has approved such a plan; the approved plan is constituted by the plan map attached to the Planning Commission's Recommendation as Exhibit E, the attached conditions of approval, and Sections I, II and IV of applicant's Exhibit 4.

B) Aggregate and Mineral Resources Element

i) Policy 1:

Minerals are recognized as a nonrenewable and necessary resource that must be protected from incompatible development and be available for mining.

FINDING: The Planning Commission finds that the location, quality, and quantity data indicate the aggregate resources on the subject properties are a significant Goal 5 aggregate resource. A Goal 5 protection program compliant with OAR 660, Division 16 is included in this report.

ii) Policy 2:

The County shall protect and conserve aggregate resources, reduce conflicts between aggregate operations and adjacent land uses, and ensure that aggregate resources are available for current and future use.

FINDING: The Comprehensive Plan findings supporting this policy state that sensitive agricultural areas are often located near key deposits of concrete aggregates, sand, and gravel, on high and low floodplains and terrace lands. One of the specific areas identified in these findings is the lower Bear Creek floodplain. This area contains one of the largest deposits of sand and gravel within an economical distance of the urbanizable areas of White City, Central Point, and Medford. These same floodplains are also classified as agricultural land by statewide planning goal definition. The ESEE analysis shows the subject properties are not constrained by noise and dust sensitive agricultural operations on surrounding lands, although aggregate operation may impact adjacent agricultural activities. The Planning Commission incorporates and adopts its ESEE analysis above and finds it is a site specific analysis that will protect and conserve aggregate resources, reduce conflicts between aggregate operations and adjacent land uses, and ensure that aggregate resources are available for current and future use.

iii) Policy 3:

Emphasis will be placed on the zoning of lands for aggregate resource purposes near each urban center and key rural community in the County.

FINDING: The Planning Commission finds the subject properties are well situated near the urban centers of White City, Central Point, and Medford.

iv) Policy 4:

When an aggregate site is no longer suited for aggregate operations, a change from aggregate resource zoning to another zoning designation is desirable. The proposed zoning must be consistent with the Comprehensive Plan ordinances, and reclamation plan.

FINDING: The Planning Commission finds that is has contemplated uses such as Greenway trail extension and future reclamation of the site, but that application of this policy with respect to specific land uses will be deferred until the depletion of aggregate resources is more readily anticipated.

v) Provisions A through U are criteria that are implemented through various other sections of the Jackson County Comprehensive Plan and Land Development Ordinance, and ESEE process.

FINDING: The Planning Commission incorporates and adopts applicant's conclusions of law addressing provisions A through U except as amended in the ESEE analysis above, sufficient to find the minor Comprehensive Plan Map amendment complies with these criteria.

C) Transportation Element

The Jackson County Transportation Plan (TSP) is acknowledged as being consistent with the Transportation Planning Rule. Applicable policies of the TSP are addressed below.

i) Safety Policies

a) The County will provide a transportation system that supports emergency access for emergency vehicles and provides for evacuation in the event of a wildfire hazard or other emergency.

Strategies:

(1) Establish and maintain land development ordinance regulations that assure minimum emergency vehicle access standards are provided for all development. These standards should provide base-line safety protections that are related to the total amount of development that would use the access in the event of an emergency.

FINDING: Emergency vehicle access standards are addressed in the site plan review and a condition of approval will require compliance with the standards of Section 8.7 of the LDO.

b) Public Safety will be a primary consideration in the planning, design, and maintenance of all Jackson County Transportation Systems.(RTP 16-4)

FINDING: A Traffic Impact Study has been submitted for access from Blackwell Road. The conclusions of the study require a southbound left turn lane from Blackwell Road when the asphaltic batch plant is built. The left turn lane will be located at the existing access. A new access road is proposed 1,400 feet south of the existing access. The new access to the asphaltic batch plant will be a "Right Turn In Only." This new access will be a one-way street circulation for a more efficient and safe operation. Trucks will exit from the existing main entrance.

Jackson County Roads has reviewed the Traffic Impact Study and concurs with its findings. In its deliberation, the Planning Commission determined it appropriate to get preliminary approval of the left-turn lane and determine the need for any new right of way prior to design and installation of the berms along Blackwell Road and the conditions of approval reflect the same. The Planning Commission incorporates and adopts the findings of applicant's TIS as evidence sufficient to establish minimum transportation safety standards will be maintained.

c) Maintain clear vision areas (sight triangle) adjacent to intersections so as not to obstruct the necessary views of motorists, bicyclists, and pedestrians. (RTP 16-3)

Strategies:

(1) Maintain development ordinance regulations that will assure adequate sight distances at intersections.

FINDING: The Traffic Impact Study states there is adequate sight distance at the existing main entrance.

ii) Transportation and Land Use Coordination Policies

a) The County will prohibit new or expanded development proposals with the potential to prevent placement of, or significantly increase the cost of, designated transportation connections in the TSP.

Strategies:

(1) Establish and maintain development review procedures that will prevent conflicts between development and future transportation facilities and connections.

FINDING: The TIS states that the proposal will not conflict with future transportation facilities and connections, specifically the Seven Oaks Interchange, which has an approved and funded up-grade with a completion date scheduled for the fall of 2008.

b) Plan amendments, zone changes and type 3 and 4 land use permits need to demonstrate that adequate transportation planning has been done to support the proposed land use.

Strategies:

- (1) Inside urban growth boundaries, demonstration of adequate transportation facilities for a land-use action should defer to the city's adopted Transportation System Plan; this deference should occur in accordance with any applicable provisions in the Urban Growth Management Agreement between the particular city and the County. Absent an adopted Transportation System Plan for the applicable city, land use actions related to transportation planning and transportation project decisions will be based on the Jackson County Transportation System Plan; application of the County TSP in this situation should account for any applicable provisions in the Urban Growth Management Agreement between the particular city and the County.
- (2) Ensure that legislative land use changes will not result in land uses that are incompatible with the public transportation facilities they will use through compliance with, and direct application of, OAR 660 Division 12.
- (3) Ensure that quasi-judicial comprehensive plan changes, zone changes and type 3 and 4 land use permits will not result in land uses that are incompatible with the public transportation facilities they will use. To meet this requirement, criteria "i, ii and iii" below must be demonstrated to be met through a Transportation Impact Study (TIS) completed by a registered professional engineer with expertise in transportation. Compliance with criteria "i, ii and iii" will be considered sufficient to demonstrate compliance with the Transportation Planning Rule. The TIS requirement may be waived if the Planning Director and the County Engineer administratively concur in writing that sufficient specific evidence is provided

from affected transportation management agencies that the cumulative effect of approving the proposed plan amendment, zone change or type 3 or 4 land use permit, along with the potential for similar approvals on similarly situated parcels within 2 miles (.75 miles in the MPO) of the subject parcel (or portion of the parcel that is requesting the land use change or permit), will not significantly affect a transportation facility identified in State, regional or local transportation plans (RTP 6-1).

- (a) Approval of the proposed changes and the cumulative impact of the potential for similar approvals on parcels within 2 miles (.75 miles in the MPO) of the subject parcel would not change the functional classification of an existing or planned transportation facility nor would it change standards implementing the functional classification system (unless the change can be made in conjunction with a TSP amendment pursuant to policy 4.3.3-D).
- (b) Approval of the proposed changes and the cumulative impact of the potential for similar approvals on parcels within 2 miles (.75 miles in the MPO) of the subject parcel would not allow types or levels of land uses that would result in levels of travel or access inconsistent with the functional classification of a transportation facility (unless a functional class change is made pursuant to policy 4.3.3-D).
- (c) Approval of the proposed land use changes and the cumulative impact of the potential for similar approvals on parcels within 2 miles (.75 miles in the MPO) of the subject parcel would not cause a facility to exceed the adopted performance standards for facilities used by the subject parcel. A facility used by the subject parcel is defined as any facility where approval of the proposed land use changes and the cumulative impact of the potential for similar approvals on parcels within 2 miles (.75 miles in the MPO) of the subject parcel would increase traffic on a facility by more than 3% of the total capacity for collectors and/or 2% of

the total capacity for arterials and state highways. ODOT may determine that the subject parcel, beyond this definition and in accordance with the Oregon Highway Plan, will use additional state facilities.

FINDING: Jackson County has signed a capacity analysis waiver dated August 26, 2005. The waiver stipulates to a safety analysis, which has been completed and submitted. The proposed Comprehensive Plan map and Zoning Map Amendment will not change the functional classification of any existing or planned transportation facility nor will it change standards implementing the County's functional classification system. The left turn lane mitigation will assure the project will not create or worsen a safety problem on Blackwell Road.

- (4) Projects proposed in the TSP towards the end of the planning horizon cannot be relied on for quasi-judicial plan amendments, zone changes or type 3 and 4 land use permits. TSP projects on state highways cannot be relied on unless in an adopted STIP. TSP planned projects may have to be altered or cancelled at a later time to meet changing budgets or unanticipated conditions such as environmental constraints. However, quasi-judicial plan amendments, zone changes or type 3 and 4 land use permits may demonstrate compliance with strategy "c." based on planned facility improvements under the following circumstances (and provided that an additional comprehensive plan amendment is not required as part of project development such as an ESEE):
 - (a) For ODOT facilities within the MPO, projects that are in the short and/or medium range Regional Transportation Plan (RTP) Tier 1 project list. For ODOT facilities outside the MPO, projects that are programmed into the STIP. (An alternate strategy for an ODOT facility may be to coordinate with ODOT on a change to the applicable Highway Plan requirements)
 - (b) For County facilities outside the MPO and local county facilities in the MPO, projects that are in the financially constrained TSP projects list and are in either the short and/or medium range Tier 1 lists.
 - (c) For regionally significant County facilities within the MPO, the facility must be in either the short and/or medium range RTP Tier 1 lists.

FINDING: This criteria does not apply to this application.

(5) If a concurrent quasi-judicial TSP amendment is submitted (See Policy 4.3.3-D) with the proposed comprehensive plan amendments and/or zone changes, the actions may be considered together. If the TSP amendment can be made then any changes included in the TSP amendment may be counted under section d for compliance with section c.

FINDING: This criterion does not apply.

c) Regardless of whether adequate capacity exists, changes in land use and new or expanded development proposals will not be approved if they will create, or would worsen, a safety problem on a public transportation system or facility. If a problem would be created or worsened without mitigation, then a mitigation plan that resolves the safety concern must also be approved and included in the proposal in order for the land use change and/or development proposal to be approved. Where a safety concern exists, study by a registered professional engineer with expertise in transportation will be considered to determine if a problem would be created or worsened.

FINDING: The TIS identifies a traffic safety concern and proposes mitigation by creating a southbound left turn lane into the existing main entrance once the asphaltic concrete batch plant is completed and a new access road with a "Right Turn In Only" for efficient and safe operation. Jackson County Roads has reviewed the Traffic Impact Study and concurs with its findings. In its deliberation, the Planning Commission determined it appropriate to get preliminary approval of the left-turn lane and determine the need for any new right of way prior to design and installation of the berms along Blackwell Road and the conditions of approval reflect the same. The Planning Commission incorporates and adopts the findings of applicant's TIS as evidence sufficient to establish minimum transportation safety standards will be maintained.

3) COMPLIANCE WITH THE LAND DEVELOPMENT ORDINANCE

A) Section 3.7: Any amendment must comply with all applicable Statewide Planning Goals, Oregon Administrative Rules and the Comprehensive Plan as a whole.

FINDING: Findings have been made regarding the Statewide Planning Goals, Oregon Administrative Rules and the Comprehensive Plan as they apply to this application. The Planning Commission finds the proposed land use changes comply with the adopted and acknowledged Comprehensive Plan and incorporate and adopt the Commission's findings of fact and conclusions of law demonstrating compliance with the Statewide Planning Goals Oregon Administrative Rules and the Comprehensive plan herein above.

Section 3.7.3(C), Minor Comprehensive Plan or Zoning Map Amendments (Quasi-Judicial) establishes procedures, standards, and criteria for minor map amendments.

i) Adequate public safety, transportation, and utility facilities and services can be provided to the subject property. In the case of a minor zoning map amendment, adequate transportation facilities must exist or be assured.

FINDING: The only critical utility services for the aggregate operation are water and electricity. The applicant has an existing water right from the Rogue River Irrigation District to provide for the water needs of the operation. Electricity is available onsite. The operation accesses a collector road, Blackwell Road and the existing capacity of Blackwell Road will not be exceeded by the proposed aggregate operations.

ii) The minor map amendment will not prevent implementation of any area of special concern or restrictions specified for that area in Chapter 7 or the adopting ordinance creating it, or both.

FINDING: The Planning Commission finds that portions of the subject properties contain Area of Special Concern 82-2, the Bear Creek Greenway. Aggregate operations and the Bear Creek Greenway are competing Goal 5 resources. An ESEE analysis is required to balance competing Goal 5 resources. The Planning Commission finds that ASC 82-2 is principally concerned with the protection and preservation of riparian area to help facilitate Greenway trail extension and that with the stipulated easement offered by the applicant and the setbacks in the approved site and operations master plan this goal is served in accordance with the site-specific ESEE analysis above. The Planning Commission recognizes applicant's argument that the Goal 5 Background Document includes an ESEE analysis for the Bear Creek Greenway and that analysis determined aggregate operations are a permitted use in the Bear Creek Greenway. However, the current LDO indicates that aggregate operations must go through a Type 3 review. The Planning Commission finds that the applicant has submitted a Type 3 review addressing applicable criteria and that this application can be conditionally approved and the same is accomplished in this report herein below. The Planning Commission thus finds that, because a Type 3 application can be approved for the site, the legal esoteric argumentation regarding the applicability of the Type 3 criteria need not be reached and the Planning Commission thus concludes the criterion is met based upon demonstration of compliance with the Type 3 criteria as addressed herein.

iii) On resource zoned lands outside urban growth boundaries, the entire parcel is included in the minor Comprehensive Plan Map unless the purpose of the amendment conforms with the criteria of Policy 1 of the Comprehensive Map Designations Element.

FINDING: Some of the subject properties east of Bear Creek are resource zoned parcels for which the applicant requested only a portion of the parcel be designated

Aggregate Resource and rezoned to Aggregate Removal (Tax Lots 100, 200, and 2600 west of the irrigation ditch). Policy 1 of the Map Designations Element allows for a portion of a resource zoned parcel to obtain a new Comprehensive Plan map designation and be rezoned if it is to implement protection of a Goal 5 resource and in this case the change is from one resource designation to another (Agricultural Land to Aggregate Resource Land).

iv) Map amendments outside urban growth boundaries and urban unincorporated communities that will result in a minimum residential lot size smaller than 10 acres meet the requirements for an exception to Statewide Planning Goal 14.

FINDING: This proposal will not result in a minimum residential lot size smaller than 10 acres.

v) Any minor Zoning Map amendment is consistent with the Comprehensive Plan Map designation.

FINDING: The Planning Commission herewith incorporate and adopt their findings of fact, ESEE analysis, and conclusions of law demonstrating the subject properties (or portions thereof in the case of TL 100, 200 and 2600) are appropriately designated Aggregate Resource. Through the ESEE process, the Planning Commission has concluded that Tax Lots 800, 900, 1200, 1300, and 1500 are not appropriately zoned Aggregate Removal at this time. All other parcels are appropriately designated Aggregate Removal and the same is consistent with the Aggregate Resource Comprehensive Plan Map designation herein approved.

vi) In the case of a minor Comprehensive Plan Map amendment, community benefit as a result of the minor map amendment is clearly demonstrated.

FINDING: The location, quality, and quantity of the aggregate resource has been shown to meet the criteria as a significant Goal 5 aggregate resource. Policy 2 of the Aggregate and Mineral Resources element establishes protection of aggregate resources through the Goal 5 process as a benefit to the community as a matter of policy. Based upon the Planning Commission's conclusion that the subject property is a Goal 5 aggregate resource worthy of protection and all analysis, evidence, and findings thereto, the Planning Commission finds that a community benefit is clearly demonstrated by operation of established policy.

vii) In determining the appropriateness of the proposed redesignation, the White City or Jackson County Planning Commission and Board of Commissioners will consider any factors relevant to the proposal, which may include: topography, geology, hydrology, soil characteristics, climate, vegetation, wildlife, water quality, historical or archaeological resources, scenic resources, noise, open space, existing site grading, drainage, adverse impacts on other

property in the vicinity, and any other factors deemed to be relevant to the application.

FINDING: The Planning Commission finds that the record is extensive and that all factors relevant to the proposal have been addressed through the ESEE analysis and hearings process.

- B) Type 3 Approval Criteria, Section 3.1.4(B)
 - i) The County may issue Type 3 and 4 Permits only upon finding that the proposed use is in conformance with any applicable development approval criteria or standards of the Comprehensive Plan, and all applicable standards of this Ordinance, and that all of the following criteria have been met:

FINDING: The Planning Commission recognizes the applicant's argument that the Goal 5 Background Document includes an ESEE analysis for the Bear Creek Greenway and that analysis determined aggregate operations are a permitted use in the Bear Creek Greenway. However, the current LDO indicates that aggregate operations must go through a Type 3 review. The Planning Commission finds that the applicant has submitted findings of fact and conclusions of law addressing the Type 3 review criteria. The Planning Commission thus finds that, because a Type 3 application can be approved for the site in accordance with its findings of fact and conclusions of law hereinbelow, the legal esoteric argumentation regarding the applicability of the Type 3 criteria need not be reached and the Planning Commission thus concludes the criterion is met based upon demonstration with Compliance with the Type 3 criterion. The Planning Commission herewith incorporates and adopts applicant's conclusions of law with respect to geographic applicability of the Greenway provisions to that specific area identified as ASC 82-2 on the 1982 zoning maps at Record Page 343. Based upon its findings of fact and conclusions of law provided elsewhere herein, the Planning Commission finds it has addressed all applicable LDO requirements and has identified and determined compliance with those Comprehensive Plan provisions that operate as approval criterion.

(1) The proposed use will cause no significant adverse impact on existing or approved adjacent uses in terms of scale, site design, and operating characteristics (e.g., hours of operation, traffic generation, lighting, noise, odor, dust, and other external impacts). In cases where there is a finding of overriding public interest, this criterion may be deemed met when significant incompatibility resulting from the use will be mitigated or offset to the maximum extent practicable.

FINDING: The record demonstrates that, with approval of the requested Comprehensive Plan Map amendments and zoning map amendments as approved by the Planning Commission, that portion of the Greenway where the proposed uses will be located will be

surrounded by aggregate operations that can be expected to be similar with respect to scale, site design, and operating characteristics such that significant adverse impacts are not expected.

The Planning Commission finds that a date for completion of this section of the Greenway is unknown and is not anticipated within the near future. The focus has been on completing the Greenway from Ashland to Central Point. At this point in time, the aggregate operations near or within the mapped Greenway will cause no adverse impacts to the Greenway because it does not currently exist and it is not known if it will ever be completed through this area. A letter from Karen Smith, Special Projects Manager, states that a perpetual trail easement would assure an effective balance between the conflicting Goal 5 resources of aggregate and the Bear Creek Greenway. The reclamation of Pit 2 on the east side of Bear Creek will create waterfowl habitat and wetlands, which would enhance the viewshed from any proposed Greenway trail. Staff recommends that a perpetual trail easement be required as a condition of approval to allow a trail to be built through the subject properties, should the Greenway trail be extended to this area.

(2) Adequate public facilities (e.g., transportation) are available or can be made available to serve the proposed use;

FINDING: Water and electricity are the only critical facilities for the aggregate operations. A water right with the Rogue River Irrigation District currently exists and electricity exists onsite. A Traffic Impact Study has been completed and the conclusion of that study requires a southbound left turn lane at the existing main entrance shall be built when the proposed asphaltic batch plant is completed. This will be a condition of approval for this review.

(3) The proposed use is not a conflicting use certified in an adopted Goal 5 ESEE applicable to the parcel, or if an identified conflicting use, one that can be mitigated to substantially reduce or eliminate impacts;

FINDING: The Planning Commission finds the aggregate resources in this area and the Bear Creek Greenway are both conflicting uses already certified as such in adopted Goal 5 ESEE analyses. The Planning Commission construes this criterion as a protection measure for Goal 5 resources from non-Goal 5 conflicting uses. The criterion includes no provision to balance competing Goal 5 resources that mutually conflict with one another. This criterion does not, however, preclude the County from certifying a site-specific ESEE analysis that balances impacts to competing Goal 5 resources, consistent with the Goal. The Planning Commission incorporates and adopts its ESEE analysis herein above as a site specific ESEE analysis that balances the Bear Creek Greenway and Aggregate Resources and that the site and operations master plan approved herein will allow mining with certain restrictions to assure protection of the Bear Creek Greenway. The Planning Commission finds that ASC 82-2 is principally concerned with the protection and preservation of riparian area to help facilitate Greenway trail extension and that with the stipulated easement offered by the applicant and the setbacks in the approved site and operations master plan this goal is served in accordance with the site-specific ESEE analysis above.

(4) The applicant has identified and can demonstrate due diligence in pursuing all Federal, State, and local permits required for development of the property; and

FINDING: The Planning Commission finds the record contains extensive evidence concerning the pursuit of required Federal, State, and local permits for the proposed aggregate operation expansion. To-date, the record contains no substantial evidence that the applicant cannot feasibly obtain any required permit and obtainment of the same will be required as a condition of approval.

(5) On land outside urban growth boundaries and urban unincorporated communities, the proposed use will either provide primarily for the needs of rural residents and therefore requires a rural setting in order to function properly, or else the nature of the use (e.g., an aggregate operation) requires a rural setting, even though the use may not provide primarily for the needs of rural residents. Churches and schools however are not subject to this criterion.

FINDING: The requested aggregate use require a rural setting, as indicated in the text of the criterion.

CONCLUSION: Based upon its findings above herein incorporated and adopted, the Planning Commission concludes that, with the proposed conditions of approval, the application complies with the Type 3 criteria of Section 3.1.4(B).

C) Site Plan Review for Aggregate Operation in an Aggregate Removal Zoning District. Section 4.4.5 and 4.4.8

Section 4.4.5

The use may be approved only where the use:

- i) Will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; and
- ii) Will not significantly increase the cost of accepted farm or forest practices on lands devoted to farm or forest use.

FINDING: Aggregate operations have existed in the area for many years. The Planning Commission finds that the evidence indicates that there appears to have been no changes in the farming practices over the last six years due to the existing operations.

Section 4.4.8

Prior to commencement of new or expanded operations for mining, crushing, stockpiling or processing of aggregate or other mineral resources, evidence shall be submitted showing that the operation will comply with the following operating standards, in addition to any requirements and conditions that were placed on the site at the time it was designated AR, or that were otherwise required through the Goal 5 process, or approved through a mining permit issued by the County. In AR zones, if the Board Ordinance designating the site AR required a higher level of review than shown in Table 4.4-1, the review and noticing requirements of the Board Ordinance will be used.

i) All necessary County and state permits have been obtained, and a current Department of Geology and Mineral Industries (DOGAMI) operating permit has been issued. Equipment testing necessary to obtain permits is allowed.

FINDING: A condition of approval will require that all necessary County and state permit have been obtained and a current DOGAMI operating permit has been issued.

ii) All facets of the operation will be conducted in a manner that complies with applicable DEQ air quality, water quality and noise standards, and in conformance with the requirements of the DOGAMI permit for the site.

FINDING: This will be a condition of approval.

iii) A site reclamation plan, approved by DOGAMI, has been submitted for inclusion in Planning Department records. Such plan must return the land to natural condition, or return it to a state compatible with land uses allowed in the zoning district or otherwise identified through the Goal 5 review process.

FINDING: This will be a condition of approval.

iv) A written statement from the County Road Department and/or ODOT has been submitted verifying that the public roads that will be used by haul trucks have adequate capacity and are, or will be, improved to a standard that will accommodate the maximum potential level of use created by the operation. The property owner or operator is responsible for making all necessary road improvements, or must pay a fair share for such improvements if agreed to by the County Road Department or ODOT.

FINDING: A letter from Jackson County Roads states that the use meets capacity requirements for Blackwell Road. A Traffic Impact Study requires a southbound left turn lane be built at the existing main entrance when the proposed asphaltic concrete batch plant is built and the applicant has stipulated to construction of the same.

- v) On-site roads and private roads from the operating area to a public road have been designed and constructed to accommodate the vehicles and equipment that will use them, and meet the following standards:
 - (1) All access roads within 100 feet of a paved public road are paved, unless the operator demonstrates that other methods of dust control will be implemented.
 - (2) All unpaved roads that will provide access to the site or that are within the operating area will be maintained in a dust-free condition at all points within 250 feet of a dwelling or other identified conflicting use.

FINDING: The Planning Commission finds that the initial staff report had identified a concern that the applicant was attempting to subvert the paving requirements. The Planning Commission finds based upon the site plans and testimony at the hearing that this is not the case and that all required paving will be provided and in addition the applicant has stipulated to exceed the paving requirements for main haul roads to minimize air quality impacts and the same are appropriate. The above requirements together with applicant's stipulations will be made conditions of approval.

vi) If the operation will include blasting, the operator has developed a procedure to ensure that a notice will be mailed or delivered to the owners and occupants of all residences within one-half mile of the site at least three working days before the blast. The notice must provide information concerning the date and time that blasting will occur, and must designate a responsible contact person for inquiries or complaints. Failure to notify neighbors and the County before blasting is a violation of this Ordinance for which a citation may be issued. Notice will be deemed sufficient if the operator can show that the notices were mailed or delivered, even if one or more of the households within the notice area did not receive the notice.

FINDING: This will be a condition of approval.

vii) The operation is insured for a minimum of \$500,000 against liability and tort arising from surface mining, processing, or incidental activities conducted by virtue of any law, ordinance, or condition. Insurance shall be kept in full force and effect during the period of such activities. Evidence of a prepaid policy of such insurance which is in effect for a period of one year shall be deposited with the County prior to commencing any operations. The owner or operator shall annually provide the County with evidence that the policy has been renewed.

FINDING: Evidence of insurance has been submitted. This criterion is met.

- viii) The operation will observe the following minimum setbacks except where the operation is lawfully preexisting and encroachment within the prescribed setbacks has already occurred:
 - (1) No extraction or removal of aggregate/minerals will occur within 25 feet of the right-of-way of public roads or easements of private roads.
 - (2) Processing equipment, batch plants, and manufacturing and fabricating plants will not be operated within 50 feet of another property or a public road right-of-way, or within 200 feet of a residence or residential zoning district, unless written consent of the property owner(s) has been obtained.

FINDING: These setbacks will be conditions of approval.

ix) If the aggregate removal and surface mining operation will take place within the Floodplain Overlay the requirements of Section 7.1.2 have been met.

FINDING: Based upon the Planning Commissions findings of fact and conclusions of law addressing Section 7.1.2 incorporated and adopted herein, the requirements of Section 7.1.2 can feasibly be and will be met with appropriate conditions of approval.

- x) Mining and processing activities, including excavated areas, stockpiles, equipment and internal roads, will be screened from the view of dwellings, scenic resources protected under ASC 90-9, and any other conflicting use identified through the Goal 5 process or Type 3 review. Screening may be natural or may consist of earthen berms or vegetation which is added to the site. If vegetation is added, it shall consist of alternating rows of conifer trees planted six feet on center and a height of six feet at the commencement of the operation. An exemption to the screening requirements may be granted when the operator demonstrates any of the following:
 - (1) Supplied screening cannot obscure the operation due to local topography.
 - (2) There is insufficient overburden to create berms, and planted vegetation will not survive due to soil, water, or climatic conditions.
 - (3) The operation is temporary and will be removed, or the site will be reclaimed within 18 months of commencement.
 - (4) The owner of the property containing the use from which the operation must be screened, has signed and recorded a restrictive deed declaration acknowledging and accepting that the operation will be visible and that the operator will not be required to provide screening.

FINDING: The Planning Commission finds are only a few dwellings from which the operation east of Bear Creek may be visible and these dwellings are located on a steep bench that topographically precludes effective screening. The applicant offers no screening on the east side of Bear Creek other than the screening supplied by the preservation of the Bear Creek riparian corridor. This meets the exemption criteria for screening for the operations on the east side of Bear Creek..

The applicant proposes to build earthen berms topped with the prescribed vegetative screening along property lines depicted on the site plan for the area west of Bear Creek. By phasing the extraction and allowing the screening to fill in prior to mining in the area west of Bear Creek, the operation will be screened in accordance with this standard. Because the Planning Commission denied the zoning map amendment applicable to the southwest corner of the project, the screening initially proposed by the applicant in this area is not required. The Planning Commission deliberated regarding the location and adequacy of the screening and concluded the proposed screening is adequate, but should not be constructed until right-of-way dedications, if any, for construction of the left-turn lane are known. The topography west of Blackwell Road is such that all dwellings on this hill may not be completely screened, according to the exemption above. A condition of approval requires the applicant to provide screening as depicted on the site plan and in compliance with the plan showing the configuration of a typical berm.

xi) Existing trees and other natural vegetation adjacent to any public park, residential zoning district, or parcel on which a dwelling is situated will be preserved for a minimum width of 25 feet along the boundary of the property on which the operation is located.

FINDING: This will be a condition of approval.

- xii) Operations will observe the following hours of operation:
 - (1) Mining, processing, and hauling from the site are restricted to the hours of 6 a.m. to 7 p.m. Monday through Saturday. The hours of operation do not apply to hauling for public works projects.
 - (2) Neither mining, processing, nor hauling from the site will take place on Sundays or the following legal holidays: New Year's Day, Memorial Day, July 4, Labor Day, Thanksgiving Day, and Christmas Day.
 - (3) An exemption to the hours of operation may be requested. Notice of the proposed change in operating hours must be provided to all property owners within 1,000 feet radius of the aggregate removal or surface mining operation, to residences within one-half mile of the site, and to owners of property

adjacent to private site access roads. If no request for a public hearing is made within 12 calendar days of mailing said notice, the operating hours can be changed as requested by the operator. If a request is made for a public hearing, adjustment of standard operating hours shall be determined by the Hearings Officer, subject to findings that the proposal is consistent with the best interests of public health, safety, and welfare and that the operation will not conflict with other land uses

FINDING: These will be conditions of approval.

CONCLUSION: The Planning Commission concludes that the proposed aggregate operations can feasibly and will be required meet the criteria of Sections 4.4.5 and 4.4.8. through imposition of appropriate conditions of approval. The Planning Commission incorporates and adopts the applicant's argument and conclusions at Record Page 1565 with respect to applicability of site development plan review criteria and based thereupon concludes the above criteria constitutes the only applicable criteria.

D) Section 7.1.2, Floodplain Review

- The scientific and engineering report prepared by the Federal Emergency Management Agency (FEMA) entitled The Flood Insurance Study for Jackson County, dated April 1, 1982 or as hereafter amended, along with accompanying Flood Insurance Rate Maps (FIRM) and Flood Boundary and Floodway Maps (FBFM), are hereby adopted by reference and declared to be a part of this Section. These documents will be the means for establishing the location of the 100-year floodplain. The Flood Insurance Study is on file with the County.
- The floodway has been established as shown on the FIRM or Floodway Boundary and Floodway Maps (FBFM). A floodway will be presumed to exist in the Approximate A zone, as shown on the FIRM. An applicant may offer evidence establishing the location of the floodway where one has not been established. This evidence will be prepared in accordance with accepted engineering practices and must be certified by an Oregon registered professional engineer. Such evidence may be accepted or rejected by the County. It will be presumed that the floodway is equally distributed on either side of the centerline of the stream. Along the Applegate River the requirements of Section 7.1.2(F)(7)(d) shall be used in lieu of the floodway determination of this Section.

FINDING: The applicant has submitted a flood study by the Galli Group, Geotechincal Consultants, William Galli, P.E. The project includes a bridge across Bear Creek, which went through a Type 1 review that was later rescinded by Jackson County. The project includes

fill and removal in the floodplain in association with aggregate Pits 2 (Pit 4 will be engineered and the same approved prior to extraction in that area), as well as a proposed road on the east side of Bear Creek. The applicant's engineer used the HEC-RAS flood analysis software to calculate flood elevations along Bear Creek through the Rock 'N' Ready site in accordance with generally accepted engineering practices. The floodplain and floodway boundaries as shown on the FIRM panels are different than those determined by recent flood study. This flood study was updated to respond to appropriate technical concerns raised in the hearings process. However, the Planning Commission finds that the record is clear that the site includes both floodway and floodplain development and thus requires demonstration of compliance the Floodplain Development standards of this section which is not mapping exercise but rather involves demonstration of compliance with standards that pertain to water surface elevations and velocities. The applicant has stipulated to complete a Letter of Map Revision through FEMA to assure a consistent regulatory framework. The Planning Commission finds the LOMA (or similar FEMA process) is an appropriate discretionary condition due to the size and extent of the project but the Commission does not interpret the code to require, nor is there express code language that requires, the LOMA be completed in order to demonstrate compliance with the County's floodplain development regulations as a matter of law.

iii) Determining Base Flood Elevation

- (1) In areas where base flood elevation profiles are available from the FIRM or from the Flood Insurance Study profiles, the base flood elevation at the proposed building site will be extrapolated from the elevations that are immediately upstream and downstream from the location of the proposed use.
- (2) When base flood elevation data has not been provided by FEMA, the applicant will employ an Oregon registered professional engineer to prepare a report certifying the base flood elevation, examples of which are described in FEMA publication FEMA 265, Managing Floodplain Development in Approximate Zone A Areas: A Guide For Obtaining And Developing Base (100-Year) Flood Elevations (Detailed Methods Chapter). The report will set forth the elevation of the 100-year flood, and will cite the evidence relied upon in making such determination. The calculated base flood elevation may be from mean sea level or may be based on an assumed elevation when tied to a benchmark. The location of the benchmark will be described in the report and shown on a map that must be included with the report. The report may be accepted or rejected by the County.
- (3) Where base flood elevation data has not been provided by FEMA, in lieu of a report by an Oregon registered professional engineer as outlined in (2) above, the applicant may choose to elevate a structure at least three feet above the highest adjacent natural grade, provided

that the structure is not located in the presumed floodway as described in Section 7.1.2(C)(2) and all riparian setbacks will be met. Elevation Certificate documentation described in 7.1.2(B)(4) is required. All other development standards of Section 7.1.2(F) will be met. Use of this elevation standard could result in increased flood insurance premium rates.

FINDING: The Planning Commission finds the updated flood study water surface elevations submitted by the Galli Group are compared to FEMA water surface elevations at Record Pages 910 and 911 and the Planning Commission adopts and incorporates this evidence as sufficient to find the special flood study water surface elevation data prepared by the Galli Group is substantially consistent with the FEMA water surface elevations for the project area. The Planning Commission finds the special study applicable to site prepared by the Galli Group constitutes a higher resolution refinement of the FEMA water surface elevations sufficient to determine compliance with the criteria for approval of a floodplain development permit

iv) Criteria for Approval

Prior to approval of floodplain review, the County will determine all of the following:

- That all applicable development standards of Section 7.1.2(F) can feasibly be met;
- (2) That applications have been submitted or all necessary permits have been obtained from those federal, state, or local governmental agencies from which approval is required by law. Copies of all permits must be submitted to the County prior to initiation of the development.

FINDING: Development standards of Section 7.1.2(F) can and must be met and a condition of approval will require that applications have been submitted or all necessary permits have been obtained from those federal, state, or local governmental agencies from which approval is required by law. Copies of all permits must be submitted to the County prior to initiation of the development. The Planning Commission finds the record contains conflicting evidence regarding permits that may or may not be required; however, the Planning Commission finds the record contains no substantial evidence that is explicit and specific which indicates that a particular permit is in fact required for which the applicant has not applied nor is there substantial evidence that a required permit cannot feasibly be obtained. Moreover, the Commission finds the applicant has demonstrated due diligence sufficient to find that, if a regulatory agency determines an additional permit is required, there is no reason to believe the applicant will not apply for such permit in due course.

v) Floodway Development

(1) All encroachments, including fill, roadways or bridges are prohibited unless certification by an Oregon registered professional engineer is provided demonstrating that the encroachment will not result in any increase in flood levels during the occurrence of the 100-year flood (no-rise analysis and certification). Culverts used in stream crossings where floodways are mapped and/or 100-year floodplain elevations have been determined will require a no-rise analysis and certification. Culverts used in stream crossings where base flood elevations and floodways have not been determined (Approximate A zone) will be of sufficient size to minimize the rise of flood waters within the presumed floodway. Evidence must be provided by an Oregon registered professional engineer showing the size of the proposed culvert will pass the flood waters of the 100-year flood. Culverts and bridges must be anchored so that they will resist being washed out during a flood event. Culverts and bridges must also meet the riparian protection standards in Section 8.6.3 of this Ordinance.

FINDING: A No-Rise Declaration has been submitted by the Galli Group, William F. Galli, P.E and Mr. Galli's testimony is that through revisions to the study the no-rise condition remains. The declaration states that the project should be considered a NO RISE condition as it will not cause a rise in the Base Flood Elevations on sites upstream or downstream of the applicant's property and will cause only incidental rises on-site for which the applicant has agreed to indemnify the County and FEMA. Based upon these considerations and the evidence of record, the Planning Commission finds the no-rise declaration standard is met.

vi) Fill in the Floodplain

Prior to placement of fill within the 100-year floodplain a report from an Oregon registered professional engineer determining the effect the placement of fill will have on the 100-year floodplain will be submitted.

- (1) Where base flood elevations have been determined, the fill cannot cumulatively raise the base flood elevation more than one foot at any given point. The report will reference the Flood Insurance Study for Jackson County, Table 3 (Floodway Data), for a specific reach of a stream. The increase in the base flood water surface elevation, as shown in this table, will not be more than one foot.
- (2) Where base flood elevations have not been determined, the fill cannot raise the base flood elevation more than one foot at any given point. (See 7.1.2(D)(2))
- (3) The fill will be engineered to resist erosion by flood waters.

FINDING: The engineer states that any rise caused by the bridge or fill in the floodplain will not cause adverse impacts to this or other parcels in the area. The pre- and post development base flood elevations are less than 1 foot and meet the criteria. A condition of approval will require any fill to be engineered to resist erosion by flood waters. The Planning Commission finds the above criteria are met.

vii) Aggregate Removal

- (1) Aggregate removal or surface mining operations within the 100-year floodplain or floodway will not cause an increase in flooding potential or stream bank erosion adjacent to, upstream or downstream from the operation.
- (2) All mining and processing equipment and stockpiles of mined or processed materials will be removed from the site during the period of December 1 through April 30, unless the operation will be protected by a dike that is of sufficient width and height to prevent flood waters from inundating the site.

FINDING: An Oregon Registered engineer has submitted a No-Rise Declaration stating the development will not cause a rise in the Base Flood Elevations on sites upstream or downstream of the applicant's property. The Planning Commission finds the project, as approved (No mining of Pit 2a), will not allow any new aggregate removal or mining operations within the 100-year floodway except for the stream crossing proposed on Tax Lot 1900. Based upon this finding and the no-rise declaration, the Planning Commission concludes the project will not cause an increase in flooding potential or stream bank erosion due to floodway encroachments as the only floodway encroachment is a bridge that could be permitted for a range of other non-aggregates uses and the above criterion should be interpreted consistent with the approval standards for all stream crossings. The Planning Commission finds that aggregate removal and surface mining operations in the 100-year floodplain have been engineered with protective dike features of sufficient height to prevent pit inundation based upon engineering and hydrologic analysis in the record prepared by applicant's registered professional engineer incorporated and adopted herein. Based upon this engineering evidence, the Planning Commission finds that the fill placed in the floodplain to construct the protective dikes will not cause the base flood elevation to rise by more than one foot and that this is the standard under which the County determines that fill in the floodplain will not increase flooding potential. With respect to stream bank erosion, the Planning Commission finds that the evidence establishes that the applicant proposes substantial setbacks from the banks of Bear Creek, that the engineering analysis does not identify substantial increases to flow velocities, and that DOGAMI carefully evaluates potential stream bank erosion issues and a condition of approval will require the applicant to comply with any additional erosion prevention measures required by DOGAMI. Based upon this finding, the the Planning Commission finds the project will not increase stream bank erosion potential. The Planning Commission finds the existing concrete processing area was lawfully established and is considered a lawful nonconforming use.

CONCLUSION: Based upon the foregoing findings of fact incorporated and adopted herein, the Planning Commission concludes the proposed development within the floodplain and floodway meet the criteria or can feasibly meet the criteria of Section 7.1.2, with conditions of approval. Portions of Pit 4 (TL 1900, 1400, and 1303) is within the 100 year floodplains of Willow Creek and Bear Creek. The Planning Commission is not issuing final site plan review or floodplain development permits for Pit 4 at this time; a condition of approval will require a floodplain review prior to beginning aggregate for that pit. A condition of approval will require a landscape plan approved by Oregon Department of Fish and Wildlife for riparian areas disturbed by development (bridge crossing).

E) Section 7.1.1(B), ASC 82-2 Bear Creek Greenway

i) Description

This area consists of the lands identified on the official Bear Creek Greenway Maps.

ii) Special Regulations or Development Standards

The County refers to The Bear Creek Greenway Plan: Management Policies and Guidelines (1982) and the Bear Creek Greenway Plan: Ashland to Central Point (1988) for guidance on uses appropriate to the Greenway. The County will, to the extent of its legal authority, provide for the implementation of these plans during the development review process, through the implementation of the use restrictions set forth below, and in some cases by attaching special conditions to development approvals.

iii) Uses Permitted

Notwithstanding the provisions of Table 6.2-1, 4.2-1, 4.3-1 or 4.4-1, the following use restrictions will apply in this area.

- (1) <u>Type 1</u>: The following uses are permitted under a Type 1 approval process within ASC 82-2 provided the use is permitted as a Type 1 use within the underlying zone:
 - (a) Open space and parks.
 - (b) Agriculture.
 - (c) Fishing and hunting reserves where compatible with other uses.
 - (d) Utility facilities necessary for public service provided such facilities are underground.

- (e) Sedimentation ponds when used in conjunction with aggregate removal operations.
- (f) Pedestrian, equestrian and bicycle trails.
- (g) Riparian enhancement.
- (2) <u>Type 3</u>

All other uses within the primary zoning district will be subject to a Type 3 permit approval process. Type 3 permits requested within the ASC 82-2 will be consistent with the Bear Creek Greenway Plan and related documents.

FINDING: These criteria are addressed in Section 3(B) of the staff report.

III. ULTIMATE CONCLUSION:

Based upon the evidence and testimony in the record and the foregoing and indings of fact and conclusions of law, the Planning Commission has deliberated and found the subject application to comply with the applicable requirements for a minor Comprehensive Plan map amendment, nation zoning map amendment subject to the site and operations master plan (as modified by the Commission's deliberations), a Type 3 permit for aggregate operations in the Bear Creek Greenway, (approval of the bridge crossing and incidental modifications in accordance with the approved site and operations master plan), final site plan approval (as amended by the Commission's deliberations), and floodplain development permit for all aspects of the operation for which final site plan approval is granted by the Planning Commission.

JACKSON COUNTY COMPREHENSIVE PLANNING MANAGER

By: Michael W. Mattson, Planner II

Date: 5-23-06

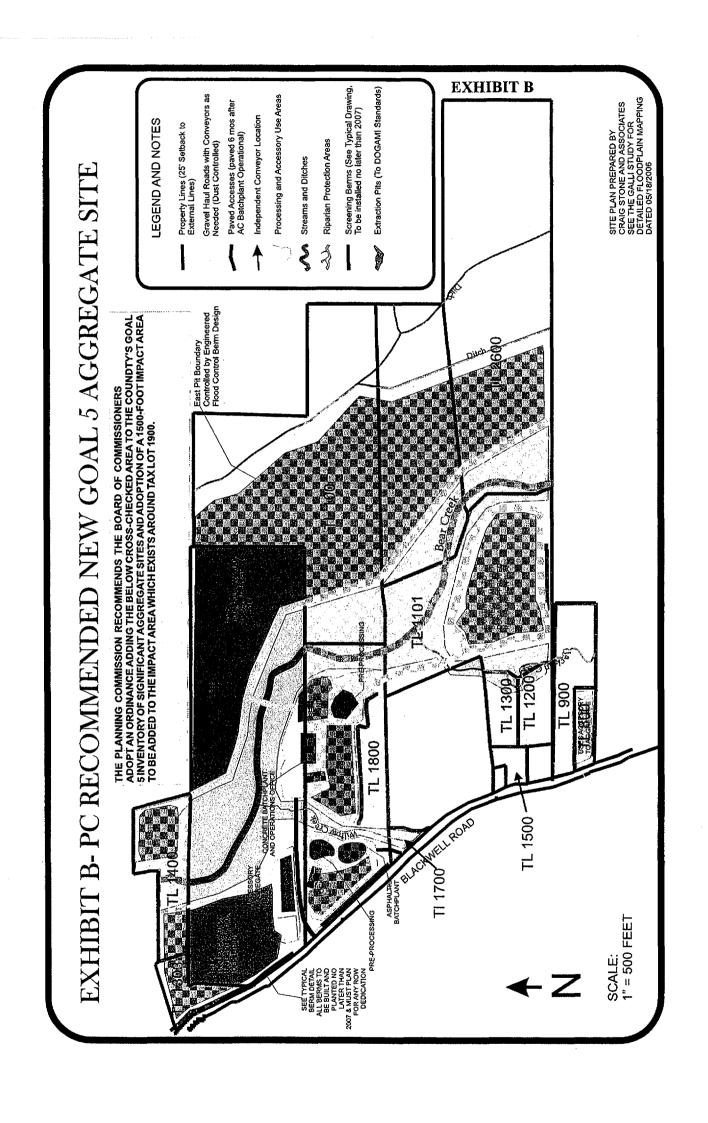
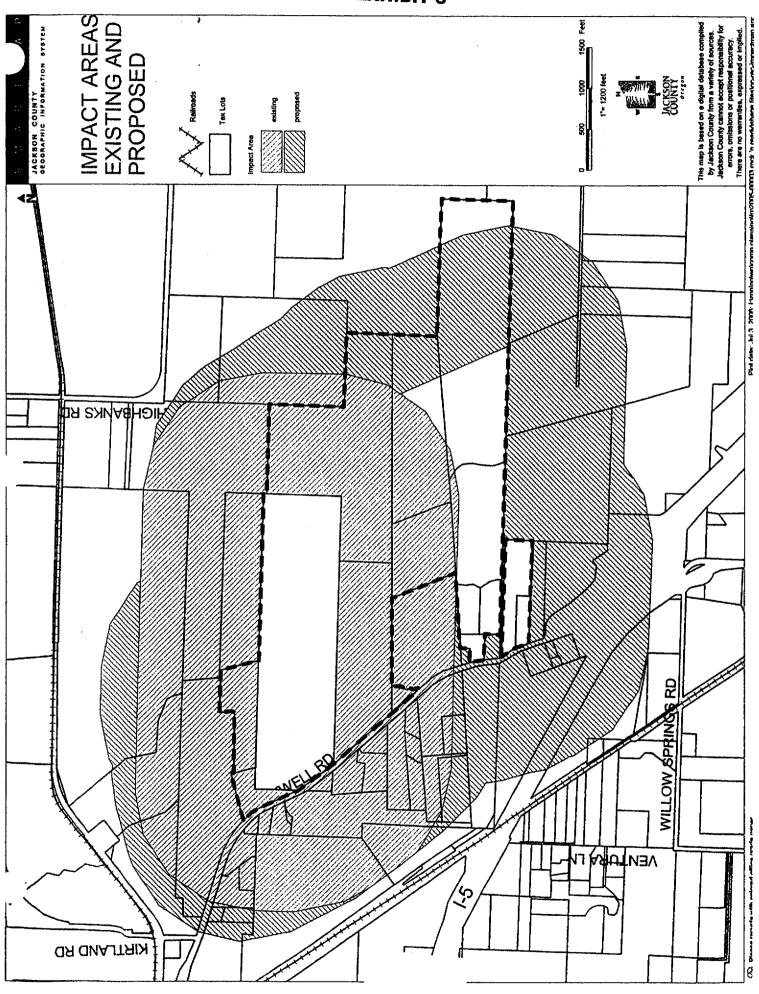
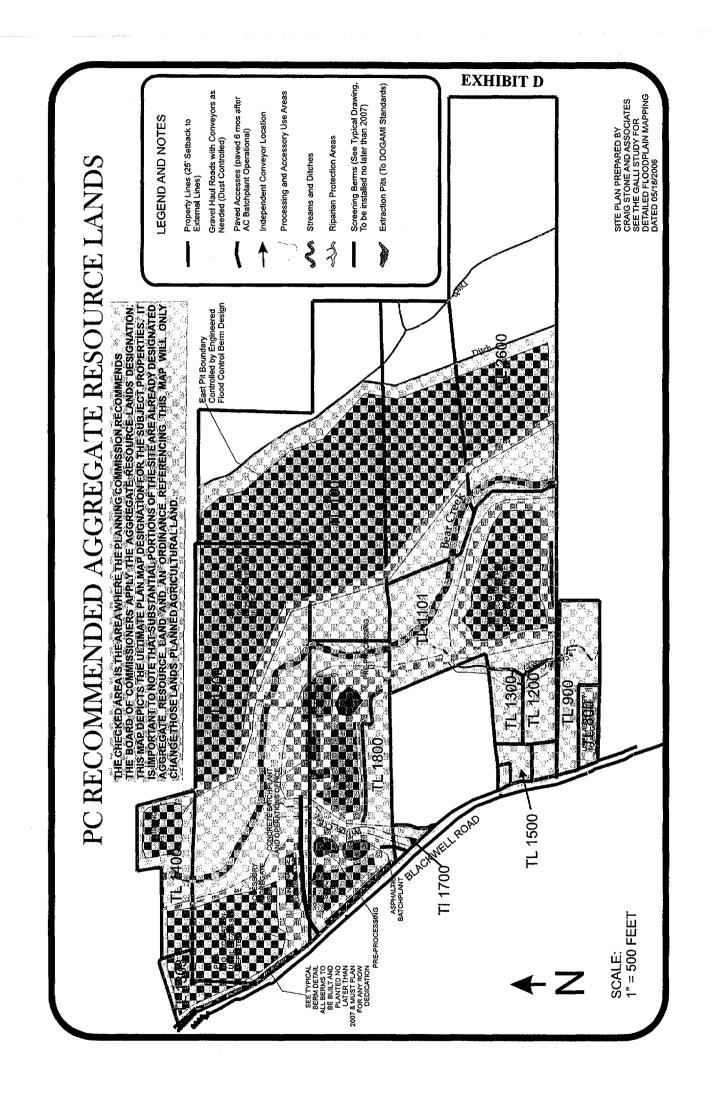


EXHIBIT C





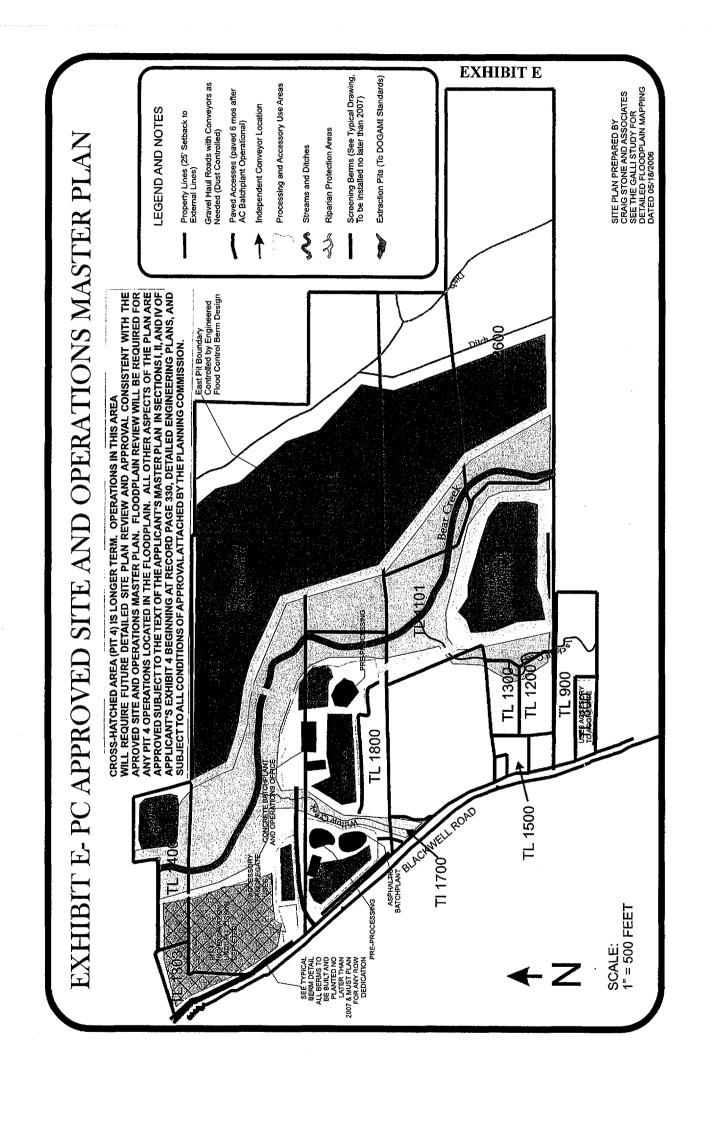


EXHIBIT F

EXHIBIT 4

JACKSON COUNTY LAND DEVELOPMENT ORDINANCE STANDARDS AND APPLICABLE REQUIREMENTS FOR APPROVAL OF THE REQUESTED AGGREGATE SITE AND OPERATIONS MASTER PLAN

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MASTER PLAN OVERVIEW

The site and operations master plan will govern all future aggregate operations on the site in accordance with applicable conditions of approval. By phasing the extraction operations, the plan maximizes the aggregate resource potential when balanced against conflicting land uses and competing Goal 5 resources. Exhibit 4 and the approved plans together constitute the site and operations master plan. The site and operations master plan governs operations for the site and all previous site and operations plans and any conditions so attached are replaced by this plan. In the event there is a conflict between the site plan maps and written master site plan and operations plan text herein contained, the text shall govern. Special conditions attached.

