



Oregon

Theodore R. Kubongski, Governor

Department of Land Conservation and Development

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NOTICE OF ADOPTED AMENDMENT

1/19/2010

TO: Subscribers to Notice of Adopted Plan
or Land Use Regulation Amendments

FROM: Plan Amendment Program Specialist

SUBJECT: Marion County Plan Amendment
DLCD File Number 002-09

The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. Due to the size of amended material submitted, a complete copy has not been attached. A Copy of the adopted plan amendment is available for review at the DLCD office in Salem and the local government office.

Appeal Procedures*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: Thursday, January 28, 2010

This amendment was submitted to DLCD for review prior to adoption pursuant to ORS 197.830(2)(b) only persons who participated in the local government proceedings leading to adoption of the amendment are eligible to appeal this decision to the Land Use Board of Appeals (LUBA).

If you wish to appeal, you must file a notice of intent to appeal with the Land Use Board of Appeals (LUBA) no later than 21 days from the date the decision was mailed to you by the local government. If you have questions, check with the local government to determine the appeal deadline. Copies of the 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). Please call LUBA at 503-373-1265, if you have questions about appeal procedures.

***NOTE:** THE APPEAL DEADLINE IS BASED UPON THE DATE THE DECISION WAS MAILED BY LOCAL GOVERNMENT. A DECISION MAY HAVE BEEN MAILED TO YOU ON A DIFFERENT DATE THAT IT WAS MAILED TO DLCD. AS A RESULT, YOUR APPEAL DEADLINE MAY BE EARLIER THAN THE ABOVE DATE SPECIFIED.

Cc: Dave Epling, Marion County
Jon Jinings, DLCD Community Services Specialist
Amanda Punton, DLCD Regional Representative
Gary Fish, DLCD Regional Representative

<paa> YA



FORM 2

DLCD

Notice of Adoption

This Form 2 must be mailed to DLCD within **5-Working Days after the Final Ordinance is signed** by the public Official Designated by the jurisdiction and all other requirements of ORS 197.615 and OAR 660-018-000

In person electronic mailed

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LAND CONSERVATION
AND DEVELOPMENT

For Office Use Only

Jurisdiction: **MARION COUNTY**

Local file number: **ZC/CP/CU09-003**

Date of Adoption: **01/06/2010**

Date Mailed: **01/06/2010**

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? Yes No Date: 3/20/09

Comprehensive Plan Text Amendment

Comprehensive Plan Map Amendment

Land Use Regulation Amendment

Zoning Map Amendment

New Land Use Regulation

Other:

Summarize the adopted amendment. Do not use technical terms. Do not write "See Attached".

Post acknowledgement Comprehensive plan text amendment to expand an existing aggregate extraction site and add a mineral and aggregate site to operate the extraction site within the 100 year floodplain the significant sites inventory of the Marion County Comprehensive Plan and a floodplain development permit for property within the floodplain of the Willamette River.

Does the Adoption differ from proposal? Please select one

no

Plan Map Changed from:

to:

Zone Map Changed from:

to:

Location:

Acres Involved: **690.34**

Specify Density: Previous:

New:

Applicable statewide planning goals:

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19

Was an Exception Adopted? YES NO

Did DLCD receive a Notice of Proposed Amendment...

45-days prior to first evidentiary hearing?

Yes No

If no, do the statewide planning goals apply?

Yes No

If no, did Emergency Circumstances require immediate adoption?

Yes No

DLCD File No. 002-09 (17439) [15937]

DLCD file No. _____

Please list all affected State or Federal Agencies, Local Governments or Special Districts:

Local Contact: **DAVID EPLING**

Phone: (503) 588-5038 Extension:

Address: **PO BOX 14500**

Fax Number: - -

City: **SALEM**

Zip: **97308-**

E-mail Address:

ADOPTION SUBMITTAL REQUIREMENTS

This Form 2 must be received by DLCD no later than 5 days after the ordinance has been signed by the public official designated by the jurisdiction to sign the approved ordinance(s)
per ORS [197.615](#) and OAR Chapter 660, Division 18

1. This Form 2 must be submitted by local jurisdictions only (not by applicant).
2. When submitting, please print this Form 2 on light green paper if available.
3. Send this Form 2 and One (1) Complete Paper Copy and One (1) Electronic Digital CD (documents and maps) of the Adopted Amendment to the address in number 6:
4. **Electronic Submittals: Form 2 – Notice of Adoption will not be accepted via email or any electronic or digital format at this time.**
5. The Adopted Materials must include the final decision signed by the official designated by the jurisdiction. The Final Decision must include approved signed ordinance(s), finding(s), exhibit(s), and any map(s).
6. **DLCD Notice of Adoption must be submitted in One (1) Complete Paper Copy and One (1) Electronic Digital CD via United States Postal Service, Common Carrier or Hand Carried to the DLCD Salem Office and stamped with the incoming date stamp.** (for submittal instructions, also see # 5)] MAIL the PAPER COPY and CD of the Adopted Amendment to:

**ATTENTION: PLAN AMENDMENT SPECIALIST
DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
635 CAPITOL STREET NE, SUITE 150
SALEM, OREGON 97301-2540**

7. Submittal of this Notice of Adoption must include the signed ordinance(s), finding(s), exhibit(s) and any other supplementary information (see [ORS 197.615](#)).
8. Deadline to appeals to LUBA is calculated **twenty-one (21) days** from the receipt (postmark date) of adoption (see [ORS 197.830 to 197.845](#)).
9. In addition to sending the Form 2 - Notice of Adoption to DLCD, please notify persons who participated in the local hearing and requested notice of the final decision at the same time the adoption packet is mailed to DLCD (see [ORS 197.615](#)).
10. **Need More Copies?** You can now access these forms online at <http://www.lcd.state.or.us/>. You may also call the DLCD Office at (503) 373-0050; or Fax your request to: (503) 378-5518.

**BEFORE THE BOARD OF COMMISSIONERS
FOR MARION COUNTY**

In the Matter of the)	Case No. CP/FP 09-3
Application of:)	Clerk's File No. 5627
WINDSOR ROCK PRODUCTS)	Comprehensive Plan Amendment/ Floodplain Development Permit

AN ADMINISTRATIVE ORDINANCE

ORDINANCE NO. 1298

THE MARION BOARD OF COMMISSIONERS HEREBY ORDAINS AS FOLLOWS:

Section I. Statement of Purpose:

This matter comes before the Marion County Board of Commissioners, on the application of Windsor Rock Products ("applicant"). This application is for a comprehensive plan text amendment to add a mineral and aggregate site to the "significant sites" inventory of the Marion County Comprehensive Plan and a Floodplain development permit for property within the floodplain of the Willamette River. The subject property consists of 690.34 acres located in an EFU (Exclusive Farm Use) zone property which is addressed at 8425 Windsor Island Road, Keizer, T6S; R3W; Section 21; tax lots 200, 300 and T6S; R3W; Section 22; tax lot 3.

Section II. Procedural History:

The Marion County Hearings Officer held a duly noticed public hearing on this application on May 13, 2009, at which hearing the applicant requested a continuance in order to allow an opportunity to submit additional information. The Hearings Officer continued the hearing to May 20, 2009 to receive additional testimony and until June 3, 2009 for the applicant's rebuttal. No objections were raised as to notice, jurisdiction, conflicts, or to evidence or testimony presented. On September 18, 2009, the hearings officer referred this application to the Board of Commissioners with a recommendation for approval of the application.

The Board held a duly noticed public hearing on the subject application on November 4, 2009. Official notice was taken of the Planning Division file and the Hearings Officer's recommendation. The Board has reviewed all the evidence in the record, all arguments of the parties and is otherwise fully advised in the premises. This Ordinance represents the final decision of the Marion County Board of Commissioners, including finding of facts, conclusion of law and conditions of approval.

Section III. Adoption of Findings and Conclusions:

After careful consideration of all facts and evidence in the record, the Board adopts as its own the Findings of Fact and Additional Findings of Fact and Conclusions of Law in Exhibit A, attached hereto, and by this reference incorporated herein.

Section IV. Action of Approval With Conditions:

Based upon the substantial evidence in the record, the findings and conclusions contained in Exhibit A, the Marion County Board of Commissioners does hereby **APPROVE** the application for a comprehensive plan amendment, identifying and listing the subject property on the Marion County inventory of significant aggregate sites, and approving the operating plan proposed by the applicant. This approval carries with it certain conditions, which are deemed to be necessary for the public health, safety and welfare. The Marion County Board of Commissioners adopts the conditions of approval attached hereto as Exhibit B, incorporated herein by this reference.

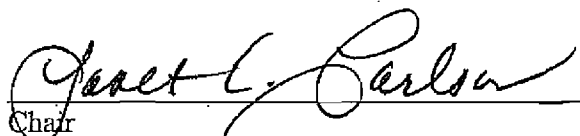
The requested Floodplain Development permit to allow aggregate extraction is hereby **GRANTED**, subject the conditions identified in Exhibit B, attached hereto and by this reference incorporated herein.


Section V. Effective Date:

Pursuant to Ordinance 669, this is an administrative ordinance and shall take effect 21 days after the adoption and final signature of the chair of the Marion County Board of Commissioners.

SIGNED and FINALIZED this 6th day of January 2010, at Salem, Marion County, Oregon.

MARION COUNTY BOARD OF COMMISSIONERS


Chair


Recording Secretary

***** JUDICIAL NOTICE *****

Oregon Revised Statutes, Chapter 197.830, provides that land use decisions may be reviewed by the Land Use Board of Appeals by filing a notice of intent to appeal within 21 days from the date this decision becomes final.

EXHIBIT A

The Marion County Board of Commissioners, after careful consideration of all the testimony and evidence in the record makes the following findings of fact and conclusions of law if Comprehensive Plan Amendment/Floodplain Development case # 09-03/Windsor Rock Products Inc.:

Findings of Fact

1. The subject property includes approximately 690.34 acres consisting of three tax lots. The property is designated Primary Agriculture in the Marion County Comprehensive Plan (MCCP) and is zoned EFU (Exclusive Farm Use). The property is also located in the identified 100-year floodplain of the Willamette River with a portion of the site situated within the Willamette River Greenway.
2. The subject property is located on the east and west side of Windsor Island Road, Keizer, Marion County, approximately 1.0 mile south of Simon Street. The parcel that contains the proposed extraction area is identified as T6S; R3W; S22; tax lot 300. This parcel currently is in farm use.
3. Adjacent to the expansion site, applicant currently operates an existing and permitted aggregate mining site (including processing operations) and also maintains aggregate operation on parcels under a lease agreement that include T6S; R3W; Section 16; tax lot 500 and T6S; R3W; Section 21; tax lot 350, owned by the State of Oregon. The applicant previously received Marion County approval for Comprehensive Plan Amendment/Floodplain/Greenway Permit Case No. 99-9 to expand the existing operation onto parcels to the north and added that site to the Marion County Comprehensive Plan list of significant aggregate sites under Statewide Planning Goal 5. Windsor Rock is operating the existing site under DOGAMI (Department of Geology and Mineral Industries) Permit Number 24-0083.
4. The parcels involved with this expansion request include the proposed extraction site on the east side of Windsor Island Road and two parcels on the west side of Windsor Island Road that provide access to the processing facility located near the river. The applicant is not proposing any processing in the expansion area and all processing activities will remain at the applicant's existing and permitted location. Therefore, the expansion proposal is for extraction only and affects 247 acres of the 651.78 total acreage of the tax parcels. Extraction is planned on 217 acres of the 247 acre area with the remaining acreage used for buffer areas and an access roadway. The expansion site is not currently listed on the Marion County Comprehensive Plan Mineral and Aggregate Inventory.
5. Farming operations surround the subject site, some of which contain dwellings. An existing aggregate site known as the Nisley Pit is located to the southwest and the Keizer city limits is situated approximately 1200 feet to the east. Surrounding properties are within the EFU (Exclusive Farm Use) zone except for the property to the east within the Keizer city limits. Clear Lake and Claggett Creek border the expansion parcel to the north, south, and east. An extensive riparian area generally follows the property boundary and dissects the northeast corner of the parcel.

6. We find that soil types on the property include Soil Conservation Service Soil Classifications II through VII. There is a significant amount of Class II soil on the expansion site, including Cloquato (Cm) and Newberg (Nu, Nw) and very small amount of McBee (Mb) soils. The hearings officer found that approximately 78.6% of soil on the subject site is comprised of Class II soil. Certified Engineering Geologists found that approximately 90% of the soils in the 217-acre extraction area are Class II soils. We find and conclude, whether determined from the entire acreage of the tax parcels comprising the expansion site (this was the hearings officer's methodology) or from the extraction site alone (this was the Certified Engineering Geologists' methodology), that more than 35% of the soils within the expansion site consist of Class II soils. Accordingly, as part of our decision, we must determine if the average thickness of the aggregate layer within the mining area exceeds 60 feet set forth in OAR 660-023-0180(3)(d)(B)(i) (see Relevant Findings below).
7. The request includes a Comprehensive Plan Amendment to add the extraction site to the list of significant mineral and aggregate sites by applying for a post acknowledgment plan amendment (PAPA) under provisions of Goal 5 and to allow mining of the property. The request includes only product extraction and removal in the expansion area and does not propose an expansion of the processing facility. The applicant also requests floodplain and greenway permit approval to carry out mining-related activities within the floodplain and greenway of the Willamette River.
8. The Marion County Planning Division requested comments on the subject application from a number of governmental agencies and area advisory committee member. The following entities responded:

Marion County Department of Public Works (DPW) reviewed the proposal and indicated a number of suggested conditions to address impacts created by approval of the proposed CP/FP/GW.

Marion County Fire District #1 responded by telephone that the District is satisfied that the proposal will be in compliance with the fire apparatus access roads on private property and address standards.

Marion County Tax Office provided tax information concerning the parcels.

City of Keizer commented that it was in agreement with recommendations from DPW.

Oregon Department of Fish and Wildlife (ODFW) indicated that the extraction design is adequate to address fish and wildlife issues and will continue to work with the applicant.

All other contacted agencies either failed to submit comments or stated they were not affected by the proposal.

