Oregon
Kate Brown, Governor

Department of Land Conservation and Development
635 Capitol Street NE, Suite 150
Salem, Oregon 97301-2540
Phone: 503-373-0050
Fax: 503-378-5518
www.oregon.gov/LCD

NOTICE OF ADOPTED CHANGE TO A COMPREHENSIVE PLAN OR LAND USE REGULATION

Date: June 20, 2016

Jurisdiction: Polk County

Local file no.: ZC 01-01 & PA 01-02

DLCD file no.: 005-01

The Department of Land Conservation and Development (DLCD) received the attached notice of adopted amendment to a comprehensive plan or land use regulation on 06/16/2016. A copy of the adopted amendment is available for review at the DLCD office in Salem and the local government office.

Notice of the proposed amendment was submitted to DLCD 48 days prior to the first evidentiary hearing.

Appeal Procedures

Eligibility to appeal this amendment is governed by ORS 197.612, ORS 197.620, and ORS 197.830. Under ORS 197.830(9), a notice of intent to appeal a land use decision to LUBA must be filed no later than 21 days after the date the decision sought to be reviewed became final. If you have questions about the date the decision became final, please contact the jurisdiction that adopted the amendment.

A notice of intent to appeal must be served upon the local government and others who received written notice of the final decision from the local government. The notice of intent to appeal must be served and filed in the form and manner prescribed by LUBA, (OAR chapter 661, division 10).

If the amendment is not appealed, it will be deemed acknowledged as set forth in ORS 197.625(1)(a). Please call LUBA at 503-373-1265, if you have questions about appeal procedures.

DLCD Contact

If you have questions about this notice, please contact DLCD's Plan Amendment Specialist at 503-934-0017 or plan.amendments@state.or.us

DLCD FORM 2

NOTICE OF ADOPTED CHANGE TO A COMPREHENSIVE PLAN OR LAND USE REGULATION

FOR DLCD USE

File No.: 005-01 {11335}

Received: 6/16/2016

Local governments are required to send notice of an adopted change to a comprehensive plan or land use regulation **no more than 20 days after the adoption**. (*See* OAR 660-018-0040). The rules require that the notice include a completed copy of this form. **This notice form is not for submittal of a completed periodic review task or a plan amendment reviewed in the manner of periodic review.** Use Form 4 for an adopted urban growth boundary including over 50 acres by a city with a population greater than 2,500 within the UGB or an urban growth boundary amendment over 100 acres adopted by a metropolitan service district. Use Form 5 for an adopted urban reserve designation, or amendment to add over 50 acres, by a city with a population greater than 2,500 within the UGB. Use Form 6 with submittal of an adopted periodic review task.

Jurisdiction: Polk County

Local file no.: **PA 01-02, ZC 01-01**

Date of adoption: 6/15/ 2016 Date sent: 6/16/2016

Was Notice of a Proposed Change (Form 1) submitted to DLCD?

Yes: Date (use the date of last revision if a revised Form 1was submitted): 8/15/2001

No

Is the adopted change different from what was described in the Notice of Proposed Change? Yes No

If yes, describe how the adoption differs from the proposal:

The subject property was reduced in size to approximately 130 acres; Changes to the Transportation Planning Rule were adressed in LUBA remand findings; References to an asphaltic batch plant were removed.

Local contact (name and title): Mark Bernard, Senior Planner

Phone: 503-623-9237 E-mail: bernard.mark@co.polk.or.us

Street address: One property east of 2300 Hwy 51 City: Independence Zip: 97351-

---

PLEASE COMPLETE ALL OF THE FOLLOWING SECTIONS THAT APPLY

For a change to comprehensive plan text:

Identify the sections of the plan that were added or amended and which statewide planning goals those sections implement, if any:

Amends the Polk County Comprehensive Plan Inventory of Significant Mineral and Aggregate Resources to include the 124 acre Extraction Area and adopts the Economic, Social, Environmental, and Energy (ESEE) Analysis pertaining to the subject site.

For a change to a comprehensive plan map:

Identify the former and new map designations and the area affected:

Change from	to	acres.	A goal exception was required for this change.
Change from	to	acres.	A goal exception was required for this change.
Change from	to	acres.	A goal exception was required for this change.
Change from	to	acres.	A goal exception was required for this change.

Location of affected property (T, R, Sec., TL and address):

The subject property is entirely within an urban growth boundary

The subject property is partially within an urban growth boundary

If the comprehensive plan map change is a UGB amendment including less than 50 acres and/or by a city with a population less than 2,500 in the urban area, indicate the number of acres of the former rural plan designation, by type, included in the boundary.

Exclusive Farm Use – Acres:	Non-resource – Acres:
Forest – Acres:	Marginal Lands – Acres:
Rural Residential – Acres:	Natural Resource/Coastal/Open Space – Acres:
Rural Commercial or Industrial – Acres:	Other: – Acres:

If the comprehensive plan map change is an urban reserve amendment including less than 50 acres, or establishment or amendment of an urban reserve by a city with a population less than 2,500 in the urban area, indicate the number of acres, by plan designation, included in the boundary.

Exclusive Farm Use – Acres:	Non-resource – Acres:
Forest – Acres:	Marginal Lands – Acres:
Rural Residential – Acres:	Natural Resource/Coastal/Open Space – Acres:
Rural Commercial or Industrial – Acres:	Other: – Acres:

For a change to the text of an ordinance or code:
Identify the sections of the ordinance or code that were added or amended by title and number:

For a change to a zoning map:
Identify the former and new base zone designations and the area affected:

Change from	to	Acres:
Change from	to	Acres:
Change from	to	Acres:
Change from	to	Acres:

Identify additions to or removal from an overlay zone designation and the area affected:

Overlay zone designation: MA Acres added: 130 Acres removed:

Location of affected property (T, R, Sec., TL and address): T8S, R4W, S 2, TL 100; T8S, R4W, S 3, TL 800; T8S, R4W, S 11

List affected state or federal agencies, local governments and special districts: ODOT, DEQ, DSL

Identify supplemental information that is included because it may be useful to inform DLCD or members of the public of the effect of the actual change that has been submitted with this Notice of Adopted Change, if any. If the submittal, including supplementary materials, exceeds 100 pages, include a summary of the amendment briefly describing its purpose and requirements.

BEFORE THE BOARD OF COMMISSIONERS
FOR THE COUNTY OF POLK, STATE OF OREGON

In the Matter of Plan Amendment PA 01-02 and	)
Zone Change ZC 01-01 to Apply the Mineral and	)
Aggregate Overlay Zoning Designation to an	)
Approximately 124-Acre Proposed Extraction Area,	)
and the Identified Impact Area Extending 750-Feet	)
from the Extraction Area Boundary, on a 126-Acre	)
Exclusive Farm Use Zoned Parcel (Subject Property	)
located on Assessment Map T8S, R4W, Section 2,	)
Tax Lot 100; T8S, R4W, Section 3, Tax Lot 800;	)
T8S, R4W, Section 11, Tax Lot 100)	)

ORDINANCE NO. 16-02

WHEREAS, The applications for PA 01-02 and ZC 01-01 were submitted on July 3, 2001; and

WHEREAS, On October 23, 2001 a public hearing was conducted before the Polk County Hearings Officer. On January 21, 2002 the applicant requested the record to be reopened to allow for the submittal of additional information. On January 25, 2002, the Polk County Hearings Officer remanded the application back to the Polk County Planning Division; and

WHEREAS, The applicant provided additional information and, on November 23, 2004, another public hearing before the Polk County Hearings Officer was held and the Hearings Officer made a recommendation of approval for PA 01-02, and ZC 01-01 on September 12, 2005, subject to conditions; and

WHEREAS, The Board of Commissioners held a public hearing on November 9, 2005, with due notice of all such public hearings having been given, and they provided an opportunity for public comments and testimony. There were no objections as to notice or jurisdiction. The Board allowed all parties to be heard and to submit an unlimited amount of written materials; and

WHEREAS, On December 28, 2005 the Board fully and openly deliberated this matter and having reviewed the testimony and other evidence in the record, and, based on the Staff Report, the Hearings Officer's recommendation, the testimony, evidence in the record, approved the applications; and

WHEREAS, A timely appeal of PA 01-02 and ZC 01-01 was made to the Oregon Land Use Board of Appeals (LUBA). On December 8, 2006, LUBA issued its Final Opinion and Order (LUBA Nos. 2006-28, 2006-29, 2006-31 and 2006-32) remanding the decisions. LUBA denied several assignments of error, sustained others and remanded the decisions requiring further consideration and adoption; and

WHEREAS, On September 19, 2007, the Polk County Board of Commissioners held a public hearing to further consider the matters on remand from LUBA. The Board of Commissioners initiated a legislative process for the consideration of adding the site to the Inventory of Significant Mineral and Aggregate Resources in the Polk County Comprehensive Plan and directed the Planning Commission to conduct a public hearing and make a recommendation on that matter; and

WHEREAS, On March 31, 2009 the Polk County Planning Commission held a public hearing on the remanded plan amendment, and kept the record open for the allowance of additional submittals. On June 2, 2009, the Planning Commission fully and openly deliberated and unanimously recommended to the Board of Commissioners approval of the legislative plan amendment to place the subject property on the Inventory of Significant Mineral and Aggregate Resources; and

WHEREAS, The Board of Commissioners held a public hearing on March 10, 2010 on all matters remanded, with due notice of such public hearing having been given. The Board allowed all parties to be heard and to submit an unlimited amount of written materials; and

WHEREAS, On April 28, 2010 the Board fully and openly deliberated this matter and having reviewed the testimony and other evidence in the record, determined that on remand the County had complied with all applicable legislative criteria as required by LUBA and approved the applications; and

WHEREAS, The April 28, 2010 approval by the Board of Commissioners was appealed to LUBA and, subsequently, the Oregon Court of Appeals. LUBA remanded some of the issues raised on appeal, including the Court of Appeals' interpretation of Transportation Planning Rule (TPR) provisions found at OAR 660-012-0060(1) & (2); and

WHEREAS, On May 15, 2014, the applicant submitted a request for Polk County to reconsider applications PA 01-02 and ZC 01-01 for the second time, as part of the LUBA remand order 2010-057; and

WHEREAS, On June 18, 2014, Polk County Community Development provided to the Board of Commissioners the applicant's remand reconsideration request and the entire record for the matter, with the exception of oversized exhibits which were available for review in the Community Development Department.; and

WHEREAS, On November 25, 2014, after each Commissioner had an opportunity to review the request and the entire record, the Board of Commissioners held a public meeting and, pursuant to PCZO 111.280, determined that the Hearings Officer was the appropriate hearings body and directed staff to set the matter for a public hearing; and

WHEREAS, On February 17, 2015 the Polk County Hearings Officer conducted a public hearing on the issues raised in the LUBA remand (Final Opinion and Order No. 2010-057) with due notice of all such public hearings having been given, and an opportunity for public comments and testimony. The Hearings Officer concluded that the applicant satisfied the remanded issues and administered a Decision of Approval on June 15, 2015; and

WHEREAS, On June 15, 2016, pursuant to PCZO 111.280, the Board of Commissioners ratified the Decision of the Hearings Officer; now therefore,

THE POLK COUNTY BOARD OF COMMISSIONERS ORDAINS AS FOLLOWS:

Sec. 1 The June 15, 2015 Decision of the Polk County Hearings Officer (Exhibit A) is hereby ratified as the final local decision pursuant to PCZO 111.280 thereby;

1. Polk County adopts the findings in favor of PA 01-02 and ZC 01-01 located in the Hearings Officer Decision (Exhibit A) and the associated Conditions of Approval found in Attachment B of the Hearings Officer's Decision; and
2. Polk County amends the Polk County Comprehensive Plan Inventory of Significant Mineral and Aggregate Resources to include the approximately 124-acre proposed mineral and aggregate extraction site located one property south of 1620 Highway 51, Independence, Oregon (Subject property located one property north of 5595 Halls Ferry Road, Independence Oregon (Subject property is located on Assessment Map T8S, R4W, Section 2, Tax Lot 100; T8S, R4W, Section 3, Tax Lot 800; T8S, R4W, Section 11, Tax Lot 100) and more specifically delineated on the extraction and impact areas site plan (Exhibit B).
3. Polk County amends the Polk County Zoning Map to designate the proposed 124-acre Extraction Area and Impact Area extending 750-feet outward from the Extraction Area, which are currently zoned Exclusive Farm Use, as Exclusive Farm Use with a Mineral and Aggregate Overly (MA Overlay) Zoning District, as depicted on Exhibit "B".
4. Polk County approves the conditional use of mining aggregate and other mineral and subsurface resources on the proposed 124-acre Extraction Area which is included in the County inventory of mineral and aggregate resources within the Exclusive Farm Use Zoning District.
5. The Economic, Social, Environmental, and Energy (ESEE) Analysis pertaining to the subject site found in Attachment C of the Hearings Officers Decision (Exhibit A) is adopted and made a part of the Comprehensive Plan as a background report document.

Dallas, Oregon, June 15, 2016

POLK COUNTY BOARD OF COMMISSIONERS

Jennifer Wheeler, Chair

Mike Ainsworth, Commissioner

Craig Pope, Commissioner

Approved as to form:

Morgan Smith, County Counsel
First Reading: June 15 2016
Second Reading: _____
Recording Secretary: D Chase

Exhibit A

BEFORE THE PLANNING DIVISION
FOR POLK COUNTY, OREGON

In the Matter of the Remand of	)	PA 01-02
Plan Amendment PA 01-02	)	ZC 01-01

SUMMARY OF PROCEEDINGS

This matter arose on the remand by the Land Use Board of Appeals (LUBA) of the application for Plan Amendment PA 01-02, which requested an amendment to the Polk County Comprehensive Plan (PCCP) to include the subject site on the Polk County Inventory of Significant Mineral and Aggregate Resources and to apply the Mineral and Aggregate Overlay Zoning Designation to approximately 124 acres of the approximately 130-acre Exclusive Farm Zone (EFU) zoned subject parcel and to an impact area extending approximately 750 feet from the 124-acre extraction area.

The subject property is located east of 2300 Highway 51, Independence, Polk County, Oregon, legally described as T8S, R4W, section 2, tax lot 100; T8S, R4W, section 3, tax lot 800; and T8S, R4W, section 11, tax lots 100 and 102. After the remanded application was most recently considered by Polk County in 2010, the subject tract has been reconfigured and portions conveyed from the tract. Polk County Property Line Adjustment (LLA) 14-29, approved April 29, 2014, authorized the current configuration of the subject tract that now consists of approximately 130 acres.

The application that is the subject of this proceeding was submitted on July 3, 2001. The first public hearing was held on October 23 and November 20, 2001. There followed more than 13 years of decisions, appeals, remands, additional hearings, further appeals and remands, and an array of proceedings that are summarized on pages 2 to 4 of the Staff Report. No useful purpose would be served by duplicating that historical summary at this point. Anyone interested can obtain a copy from the Polk County Planning Division. The present proceeding is in response to LUBA's Final Opinion and Order No. 2010-057 dated January 13, 2012. In its remand order, LUBA acknowledged that amendments to the Transportation Planning Rule (TPR) by LCDC may affect application of the TPR in this case.

In its response to the most recent LUBA remand, the applicant has updated its analysis of transportation through 2030 in order to demonstrate compliance with the Polk County Transportation Systems Plan (TSP). The applicant also provided additional evidence addressing the new TPR and Oregon Highway Plan (OHP).

The applicant contends that it has submitted substantial evidence into the record to demonstrate that the plan amendment would generate only a "small increase" in traffic in compliance with the revised TPR and OHP rules. Compliance with the revised TPR as a "small increase" that would not significantly affect the transportation facility would eliminate the mitigation requirements from the remand proceedings.

The remand proceeding will also require adoption of the ESEE analysis adopted in Polk County's enacting ordinance from 2006 but unintentionally omitted from Polk County's 2010 ordinance addressing the first remand reconsideration.

The Record associated with this case is extremely voluminous. It is available in its entirety for review at the office of the Community Development Department on the second floor of the Polk County Courthouse. Any person desiring to review the record, in whole or in part)

should first contact the Department (503-623-9237) to schedule a time, and to assure that staff will be available to assist in locating whatever it is that is desired.

PUBLIC HEARING

A public hearing was held in the Polk County Courthouse on the evening of February 17, 2015. The Board of Commissioners had designated Robert W. Oliver, Polk County Hearings Officer, to conduct the hearing and render a final local decision, subject to its ratification.

(Notice)

Staff reported that written notice of the public hearing was provided as required by Polk County Zoning Ordinance (PCZO) 111.340 to 111.370 to property owners within 750 feet from the outside perimeter of the subject property, all participants of record and applicable government agencies. Notice was posted on the subject property, and was published in the Dallas, Oregon *Itemizer-Observer*.

In these times of budget austerity, because the mailing or personal delivery of written notices is an expensive item, Polk County must limit such notices to those required by law and ordinance. Given the intense local public interest in this case demonstrated during recent years, it is hard to see how any person directly affected within the notice area would be unaware of the scheduled public hearing. Nevertheless, claims were made by persons in attendance that they did not receive written notice, and that they had heard of others who also failed to receive written notice. The fact of their presence at the hearing indicates that actual notice in fact was received by them, and there was no specific evidence showing how they or others entitled by law or ordinance to be given individual written notice were harmed by an alleged lack thereof. The fact that someone has a special interest in a particular case does not of itself necessarily mean that he or she is automatically entitled to receive written notice under PCZO 111.340 to 111.370. The Hearings Officer is not a detective with resources to investigate nonspecific allegations that some people legally entitled to be notified individually in writing failed to be so notified, when they do not cite specifically the law or ordinance that requires notice to be sent to them, and do not show how they are so entitled under the law or ordinance.

(Disclaimers)

The Hearings Officer announced that he had no personal interest in the outcome of the case, conflict of interest, or *ex parte* contacts. He mentioned that he and Lien, attorney for Applicants, were professional friends. In a subsequent written submission, an opponent declared this adds "a curious conflict-of-interest angle to the mix." The objector seems not to understand that, particularly in smaller communities, attorneys may contest a case fiercely, but this does not prevent them from behaving in a friendly manner at other times. Lien has argued numerous other cases before the Hearings Officer. Sometimes the Hearings Officer has ruled in Lien's favor, sometimes against. Their professional friendship has nothing to do with individual rulings. In the same vein, somebody alert to the possibility of an *ex parte* communication might have been upset to see Lien and the Hearings Officer chatting amiably before this hearing. In truth, the subject of their conversation was limited to Australian cuisine, prompted by Lien's recent article in the travel pages of a local newspaper.

(Attendance; Staff Report; Authority)

A total of 16 individuals signed up in advance to testify, including attorneys representing a number of interested clients including the Rickreall Community Water Association (RCWA). There were perhaps as many other individuals who attended but did not testify. All spoke against the proposal. The Hearings Officer has not attempted to paraphrase the arguments of each individual. Anyone interested in what a particular witness said can access a recording of the proceedings which is a part of the record of the proceedings in the office of the Polk County Planning Division. The Hearings Officer instead has dealt with the substance of objections that fall within the scope of his authority. This excludes, for example, consideration of objections based on asserted adverse impact to the environment, matters thoroughly addressed and resolved earlier in these proceedings.

It was urged that, because so much time has passed since these proceedings began in 2001, circumstances have changed and the application should be reconsidered from its very beginning. The Hearings Officer believes that this could lead to endless cycles of proceedings --- new applications and evidence, followed by lengthy litigation over various preliminary decisions with consequent delays, followed by assertions that circumstances have changed even as most objections were resolved and the changed circumstances require a fresh start *de novo*. Sooner or later a final decision must be made. In any event, the Hearings Officer does not believe he has authority in effect to throw away the voluminous record already established in this matter and to overturn a host of preliminary decisions by the Board of Commissioners, LUBA and the Oregon Court of Appeals.

The Hearings Officer called on staff to summarize its report and recommendations. The Hearings Officer stressed that his mission was not to re-examine previous issues discussed at length during the many years of this case's pendency, and settled by one authority or another. Instead, he was charged to deal with the limited, unresolved issues identified in the LUBA remand. This was consistent with action of the Board of Commissioners at its regular meeting on November 4, 2014, setting "a hearing with the Polk County Hearings Officer to constitute the final County decision which will then be ratified by the Board of Commissioners." Most opponents did not focus on the remanded issues, which involve *transportation*. For example, one item submitted into the record was a DVD purporting to show splendid agricultural development of nearby lands, which provides numerous jobs and income and allegedly might be jeopardized by the subject project. Others attempted to revisit issues litigated and decided years ago. The Hearings Officer announced that he would not rule, during the hearing, on the relevance of individual testimony and submissions, but in reaching his decision would consider only evidence relating directly to the remand.