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MASTER PLAN CHARACTERISTICS

SITE PLAN CHARACTERISTICS:

- 1. Existing Vegetation: Except where stream crossings are proposed, the existing riparian vegetation areas will be retained. Some lands west of the RVSS mainline are expected to be reclaimed by riparian vegetation as lands to the east are converted to aggregate from the existing farm uses. Native trees include White Alder, Black Cottonwood, Hemlock, and various Willow species.
- 2. Screening and Berming: A six-foot berm crowned with alternating conifer rows six-feet on-center will be constructed and planted where berms are depicted on the site plan in the setback locations. In addition to the trees, the berms will be planted with low growing drought tolerant native grasses. The applicant will stipulate to establishing these berms and plantings no later than 2007, following timely approval

of the master plan. The trees will be established with irrigation and will be fertilized during the first three years.

- 3. Existing and Proposed Structures: The plan identifies which general areas will contain which types of aggregate uses. The Technical Detail Plan depicts existing building outlines. No new structures are proposed at this time, but the need for new structures may arise in the future. Any new or remodeled structures will be placed in an appropriate area as indicated on the Site and Operations Master Plan or else a revision to this plan will be required. In either case, such future structural needs can be accommodated with no more than a Type 1 review by Planning Staff and with issuance of applicable building permits.
- 4. Extraction Areas: Pit slopes will be in accordance with current DOGAMI specifications, an example the slope angles are depicted in the operating permit request to DOGAMI for Pit 2 and 2A. Pits will be excavated so that storm drainage will drain into the pit.
 - a) Overburden: Ranges in depth from approximately 2 to 12 feet.
 - b) Aggregate Types: Sand, Gravel and some Top Soil.
 - c) Depth of Extraction Areas: Up to 85 feet to bedrock, but in a range of 50 to 65 feet in most locations.
 - d) Extraction Sequencing: The site plan includes an extraction-phasing plan. This plan is intended to provide time for the vegetative screening to be established prior to extraction operations west of Bear Creek. No extraction in Pit 4 shall occur until Pit 2 is at least 90 percent depleted. Reclamation of Pit 2 will be completed prior to 25 percent depletion of Pit 4. No extraction will occur in Pit 3 until Pit 4 is at least 90 percent depleted.
- 5. Riparian Setbacks: A minimum 50-foot riparian setback for all operations (except stream crossing locations) will be maintained from the banks of Jackson Creek and Willow Creek. A minimum 100-foot riparian setback for all operations (except stream crossing locations) will be maintained from the banks of Bear Creek. These riparian areas provide a critical function in the aggregate operation by providing the final filtering and cooling discharges from dewatering activities prior to entry into the stream system.
- **6.** Wetland Protections: Wetlands identified on the NWI wetlands inventory and/or in the wetlands report prepared by Scoles and Associates will be protected by a fifty foot setback or will be mitigated in accordance with wetland mitigation requirements and procedures of the Division of State Lands.

- 7. Stockpiling Areas: No stockpiling will occur in the floodway. No new stockpiling locations are proposed or will be established in the floodplain.
- 8. Internal Road System: The system of haul roads within the site is designed to efficiently move aggregate around the site. The base for the Haul Road on the east side of the RVSS mainline will also serve as a dyke to prevent inundation of the pits on that side of Bear Creek in the event of a 100-year flood. Two new accesses are proposed from Blackwell Road. One is on Tax Lot 1500. This access will serve only as a personnel and equipment access and will not provide for hauling along Blackwell Road. A new access is proposed for Tax Lot 1700 to provide a right-in access for internal circulation through the asphaltic batch plant.
- 9. Conveyor System: The conveyor system within the site is designed to efficiently move aggregate around the site. Conveyors may be installed along any haul road, processing and/or pit areas depicted on the site plan. Conveyors may also be installed in locations specified for conveyors on the plans. Conveyors are especially advantageous in riparian areas where they have significantly less impact than would result from a haul road in a similar area because of the narrower footprint. Also, conveyors emit less dust than truck hauling and can be more energy efficient.
- 10. RVSS Mainline Protections: A fifty-foot setback will be maintained for all extraction activities from the RVSS mainlines.

11. Processing:

- a) Batch Plants: A conditional use permit in 1996 approved a Portland cement concrete batch plant and Asphaltic Batch Plant. The Concrete Batch plant will remain in its current location. An asphaltic batch plant was also approved as part of the 1996 conditional use permit. This batch plant has never been constructed. The site plan proposes to keep the batch plant on Tax Lot 1800, but it will be relocated west of Willow Creek to provide for efficient truck movements and processing for future asphaltic concrete operations.
- b) Dewatering: All pits will be dewatered. Dewatering discharge areas will be constructed and sited in accordance with the construction and location methods specified by DOGAMI and ODFW. The Technical Detail Plan shows the location of these facilities as currently proposed.
- c) Washing and Pre-processing: Gravel and sand must be washed and sorted prior to mixing into concrete. Some aggregates must also be crushed. These activities are proposed to remain in their current location for the Portland cement concrete processing. Additional facilities are proposed to be added around and to support the asphaltic concrete processing operations.

¹ Floodplain as mapped by Applicant's Geotechnical Engineer.

- d) Settling Ponds: Wash water must be settled in order to allow sediments to fallout. The site plan will continue to utilize existing settling facilities.
- 12. Water, Sanitation and Utilities: Water for concrete production is obtained from the Rogue River Irrigation District, see Exhibit 22. Existing sanitation is by pre-existing on-site systems and portable units. A transformer has been constructed on-site and the existing service is expected to be sufficient for planned future operations.

OPERATING PLAN CHARACTERISTICS:

- A. Extraction Methods: Extraction will be by scraper and excavator. All equipment is 1998 or newer. The newer generation of equipment produces less noise and diesel emissions when compared to older equipment. Some overburden is stockpiled as required by DOGAMI for reclamation and will be used to construct screening berms. Electric pumps are used to dewater the pits.
- **B.** Hauling and Stockpiling: Loaders are used to stockpile, transport aggregates short distances, load bins for processing, load dump trucks for hauling, and load conveyors. Hauling is done by dump truck and/or by conveyor. The master plan contemplates a significant expansion of the conveyor system to increase efficiency and reduce diesel and dust emissions. A 4,000 gallon water truck is present on-site for dust prevention on haul roads and other aspects of the operation.
- C. Concrete Recycling: Applicant uses the heavy equipment to stockpile, crush and recycle concrete into recycled aggregate for a variety of construction applications
- **D.** Hours of Operations: Applicant has and will continue to limit operating hours in accordance with JCLDO requirements from 6:00 a.m. to 7:00 p.m. Monday through Saturday, except for public works projects. The applicant has and will continue to observe operation restrictions for specified legal holidays in accordance with JCLDO requirements.
- E. Lab Testing: Two employees are engaged in concrete testing operations. Scientific equipment is used to test concrete and raw aggregates produced at the site. Public works projects require these tests to assure materials used in infrastructures are of a high quality and represent responsible expenditure of public funds. The lab is currently located on Tax Lot 800, but may be moved in the future to Tax Lot 1900.
- F. Concrete Batch Plant Operations: Delivery of Portland cement is by semi-truck. The concrete batch plant mixes water with Portland cement from a 600-barrel silo and aggregate to create slurry. This slurry is then loaded into concrete mixing trucks from above. The trucks are all 1998 or newer, which produce less noise and emissions when compared to earlier model trucks

- **G.** Asphaltic Batch Plant Operations: Asphalt will be delivered by semi-truck when asphaltic concrete production begins. Liquid asphalt, a petroleum product, is pumped up into a silo where it is heated and mixed with water and aggregate. This mixture is then loaded in dump trucks for off-site delivery.
- H. Office and Administration: An operations office is located on Tax Lot 1800 immediately adjacent to the concrete batch plant. This office includes the dispatch center where deliveries are coordinated as well as some accounting and operations management. The office on Tax Lot 800 is used for clerical and other ancillary administrative activities associated with the aggregate operations.
- I. Responsible Party: The existing operation designates Wes Norton, President of Rock-n-Ready Mix, as the responsible party for all matters pertaining to permits, land use actions, and conditions attached thereto. Applicant reserves the right to designate a new individual as the responsible party such as would result from a change in corporate ownership or management or other applicable circumstance.

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STIPULATIONS OFFERED BY APPLICANT

- Applicant will submit a request for Letter of Map Revision for FIRM Panels 313 and 314 no later than nine months following final approval of this site and operations master plan. Applicant further stipulates to modify the technical detail plan as necessary to comply with the ultimate map revisions approved by FEMA.
- 2. Applicant will stipulate to construction and planting of all new berms depicted on the site plan no later than 2007. All trees will be irrigated in accordance with generally accepted landscape planting practices.
- 3. Access roads depicted in black on the site plan will be paved no later than six months following start-up of asphaltic batch plan operations.
- 4. Applicant will stipulate to aggregate extraction and operations for Pit 2 substantially in conformance with the technical Detail Plan prepared by the Galli Group and such submitted materials to DOGAMI. Setbacks, pit flood control protections and such other items depicted on this plan will be observed.
- 5. Applicant will stipulate to preparation and administrative approval by the County of a technical detail plan similar to that prepared and depicted in Exhibit 5 prior to extraction in Pit 4.
- 6. Applicant will stipulate to the following Pit extraction sequencing. Pit 2 is scheduled for extraction immediately following approval of this plan. Pit 4 is the next scheduled extraction area, but no extraction will take place until Pit 2 is 90 percent depleted.
- 7. Applicant will stipulate to 100% reclamation of Pit 2 prior to 25 percent depletion of Pit 4.
- 8. Applicant will adhere to the Master Plan Characteristics contained herein, and as modified through conditions of approval by the Board of Commissioners.

EXHIBIT B

JACKSON COUNTY BOARD OF COMMISSIONERS EXPRESS FINDINGS IN SUPPORT OF ORDINANCES:

2007-19

2007-20

2007-21

2007-22

And Order #433-07

Planning File LRP 2005-00003

I. Nature of Application

This application was filed by Craig Stone and Associates as agent for the applicant, Rock 'N' Ready Mix, LLC ("applicant") on March 24, 2005. The application requests the following: (1) a Minor Comprehensive Plan Map and Zoning Map Amendment to change the Comprehensive Plan Map designation from Agricultural Land to Aggregate Resource Land and the zoning district from Exclusive Farm Use (EFU) to Aggregate Removal (AR); (2) designation as a significant aggregate resource and ESEE analysis to determine the level of Statewide Planning Goal 5 protection; (3) Site Plan Review for aggregate operations; (4) Floodplain Review for development within the 100 year floodplain; and (5) Type 3 review for development within the Bear Creek Greenway (Area of Special Concern 82-2).

The applications were deemed incomplete on April 28, 2005. The applicant submitted the required supplemental materials and the application was deemed complete on June 29, 2005. Public hearings before the Jackson County Planning Commission were held on October 27, 2005, January 26, 2006, and March 9, 2006 in the Jackson County Auditorium, and the Planning Commission issued a recommendation of approval on July 27, 2006.

The Jackson County Board of Commissioners ("Board") held a properly noticed and advertised public hearing to consider the recommendation of the Planning Commission on September 27, 2006. On October 25, 2006, the Board deliberated on matters related to the applicant's compliance with applicable rules adopted by state and federal regulatory agencies, specifically the Department of Geology and Mineral Industries (DOGAMI), the Army Corps of Engineers ("Corps"), and the Oregon Department of State Lands (DSL). The Board's deliberations were postponed to allow the applicant to provide additional evidence and testimony demonstrating compliance with the regulatory requirements of those agencies.

As described in the Ordinances adopted by the Board, additional properly noticed hearings were held before the Board on February 28, 2007, April 11, 2007 and May 30, 2007.

II. Adoption of Planning Commission Findings

The Board adopts and incorporates by reference the findings of the Jackson County Planning Commission as set forth in its recommendation for approval and findings dated July 27, 2006. To the extent there is any discrepancy between these findings and the findings of the Planning Commission, the express findings of the Board provided herein shall govern.

III. Additional Findings of the Board of County Commissioners

In addition to adoption of the Planning Commission's findings in its recommendation of approval, the Board adopts the following findings of fact and conclusions of law in support of its decision to approve the applications at issue. These findings address applicable approval criteria and issues that were raised in the proceedings before the Board.

A. Responses to Specific Issues Raised by Opponents

During the hearing process before the Planning Commission, the applicant retained two additional consultants to respond to claims that the applicant's technical information and engineering was not adequate. The first consultant, Kuper Consulting, Inc. ("Kuper") was charged with responding to and refuting opponent's contentions that the site is not a significant mineral and aggregate site under Goal 5. Kuper's analysis was presented to and evaluated by the Commission. Based on that analysis, the Planning Commission recommended that all tax lots associated with the application be designated as a significant Goal 5 resource and placed on the County's Goal 5 inventory. The Board of Commissioners agrees with the Planning Commission's conclusion that the entire site is a significant Goal 5 mineral and aggregate resource.

The second consultant brought in by the applicant is Northwest Hydraulic Consultants ("nhc"). Jeff Johnson, an engineer certified in Oregon with extensive experience in floodplain development, engineering and regulation, works for nhc and was responsible for evaluating and supplementing the applicant's previous testimony relating to floodplain impacts, possible impacts up-and-downstream and engineering generally. NHC is one of two contract consultants working for the Federal Emergency Management Agency (FEMA) on floodplain hydraulic matters in the northwest, and Mr. Johnson demonstrated his technical expertise and credibility on such matters. Mr. Johnson was charged by the applicant with responding to opponent's contentions that the applicant's engineering was inadequate. Mr. Johnson's testimony was relied upon by the Planning Commission, and the Board of Commissioners adopts the Planning Commission's conclusions on these issues. Mr. Johnson also testified directly to the Board on these issues at the September 25, 2006 hearing, and the Board finds that his testimony was both technically valid and credible.

In written materials submitted to the Board, Rogue Aggregates' attorney identified certain specific concerns and objections to the application. These objections are set out below, and addressed in findings immediately following each objection.

1. Issues Regarding Compliance with State and Federal Agency Rules

The majority of the proceedings before the Board of Commissioners focused on issues surrounding the applicant's compliance with applicable rules and consent orders issued by DOGAMI, the Army Corps of Engineers, and the Oregon Department of State Lands. Rogue Aggregate argued that approval of the applications was prohibited under Sections 1.7 and 1.8 of the Jackson County Land Development Ordinance (LDO). Opponents of the project, including Rogue Aggregates in particular, contended that the Board must reject or deny the application under LDO 1.8.2(B), which prohibits approval of applications where "local, state or federal land use enforcement action has been initiated on the property, or other reliable evidence of such a pending actions."

Findings: During the hearings held on September 25 and 27, and on October 25, 2006, the Board received testimony regarding allegations of possible enforcement actions taken against the applicant by the DSL, the Corps, and DOGAMI. The enforcement actions related to alleged violations of the state Removal-Fill Law, Section 404 of the Clean Water Act and the state's mining and reclamation program. DOGAMI had issued a notice of violation (NOV) to the applicant dated July 18, 2006. The Corps issued a Cease and Desist letter to the applicant dated May 26, 2006. However, DSL had not issued any such order or otherwise indicated formally that a violation of its program had occurred. Ultimately, the Board required the applicant to provide evidence that any existing violations or enforcement actions had been resolved.

The applicant and the involved agencies provided the Board with the following evidence in writing:

- 1. A letter from DOGAMI dated December 4, 2006 (Exhibit 69, BOC record) stating that "DOGAMI conducted inspections on October 4th, November 1st and November 16th to monitor progress in the correction of the violations listed in the July 18, 2006 Notice of Violation (NOV). Those inspections have confirmed that Rock N' Ready is in full compliance with the July 18, 2006 NOV."
- 2. In a letter from the Corps dated January 25, 2006 (Exhibit 68, BOC record), the Corps determined that they had no jurisdiction over the alleged actions. Specifically, the Corps wrote that the work investigated was either exempt under Section 404(f) of the Clean Water Act or above the ordinary high water mark, which is the landward extent of Corps jurisdiction under the Clean Water Act. The letter states that the Corps has closed its file on this matter.
- 3. In a letter from DSL dated April 17, 2006 (Exhibit 78, BOC record), DSL states that the applicant "has made substantial progress and taken the appropriate and effective steps to resolve this matter, and is in compliance with the provisions of the Department's Consent Order."

Given the evidence provided, the Board concludes that the enforcement actions initiated by DOGAMI and the Corps are sufficiently resolved to ensure compliance with the relevant code sections.

Given the written testimony provided by DSL, the Board concludes that the DSL enforcement action has been sufficiently resolved to ensure compliance with the relevant code sections. As concluded by the Board during the May 30, 2007 hearing, any and all present cited enforcement actions and/or violations by the applicant have been resolved to the degree

necessary to ensure consistency with LDO Sections 1.7 and 1.8. Having resolved all issues associated with enforcement actions and violations at the May 30, 2007 hearing, at its next meeting on June 13, 2007 the Board deliberated and reached a final decision to approve the applications.

Furthermore, the Board of Commissioners concludes that LDO Sections 1.7 and 1.8 must be interpreted in a manner that leaves the last sentence of LDO Section 1.5.1 with meaning. Section 1.5.1 provides that, "standards imposed by other permitting agencies will be implemented and enforced by those agencies." Section 1.5.1 makes clear that it is not for the The Board of Commissioners concludes that they have responded to violation issues of "other permitting agencies" by withholding issuance of new development permits consistent with LDO Sections 1.7 and 1.8, but have provided an opportunity to submit evidence in response to the violation issues. The evidence now demonstrates that the Application is in compliance with the standards imposed by such other permitting agencies, and thus, the Board of Commissioners are bound to recognize the procedures to implement and enforce those agencies' standards consistent with LDO Section 1.5.1.

2. Compatibility With Rogue Aggregate Operations

Rogue Aggregates contends that the applicant's proposal is incompatible with Rogue Aggregates' existing operations and facilities. Rogue Aggregates asserts that it is within the impact area as evidenced by the downstream impacts of the recent flooding. Significant adverse impacts are allowed only when there is an "overriding public interest" for which the impacts can be mitigated to the extent practicable, which Rogue Aggregates argues has not been demonstrated.[JH1]

Findings: Rogue Aggregate's contention that its site should be included in the "impact area" is based on their allegation that the applicant's existing Pit 1 operation is somehow responsible for the failure of its culverted road crossing. The Planning Commission found otherwise and limited the Impact Area to the 1,500-foot distance from the proposed mining site as established in the County Code. The Board of Commissioners agrees with and adopts that conclusion as its own. The Board finds that Rogue Aggregates' complaints regarding the applicant's existing operation at Pit 1 having an adverse impact on its site are inaccurate. How Pit 1 was engineered or designed is not an issue that is currently before the Board as part of its review of the present applications.

Further, the Board finds that two engineers retained by the applicant, Bill Galli and Jeff Johnson, independently reviewed Rogue Aggregates' culverted road crossing and concluded that regardless of upstream activities, the crossing was doomed to fail. Mr. Johnson noted that the culverts could pass only a fraction of the total flow that Bear Creek could deliver during a moderate to major flood even if the culverts remained clear of sediment. Therefore, the crossing had to rely upon overtopping to pass flood flows, and the damage reveals that the crossing could not handle the overtopping.

Based on the evidence presented, the Board finds that the applicant's site and its Pit 1 operation did not provide the sediments that clogged the Rogue Aggregate road crossing. The evidence indicates that the applicant was not mining within Bear Creek, but was mining behind a

berm that separates Pit 1 from Bear Creek. Consequently, its normal operations would have caused no increase in turbidity or sedimentation downstream. Deposition of a 5- to 6-foot deep layer of sediment at Rogue's crossing, as it did during the December 1, 2005 flood event, would require that velocities near the crossing decrease significantly. Velocities did decrease because the crossing acted like a dam, because the culverts were not large enough culverts to pass the volume of water carried by Bear Creek. In addition, the crossing is located at a sharp bend in the stream. Therefore, significant sediment deposition as a point bar formed naturally along the inside portion of the bend. Backwater influences from the Rogue River may have also had an influence on stream velocities.

The applicant submitted evidence sufficient to establish that it has not operated on the water side of the Bear Creek bank and is not responsible for erosion along the bank line itself. There are hundreds of locations that are contributing sediment to Bear Creek. Bear Creek continues upstream for approximately 30 miles, and there are hundreds of miles of tributaries beyond that, many of which have ongoing erosion and undercutting along the banks. Bear Creek and its tributaries contain substantial stretches of eroding bank line that provide sediment of large and small grain size into the waterway. If Rogue's culverts were blocked by sediments from upstream, there is no evidence that it was specifically the result of any activity conducted by the applicant. However, the implication of the muddy water seen in high water events in Bear Creek is that areas upstream of the applicant's operation erode and contribute to the sediment captured at the depositional area where Rogue built its culverted road crossing.

The problems at Rogue's culverted road crossing took place during the December 1, 2005 flood event. However, Bear Creek did not overtop Pit 1 until the December 30, 2005 flood, after the incident at Rogue's culverted road crossing. Rogue Aggregate provided photos implying that flooding at Pit 1 and the applicant's subsequent emergency repair caused their sedimentation problems. However, the events are unrelated because there cannot be a connection between what occurred at Rogue's culverted road crossing on December 1st and what occurred at the applicant's pit on December 30th and afterwards.

Finally, the applicant submitted a photo showing the actual location of the material that was washed out when the breach in the Pit 1 berm was created. As can be seen in that photo, the sediments were retained within Pit 1 and could hardly have caused any problems for Rogue Aggregate or any other downstream user.

With respect to the application presently before the Board and previously evaluated by the Planning Commission, the Board agrees with and adopts the recommendation of the Planning Commission that the testimony from Mr. Johnson demonstrates that the work proposed under this application will not adversely affect properties either upstream or downstream (including the Crater Sand & Gravel and the Rogue Aggregates operations)

3. Adequacy of Information Regarding Site Operations

Rogue Aggregates contends that neither the applicant's Site Development Plan nor its proposed bridge design contain sufficient detail to demonstrate compliance with the various code requirements, and do not provide sufficient detail regarding site operations, mine phasing, and reclamation.

Findings: For the reasons explained in the Planning Commission's findings, the Board of Commissioners finds that these code requirements are met. The Board finds that sufficient detail regarding the bridge design was provided by Bill Galli in his testimony to the Planning Commission. Support for Mr. Galli's position is in the record and was accepted by the Planning Commission, and is adopted by the Board. The additional work conducted by Mr. Johnson of *nhc* confirms that conclusion, was accepted by the Planning Commission and is adopted by the Board. The applicant's amended DOGAMI operating permit application contains the necessary mining details not just for TL 1900 but also for tax lots 100 and 200.

4. Coordination with Potentially Affected Agencies

Rogue Aggregates contends that the applicant has not coordinated with all potentially affected local, state and federal agencies or demonstrated that it is feasible to obtain the necessary permits for the master plan.

Findings: Evidence in the record establishes that the applicant's representatives, including Bill Galli of the Galli Group, coordinated with ODFW, DSL and DOGAMI while the initial application to the County was being developed. Mr. Galli's testimony to that fact was made to and accepted by the Planning Commission. The Board also finds that Mr. Johnson and Dorian Kuper coordinated with DOGAMI staff during the preparation of the application to DOGAMI regarding mining on TL 1900, 100 and 200. They and others also coordinated with ODFW and DOGAMI to prepare the Pit 1 restoration plan, as indicated by Ms. Kuper's amended operating permit submitted to DOGAMI.

5. Reliance on Maps Regarding Location of Floodplain

Rogue Aggregates contends that only approved FEMA and FIRM maps can be considered by the County, and that any changes to these maps used in support of the application must be approved prior to submitting the application.

Findings: The Board finds that this argument is incorrect, for the reasons addressed in Mr. Johnson's report titled "Flood Protection Design & River Engineering Investigation for Proposed Pit 2 and Bridge" and the same is herewith incorporated and adopted. As explained by Mr. Johnson, who is one of two consultants in the northwest contracted to work with FEMA on such issues, the FEMA floodway may need to be refined to allow the County to review the effects of the proposed bridge on the floodplain, but a formal review by FEMA is not necessary. As noted by Mr. Johnson, where the "effective" FEMA study misrepresents the flood risk along, for example, Bear Creek, then it would be prudent (not required) to revise the FEMA study. The Board accepts Mr. Johnson's testimony that the FEMA maps are more conservative because they are based on higher 100-year flood values than actually exist today, and that the "location of the floodplain and the floodway could be refined using new and more accurate topographic information, but again this does not require a formal FEMA map update." (Pages 10-11).

6. Consistency with Greenway Plan

Rogue Aggregates contends that a Type 3 permit must be "consistent with" the Greenway Plan, and therefore no mining activities should be allowed within Bear Creek Greenway as it "seems impossible" that there is an overriding public interest given the public characteristics of

the Greenway and the intensity of the proposed uses. The code also prohibits map amendments that will prevent implementation of any area of special concern such as the Bear Creek Greenway.

Findings: The Planning Commission correctly determined that the primary purpose of Area of Special Concern (ASC) 82-2 is to protect and preserve the riparian area to help facilitate a Greenway trail extension. Because the proposed operations will be set back from the Greenway, the applicant has stipulated that it will provide a perpetual trail easement. The Board of Commissioners notes that the purpose of ASC 82-2 is met and the trail will not be precluded by the proposed aggregate operations. Additionally, if and when the trail is constructed in the area, the reclamation of Pit 2 on the east side of Bear Creek will create waterfowl habitat and wetlands, enhancing the viewshed from the Greenway trail. The Board adopts the Planning Commission's interpretation of this section of the County Code to mean that the requirement that the proposed use is not a conflicting use certified in an adopted Goal 5 ESEE means that Goal 5 resources, such as the Greenway, are to be protected from non-Goal 5 resources. Because both the Bear Creek Greenway and the proposed aggregate operations are Goal 5 resources, the Board may adopt an ESEE analysis that balances the competing Goal 5 resources. Accordingly, the Board finds that the ESEE analysis balances the Bear Creek Greenway and Aggregate Resources in the Goal 5 analysis for the Minor Comprehensive Plan Map and Zoning Map Amendments.

B. Exhibits Accepted/Rejected by the Board

On April 11, 2007, the Board of Commissioners held a public hearing to accept evidence and testimony into the record specifically related to compliance with DOGAMI, the Army Corps of Engineers, and the Department of State Lands violations. Prior to this hearing, two violations had been identified from DOGAMI and the Army Corps of Engineers. Evidence in the form of exhibits was submitted clearing these two violations. Evidence was also submitted identifying a violation from Department of State Lands. A decision on the merits of the application was postponed pending additional evidenc and testimony that the Applicant was in substantial compliance with the Department of State Lands consent order.

Exhibits were discussed relative to their compliance with the Board's specific criteria for submission of evidence regarding clearance of the two violations from DOGAMI and the Army Corps of Engineers. The Board of Commissioners decided, by motion and vote, to accept Exhibits # 68, 69, 70, 76 and 77 into the record to be considered by the Board for this application. The Board rejected Exhibits # 71, 72, 73, 74, 75 and 81 as evidence to be considered by the Board. These exhibits did not meet the specific criteria determined by the Board regarding the clearance of violations from DOGAMI and the Army Corps of Engineers.

On May 30, 2007, the Board of Commissioners held a public hearing to accept evidence and testimony into the record specifically related to demonstration of substantial compliance with the Department of State Lands consent order. Exhibit 82 was specifically rejected because it did not meet the criteria determined by the Board with regards to the substantial compliance with the Department of State Lands consent order and would not be used as evidence used by the Board to reach a decision on this application. All other numbered exhibits were accepted as part of the record as evidence to determine compliance with the criteria for this application.

III. Conclusion

Based upon the evidence and testimony in the record and the foregoing findings of fact and conclusions of law, the Board of Commissioners concludes that the subject application complies with the applicable requirements for a minor Comprehensive Plan map amendment, minor zoning map amendment subject to the site and operations master plan (as modified), a Type 3 permit for aggregate operations in the Bear Creek Greenway, (approval of the bridge crossing and incidental modifications in accordance with the approved site and operations master plan), final site plan approval (as amended in these proceedings), and floodplain development permit for all aspects of the operation for which final site plan approval is granted.

CRAIG A STONE & ASSOCIATES, LTD.

EXHIBIT C

712 Cardley Avenue • Medford, Oregon 97504-6124
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RECEIVED

JAN 1 8 2006

JACKSON COUNTY

January 16, 2006

JACKSON COUNTY PLANNING COMMISSION c/o Jackson County Planning Department County Courthouse 10 South Oakdale Medford, OR 97501

RE: REBUTTAL

Planning Action LRP2005-00003 Rock-n-Ready Mix LLC: Applicant

Dear Jackson County Planning Commission:

Following the close of public testimony at the October 27, 2005 public hearing on the above captioned matter, the Planning Commission ("Commission") left the record open and continued the public hearing. Opposition to the application was presented by the Applicant's competitor Rogue Aggregates, Inc. This letter serves as preliminary rebuttal to the arguments made by their Attorney at that proceeding.

Applicants Rebuttal:

1. Letter to Jackson County Planning Commission from Todd Sadlo, Attorney for Opponent Rogue Aggregates, Inc., dated October 27, 2005.

The Opponent's Attorney addresses certain issues in numerical fashion; these are cited verbatim below, where each is followed by Applicant's rebuttal.

Objection 1: The applicant has proposed a bridge across Bear Creek that would be composed of a railroad car and two flatcar ramps, on the north and south banks of the creek. The County's development code requires that the proposed bridge be subject to review in these proceedings, and does not allow separate approval through a "Land Use Interpretation," without notice and opportunity for a hearing. The applicant is constructing abridge footings now, even though the staff approval states that it is "voidable" if the application you are now considering is not approved. The entire proposal before you should be tabled until all information regarding the proposed bridge is presented to the Planning Commission for review and approval as part of this Post-Acknowledgement Plan Amendment. If what is in the application packet about the bridge is all there is, it is not enough to address the potential risks and impacts to the creek and downstream landowners.

Rebuttal: The above described land use permit has been rescinded, without contest from Rock-n-Ready Mix LLC. by the County. For this reason, this objection has no bearing on the proceeding at this time.

Notwithstanding this fact, the objection fails to identify the LDO provision(s) upon which Opponent's Attorney relies in his conclusion that, "the County's development code requires that the proposed bridge be subject to review in these proceedings and does not allow separate approval..." The code section prohibiting the pursuit of multiple land use applications subject to different levels of review for a permitted use is not identified; the parcel where the bridge is located is planned Aggregate Resource and zoned Aggregate Removal and the bridge is proposed as an accessory structure thereto.

Objection 2: On behalf of Rogue Aggregates, Chris Lidstone & Associates have reviewed the proposal, and have concluded that there is insufficient evidence in the record to support that applicant's bridge design or 'no net floodwater rise' conclusions. The applicant states that the regulatory FEMA deck is inaccurate and has asserted to the County that it is proposing a new "pre-development condition" as a basis for its proposed Conditional Letter or Map Revision (CLOMR) or a Letter of Map Revision (LOMR). The application has put the cart before the horse. The applicant has not provided "input data" nor modeling assumptions for an acceptable hydraulic modeling study. The difference between FEMA and the post-development condition ranges for 0.69 feet to 2.8 feet, which is a significant difference that calls into question the applicant's claim of "no net rise."

Rebuttal: As to whether the Galli calculated flood deck is consistent with the FEMA calculated flood deck, this issue is addressed below under Objection 5a.

The Applicant does not state that the regulatory FEMA deck is inaccurate. At record page 189, Applicant asserts that the differences in the Galli calculated water surface elevations and the FEMA calculated elevations are small, and that this discrepancy is sufficiently small to allow the County to apply the Galli calculated water surface elevations. For this reason, the assertion by Opponent's Attorney that the applicant has characterized the regulatory FEMA deck as inaccurate overstates the Findings of Fact offered by the applicant with the initial submittal. The Galli study has almost twice the resolution of the FEMA study to provide the County a study that accurately reflects current conditions at the site. Increased precision can reasonably be expected to result in site-specific variances not captured in the FEMA study. It is the responsibility of the County to weigh the evidence and conclude whether the overall variance is small enough to be considered substantially equivalent to the FEMA study.

The assertion that "input data" has not been provided neglects substantial evidence in the record. Record page 222 to 223 contains a detailed discussion of the methodology used to calculate the flow volumes (Q_{100}) . If Opponent's Geotechnical Engineer, Chris Lidstone, believes these calculations and/or modeling assumptions to be in error then he should provide a detailed technical review of the calculations for the Commission to consider.

Objection 3: The applicant contends that it has performed calculations and has met with ODFW concerning construction of the bridge, that all work will be performed above the Ordinary High Water Mark (OHWM) (two-year flood event), and that, therefore, no permits are required from DSL or the Corps of Engineers. To the contrary, no calculations have been provided regarding the location of the Ordinary High Water Mark, nor has the applicant provided a letter or concurrence for ODFW. If the OHWM calculation used by the applicant is incorrect, a flood event

could dislodge the bridge, which would create havoc for all downstream landowners and in particular Rogue Aggregate's conveyors and other facilities.

We have good reason to be concerned. Based on our preliminary review of available data, the railroad car span will range from 90 to 120 feet, depending on which drawing is relied upon. There is no protection proposed that would protect the footings located below the Ordinary High Water Mark. Hydraulic conditions at the bridge are such that the river will continue to move, raising serious concerns regarding erosion and scour at the bridge footings during a flood event. If the bridge were to fail during a flood event, the bridge, and materials eroded from the footings and banks, will end up in the vicinity of downstream channel improvements recently constructed be Rogue Aggregates.

Rebuttal: It appears this testimony is directed at the Floodplain Development standards in JCLDO 7.1.2(E) and (F) in a general way and the same are addressed below.

JCLDO 7.1.2(E) relates to state and federal permits, where required. Determination of the Ordinary High Water Line is not a County requirement, but does relate to the need for DSL/Corp of Engineers permitting requirements. At the time of the initial hearing, a response from DSL regarding the need for a permit had not been received by the County. Applicant can feasibly and will obtain a DSL/Corp permit if these agencies determine one is required; no such permit appears necessary based upon Galli's determination of the OHWM location depicted in Galli's Figure 7 at record page 214.

JCLDO 7.1.2(F)(c) requires, "bridges to be anchored so that they will resist being washed out during a flood." At record page 203, Applicant's registered professional Geotechnical Engineer states, "The two main bridge piers were designed such that forces from streamflow, floating debris, bridge dead load, vehicle live load and braking load of vehicles can be adequately resisted." Record pages 214 to 220 provide detailed engineering drawings and specifications for bridge construction. Opponent's Attorney's speculation as to bridge design adequacy does not constitute substantial evidence in the record.

Objection 4: The applicant's proposed ESEE analysis and other proposed findings are mostly baid assertions, and are not supported by any substantive data or studies. Based on what has been submitted to date, the only conclusion that can reasonably be drawn from a proper ESEE analysis is that the risk of harm to Bear Creek, the Rogue, and all downstream owners, is unacceptable and tips the scales against approval. At this point, there is not enough evidence for a reasonable person to use as the basis for a decision to approve. The burden is on the applicant, and the burden to justify approval has not been met.

Rebuttal: This objection is general in nature and is not stated with sufficient specificity to afford the Planning Commission an opportunity to respond as required by law and stated by the Chair of the Jackson County Planning Commission prior to opening the public hearing on this application. Opponent's Attorney states, "the only conclusions that can reasonably be drawn from a proper ESEE is that risk of harm to Bear Creek, the Rogue [River] and all downstream owners is unacceptable and tips the scales against approval." This conclusion is reached without identifying what additional uses must be

included and/or additional information necessary for the County to complete the ESEE process.

Objection 5a: Insufficient information regarding flood profiles, and inadequate support for conclusory flood certification provided with the application;

Rebuttal: Opponent's Attorney and Opponent's Geotechnical Engineer both raised concerns that the Galli calculated flood deck and regulatory FEMA flood deck were too disparate to be considered consistent, and that this discrepancy was too large to demonstrate compliance with the standards in section 7.1.2 as is argued in Applicant's initial submittal. Applicants appreciate this testimony and agree that the hydrologic engineering for the project must be based on sound and generally accepted hydrologic engineering practices. Since the hearing, applicant's Geotechnical Engineer has revisited this issue and the applicant expects to have revised hydrology analysis that addresses this concern available for the Commission to review at the hearing scheduled for January 26, 2006.

Objection 5b: Insufficient information regarding the proposed berm along the sewer line, and how it will impact the base flood;

Rebuttal: This objection is not raised with sufficient specificity to allow the Commission an opportunity to respond; it is not clear from this objection how the Opponent's Attorney reaches the conclusion that the information in the record is insufficient. As a matter of past practice, the submitted information is at least as detailed as the County has relied upon to approve numerous floodplain development permits over the years. The record shows that the berm was modeled in the HEC-RAS analysis, in accordance with generally accepted engineering practices for hydrologic modeling. Also, the berm construction schematics are provided at record page 323 and have been designed by a registered professional Geotechnical Engineer in accordance with the County's floodplain review requirements which constitute the relevant substantive approval criteria.

Objection 5c: Insufficient explanation of the location of the ordinary high water line, which is key to determining proper bridge design and permits required. There is also insufficient information regarding the design, height, and potential impacts on flood velocities and erosion potential of the bridge and berms that would be located in the floodplain and floodway as part of the proposal;

Rebuttal: This objection is not raised with sufficient specificity to allow the Commission an opportunity to respond; it is not clear from this objection how the Opponent's Attorney reaches the conclusion that the information in the record is insufficient. As a matter of past practice, the submitted information is at least as detailed as the County has relied upon to approve numerous floodplain development permits over the years. The bridge and berm were modeled in the HEC-RAS analysis, in accordance with generally accepted engineering practices for hydrologic modeling. The berm and bridge construction schematics are provided in the record and have been designed by a registered professional Geotechnical Engineer in accordance with generally accepted engineering practices to demonstrate compliance with the relevant substantive approval criteria contained in the County's floodplain development standards.

Objection 5d: Insufficient information regarding erosion control techniques to be employed to prevent day-to-day erosion and potential catastrophic flooding events. Channel and bank instability, channel avulsion and meander cut-off are all important issues that must be addressed to protect Bear Creek, the Rogue River, and downstream landowners. No geomorphic study has been provided. The importance of this information is magnified by the applicant's proposal for berm construction and stockpiling of overburden within the floodplain;

Rebuttal: Jackson County has adopted standards for floodplain and riparian area development (LDO Sections 7.1.2). It is unclear what, if any, approval standard this objection is intended to address. A geomorphic study is not a submittal requirement nor has the assertion that one is necessary been raised with sufficient specificity. No explanation or legal argument is provided to establish why the County's floodplain standards are inadequate and why such a study is therefore necessary in this instance to assure the risk posed by a 100-year flood event will not exceed the risk generally accepted by Jackson County for floodplain and floodway development. The standards in JLDO Section 7.1.2 regulate fill within the floodplain as is proposed for the berm/haul road to protect the extraction on the east side of the project from inundation.

The project generally avoids riparian areas altogether. It is unclear where the source of erosion potential is expected to occur by the Opponent's Attorney. The objection incorrectly states that overburden is proposed to be stockpiled in the floodplain. With the flood management measures proposed herein, there are no new stockpiling areas proposed in the floodplain as the same is plainly stated at the top of Record Page 332 and as depicted on the Site Master Plan.

Objection 5e: Insufficient information has been presented to establish appropriate setbacks from Bear Creek. For example, there is a potential for river 'capture' by the existing pit which, as part of the proposal is to be used as a settling pond. The pond will at most times be filled with turbid water and is located within the meander zone of Bear Creek, on a major meander. "Capture" or overtopping would cause the release of highly turbid water into Bear Creek and the Rogue River, fouling sandbars and otherwise harming the Rogue River fishery;

Rebuttal: Minimum setbacks from Bear Creek are established by the LDO at 50-feet. In most all locations, the project proposes setbacks of substantially more than 50-feet and the project complies with all the riparian protection standards in JCLDO Section 8.6 as depicted on the Master Site Plan. The only indication as to the point of this objection is the example provided with respect to capture of the proposed settling pond in Existing Pit #1. DOGAMI raised concerns with the use of this area as a settling pond and this portion of the proposal has now been revised to eliminate this feature. For this reason, the example provided by opponent's attorney is now without practical meaning.

Objection 5f: Insufficient and conflicting information regarding the configuration of mining cells on the east and north side of Bear Creek. The application materials are geared to 35 acres of tax lot 1900, and provide little to no information regarding mining plans to the south, in a total ownership area of 345.80 acres;

Rebuttal: This objection is not directed at any particular approval criteria and is not stated with sufficient specificity to afford the Planning Commission an opportunity to

respond as required by law and stated by the Chair of the Jackson County Planning Commission prior to opening the public hearing on this application. Detailed information on the configuration of mining cells are not required by the County's Aggregate Site Plan standards. These standards require only general location and operating parameters. The project includes more detailed mining plans for Tax Lot 1900 because it is planned and zoned aggregate and, as part of this site plan review, mining is expected to commence immediately following approval. The more detailed information on Tax Lot 1900 is provided consistent with the currently pending DOGAMI permit application. Although the Applicant believes there is sufficient information for the proposed mining operations east of Bear Creek to demonstrate compliance with the County's standards, if the Commission believes a detailed site plan review is appropriate prior to extraction on Tax Lots 100, 200 and 2600 then applicant will accept a reasonable condition requiring the same. The initial submittal recognizes that mining west of Bear Creek is many years in the future and that both detailed hydrologic analysis and detailed site plan review will be required prior to any extraction west of Bear Creek.

Objection 5g: Insufficient delineation of wetlands and vernal pools. The applicant's wetland study says nothing about the north and the east bank of Bear Creek, where mining expansion is proposed. Without a proper delineation of such resources, it is impossible in this case to properly weigh potential environmental impacts, as required by the ESEE process;

Rebuttal: Applicant had originally proposed to defer wetland identification following approval of this land use application because the National Wetlands Inventory Maps, upon which the County relies, do not identify substantial wetlands in the area proposed for extraction. Deferral of detailed wetlands identification was originally proposed because these detailed studies are valid for a limited time period. As a practical matter, wetlands must be identified at sometime prior to mining operations proceeding. Because the opponent raised this issue, the applicant engaged Terra Science Inc. to identify potential wetlands impacts and a preliminary report is expected to be available at the next scheduled hearing. However, it should be noted the Opponent's Attorney has not explained how as a matter of law any necessary DSL/Corp of Engineering Permits could not feasibly be obtained. Moreover, wetlands, as a matter of law, cannot serve as a basis for mining restrictions pursuant to Provision 12 of Jackson County's aggregate program because the County has not included wetlands on its inventory of significant Goal 5 resources and no protection program for wetlands has been adopted by Jackson County.

Objection 5h: Insufficient delineation for Bear Creek riparian areas, insufficient setbacks, and a lack of coherent explanation of steps that will be taken to protect and improve the existing riparian area, which has been partially cleared and graded by the applicant;

Rebuttal: With respect to riparian protections and development the County has adopted and acknowledged protections and they are found in LDO Section 8.6. Opponent's Attorney has failed to explain how the use of aerial photos followed by on-the-ground verification is inadequate. No area was identified where the proposed site-plan depicts a location where the applicable setback of 50 feet will not be maintained. The Conclusions of Law offered for adoption by applicant at Record Page 331 clearly states that no existing overstory vegetation will be removed in the prescribed 50-foot setback and the only understory vegetation that will be removed is at the stream crossing location where

it is unavoidable and allowed as a matter of code. With respect to operational issues to assure the prescribed setbacks for existing and proposed operational areas are observed, applicant agrees that conditions assuring the same are appropriate and applicant will accept reasonable conditions to accomplish the same ¹.

Objection 5i: Insufficient analysis of potential fish capture and mortality in the proposed settling ponds and new ponds as they are constructed;

Rebuttal: This objection is partially mooted with respect to the proposed settling pond, because this component of the proposal has been removed. Notwithstanding this revision, this objection ignores the facts. Fish capture and mortality at the existing Pit #1 was a concern raised by DOGAMI and ODFW as part of the operating permit for this site. The land use at this Pit #1 is already permitted by Jackson County with a condition that mining depth exceeding 25 feet be approved through an amendment to the DOGAMI permit. The DOGAMI permit amendment for Pit #1 has now been issued and this amendment included fish escapement features approved by DOGAMI in coordination with ODFW. The objections reference to new ponds is not stated with sufficient specificity to determine the mining feature being referenced; new pits include flood control features engineered to prevent pit capture by a 100-year flood event.

Objection 5j: Insufficient evidentiary support for numerous statements made in the ESEE, regarding, especially, economic and environmental consequences of allowing or prohibiting the use:

Rebuttal: This objection is not directed at any particular approval criteria and where opponent's attorney fails to identify the numerous statements in the ESEE, regarding especially, economic and environmental consequences this objection is not stated with sufficient specificity to afford the Planning Commission an opportunity to respond as required by law and stated by the Chair of the Jackson County Planning Commission prior to opening the public hearing on this application. It is not even clear whether this objection refers to economic and environmental consequences of allowing or prohibiting uses in the impact area or whether it refers to allowing or prohibiting the proposed aggregate use.

Objection 5k: Insufficient information regarding proposed reclamation plans. The County cannot be expected to make a coherent decision about the long term environmental consequences of the of the proposal without knowing the proposed duration of mining and without seeing a more detailed conceptual reclamation plan;

Rebuttal: Neither Jackson County's aggregate program nor its standards require the duration of the operation to be explicitly defined as a pre-requisite to determine long-term environmental consequences. The assertion that this is necessary is Opponent's Attorney's opinion and no such requirement is established in the County's aggregate program. Notwithstanding this matter of law, applicant expects the total project area to be mined over the next 25 to 35 years. With regards to more detail in the reclamation

¹ If this objection was intended to address criteria relating to protection of the Bear Creek Greenway see rebuttal to objection 5(r) below.

plan, the applicant welcomes any details the Commission believes is necessary and will provide the same.

Objection 51: Complete lack of a coherent set of conditions or other "program to achieve Goal 5," as required by law. Applicant's Exhibit 4 is not adequate;

Rebuttal: The County has an adopted and acknowledged program to achieve Goal 5 and it is located in the Aggregate Element and Aggregate Map Designations of the Comprehensive Plan and Section 4.4 of the JCLDO. Compliance with these provisions achieves Goal 5 for aggregate in Jackson County. Conditions of approval can be and are frequently placed on aggregate operations as part of the County's aggregate program, but development and attachment of such conditions are the responsibility of Jackson County through the ESEE process.

Notwithstanding the above technical arguments, Applicant concurs that a set of conditions to obtain Goal 5 is likely appropriate. As stated in Applicant's letter dated June 29 at Record Page 559, Applicant viewed work on a set of conditions prior to the first evidentiary hearing as premature where the Planning Commission may make changes to the ESEE offered by the applicant and the fact that there is another hearing before the Board of Commissioners in which new evidence may be offered and any objections to proposed conditions may be raised. With a positive recommendation, Applicant expects to work with Jackson County Planning Staff to prepare a set of appropriate conditions consistent with the Planning Commission's recommendation and its corresponding deliberation.

Objection 5m: Insufficient explanation by the applicant of numerous past violations, that affect the credibility of the applicant and detract from a finding that it is feasible for the applicant to carry out the proposal in compliance with law. The applicant has since 1998 been under numerous DOGAMI "notices of violation" and has also been subject to DEQ and Country enforcement actions;

Rebuttal: There are no violations at this time. Violations have nothing to do with whether a sand and gravel deposit is a significant resource. If, through approval of the operating permit, the Planning Commission has concerns regarding compliance with code requirements and discretionary conditions, then the Commission has the authority to attach conditions for regular inspection by County Staff and when key components of the Master Plan are initiated. The Applicant will accept reasonable conditions of approval requiring the same.

Objection 5n: Insufficient justification for conclusions regarding the quantity, quality, and location of the resource. The source of the boring log information, how it was collected, and who collected it, is not presented in the conclusions made. Quantity estimates are based on a new pit depth of 50-60 feet while DOGAMI has limited the existing pit depth to 25-feet. No basis is provided for the applicant's expectation that pits are twice as deep will be allowed. Quality information is not based on any samples that were taken from areas that the applicant proposes to mine on the north and east bank of Bear Creek;

Rebuttal: In the interest of assuring that the entire site is designated a significant resource, the applicant has engaged the services of Dorian Kuper, Engineering Geologist



from Kuper Consulting LLC, to supplement the quality information and refine the quantity estimates submitted to-date; this supplemental evidence is expected to be available at the next scheduled hearing.

Opponent's attorney explicitly refers to the need to justify the quality of aggregate reserves on the north bank of Bear Creek. This objection ignores established fact; the Jackson County Board of Commissioners already designated the quantity and quality of the aggregate reserves on Tax Lot 1900 (north bank) as significant. This is plainly stated in County Ordinance 95-61, which was adopted as part of the County's periodic review for aggregate and was acknowledged by DLCD without objection.

With respect to the boring log information already submitted to the record and estimates of quantity on the Medina site (Tax Lots 100 and 200), this information was collected and quantity estimated by Knife River Corporation, a subsidiary of MDU Resources Group (Rogue Aggregate's parent company). Based upon the oral testimony of Paul Medina, the owner of the subject property, this analysis was performed by Rogue Aggregates' subsidiary company while they were attempting to acquire rights to mine the Medina property. Opponents' Attorney is questioning the validity of the quantity estimate prepared by his client's subsidiary.

With respect to pit depth and quantity of minable reserves, mining depth is a matter of engineering feasibility and associated permitting from DOGAMI. The DOGAMI permit for Pit #1 has been amended to allow depths in excess of 25 feet. Moreover, the applications to both DOGAMI and the County herein request approval to full minable reserve depth and quantity estimates are based upon the same. As a practical matter this argument is without substance; even if estimates were arbitrarily restricted to 25 feet, the record indicates the resource is still larger than Jackson County's threshold standard of 100,000 cubic yards.

Objection 50: Lack of a traffic study:

Rebuttal: This objection ignores substantial evidence in the record. A detailed study for transportation system safety is provided at Record Page 578. This study identifies needed improvements to assure safe system operations. Neither ODOT traffic engineering staff nor Jackson County traffic engineering staff determined that a detailed capacity analysis was necessary to conclude the proposed land use changes will not significantly affect a transportation facility. A letter from Jackson County Road stating the same is provided at Record Page 572. The expert opinion of Applicant's registered professional traffic engineer Robert Kortt is provided in a letter, dated December 15, 2005, that the trip generation analysis previously submitted to the record is correct and on this basis a detailed capacity analysis is not necessary to conclude the proposal will not significantly affect a transportation facility.

Objection 5p: Insufficient information addressing potential groundwater impacts. The applicant is proposing to dewater a very large pit or pits to a depth of 50-60 feet. The applicant has provided a single page of narrative, without any supporting documentation, addressing potential groundwater impacts of the proposal, which is inadequate:

Rebuttal: As a matter of law, this objection cannot serve as a basis for mining restrictions pursuant to Provision 12 of Jackson County's aggregate program because this

area is not within an area where a Goal 5 protection program for groundwater resources has been adopted and the site is not located in ASC 90-8 which is the County's only adopted protection program for groundwater resources (see also Page 111 of the County's adopted and acknowledged Goal 5 background document). The Opponent's Attorney has identified no well or other impact related to ground water to his client's property that can reasonably be expected to be result from the proposed operation.

As a practical matter, both the applicant and DOGAMI want to assure that neighboring residences continue to have sufficient well water. On his own volition, Applicant has in the past drilled a well on the adjacent property to the south when problems with that well were encountered. The DOGAMI review of Pit 2 on tax lot 1900 includes a condition for well monitoring on the Medina well on a regular basis. As this permit is extended to include the balance of the Medina and Hilton property, the County can expect similar conditions to be placed on any other wells for which DOGAMI has concerns. For this reason, applicant will accept a similar condition for any wells identified in this proceeding that the Commission believes there is reasonable likelihood of adverse affect.

Objection 5q: The applicant proposes to construct a "high channel" ditch as a permanent feature on the floodplain, between a proposed permanent 100-year-elevation berm and the existing sewer mainline through the property. The proposal states that the ditch will be lined with "Reno mattresses" (articulated concrete blocks). Minimal information has been provided regarding the hydraulic design of this major floodplain feature. There is insufficient data to review, data necessary to establish the long-term integrity of the proposed channel, and addressing its potential for avulsion, sedimentation, erosion, and impacts to the Bear Creek Greenway and downstream landowners; and

Rebuttal: In response to testimony at the earlier hearing, Applicant's Geotechnical Engineer has re-examined the floodplain analysis. This examination identified an anomaly in the analysis that that may eliminate the need to construct this feature altogether. Applicant expects a revised floodplain analysis addressing this issue will be available at the next scheduled hearing.

Objection 5r: The proposal's treatment of the Bear Creek Greenway is not appropriate. The Greenway is an "Area of Special Concern" and is the subject of management policies and guidelines that are not addressed by the proposal. Although the development ordinance directs you to promote Greenway polices to the extent of your legal authority, (7.1.1(B)(2)), the applicant has proposed no greenway mitigation.

Rebuttal: Notwithstanding the below legal technicalities, the applicant believes good planning should incorporate important features like Bear Creek Greenway where appropriate. The statement by Opponent's Attorney that the applicant has offered no Greenway mitigation is unfounded. Applicant's site plan leaves 500-foot wide reaches of riparian area as undisturbed greenway area. Applicant has offered a public easement to take effect following mining operations east of Bear Creek in accordance with a request submitted by the Greenway Program manager. Considering Applicant's offer to dedicate almost a mile of private property for public purposes, Applicant finds the Opponent's Attorney's assertion that no mitigation has been offered absurd.

This objection identifies no policies in the Greenway Plan that the Opponent's Attorney believes operate as an approval standard. No legal analysis is provided upon which a conclusion can be reached that treatment of the Greenway is inappropriate.

2. In addition to those objections raised in the Letter to Jackson County Planning Commission from Todd Sadlo, Attorney for Opponent Rogue Aggregates, Inc., dated October 27, 2005, he raised the following objections/issues in oral testimony on October 27, 2005.

Oral Objection #1: Opponent's Attorney stated that the Applicant had included some conflicting uses that may not pose a substantial threat to the aggregate resource and then proceeded to assert that, on this basis, the Commission should include his Client's property within the conflicting use area. The principal rationale for the request to be included in the impact area was the threat posed by increased risk of flood damage to his client's property.