Additional Findings of Fact and Conclusions of Law

1. Applicant has the burden of proving all applicable standards and criteria are met. We find and conclude that the applicant has met all applicable standards as set forth in our analysis in this Findings documents ("Exhibit A").

COMPREHENSIVE PLAN AMENDMENT

2. All Comprehensive Plan amendments are subject to review by the State Department of Land Conservation and Development (DLCD). The DLCD was notified as required by State law, but no response was received.
3. Comprehensive plan amendments must be in compliance with applicable Statewide Planning Goals. Goal 5 (Natural Resources, Scenic and Historic Areas and Open Spaces) sets the framework for land use decisions on natural resources, including mineral and aggregate resources. The purpose of Goal 5 is to conserve open space and protect natural and scenic resources. In Marion County, Goal 5 is implemented through Oregon Administrative Rule (OAR) 660-023, with MCZO 120.400 providing additional standards under which the mineral and aggregate site will be operated.
4. OAR 660-023 allows comprehensive plan amendments for the protection of significant mineral and aggregate sites via the post-acknowledgment plan amendment process. Under OAR 660-023, the county is first generally required to inventory significant Goal 5 resources and ultimately must determine whether mining will be allowed. As part of the process, the county must determine whether conflicts with other uses can be minimized. If conflicts cannot be minimized, the county must analyze the positive and negative economic, social, environmental, and energy (ESEE) consequences that could result from a decision to allow, limit or prohibit conflicting uses. The county must adopt comprehensive plan provisions and land use regulations to implement its decision regarding the site, based on its determinations regarding the Goal 5 criteria.

Inventory Process

5. According to OAR 660-023-030(1), inventories provide the information necessary to locate and evaluate resources and develop programs to protect such resources. Mineral and aggregate are Goal 5 resources. The general Goal 5 inventory process is divided into four steps:
 - (a) Collect information about Goal 5 resource sites;
 - (b) Determine the adequacy of the information;
 - (c) Determine the significance of the resource sites; and
 - (d) Adopt a list of resource sites.
6.
 - (a) When reviewing a site as a PAPA, OAR 660-023-0030(1) and (2) do not require a local government to collect information, but the local government may rely on information submitted by the applicant and other participants in the local process. The applicant has provided substantial information regarding this site as part of the application materials. Additional information was submitted by other participants. OAR 660-023-0180 provides specific guidelines for making a determination regarding the adequacy of the information and the significance of the resource sites.
 - (b) Under OAR 660-023-0030(3), if the information is determined to be inadequate, the local government shall not proceed with the Goal 5 process. The information concerning a resource site shall be adequate if it provides the location, quantity and quality (LQQ) of the

resource, including a map or description of the site, the value of the resource site relative to other known examples of the same resource, and an estimate of the relative abundance of the resource. As discussed below, we find and conclude that the information about the Windsor Rock Products expansion site is adequate.

The gross area of the proposed site consists of 690.43 acres and is made up of tax lots 63W210200, 63W210300, and 63W220300 near Keizer in Marion County, Oregon. Maps of the proposed site are included in the record. The applicant has applied for approval on approximately 247 acres with a total of 217 acres designated for excavation. Detailed location maps and schematics are found in the record. This is an expansion of an existing aggregate site. We find that the location of the site is clearly identified in the application. Quantity and quality are discussed below under OAR 660-023-0180.

(c) The significance of the resource is determined under OAR 660-023-0030(4), as modified by OAR 660-023-0180. The determination is based on the LQQ information, the supplemental or superseding significance criteria in OAR 660-023-0180, and any additional criteria adopted by the local government that are not in conflict with OAR 660-023-0180. Marion County does not have alternative significance criteria and specifically adopts OAR 66-023-0180. (See MC20 120.420 and 120.450.) Significance is more specifically addressed below under OAR 660-023-00180.

(d) Under OAR 660-023-0030(5), when the County determines that a resource site is significant, the site is included on a list of significant Goal 5 resources adopted as part of the comprehensive plan or land use regulation. The entire Goal 5 process is then completed for the site. The significance listing is more specifically addressed below under OAR 660-023-0180.

7. OAR 660-023-0180 requirements modify, supplement, or supersede certain requirements of the standard Goal 5 process in OAR 660-023-0030 through 0050. (See OAR 660-020-0180(2)(a)).
8. Under OAR 660-023-0180(2)(a), when the County is following the inventory process for a mineral or aggregate resource site under a PAPA, it shall follow the applicable requirements of OAR 660-023-0030, except where those requirements are expanded or superceded for aggregate resources as provided in subsections (b) through (d) of OAR 660-023-0180(2) and sections (3), (4) and (8) of OAR 660-023-0180.
9. Under OAR 660-023-0180(2)(b), the County shall apply the criteria in section 0180(3) or (4) of the rule, whichever is applicable, rather than OAR 660-023-0030(4), in determining whether an aggregate resource site is *significant*. Under OAR 660-023-0180(2)(c), the County shall follow the requirements of section (5) or (6) of the rule, whichever is applicable, in deciding whether to *authorize* the mining of a significant aggregate resource site, and OAR 660-023-0040 through 660-023-0050 in deciding whether to authorize mining of a significant mineral resource. Under OAR 660-023-0180(2)(d), for significant mineral and aggregate sites where mining is allowed, except for aggregate sites that have been determined to be significant under section (4) of this rule, local governments shall decide on a program to protect the site from new off-site conflicting uses by following the standard ESEE process in OAR 660-023-0040 and 660-023-0050 with regard to such uses.

OAR 660-023-0180(3) applies to resource sites with an estimated amount of material greater than 2,000,000 tons in the Willamette Valley. Applicant estimates, and we find, that more than 2,000,000 tons of material located are at this site. Since section (3) applies to this site, (5) also applies. Sections (4) and (6) apply to resource sites with an estimated amount of material of 2,000,000 tons or less in the Willamette Valley. Sections (4) and (6) do not apply and are not examined here.

10. Under OAR 660-023-0180(3), an aggregate resource site shall be considered significant if adequate information regarding the quantity, quality, and location (LQQ) of the resource demonstrates that the site meets any one of the criteria in (a) through (c), except as provided in subsection (d):

- (a) A representative set of samples of aggregate material in the deposit on the site meets ODOT specifications for base rock for air degradation, abrasion, and sodium sulfate soundness, and the estimated amount of material is more than 2,000,000 tons in the Willamette Valley, or 100,000 tons outside the Willamette Valley.
- (b) The material meets local government standards establishing a lower threshold for significance than subsection (a) above; or
- (c) The aggregate site is on an inventory of significant aggregate sites in an acknowledged plan on the applicable date of this rule.
- (d) Notwithstanding subsections (a) through (c) above, except for an expansion area of an existing site if the operator of the existing site on March 1, 1996 had an enforceable property interest in the expansion area on that date, an aggregate site is not significant if the criteria in either paragraphs (A) or (B) of this subsection apply:
 - (A) More than 35 percent of the proposed mining area consists of soil classified as Class I on Natural Resource and Conservation Service (NRCS) maps on the date of this rule; or
 - (B) More than 35 percent of the proposed mining area consists of soil classified as Class II, or of a combination of Class II and Class I or Unique soil on NRCS maps available on the date of this rule, unless the average width of the aggregate layer within the mining area exceeds:
 - (i) 60 feet in Washington, Multnomah, Marion, Columbia, and Lane counties;
 - (ii) 25 feet in Polk, Yamhill, and Clackamas counties;
 - (iii) 17 feet in Linn and Benton counties.

11. The applicant's site is located near Keizer, Marion County, Oregon. OAR 660-023-0180(1)(m) defines the Willamette Valley as including Marion County. The site is in the Willamette Valley and therefore it must have two million ton as a threshold matter to proceed with OAR 660-023-0180(3). Documents and test results provided by Certified Engineering

Geologists indicate the volume of material available from this site is estimated at 34,500,000 tons of aggregate present in the mining area. As indicated in this finding document, we find and conclude that this evidence related to resource quantity is credible and persuasive.

As part of the geologic investigation of the site, geologic mapping, review of water well logs in the general area, review of the approved Windsor Island site to the west (determined in 1999 to be a significant site by the County) and significant exploratory drilling were undertaken at the site.

To estimate the quantity of aggregate at the site, the Certified Engineering Geologists identified and contoured the top and bottom elevations of the aggregate deposit. The top elevations of the aggregate deposit (aggregate resource located below the topsoil and overburden) were identified using the sonic core borings and were mapped at two-foot contour intervals. The bottom elevations of the aggregate deposit were identified using sonic core borings, as well as the water well logs, and were mapped at two-foot contour intervals. We find this methodology is valid and provides credible evidence for our decision.

We find that the bottom elevations of the mineral and aggregate resource, for the purposes of volume calculations, were voluntarily constrained by Certified Engineering Geologists to the depth of the proposed operational mining floor at the aggregate site. We find, as shown on the Certified Engineering Geologist's Field Exploration Logs, the surface level of the site varies between approximately 115 feet mean sea level (MSL) to approximately 127 feet MSL. We find that the excavation depth proposed by the applicant based on the availability of the sand and gravel resource varies from approximately 66 feet to 85 feet along the western and central portions of the extraction area (see borings B-1 through B-5.) On the eastern side of the extraction area, the resources are present from approximately 71 to 100 feet MSL (see Boring B-6 through B-8). We further find that aggregate resources are present on the site below some of the bottom elevations selected, and, as a result, the geologist's quantity calculations are a conservative estimate of the quantity of aggregate present on the site. We further find that opponent, Mark Reed, on direct questioning from the Board, agreed the site had more than the 2 million tons required under the Goal 5 rule. Accordingly, we find and conclude that sufficient quantity (greater than 2 million tons) is available on the site as required under the Goal 5 rule.

OAR 660-023-0180(3)(a) requires that the aggregate resource must meet certain Oregon Department of Transportation (ODOT) quality standards for base rock. We find that aggregate from this site was tested at ACS Testing Inc. for the required three quality standards. The aggregate was tested in the laboratory for its ability to withstand abrasion and degradation. The abrasion test indicates how aggregate will withstand grinding actions. The air degradation test measures the quantity and quality of the material produced by attrition. Another test, the sodium sulfate soundness test, measures the quantity of material produced by repeated immersion in a corrosive solution of sodium sulfate.

We find that the abrasion and degradation tests confirm that the quality of the entire resource consistently meets and exceeds the required ODOT specifications for base rock. We further find that the sodium sulfate soundness test values for paving rock (a more stringent specification) are met and exceeded by nearly all the mineral and aggregate resource samples from the site. Certified Engineering Geologists provided detailed geologic analysis, which we find persuasive, as part of the application materials.

We find that ODOT's durability specifications require that an abrasion standard base (35% maximum loss, American Association of State Highway and Transportation Officials [AASHTO] method T-96) and a degradation standard (30% maximum loss and 3 inch sediment height, ODOT method TM-208) must be met. We find, however, that ODOT does not have a sodium soundness specification for base rock. Although the sodium soundness test does not apply to base rock, sodium soundness testing was conducted using a more stringent standard designed for paving rock (as opposed to base rock).

Witness Mark Reed testified in opposition. Under direct questioning from the Board of Commissioners, Mr. Reed conceded that the site had more than the required 2 million tons and therefore meets the quantity requirements of Goal 5. However, Mr. Reed challenged the quality conclusions of the Certified Engineering Geologists, claiming that there is not adequate information to make a decision, that the Certified Engineering Geologists had failed to select a representative set of samples, that the Certified Engineering Geologists failed to test the full vertical extent of the cores (and thereby missed a large percentage of the material to be tested), and that the Certified Engineering Geologists must not be allowed to use professional observation or geologic assessment in determining a representative set of samples under the Goal 5 rule. We have carefully examined this testimony, as well as the rebuttal testimony, the testimony of the Certified Engineering Geologists, material from Professor Scott Burns of Portland State University (also a Certified Engineering Geologist) and the summaries of conversations with an expert on the Army Corps of Engineers (ACE) testing methodology and an expert on the American Society of Testing Materials (ASTM) methodology that Mr. Reed attempts to apply in this PAPA. Before the hearings officer, Mr. Reed claimed that it was "well established" that under the Corps of Engineers standard and ASTM standard (designation D75-03) all material in vertically continuous sequence (i.e. from the drilling cores obtained by the Certified Engineering Geologist) must be sampled in order for there to be a representative set of samples. As an initial matter, we find Mr. Reed's testimony before the hearings officer relied on an outdated ASTM standard (designation D75-97 rather than D75-03). This does not bolster confidence in Mr. Reed's testimony nor confidence in the accuracy of that testimony. Our plain reading of the ACE and ASTM standards clearly shows that they do not require 100% testing of core samples for a sand and gravel deposit. We are particularly persuaded by the summary of conversations with Jim Hinds from the Army Corps of Engineer (the ACE RCC concrete expert). Mr. Hinds pointed out that the ACE standards for quarry rock deposits advocated by Mr. Reed are inapplicable because quarry rock deposits are different from alluvial sand and gravel deposits at issue in this application. We find that Mr. Hinds' comments demonstrate that Mr. Reed is attempting to mix apples and oranges and we find Mr. Hinds to be correct in this regard. Equally persuasive are the summary comments from Mr. Glenn Waite, the ASTM D-04 Committee Vice-Chair and D75 Task Group Chair. Mr. Waite is the individual to whom ASTM has entrusted specific responsibility for maintaining the D75 standard which Mr. Reed claims is applicable. We agree with Mr. Waite's statement that all appendices, including the X2 appendix, contrary to Mr. Reed's assertions, are non-mandatory and therefore do not provide a basis for disputing the representative set of samples tested by the Certified Engineering Geologists. We are also persuaded by the testimony of Professor Burns, a geology professor at Portland State University and a Certified Engineering Geologist. Professor Burns states that the approach used by the Certified Engineering Geologists determined a representative set of samples at this particular site meets the standard practice

in the field of aggregate mining. We find that Mr. Reed's arguments about the application of ACE and ASTM standards are intentionally misleading and flat wrong.