(Applicant's Testimony and Evidence)

Applicant was represented by Wallace Lien, an attorney. Lien argued the proceedings are limited to adoption of an ESEE analysis erroneously omitted from an earlier county action, and resolution of issues involving impact on transportation. During the course of this case, Polk County updated its Transportation Systems Plan (TSP) so that it extended to 2030. LUBA ordered that Polk County must determine whether this proposal will "significantly" affect transportation facilities as measured in 2030. Applicant commissioned a study by recognized traffic engineers Kittelson and Associates, Inc., to update the Traffic Impact Analysis (TIA) to take into account changes in Polk County's Transportation Systems Plan (TSP), particularly to evaluate the TIA through 2030. Lien introduced into evidence a Technical Memorandum dated

February 2, 2014, which is included in the Record. The memorandum concluded that operation of the proposed facility will not degrade currently operating or projected transportation facilities.

Lien further argued that amendments to the Transportation Planning Rule in 2012 and the Oregon Highway Plan in 2012 established new provisions related to "small increases" in traffic on any failing facilities without degradation. The critical change for purpose of this application, Lien claims, on any application for a plan amendment is that any proposal that does not increase the average daily trips by more than 400 is considered a "small increase" which does not cause "further degradation" of the transportation facility. This application, he asserts, has never envisioned more than 240 average daily trips. Consequently, the proposal is exempt from review under the TPR and OHP. Opponents of the proposal have not produced any detailed or specific evidence more convincing to the contrary.

The Board in 2006 adopted the ESEE analysis as a part of the Polk County Comprehensive Plan, but a clerical error in drafting the Board's action failed to incorporate it formally. Lien noted that LUBA said even though this remand involves transportation matters as unresolved issues, the simplest solution would be to take that corrective action in the course of addressing this remand. The Hearings Officer concurs.

(Opponents' Testimony and Evidence)

As noted above, opponents attempted to contest numerous issues that previously had been resolved by the Board of Commissioners, LUBA or the Court of Appeals, initially or on appeal. Anticipating these efforts, the Hearings Officer at the outset had cautioned that he did not intend to prolong the meeting by ruling on each submission of evidence as it was offered, and debating such rulings on the spot, but would allow into the Record virtually anything pertaining to the case, even if it were only remotely germane. In his opinion, as articulated above, the only issues properly involved in this remand pertain to transportation impacts.

In his memorandum dated February 17, 2015, and during the public hearing, attorney William H. Sherlock spoke for opponents David Setniker and Agricultural Capital Management Permanent Crop Oregon 2 LLC. With respect to the transportation issue, Sherlock cites an evaluation by Sandow Engineering, which he says "concurs with the proposed number and distribution of traffic to/from the proposed gravel parcel near Hayden Lake Site." However, he claims, Sandow made numerous findings and recommendations with respect to "the flawed methodology and assumptions elsewhere in the TIA."

Any referee who is not trained as a traffic engineer will face an uphill battle in resolving the apparent conflict between the Kittelson and Sandow memoranda. Sherlock's recommendation is that the County deny the application, presumably on grounds that the Sandow engineering study has exposed fatal flaws in the Kittelson study, and further studies are in order. The Hearings Officer finds that the Kittelson study has shown that the project will generate substantially fewer than 400 ADT. The Sandow memorandum criticizes Kittelson's methodology, but does not demonstrate that a greater number will be generated.

Along with several other opponents, Sherlock argued that only the Board of Commissioners itself, not a designated Hearings Officer, must conduct a public hearing on this remanded case. The Hearings Officer believes this might well be a valid objection, if the plan amendment were being initiated at this point. However, this is not a situation where a new plan amendment is being proposed and considered. This hearing involves findings of fact for a remand, not a legislative proceeding. There is no reason under statute or ordinance why a

Hearings Officer cannot be delegated authority to determine factual matters as opposed to performing a legislative activity.

The Hearings Officer agrees with Sherlock and others that Polk County may be free to expand the scope of the remand. However, the Hearings Officer understands his charge is dealing with the matters remanded by LUBA, namely, transportation issues. There is no indication that LUBA, or the Board of Commissioners remanded every finding and ruling in this case that has been rendered during the past 13 years. The Hearings Officer believes that such a dramatic undertaking would require plain and explicit language, and that he cannot infer such authority or directive when there is no such plain and explicit language.

Sherlock and others contend that changed circumstances surrounding the proposed site make it necessary to reopen the record and hold more hearings, and that neighboring landowners and residents no longer support the application. Goal 1 requires public participation in the planning process, but does not mandate public approval of an application. Moreover, the Hearings Officer is hesitant to reopen settled issues in a case because circumstances have changed since they were decided. As to other allegedly changed circumstances in the surrounding area, the Hearings Officer does not intend to impugn the good faith of opponents in this case. However, such a practice could tempt opponents in land use proceedings where the issues have been narrowed to make use of one procedural delay after another, eventually claiming that the passage of time requires the reopening of earlier decisions in the case. In other words, if prior findings in a complex and lengthy case could be challenged and reopened on grounds that findings have become stale and invalid due to the length of proceedings, it might be impossible ever to bring a complex case to a conclusion.

Sherlock and others raise a variety of other issues (e.g., dust deposition, impact on water wells, etc.) that are not the subject of the current remand proceedings, and which the Hearings Officer does not have authority to reopen and re-adjudicate.

David Noren, an attorney representing the Rickreall Community Water Association (RCWA) testified and submitted written arguments and evidence. In his concise oral and written testimony, Noren argued that the Board of Commissioners cannot lawfully designate a Hearings Officer to conduct the hearing and render the final local decision, and there is nothing in the record to show that the scope of the proceedings must be limited to the terms of the LUBA remand. The Hearings Officer cannot agree that the absence of a specific charge to the Hearings Officer has the effect of requiring or at least authorizing an unlimited inquiry. The minutes of the Board of Commissioners' meeting of November 25, 2014 (copy attached to Noren's presentation) speaks of the "LUBA remand" of the case, and designation of the Hearings Officer to "process the remand" subject to ratification by the Board. It does not speak of the Hearings Officer reconsidering the case otherwise. The Hearings Officer believes he would need specifically articulated authority to throw out decisions and findings rendered during the past 13 or 14 years, and receive new evidence (beyond that pertinent to the matter remanded by LUBA) as would be appropriate in the case of a novel proceeding. The Hearings Officer does not find such specific language by the Board in the record, and cannot take it on himself in effect to start anew in this case.

In rebuttal, to the opponents, Lien stated that the dispute over access to the site, mentioned by Sherlock and noted below in this document, was held by LUBA not to be relevant. He said the Board of Commissioners correctly assigned the remanded matter to the Hearings Officer, and expanding the scope of the hearing beyond the remanded transportation issues was

entirely discretionary with the Board. The Hearings Officer concurs, and as noted above finds no directive from the Board to reopen issues not involved in the remand from LUBA.

(Leaving Record Open; Continuance)

There were requests to leave the Record open for submission of additional written testimony and evidence. The Hearings Officer announced that the record will remain open for such submissions until March 3, 2015. The record will remain open for written responses until March 17, 2015; and until March 31, 2015, for final closing arguments by applicant. The Hearings Officer emphasized that the material had to be physically submitted to the office of the Planning Department by 5 p.m. on the dates indicated. There was no objection to this schedule, but there was a request by an opponent that, in addition, this hearing be continued until a later date. Aware that denial of the latter request likely will be the subject of another appeal citing alleged procedural errors, the Hearings Officer declined to continue the hearing. He believes there comes a point when everything that can be said has been said, and the extended period for submission of additional written testimony and evidence makes a continuation of verbal testimony redundant.

(Adjournment)

There being no further business before the group, the Hearings Officer adjourned the meeting. Robert W. Oliver, Polk County Hearings Officer, presided. He was given authority by the Board of Commissioners to conduct the hearing and render a decision, subject to ratification by the Board.

ADDITIONAL WRITTEN SUBMIISSIONS

On March 3, 2015, Kittelson and Associates made timely submission of a written response directed to the earlier testimony of Sandow Engineering, which had been brought forward at the public hearing by attorney Sherlock. It must be noted that the written testimony of both Kittelson and Sandow presented for the public hearing involved extensive and detailed engineering data and analyses, couched in language perhaps familiar to trained engineers but, more often than not, somewhat arcane to lay persons.

In this case two engineering firms prepared studies for opposing parties. One study finds that the proposal satisfies applicable legal requirements and traffic engineering standards, while the other seeks to discredit the data and methodology of that study and reaches an opposite conclusion. In an ideal world, provision for resolving such controversies in land use cases might involve a panel of independent experts who would review the data brought forward and the methodologies employed, and --- if only by majority vote --- reach a final, binding decision not subject to further appeals. Such is not the case in our real world, where a Hearings Officer who is not trained in engineering is called upon to resolve a technical dispute among engineers.

The Hearings Officer in this case has carefully examined the engineering materials submitted by both parties, and believes that what was required of applicant was to submit substantial evidence in support of the project which is the subject of this application. Based on his review, the Hearings Officer finds the evidence submitted by applicant to be substantial. Opponents have criticized the methodology employed by applicant's engineer (see Sherlock's submission of March 3, 2015), which they assert has the effect of challenging its substantiality. Nevertheless, the Hearings Officer finds the response submitted by Kittelson Associates on

March 3, 2015, to be persuasive, and confirms the substantiality of applicant's engineering arguments.

On March 3, 2015, Sherlock made timely submission of memorandum of 52 pages of additional testimony in opposition to the application, accompanied by many more pages of evidentiary exhibits. Among other matters, opponents dispute issues of legal access, changes in circumstances of surrounding properties, dust, noise, impact on nearby sensitive agricultural enterprises, groundwater contamination,, and other matters not involved in the most recent LUBA remand. The memorandum is virtually a catalog of possible objections that could be brought forward if LUBA had mandated a de novo proceeding on this application. However, the Hearings Officer was not instructed to reopen the proceedings as if nothing has been argued and decided during many years of consideration of this application. Arguably the Board of Commissioners could wipe clean the slate, as it were, erasing many years of work by interested parties and deliberative authorities. The Board has not chosen to do that, and the Hearings Officer will not take it on himself to proceed on the assumption that prior findings have become stale because of extended litigation so as to warrant another round of proceedings, as urged by opponents.

Among other issues, as noted above Sherlock raises the matter of legal access. On page 12 of his Supplemental Opposition Testimony, he notes that a legal action has been initiated in the Polk County Circuit Court that seeks to quiet title to access to the subject site. Sherlock asserts that Polk County therefore should deny this application. The Hearings Officer finds nothing in the terms of the LUBA remand that requires a ruling by him based on the matter of legal access. Consequently, the Hearings Officer finds nothing in the terms of the LUBA remand, much less the proceedings of the Circuit Court, that would require him to deny this application on issues involving legal access. It might be argued that this proceeding should be put "on hold" until the court case is resolved, which could involve an additional delay of years. The same argument could be advanced to delay resolution of this case until all federal, state and local permits are approved and in place --- some of which might well require prior approval of the proposal under local land use laws! If applicant is willing to risk the consequences of winning approval under land use law but failing to gain necessary access or approval under regulatory programs, the Hearings Officer believes that is his right.

Attorney David Noren made timely submission of written testimony in a letter dated February 28, 2015. Noren also argued that the Hearings Officer should, in effect, restart the proceedings, and that the Board of Commissioners itself, after one or more public hearings, should render the final local decision. The Hearings Officer believes the Board already has made clear its resolve that the Hearings Officer should render the final local decision subject to ratification by the Board of Commissioners, and limit consideration to the specific issues delineated in the LUBA remand.

Other submissions also expressed concerns articulated by Sherlock and Noren.

APPLICANT'S FINAL WRITTEN ARGUMENT

On March 31, 2015, Attorney Wallace Lien submitted timely written final arguments on behalf of applicant. In his memorandum, he briefly alluded to the history of the case dating from its initial filing, nearly 15 years ago. He summarized the issues involved in the LUBA remand, which he claimed to be limited to transportation planning, and inclusion of the ESEE analysis in the PCCP adopted in 2006, but through recognized clerical error was not similarly included in 2010. He emphasized that that the issues so identified "are the only issues remaining to be

decided in the case. All other issues have been previously resolved in full in prior decisions by LUBA and the Court of Appeals."

Lien referred to actions of the Polk County Board of Commissioners on November 25, 2014, setting a hearing on the remand decision before the Hearings Officer, subject to ratification by the Board, arguing that this action complies with PCZO 111.280. There is a presumption that public officials do their duty properly until shown otherwise, so one must assume that the members of the Board will carefully read the Record of this proceeding as they resolve the question of ratification.

Lien enumerated the specific issues involved in LUBA's remand of this case, all involving transportation. He noted that an increase in traffic generating fewer than 400 ADT will not significantly impact a transportation facility; that the traffic generated will be small under the TPR and will not cause further degradation of a facility and there is not a need for mitigation of a small increase in traffic generated at a proposed site.

Lien asserted that Polk County should adopt the ESEE analysis into the PCCP with minor corrective changes. His arguments here are in accord with staff recommendations.

Lien contended that the scope of the current proceeding should be limited to the specific issues identified by LUBA, and that revisiting issues decided in past years would be contrary to an expeditious resolution of land use cases. He responded at length to objections expressed during the public hearing by various witnesses, and in doing so restated some of his earlier arguments. Concluding, he urged approval of the application.

LATE SUBMISSIONS

At the conclusion of testimony during the public hearing, the Hearings Officer announced the record would remain open for submission of additional written testimony until March 3, 2015; for written testimony responsive to such submissions until March 17, 2015; and for the applicant's final written arguments until March 31, 2015. In each case, the materials were physically due in the office of the Polk County Planning Department by 5 p.m. on the date specified. **No objections to these instructions for submissions of additional written material were expressed**. The Hearings Officer ruled separately on a motion to continue the public hearing.

Nevertheless, dozens of documents purporting to be additional written submissions were submitted not to the Planning Department, but to the Board of Commissioners' office after the March 3 and 17, 2015, deadlines. Each and every one expressed opposition to the application. At least some were prompted by a memorandum dated March 10, 2015, issued by the Rickreall Community Water Association (RCWA) (Attachment "A"). The memorandum urged recipients to write the members of the Board of Commissioners to oppose the application based on potentially adverse impact on groundwater. The memorandum made no reference to the deadlines adopted at the public hearing, or instructions that the submissions be sent to the Planning Department, not the Board of Commissioners.

A few of the submissions dealt with generation of particulates (dust), but virtually all dealt with water problems. A handful mentioned, in passing, transportation. The Hearings Officer surmises that the memorandum issued by the RCWA probably misled scores of individuals by failing to indicate applicable deadlines for submission of written testimony, and by mistakenly advising them to send testimony directly to the Board of Commissioners. Further, persons who wrote submissions in good faith were not advised in the RCWA memorandum that the public hearing was limited in scope to transportation issues remanded by LUBA. The

Hearings Officer believes the least unfair solution (for those submitting the late material) is to admit all of the submissions into the record, so long as they were received somewhere in Polk County's offices by March 31, 2015. Admitting the documents into the record **does not mean** that the Hearings Officer will tabulate them as if the process involves a local referendum, nor does it means the documents are automatically deemed to contain substantial evidence.

The Hearings Officer is aware his actions here, as in the case of rejecting a motion for continuation of the hearing, may lead one party or the other to appeal on procedural grounds. He hopes that, henceforth, entities calling for their members to contact Polk County officials on land use issues will advise those members of applicable deadlines, provide accurate information on where to send such messages, and correctly identify the relevant issues under discussion at the hearing.

CRITERIA AND FINDINGS

As noted above, the only matters for decision are those issues that LUBA found deficient from prior appeals, and can be found in LUBA Final Opinion and Order No. 2010-057. Many issues related to this application have been conclusively decided by LUBA and the Oregon Court of Appeals. Whatever it might or could have done, Polk County has reopened the case *only* to admit new evidence, arguments or testimony on the remanded issues. Polk County is *not* revisiting issues that were raised and resolved during previous appeals, or that could have been raised and were not. The few issues on remand fall under the criteria listed in PCZO 115.060(A).

This criterion was previously addressed by the Hearings Officer, Planning Commission and Board of Commissioners. Findings were adopted as part of Polk County Ordinance 06-02, and more recently as part of the remand reconsideration with Polk County Ordinance 10-05. After additional LUBA and Oregon Court of Appeals review, several issues focusing on the Transportation Planning Rule (TPR) and formal adoption of the Economic, Social, environmental and Energy (ESEE) Analysis into the Polk County Comprehensive Plan (PCCP) remain for further reconsideration and fall under the review and decision criteria cited above.

On February 18, 2011, LUBA issued its Final Opinion and Order (LUBA No. 2010-95) on the remand reconsideration. LUBA rejected most of the assignments of error, ruled for petitioners on others, and once again remanded the case to Polk County. LUBA's remand order was appealed to the Oregon Court of Appeals. On August 3, 2011, the Court affirmed LUBA's decision in part, reversed it in part and remanded the case to LUBA for reconsideration of the TPR mitigation requirements for traffic that was projected to cause the Oregon Highway 51/State Highway 22 intersection to fail by 2030. The Court ruled that, under the TPR, Polk County could approve the plan amendment only if measures are put in place that correct failures, or projected failures, caused existing traffic conditions or projected increases in background traffic, without regard to whether those existing and projected failures are attributable to the plan amendment, in order to ensure that allowed land uses are consistent with the function, capacity and performance standards of affected facilities.

On January 13, 2012, LUBA issued its Final Opinion and Order (LUBA No. 2010-057) on the remand from the Court. Meanwhile, back at the ranch as it were, the Land Conservation and Development Commission (LCDC) had adopted amendments to the TPR that took effect on January 1, 2012. LUBA acknowledged that those amendments made changes that may affect application of the TPR in this case. LUBA thereupon remanded the case to Polk County. In response to the LUBA remand, the applicant has updated its analysis of transportation through 2030 in order to demonstrate compliance with the 2009 Polk County Transportation Systems

Plan (TSP). The applicant also provided additional evidence addressing the new TPR and the OHP.

The new TPR changes the way Polk County can review plan amendments that significantly affect a transportation facility by requiring consideration of possible corrective demand management. The new TPR also changed mitigation requirements now allowing partial mitigation or alternative mitigation to other modes. The TPR changes also expanded the non-degradation provisions so as to apply to plan amendments on any facility that is failing or is projected to fail before the planning horizon.

The OHP was amended on December 21, 2011, to include changes in the Highway Mobility Policy. That policy establishes minimum volume-to-capacity (v/c) ratios. The amendment to the OHP established new provisions related to small increases in traffic on any failing facilities without degradation. This change established new thresholds to determine when a small increase would cause further degradation of a transportation facility.

Applicant contends that it has submitted substantial evidence into the record to demonstrate that the plan amendment would generate a small increase in traffic in compliance with the new TPR and OHP rules. Compliance with the new TPR as a small increase that would not significantly affect a transportation facility would eliminate the mitigation requirements resulting from the Court of Appeals remand. The Hearings Officer finds that applicant's submission does constitute substantial evidence, and that while opponents have questioned its methodology, they have not demonstrated its inadequacy.

(Updated traffic analysis through 2030)

During the course of the 2009 consideration of this application, Polk County updated the TSP for the period ending in 2020 further to the period ending in 2030. LUBA determined that the updated 2009 TSP controlled this application, and remanded the case to allow the applicant an opportunity to submit evidence of compliance through the end of the new planning period. According to the LUBA remand, in applying OAR 660-012-0060(1)(c) Polk County is required to determine whether this application significantly affects transportation facilities as measured at the end of the planning period identified in the TSP, which in this case is 2030. As related above, the applicant hired Kittelson and Associates, Inc., a transportation engineering firm, to prepare a new TIA for the project that takes into account the updated 2009 TSP and evaluates all elements of transportation impact through the end of the 2030 planning horizon. The applicant submitted the voluminous study memorandum into the record. Opponents have criticized the methodology employed by Kittelson, but differing methodologies can sometimes yield similar results. Opponents have not demonstrated that a different methodology will necessarily yield a better result.

The updated TIA concludes that "the proposed gravel mining development will not cause any degradation of the transportation facilities that are currently operating or are projected to operate above the v/c mobility target," which includes peak season traffic conditions in 2030. The Hearings Officer finds that the applicant has submitted substantial evidence demonstrating compliance with the 2009 Polk County TSP, and satisfies the requirements of the remand.

(New TPR and OHP)

In January 2012, significant revisions were made to the TPR and the OHP. Staff and the Hearings Officer agree with the applicant that LUBA recognized that the new TPR may affect application of the relevant sections of the TPR in the present case, and that Polk County may rely on the newer provisions of the TPR in deciding the case.

As explained by staff, the newer TPR eliminates the issue raised at LUBA as to the date a turn movement failed by deleting the questioned provision of the TPR. Under the newer TPR, there is no longer a requirement for failure on the date of the application as a condition precedent to use of the mitigation provisions of the TPR. The newer TPR also changes the evaluation of projects. Three of these changes have direct impact on how Polk County reviews this application. The *first* is that the newer TPR changed the evaluation of plan amendments that significantly affect a facility in OAR 660-012-0060(1) to require consideration of possible corrective demand management measures, and revising the definition of demand management at OAR 660-012-0005(7) to expand the corrective measures available. *Second*, the new TPR changed mitigation requirements under OAR 660-012-0060(2) to expand the definition of "other methods" of mitigation, allowing for partial mitigation under section (11) , or alternative mitigation to other modes under OAR 660-012-0060(2)(e). *Third*, the newer TPR expands the non-degradation provisions to apply to amendments on any facility that is failing or projected to fail before the planning horizon.