Rebuttal: This objection and request to be included in the impact area is absurd for the following reasons:

- Opponents request to be included in the impact area is without precedent or legal basis. Nowhere in the County's Aggregate Element of the Comprehensive Plan or in the history of its application, in Goal 5, in Division 16, in Division 23 nor in the Jackson County LDO is one sand and gravel operation identified as a conflicting use with another sand and gravel operation. The Applicant is unaware of any case law to support this assertion. This objection and request is raised without any legal analysis where substantive criteria or procedures in the ESEE process is identified and relied upon to designate one aggregate operation as a conflicting use with another aggregate operation. Nowhere in the application is this point conceded by the applicant. Quite the contrary, the conflicting use tables offered by the applicant at record pages 156 and 161 clearly state that the applicant does not identify adjacent aggregate uses as potential conflicting uses.
- Opponent's Attorney's argument is backwards in precisely the way that both the Staff and the Planning Commission cautioned the entire audience at the hearing with respect to the legal requirements for the County's Goal 5 Aggregate Program. Opponent's Attorney has made no compelling argument and offered no substantial evidence as to how this resource site is adversely affected by the uses on his client's property 2,000 feet away.
- The potential risk cited by the Opponent's Attorney as the basis for inclusion in the impact area was primarily related to the bridge improvement. This improvement is located on Tax Lot 1900 which is planned and zoned for aggregate uses. The ESEE process for this parcel is complete and an impact area is already established for this parcel by operation of Ordinance 95-61, which was completed as part of Jackson County's periodic review. The principal requests related to the subject application applicable to Tax Lot 1900 are the floodplain development approval and site and operations master plan approval. The only component of the Plan Amendment and ESEE applicable to Tax Lot 1900 are the restrictions on mining west of Bear Creek and restrictions on mining in the Bear Creek Greenway overlay area. Neither of these restrictions in that adopted and

acknowledged ESEE were based upon floodplain issues nor were they related to other aggregate operations in the area.

Respectfully Submitted,

CRAIG A. STONE & ASSOCIATES, LTD.

Jay Harland Consulting Planner RECEIVED

MAR 16 2006 JACKSON CCONTY PLANNING



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March 15, 2006

VIA FIRST CLASS MAIL

Jackson County Planning Commission c/o Jackson County Planning Department County Courthouse 10 South Oakdale Medford, OR 97501

Re: File LRP 2005-0003: Rock 'N Ready Comp Plan Amendment, Site Plan Review and Zone Change

Dear Chair Hennion and Commission Members:

This Firm represents Rock 'N Ready Mix, LLC, the applicant in the above-referenced land use application. This letter is intended to respond to issues and allegations made by Rogue Aggregate ("Rogue") and its representatives at the Planning Commission hearing on February 9, 2006. At that time, the Planning Commission directed that the record be held open for seven days for new evidence and testimony. This letter and the attached materials are submitted under that direction.

It is clear from the oral testimony and the binder provided by Rogue that its goal is to avoid meaningful commentary on the proposed activities and to attempt to confuse the Planning Commission with irrelevancies, misrepresentations, and inferences. Generally, we believe Rogue's intent is to delay the proposal and to add to the expense of permitting for the applicant. Rogue's testimony thus far contains little to no factual evidence or analysis relative to the criteria. Rather, it relies on past resolved violations, unsubstantiated allegations that the existing operation has harmed Rogue's operation and, generally, trying to cast doubt on Rock 'N Ready engineering consultant. Rogue also makes the usual demands for additional detail, more studies

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and more information. Rogue's testimony does not relate to specific criteria or explain why Rock 'N Ready's testimony, provided by a registered Oregon engineer, is not sufficient to meet the relevant criteria. They simply claim it is not sufficient to meet their criteria.

In response to Rogue's comments, Rock 'N Ready retained Jeff Johnson of Northwest Hydraulic Consultants (NHC). Mr. Johnson has extensive experience in such situations and NHC is a major contractor to FEMA. Mr. Johnson substantially refutes Rogue's testimony regarding the likelihood of downstream impacts, sedimentation from Rock 'N Ready and their culverted road crossing. As an engineer certified in Oregon and given his experience in such matters his testimony constitutes expert testimony and is substantial evidence supporting Rock 'N Ready's application.

Immediately below, we would like to correct some of Rogue's testimony presentation on February 9, 2006, and at other times during the county's public hearing process. Additional rebuttal testimony is being prepared by Jay Harland, Bill Galli and Dave Paradis. Please include all this testimony into the record for this matter.

1. Department of State Lands (DSL) and Corps of Engineers (Corps) Permitting.

Rogue's Testimony: Rogue contends that Rock 'N Ready deliberately avoided the DSL and Corps regulatory processes. Rogue's allegation implies that by doing so, Rock 'N Ready did something sinister and apparently would like the County to believe that a substantive engineering evaluation was avoided. Rogue also contends that the HEC-RAS analysis misidentified the ordinary high water level ("OHW"). Rogue also offers a letter from the Corps to Copeland Sand and Gravel regarding their application implying that a similar process is necessary for its bridge.

Response: Yes, Rock 'N Ready deliberately avoided the state and federal permit processes. It was their legal obligation to do so. The basic criteria used by both agencies is to require applicants to demonstrate that impacts to aquatic resources be the only practicable way to conduct the project. (See Attachment 1 the definition of "mitigation.") Since it was obviously practicable for Rock 'N Ready to place the footings above OHW and, therefore, outside the aquatic resource regulated by DSL and the Corps, the law required them to so. In such a situation, no permit is necessary from either agency.

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Neither DSL nor the Corps evaluates the engineering of any proposed application. Consequently, in spite of the inferences from Rogue, by avoiding the permit process, not only did Rock 'N Ready meet their legal obligations, but they did not avoid a substantive engineering review. The Removal-Fill Law under which DSL acts and Section 404 of the Clean Water Act under which the Corps acts are environmental statutes. By placing the footings above the regulatory jurisdictional line, the agencies' concern about environmental impacts to the aquatic resource are resolved.

OHW is defined by both DSL and the Corps – see Attachment 2. In neither case is the two-year flood level or engineering calculations like the HEC-RAS analysis mentioned. By definition, OHW is determined by field observations and not mechanical or mathematical calculations.

The Corps' letter to Copeland is not relevant to this situation. That letter was in response to a permit application requesting authorization to place fill material below OHW within their jurisdiction. The Rock 'N Ready bridge avoids fill in the Corps jurisdiction. The point being that Rock 'N Ready followed the law by avoiding the impacts in the first instance.

2. Pit Capture

Rogue's Testimony: Rogue refers to Pit 1 as having been captured by Bear Creek.

Response: Pit 1 has not been "captured" by Bear Creek. However, during the December 30, 2005 flood event, it was overtopped as planned by both Rock 'N Ready and the Oregon Department of Geology and Mineral Industry ("DOGAMI"). The primary difficulty at that time was that the fish channel intended to allow water into the pit had not been completed. DOGAMI had concurred with that decision.

The phrase "pit capture" means that the stream has shifted and flows through the mined pit. The stream usually enters the pit upstream by eroding or breaking through the stream bank itself and/or any berms intended to prevent the pit from being overtopped. The stream then fills the pit with water and exits downstream after eroding a new channel. The pit then becomes a feature of the stream, in effect, the pit becomes a deep, widened area within the stream. In the case of Pit 1, it

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remains a unique feature separated from Bear Creek by the established setback. Bear Creek does not run through Pit 1, has not been captured by Bear Creek and is not part of Bear Creek. Consequently, referring to Pit 1 as having been captured by Bear Creek grossly misprepresents the situation.

3. Failure of Rogue's Culverted Road Crossing.

Rogue's Testimony: Events at Rock 'N Ready's Pit 1 somehow caused Rogue's culverted road crossing to fail.

Response: Two Oregon registered engineers have independently reviewed Rogue's culverted road crossing and both concluded that regardless of upstream activities, the crossing was doomed to fail. Mr. Johnson notes that the culverts could pass only a fraction of the total flow that Bear Creek could deliver during a moderate to major flood even if the culverts remained clear of sediment. Therefore, the crossing had to rely upon overtopping to pass flood flows. Clearly the damage reveals that it could not handle the overtopping.

Although Rogue would like the Planning Commission to believe that material specifically from Rock 'N Ready's bankline provided the sediments that blocked their culverts, that position is unsupportable. In order for a 5-to 6-ft deep layer of sediment to deposit at Rogue's crossing, as it did during the December 1st flood, velocities near the crossing had to decrease significantly. Velocities did decrease because the crossing acted like a dam, for the culverts were not large enough culverts to pass the volume of water carried by Bear Creek. In addition, the crossing is located at a sharp bend in the stream. Therefore, significant sediment deposition in the form of a point bar was inevitable along the inside portion of the bend. Backwater influences from the Rogue River may have also had an influence on velocities. Rock 'N Ready has not operated on the water side of the Bear Creek bank and is not responsible for erosion along the bank line itself. There are hundreds of locations that are contributing sediment to Bear Creek and to single out the reach along Rock 'N Ready is intentionally misleading and inappropriate. Bear Creek continues upstream for approximately 30 miles, and there are hundreds of miles of tributaries beyond that, many of which have ongoing erosion and undercutting along the banks. As explained by Mr. Galli, Bear Creek and its tributaries contain substantial stretches of eroding bank line that provide sediment of large and small grain size into the waterway. If Rogue's culverts were blocked by sediments from upstream, there is no evidence that it was specifically the result of any activity conducted by Rock 'N Ready. However,

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the implication of the muddy water seen in every high water event in the Bear Creek is that areas upstream erode and contribute to the sediment captured at depositional area where Rogue built its culverted road crossing.

Finally, it has been pointed out that the problems at Rogue's culverted road crossing took place during the December 1st flood event. Rock 'N Ready Pit 1 was not overtopped during that event. That didn't happen until the December 30th flood. Rogue provided pictures implying that the flooding of Pit 1 caused their sedimentation problems. This can not be. Obviously, there is no connection between what occurred at Rogue's culverted road crossing on December 1st and what occurred at Rock 'N Ready's pit on December 30th.

Rogue would like the Planning Commission to believe that their testimony demonstrates that downstream impacts from Rock 'N Ready's proposal will occur. However, it does not. What it does do is demonstrate Rogue's failure to fully consider the amount of sediment being carried by Bear Creek, the depositional nature of their crossing site and the volume of water Bear Creek is capable of conveying. Because Rogue's testimony is rebutted by two Oregon certified engineers, the Planning Commission should reject Rogue's implications of down stream effects from the proposed or past work.

4. FEMA Mapping

Rogue Testimony: Rogue contends that the FEMA maps must be modified and approved by FEMA prior to authorizing the proposed project.

Response: Although FEMA must approve any change in their maps, no modification is necessary in this case. FEMA published a Flood Insurance Rate Map (FIRM) and a Floodway map for this reach of Bear Creek. As required by FEMA, Jackson County is using these maps to regulate development within the floodplain. Mr. Galli has demonstrated that the proposed project complies with FEMA standards associated with the existing FEMA maps. Therefore, there is no need or plan at this time to change the existing FEMA maps.

For your general information the FEMA maps were developed to provide a "high-altitude" view of flood risk along the channel. For the proposed project, the designers felt that the FEMA maps did not provide enough detail to allow them to design flood protection features. Therefore, they constructed a much more

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detailed hydraulic model of the project area to provide the data they needed. This model will not produce flood hazard data identical to that shown on the FEMA FIRMs, but it does not need to.

If at some time in the future, there is a need to update the FEMA FIRMs, the new model could be used to do so. Rock 'N Ready would be willing to share it with whomever would be tasked with updating the maps.

5. DOGAMI Permit

Rogue Testimony. Rogue contends that DOGAMI effectively denied Rock 'N Ready's application for mining a 350-acre area by issuing a permit for only 6 to 8 acres. Rogue's testimony implies that DOGAMI finds Rock 'N Ready's engineering suspect and consequently has not approved Rock 'N Ready's request.

Response: Rogue's testimony is factually incorrect. Rock 'N Ready's application to DOGAMI relates to Tax Lot 1900, which is about 35 acres. (See Attachment 3). Tax Lot 1900 is already zoned by the County for aggregate mining and has been determined to be a significant mineral and aggregate resource by the County under Ordinance 95-61. As a result, a request for approval to mine on Tax Lot 1900 could be submitted to DOGAMI. Among the things that Rogue fails to mention is that DOGAMI is not in a position to evaluate an application for mining on areas where mining is not allowed by the local government. Consequently, the larger area presently zoned for exclusive farm use and not yet determined by the County to be a significant Goal 5 resource or otherwise zoned for mining is not available for submission to DOGAMI. Rogue's testimony is a deliberate attempt to mislead the Planning Commission and is factually incorrect. Moreover, it is not relevant to any criteria for any of the requests presently before the Planning Commission and should be ignored for all those reasons.

6. There is no Downstream Conflict

Rogue's Testimony: Rogue would like the County to extend the impact area associated with its Goal 5 evaluation to include its site. Rogue contends that must be done because they have raised a conflict.

Response: Rogue claims Rock 'N Ready is ignoring the downstream conflict they raise. However, the reality is that Bill Galli has demonstrated that the

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effect of the operation will not travel further than Rock 'N Ready's property line. Independently, NHC notes that "it is our opinion that there will be no significant change in flow velocities, direction or depths within the RA reach due to changes at the Rock 'N Ready site." NHC also notes that the existing rail road bridge would dampen any significant effects downstream of that bridge. This further decreases the likelihood of downstream effects.

Simply raising a concern is not enough, it must be a real potential concern supported by substantial evidence. In this case, it is not. Because Rogue has not met its burden to demonstrate that a conflict exists, the County has no reason to expand its impact area.

We believe that the Planning Commission has substantial evidence in the record supporting a positive recommendation on Rock 'N Ready's application. Opposition testimony from, among others, Rogue has been refuted by Bill Galli and Jeff Johnson and others. We appreciate your efforts to sort through to complex and often confusing testimony.

Very truly yours

Frank M. Flynn

FMF:sag

[59913-0001/PA060710.017]

Definition of Mitigation - OAR 141-085-0010 (129)

- (129) "Mitigation" means the reduction of adverse effects of a proposed project by considering, in the following order:
 - (a) Avoiding the impact altogether by not taking a certain action or parts of an action;
 - (b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation;
 - (c) Rectifying the impact by repairing, rehabilitating or restoring the affected environment;
 - (d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action by monitoring and taking appropriate corrective measures; and
 - (e) Compensating for the impact by replacing or providing comparable substitute wetlands or other waters.

[599]3-0001-000000/PA060740.067]

Attachment 1

DSL Definition of Ordinary High Water Line

OAR 141-085-0010 (150) – "Ordinary High Water Line" (OHWL) means the line on the bank or shore to which the high water ordinarily rises annually in season (ORS 274.005). The OHWL excludes exceptionally high water levels caused by large flood events (e.g. 100 year events). OHWL is indicated in the field by the following physical characteristics:

- (a) Clear, natural line impressed on the shore;
- (b) Change in vegetation (riparian (e.g. willows) to upland (e.g. oak, fir) dominated);
- (c) Textural change of depositional sediment or changes in the character of the soil (e.g. from sand, sand and cobble, cobble to gravel to upland soils):
- (d) Elevation below which no fine debris (needles, leaves, cones, seeds) occurs;
- (e) Presence of litter and debris, water-stained leaves, water lines on tree trunks; and/or
- (f) Other appropriate means that consider the characteristics of the surrounding areas.

Corps Definition of Ordinary High Water

The Corps defines ordinary high water at 33 CFR 328.3 (e) as: that line on the shore established by the fluctuations of water and indicated by physical characteristics such as clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.

DSL Jurisdiction

OAR 141-085-0015

Removal-Fill Jurisdiction by Volume of Material and Location of Activity

(1) The Department's determination as to whether a removal-fill authorization is required depends primarily upon a project's position relative to waters of the state and the volume of the fill and/or removal and the project purpose. Uplands are generally not subject to these rules except when they are used for compensatory wetland mitigation or compensatory mitigation sites.

Attachment 2

[59913-0001/PA060670.036]

- (2) To be subject to the requirements of the removal-fill law, the removal or fill must be within "waters of the state." The types of waters of the state and the physical limits of removal-fill jurisdiction are as follows:
 - (a) Estuaries and tidal bays, to the elevation of highest measured tide;
 - (b) The Pacific Ocean, from the line of extreme low tide seaward to the limits of the territorial sea,
 - (c) Rivers, intermittent and perennial streams, lakes, ponds and all other bodies of water (except wetlands) subject to these rules, to the ordinary high water line, or absent readily identifiable field indicators, the bankfull stage;
 - (d) Wetlands (defined in OAR 141-085-0010), within the wetland boundary delineated in accordance with OAR 141-090-0005 to 0055.
 - (e) "Other Bodies of Water," as used in ORS 196.800(14) are the following artificially created waters which are considered "waters of the state":

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RECEIVED

March 21, 2006

MAR 2:3 2006 JACKSON COUNTY PLANNING

JACKSON COUNTY PLANNING COMMISSION c/o Jackson County Planning Department County Courthouse 10 South Oakdale Medford, OR 97501

RE: Final Written Argument

Planning Action LRP2005-00003 Rock-n-Ready Mix LLC: Applicant

Dear Jackson County Planning Commission:

Following the close of public testimony at the March 9, 2006 public hearing on the above captioned matter, the Planning Commission ("Commission") afforded the applicant seven additional days from the date the record closed on March 16, 2006 for final written argument. Opposition to the application was presented by the Applicant's competitors Rogue Aggregates, Inc and Crater Sand and Gravel. This letter constitutes Applicant's final written argument on this matter as it appears before the Jackson County Planning Commission. This argument is intended to operate within the decision making framework laid forth in the letter entitled *Decision Making Process* dated March 15, 2006 and found at Record Pages 1506 to 1510. The substance of this memo is repeated below for ease of reference:

Decision #1. Final Site Plan Permit/Floodplain Permit/Aggregate Hauling across the Bear Creek Greenway for lands Planned and Zoned AR where no plan amendment and/or zone change is requested. (The area applicable to this decision is the cross-hatched area on Applicant's Request Key Map #2 located on Tax Lot 1900 at Record Page 808)

This decision applies to those portions of Tax Lot 1900 where no plan amendment is requested; this decision is a permit action. The opponent's have failed to identify any Comprehensive Plan amendment criteria that are directly applicable to this permit request, as such the decision is strictly governed by standards and criteria contained in the LDO.

With respect to the floodplain development permit and site plan permit, the level of detail necessary to make this decision is rather mechanical. The recommended approach is to go through each floodplain development standard and each aggregate site plan standard individually to answer one of two questions. Does substantial evidence in the record demonstrate compliance with each standard? If not, is there substantial evidence that

demonstrates compliance can be obtained through imposition of clear and objective conditions of approval? If the answer to either of these questions is yes for all relevant standards and criteria, then the burden of proof has been met by the applicant and the Commission should, as a matter of the County's established aggregate policy, pass a separate motion to approve each permit request.

With respect to the Greenway criteria, the Commission must first decide the extent to which these criteria are applicable. To the extent the Commission believes they are applicable, an evaluation of each criterion should be performed for the stream crossing as this is the only area in the Greenway where no plan amendment is requested and two questions should be answered. Does substantial evidence in the record demonstrate compliance with each standard? If not, is these substantial evidence that demonstrates compliance can be obtained through imposition of clear and objective conditions of approval? If the answer to either of these questions is yes for all relevant standards and criteria, then the burden of proof has been met by the applicant and the Commission, should as a matter of the County's established aggregate policy, pass a separate motion for approving the aggregate hauling use in the Greenway.

If the Commission approves all three of these permit requests by motion, then staff should be directed to prepare an order approving these permit requests with an attached map that depicts the geographic applicability of the order for approval.

Decision #2. Comprehensive Plan Map amendment to modify the ESEE analysis and the corresponding conditions attached to Ordinance 95-61 (Request Key Map #5 at Record Page 811).

Significance is established. No modification to the impact area is requested. The Commission need only revisit the conflicts analysis as they pertain to Pit 2A and Pit 4 on Tax Lot 1900. The Commission must determine, based upon substantial evidence in the record, whether the proposed mining operation with the stipulated phasing plan, screening, future demonstration of compliance with County floodplain regulations, and aggregate site plan standards will adequately balance identified conflicting uses. The Commission may elect to add site specific conditions to balance the aggregate resource against conflicting uses. If the Commission determines that the requested amendments cannot be allowed without expansion of the impact area, due to new conflicts identified, then deny the requested amendments on the basis that the applicant has not requested an amendment to the impact area and the ESEE cannot be amended without expansion of the impact area for which the Applicant has not requested.

Decision #3. Significance of Proposed Areas to be Added to the Aggregate Inventory (These areas are identified on Request Key Map #4)

Based upon substantial evidence in the record, determine whether the site meets the County's test for a significant aggregate resource site. By separate motion, vote on the significance of the resource site and make a recommendation to the Board of

Commissioners that the lands depicted on Request Key Map #4 be added to the County's list of significant aggregate resources.

Decision #4. Identify Conflicting Uses and Establish Impact Area for new sites identified as significant resources pursuant to Decision #3 above.

Review the evidence in the record. The Commission should begin with those conflicting uses identified in Applicant's initial submittal. The Commission should then deliberate as to whether there are additional conflicting uses that have not been identified by the Applicant. This evaluation should seek to identify causal relationships between conflicting uses and impacts directly associated with new Goal 5 aggregate areas. For example, there are no impacts to the Bear Creek Greenway related to the portion of Pit 2 on Tax Lot 100 of the Medina Property because all operations are proposed to occur outside the riparian area and are not in any mapped Greenway overlay area. The Commission should review the record for potential conflicting uses outside the 1500-foot impact area and the Commission must determine whether any such conflicts are significant to an extent that modification of the impact area is necessary. Any modification of the impact area must be based on the impacts to the Goal 5 resource and establish the causal relationship between the site proposed for inclusion on the County's aggregate inventory and the identified conflicting uses outside the standard 1500-foot impact area. By separate motion and vote, recommend to the Board of Commissioners an impact area and a list of conflicting uses to be evaluated in the ESEE analysis.

Decision #5. Complete the ESEE process for new sites identified as significant resources pursuant to Decisions #3 and #4 above.

It is recommended the Commission begin with the ESEE analysis prepared by the applicant and then modify it as necessary-pursuant to Decisions #3 and #4 above. Modifications to the Applicant's ESEE analysis should evaluate the ESEE consequences and balance conflicting land uses and competing Goal 5 resource sites. When balancing conflicts, it is recommended the Commission begin with an evaluation of the adopted LDO standards, the stipulations offered by the applicant, and the site plan and operations master plan as a means to balance the conflicts. If the Commission believes the adopted standard is somehow inadequate the Commission can and should evaluate potential sitespecific conditions to balance the conflicts. At this stage in the decision making process, the Commission is not required to make any determination as to whether the development permit requests included with this consolidated application comply with the LDO development standards or any site specific conditions; the Commission need only determine that compliance with the standards and site specific conditions as applicable will adequately balance identified conflicting uses. When the conflicts analysis is complete, by motion and vote, recommend the Board of Commissioners adopt the Planning Commission's ESEE analysis and amend the Comprehensive Plan Map in accordance with the results of the ESEE analysis.

Decision #6. Evaluate the site and operations master plan as a means to implement the ESEE results and zone those lands AR where the results of the ESEE analysis are balanced toward aggregate extraction.

At the most recent hearing, Opponent Rogue Aggregates asserted that the County cannot approve a general site plan without all specific mining details. For a site this large and an operation this complex with a substantial duration, this is impractical and is not required as matter of code. The hypertechnical ultra-rigid code interpretation offered by the Opponents is not representative of the County's past practice in its application of the County's Goal 5 program for aggregate and the same have not been changed substantially for many years. Site detail conditions, such as providing the pit grading cross-sections approved by DOGAMI to the County, can feasibly be provided and may be attached as conditions of approval to the site and operations master plan.

The Commission must evaluate the site and operations master plan in relation to the ESEE results. Any changes to the site and operations master plan, or conditions thereto, which are necessary to carry out the ESEE consequences analysis should be laid forth and clearly relate to the portion of the plan they affect. With these amendments incorporated, the Commission should by motion and vote adopt the site and operations master plan and zone all areas planned Aggregate Resource pursuant to Decision #5 above to Aggregate Removal (AR). This action should be implemented by an order to which the following condition may be attached to assure consistency with the Zoning Map and Comprehensive Plan Map:

The Planning Commission's decision approving the requested Zoning Map Amendment is subject to a final decision approving the requested Comprehensive Plan Map amendment. A final decision is defined as either a decision by the Board of Commissioners that is not appealed or a decision that is appealed resulting in an approval of the requested amendment.

Decision #7. Final Site Plan Permit/Floodplain Permit/Aggregate Hauling across the Bear Creek Greenway for lands where the Aggregate Resource Plan designation and Aggregate Removal zoning district is recommended by the Planning Commission. (The area applicable to this decision is the cross-hatched area on Applicant's Request Key Map #2 not located on Tax Lot 1900 at Record Page 808)

With respect to the floodplain development permit and site plan permit, the level of detail necessary to make this decision is rather mechanical. The recommended approach is to go through each floodplain development standard, each aggregate site plan standard, and any site specific conditions attached from the ESEE analysis to answer one of two questions. Does substantial evidence in the record demonstrate compliance with each standard? If not, is there substantial evidence that demonstrates compliance can be obtained through imposition of clear and objective conditions of approval? If the answer to either of these questions is yes for all relevant standards and criteria, then the burden of proof has been met by the applicant and the Commission should, as a matter of the County's established aggregate policy, pass a separate motion to approve each permit request.

With respect to the Greenway criteria, the Commission must first decide the extent to which these criteria are applicable. To the extent the Commission believes they are applicable, an evaluation of each criterion should be performed for those areas where hauling or extraction are proposed for mapped Greenway areas. Does substantial evidence in the record demonstrate compliance with each standard? If not, is there substantial evidence that demonstrates compliance can be obtained through imposition of clear and objective conditions of approval? If the answer to either of these questions is yes for all relevant standards and criteria, then the burden of proof has been met by the applicant and the Commission should, as a matter of the County's established aggregate policy, pass a separate motion for approving the aggregate hauling and/or extraction located in the Greenway area.

If the Commission approves all three of these permit requests by motion, then staff should be directed to prepare an order approving these permit requests with an attached map that depicts the geographic applicability of the order for approval and make it subject to the following condition:

The Planning Commission's decision approving the requested Floodplain Development Permit, Aggregate Site Master Plan, and Type 3 permit for aggregate operations in the Bear Creek Greenway is subject to final decisions approving the requested Comprehensive Plan Map amendment and Zoning Map amendment. Final decisions are defined as either a decision by the Board of Commissioners that is not appealed or a decision that is appealed resulting in an approval of the requested amendment.

The Applicant hopes that letter, combined with this argument, will aid the Commission in making its recommendation to the Board of Commissioners. Consistent with the Commission's direction, this letter does not present new evidence but relies on testimony and evidence already in the County's record. Rock N Ready Mix, LLC [the Applicant] requests that this letter be included in the County's record for this matter.

The below list details the evidence submitted to-date by the Applicant in support of this application:

•	Exhibit 13	Application for Minor Comprehensive Plan Map Amendment and Zoning Map Amendment		
•	Exhibit 14	Floodplain Finding of Fact		
•	Exhibit 15	Geotechnical and hydrologic report, The Galli Group		
•	Exhibits 16-18	Site and Operations Master Plan		
•	Exhibits 19-39	Detail Evidence to Support Exhibits 13-19		
•	Exhibit 50	Traffic Impact Study		
•	Exhibit 100	Rebuttal Letter Responding to Opponents Objections		
•	Exhibit 101	Testimony from Applicant's Traffic Engineer		
•	Exhibit 116	Bridge Cross-Section Figure- Galli Group		
•	Exhibit 117	Ordinary High Water Level Discussion and Data- Galli Group		
•	Exhibit 118	Bridge Pier Stability Bear Creek Sta 1969 - Galli Group		
•	Exhibit 119	HEC RAS Evaluation Bear Creek - Galli Group		
•	Exhibit 120	HEC-RAS Input Data - Galli Group		
•	Exhibit 121	HEC-RAS Output Data – Galli Group		
•	Exhibit 122	No Rise Certificate – Galli Group		
•	Exhibit 123	Streamback Migration Study Bear Creek @TL 1900-Galli		
	Group			
•	Exhibit 124	Channel Stability and Offsite Affects of Proposed Project-Galli		
	Group			
•	Exhibit 125	Water Surface Profiles – Galli Group		
•	Exhibit 126	Access Road Berm Design Considerations - Galli Group		
•	Exhibit 133	Peer Review Testimony from Jeff Johnson		
•	Exhibit 149	Response from David Paradis clarfying violation history		
•	Exhibit 150	Written Response to Issues Raised by Lidstone-Galli Group		

Applicants Final Written Argument:

This application was initiated through the County's quasi-judicial land use process. As a result, the policies and standards governing this application are in the existing County Comprehensive Plan and Land Development Ordinance. The Commission is charged with applying the existing policies and standards that have been evaluated and approved by the Board of Commissioners. This application does not request and the Commission cannot apply new or different standards or policies.

1. Floodplain Development Standards

Record Summary: The record includes conflicting testimony regarding legal interpretation of the County's floodplain regulations and technical demonstration of compliance with the County's floodplain and floodway development standards.

With respect to technical evidence, Applicant's registered professional engineer licensed in the State of Oregon, William Galli, has analyzed the proposed project and has testified it will have no downstream impacts. Mr. Galli, who has extensive experience work on bear Creek and other waterways in Jackson County, has provided substantial written and oral testimony on many aspects of the proposal. Applicant's registered professional engineer has reevaluated his analysis to address technical concerns raised during the hearing process. Opponents' testimony asserts that substantial downstream impacts are likely to be caused by Rock-n-Ready operations on property owned by Rogue Aggregates and that hydraulic analysis and sediment transport analysis must be conducted from the Applicant's property to its confluence with Bear Creek. Applicant's engaged Jeff Johnson of Northwest Hydraulic Consultants, Inc. as an expert with extensive experience in hydraulic analysis. Mr. Johnson, another Oregon certified engineer with extensive experience evaluating impacts to waterways and hydrologic impacts from mining activities, conducted a limited peer review of the flood analysis prepared and submitted to-date by The Galli Group and made two critical statements at record pages 1398 and 1399 that agreed with earlier statements made by Mr. Galli:

"The existing railroad grade just upstream from RA [Rogue Aggregates] serves as a major hydraulic control during large floods. Water ponds behind the railroad fill which effectively dampens out any significant impact." Mr. Johnson additionally stated, "To suggest that RNR [Rock-n-Ready] activities are a major source of their [sedimentation] problem in our opinion is misleading and inappropriate, rather the sources of the sediment that enter the reach come from hundreds of source both big and small along the entire length of Bear Creek and its tributaries."

Mr. Lidstone responds to Mr. Johnson's comments from Record Page 1482 to 1492. This response questions the validity of Mr. Johnson's testimony based upon speculations made by Mr. Lidstone regarding information that Mr. Johnson had at the time his testimony was prepared. This speculation does not constitute substantial evidence and has no effect on Mr. Johnson's expert testimony on the above quoted matters. Mr. Lidstone and Mr. Galli have differing opinions as to whether the Galli calculated 100-year flood elevations can be considered consistent with the adopted FEMA Flood Study. No substantial evidence has been submitted to the Record that contends the FEMA Flood Study is inaccurate for this stretch of Bear Creek. Applicant has contended since the beginning of this proceeding that the FEMA Maps have significant inaccuracies for a portion of the Rock-n-Ready reach of Bear Creek and Opponent's have offered no substantial conflicting evidence.

With respect to legal interpretation of Chapter 7.1.2, Opponent's have offered an interpretation that the LDO requires a Letter of Map Revision (LOMR) or at least a Conditional Letter of Map Revision (CLOMR). Opponent's attorney has cited FEMA regulations as a basis for this assertion; no coherent legal analysis exists in the record that explains how these Federal regulations operate as an approval standard for a quasi-judicial local land use decision. Applicants have advanced the legal position that a Letter of Map Revision is not a preemptory requirement and that the local code can and should be interpreted to allow a site-specific detailed HEC-RAS floodplain analysis that demonstrates compliance with the County's floodplain criteria and development standards.

Applicant's Argument: Determination of Floodplain and Floodway boundary locations is a two-dimensional exercise upon which the County determines whether the floodplain development and floodway development criteria apply to a project. The evidence establishes that the stream crossing is subject to the Floodway Development standards in 7.1.2(F)(7)(c). The evidence establishes that other portions the operation are located in the 100-year mapped floodplain area and are therefore subject to the County's Floodplain Development standards. Because there is no dispute that the County's floodplain and floodway regulations apply to the project, the maps have limited practical effect on the decision making process because the criteria for approval of a floodplain development permit is based upon compliance with development standards that relate development impacts to changes in water surface elevations and to a lesser extend water velocities.

LDO Section 7.1.2(D) describes methods for determining flood elevations. For flood hazard areas with established flood elevations, these provisions provide clear direction for a project involving a particular building permit at a distinct location. By the language and context of LDO 7.1.2(D), the methods discussed in the LDO Section 7.1.2(D) have limited applicability for an aggregate operation with a bridge crossing and engineered flood control berms that extend for a considerable stream length. For this reason, interpretation of LDO Section 7.1.2(D) is appropriate. A detailed hydraulic model has been prepared by the Applicant's Registered Professional Engineer. The existing conditions base flood elevation profiles are provided at Record Page 910. This graph plainly shows that the site-specific HEC-RAS model is substantially consistent with the more generalized FEMA water surface profiles. The downstream water surface elevation of this model is an input that comes directly from the FEMA Flood Study elevations. Because the site-specific HEC-RAS model utilizes the Flood Study flood elevations as a principal model input and the model itself has been developed by FEMA, it is appropriately applied in evaluating 100-year flood impacts consistent with the methods for establishing base flood elevations described in LDO Section 7.1.2(D) as it is applicable to this project.

If the reasoning in the above two paragraphs is acceptable to the Planning Commission, then the Planning Commission can and should proceed to evaluate compliance with the criteria based upon the same reasoning. A floodplain development permit requires demonstration of compliance with the following two criteria, each is addressed below:

E) Criteria for Approval

Prior to approval of floodplain review, the County will determine all of the following:

1) That all applicable development standards of Section 7.1.2(F) can feasibly be met;

The Planning Commission identifies the following developments standards of 7.1.2(F) apply to the project:

F) Development Standards

- 7) Floodway Development
 - c) All encroachments, including fill, roadways or bridges are prohibited unless certification by an Oregon registered professional engineer is provided demonstrating that the encroachment will not result in any increase in flood levels during the occurrence of the 100-year flood (no-rise analysis and certification). Culverts used in stream crossings where floodways are mapped and/or 100-year floodplain elevations have been determined will require a no-rise analysis and certification. Culverts used in stream crossings where base flood elevations and floodways have not been determined (Approximate A zone) will be of sufficient size to minimize the rise of flood waters within the presumed floodway. Evidence must be provided by an Oregon registered professional engineer showing the size of the proposed culvert will pass the flood waters of the 100-year flood. Culverts and bridges must be anchored so that they will resist being washed out during a flood event. Culverts and bridges must also meet the riparian protection standards in Section 8.6.3 of this Ordinance.

An Oregon Registered Professional Engineer, William Galli has performed a no-rise analysis and testified in writing and orally that the only floodway encroachment proposed is the bridge and that it will not cause a rise in the 100-year flood condition off-site and will cause only an incidental rise within the project for which the applicant is willing to accept responsibility for any damages resulting from this minor rise, Record Pages 1542-1545. With respect to riparian habitat protections, Applicant has demonstrated the standards in Section 8.6.3 have been met or can feasibly be met through imposition of a condition of approval requiring submittal and staff approval of a final landscape plan approved by ODF&W; no evidence substantial evidence conflicts with this conclusion. The stream crossing component of the floodplain development permit request is a permitted use in the applicable AR zoning district and is not dependent on the requested map amendments and thus requires no analysis or consideration in the Goal 5 process.

8) Fill in the Floodplain

Prior to placement of fill within the 100-year floodplain a report from an Oregon registered professional engineer determining the effect the placement of fill will have on the 100-year floodplain will be submitted.

- a) Where base flood elevations have been determined, the fill cannot cumulatively raise the base flood elevation more than one foot at any given point. The report will reference the Flood Insurance Study for Jackson County, Table 3 (Floodway Data), for a specific reach of a stream. The increase in the base floodwater surface elevation, as shown in this table, will not be more than one foot.
- b) Where base flood elevations have not been determined, the fill cannot raise the base flood elevation more than one foot at any given point. (See 7.1.2(D)(2))
- c) The fill will be engineered to resist erosion by floodwaters.

Based upon the evidence in the Record, all bridge construction and flood control measures for the aggregate operations have been professionally engineered. The HEC-

¹ The Planning Commission acknowledges there is an incidental rise in water surface elevation projected in the HEC-RAS analysis immediately upstream of the bridge. The applicant's stipulation to record a waiver of remonstrance from the pursuit of damages against the County and/or FEMA from flood damages for the Applicant's properties adjacent to the crossing is sufficient to protect the County's financial and legalinterest in this regard.

RAS 100-year flood event analysis at Record Page 1545 demonstrates that the proposed fill (road berm) will not increase 100-year flood elevations more than one-foot at any location. A considerable portion of the proposed fill in the floodplain is located on Tax Lot 1900 in an area planned and zoned AR; the aggregate use in this area is permitted in the applicable zoning district and is not dependent on the requested map amendments and thus requires no analysis or consideration in the Goal 5 process.

10) Aggregate Removal

- Aggregate removal or surface mining operations within the 100-year floodplain or floodway will not cause an increase in flooding potential or stream bank erosion adjacent to, upstream or downstream from the operation.
- b) All mining and processing equipment and stockpiles of mined or processed materials will be removed from the site during the period of December 1 through April 30, unless the operation will be protected by a dike that is of sufficient width and height to prevent flood waters from inundating the site.

Based upon the Record, all bridge construction and flood control measures for the aggregate operations have been professionally engineered and meet the applicable standards for fill and stream crossings pursuant to Sections 7 and 8 above. Because all other new operations will be located outside the mapped floodplain or in areas protected by the engineered flood control road berm, other operations will not increase flooding potential as matter of deduction. With respect to stream bank erosion potential, the post-development water velocities and elevations have been shown to meet applicable development standards as detailed above and will therefore minimize the potential for increased stream bank erosion. The existing concrete processing area is a lawfully established nonconforming use in the floodplain.

2) That applications have been submitted or all necessary permits have been obtained from those federal, state, or local governmental agencies from which approval is required by law. Copies of all permits must be submitted to the County prior to initiation of the development.

The record establishes that the bridge design was required to avoid the need for DSL/COE permits and the record does not establish failure to obtain or apply for a necessary permit.

Conclusion: Based upon the above argument and the evidence in the Record, The Planning Commission can conclude that the Record demonstrates compliance with the County's floodplain development criteria. The Commission can further conclude that the floodplain development permit has limited applicability to the concurrent Goal 5 review process because most all of the floodplain development is located on a portion of the site where the Goal 5 process is complete and no Comprehensive Plan Map amendment is requested or needed (Portions of Tax Lot 1900 not subject to the restrictions on extraction in Ordinance 95-61).

2. Aggregate Site Plan Review

Record Summary: Applicant submitted an overall site and operations master plan and more detailed plans for those areas where final site plan approval is requested for near-term operations, See Exhibits 16 and 18 at Record Pages 330-345. Modifications to the original plans have been made principally to accommodate engineered flood control features along Upton Slough and to remove settling ponds in existing Pit #1. Opponents have argued that the site plan does not meet the County's requirements, lacks essential details and that it is inappropriate to expect the County to develop and apply conditions of approval.

Applicant's Argument: Opponents misconstrue the applicable law at Record Page 1468. Opponents advance the position that the Applicant's seek a Type 4 Permit that requires compliance with Type 4 site development plan review criteria. This is not the case. The Applicant requests a Comprehensive Plan Map amendment and map amendments are subject to a Type 4 process, but one that is subject to independent criteria found in LDO Section 3.7. Aggregate Site Plan reviews are Type 1 permit actions on AR zoned lands that are subject to aggregate-specific site development criteria and standards. Opponent's interpretation on the applicability of the Type 4 Permit criteria and corresponding site-development criteria is not supported by the context and language of the code which is clearly directed at non-aggregate site development, is contrary to the County's past pattern and practice, and is likely pre-empted as a matter of law under the Hegele decision.

The criteria and standards that apply are found in LDO Section 4.4.8(A). The introductory paragraph to these standards is important in understanding the applicability of review requirements for significant Goal 5 aggregate sites. This paragraph expressly references the Goal 5 process and review levels applied when a site was zoned AR through the Goal 5 process. The record includes substantial evidence that the standards of Section 4.4.8(A) for all areas where final site plan approval is requested are met or can be met through the imposition of clear and objective conditions. One important standard is the requirement for a DOGAMI operating permit; the language and context of the code anticipates that this will be a condition of approval for any aggregate site plan and the administrative rules for DOGAMI call for the DOGAMI permit review to occur after any Comprehensive Plan Map amendments are in place. For areas where site and operations master plan approval only is requested, the site plan serves to guide the ESEE process, but initiation of mining in these areas will be conditioned on future detailed Type 1 site plan review and approval.

Conclusion: Based upon the above argument and the evidence in the Record, The Planning Commission can conclude that the record demonstrates compliance with the County's Aggregate Site Plan review standards where final site plan review is requested. The Planning Commission has sufficient evidence to conclude it is in the County's interest to have a site and operations master plan for the entire site for the purposes of adopting and implementing a Goal 5 protection program for the portion of the site where a Comprehensive Plan Map amendment is requested and that there is nothing in the County's Goal 5 program that prohibits such adoption.

3. Bear Creek Greenway

Record Summary: Applicant has identified multiple plan, LDO, and mapping issues that make clear determination of criteria related to the Greenway difficult. Notwithstanding these issues, Applicant has offered to stipulate to dedication of a public use easement to facilitate ultimate Greenway trail planning for this portion of the Greenway. This stipulation has received written support from the County's Greenway Program manager Karen Smith at Record Page 650. Applicant's position has consistently been that this is good planning and will serve both the Applicants and the County's long-term Greenway goals. The Applicant has provided map analysis to locate the Greenway in relation to proposed operations; these maps indicate that, with the exception of Pit 2A, only minor Greenway impacts will occur and several acres that are not located in the Greenway will have no operations in them. The site visit demonstrated that the mining area is well setback from the actual riparian area that would normally be considered *Greenway*. Opponents have argued Applicant's offer to dedicate private land for public purposes is inadequate, that this project will do irreparable harm to the Greenway Program and Plan and have argued the Type 3 criteria cannot be met.

Applicant's Argument: The Greenway Program and Plan is principally an acquisition plan to create a non-motorized alternative transportation corridor and serves a secondary riparian protection function. The Applicant's stipulation that would allow the County to acquire the rights of public use at no cost is a substantial step toward any ultimate Greenway trail extension in this area in the future. If the Plan Amendment is approved, then the only existing and approved land uses around the Greenway are major aggregate uses with generally the same scale, site design, and operating characteristics so adverse impacts must necessarily be insignificant.

Conclusion: Based upon the above argument and the Conclusions of Law at Record Pages 343 to 344, The Planning Commission can conclude that the record demonstrates compliance with the Type 3 criteria related to the Bear Creek Greenway to the extent it is applicable.

4. Amendments to Ordinance 95-61

Record Summary: Applicants have requested an amended ESEE analysis to modify the mining restrictions placed on Tax Lot 1900 in Ordinance 95-61; no amendment to the impact area has been requested. These amendments would allow for mining in the Bear Creek Greenway area (Pit 2A) as a balance to the additional Greenway areas that will be retained in a natural state on Tax Lots 100, 200 and 2600 as depicted on Applicant's site plan. The other amendment requested is the restriction on mining west of Bear Creek. In the original ESEE analysis, the property owner simply stated they had no intention to mine this area. The owner, at that time, offered no screening as mitigation. The restriction contained in Ordinance 95-61 arose from concerns related to groundwater and aesthetic impacts.

Applicant's Argument: With respect to the Greenway Overlay restrictions, which are limited to extraction in Pit 2A, the record demonstrates that substantial lands adjacent to the Greenway Overlay on Tax Lots 100, 200 and 2600 will be unmined and left in a natural state. If these lands are used to balance the removal of Greenway restrictions to mine Pit 2A, when combined with Applicant's stipulation to dedicate an easement for eventual Greenway Trail construction, the Planning Commission has adequate factual basis to amend the ESEE analysis and allow mining in Pit 2A subject to future Type 1 site plan and floodplain development permit approvals.

With respect to the mining restrictions west of Bear Creek on Tax Lot 1900, the original ESEE analysis relied on comments regarding ground-water impacts for irrigation and aesthetic impacts. The record demonstrates that the Applicant has stipulated to provide screening and extraction phasing to substantially reduce aesthetic impacts and the Commission could increase the screening requirements at its discretion. With respect to groundwater effects on irrigation, this area now has a demonstrated history of farm uses continuing uninterrupted immediately adjacent to an aggregate extraction operations. Moreover, there are no significant agricultural operations in this immediate vicinity and these should therefore not serve as a basis for mining restrictions. If the Commission has concerns about groundwater impacts, a clear an objective condition requiring well monitoring and well deepening can be attached to the approval and applicant will accept a reasonable condition requiring the same.

Conclusion: The Record contains additional evidence sufficient to revisit the ESEE conflicts analysis adopted through Ordinance 95-61 and the Commission has the authority to amend the ESEE conflicts analysis as requested and apply any conditions it deems appropriate to balance the Aggregate Goal 5 resource against the Greenway Goal 5 resource in this area.

5. Significance of Proposed Goal 5 Aggregate Resource

Record Summary: Applicant provided evidence that the site is a significant aggregate resource in the initial application. Opponents questioned the validity of these studies prepared by one of their parent companies subsidiary companies. Applicant provided additional geologic evidence at Record Pages 852 to 893, prepared by Kuper Consulting LLC, that the site is a significant resource. No substantial conflicting evidence has been offered by Opponents that this is not a significant aggregate resource.

Applicant's Argument: The record contains substantial evidence that this is a significant aggregate resource.

Conclusion: Based upon the evidence in the Record, this is a significant resource that requires the County to complete the ESEE process to determine an appropriate level of protection.

6. Impact Area and Identification of Conflicting Uses for New Significant Aggregate Resources

Record Summary: Staff's memo at Record Page 1179 provides guidance on establishing the Impact Area and Identifying Conflicting Uses. Applicant's initial submittal identified conflicting uses in the standard 1500-foot impact area and evaluated conflicting uses outside the impact area that would warrant expansion of the impact area. Applicant did not request expansion of the impact area to protect their significant aggregate resource. Opponents, Rogue Aggregates, have argued that the impact area must be extended down to the Rogue River due principally to potential increases in sedimentation and flood hazards. Expert testimony and analysis has been provided by two Oregon Registered Professional Engineers William Galli and Jeff Johnson that the railroad crossing is a major flood control feature between the Rock-n-Ready Mix site and the Rogue Aggregates Site. These engineers have both testified

that this feature minimizes the likelihood that 100-year flood hazards below the railroad bridge could be impacted by development changes above the railroad bridge. The FEMA flood study is explicit; 100-year flood elevations downstream of Kirtland Bridge are controlled by the Rogue River, See Record Page 194. With respect to sedimentation, all new Pits must meet current County Floodplain standards and receive approval from DOGAMI. New near-term operations such as Pit 2 includes flood control features that have been professionally engineered to prevent pit capture that would lead to increased sedimentation potential and Applicant will accept reasonable conditions of approval for final design submittals to accomplish the same for future pits.

Applicant's Argument: Opponents, Rogue Aggregates, are the only land users outside the 1500-foot impact area requesting designation as a conflicting use and requesting inclusion in the impact area based thereupon. Opponents rationale for inclusion in the impact area is based primarily on testimony by Chris Lidstone that Rogue Aggregates operations, and especially their recently constructed culvert stream crossing will be adversely impacted by protection of Applicant's significant aggregate resources. In addition to the arguments provided by the Applicant at record page 781, this request is not appropriate based upon the following facts:

- 1. Opponents have failed to explain why the Floodplain Development standards in LDO Section 7.1.2 cannot be relied upon to reduce land use conflicts sufficient to protect this significant aggregate resource. Moreover, it is unreasonable to base a decision to expand the impact area, under the Goal 5 process, based on flood hazard concerns for a culvert stream crossing that did not meet the LDO code requirement to pass a 100-year flood event as required by the plain and unambiguous language of LDO Section 7.1.2(F)(7)(c) which states, "Evidence must be provided by an Oregon registered professional engineer showing the size of the proposed culvert will pass the flood waters of the 100-year flood." Moreover, these culverts were constructed based upon a Type 1 floodplain permit where the "no-rise" analysis and certification dealt strictly with Bear Creek and included no analysis or certification regarding the Rogue River which controls the 100-year flood elevations at the location of this crossing as is plainly stated in the adopted FEMA Flood Insurance study at Record Page 194.
- 2. There is no evidence that the Rogue Aggregates failed culvert stream crossing will negatively affect those areas proposed to be included on the County's inventory of significant Goal 5 resource sites. The Record contains no substantial evidence that refutes expert testimony provided by two Oregon Registered Professional Engineers that the hydraulic control of the railroad bridge assures the 100-year flood hazard risks below the railroad bridge are unlikely to significantly affect or be affected by development above the railroad bridge.
- 3. Most all of the significant aggregate resource areas where new operations are proposed are located outside the 100-year floodplain (operations areas within the 100-year floodplain have engineered flood control features) and no new operations are proposed in the floodway. On the east side of Bear Creek, all new operations are located behind a major public infrastructure feature- a 54-inch RVSS interceptor. Applicant's plans were reviewed by RVSS Engineer Carl

Tappert and he states, "The current operating plan [plan as initially submitted] for Rock-n-Ready does provide adequate protection to the pipe."

Conclusion: Based upon the evidence in the Record, the Planning Commission can conclude that the standard 1500-foot impact area is sufficient to protect the resource.

7. ESEE Analysis for New Significant Sites West of Bear Creek

Record Summary: Applicant provided an ESEE analysis for the Commission's consideration. Staff prepared an ESEE analysis based upon that offered by the Applicant. The Robertsons have provided evidence and testimony regarding impacts associated with mining Pit 3 adjacent to their rural residence. Other written testimony has been received from residences on the hill west of Blackwell Road. At the initial hearing, Opponents attorney Todd Sadlo raised objections regarding the ESEE offered by the Applicant which were rebutted at Record Pages 771-782.

Applicant's Argument: Applicant recognizes the acute conflicts between those residences immediately adjacent to Pit 3, but believes the screening, phasing and conveying methods will be sufficient to minimize impacts when mining of this site will actually occur many years in the future. The Commission membership includes a registered landscape architect and the Commission may wish to rely on his expertise to impose additional screening requirements along Blackwell Road if the Commission believes the screening offered by the applicant is insufficient to reduce land use conflicts associated with aggregate operations west of Bear Creek. Because the Opponent's request for inclusion in the impact area is not supported by the facts, the rebuttal provided at Record Pages 771-782 adequately address all objections raised to date on the adequacy of the ESEE analysis offered by the Applicant.

Conclusion: Based upon the evidence in the Record, the Planning Commission can recommend the Board of Commissioners adopt the ESEE analysis offered by the applicant with amendments recommended in the Staff report and developed during deliberation sufficient to protect the resource in this area from conflicting land uses and to balance competing Goal 5 resources. The Planning Commission can and should direct staff to work with the Applicant to prepare a set of conditions based upon its recommended ESEE analysis.

8. ESEE Analysis for New Significant Sites East of Bear Creek

Record Summary: Applicant provided an ESEE analysis for the Commission's consideration. Staff prepared an ESEE analysis based upon that offered by the Applicant. Opponents have argued that the ESEE must address land use conflicts based upon their concern that protection of the resource will increase the risk associated with flood hazards.

Applicant's Argument: If Opponent's request for inclusion in the impact area is rejected, then there is limited testimony or substantial evidence that would require significant alteration of the ESEE analysis prepared by the Applicant. If the Commission does not concur with the Applicant's argument above and elects to include Rogue Aggregates property in the impact area and analyze other Aggregate Operations as conflicting uses, then the Applicant requests the following protections be required on the

subject property as well as any downstream aggregate operators in the impact area to reduce land use conflicts:

• New or substantially reconstructed stream crossings require demonstration by an Oregon Registered Professional Engineer that the cross-sectional flow area under the culvert or bridge be capable of passing the 100-year flood event.

Conclusion: Based upon the evidence in the Record, the Planning Commission can recommend the Board of Commissioners adopt the ESEE analysis offered by the applicant with amendments recommended in the Staff report and developed during deliberation sufficient to protect the resource in this area from conflicting land uses and to balance competing Goal 5 resources. The Planning Commission can and should direct staff to work with the Applicant to prepare a set of conditions based upon its recommended ESEE analysis.

9. Comprehensive Plan Amendment Criteria and Zoning Map Amendment Criteria

Record Summary: Applicant provided detailed Finding of Fact and Conclusions of Law addressing all Comprehensive Plan Map and Zoning Map amendment criteria. If the Planning Commission concurs with the above conclusions, there is no substantial evidence or argument in the record that conflicts with the Findings of Fact and Conclusions of Law, with any necessary revisions to accommodate the Commission's recommended ESEE, offered by the Applicant in the initial application.

Applicant's Argument: Applicant's original Findings of Fact and Conclusions of Law are sufficient to warrant approval of the requested map amendments in accordance with the Commission's recommended ESEE.

Conclusion: Based upon the evidence in the Record, the Planning Commission can recommend the Board of Commissioners amend the Comprehensive Plan Map and Zoning Map in accordance with the Commission's recommended ESEE analysis.

Application of Jackson County's Aggregate Policy

Record Summary: Opponents' have argued that the County must deny or substantially delay protection of a significant and substantial aggregate resource principally based upon conflicting evidence and testimony for a floodplain development permitting issue where the concerns amount to engineering calculations regarding a few inches of water surface elevation in a 100-year flood event and sediment transport volumes that represent a fraction of the total sediment transported by Bear Creek in significant high-water events. The Applicant has maintained that the hyper-technical arguments offered by the Opponent are not required as a matter of law and that such an interpretation does not serve the County's established aggregate policies to ensure an adequate supply of aggregate resources for current and future use.