Mr. Reed further argues that Certified Engineering Geologists should not be allowed to use professional observation or geologic assessment to select a representative set of samples. We find, as pointed out by Professor Burns and confirmed by Mr. Waite, that use of professional judgment by Certified Engineering Geologists or other registered professionals is essential to provide the necessary judgment and expertise to select a representative set of samples. We find Mr. Reed's testimony is not credible or persuasive. We find that Mr. Reed used outdated standards, misquoted or misled with regard to standards and that his arguments do not withstand a straightforward reading of the standards, particularly given the clear explanations provided by experts who apply the standards on a regular basis.

Before the Board of Commissioners, Mr. Reed, joined by his spouse, Karen Reed, changed his argument slightly. We find that Mr. Reed concedes that his prior argument (about testing the entire drill core) is incorrect when he shifted his comments before the Board of Commissioners to argue that the entire face of a gravel pit must be sampled (as opposed to the entire drill core). We find this argument is obviously incorrect because this is an unexcavated site and that there is no open face to sample. Mr. Reed's next argument before the Board is that Certified Engineering Geologist "completely neglected" to consider 30% of the gravel thickness in the deposit on the site (at one point in his testimony, Mr. Reed claims 35% of the gravel thickness was not tested). We have reviewed the initial geology report of the Certified Engineering Geologists and subsequent materials. The Certified Engineering Geologists' reports show that samples were tested from each of the eight boring holes (from B1 through B8) and that all vertical horizons of the aggregate deposit on the expansion site were sampled and tested. There are three samples between 10 and 17 feet on the site. Three additional samples between 16 and 28 feet. There are three additional samples between 33 and 49 feet and three additional samples between 58 feet and 67 feet. Finally, there are four samples at the bottom of the deposit between 69 and 90 feet below ground surface. It is clear that the samples were selected to cover the entire vertical strata of the deposit and that no portion of the gravel resource on the site went untested. Mr. Reed's claim to the contrary is simply false.

We find the testimony of Mr. and Mrs. Reed does not detract from the credibility and persuasiveness of the materials submitted by the Certified Engineering Geologist. We find that the aggregate deposit on site is a large one, certainly more than the 2 million tons required to comply. We further find the sampling methodology provided adequate information and a representative set of samples were tested demonstrating that applicable quality standards were satisfied. We further find that the rock on the site consists of basalts or andesite from either the Cascades or coast range, that the rock on site is the same gravel deposit currently mined at the Windsor Rock Products site to the west and, therefore, the resource on the expansion site compares favorably with the value of other known aggregate resources in the county.

Accordingly, we conclude the estimated amount of material in the mining area significantly exceeds the two million ton Willamette Valley volume requirement and the site meets quality requirements. OAR 660-0230180(3)(a) is satisfied.

12. We further find that Marion County does not have local standards that establish a lower threshold for significance, and the subject site was not on the Marion County inventory of significant resources prior to the implementation date of OAR 660-023-0180(b) and (c) are not applicable.

13. Under the Goal 5 rule, gravel extraction operations on certain types of farmland (Class I, Class II, unique agricultural soil) must demonstrate deep sand and gravel deposits to be significant or the site is prevented from being "significant" by OAR 660-023-0180(3)(d). Put another way, if a mineral and aggregate extraction site in Marion County is located on land with more than 35% of Class II soil, the average thickness of the aggregate layer within the mining area must exceed 60 feet if the site is to be significant. We find, consistent with the Soil Survey for Marion County Area, Oregon, prepared by the Soil Conservation Service, the subject 690.34 acres contain no Class I or unique agricultural soils. However, whether we consider the entire 690-acre site, or the only 217 acres of actual disturbed area is considered, we find that more than 35 percent of the subject site is comprised of Class II soils. Therefore, to satisfy the criteria of OAR 660-023-0180(3)(d)(B)(i), the average thickness of the aggregate layer within the mining area on this Marion County site must exceed 60 feet.

The "average thickness of aggregate layer" is defined as the depth of the water-lain deposit of sand, stones, and pebbles of sand-sized fraction or larger, minus the depth of the topsoil and non-aggregate overburden. OAR 660-023-0180(1)(I). We find that the subsurface exploration by the Certified Engineering Geologists accurately and adequately establishes the average thickness of the topsoil, floodplain soils, and gravel/aggregate resource at the expansion site.

We find the total thickness of the aggregate layer for each of the eight cross-section borings were approximately as follows:

Boring 1:	60 feet	Boring 5:	78 feet
Boring 2:	70 feet	Boring 6:	56 feet
Boring 3:	60 feet	Boring 7:	82 feet
Boring 4:	48 feet	Boring 8:	92 feet

We find that the geologists calculated the average thickness of the mineral and aggregate resource with both mathematical and weighted average methods and we specifically adopt and accept their conclusion that the average thickness of the aggregate layer within the mining area is approximately 68 feet. We conclude that the average thickness of the aggregate layer at the mining area exceeds the 60-foot requirement of OAR 660-023-0180(3)(d)(B)(i).

Karen Reed and Mark Reed argue that the Certified Engineering Geologists did not properly compute the average thickness of the aggregate layer. We have reviewed the couple's arguments. We find that it does not change our conclusion that the average thickness of the aggregate layer in the mining area is greater than 60 feet for the reasons that follow. The gist of the Reed argument is that the Certified Engineering Geologists did not provide an "average" for the average thickness, but rather provided "an opinion" and thereby failed to provide adequate information as required by the PAPA rule. Essentially, Mr. Reed argues

that the professional opinion of Certified Engineering Geologists is not necessary or allowed in the Goal 5 process. We fail to see how this argument is sincere when Mr. Reed also states in his comments the following: "Of course judgment is necessary to separate sedimentary layers for sampling and testing...." We find that the necessity for the opinion of the Certified Engineering Geologists is fully supported by the testimony of Professor Scott Burns (a Certified Engineering Geologist), who states that Mr. Reed's argument is "backwards." Professor Burns states, and we concur, that: "Without the use of professional judgment and professional discretion to form a professional opinion, it would be impossible to establish the average thickness of the underground resource. This is not, as argued by the Reed letter, simply a matter of mathematics. The Certified Engineering Geologists must review the data and apply his or her knowledge and judgment related to the underground conditions that are not readily visible." Professor Burns goes on to say that the Certified Engineering Geologists in this matter properly accounted for topsoil and floodplain soils, used appropriately located borings, all depths of the borings were considered and the east/west difference in the bottom of the gravel deposit was acknowledged. We find this persuasive and we find that the Reed argument is not credible.

Mr. Reed next argues that the Certified Engineering Geologists incorrectly used an arithmetic average and provides a college exam question as an example of why an arithmetic average is not appropriate. First, we find that the Certified Engineering Geologists used both an arithmetic average and a weighted average. Second, a cursory review of Mr. Reed's exam question shows that the boring holes used on the question are intentionally "grouped" so that the weight of the deeper holes (with thicker gravel deposit) is less pronounced than the weight of the more dispersed holes (where the thickness of the gravel deposit is shallower). We find it is misleading for Mr. Reed to make this type of argument when it is clearly observable that the Certified Engineering Geologists in this case did not "group" the boring holes on the Windsor site but rather distributed them evenly throughout the mining area. We find that advocating a misleading exam question that is not relevant to the actual work performed by the Certified Engineering Geologists adversely affects Mr. Reed's credibility. Finally, we agree with the rebuttal argument that Mr. Reed could have, from the data available, easily provided us with an average thickness of the aggregate layer based using whatever form of weighted calculation he felt appropriate. The fact that he did not do so, when the data are clearly available to allow him to perform such a calculation, leads to the inference, as correctly pointed out in rebuttal, that Mr. Reed knows that the average thickness of the aggregate layer on the mining site is in excess of 60 feet. This type of partisan and incomplete testimony is not helpful in the public hearing process and, more importantly, detracts from the credibility of Mr. Reed and strengthens our conclusion that the Certified Engineering Geologists provided correct data in this particular case. Fully considering the arguments of Karen Reed and Mark Reed, we do not find any reason to change our findings related to the average thickness of the aggregate layer in the mining area and our conclusion that the average thickness exceeds the 60 feet required by the PAPA rule.

Because we find that the average width of the aggregate layer exceeds 60 feet and satisfies subsection (B)(1) of 660-023-0180(3)(d), we conclude the criteria in OAR 660-023-0180(3)(d) are met.

14. Based on our review of all the evidence in the record offered by proponents and opponents, we conclude the subject site contains a volume of aggregate material far in excess of the two

million ton minimum standard (more than 15 times the required minimum); that the aggregate material meets the required ODOT standards for quality; that the mining area is not subject to the exception for Class II soils because the average width of the aggregate layer on site exceeds 60 feet. Therefore, we conclude OAR 660-023-0030(c) is satisfied.

15. Based on the above discussion, we find and conclude the subject expansion site is a significant aggregate resource site and Marion County will grant the applicant's request to amend the inventory and the Comprehensive Plan to list the expansion area as a significant aggregate site. The county must next determine whether to allow mining at the site.

ESEE Decision Process to Determine Whether to allow Mining

16. OAR 660-023-0040 generally provides that local governments shall develop a program to achieve Goal 5 for all significant resource sites based on an analysis of the economic, social, environmental, and energy (ESEE) consequences that could result from a decision to allow, limit, or prohibit a conflicting use. The four steps to be generally followed in conducting an ESEE analysis are:

- (a) Identify conflicting uses;
- (b) Determine the impact area;
- (c) Analyze the ESEE consequences; and
- (d) Develop a program to achieve Goal 5.

In general, local governments are not required to follow these steps sequentially, and some steps anticipate a return to a previous step. Findings must demonstrate that requirements under each of the steps have been met. The ESEE analysis need not be lengthy or complex, but should enable reviewers to gain a clear understanding of the conflicts and the consequences to be expected. The specific requirements to be followed by the county in assessing conflicting uses for significant mineral and aggregate sites are contained in OAR 660-023-0180(5).

17. Under OAR 660-023-0180(5), for a significant mineral and aggregate site, the county shall decide whether mining is permitted. For a PAPA application, the process for making this decision is set out in subsections 0180(5)(a) through (g).
 - (a) The county must determine an impact area for the purpose of identifying conflicts with the proposed mining and processing activities. The impact area shall be large enough to include uses listed in (b) below and shall be limited to 1,500 feet from the boundaries of the mining area, except where factual information indicates significant potential conflicts beyond this distance. For a proposed expansion of an existing aggregate site, the impact area shall be measured from the perimeter of the proposed expansion area rather than the boundaries of the existing aggregate site and shall not include the existing aggregate site.
 - (b) The county must determine existing or approved land uses within the impact area that will be adversely affected by proposed mining operations and shall specify the predicted conflicts. For purposes of this section, "approved land uses" are dwellings allowed by a residential zone on existing platted lots and other uses for which conditional or final approvals have been granted by the county. For determination of

conflicts from proposed mining of a significant aggregate site, the county shall limit its consideration to the following:

- (A) Conflicts due to noise, dust, or other discharges with regard to those existing and approved uses and associated activities (e.g. houses and schools) that are sensitive to such discharges;
 - (B) Potential conflicts to local roads used for access and egress to the mining site within one mile of the entrance to the mining site unless a greater distance is necessary in order to include the intersection with the nearest arterial identified in the local transportation plan. Conflicts shall be determined based on clear and objective standards regarding sight distances, road capacity, cross section elements, horizontal and vertical alignment, and similar items in the transportation plan and implementing ordinances. Such standards for trucks associated with the mining operation shall be equivalent to standards for other trucks of equivalent size, weight, and capacity that haul other materials;
 - (C) Safety conflicts with existing public airports due to bird attractants, i.e., open water impoundments as specified in OAR chapter 660, division 013;
 - (D) Conflicts with other Goal 5 resource sites within the impact area that are shown on an acknowledged list of significant resources and for which the requirements of Goal 5 have been completed at the time the PAPA is initiated;
 - (E) Conflicts with agricultural practices; and
 - (F) Other conflicts for which consideration is necessary in order to carry out ordinances that supersede (DOGAMI) regulations pursuant to ORS 517.780;
- (c) The county must also determine reasonable and practicable measures that would minimize the conflicts identified under subsection (b) of this section. To determine whether proposed measures would minimize conflicts to agricultural practices, the requirements of ORS 215.296 shall be followed rather than the requirements of this section. If reasonable and practicable measures are identified to minimize all identified conflicts, mining shall be allowed at the site and subsection (d) of this section is not applicable. If identified conflicts cannot be minimized, subsection (d) of this section applies.
- (d) The county shall determine any significant conflicts identified under the requirements of subsection (c) of this section that cannot be minimized. Based on these conflicts only, the county shall determine the ESEE consequences of either allowing, limiting, or not allowing mining at the site. The county shall reach this decision by weighing these ESEE consequences, with consideration of the following:
- (A) The degree of adverse effect on existing land uses within the impact area;
 - (B) Reasonable and practicable measures that could be taken to reduce the identified adverse effects, and

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

[We emphasize that this initial ESEE must be performed only if identified conflicts cannot be minimized.]

- (e) Where mining is allowed, the plan and implementing ordinances shall be amended to allow such mining. Any required measures to minimize conflicts, including special conditions and procedures regulating mining, shall be clear and objective. Additional land use review (e.g., site plan review), if required by the county, shall not exceed the minimum review necessary to assure compliance with these requirements and shall not provide opportunities to deny mining for reasons unrelated to these requirements, or to attach additional approval requirements, except with regard to mining or processing activities:

- (A) For which the PAPA application does not provide information sufficient to determine clear and objective measures to resolve identified conflicts;

- (B) Not requested in the PAPA application; or

- (C) For which a significant change to the type, location, or duration of the activity shown on the PAPA application is proposed by the operator.

- (f) Where mining is allowed, the county shall determine the post-mining use and provide for this use in the comprehensive plan and land use regulations. For significant aggregate sites on Class I, II, and Unique farmland, local governments shall adopt plan and land use regulations to limit post-mining use to farm uses under ORS 215.203, uses listed under ORS 215.213(1) or 215.283(1), and fish and wildlife habitat uses, including wetland mitigation banking. Local governments shall coordinate with DOGAMI regarding the regulation and reclamation of mineral and aggregate sites, except where exempt under ORS 517.780.

- (g) Local governments shall allow a currently approved aggregate processing operation at an existing site to process material from a new or expansion site without requiring a reauthorization of the existing processing operation unless limits on such processing were established at the time it was approved by the local government.