The OHP established highway standards and provides the mechanism to evaluate impacts from plan amendments under the TPR. The OHP amendments were adopted on December 21, 2011. For the purposes of this review, applicable changes were to Highway Mobility Policy 1F. This policy establishes the minimum mobility standards on Oregon's state highway system in terms of specified maximum v/c ratios. These are the performance standards for state highway facilities such as Highway 51, Highway 22 and Highway 99W, all of which are relevant to this application.

The amendments to the OHP established new policies related to small increases in traffic on any failing facilities without degradation. The applicant in this case contends that the critical change for the purpose of this application is that any proposed plan amendment that does *not* increase the average daily trips by more than 400 is considered a small increase, which does not cause further degradation of the transportation facility.

(Relevance of New Rules)

The Highway Mobility Policy of the OHP affects land use decisions through the requirements of the TPR. The TPR requires that regional and local TSP's be consistent with the plans adopted by the Oregon Transportation Commission (OTC). The TPR also requires that local governments assure that comprehensive plan amendments, zone changes and amendments to land use regulations that significantly affect a transportation facility be consistent with the identified function, capacity and performance of the affected state facility. The Highway Mobility Policy establishes the Oregon Department of Transportation's (ODOT's) mobility targets for state highways as the standards for system performance in compliance with the TPR, and are to be used to determine "significant affect related to section 0600 of the TPR. If an amendment to an acknowledged comprehensive plan would significantly affect an existing or planned transportation facility, then the local government must put in place measures as provided by the TPR.

Section 0060 of the newer TPR states that a plan amendment significantly affects a transportation facility if it would (1) Change the functional classification of an existing or planned transportation facility; or, (2) Change standards implementing a functional classification system; or, (3) Result in any of the following effects based on projected conditions measured at the end of the planning period identified in the adopted TSP: (a) Types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility; (b) Degrade the performance of an existing or planned transportation facility such that it would not meet the performance standards identified in the TSP or comprehensive plan; or (c) Degrade the performance of an existing or planned transportation facility that is otherwise projected to not meet the performance standards identified in the TSP or comprehensive plan.

This plan amendment was remanded for reconsideration of TPR mitigation requirements for traffic that was projected to cause the Oregon Highway 51/22 intersection to fail by the 2030 planning horizon of the TSP. Under the older TPR the Oregon Court of Appeals ruled that Polk County can approve the plan amendment only if measures are put in place that correct failures, or projected failures, caused by existing traffic conditions or projected increases in background traffic, without regard to whether those existing and projected failures are attributable to the [;an amendment. Staff states that OHP Highway Mobility Policy 1F, Action 1F.5, now states that a plan amendment subject to TPR section 0060 that increases the v/c ratio further, or degrades the performance of a facility so that it does not meet an adopted mobility target at the planning horizon, will significantly affect the facility *unless* it falls within the thresholds listed in Policy 1F for a small increase in traffic between the existing plan and the proposed amendment. The policy sets the minimum threshold as any proposed amendment that does not increase the average daily trips (ADT) by more than 400. The new OHP small increase thresholds appear to be an attempt by the OTC to allow plan amendments that are not directly attributable to existing or projected failures in state transportation facilities.

The original TIA submitted for a plan amendment expected 160 ADT to be generated from the site. The current TIA estimates the proposed plan amendment would generate approximately 240 ADT under current market conditions. Regardless of the changing assumptions underlying these estimates, the projected traffic impact is well below the "small increase" threshold identified in the OHP Highway Mobility Policy. As a result, staff and the Hearings Officer believe that the proposed plan amendment would not degrade transportation facilities, even those that, according to the applicant's new TIA, are projected to 2030 to operate above the v/c ratio mobility target established in the OHP.

Based on the above, the Hearings Officer finds that when evaluated together, the newer TPR and OHP exempt plan amendments that would generated less than 400 ADT from further TPR review, as they are classified as a small increase that does not further degrade the transportation facility. By this state's own policy measure, it can reasonably be concluded that the proposed plan amendment would not cause a significant effect on transportation facilities. In short, the Hearings Officer finds that the projected increase of 240 ADT generated from this proposed plan amendment would not cause a significant effect on a transportation facility, so the application therefore complies with the TPR.

(Study of Specific Intersections)

LUBA determined that study of those intersections needed to extend out to 2030, and that, for purposes of the TPR analysis, the applicant cannot rely on improvements that are not

planned and funded, or otherwise are not provided for under the TPR to support a conclusion that impacts of the proposed development will not worsen a facility projected to fail at the end of the relevant planning period. Staff and the Hearings Officer believe that when evaluated together, the new TPR and OHP make this remand issue moot, as the proposed plan amendment would generate less than 400 ADT and would not be classified as having a significant effect on a transportation facility.

(Mitigation Conditions)

This matter involves LUBA's finding that the hours for which the rerouting condition would apply did not match the hours for which the Highway 51/22 intersection was impacted. The original condition called for rerouting between 4 p.m. and 6 p.m. LUBA determined that the findings showed the hours for rerouting should have been evaluated as to 2030 conditions, and that other hours may have been necessary to be added to the hours the rerouting condition was in place. The Hearings Officer finds that, when evaluated together, the newer TPR and OHP rules exempt the plan amendment from mitigation, as the proposed plan amendment would generate less than 400 ADT and would not be classified as having significant effect on a transportation facility.

The applicant noted that they have purchased the Walling aggregate site in West Salem and are enabled to serve all of West Salem from that site. This would eliminate any of the subject-site-aggregate truck trips from the failing westbound left turn from Highway 22 onto Highway 51.

(Adoption of ESEE)

LUBA pointed out in its ruling that the 2006 enacting ordinance accurately adopted the ESEE analysis into the PCCP, but the 2010 ordinance failed to include the adopting language. LUBA recognized this was a clerical oversight, which could be corrected by Polk County while dealing with this remand. The applicable criteria for the ESEE analysis are found in PCZO 174.150(B)(2). It is the function of the ESEE analysis to resolve conflicts between the inventoried mineral and aggregate site and any other identified conflicting uses, including those occurring as a result of any other applicable provision in the PCCP and the zoning ordinance. The ESEE analysis documents Polk County's decision to prohibit, restrain or fully allow conflicting uses on or near the inventoried resource site, and is intended to serve as Polk County's program to achieve the Goal under the old Statewide Planning Goal 5 as found in OAR 660-16-0010.

PCZO 174.015(B) provides that the ESEE analysis "(A) shall identify the resource site extraction and impact area, as defined in Section 174.015 of this Chapter; and (B) May describe site-specific development standards, including but not limited to setbacks, screening, road grading, and other requirements to protect and resolve conflicts with the inventoried resource site."

The Applicant provided an ESEE analysis for the proposed quarry site, which is in its application for the zone change, PCCP change and conditional use permit. The Polk County Board of Commissioners reviewed the ESEE analysis, identified potential conflicts and sensitive uses, and identified an impact area extending 750 feet outward from the boundary of the extraction area. In February 2006, the Board enacted Polk County Ordinance 06-02, which (along with the amended Traffic Planning Rule and amended Oregon Highway Plan Action 1F.5) amended the PCCP so as to include the ESEE analysis. That ordinance was appealed and

subsequently remanded by LUBA in 2006. In 2010, after an extended public process and further consideration, Polk County adopted Ordinance 10-05 addressing all matters of the initial LUBA remand, but unintentionally omitting inclusion of the ESEE as an amendment to the PCCP as was effected in 2006. In its Final Opinion and Order No. 2010-057, which is the subject of this remand consideration, LUBA found that since Polk County's omission of the ESEE in the subsequent PCCP amendment was an oversight, the simplest solution is for Polk County on remand to amend the PCCP so as to include the ESEE analysis, as was done in 2006.

As a result of the most recent LUBA proceeding, Polk County staff updated the ESEE with findings and conditions reflecting the remanded issues that have been conclusively decided by LUBA, including prohibition of an asphalt plan (HMAC) and additional weed control conditions, and to include updated findings and conditions related to the traffic issues subject to this remand and discussed at great length above. (See Attachment "C".) Additions to the ESEE are in **bold and underscored** type, and in ~~**bold strikethrough**~~ for deletions. With adopting language to amend the PCCP to include this revised ESEE as was done in 2006, this remand issue will be resolved.

CONCLUSIONS

Staff and the Hearings Officer conclude and find that the applicant has provided substantial evidence in the record addressing the substantive issues related to transportation, as determined by LUBA. Compliance with the 2009 Polk County TSP has been achieved by submission of the new TIA, which studied the transportation system trough the 2030 planning horizon. Compliance with the TPR has been achieved by virtue of the TPR and OHP small increase exception for plan amendments that generate fewer than 400 ADT. Issues regarding mitigation conditions also have become moot based on the small increase exception. Staff and the Hearings Officer concur in finding that all issues relating to transportation that were remanded by LUBA have been satisfied.

Another issue in the LUBA remand involves Polk County's inadvertent failure to include the adopted ESEE analysis in its 2010 ordinance, as it had done in 2006. It was suggested that the matter could be resolved simply by including the ESEE adopting language into a new ordinance.

Staff and the Hearings Officer concur in recommending and approving inclusion of conditions of approval modified from Ordinance 10-05 so as to exclude proposed condition 25 and portions of conditions 10 and 12 which would have implemented previous TPR mitigation requirements.

Staff and the Hearings Officer cannot accept arguments that the record of this remand should be opened for discussion of other possible objections to the proposal, which were either not addressed or were addressed but rejected during prior proceedings in this case. They also cannot agree that the proceedings up to this point should be abandoned, and the matter made the subject of an entirely new proceeding.

FINDING AND RECOMMENDATION

The Hearings Officer FINDS that applicant has provided substantial evidence in the record to support the approval of those portions of the application that were remanded by LUBA, subject to Conditions of Approval set out in Attachment "B" hereof.

The Hearings Officer RECOMMENDS that the Board of Commissioners ratify the findings and conclusions of the Hearings Officer as set out above, and also adopt the revised ESEE as set out in Attachment "C" hereof.

Dallas, Oregon, June 15th 2015

Robert W. Oliver
Polk County Hearings Officer

Attachment "A"
Attachment "B"
Attachment "C"

ATACHMENT A

March 10, 2015

TO: RICKREALL COMMUNITY WATER ASSOCIATION (RCWA) USERS
RE: FINAL HEARING ON PROPOSED GRAVEL PIT HELD ON FEBRUARY 17, 2015

It was discovered that multiple people did not receive notice for the above hearing. This lack of receiving notice resulted in a very poor hearing attendance.

According to the Planning Department, **this was to be the final hearing for persons to provide input.** The Planning Director had decided that the new Commissioners did not need to attend the hearing, so the **Commissioners were not present to hear our testimony.** He also said that Hearings Officer Robert Oliver could make the final decision on whether to approve the gravel pit operation site over the aquifer that leads to the wells that provide the water to all the users of Rickreall water. This has not been the normal procedure. The Commissioners have always made the decisions regarding this case. By not allowing them to do so this time, the County diverted from their normal hearing procedure.

KEEP IN MIND: THERE IS NO PROVISION IN PLACE TO SUPPLY WATER TO RCWA USERS IF THE WELLS ARE COMPROMISED.

NOTE: **Dennis Nelson of the Oregon Department of Human Services, Health Division/Drinking Water Program** in a letter dated 11-23-2001 which was submitted in testimony in previous hearings **states that "chemical releases within the pit has a greater potential for impacting the wells because of their proximity" (referring to the proposed gravel pit).** In a second letter dated 12-3-2001, **Dennis Nelson writes, "Groundwater travels to the northeast from the proposed aggregate/asphalt operation towards Rickreall wells 5 and 6. The estimated time of travel for groundwater from the aggregate/asphalt operation to wells 5 and 6 is one year or less."**

LAST CHANCE: **YOUR INPUT IS IMPORTANT AND URGENT!** We have all new Commissioners. They have not heard this case and have not read the last 14 years of testimony made by many of you who attended all those previous hearings. RCWA USERS NEED TO WRITE THE COMMISSIONERS, ASKING THEM TO PERSONALLY REVIEW ALL THE FILES AND REOPEN THE CASE.

REMEMBER: You cannot live in your home without water AND you cannot sell your home without water. Don't rely on someone else to write. If you wish to save your water, send a letter to the following stating so:

Be sure to refer to : (PA 01-02 and ZC 01-01) at the top of your letter.
Send your letters to: Polk County Commissioners Mike Ainsworth, Craig Pope and Jennifer Wheeler
Polk County Courthouse
850 Main St.
Dallas, OR 97338-1922

Enclosed is a **QUESTIONNAIRE** regarding receipt of the Notice for the 2-17-2015 hearing. It would be greatly appreciated if you would **COMPLETE AND RETURN IT TO RCWA at P.O. BOX 44, RICKREALL, OR 97371.**

Thank you in advance for your cooperation.
RICKREALL COMMUNITY WATER ASSOCIATION

ATTACHMENT B
CONDITIONS OF APPROVAL

The Applicant/Operator shall submit to the Planning Director, pursuant to PCZO 174.070 to 174.080, a site development plan in compliance with the standards under PCZO 174.060 and substantially similar to that submitted during the remand process. The site development plan shall comprise the minimum standards under PCZO 174.060 and the following site-specific development plan requirements set forth in the ESEE analysis and as required by the county as a result of the remand proceedings:

1. Prior to operation of Mineral and Aggregate mining operation, the operator shall sign and record, with the Polk County Clerk, a Waiver of Remonstrance that shall state that if the owner or successors of the sensitive use (the applicant owned dwelling located within the designated impact area) object to the allowed mineral and aggregate activities on the adjacent MA Extraction Area, the owner or successors of the sensitive use shall indemnify the County and the resource owner and operator against all lost cost and expense including attorney's fees arising out of any remonstrance proceeding. The Waiver of Remonstrance shall run with the land, until such time as the operation ends and the site has been reclaimed in accordance with the approved reclamation plan. It shall be the requirement of the mineral and aggregate operator to release any restriction, easements or waivers or remonstrance and indemnity.

2. The operator shall comply with the applicable review procedure and management plan requirements outlined in PCZO 182.040 prior to construction of the proposed project. The operator shall conform to the significant resource protection strategy outlined in the Significant Resource Management Plan submitted in this application. The applicant shall consult with the Oregon Division of State Lands (DSL) and obtain all applicable permits from DSL prior to filling or excavating any designed wetland. The applicant shall submit a copy of all DSL permits to the Planning Division.

3. The operator shall provide vegetative screening on the west and south sides of the extraction area. Where landscaping is used for required screening, it shall be at least 6 ft in height and at least 80 percent opaque, as seen from a perpendicular line of sight, within 18 months following establishment of mineral and aggregate operation. A minimum of one medium canopy tree every 60-feet shall be established in conjunction with the screening. The trees may be grouped in clusters if the total number of grouped trees is equal to one tree every 60-feet of screening. The operator shall maintain the landscaping during the term of the use including the existing vegetation along Hayden Slough that help screen the extraction and processing areas form Highway 51 and houses west of the subject property. Operator, on a weekly basis during the normal growing season, shall use weed control methods to control all weeds on the Oregon Noxious Weed List, and difficult to control perennial weeds such as blackberry, morning glory and Canadian thistle, and also any volunteer tree sprouts within the 60 foot buffer strip adjacent to the Madjic Farms (Calef) property Map T8S R4W Section 10 Tax Lot 100.

4. Prior to construction of the proposed fuel storage facility, the operator shall obtain a flammable liquid storage permit from the Oregon Fire Marshall's office. A copy of this

permit shall be provided to the Planning Division. However, gasoline shall not be stored at the site.

5. The operator shall prepare a spill prevention, containment and counter measure plan for the site that will specifically address the materials used on the site, including all lubricants, oils, fuels and chemicals. The plan shall address prevention of spills and spill response to minimize impact to the pit and groundwater, including a plan for the notification of Rickreall Water Association. The applicant shall provide a copy of the spill prevention and response plan to the Polk County Planning Division to be included in the file.

6. The Operator shall install monitoring wells near the operations area of the extraction area and between the operations area and the Rickreall Water Association wells. The operator shall monitor the wells for hydrocarbon, turbidity, conductivity, and pH.

7. The operator shall use double walled above ground fuel storage tanks or construct catchment basins around the fuel storage areas to contain any possible fuel leakage. Such basins shall be constructed as a holding area to contain any leakage or spilled materials on-site prior to removal.

8. Prior to construction of the fuel storage facility, the operator shall obtain all necessary building, electrical and plumbing permits from the Polk County Building Division. Construction of the fuel storage facility and use of the flammable or combustible liquids shall be in accordance with the Uniform Fire Code (Article 80); and the 1996 National Electrical Code (Article 500–505).

9. The access road serving the quarry site shall be paved or graveled. Where graveled, the access road shall be graded and maintained as needed to minimize dust. All portions of the access road shall be graded and maintained as needed to minimize dust. All portions of the access road within 200 feet of Highway 51, and within 300 feet of a neighboring property, shall be paved. The operator shall post a 15-mph speed limit for all onsite traffic. The operator shall periodically remove soil tracked onto the paced surfaces of the private road by flushing with water or other means permitted by DEQ, especially at the intersection with Highway 51.

10. The operator shall obtain a highway approach permit from ODOT and design and construct, at their own expense, deceleration, acceleration, and left turn lanes on Highway 51. Design and construction of these improvements shall be coordinated and approved by ODOT and the Polk County Public Works Department~~, and shall include the gated entry design submitted during the remand process~~.

11. The operator shall position the concrete trucks inside a partial enclosure or use a localized hood and filter system (i.e., baghouse) to capture emissions during truck loading operations. All process operations shall be located at least 100 feet from property lines.

12. The operator shall construct a vehicular barrier or gate on the proposed access road ~~in accordance with the gated entry design submitted by the applicant's traffic engineer~~

~~during the remand process~~.

13. The operator shall operate the mining operation by wet methods and not by de-watering.

14. The operator shall obtain an amended Operating Permit from DOGAMI to conduct mining-related activities in the proposed extraction area. A copy of the amended permit shall be provided to the Planning Division.

15. The operator shall provide the Planning Division with appropriate evidence of compliance with DOGAMI bonding and security requirements as required by ORS 517.810 on an annual basis.

16. The applicant shall provide the Planning Division with evidence the extraction operations are insured as stipulated under PCZO 174.060(F)(2). The applicant shall also provide annual evidence of insurance renewal.

17. Mineral and aggregate extraction, processing and other operations shall conform to the applicable environmental standards of Polk County and the State of Oregon. Prior to establishment of any crusher or concrete batch plant, or other machinery at the quarry site which requires DEQ permits, the applicant shall submit copies of approved DEQ permits to the Planning Division.

18. Prior to any structural or non-structural development within the identified 100-year floodplain of the Willamette River, the applicant shall obtain a Floodplain Development Permit from the Polk County Planning Division and comply with the construction standards of PCZO Chapter 178 (Floodplain Overlay Zone).

19. The operator shall obtain all necessary building, electrical and plumbing permits from the Building Division prior to construction or placement of any structures within the proposed extraction area.

20. Any on-site sewage disposal system requires a septic site evaluation and permit from the Environmental Health Division.

21. The operator shall remove all equipment and vehicles upon final closure of the quarry operations, except for structures that may be utilized in on-going farm management operations.

22. Hours of operation shall be within those specified in the ESEE Analysis as follows:

Activity	Hours
Blasting	9 a.m. to 5 p.m., Mon. - Fri.
Drilling	9 a.m. to 5 p.m., Mon. - Fri.
Crushing	5:30 a.m. to 10 p.m., Mon. - Sat.
Stockpiling/Delivery	5:30 a.m. to 10 p.m., Mon. - Sat.
Maintenance Operations	5:30 a.m. to 10 p.m., Mon. - Sat.

Any extension of operating hours beyond those specified in the ESEE Analysis requires review and approval by Polk County, or a waiver in the case of an emergency as determined by the County governing body.

23. Nothing in the ESEE Analysis authorizes uses that are inconsistent with Federal or State rules for the protection of threatened or endangered species. The applicant is responsible for all activity conducted in conjunction with this project and shall ensure that all activity is consistent with provisions for protection of species protected under the Federal Endangered Species Act.

24. The operator shall not use any chlorinated solvents on the site.

~~25. In order to avoid adding new traffic to the westbound left-turn movement at the Hwy 22/Hwy 51 intersection, and to remove existing truck traffic, the ingress route used by the operator and its employees and independent haulers visiting, to the site from westbound Hwy 22 shall be modified during the weekday p.m. peak period (4-6 p.m.). All of the operator's trucks and/or employees' vehicles and visiting independent haulers driving to the site on westbound Hwy 22 after 4 p.m. shall use Hwy 99W/Clow Corner Road and Rogers Road, or similar alternative route to gain access to Hwy 51 until an interchange is constructed at the Highway 51/22 intersection. During that critical peak period, no vehicles going to the subject property shall make a southbound turning movement from Highway 22 onto Highway 51. Operator shall construct a gated entry design at its access point on Highway 51 that is substantially similar to that submitted to the county during the hearings process, and shall close the gate and keep it closed during the weekday p.m. peak period (4-6p.m.) to prevent access to the site from vehicles that attempt to access the site while driving in a southbound direction. Operator shall maintain GPS equipment in all of its trucks and shall train its drivers and other employees in this alternative routing requirement and shall monitor trucks using the GPS system to ensure compliance. Operator shall require all independent haulers visiting the site to sign an access agreement that requires that independent hauler to comply with the alternative mandatory routing as specified in this condition, and to suspend access privileges of those who do not comply. Operator shall make its transportation records available to the county upon request for verification of compliance with this condition.~~

26. The operator shall not use Poplar Lane for an access route or from the site, but the operator may use Poplar Lane for serving local deliveries along Poplar Lane.