Applicant's Argument: Precise engineering details are not necessary for any component of the request except the floodplain development permit itself. The LDO contains standards for floodplain and floodway development to assure the risks associated with flood hazards will not be increased to unacceptable levels. The County's floodplain standards do not eliminate any potential for flood hazard for low lying areas along Bear Creek and the Rogue River and any expectation to that effect on the part of the Opponents is unfounded. The County can and does rely on its development standards to amend the Comprehensive Plan in accordance with generally accepted planning practice and theory and such reliance for the requested Comprehensive Plan Map amendment is legally defensible.

There is substantial evidence in the record that this is a significant and recoverable resource and the overall level of conflicting uses for the area are low. Under such circumstances, Policy 2 of the Aggregate Element of the Jackson County Comprehensive Plan directs the County as follows:

POLICY #2: THE COUNTY SHALL PROTECT AND CONSERVE AGGREGATE RESOURCES, REDUCE CONFLICTS BETWEEN AGGREGATE OPERATIONS AND ADJACENT LAND USES, AND ENSURE THAT AGGREGATE RESOURCES ARE AVAILABLE FOR CURRENT AND FUTURE USE.

Policy #2 is straightforward. The record substantiates that the site contains a significant and recoverable resource. The record also demonstrates that the number and concentration of conflicting land uses is relatively low for an aggregate site of this size that is near the key urban centers of Central Point, White City, and Medford, See Table 3, 4, and 5 in Record Pages 150 to 165. The Applicant has sought to minimize the potential for impacts to its neighbors by having the project professionally engineered, cooperating and responding to legitimate design concerns, and seeking additional technical review to assure the project meets all applicable standards. To that end, the record demonstrates that downstream impacts due to the proposed actives will not extend beyond the Applicant's property because water surface elevations and velocities will not be substantially altered by the project, see Record Page 1545. In addition, two Oregon certified engineers had noted that the railroad bridge located downstream limits the possibility of downstream effects from the proposal. Consequently, the County can find

that conflicts with adjacent uses will not extend beyond the County's 1,500 foot impact area.

Opponents have also raised issues regarding past violations and their dissatisfaction with DOGAMI approved design and reclamation plan for Pit 1. The Applicant is not under a violation situation with the County or DOGAMI at this time. Pit 1 is an approved land use that is predominantly zoned AR and its inclusion in the master plan serves only to provide the Applicant with a consistent and coherent set of regulations under which to operate. Testimony regarding Pit 1 has limited or no applicability to this proceeding.

Conclusion: The record substantiates that the Comprehensive Plan Amendment can be approved without violating any express provisions of the LDO, the Jackson County Comprehensive Plan and/or State of Oregon rules, laws, and/or goals. For the above reasons, the Planning Commission should consider the balance of the final written argument as the means by which the Commission can implement the County's established aggregate policy.

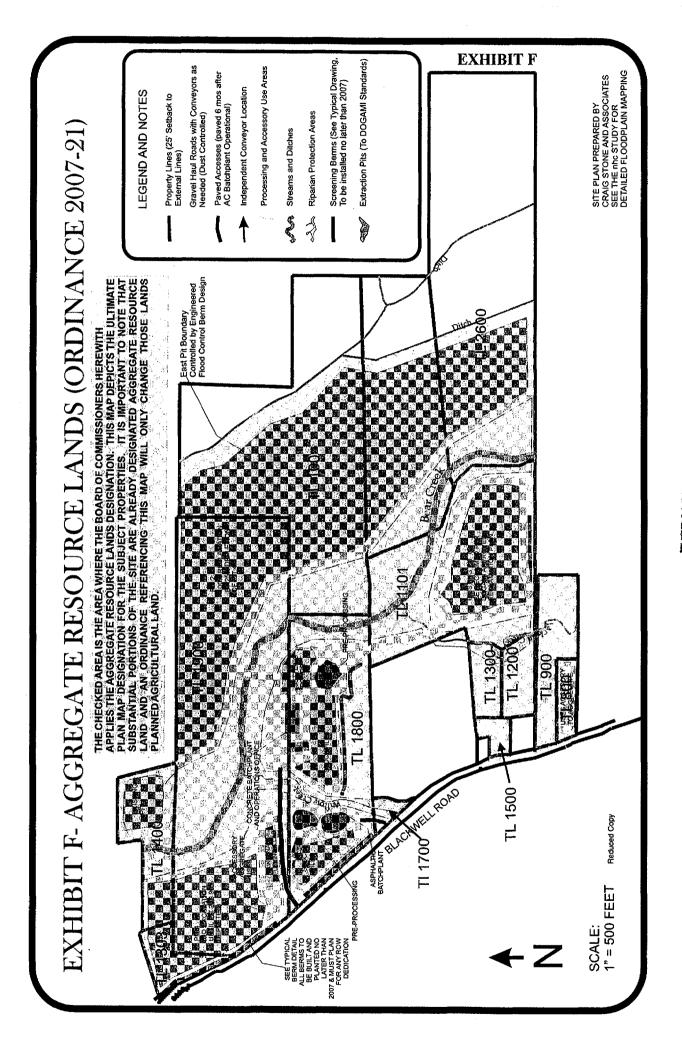
With approval of this application, the Applicant requests the Commission direct staff to work with the Applicant to develop conditions of approval that will implement the Commission's decisions on the above matters. The Applicant further requests the Commission direct staff to coordinate with the Applicant on the preparation of its orders and recommendations for approval on this matter.

Respectfully Submitted,

CRAIG A. STONE & ASSOCIATES, LTD.

Jay Harland

Consulting Planner



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BEFORE THE JACKSON COUNTY PLANNING COMMISSION STATE OF OREGON, COUNTY OF JACKSON

ORDINANCE	NO.	2007-22

AN ORDINANCE AMENDING THE OFFICIAL ZONING MAPS OF JACKSON COUNTY TO CHANGE THE ZONING DESIGNATION FROM EXCLUSIVE FARM USE (EFU) TO AGGREGATE REMOVAL (AR) FOR THE SUBJECT PROPERTIES FOR SUCH LANDS NOT CURRENTLY DESIGNATED AGGREGATE REMOVAL. THE SUBJECT PROPERTIES ARE IDENTIFIED ON THE TAX ASSESSOR'S PLAT MAPS AS TOWNSHIP 36 SOUTH, RANGE 2 WEST, SECTION 21, TAX LOT 1303 AND TOWNSHIP 36 SOUTH, RANGE 2 WEST, SECTION 27, TAX LOT 2600 (ONLY THAT PORTION WEST OF UPTON SLOUGH) AND TOWNSHIP 36 SOUTH, RANGE 2 WEST, SECTION 28, TAX LOTS 100 (ONLY THAT PORTION WEST OF UPTON SLOUGH), 1101, 1700, 1800, AND 2604 AND LOCATED IN AN AREA NORTH OF THE EXIT 35 INTERCHANGE AND EAST OF BLACKWELL ROAD, SOUTH OF HIGH BANKS ROAD AND NORTH OF GIBBON ROAD. OWNED BY LINCOLN TRUST COMPANY (CONTRACT ROCK 'N' READY MIX INC.), PAUL AND DEANNA MEDINA, AND MICHAEL AND SHANNON HILTON. FILE LRP2005-00003.

Jackson County Board of Commissioners: Issues an ordinance to amend the official zoning maps of Jackson County from Exclusive Farm Use (EFU) to Aggregate Removal (AR).

RECITALS:

- 1. Pursuant to Chapter 197 and 215 of the Oregon Revised Statutes, and in conformance with the Statewide Planning Goals, Jackson County's Comprehensive Plan (JCCP) and implementing ordinances have been acknowledged by the Oregon Land Conservation and Development Commission (LCDC).
- 2. On March 24, 2005 an application for a Comprehensive Plan Map Amendment and Zoning Map Amendment was submitted by the agent, Craig A. Stone and Associates, for the applicant, Rock-n-Ready Mix LLC. After initial review by staff, the application was deemed incomplete on April 28, 2005. The applicant provided the requested supplemental materials and the application was then deemed complete by staff on June 29, 2005.

PROCEDURAL FINDINGS:

1. A notice of the proposed amendment was provided to DLCD more than 45 days prior to the initial public hearing. A notice was published on Sunday, October 16, 2005 in the Medford Mail Tribune that a first evidentiary hearing was scheduled before the Jackson County Planning Commission on October 27, 2005 at 9:00 a.m in the Jackson County Auditorium. That public hearing was conducted and continued by the Planning Commission to January 23, 2006 at 9:00 a.m. in the Jackson County

1-ZONING ORDINANCE; File LRP 2005-00003 Craig A. Stone and Associates, Agent; Rock-n-Ready Mix LLC, Applicant

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Auditorium. That public hearing was conducted and a site visit was scheduled and conducted on February 23, 2006. A continued public hearing was scheduled for March 9, 2006 at 9:00 a.m. in the Jackson County Auditorium.

- 2. On March 9, 2006, a public hearing was conducted and the Planning Commission heard testimony, received evidence into the record and continued the public hearing to April 27, 2006 at 9:00 a.m. That public hearing was conducted and the Planning Commission deliberated to arrive at a recommendation based upon the applicable criteria.
- 3. On July 27, 2006, the Jackson County Planning Commission signed a recommendation to approve the ordinance presented herein following its motion and unanimous decision to recommend approval of the same.
- 4. A notice of public hearing was sent to the applicant, property owners within 1500 feet of the subject properties, and those demanding notice on September 5, 2006 that the application was scheduled before the Board of Commissioners on September 25, 2006 at 1:30 p.m.. A media notice was sent to the Medford Mail Tribune and a copy was sent to the Ashland Daily Tidings and Upper Rogue Independent. Legal notice was published in the Sunday, September 10, 2006 edition of the Medford Mail Tribune.
- 5. On September 25, 2006, the Board of Commissioners held a public hearing to consider the recommendation by the Planning Commission and they received evidence and testimony on this application. The public hearing was continued to September 27, 2006.
- 6. On September 27, 2006, the Jackson County Board of Commissioners held a public hearing to consider the recommendation by the Planning Commission and they received evidence and testimony on this application. The public hearing was continued to October 25, 2006 at 1:30 p.m. in the Jackson County Auditorium.
- 7. On October 25, 2006, the Jackson County Board of Commissioners deliberated on matters relating to compliance with Federal and State regulatory agencies, specifically: DOGAMI, the Army Corps of Engineers, and the Department of State Lands. No decision was made and the deliberation was postponed pending additional evidence and testimony on compliance with these Agencies' regulatory requirements.
- 8. A notice of public hearing was sent to the applicant, property owners within 1500 feet of the subject properties, and those demanding notice on February 7, 2007 that a public hearing was scheduled before the Board of Commissioners on February 28, 2007 to accept evidence and testimony specifically related to compliance with Federal and State regulatory agencies, specifically: DOGAMI, the Army Corps of Engineers, and the Department of State Lands. Legal notice was published in the Sunday, February 18, 2007 edition of the Medford Mail Tribune.
- 9. On February 28, 2007, the Jackson County Board of Commissioners held a public hearing to reopen the record and accept evidence and testimony specifically related to compliance with Federal and State regulatory agencies, specifically: DOGAMI, the Army Corps of Engineers, and the Department of State Lands. No decision was made and the deliberation was postponed pending additional evidence

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and testimony on the Department of State Lands consent order. The public hearing was continued to April 11, 2007.

- 10. On April 11, 2007, the Jackson County Board of Commissioners held a public hearing to re-open the record and accept evidence and testimony specifically related to compliance with the Department of State Lands consent order. No decision was made and the deliberation was postponed pending additional evidence and testimony that the Applicant was in substantial compliance with the Department of State Lands consent order.
- 11. A notice of public hearing was sent to the applicant, property owners within 1500 feet of the subject properties, and those demanding notice on May 10, 2007 that a public hearing was scheduled before the Board of Commissioners on February 28, 2007 to accept evidence and testimony into the record specifically related to demonstration of substantial compliance with the Department of State Lands consent order. Legal notice was published in the Sunday, May 20, 2007 edition of the Medford Mail Tribune.
- 12. On May 30, 2007, the Jackson County Board of Commissioners held a public hearing to re-open the record and accept evidence and testimony specifically related to demonstration of substantial compliance with the Department of State Lands consent order. Based upon the evidence, the Board of Commissioners decided by motion and vote that decisions on the merits of the application were not precluded due to any outstanding violations issues. The public hearing was continued to June 13, 2007 at 1:30 p.m. in the Jackson County Auditorium.
- 13. On June 13, 2007, the Jackson County Board of Commissioners held a public meeting and deliberated to a decision on the above captioned land use application.

Now, Therefore, the Board of County Commissioners of Jackson County hereby make the following findings and conclusions:

SECTION 1. FINDINGS OF FACT:

Based upon the evidence and arguments presented, the Planning Commission makes the following findings of fact with respect to this application. Where factual conflicts arose, the Planning Commission has resolved them consistent with these findings.

- 1.1 The Board of Commissioners hereby incorporates and adopts as its own the Findings of Fact and Conclusions of Law relied upon by the Planning Commission as stated in their Recommendation for Approval, except as supplemented pursuant Section 1.2 and 1.3 below. The same is attached hereto as Exhibit "A". To the extent there is any discrepancy between the findings incorporated by this paragraph and the Board's express findings in Exhibit B, *infra*, the express findings of the Board shall govern.
- 1.2 The Board of Commissioners hereby incorporates and adopts as its own, the supplementary Findings of Fact and Conclusions of Law offered by Applicant's Attorney, attached hereto as Exhibit "B".

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1.3 The Board of Commissioners hereby incorporates and adopts Applicant's rebuttal at Planning Commission Record Pages 771 to 782, 1511 to 1520, and 1555 to 1572 as its own resolution of issues raised by the Opponents and the same are attached hereto as Exhibit "C". To the extent there is any discrepancy between the findings incorporated by this paragraph and the Board's express findings in Exhibit B, the express findings of the Board shall govern.

SECTION 2. LEGAL FINDINGS:

- 2.1 The Board of Commissioners finds that all notices were legally and properly published and sent to necessary persons and affected agencies.
- 2.2 The Board of Commissioners finds that the subject property affected by this ordinance are described as Township 36 South, Range 2 West, Section 21 tax lot 1303, Section 28 tax lots 100 (portion west of Upton Slough), 200 (portion west of Upton Slough), 1101, 1700, 1800, and 2604, and that portion of tax lot 2600 west of Upton Slough in Section 27. The subject property is adjacent to Blackwell Road and surrounds the existing Rock-n-Ready operation and extends east across Bear Creek to Upton Slough.
- 2.3 The Board of Commissioners finds that it has followed all required procedures in the Land Development Ordinance, the Comprehensive Plan, and State of Oregon requirements and that the rights of affected agencies and property owners have not been substantially prejudiced.

SECTION 3. CONCLUSIONS: Based on the evidence and arguments relied upon by the Commission in the record, the Board of Commissioners concludes that the proposed amendments are in compliance with the Jackson County Land Development Ordinance, the Statewide Planning Goals, Oregon Administrative Rules, and the Jackson County Comprehensive Plan. Where factual conflicts arose, the Jackson County Board of Commissioners has resolved them consistent with these conclusions.

- 3.1 Statewide Planning Goals: Based upon the findings of fact and conclusions of law enumerated in Sections 1.1 to 1.3 above and attached hereto as Exhibits "A-C", the Board of Commissioners concludes the subject properties constitute a significant Goal 5 aggregate resource and through this application process has adopted a protection program, and based upon the same has designated the subject property with the Aggregate Resource Comprehensive Plan Map designation in compliance with the Statewide Planning Goals. The Aggregate Removal District is acknowledged and implements this Plan Designation and application of this district is therefore in compliance with the Goals.
- 3.2 Comprehensive Plan and Transportation System Plan: Based upon the findings of fact and conclusions of law enumerated in Sections 1.1 to 1.3 above and attached hereto as Exhibits "A-C", the Board of Commissioners concludes that this application complies with all aspects of the Comprehensive Plan that function as approval criteria for the designation of a significant aggregate resource and map amendment to Aggregate Resource under the County's Goal 5 aggregate program and the site is therefore appropriately planned Aggregate Resource and the application has satisfied the criteria to zone the subject properties Aggregate Removal (AR).

4-ZONING ORDINANCE; File LRP 2005-00003 Craig A. Stone and Associates, Agent; Rock-n-Ready Mix LLC, Applicant

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- 3.3 Jackson County Land Development Ordinance: Based upon the findings of fact and conclusions of law enumerated in Sections 1.1 to 1.3 above and attached hereto as Exhibits "A-C", the Board of Commissioners concludes that the proposed zoning designation of Aggregate Removal complies with the Jackson County Land Development Ordinance.
- 3.4 Oregon Administrative Rules: The Board of Commissioners incorporates and adopts applicant's purpose and intent statement at Record Page 148 as being sufficient to explain the basis under Oregon Administrative Rule for which the County can and does apply OAR 660-016 to aggregate by and through demonstration of compliance with its Comprehensive Plan. Based upon the findings of fact and conclusions of law enumerated in Sections 1.1 to 1.3 above and attached hereto as Exhibits "A-C", the Board of Commissioners concludes that designation of the subject properties as a significant Goal 5 aggregate resource has proceeded in accordance with all administrative rules to the extent the same are directly applicable to the determination of a significant Goal 5 aggregate resource and the site is therefore appropriately designated Aggregate Resource.
- 3.5 The Board of Commissioners concludes that proper public notices were given.

SECTION 4. DECISION: The Board of County Commissioners of Jackson County ordains to amend the official zoning map of Jackson County from Exclusive Farm Use (EFU) to Aggregate Removal (AR) for the properties subject to this ordinance, See Exhibit "G".

This approval is subject to the approved site and operations master plan which is constituted by the Board of Commissioners Conditions of Approval (Exhibit I), the attached map entitled "PC Approved Site and Operations Master Plan" (Exhibit H), and applicants updated Exhibit 4, entitled "Exhibit 4 Jackson County Land Development Ordinance Standards and Applicable Requirements For Approval Of The Requested Aggregate Site And Operations Master Plan", Sections I, II, and IV (Part of and attached to the Planning Commission's Recommendation and Findings in Exhibit "A"). Any future amendments to the master plan on the properties subject to this ordinance will require demonstration of compliance with applicable land development ordinance standards and criteria. In addition, changes to the site plan and/or operations master plan that require discretion shall demonstrate proposed changes remain consistent with the results of the ESEE analysis adopted through Planning File LRP2005-00003.

APPROVED this 25th day of	July	, 2007,	at Medford,	Oregon.
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	JACKSON COUNTY BOARD OF COMMISSIONERS Dennis C. W. Smith, Chair
	Jack Walker, Commissioner Dave Gilmour, Commissioner
APPROVED AS TO FORM:	ATTEST:
County Counsel	<u> Дуина Валек</u> By: Recording Secretary
be appealed to the Oregon Land Use Bo 21 days of the date it is mailed. This de	rdinance is the final decision on this action. This decision may pard of Appeals (LUBA). You must appeal this decision within cision is being mailed on, 2007, and, 2007. Please contact LUBA for specific 550 Capitol Street N.E. Suite 235, Salem, Oregon 97301-2552.

I:\ZONING\WP\Comp Planning\LRP2005-00003 Rock 'n Ready\BoC Review\BOC Ordinances & Exhibits\zoningordinance 2007-22.wpd

6-ZONING ORDINANCE; File LRP 2005-00003 Craig A. Stone and Associates, Agent; Rock-n-Ready Mix LLC, Applicant

EXHIBIT A

BEFORE THE JACKSON COUNTY PLANNING COMMISSION STATE OF OREGON, COUNTY OF JACKSON

IN THE MATTER OF AN APPLICATION FOR A) CONSOLIDATED REVIEW OF A MINOR COMPREHENSIVE PLAN MAP AMENDMENT TO CHANGE THE COMPREHENSIVE PLAN MAP FROM AGRICULTURAL LAND TO AGGREGATE RESOURCE LAND, A MINOR ZONING MAP AMENDMENT TO CHANGE THE ZONING DISTRICT FROM THE EXCLUSIVE FARM USE (EFU) DISTRICT TO THE AGGREGATE REMOVAL (AR) DISTRICT, THE **DESIGNATION OF A SITE AS A SIGNIFICANT** RESOURCE AGGREGATE **ESTABLISHMENT OF GOAL 5 PROTECTION** MEASURES, AND APPROVAL OF A SITE PLAN AND OPERATIONS MASTER PLAN SUFFICIENT TO IMPLEMENT THE ZONING DISTRICT, AND FINAL DEVELOPMENT PERMIT APPROVALS FOR A PORTION OF THE SITE AND OPERATIONS MASTER PLAN ON PARCELS LOCATED IN TOWNSHIP 36 SOUTH RANGE 2 WEST SECTIONS 21, 27 AND 28. EXISTING AR ZONED AREA IS APPROXIMATELY 116 ACRES. PROPOSED **EXPANSION WILL ADD APPROXIMATELY 163** ACRES.

RECOMMENDATION FOR APPROVAL

Applicant: Rock-n-Ready Mix, LLC Owners: Paul and Deanne Medina, Michael and Sharon Hilton, Rock-n-Ready Mix, Inc.

1-RECOMMENDATION; File LRP2005-00003 Craig A. Stone and Associates Ltd., Agent; Rock-n-Ready Mix LLC, Applicant Jackson County Planning Commission 1) Recommends adoption of an ordinance amending the Comprehensive Plan that adds the subject properties that are not currently on the inventory of significant aggregate resource site to said inventory and adopts an impact area and protection program for these new sites, see attached Exhibits B and F. 2) Recommends adoption of an ordinance to amend Ordinance 95-61 that allows aggregate operations in accordance with the approved site and operations master plan (this ordinance does not allow aggregate extraction of proposed Pit 2a). 3) Recommends adoption of an ordinance amending the Comprehensive Plan Map to designate all of the subject properties Aggregate Resource Land (only those portions of Tax Lots 100, 200 in Section 28 and 2600 in Section 27 west of the Upton Slough), see attached Exhibit C. 4) recommends an order be approved by the Board of Commissioners to amend the zoning map to change the zoning designation from Exclusive Farm Use (EFU) to Aggregate Removal (AR) for all of Tax Lots 1303 in Section 21, 1101/2604, 1700, and 1800 in Section 28 and for those portions of Tax Lots 100, 200 in Section 28 and 2600 in Section 27, see attached Exhibit D, subject to the approved site and operations master plan (See applicant's Exhibit 4 at Record Page 330, attached conditions of approval, and attached Exhibit E).

RECITALS:

- 1. Pursuant to Chapter 197 and 215 of the Oregon Revised Statutes, and in conformance with the Statewide Planning Goals, Jackson County's Comprehensive Plan (JCCP) and implementing ordinances have been acknowledged by the Oregon Land Conservation and Development Commission (LCDC).
- 2. On March 24, 2005 an application for a Comprehensive Plan Map Amendmentt and Zoning Map Amendment was submitted by the agent, Craig A. Stone and Associates, for the owner, Rock-n-Ready Mix LLC. After initial review by staff, the application was deemed incomplete on April 28, 2005. The applicant provided the requested supplemental materials and the application was then deemed complete by staff on June 29, 2005.
- 3. A notice of the proposed amendment was provided to DLCD more than 45 days prior to the initial public hearing. The application was scheduled before the Jackson County Planning Commission for a properly noticed first evidentiary hearing on October 27, 2005 at 9:15 a.m in the Jackson County Auditorium. That public hearing was continued. Another properly noticed public hearing was held for January 23, 2006 at 9:15 in the Jackson County Auditorium. That public hearing was also continued. A third properly noticed public hearing was held on March 9, 2006 at 9:15 a.m. in the Jackson County Auditorium.

Now, therefore,

The Jackson County Planning Commission finds, concludes, and RECOMMENDS as follows:

SECTION 1. FINDINGS OF FACT:

Based upon the evidence and arguments presented, the Planning Commission makes the following findings of fact with respect to this application. Where factual conflicts arose, the Planning Commission has resolved them consistent with these findings.

2-RECOMMENDATION; File LRP2005-00003
Craig A. Stone and Associates Ltd., Agent; Rock-n-Ready Mix LLC, Applicant

- 1.1 The Planning Commission finds that proper legal notice was sent on to the applicant, property owners within 1500 feet of the subject property and affected agencies on August 23, 2005. A media notice was sent to the Medford Mail Tribune on August 31, 2005, and a copy was sent to the Ashland Daily Tidings and Upper Rogue Independent. Legal notice was published in the Sunday, October 16, 2005 edition of the Medford Mail Tribune.
- 1.2 The Planning Commission finds that the subject property is described as Township 36 South, Range 2 West, Section 21 tax lots 1303 and 1400, Section 28 tax lots 100 (portion west of Upton Slough), 200 (portion west of Upton Slouth), 800, 900, 1200, 1300, 1700, 1800, 1900, and 1101/2604 and that portion of tax lot 2600 west of Upton Slough in Section 27. The subject property is adjacent to Blackwell Road and surrounds the existing Rock-n-Ready operation and extends east across Bear Creek to Upton Slough.
- 1.3 The Planning Commission finds that it has followed all required procedures in the Land Development Ordinance, the Comprehensive Plan, and State of Oregon requirements and that the rights of affected agencies and property owners have not been substantially prejudiced. The Planning Commission finds that the record contains no procedural objections that were raised with sufficient specificity to provide the Commission an opportunity to respond.

SECTION 2. LEGAL FINDINGS: To recommend approval of an Official Comprehensive Plan Map and Zoning Map amendment, the Planning Commission must find that the amendment is consistent with the Jackson County Land Development Ordinance (JCLDO) Chapter 3.7, which requires compliance with the Statewide Planning Goals, Oregon Administrative Rules, Jackson County Land Development Ordinance and the Jackson County Comprehensive Plan (JCCP).

The Planning Commission incorporates and adopts the findings of fact and conclusions of law in the updated Staff Report attached as Exhibit A. These findings demonstrate that the application is in compliance with the Statewide Planning Goals, Oregon Administrative Rules, the Jackson County Comprehensive Plan, and the Jackson County Land Development Ordinance.

SECTION 3. CONCLUSIONS: Based on the evidence and arguments relied upon by the Commission in the record, the Planning Commission concludes that the proposed amendments are in compliance with the Jackson County Land Development Ordinance, the Statewide Planning Goals, Oregon Administrative Rules, and the Jackson County Comprehensive Plan. Where factual conflicts arose, the Jackson County Planning Commission has resolved them consistent with these conclusions.

- 3.1 Statewide Planning Goals: Based upon the findings of fact and conclusions of law in the updated staff report attached hereto as Exhibit A, the Planning Commission concludes that this application complies with the Statewide Planning Goals.
- 3.2 Comprehensive Plan and Transportation System Plan: Based upon the findings of fact and conclusions of law in the updated staff report attached hereto as Exhibit A, the Planning Commission concludes that this application complies with all aspects of the Comprehensive Plan that function as approval criteria for the subject application as approved.
- 3.3 Jackson County Land Development Ordinance: The Planning Commission concludes that this application complies with the Jackson County Land Development Ordinance in accordance with the findings of fact and conclusions of law in the updated Staff Report attached hereto as Exhibit A.

3-RECOMMENDATION; File LRP2005-00003
Craig A. Stone and Associates Ltd., Agent; Rock-n-Ready Mix LLC, Applicant

- 3.4 Oregon Administrative Rules: The Planning Commission incorporates and adopts applicant's purpose and intent statement at Record Page 148 as being sufficient to explain the basis under Oregon Administrative Rule for which the County can and does apply OAR 660-016 to aggregate by and through demonstration of compliance with its Comprehensive Plan. The Planning Commission incorporates and adopts the findings of fact and conclusions of law in the Staff Report attached hereto as Exhibit A to demonstrate compliance with all administrative rules to the extent the same are directly applicable to the recommended map amendments.
- 3.5 The Planning Commission concludes that proper public notices were given.

SECTION 4. RECOMMENDATION: The Jackson County Planning Commission:

- 1) Recommends adoption of an ordinance amending the Comprehensive Plan to add the subject properties that are not currently on the list of significant aggregate resource sites to Jackson County's inventory of "Significant Goal 5 Resource Sites", as shown on the attached map entitled "Exhibit B PC Recommended New Goal 5 Aggregate Site" (Exhibit B).
- 2) Recommends a 1,500 foot impact area around areas added to Jackson County's inventory of "Significant Goal 5 Resource Sites". The proposed 1,500 foot impact area and the existing 1,500 foot impact area around tax lot 1900 are shown on the attached map "Impact Areas: Existing and Proposed" (Exhibit C).
- 3) Recommends adoption of an ordinance amending the Comprehensive Plan Map to designate all of the subject properties Aggregate Resource Land that are not currently so designated (only those portions of Tax Lots 100, 200 in Section 28 and 2600 in Section 27 west of the Upton Slough), as shown on the attached map "PC Recommended Aggregate Resource Lands" (Exhibit D).
- 4) Recommends adoption of an ordinance to amend Ordinance 95-61 that allows aggregate operations in accordance with the approved site and operations master plan as shown on the attached map "Exhibit E PC Approved Site and Operations Master Plan" (Exhibit E) and applicants updated Exhibit 4, entitled "Exhibit 4 Jackson County Land Development Ordinance Standards and Applicable Requirements For Approval Of The Requested Aggregate Site And Operations Master Plan", Sections I, II, and IV (Exhibit F). This ordinance does not allow aggregate extraction of proposed Pit 2a.
- 5) Recommends an ordinance be approved by the Board of Commissioners to amend the zoning map to change the zoning designation from Exclusive Farm Use (EFU) to Aggregate Removal (AR) for all of Tax Lots 1303, 1101/2604, 1700, and 1800 in Section 28 and for those portions of Tax Lots 100, 200 in Section 28 and 2600 in Section 27 subject to the approved site and operations master plan.
- 6) Recommends an order be approved by the Board of Commissioners approving land development permits for a Type 3 permit for aggregate operations in the Bear Creek Greenway (ASC)82-2, Site Plan Review for Aggregate Operations (future review will be required for Pit 4), and a Floodplain Review Permit for aggregate operations in the floodplain and floodway of Bear Creek (future review will be required for Pit 4.

This recommendation f	for APPROVAL	adopted this 2174day of	July_	2006,	at
Medford, Oregon.					

JACKSON COUNTY PLANNING COMMISSION

(Vote: Y=Yes; N=No; A=Abstain)

Reeve Hennion, Chair / abSint Don Greene, Vice-Chair

Espalth Tups y absent

Elizabeth Fujas, Commissioner Richard B. Thierolf, Jr., Commissioner

Byron Williams, Commissioner

ATTEST:

Heather Couch, Secretary

EXHIBIT A

JACKSON COUNTY ROAD, PARKS AND PLANNING SERVICES COMPREHENSIVE PLAN AMENDMENT STAFF REPORT WITH PLANNING COMMISSION AMENDMENTS

APPLICANT: Rock 'N' Ready Mix, LLC

6968 Blackwell Road Central Point, OR 97502

AGENT: Craig Stone & Associates

712 Cardley Ave. Medford, OR 97504 FILE: LRP2005-00003

OWNER: Rock 'N' Ready Mix, Inc., Michael

D. Lindeman IRA Rollover Acct., Michael R. & Shannon L. Hilton, Michael M. & Jodi L. Medina, Paul J. & Deanna L. Medina, and

Michael D. Lindeman

LEGAL DESCRIPTION:

TWP 36 South RANGE 2 West SECTION 21 TAX LOT(S) 1303, 1400

TWP 36 South RANGE 2 West SECTION 27 TAX LOT(S) 2600

TWP 36 South RANGE 2 West SECTION 28 TAX LOT(S) 100, 200, 800, 900, 1101, 1200, 1300,

1500, 1700, 1800, 1900, and 2604

APPLICATION REQUEST: A Minor Comprehensive Plan Map and Zoning Map Amendment to change the Comprehensive Plan Map designation from Agricultural Land to Aggregate Resource Land and the zoning district from Exclusive Farm Use (EFU) to Aggregate Removal (AR), designation as a significant aggregate resource and ESEE analysis to determine the level of Statewide Planning Goal 5 protection, Site Plan Review for aggregate operations, Floodplain Review for development within the 100 year floodplain, and Type 3 review for development within the Bear Creek Greenway (Area of Special Concern 82-2) on 348.56 acres in Township 36 South, Range 2 West, Section 21, Tax lots 1303 and 1400, Section 27, Tax Lot 2600, and Section 28, Tax Lots 100, 200, 800, 900, 1101, 1200, 1300, 1500, 1700, 1800, 1900, and 2604.

LOCATION: Located on Blackwell Road, beginning approximately 0.3 miles north of the intersection of Interstate 5 and Blackwell Road to approximately 1 mile north of the same intersection.

BACKGROUND: An application was received by Jackson County from Craig Stone and Associates, agent for the applicant, Rock 'N' Ready Mix, LLC, on March 24, 2005. The proposal is a Minor Comprehensive Plan Map and Zoning Map Amendment to change the Comprehensive Plan Map designation from Agricultural Land to Aggregate Resource Land and the zoning district from Exclusive Farm Use (EFU) to Aggregate Removal (AR), designation as a significant aggregate resource and ESEE analysis to determine the level of Statewide Planning Goal 5 protection, Site Plan Review for aggregate operations, Floodplain Review for development within the 100 year floodplain, and Type 3 review for development within the Bear Creek Greenway (Area of Special Concern 82-2). The application was deemed incomplete on April 28, 2005. The applicant submitted the required elements and the application was deemed complete on June 29, 2005. Public Hearings before the Jackson County Planning Commission were held on October 27, 2005, January 26, 2006, and March 9, 2006 in the Jackson County Auditorium and site visit February 23, 2006.

KEY ISSUES:

_	Determine if the aggregate resources quality as a significant Goal 5 aggregate resource.
	Determine what level of protection is justified by the ESEE analysis.
	Determine whether the application meets the criteria to allow aggregate mining.
	Determine whether the application meet the criteria for development within the floodplain and
	floodway.

Determine whether the application meets Type 3 criteria for development within the Bear Creek Greenway.

I. FACTS:

- 1) Location: The property is located on Blackwell Road, beginning approximately 0.3 miles north of the Interstate 5/Blackwell Road/HWY 99 interchange to approximately 1 mile north of the Jame interchange.
- 2) Access: Current access is from 6360 Blackwell Road (362W18, tax lot 1800) is county owned and maintained road. Two additional accesses were proposed by the Applicant. One from 6508 Blackwell Road (362W28, tax lot 1500) and a right-in at (362W28, tax lot 1700).

3) Acreage:

MAP ID	ACREAGE
362W21-1303	4.01
362W21-1400	9.70
362W27-2600	61.31
362W28-100	61.38
362W28-200	36.90
362W28-800	2.30
362W28-900	8.40
362W28-1101	21.55
362W28-1200	3.70
362W28-1300	3.80
362W28-1500	1.60
362W28-1700	1.24
362W28-1800	35.62
362W28-1900	78.31
362W28-2604	<u>15.98</u>
TOTAL:	345.80 acres ¹

¹The applicant determined the total acreage to be 348.56 acres. Upon reviewing the acreage for each parcel in Assessment records, it was determined that the total acreage is actually 345.80 acres.

4)	Assessment:		
	MAP ID	PROP. CLASS	DEFINITION
	362W21-1303	400	Vacant, H & B use tract land, zoning not significant
	362W21-1400	400	
	362W27-2600	559	Manufactured structure, H & B use farm land, receiving farm deferral, zoned EFU
	362W28-100	559	Manufactured structure, H & B use farm land, receiving farm deferral, zoned EFU
	362W28-200	550	Vacant, H & B use farm, receiving farm deferral, zoned EFU
	362W28-800	401	Improved, H & B use tract, zoning not significant
	362W28-900	401	4(1) (4 2) (1 1) 4(
	362W28-1101	400	Vacant, H & B use tract land, zoning not significant
	362W28-1200	409	Manufactured structure, H & B use tract, zoning not significant
	362W28-1300	409	« » « » « » «
	362W28-1500	409	41 31 11 31 11 39 (1
	362W28-1700	109	Manufactured structure, improved, zoned residential
	362W28-1800	401	Improved, H & B use tract, zoning not significant
	362W28-1900	401	u n a n a
	362W28-2604	400	Vacant, H & B use tract land, zoning not significant

220.9 acres receive a special assessment as farm land.

5) Lot Legality: Lot legality for these parcels was reviewed and established in 1998. A Memo dated July, 22, 1998 from Dody Talbott, Planning Technician II, determined the legality of each tax lot and is used as the official lot legality determination for this application.

MAP ID	
362W21-1303	Per file 92-90-LLA, this tax lot is part of 362W28, tax lot 1900. Tax lots 1900 and 1303 are considered a single, legal parcel.
362W21-1400	This tax lot was created by Volume 421, Page 222, recorded in 1956 and is considered a legal parcel.

362W27-2600	OR 70-11899 described tax lot 2600 with 362W28, tax lot 1100. OR 81-18853 separated tax lot 1101 from tax lot 2600 without the required review and approval from Jackson County. A letter dated February 27, 1990 indicated Planning would not penalize tax lot 2600 for the illegal division that occurred in 1981. This tax lot is considered a legal parcel based upon the Planning Director's ruling.
362W28-100	This parcel was created by Volume 224, Page 443 of the official records in the County Clerk's Office in 1940 and is considered a legal parcel.
362W28-200	This parcel was created by Volume 245, Page 434 of the official records in the County Clerk's Office in 1943 and is considered a legal parcel.
362W28-800	Prior to 1973, this parcel contained part of tax lot 900. Tax lot 900 was created in its current configuration by Volume 305, Page 266 of the official records in the County Clerk's Office in 1948, leaving tax lot 800 as a residual parcel in its current configuration. Therefore, the date of creation for tax lot 800 is 1948 and is considered a legal parcel.
362W28-900	This parcel was created by Volume 305, Page 266 of the official records in the County Clerk's Office in 1948 and is considered a legal parcel.
362W28-1101	OR 81-18853 separated tax lot 1101 from 362W27, tax lot 2600, without the required review and approval from Jackson County. The property owner could consolidate this tax lot and tax lot 2604 with tax lot 1800. A condition of approval to require consolidation of tax lots 1101 and 2604 with tax lot 1800 is recommended.
362W28-1200	This parcel was created by Volume 570, Page 166 of the official records in the County Clerk's Office in 1952 and is considered a legal parcel.
362W28-1300	This parcel was created by OR 69-11035 in 1969 and is considered a legal parcel.
362W28-1500	This parcel was created by Volume 422, Page 479 of the official records in the County Clerk's Office in 1952 and is considered a legal parcel.

362W28-1700	This parcel was created by Volume 555, Page 368 of the official records in the County Clerk's Office in 1963 and is considered a legal parcel.
362W28-1800	This parcel was created by OR 66-04539 in 1966 and is considered a legal parcel.
362W28-1900	This parcel was created by OR 69-11799 in 1969 and is considered a legal parcel.
382W28-2604	Since at least 1963, 362W28, tax lot 2600 and 2604 were a single parcel east of Blackwell Road. OR 89-07502 segregated tax lot 2604 from 2600 without the required review and approval from Jackson County. A letter dated August 20, 1996 advised the property owner that no permits or requests for development would be approved on this parcel, and recommended consolidating tax lot 2604 with an adjacent parcel. Tax lots 2604 and 1101 could be consolidated with tax lot 1101. A condition of approval to require consolidation of tax lots 1101 and 2604 with tax lot 1800 is recommended.

- 6) **Fire Protection:** The parcel is within Jackson County Fire District No. 3.
- 7) **Irrigation**: The subject properties are within the Rogue River Valley Irrigation District. Irrigation water is used for some production activities, although irrigation water is not required to support the extraction area uses and activities, according to the applicant. Evidence of a water right for the production activities has been provided by the applicant.

8) Zoning:

- A) Subject Property: Exclusive Farm Use (EFU), Aggregate Removal (AR)
- B) North: Exclusive Farm Use (EFU), Aggregate Removal (AR)
- C) East: Exclusive Farm Use (EFU)
- D) South: Exclusive Farm Use (EFU)
- E) West: Rural Residential (RR-5), Exclusive Farm Use (EFU), Urban Residential (UR-1), Interchange Commercial (IC)
- 9) Land Use: Land uses for these parcels include field and dairy farming, aggregate extraction, aggregate processing, aggregate stockpiling, concrete recycling, concrete batch plant, accessory uses to aggregate operations, and residential uses.

- Site Characteristics: Outside of the riparian area of Bear Creek, the subject properties are gently sloping. There is a bench on tax lots 100, 200, and 2600 near the eastern borders of these tax lots. The riparian areas typically consist of Oregon ash and willow with an understory of reed canary grass. Areas east of Bear Creek appear to be in farm use, particularly field and dairy farming.
- 11) Soils: Over 60% of the soil types for these properties are considered Prime Farmland (NRCS) or High Value Farmland (OAR 660-033-0020(8)) soils. All of the soil types are considered Agricultural Land (OAR 660-033-0020(1)), regardless of zoning district. A map of the soil types and percentages of soil types is provided in the record. None of the soil types could be considered Forest Land.
- Water: The subject properties are within the Rogue river Valley Irrigation District. Irrigation water is used for some production activities and evidence of a water right for this purpose has been provided. The applicant states that irrigation water will not be required to support the extraction area uses and activities.
- Wetlands: There are numerous wetlands associated with Bear Creek, Willow Creek, Jackson Creek, and the irrigation canal along the eastern borders of tax lots 100, 200, and 2600. The applicant has supplied a wetland report for tax lots 1800, 1101, and 2604. A GIS map depicting the National Wetlands Inventory Sams Valley Map is included in the record.
- Area of Special Concern: Portions of these properties are within Area of Special Concern (ASC) 82-2, Bear Creek Greenway. These properties are also within the Air Quality Maintenance Area for Jackson County. A portion of tax lots 800 and 900 near Blackwell Road is within Central Point's Area of Mutual Concern.
- 18) Past Planning Actions: Aggregate extraction began on all or part of tax lot 1101 about 1960. On December 21, 1995, ordinance 95-61 was signed changing the official Comprehensive Plan and Zoning Map from Exclusive Farm Use to Aggregate Resource on tax lot 1900, although limiting aggregate extraction to the east side of Bear Creek and outside of the Bear Creek Greenway Overlay. This comprehensive plan and zoning map amendment was part of Periodic Review Task 14. In 1997, file 1996-2-CUPA, a conditional use permit on tax lots 1800 and 800 for aggregate mining, stockpiling, processing and operations in connection with aggregate mining on tax lot 1101, was conditionally approved. On August 31, 1999, the Hearings Officer approved file 1998-1-SPRA for aggragate operations on tax lots 1101 and 2604.

Numerous code violations associated with the aggregate operations. Per Gary Saltonstall, Code Compliance officer, these violations have been cleared.

19) Affected Agency and Property Owner Notification: On August 23, 2005 agencies and property owners were notified of the proposed zone change, floodplain review, and site plan review for aggregate operations. Numerous responses were received. Specific agency

comments are shown below. Property owner comments are identified in a general fashion below agency comments.

- A) Jackson County Roads and Parks recommends a traffic study to evaluate the need for a left turn land and a right turn deceleration lane at the road approach. If turn lands are warranted, Roads and Parks recommends denial until the turn lanes are provided. A Road Approach Permit for any new or improved driveway off Blackwell Road is required. Additionally, Roads and Parks requested all existing trees, especially those near the waterway, be retained.
- B) Jackson County Fire District #3 states all Fire Code requirements will be applied to this project, including addressing, access, and possible on-site water for fire suppression.
- C) Rogue Valley Sewer Services responded stating there are several sewer mains on the subject properties and any aggregate removal operations in this area must take adequate precautions to prevent damage to the pipeline. They also indicated the operating plan does provide adequate protection to the pipe.
- D) A letter from Karen Smith, Special Projects Manager for Roads, Parks and Planning Services, states Rock 'N' Ready's reclamation plan would consider future extension of the Greenway trail and a perpetual trail easement to take effect at the time Pit 2 is reclaimed would serve this purpose well. Also indicated was that an easement would assure effective balance between the conflicting goal 5 resources of Aggregate and the Bear Creek Greenway over time.
- E) An email from Gary Saltonstall, Jackson County Code Compliance officer, dated 9-23-05, states there are no code violation cases with Rock 'N' Ready at this time.
- F) An email from Dan Dorrell, ODOT, stated that if Rock 'N' Ready was not increasing their truck fleet, ODOT would not need a capacity analysis on any state facility.
- G) From the many property owner responses, the concerns that property owners have include, noise, dust, traffic safety, smell from the asphalt plant, viewshed, decrease in land values, affect on water table and wells, affect on Bear Creek and other streams, affect on the Rogue Valley Sewer Service pipelines, affect on the rural way of life in the area, and the loss of farm land.

II. APPLICABLE CRITERIA ADDRESSED:

In order to approve an amendment to the Official Comprehensive Plan Map and Zoning Map Amendment, determination of Goal 5 protection, site plan review for aggregate operations, floodplain review for development within the 100 year floodplain, and an development within the Bear Creek Greenway², the County must find that the amendment is consistent with:

- 1) Compliance with Statewide Planning Goals: Goal 1, Citizen Involvement; Goal 2, Land Use Planning; Goal 3, Agricultural Land; Goal 4, Forest Land; Goal 5, Open Spaces and Natural Resources; Goal 6, Air, Water and Land Resource Quality; Goal 7, Areas Subject to Natural Hazards; Goal 8, Recreational Needs; Goal 9, Economic Development; Goal 10, Housing; Goal 11, Public Facilities and Services; Goal 12, Transportation; Goal 13, Energy Conservation; and, Goal 14, Urbanization. Compliance with Oregon Administrative Rule (OAR) 660, Division 16 and Division 12.
- 2) Compliance with the following elements of the Jackson County Comprehensive Plan: Map Designations (Aggregate Resource Land), Aggregate and Mineral Resources, and Transportation (Transportation System Plan).
- 3) Compliance with the following sections of the Jackson County Land Development Ordinance: 3.1.4, 3.7.3(C), 4.4.5, 4.4.8, 7.1.1(B), and 7.1.2.

The following sets forth the legal references upon which the Commission has reached its recommendations and issued orders for dependent land use permits:

(i) COMPLIANCE WITH STATEWIDE PLANNING GOALS AND OREGON ADMINISTRATIVE RULES:

The purpose of reviewing plan and zoning map amendments agree at Statewide Planning Goals and Oregon Administrative Rules is to assure that changes made in the County's acknowledged plan are also acknowledgeable.

A) Goal 1, Citizen Involvement: The goal is to develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process.

FINDING: The quasi-judicial procedure allows affected citizens and agencies to particle in the planning process. This goal is satisfied through this process.

²The Planning Commission recognizes that alternative interpretations of the applicable criteria with respect to the Bear Creek Greenway overlay are possible, but because the criteria can be found to be met the Planning Commission does not reach the legal arguments as to applicability raised by the Applicant.

B) Goal 2, Land Use Planning: The goal is to establish a land use planning process and policy framework as a bases for all decisions and actions related to use of land and to assure an adequate factual base for such decisions and actions.

FINDING: The proposed application and quasi-judicial process provides a framework for which the application can be reviewed. The Commissioners must find that the evidence supports the proposed zone change and proposed development. The specific Statewide Planning Goals are administered through the criteric dentified in the acknowledged Jackson County Comprehensive Plan and Land Development Ordinance (LDO). Goal 2 is satisfied through this quasi-judicial process. No exception to any Statewide Planning Goal is requested or required.

C) Goal 3, Agricultural Lands: The goal is to preserve and maintain agricultural lands.

FINDING: The subject properties are zoned Exclusive Farm Use (EFU) and are protected under Goal 3. All of the soil types on the properties are considered Agricultural Land, according to OAR 660-033-0020(1). 60% of the soil types are considered High Value Farm Land. Aggregate mining is permitted in the EFU zoning district through a Conditional Use Permit on sites designated significant Goal 5 resources. The proposal to identify the properties as a significant Goal 5 resource and develop Goal 5 protection based upon an ESEE analysis by the applicant is the process which Goal 5 aggregate resources are balanced against Goal 3 agricultural resources. The ESEE analysis provides a balance of protection between Goal 3 and Goal 5 resources. Based upon the ESEE Analysis herein below and the evidence and testimony in the record, the Planning Commission finds protection of this significant Goal 5 resource does not conflict with Goal 3.

D) Goal 4, Forest Lands: The goal is to conserve forest lands.

FINDING: The soil class rating for forest production all of the soil types is 0. The applicant indicates the area is not considered Forest Land and is not near designated Forest Land. The applicant states the designation of the site for aggregate resource will have no significant impact on the conservation of forest lands in Jackson County. The Planning Commission concurs with the applicant's findings and adopts them as a basis to satisfy Goal 4 thereto.

E) Goal 5, Open Spaces, Scenic and Historic Areas and Natural Resources: The goal is to conserve open space and protect natural and scenic resources.

FINDING: The applicant has provided evidence regarding quality and quantity of the aggregate resources on the properties. The evidence suggests there is a significant Goal 5 aggregate resource on the properties. The Planning Commission finds the County's Goal 5 program for aggregate is acknowledged by the State of Oregon and the Planning Commission finds it has completed the Goal 5 process in accordance with this program and found the evidence and ESEE analysis sufficient to determine the location, quality, and

quantity of the aggregate resource establishes a significant Goal 5 aggregate resource and should be included on the County's Inventory of Signigicant Goal 5 aggregate resources.

F) Goal 6, Air, Water and Land Resources Quality: The goal is to maintain and improve the quality of the air, water and land resources of the state.

FINDING: The applicant states that, based upon the ESEE analysis, the County's aggregate operation standards and proposed conditions of approval are sufficient to minimize adverse affects on air, water, and land resources quality. The Planning Commission incorporates and adopts the applicant's findings thereto and further finds that compliance with applicable State agency regulations will assure compliance with Goal 6.

G) Goal 7, Areas Subject to Natural Hazards: The goal is to protect people and property from natural hazards.

FINDING: The Planning Commission finds that the only natural hazard to which the property is subject is flood hazards. This area contains a significant area of FEMA mapped floodplain associated with Bear Creek, Jackson Creek, and Willow Creek. Goal 7 as it applies to flood hazards is administered through the Comprehensive Plan and Section 7.1.2 of the LDO. The Planning Commission incorporates its findings of fact and conclusions of law demonstrating compliance with the applicable floodplain development standards in Section 7.1.2 herein below and based thereupon conclude Goal 7 is met.

H) Goal 8, Recreational Needs: The goal is to satisfy the recreational needs of the citizens of the state and visitors and, where appropriate, to provide for the siting of necessary recreational facilities including destination resorts.

FINDING: The Bear Creek Greenway runs through these properties and is part of Area of Special Concern 82-2 in the LDO and is an identified Goal 5 resource. The Planning Commission incorporates and adopts the ESEE analysis below and together with applicant's stipulation to provide a Greenway easement Goal 8 is found to be met.

Goal 9, Economic Development: The goal is to provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens.

FINDING: The applicant states the ESEE analysis addresses the economic consequences of allowing mining on the subject properties and the analysis outcome is that mining these sites is critical for economic development in Jackson County.

The Planning Commission finds economic development in Jackson County would be enhanced by the proposed aggregate operations on the subject properties because of the continued availability of aggregate products processed by this operation. Goal 9 is met.

J) Goal 10, Housing: The goal is to provide for the housing needs of citizens of the state.

FINDING: The applicant states the approval of the proposed mining operation assures future aggregate supply near future housing markets and this supports the Comprehensive Plan Housing Element's policies consistent with Statewide Planning Goal 10. The Planning Commission concurs with this assessment. Goal 10 is met.

K) Goal 11, Public Facilities and Services: The goal is to plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development.

FINDING: The applicant states impacts to public safety facilities and services will be minimal and the only critical utility services for an aggregate operation are water and electricity. Water needs for the operation are provided by an existing water right from Rogue River Irrigation District and is sufficient to provide for the water needs of the operation. Electricity is already available onsite. The Planning Commission concurs with the applicant's findings. Goal 11 is met.

H) Goal 12, Transportation: The goal is to provide and encourage a safe, convenient and economic transportation system.

FINDING: The Planning Commission incorporates and adopts its findings of fact and conclusions of law herein below demonstrating compliance with the Transportation System Plan facility adequacy test and the Oregon Transportation Planning Rule as being sufficient to conclude Goal 12 is met.

1) Goal 13, Energy Conservation: The goal is to conserve energy.

FINDING: The applicant indicates the ESEE analysis demonstrates that allowing mining near major markets will support Goal 13. Based upon applicant's findings, the Planning Commission finds the existing mining operation and the proposed problem are near major markets for aggregate and the proposed aggregate operation will not increase energy requirements in this area or for the County as a whole pool 13 is met.

J) Goal 14, Urbanization: The goal is to provide for an orderly and efficient transition from rural to urban land use.

FINDING: The applicant states the proposed mining operation helps to assure a future aggregate supply near urbanizing areas of White City, Central Point, Eagle Point and Medford and approval of the aggregate operation supports urbanization policies consistent with Goal 14. Based upon this locational finding, the Planning Commission Goal 14 is met.

K) Oregon Administrative Rule (OAR) 660, Division 16, Requirements and Application Procedures for Complying with Statewide Goal 5.

FINDING: OAR 660, Division 16 is addressed through the County's adopted and acknowledged Comprehensive Plan Map Designation Element and Mineral and Aggregate Resources Element, and the Land Development Ordinance. The Planning Commission incorporates and adopts applicant's purpose and intent statement at Record Page 148 as sufficient legal basis under which the County may and does apply Division 16 as implemented by the Jackson County Comprehensive Plan herein.

L) OAR 660-012-0060, TRANSPORTATION PLANNING, Plan and Land Use Regulation Amendments

FINDING: OAR 660, Division 12 is addressed through the County's adopted and acknowledged Comprehensive Plan Transportation Element and Transportation System Plan (TSP). The Planning Commission incorporates and adopts the evidence provided by applicant's Traffic Engineer and the opinion of the County Engineer and applicant's findings of fact and conclusions of law demonstrating compliance with OAR 660-012-0060.