18. To determine if mining is permitted for significant mineral and aggregate sites, the applicant must meet the provisions listed above under OAR 660-023-0180(5). An impact area limited to 1,500 feet must be delineated from the boundaries of the mining area, except where factual information indicates significant potential conflicts beyond this distance. A determination must be made concerning conflicts with existing or approved land uses within the impact area that will be adversely affected by the mining operation. Reasonable and practicable measures that would minimize identified conflicts must also be determined.

19. OAR 660-0230180(5)(a) provides that the impact area shall be limited to 1,500 feet from the boundary of the mining area, unless the facts indicate significant potential conflicts beyond 1,500 feet. To determine whether the impact area should be enlarged, conflicts, potential conflicts, and the extent to which the conflicts can be mitigated must be examined under

OAR 660-023-0180(5)(b). We find that there has been no evidence of conflicts submitted in this matter that would suggest that the impact area be enlarged beyond 1,500 feet. We address specific conflicts below.

Conflicts Due to Noise, Dust and Other Discharges

20. OAR 340-035-0035 contains Oregon Department of Environmental Quality (DEQ) noise control regulations. DEQ does not have a noise permitting process and does not fund a noise enforcement program. Meeting state noise standards will provide adequate protection to the public, and compliance with state noise rules must be ensured on a local level.

The applicant provided a noise study performed by acoustical engineers from Daly-Standlee & Associates, Inc. (DSA). DSA evaluated the noise levels predicted to occur from mining activities at the mining site and we find the DSA analysis is helpful and persuasive. It is important to note that no crushing, screening, or related processing activities will occur on the expansion site. As such, we find that the noise impact of the proposed operations is greatly reduced.

The methodology used by the acoustical engineer included the placement of five receivers in the vicinity of residences surrounding the extraction site that gathered noise data generated from the site. The study included haul trucks that are used in the excavation plan.

We find that the DSA noise study is persuasive and credible, and we adopt its findings as our own. We find that noise levels from mining operations will not conflict with dwellings located within the 1,500 foot impact area with the exception of noise between the hours of 6:00 a.m. and 7:00 a.m. for a dwelling located on tax lot 200. Although the applicant owns this dwelling, applicant agrees to limit the starting time to 7:00 a.m. to mitigate any potential noise conflict. We find that with the stated limit on hours of operation, noise generated from the expansion site will be in compliance with DEQ noise regulations. We find and conclude that DEQ noise standards are met and maintained, and that noise generated by the mining operation will not conflict with uses outside the 1,500 foot impact area. We find and conclude that revising hours of operation is a reasonable and practicable method to minimize noise conflicts.

Because the noise conflict can be mitigated to meet DEQ requirements, the applicant stated that the impact area need only go out approximately 800 feet and requests that the impact area be reduced from 1,500 feet to 800 feet. We find that under the Goal 5 Rule, the 1,500 foot impact area appears to be a minimum rather than a maximum requirement. The rule discusses under what circumstances the impact area may be expanded but does not discuss if or under what circumstances the impact area may be reduced. Therefore, we conclude that the impact area will remain at 1,500 feet for this ESEE analysis.

21. As with any sand and gravel operation, overburden removal, aggregate extraction, truck and equipment movement, and reclamation activities proposed at the Windsor Island Expansion Site are potential sources of dust. We find, however, that because there will be no crusher operated on the expansion site and all gravels extracted from the site will be transported to the existing and permitted processing site, a significant source of dust on the site is eliminated. In addition, we find that the aggregate that will be removed is located below the groundwater table and that this "wet extraction" will also greatly reduce dust from the

extraction process. We find that there are a number of dust minimization strategies that include providing gravel on haul roads, paving critical areas, controlling the speed of haul trucks, water dust suppression, wet handling of aggregate during extraction, and removal of stockpiles from the aggregate extraction area. Additionally, mining activities must comply with DEQ fugitive dust standards. We find that the current site has been in operation for 30 to 40 years and dust has been effectively minimized at that site. We find the above measures are clear, feasible, reasonable and practicable methods for controlling dust. We find and conclude that operations conducted in accordance with the listed dust control measures as a condition of approval will minimize potential conflicts with dust on existing uses.

22. We find that an evaluation of "other discharges" addresses conflicts with respect to turbidity in storm water runoff and turbidity in groundwater. Other than light discharges addressed below, no additional "other discharges" are identified by any party. We find that the mining plan for the expansion site will be designed to direct all storm water inward to reduce turbid storm water discharge. Soil areas that are not part of ongoing operations will be vegetated to reduce the possibility of turbid runoff. We find that that the surface area of the expansion site will continue to be farmed on a declining basis and that ongoing farming will help to curb water runoff and minimize erosion. The applicant will also be required to obtain a National Pollutant Discharge Elimination Permit. We find that the above measures are reasonable and practicable measures to minimize "other discharges."

DOGAMI and DEQ have joint regulatory authority over the treatment and discharge of storm water at mineral and aggregate extraction sites. Applicant, as a condition of approval, is required to obtain all required state or federal air and water quality permits and to operate in continual compliance with all state and federal permits. We find that applicant's current extraction operation has all necessary permits and therefore find it is feasible to obtain these permits for the expansion site. Compliance with these permits is a reasonable and practicable measure to reduce "other discharges."

Discharge of light is an "emission" that can be considered under OAR 660-023-0180, and must be controlled to prevent illumination of adjacent properties and sensitive habitat areas. We find that lighting controls, such as permitting lighting only during hours of operation and shielding, can minimize the discharge of light. Generally, all lighting should be directed away from Windsor Island Road. However, lighting required for safety near buildings and equipment is permissible. We find that it is feasible for the applicant to implement lighting controls such as directed or shielded lighting and reduced candlepower. We find that such measures, including those required in Condition 18, are reasonable and practical methods of minimizing light discharges.

23. We find that the delay of start-up operations until 7:00 a.m.; operations conducted in accordance with the stated dust control measures; and operations conducted in accordance with management practices that minimize other potential discharges from the extraction activities set forth herein and in the conditions of approval, are reasonable and practicable measures that minimize potential adverse impacts and we conclude that the application meets the criteria of OAR 660-023-0180(5)(b)(A).

Conflicts with Local Roads

24. The applicant submitted a Transportation Impact Analysis (TIA) prepared by Kittelson & Associates, Inc. The project manager for the TIA was a registered professional engineer. The TIA analyzed traffic impacts at the expansion site. We find the TIA to be informative and persuasive.

A private roadway identified as Quebec Street provides access from the existing site onto Windsor Island Road and will extend across the roadway and onto the parcel to the east and to the expansion area. Windsor Island Road is classified as a local road, and the nearest arterial is River Road (State Highway 219). The TIA presents information concerning existing conditions and conditions projected for 2012 when the expansion area is operational. The existing aggregate site generates approximately 380 daily trips and approximately 300 are truck trips during the peak season. We find that when the expansion site is operational (five days a week from June through October) it would generate 480 trips (240 in each direction) per day by off-road trucks on the haul road between the expansion extraction site and the existing processing area.

We find the proposed expansion site will not generate any new traffic into the public road system. The total volume of trucks and traffic inserted into the county's road matrix from the existing and proposed sites are projected to remain at the current approved level. Off-road haul trucks crossing Windsor Island Road will be generated by the expansion, but off-site truck deliveries from the expansion site will generally not be introduced into the county's road system. We find that approximately 24-25 new off-road truck trips per hour in each direction (between expansion site and the existing processing site) will be generated on the new private access road during peak hours. The proposal involves transporting the extracted aggregate in off-road haul trucks from the extraction site to the existing processing facility west of Windsor Island Road. The haul trucks used for the expansion site are designed for off-road use and would transport the aggregate from the mining area to the processing facility west of the roadway without entering the greater county road system.

We find that the proposed expansion site can be developed while maintaining required performance standards and safety on the surrounding transportation system. We find that since the processing facility (and related approved traffic) already exists and the expansion area will not increase the amount of trucking activity introduced onto public roadways in the county road matrix, no new traffic impacts are created by approval. We find and conclude that the current proposed expansion can be developed with minimal impact to the surrounding road system.

Although there will be no new traffic impacts if the expansion request is approved, the site is projected to be operational for a number of years and the area roads are all local roads that were not built to accommodate the level of traffic over the expected life of the project. To address this concern, DPW requested numerous conditions due to the long term affect on the transportation system. A new access point will be required for the new haul road and applicant will need to obtain an access permit from DPW. Once the haul road is no longer used, the applicant shall remove the accessory traffic control.

The applicant will be required to design and construct a pavement section at the new crossing and on Windsor Island Road that will accommodate the anticipated off-road haul truck traffic on Windsor Island Road as the current roadway was not built to sustain the amount of traffic projected by the new site. (See Conditions 35 and 40.) It will be the

2. The applicant shall enter into a maintenance agreement with the DPW to assure maintenance of, and housekeeping at, the new intersection at the applicant's expense.
3. The applicant shall flag or otherwise mark the boundaries of the required setbacks before beginning excavation at the aggregate resource site.
4. Reclamation Plan.
 - a. Prior to any aggregate extraction, processing or preparation of the site for processing or extraction the applicant shall submit a reclamation plan. The plan shall be part of the reclamation plan submitted to DOGAMI.
 - b. The reclamation plan shall be designed to achieve wetland, ponds, farming and wildlife habitat use of the excavation area and shall include setback and other unexcavated areas within the entirety of the subject properties necessary for buffering these uses from surrounding land uses and activities. The plan shall provide for sequential reclamation of the excavation and buffer areas, and include procedures for monitoring implementation.
 - c. The reclamation plan shall include a wetland, ponds, farming and wildlife habitat program element that describes graphically and in a narrative form the specific process for reclamation of the site. The wetland, pond, and wildlife habitat program is integral to approval of aggregate extraction of these properties. The reclamation program shall be substantially completed within one-year of completion of the excavation of the properties.
 - d. The plan shall be subject to the approval of the Oregon Department of Fish and Wildlife and the County.
 - e. The plan shall be in conformance with DOGAMI reclamation plan and reclamation bond standards. The reclamation bond shall be in an amount sufficient to fully implement the wetland and the wildlife habitat reclamation plan.
 - f. In addition to any DOGAMI enforcement authority, the implementation of the reclamation plan is enforceable as provided under County enforcement laws.
5. Performance agreements shall be submitted prior to extraction activities as required by MCZO 120.460(H) that states that the applicant shall provide the county with a letter and two copies of relevant documents that demonstrate that

the operator has in full force and effect the bond or security deposit with DOGAMI to assure conformance with the state-required reclamation plan. The applicant shall also provide evidence of having the insurance required under this section.

6. The applicant shall satisfy the requirements of Marion County Fire District #1 and provide evidence that the requirements have been satisfied to DPW.
7. The mining operation shall follow procedures and recommendations for the mine plan as stated in the engineer's hydrogeology report unless otherwise instructed by Marion County or DOGAMI.
8. The applicant shall meet Marion County Public Works conditions for right-of-way dedication, access, roadway and any related improvements. These conditions shall be met to DPW's satisfaction.
9. Applicant shall maintain a dust mitigation plan during any extraction or transportation activities at the site. The plan shall include, but not be limited to providing gravel amendments on haul roads, using water trucks as necessary to control dust, and paving the approaches to the new haul road/Windsor Island Road intersection for at least 500 feet on both sides of Windsor Island Road.
10. Applicant shall provide a truck wash area or other means to reduce or eliminate the haul trucks from carrying soil or gravel onto the public roadway
11. Prior to the start of the aggregate extraction operation, the applicant shall submit a traffic control plan to DPW for review and approval. The applicant will be responsible for the implementation and maintenance of the plan agreed to by DPW.
12. Prior to the start of the aggregate extraction operation, the applicant shall provide evidence of obtaining any required permits from the DSL and the USACE or provide evidence that such permits are not required.
13. The applicant shall provide evidence of obtaining a National Pollutant Discharge Elimination System (NPDES) Industrial Storm-Water General 1200-A Permit for the discharge of stormwater from a point source to surface waters or to conveyance systems that discharge to surface waters. The NPDES permit is obtained through the State Department of Environmental Quality (DEQ).
14. The extraction area shall not exceed the area shown on the applicant's conceptual reclamation plan.
15. Except as otherwise approved herein, farming, wetland, ponds and wildlife habitat are the designated uses of the subject property. These shall be the

designated uses unless the county approves a conditional use permit for other uses allowable as a permitted or conditional use in the underlying zone.

16. When excavation is completed if the parcels remain in private ownership, the owner(s) shall record irrevocable deed restrictions, approved by the County, ensuring that the areas which are deemed wetlands, ponds, and wildlife habitat areas and buffers, shall be reserved for wildlife and wetland conservation use in perpetuity.
17. All processing and stockpiling shall be discontinued within six months of the date excavation is completed.
18. Outdoor lighting shall be on only during permitted hours of operation except for lighting required for safety near building and equipment parking areas. Outdoor lighting shall be shielded so it does not illuminate any adjacent property, public right of way, or wildlife habitat.
19. The applicant shall insure the proposed operation for \$100,000 against liability and tort arising from production activities or incidental operations conducted or carried on by virtue of any law, ordinance or condition, and the insurance shall be kept in full force and effect during the periods of operation. Evidence of a prepaid policy of said insurance that is effective for a period of one (1) year shall be deposited with the county prior to commencement of any mineral and aggregate operations. The owner or operator shall annually provide the county with evidence that the policy has been renewed.
20. The hours of operation for extraction, processing and transportation activities shall be from 7:00 a.m. to 6:00 p.m. Monday through Friday. Transportation activities shall be allowed on Saturday between the hours of 7:00 a.m. to 6:00 p.m. No extraction, processing transportation activity shall take place on January 1st, Memorial Day, July 4th, Labor Day, Thanksgiving Day, and December 25th.
21. The applicant shall be in compliance with acceptable DEQ noise levels. The applicant shall maintain hours of operation from 7:00 a.m. to 6:00 p.m. for noise mitigation.
22. An owner or operator may request and the Director may grant an exception to provide for additional hours of operation for a when additional hours of operation are need to alleviate a public emergency. Public emergency includes:
 - (a) Damage to public roads or structures that requires immediate repair.
 - (b) Road construction or repair that is scheduled during nighttime hours to reduce traffic conflicts.