27. The operator's aggregate haul trucks shall not use Halls Ferry Road as ingress or egress from Hwy 51, except for emergency purposes.

28. The operator shall use Halls Ferry Road for the delivery of petroleum products to this site.

29. The operator shall comply with all air quality, noise, water and dust deposition standards established by the Oregon Department of Environmental Quality (DEQ).

30. There shall be a 100-foot wide riparian setback area around Hyden Lake, and there shall be no excavation, processing, or vegetation removal within this designated riparian management area until a Significant Resource Management Plan has been completed and approved by Polk County pursuant to PCZO Chapter 182.

31. The site screening on the two sides (western) adjacent to the Madjic Farms, Inc./Calef property shall consist of plants that do not exceed 10-feet in height at maturity.

32. The operator shall utilize "smart" backup beepers on all trucks and equipment used on site to the extent allowed by law and the Mine Safety and Health Administration (MSHA).

33. The operator shall shield and/or direct all lights in the extraction and processing area in order to minimize the glare on adjacent properties. Any lights not needed for safety and security reasons shall be turned off by the operator after operating hours.

34. All water required for the mineral and aggregate operation, including dust control, landscaping and processing of material, shall be legally available and appropriated for such use. The operator shall provide written documentation of water rights form the State of Water Resources (ODWR) and/or local water district prior to any site operation.

35. The operator shall install three monitoring wells. Two monitoring wells shall be located in a presumed downgraded position relative to the aggregate site between the operations area and the Rickreall Water Association wells. The third well is to be located in a presumed upgraded position on the south side of the aggregate extraction area. The monitoring wells shall be sampled on a semi-annual or annual basis using the following schedule:

    Semi-Annual Monitoring Parameters:

    1. Depth of water;
    2. Total dissolved solids;
    3. pH;
    4. Temperature;
    5. Dissolved oxygen;
    6. Turbidity; and
    7. Conductivity.

    The operator shall monitor annually for volatile organic compounds by the Environmental Protection Agency (EPA) method 8260B.

36. The approval granted herein does not include authorization for the placement of an asphalt plant (HMAC) on the subject property.

ATTACHMENT C
Economic, Social, Environmental, and Energy (ESEE) Analysis

In the matter of Plan Amendment PA 01-02 and Zone Change ZC 01-01 to amend the Polk County Comprehensive Plan to include the Subject 124-acre proposed extraction area and the surrounding area extending 750-Feet from the extraction area boundary on the Polk County Inventory of Significant Mineral and Aggregate Resources (Subject Property is Located on Assessment Map ~~T8S, R4W, Section 2, Tax Lots 100, 103, 104, and 300; T8S, R4W, Section 3, Tax Lot 800; T8S, R4W, Section 11, Tax Lot 100~~ T8S, R4W, Section 2, Tax Lot 100; T8S, R4W, Section 3, Tax Lot 800; and T8S, R4W, Section 11, Tax Lots 100, and 102)

ESEE ANALYSIS:

To accomplish the MA Overlay Zoning District purpose objectives, the MA District requires that an Economic, Social, Environmental and Energy (ESEE) Consequences Analysis be prepared to address issues of conservation and conflict resolution. PCZO 174.015 describes the ESEE Analysis as follows:

(B)(2) It is the function of the ESEE Analysis to resolve conflicts between the inventoried mineral and aggregate site(s) and any other identified conflicting uses, including those occurring as a result of any other applicable provisions in the Comprehensive Plan and this ordinance.

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

The ESEE Analysis:

(A) Shall identify the resource site's Extraction and Impact Areas as defined in Section 174.015 of this Chapter; and

(B) May describe site-specific development standards, including, but not limited to, setbacks, screening, road grading, and other requirements to protect and resolve conflicts with the inventoried resource site(s).

The Hearings Officer's findings for each ESEE factor are listed below:

Extraction and Impact Areas. PCZO 174.015 defines the extraction area as: "The area within which mineral and aggregate extraction, processing and storage may take place under the provisions of this Chapter." The applicant proposes an extraction boundary that encompasses approximately 124 acres. The proposed extraction area would be bordered on the west and south sides by a 40-foot wide tree planting barrier to be comprised of a mixture of evergreen and deciduous trees which would screen the quarry from view.

An Impact Area, defined as "An area determined on a case-by-case basis through the ESEE analysis, within which sensitive uses are limited or regulated," is proposed to extend 750 feet outward from the extraction area, the minimum width required by PCZO 174.015. The impact area identified by the applicant would consist of approximately 212 acres, creating a total extraction and impact area of approximately 336 acres.

Sensitive Uses. PCZO 174.015 describes a sensitive use as "A use or structure considered sensitive to dust, odor, vibration and/or noise, such as a residence, school, park, or hospital. Industrial, agricultural and forestry activities are not sensitive uses unless the activity includes an accessory residential use." The only sensitive uses currently located within the applicants proposed Impact Area is one dwelling owned by the applicant. The site plan submitted by the applicant depicts four other dwellings not owned by the applicant in close proximity to the impact area designated by the applicants that extends 750 feet outward from the extraction and processing area. The Social Security Fishing Hole County Park is located approximately 2,800 feet southeast of the designated impact area on the west bank of the Willamette River.

Conflicting Uses. PCZO 174.015 defines a "conflicting use" as a use that, "if allowed, could *negatively* impact a Goal 5 resource site." The proposed aggregate extraction site and 750-foot impact area do not include any resources included in the Polk County Significant Resource Areas map (SRA) that lists Goal 5 resources. However, it does include wetlands listed on the National Wetlands Inventory map that are identified as a Polk County Significant Resource.

Site Development Plan. The site development plan serves as the primary mechanism for addressing concerns and resolving conflicts between the proposed development and surrounding activities and land use. PCZO 174.070 and 174.080 describe the necessary elements of a site plan and the administrative approval process. As noted under PCZO 174.080, subsequent to designation of the site as a significant resource under PCZO 174.110 and adoption of the required ESEE Analysis, the Planning Director shall review the completed site development plan application and shall grant or deny approval based on the ability of the proposal to conform with the ESEE Analysis for the site and the development standards set forth in PCZO 174.060. The applicant may be required to make such modifications in the development plan as are necessary to meet the requirements of the ESEE Analysis and development standards. Approval may only be granted to sites that are inventoried 3A or 3C under Statewide Planning Goal 5 and the PCCP. The applicant submitted proposed findings regarding PCZO 174.060 and 174.070, and included a map showing the location and setbacks of the proposed mineral and aggregate activities and operations and the location and distance to sensitive uses within the impact area, but has not applied for a development plan review. If this application is approved, the operator must submit to the Planning Director, pursuant to PCZO 174.070 and 174.080, a site development plan in compliance with the standards under PCZO 174.060. The site development plan shall comprise the minimum standards under PCZO 174.060 and the site-specific development plan requirements set forth in the ESEE Analysis.

Exclusive Farm Use Zone Conflicting Uses

The proposed mineral and aggregate resource site and adjacent properties are located on high value soils within the EFU Zoning District. The EFU Zoning District provides for uses on high value soils that could potentially conflict with the extraction and processing of aggregate, including:

1. Resource Uses
2. Residential Uses
3. Commercial Uses

4. Mineral and Aggregate
5. Transportation Uses
6. Utilities and Solid Waste Disposal
7. Parks/Public/Quasi-Public Facilities

Among the potential conflicting uses above, none has been identified currently to exist within the 750-foot impact area identified by the applicant, with the exception of a dwelling owned by the applicant. According to the plot plant submitted by the applicant, the identified dwelling is located approximately 410 feet south of the proposed extraction area. A potential property line adjustment could put the dwelling under the ownership of another landowner. The applicant must sign and record with the Polk County Clerk a Waiver of Remonstrance, as identified by staff, that shall state that if the owner or successors of the sensitive use object to the allowed mineral and aggregate activities on the adjacent MA Extraction Area, the owner or successors of the sensitive use shall indemnify the County and the resource owner and operator against all lost cost and expense (including attorney's fees) arising out of any remonstrance proceeding. The Waiver of Remonstrance shall run with the land, until such time as the operation ends and the site has been reclaimed in accordance with the approved reclamation plan. In such case, the mineral and aggregate operator must release any restriction, easements or waivers of remonstrance and indemnity; and, Polk County must release Polk County indemnity. The Waiver of Remonstrance could be specifically identified as the area within 750 feet of the extraction area if it is chosen not to encumber the entire 703.87-acre parcel.

The excavation area, and the parcels located within the proposed impact area are predominantly composed of high value soils that limit the establishment of some potential conflicting uses. Two wetlands that are inventoried Statewide Planning Goal 5 resources exist within the 750-foot impact area. Potential impacts from the aggregate operation to uses allowed within the EFU Zoning District include traffic, fugitive dust, noise, and loss of visual attractiveness. The applicant has stated that they have no objection to new sensitive uses in the impact area as long as the owners enter into a waiver of remonstrance agreement, as identified by staff, with the applicants consistent with PCZO 174.090. The Waiver of Remonstrance could be specifically identified as the area within 750 feet of the extraction area if they chose not to encumber the entire subject parcel. In no case shall an identified sensitive use be allowed less than 100 feet from the ME boundary.

Economic: The potential adverse economic impacts on the Goal 5 mineral and aggregate resources from the establishment of uses that would be sensitive to dust, odor, vibration and/or noise within the designated impact area could include limited hours and times of operation, reduced traffic, dust and noise. Uses involving the regular occupation of the designated impact area with people would constitute a sensitive use. As a result, all residential uses, personal use airports and helipads, training and stabling of horses, breeding kenneling and training of Greyhounds for racing, on-site filming and accessory activities, home occupations, operations for the extraction and bottling of water, farm stands, wineries, parks, and model aircraft takeoff and landing sites shall be listed as sensitive uses. Vineyards have a specific conflict with asphalitc batch plants. ~~**The applicant has proposed an asphaltic batch plant in the application submitted.**~~ Vineyards shall be listed as sensitive uses.

The applicant stated in the application that no blasting or drilling would take place on site. As a result of no non-applicant-owned sensitive uses within the proposed 750-foot impact area, the applicants indicate the hours of operation would be 5:30 a.m. to 6:00 p.m. from April through October. The normal hours of operation from November through

March would be 6:30 a.m. to 6:00 p.m. For the purpose of this ESEE Analysis staff considered the applicants proposed hours of operation and the County's hours of operation listed in PCZO 174.060(C) as follows: Blasting from 9 a.m. to 5 p.m., Mon. - Fri.; Drilling from 9 a.m. to 5 p.m., Mon. - Fri.; Crushing from 7 a.m. to 10 p.m., Mon. - Sat.; Stockpiling/Delivery from 7 a.m. to 10 p.m., Mon. - Sat.; and Maintenance Operations from 7 a.m. to 10 p.m., Mon. - Sat. The applicant proposes exceeding the 7 a.m. start time. The applicant shall sign and record a waiver of remonstrance as described above in this ESEE Analysis in order to operate at the proposed times. PCZO 174.060 would permit crushing, stockpiling/delivery, and maintenance operation until 10 p.m. In addition, PCZO 174.060(C) would permit blasting and drilling. The operation times reviewed in the ESEE Analysis are as follows:

Activity	Hours
Blasting	9 a.m. to 5 p.m., Mon. - Fri.
Drilling	9 a.m. to 5 p.m., Mon. - Fri.
Crushing	5:30 a.m. to 10 p.m., Mon. - Sat.
Stockpiling/Delivery	5:30 a.m. to 10 p.m., Mon. - Sat.
Maintenance Operations	5:30 a.m. to 10 p.m., Mon. - Sat.

Transportation projects have been identified that operate at times not identified above in order to avoid transportation temporal peaks, such as the Highway 99W south of Monmouth to Benton County road repair project that operated from 6 p.m.-6 a.m. As a result, the applicant could apply for a temporary addendum to the approved site plan with the Polk County Planning Division in order to extend the hours of operation beyond those identified in this ESEE Analysis for similar projects. Any extension of operating hours beyond those specified in the ESEE Analysis requires review and approval by Polk County, or a waiver in the case of an emergency as determined by the Board of Commissioners.

The ESEE Analysis submitted by the applicant notes that the development of this sand and gravel resource will help maintain an adequate supply of these construction materials. Further, the site is located within 10 miles of the Salem, Dallas, and Monmouth-Independence markets reducing transport costs.

The applicant stated that the farm practices employed on the surrounding properties for the activities of raising row crops, sweet corn, grass seed, bulbs, strawberries, blueberries, and other seed crops will not be significantly affected by the operations of the proposed aggregate site.

The applicant stated that the proposed use would not have a significant negative impact on water quality. The applicant hired Martin Boatwright, professional engineer, to study the impact of the proposed extraction site on the availability of irrigation well water. Martin Boatwright determined that the effect on the aquifer would be negligible as long as extraction activities are done in the wet. An adjacent property owner, Mike Calef, hired Ralph Christensen of EGR & Associates, INC., geologist, to analyze the effect of the proposed gravel operations under the 1998 application on surrounding wells. Ralph Christensen concluded that the proposed use would not have a significant negative impact on water quality, stating that turbidity caused by aggregate mining activity is rarely a problem any significant distance from the pit walls. Christensen also concluded that the likelihood of spills, or other releases, that would migrate to the groundwater table through the pit is not high, but definitely real. In submissions related to the third public meeting, extensive evidence was adduced on both sides of the controversy, and generated a heated debate between attorneys over the professional qualifications of one witness. As noted above, the Hearings Officer does not have authority to resolve that particular issue. It is

noteworthy, however, that a final submission by opponent's expert witness criticized the applicant's analysis of spill effects on grounds that it only dealt with a catastrophic spill, and not with less extensive spills. The Hearings Officer is not a geologist, biologist, hydrogeologist, chemist, or industrial hygienist, but he cannot understand why --- if measures are deemed adequate to deal with the possibility of a catastrophic spill --- time and effort must be spent modeling the impact of less serious events.

In order to protect groundwater wells the applicant shall operate the mining operation by wet methods and not by de-watering. Extensive documentation was submitted by all parties prior to, during and after the public meetings, and is discussed above. The applicant shall prepare a spill prevention and response plan for the site that will specifically address the materials used on the site, including all lubricants, oils, fuels, and chemicals. The plan shall address prevention of spills and spill response to minimize impact to the pit and groundwater. The applicant shall provide a copy to the Polk County Planning Division to be included in the file. Mineral and aggregate extraction, processing and other operations shall conform to the applicable environmental standards of Polk County and the State of Oregon. Prior to establishment of any crusher, asphalt or concrete batch plant, or other machinery at the quarry site which requires Oregon Department of Environmental Quality (DEQ) permits, the applicant shall submit copies of approved DEQ permits to the Planning Division.

Social: No potential adverse social impacts on the Goal 5 mineral and aggregate resources from the establishment of uses that would be sensitive to dust, odor, vibration and/or noise within the designated impact area have been established.

The applicant stated that potential visual and traffic impacts on surrounding properties are the primary social impacts associated with development of the proposed quarry.

The applicant hired Kittelson & Associates, Inc. to prepare a Transportation Impact Analysis (TIA) for the proposed uses under this application. ~~**The applicant indicated that the anticipated traffic generated by the quarry will generate an additional 40 trips during the weekday a.m. peak hour and 25 trips during the weekday p.m. peak hour**~~. In the 2014 updated transportation analysis, **Kittelson & Associates estimated the proposed gravel mining development would be expected to generate approximately 240 daily trips (120 inbound and 120 outbound).** The applicant stated that no haul trucks would use Halls Ferry Road as an access road from the gravel extraction area. The applicants are proposing a private graveled and partially paved road across the subject property from the extraction area directly to Highway 51. ~~**Applicant has stated that its TIA includes truck traffic generated by the asphalt batch operation.**~~

The applicant states that because this application involves the relocation of an existing aggregate facility (Krauger site, located on Assessment Map T8S, R4W, Section 34, Tax Lot 200; T9S, R4W, Section 3, Tax Lots 100 and 203; T9S, R4W, Section 2, Tax Lot 200) and not the creation of an entirely new operation, traffic issues are assessed based on the premise that the truck traffic is already on the local roadway system and is simply coming from a different origination point. The applicant states that the relocation of the operation from the City of Independence to the proposed location would relieve considerable traffic impacts in that city without adversely impacting any other roadway in the county. Currently the aggregate rock is extracted from the Krauger site and trucked to the City of Independence for processing. After processing, the product is then trucked to the end user. The applicant states that an advantage of this proposal would be that, once the Krauger site is closed, all the traffic moving the aggregate from the extraction area to the processing facility would occur on site on private roads, which would reduce the impact on the local public road system. Opponents have asserted that local farm-related traffic would be adversely affected. As anyone who frequently drives on roads in Polk County is aware, it is more often slow moving, farm-related traffic that impedes other

traffic, rather than the farm-related traffic being impeded. Opponents have stated that applicant's plan to relieve congestion at the intersection of Highways 22 and 51 by rerouting truck traffic during certain peak hours is not practical. This would be an excellent argument if the proposal involved heavy traffic generated by a facility used by the general public, such as a retail superstore or even a church. In this case, the bulk of the traffic will be generated by applicant's drivers and employees, which are under applicant's control.

The applicant stated that they would grade, maintain, and water the proposed access roads as necessary to minimize any dust

The applicant hired Candace Hatch, environmental engineer, to recommend what portions of the access road should be paved in order to mitigate road dust impacts. Hatch concluded that, if the access road is 300 feet from neighboring property or is paved when it is closer than 300 feet, the access road dust impact should be mitigated. The applicant is proposing to pave all portions of the access road within 300 feet of a neighboring property. The applicant is also proposing to periodically remove soil tracked onto the paved surfaces of the private road by flushing with water or other means, especially at the intersection with Independence Highway. In addition, the applicant is proposing to water the remaining gravel sections of the access road during dry weather periods in order to control dust.

As a condition of approval, this private road shall be paved or graveled. If graveled, the haul road shall be graded and maintained as needed to minimize dust. The applicant proposes to construct, at their own expense, acceleration, deceleration, and turn lanes on Highway 51. Kittelson & Associates conclude that the proposed site access intersection on Highway 51 would operate at acceptable levels of service during the weekday a.m. and p.m. peak hours under full development of the site.

With the exception of one dwelling owned by the applicant, no public roads, parks or residences are located within the proposed extraction site or designated impact area. However, there are four dwellings not owned by the applicant located within 1000 feet of the extraction and processing area. The applicant's site plan shows a 40-foot wide tree planting barrier to be comprised of a mixture of evergreen and deciduous trees which would be planted on the west and south sides of the extraction area to screen the quarry from view. There is also existing vegetation along Hayden Slough that would help screen the extraction and processing area from Highway 51 and the neighbors to the northwest. The applicant shall provide vegetative screening on the west and south sides of the extraction area. Where landscaping is used for required screening, it shall be at least 6-feet in height and at least 80 percent opaque, as seen from a perpendicular line of sight, within 18 months following establishment of mineral and aggregate operation. In order to provide a more natural visual appearance, a minimum of one medium canopy tree every 60-feet shall be established in conjunction with the screening. The trees may be grouped in clusters if the total number of grouped trees is equal to one tree every 60-feet of screening. The operator shall maintain the landscaping during the term of the use including the existing vegetation along Hayden Slough that help screen the extraction and processing areas from Highway 51 and houses west of the subject property. **The operator, on a weekly basis during the normal growing season, shall use weed control methods to control all weeds on the Oregon Noxious Weed List, and difficult to control perennial weeds such as blackberry, morning glory and Canadian thistle, and also any volunteer tree sprouts within the 60 foot buffer strip adjacent to the Madjic Farms (Calef) property Map T8S R4W Section 10 Tax Lot 100.**

No fencing is proposed on the site plan submitted. The applicant indicated that cyclone or other types of fencing would accumulate flood debris resulting in the fence being crushed by a large flood event. The applicant indicated that the access road into the extraction

site would be gated. In order to reduce the public safety risks associated with the extraction area and processing facility, the applicant shall construct a vehicular barrier or gate on the proposed access road.

Environmental: No potential adverse environmental impacts on the Goal 5 mineral and aggregate resources from the establishment of uses that would be sensitive to dust, odor, vibration and/or noise within the designated impact area have been demonstrated.