2) JACKSON COUNTY COMPREHENSIVE PLAN:

This section addresses those plan elements and policies which are applicable to the requested map amendment.

- A) Map Designations Element: Aggregate Resource Land
 - i) <u>Map Designation Criteria:</u>
 - a) Significance Determination. The County shall analyze unormation relating to the location, quality and quantity of mineral and aggregate deposits. Information necessary to demonstrate the continuous of a resource shall include:
 - (1) A map and other written documentation sufficient to accurately identify the location and perimeter of the mineral or aggregate resource; and
 - (2) Information demonstrating that the resource deposit meets or can meet applicable city, County, state, or federal quality specifications for the intended use(s). Oregon Department of Transportation quality specifications for aggregate include: (1) the Los Angeles Rattler test for abrasion (AASHTO T96, OSHD TM 211—loss of not more than 30 percent by weight), (2) the Oregon Air Degradation test (OSHD TM 208—loss of not more than 20 percent by weight), and (3) the Sodium Sulfate Soundness test (OSHD TM 206—not more than 12 percent by weight). Information may consist of laboratory test

- data or the determination of a certified, licensed or registered geology professional, or other qualified person; and
- (3) Information demonstrating the quantity of the resource deposit as determined by exploratory test data or other calculation compiled and attested to by a certified, licensed or registered geology professional, or other qualified person.

FINDING: Maps have been submitted showing the location and perimeter of the aggregate resource. Evidence was initially submitted by the applicant from The Galli Group, Geotechnical Consulting, regarding quantity and later supplemented by evidence submitted by Kuper Consulting LLC, engineering geologists at record page 853 to 892; this evidence is incorporated and adopted by the Planning Commission. Policy 4, Subsection D of the Aggregate and Mineral Resources Element of the Comprehensive Plan states "For an aggregate site to be determined significant, the resource must possess a minimum of 100,000 cubic yards of minable reserves. This standard is not absolute; the county may consider the significance of a site based on unique circumstances even though the volume threshold may not be met." The Planning Commission incorporates and adopts as its finding with respect to resource quantity applicable to the entire project site the expert opinion of applicant's consulting geologist that, "there is approximately 4.0 million cubic yards of aggregate resource estimated to occur on the Rock-n-Ready property [subject application area]. Therefore the property exceeds the quantity criteria of 100,000 cubic yards required in the Jackson County Comprehensive Plan" (Record Page 864).

Three reports were submitted from the Oregon Department of Transportation Materials Laboratory for material from the subject properties, dated January 8, 2004. These tests noted the materials complied with ODOT quality specifications. The applicant states these standards are for bridge construction. The test results show the samples meet the criteria stated above for ODOT quality test OSHD TM 206, OSHD TM 208, and OSHD TM 211, as identified in the Map Designations Element and the Aggregate and Mineral Resources Element. The tests show the samples meet the criteria as a significant resource in the Comprehensive Plan. The samples were taken from the current aggregate operations stockpiles. This initial evidence was supplemented by evidence submitted by Kuper Consulting LLC, engineering geologists at record page 853 to 892; this evidence is incorporated and adopted by the Planning Commission. The Planning Commission finds there is substantial evidence in the record to find the site includes aggregate of sufficient quality to meet Jackson County Goal 5 aggregate resource requirements.

ii) Inventory. Based on the analysis of information relating to the location, quality and quantity of mineral and aggregate deposits, the County shall determine the inventory status of the resource site. Each site considered by the County shall be placed on one of three inventories based on the following criteria:

- a) If the resource site does not meet the definition of a significant resource in the Land Development Ordinance, the County shall include the site on an inventory of "Nonsignificant Sites"; or
- b) If information is not available to determine whether the resource site meets the definition of a significant resource as defined in the Land Development Ordinance, the County shall include the site on an inventory of "Potential Sites." Sites shall remain on the "Potential sites" inventory until such time as information is available to determine whether the resource site is significant; or
- c) If the resource site meets the definition of a significant resource, the County shall include the site on an inventory of "Significant Goal 5 Resource Sites."

FINDING: Based upon the quality and quantity information submitted by the applicant's experts herewith incorporated and adopted that the entire site is a cohesive geologic unit with substantial high quality reserves, all properties in the subject application that are not currently designated as significant aggregate resources are appropriately added to the Jackson County inventory of "Significant Goal 5 Resource Sites" as per the map attached to the Planning Commission's recommendation as Exhibit B.

iii) Identify Impact Area. For each site determined to be significant and to be included on the inventory of "Significant Goal 5 Resource Sites", the Impact Area shall be identified and mapped. The Impact Area shall be 1,500 feet unless increased or decreased based on analysis and findings developed in the course of the Goal 5 process.

FINDING: The Planning Commission finds the record contains testimony and evidence regarding the appropriate location of the impact area and ESEE analysis contents and that the Commission has developed analysis and findings in the course of the Goal 5 process as provided herein below and finds that there is nothing in its adopted analysis or findings upon which to base, much less require, an expansion or contraction of the impact area. Moreover, the Planning Commission incorporates and adopts applicant's record summary, argument, and conclusion at Record Pages 1567 to 1569 and the argument in Bullet Point 3 at Record Page 781 as adequate basis to explain why evidence in the record does not require the impact area be expanded.

- iv) Identify Conflicting Uses. For each site determined to be significant and to be included on the inventory of "Significant Goal 5 Resource Sites", conflicting uses, as defined in the Land Development Ordinance, shall be identified.
 - a) The identification of conflicting uses and other Goal 5 resources shall include uses in existence at the time of review, as well as the potential for the establishment of new conflicting uses. Identification of

potential conflicting uses shall be accomplished by analyzing the uses allowed in the adjacent zone(s).

b) If no conflicting uses are identified, the impact area designation shall not be applied to the property surrounding the resource site.

"To be identified as a conflicting use, the allowed aor allowable use must have a negative impact on the Goal 5 resource site. But also consistently with the rule's working, the negative impacts that a local government may consider in that regard are not limited to legal burdens that might arise from nuisance and trespass actions. Rather, the local government may consider any negative impacts of an allowable use, which can include, but is not limited to, impacts of a social, legal, economic, and environmental nature." Section 13.3(6)(a) defines a conflicting use as "A use which, if allowed, could adversely affect operations at a mineral and aggregate site, or could be adversely affected by extraction and processing activities at a significant mineral and aggregate site." Jackson County's definition of "conflicting use" does not agree with the Court of Appeal's decision in Hegele v. Crook County. Jackson County must use the Court of Appeal's decision regarding the definition of a "conflicting use", which is an allowed or allowable use that has a negative impact on a Goal 5 resource site.

The applicant has identified conflicting use on an area-wide basis and then two site-specific ESEE analyses that focus on specific conflicting uses that exist or have the potential to develop within a 1,500 foot impact area. The latter is based upon the natural division that Bear Creek has on the area and will be east and west of Bear Creek. Below are the identified conflicting uses on an area-wide basis.

Area-wide Conflicting Uses

Riparian Corridors of Bear Creek, Jackson Creek, and Willow Creek - Identified Goal 5 resources (Class 1 streams). Potential negative impacts on the aggregate site include limiting of mining areas and increasing removal and processing operation costs.

Wetlands - Bear Creek (Riverine), Various Palustrine Wetlands, and Vernal Pools in East and NE portion of the area. Potential negative impacts on the aggregate site include limiting of mining areas and increasing removal and processing operation costs. Wetlands are identified as a 1B resource (insufficient data). Mining operations were not identified as a conflicting use for wetlands in Jackson County's Goal 5 Background Document.

Groundwater Resources. The applicant states there are no groundwater quantity or problems known to exist beyond those generally present in the lower Bear Creek Basin. Groundwater resources are identified as a 1B resource (insufficient data) in the Goal 5 Document. Staff finds a potential exists to determine this is a conflicting use because of the possibility of a reduction in the amount of water output for wells

in the area. A reduction in water output in a well could result in litigation for the applicant and an increase in costs associated with aggregate operations.

Oregon Recreational Trails - Bear Creek Greenway. This is an identified Goal 5 resource. The applicant states this section of the trail is proposed, according to the Goal 5 Document and that no conflicts would be present if Greenway construction does not occur until completion of operation. The applicant also states the potential negative impacts on the aggregate site would be increased operations costs and complaint management.

Scenic Views and Sites - Bear Creek Greenway and Class 1 streams (Bear Creek, Jackson Creek, and Willow Creek). These are identified Goal 5 resources. Potential negative impacts on the aggregate site are limiting the mining areas and increased operation costs.

Residential Development - Residential zones and scattered farm and non-farm dwellings. Potential negative impacts on the aggregate site include increased operation costs, complaint management, reduced operating hours, and traffic conflicts.

Commercial Development - Interchange Commercial (IC) zoning district development, including but not limited to hotel/motel accommodations, eating and drinking establishments, campground/RV parks, parks/playgrounds, public safety services, and farm stands, bed and breakfast establishments. Potential negative impacts on the aggregate site are complaint management, reduced operating hours and traffic conflicts.

Farm Uses. The applicant indicates there are no noise and dust sensitive farm uses present in the area, primarily orchards and vineyards. Staff finds there is a nursery within the 1,500 foot impact area, as well as a dairy operation and an elk farm. These farm uses could by affected by the aggregate operations because of noise and dust impacts. The potential negative impacts on the aggregate site are reduction of elimination of the mining areas, additional buffering and landscaping, and increased dust and noise control measures.

Other Non-residential and Non-farm Uses. The applicant identifies some uses that are not present within the impact area such as golf courses, parks, schools, and day-care facilities, although these are not specifically limited types of non-residential and non-farm uses that could occur in the impact area. Potential negative impacts on the aggregate site include a reduction or elimination of mining areas, additional buffering and landscaping, and increased dust and noise control measures.

East Side of Bear Creek Conflicting Uses: The zoning districts are EFU and AR.

Residential Development. According to the applicant in Table 4 of their Exhibit 1, there are approximately 7 existing dwellings within the 1,500 foot existing and proposed impact areas. There are 5 properties which may have a potential for residential development. Potential negative impacts on the aggregate site include increased operation costs, complaint management, reduced operating hours, and traffic conflicts.

Goal 5 Resources - The existing Goal 5 resources include the Bear Creek Greenway, Bear Creek riparian area, wetlands, and intact vernal pools (wetlands), and adjacent aggregate operations. Potential negative impacts on aggregate operations are limiting the mining areas, increased operation costs, and complaint management.

Farm Uses. Existing farm uses include field farming and dairy farming. Potential farm uses would include the same activities as well as those activities included in the definition of "farm use" in the LDO, including wineries and vineyards. The potential negative impacts on the aggregate site are reduction or elimination of the mining areas, additional buffering and landscaping, and increased dust and noise control measures.

Groundwater Resources. Existing wells are associated with residences as well as farm uses. Those residences within the impact area can be assumed to have wells within the impact area. A potential of 5 other wells on the vacant properties may also be assumed. Potential negative impacts on aggregate operations are litigation resulting from a reduction in water output for a well and an increase in costs associated with aggregate operations.

Commercial Development. Commercial development is not know to exist within the impact area east of Bear Creek. Commercial activities in conjunction with farm use are possible for future development. Potential negative impacts on the aggregate site are complaint management, reduced operating hours and traffic conflicts.

Other Non-farm and Non-residential uses. No existing uses appear to be occurring within the impact area. The potential does exist for uses such as golf courses, parks, schools, and day-care facilities. Potential negative impacts on the aggregate site include a reduction or elimination of mining areas, additional buffering and landscaping, and increased dust and noise control measures.

West Side of Bear Creek: Zoning districts include EFU, AR, OSR, RR-5, UR-1, GI, and IC.

Residential Development. There are approximately 27 dwellings located within the 1,500 foot impact area. There are approximately 10 dwellings that could potentially be built. Potential negative impacts on the aggregate site include increased operation costs, complaint management, reduced operating hours, and coeffic conflicts.

Goal 5 Resources - The existing Goal 5 resources include the Bear Creek Greenway, Bear Creek riparian area, Willow Creek riparian, Jackson Creek riparian area, and wetlands and adjacent aggregate operations. Potential negative impacts on aggregate operations are limiting the mining areas, increased operation costs, and complaint management.

Farm Uses. Existing farm uses include a nursery, field farming, an elk farm, and other farming not specifically known. Potential farm uses would include the same activities as well as those activities included in the definition of "farm use" in the LDO, including wineries and vineyards. The potential negative impacts on the aggregate site are reduction or elimination of the mining areas, additional buffering and landscaping, and increased dust and noise control measures.

Commercial Development. Existing commercial development includes a small market, trucking company, nursery, and motocross track. There is a tax lot within the GI zoning district with many industrial buildings, although it is not known what types of activities are occurring within these buildings. There are 2 tax lots within the IC zoning district that are currently vacant. The potential exists for future commercial development within the GI and IC zoning districts. Potential negative impacts on the aggregate site are complaint management, reduced operating hours and traffic conflicts.

Other Non-farm and Non-residential uses. No existing uses appear to be occurring within the impact area. The potential does exist for uses such as golf courses, parks, schools, and day-care facilities. Potential negative impacts on the aggregate site include a reduction or elimination of mining areas, additional buffering and landscaping, and increased dust and noise control measures.

Groundwater Resources. Existing wells are associated with residences as well as farm uses. Those residences within the impact area can be assumed to have wells within the impact area. Potential negative impacts on aggregate operations are litigation resulting from a reduction in water output for a well and an increase in costs associated with aggregate operations.

- v) Analysis of Conflicting Uses. For each site determined to be significant, the economic, social, environmental and energy (ESEE) consequences of conflicting uses shall be analyzed.
 - a) The analysis shall be limited to uses and Goal 5 resources identified pursuant subsection D.
 - b) The analysis shall consider the consequences associated with protecting the mineral or aggregate resource, as well as extracting and processing the resource.

- c) The analysis shall determine the relative value or use of the mineral or aggregate resource site as compared to existing or potential conflicting uses.
- d) The analysis shall consider the consequences for both existing and potential conflicts, and shall consider opportunities to avoid and mitigate conflicts. The analysis shall examine:
 - (1) The consequences of allowing conflicting uses fully, notwithstanding the possible effects on surface mining operations:
 - (2) The consequences of allowing surface mining operations fully, notwithstanding the possible effects on conflicting uses;
 - (3) The consequences of protecting conflicting Goal 5 resources.

FINDING: The applicant has completed ESEE analyses based upon area-wide and site-specific areas east and west of Bear Creek. While the area-wide analysis is helpful, the Planning Commission concentrates on only the site-specific areas east and west of Bear Creek and the ESEE analysis and consequences of allowing conflicting uses fully, allowing surface mining fully, and consequences of protecting conflicting Goal 5 resources. The Planning Commission adopts and incorporates the applicant's review and analysis of conflicting uses, except as amended by the Commission's deliberations. Based upon that review and analysis, together with the requirements of the Land Development Ordinance and any additional discretionary conditions, the Planning Commission adopts the following ESEE analysis sufficient to implement Goal 5 for the site:

East Side of Bear Creek

Economic Consequences of Allowing Conflicting Uses Fully:

The economic consequences of limiting or eliminating aggregate operations are lost employment and increased scarcity of the commodity. The reduction or loss in production at these facilities would reduce employment opportunities and require other aggregate operations to replace the aggregate that is lost from this operation, with possible increase in costs because of the distance to markets.

Economic Consequences of Allowing Surface Mining Operations Fully:

Allowing aggregate operations to expand would cause farming operations to be reduced. There is a family run dairy operation as well as small to medium scale ranching and field farming activities. Because a portion of land owned by the Medina dairy farm is included in this proposal, the expectation is that

the loss of farm land will be offset by money received from the sale of the property used for aggregate operations and reinvested in the dairy farm without a significant increase cost or changes in farming practices. The Hilton property, tax lot 2600 in Section 28, will lose approximately one third of property to aggregate extraction and will result in at least a minor loss in farm income. The costs to other ranching and field farming activities will not be significantly increased nor will the aggregate operations force a significant change in farming practices.

Economic Consequences of Protecting other Goal 5 Resources:

The identified Goal 5 resources for the subject properties are the Bear Creek Greenway, Bear Creek and its riparian area, wetlands, and an area of intact vernal pools (wetlands). The intact vernal pools are not within the extraction area for aggregate operations and would not be affected. The wetlands and vernal pools are regulated by Division of State Lands and are designated a 1B resource, resources sites considered to be potentially important, but inadequate information is available to complete the Goal 5 process. The Bear Creek Greenway is an Outstanding Scenic Stream Corridor and is designated as a 3C area, which specifically limits conflicting uses. The riparian area of Bear Creek is administered through the LDO. Section 8.6.

The economic consequences of protecting these Goal 5 resources, whi would limit the extent of aggregate operations, would request the operations as well as the amount of aggregate materials available development purposes. Aggregate materials would need to come fit out sites which could increase the market value of the aggregate product for Jackson County as a whole.

Social Consequences of Allowing Conflicting Uses Fully:

The Planning Commission finds the aesthetic impacts from farm uses, limited residential development, commercial development in conjunction with farm use, and the presence of protected Goal 5 resources are more desirable than the impacts from aggregate operations.

Social Consequences of Allowing Surface Mining Operations Fully:

The social consequences of allowing expanded aggregate mining are noise, dust, and viewshed for conflicting uses, basically aesthetic values would be impacted by the aggregate mining. There are only 7 residences within the 1,500 foot impact area and parties to this application own 3 of these residences. The other residences are located over 1,200 feet from the nearest extraction area. There is already a large gravel pit to the north on tax lot 1300 in Section 21. Because of the topographic bench to the east and the

Bear Creek riparian corridor to the west, aesthetic impacts will be relatively slight. As aggregate removal and machinery move further below grade, aesthetic impacts will be reduced. Conditions which may help to mitigate the social impacts due to expanding the aggregate operations would include a protected riparian area from the banks of Bear Creek (applicant has proposed a 100 foot or more of setback from the stream bank), and an easement through the area for the Bear Creek Greenway (applicant has proposed such an easement).

Social Consequences of Protecting other Goal 5 Resources fully:

As was stated above, the presence of Goal 5 resources creates a more desirable aesthetic impact for this area than allowing the expansion of aggregate operations. The Bear Creek riparian area, wetlands, and vernal pools (wetlands) help to enhance aesthetic values of this area.

Environmental Consequences of Allowing Conflicting Uses Fully:

While farming activities are not generally associated with adverse environmental impacts, many farming uses are unregulated and could cause considerable environmental damage over time. Residential development, commercial activities in conjunction with farm use, golf courses, schools, etc., also have the potential for environmental damage, particularly to Bear Creek.

Environmental Consequences of Allowing Surface Mining Operations Fully:

Expanding the aggregate operations could have adverse environmental consequences to the Bear Creek riparian corridor, including impacts to hydrophytic vegetation, water quality, and fish habitat. Mitigation proposed by the applicant is a 100 foot or more setback from the banks of Bear Creek. Another mitigation measure could include aggressive riparian planting of the protected riparian area, as approved by Oregon Department of Fish and Wildlife (ODFW). Mining activities in Oregon include many environmental controls and regulations to reduce environmental impacts which are required by Department of Geology and Mineral Industries (DOGAMI), Department of Environmental Quality (DEQ), and ODFW.

There are also two Rogue Valley Sewer Service mainlines on the subject properties and failure of the mining operation to protect the waste disposal lines could have considerable environmental impacts. The applicant has proposed to RVSS a plan to protect the lines, including 50 foot mining setbacks from the lines.

Environmental Consequences of Protecting other Goal 5 Resources:

Protecting the identified Goal 5 resources would limit the area allowed for mining and possibly increase operational costs associated with mining. The Bear Creek riparian corridor, Bear Creek Greenway, wetlands, and vernal pool (wetlands) are environmental resources, with the Bear Creek Greenway being associated with the Bear Creek riparian corridor. Protecting these resources would limit adverse environmental impacts associated with aggregate operations.

Energy Consequences of Allowing Conflicting Uses Fully:

The expanded aggregate operations for the east side of Bear Creek include hauling and conveying aggregate over Bear Creek to take advantage of the existing processing facilities without additional energy inputs. Prohibiting or limiting aggregate extraction would require a new processing site and would not take advantage of the haul road and approved bridge infrastructure. A processing facility on the east side of Bear Creek would add distance to every load of aggregate hauled out of this operation, increasing energy costs and inputs.

Energy Consequences of Allowing Surface Mining Operations Fully:

Aside from post-mining reclamation inputs and mitigation inputs during mining operations, no adverse energy consequences are identified.

Energy Consequences of Protecting other Goal 5 Resources:

Protection of the identified Goal 5 resources could result in prohibiting expanded aggregate extraction from the east side of Bear Creek, not including tax lot 1900, which has been rezoned to allow extraction and processing. Prohibiting or limiting extraction would require a new processing site and increasing the transportation costs from production facility to market.

Relative Value or Use of the Aggregate Resource Site as Compared to Existing or Potential Conflicting Uses:

There are no acute land use conflicts in the area and the relative value of all ESEE factors for expanding aggregate extraction east of Bear Creek are strongly weighted towards allowing aggregate extraction over other existing or potential conflicting uses. There is a substantial quantity of high grade aggregate material to be used in concrete and asphaltic concrete production and with mitigation measures, adverse impacts to conflicting uses could be reduced to an acceptable level. OAR 660-016-00005 states, in part, "Where conflicting uses have been identified, Goal 5 resources may impact those sites." This indicates that the aggregate operations may indeed have an impact on conflicting uses within the impact area. The Planning Commission

finds the value of the aggregate resource does outweigh impacts to conflicting uses within the 1,500 foot impact area and that there is not substantial evidence in the record that explains how the outcome of the ESEE analysis would change significantly if the 1,500 impact area were altered.

With regards to other Goal 5 resources, under Policy 4 of the Comprehensive Plan Aggregate and Mineral Resources Element, "L" states "When analyzing the ESEE consequences of potential conflicts between significant mineral or aggregate resource and another significant Goal 5 resource, the county shall consider the protection program adopted for the conflicting resource. Conflicts with other natural resources shall not be the basis for mining restrictions unless the county has included or includes the conflicting resource on the inventory of significant Goal 5 resources, and has adopted or adopts a resource protection program." The Bear Creek Greenway and the Bear Creek riparian corridor are the only non-aggregate Goal 5 resources designated as significant resources in this area. With stipulations offered by the applicant for a Greenway trail easement and compliance with all applicable LDO standards and site-specific conditions required by the Planning Commission, the ESEE analysis is balanced toward allowing all aspects of the mining operation as depicted on the approved site and operations master plan map as amended by the Planning Commission (See Exhibit E attached to the Planning Commission's Recommendation); the applicant requested an amendment to Ordinance 95-61 to that would allow mining of Pit 2a and the Planning Commission finds that the potential for environmental and social impacts associated with this portion of the amendment request to that ordinance outweighs the value of aggregate mining in this area and based thereupon does not recommend an amendment to the ordinance to allow the mining of Pit 2a at this time.

The Planning Commission finds the aggregate resource and operations on the east side of Bear Creek should be designated a significant resource requiring protection under Jackson County's Goal 5 program for aggregate subject to applicable standards contained in the Land Development Ordinance, attached site specific conditions of approval, and approved site and operations master plan (See Exhibit E attached to the Planning Commission's Recommendation and Sections I, II, and IV of applicant's Exhibit 4 beginning at Record Page 330).

West Side of Bear Creek

Economic Consequences Allowing Conflicting Uses Fully:

Eliminating or limiting aggregate operations would result in lost employment opportunities and reducing the available aggregate resource in this area. This could cause an increase in transportation costs if material must be replaced

from another site that may not have existing infrastructure in place. There are several vacant and undeveloped parcels controlled by Rock 'N' Ready and providing Goal 5 protection and AR zoning for these lots will open opportunities for extraction and accessory aggregate operations where they now serve only to prevent incompatible uses from siting near the aggregate operations.

Economic Consequences of Allowing Surface Mining Operations Fully:

When tax lot 1900 was rezoned to AR by Ordinance 95-61, no extraction was allowed west of Bear Creek. There may be lost economic opportunities from noise and dust sensitive uses should extraction activities be allowed west of Bear Creek. There is a single vacant residentially zoned tax lot within the impact area applied through Ordinance 95-61. A Conditional Use Permit (Type 3 application) and approval of that application would be required to build a dwelling on that tax lot. The lost opportunities for new residential development would be minimal.

There are, however, existing residential development that could experience an increase in noise, dust, and viewshed impacts due to extraction and new processing activities on the west side of Bear Creek. The applicant has proposed six foot landscaped berms along Blackwell Road and around Pit 3, which will help reduce noise and viewshed impacts, and dust control procedures. There will be an increase in impacts, however slight or adverse, to existing residential development regardless of mitigation measures proposed by the applicant and incorporated as conditions of approval. The Planning Commission finds that these impacts are likely to be most acute in the southwest corner of the proposal (TL's 800, 900, 1200, 1300, and 1500) because of the immediate vicinity of two residential units zoned for residential use.

With regards to farm uses in this area, the EFU lands are well suited to agricultural production, but the predominant farm uses are not noise or dust sensitive. West of Bear Creek, there area three farming operations currently in production. South of the existing extraction operation on tax lots 1101/2604 is the Von der Helen farm, which is a field farming operation. These farming activities appear to have continued without changes over the last six years and that the mining activities and extraction areas on tax lots 800, 900, 1200, 1300, and 1500 would expected to result in a net decrease from the current impacts from mining operations on tax lots 1101/2604, which will be reclaimed prior to opening Pit 4. Southwest of the existing extraction area is the Hong farm, which is also a field farming operation and appear to be similar to the Von der Helen operations. There appear to have been no change in farming activities due to existing aggregate operations in the last six years. There will be a modest increase in current impacts from aggregate operations and

accessory mining activities associated with proposed Pit 3 following reclamation of the pit on tax lot 1101/2604.

The third farming operation involves the Walker elk ranching operation. The operation breeds and raises elk and includes properties on the west and east sides of Blackwell Road. The portion of the ranching operations east of Blackwell Road on tax lot 2600 in Section 28 will be most impacted by the proposed AR zoning and aggregate operations. This tax lot has aggregate hauling and extraction on the east boundary with the principal extraction area to the southeast. North and northeast of tax lot 2600 are the existing preprocessing area, stockpiling areas, and the concrete batch plant. To the west of these existing operations are the proposed pre-processing areas, stockpiling areas, and an asphaltic batch plant. The accessory mining activities and extraction area associated with Pit 3 will cause no net increase in current impacts from existing mining operations because the screening will have reached maturity prior to extraction in accordance with the phasing plan. A 200 foot setback from aggregate operations on tax lot 1800 has been maintained as well as a similar setback on tax lot 1700. This buffering has been sufficient for the elk ranch over the past six years and that approval of the proposed mining operations and AR zoning would not be expected to result in new impacts that would significantly increase the cost of or significantly alter the ranching operations. The proposed AR zoning is unlikely to significantly increase the cost of farming practices or force a significant change in the farming practices on other less intensive agricultural operations in the existing and proposed impact areas west of Bear Creek.

There will be impacts to existing farming operations in this area. Mitigation measures such as dust control and landscaped berms proposed by the applicant will help to reduce impacts on farming activities. Staff recommended a 200 foot setback from the elk ranch boundaries for aggregate extraction activities associated with Pit 3 in its initial report, similar to the setback maintained on tax lot 1800.

Economic consequences associated with the GI zoning districts in the area are expected to be no more than minimal because industrial uses are high impact uses that either do not conflict with aggregate uses or would conflict at level that could be addressed at the site design stage. With respect to commercial uses in the small IC zoned parcel there are some uses that could be considered conflicting uses allowed in that zone. However, these are generally uses that could locate elsewhere in the County where conflicts are less acute and there are still uses allowed in the zone where conflicts could be balanced through the County's standard site development approval process with minimal consequences.

Economic Consequences of Protecting other Goal 5 Resources:

The Goal 5 resources associated with the west side of Bear Creek include the Bear Creek Greenway, Bear Creek and Jackson Creek riparian areas, and wetlands. Protection of these Goal 5 resources would limit the extraction areas for Pit 3 particularly. The applicant states that the Comprehensive Plan Goal 5 Background Document, pages 23-26, conclude that aggregate operations are a permitted use in the Bear Creek Greenway, provided the aggregate operations are a permitted use in the primary zoning district. The Jackson County Land Development Ordinance requires a Type 3 approval process. This concurrent application has been conditionally approved. The Bear Creek riparian area is subject to development standards in the LDO requiring at least a 50 foot riparian setback. The evidence indicates this setback can feasibly be met and will be exceeded for all of Pit 2 along Bear Creek. Wetlands are regulated by the Division of State Lands and evidence from DSL regarding approval of development within these wetlands will be a condition of approval prior to development within the wetlands. The Planning Commission finds that mitigation can be provided through the concurrent Type 3 application, LDO requirements, and DSL review.

Social Consequences of Allowing Conflicting Uses Fully:

The Planning Commission finds that farm uses, particularly near Pit 3, have been operating without the appearance of significant adverse impacts associated with current mining operations. Eliminating or limiting mining on the west side of Bear Creek would reduce affects of dust on farm uses and the deterioration of the viewshed due to mining operations.

Commercial development in the appropriate zoning districts would affect the mining operations should their presence limit or eliminate mining operations. Eliminating or limiting mining on the west side of Bear Creek would reduce affects of dust on commercial development and the deterioration of the viewshed due to mining operations, as well as a reduction affects produced by noise of the aggregate operation.

Eliminating or limiting mining on the west side of Bear Creek would reduce affects of dust and noise on residential development and the deterioration of the viewshed due to mining operations. The proposed dust control measures and landscaped berms would help reduce affects on residential and commercial development as well as farm uses

Social Consequences of Allowing Surface Mining Operations Fully:

The primary social consequences of allowing expanded aggregate operations fully would be dust, noise, deterioration of the viewshed, and smells from the asphaltic concrete batch plant. The applicant states the most serious land use conflicts would be on dwellings. There are approximately 25 residences

located within the impact area. Many of the social consequences are already occurring due to the existing aggregate operations on tax lot 1800, tax lots 1101/2604, and tax lot 1300 in Section 21 (Crater Sand & Gravel). Significant land use conflict intensification in not expected because of existing mining operations. The aesthetic impacts from the proposed aggregate operations on the west side of Bear Creek have the potential to be significant. This is because the existing residences are mostly concentrated on the east slope of the small hill on the west side of Blackwell Road, which overlooks the subject properties and proposed aggregate operations. Without screening, these residences would experience significant visual impacts. The applicant has proposed landscaped berms along Blackwell Road to help reduce noise and visual impacts, although the noise and visual impacts cannot be mitigated entirely.

Social Consequences of Protecting Goal 5 Resources:

Significant Goal 5 resources on the subject properties are the Bear Creek Greenway and the Bear Creek, Willow Creek and Jackson Creek riparian corridors. The applicant has proposed a setback from the banks of Bear Creek to protect the riparian corridor. This setback is approximately 100 feet from the bank, although not through the entire corridor on the subject parcels. The LDO provides for a minimum setback of 50 feet from the bank. The social consequences would be on the viewshed for the riparian corridor. The mining operations would not be affected significantly and the proposed setback by the applicant is greater than required by the LDO. Minimal impacts to the aggregate operations would occur if the riparian corridor of Bear Creek were fully protected. Staff recommended a similar setback from the banks of Jackson Creek be determined as a condition of approval in the initial staff report. At least a 50 foot setback from the bank should be required.

The Bear Creek Greenway has a limited area west of Bear Creek. Pit 4 would be most affected should the Greenway be protected fully, although the affect would be minimal. Protecting the Greenway fully would not significantly affect the mining operations on the west side of Bear Creek.

Environmental Consequences of Allowing Conflicting Uses Fully:

Reclamation of the aggregate pits of the west side of Bear Creek will create new waterfowl habitat and the extention of the Bear Creek Greenway. Limiting or eliminating aggregate operations may encourage the conversion of lands to alternative uses that may be more conflicting than aggregate operation.

The environmental consequences of allowing conflicting uses fully would be the protection of the stream corridors, fish habitat, and affects of dust and noise. The proposed mitigation measures for dust control, landscaped berms to reduce noise, and setbacks from stream banks will help to reduce these consequences to levels required by federal, state, and local agencies.

Environmental Consequences of Allowing Surface Mining Operations Fully:

Adverse environmental impacts are most likely to occur in the Bear Creek Willow Creek, and Jackson Creek riparian corridor. Hydrophytic vegetation water quality, and fish habitat could all be negatively impacted.

The Planning Commission finds that although negative impacts abuse occur by the expansion of aggregate operations to the west side of Bear Creek, requirements and regulations from federal, state, and local governmental agencies must be complied with prior to the begin and of operations. These requirements help reduce adverse environmental impacts.

Environmental Consequences of Projecting other Goal 5 Resources Fully:

The significant Goal 5 remaines which are protected are the Bear Creek Greenway and the openion areas for Bear Creek, Jackson Creek, and Willow Creek. Limiting or eliminating mining to protect these resources could restrict mining to the east side of Bear Creek and allow only existing operations to continue on the west side of Bear Creek. The balance for protecting conflicting Goal 5 resources is found in the LDO requirements for riparian corridor protection and the Type 3 review process for the Bear Creek Greenway. The Planning Commission finds that these resource protection programs in the LDO provide the proper balance between conflicting Goal 5 resources.

Energy Consequences of Allowing Conflicting Uses Fully:

The Planning Commission finds that allowing conflicting uses fully by limiting or elimination expanded aggregate operations to the west side of Bear Creek could increase energy requirements to mine, process, and distribute aggregate materials to needed construction sites. This is due to locating aggregate operations in areas which are not as well situated to provide for efficient aggregate extraction, processing, and distribution.

Energy Consequences of Allowing Surface Mining Operations Fully:

Aside from post-mining reclamation and mining inputs during mining operations, no adverse energy consequences area anticipated.

Energy Consequences of Protecting other Goal 5 Resources Fully:

Protecting Goal 5 resources fully could limit or eliminate mining operations on the west side of Bear Creek. The energy consequences could increase energy requirements to mine, process, and distribute aggregate materials because of locating aggregate operations in other areas. Goal 5 resource are protected through requirements for development within riparian corridors and the Bear Creek Greenway.

Relative Value or Use of the Aggregate Resource Site as Compared to Existing or Potential Conflicting Uses:

The Goal 5 language in Division 16 states "In conjunction with the inventory of mineral and aggregate resources, sites for removal and processing of such resources should be identified and protected." Prohibition of any extraction west of Bear Creek, failure to recognize the area west of Bear Creek as a significant aggregate resource site, and protecting existing operations and activities would not result in a balance that is consistent with Jackson County's aggregate policies and Statewide Planning Goal 5. This area west of Bear Creek has a greater concentration of conflicting land uses. Full preservation of the proposed aggregate resources and mining operations with little or no limitations would also result in a balance that is not consistent with Jackson County's aggregate policies and Goal 5. The Map Designations Element of the Comprehensive Plan specifically provides for balance between allowing conflicting uses folly and allowing aggregate mining operations fully by the incorporation of site descrippment requirements into the ordinance designating the significant site.

As the Planning Commission deliberated through ESEE analysis placess, the Commission found that some, but not all, of the applicant's requests applicable to the west side of Bear Creek represent an attention below to the balance of conflicting uses. The more northern portion of the requests applicable to Tax Lots 1700, 1800, 1900 (amendment of ordinance 95-61), 1400 and 1303 were found to meet the requirements of Jackson County's aggregate program with conditions of approval, proposed phasing plan, and screening. However, the Planning Commission's analysis raised concerns regarding the timing and extent of conflicting uses in the southwest corner of the project area. The Planning Commission recognizes that this area is intended in the Master Site and Operations Plan proposed by the applicant to be mined in the distant future and that land use changes in the interim may reduce the acute conflicting uses that presently exist. The Commission further recognizes that the site contains significant aggregate reserves such that failure to provide any protection under the Comprehensive Plan would not adequately balance this valuable resource against the conflicting uses in the area. Thus, the Planning Commission elects to balance the conflicting uses for Tax Lots 800,

900, 1200, 1300, and 1500 by designating the site significant, establishing an impact area, and designating these lots Aggregate Resource Land on the Comprehensive Plan, but not by rezoning these parcels to Aggregate Removal at the present time, because the Commission finds the level of social and economic impacts on the two immediately adjacent residences, and the elk farm to a lesser degree, too acute to warrant re-zoning at this time.

With regards to other Goal 5 resources, under Policy 4 of the Comprehensive Plan Aggregate and Mineral Resources Element, "L" states "When analyzing the ESEE consequences of potential conflicts between significant mineral or aggregate resource and another significant Goal 5 resource, the county shall consider the protection program adopted for the conflicting resource. Conflicts with other natural resources shall not be the basis for mining restrictions unless the county has included or includes the conflicting resource on the inventory of significant Goal 5 resources, and has adopted or adopts a resource protection program." The Bear Creek Greenway Creek riparian corridor are the only Goal 5 resources designate resources in this area. The applicant states that the Comprehensive Plant Goal 5 Background Document, pages 23-26 conclude that aggregate operations are a permitted use in the Bear Creek Greenway, provided the aggregate operations are a permitted use in the primary zoning district. The Jackson County Land Development Ordinal De requires a Type 3 approval process. This concurrent opplication. been conditionally approved. The Bear Creek riparian and is subject to provelopment standards in the LDO requiring at least a 50 foot riparian setback. The applicant indicates this setback can feasibly be met and will be exceeded for most of the site along Bear Creek.

The Planning Commission finds the aggregate resource and operations on the west side of Bear Creek should be designated a significant resource requiring protection under Jackson County's Goal 5 program for aggregate subject to applicable standards contained in the Land Development Ordinance, attached site specific conditions of approval, and approved site and operations master plan for the area re-zoned to Aggregate Removal and that the areas not re-zoned at this time will benefit from protection as a significant resource subject to additional approvals that may occur at such time as the conflicting use conditions can be addressed in a manner acceptable to the County.

ESEE CONCLUSIONS

Based upon the applicant's land use review and analysis and with those amendments discussed herein above, the Planning Commission concludes its foregoing ESEE analysis will adequately balance the relative value of conflicting uses and the aggregate resource sufficient to satisfy and implement Jackson County's Goal 5 program for aggregate for the subject The subject properties are designated a '3C' site; the '3C' program determines that both the resource site and the conflicting uses are important relative to each other, and that the ESEE consequences should be balanced so as to allow the conflicting uses in a limited way so as to protect the resource site. Based upon its ESEE analysis above, the Planning Commission concludes the proposed aggregate uses east of Bear Creek will be relatively unconstrained by conflicting land uses, but should be balanced against competing Goal 5 resources, specifically the Bear Creek Greenway and the Bear Creek riparian corridor and is therefore protected as a '3C' site and the same will be accomplished through adherence to the approved site and operations master plan, requirements of the LDO, and discretionary conditions adopted by the Planning Commission. Based upon its ESEE analysis above, the Planning Commission concludes the proposed extraction area west of Bear Creek is more constrained by conflicting land uses, but should be balanced against competing Goal 5 resources and conflicting land uses subject to applicable standards contained in the Land Development Ordinance, attached site specific conditions of approval, and approved site and operations master plan for the area re-zoned to Aggregate Removal and that the areas not re-zoned at this time will benefit from protection as a significant resource subject to additional approvals that may occur at such time as the conflicting use conditions can be addressed in a manner acceptable to the County.

- vi) Decision on Program to Provide Goal 5 Protection. Based on the analysis of ESEE consequences, the County shall make a determination on the level of protection to be afforded each site. Each determination shall constitute a decision to comply with Goal 5 for the specific site, and shall be incorporated into the Comprehensive Plan, and reflected on the County zoning maps, as appropriate. The County shall make one of the following determinations:
 - a) Protect the resource site fully, allow surface mining. To implement this decision the County shall apply the Aggregate Removal zone. Development and use of the mineral or aggregate resource shall be governed by the standards within the Land Development Ordinance. As part of the final decision, the County shall adopt site-specific policies prohibiting the establishment of conflicting uses within the area designated as the Impact Area surrounding the Extraction Area.
 - b) Balance protection of the resource site and conflicting uses, allow surface mining. To implement this decision, the County shall apply the Aggregate Removal zone. Development and use of the mineral or aggregate resource shall be governed by the standards in the Land Development Ordinance and any other site-specific requirements designed to avoid or mitigate the consequences of conflicting uses

and adopted as part of the final decision. Development of conflicting uses within the Impact Area shall be regulated by the Land Development Ordinance and any other site-specific requirements designed to avoid or mitigate impacts on the resource site and adopted as part of the final decision.

c) Allow conflicting uses, do not allow surface mining. To implement this decision, the County shall not apply the Aggregate Removal zoning district. The site will not be afforded protection from conflicting uses, and surface mining shall not be permitted except through the permit review process in the Land Development Ordinance.

FINDING: The Based upon the applicant's land use review and analysis and with those amendments discussed herein above, the Planning Commission concludes its foregoing ESEE analysis will adequately balance the relative value of conflicting uses and the aggregate resource sufficient to satisfy and implement Jackson County's Goal 5 program for aggregate for the subject properties. The subject properties are designated a '3C' site; the '3C' program determines that both the resource site and the conflicting uses are important relative to each other, and that the ESEE consequences should be balanced so as to allow the conflicting uses in a limited way so as to protect the resource site. Based upon its ESEE analysis above, the Planning Commission concludes the proposed aggregate uses east of Bear Creek will be relatively unconstrained by conflicting land uses, but should be balanced against competing Goal 5 resources, specifically the Bear Creek Greenway and the Bear Creek riparian corridor and is therefore protected as a '3C' site and the same will be accomplished through adherence to the approved site and operations master plan, requirements of the LDO, and discretionary conditions adopted by the Planning Commission. Based upon its ESEE analysis above, the Planning Commission concludes the proposed extraction area west of Bear Creek is more constrained by conflicting land uses, but should be balanced against competing Goal 5 resources and conflicting land uses subject to applicable standards contained in the Land Development Ordinance, attached site specific conditions of approval, and approved site and operations master plan for the area re-zoned to Aggregate Removal and that the areas not re-zoned at this time will benefit from protection as a significant resource subject to additional approvals that may occur at such time as the conflicting use conditions can be addressed in a manner acceptable to the County.

vii) Establishment of Zoning District:

The Aggregate Removal (AR) zoning district will be applied when an aggregate site plan consistent with the requirements of this Section has been approved by the County. The site plan will be adopted by ordinance concurrent with the map designation amendment and zone change application. The approving ordinance will serve as the development ordinance for land uses on the subject property.

FINDING: The Planning Commission interprets this criterion to require the adoption of a site and operations plan that contains sufficient specificity to complete the ESEE analysis and implement a Goal 5 protection program for the site. The Planning Commission finds that such a plan was offered by the applicant, has been amended by the Commission through the Goal 5 review, and the Commission has approved such a plan; the approved plan is constituted by the plan map attached to the Planning Commission's Recommendation as Exhibit E, the attached conditions of approval, and Sections I, II and IV of applicant's Exhibit 4.

B) Aggregate and Mineral Resources Element

i) Policy 1:

Minerals are recognized as a nonrenewable and necessary resource that must be protected from incompatible development and be available for mining.

FINDING: The Planning Commission finds that the location, quality, and quantity data indicate the aggregate resources on the subject properties are a significant Goal 5 aggregate resource. A Goal 5 protection program compliant with OAR 660, Division 16 is included in this report.

ii) Policy 2:

The County shall protect and conserve aggregate resources, reduce conflicts between aggregate operations and adjacent land uses, and ensure that aggregate resources are available for current and future use.

FINDING: The Comprehensive Plan findings supporting this policy state that sensitive agricultural areas are often located near key deposits of concrete aggregates, sand, and gravel, on high and low floodplains and terrace lands. One of the specific areas identified in these findings is the lower Bear Creek floodplain. This area contains one of the largest deposits of sand and gravel within an economical distance of the urbanizable areas of White City, Central Point, and Medford. These same floodplains are also classified as agricultural land by statewide planning goal definition. The ESEE analysis shows the subject properties are not constrained by noise and dust sensitive agricultural operations on surrounding lands, although aggregate operation may impact adjacent agricultural activities. The Planning Commission incorporates and adopts its ESEE analysis above and finds it is a site specific analysis that will protect and conserve aggregate resources, reduce conflicts between aggregate operations and adjacent land uses, and ensure that aggregate resources are available for current and future use.

iii) Policy 3:

Emphasis will be placed on the zoning of lands for aggregate resource purposes near each urban center and key rural community in the County.

FINDING: The Planning Commission finds the subject properties are well situated near the urban centers of White City, Central Point, and Medford.

iv) Policy 4:

When an aggregate site is no longer suited for aggregate operations, a change from aggregate resource zoning to another zoning designation is desirable. The proposed zoning must be consistent with the Comprehensive Plan ordinances, and reclamation plan.

FINDING: The Planning Commission finds that is has contemplated uses such as Greenway trail extension and future reclamation of the site, but that application of this policy with respect to specific land uses will be deferred until the depletion of aggregate resources is more readily anticipated.

v) Provisions A through U are criteria that are implemented through various other sections of the Jackson County Comprehensive Plan and Land Development Ordinance, and ESEE process.

FINDING: The Planning Commission incorporates and adopts applicant's conclusions of law addressing provisions A through U except as amended in the ESEE analysis above, sufficient to find the minor Comprehensive Plan Map amendment complies with these criteria.

C) Transportation Element

The Jackson County Transportation Plan (TSP) is acknowledged as being consistent with the Transportation Planning Rule. Applicable policies of the TSP are addressed below.

i) Safety Policies

a) The County will provide a transportation system that supports emergency access for emergency vehicles and provides for evacuation in the event of a wildfire hazard or other emergency.

Strategies:

(1) Establish and maintain land development ordinance regulations that assure minimum emergency vehicle access standards are provided for all development. These standards should provide base-line safety protections that are related to

the total amount of development that would use the access in the event of an emergency.

FINDING: Emergency vehicle access standards are addressed in the site plan review and a condition of approval will require compliance with the standards of Section 8.7 of the LDO.

b) Public Safety will be a primary consideration in the planning, design, and maintenance of all Jackson County Transportation Systems. (RTP 16-4)

FINDING: A Traffic Impact Study has been submitted for access from Blackwell Road. The conclusions of the study require a southbound left turn lane from Blackwell Road when the asphaltic batch plant is built. The left turn lane will be located at the existing access. A new access road is proposed 1,400 feet south of the existing access. The new access to the asphaltic batch plant will be a "Right Turn In Only." This new access will be a one-way street circulation for a more efficient and safe operation. Trucks will exit from the existing main entrance.

Jackson County Roads has reviewed the Traffic Impact Study and concurs with its findings. In its deliberation, the Planning Commission determined it appropriate to get preliminary approval of the left-turn lane and determine the need for any new right of way prior to design and installation of the berms along Blackwell Road and the conditions of approval reflect the same. The Planning Commission incorporates and adopts the findings of applicant's TIS as evidence sufficient to establish minimum transportation safety standards will be maintained.

c) Maintain clear vision areas (sight triangle) adjacent to intersections so as not to obstruct the necessary views of motorists, bicyclists, and pedestrians. (RTP 16-3)

Strategies:

(1) Maintain development ordinance regulations that will assure adequate sight distances at intersections.

FINDING: The Traffic Impact Study states there is adequate sight distance at the existing main entrance.

ii) Transportation and Land Use Coordination Policies

a) The County will prohibit new or expanded development proposals with the potential to prevent placement of, or significantly increase the cost of, designated transportation connections in the TSP.

Strategies:

(1) Establish and maintain development review procedures that will prevent conflicts between development and future transportation facilities and connections.

FINDING: The TIS states that the proposal will not conflict with future transportation facilities and connections, specifically the Seven Oaks Interchange, which has an approved and funded up-grade with a completion date scheduled for the fall of 2008.

b) Plan amendments, zone changes and type 3 and 4 land use permits need to demonstrate that adequate transportation planning has been done to support the proposed land use.

Strategies:

- (1) Inside urban growth boundaries, demonstration of adequate transportation facilities for a land-use action should defer to the city's adopted Transportation System Plan; this deference should occur in accordance with any applicable provisions in the Urban Growth Management Agreement between the particular city and the County. Absent an adopted Transportation System Plan for the applicable city, land use actions related to transportation planning and transportation project decisions will be hased on the Jackson County, Transportation System Plan; application of the County i SP in this situation should account for any applicable provisions in the Urban Growth Management Agreement between the particular city and the County.
- (2) Ensure that legislative land use changes will not result in land uses that are incompatible with the public transportation facilities they will use through compliance with, and direct application of, OAR 660 Division 12.
- (3) Ensure that quasi-judicial comprehensive plan changes, zone changes and type 3 and 4 land use permits will not result in land uses that are incompatible with the public transportation facilities they will use. To meet this requirement, criteria "i, ii and iii" below must be demonstrated to be met through a Transportation Impact Study (TIS) completed by a registered professional engineer with expertise in transportation. Compliance with criteria "i, ii and iii" will be considered sufficient to demonstrate compliance with the Transportation Planning Rule. The TIS requirement may be waived if the Planning Director and the County Engineer administratively concur in writing that sufficient specific evidence is provided

from affected transportation management agencies that the cumulative effect of approving the proposed plan amendment, zone change or type 3 or 4 land use permit, along with the potential for similar approvals on similarly situated parcels within 2 miles (.75 miles in the MPO) of the subject parcel (or portion of the parcel that is requesting the land use change or permit), will not significantly affect a transportation facility identified in State, regional or local transportation plans (RTP 6-1).

- (a) Approval of the proposed changes and the cumulative impact of the potential for similar approvals on parcels within 2 miles (.75 miles in the MPO) of the subject parcel would not change the functional classification of an existing or planned transportation facility nor would it change standards implementing the functional classification system (unless the change can be made in conjunction with a TSP amendment pursuant to policy 4.3.3-D).
- (b) Approval of the proposed changes and the cumulative impact of the potential for similar approvals on parcels within 2 miles (.75 miles in the MPO) of the subject parcel would not allow types or levels of land uses that would result in levels of travel or access inconsistent with the functional classification of a transportation facility (unless a functional class change is made pursuant to policy 4.3.3-D).
- (c) Approval of the proposed land use changes and the cumulative impact of the potential for similar approvals on parcels within 2 miles (.75 miles in the MPO) of the subject parcel would not cause a facility to exceed the adopted performance standards for facilities used by the subject parcel. A facility used by the subject parcel is defined as any facility where approval of the proposed land use changes and the cumulative impact of the potential for similar approvals on parcels within 2 miles (.75 miles in the MPO) of the subject parcel would increase traffic on a facility by more than 3% of the total capacity for collectors and/or 2% of

the total capacity for arterials and state highways. ODOT may determine that the subject parcel, beyond this definition and in accordance with the Oregon Highway Plan, will use additional state facilities.

FINDING: Jackson County has signed a capacity analysis waiver dated August 26, 2005. The waiver stipulates to a safety analysis, which has been completed and submitted. The proposed Comprehensive Plan map and Zoning Map Amendment will not change the functional classification of any existing or planned transportation facility nor will it change standards implementing the County's functional classification system. The left turn lane mitigation will assure the project will not create or worsen a safety problem on Blackwell Road.

- (4) Projects proposed in the TSP towards the end of the planning horizon cannot be relied on for quasi-judicial plan amendments, zone changes or type 3 and 4 land use permits. TSP projects on state highways cannot be relied on unless in an adopted STIP. TSP planned projects may have to be altered or cancelled at a later time to meet changing budgets or unanticipated conditions such as environmental constraints. However, quasi-judicial plan amendments, zone changes or type 3 and 4 land use permits may demonstrate compliance with strategy "c." based on planned facility improvements under the following circumstances (and provided that an additional comprehensive plan amendment is not required as part of project development such as an ESEE):
 - (a) For ODOT facilities within the MPO, projects that are in the short and/or medium range Regional Transportation Plan (RTP) Tier 1 project list. For ODOT facilities outside the MPO, projects that are programmed into the STIP. (An alternate strategy for an ODOT facility may be to coordinate with ODOT on a change to the applicable Highway Plan requirements)
 - (b) For County facilities outside the MPO and local county facilities in the MPO, projects that are in the financially constrained TSP projects list and are in either the short and/or medium range Tier 1 lists.
 - (c) For regionally significant County facilities within the MPO, the facility must be in either the short and/or medium range RTP Tier 1 lists.

FINDING: This criteria does not apply to this application.

(5) If a concurrent quasi-judicial TSP amendment is submitted (See Policy 4.3.3-D) with the proposed comprehensive plan amendments and/or zone changes, the actions may be considered together. If the TSP amendment can be made then any changes included in the TSP amendment may be counted under section d for compliance with section c.

FINDING: This criterion does not apply.

c) Regardless of whether adequate capacity exists, changes in land use and new or expanded development proposals will not be approved if they will create, or would worsen, a safety problem on a public transportation system or facility. If a problem would be created or worsened without mitigation, then a mitigation plan that resolves the safety concern must also be approved and included in the proposal in order for the land use change and/or development proposal to be approved. Where a safety concern exists, study by a registered professional engineer with expertise in transportation will be considered to determine if a problem would be created or worsened.

FINDING: The TIS identifies a traffic safety concern and proposes mitigation by creating a southbound left turn lane into the existing main entrance once the asphaltic concrete batch plant is completed and a new access road with a "Right Turn In Only" for efficient and safe operation. Jackson County Roads has reviewed the Traffic Impact Study and concurs with its findings. In its deliberation, the Planning Commission determined it appropriate to get preliminary approval of the left-turn lane and determine the need for any new right of way prior to design and installation of the berms along Blackwell Road and the conditions of approval reflect the same. The Planning Commission incorporates and adopts the findings of applicant's TIS as evidence sufficient to establish minimum transportation safety standards will be maintained.

3) COMPLIANCE WITH THE LAND DEVELOPMENT ORDINANCE

A) Section 3.7: Any amendment must comply with all applicable Statewide Planning Goals, Oregon Administrative Rules and the Comprehensive Plan as a whole.

FINDING: Findings have been made regarding the Statewide Planning Goals, Oregon Administrative Rules and the Comprehensive Plan as they apply to this application. The Planning Commission finds the proposed land use changes comply with the adopted and acknowledged Comprehensive Plan and incorporate and adopt the Commission's findings of fact and conclusions of law demonstrating compliance with the Statewide Planning Goals Oregon Administrative Rules and the Comprehensive plan herein above.