23. Continuing compliance with the standards for development and operation in MCZO 120.460 shall be a condition of approval. The exception to this is section (D) of the ordinance concerning the hours of operation.
24. No batch plant, processing, or blasting shall be allowed at the expansion site.
25. No permanent buildings, berms, or stockpiles shall be allowed at the expansion site.
26. Existing deciduous and evergreen vegetation within the required setback areas that screen visibility of the operation from adjacent property or public roads shall be retained or replanted unless located within a vision clearance area or determined by the county to be a public safety hazard.
27. Applicant shall manage vegetation and signage at the new haul road/ Windsor Island Road intersection to protect intersection sight distance.
28. Access roads to the aggregate site shall be gated and locked when not in use.
29. Materials that are buoyant, flammable, obnoxious, toxic, or otherwise injurious to persons or property, if transported by floodwaters, are prohibited. Storage of materials and equipment not having these characteristics is permissible only if the materials and equipment have low-damage potential and are anchored or are readily removable from the area within the time available after forecasting and warning.
30. As required by DOGAMI, the applicant shall construct the Fish Connection described in the Northwest Hydraulics report.
31. The applicant shall maintain 100-foot setbacks from the extraction area and the property line on the west and from Clear Lake and Claggett Creek on the north, south and east of the extraction area. As agreed, the applicant shall not engage in activities of any type at the western portion of the property that includes tax lot 300 and the Willamette River Greenway without first obtaining a greenway permit.
32. The applicant shall end mechanical dewatering of any cell on the expansion site not later than November 1 of each calendar year and shall not begin mechanical dewatering of the expansion site before May 1 of each year.
33. The applicant shall have a floodwater ingress/egress analysis performed to determine if additional erosion and head cutting prevention measures are needed or provide evidence that the analysis is not need.
34. The applicant shall remove the access to the new haul road and related accessory traffic control at the end of the project.

35. In accordance with Marion County Driveway Ordinance 651, a driveway permit will be required for any new access or change in use of any existing access to the public right-of-way. Applicant will obtain a driveway permit from Public Works and will comply with DPW accesses standards to ensure safe ingress and egress.
36. Construction of improvements on the property shall not block historical or naturally occurring runoff from adjacent properties. Site grading shall not impact surrounding properties, roads or drainage ways in a negative manner.
37. The applicant shall obtain a Major Construction Permit from DPW.
38. One hundred foot setbacks shall be maintained from any property line and the aggregate processing and loading and five hundred foot setbacks shall be maintained from any habitable building existing on adjacent property at the time the aggregate processing operation is established.
39. If any building occurs in the floodplain that requires a building permit, a declaratory statement must be filed.
40. Prior to commencement of extraction activities, the operator shall provide DPW with design details for pavement sections for the new access and construction of the intersection to support heavy trucks.
41. The applicant shall be responsible for making a proportional share financial contribution for a future overlay(s) or reconstruction project along sections of the haul routes as identified by DPW.
42. The applicant shall submit to DPW approved engineering plans for the heavy haul crossing and enter into an agreement with the county for establishing the short and long term maintenance of the crossing and haul routes prior to the issuance of the major construction permit. The specific hauls routes are:

Windsor Island Road North from the subject property, south to the intersection with Lockhaven Drive North

Windsor Island Road North from the subject property, north to Wheatland Road at Ravena Drive North via local roads
43. The applicant shall provide to DPW an approved traffic control plan prior to the issuance of the major construction permit.
44. The applicant shall provide to DPW a maintenance agreement accepting financial responsibility for maintaining traffic control devices associated with the project prior to the issuance of the major construction permit.

applicant's responsibility to maintain the crossing, including but not limited to, removal of debris, paving 500 feet back from the edge of both of the travel lanes, providing a truck wash area or other means to minimize the potential for tracking oil and gravel onto Windsor Island Road. We find that the new crossing site is in the 100-year floodplain of the Willamette River and the new haul road is susceptible to repeated flooding, and therefore, the applicant will maintain the new crossing, including removal of any debris on the crossing and roadway. The applicant is required to submit a traffic control plan for review and approval due to the number of trucks using both haul roads and will be responsible for the implementation of the approved plan. (See Conditions 11 and 43.) Because of the added duration of the project, the applicant will need to improve the frontage of their property to county standards. (See generally, Conditions 2, 8, 27, 36, 37 and 38.)

Because of the length of time of the project and the continued presence of large trucks on the local roads, the applicant will need to improve the corner radii of the 90-degree curves along the haul routes of Ravena Drive N to Wheatland Road North and along the southern haul route of Wheatland Road North, north of the intersection with Lockhaven Drive North. Because of the impact of the truck traffic on the local roads over the life of the project, the applicant will need to make proportional share for future overlays or reconstruction of the haul route sections. Additionally because of the added duration of heavy trucks and the impacts on the roads, the applicant will need to obtain a Major Construction Permit and dedicate enough right of way to bring the right of way width up to 30 feet. (See generally, Conditions 37, 40 - 44.)

We find that no new traffic will be introduced into the county road system due to the expansion of the aggregate site. The only point of interaction with the county road system will be where the new haul road briefly crosses Windsor Island Road. We find that the applicant will upgrade the intersection by paving at least 500 feet on either side of the intersection to ensure the integrity and safety of the road and to help eliminate debris from being tracked onto Windsor Island Road. We find that the applicant, in conjunction with DPW, will engineer cross-section elements of the intersection for soundness of strength, foundation and site distance, and will be required to enter into a road maintenance agreement with the county for maintenance and upkeep of the intersection at the applicant's expense. (See generally, Conditions 40 - 44.)

We further find that the applicant also has a program to train its drivers to make them aware of the need to share the road with others and to be aware that farm vehicles are often on the roadway. In addition, the applicant also uses a mobile radar speed trailer to control the speed of its trucks.

The TIA identified two 90-degree curves on Windsor Island Road about one mile south of the access road that have potential issues and suggested that the county install advance warning signs to alert drivers. We find that the applicant has agreed to work with DPW on this issue. The TIA also addressed intersection sight distance for both the existing and proposed access road pursuant to AASHTO guidelines. Field conditions revealed that the speed of the northbound traffic in the 85th percentile was 54 mph with a recommended intersection sight distance of 675 feet and the speed of the southbound traffic in the 85th percentile was 21 mph due to a small-radius curve located to the north of the access roads. We find that this site has adequate site distance. The TIA stated that Windsor Island Road on either side of the new road approaches should be graded to provide a level intersection

platform to ensure adequate site distance. The TIA also recommended that the sight distance be measured again after the haul road approaches are constructed to determine whether there will need to be additional brush and tree removal. We find that the applicant has agreed to work with DPW on this issue.

We find that each of the items listed above (i.e., constructing an intersection where the haul road meets Windsor Island Road, clearing debris, checking site distance, etc.) are measures that reasonably and practicably minimize potential conflicts to local roads used for access and egress to the mining site. We have placed a number of conditions on the application and we find that each of these conditions (i.e., intersection improvements, DPW permits, road designs, maintenance agreements, etc.) are feasible and provide practicable mechanisms to minimize and eliminate local road conflicts. Because we find there are measures available to minimize conflicts with two local roads used for access and egress to the mining site, we conclude that the criteria of OAR 660-023-0180(5)(b)(B) are met by the proposed application.

Conflicts with Existing Public Airports

25. We find that there are no public airports in the area. Therefore, we conclude that OAR 660-023-0180(5)(b)(C) is not applicable.

Conflicts with Other Goal 5 Resources

26. The applicant submitted a Wildlife and Vegetation Assessment of the Windsor Island Expansion Site and Presumptive Impact Area prepared by Pacific Habitat Services, Inc. The assessment provided information and recommendations on natural resources in the impact area that included vegetation communities, water resources, wildlife habitat, fisheries, and a review of sensitive species. We find this report to be informative and persuasive. The mining area is bordered to the north, south, and east by the Clear Lake-Claggett Creek oxbow and a riparian buffer. Our defined 1,500 foot impact area around the expansion site includes the entire oxbow, and agricultural fields that extend to the east, west, north, and south. To the west, the 1,500 foot impact area also includes part of the existing Windsor Island Rock Products operations. We find that Clear Lake is identified on the Marion County Comprehensive Plan Fish and Wildlife Habitat Map as a "Sensitive River and Stream" (intermittent), but that it is not an inventoried Goal 5 resource.

We find that the expansion site currently is in agricultural production and that vegetation is sparse due to cultivation and herbicide use, except in areas that are currently in production. We find that using the method defined in the 1987 wetlands manual for "atypical situations" (due to the disturbance of the area caused by farming) that there are no jurisdictional wetlands within the general farmed area with the exception of one swale area. We find that the swale area is located outside the proposed extraction area but inside the southwest portion of the 1500-foot impact area and that the portion of the swale that is potentially jurisdictional wetlands is outside of the proposed extraction site. We find that the expansion site is designed to have no impact on and will have no impact on adjacent Clear Lake or Claggett Creek based on 100 foot setbacks (buffers) from the lake and storm water quality control.

We find that the subject site has little wildlife other than in the fall and winter when waterfowl, especially Canadian geese, forage in the fields. However there is an abundance suitable field foraging habitat in the Willamette Valley.

We find that Clear Lake and the associated reaches of Claggett Creek support a warm water fishery dominated by exotics, including large mouth bass and crappie.

We find that a potential project impact could occur during periods of flooding: salmonid entrapment in the extraction area. We find that the applicant has agreed to construct a fish ingress/egress channel between Clear Lake and the extraction area and that this channel will help to minimize and prevent salmonid entrapment in the mining area and allow trapped fish to escape. We find that the extraction operation will maintain a 100 foot riparian buffer that follows along the full extent of the riparian area located on the subject property.

The Northern Pacific pond turtle and the red-legged frog were found within the presumptive impact area but not within the proposed expansion site. We find that reclamation activities that include replacement of topsoil and revegetation on the pond slopes are appropriate conflict minimization measures for these species. One identified bird species that could inhabit the area is nesting Bald Eagles. An existing pair was identified near the existing mining operation. We find that the identified setbacks and preservation of nesting trees, redirecting outdoor lighting, and not allowing any extraction within the setback area are effective strategies to minimize potential conflicts with the eagles.

We find that ODFW provided a response to the proposal and indicated that overall, the project design adequately addresses fish and wildlife issues. The agency noted that ODFW would continue to work with the applicant to survey for wildlife and to assure the project will not result in permanent change in the Willamette River channel following flood events.

Based on the uncontroverted evidence provided in the PHS report, we find and conclude that there is no significant level of conflict between wildlife and vegetation resources in the general area and the requested extraction of mineral and aggregate resources on the expansion site. We further find that the Marion County Comprehensive Plan includes no inventoried Goal 5 resources, including wetlands, wildlife habitat, groundwater, fish habitat, or other Goal 5 resource within 1,500 feet of the expansion site. We further find that in the event there were Goal 5 resources identified in the site or that other fish, wildlife and habitat resources would need to be considered in the process, there are numerous identified and defined measures to minimize and reduce any conflicts. These measures include setbacks, stormwater control permits, fish ingress/egress channel, buffer areas, replacement of topsoil and revegetation of pond slopes. We find that these measures are reasonable and practicable measures of things that can be feasibly accomplished to minimize any potential Goal 5 or fish and wildlife habitat conflicts. We have also included conditions to obtain stormwater permits (see Condition 13), limitations on the extraction area, preservation of setbacks (see Condition 14) and reclamation conditions (see Condition 4) which we find also help to minimize conflicts. Accordingly, we find and conclude that the criteria of OAR 660-023-180(5)(b)(D) are met by the application.

Conflicts with Agricultural Practices

27. OAR 660-023-0180(5)(b)(E) requires an assessment of conflicts with agricultural practices. Therefore an analysis under OAR 660-023-0180(5)(c) is needed.

Under OAR 660-023-0180(5)(c), to determine whether proposed measures would minimize conflicts to agricultural practices, the requirements of ORS 215.296 shall be followed. In addition, under ORS 215.301(1), no application shall be approved to allow batching and blending of mineral and aggregate into asphalt cement within two miles of a planted vineyard. Under OAR 660-033-0130(15), planted vineyard means one or more vineyards totaling 40 acres or more that are planted as of the date the application for batching and blending is filed. We find that the applicant has not requested asphalt plant approval and there are no identified nearby vineyards and conclude that ORS 215.301(1), to the extent it is applicable, is met.

Under ORS 215.296(1), a use may be approved only where the local government finds that the use will not:

- (a) Force a significant change in accepted farm or forest practices on surrounding lands devoted to farm use; or
- (b) Significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.

We find that the impact area is not in forest zoning and there are no forest uses nearby. However, the nearby farm uses must be examined.

To demonstrate compliance with ORS 215.296(1), the county's findings must (1) describe the farm and forest practices on surrounding lands devoted to farm or forest use; (2) explain why the proposed use will not force a significant change in those practices; and (3) explain why the proposed use will not significantly increase the cost of those practices. *Schellenberg v. Polk County*, 21 Or LUBA 425, 440 (1991). In *Schellenberg v. Polk County*, 22 Or LUBA 673, 686 (1992), Polk County based its identification of accepted farm or forest practices on the definition of "accepted farming practice" in ORS 215.203(2)(c). LUBA found this was a correct approach to interpreting the virtually identical term accepted farm and forest practices in ORS 215.296(1).

ORS 215.203(2)(c) defines accepted farming practice as a mode of operation that is common to farms of a similar nature, necessary for the operation of such farms to obtain a profit in money, and customarily utilized in conjunction with farm use. Experimental farm practices or those atypical to area farms do not need to be evaluated. We find the following crops are grown on surrounding lands: beans, corn, grass seed, beets, wheat, hops, hay, ensilage, caneberrries, cover seed crops, feed grain, nursery crops, orchard crops (cherries, filberts, etc.), mint, row crops and flower seed. The identified farming practices included: plowing; disking; planting; harvesting; irrigating; fertilizing, the application of herbicides, pesticides and fungicides (including aerial application); transplanting, sorting; labor for predator control, transportation of crops to market, mint distilling, crop drying, seed sorting and primary product processing. As an initial matter, we find that mineral and aggregate activities as well as crushing, sorting and screening have occurred at the existing mining

location for 30 to 40 years with little or no impact on the surrounding farm uses and practices. The potential for impacts is greatly reduced at the expansion site because no processing, crushing, screening, or sorting will take place at the expansion site. We are particularly persuaded by the fact that the applicant has conducted mining activities at the Windsor Island site for years with no reported adverse effects to farm practices or to the cost of farm practices.