The proposed aggregate extraction site and associated 750-foot impact area, as defined by PCZO 174.015 does not include any resources included in the Polk County Significant Resource Areas map (SRA). However, according to the National Wetland Inventory Rickreall Quad Map, the proposed extraction area is contiguous to Hayden Slough and Hayden Lake, which have been determined to be significant resource wetlands. Hayden Slough and Hayden Lake are located within the identified impact area. The applicant hired Terra Science, Inc, wetland consultants, to delineate wetlands within the proposed access road area and identify potential impact areas. The applicant determined that the emergent fringe of Hayden Slough qualifies as a wetland area. The applicant is proposing to replace an existing bridge and construct a new bridge in its place at the narrowest point of Hayden Slough in the vicinity. The applicant is proposing to span Hayden Slough at this point without using a center support in order to minimize the impact on the wetlands.

Oregon Division of State Lands (DSL) may require a removal-fill permit for the described project. DSL was notified of the subject land use application utilizing the DSL Wetland Land Use Notification Form. As a condition of approval, the applicant shall consult with DSL and obtain all applicable permits from DSL prior to filling any designated wetland. The applicant shall submit a copy of all DSL permits to the Planning Division.

Due to the close proximity to wetlands identified on the National Wetland Inventory, it is applicable to apply PCZO chapter 182 (Significant Resource Areas Overlay Zone) criteria to the proposed project. Based on aerial photo, wetland image, and contour data using the Polk County Geographic Information Systems (GIS), Hayden Lake exceeds 10 acres in size, which requires a 100-foot in width riparian management area around the resource pursuant to PCZO 182.050(B)(2). In addition, Hayden Slough exceeds 33 feet in width bank-to-bank, which would also require a 100-foot in width riparian setback area around the resource pursuant to PCZO 182.050(B)(2). The applicant is proposing road construction and excavation and processing sites that require vegetation removal/loss of streamside vegetation within the designated riparian management areas. Aggregate extraction and processing are permitted uses in the proposed MA overlay zone, associated road construction and vegetation removal is, as proposed in this application, listed as a conflicting use in PCZO 182.070. As a result, the applicant shall comply with the applicable review procedure and management plan requirements outlined in PCZO 182.040 prior to construction of the proposed project.

The applicant submitted a Significant Resource Management Plan for aggregate removal, new road construction and bridge construction as part of this application. The operator shall conform to the significant resource protection strategy outlined in the Significant Resource Management Plan submitted in this application.

The proposed aggregate operation is located approximately 4,300 feet from the Willamette River, which is identified on the SRA map. Based on the generally flat topography of the subject site, runoff from the subject site will be minimal. A Storm Water Pollution Control Plan for the quarry would be required by DEQ prior to development of the proposed extraction area. The applicant proposed that all exposed earthen slopes would be constructed at a slope not greater than 3:1 horizontal to vertical

ratio, and would be vegetated. These types of standards are typically required as part of the Department of Geology and Mineral Industries (DOGAMI) permitting process.

All processing water used for silts and clays from the sand and gravel operation would be discharged back into the excavated pit, which would function as a siltation pond. Construction standards for the siltation pond are included as part of the DOGAMI permitting process. The proposed quarry would not directly discharge water into any water body. The applicant also indicated that no de-watering would be required in the extraction process.

Any on-site sewage disposal would require a septic site evaluation and permit from the Polk County Environmental Health Division. Any on-site drinking water must be from a potable source. Processing equipment established on-site~~, such as concrete or asphalt batch plants,~~ are subject to DEQ permitting requirements.

~~The applicant stated that the proposed Hot Mixed Asphalt Concrete Plant (HMAC) would meet or exceed State and DEQ requirements, and would not adversely impact the air. The proposed HMAC plant would utilize a bag house cleaning system. The applicant also stated that the quick hardening characteristics of asphalt prevent it from being a significant risk for water pollution.~~

Establishment of a hot mixed asphalt concrete plant (HMAC) within the extraction or impact area shall be prohibited

The applicant has submitted a floodplain development application (LUD 01-16) for non-structural development within the 100-year floodplain of the Willamette River. All structural development associated with the quarry that would be located within the 100-year floodplain would require a Floodplain Development Application from the Polk County Planning Division. Construction would be required to conform to the standards of PCZO Chapter 178 (Floodplain Overlay Zone).

The applicant hired Randall J Boese, RG, Senior Hydrologist with Bergeson-Boese and Associates, Inc., to determine what potential environmental contamination risk the proposed extraction and aggregate processing activities could pose to the water wells operated by the Rickreall Water Association, located approximately 4,000 feet north of the proposed aggregate site. Boese evaluated the risk from potential catastrophic spill events on the site. The spill analysis assumed many worst-case conditions and ignored favorable influences, which would impact a spill under normal circumstances, including the following:

> The analysis assumed that no mitigation of the spill occurs. The applicant stated that in the actual event of a spill, immediate mitigation would occur pursuant to the Spill prevention and Response Plan and as required by State law and Oregon Department of Environmental Quality (DEQ) regulations.
>
> The analysis assumed that all of the diesel (20,000 gallons), burner fuel (10,000) gallons and 1,000 gallons of gasoline proposed to be stored on site, instantaneously all spill and are left to naturally migrate through surface soils and into the ground water. The analysis assumed that all of the product stored on site is spilled in a catastrophic event at one time and ignored the benefits from secondary containment structures. Subsequently the applicant withdrew the proposal to store gasoline at the site.
>
> The analysis assumes the direction of ground water flow remains constant and that the direction is directly toward Rickreall Water Association wells. The applicant states that information contained in United States Geologic Service (USGS) Groundwater Report No. 28, groundwater would be expected to flow northeast from the proposed aggregate mining facility. The applicant states that in

addition the direction of the groundwater flow changes and flows east-southeast towards the Willamette River near the wells.

The analysis ignores favorable hydraulic barriers such as Hayden Lake and Hayden Slough. Boese's report states that under actual conditions Hayden Slough "would prevent migration to the municipal well field".

The analysis concludes that the concentrations from the spill exceeding the Environmental Protection Agency's (EPA) Federal Drinking Water Standard of 0.005 ppm, would not migrate to within 3,608-feet of Rickreall Water Association wells. Boese's report concluded that "the results of this model support the conclusion that petroleum products stored at the proposed aggregate mining facility, as outlined in this report, do not remotely threaten groundwater quality at the Rickreall municipal wells in the event of a catastrophic spill." The applicant contends that the catastrophic spill analysis conducted on the subject property is consistent with other independent third party research, including a report prepared by a team of scientists from the Lawrence Livermore National Laboratory and University of California at Berkley, that concluded in part that the length of dissolved contaminate plumes from petroleum products rarely exceed 250 feet in length from a source area.

Boese also used a computer model to predict the fate of spilled petroleum products on surface water in the event of a combined spill and flood event. (As noted above, opponents criticized this report for not modeling less serious events.) The computer model predicted approximately 18,000 gallons of the spilled products would be evaporated within the first 12 hours of the release. The model also predicted another 13,000 gallons of product would be disbursed after approximately 24 hours. Within 48 hours, the modeled spill evaporated and dissipated. Based on the computer model evaluation, Boese concluded, "a combined flood and spill event would not remotely threaten groundwater quality at the Rickreall Municipal wells." The applicant states that this conclusion is also supported by the following additional considerations:

The Rickreall Water Association wells should not be impacted because the petroleum products float since the density of diesel and gasoline are less than water. The applicant states that if the wells were operating during a flood event, they would be extracting groundwater from depths greater than 50 feet below land surface, well beneath any petroleum contamination, if any, that would be floating on the water surface.

The applicant states that it is their understanding the subject Rickreall Water Association wells, as currently designed, do not have the capability to operate during flood events.

The applicant hired EGR and Associates, Inc., to evaluate the proposed gravel extraction and processing site for its potential to impact ground water and to identify methods to eliminate any potential impacts to the Rickreall Water Association wells. EGR identified the following methods in its report "Groundwater Protection with Respect to Sand and Gravel Operations" (Exhibit 4.3, of applicant's additional submittal) to eliminate risk to the Rickreall Water Association Wells:

Construct facilities to house material and products so that spillage is avoided and any incidental spillage is contained;

Prepare a Spill Prevention Containment and Counter Measure Plan (SPCC Plan) and a Storm Water Pollution Control Plan (SWPC Plan);

Have a monitoring program, which includes monitoring wells to ensure detection of any unnoticed releases;

In the event of a spill, use the best available technology and techniques to cleanup and contain the spill

The applicant proposed a refueling area comprised of an above ground diesel fuel tank with a concrete spill containment basin. The applicant stated that the facilities would house materials and products so that spillage is avoided and any incidental spillage is contained including the following methods:

The applicant stated that all bulk fuel tanks would be double-walled, aboveground tanks. Double-walled tanks have an interior tank that can hold product and a second tank constructed around the outside of the main tank. The second tank can hold all of the contents of the inner tank. The tanks are placed above ground so that they can be readily inspected for any problems associated with leakage; or, alternatively, if single-walled tanks are used, they would be set in a concrete tank containment structure hat could hold approximately 120% of the contents of the tanks. This structure would have a roof to keep rainwater out so that no potential for overflow from storm water would exist. An example of a tank and secondary containment system is provided as Exhibit 4.4.2, of applicant's additional submittal).

The applicant stated that all of the other incidental materials that could cause contamination such as lubricants, antifreeze, hydraulic fluid, cleaners, etc., would be stored in a building in the processing area elevated above the 100-year base flood elevation.

To establish such a facility, a flammable liquid storage permit is required from the Oregon Fire Marshal's office. In conjunction with the application process for this permit, the applicant would be required to submit plans to the Fire Marshal detailing any proposal to store more than 1,000 gallons of flammable liquids. In addition, the Polk County Building Division notes that the storage and use of flammable or combustible liquids shall be in accordance with the Uniform Fire Code (Article 80) and the 1996 National Electrical Code (Article 500-505) and building permits would be required for any structures. Compliance with these standards shall be included as a condition of approval.

As noted above, applicant no longer proposes storage of gasoline on the site.

EGR and Associates, Inc., prepared preliminary models of the SWPCP and SPCC Plans modeled on the current SWPCP and SPCC Plans for the existing Valley Concrete and Gravel operations located in Independence, Oregon. The applicant states that since each plan must be written specifically for the actual site, the final plans would be completed after construction of the proposed extraction and processing facilities.

The applicant proposes to construct at least two monitoring wells to detect any groundwater impacts that are not immediately discovered at the time of release. The applicant stated that the monitoring wells would be installed near the operations area of the sand and aggregate site and between the operations area and the Rickreall Water Association wells. The applicant proposes to monitor the wells for hydrocarbon (with a sniffer), turbidity, conductivity, and pH.

The applicant states that the SPCC Plan would outline the specific actions to take if a spill or release of some material does occur. The plan would cover both the immediate response to prevent further spillage, the initial actions to take to start cleanup and prevent further spread of the contaminant, and secondary actions to take after the initial actions are complete, which includes contacting the DEQ and other agencies as appropriate.

EGR and Associates, Inc. identified different spill response techniques that could be used to control the groundwater in the vicinity of a spill to prevent impacted groundwater from

migrating from a spill location. Wells within or at the margins of the spill area could be used to pump strongly enough to create a groundwater gradient from beyond the edge of the spill area, towards the spill area to prevent migration of the water to the Rickreall Water Association wells. According to EGR and Associates, Inc., as long as the groundwater gradient toward the spill area is maintained, pollution could not escape the spill area. EGR states that a pumping program could easily control groundwater flow so that no contaminated groundwater would reach the Rickreall Water Associations wells.

The applicant also identified passive treatment trenches as another technology used after a spill to protect water sources from impacted groundwater. Passive treatment trenches, installed between a spill and the drinking water source, rely upon treatment materials packed into a trench, which cleans groundwater as it passes through the trench. The applicant states that simple materials such as an oxidant and carbon source could be used to remove essentially all hydrocarbons. These trenches are only installed in the event of a spill. The applicant states that the response to any spill would depend on the specific circumstances involved in that spill.

The applicant shall use double walled above ground fuel storage tanks or construct catchment basins around the fuel storage areas to contain any possible fuel leakage. Such basins shall be constructed as a holding area to contain any leakage or spilled materials on-site prior to removal.

The applicant shall prepare a spill prevention, containment and counter measure plan for the site that will specifically address the materials used on the site, including all lubricants, oils, fuels, and chemicals. The plan shall address prevention of spills and spill response to minimize impact to the pit and groundwater, including a plan for the notification of Rickreall Water Association. The applicant shall provide a copy of the spill prevention and response plan to the Polk County Planning Division to be included in the file.

The applicant indicated that for any on-site crusher, or batch plants located within the proposed extraction area they would obtain permits as necessary from DEQ. The applicant would need to obtain an amended operating permit from DOGAMI prior to the development of the extraction area beyond the existing quarry area. As a condition of approval, the applicant shall be required to provide copies of all DEQ and DOGAMI permits to the Planning Division.

The applicant has submitted a reclamation plan in this application. The applicant indicated that the reclamation plan has been prepared with input from DOGAMI. The applicant indicated that a concurrent reclamation process would be established to develop reclaimed use of the site at the earliest possible time once the mining has been completed on any section. After reclamation the extraction area would be used as water impoundment for farm purposes, and the remaining site including the processing area would be returned to farm use. Polk County is not considering the reclamation plan as part of this application. Polk County will consider the reclamation plan as part of the Site Plan Review. The reclamation plan must also be approved by DOGAMI as part of their permitting process.

The applicant shall remove all equipment and vehicles upon final closure of the quarry operations, except for structures that may be utilized in on-going farm management operations.

The applicant indicated that on an annual basis Polk County would be provided with appropriate evidence of compliance with DOGAMI bonding and security requirements as required by ORS 517.810.

The applicant also indicated that the extraction operations would be insured as stipulated under PCZO 174.060(F)(2). The applicant shall provide annual evidence of insurance renewal.

Nothing in this ESEE Analysis authorizes uses that are inconsistent with Federal or State rules for the protection of threatened or endangered species. The applicant is responsible for all activity conducted in conjunction with this project and shall ensure that all activity is consistent with provisions for protection of species protected under the Federal Endangered Species Act.

As noted above, opponents submitted numerous documents demonstrating the perils of groundwater contamination, and alleging that the risks inherent in the proposed operation outweigh any potential benefits to the community. These important analyses are replete with data involving geological, chemical, biological and other technical, scientific disciplines. The Hearings Officer cannot claim to be learned in any of these disciplines. However, after reading these documents, the Hearings Officer has concluded that those offered by applicant more realistically appraise the risks, and applicant has agreed to install and use reasonable countermeasures to minimize any such risks.

Energy: No potential adverse energy impacts on the Goal 5 mineral and aggregate resources from the establishment of uses that would be sensitive to dust, odor, vibration and/or noise within the designated impact area have been identified.

The proposed location should allow for economical access to the Dallas, Monmouth-Independence, and Salem markets, which are all within 10 miles of the site. Additionally, the applicant indicated that no de-watering would be required in the extraction process limiting the cost of production.

~~**The applicant stated that the proposed HMAC plant would use typically 10-20 percent recycled asphalt product for production.**~~

Uses allowed in the impact area. The EFU Zone, under PCZO 136.020, provides for uses that are categorized in the following listings as non-sensitive and sensitive and allowed or restricted, pursuant to PCZO 174.090.

NON-SENSITIVE USES –ALLOWED WITHIN THE 750' IMPACT AREA, SUBJECT TO ZONING CRITERIA

Resource uses

1. Farm Use as defined in ORS 215.203 (except Training and Stabling Horses, and Vineyards)
2. Facility for the Processing of Farm Crops
3. Use and Management of Forest Lands
4. Farm and Forest Accessory Structures
5. Forest Product Primary Processing Facility
6. Wetland Creation/Restoration and Enhancement
7. Wildlife Habitat Conservation and Management Plan
8. Aquaculture
9. Insect Breeding

Mineral and aggregate

10. Exploration and Production of Geothermal, (ORS 522.005) Oil and Gas (ORS 520.005)
11. Mineral Exploration (ORS 517.750)
12. Mining and Processing of Geothermal

13. Mining and Processing of Mineral and Aggregate Materials
14. Processing of Aggregate into Asphalt or Portland Cement (ORS 517.750)
15. Processing of Other Mineral Resources

Transportation

16. Climbing and Passing Lanes within Right-of Way existing on July 1, 1987
17. Construction of Passing and Travel lanes, requiring acquisition of right-of-way, but not resulting in the creation of new land parcels
18. Reconstruction or Modification of Public Roads, not including addition of travel lanes or removal of buildings, but not resulting in the creation of new land parcels
19. Reconstruction or Modification of Public Roads, involving the removal of buildings, but not resulting in the creation of new land parcels
20. Temporary Public Road Detours
21. Minor Improvements to Existing Road and Highway Related Facilities within right-of-way existing on July 1, 1987
22. Improvements to Existing Road and Highway Related Facilities where additional property or right-of-way is required, but not resulting in the creation of new land parcels
23. Roads, Highways and Other Transportation Facilities

Utilities and solid waste disposal

24. Transmission towers
25. Utility Facilities Necessary for Public Service, excepting commercial power generating facilities and transmission towers over 200 feet in height
26. Transmission Towers over 200 feet in height
27. Commercial power generating facility

SENSITIVE USES-ALLOWED WITHIN THE 750' IMPACT AREA, SUBJECT TO PCZO 174.090

Resource

1. Vineyards (specific conflict with asphaltic batch plants)

Residential

2. Farm Dwelling
3. Accessory Farm Dwelling
4. Family Farm Help Dwelling
5. Lot of Record Dwelling - High-Value
6. Small-Tract Dwelling - High-Value
7. Replacement Dwelling
8. Replacement of Historic Dwelling
9. Temporary Hardship Manufactured Home
10. Seasonal Farm Worker Housing (ORS 197.675)
11. Residential Home or Facility (ORS 197.660)
12. Room and Board Arrangements

Commercial

13. Training and Stabling Horses
14. Breeding, Kenneling, and Training of Greyhounds for Racing
15. Winery, as described in ORS 215.452

16. Operations for the Extraction and Bottling of Water
17. Home occupation
18. Commercial activity in conjunction with farm use.
19. On-site Filming and Accessory Activities for 45 days or less
20. On-site Filming and Accessory Activities for more than 45 days
21. Farm Stands

Transportation

22. Personal Use Airports and Helipads

Parks/public/quasi-public facilities

23. Parks, Public or Nonprofit, Including Playgrounds or Community Centers
24. Model Aircraft Takeoff and Landing Sites

ESEE ANALYSIS AMENDMENTS ADOPTED BY THE BOARD OF COMMISSIONERS:

1. **To accomplish the MA Overlay Zoning District purpose objectives, the MA District requires that an Economic, Social, Environmental and Energy (ESEE) Consequences Analysis be prepared to address issues of conservation and conflict resolution. PCZO 174.015 describes the ESEE Analysis as follows:**

(B)(2) It is the function of the ESEE Analysis to resolve conflicts between the inventoried mineral and aggregate site(s) and any other identified conflicting uses, including those occurring as a result of any other applicable provisions in the Comprehensive Plan and this ordinance.

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

The ESEE Analysis:

(A) Shall identify the resource site's Extraction and Impact Areas as defined in Section 174.015 of this Chapter; and

(B) May describe site-specific development standards, including, but not limited to, setbacks, screening, road grading, and other requirements to protect and resolve conflicts with the inventoried source site(s).

Conflicting Use. As used under OAR 660-16-005, a conflicting use is a use which, if allowed, could negatively impact a Goal 5 resource site. The proposed mineral and aggregate resource site and adjacent properties are located on high value soils within the EFU zoning district. The EFU zoning district provides for uses on high value soils that could potentially conflict with the extraction and processing of aggregate, including the following:

1. Resource uses;
2. Residential uses;
3. Commercial uses;
4. Mineral and aggregate;
5. Transportation uses;

6. Utilities and solid waste disposal; and

7. Parks/public/quasi, public facilities.

It is the function of the ESEE Analysis to resolve conflicts between the inventoried mineral and aggregate site and any other identified conflicting uses, including those occurring as a result of any other applicable provisions in comprehensive plan and this ordinance.

1.1 **Economic Analysis.**

1.1.1 **Potential Effect on Rickreall Water Wells.** Opponents to the application have argued that the proposed use could potentially contaminate the Rickreall Water Association wells, which, if it occurred, would have a negative economic or social impact.