Section 3.7.3(C), <u>Minor Comprehensive Plan or Zoning Map Amendments (Quasi-Judicial)</u> establishes procedures, standards, and criteria for minor map amendments.

i) Adequate public safety, transportation, and utility facilities and services can be provided to the subject property. In the case of a minor zoning map amendment, adequate transportation facilities must exist or be assured.

FINDING: The only critical utility services for the aggregate operation are water and electricity. The applicant has an existing water right from the Rogue River Irrigation District to provide for the water needs of the operation. Electricity is available onsite. The operation accesses a collector road, Blackwell Road and the existing capacity of Blackwell Road will not be exceeded by the proposed aggregate operations.

ii) The minor map amendment will not prevent implementation of any area of special concern or restrictions specified for that area in Chapter 7 or the adopting ordinance creating it, or both.

FINDING: The Planning Commission finds that portions of the subject properties contain Area of Special Concern 82-2, the Bear Creek Greenway. Aggregate operations and the Bear Creek Greenway are competing Goal 5 resources. An ESEE analysis is required to balance competing Goal 5 resources. The Planning Commission finds that ASC 82-2 is principally concerned with the protection and preservation of riparian area to help facilitate Greenway trail extension and that with the stipulated easement offered by the applicant and the setbacks in the approved site and operations master plan this goal is served in accordance with the site-specific ESEE analysis above. The Planning Commission recognizes applicant's argument that the Goal 5 Background Document includes an ESEE analysis for the Bear Creek Greenway and that analysis determined aggregate operations are a permitted use in the Bear Creek Greenway. However, the current LDO indicates that aggregate operations must go through a Type 3 review. The Planning Commission finds that the applicant has submitted a Type 3 review addressing applicable criteria and that this application can be conditionally approved and the same is accomplished in this report herein below. The Planning Commission thus finds that, because a Type 3 application can be approved for the site, the legal esoteric argumentation regarding the applicability of the Type 3 criteria need not be reached and the Planning Commission thus concludes the criterion is met based upon demonstration of compliance with the Type 3 criteria as addressed herein.

iii) On resource zoned lands outside urban growth boundaries, the entire parcel is included in the minor Comprehensive Plan Map unless the purpose of the amendment conforms with the criteria of Policy 1 of the Comprehensive Map Designations Element.

FINDING: Some of the subject properties east of Bear Creek are resource zoned parcels for which the applicant requested only a portion of the parcel be designated

Aggregate Resource and rezoned to Aggregate Removal (Tax Lots 100, 200, and 2600 west of the irrigation ditch). Policy 1 of the Map Designations Element allows for a portion of a resource zoned parcel to obtain a new Comprehensive Plan map designation and be rezoned if it is to implement protection of a Goal 5 resource and in this case the change is from one resource designation to another (Agricultural Land to Aggregate Resource Land).

iv) Map amendments outside urban growth boundaries and urban unincorporated communities that will result in a minimum residential lot size smaller than 10 acres meet the requirements for an exception to Statewide Planning Goal 14.

FINDING: This proposal will not result in a minimum residential lot size smaller than 10 acres.

v) Any minor Zoning Map amendment is consistent with the Comprehensive Plan Map designation.

FINDING: The Planning Commission herewith incorporate and adopt their findings of fact, ESEE analysis, and conclusions of law demonstrating the subject properties (or portions thereof in the case of TL 100, 200 and 2600) are appropriately designated Aggregate Resource. Through the ESEE process, the Planning Commission has concluded that Tax Lots 800, 900, 1200, 1300, and 1500 are not appropriately zoned Aggregate Removal at this time. All other parcels are appropriately designated Aggregate Removal and the same is consistent with the Aggregate Resource Comprehensive Plan Map designation herein approved.

vi) In the case of a minor Comprehensive Plan Map amendment, community benefit as a result of the minor map amendment is clearly demonstrated.

FINDING: The location, quality, and quantity of the aggregate resource has been shown to meet the criteria as a significant Goal 5 aggregate resource. Policy 2 of the Aggregate and Mineral Resources element establishes protection of aggregate resources through the Goal 5 process as a benefit to the community as a matter of policy. Based upon the Planning Commission's conclusion that the subject property is a Goal 5 aggregate resource worthy of protection and all analysis, evidence, and findings thereto, the Planning Commission finds that a community benefit is clearly demonstrated by operation of established policy.

In determining the appropriateness of the proposed redesignation, the White City or Jackson County Planning Commission and Board of Commissioners will consider any factors relevant to the proposal, which may include: topography, geology, hydrology, soil characteristics, climate, vegetation, wildlife, water quality, historical or archaeological resources, scenic resources, noise, open space, existing site grading, drainage, adverse impacts on other

property in the vicinity, and any other factors deemed to be relevant to the application.

FINDING: The Planning Commission finds that the record is extensive and that all factors relevant to the proposal have been addressed through the ESEE analysis and hearings process.

B) Type 3 Approval Criteria, Section 3.1.4(B)

i) The County may issue Type 3 and a Permits only upon finding the ane proposed use is in conformance with any applicable development approval criteria or standards of the Comprehensive Plan, and all applications are standards of this Ordinance, and that all of the following criteria is an application met:

FINDING: The Planning Commission recognizes the applicant's argument ٠h، ≘e Goal 5 Background Document includes an ESEE analysis for the Bear Creek Government and that analysis determined aggregate operations are a permitted use in the Bear Creek Greenway. However, the current LDO indicates that aggregate operations must go through a Type 3 review. The Planning Commission finds that the applicant has submitted findings of fact and conclusions of law addressing the Type 3 review criteria. The Planning Commission thus finds that, because a Type 3 application can be approved for the site in accordance with its findings of fact and conclusions of law hereinbelow, the legal esoteric argumentation regarding the applicability of the Type 3 criteria need not be reached and the Planning Commission thus concludes the criterion is met based upon demonstration with Compliance with the Type 3 criterion. The Planning Commission herewith incorporates and adopts applicant's conclusions of law with respect to geographic applicability of the Greenway provisions to that specific area identified as ASC 82-2 on the 1982 zoning maps at Record Page 343. Based upon its findings of fact and conclusions of law provided elsewhere herein, the Planning Commission finds it has addressed all applicable LDO requirements and has identified and determined compliance with those Comprehensive Plan provisions that operate as approval criterion.

(1) The proposed use will cause no significant adverse impact on existing or approved adjacent uses in terms of scale, site design, and operating characteristics (e.g., hours of operation, traffic generation, lighting, noise, odor, dust, and other external impacts). In cases where there is a finding of overriding public interest, this criterion may be deemed met when significant incompatibility resulting from the use will be mitigated or offset to the maximum extent practicable.

FINDING: The record demonstrates that, with approval of the requested Comprehensive Plan Map amendments and zoning map amendments as approved by the Planning Commission, that portion of the Greenway where the proposed uses will be located will be

surrounded by aggregate operations that can be expected to be similar with respect to scale, site design, and operating characteristics such that significant adverse impacts are not expected.

The Planning Commission finds that a date for completion of this section of the Greenway is unknown and is not anticipated within the near future. The focus has been on completing the Greenway from Ashland to Central Point. At this point in time, the aggregate operations near or within the mapped Greenway will cause no adverse impacts to the Greenway because it does not currently exist and it is not known if it will ever be completed through this area. A letter from Karen Smith, Special Projects Manager, states that a perpetual trail easement would assure an effective balance between the conflicting Goal 5 resources of aggregate and the Bear Creek Greenway. The reclamation of Pit 2 on the east side of Bear Creek will create waterfowl habitat and wetlands, which would enhance the viewshed from any proposed Greenway trail. Staff recommends that a perpetual trail easement be required as a condition of approval to allow a trail to be built through the subject properties, should the Greenway trail be extended to this area.

(2) Adequate public facilities (e.g., transportation) are available or can be made available to serve the proposed use;

FINDING: Water and electricity are the only critical facilities for the aggregate operations. A water right with the Rogue River Irrigation District currently exists and electricity exists onsite. A Traffic Impact Study has been completed and the conclusion of that study requires a southbound left turn lane at the existing main entrance shall be built when the proposed asphaltic batch plant is completed. This will be a condition of approval for this review.

(3) The proposed use is not a conflicting use certified in an adopted Goal 5 ESEE applicable to the parcel, or if an identified conflicting use, one that can be mitigated to substantially reduce or eliminate impacts;

FINDING: The Planning Commission finds the aggregate resources in this area and the Bear Creek Greenway are both conflicting uses already certified as such in adopted Goal 5 ESEE analyses. The Planning Commission construes this criterion as a protection measure for Goal 5 resources from non-Goal 5 conflicting uses. The criterion includes no provision to balance competing Goal 5 resources that mutually conflict with one another. This criterion does not, however, preclude the County from certifying a site-specific ESEE analysis that balances impacts to competing Goal 5 resources, consistent with the Goal. The Planning Commission incorporates and adopts its ESEE analysis herein above as a site specific ESEE analysis that balances the Bear Creek Greenway and Aggregate Resources and that the site and operations master plan approved herein will allow mining with certain restrictions to assure protection of the Bear Creek Greenway. The Planning Commission finds that ASC 82-2 is principally concerned with the protection and preservation of riparian area to help facilitate Greenway trail extension and that with the stipulated easement offered by the applicant and the setbacks in the approved site and operations master plan this goal is served in accordance with the site-specific ESEE analysis above.

(4) The applicant has identified and can demonstrate due diligence in pursuing all Federal, State, and local permits required for development of the property; and

FINDING: The Planning Commission finds the record contains extensive evidence concerning the pursuit of required Federal, State, and local permits for the proposed aggregate operation expansion. To-date, the record contains no substantial evidence that the applicant cannot feasibly obtain any required permit and obtainment of the same will be required as a condition of approval.

(5) On land outside urban growth boundaries and urban unincorporated communities, the proposed use will either provide primarily for the needs of rural residents and therefore requires a rural setting in order to function properly, or else the nature of the use (e.g., an aggregate operation) requires a rural setting, even though the use may not provide primarily for the needs of rural residents. Churches and schools however are not subject to this criterion.

FINDING: The requested aggregate use require a rural setting, as indicated in the text of the criterion.

CONCLUSION: Based upon its findings above herein incorporated and adopted, the Planning Commission concludes that, with the proposed conditions of approval, the application complies with the Type 3 criteria of Section 3.1.4(B).

C) Site Plan Review for Aggregate Operation in an Aggregate Removal Zoning District. Section 4.4.5 and 4.4.8

Section 4.4.5

The use may be approved only where the use:

- i) Will not force a significant change in societed farm or forest practices on surrounding lands devoted to farm or forest use; and
- ii) Will not significantly increase the cost of accepted farm or forest practices on lands devoted to farm or forest use.

FINDING: Aggregate operations have existed in the area for many years. The Planning Commission finds that the evidence indicates that there appears to have been no changes in the farming practices over the last six years due to the existing operations.

Section 4.4.8

Prior to commencement of new or expanded operations for mining, crushing, stockpiling or processing of aggregate or other mineral resources, evidence shall be submitted showing that the operation will comply with the following operating standards, in addition to any requirements and conditions that were placed on the site at the time it was designated AR, or that were otherwise required through the Goal 5 process, or approved through a mining permit issued by the County. In AR zones, if the Board Ordinance designating the site AR required a higher level of review than shown in Table 4.4-1, the review and noticing requirements of the Board Ordinance will be used.

 All necessary County and state permits have been obtained, and a current Department of Geology and Mineral Industries (DOGAMI) operating permit has been issued. Equipment testing necessary to obtain permits is allowed.

FINDING: A condition of approval will require that all necessary County and state permit have been obtained and a current DOGAMI operating permit has been issued.

ii) All facets of the operation will be conducted in a manner that complies with applicable DEQ air quality, water quality and noise standards, and in conformance with the requirements of the DOGAMI permit for the site.

FINDING: This will be a condition of approval.

iii) A site reclamation plan, approved by DOGAMI, has been submitted for inclusion in Planning Department records. Such plan must return the land to natural condition, or return it to a state compatible with land uses allowed in the zoning district or otherwise identified through the Goal 5 review process.

FINDING: This will be a condition of approval.

iv) A written statement from the County Road Department and/or ODOT has been submitted verifying that the public roads that will be used by haul trucks have adequate capacity and are, or will be, improved to a standard that will accommodate the maximum potential level of use created by the operation. The property owner or operator is responsible for making all necessary road improvements, or must pay a fair share for such improvements if agreed to by the County Road Department or ODOT.

FINDING: A letter from Jackson County Roads states that the use meets capacity requirements for Blackwell Road. A Traffic Impact Study requires a southbound left turn lane be built at the existing main entrance when the proposed asphaltic concrete batch plant is built and the applicant has stipulated to construction of the same.

- v) On-site roads and private roads from the operating area to a public road have been designed and constructed to accommodate the vehicles and equipment that will use them, and meet the following standards:
 - (1) All access roads within 100 feet of a paved public road are paved, unless the operator demonstrates that other methods of dust control will be implemented.
 - (2) All unpaved roads that will provide access to the site or that are within the operating area will be maintained in a dust-free condition at all points within 250 feet of a dwelling or other identified conflicting use.

FINDING: The Planning Commission finds that the initial staff report had identified a concern that the applicant was attempting to subvert the paving requirements. The Planning Commission finds based upon the site plans and testimony at the hearing that this is not the case and that all required paving will be provided and in addition the applicant has stipulated to exceed the paving requirements for main haul roads to minimize air quality impacts and the same are appropriate. The above requirements together with applicant's stipulations will be made conditions of approval.

vi) If the operation will include blasting, the operator has developed a procedure to ensure that a notice will be mailed or delivered to the owners and occupants of all residences within one-half mile of the site at least three working days before the blast. The notice must provide information concerning the date and time that blasting will occur, and must designate a responsible contact person for inquiries or complaints. Failure to notify neighbors and the County before blasting is a violation of this Ordinance for which a citation may be issued. Notice will be deemed sufficient if the operator can show that the notices were mailed or delivered, even if one or more of the households within the notice area did not receive the notice.

FINDING: This will be a condition of approval.

vii) The operation is insured for a minimum of \$500,000 against liability and tort arising from surface mining, processing, or incidental activities conducted by virtue of any law, ordinance, or condition. Insurance shall be kept in full force and effect during the period of such activities. Evidence of a prepaid policy of such insurance which is in effect for a period of one year shall be deposited with the County prior to commencing any operations. The owner or operator shall annually provide the County with evidence that the policy has been renewed.

FINDING: Evidence of insurance has been submitted. This criterion is met.

- viii) The operation will observe the following minimum setbacks except where the operation is lawfully preexisting and encroachment within the prescribed setbacks has already occurred:
 - (1) No extraction or removal of aggregate/minerals will occur within 25 feet of the right-of-way of public roads or easements of private roads.
 - (2) Processing equipment, batch plants, and manufacturing and fabricating plants will not be operated within 50 feet of another property or a public road right-of-way, or within 200 feet of a residence or residential zoning district, unless written consent of the property owner(s) has been obtained.

FINDING: These setbacks will be conditions of approval.

ix) If the aggregate removal and surface mining operation will take place within the Floodplain Overlay the requirements of Section 7.1.2 have been met.

FINDING: Based upon the Planning Commissions findings of fact and conclusions of law addressing Section 7.1.2 incorporated and adopted herein, the requirements of Section 7.1.2 can feasibly be and will be met with appropriate conditions of approval.

- x) Mining and processing activities, including excavated areas, stockpiles, equipment and internal roads, will be screened from the view of dwellings, scenic resources protected under ASC 90-9, and any other conflicting use identified through the Goal 5 process or Type 3 review. Screening may be natural or may consist of earthen berms or vegetation which is added to the site. If vegetation is added, it shall consist of alternating rows of conifer trees planted six feet on center and a height of six feet at the commencement of the operation. An exemption to the screening requirements may be granted when the operator demonstrates any of the following:
 - (1) Supplied screening cannot obscure the operation due to local topography.
 - (2) There is insufficient overburden to come berms, and planted vegetation will not survive due to soil, water, or climatic conditions.
 - (3) The operation is temporary and will be removed, or the site will be reclaimed within 18 months of commencement.
 - (4) The owner of the property containing the use from which the operation must be screened, has signed and recorded in the screening uses declaration acknowledging and accepting that the operation will be visible and that the operator will not be required to provide screening.

FINDING: The Planning Commission finds are only a few dwellings from which the operation east of Bear Creek may be visible and these dwellings are located on a steep bench that topographically precludes effective screening. The applicant offers no screening on the east side of Bear Creek other than the screening supplied by the preservation of the Bear Creek riparian corridor. This meets the exemption criteria for screening for the operations on the east side of Bear Creek..

The applicant proposes to build earthen berms topped with the prescribed vegetative screening along property lines depicted on the site plan for the area west of Bear Creek. By phasing the extraction and allowing the screening to fill in prior to mining in the area west of Bear Creek, the operation will be screened in accordance with this standard. Because the Planning Commission denied the zoning map amendment applicable to the southwest corner of the project, the screening initially proposed by the applicant in this area is not required. The Planning Commission deliberated regarding the location and adequacy of the screening and concluded the proposed screening is adequate, but should not be constructed until right-of-way dedications, if any, for construction of the left-turn lane are known. The topography west of Blackwell Road is such that all dwellings on this hill may not be completely screened, according to the exemption above. A condition of approval requires the applicant to provide screening as depicted on the site plan and in compliance with the plan showing the configuration of a typical berm.

xi) Existing trees and other natural vegetation adjacent to any public park, residential zoning district, or parcel on which a dwelling is situated will be preserved for a minimum width of 25 feet along the boundary of the property on which the operation is located.

FINDING: This will be a condition of approval.

- xii) Operations will observe the following hours of operation:
 - (1) Mining, processing, and hauling from the site are restricted to the hours of 6 a.m. to 7 p.m. Monday through Saturday. The hours of operation do not apply to hauling for public works projects.
 - (2) Neither mining, processing, nor hauling from the site will take place on Sundays or the following legal holidays: New Year's Day, Memorial Day, July 4, Labor Day, Thanksgiving Day, and Christmas Day.
 - (3) An exemption to the hours of operation may be requested. Notice of the proposed change in operating hours must be provided to all property owners within 1,000 feet radius of the aggregate removal or surface mining operation, to residences within one-half mile of the site, and to owners of property

adjacent to private site access roads. If no request for a public hearing is made within 12 calendar days of mailing said notice, the operating hours can be changed as requested by the operator. If a request is made for a public hearing, adjustment of standard operating hours shall be determined by the Hearings Officer, subject to findings that the proposal is consistent with the best interests of public health, safety, and welfare and that the operation will not conflict with other land uses.

FINDING: These will be conditions of approval.

CONCLUSION: The Planning Commission concludes that the proposed aggregate operations can feasibly and will be required meet the criteria of Sections 4.4.5 and 4.4.8. through imposition of appropriate conditions of approval. The Planning Commission incorporates and adopts the applicant's argument and conclusions at Record Page 1565 with respect to applicability of site development plan review criteria and based thereupon concludes the above criteria constitutes the only applicable criteria.

D) Section 7.1.2, Floodplain Review

- The scientific and engineering report prepared by the Federal Emergency Management Agency (FEMA) entitled The Flood Insurance Study for Jackson County, dated April 1, 1982 or as hereafter amended, along with accompanying Flood Insurance Rate Maps (FIRM) and Flood Boundary and Floodway Maps (FBFM), are hereby adopted by reference and declared to be a part of this Section. These documents will be the means for establishing the location of the 100-year floodplain. The Flood Insurance Study is on file with the County.
- The floodway has been established as shown on the FIRM or Floodway Boundary and Floodway Maps (FBFM). A floodway will be presumed to exist in the Approximate A zone, as shown on the FIRM. An applicant may offer evidence establishing the location of the floodway where one has not been established. This evidence will be prepared in accordance with accepted engineering practices and must be certified by an Oregon registered professional engineer. Such evidence may be accepted or rejected by the County. It will be presumed that the floodway is equally distributed on either side of the centerline of the stream. Along the Applegate River the requirements of Section 7.1.2(F)(7)(d) shall be used in lieu of the floodway determination of this Section.

FINDING: The applicant has submitted a flood study by the Galli Group, Geotechincal Consultants, William Galli, P.E. The project includes a bridge across Bear Creek, which went through a Type 1 review that was later rescinded by Jackson County. The project includes

fill and removal in the floodplain in association with aggregate Pits 2 (Pit 4 will be engineered and the same approved prior to extraction in that area), as well as a proposed roak on the east side of Bear Creek. The applicant's engineer used the HEC-RAS flood analysis software to calculate flood elevations along Bear Creek through the Rock (N) Ready site in accordance with generally accepted engineering practices. The floodplain and floodway boundaries as shown on the FIRM panels are different than those determined by recent flood study. This flood study was updated to respond to appropriate technical concerns raised in the hearings process. However, the Planning Commission fads that the record is clear that the site includes both floodway and floodplain development and thus requires demonstration of compliance the Floodplain Development standards of this section which is not mapping exercise but rather involves demonstration of compliance with standards that pertain to water surface elevations and velocities. The applicant has stipulated to complete a Letter of Map Revision through FEMA to assure a consistent regulatory framework. Commission finds the LCMA (or similar FEMA process) is an appropriate discretionary condition due to the size and extent of the project but the Commission does not interpret the code to require, nor is there express code language that requires, the LOMA be completed in order to demonstrate compliance with the County's floodplain development regulations as a matter of law.

iii) Determining Base Flood Elevation

- (1) In areas where base flood elevation profiles are available from the FIRM or from the Flood Insurance Study profiles, the base flood elevation at the proposed building site will be extrapolated from the elevations that are immediately upstream and downstream from the location of the proposed use.
- (2) When base flood elevation data has not been provided by FEMA, the applicant will employ an Oregon registered professional engineer to prepare a report certifying the base flood elevation, examples of which are described in FEMA publication FEMA 265, Managing Floodplain Development in Approximate Zone A Areas: A Guide For Obtaining And Developing Base (100-Year) Flood Elevations (Detailed Methods Chapter). The report will set forth the elevation of the 100-year flood, and will cite the evidence relied upon in making such determination. The calculated base flood elevation may be from mean sea level or may be based on an assumed elevation when tied to a benchmark. The location of the benchmark will be described in the report and shown on a map that must be included with the report. The report may be accepted or rejected by the County.
- (3) Where base flood elevation data has not been provided by FEMA, in lieu of a report by an Oregon registered professional engineer as outlined in (2) above, the applicant may choose to elevate a structure at least three feet above the highest adjacent natural grade, provided

that the structure is not located in the presumed floodway as described in Section 7.1.2(C)(2) and all riparian setbacks will be met. Elevation Certificate documentation described in 7.1.2(B)(4) is required. All other development standards of Section 7.1.2(F) will be met. Use of this elevation standard could result in increased flood insurance premium rates.

FINDING: The Planning Commission finds the updated flood study water surface elevations submitted by the Galli Group are compared to FEMA water surface elevations at Record Pages 910 and 911 and the Planning Commission adopts and incorporates this evidence as sufficient to find the special flood study water surface elevation data prepared by the Galli Group is substantially consistent with the FEMA water surface elevations for the project area. The Planning Commission finds the special study applicable to site prepared by the Galli Group constitutes a higher resolution refinement of the FEMA water surface elevations sufficient to determine compliance with the criteria for approval of a floodplain development permit

iv) Criteria for Approval

Prior to approval of floodplain review, the County will determine all of the following:

- (1) That all applicable development standards of Section 7.1.2(F) can feasibly be met;
- (2) That applications have been submitted or all necessary permits have been obtained from those federal, state, or local governmental agencies from which approval is required by law. Copies of all permits must be submitted to the County prior to initiation of the development.

FINDING: Development standards of Section 7.1.2(F) can and must be met and a condition of approval will require that applications have been submitted or all necessary permits have been obtained from those federal, state, or local governmental agencies from which approval is required by law. Copies of all permits must be submitted to the County prior to initiation of the development. The Planning Commission finds the record contains conflicting evidence regarding permits that may or may not be required; however, the Planning Commission finds the record contains no substantial evidence that is explicit and specific which indicates that a particular permit is in fact required for which the applicant has not applied nor is there substantial evidence that a required permit cannot feasibly be obtained. Moreover, the Commission finds the applicant has demonstrated due diligence sufficient to find that, if a regulatory agency determines an additional permit is required, there is no reason to believe the applicant will not apply for such permit in due course.

v) Floodway Development

(1) All encroachments, including fill, roadways or bridges are prohibited unless certification by an Oregon registered professional engineer is provided demonstrating that the encroachment will not result in any increase in flood levels during the occurrence of the 100-year flood (no-rise analysis and certification). Culverts used in stream crossings where floodways are mapped and/or 100-year floodplain elevations have been determined will require a no-rise analysis and certification. Culverts used in stream crossings where base flood elevations and floodways have not been determined (Approximate A zone) will be of sufficient size to minimize the rise of flood waters within the presumed floodway. Evidence must be provided by an Oregon registered professional engineer showing the size of the proposed culvert will pass the flood waters of the 100-year flood. Culverts and bridges must be anchored so that they will resist being washed out during a flood event. Culverts and bridges must also meet the riparian protection standards in Section 8.6.3 of this Ordinance.

FINDING: A No-Rise Declaration has been submitted by the Galli Group, William F. Galli, P.E and Mr. Galli's testimony is that through revisions to the study the no-rise condition remains. The declaration states that the project should be considered a NO RISE condition as it will not cause a rise in the Base Flood Elevations on sites upstream or downstream of the applicant's property and will cause only incidental rises on-site for which the applicant has agreed to indemnify the County and FEMA. Based upon these considerations and the evidence of record, the Planning Commission finds the no-rise declaration standard is met.

vi) Fill in the Floodplain

Prior to placement of fill within the 100-year floodplain a report from an Oregon registered professional engineer determining the effect the placement of fill will have on the 100-year floodplain will be submitted.

- (1) Where base flood elevations have been determined, the fill cannot cumulatively raise the base flood elevation more than one foot at any given point. The report will reference the Flood Insurance Study for Jackson County, Table 3 (Floodway Data), for a specific reach of a stream. The increase in the base flood water surface elevation, as shown in this table, will not be more than one foot.
- (2) Where base flood elevations have not been determined, the fill cannot raise the base flood elevation more than one foot at any given point. (See 7.1.2(D)(2))
- (3) The fill will be engineered to resist erosion by flood waters.

FINDING: The engineer states that any rise caused by the bridge or fill in the floodplain will not cause adverse impacts to this or other parcels in the area. The pre- and post development base flood elevations are less than 1 foot and meet the criteria. A condition of approval will require any fill to be engineered to resist erosion by flood waters. The Planning Commission finds the above criteria are met.

vii) Aggregate Removal

- (1) Aggregate removal or surface mining operations within the 100-year floodplain or floodway will not cause an increase in flooding potential or stream bank erosion adjacent to, upstream or downstream from the operation.
- (2) All mining and processing equipment and stockpiles of mined or processed materials will be removed from the site during the period of December 1 through April 30, unless the operation will be protected by a dike that is of sufficient width and height to prevent flood waters from inundating the site.

FINDING: An Oregon Registered engineer has submitted a No-Rise Declaration stating the development will not cause a rise in the Base Flood Elevations on sites upstream or downstream of the applicant's property. The Planning Commission finds the project, as approved (No mining of Pit 2a), will not allow any new aggregate removal or mining operations within the 100-year floodway except for the stream crossing proposed on Tax Lot 1900. Based upon this finding and the no-rise declaration, the Planning Commission concludes the project will not cause an increase in flooding potential or stream bank erosion due to floodway encroachments as the only floodway encroachment is a bridge that could be permitted for a range of other non-aggregates uses and the above criterion should be interpreted consistent with the approval standards for all stream crossings. The Planning Commission finds that aggregate removal and surface mining operations in the 100-year floodplain have been engineered with protective dike features of sufficient height to prevent pit inundation based upon engineering and hydrologic analysis in the record prepared by applicant's registered professional engineer incorporated and adopted herein. Based upon this engineering evidence, the Planning Commission finds that the fill placed in the floodplain to construct the protective dikes will not cause the base flood elevation to rise by more than one foot and that this is the standard under which the County determines that fill in the floodplain will not increase flooding potential. With respect to stream bank erosion, the Planning Commission finds that the evidence establishes that the applicant proposes substantial setbacks from the banks of Bear Creek, that the engineering analysis does not identify substantial increases to flow velocities, and that DOGAMI carefully evaluates potential stream bank erosion issues and a condition of approval will require the applicant to comply with any additional erosion prevention measures required by DOGAMI. Based upon this finding, the the Planning Commission finds the project will not increase stream bank erosion potential. The Planning Commission finds the existing concrete processing area was lawfully established and is considered a lawful nonconforming use.

CONCLUSION: Based upon the foregoing findings of fact incorporated and adopted herein, the Planning Commission concludes the proposed development within the floodplain and floodway meet the criteria or can feasibly meet the criteria of Section 7.1.2, with conditions of approval. Portions of Pit 4 (TL 1900, 1400, and 1303) is within the 100 year floodplains of Willow Creek and Bear Creek. The Planning Commission is not issuing final site plan review or floodplain development permits for Pit 4 at this time; a condition of approval will require a floodplain review prior to beginning aggregate for that pit. A condition of approval will require a landscape plan approved by Oregon Department of Fish and Wildlife agrain areas disturbed by development (bridge crossing).

E) Section 7.1.1(B), ASC 82-2 Bear Creek Greenway

i) Description

This area consists of the lands identified an the official Bear Creek Greenway Maps.

II) Special Regulations or Development Standards

The County refers to The Bear Creek Greenway Plan: Management Policies and Guidelines (1982) and the Bear Creek Greenway Plan: Ashland to Central Point (1988) for guidance on uses appropriate to the Greenway. The County will, to the extent of its legal authority, provide for the implementation of these plans during the development review process, through the implementation of the use restrictions set forth below, and in some cases by attaching special conditions to development approvals.

iii) Uses Permitted

Notwithstanding the provisions of Table 6.2-1, 4.2-1, 4.3-1 or 4.4-1, the following use restrictions will apply in this area.

- (1) <u>Type 1</u>: The following uses are permitted under a Type 1 approval process within ASC 82-2 provided the use is permitted as a Type 1 use within the underlying zone:
 - (a) Open space and parks.
 - (b) Agriculture.
 - (c) Fishing and hunting reserves where compatible with other uses.
 - (d) Utility facilities necessary for public service provided such facilities are underground.

- (e) Sedimentation ponds when used in conjunction with aggregate removal operations.
- (f) Pedestrian, equestrian and bicycle trails.
- (g) Riparian enhancement.
- (2) <u>Type 3</u>

All other uses within the primary zoning district will be subject to a Type 3 permit approval process. Type 3 permits requested within the ASC 82-2 will be consistent with the Bear Creek Greenway Plan and related documents.

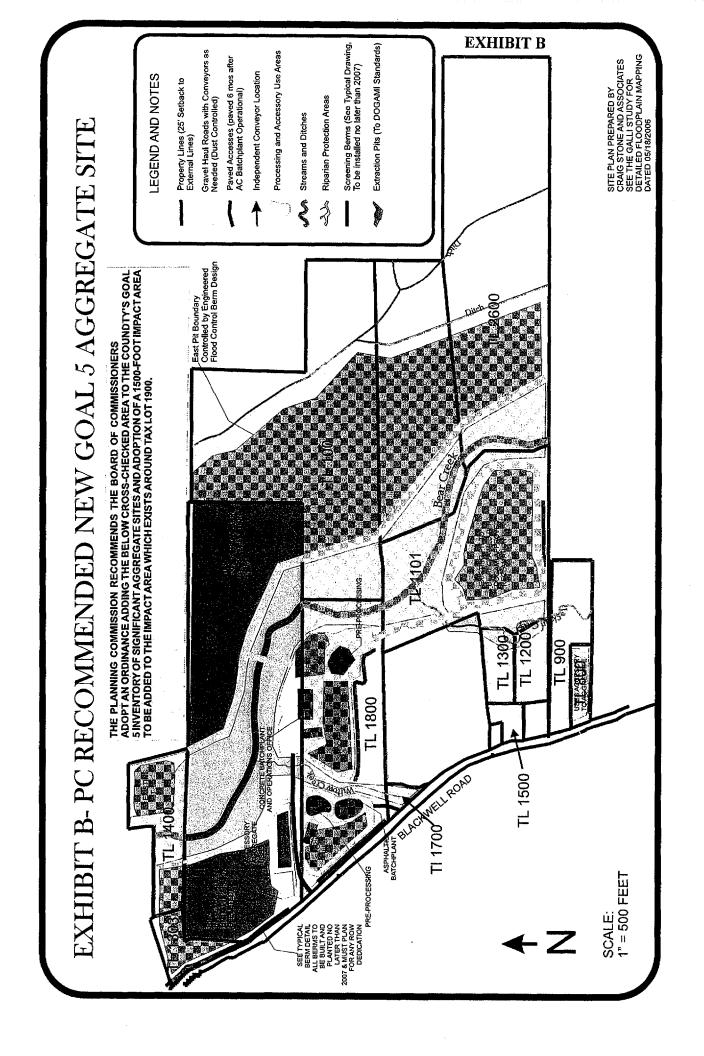
FINDING: These criteria are addressed in Section 3(B) of the staff report.

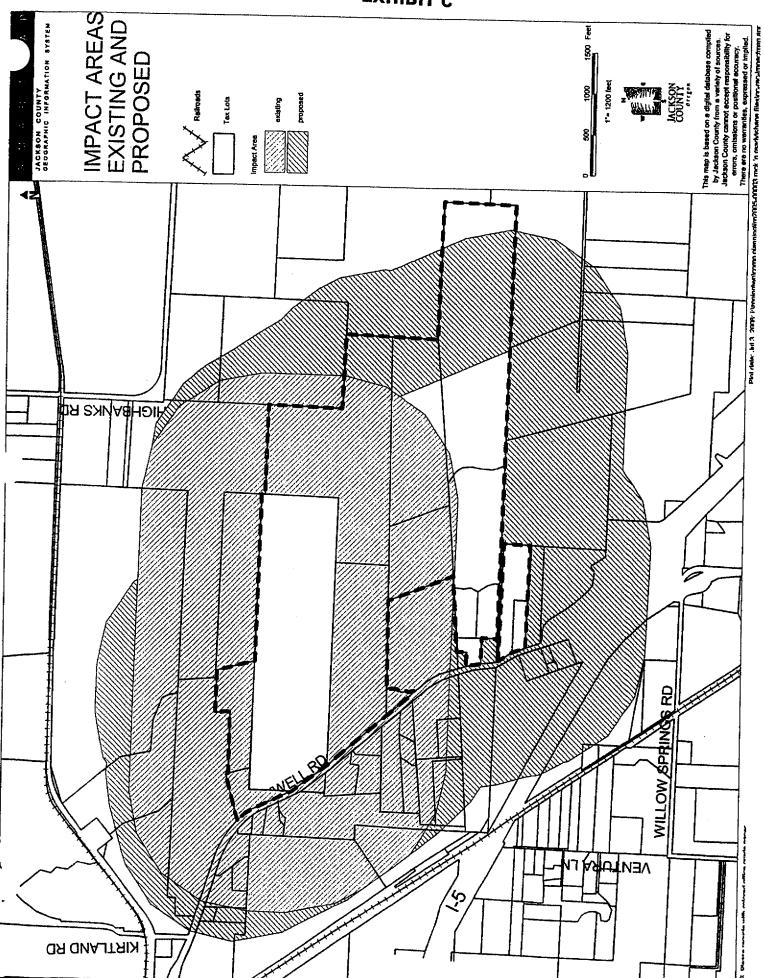
III. ULTIMATE CONCLUSION:

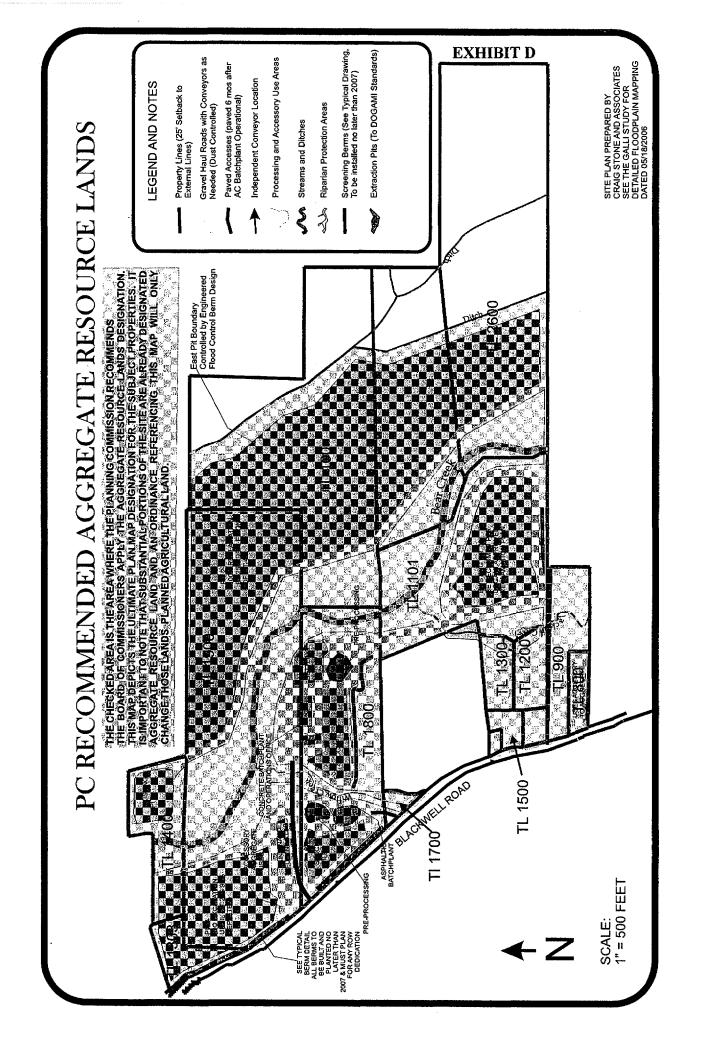
Based upon the evidence and testimony in the record and the foregoing findings of fact and conclusions of law, the Planning Commission has deliberated and found the subject application to comply with the applicable requirements for a minor Comprehensive Plan map amendment, minor zoning map amendment subject to the site and operations master plan (as modified by the Commission's deliberations), a Type 3 permit for aggregate operations in the Bear Creek Greenway, (approval of the bridge crossing and incidental modifications in accordance with the approved site and operations master plan), final site plan approval (as amended by the Commission's deliberations), and floodplain development permit for all aspects of the operation for which final site plan approval is granted by the Planning Commission.

JACKSON COUNTY COMPREHENSIVE PLANNING MANAGER

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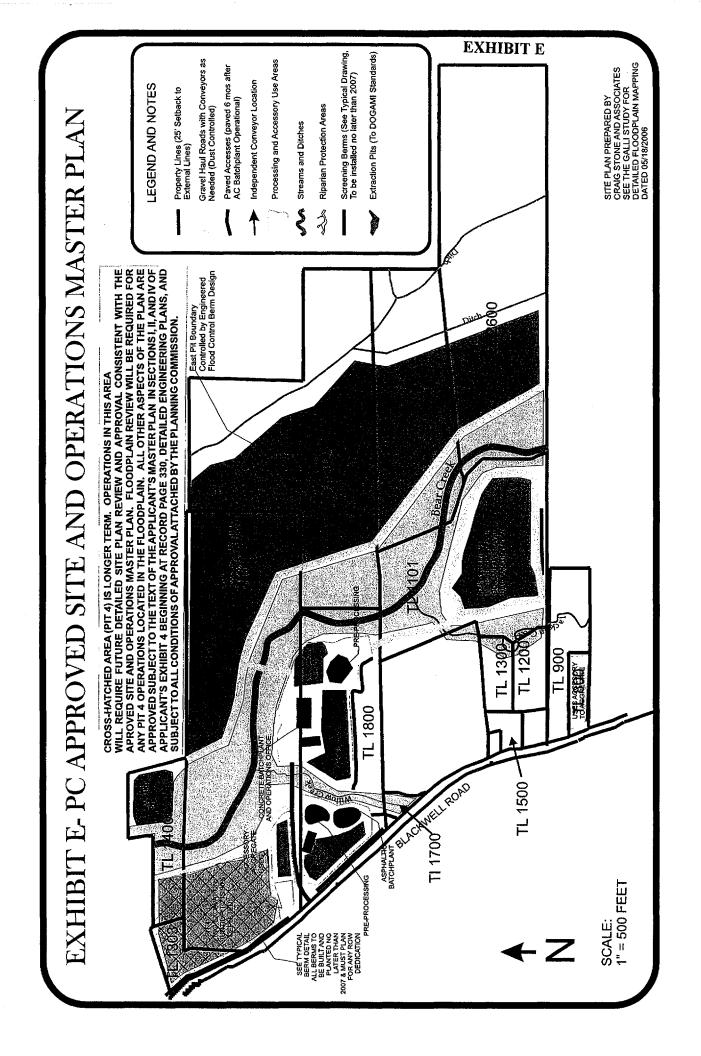


EXHIBIT F

EXHIBIT 4

JACKSON COUNTY LAND DEVELOPMENT ORDINANCE STANDARDS AND APPLICABLE REQUIREMENTS FOR APPROVAL OF THE REQUESTED AGGREGATE SITE AND OPERATIONS MASTER PLAN

1

MASTER PLAN OVERVIEW

The site and operations master plan will govern all future aggregate operations on the site in accordance with applicable conditions of approval. By phasing the extraction operations, the plan maximizes the aggregate resource potential when balanced against conflicting land uses and competing Goal 5 resources. Exhibit 4 and the approved plans together constitute the site and operations master plan. The site and operations master plan governs operations for the site and all previous site and operations plans and any conditions so arrached are replaced by this plan. In the event there is a conflict between the site plan maps and written master site plan and operations plan text herein contained, the text shall govern. Special conditions attached.

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MASTER PLAN CHARACTERISTICS

SITE PLAN CHARACTERISTICS:

- 1. Existing Vegetation: Except where stream crossings are proposed, the existing riparian vegetation areas will be retained. Some lands west of the RVSS mainline are expected to be reclaimed by riparian vegetation as lands to the east are converted to aggregate from the existing farm uses. Native trees include White Alder, Black Cottonwood, Hemlock, and various Willow species.
- 2. Screening and Berming: A six-foot berm crowned with alternating conifer rows six-feet on-center will be constructed and planted where berms are depicted on the site plan in the setback locations. In addition to the trees, the berms will be planted with low growing drought tolerant native grasses. The applicant will stipulate to establishing these berms and plantings no later than 2007, following timely approval

of the master plan. The trees will be established with irrigation and will be fertilized during the first three years.

- 3. Existing and Proposed Structures: The plan identifies which general areas will contain which types of aggregate uses. The Technical Detail Plan depicts existing building outlines. No new structures are proposed at this time, but the need for new structures may arise in the future. Any new or remodeled structures will be placed in an appropriate area as indicated on the Site and Operations Master Plan or else a revision to this plan will be required. In either case, such future structural needs can be accommodated with no more than a Type 1 review by Planning Staff and with issuance of applicable building permits.
- 4. Extraction Areas: Pit slopes will be in accordance with current DOGAMI specifications, an example the slope angles are depicted in the operating permit request to DOGAMI for Pit 2 and 2A. Pits will be excavated so that storm drainage will drain into the pit.
 - a) Overburden: Ranges in depth from approximately 2 to 12 feet.
 - b) Aggregate Types: Sand, Gravel and some Top Soil.
 - c) Depth of Extraction Areas: Up to 85 feet to bedrock, but in a range of 50 to 65 feet in most locations.
 - d) Extraction Sequencing: The site plan includes an extraction-phasing plan. This plan is intended to provide time for the vegetative screening to be established prior to extraction operations west of Bear Creek. No extraction in Pit 4 shall occur until Pit 2 is at least 90 percent depleted. Reclamation of Pit 2 will be completed prior to 25 percent depletion of Pit 4. No extraction will occur in Pit 3 until Pit 4 is at least 90 percent depleted.
- 5. Riparian Setbacks: A minimum 50-foot riparian setback for all operations (except stream crossing locations) will be maintained from the banks of Jackson Creek and Willow Creek. A minimum 100-foot riparian setback for all operations (except stream crossing locations) will be maintained from the banks of Bear Creek. These riparian areas provide a critical function in the aggregate operation by providing the final filtering and cooling discharges from dewatering activities prior to entry into the stream system.
- **6.** Wetland Protections: Wetlands identified on the NWI wetlands inventory and/or in the wetlands report prepared by Scoles and Associates will be protected by a fifty foot setback or will be mitigated in accordance with wetland mitigation requirements and procedures of the Division of State Lands.

- 7. Stockpiling Areas: No stockpiling will occur in the floodway. No new stockpiling locations are proposed or will be established in the floodplain.
- 8. Internal Road System: The system of haul roads within the site is designed to efficiently move aggregate around the site. The base for the Haul Road on the east side of the RVSS mainline will also serve as a dyke to prevent inundation of the pits on that side of Bear Creek in the event of a 100-year flood. Two new accesses are proposed from Blackwell Road. One is on Tax Lot 1500. This access will serve only as a personnel and equipment access and will not provide for hauling along Blackwell Road. A new access is proposed for Tax Lot 1700 to provide a right-in access for internal circulation through the asphaltic batch plant.
- 9. Conveyor System: The conveyor system within the site is designed to efficiently move aggregate around the site. Conveyors may be installed along any haul road, processing and/or pit areas depicted on the site plan. Conveyors may also be installed in locations specified for conveyors on the plans. Conveyors are especially advantageous in riparian areas where they have significantly less impact than would result from a haul road in a similar area because of the narrower footprint. Also, conveyors emit less dust than truck hauling and can be more energy efficient.
- **10. RVSS Mainline Protections:** A fifty-foot setback will be maintained for all extraction activities from the RVSS mainlines.

11. Processing:

- a) Batch Plants: A conditional use permit in 1996 approved a Portland cement concrete batch plant and Asphaltic Batch Plant. The Concrete Batch plant will remain in its current location. An asphaltic batch plant was also approved as part of the 1996 conditional use permit. This batch plant has never been constructed. The site plan proposes to keep the batch plant on Tax Lot 1800, but it will be relocated west of Willow Creek to provide for efficient truck movements and processing for future asphaltic concrete operations.
- b) Dewatering: All pits will be dewatered. Dewatering discharge areas will be constructed and sited in accordance with the construction and location methods specified by DOGAMI and ODFW. The Technical Detail Plan shows the location of these facilities as currently proposed.
- c) Washing and Pre-processing: Gravel and sand must be washed and sorted prior to mixing into concrete. Some aggregates must also be crushed. These activities are proposed to remain in their current location for the Portland cement concrete processing. Additional facilities are proposed to be added around and to support the asphaltic concrete processing operations.

¹ Floodplain as mapped by Applicant's Geotechnical Engineer.

- d) Settling Ponds: Wash water must be settled in order to allow sediments to fallout. The site plan will continue to utilize existing settling facilities.
- 12. Water, Sanitation and Utilities: Water for concrete production is obtained from the Rogue River Irrigation District, see Exhibit 22. Existing sanitation is by pre-existing on-site systems and portable units. A transformer has been constructed on-site and the existing service is expected to be sufficient for planned future operations.

OPERATING PLAN CHARACTERISTICS:

- A. Extraction Methods: Extraction will be by scraper and excavator. All equipment is 1998 or newer. The newer generation of equipment produces less noise and diesel emissions when compared to older equipment. Some overburden is stockpiled as required by DOGAMI for reclamation and will be used to construct screening berms. Electric pumps are used to dewater the pits.
- **B.** Hauling and Stockpiling: Loaders are used to stockpile, transport aggregates short distances, load bins for processing, load dump trucks for hauling, and load conveyors. Hauling is done by dump truck and/or by conveyor. The master plan contemplates a significant expansion of the conveyor system to increase efficiency and reduce diesel and dust emissions. A 4,000 gallon water truck is present on-site for dust prevention on haul roads and other aspects of the operation.
- C. Concrete Recycling: Applicant uses the heavy equipment to stockpile, crush and recycle concrete into recycled aggregate for a variety of construction applications
- **D. Hours of Operations:** Applicant has and will continue to limit operating hours in accordance with JCLDO requirements from 6:00 a.m. to 7:00 p.m. Monday through Saturday, except for public works projects. The applicant has and will continue to observe operation restrictions for specified legal holidays in accordance with JCLDO requirements.
- E. Lab Testing: Two employees are engaged in concrete testing operations. Scientific equipment is used to test concrete and raw aggregates produced at the site. Public works projects require these tests to assure materials used in infrastructures are of a high quality and represent responsible expenditure of public funds. The lab is currently located on Tax Lot 800, but may be moved in the future to Tax Lot 1900.
- F. Concrete Batch Plant Operations: Delivery of Portland cement is by semi-truck. The concrete batch plant mixes water with Portland cement from a 600-barrel silo and aggregate to create slurry. This slurry is then loaded into concrete mixing trucks from above. The trucks are all 1998 or newer, which produce less noise and emissions when compared to earlier model trucks

- **G.** Asphaltic Batch Plant Operations: Asphalt will be delivered by semi-truck when asphaltic concrete production begins. Liquid asphalt, a petroleum product, is pumped up into a silo where it is heated and mixed with water and aggregate. This mixture is then loaded in dump trucks for off-site delivery.
- H. Office and Administration: An operations office is located on Tax Lot 1800 immediately adjacent to the concrete batch plant. This office includes the dispatch center where deliveries are coordinated as well as some accounting and operations management. The office on Tax Lot 800 is used for clerical and other ancillary administrative activities associated with the aggregate operations.
- I. Responsible Party: The existing operation designates Wes Norton, President of Rock-n-Ready Mix, as the responsible party for all matters pertaining to permits, land use actions, and conditions attached thereto. Applicant reserves the right to designate a new individual as the responsible party such as would result from a change in corporate ownership or management or other applicable circumstance.

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STIPULATIONS OFFERED BY APPLICANT

- 1. Applicant will submit a request for Letter of Map Revision for FIRM Panels 313 and 314 no later than nine months following final approval of this site and operations master plan. Applicant further stipulates to modify the technical detail plan as necessary to comply with the ultimate map revisions approved by FEMA.
- 2. Applicant will stipulate to construction and planting of all new berms depicted on the site plan no later than 2007. All trees will be irrigated in accordance with generally accepted landscape planting practices.
- 3. Access roads depicted in black on the site plan will be paved no later than six months following start-up of asphaltic batch plan operations.
- 4. Applicant will stipulate to aggregate extraction and operations for Pit 2 substantially in conformance with the technical Detail Plan prepared by the Galli Group and such submitted materials to DOGAMI. Setbacks, pit flood control protections and such other items depicted on this plan will be observed.
- 5. Applicant will stipulate to preparation and administrative approval by the County of a technical detail plan similar to that prepared and depicted in Exhibit 5 prior to extraction in Pit 4.
- 6. Applicant will stipulate to the following Pit extraction sequencing. Pit 2 is scheduled for extraction immediately following approval of this plan. Pit 4 is the next scheduled extraction area, but no extraction will take place until Pit 2 is 90 percent depleted.
- 7. Applicant will stipulate to 100% reclamation of Pit 2 prior to 25 percent depletion of Pit 4.
- 8. Applicant will adhere to the Master Plan Characteristics contained herein, and as modified through conditions of approval by the Board of Commissioners.

EXHIBIT B

JACKSON COUNTY BOARD OF COMMISSIONERS EXPRESS FINDINGS IN SUPPORT OF ORDINANCES:

2007-19

2007-20

2007-21

2007-22

And Order #433-07

Planning File LRP 2005-00003

I. Nature of Application

This application was filed by Craig Stone and Associates as agent for the applicant, Rock 'N' Ready Mix, LLC ("applicant") on March 24, 2005. The application requests the following: (1) a Minor Comprehensive Plan Map and Zoning Map Amendment to change the Comprehensive Plan Map designation from Agricultural Land to Aggregate Resource Land and the zoning district from Exclusive Farm Use (EFU) to Aggregate Removal (AR); (2) designation as a significant aggregate resource and ESEE analysis to determine the level of Statewide Planning Goal 5 protection; (3) Site Plan Review for aggregate operations; (4) Floodplain Review for development within the 100 year floodplain; and (5) Type 3 review for development within the Bear Creek Greenway (Area of Special Concern 82-2).

The applications were deemed incomplete on April 28, 2005. The applicant submitted the required supplemental materials and the application was deemed complete on June 29, 2005. Public hearings before the Jackson County Planning Commission were held on October 27, 2005, January 26, 2006, and March 9, 2006 in the Jackson County Auditorium, and the Planning Commission issued a recommendation of approval on July 27, 2006.

The Jackson County Board of Commissioners ("Board") held a properly noticed and advertised public hearing to consider the recommendation of the Planning Commission on September 27, 2006. On October 25, 2006, the Board deliberated on matters related to the applicant's compliance with applicable rules adopted by state and federal regulatory agencies, specifically the Department of Geology and Mineral Industries (DOGAMI), the Army Corps of Engineers ("Corps"), and the Oregon Department of State Lands (DSL). The Board's deliberations were postponed to allow the applicant to provide additional evidence and testimony demonstrating compliance with the regulatory requirements of those agencies.

As described in the Ordinances adopted by the Board, additional properly noticed hearings were held before the Board on February 28, 2007, April 11, 2007 and May 30, 2007.

II. Adoption of Planning Commission Findings

The Board adopts and incorporates by reference the findings of the Jackson County Planning Commission as set forth in its recommendation for approval and findings dated July 27, 2006. To the extent there is any discrepancy between these findings and the findings of the Planning Commission, the express findings of the Board provided herein shall govern.

III. Additional Findings of the Board of County Commissioners

In addition to adoption of the Planning Commission's findings in its recommendation of approval, the Board adopts the following findings of fact and conclusions of law in support of its decision to approve the applications at issue. These findings address applicable approval criteria and issues that were raised in the proceedings before the Board.