We find that dust impacts from the expansion site can be minimized through a variety of methods, including gravel on haul roads, paving critical areas, controlling the speed of haul trucks, water dust suppression, wet handling of aggregate during extraction, and removal of stockpiles from the aggregate extraction areas. Minimization and/or elimination of dust impacts is possible with these methodologies and will prevent significant impacts on agricultural practices.

With regard to traffic conflicts with agricultural practices, we find that the roads in the area are adequate and there have been no incident reports or increase in accidents related to existing and approved traffic from the existing Windsor Island operations. Because no new truck traffic will be generated into the greater county road system by activities on the expansion site, we find that there will not be any additional traffic conflicts with agricultural practices in the area. A road maintenance agreement between the applicant and the county will ensure upkeep of the intersection with Windsor Island Road, which will be the only potential interface between trucks from the expansion site and farm vehicles.

From hydrogeologic evidence in the record, we conclude that there will be no significant impact to groundwater in off-site wells and that the groundwater supply for farmers will not be threatened by the extraction activity. We find that there will be some groundwater draw-down related to dewatering activities at the mining site, but the draw-down can be managed and will not have a significant adverse effect on agricultural wells in the area.

We find that the location of the expansion site is ideal with intervening surface water sources supplementing groundwater levels to the north, south, east, and west. We find that effects on groundwater levels will be minimized. A farmer to the west, Doug Zielinski, stated that the drawdown would not have a significant effect on farming practices or cost. We find this evidence to be persuasive and credible, and conclude that there will be no significant forced changes in accepted farming practices or significant increases in costs to accepted farming practices.

The expansion site is in the floodplain and subject to periodic flooding events. If activities on the expansion site affect flood levels, agricultural practices in the area could be affected. From persuasive and un rebutted evidence in the record, we find that there will be no adverse effects on flood levels or flood velocities because there will be no permanent structures (including berms and stockpiles) located on the site. Accordingly, we conclude that floodplain related issues will not force significant changes in accepted farming practices or significant increases in cost to accepted farming practices.

With regard to noise, we do not see how noise will affect farming operations on surrounding land. We agree with the noise engineer that reasonable and practical measures are available to ensure compliance with noise standards. No noise intensive processing operations will occur on the expansion site and we conclude that noise issues associated

with the site will have no effect on the cost of accepted farming practices or force changes in accepted farming practices on surrounding lands.

The issue of vibration was raised as a potential issue for farm practices and activities. The information provided by Doug Zielinski is instructive. As a long-time farmer in the area, Mr. Zielinski states that vibration will not be a conflict with any kind of farming operation. Any potential vibration issues are eliminated by the 100 foot setback from the extraction operation. The Daly-Standlee engineer's report indicates no evidence to claim that any agricultural operations that are sensitive to ground-bourn vibrations. We find this report to be credible and persuasive, and we conclude that vibration issues associated with the site will have no effect on the cost of accepted farming practices or force changes in accepted farming practices on surrounding lands.

Opponents generally argued that taking the subject area out of farming would increase the cost of farming practices and that taking land out of agricultural production for non-farm uses forces changes in agricultural practices.

In testimony before the Board, Mr. Bruce Chapin made an interesting argument that any IRS acceptable farm deductible expense would qualify as "costs of accepted farm practices." Under this line of argument, Mr. Chapin argues that all 23 IRS Schedule F cost categories (i.e., current truck expenses, employee benefits programs, faxes, fertilizers and lime, insurance, hired labor, etc.) are in fact examples of costs of accepted farming practices. As an example, Mr. Chapin argues that the farm practice of fertilizing includes the cost of the fertilizer, the cost of fuel and lubricants, the cost of daily maintenance for the tractor, mechanical equipment and labor costs for the operators, including wages, workers' compensation, social security, unemployment, Medicare, etc. The thread of Mr. Chapin's argument is difficult to follow, but appears to be a permutation of the "critical mass" argument that will be discussed below. In any event, we believe the definition of accepted farming practice in ORS 215.203(2)(c) is the focus of our inquiry under 215.296. ORS 215.203(2)(c) connects accepted farming practices to farmers' efforts to obtain profit and money, and further requires that those practices be customarily utilized in conjunction with farm uses. To the extent Mr. Chapin's farm practices and customary uses and costs associated with customary uses fall into the definition provided in the statute, they are considered as part of these findings.

As an initial matter, we find that mineral and aggregate activities, as well as the related crushing, sorting, screening, and transportation uses, have occurred at Windsor Rock Products' existing mining location for 30 to 40 years with little or no impact on surrounding farm uses and practices. The potential for impacts is greatly reduced at the expansion site because only extraction will occur at the expansion site and there will be no processing, crushing, screening or sorting which could otherwise lead to the potential for conflicts or adverse impacts which would force changes to accepted farming practices in the surrounding area or would increase costs to accept farming practices in the surrounding area. We have previously concluded, and incorporate our findings and conclusions herein by reference, that conflicts with agricultural practices can be minimized through reasonable and practicable measures. However, we understand ORS 215.296 requires a different inquiry with regard to forced changes and increased costs of accepted farming practices and that minimization analysis must be supplemented by additional analysis directly related to

questions of increased costs and forced changes to accepted farming practices on surrounding lands.

First, we wish to make it clear that in considering "surrounding lands," we are not limiting our consideration to the particular tax lots subject to the application, or to the 1,500-foot impact area which we have identified around the entire application site. Rather, when addressing "surrounding lands" in this application, we are reviewing accepted farm practices that occur in a much broader area to provide a realistic assessment of accepted farm practices. As such, we are considering "surrounding lands" to be a larger segment of the farm area stretching from the city of Salem and Keizer in the south, to roughly the Mission Bottom Park in the north, and the city of Keizer and I-5 on the east, to roughly Wallace Road (Highway 221) on the west. We believe this area gives appropriate consideration to "surrounding lands" as defined in the statute and allows us to make the appropriate determinations with regard to whether or not approval of the PAPA application will force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use or significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use. Again, we note there are no forest zone plans or forest uses identified in the area so we will be referring solely to farm uses under the ORS 215.296 standard.

We find that noise and vibration are not conflicts that will change farming practices or increase farming costs. Both a local farmer (Mr. Zielinski) and Registered Professional Engineer provided us with persuasive testimony that noise and vibration will not cause problems with agricultural crops and we conclude that noise and vibration will not increase costs or force changes in accepted farming practices. With regard to dust, the applicant has demonstrated it will control dust with a number of strategies. Applicant has also demonstrated that at its existing operations, ongoing farming activities occur immediately adjacent to processing and mining activities without changing accepted practices or increasing the cost of accepted practices. We find no evidence in the record to suggest that any dust produced by the wet extraction method on the expansion site will cause any effect on agriculture. We find and conclude that applicant will take sufficient steps to control dust, and conditions are in place (see Condition 9) to ensure that dust impacts will not force significant changes to accepted farming practices or significantly increase the cost of accepted farm practices on surrounding lands.

With regard to other discharges, issues were raised with regard to potential changes in flood patterns and potential effects to agricultural and changes in availability of irrigation water through drawdown associated with the dewatering of the mining cells for aggregate extraction. We find that the applicant submitted a comprehensive floodplain analysis and a comprehensive hydrogeologic analysis, both of which are informative and persuasive. We find that the mining activities on the expansion site will have no effect on flood levels, flood velocities, flood elevations, flood insurance, or any other flood related impact that could adversely affect farming practices or increase farming costs. Similarly, we find there will be minimal drawdown on groundwater levels around the site in the range of 3.3 feet at 1,500 feet from the perimeter of the excavated area, falling to approximately one foot of drawdown at 4,000 feet from the excavated area. We find the testimony of Mr. Zielinski, the farmer immediately west of the application area (where the most extensive drawdown will occur) to be informative and persuasive. Mr. Zielinski states that drawdown will not have a significant effect on his farming practices or cost. We accept this testimony and find and

conclude that any drawdown associated with the watering from the mineral and aggregate extraction operations will not have any significant adverse effect on farming practices nor will it force a significant change or significantly increase the cost of accepted farming practices on surrounding lands.

With regard to transportation and the effects of farm costs, we note the application, as proposed, will not increase traffic levels on the county road system and, therefore, will not cause any additional conflicts, increase costs or forced changes in farming practices related to transportation of farmed goods on local roads that service surrounding lands. We also find that the conditions of approval require applicant to be responsible for a proportionate share of any road maintenance costs in the general area. Accordingly, any additional costs to the county road department, to the extent these could be argued to increase farm costs or force changes in accepted farming practices, will be avoided.

Mr. Chapin, Mr. Sweeney and the Oregon Farm Bureau make a further argument which may be generally described as the "critical mass" argument. By this, we understand the opponents to mean that approval of this mineral and aggregate expansion site will decrease the availability of farmland, availability of farm services, the ability of farmers to trade among themselves, and a variety of other interconnectivity factors between farmers thereby reducing "critical mass" necessary to maintain a farm economy and, by implication, forcing significant changes in the accepted farm practices on surrounding lands or significantly increasing the cost of accepted farm practices on surrounding lands. Mr. Chapin calls these costs "variable costs, fixed costs and non-cash costs" and argues they include the cost of obtaining machinery, repair costs, costs of accounting, costs of insurance, costs of financing, costs of information, and costs of farmland possession. All of these factors, in the view of Mr. Chapin, Mr. Sweeney and the Farm Bureau, will accompany the approval of this PAPA application and, by implication, force significant changes in accepted farm practices and significantly increase the cost of accepted farm practices on surrounding lands. Mr. Chapin argues that any loss of farmland will increase the cost of accepted farming practices by decreasing the amount of farmland for sale or lease, increasing competition for remaining farmland, increasing land purchase costs, increasing inheritance taxes, increasing land rental costs, reducing operation size left to absorb overhead, reducing opportunities to do custom work, reducing opportunities to rent or borrow equipment, reducing farmer-to-farmer markets, reducing sources and information, reducing infrastructure, reducing supporting suppliers and services, reducing available processors and other "critical mass" factors.

As a preliminary matter, we agree with our Hearings Officer's determination that while Mr. Chapin's concern with the conversion of farmland to mineral and aggregate mining is a legitimate concern, Mr. Chapin's philosophical position that mineral and aggregate extraction should be prohibited on high value farmland cannot trump the Goal 5 rule, state law and county ordinances that allow mining on Class II soils if all of the statutory and regulatory conditions are satisfied. We agree with the Hearings Officer's assessment that the materials submitted by Mr. Chapin do not invalidate any of the site-specific professional reports provided by the applicant which demonstrate to us that conflicts have been minimized with agricultural uses and that approval of this use will not force significant changes in accepted farm practices or increase the cost of accepted farm practices on surrounding land.

More specifically, we find that the facts simply do not support Mr. Chapin's arguments. We find particularly persuasive the argument of Mr. Zielinski, a farmer in the area. Mr. Zielinski

argues, and we agree, that the expansion site will not have an adverse affect on existing farmer-to-farmer and other economic relationships, but will actually strengthen them. Mr. Zielinski's position, which we believe is persuasive, is that Mr. Chapin's line of argument misses the point: it is not the land itself, but the strength of the farmer and the farming unit that gives rise to the ability to share expensive equipment and participate in farmer-to-farmer relationships that make up the "critical mass" championed by Mr. Chapin. Mr. Zielinski argues convincingly that if he can strengthen his farm unit by diversifying a portion of his less valuable land to a non-farm mineral and aggregate use, such diversification ultimately strengthens the farm economy (i.e., the "critical mass") of the surrounding area. Mr. Zielinski argues, and we agree, that by diversifying a portion of his less productive land into mineral and aggregate operations, he is actively and carefully stewarding land assets to best position his farm to weather economic downturns and have the economic strength to stay in the market. By diversifying and keeping his farm strong, Mr. Zielinski argues, and we agree, that it remains available as part of the local farm economy or "critical mass." We find this testimony to be powerful and convincing.

In addition, as pointed out in the testimony, the Chapin family made the same arguments regarding "critical mass" approximately 13 years ago before Marion County Board of Commissioners in opposition to another gravel pit in the Mission Bottom area. We find that in the meantime, the Chapin family has acquired large acreages of land (including parcels that abut Clear Lake opposite the Windsor Island expansion site), has expanded orchard holdings, and has diversified farm activities. They have continued to make farm alliances with other farmers and provided and given services to farmers in the area. In short, the Chapin family and Mr. Chapin have prospered in proximity to mineral and aggregate operations and the Mission Bottom area. We find that aggregate mining has not changed this fact or made the family any less successful by increasing costs or forcing changes in their accepted farming practices.

Finally, we find that the studies submitted by Mr. Chapin do not support that ongoing mineral and aggregate activity or approvals adversely affect "critical mass" in the farm community and, therefore, increase costs and force changes in accepted farming practices. To the contrary, we find the Willamette Valley has gained 911 new agricultural service businesses, including crop services, animal services, farm and labor management services, and others. In addition, we find that the Willamette Valley has gained 48 processing firms for food products. We find that the total gain for Willamette Valley agricultural service firms confirmed in the study provided by Mr. Chapin is approximately 368 percent. We find and conclude that with agricultural service firms expanding rapidly in the Willamette Valley, it is impossible to argue that this particular application, or the mineral and aggregate industry as a whole, will have an adverse effect on "critical mass" for farmers in the area. In short, we find and conclude that approval of the use requested in this PAPA application will not force a significant change in accepted farm practices on surrounding lands devoted to farm use, nor will it significantly increase the cost of accepted farm practices on surrounding lands devoted to farm use.