The applicant hired Randall J. Boese, RG, Senior Hydrologist with Bergeson-Boese & Associates, Inc., which provides comprehensive environmental services ("BB&A"), to determine what environmental contamination risk, if any, the proposed extraction and aggregate processing activities would pose to the water wells operated by the Rickreall Community Water Association ("RCWA"), located approximately 4,000 feet north of the proposed aggregate site. BB&A evaluated the risk from a potential catastrophic spill event on the site and prepared a report titled "Catastrophic Spill Analysis Fate and Transport Modeling" dated October 30, 2002, which is part of the record. This spill analysis assumed many worst- case conditions and ignored favorable influences, which would impact a spill under normal circumstances, including the following:

- The analysis assumes that no mitigation of the spill occurs. In the actual event of a spill, immediate mitigation will occur pursuant to the Spill Prevention and Response Plan and as required by State law and DEQ regulations;
- The analysis assumed that all of the diesel (20,000-gallons), burner fuel (10,000-gallons) and 1,000 gallons of gasoline proposed to be stored on site, instantaneously all spill and are left to naturally migrate through surface soils and into the groundwater. The analysis assumes that all of the product stored on site is spilled in a catastrophic event at one time and ignores the benefits from secondary containment structures;
- The analysis assumes the direction of ground water flow remains constant and that the direction is directly toward the municipal wells, even though according to information contained in USGS Groundwater Report No. 28, groundwater would be expected to flow northeast from the proposed aggregate mining facility. Additionally, according to geology reports, near the municipal wells the direction of the groundwater flow changes and flows east-southeast towards the Willamette River;
- The analysis ignores favorable hydraulic barriers such as Hayden Lake and Hayden Slough. The BB&A report states that under actual conditions the Hayden Slough "would prevent migration to the municipal well field".

Even under these unrealistically adverse assumptions, the analysis concludes that concentrations from the spill exceeding the Environmental Protection Agency's (EPA's) Federal Drinking Water Standard of 0.005 ppm, would not migrate to within 3,608 feet of the municipal wells. BB&A concluded that "The results of this model support the conclusion that petroleum products stored at the proposed aggregate mining facility, as outlined in this report, do not remotely threaten groundwater quality at the Rickreall municipal wells in the event of a catastrophic spill."

According to the BB&A, this analysis is consistent with other independent third party research, including a report prepared by a team of scientist from the Lawrence Livermore National Laboratory and University of California at Berkley, that concluded in part that the length of dissolved contaminate plumes from petroleum products rarely exceeds 250 feet in length from a source area. In this case, the distance between the source area and the Rickreall Association wells is approximately 4,000 feet.

1.1.1.1 **Flood Event**. BB&A also used a computer model to predict the fate of spilled petroleum products on surface water in the event of a combined spill and flood event. The computer model predicted approximately 18,000 gallons of the spilled product would be evaporated within the first 12 hours of the release. The model also predicted another 13,000 gallons of product will be disbursed after approximately 24 hours. A small percentage of the fuel is predicted to remain up until 48 hours of time has elapsed. Within 48 hours, the spill has evaporated and dissipated. The model demonstrates the limited duration and environment fate of this type of product in an open air environment. Based on the computer model evaluation, BB&A concluded that a combined flood and spill event would not remotely threaten groundwater quality at the Rickreall municipal wells."

BB&A also determined that the RCWA wells should not be impacted because the petroleum products are floaters since the density of diesel and gasoline are less than water. If the wells were operating during a flood event, they would be extracting groundwater from depths greater than 50 feet below land surface, well beneath any petroleum contamination, if any, that would be floating on the water surface.

1.1.1.2 **Actual Spill Occurrence Confirms Accuracy of Spill Model**. In BB&A's letter dated November 15, 2004, which has been submitted into the record, Randy Boese reviewed the results of an actual underground storage tank spill at the proposed site. BB&A found that even though a large petroleum release appears to have occurred onsite, the lateral extent of dissolved groundwater impact was very limited. Although the tanks had leaked for an extended period of time, the impact was limited to less than 100 feet from the leak source. Additionally, according to BB&A, a domestic well located a few hundred feet from the release never contained any detectable concentrations of petroleum hydrocarbon constituents. According to BB&A, the prior spill at the existing site illustrates how even a large petroleum release may only impact groundwater in a localized area around the spill site, and illustrates that following the release, the petroleum broke down through natural processes and even the impacted groundwater in a close vicinity to the well was restored by natural processes to clean water. According to BB&A, the DEQ imposed a drinking water restriction of 250 feet from the spill site, which corresponds with the distance which the Lawrence Livermore National Laboratories (LLNL) Study indicated was a typical maximum dissolved plume length for petroleum hydrocarbon releases.

The Oregon Department of Environmental Quality reviewed Randy Boese's letter dated November 18, 2004, regarding the experience from the onsite spill along with other supporting documents regarding the proposed development with our specified safeguards and concluded in their letter dated November 22, 2004, submitted into the record, that "The Department believes that with proper construction, maintenance, preventive measures and immediate action, should a leak occur, the AST at the proposed aggregate operation should pose minimal risk to the RWA Wells."

1.1.1.3 **Gasoline Additive.** Opponents to the application expressed concern that there could be methyl tertiary-butyl ether ("MTBE") as an additive to the proposed 1,000 gallons of gasoline to be stored on site. The applicant hired Randy Boese, Senior Hydrologist of Bergeson-Boese & Associates, Inc., to review and provide advice regarding this issue. In Mr. Boese's letter of December 13, 2004, submitted into

the record, he indicated that MTBE is not used in Oregon and is now banned in some 20 states, given the perceived risks associated with this compound. However, in light of the potential risk that gasoline in Oregon could be slightly contaminated with MTBE, the applicant agreed to remove the storage of gasoline from on site. According to Mr. Boese, the removal of 1,000 gallons of gasoline storage from site also reduced the amount of benzene to be stored on site by 76.16 kg from 130.40 kg to 54.24 kg. According to the applicant, this reduced the amount of benzene on site by approximately 58%. According to BB&A, this decreased the extent of the predicted dissolved benzene plume from BB&A's previous spill model. Based on the lower benzene levels after removal of gasoline from the site, BB&A concluded that no detectable concentration of benzene could reach the Rickreall Water Association wells from an on-site spill.

1.1.1.4 **Fuel Trucks.** Opponents to the application were concerned that fuel trucks traveling on the proposed private access road could crash and the spill from those trucks could then potentially affect the Rickreall Water Association wells. In order to reduce the risk to Rickreall Water Association wells from spills arising out of the delivery of petroleum fuel to the site, the applicant has agreed to use Halls Ferry Road for petroleum deliveries instead of the new private access road and this has been made a condition of the application. This will assure that in the unlikely event of a petroleum spill by a delivery truck, the distance from the Rickreall Water Association Wells will be greater than the distance from the proposed storage location for the fuels which has been shown by BB&A's analysis to be a sufficient distance from the wells so that there will not be any effect on the wells from such a spill.

Opponents to the application expressed concern that moving the filled truck deliveries onto Halls Ferry Road could have a potential negative impact on Halls Ferry Road or farm activities. The applicant requested Kittelson & Associates, Inc.'s transportation planning and traffic engineers to address this concern. In Kittelson & Associates, Inc.'s letter dated February 28, 2005, they conclude that:

> "Based upon the planned equipment and uses at the proposed development, River Bend Sand & Gravel estimates that the total volume of petroleum deliveries to be approximately 50 trucks per year. This equates to an average of one truck every week, or possibly two trucks during a busy week. These deliveries would not usually occur during the weekday AM or PM peak hours. Even if they do occasionally occur during the peak traffic hours, it would not significantly alter the trip generation estimates."

Kittelson & Associates concluded that the volume of the traffic from petroleum trucks on Halls Ferry Road is so insignificant that it will not have any significant impact on Halls Ferry Road. We agree with this analysis.

1.1.1.5 **Asphalt Trucks.** Some opponents to the application have argued that a potential spill from an asphalt truck could endanger the water bodies adjacent to the private access road. This argument is rejected. The applicant has submitted testimony in the record that the heavy oil used to produce liquid asphalt must be kept at approximately 180 degrees to keep it in liquid form. In the unlikely event of a spill, this tar, or asphalt after it has been mixed, will immediately solidify and is of no significant risk to the environment. According to Randy Boese's letter dated December 13, 2004, liquid petroleum asphalt has a density greater than water and is characterized as a semi-solid at moderate temperatures. Liquid petroleum asphalt is, therefore, assumed to be inert (not unlike paved highways) and not a threat to groundwater quality.

Nevertheless, Establishment of a hot mixed asphalt concrete plant (HMAC) within the extraction or impact area shall be prohibited

1.1.1.6 **Risk From Other Chemicals.** In Randy Boese's letter of December 13, 2004, he analyzed the list of potential pollutants and chemicals on site to assess their potential risks. Randy Boese and the applicant has agreed that since chlorinated solvents tend to naturally degrade slowly, no chlorinated solvents will be used at the facility and parts cleaning will be provided using a non-chlorinated hydrocarbon or aqueous-based system. According to Randy Boese, having no on-site chemical storage of compounds that are slow to naturally degrade, eliminates the potential of these chemicals from impacting the Rickreall Water Association wells.

In correspondence and during the public hearing on November 9, 2005, the opponents to the application raised specific concerns regarding Shell Sol 140HT and Pozzolith 322N. Randy Boese, again, reviewed the proposed chemicals on site and specifically addressed these chemicals in his letter dated November 21, 2005, submitted into the record. Randy Boese concluded that Shell Sol 140HT does not contain any chlorinated solvents. Randy Boese indicates that Pozzolith 322N contains "Triethanolamine" according to its Materials Safety Data Sheet ("MSDS"). According to Randy Boese, this compound is also used in many other products including cosmetics, and is presumed not to cause cancer, birth defects or other reproductive harm since it is not listed under the § 15 California Proposition 65, which requires the listing of chemicals with those characteristics.

Randy Boese concludes in his letter dated November 21, 2005, that:

> "No chlorinated solvents are to be used at the site and the other chemicals, due to limited volume, physical characteristics, and chemical characteristics, do not have the potential to adversely impact groundwater beyond a very localized area, if at all. All chemicals will be managed using best management practices in accordance with manufacturer's specifications and in accordance with EPA and DEQ guidelines. Additionally, procedures will be in place to manage, store, use and immediately mitigate any spill no matter what quantity."

1.1.1.7 **Preventative and Mitigation Measures.** Ralph Christiansen of EGR & Associates, Inc. "EGR" was retained by the applicant to evaluate the proposed gravel extraction and processing site for its potential to impact groundwater and to identify methods to eliminate any potential impacts to the Rickreall Water Association wells. EGR identified the following methods in its report titled "Groundwater Protection with Respect to Sand and Gravel Operations" which was submitted into the record as preventative measures:

- First, construct facilities to house materials and products so that spillage is avoided and any incidental spillage is contained;
- Second, prepare a Spill Prevention Containment and Counter Measure Plan (SPCC Plan) and a Storm Water Pollution Control Plan (SWPCP Plan);
- Third, have a monitoring program, which includes monitoring wells to ensure detection of any unnoticed releases;
- In the event of a spill, use the best available technology and techniques to clean up and contain the spill.

As a condition to this application, the applicant "shall use double-walled, above-ground fuel storage tanks or construct catchment basins around the fuel storage areas to contain any possible fuel leakage. Such basins shall be constructed as a holding area to contain any leakage or spilled materials on-site prior to removal." The applicant has agreed to store all materials that could cause contamination such as lubricants, antifreeze, hydraulic

fluid, cleaners, etc. in a building in the processing area above the 100-year flood elevation.

As a condition of the application, the applicant "shall prepare a spill prevention, containment and counter-measure plan for the site that will specifically address the materials used on the site, including all lubricants, oils, fuels and chemicals. The plan shall address prevention of spills and spill response to minimize impact to the pit and groundwater, including a plan for the notification of Rickreall Water Association. The applicant shall provide a copy of the spill prevention and response plan to the Polk County Planning Division to be included in the file."

According to Randy Boese's letter of November 21, 2005, the applicant has agreed to voluntarily monitor groundwater quality to provide an added layer of protection and assurance that the wells will not be affected. In order to ensure that groundwater quality is not being affected by on-site chemical storage and to provide an early warning system for taking corrective actions, the J.C. Compton Company will agree to voluntarily monitor groundwater quality at three monitoring points. Two are to be located in the presumed down-gradient position relative to the aggregate site and the Rickreall Water Association wells (north side of the aggregate pit). The third well is to be located in a presumed up-gradient position on the south side of the aggregate pit. The presumed down-gradient monitoring points are to be located approximately 4,000 feet from the Rickreall Water Association wells. The monitoring wells will be sampled on a semi-annual basis using the following schedule:

Semi-Annual Monitoring Parameters:

* Depth to water
* Total Dissolved Solids
* pH
* Temperature
* Dissolved Oxygen
* Turbidity
* Conductivity

Annual Monitoring Parameters:

* Volatile Organic Compounds by EPA Method 8260B

According to Randy Boese, the Volatile Organic Compounds by EPA Method 8260B tests for a list of approximately 40+ compounds. The water quality parameters and analytical chemical data will be evaluated by a registered professional geologist following each monitoring event. The data will be used to confirm that gravel and other operations were not affecting groundwater quality and provide an early opportunity to take corrective action should data indicate a problem.

The applicant, through its consultant EGR & Associates, has also identified alternative spill response techniques which can be used in response to a spill. EGR indicates that wells within or at the margin of spill areas can be used to pump strongly enough to create a groundwater gradient from beyond the edge of the spill area, towards the spill area to prevent migration of the water to the Rickreall Water Association wells. According to EGR, as long as the groundwater gradient towards the spill area is maintained, no pollution can escape the spill area.

EGR also identified passive treatment trenches as another technology used after a spill to protect water sources from impacted groundwater. Such trenches, installed between the spill and the drinking water source, rely upon treatment materials packed into a trench into the groundwater which cleans groundwater as it passes through the trench. According to EGR & Associates, such simple materials as an oxidant and carbon source can be used to remove essentially all hydrocarbons. EGR & Associates concludes that

"using readily available and widely-used technology any remediation program can readily control groundwater movement so that a spill will not migrate to the RWA wells."

Based on the above expert testimony submitted as part of the record, we find that the applicant has provided substantial and convincing evidence that the proposed storage and transportation of fuels and chemicals associated with the proposed use, do not remotely threaten the Rickreall Water Association wells.

1.1.2 **Importance of Aggregate Source.** Some of the opponents to this application have argued that there is not a need for additional aggregate resources. We reject that argument. The applicant has submitted evidence into the record that the majority of mining sites listed for Polk County are quarry sites, which produce crushed rock instead of high quality aggregate. The applicant states that crushed rock from quarries generally cannot be used in the production of concrete. Only high quality aggregate and sand is generally used in the production of concrete when available. An adequate supply of concrete is important for the construction of homes, commercial buildings, public buildings, roadways and other uses for the public good. According to the DOGAMI Aggregate Report submitted into the record, limiting the availability of aggregate to a community, can cause a significant increase in the cost of delivered aggregate to customers in that community because of the high transportation costs associated with trucking aggregate. Additionally, according to the DOGAMI Aggregate Report, local shortages force contractors to use grades of aggregate they would normally avoid. Projects made with poor quality aggregate often cost more to build and lack durability.

The Krauger aggregate extraction site, owned by the applicant, is the only current active sand and gravel extraction source in the immediate Monmouth, Independence and Dallas area, other than the applicant's Hayden Island site. The applicant estimates that this gravel source will be exhausted within five to seven years.

The proposed aggregate site is necessary to replace the Krauger site, and is needed to maintain a continuous, undisrupted supply of aggregate to the Independence, Monmouth and Dallas area. The applicant has indicated that it needs a new processing site in order to effectively utilize the Hayden Island existing Goal 5 aggregate resource site since the Hayden Island site can only be mined on a seasonal basis because of flooding and only temporary processing facilities can be used because Hayden Island is within the floodway. Therefore, the applicant indicates that Hayden Island cannot provide a continual year-round source of aggregate and is not an adequate substitute for the Krauger site. Therefore, we find that the proposed aggregate extraction site will have a substantial economic benefit to Polk County.

~~**The applicant has pointed out in the record that Polk County currently does not have an operating hot-mix asphalt concrete plant ("HMAC"). The applicant states that "one of the largest cost components for HMAC and other aggregate products are the costs associated with transporting these products. Having an operating HMAC plant close to the demand for these products will enable government and private users in Polk County to benefit from lower transportation costs."**~~

The applicant has provided substantial and convincing evidence that the proposed use will have a substantial economic benefit to Polk County.

2. **Social Impact Analysis. The potential visual, noise, traffic and air/dust pollution impacts on surrounding properties would be the primary social impacts associated with development of the proposed use.**

2.1 **Visual.** The applicant's site plan shows a 40-foot wide tree planting barrier to be comprised of a mixture of evergreen and deciduous trees which would be

planted on the west and south sides of the extraction area to screen the extraction and processing area from view. There is also existing vegetation along Hayden Slough that would help screen the extraction and processing area from Hwy. 51 and the neighbors to the northwest. As a condition to the application, the applicant shall provide vegetative screening on the west and south sides of the extraction area. Where landscaping is used for required screening, it shall be at least six feet in height and at least 80% opaque, as seen from a perpendicular line of sight, within 18 months following establishment of the aggregate operation. In order to provide a more natural, visual appearance, the minimum of one medium canopy tree every 60 feet shall be established in conjunction with the screening. The trees may be grouped in clusters if the total number of group trees is equal to one tree every 60-feet of screening. The operator shall maintain the landscaping during the term of the use including the existing vegetation along Hayden Slough that helps screen the extraction processing areas from Hwy. 51 and houses west of the subject property.

In a letter dated November 9, 2005, from Michael and Susan Calef, who live west of the site, they indicate that "All other residences to the west and southwest are already screened by existing vegetation along Hayden Slough. We request that the screening on the two sides adjacent to our property consist of plants that do not exceed 10 feet in height at maturity." The Calefs are concerned that taller trees will provide habitat for birds which will potentially feed on their blueberries. Therefore, a condition to the application shall require that the screening on the two sides adjacent to the Calef property shall consist of plants that do not exceed 10 feet in height at maturity and trees shall not be planted in this area.

In Michael and Susan Calef's letter dated November 9, 2005, they requested that all lights in the extraction and processing area should be shielded and/or directed so as not to shine on to adjacent properties. Also, any lights not needed for security reasons should be turned off at night. They state that this area is relatively quiet and sparsely developed at the current time and they believe that if this condition is imposed, as well as a backup beeper condition mentioned below, this will help to retain this nature as much as possible. Therefore, the applicant shall be required to have all lights in the extraction and processing area shielded and/or directed so as not to shine on adjacent properties. Also, any lights not needed for security reasons shall be turned off at night.

2.2 **Noise.** The applicant has indicated that all noise levels from the site will meet the Oregon Department of Environmental Quality ("DEQ") standards. One of the conditions to this application requires that "Prior to establishment of any crusher, asphalt or concrete batch plant, or other machinery at the quarry site which requires DEQ permits, the applicant shall submit copies of approved DEQ permits to the Planning Division."

Michael and Susan Calef in their letter dated November 9, 2005, have requested that "As a condition to the application, the applicant be required to use 'smart' backup beepers on all trucks and equipment to the extent allowed by law. These beepers do not beep unless there is an obstruction in close proximity behind a vehicle." It shall be a condition of this application that the applicant is required to use "smart" backup beepers on all trucks and equipment in the extraction and processing area where allowed by law and the Mine Safety and Health Administration.

With the above conditions in place, we find that the noise from the proposed use will have no significant social impact.

2.3 **Traffic.** The applicant hired Kittelson & Associates, Inc., as traffic engineers to analyze the traffic impact for the proposed use. In their letter dated November 20, 2001, Kittelson & Associates concludes in part that:

The truck traffic generated by the site will essentially replace existing truck traffic currently using Hwy. 51 to travel between the existing Valley Concrete processing plant in Independence and Hwy. 22. Thus, there will not be an appreciable increase in truck traffic on Hwy. 51 as a result of the proposed development.

The on-road operating and performance characteristics of farm equipment are substantially lower than can be expected for either private autos or trucks. Farm Equipment typically moves along the highway at very slow speeds, and the width of this equipment occasionally creates difficulties for vehicles passing it in either direction. For this reason, it is the farm equipment that usually constrains the movement of the vehicles and trucks that follow it, not vice versa.

Therefore, because the proposed development will not increase the volume of trucks on the highway, and because farm equipment moves more slowly than gravel trucks and other autos, the proposed gravel mining and processing development is not expected to create any new impediments or hazards for farm equipment on Hwy. 51.

Kittelson & Associates also generated an updated traffic impact analysis dated December 9, 2004, and a supplemental analysis dated February 28, 2005, which were both submitted into the record. The traffic analysis is based on the assumption that the applicant will begin processing in 2007. The updated traffic analysis dated February 28, 2005, concluded that during the weekday a.m. peak hours and 3:00-4:00 p.m. hour, the study intersections will all continue to operate acceptably under 2007 conditions. The study also concluded that under existing conditions and 2007 conditions during the weekday p.m. peak hours between 4:00-6:00 p.m., the westbound left-turn movement at the Hwy. 22/Hwy. 51 intersection operates over the maximum acceptable V/C ratio of 0.80. The eastbound left-turn-through movement at the Hwy. 99W/Clow Corner Road intersection is also currently at the V/C threshold.

The February 28, 2005, traffic study concludes that at the Hwy. 99W/Clow Corner Road intersection, the proposed development would not add any new traffic to the critical eastbound left-turn-through movement, which is projected to be over the 0.80 V/C threshold under 2007 background conditions.