A. Responses to Specific Issues Raised by Opponents

During the hearing process before the Planning Commission, the applicant retained two additional consultants to respond to claims that the applicant's technical information and engineering was not adequate. The first consultant, Kuper Consulting, Inc. ("Kuper") was charged with responding to and refuting opponent's contentions that the site is not a significant mineral and aggregate site under Goal 5. Kuper's analysis was presented to and evaluated by the Commission. Based on that analysis, the Planning Commission recommended that all tax lots associated with the application be designated as a significant Goal 5 resource and placed on the County's Goal 5 inventory. The Board of Commissioners agrees with the Planning Commission's conclusion that the entire site is a significant Goal 5 mineral and aggregate resource.

The second consultant brought in by the applicant is Northwest Hydraulic Consultants ("nhc"). Jeff Johnson, an engineer certified in Oregon with extensive experience in floodplain development, engineering and regulation, works for nhc and was responsible for evaluating and supplementing the applicant's previous testimony relating to floodplain impacts, possible impacts up-and-downstream and engineering generally. NHC is one of two contract consultants working for the Federal Emergency Management Agency (FEMA) on floodplain hydraulic matters in the northwest, and Mr. Johnson demonstrated his technical expertise and credibility on such matters. Mr. Johnson was charged by the applicant with responding to opponent's contentions that the applicant's engineering was inadequate. Mr. Johnson's testimony was relied upon by the Planning Commission, and the Board of Commissioners adopts the Planning Commission's conclusions on these issues. Mr. Johnson also testified directly to the Board on these issues at the September 25, 2006 hearing, and the Board finds that his testimony was both technically valid and credible.

In written materials submitted to the Board, Rogue Aggregates' attorney identified certain specific concerns and objections to the application. These objections are set out below, and addressed in findings immediately following each objection.

1. Issues Regarding Compliance with State and Federal Agency Rules

The majority of the proceedings before the Board of Commissioners focused on issues surrounding the applicant's compliance with applicable rules and consent orders issued by DOGAMI, the Army Corps of Engineers, and the Oregon Department of State Lands. Rogue Aggregate argued that approval of the applications was prohibited under Sections 1.7 and 1.8 of the Jackson County Land Development Ordinance (LDO). Opponents of the project, including Rogue Aggregates in particular, contended that the Board must reject or deny the application under LDO 1.8.2(B), which prohibits approval of applications where "local, state or federal land use enforcement action has been initiated on the property, or other reliable evidence of such a pending actions."

Findings: During the hearings held on September 25 and 27, and on October 25, 2006, the Board received testimony regarding allegations of possible enforcement actions taken against the applicant by the DSL, the Corps, and DOGAMI. The enforcement actions related to alleged violations of the state Removal-Fill Law, Section 404 of the Clean Water Act and the state's mining and reclamation program. DOGAMI had issued a notice of violation (NOV) to the applicant dated July 18, 2006. The Corps issued a Cease and Desist letter to the applicant dated May 26, 2006. However, DSL had not issued any such order or otherwise indicated formally that a violation of its program had occurred. Ultimately, the Board required the applicant to provide evidence that any existing violations or enforcement actions had been resolved.

The applicant and the involved agencies provided the Board with the following evidence in writing:

- 1. A letter from DOGAMI dated December 4, 2006 (Exhibit 69, BOC record) stating that "DOGAMI conducted inspections on October 4th, November 1st and November 16th to monitor progress in the correction of the violations listed in the July 18, 2006 Notice of Violation (NOV). Those inspections have confirmed that Rock N' Ready is in full compliance with the July 18, 2006 NOV."
- 2. In a letter from the Corps dated January 25, 2006 (Exhibit 68, BOC record), the Corps determined that they had no jurisdiction over the alleged actions. Specifically, the Corps wrote that the work investigated was either exempt under Section 404(f) of the Clean Water Act or above the ordinary high water mark, which is the landward extent of Corps jurisdiction under the Clean Water Act. The letter states that the Corps has closed its file on this matter.
- 3. In a letter from DSL dated April 17, 2006 (Exhibit 78, BOC record), DSL states that the applicant "has made substantial progress and taken the appropriate and effective steps to resolve this matter, and is in compliance with the provisions of the Department's Consent Order."

Given the evidence provided, the Board concludes that the enforcement actions initiated by DOGAMI and the Corps are sufficiently resolved to ensure compliance with the relevant code sections.

Given the written testimony provided by DSL, the Board concludes that the DSL enforcement action has been sufficiently resolved to ensure compliance with the relevant code sections. As concluded by the Board during the May 30, 2007 hearing, any and all present cited enforcement actions and/or violations by the applicant have been resolved to the degree

necessary to ensure consistency with LDO Sections 1.7 and 1.8. Having resolved all issues associated with enforcement actions and violations at the May 30, 2007 hearing, at its next meeting on June 13, 2007 the Board deliberated and reached a final decision to approve the applications.

Furthermore, the Board of Commissioners concludes that LDO Sections 1.7 and 1.8 must be interpreted in a manner that leaves the last sentence of LDO Section 1.5.1 with meaning. Section 1.5.1 provides that, "standards imposed by other permitting agencies will be implemented and enforced by those agencies." Section 1.5.1 makes clear that it is not for the The Board of Commissioners concludes that they have responded to violation issues of "other permitting agencies" by withholding issuance of new development permits consistent with LDO Sections 1.7 and 1.8, but have provided an opportunity to submit evidence in response to the violation issues. The evidence now demonstrates that the Application is in compliance with the standards imposed by such other permitting agencies, and thus, the Board of Commissioners are bound to recognize the procedures to implement and enforce those agencies' standards consistent with LDO Section 1.5.1.

2. Compatibility With Rogue Aggregate Operations

Rogue Aggregates contends that the applicant's proposal is incompatible with Rogue Aggregates' existing operations and facilities. Rogue Aggregates asserts that it is within the impact area as evidenced by the downstream impacts of the recent flooding. Significant adverse impacts are allowed only when there is an "overriding public interest" for which the impacts can be mitigated to the extent practicable, which Rogue Aggregates argues has not been demonstrated.[JH1]

Findings: Rogue Aggregate's contention that its site should be included in the "impact area" is based on their allegation that the applicant's existing Pit 1 operation is somehow responsible for the failure of its culverted road crossing. The Planning Commission found otherwise and limited the Impact Area to the 1,500-foot distance from the proposed mining site as established in the County Code. The Board of Commissioners agrees with and adopts that conclusion as its own. The Board finds that Rogue Aggregates' complaints regarding the applicant's existing operation at Pit 1 having an adverse impact on its site are inaccurate. How Pit 1 was engineered or designed is not an issue that is currently before the Board as part of its review of the present applications.

Further, the Board finds that two engineers retained by the applicant, Bill Galli and Jeff Johnson, independently reviewed Rogue Aggregates' culverted road crossing and concluded that regardless of upstream activities, the crossing was doomed to fail. Mr. Johnson noted that the culverts could pass only a fraction of the total flow that Bear Creek could deliver during a moderate to major flood even if the culverts remained clear of sediment. Therefore, the crossing had to rely upon overtopping to pass flood flows, and the damage reveals that the crossing could not handle the overtopping.

Based on the evidence presented, the Board finds that the applicant's site and its Pit 1 operation did not provide the sediments that clogged the Rogue Aggregate road crossing. The evidence indicates that the applicant was not mining within Bear Creek, but was mining behind a

berm that separates Pit 1 from Bear Creek. Consequently, its normal operations would have caused no increase in turbidity or sedimentation downstream. Deposition of a 5- to 6-foot deep layer of sediment at Rogue's crossing, as it did during the December 1, 2005 flood event, would require that velocities near the crossing decrease significantly. Velocities did decrease because the crossing acted like a dam, because the culverts were not large enough culverts to pass the volume of water carried by Bear Creek. In addition, the crossing is located at a sharp bend in the stream. Therefore, significant sediment deposition as a point bar formed naturally along the inside portion of the bend. Backwater influences from the Rogue River may have also had an influence on stream velocities.

The applicant submitted evidence sufficient to establish that it has not operated on the water side of the Bear Creek bank and is not responsible for erosion along the bank line itself. There are hundreds of locations that are contributing sediment to Bear Creek. Bear Creek continues upstream for approximately 30 miles, and there are hundreds of miles of tributaries beyond that, many of which have ongoing erosion and undercutting along the banks. Bear Creek and its tributaries contain substantial stretches of eroding bank line that provide sediment of large and small grain size into the waterway. If Rogue's culverts were blocked by sediments from upstream, there is no evidence that it was specifically the result of any activity conducted by the applicant. However, the implication of the muddy water seen in high water events in Bear Creek is that areas upstream of the applicant's operation erode and contribute to the sediment captured at the depositional area where Rogue built its culverted road crossing.

The problems at Rogue's culverted road crossing took place during the December 1, 2005 flood event. However, Bear Creek did not overtop Pit 1 until the December 30, 2005 flood, after the incident at Rogue's culverted road crossing. Rogue Aggregate provided photos implying that flooding at Pit 1 and the applicant's subsequent emergency repair caused their sedimentation problems. However, the events are unrelated because there cannot be a connection between what occurred at Rogue's culverted road crossing on December 1st and what occurred at the applicant's pit on December 30th and afterwards.

Finally, the applicant submitted a photo showing the actual location of the material that was washed out when the breach in the Pit 1 berm was created. As can be seen in that photo, the sediments were retained within Pit 1 and could hardly have caused any problems for Rogue Aggregate or any other downstream user.

With respect to the application presently before the Board and previously evaluated by the Planning Commission, the Board agrees with and adopts the recommendation of the Planning Commission that the testimony from Mr. Johnson demonstrates that the work proposed under this application will not adversely affect properties either upstream or downstream (including the Crater Sand & Gravel and the Rogue Aggregates operations)

3. Adequacy of Information Regarding Site Operations

Rogue Aggregates contends that neither the applicant's Site Development Plan nor its proposed bridge design contain sufficient detail to demonstrate compliance with the various code requirements, and do not provide sufficient detail regarding site operations, mine phasing, and reclamation.

Findings: For the reasons explained in the Planning Commission's findings, the Board of Commissioners finds that these code requirements are met. The Board finds that sufficient detail regarding the bridge design was provided by Bill Galli in his testimony to the Planning Commission. Support for Mr. Galli's position is in the record and was accepted by the Planning Commission, and is adopted by the Board. The additional work conducted by Mr. Johnson of *nhc* confirms that conclusion, was accepted by the Planning Commission and is adopted by the Board. The applicant's amended DOGAMI operating permit application contains the necessary mining details not just for TL 1900 but also for tax lots 100 and 200.

4. Coordination with Potentially Affected Agencies

Rogue Aggregates contends that the applicant has not coordinated with all potentially affected local, state and federal agencies or demonstrated that it is feasible to obtain the necessary permits for the master plan.

Findings: Evidence in the record establishes that the applicant's representatives, including Bill Galli of the Galli Group, coordinated with ODFW, DSL and DOGAMI while the initial application to the County was being developed. Mr. Galli's testimony to that fact was made to and accepted by the Planning Commission. The Board also finds that Mr. Johnson and Dorian Kuper coordinated with DOGAMI staff during the preparation of the application to DOGAMI regarding mining on TL 1900, 100 and 200. They and others also coordinated with ODFW and DOGAMI to prepare the Pit 1 restoration plan, as indicated by Ms. Kuper's amended operating permit submitted to DOGAMI.

5. Reliance on Maps Regarding Location of Floodplain

Rogue Aggregates contends that only approved FEMA and FIRM maps can be considered by the County, and that any changes to these maps used in support of the application must be approved prior to submitting the application.

Findings: The Board finds that this argument is incorrect, for the reasons addressed in Mr. Johnson's report titled "Flood Protection Design & River Engineering Investigation for Proposed Pit 2 and Bridge" and the same is herewith incorporated and adopted. As explained by Mr. Johnson, who is one of two consultants in the northwest contracted to work with FEMA on such issues, the FEMA floodway may need to be refined to allow the County to review the effects of the proposed bridge on the floodplain, but a formal review by FEMA is not necessary. As noted by Mr. Johnson, where the "effective" FEMA study misrepresents the flood risk along, for example, Bear Creek, then it would be prudent (not required) to revise the FEMA study. The Board accepts Mr. Johnson's testimony that the FEMA maps are more conservative because they are based on higher 100-year flood values than actually exist today, and that the "location of the floodplain and the floodway could be refined using new and more accurate topographic information, but again this does not require a formal FEMA map update." (Pages 10-11).

6. Consistency with Greenway Plan

Rogue Aggregates contends that a Type 3 permit must be "consistent with" the Greenway Plan, and therefore no mining activities should be allowed within Bear Creek Greenway as it "seems impossible" that there is an overriding public interest given the public characteristics of

the Greenway and the intensity of the proposed uses. The code also prohibits map amendments that will prevent implementation of any area of special concern such as the Bear Creek Greenway.

Findings: The Planning Commission correctly determined that the primary purpose of Area of Special Concern (ASC) 82-2 is to protect and preserve the riparian area to help facilitate a Greenway trail extension. Because the proposed operations will be set back from the Greenway, the applicant has stipulated that it will provide a perpetual trail easement. The Board of Commissioners notes that the purpose of ASC 82-2 is met and the trail will not be precluded by the proposed aggregate operations. Additionally, if and when the trail is constructed in the area, the reclamation of Pit 2 on the east side of Bear Creek will create waterfowl habitat and wetlands, enhancing the viewshed from the Greenway trail. The Board adopts the Planning Commission's interpretation of this section of the County Code to mean that the requirement that the proposed use is not a conflicting use certified in an adopted Goal 5 ESEE means that Goal 5 resources, such as the Greenway, are to be protected from non-Goal 5 resources. Because both the Bear Creek Greenway and the proposed aggregate operations are Goal 5 resources, the Board may adopt an ESEE analysis that balances the competing Goal 5 resources. Accordingly, the Board finds that the ESEE analysis balances the Bear Creek Greenway and Aggregate Resources in the Goal 5 analysis for the Minor Comprehensive Plan Map and Zoning Map Amendments.

B. Exhibits Accepted/Rejected by the Board

On April 11, 2007, the Board of Commissioners held a public hearing to accept evidence and testimony into the record specifically related to compliance with DOGAMI, the Army Corps of Engineers, and the Department of State Lands violations. Prior to this hearing, two violations had been identified from DOGAMI and the Army Corps of Engineers. Evidence in the form of exhibits was submitted clearing these two violations. Evidence was also submitted identifying a violation from Department of State Lands. A decision on the merits of the application was postponed pending additional evidenc and testimony that the Applicant was in substantial compliance with the Department of State Lands consent order.

Exhibits were discussed relative to their compliance with the Board's specific criteria for submission of evidence regarding clearance of the two violations from DOGAMI and the Army Corps of Engineers. The Board of Commissioners decided, by motion and vote, to accept Exhibits # 68, 69, 70, 76 and 77 into the record to be considered by the Board for this application. The Board rejected Exhibits # 71, 72, 73, 74, 75 and 81 as evidence to be considered by the Board. These exhibits did not meet the specific criteria determined by the Board regarding the clearance of violations from DOGAMI and the Army Corps of Engineers.

On May 30, 2007, the Board of Commissioners held a public hearing to accept evidence and testimony into the record specifically related to demonstration of substantial compliance with the Department of State Lands consent order. Exhibit 82 was specifically rejected because it did not meet the criteria determined by the Board with regards to the substantial compliance with the Department of State Lands consent order and would not be used as evidence used by the Board to reach a decision on this application. All other numbered exhibits were accepted as part of the record as evidence to determine compliance with the criteria for this application.

III. Conclusion

Based upon the evidence and testimony in the record and the foregoing findings of fact and conclusions of law, the Board of Commissioners concludes that the subject application complies with the applicable requirements for a minor Comprehensive Plan map amendment, minor zoning map amendment subject to the site and operations master plan (as modified), a Type 3 permit for aggregate operations in the Bear Creek Greenway, (approval of the bridge crossing and incidental modifications in accordance with the approved site and operations master plan), final site plan approval (as amended in these proceedings), and floodplain development permit for all aspects of the operation for which final site plan approval is granted.

CRAIG A STONE & ASSOCIATES, LTD.

EXHIBIT C

712 Cardley Avenue ● Medford, Oregon 97504-6124
Telephone: (541) 779-0569 ● Fax: (541) 779-0114 ● E-mail: cstone@cstoneassociates.com

RECEIVED

JAN 1 8 2006

January 16, 2006

JACKSON COUNTY PLANNING COMMISSION c/o Jackson County Planning Department County Courthouse 10 South Oakdale Medford, OR 97501

RE: REBUTTAL

Planning Action LRP2005-00003 Rock-n-Ready Mix LLC: Applicant

Dear Jackson County Planning Commission:

Following the close of public testimony at the October 27, 2005 public hearing on the above captioned matter, the Planning Commission ("Commission") left the record open and continued the public hearing. Opposition to the application was presented by the Applicant's competitor Rogue Aggregates, Inc. This letter serves as preliminary rebuttal to the arguments made by their Attorney at that proceeding.

Applicants Rebuttal:

1. Letter to Jackson County Planning Commission from Todd Sadlo, Attorney for Opponent Rogue Aggregates, Inc., dated October 27, 2005.

The Opponent's Attorney addresses certain issues in numerical fashion; these are cited verbatim below, where each is followed by Applicant's rebuttal.

Objection 1: The applicant has proposed a bridge across Bear Creek that would be composed of a railroad car and two flatcar ramps, on the north and south banks of the creek. The County's development code requires that the proposed bridge be subject to review in these proceedings, and does not allow separate approval through a "Land Use Interpretation," without notice and opportunity for a hearing. The applicant is constructing abridge footings now, even though the staff approval states that it is "voidable" if the application you are now considering is not approved. The entire proposal before you should be tabled until all information regarding the proposed bridge is presented to the Planning Commission for review and approval as part of this Post-Acknowledgement Plan Amendment. If what is in the application packet about the bridge is all there is, it is not enough to address the potential risks and impacts to the creek and downstream landowners.

Rebuttal: The above described land use permit has been rescinded, without contest from Rock-n-Ready Mix LLC. by the County. For this reason, this objection has no bearing on the proceeding at this time.

Notwithstanding this fact, the objection fails to identify the LDO provision(s) upon which Opponent's Attorney relies in his conclusion that, "the County's development code requires that the proposed bridge be subject to review in these proceedings and does not allow separate approval..." The code section prohibiting the pursuit of multiple land use applications subject to different levels of review for a permitted use is not identified; the parcel where the bridge is located is planned Aggregate Resource and zoned Aggregate Removal and the bridge is proposed as an accessory structure thereto.

Objection 2: On behalf of Rogue Aggregates, Chris Lidstone & Associates have reviewed the proposal, and have concluded that there is insufficient evidence in the record to support that applicant's bridge design or 'no net floodwater rise' conclusions. The applicant states that the regulatory FEMA deck is inaccurate and has asserted to the County that it is proposing a new "pre-development condition" as a basis for its proposed Conditional Letter or Map Revision (CLOMR) or a Letter of Map Revision (LOMR). The application has put the cart before the horse. The applicant has not provided "input data" nor modeling assumptions for an acceptable hydraulic modeling study. The difference between FEMA and the post-development condition ranges for 0.69 feet to 2.8 feet, which is a significant difference that calls into question the applicant's claim of "no net rise."

Rebuttal: As to whether the Galli calculated flood deck is consistent with the FEMA calculated flood deck, this issue is addressed below under Objection 5a.

The Applicant does not state that the regulatory FEMA deck is inaccurate. At record page 189, Applicant asserts that the differences in the Galli calculated water surface elevations and the FEMA calculated elevations are small, and that this discrepancy is sufficiently small to allow the County to apply the Galli calculated water surface elevations. For this reason, the assertion by Opponent's Attorney that the applicant has characterized the regulatory FEMA deck as inaccurate overstates the Findings of Fact offered by the applicant with the initial submittal. The Galli study has almost twice the resolution of the FEMA study to provide the County a study that accurately reflects current conditions at the site. Increased precision can reasonably be expected to result in site-specific variances not captured in the FEMA study. It is the responsibility of the County to weigh the evidence and conclude whether the overall variance is small enough to be considered substantially equivalent to the FEMA study.

The assertion that "input data" has not been provided neglects substantial evidence in the record. Record page 222 to 223 contains a detailed discussion of the methodology used to calculate the flow volumes (Q₁₀₀). If Opponent's Geotechnical Engineer, Chris Lidstone, believes these calculations and/or modeling assumptions to be in error then he should provide a detailed technical review of the calculations for the Commission to consider.

Objection 3: The applicant contends that it has performed calculations and has met with ODFW concerning construction of the bridge, that all work will be performed above the Ordinary High Water Mark (OHWM) (two-year flood event), and that, therefore, no permits are required from DSL or the Corps of Engineers. To the contrary, no calculations have been provided regarding the location of the Ordinary High Water Mark, nor has the applicant provided a letter or concurrence for ODFW. If the OHWM calculation used by the applicant is incorrect, a flood event

could dislodge the bridge, which would create havoc for all downstream landowners and in particular Rogue Aggregate's conveyors and other facilities.

We have good reason to be concerned. Based on our preliminary review of available data, the railroad car span will range from 90 to 120 feet, depending on which drawing is relied upon. There is no protection proposed that would protect the footings located below the Ordinary High Water Mark. Hydraulic conditions at the bridge are such that the river will continue to move, raising serious concerns regarding erosion and scour at the bridge footings during a flood event. If the bridge were to fail during a flood event, the bridge, and materials eroded from the footings and banks, will end up in the vicinity of downstream channel improvements recently constructed be Rogue Aggregates.

Rebuttal: It appears this testimony is directed at the Floodplain Development standards in JCLDO 7.1.2(E) and (F) in a general way and the same are addressed below.

JCLDO 7.1.2(E) relates to state and federal permits, where required. Determination of the Ordinary High Water Line is not a County requirement, but does relate to the need for DSL/Corp of Engineers permitting requirements. At the time of the initial hearing, a response from DSL regarding the need for a permit had not been received by the County. Applicant can feasibly and will obtain a DSL/Corp permit if these agencies determine one is required; no such permit appears necessary based upon Galli's determination of the OHWM location depicted in Galli's Figure 7 at record page 214.

JCLDO 7.1.2(F) pertains to development standards in the floodplain and floodway. JCLDO 7.1.2(F)(c) requires, "bridges to be anchored so that they will resist being washed out during a flood." At record page 203, Applicant's registered professional Geotechnical Engineer states, "The two main bridge piers were designed such that forces from streamflow, floating debris, bridge dead load, vehicle live load and braking load of vehicles can be adequately resisted." Record pages 214 to 220 provide detailed engineering drawings and specifications for bridge construction. Opponent's Attorney's speculation as to bridge design adequacy does not constitute substantial evidence in the record.

Objection 4: The applicant's proposed ESEE analysis and other proposed findings are mostly bald assertions, and are not supported by any substantive data or studies. Based on what has been submitted to date, the only conclusion that can reasonably be drawn from a proper ESEE analysis is that the risk of harm to Bear Creek, the Rogue, and all downstream owners, is unacceptable and tips the scales against approval. At this point, there is not enough evidence for a reasonable person to use as the basis for a decision to approve. The burden is on the applicant, and the burden to justify approval has not been met.

Rebuttal: This objection is general in nature and is not stated with sufficient specificity to afford the Planning Commission an opportunity to respond as required by law and stated by the Chair of the Jackson County Planning Commission prior to opening the public hearing on this application. Opponent's Attorney states, "the only conclusions that can reasonably be drawn from a proper ESEE is that risk of harm to Bear Creek, the Rogue [River] and all downstream owners is unacceptable and tips the scales against approval." This conclusion is reached without identifying what additional uses must be

included and/or additional information necessary for the County to complete the ESEE process.

Objection 5a: Insufficient information regarding flood profiles, and inadequate support for conclusory flood certification provided with the application;

Rebuttal: Opponent's Attorney and Opponent's Geotechnical Engineer both raised concerns that the Galli calculated flood deck and regulatory FEMA flood deck were too disparate to be considered consistent, and that this discrepancy was too large to demonstrate compliance with the standards in section 7.1.2 as is argued in Applicant's initial submittal. Applicants appreciate this testimony and agree that the hydrologic engineering for the project must be based on sound and generally accepted hydrologic engineering practices. Since the hearing, applicant's Geotechnical Engineer has revisited this issue and the applicant expects to have revised hydrology analysis that addresses this concern available for the Commission to review at the hearing scheduled for January 26, 2006.

Objection 5b: Insufficient information regarding the proposed berm along the sewer line, and how it will impact the base flood;

Rebuttal: This objection is not raised with sufficient specificity to allow the Commission an opportunity to respond; it is not clear from this objection how the Opponent's Attorney reaches the conclusion that the information in the record is insufficient. As a matter of past practice, the submitted information is at least as detailed as the County has relied upon to approve numerous floodplain development permits over the years. The record shows that the berm was modeled in the HEC-RAS analysis, in accordance with generally accepted engineering practices for hydrologic modeling. Also, the berm construction schematics are provided at record page 323 and have been designed by a registered professional Geotechnical Engineer in accordance with the County's floodplain review requirements which constitute the relevant substantive approval criteria.

Objection 5c: Insufficient explanation of the location of the ordinary high water line, which is key to determining proper bridge design and permits required. There is also insufficient information regarding the design, height, and potential impacts on flood velocities and erosion potential of the bridge and berms that would be located in the floodplain and floodway as part of the proposal;

Rebuttal: This objection is not raised with sufficient specificity to allow the Commission an opportunity to respond; it is not clear from this objection how the Opponent's Attorney reaches the conclusion that the information in the record is insufficient. As a matter of past practice, the submitted information is at least as detailed as the County has relied upon to approve numerous floodplain development permits over the years. The bridge and berm were modeled in the HEC-RAS analysis, in accordance with generally accepted engineering practices for hydrologic modeling. The berm and bridge construction schematics are provided in the record and have been designed by a registered professional Geotechnical Engineer in accordance with generally accepted engineering practices to demonstrate compliance with the relevant substantive approval criteria contained in the County's floodplain development standards.

Objection 5d: Insufficient information regarding erosion control techniques to be employed to prevent day-to-day erosion and potential catastrophic flooding events. Channel and bank instability, channel avulsion and meander cut-off are all important issues that must be addressed to protect Bear Creek, the Rogue River, and downstream landowners. No geomorphic study has been provided. The importance of this information is magnified by the applicant's proposal for berm construction and stockpiling of overburden within the floodplain;

Rebuttal: Jackson County has adopted standards for floodplain and riparian area development (LDO Sections 7.1.2). It is unclear what, if any, approval standard this objection is intended to address. A geomorphic study is not a submittal requirement nor has the assertion that one is necessary been raised with sufficient specificity. No explanation or legal argument is provided to establish why the County's floodplain standards are inadequate and why such a study is therefore necessary in this instance to assure the risk posed by a 100-year flood event will not exceed the risk generally accepted by Jackson County for floodplain and floodway development. The standards in JLDO Section 7.1.2 regulate fill within the floodplain as is proposed for the berm/haul road to protect the extraction on the east side of the project from inundation.

The project generally avoids riparian areas altogether. It is unclear where the source of erosion potential is expected to occur by the Opponent's Attorney. The objection incorrectly states that overburden is proposed to be stockpiled in the floodplain. With the flood management measures proposed herein, there are no new stockpiling areas proposed in the floodplain as the same is plainly stated at the top of Record Page 332 and as depicted on the Site Master Plan.

Objection 5e: Insufficient information has been presented to establish appropriate setbacks from Bear Creek. For example, there is a potential for river 'capture' by the existing pit which, as part of the proposal is to be used as a settling pond. The pond will at most times be filled with turbid water and is located within the meander zone of Bear Creek, on a major meander. "Capture" or overtopping would cause the release of highly turbid water into Bear Creek and the Rogue River, fouling sandbars and otherwise harming the Rogue River fishery;

Rebuttal: Minimum setbacks from Bear Creek are established by the LDO at 50-feet. In most all locations, the project proposes setbacks of substantially more than 50-feet and the project complies with all the riparian protection standards in JCLDO Section 8.6 as depicted on the Master Site Plan. The only indication as to the point of this objection is the example provided with respect to capture of the proposed settling pond in Existing Pit #1. DOGAMI raised concerns with the use of this area as a settling pond and this portion of the proposal has now been revised to eliminate this feature. For this reason, the example provided by opponent's attorney is now without practical meaning.

Objection 5f: Insufficient and conflicting information regarding the configuration of mining cells on the east and north side of Bear Creek. The application materials are geared to 35 acres of tax lot 1900, and provide little to no information regarding mining plans to the south, in a total ownership area of 345.80 acres;

Rebuttal: This objection is not directed at any particular approval criteria and is not stated with sufficient specificity to afford the Planning Commission an opportunity to

respond as required by law and stated by the Chair of the Jackson County Planning Commission prior to opening the public hearing on this application. Detailed information on the configuration of mining cells are not required by the County's Aggregate Site Plan standards. These standards require only general location and operating parameters. The project includes more detailed mining plans for Tax Lot 1900 because it is planned and zoned aggregate and, as part of this site plan review, mining is expected to commence immediately following approval. The more detailed information on Tax Lot 1900 is provided consistent with the currently pending DOGAMI permit application. Although the Applicant believes there is sufficient information for the proposed mining operations east of Bear Creek to demonstrate compliance with the County's standards, if the Commission believes a detailed site plan review is appropriate prior to extraction on Tax Lots 100, 200 and 2600 then applicant will accept a reasonable condition requiring the same. The initial submittal recognizes that mining west of Bear Creek is many years in the future and that both detailed hydrologic analysis and detailed site plan review will be required prior to any extraction west of Bear Creek.

Objection 5g: Insufficient delineation of wetlands and vernal pools. The applicant's wetland study says nothing about the north and the east bank of Bear Creek, where mining expansion is proposed. Without a proper delineation of such resources, it is impossible in this case to properly weigh potential environmental impacts, as required by the ESEE process:

Rebuttal: Applicant had originally proposed to defer wetland identification following approval of this land use application because the National Wetlands Inventory Maps, upon which the County relies, do not identify substantial wetlands in the area proposed for extraction. Deferral of detailed wetlands identification was originally proposed because these detailed studies are valid for a limited time period. As a practical matter, wetlands must be identified at sometime prior to mining operations proceeding. Because the opponent raised this issue, the applicant engaged Terra Science Inc. to identify potential wetlands impacts and a preliminary report is expected to be available at the next scheduled hearing. However, it should be noted the Opponent's Attorney has not explained how as a matter of law any necessary DSL/Corp of Engineering Permits could not feasibly be obtained. Moreover, wetlands, as a matter of law, cannot serve as a basis for mining restrictions pursuant to Provision 12 of Jackson County's aggregate program because the County has not included wetlands on its inventory of significant Goal 5 resources and no protection program for wetlands has been adopted by Jackson County.

Objection 5h: Insufficient delineation for Bear Creek riparian areas, insufficient setbacks, and a lack of coherent explanation of steps that will be taken to protect and improve the existing riparian area, which has been partially cleared and graded by the applicant;

Rebuttal: With respect to riparian protections and development the County has adopted and acknowledged protections and they are found in LDO Section 8.6. Opponent's Attorney has failed to explain how the use of aerial photos followed by on-the-ground verification is inadequate. No area was identified where the proposed site-plan depicts a location where the applicable setback of 50 feet will not be maintained. The Conclusions of Law offered for adoption by applicant at Record Page 331 clearly states that no existing overstory vegetation will be removed in the prescribed 50-foot setback and the only understory vegetation that will be removed is at the stream crossing location where

it is unavoidable and allowed as a matter of code. With respect to operational issues to assure the prescribed setbacks for existing and proposed operational areas are observed, applicant agrees that conditions assuring the same are appropriate and applicant will accept reasonable conditions to accomplish the same.

Objection 5i: Insufficient analysis of potential fish capture and mortality in the proposed settling ponds and new ponds as they are constructed;

Rebuttal: This objection is partially mooted with respect to the proposed settling pond, because this component of the proposal has been removed. Notwithstanding this revision, this objection ignores the facts. Fish capture and mortality at the existing Pit #1 was a concern raised by DOGAMI and ODFW as part of the operating permit for this site. The land use at this Pit #1 is already permitted by Jackson County with a condition that mining depth exceeding 25 feet be approved through an amendment to the DOGAMI permit. The DOGAMI permit amendment for Pit #1 has now been issued and this amendment included fish escapement features approved by DOGAMI in coordination with ODFW. The objections reference to new ponds is not stated with sufficient specificity to determine the mining feature being referenced; new pits include flood control features engineered to prevent pit capture by a 100-year flood event.

Objection 5j: Insufficient evidentiary support for numerous statements made in the ESEE, regarding, especially, economic and environmental consequences of allowing or prohibiting the use;

Rebuttal: This objection is not directed at any particular approval criteria and where opponent's attorney fails to identify the numerous statements in the ESEE, regarding especially, economic and environmental consequences this objection is not stated with sufficient specificity to afford the Planning Commission an opportunity to respond as required by law and stated by the Chair of the Jackson County Planning Commission prior to opening the public hearing on this application. It is not even clear whether this objection refers to economic and environmental consequences of allowing or prohibiting uses in the impact area or whether it refers to allowing or prohibiting the proposed aggregate use.

Objection 5k: Insufficient information regarding proposed reclamation plans. The County cannot be expected to make a coherent decision about the long term environmental consequences of the of the proposal without knowing the proposed duration of mining and without seeing a more detailed conceptual reclamation plan;

Rebuttal: Neither Jackson County's aggregate program nor its standards require the duration of the operation to be explicitly defined as a pre-requisite to determine long-term environmental consequences. The assertion that this is necessary is Opponent's Attorney's opinion and no such requirement is established in the County's aggregate program. Notwithstanding this matter of law, applicant expects the total project area to be mined over the next 25 to 35 years. With regards to more detail in the reclamation

¹ If this objection was intended to address criteria relating to protection of the Bear Creek Greenway see rebuttal to objection 5(r) below.

plan, the applicant welcomes any details the Commission believes is necessary and will provide the same.

Objection 51: Complete lack of a coherent set of conditions or other "program to achieve Goal 5," as required by law. Applicant's Exhibit 4 is not adequate;

Rebuttal: The County has an adopted and acknowledged program to achieve Goal 5 and it is located in the Aggregate Element and Aggregate Map Designations of the Comprehensive Plan and Section 4.4 of the JCLDO. Compliance with these provisions achieves Goal 5 for aggregate in Jackson County. Conditions of approval can be and are frequently placed on aggregate operations as part of the County's aggregate program, but development and attachment of such conditions are the responsibility of Jackson County through the ESEE process.

Notwithstanding the above technical arguments, Applicant concurs that a set of conditions to obtain Goal 5 is likely appropriate. As stated in Applicant's letter dated June 29 at Record Page 559, Applicant viewed work on a set of conditions prior to the first evidentiary hearing as premature where the Planning Commission may make changes to the ESEE offered by the applicant and the fact that there is another hearing before the Board of Commissioners in which new evidence may be offered and any objections to proposed conditions may be raised. With a positive recommendation, Applicant expects to work with Jackson County Planning Staff to prepare a set of appropriate conditions consistent with the Planning Commission's recommendation and its corresponding deliberation.

Objection 5m: Insufficient explanation by the applicant of numerous past violations, that affect the credibility of the applicant and detract from a finding that it is feasible for the applicant to carry out the proposal in compliance with law. The applicant has since 1998 been under numerous DOGAMI "notices of violation" and has also been subject to DEQ and Country enforcement actions;

Rebuttal: There are no violations at this time. Violations have nothing to do with whether a sand and gravel deposit is a significant resource. If, through approval of the operating permit, the Planning Commission has concerns regarding compliance with code requirements and discretionary conditions, then the Commission has the authority to attach conditions for regular inspection by County Staff and when key components of the Master Plan are initiated. The Applicant will accept reasonable conditions of approval requiring the same.

Objection 5n: Insufficient justification for conclusions regarding the quantity, quality, and location of the resource. The source of the boring log information, how it was collected, and who collected it, is not presented in the conclusions made. Quantity estimates are based on a new pit depth of 50-60 feet while DOGAMI has limited the existing pit depth to 25-feet. No basis is provided for the applicant's expectation that pits are twice as deep will be allowed. Quality information is not based on any samples that were taken from areas that the applicant proposes to mine on the north and east bank of Bear Creek;

Rebuttal: In the interest of assuring that the entire site is designated a significant resource, the applicant has engaged the services of Dorian Kuper, Engineering Geologist

from Kuper Consulting LLC, to supplement the quality information and refine the quantity estimates submitted to-date; this supplemental evidence is expected to be available at the next scheduled hearing.

Opponent's attorney explicitly refers to the need to justify the quality of aggregate reserves on the north bank of Bear Creek. This objection ignores established fact; the Jackson County Board of Commissioners already designated the quantity and quality of the aggregate reserves on Tax Lot 1900 (north bank) as significant. This is plainly stated in County Ordinance 95-61, which was adopted as part of the County's periodic review for aggregate and was acknowledged by DLCD without objection.

With respect to the boring log information already submitted to the record and estimates of quantity on the Medina site (Tax Lots 100 and 200), this information was collected and quantity estimated by Knife River Corporation, a subsidiary of MDU Resources Group (Rogue Aggregate's parent company). Based upon the oral testimony of Paul Medina, the owner of the subject property, this analysis was performed by Rogue Aggregates' subsidiary company while they were attempting to acquire rights to mine the Medina property. Opponents' Attorney is questioning the validity of the quantity estimate prepared by his client's subsidiary.

With respect to pit depth and quantity of minable reserves, mining depth is a matter of engineering feasibility and associated permitting from DOGAMI. The DOGAMI permit for Pit #1 has been amended to allow depths in excess of 25 feet. Moreover, the applications to both DOGAMI and the County herein request approval to full minable reserve depth and quantity estimates are based upon the same. As a practical matter this argument is without substance; even if estimates were arbitrarily restricted to 25 feet, the record indicates the resource is still larger than Jackson County's threshold standard of 100,000 cubic yards.

Objection 50: Lack of a traffic study:

Rebuttal: This objection ignores substantial evidence in the record. A detailed study for transportation system safety is provided at Record Page 578. This study identifies needed improvements to assure safe system operations. Neither ODOT traffic engineering staff nor Jackson County traffic engineering staff determined that a detailed capacity analysis was necessary to conclude the proposed land use changes will not significantly affect a transportation facility. A letter from Jackson County Road stating the same is provided at Record Page 572. The expert opinion of Applicant's registered professional traffic engineer Robert Kortt is provided in a letter, dated December 15, 2005, that the trip generation analysis previously submitted to the record is correct and on this basis a detailed capacity analysis is not necessary to conclude the proposal will not significantly affect a transportation facility.

Objection 5p: Insufficient information addressing potential groundwater impacts. The applicant is proposing to dewater a very large pit or pits to a depth of 50-60 feet. The applicant has provided a single page of narrative, without any supporting documentation, addressing potential groundwater impacts of the proposal, which is inadequate;

Rebuttal: As a matter of law, this objection cannot serve as a basis for mining restrictions pursuant to Provision 12 of Jackson County's aggregate program because this

area is not within an area where a Goal 5 protection program for groundwater resources has been adopted and the site is not located in ASC 90-8 which is the County's only adopted protection program for groundwater resources (see also Page 111 of the County's adopted and acknowledged Goal 5 background document). The Opponent's Attorney has identified no well or other impact related to ground water to his client's property that can reasonably be expected to be result from the proposed operation.

As a practical matter, both the applicant and DOGAMI want to assure that neighboring residences continue to have sufficient well water. On his own volition, Applicant has in the past drilled a well on the adjacent property to the south when problems with that well were encountered. The DOGAMI review of Pit 2 on tax lot 1900 includes a condition for well monitoring on the Medina well on a regular basis. As this permit is extended to include the balance of the Medina and Hilton property, the County can expect similar conditions to be placed on any other wells for which DOGAMI has concerns. For this reason, applicant will accept a similar condition for any wells identified in this proceeding that the Commission believes there is reasonable likelihood of adverse affect.

Objection 5q: The applicant proposes to construct a "high channel" ditch as a permanent feature on the floodplain, between a proposed permanent 100-year-elevation berm and the existing sewer mainline through the property. The proposal states that the ditch will be lined with "Reno mattresses" (articulated concrete blocks). Minimal information has been provided regarding the hydraulic design of this major floodplain feature. There is insufficient data to review, data necessary to establish the long-term integrity of the proposed channel, and addressing its potential for avulsion, sedimentation, erosion, and impacts to the Bear Creek Greenway and downstream landowners; and

Rebuttal: In response to testimony at the earlier hearing, Applicant's Geotechnical Engineer has re-examined the floodplain analysis. This examination identified an anomaly in the analysis that that may eliminate the need to construct this feature altogether. Applicant expects a revised floodplain analysis addressing this issue will be available at the next scheduled hearing.

Objection 5r: The proposal's treatment of the Bear Creek Greenway is not appropriate. The Greenway is an "Area of Special Concern" and is the subject of management policies and guidelines that are not addressed by the proposal. Although the development ordinance directs you to promote Greenway polices to the extent of your legal authority, (7.1.1(B)(2)), the applicant has proposed no greenway mitigation.

Rebuttal: Notwithstanding the below legal technicalities, the applicant believes good planning should incorporate important features like Bear Creek Greenway where appropriate. The statement by Opponent's Attorney that the applicant has offered no Greenway mitigation is unfounded. Applicant's site plan leaves 500-foot wide reaches of riparian area as undisturbed greenway area. Applicant has offered a public easement to take effect following mining operations east of Bear Creek in accordance with a request submitted by the Greenway Program manager. Considering Applicant's offer to dedicate almost a mile of private property for public purposes, Applicant finds the Opponent's Attorney's assertion that no mitigation has been offered absurd.

This objection identifies no policies in the Greenway Plan that the Opponent's Attorney believes operate as an approval standard. No legal analysis is provided upon which a conclusion can be reached that treatment of the Greenway is inappropriate.

2. In addition to those objections raised in the Letter to Jackson County Planning Commission from Todd Sadlo, Attorney for Opponent Rogue Aggregates, Inc., dated October 27, 2005, he raised the following objections/issues in oral testimony on October 27, 2005.

Oral Objection #1: Opponent's Attorney stated that the Applicant had included some conflicting uses that may not pose a substantial threat to the aggregate resource and then proceeded to assert that, on this basis, the Commission should include his Client's property within the conflicting use area. The principal rationale for the request to be included in the impact area was the threat posed by increased risk of flood damage to his client's property.

Rebuttal: This objection and request to be included in the impact area is absurd for the following reasons:

- Opponents request to be included in the impact area is without precedent or legal basis. Nowhere in the County's Aggregate Element of the Comprehensive Plan or in the history of its application, in Goal 5, in Division 16, in Division 23 nor in the Jackson County LDO is one sand and gravel operation identified as a conflicting use with another sand and gravel operation. The Applicant is unaware of any case law to support this assertion. This objection and request is raised without any legal analysis where substantive criteria or procedures in the ESEE process is identified and relied upon to designate one aggregate operation as a conflicting use with another aggregate operation. Nowhere in the application is this point conceded by the applicant. Quite the contrary, the conflicting use tables offered by the applicant at record pages 156 and 161 clearly state that the applicant does not identify adjacent aggregate uses as potential conflicting uses.
- Opponent's Attorney's argument is backwards in precisely the way that both the Staff and the Planning Commission cautioned the entire audience at the hearing with respect to the legal requirements for the County's Goal 5 Aggregate Program. Opponent's Attorney has made no compelling argument and offered no substantial evidence as to how this resource site is adversely affected by the uses on his client's property 2,000 feet away.
- The potential risk cited by the Opponent's Attorney as the basis for inclusion in the impact area was primarily related to the bridge improvement. This improvement is located on Tax Lot 1900 which is planned and zoned for aggregate uses. The ESEE process for this parcel is complete and an impact area is already established for this parcel by operation of Ordinance 95-61, which was completed as part of Jackson County's periodic review. The principal requests related to the subject application applicable to Tax Lot 1900 are the floodplain development approval and site and operations master plan approval. The only component of the Plan Amendment and ESEE applicable to Tax Lot 1900 are the restrictions on mining west of Bear Creek and restrictions on mining in the Bear Creek Greenway overlay area. Neither of these restrictions in that adopted and

acknowledged ESEE were based upon floodplain issues nor were they related to other aggregate operations in the area.

Respectfully Submitted,

CRAIG A. STONE & ASSOCIATES, LTD.

Jay Harland Consulting Planner RECEIVED

MAR 16 2006 JACKSUN GOUNTY PLANNING



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March 15, 2006

VIA FIRST CLASS MAIL

Jackson County Planning Commission c/o Jackson County Planning Department County Courthouse 10 South Oakdale Medford, OR 97501

Re: File LRP 2005-0003: Rock 'N Ready Comp Plan Amendment, Site Plan Review and Zone Change

Dear Chair Hennion and Commission Members:

This Firm represents Rock 'N Ready Mix, LLC, the applicant in the above-referenced land use application. This letter is intended to respond to issues and allegations made by Rogue Aggregate ("Rogue") and its representatives at the Planning Commission hearing on February 9, 2006. At that time, the Planning Commission directed that the record be held open for seven days for new evidence and testimony. This letter and the attached materials are submitted under that direction.

It is clear from the oral testimony and the binder provided by Rogue that its goal is to avoid meaningful commentary on the proposed activities and to attempt to confuse the Planning Commission with irrelevancies, misrepresentations, and inferences. Generally, we believe Rogue's intent is to delay the proposal and to add to the expense of permitting for the applicant. Rogue's testimony thus far contains little to no factual evidence or analysis relative to the criteria. Rather, it relies on past resolved violations, unsubstantiated allegations that the existing operation has harmed Rogue's operation and, generally, trying to cast doubt on Rock 'N Ready engineering consultant. Rogue also makes the usual demands for additional detail, more studies

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and more information. Rogue's testimony does not relate to specific criteria or explain why Rock 'N Ready's testimony, provided by a registered Oregon engineer, is not sufficient to meet the relevant criteria. They simply claim it is not sufficient to meet their criteria.

In response to Rogue's comments, Rock 'N Ready retained Jeff Johnson of Northwest Hydraulic Consultants (NHC). Mr. Johnson has extensive experience in such situations and NHC is a major contractor to FEMA. Mr. Johnson substantially refutes Rogue's testimony regarding the likelihood of downstream impacts, sedimentation from Rock 'N Ready and their culverted road crossing. As an engineer certified in Oregon and given his experience in such matters his testimony constitutes expert testimony and is substantial evidence supporting Rock 'N Ready's application.

Immediately below, we would like to correct some of Rogue's testimony presentation on February 9, 2006, and at other times during the county's public hearing process. Additional rebuttal testimony is being prepared by Jay Harland, Bill Galli and Dave Paradis. Please include all this testimony into the record for this matter.

1. Department of State Lands (DSL) and Corps of Engineers (Corps) Permitting.

Rogue's Testimony: Rogue contends that Rock 'N Ready deliberately avoided the DSL and Corps regulatory processes. Rogue's allegation implies that by doing so, Rock 'N Ready did something sinister and apparently would like the County to believe that a substantive engineering evaluation was avoided. Rogue also contends that the HEC-RAS analysis misidentified the ordinary high water level ("OHW"). Rogue also offers a letter from the Corps to Copeland Sand and Gravel regarding their application implying that a similar process is necessary for its bridge.

Response: Yes, Rock 'N Ready deliberately avoided the state and federal permit processes. It was their legal obligation to do so. The basic criteria used by both agencies is to require applicants to demonstrate that impacts to aquatic resources be the only practicable way to conduct the project. (See Attachment 1 the definition of "mitigation.") Since it was obviously practicable for Rock 'N Ready to place the footings above OHW and, therefore, outside the aquatic resource regulated by DSL and the Corps, the law required them to so. In such a situation, no permit is necessary from either agency.

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Neither DSL nor the Corps evaluates the engineering of any proposed application. Consequently, in spite of the inferences from Rogue, by avoiding the permit process, not only did Rock 'N Ready meet their legal obligations, but they did not avoid a substantive engineering review. The Removal-Fill Law under which DSL acts and Section 404 of the Clean Water Act under which the Corps acts are environmental statutes. By placing the footings above the regulatory jurisdictional line, the agencies' concern about environmental impacts to the aquatic resource are resolved.

OHW is defined by both DSL and the Corps – see Attachment 2. In neither case is the two-year flood level or engineering calculations like the HEC-RAS analysis mentioned. By definition, OHW is determined by field observations and not mechanical or mathematical calculations.

The Corps' letter to Copeland is not relevant to this situation. That letter was in response to a permit application requesting authorization to place fill material below OHW within their jurisdiction. The Rock 'N Ready bridge avoids fill in the Corps jurisdiction. The point being that Rock 'N Ready followed the law by avoiding the impacts in the first instance.

2. Pit Capture

Rogue's Testimony: Rogue refers to Pit 1 as having been captured by Bear Creek.

Response: Pit 1 has not been "captured" by Bear Creek. However, during the December 30, 2005 flood event, it was overtopped as planned by both Rock 'N Ready and the Oregon Department of Geology and Mineral Industry ("DOGAMI"). The primary difficulty at that time was that the fish channel intended to allow water into the pit had not been completed. DOGAMI had concurred with that decision.

The phrase "pit capture" means that the stream has shifted and flows through the mined pit. The stream usually enters the pit upstream by eroding or breaking through the stream bank itself and/or any berms intended to prevent the pit from being overtopped. The stream then fills the pit with water and exits downstream after eroding a new channel. The pit then becomes a feature of the stream, in effect, the pit becomes a deep, widened area within the stream. In the case of Pit 1, it

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remains a unique feature separated from Bear Creek by the established setback. Bear Creek does not run through Pit 1, has not been captured by Bear Creek and is not part of Bear Creek. Consequently, referring to Pit 1 as having been captured by Bear Creek grossly misprepresents the situation.

3. Failure of Rogue's Culverted Road Crossing.

Rogue's Testimony: Events at Rock 'N Ready's Pit 1 somehow caused Rogue's culverted road crossing to fail.

Response: Two Oregon registered engineers have independently reviewed Rogue's culverted road crossing and both concluded that regardless of upstream activities, the crossing was doomed to fail. Mr. Johnson notes that the culverts could pass only a fraction of the total flow that Bear Creek could deliver during a moderate to major flood even if the culverts remained clear of sediment. Therefore, the crossing had to rely upon overtopping to pass flood flows. Clearly the damage reveals that it could not handle the overtopping.

Although Rogue would like the Planning Commission to believe that material specifically from Rock 'N Ready's bankline provided the sediments that blocked their culverts, that position is unsupportable. In order for a 5-to 6-ft deep layer of sediment to deposit at Rogue's crossing, as it did during the December 1st flood, velocities near the crossing had to decrease significantly. Velocities did decrease because the crossing acted like a dam, for the culverts were not large enough culverts to pass the volume of water carried by Bear Creek. In addition, the crossing is located at a sharp bend in the stream. Therefore, significant sediment deposition in the form of a point bar was inevitable along the inside portion of the bend. Backwater influences from the Rogue River may have also had an influence on velocities. Rock 'N Ready has not operated on the water side of the Bear Creek bank and is not responsible for erosion along the bank line itself. There are hundreds of locations that are contributing sediment to Bear Creek and to single out the reach along Rock 'N Ready is intentionally misleading and inappropriate. Bear Creek continues upstream for approximately 30 miles, and there are hundreds of miles of tributaries beyond that, many of which have ongoing erosion and undercutting along the banks. As explained by Mr. Galli, Bear Creek and its tributaries contain substantial stretches of eroding bank line that provide sediment of large and small grain size into the waterway. If Rogue's culverts were blocked by sediments from upstream, there is no evidence that it was specifically the result of any activity conducted by Rock 'N Ready. However,

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the implication of the muddy water seen in every high water event in the Bear Creek is that areas upstream erode and contribute to the sediment captured at depositional area where Rogue built its culverted road crossing.

Finally, it has been pointed out that the problems at Rogue's culverted road crossing took place during the December 1st flood event. Rock 'N Ready Pit 1 was not overtopped during that event. That didn't happen until the December 30th flood. Rogue provided pictures implying that the flooding of Pit 1 caused their sedimentation problems. This can not be. Obviously, there is no connection between what occurred at Rogue's culverted road crossing on December 1st and what occurred at Rock 'N Ready's pit on December 30th.

Rogue would like the Planning Commission to believe that their testimony demonstrates that downstream impacts from Rock 'N Ready's proposal will occur. However, it does not. What it does do is demonstrate Rogue's failure to fully consider the amount of sediment being carried by Bear Creek, the depositional nature of their crossing site and the volume of water Bear Creek is capable of conveying. Because Rogue's testimony is rebutted by two Oregon certified engineers, the Planning Commission should reject Rogue's implications of down stream effects from the proposed or past work.

4. FEMA Mapping

Rogue Testimony: Rogue contends that the FEMA maps must be modified and approved by FEMA prior to authorizing the proposed project.

Response: Although FEMA must approve any change in their maps, no modification is necessary in this case. FEMA published a Flood Insurance Rate Map (FIRM) and a Floodway map for this reach of Bear Creek. As required by FEMA, Jackson County is using these maps to regulate development within the floodplain. Mr. Galli has demonstrated that the proposed project complies with FEMA standards associated with the existing FEMA maps. Therefore, there is no need or plan at this time to change the existing FEMA maps.

For your general information the FEMA maps were developed to provide a "high-altitude" view of flood risk along the channel. For the proposed project, the designers felt that the FEMA maps did not provide enough detail to allow them to design flood protection features. Therefore, they constructed a much more

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detailed hydraulic model of the project area to provide the data they needed. This model will not produce flood hazard data identical to that shown on the FEMA FIRMs, but it does not need to.

If at some time in the future, there is a need to update the FEMA FIRMs, the new model could be used to do so. Rock 'N Ready would be willing to share it with whomever would be tasked with updating the maps.

5. DOGAMI Permit

Rock 'N Ready's application for mining a 350-acre area by issuing a permit for only 6 to 8 acres. Rogue's testimony implies that DOGAMI finds Rock 'N Ready's engineering suspect and consequently has not approved Rock 'N Ready's request.