Conflicts with Local Reclamation Ordinances

28. OAR 660-023-0180(5)(b)(F) requires an assessment of conflicts for which consideration is necessary to carry out ordinances that supersede DOGAMI regulations pursuant to ORS 517.780. This refers to counties that have self-administered mine reclamation programs and

do not rely on DOGAMI and applies to Columbia County only. Marion County has not adopted any reclamation ordinances that supersede DOGAMI regulations. Accordingly, we find that the OAR 660-023-0180(5)(b)(F) criteria are not applicable.

29. We have analyzed both OAR 660-023-0180(5)(c) and OAR 660-023-0180(5)(b)(E) above and conclude that both criteria are met by the application. We have adopted appropriate conditions.
30. We find that identified conflicts are minimized, or have been reasonably conditioned to be minimized or eliminated. We find and conclude that because the conflicts from the project can be minimized, the initial ESEE analysis under OAR 660-023-0180(5)(d) is not required.
31. Based on our findings and conclusions above, we decide that mining shall be allowed on the site and with these findings and this ordinance, amend the county's comprehensive plan to grant approval to allow such mining. We have placed conditions on our approval, including the requirement for a site plan review (see Condition 1). Consistent with OAR 660-023-0180(5)(e), the site plan condition requires additional "fine tuning" information and does not provide the county with an opportunity to deny the application for unrelated reasons. We find this is the minimum review necessary to ensure compliance with our approval decision.
32. We determine, consistent with ORS 215, that the post mining use of the property is wildlife and fish habitat with a limited amount of farming. The preliminary reclamation site plan submitted by the applicant indicates that the extraction process consists of a series of cells which will be mined and reclaimed as the mining process moves from cell to cell from south to east progressing to the north. As a condition of approval, the applicant is required to provide proof that it has a valid permit from DOGAMI prior to beginning any extraction work. As conditioned, we find that OAR 660-023-0180(5)(f) is met. The League of Women Voters, Mr. Sam Sweeney, 1,000 Friends of Oregon and Mr. Chapin all argue that the applicant should be required to reclaim the excavation to farmland after the mineral and aggregate operations are completed. We find that reclamation to farmland is not a requirement of the Goal 5 process. We, therefore, find that this is a straw argument for denial of the application because the opponents know that reclamation to farmland is not possible at the expansion site due to the depth of gravels (up to 92 feet) and lack of topsoil (zero topsoil in places) on the expansion site. Applicant has indicated a willingness to reclaim as much farmland as possible, but we specifically reject the suggestion that our approval be conditioned on full reclamation of the extraction area to farmland.
33. We find that the applicant has a currently approved aggregate processing operation adjoining the subject site. No reauthorization of the existing processing operation is required. As such, OAR 660-023-0180(5)(g) is satisfied.
34. We find that this application is examined under OAR 660-023-0180(5) and that OAR 660-023-0180(6) is not applicable.

ESEE Analysis for Future Conflicting Uses

35. OAR 660-023-0180(7) requires that an ESEE analysis be done to determine whether future conflicting uses in the impact area should be allowed, limited, or prohibited. We find generally that the development potential of the area for new dwellings and other uses is

substantially limited based on the restrictive provisions of the EFU zone and the restrictive provisions of the floodplain and greenway zones. The ESSE analysis framework is found at OAR 660-023-0040 and 050..

36. Under OAR 660-023-050(2), when a local government has decided to protect a resource site under OAR 660-023-040, implementing measures applied to conflicting uses on the resource site and within its impact area shall contain clear and objective standards. A standard is considered clear and objective if it is a fixed numerical standard, is a nondiscretionary requirement, or is a performance standard that describes the outcome to be achieved by the design, siting, construction, or operation of the conflicting use, and specifies the objective criteria to be used in evaluating outcome of performance.
37. The land within the impact area is zoned EFU and, therefore, we find that potential conflicting uses would be those uses allowable in the EFU zone. A complete list of the allowable uses in the EFU zone is contained in MCZO 136.
38. Under OAR 660-023-0040(2), the county is not required to consider uses that are "unlikely to occur." We find that because the expansion site and impact area are entirely within the 100-year floodplain, it is unlikely that most of the uses identified in MCZO 136 would occur in the impact area. We find generally that structures that are allowed in the EFU zone would generally not be permitted in the floodplain. We find a second group of possible uses in the impact area that includes such things as roadways and utilities. However, we find that, these activities, too, are unlikely to be located in the floodplain. We find and conclude that since these groups of structures, roadways and utilities are not likely to occur within the impact area, there is no potential for conflict with the proposed use.
39. We find a third group of uses that have some similarity with aggregate and mining resources but that do not create conflicts. The activities include other gravel extraction operations, exploration for other minerals and gasses, and model aircraft activities. These uses share common noise, dust and/or vibration issues with the approved use and, therefore, do not create conflicts. A fourth group of uses that could be allowed in the EFU zone would be expansion of existing uses, such as dog kennels and replacement dwellings. We find that there are currently no dwellings to replace or dog kennels to expand in the impact area with the exception of one dwelling belonging to the applicant located within the impact area. Given the location and ownership of the dwelling, we find that it is unlikely that there would be a request for a replacement dwelling.
40. Based on our analysis above related to a lack of conflict and adverse effect on farming uses and practices, we find there would be no conflict with farm stands. As indicated above, we find that there is no propagation or harvesting of forest products in the surrounding area and, therefore, there is no conflict. Even if forest products were to be propagated and harvested, we find that they are similar to agricultural products and based on our reasoning for agricultural products, we find there would be no conflict. The use requested, will be reclaimed to fish and wildlife habitat which will include wetland areas. In addition, the mineral and aggregate extraction site will exist adjacent to existing wetland areas and we find there will be no effect on those existing wetland areas. As such, we do not believe that creation, restoration or enhancement of wetlands presents any potential conflict with the proposed use. We find that on-site filming and accessory activities generally occur only in the areas that produce the type of image that is wanted for the film. Accordingly, if an

individual wanted to make a movie at a gravel pit, they could film in the area of the proposed use. If they did not want this image as part of the film, they would choose a different area for on-site filming. We find the gravel operation is a long-term and ongoing operation and, accordingly, will not interrupt on-site filming and accessory activities and there is no potential conflict between this use and the proposed use.

We find that propagation, cultivation, maintenance and harvesting of aquatic species, public parks, open areas and playgrounds are unlikely to occur in the impact area. However, if they did occur, there could be potential conflicts; namely, potential water level conflicts with aquaculture ponds and potential noise and dust conflicts with public parks, open areas and playgrounds.

41. As indicated earlier in this findings document, we have established an impact area of 1,500 feet. The primary concern in analyzing the practical effects of the proposed use for purposes of impact area analysis is noise. We agree with the report of acoustical engineers, and find that noise impacts from operations at the site are fully minimized to meet DEQ standards at approximately 800 feet from the perimeter of the extraction site. We find that noise impacts are successfully minimized anywhere outside of the line delineated "DEQ Noise Compliance Boundary" in the acoustical engineers report. Because noise can effectively be controlled below DEQ standards at approximately 800 feet from the perimeter of the proposed use, potential uses (including noise sensitive dwellings and structures) allowed in the EFU zone (or other zones) could create a conflict with the proposed use (or vice versa) due to noise effects of the proposed use, only if they are located within 800 feet of the perimeter of the extraction site. In other words, we find that beyond 800 feet, noise emissions are controlled within DEQ limits and do not present a conflict. Accordingly, for noise sensitive issues such as dwellings, structures and public parks, open areas and playgrounds that are located beyond the defined "DEQ Noise Compliance Boundary" (approximately 800 feet from the perimeter of the proposed use) do not create conflicts that must be analyzed. Accordingly, any park, replacement dwelling, open area, playground or other noise sensitive use located more than 800 feet does not create a conflict and this would include the houses on the bluff that are within the UGB for the city of Keizer. We find that noise sensitive uses occurring outside the 800-foot distance (DEQ Noise Compliance Boundary) could exist without causing the mining operation to violate DEQ standards and conversely the proposed use could operate without causing a noise-based conflict with these potential uses because DEQ standards would be met. However, we find that noise sensitive issues, such as a replacement dwelling or public parks, open areas and playgrounds within the 800-foot "DEQ Noise Compliance Boundary" could potentially create a conflict.

With regard to aquaculture ponds, the potential conflict we see is that dewatering of the extraction site could affect groundwater levels adjacent to the site and, therefore, potentially affect an aquaculture operation near the site. We have already determined that general farming activities identified by the applicant and opponents in the hearing process would not be adversely affected by groundwater drawdown projected in the hydrogeologic report. However, we find that aquaculture ponds might be level-sensitive and the projected drawdowns within 1,500 feet of the site (3.3 feet or more) could, at least in theory, cause a minor conflict with aquaculture activities. Beyond 1,500 feet, the potential drawdown is 3.3 feet or less and we do not see how this would be a substantial difficulty on any aquaculture activity. Accordingly, we confirm the impact area of 1,500 feet is appropriate and

we will address the ESEE consequences on aquaculture activities specifically under each prong of the ESEE analysis.

42. The economic consequences of proposed aggregate extraction site are substantial. The mining operation could lead to numerous jobs in the area as the aggregate could be used for numerous infrastructure projects including new roadways as well as maintaining the current infrastructure. Because the aggregate source is local, it would help reduce the cost to area projects. In addition, it will be a source of employment for many years and will have a spill over affect in support related to industries such as construction.

If new conflicting uses are fully allowed, including aquaculture, positive economic consequences could be that landowners could fully develop their property. Negative economic consequences to the mining operation of fully allowing the conflicting uses could be that the mining operation would be out of compliance with noise standards if, for example, a new public park was allowed within 800 feet of the extraction area perimeter in the impact area. Compliance with noise standards is placed on the noise source, in this case, the applicant. If a new aquaculture use were allowed within the impact area, there could be potential water conflicts that could have an adverse economic effect on both the proposed use and the aquaculture use. However, we see no reason why this potential conflict could not be fully eliminated by directing the dewatering flow from the quarry into the aquaculture pond(s) to maintain water levels. In addition to eliminating a potential conflict with aquaculture, this would also serve as a recharge point to help maintain groundwater levels and the water balance. As such, the economic loss of aquaculture may be overstated.

If new conflicting uses area limited, there still could be positive economic advantages. Specific limitations could be placed on the new use along with the landowner's acknowledgement of the existence of the aggregate operation. This would reduce the economic burden on the aggregate operation as there would be fewer costs associated with mitigation measures. If new uses were limited and had to take into account the mining operation before the use was allowed, both the option of proceeding with development as well as protecting the resource is preserved. For example, if aquaculture uses were required to coordinate with the water levels of the proposed use, economic consequences would be avoided and the positive economic benefits of both uses could be achieved. Because of the EFU and floodplain designations, uses are very limited in the impact area, and such limitations on conflicting uses have little potential for causing economic consequences to the landowner.

If new conflicting uses are prohibited in the impact area, positive economic consequences could include that the operation continue as proposed with no pressure from new development with benefits (revenue, taxes) generated by the operation remaining the same. Having a local source for aggregate would reduce the cost of providing new infrastructure and maintaining the existing infrastructure. It is unlikely that any non-farm economic activity (including aquaculture) could take place on the property because it is located in the floodplain that limits possible uses so such a prohibition would have a small economic effect. The current economic use of the property is farming and that use would not be prohibited thereby providing at least the current economic use of the property.

Prohibiting conflicting uses could cause landowners to lose some potential development opportunities, but we find these potential losses to be speculative and remote. The applicant

does not feel that conflicting uses should be prohibited and proposes that a recorded acknowledgement of the ongoing mining activities would be sufficient to protect the mineral and aggregate resource in conjunction with the existing EFU and floodplain restrictions. We believe this is a common sense solution that allows potential conflicting uses to assess conflicts and modify operations to achieve maximum economic output for both the potential conflicting use and the approved gravel use.

43. Social consequences from allowing the mining operation are that it contributes to maintaining a stable regional economy and provides jobs for local residents thereby helping them maintain their standard of living. The operation will generate revenue to help local schools and roads and generally add to the quality of life in the area.

Possible positive social consequences from fully allowing conflicting uses in the impact area are that the landowners would be able to develop their farm property, subject to regulations, without additional limitations. However, because the impact area is located in the floodplain, future uses are very limited and farming is most likely the activity that will take place. We also find that potential aquaculture is limited because the floodplain location provides the possibility of seasonal overflow and escape of the water-related aquaculture species. Accordingly, all the potential positive consequences of aquaculture (social, economic, environmental and energy) may be overstated.

If new possible conflicting uses are limited in the impact area, possible negative social impacts could be the sense of loss of property rights and resentment of the imposition of additional development constraints for landowners. Again, because the area is within the floodplain, it is unlikely that a conflicting use (a dwelling, park, playground or aquaculture operation) would be located in the impact area. Potential conflicting uses such as public parks are also unlikely because they are incompatible with farming operations that predominate in the area. We agree with the applicant that limiting conflicting uses, beyond a recorded acknowledgment, is unnecessary because it is impractical to place structures or other conflicting use in the floodplain.

The possible positive social consequences from prohibiting new conflicting uses could be the benefit to the general public of having readily available aggregate to maintain the communities' infrastructure. Possible negative consequences could be that landowners within the impact area would be slightly limited on the use of their property. It is unlikely that any conflicting uses (structures in particular) would be located within the impact area because the area is within the floodplain. There would be potential social conflicts for both farming and mining operations if conflicting uses were allowed in the impact area. We agree with the applicant that a recorded acknowledgement is sufficient to avoid or minimize any social conflicts.

44. Environmental consequences from the proposed use will be minimized because the expansion site is located in an upland area and setbacks will be maintained from the nearby water bodies. The applicant will meet DEQ requirements, wildlife habitat will not be removed, and the site will be reclaimed to fish and wildlife habitat.

If new conflicting uses (i.e., structures, aquaculture operations or parks) area fully allowed the environmental consequences could be that the mining and aggregate operation would be unable to meet DEQ noise requirements. Also, new developments would need new septic

and sewer systems that would create the potential for runoff. Aquaculture operations might need higher water levels if located near the proposed use. Allowing new development in the impact area would also deplete farmland and possibly wildlife habitat.