The February 28, 2005, traffic study states that "to avoid adding new traffic to the over-capacity westbound left-turn- movement at the Hwy. 22/Hwy. 51 intersection, the ingress route to the site from westbound Hwy. 22 should be modified during the weekday p.m. peak period (4:00-6:00 p.m.). All trucks and/or employee vehicles driving to the site on westbound Hwy. 22 after 4:00 p.m. should use Hwy. 99W/Clow Corner Road, and Rogers Road to gain access to Hwy. 51. The volume of traffic estimated to be making this movement is approximately two vehicles during the weekday p.m. peak hour."

~~The above recommended traffic movement restriction has been added as a condition of approval to this application so that the applicant will not be adding traffic to the westbound left-turn movement at the Hwy. 22/Hwy. 51 intersection during the weekday p.m. peak period between 4:00-6:00 p.m.~~

~~The findings of fact and conclusions of law under the traffic impact section regarding PCZO 136.060 are hereby adopted in total just as if they were set forth herein.~~

In February, 2014 Kittelson & Associates prepared an updated supplemental transportation analysis for the proposed aggregate site in response to issues that were remanded by the Land Use Board of Appeals (LUBA) in their 2010 and 2012 decisions. The updated analysis includes the 2030 planning horizon of the 2009 Polk County TSP. Input data and key assumptions were updated to reflect current

market conditions, which in turn affect the geographic boundaries of the study area and the scope of potential mitigation needs. This analysis also included an accounting of the existing trips that are currently generated by the existing CPM facilities (Valley Concrete site and the Krueger Pit). Kittelson & Associates also collected new traffic counts at all key study area intersections and conducted an updated analysis of existing 2013 and anticipated 2015 traffic conditions.

The 2014 analysis found that under existing 2013 peak season traffic conditions, all study intersections meet the Oregon Highway Plan (OHP) mobility standards, with the exception of the Hwy. 22/Hwy. 51 intersection. Under the projected 2015 background traffic conditions, all of the study intersections are expected to meet the OHP mobility standards with the exception of the Hwy. 99W/Clow Corner Road intersection and the Hwy.22/Hwy. 51 intersection. During the peak season under optimal market conditions, Kittelson & Associates estimated the proposed gravel mining development would be expected to generate approximately 240 daily trips (120 inbound and 120 outbound).

Based on the 2011 revisions to the OHP, the total daily traffic generation estimated for the proposed gravel mining development falls below the established threshold for a potentially significant traffic impact (viz. 400 daily trip ends). On this basis, the proposal's off-site transportation related effects are considered to be negligible and would not require mitigation. The 2014 analysis found that, after accounting for the proposal's additional effect of removing some existing vehicle trips from the road system, the net result of the proposed development is to cause no further degradation of the surrounding transportation facilities.

The 2014 analysis found that the applicants newly acquired aggregate facility in West Salem results in no site generated trips passing through the Hwy. 22/Hwy. 51 intersection traveling to or from the east, since that entire area is served by the West Salem facility. The analysis also found that the proposed facility would not add any net new traffic to the critical movements of Hwy. 22/ Hwy. 51 intersection, the Hwy. 99W/Clow Corner Road intersection or the Hwy. 99/Hoffman Road intersection.

The 2014 analysis found that under 2015 total peak season traffic conditions, the proposed gravel mining development would not cause any degradation of the transportation facilities that are currently operating or are projected to operate above the OHP V/C ratio mobility target.

The 2014 analysis found that under the projected 2030 background traffic conditions, three of the six study intersections are expected to exceed the OHP v/c ratio mobility standards. These include Hwy. 22/ Hwy.51 intersection, the Hwy. 99W/Clow Corner Road intersection and the Hwy. 99/Hoffman Road intersection. The analysis concludes that under year 2030 total peak season traffic conditions, the proposed gravel mining development would not cause any degradation of the transportation facilities that are currently operating or projected to operate above the OHP V/C mobility target.

The 2014 Kittelson & Associates updated transportation analysis concludes that the proposed peak hour routing plan, which had been proposed in the previous analyses, be eliminated from the conditions of approval as they are no longer required or warranted.

The applicant has provided substantial and convincing evidence that traffic from the proposed use will not have a significant social impact on the surrounding area.

2.4 **Dust and Air Pollution.** Opponents of the application have argued that fugitive dust and air pollution from the proposed operations may have negative social

or economic impacts. In response to these concerns, the applicant hired Candice Hatch, P.E., Air Quality Engineer, with the Bridgewater Group, Inc. In Ms. Hatch's letter dated November 20, 2001, she states that:

> "Air pollution control measures will be used on all of the operations at the site. The air pollution control equipment and fugitive dust control measures will be approved by the Department of Environmental Quality (DEQ) as part of the air permitting requirements for the site. . . . An Air Contaminant Discharge Permit (ACDP) will be required for the aggregate processing equipment. As part of the permitting process, DEQ will review the permit application information and the proposed air pollution control technology. Operations at the proposed facility will be required to have state-of-the-art air pollution control devices. There are stringent requirements that will be placed on operation of air pollution control devices and the reliability of the control devices. These devices will have permits issued by DEQ. The permits will have emission limits that must be met as well as testing and monitoring requirements to assure that the devices are meeting the emission limits. The permit will also require that the devices have periodic operation and maintenance evaluations that will keep the units running at optimal efficiency. A log of the operation and maintenance evaluations will be maintained for inspection by DEQ. If an air pollution control device has a breakdown, the facility will be required to shut down the processing operation immediately until the air pollution control device is repaired.
>
> "In addition to the control devices, DEQ will require that the facility maintain a dust control plan for the dust sources that do not have specific control equipment (i.e., the site access road and operations yard). The dust control plan will detail the types of control measures to be used and the frequency of use. Before a permit can be issued, DEQ must be satisfied that the facility will meet all applicable air quality standards.
>
> > "Rainfall is another mechanism for controlling dust emissions. On days with more than 0.01 inch in rain, a reduction in emissions from particulate emission sources occurs. Rain also washes the surface of vegetation and structures to reduce the accumulation of dust. Nature has proven that watering is an effective dust control measure.
> >
> > "The primary air quality issue raised in comments about the proposed project is a potential for significant amounts of dust to be deposited on neighboring property. The air quality standard that discusses this concern is the particulate fall-out (dust deposition) standard. The DEQ standard limits the amount of allowable deposition to 5 grams/m^2/month. [*note: 5 grams/m^2/month equates to about 1 ½ teaspoons spread over ten square feet accumulated over a month*]. The DEQ standard applies at the property line and anywhere off of the facility's property. Dust deposition reduces with distance from a source. This means that if a facility meets the DEQ standard at its property line, the dust deposition will be less than the standard just beyond the property line and decreasing with distance away from the property line."

In Ms. Hatch's November 20, 2001 letter, she lists the following seven dust control measures which should be included within the applicant's dust control plan submitted to the DEQ, and include the following:

1. Pave the last 200 feet of the site access road to minimize the amount of dust created near Hwy. 51.
2. Wash off the dust tracked out onto the paved end of the site access road and the intersection with Hwy 51 periodically.
3. Have a water truck available on-site at all times to sprinkle the access road, the yard and other vehicle traffic areas.
4. Position the concrete trucks inside a partial enclosure or use a localized hood and filter system (i.e., baghouse) to capture emissions during truck loading operations.
5. Keep the internal roadways used for onsite vehicle traffic at least 100 feet from the property lines.
6. Locate all process operations (crushing/screening, hot mix asphalt plant and concrete batch plant) at least 100 feet away from the property lines.
7. Post a 15 mph speed limit for all onsite traffic.

Ms. Hatch concludes that:

> "The proposed dust control measures include the measures necessary to meet the permit requirements and to be compliant with DEQ airborne particulate matter emission and dust deposition standard. The proposed dust control measures will minimize dust-related conflicts to meet DEQ standards. Dust deposition from the facility should not exceed the 5-gram/m^2/month limit. Compliance with air permit conditions and DEQ emission standards means that potential dust impacts from the facility will be minimized."

We find that the applicant has provided substantial and convincing evidence in the record that air contaminants, including fugitive dust, will not have any significant effect on adjacent properties.

It has also been argued by the opposition that the fugitive dust from the proposed activities will have a negative economic or social impact on adjacent farm practices. This argument is rejected. In response to this concern, Bob Costa, a certified professional agronomist and certified professional soil scientist, with degrees in soil science and biology, provided an analysis dated November 20 2001, which was submitted into the record. Mr. Costa concludes, in his analysis, that:

> "In summary, the research evidence demonstrates that the dust deposition rate predicted from the proposed facility is well below the levels reported in the research to cause detrimental effects on crop plants. The evidence in the record shows that the lowest dust deposition rates associated with detrimental effects on crop plants and on farm practices range from 3 to 18 times higher than the maximum estimated rate of 5gs/m2/month in the areas adjacent to the proposed facility."

We find, based on substantial and convincing evidence in the record, that fugitive dust from the proposed use will not have any significant social or economic effect on surrounding properties.

3. **Environmental Impact.** According to the National Wetland Inventory Rickreall Quad Map, the proposed activities are in the vicinity of Hayden Slough and Hayden Lake, which have been determined to be significant resource wetlands.

The applicant is proposing to have its private access roads span Hayden Slough at its narrowest point in that vicinity using a center support in order to minimize the impact on the wetlands. The applicant hired Terra Science, Inc., Wetland Consultants, to delineate wetlands within the proposed access road area and identify potential impact areas. Terra Science, in its report dated July 2003, submitted into the record, determined that the emergent fringe of Hayden Slough qualifies as a wetland area. Terra Science, Inc.'s report states that:

> "According to the proposed site plan, most construction activities within Hayden Slough would be limited to the area that was historically filled for the existing bridge, with only a very small wetland impact area (less than 100 square feet) associated with the bridge retaining walls. However, the proposed bridge replacement would occur mostly within the OHW/2-year elevation of Hayden Slough. These activities would require authorization of the regulatory agencies. Also, compensatory mitigation would likely be necessary to offset these impacts and such mitigation would need to follow state and federal guidelines."

According to the Division of the State Land Removal/Fill permit dated July 14, 2005, submitted into the record, wetland mitigation for the unavoidable loss of 0.005 acres of freshwater wetlands has been accomplished via purchase of 0.005 credits from the Mud Slough Mitigation Bank, with a letter of agreement signed by Mark Knaupp, received by the Department on April 1, 2004. Both the Oregon Division of State Lands and the U.S. Army Corps of Engineers have issued permits for the construction of the proposed bridge and such permits have been submitted into the record.

3.1 **Hayden Slough.** Hayden Slough is categorized as a 3-C Resource and is identified on the County's Significant Resource Areas Map. The applicant has submitted a Resource Management Plan pursuant to PCZO § 182.040(E)(1) regarding Hayden Slough, which is a part of the record. Pursuant to the Resource Management Plan, the applicant has agreed that no extraction or processing activities will occur within 100 feet of the bank top of the Hayden Slough. Dorian Kuper, Certified Engineering Geologist, in her letter dated December 4, 2004, submitted into the record, concluded that "It is highly unlikely that turbid groundwater would seep into the Slough. There is very little groundwater elevation difference across this section of the floodplain. The low gradient allows groundwater to migrate through the sand and gravel at a relatively constant velocity, allowing sufficient time to cleanse the water that eventually seeps into Hayden Slough." Therefore, Dorian Kuper concludes that it is highly unlikely that turbid groundwater would seep into the Slough.

Chip Andrus from Water Work Consulting also analyzed the potential effect on the Slough from the proposed activities in his letter dated December 12, 2004, which is in the record. According to his qualifications submitted into the record, Mr. Andrus is an engineer, hydrologist and specialist in fish and wildlife habitat. For more than 20 years, he has provided state, federal and private entities with technical expertise on managing natural resources within the Pacific Northwest watersheds.

Mr. Andrus notes that no roads, dikes or other manmade features will be within the 100-foot set back zone. Native trees will be planted in that part of the set back zone which currently has no trees. The trees will provide increased foliage, shelter and resting areas for small animals, birds and other wildlife in the Slough. Because the sides of the proposed gravel pit are sloped in a three-to-one ratio, the 100-foot wide set back at the ground surface will be a 200-foot set back at the elevation of the Slough water surface during the summer. Runoff water from the processing plant will be routed to the gravel pit pond and will not be allowed to flow into nearby Hayden Lake or the Slough.

Mr. Andrus's report also cites Paul Adamus who has noted in his research that wildlife abundance and diversity were unusually high within and along the perimeter of gravel pit ponds. Mr. Adamus has noted that the gravel pit operations provided scarce and important habitat that was not available elsewhere in the study area, including bare substrate for pond turtle dens, mudflats that support organisms that wadding birds feed upon, and loose mounds of soil that fox, nighthawk and other animals can burrow into.

Mr. Andrus states that mortality of varying vegetation along the slough from the proposed activities is "highly unlikely" since dust does not kill vegetation surrounding other gravel pits, and the wet mining and dust control practices at this site will minimize dust creation. Furthermore, Mr. Andrus notes that the prevailing winds from the west and northwest will move any dust away from the slough.

Mr. Andrus concludes that with the extraction area set back by at least 100 feet from the slough, it will have negligible influence on the slough's appearance and functions.

In Chip Andrus's Biological Assessment, dated May 6, 2004, and submitted into the record, Mr. Andrus states:

> "The project will have no negative effects on the habitat for fish species using Hayden Slough. Replacing the existing bridge will cause small and temporary increases in suspended sediment. Furthermore, salmon and steelhead will not be present during the construction season due to naturally warm water temperatures . . . replacement of the bridge will not result in any changes of the fish passage or feeding opportunities since the current bridge is not a barrier.

Mr. Andrus concludes, in his May 6, 2004, report that, "project-related impacts are not likely to affect an endangered or threatened species (Spring Chinook Salmon or Winter Steelhead) or their critical habitat."

In Mr. Andrus's letter dated July 2, 2004, he notes that noise could have a negative influence on some wildlife; however, "this disturbance quickly diminishes with increasing distance from the road. Also, some animals become accustomed to noise after an initial adjustment. . . of those species sensitive to noise, I expect most to relocate upstream or downstream of the bridge rather than vacate Hayden Slough altogether."

Chip Andrus indicates that noise-sensitive animals would be displaced in only "four percent of the total length of the Hayden Slough."

The applicant has provided substantial and convincing evidence that the proposed use will not have a significant effect on Hayden Slough.

3.2 **Hayden Lake**. Hayden Lake exceeds 10 acres in size, which requires a 100-foot in width riparian management area around the resource pursuant to PCZO 182.050(B)(2). Since the applicant is not proposing new road construction, excavation, processing or vegetation removal/loss of streamside vegetation within the designated 100-foot wide riparian management area, the applicant is not required to provide a Significant Resource Management Plan for Hayden Lake. As a condition of approval, the applicant shall not be allowed to have any excavation, processing or vegetation removal within the 100-foot designated riparian management area around Hayden Lake without preparing a Significant Resource Management Plan.

In Dorian Kuper's analysis dated December 4, 2004, she concludes that, "mining is not expected to degrade the ground water quality in the vicinity of the site and turbidity from the mining operations is not expected to occur in nearby wells or surface water bodies."

Dorian Kuper concluded that, "because the ground water gradient has been reported to be very low in this area, there is very little ground water elevation difference ("head") across

the flood plain." She concludes that, "a low gradient allows ground water to migrate through the sand and gravel at a relative constant velocity, allowing time to cleanse the water" . . . Mother Nature works as the best cleanser of turbid water. Sand is a natural filter (hence its use in drain fields, septic systems, etc.) because it "catches the finer material." The old adage that the dirtiest water, if run through sand, will result in clean water at the other end has validity to it. Doran Kuper concludes that the presence of at least 100 plus feet of sand and gravel left in place between the mining site and the closest water bodies allows for cleansing of the groundwater. Dorian concludes that, "turbidity from the mining operations is not expected to occur in nearby wells or surface water bodies."

3.3 **Potential Risk from Petroleum Spill to Hayden Lake or Hayden Slough.** Malia Kupillas of Pacific Hydro-Geology, Inc. has attempted to argue that Randy Boese's Catastrophic Spill Analysis shows there is a risk to Hayden Lake from benzene from an on-site petroleum spill. We reject this argument. First, the Catastrophic Spill Analysis performed by Randy Boese used worst-case assumptions, which ignored that the diesel stored on-site will be in either double-walled tanks or in a single tank with a catchment basin. The report assumes that this system totally fails and all diesel fuel is spilled and allowed to migrate without clean-up efforts. The applicant argues that in the real world, immediate clean-up efforts will occur, which will dramatically reduce any impact as compared to the impacts shown under the Catastrophic Spill Analysis. Even using the conservative Catastrophic Spill Analysis, only benzene levels under the Federal Drinking Water Standard of 5 parts per billion could possibly reach Hayden Lake. According to Randy Boese, the concentrations of benzene which could potentially reach Hayden Lake under the worst-case scenario are two orders of magnitude lower than the Oregon Department of Environmental Quality Level 2 screening values for aquatic plants, invertebrates and wildlife.

In Randy Boese's analysis dated December 16, 2004, his model shows that the predicted plume from an on-site petroleum spill will not reach Hayden Slough and, therefore, cannot threaten the environmental quality of Hayden Slough.

3.4 **Perceived Risk from Other Compounds.** In correspondence dated April 7, 2005, Pacific-Hydro-Geology, Inc. ("PGI") cited ecological concerns with other compounds associated with gasoline and diesel fuel These compounds included toluene, ethylbenzene, and xylene. The applicant requested Randy Boese, RG, Senior Hydrologist with Bergeson-Boese & Associates to address this issue. In Randy Boese's correspondence dated April 20, 2005, he acknowledged that these compounds have lower level II screening level values than benzene; however, he points out that these values are to be used for screening (not clean up) purposes only and represent values that may cause adverse affects only in certain organisms if those organisms are present and exposed to the compounds over a long period, generally the life cycle of the organism. Randy Boese concludes that the duration of potential exposure with these types of compounds is not long-term but, rather, short-term due to the rapid degradation and attenuation of these types of compounds in an open-air environment. Therefore, he concludes there will be no residual or lasting long-term effects to these ecological environments associated with a spill of these compounds.

In Randy Boese's analysis dated January 14, 2005, and December 13, 2004, both submitted into the record, he indicates that the non-petroleum chemicals, due to their limited volume, physical characteristics and chemical characteristics, do not have the potential to adversely impact ground water beyond a very localized area, if at all.

3.5 **Truck Spills.** The applicant has also expressed a concern that if there is a crash of one of the haul trucks on the access road, the petroleum from the truck gas tanks could spill into surface water and impact Hayden Slough or Hayden Lake. In

Randy Boese's letter dated April 20, 2005, he indicates that his spill model is also applicable to smaller incidental spills and demonstrates the short duration and impact of the spilled product in an open-air environment. He states that, "any spills due to vehicle accidents would be immediately recognized and appropriate actions taken." He states that, "among others, BB&A has led clean-up efforts associated with tanker spills along Detroit Reservoir, Amity Creek, Umpqua River and Cow Creek. In each case, where surface water was impacted, the spill dissipated within hours or days. In no case were there residual or lasting long-term effects to these ecological environments." He indicates that in a spill event, the duration of potential exposure from the compounds is short-term versus long-term due to the rapid degradation and attenuation of the spilled product in an open-air environment so that there would be no residual or lasting long-term effects on these ecological environments from a spill caused by a truck crash along Hayden Slough or Hayden Lake.

We find that the applicant has provided substantial and convincing evidence that the proposed activities will have no significant impact on Hayden Lake or Hayden Slough.

4. **Energy.** The applicant states that, "the location of the proposed site will conserve non-renewable fuel resources because of its close proximity to the need for aggregate ~~and HMAC~~. There is currently a strong demand for ~~these products~~ **aggregate** in the Monmouth-Independence, Dallas and Salem markets, which are all within approximately ten miles of the site."

~~The applicant states that Polk County currently does not have an HMAC plant. This means that asphalt for Polk County must be trucked in from either East Salem or South Salem, which unnecessarily wastes non-renewable fuels to truck the hot mix asphalt over this substantial distance. The new HMAC plant in Polk County to serve Polk County needs will conserve fuel energy.~~

The applicant states that having the aggregate processing areas in close proximity to Hayden Island, which is an existing goal 5 resource area, and the new proposed extraction area, will be more energy efficient since it will eliminate the need to truck the aggregate from Hayden Island on a circuitous route up to the city of Independence for processing with empty trucks returning to Hayden Island to retrieve additional aggregate for processing.

~~The applicant states that, "the proposed HMAC plant will typically use 10-20 percent recycled asphalt product for production. This recycling of roadway surfaces is important for conservation of non-renewable aggregate and petroleum resources."~~

The applicant has provided substantial and convincing evidence that the proposed use will conserve energy.