Response: Rogue's testimony is factually incorrect. Rock 'N Ready's application to DOGAMI relates to Tax Lot 1900, which is about 35 acres. (See Attachment 3). Tax Lot 1900 is already zoned by the County for aggregate mining and has been determined to be a significant mineral and aggregate resource by the County under Ordinance 95-61. As a result, a request for approval to mine on Tax Lot 1900 could be submitted to DOGAMI. Among the things that Rogue fails to mention is that DOGAMI is not in a position to evaluate an application for mining on areas where mining is not allowed by the local government. Consequently, the larger area presently zoned for exclusive farm use and not yet determined by the County to be a significant Goal 5 resource or otherwise zoned for mining is not available for submission to DOGAMI. Rogue's testimony is a deliberate attempt to mislead the Planning Commission and is factually incorrect. Moreover, it is not relevant to any criteria for any of the requests presently before the Planning Commission and should be ignored for all those reasons.

6. There is no Downstream Conflict

Rogue's Testimony: Rogue would like the County to extend the impact area associated with its Goal 5 evaluation to include its site. Rogue contends that must be done because they have raised a conflict.

Response: Rogue claims Rock 'N Ready is ignoring the downstream conflict they raise. However, the reality is that Bill Galli has demonstrated that the

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effect of the operation will not travel further than Rock 'N Ready's property line. Independently, NHC notes that "it is our opinion that there will be no significant change in flow velocities, direction or depths within the RA reach due to changes at the Rock 'N Ready site." NHC also notes that the existing rail road bridge would dampen any significant effects downstream of that bridge. This further decreases the likelihood of downstream effects.

Simply raising a concern is not enough, it must be a real potential concern supported by substantial evidence. In this case, it is not. Because Rogue has not met its burden to demonstrate that a conflict exists, the County has no reason to expand its impact area.

We believe that the Planning Commission has substantial evidence in the record supporting a positive recommendation on Rock 'N Ready's application. Opposition testimony from, among others, Rogue has been refuted by Bill Galli and Jeff Johnson and others. We appreciate your efforts to sort through to complex and often confusing testimony.

Very truly yours,

Frank M. Flynn

FMF:sag

Definition of Mitigation - OAR 141-085-0010 (129)

- (129) "Mitigation" means the reduction of adverse effects of a proposed project by considering, in the following order:
 - (a) Avoiding the impact altogether by not taking a certain action or parts of an action;
 - (b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation;
 - (c) Rectifying the impact by repairing, rehabilitating or restoring the affected environment;
 - (d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action by monitoring and taking appropriate corrective measures; and
 - (e) Compensating for the impact by replacing or providing comparable substitute wetlands or other waters.

DSL Definition of Ordinary High Water Line

OAR 141-085-0010 (150) — "Ordinary High Water Line" (OHWL) means the line on the bank or shore to which the high water ordinarily rises annually in season (ORS 274.005). The OHWL excludes exceptionally high water levels caused by large flood events (e.g. 100 year events). OHWL is indicated in the field by the following physical characteristics:

- (a) Clear, natural line impressed on the shore;
- (b) Change in vegetation (riparian (e.g. willows) to upland (e.g. oak, fir) dominated);
- (c) Textural change of depositional sediment or changes in the character of the soil (e.g. from sand, sand and cobble, cobble to gravel to upland soils);
- (d) Elevation below which no fine debris (needles, leaves, cones, seeds) occurs;
- (e) Presence of litter and debris, water-stained leaves, water lines on tree trunks; and/or
- (f) Other appropriate means that consider the characteristics of the surrounding areas.

Corps Definition of Ordinary High Water

The Corps defines ordinary high water at 33 CFR 328.3 (e) as: that line on the shore established by the fluctuations of water and indicated by physical characteristics such as clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.

DSL Jurisdiction

OAR 141-085-0015

Removal-Fill Jurisdiction by Volume of Material and Location of Activity

(1) The Department's determination as to whether a removal-fill authorization is required depends primarily upon a project's position relative to waters of the state and the volume of the fill and/or removal and the project purpose. Uplands are generally not subject to these rules except when they are used for compensatory wetland mitigation or compensatory mitigation sites.

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Attachment 2

- (2) To be subject to the requirements of the removal-fill law, the removal or fill must be within "waters of the state." The types of waters of the state and the physical limits of removal-fill jurisdiction are as follows:
 - (a) Estuaries and tidal bays, to the elevation of highest measured tide;
 - (b) The Pacific Ocean, from the line of extreme low tide seaward to the limits of the territorial sea,
 - (c) Rivers, intermittent and perennial streams, lakes, ponds and all other bodies of water (except wetlands) subject to these rules, to the ordinary high water line, or absent readily identifiable field indicators, the bankfull stage;
 - (d) Wetlands (defined in OAR 141-085-0010), within the wetland boundary delineated in accordance with OAR 141-090-0005 to 0055.
 - (e) "Other Bodies of Water," as used in ORS 196.800(14) are the following artificially created waters which are considered "waters of the state":

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RECEIVED

March 21, 2006

MAR 2.3 2006 JACKSON COUNTY PLANNING

JACKSON COUNTY PLANNING COMMISSION c/o Jackson County Planning Department County Courthouse 10 South Oakdale Medford, OR 97501

RE: Final Written Argument

Planning Action LRP2005-00003 Rock-n-Ready Mix LLC: Applicant

Dear Jackson County Planning Commission:

Following the close of public testimony at the March 9, 2006 public hearing on the above captioned matter, the Planning Commission ("Commission") afforded the applicant seven additional days from the date the record closed on March 16, 2006 for final written argument. Opposition to the application was presented by the Applicant's competitors Rogue Aggregates, Inc and Crater Sand and Gravel. This letter constitutes Applicant's final written argument on this matter as it appears before the Jackson County Planning Commission. This argument is intended to operate within the decision making framework laid forth in the letter entitled *Decision Making Process* dated March 15, 2006 and found at Record Pages 1506 to 1510. The substance of this memo is repeated below for ease of reference:

Decision #1. Final Site Plan Permit/Floodplain Permit/Aggregate Hauling across the Bear Creek Greenway for lands Planned and Zoned AR where no plan amendment and/or zone change is requested. (The area applicable to this decision is the cross-hatched area on Applicant's Request Key Map #2 located on Tax Lot 1900 at Record Page 808)

This decision applies to those portions of Tax Lot 1900 where no plan amendment is requested; this decision is a permit action. The opponent's have failed to identify any Comprehensive Plan amendment criteria that are directly applicable to this permit request, as such the decision is strictly governed by standards and criteria contained in the LDO.

With respect to the floodplain development permit and site plan permit, the level of detail necessary to make this decision is rather mechanical. The recommended approach is to go through each floodplain development standard and each aggregate site plan standard individually to answer one of two questions. Does substantial evidence in the record demonstrate compliance with each standard? If not, is there substantial evidence that

demonstrates compliance can be obtained through imposition of clear and objective conditions of approval? If the answer to either of these questions is yes for all relevant standards and criteria, then the burden of proof has been met by the applicant and the Commission should, as a matter of the County's established aggregate policy, pass a separate motion to approve each permit request.

With respect to the Greenway criteria, the Commission must first decide the extent to which these criteria are applicable. To the extent the Commission believes they are applicable, an evaluation of each criterion should be performed for the stream crossing as this is the only area in the Greenway where no plan amendment is requested and two questions should be answered. Does substantial evidence in the record demonstrate compliance with each standard? If not, is there substantial evidence that demonstrates compliance can be obtained through imposition of clear and objective conditions of approval? If the answer to either of these questions is yes for all relevant standards and criteria, then the burden of proof has been met by the applicant and the Commission, should as a matter of the County's established aggregate policy, pass a separate motion for approving the aggregate hauling use in the Greenway.

If the Commission approves all three of these permit requests by motion, then staff should be directed to prepare an order approving these permit requests with an attached map that depicts the geographic applicability of the order for approval.

Decision #2. Comprehensive Plan Map amendment to modify the ESEE analysis and the corresponding conditions attached to Ordinance 95-61 (Request Key Map #5 at Record Page 811).

Significance is established. No modification to the impact area is requested. The Commission need only revisit the conflicts analysis as they pertain to Pit 2A and Pit 4 on Tax Lot 1900. The Commission must determine, based upon substantial evidence in the record, whether the proposed mining operation with the stipulated phasing plan, screening, future demonstration of compliance with County floodplain regulations, and aggregate site plan standards will adequately balance identified conflicting uses. The Commission may elect to add site specific conditions to balance the aggregate resource against conflicting uses. If the Commission determines that the requested amendments cannot be allowed without expansion of the impact area, due to new conflicts identified, then deny the requested amendments on the basis that the applicant has not requested an amendment to the impact area and the ESEE cannot be amended without expansion of the impact area for which the Applicant has not requested.

Decision #3. Significance of Proposed Areas to be Added to the Aggregate Inventory (These areas are identified on Request Key Map #4)

Based upon substantial evidence in the record, determine whether the site meets the County's test for a significant aggregate resource site. By separate motion, vote on the significance of the resource site and make a recommendation to the Board of

Commissioners that the lands depicted on Request Key Map #4 be added to the County's list of significant aggregate resources.

Decision #4. Identify Conflicting Uses and Establish Impact Area for new sites identified as significant resources pursuant to Decision #3 above.

Review the evidence in the record. The Commission should begin with those conflicting uses identified in Applicant's initial submittal. The Commission should then deliberate as to whether there are additional conflicting uses that have not been identified by the This evaluation should seek to identify causal relationships between conflicting uses and impacts directly associated with new Goal 5 aggregate areas. For example, there are no impacts to the Bear Creek Greenway related to the portion of Pit 2 on Tax Lot 100 of the Medina Property because all operations are proposed to occur outside the riparian area and are not in any mapped Greenway overlay area. The Commission should review the record for potential conflicting uses outside the 1500-foot impact area and the Commission must determine whether any such conflicts are significant to an extent that modification of the impact area is necessary. Any modification of the impact area must be based on the impacts to the Goal 5 resource and establish the causal relationship between the site proposed for inclusion on the County's aggregate inventory and the identified conflicting uses outside the standard 1500-foot impact area. By separate motion and vote, recommend to the Board of Commissioners an impact area and a list of conflicting uses to be evaluated in the ESEE analysis.

Decision #5. Complete the ESEE process for new sites identified as significant resources pursuant to Decisions #3 and #4 above.

It is recommended the Commission begin with the ESEE analysis prepared by the applicant and then modify it as necessary-pursuant to Decisions #3 and #4 above. Modifications to the Applicant's ESEE analysis should evaluate the ESEE consequences and balance conflicting land uses and competing Goal 5 resource sites. When balancing conflicts, it is recommended the Commission begin with an evaluation of the adopted LDO standards, the stipulations offered by the applicant, and the site plan and operations master plan as a means to balance the conflicts. If the Commission believes the adopted standard is somehow inadequate the Commission can and should evaluate potential sitespecific conditions to balance the conflicts. At this stage in the decision making process, the Commission is not required to make any determination as to whether the development permit requests included with this consolidated application comply with the LDO development standards or any site specific conditions; the Commission need only determine that compliance with the standards and site specific conditions as applicable will adequately balance identified conflicting uses. When the conflicts analysis is complete, by motion and vote, recommend the Board of Commissioners adopt the Planning Commission's ESEE analysis and amend the Comprehensive Plan Map in accordance with the results of the ESEE analysis.

Decision #6. Evaluate the site and operations master plan as a means to implement the ESEE results and zone those lands AR where the results of the ESEE analysis are balanced toward aggregate extraction.

At the most recent hearing, Opponent Rogue Aggregates asserted that the County cannot approve a general site plan without all specific mining details. For a site this large and an operation this complex with a substantial duration, this is impractical and is not required as matter of code. The hypertechnical ultra-rigid code interpretation offered by the Opponents is not representative of the County's past practice in its application of the County's Goal 5 program for aggregate and the same have not been changed substantially for many years. Site detail conditions, such as providing the pit grading cross-sections approved by DOGAMI to the County, can feasibly be provided and may be attached as conditions of approval to the site and operations master plan.

The Commission must evaluate the site and operations master plan in relation to the ESEE results. Any changes to the site and operations master plan, or conditions thereto, which are necessary to carry out the ESEE consequences analysis should be laid forth and clearly relate to the portion of the plan they affect. With these amendments incorporated, the Commission should by motion and vote adopt the site and operations master plan and zone all areas planned Aggregate Resource pursuant to Decision #5 above to Aggregate Removal (AR). This action should be implemented by an order to which the following condition may be attached to assure consistency with the Zoning Map and Comprehensive Plan Map:

The Planning Commission's decision approving the requested Zoning Map Amendment is subject to a final decision approving the requested Comprehensive Plan Map amendment. A final decision is defined as either a decision by the Board of Commissioners that is not appealed or a decision that is appealed resulting in an approval of the requested amendment.

Decision #7. Final Site Plan Permit/Floodplain Permit/Aggregate Hauling across the Bear Creek Greenway for lands where the Aggregate Resource Plan designation and Aggregate Removal zoning district is recommended by the Planning Commission. (The area applicable to this decision is the cross-hatched area on Applicant's Request Key Map #2 not located on Tax Lot 1900 at Record Page 808)

With respect to the floodplain development permit and site plan permit, the level of detail necessary to make this decision is rather mechanical. The recommended approach is to go through each floodplain development standard, each aggregate site plan standard, and any site specific conditions attached from the ESEE analysis to answer one of two questions. Does substantial evidence in the record demonstrate compliance with each standard? If not, is there substantial evidence that demonstrates compliance can be obtained through imposition of clear and objective conditions of approval? If the answer to either of these questions is yes for all relevant standards and criteria, then the burden of proof has been met by the applicant and the Commission should, as a matter of the County's established aggregate policy, pass a separate motion to approve each permit request.

With respect to the Greenway criteria, the Commission must first decide the extent to which these criteria are applicable. To the extent the Commission believes they are applicable, an evaluation of each criterion should be performed for those areas where hauling or extraction are proposed for mapped Greenway areas. Does substantial evidence in the record demonstrate compliance with each standard? If not, is there substantial evidence that demonstrates compliance can be obtained through imposition of clear and objective conditions of approval? If the answer to either of these questions is yes for all relevant standards and criteria, then the burden of proof has been met by the applicant and the Commission should, as a matter of the County's established aggregate policy, pass a separate motion for approving the aggregate hauling and/or extraction located in the Greenway area.

If the Commission approves all three of these permit requests by motion, then staff should be directed to prepare an order approving these permit requests with an attached map that depicts the geographic applicability of the order for approval and make it subject to the following condition:

The Planning Commission's decision approving the requested Floodplain Development Permit, Aggregate Site Master Plan, and Type 3 permit for aggregate operations in the Bear Creek Greenway is subject to final decisions approving the requested Comprehensive Plan Map amendment and Zoning Map amendment. Final decisions are defined as either a decision by the Board of Commissioners that is not appealed or a decision that is appealed resulting in an approval of the requested amendment.

The Applicant hopes that letter, combined with this argument, will aid the Commission in making its recommendation to the Board of Commissioners. Consistent with the Commission's direction, this letter does not present new evidence but relies on testimony and evidence already in the County's record. Rock N Ready Mix, LLC [the Applicant] requests that this letter be included in the County's record for this matter.

The below list details the evidence submitted to-date by the Applicant in support of this application:

•	Exhibit 13	Application for Minor Comprehensive Plan Map Amendment and Zoning Map Amendment
•	Exhibit 14	Floodplain Finding of Fact
•	Exhibit 15	Geotechnical and hydrologic report, The Galli Group
•	Exhibits 16-18	Site and Operations Master Plan
•	Exhibits 19-39	Detail Evidence to Support Exhibits 13-19
•	Exhibit 50	Traffic Impact Study
•	Exhibit 100	Rebuttal Letter Responding to Opponents Objections
•	Exhibit 101	Testimony from Applicant's Traffic Engineer
•	Exhibit 116	Bridge Cross-Section Figure- Galli Group
•	Exhibit 117	Ordinary High Water Level Discussion and Data- Galli Group
•	Exhibit 118	Bridge Pier Stability Bear Creek Sta 1969 – Galli Group
•	Exhibit 119	HEC RAS Evaluation Bear Creek - Galli Group
•	Exhibit 120	HEC-RAS Input Data – Galli Group
•	Exhibit 121	HEC-RAS Output Data – Galli Group
•	Exhibit 122	No Rise Certificate – Galli Group
•	Exhibit 123	Streamback Migration Study Bear Creek @TL 1900-Galli
	Group	
•	Exhibit 124	Channel Stability and Offsite Affects of Proposed Project-Galli
	Group	
•	Exhibit 125	Water Surface Profiles – Galli Group
•	Exhibit 126	Access Road Berm Design Considerations – Galli Group
•	Exhibit 133	Peer Review Testimony from Jeff Johnson
•	Exhibit 149	Response from David Paradis clarfying violation history
•	Exhibit 150	Written Response to Issues Raised by Lidstone-Galli Group

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Applicants Final Written Argument:

This application was initiated through the County's quasi-judicial land use process. As a result, the policies and standards governing this application are in the existing County Comprehensive Plan and Land Development Ordinance. The Commission is charged with applying the existing policies and standards that have been evaluated and approved by the Board of Commissioners. This application does not request and the Commission cannot apply new or different standards or policies.

1. Floodplain Development Standards

Record Summary: The record includes conflicting testimony regarding legal interpretation of the County's floodplain regulations and technical demonstration of compliance with the County's floodplain and floodway development standards.

With respect to technical evidence, Applicant's registered professional engineer licensed in the State of Oregon, William Galli, has analyzed the proposed project and has testified it will have no downstream impacts. Mr. Galli, who has extensive experience work on bear Creek and other waterways in Jackson County, has provided substantial written and oral testimony on many aspects of the proposal. Applicant's registered professional engineer has reevaluated his analysis to address technical concerns raised during the hearing process. Opponents' testimony asserts that substantial downstream impacts are likely to be caused by Rock-n-Ready operations on property owned by Rogue Aggregates and that hydraulic analysis and sediment transport analysis must be conducted from the Applicant's property to its confluence with Bear Creek. Applicant's engaged Jeff Johnson of Northwest Hydraulic Consultants, Inc. as an expert with extensive experience in hydraulic analysis. Mr. Johnson, another Oregon certified engineer with extensive experience evaluating impacts to waterways and hydrologic impacts from mining activities, conducted a limited peer review of the flood analysis prepared and submitted to-date by The Galli Group and made two critical statements at record pages 1398 and 1399 that agreed with earlier statements made by Mr. Galli:

"The existing railroad grade just upstream from RA [Rogue Aggregates] serves as a major hydraulic control during large floods. Water ponds behind the railroad fill which effectively dampens out any significant impact." Mr. Johnson additionally stated, "To suggest that RNR [Rock-n-Ready] activities are a major source of their [sedimentation] problem in our opinion is misleading and inappropriate, rather the sources of the sediment that enter the reach come from hundreds of source both big and small along the entire length of Bear Creek and its tributaries."

Mr. Lidstone responds to Mr. Johnson's comments from Record Page 1482 to 1492. This response questions the validity of Mr. Johnson's testimony based upon speculations made by Mr. Lidstone regarding information that Mr. Johnson had at the time his testimony was prepared. This speculation does not constitute substantial evidence and has no effect on Mr. Johnson's expert testimony on the above quoted matters. Mr. Lidstone and Mr. Galli have differing opinions as to whether the Galli calculated 100-year flood elevations can be considered consistent with the adopted FEMA Flood Study. No substantial evidence has been submitted to the Record that contends the FEMA Flood Study is inaccurate for this stretch of Bear Creek. Applicant has contended since the beginning of this proceeding that the FEMA Maps have significant inaccuracies for a portion of the Rock-n-Ready reach of Bear Creek and Opponent's have offered no substantial conflicting evidence.

With respect to legal interpretation of Chapter 7.1.2, Opponent's have offered an interpretation that the LDO requires a Letter of Map Revision (LOMR) or at least a Conditional Letter of Map Revision (CLOMR). Opponent's attorney has cited FEMA regulations as a basis for this assertion; no coherent legal analysis exists in the record that explains how these Federal regulations operate as an approval standard for a quasi-judicial local land use decision. Applicants have advanced the legal position that a Letter of Map Revision is not a preemptory requirement and that the local code can and should be interpreted to allow a site-specific detailed HEC-RAS floodplain analysis that demonstrates compliance with the County's floodplain criteria and development standards.

Applicant's Argument: Determination of Floodplain and Floodway boundary locations is a two-dimensional exercise upon which the County determines whether the floodplain development and floodway development criteria apply to a project. The evidence establishes that the stream crossing is subject to the Floodway Development standards in 7.1.2(F)(7)(c). The evidence establishes that other portions the operation are located in the 100-year mapped floodplain area and are therefore subject to the County's Floodplain Development standards. Because there is no dispute that the County's floodplain and floodway regulations apply to the project, the maps have limited practical effect on the decision making process because the criteria for approval of a floodplain development permit is based upon compliance with development standards that relate development impacts to changes in water surface elevations and to a lesser extend water velocities.

LDO Section 7.1.2(D) describes methods for determining flood elevations. For flood hazard areas with established flood elevations, these provisions provide clear direction for a project involving a particular building permit at a distinct location. By the language and context of LDO 7.1.2(D), the methods discussed in the LDO Section 7.1.2(D) have limited applicability for an aggregate operation with a bridge crossing and engineered flood control berms that extend for a considerable stream length. For this reason, interpretation of LDO Section 7.1.2(D) is appropriate. A detailed hydraulic model has been prepared by the Applicant's Registered Professional Engineer. The existing conditions base flood elevation profiles are provided at Record Page 910. This graph plainly shows that the site-specific HEC-RAS model is substantially consistent with the more generalized FEMA water surface profiles. The downstream water surface elevation of this model is an input that comes directly from the FEMA Flood Study elevations. Because the site-specific HEC-RAS model utilizes the Flood Study flood elevations as a principal model input and the model itself has been developed by FEMA, it is appropriately applied in evaluating 100-year flood impacts consistent with the methods for establishing base flood elevations described in LDO Section 7.1.2(D) as it is applicable to this project.

If the reasoning in the above two paragraphs is acceptable to the Planning Commission, then the Planning Commission can and should proceed to evaluate compliance with the criteria based upon the same reasoning. A floodplain development permit requires demonstration of compliance with the following two criteria, each is addressed below:

- E) Criteria for Approval
 Prior to approval of floodplain review, the County will determine all of the following:
 - 1) That all applicable development standards of Section 7.1.2(F) can feasibly be met;

The Planning Commission identifies the following developments standards of 7.1.2(F) apply to the project:

F) Development Standards

7) Floodway Development

c) All encroachments, including fill, roadways or bridges are prohibited unless certification by an Oregon registered professional engineer is provided demonstrating that the encroachment will not result in any increase in flood levels during the occurrence of the 100-year flood (no-rise analysis and certification). Culverts used in stream crossings where floodways are mapped and/or 100-year floodplain elevations have been determined will require a no-rise analysis and certification. Culverts used in stream crossings where base flood elevations and floodways have not been determined (Approximate A zone) will be of sufficient size to minimize the rise of flood waters within the presumed floodway. Evidence must be provided by an Oregon registered professional engineer showing the size of the proposed culvert will pass the flood waters of the 100-year flood. Culverts and bridges must be anchored so that they will resist being washed out during a flood event. Culverts and bridges must also meet the riparian protection standards in Section 8.6.3 of this Ordinance.

An Oregon Registered Professional Engineer, William Galli has performed a no-rise analysis and testified in writing and orally that the only floodway encroachment proposed is the bridge and that it will not cause a rise in the 100-year flood condition off-site and will cause only an incidental rise within the project for which the applicant is willing to accept responsibility for any damages resulting from this minor rise, Record Pages 1542-1545. With respect to riparian habitat protections, Applicant has demonstrated the standards in Section 8.6.3 have been met or can feasibly be met through imposition of a condition of approval requiring submittal and staff approval of a final landscape plan approved by ODF&W; no evidence substantial evidence conflicts with this conclusion. The stream crossing component of the floodplain development permit request is a permitted use in the applicable AR zoning district and is not dependent on the requested map amendments and thus requires no analysis or consideration in the Goal 5 process.

- 8) Fill in the Floodplain Prior to placement of fill within the 100-year floodplain a report from an Oregon registered professional engineer determining the effect the placement of fill will have on the 100-year floodplain will be submitted.
 - a) Where base flood elevations have been determined, the fill cannot cumulatively raise the base flood elevation more than one foot at any given point. The report will reference the Flood Insurance Study for Jackson County, Table 3 (Floodway Data), for a specific reach of a stream. The increase in the base floodwater surface elevation, as shown in this table, will not be more than one foot.
 - b) Where base flood elevations have not been determined, the fill cannot raise the base flood elevation more than one foot at any given point. (See 7.1.2(D)(2))
 - c) The fill will be engineered to resist erosion by floodwaters.

Based upon the evidence in the Record, all bridge construction and flood control measures for the aggregate operations have been professionally engineered. The HEC-

¹ The Planning Commission acknowledges there is an incidental rise in water surface elevation projected in the HEC-RAS analysis immediately upstream of the bridge. The applicant's stipulation to record a waiver of remonstrance from the pursuit of damages against the County and/or FEMA from flood damages for the Applicant's properties adjacent to the crossing is sufficient to protect the County's financial and legal interest in this regard.

RAS 100-year flood event analysis at Record Page 1545 demonstrates that the proposed fill (road berm) will not increase 100-year flood elevations more than one-foot at any location. A considerable portion of the proposed fill in the floodplain is located on Tax Lot 1900 in an area planned and zoned AR; the aggregate use in this area is permitted in the applicable zoning district and is not dependent on the requested map amendments and thus requires no analysis or consideration in the Goal 5 process.

10) Aggregate Removal

- Aggregate removal or surface mining operations within the 100-year floodplain or floodway will not cause an increase in flooding potential or stream bank erosion adjacent to, upstream or downstream from the operation.
- b) All mining and processing equipment and stockpiles of mined or processed materials will be removed from the site during the period of December 1 through April 30, unless the operation will be protected by a dike that is of sufficient width and height to prevent flood waters from inundating the site.

Based upon the Record, all bridge construction and flood control measures for the aggregate operations have been professionally engineered and meet the applicable standards for fill and stream crossings pursuant to Sections 7 and 8 above. Because all other new operations will be located outside the mapped floodplain or in areas protected by the engineered flood control road berm, other operations will not increase flooding potential as matter of deduction. With respect to stream bank erosion potential, the post-development water velocities and elevations have been shown to meet applicable development standards as detailed above and will therefore minimize the potential for increased stream bank erosion. The existing concrete processing area is a lawfully established nonconforming use in the floodplain.

2) That applications have been submitted or all necessary permits have been obtained from those federal, state, or local governmental agencies from which approval is required by law. Copies of all permits must be submitted to the County prior to initiation of the development.

The record establishes that the bridge design was required to avoid the need for DSL/COE permits and the record does not establish failure to obtain or apply for a necessary permit.

Conclusion: Based upon the above argument and the evidence in the Record, The Planning Commission can conclude that the Record demonstrates compliance with the County's floodplain development criteria. The Commission can further conclude that the floodplain development permit has limited applicability to the concurrent Goal 5 review process because most all of the floodplain development is located on a portion of the site where the Goal 5 process is complete and no Comprehensive Plan Map amendment is requested or needed (Portions of Tax Lot 1900 not subject to the restrictions on extraction in Ordinance 95-61).

2. Aggregate Site Plan Review

Record Summary: Applicant submitted an overall site and operations master plan and more detailed plans for those areas where final site plan approval is requested for near-term operations, See Exhibits 16 and 18 at Record Pages 330-345. Modifications to the original plans have been made principally to accommodate engineered flood control features along Upton Slough and to remove settling ponds in existing Pit #1. Opponents have argued that the site plan does not meet the County's requirements, lacks essential details and that it is inappropriate to expect the County to develop and apply conditions of approval.

Applicant's Argument: Opponents misconstrue the applicable law at Record Page 1468. Opponents advance the position that the Applicant's seek a Type 4 Permit that requires compliance with Type 4 site development plan review criteria. This is not the case. The Applicant requests a Comprehensive Plan Map amendment and map amendments are subject to a Type 4 process, but one that is subject to independent criteria found in LDO Section 3.7. Aggregate Site Plan reviews are Type 1 permit actions on AR zoned lands that are subject to aggregate-specific site development criteria and standards. Opponent's interpretation on the applicability of the Type 4 Permit criteria and corresponding site-development criteria is not supported by the context and language of the code which is clearly directed at non-aggregate site development, is contrary to the County's past pattern and practice, and is likely pre-empted as a matter of law under the Hegele decision.

The criteria and standards that apply are found in LDO Section 4.4.8(A). The introductory paragraph to these standards is important in understanding the applicability of review requirements for significant Goal 5 aggregate sites. This paragraph expressly references the Goal 5 process and review levels applied when a site was zoned AR through the Goal 5 process. The record includes substantial evidence that the standards of Section 4.4.8(A) for all areas where final site plan approval is requested are met or can be met through the imposition of clear and objective conditions. One important standard is the requirement for a DOGAMI operating permit; the language and context of the code anticipates that this will be a condition of approval for any aggregate site plan and the administrative rules for DOGAMI call for the DOGAMI permit review to occur after any Comprehensive Plan Map amendments are in place. For areas where site and operations master plan approval only is requested, the site plan serves to guide the ESEE process, but initiation of mining in these areas will be conditioned on future detailed Type 1 site plan review and approval.

Conclusion: Based upon the above argument and the evidence in the Record, The Planning Commission can conclude that the record demonstrates compliance with the County's Aggregate Site Plan review standards where final site plan review is requested. The Planning Commission has sufficient evidence to conclude it is in the County's interest to have a site and operations master plan for the entire site for the purposes of adopting and implementing a Goal 5 protection program for the portion of the site where a Comprehensive Plan Map amendment is requested and that there is nothing in the County's Goal 5 program that prohibits such adoption.

3. Bear Creek Greenway

Record Summary: Applicant has identified multiple plan, LDO, and mapping issues that make clear determination of criteria related to the Greenway difficult. Notwithstanding these issues, Applicant has offered to stipulate to dedication of a public use easement to facilitate ultimate Greenway trail planning for this portion of the Greenway. This stipulation has received written support from the County's Greenway Program manager Karen Smith at Record Page 650. Applicant's position has consistently been that this is good planning and will serve both the Applicants and the County's long-term Greenway goals. The Applicant has provided map analysis to locate the Greenway in relation to proposed operations; these maps indicate that, with the exception of Pit 2A, only minor Greenway impacts will occur and several acres that are not located in the Greenway will have no operations in them. The site visit demonstrated that the mining area is well setback from the actual riparian area that would normally be considered *Greenway*. Opponents have argued Applicant's offer to dedicate private land for public purposes is inadequate, that this project will do irreparable harm to the Greenway Program and Plan and have argued the Type 3 criteria cannot be met.

Applicant's Argument: The Greenway Program and Plan is principally an acquisition plan to create a non-motorized alternative transportation corridor and serves a secondary riparian protection function. The Applicant's stipulation that would allow the County to acquire the rights of public use at no cost is a substantial step toward any ultimate Greenway trail extension in this area in the future. If the Plan Amendment is approved, then the only existing and approved land uses around the Greenway are major aggregate uses with generally the same scale, site design, and operating characteristics so adverse impacts must necessarily be insignificant.

Conclusion: Based upon the above argument and the Conclusions of Law at Record Pages 343 to 344, The Planning Commission can conclude that the record demonstrates compliance with the Type 3 criteria related to the Bear Creek Greenway to the extent it is applicable.

4. Amendments to Ordinance 95-61

Record Summary: Applicants have requested an amended ESEE analysis to modify the mining restrictions placed on Tax Lot 1900 in Ordinance 95-61; no amendment to the impact area has been requested. These amendments would allow for mining in the Bear Creek Greenway area (Pit 2A) as a balance to the additional Greenway areas that will be retained in a natural state on Tax Lots 100, 200 and 2600 as depicted on Applicant's site plan. The other amendment requested is the restriction on mining west of Bear Creek. In the original ESEE analysis, the property owner simply stated they had no intention to mine this area. The owner, at that time, offered no screening as mitigation. The restriction contained in Ordinance 95-61 arose from concerns related to groundwater and aesthetic impacts.

Applicant's Argument: With respect to the Greenway Overlay restrictions, which are limited to extraction in Pit 2A, the record demonstrates that substantial lands adjacent to the Greenway Overlay on Tax Lots 100, 200 and 2600 will be unmined and left in a natural state. If these lands are used to balance the removal of Greenway restrictions to mine Pit 2A, when combined with Applicant's stipulation to dedicate an easement for eventual Greenway Trail construction, the Planning Commission has adequate factual basis to amend the ESEE analysis and allow mining in Pit 2A subject to future Type 1 site plan and floodplain development permit approvals.

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With respect to the mining restrictions west of Bear Creek on Tax Lot 1900, the original ESEE analysis relied on comments regarding ground-water impacts for irrigation and aesthetic impacts. The record demonstrates that the Applicant has stipulated to provide screening and extraction phasing to substantially reduce aesthetic impacts and the Commission could increase the screening requirements at its discretion. With respect to groundwater effects on irrigation, this area now has a demonstrated history of farm uses continuing uninterrupted immediately adjacent to an aggregate extraction operations. Moreover, there are no significant agricultural operations in this immediate vicinity and these should therefore not serve as a basis for mining restrictions. If the Commission has concerns about groundwater impacts, a clear an objective condition requiring well monitoring and well deepening can be attached to the approval and applicant will accept a reasonable condition requiring the same.

Conclusion: The Record contains additional evidence sufficient to revisit the ESEE conflicts analysis adopted through Ordinance 95-61 and the Commission has the authority to amend the ESEE conflicts analysis as requested and apply any conditions it deems appropriate to balance the Aggregate Goal 5 resource against the Greenway Goal 5 resource in this area.

5. Significance of Proposed Goal 5 Aggregate Resource

Record Summary: Applicant provided evidence that the site is a significant aggregate resource in the initial application. Opponents questioned the validity of these studies prepared by one of their parent companies subsidiary companies. Applicant provided additional geologic evidence at Record Pages 852 to 893, prepared by Kuper Consulting LLC, that the site is a significant resource. No substantial conflicting evidence has been offered by Opponents that this is not a significant aggregate resource.

Applicant's Argument: The record contains substantial evidence that this is a significant aggregate resource.

Conclusion: Based upon the evidence in the Record, this is a significant resource that requires the County to complete the ESEE process to determine an appropriate level of protection.

6. Impact Area and Identification of Conflicting Uses for New Significant Aggregate Resources

Record Summary: Staff's memo at Record Page 1179 provides guidance on establishing the Impact Area and Identifying Conflicting Uses. Applicant's initial submittal identified conflicting uses in the standard 1500-foot impact area and evaluated conflicting uses outside the impact area that would warrant expansion of the impact area. Applicant did not request expansion of the impact area to protect their significant aggregate resource. Opponents, Rogue Aggregates, have argued that the impact area must be extended down to the Rogue River due principally to potential increases in sedimentation and flood hazards. Expert testimony and analysis has been provided by two Oregon Registered Professional Engineers William Galli and Jeff Johnson that the railroad crossing is a major flood control feature between the Rock-n-Ready Mix site and the Rogue Aggregates Site. These engineers have both testified

that this feature minimizes the likelihood that 100-year flood hazards below the railroad bridge could be impacted by development changes above the railroad bridge. The FEMA flood study is explicit; 100-year flood elevations downstream of Kirtland Bridge are controlled by the Rogue River, See Record Page 194. With respect to sedimentation, all new Pits must meet current County Floodplain standards and receive approval from DOGAMI. New near-term operations such as Pit 2 includes flood control features that have been professionally engineered to prevent pit capture that would lead to increased sedimentation potential and Applicant will accept reasonable conditions of approval for final design submittals to accomplish the same for future pits.

Applicant's Argument: Opponents, Rogue Aggregates, are the only land users outside the 1500-foot impact area requesting designation as a conflicting use and requesting inclusion in the impact area based thereupon. Opponents rationale for inclusion in the impact area is based primarily on testimony by Chris Lidstone that Rogue Aggregates operations, and especially their recently constructed culvert stream crossing will be adversely impacted by protection of Applicant's significant aggregate resources. In addition to the arguments provided by the Applicant at record page 781, this request is not appropriate based upon the following facts:

- 1. Opponents have failed to explain why the Floodplain Development standards in LDO Section 7.1.2 cannot be relied upon to reduce land use conflicts sufficient to protect this significant aggregate resource. Moreover, it is unreasonable to base a decision to expand the impact area, under the Goal 5 process, based on flood hazard concerns for a culvert stream crossing that did not meet the LDO code requirement to pass a 100-year flood event as required by the plain and unambiguous language of LDO Section 7.1.2(F)(7)(c) which states, "Evidence must be provided by an Oregon registered professional engineer showing the size of the proposed culvert will pass the flood waters of the 100-year flood." Moreover, these culverts were constructed based upon a Type 1 floodplain permit where the "no-rise" analysis and certification dealt strictly with Bear Creek and included no analysis or certification regarding the Rogue River which controls the 100-year flood elevations at the location of this crossing as is plainly stated in the adopted FEMA Flood Insurance study at Record Page 194.
- 2. There is no evidence that the Rogue Aggregates failed culvert stream crossing will negatively affect those areas proposed to be included on the County's inventory of significant Goal 5 resource sites. The Record contains no substantial evidence that refutes expert testimony provided by two Oregon Registered Professional Engineers that the hydraulic control of the railroad bridge assures the 100-year flood hazard risks below the railroad bridge are unlikely to significantly affect or be affected by development above the railroad bridge.
- 3. Most all of the significant aggregate resource areas where new operations are proposed are located outside the 100-year floodplain (operations areas within the 100-year floodplain have engineered flood control features) and no new operations are proposed in the floodway. On the east side of Bear Creek, all new operations are located behind a major public infrastructure feature- a 54-inch RVSS interceptor. Applicant's plans were reviewed by RVSS Engineer Carl

Tappert and he states, "The current operating plan [plan as initially submitted] for Rock-n-Ready does provide adequate protection to the pipe."

Conclusion: Based upon the evidence in the Record, the Planning Commission can conclude that the standard 1500-foot impact area is sufficient to protect the resource.

7. ESEE Analysis for New Significant Sites West of Bear Creek

Record Summary: Applicant provided an ESEE analysis for the Commission's consideration. Staff prepared an ESEE analysis based upon that offered by the Applicant. The Robertsons have provided evidence and testimony regarding impacts associated with mining Pit 3 adjacent to their rural residence. Other written testimony has been received from residences on the hill west of Blackwell Road. At the initial hearing, Opponents attorney Todd Sadlo raised objections regarding the ESEE offered by the Applicant which were rebutted at Record Pages 771-782.

Applicant's Argument: Applicant recognizes the acute conflicts between those residences immediately adjacent to Pit 3, but believes the screening, phasing and conveying methods will be sufficient to minimize impacts when mining of this site will actually occur many years in the future. The Commission membership includes a registered landscape architect and the Commission may wish to rely on his expertise to impose additional screening requirements along Blackwell Road if the Commission believes the screening offered by the applicant is insufficient to reduce land use conflicts associated with aggregate operations west of Bear Creek. Because the Opponent's request for inclusion in the impact area is not supported by the facts, the rebuttal provided at Record Pages 771-782 adequately address all objections raised to date on the adequacy of the ESEE analysis offered by the Applicant.

Conclusion: Based upon the evidence in the Record, the Planning Commission can recommend the Board of Commissioners adopt the ESEE analysis offered by the applicant with amendments recommended in the Staff report and developed during deliberation sufficient to protect the resource in this area from conflicting land uses and to balance competing Goal 5 resources. The Planning Commission can and should direct staff to work with the Applicant to prepare a set of conditions based upon its recommended ESEE analysis.

8. ESEE Analysis for New Significant Sites East of Bear Creek

Record Summary: Applicant provided an ESEE analysis for the Commission's consideration. Staff prepared an ESEE analysis based upon that offered by the Applicant. Opponents have argued that the ESEE must address land use conflicts based upon their concern that protection of the resource will increase the risk associated with flood hazards.

Applicant's Argument: If Opponent's request for inclusion in the impact area is rejected, then there is limited testimony or substantial evidence that would require significant alteration of the ESEE analysis prepared by the Applicant. If the Commission does not concur with the Applicant's argument above and elects to include Rogue Aggregates property in the impact area and analyze other Aggregate Operations as conflicting uses, then the Applicant requests the following protections be required on the

subject property as well as any downstream aggregate operators in the impact area to reduce land use conflicts:

 New or substantially reconstructed stream crossings require demonstration by an Oregon Registered Professional Engineer that the cross-sectional flow area under the culvert or bridge be capable of passing the 100-year flood event.

Conclusion: Based upon the evidence in the Record, the Planning Commission can recommend the Board of Commissioners adopt the ESEE analysis offered by the applicant with amendments recommended in the Staff report and developed during deliberation sufficient to protect the resource in this area from conflicting land uses and to balance competing Goal 5 resources. The Planning Commission can and should direct staff to work with the Applicant to prepare a set of conditions based upon its recommended ESEE analysis.

9. Comprehensive Plan Amendment Criteria and Zoning Map Amendment Criteria

Record Summary: Applicant provided detailed Finding of Fact and Conclusions of Law addressing all Comprehensive Plan Map and Zoning Map amendment criteria. If the Planning Commission concurs with the above conclusions, there is no substantial evidence or argument in the record that conflicts with the Findings of Fact and Conclusions of Law, with any necessary revisions to accommodate the Commission's recommended ESEE, offered by the Applicant in the initial application.

Applicant's Argument: Applicant's original Findings of Fact and Conclusions of Law are sufficient to warrant approval of the requested map amendments in accordance with the Commission's recommended ESEE.

Conclusion: Based upon the evidence in the Record, the Planning Commission can recommend the Board of Commissioners amend the Comprehensive Plan Map and Zoning Map in accordance with the Commission's recommended ESEE analysis.

Application of Jackson County's Aggregate Policy

Record Summary: Opponents' have argued that the County must deny or substantially delay protection of a significant and substantial aggregate resource principally based upon conflicting evidence and testimony for a floodplain development permitting issue where the concerns amount to engineering calculations regarding a few inches of water surface elevation in a 100-year flood event and sediment transport volumes that represent a fraction of the total sediment transported by Bear Creek in significant high-water events. The Applicant has maintained that the hyper-technical arguments offered by the Opponent are not required as a matter of law and that such an interpretation does not serve the County's established aggregate policies to ensure an adequate supply of aggregate resources for current and future use.

Applicant's Argument: Precise engineering details are not necessary for any component of the request except the floodplain development permit itself. The LDO contains standards for floodplain and floodway development to assure the risks associated with flood hazards will not be increased to unacceptable levels. The County's floodplain standards do not eliminate any potential for flood hazard for low lying areas along Bear Creek and the Rogue River and any expectation to that effect on the part of the Opponents is unfounded. The County can and does rely on its development standards to amend the Comprehensive Plan in accordance with generally accepted planning practice and theory and such reliance for the requested Comprehensive Plan Map amendment is legally defensible.

There is substantial evidence in the record that this is a significant and recoverable resource and the overall level of conflicting uses for the area are low. Under such circumstances, Policy 2 of the Aggregate Element of the Jackson County Comprehensive Plan directs the County as follows:

POLICY #2: THE COUNTY SHALL PROTECT AND CONSERVE AGGREGATE RESOURCES, REDUCE CONFLICTS BETWEEN AGGREGATE OPERATIONS AND ADJACENT LAND USES, AND ENSURE THAT AGGREGATE RESOURCES ARE AVAILABLE FOR CURRENT AND FUTURE USE.

Policy #2 is straightforward. The record substantiates that the site contains a significant and recoverable resource. The record also demonstrates that the number and concentration of conflicting land uses is relatively low for an aggregate site of this size that is near the key urban centers of Central Point, White City, and Medford, See Table 3, 4, and 5 in Record Pages 150 to 165. The Applicant has sought to minimize the potential for impacts to its neighbors by having the project professionally engineered, cooperating and responding to legitimate design concerns, and seeking additional technical review to assure the project meets all applicable standards. To that end, the record demonstrates that downstream impacts due to the proposed actives will not extend beyond the Applicant's property because water surface elevations and velocities will not be substantially altered by the project, see Record Page 1545. In addition, two Oregon certified engineers had noted that the railroad bridge located downstream limits the possibility of downstream effects from the proposal. Consequently, the County can find

that conflicts with adjacent uses will not extend beyond the County's 1,500 foot impact area.

Opponents have also raised issues regarding past violations and their dissatisfaction with DOGAMI approved design and reclamation plan for Pit 1. The Applicant is not under a violation situation with the County or DOGAMI at this time. Pit 1 is an approved land use that is predominantly zoned AR and its inclusion in the master plan serves only to provide the Applicant with a consistent and coherent set of regulations under which to operate. Testimony regarding Pit 1 has limited or no applicability to this proceeding.

Conclusion: The record substantiates that the Comprehensive Plan Amendment can be approved without violating any express provisions of the LDO, the Jackson County Comprehensive Plan and/or State of Oregon rules, laws, and/or goals. For the above reasons, the Planning Commission should consider the balance of the final written argument as the means by which the Commission can implement the County's established aggregate policy.

With approval of this application, the Applicant requests the Commission direct staff to work with the Applicant to develop conditions of approval that will implement the Commission's decisions on the above matters. The Applicant further requests the Commission direct staff to coordinate with the Applicant on the preparation of its orders and recommendations for approval on this matter.

Respectfully Submitted,

CRAIG A. STONE & ASSOCIATES, LTD.

Jay Harland

Consulting Planner

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EXHIBIT I

LRP2005-00003 CONDITIONS OF APPROVAL

- 1. The applicant shall comply with the terms and conditions of all state and federal authorizations, including terms and conditions adopted by the Oregon Department of Geology and Mineral Industries (DOGAMI) and to the extent that any of those authorizations differ from or conflict with the terms and conditions of the County's approval, the most stringent shall be applicable.
- 2. Prior to expanding aggregate operations into any new area, all required Federal, State, and local permits shall be obtained and copies shall be submitted to Development Services.
- 3. Prior to commencement of new aggregate operations, a perpetual trail easement for the Bear Creek Greenway through the properties will be completed and submitted to Jackson County in accordance with the stipulation offered by the applicant.
- Prior to placing fill in the floodplain or floodway of Bear Creek, a Conditional Letter of Map
 Revision (CLOMR), Letter of Map Revision (LOMR) or applicable Letter of Map Change must be
 completed and approved by FEMA.
- 5. Prior to aggregate operations commencing for Pit 4, a floodplain review will be required unless the operations are limited to the area outside the 100 year floodplain for Willow Creek and the same is demarcated by a registered professional engineer.
- 6. Prior to initiating aggregate operations for Pit 2 and completion of the bridge over Bear Creek, a "no-rise" certification from an Oregon registered professional engineer shall be submitted to Development Services for development within the floodway.
- 7. Prior to initiating aggregate operations for Pit 2, all DOGAMI and DSL violations with respect to Pit 1 will be corrected and mitigation measures are in place or are substantially completed.
- 8. Prior to aggregate operations for Pit 4, a Site Plan Review for Aggregate Operations will be submitted and approved by Development Services.
- 9. Applicant will build a southbound left turn lane on Blackwell Road, as shown in the Traffic Impact Study, when the asphaltic batch plant is completed. A new access road, as shown in the Traffic Impact Study, will be a "Right Turn In Only" for efficient and safe operation. Prior to erection of the asphaltic batch plant, the engineering plans for the left-turn lane must be reviewed and approved by Jackson County Roads.
- 10. All facets of the operation will be conducted in a manner that complies with applicable DEQ air quality, water quality and noise standards, and in conformance with the requirements of the DOGAMI permit for the site.
- 11. Aggregate extraction shall maintain at least a 200 foot setback from the bank of Bear Creek. A minimum 100 foot setback from the bank of Bear Creek for the berm shall be maintained.
- 12. Aggregate extraction shall maintain at least a 100 foot setback from the bank of Willow Creek and Jackson Creek.
- 13. Aggregate extraction and associated flood control berms shall maintain at least a 100 foot setback

from Upton Slough.

- 14. Extraction of aggregate materials shall be setback at least 50 feet from the Rogue Valley Sewer Service mainlines.
- 15. The operation will observe the following minimum setbacks except where the operation is lawfully preexisting and encroachment within the prescribed setbacks has already occurred:
 - a) No extraction or removal of aggregate/minerals will occur within 25 feet of the right-of-way of public roads or easements of private roads.
 - b) Processing equipment, batch plants, and manufacturing and fabricating plants will not be operated within 50 feet of another property or a public road right-of-way, or within 200 feet of a residence or residential zoning district, unless written consent of the property owner(s) has been obtained.
- 16. A Riparian Landscape Plan, approved by ODFW, for areas between the Pit 2 berm and Bear Creek will be submitted to Development Services prior to beginning aggregate operations for Pit 2.
- 17. Any fill within the floodplain of Bear Creek, Willow Creek, Jackson Creek or Upton Slough will be engineered to resist erosion by flood waters.
- 18. Construction and planting of all new berms will commence no later than 2008 or no later than 6 months from resolution of all appeals, whichever is later. All trees will be irrigated in accordance with generally accepted landscape planting practices. The berms as designed are appropriate.
- 19. The applicant will provide screening as shown on the site plan and in substantial compliance with the plan showing the configuration of a typical berm. Prior to installation of the berms along Biackwell Road, the applicant will review any proposed changes to the Blackwell Road right-of-way or any changes to the right-of-way from the construction of the new Seven Oaks Interchange for I-5 associated with the reconstruction of that interchange, and will also determine the need for additional right-of-way to accommodate the left-turn pocket at the main driveway entrance to the site. The applicant will make changes to the location of the berms as determined by any changes to the right-of-ways.
- 20. All roads will be constructed in compliance with emergency vehicle access standards of Section 9.5.4 of the 2004 LDO.
- 21. On-site roads and private roads from the operating area to a public road will be designed and constructed to accommodate the vehicles and equipment that will use them, and meet the following standards:
 - a) All access roads within 100 feet of a paved public road are paved, unless the operator demonstrates that other methods of dust control will be implemented.
 - b) All unpaved roads that will provide access to the site or that are within the operating area will be maintained in a dust-free condition at all points within 250 feet of a dwelling or other identified conflicting use.
- 22. A site reclamation plan, approved by DOGAMI, will be submitted for inclusion in Planning Department records. Such plan must return the land to a natural condition, or return it to a state

- compatible with land uses allowed in the zoning district or otherwise identified through the Goal 5 review process.
- 23. Existing trees and other natural vegetation adjacent to any public park, residential zoning district, or parcel on which a dwelling is situated will be preserved for a minimum width of 25 feet along the boundary of the property on which the operation is located.
- 24. All new stockpiles of mined or processed materials within the 100 year floodplain will be removed from the site (100 year floodplain) during the period of December 1ST through April 30th, unless the operation will be protected by a dike that is of sufficient width and height to prevent flood waters from inundating the sites. Any new flood control dike not approved through this application process will require a floodplain review.
- 25. To prevent or reduce flooding to properties adjacent to Pit 4, a registered professional engineer will complete and submit a drainage plan to Development Services to prevent impacts from the design year storm due to the aggregate operations in the area of Pit 4.
- 26. No extraction on Pit 4 will occur until Pit 2 is 90% depleted.
- 27. 100% reclamation of Pit 2 shall occur prior to 25% depletion of Pit 4.
- 28. If the operation will include blasting, the operator will develop a procedure to ensure that a notice will be mailed or delivered to the owners and occupants of all residences within one-half mile of the site at least three working days before the blast. The notice must provide information concerning the date and time that blasting will occur, and must designate a responsible contact person for inquiries or complaints. Failure to notify neighbors and the County before blasting is a violation of this Ordinance for which a citation may be issued. Notice will be deemed sufficient if the operator can show that the notices were mailed or delivered, even if one or more of the households within the notice area did not receive the notice.
- 29. The operation must be insured for a minimum of \$500,000 against liability and tort arising from surface mining, processing, or incidental activities conducted by virtue of any law, ordinance, or condition. Insurance shall be kept in full force and effect during the period of such activities. Evidence of a prepaid policy of such insurance which is in effect for a period of one year shall be deposited with the County prior to commencing any operations. The owner or operator shall annually provide the County with evidence that the policy has been renewed.
- 30. Operations will observe the following hours of operation:
 - a) Mining, processing, and hauling from the site are restricted to the hours of 6 a.m. to 7 p.m. Monday through Saturday. The hours of operation do not apply to hauling for public works projects.
 - b) Neither mining, processing, nor hauling from the site will take place on Sundays or the following legal holidays: New Year's Day, Memorial Day, July 4, Labor Day, Thanksgiving Day, and Christmas Day.
 - c) An exemption to the hours of operation may be requested. Notice of the proposed change in operating hours must be provided to all property owners within 1,000 feet radius of the aggregate removal or surface mining operation, to residences within one-half mile of the site, and to owners of property adjacent to private site access roads. If no request for a

public hearing is made within 12 calendar days of mailing said notice, the operating hours can be changed as requested by the operator. If a request is made for a public hearing, adjustment of standard operating hours shall be determined by the Hearings Officer, subject to findings that the proposal is consistent with the best interests of public health, safety, and welfare and that the operation will not conflict with other land uses.

- Jackson County Development Services and Code Enforcement and DOGAMI will complete joint inspections of the aggregate operations twice a year to ensure compliance with conditions. DOGAMI will be invited to take part in these inspections. Random inspections by Development Services and/or Code Enforcement could occur as conditions may demand. The aggregate operator will reimburse Jackson County for such inspections as negotiated under separate agreement.
- 32. Rock 'N Ready shall retain a qualified professional engineer for a minimum of three (3) years to oversee Rock 'N Ready's implementation of and compliance with Jackson County floodplain standards, the conditions of this approval and the application to FEMA for the required conditional letter of map revision (CLOMR) and/or letter of map revision (LOMR) for Rock 'N Ready's reach of Bear Creek. The engineer shall prepare an annual report documenting Rock 'N Ready's progress in implementing the mining plan and compliance with applicable County standards and criteria. Once complete, the annual report shall be provided to Rock 'N Ready and County planning staff.
- 33. Rock 'N Ready shall obtain engineering approval from RVS for all final engineered plans and develop a joint management and monitoring plan to the satisfaction of both RVS and Rock 'N Ready for the protection of the 15 inch sewer crossing.