5. **Determination of Impact Area.** Opponents to the application have argued that the ESEE Analysis justifies expanding the impact area beyond the minimum 750 feet. This argument is rejected. We find that there is nothing under the ESEE Analysis that justifies expanding the impact area beyond the minimum 750 feet. Candice Hatch of Bridgewater Group, Inc. performed a review of the site plan and suggested mitigation efforts to reduce any dust deposition from the proposed activities. She concluded in her letter dated November 20, 2001, which is in the record, that dust deposition from the facility should not exceed the DEQ standard of 5-grams/m^2/month limit at the property line. This DEQ standard is established at the applicant's property line which is well within the minimum 750-foot impact area. The federal standard equates to about one and one-half teaspoons spread over ten square feet accumulated over a month. Robert Costa, an agronomist with over 25 years of agricultural experience, in his letter dated November 20, 2001, concludes that "The lowest dust deposition rates associated with detrimental

effects on crop plants and farm practices range from 3 to 18 times higher than the maximum estimated rate of 5g/m^2/month" which is the federal DEQ standard. Therefore, even the dust deposition rate at the property boundary is well below levels which could harm crops, so there is no basis to require an expansion of the impact area beyond the minimum 750 feet due to dust deposition.

Opponents to the application have argued that the impact area should be increased to include all lands that may be developed for water use. This agreement is rejected. Under Randy Boese's worst case Catastrophic Spill Analysis, the worst case benzene plume declines to within federal drinking water levels well within the minimum allowed 750-foot impact area. The applicant has agreed not to store gas tanks on site since some Oregon gas could be contaminated with small amounts of the additive methyl tertiary-butyl ether which has a potentially larger plume. The applicant will also not be utilizing chlorinated solvents which could potentially have a larger plume, if spilled. Therefore, none of the chemicals on site, if spilled, will have a plume or will migrate beyond the minimum allowed 750-foot impact area in concentrations that the DEQ considers hazardous.

Dorian Kuper, Certified Engineering Geologist, in her letter dated December 4, 2004, submitted into the record, concluded that "mining is not expected to degrade the ground water quality in the vicinity of the site and turbidity from the mining operations is not expected to occur in nearby wells or surface water bodies." Dennis Nielsen, of the Oregon Health Division/Drinking Water Program, in his memo dated December 3, 2001, submitted into the record, concluded that "it is unlikely that the Rickreall wells will experience any increased turbidity of ground water or microbial contamination relating to the extraction operation or flooding at the extraction site." Ralph Christensen, Registered Geologist, also concluded in his letter submitted into the record dated November 19, 2001, that turbidity is not a ground water problem associated with gravel extraction sites." Bob Brinkman, Hydrologist with the Department of Geology and Mineral Industries, stated in his memo dated October 1, 2001, submitted as part of the record, that "turbidity in ground water outside the pit area is not expected to be above background levels due to the natural filtering capacity of the aquifer material. This is typical of existing gravel pits along the Willamette River corridor where mining occurs below the water table and elevated off-site turbidity levels have not been associated with this type of activity."

The applicant has provided substantial and convincing evidence that turbidity will not be a problem any significant distance beyond the pit area and the effects of turbidity, if any, will be within the minimum 750-foot impact area.

Opponents to the application have argued that the entire area of Hayden Lake should be included within the impact area. We reject that argument. A significant portion of Hayden Lake is already included within the impact area as shown on the site plan. According to Randy Boese, if a petroleum spill were to occur on site, even using the conservative Catastrophic Spill Analysis, which assumes no cleanup efforts, only benzene levels under the Federal Drinking Water Standard of 0.005 ppm could possibly reach Hayden Lake. According to Randy Boese, the concentrations of benzene which could potentially reach Hayden Lake under this worst-case scenario are two orders of magnitude lower than the Oregon Department of Environmental Quality Level 2 screening values for aquatic plants, invertebrates and wildlife. Dorian Kuper concluded that the presence of at least 100+ feet of sand and gravel left in place between the mining site and the closest water bodies allows for cleansing of the groundwater. Dorian Kuper concludes that "turbidity from the mining operations is not expected to occur in nearby wells or surface water bodies." Therefore, we find that it is not necessary to expand the impact area to include more of Hayden Lake.

Opponents to the application have also argued that the entire length of Hayden Slough should be included within the impact area, which is over 4.3 miles long. This argument is rejected. There is substantial evidence in the record that there will not be increased turbidity to Hayden Slough. Additionally, the projected plume from a catastrophic spill, under Randy Boese's model, does not even reach Hayden Slough at any detectable limit. Randy Boese, Hydrologist, has stated that chlorinated solvents and gas have been removed from the site, so there are no other chemicals in large enough quantities that can reasonably be expected to impact Hayden Slough. The specific impacts from the applicant crossing Hayden Slough with its access road are covered under the requirements of PCZO Chapter 182 and within the applicant's Significant Resource Management Plan.

Opponents to the application have argued that the ESEE Analysis should encompass Humbug Lake. We reject this argument. The applicant states that Humbug Lake is over 2,100 feet south of the extraction area boundary and up gradient from the proposed gravel pit. The applicant also indicates that Humbug Lake is upwind from the extraction area. The applicant has provided substantial and convincing evidence, including the evidence outlined above, that the applicant's proposed activities will have no impact on Humbug Lake. Therefore, we find that it is not necessary to expand the impact area to include Humbug Lake.

The applicant has provided substantial and convincing evidence within its ESEE Analysis and the evidence outlined above to support justification for imposing the minimum impact area of 750 feet on this proposed use.

5.1 **Access Road/Impact Area.** Opponents to the application have argued that the impact area should extend a minimum of 750 feet perpendicular to each side of the private access road until it reaches the public highway. This argument is rejected.

Mr. Sherlock, as counsel for David Setniker, alleges that *Shrader vs. Deschutes County*, 39 Or LUBA 782 (2001) supports the argument that an impact area should extend from an access road. We find that the *Shrader* case is a case regarding adequate notice that has little or no application to impact areas.

In the *Shrader* case, the party appealing the decision had property which would be affected by the proposed new road on BLM property, but he never received notice for the land use decision and never had an opportunity to be heard in any land use process. In this application, all of the property owned by the applicant including the access road was considered in determining the notification area and the public was provided with adequate notice to comment on the access road issues. Therefore, the notice problem under the *Shrader* decision is not an issue with this application.

The applicant has pointed out that the Land Use approval of aggregate sites is often contentious and many aggregate site cases have gone before LUBA for review. Yet, LUBA has never determined that an impact area should expand perpendicular on both sides of an access route.

PCZO § 174.020(B) provides, in part, that:

> "The mineral and aggregate impact area shall be applied to properties or portions of properties **adjacent to and immediately surrounding an Extraction Area . . .** the minimum width of the impact area shall be 750 feet from the Extraction Area boundary unless a reduced distance is justified based on the ESEE analysis." (Emphasis added.)

Therefore, Polk County ordinances require that the impact area be applied to properties or portions of properties adjacent to and immediately surrounding the "extraction area". PCZO § 174.015 defines the "extraction area" as "the area within which mineral and

aggregate extraction, processing and storage may take place under the provisions of this chapter." Under the clear language of this Polk County ordinance, the extraction area does not include the access road. Under the definition of processing, it does include the handling, conveying and transportation of mineral and aggregate materials which of course is necessary for the processing of those materials in the processing area. Therefore, the statute makes it clear that the extraction area includes the processing area. If the code had intended to include the access road in the definition of the extraction area, it would have been easy to clearly do this, and obviously the clear language of the code does not include it.

We find, based on our interpretation of the ordinance, that the impact area does not have to extend perpendicular from the entire length of the private access road. We find that the impact area should extend 750 feet from the extraction area as shown on the applicant's site plan.

Uses Allowed Within The Impact Area. The EFU Zone, under PCZO 136.020, provides for uses that are categorized in the following listings as non-sensitive and sensitive and allowed or restricted, pursuant to PCZO 174.090.

ESEE ANALYSIS SITE-SPECIFIC DEVELOPMENT PLAN REQUIREMENTS:

The following site-specific requirements shall be incorporated into the approved development plan:

A. Prior to operation of Mineral and Aggregate mining operation, the operator shall sign and record, with the Polk County Clerk, a Waiver of Remonstrance that shall state that if the owner or successors of the sensitive use (the applicant owned dwelling located within the designated impact area) object to the allowed mineral and aggregate activities on the adjacent MA Extraction Area, the owner or successors of the sensitive use shall indemnify the County and the resource owner and operator against all lost cost and expense including attorney's fees arising our of any remonstrance proceeding. The Waiver of Remonstrance shall run with the land, until such time as the operation ends and the site has been reclaimed in accordance with the approved reclamation plan. It shall be the requirement of the mineral and aggregate operator to release any restriction, easements or waivers of remonstrance and indemnity.

B. The operator shall comply with the applicable review procedure and management plan requirements outlined in PCZO 182.040 prior to construction of the proposed project. The operator shall conform to the significant resource protection strategy outlined in the Significant Resource Management Plan submitted in this application. The applicant shall consult with the Oregon Division of State Lands (DSL) and obtain all applicable permits from DSL prior to filling or excavating any designated wetland. The applicant shall submit a copy of all DSL permits to the Planning Division.

C. The operator shall provide vegetative screening on the west and south sides of the extraction area. Where landscaping is used for required screening, it shall be at least 6 ft in height and at least 80 percent opaque, as seen from a perpendicular line of sight, within 18 months following establishment of mineral and aggregate

operation. A minimum of one medium canopy tree every 60-feet shall be established in conjunction with the screening. The trees may be grouped in clusters if the total number of grouped trees is equal to one tree every 60-feet of screening. The operator shall maintain the landscaping during the term of the use including the existing vegetation along Hayden Slough that help screen the extraction and processing areas from Highway 51and houses west of the subject property. **Operator, on a weekly basis during the normal growing season, shall use weed control methods to control all weeds on the Oregon Noxious Weed List, and difficult to control perennial weeds such as blackberry, morning glory and Canadian thistle, and also any volunteer tree sprouts within the 60 foot buffer strip adjacent to the Madjic Farms (Calef) property Map T8S R4W Section 10 Tax Lot 100.**

D. Prior to construction of the proposed fuel storage facility, the operator shall obtain a flammable liquid storage permit from the Oregon Fire Marshal's office. A copy of this permit shall be provided to the Planning Division. However, gasoline shall not be stored at the site.

E. The operator shall prepare a spill prevention, containment and counter measure plan for the site that will specifically address the materials used on the site, including all lubricants, oils, fuels, and chemicals. The plan shall address prevention of spills and spill response to minimize impact to the pit and groundwater, including a plan for the notification of Rickreall Water Association. The applicant shall provide a copy of the spill prevention and response plan to the Polk County Planning Division to be included in the file.

F. The operator shall install monitoring wells near the operations area of the extraction area and between the operations area and the Rickreall Water Association wells. The operator shall monitor the wells for hydrocarbon, turbidity, conductivity, and pH.

G. The operator shall use double walled above ground fuel storage tanks or construct catchment basins around the fuel storage areas to contain any possible fuel leakage. Such basins shall be constructed as a holding area to contain any leakage or spilled materials on-site prior to removal.

H. Prior to construction of the fuel storage facility, the operator shall obtain all necessary, building, electrical, and plumbing permits from the Polk County Building Division. Construction of the fuel storage facility and use of flammable or combustible liquids shall be in accordance with the Uniform Fire Code (Article 80); and the 1996 National Electrical Code (Article 500-505).

I. The access road serving the quarry site shall be paved or graveled. Where graveled, the access road shall be graded and maintained as needed to minimize dust. All portions of the access road within 200 feet of Highway 51, and within 300 feet of a neighboring property, shall be paved. The operator shall post a 15-mph speed limit for all onsite traffic. The operator shall periodically remove

soil tracked onto the paved surfaces of the private road by flushing with water or other means permitted by DEQ, especially at the intersection with Highway 51.

J. The operator shall obtain a highway approach permit from ODOT and design and construct, at their own expense, deceleration, acceleration, and left turn lanes on Highway 51. Design and construction of these improvements shall be coordinated and approved by ODOT and the Polk County Public Works Department.

K. The operator shall position the concrete trucks inside a partial enclosure or use a localized hood and filter system (i.e., baghouse) to capture emissions during truck loading operations. All process operations (crushing/screening, hot mix asphalt plant, and concrete batch plat) shall be located at least 100 feet from property lines.

L. The operator shall construct a vehicular barrier or gate on the proposed access road.

M. The operator shall operate the mining operation by wet methods and not by de-watering.

N. The operator shall obtain an amended Operating Permit from DOGAMI to conduct mining-related activities in the proposed extraction area. A copy of the amended permit shall be provided to the Planning Division.

O. The operator shall provide the Planning Division with appropriate evidence of compliance with DOGAMI bonding and security requirements as required by ORS 517.810 on an annual basis.

P. The applicant shall provide the Planning Division with evidence the extraction operations are insured as stipulated under PCZO 174.060 (F)(2). The applicants shall also provide annual evidence of insurance renewal.

Q. Mineral and aggregate extraction, processing and other operations shall conform to the applicable environmental standards of Polk County and the State of Oregon. Prior to establishment of any crusher, asphalt or concrete batch plant, or other machinery at the quarry site which requires DEQ permits, the applicant shall submit copies of approved DEQ permits to the Planning Division.

R. Prior to any structural or non-structural development within the identified 100-year floodplain of the Willamette River, the applicant shall obtain a Floodplain Development Permit from the Polk County Planning Division and comply with the construction standards of PCZO Chapter 178 (Floodplain Overlay Zone).

S. The operator shall obtain all necessary building, electrical, and plumbing permits from the Building Division prior to construction or placement of any structures within the proposed extraction area.

T. Any on-site sewage disposal system requires a septic site evaluation and permit from the Environmental Health Division.

U. The operator shall remove all equipment and vehicles upon final closure of the quarry operations, except for structures that may be utilized in on-going farm management operations.

V. Hours of operation shall be within those specified in the ESEE Analysis as follows:

Activity	Hours
Blasting	9 a.m. to 5 p.m., Mon. - Fri.
Drilling	9 a.m. to 5 p.m., Mon. - Fri.
Crushing	5:30 a.m. to 10 p.m., Mon. - Sat.
Stockpiling/Delivery	5:30 a.m. to 10 p.m., Mon. - Sat.
Maintenance Operations	5:30 a.m. to 10 p.m., Mon. - Sat.

Any extension of operating hours beyond those specified in the ESEE Analysis requires review and approval by Polk County, or a waiver in the case of an emergency as determined by the County governing body.

W. Nothing in the ESEE Analysis authorizes uses that are inconsistent with Federal or State rules for the protection of threatened or endangered species. The applicant is responsible for all activity conducted in conjunction with this project and shall ensure that all activity is consistent with provisions for protection of species protected under the Federal Endangered Species Act.

X. The operator shall not use any chlorinated solvents on the site.

~~Y. In order to avoid adding new traffic to the westbound left-turn movement at the Hwy 22/Hwy 51 intersections, the ingress route used by the operator and its employees to the site from westbound Hwy 22 shall be modified during the weekday p.m. peak period (4-6 p.m.). All of the operator's trucks and/or employees vehicles driving to the site on westbound Hwy 22 after 4 p.m. shall use Hwy 99W/Clow Corner Road and Rogers Road to gain access to Hwy 51 until an interchange is constructed at the Highway 51 / 22 intersection.~~

Z. The operator shall not use Poplar Lane for an access route or from the site, but the operator may use Poplar Lane for serving local deliveries along Poplar Lane.

AA. The operator's aggregate haul trucks shall not use Halls Ferry Road as ingress or egress from HWY 51, except for emergency purposes.

BB. The operator shall use Halls Ferry Road for the delivery of petroleum products to this site.

CC. The operator shall comply with all air quality, noise, water and dust deposition standards established by the Oregon Department of Environmental Quality (DEQ).

DD. There shall be a 100-foot wide riparian setback area around Hyden Lake, and there shall be no excavation, processing, or vegetation removal within this designated riparian management area until a

Significant Resource Management Plan has been completed and approved by Polk County pursuant to PCZO Chapter 182.

EE. The site screening on the two sides (western) adjacent to the Madjic Farms, Inc./Calef property shall consist of plants that do not exceed 10-feet in height at maturity.

FF. The operator shall utilize "smart" backup beepers on all trucks and equipment used on site to the extent allowed by law and the Mine Safety and Health Administration (MSHA).

GG. The operator shall shield and/or direct all lights in the extraction and processing area in order to minimize the glare on adjacent properties. Any lights not needed for safety and security reasons shall be turned off by the operator after operating hours.

HH. All water required for the mineral and aggregate operation, including dust control, landscaping and processing of material, shall be legally available and appropriated for such use. The operator shall provide written documentation of water rights from the State Department of Water Resources (ODWR) and/or local water district prior to any site operation.

II. The operator shall install three monitoring wells. Two monitoring wells shall be located in a presumed downgraded position relative to the aggregate site between the operations area and the Rickreall Water Association wells. The third well is to be located in a presumed upgraded position on the south side of the aggregate extraction area. The monitoring wells shall be sampled on a semi-annual or annual basis using the following schedule:

Semi-Annual Monitoring Parameters:

(1) Depth of water;

(2) Total dissolved solids;

(3) pH;

(4) Temperature;

(5) Dissolved oxygen;

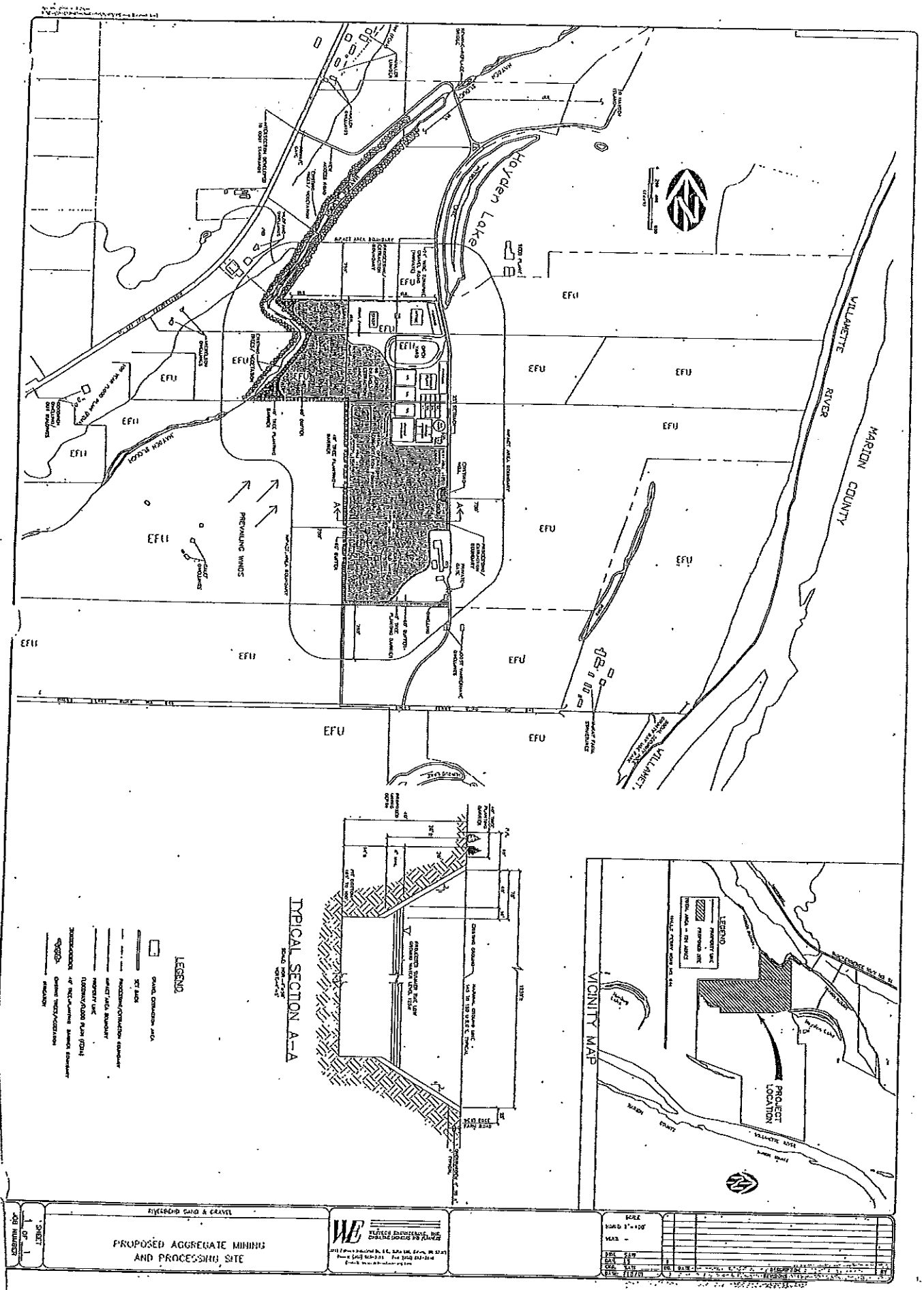
(6) Turbidity; and

(7) Conductivity.

The operator shall monitor annually for volatile organic compounds by the Environmental Protection Agency (EPA) method 8260B.

JJ. **The approval granted herein does not include authorization for the placement of an asphalt plant (HMAC) on the subject property.**

Exhibit B


Hayden Lake
WILLAMETTE RIVER
MARION COUNTY
EFU
PREVAILING WINDS
TYPICAL SECTION A-A
VICINITY MAP
PROJECT LOCATION
LEGEND
PROPOSED AGGREGATE MINING AND PROCESSING SITE