Limiting new conflicting uses could be used as a means to protect the mineral and aggregate resource. The applicant suggests for future use applications, the county might require the recording of an acknowledgement statement or a waiver of right of remonstrance to the mining operation. We agree with the applicant that with this minimal limitation, the conflicting uses could be allowed in the impact area and the resource would be protected. In addition, recognition by proposed conflicting aquaculture uses of the ongoing dewatering operations at the expansion site would allow those operations to proceed while recognizing that there might be groundwater drawdown associated with the adjoining activities on the proposed site. The county's current EFU and floodplain requirements and zoning procedures, combined with a simple statement or waiver, provide a median way for landowners and the applicant in that both could pursue future activities under defined conditions that are understood at the time of the expansion approval. As part of the permitting process for a proposed new use, this statement or waiver would identify environmental interaction between potential conflicting uses and the proposed expansion site and defining the parameters at the time of approval. Again, it is unlikely that there would be any conflicting use in relation to the proposed extraction site because of the zoning and being in the floodplain. The applicant suggests that for future uses, the only limitation necessary is recorded acknowledgment in deed records or waivers of right of remonstrance for any new use considered. We agree that this would strike a balance between concerns for the conflicting use and preserving the resource.

If new conflicting uses were prohibited in the impact area, there would be no environmental consequences to the proposed use. The evidence presented demonstrates that the operation meets the environmental requirements outside of the impact area including noise. If no new development is allowed within the impact area, future environmental impacts of that development are eliminated. It is very unlikely that any dwelling would be placed in the area because of the floodplain and EFU zoning. Rather than prohibiting potential future conflicting uses, limitations can be placed on the conflicting uses through the county's current zoning process. This will balance the concerns for both the aggregate and mineral resource as well as future uses.

45. The energy consequences of allowing the proposed extraction include efficient on-site operation and maintenance of local aggregate supplies. A local supply of aggregate will help construction schedules and avoid delays and inefficiencies in labor and petroleum consumption due to transporting aggregate-related construction materials into the market area from greater distances.

Allowing new conflicting uses would have a negative energy impact because it could increase energy consumption by potentially requiring aggregates to be transported by truck to the Salem area from distant locations (which increases fuel consumption). Allowing a new use in the impact area could require the aggregate operation to consume additional energy to meet DEQ noise and other discharge related standards. Additionally, if new uses are allowed, they could cause the expansion site to cease operation thereby causing additional energy to be used to import sand and gravel from sources much further away.

If new conflicting uses are limited within the impact area, negative energy impacts could be reduced. Specific requirements can be followed that would allow both the landowner and the applicant to conform their activities to a specific standard. For example, if a dwelling was proposed in the impact area, a waiver or right of remonstrance, or similar recorded statement, can be required by the county at the time of the future application to protect the aggregate and mineral resource and certain construction details, such as double paned windows, might be required. The result of such a moderate limitation would be to allow no additional energy consumption but at the same time protect the dwelling from noise consequences. Similarly, a statement or waiver can be required from an aquaculture operation to confirm that water levels may vary with gravel extraction and assure that aquaculture operations are adjusted to reflect these levels and reduce energy inputs. Again, it is highly unlikely that a dwelling would be placed in the impact area because of the zoning and being in the floodplain.

No negative energy consequences would result to the proposed operation from prohibiting conflicting uses in the impact area. It could continue its normal operations and no energy would be expended to protect conflicting uses from potential conflicts. The applicant does not feel that prohibition is necessary because conflicting uses are unlikely to occur in the impact area due to zoning and floodplain considerations.

46. While it appears unlikely that any conflicting uses will take place in the impact area because of the zoning and location within the floodplain, we agree with the applicant's suggestion that a simple recorded statement or waiver of remonstrance shall be considered at the time of application for a county permit for potential conflicting noise sensitive use that wishes to locate within the "DEQ Noise Compliance Boundary" (i.e., approximately 800 feet from the perimeter of the extraction area), or any aquaculture use applies for a permit within the impact area. These extremely limited measures leverage the existing zoning ordinance of the county and assure common sense notice, discussion and issue resolution for potential conflicting uses in the impact area. See Section 52 below.

Adequacy of PAPA Application

47. OAR 660-023-0180(8) establishes the criteria for determining whether a PAPA application concerning a significant aggregate site is adequate. The PAPA application is adequate if it includes:

- (a) Information regarding LQQ (location, quality, and quantity) sufficient to determine whether the standards and conditions in OAR 660-023-0180(3) are met;

The applicant has submitted a detailed report from professional geologists to demonstrate the specific location of the site, the nature of the sand and gravel deposit and detailed information regarding the quality and quantity of the mineral and aggregate deposits. LQQ issues and OAR 660-023-0180(3) were discussed above and we incorporate that discussion by reference. We find that the information provided by the applicant is sufficient regarding LQQ standards to determine whether the proposed resource site satisfies standards in OAR 660-023-0180(3). We conclude that OAR 660-023-0180(8)(a) is satisfied.

- (b) A conceptual site reclamation plan;

The applicant has submitted substantial plan sets and drawings that demonstrate the location of the site, proposed mining and operations activities, and the conceptual reclamation plan which are sufficient for the County to analyze the application. We conclude that OAR 660-023-0180(8)(b) is satisfied. However, we note that final approval of the reclamation plan resides with DOGAMI after County approval is obtained, ORS 517.780. As a condition of approval, the applicant is required to provide the county proof of a permit from DOGAMI before any work can be conducted on the proposed site (see Conditions 4 and 5).

- (c) A traffic assessment within one mile of the entrance to the mining area pursuant to section (5)(b)(B) of this rule;

The applicant provided a full traffic analysis/assessment and based on that analysis, we find that there will be no increase in traffic introduced into the general County road system above existing permitted traffic levels from the existing and approved Windsor Island facility as the instant application is a designation and protection of future resource for applicant's ongoing business. We incorporate by reference our discussion under the "Conflicts with Local Roads" section above and find and conclude that the applicant provided sufficient information to satisfy OAR 660-023-0180(8)(c).

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

We find that the applicant submitted an analysis of the identified conflict groups set out in the Goal 5 rule and proposed methods to minimize the potential conflicts as more fully discussed above. We incorporate that discussion by reference and find and conclude that OAR 660-023-0180(8)(d) is satisfied.

- (e) A site plan indicating the location, hours of operation, and other pertinent information for all proposed mining and associated uses.

We find that the site plan documents and application provide detailed information about the site plan and hours of operation. The applicant also provided a detailed analysis of the proposed operation, noting that no blasting will be needed and that the extraction will take place well below the surface elevation.

As set out earlier, we find that the active site area consists of approximately 247 acres with 217 acres actually being used as the extraction site and the remaining 30 acres providing a buffer/setback. Access to the site is from Windsor Island Road and applicant will build a haul road on the expansion site. The extraction process will move generally from south to east and then to the north in a series of mining cells. We find that reclamation will be ongoing and that the final reclamation plan calls for a series of water features which will provide for fish and wildlife habitat as well as potentially allowing some of the land to be reclaimed for farmland.

Because of the possibility that the noise may exceed DEQ regulations for the applicant owned house in the impact area, the applicant has requested that the hours of operation begin at 7 a.m. rather than 6 a.m. as allowed under the ordinance.

MCZO 120.460(D) specifies the hours of operation. It provides:

Hours of Operation.

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

Consistent with the applicant's request and our ordinance, we establish the hours of operation from 7:00 a.m. to 6:00 p.m. Monday through Friday. Activities on Saturday will be limited to transportation activities only and the Saturday hours will be from 7:00 a.m. to 6:00 p.m. No transportation or extraction activities will be take place on Sundays or on January 1st, Memorial Day, July 4th, Labor Day, Thanksgiving, or December 25th.

The PAPA application contains the information required by OAR 660-023-0180(8) and is, therefore, adequate to allow the initiation of Goal 5 evaluation and approval of the Expansion Site. Based on all these findings, we conclude that OAR 660-023-0180(8)(e) is satisfied.

48. Under OAR 660-023-0180(9), the county must amend its comprehensive plan and land use regulations to be consistent with the OAR. Until such time as local governments make those changes, the Goal 5 rule (OAR 660-023-0180) is applied directly to the PAPAs concerning aggregate resources. Marion County's comprehensive plan states that the OARs shall be followed with the exception for standards in Ordinance Chapter 120.400. Chapter 120.400 is discussed below. We find that OAR 660-023-0180(9) is satisfied.

Program to Achieve Goal 5

49. Under OAR 660-023-0050(1), the county must adopt comprehensive plan provisions and/or land use regulations to implement the decisions made pursuant to OAR 660-023-0040. The plan amendment shall describe the degree of protection intended for the significant resource site. The plan amendment and implementing ordinances shall clearly identify those conflicting uses that are allowed and the specific standards or limitations that apply to the

allowed uses. A program to achieve Goal 5 may include zoning measures that partially or fully allow conflicting uses.

50. Under OAR 660-023-0050(2), when a local government has decided to protect a resource site under OAR 660-023-0040, implementing measures applied to conflicting uses on the resource site and within its impact area shall contain clear and objective standards. A standard is considered clear and objective if it is a fixed numerical standard, is a nondiscretionary requirement, or is a performance standard that describes the outcome to be achieved by the design, siting, construction, or operation of the conflicting use, and specifies the objective criteria to be used in evaluating outcome of performance.
51. The applicant has not requested to impose any zoning limitations or setbacks on future dwellings located on adjacent property, but has instead requested that a notification or declaratory statement be recorded as part of the decision process in the unlikely event a conflicting use would request land use approval within the impact area. We find that the development potential of the area for new dwellings and other uses is substantially limited based on the ESEE analysis, the restrictive provisions of the EFU zone, and the restrictive provisions of the floodplain and greenway zones, but that such a recorded statement is a good idea.
52. We agree with the applicant that a minimally intrusive notice or declaratory statement is all that is required in the event a conflicting use or request land use approval within the impact area. Section 136.100(c) of the MCZO provides a template or declaratory statement that may be required in certain instances for conflicting uses in an EFU zone. We believe that no additional zoning restrictions or limitations are required within the 1,500-foot impact area. However, we believe that if noise sensitive uses request land use approval within the DEQ Noise Compliance Boundary (i.e., within approximately 800 feet of the perimeter of the extraction area) or if an aquaculture operation requests approval within the impact area, it is appropriate for those conflicting uses to sign a recordable "Declaratory Statement" recognizing the mineral and aggregate use. Accordingly, as part of our program to achieve Goal 5, in the unlikely event that a noise sensitive use would request land use approval within the DEQ Noise Compliance Boundary (i.e., approximately 800 feet from the perimeter of the extraction area) or an aquaculture operation would request approval within the impact area, these conflicting uses shall be required to sign a Declaratory Statement substantially equivalent to the Declaratory Statement contained in MCZO 136.100(c) with regard to recognizing the existence of the approved mineral and aggregate resource on the expansion site, an acknowledgment of potential conflicts and waiver of action related to lawful operation of approved mineral and aggregate extraction activities onsite.
53. Under OAR 660-023-0060, Marion County is required to provide timely notice to landowners and opportunities for citizen involvement during the inventory and ESEE process. Notice of the hearing before the hearings officer and Board of Commissioners was adequately given and notice was properly posted on the application property. No objections to notice were made.
54. Under OAR 660-023-0070, if measures to protect significant resource sites inside UGBs affect the inventory of buildable lands in acknowledged plans, other requirements apply. We find that this is not an application for a resource site within a UGB, and buildable lands are not affected. We conclude this standard is not applicable.

Statewide Planning Goals

55. All comprehensive plan amendments must be consistent with statewide planning goals. The requested PAPA is a comprehensive plan amendment, and therefore, must comply with statewide planning goals. We make the following findings and conclusions with regard to each of the statewide planning goals:

Goal 1: Citizen Involvement. The purpose of Goal 1 is to develop a citizen involvement program that ensures the opportunity for citizens to be involved in all phases of the planning process. The public notice and hearings afforded under Marion County's land use processes provided an opportunity for citizen communication and input to this matter. Marion County's required notice and hearing processes ensure that the requirements of Goal 1 are met.

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

Under this goal, each plan and related implementation measure shall be coordinated with the plans of affected governmental units. Affected governmental units are those local governments, state and federal agencies and special districts which have programs, land ownerships, or responsibilities within the area included in the plan. Implementation measures can be site specific.

This is a site specific comprehensive plan amendment. Marion County notified and received responses from Public Works, City of Keizer, Marion County Fire District #1, Oregon Department of Fish and Wildlife, and the Marion County Tax Office. These responding entities addressed their concerns, but did not have any concerns that could not be alleviated with conditions, compliance with regulations, or with the continued work with the applicant. DEQ, ODOT, DSL, DOGAMI, LCDC, COE, and Federal Emergency Management Agency (FEMA) were also contacted but either failed to submit comments or stated that they were not affected by the proposal. The county's hearing process allows input from the public and coordination with interested state, local, and federal agencies. We find that the application provides factual support for the requested decision and that proper opportunities for government and citizen impacts were provided. The requirements of Goal 2 are met.

Goal 3: Agricultural Lands. We incorporate our findings and conclusions above related to agricultural uses and conflicts. The purpose of Goal 3 is to preserve and maintain agricultural lands for farm use. Goal 3 is balanced with Goal 5 under OAR 660-023-0180(3) and is also examined under ORS 215.296. The site is currently zoned EFU. ORS Chapter 215 provides that gravel extraction applications may be allowed in EFU zones. LCDC has adopted the Goal 5 PAPA process to assist in balancing between preservation and maintenance of agricultural lands and the need to protect significant mineral and aggregate resources. Inherent in the PAPA process is a conflict analysis and analysis of measures to minimize effects on agricultural uses so as to balance these potentially competing interests. We find that measures are available to minimize the potential effects of applicant's extraction activities on agricultural uses and farm practices on surrounding lands. We find and conclude that the approved mineral and aggregate use will not increase the costs of, nor force changes to, accepted farming practices on surrounding lands. Because

mineral and aggregate uses are allowed under state statute on agricultural lands, because Goal 5 provides a process for balancing all statewide goals, because agricultural conflicts can be minimized, and because we find no increased costs nor forced changes in accepted farming practices, we conclude that the application meets the requirements of Goal 3.

Goal 4: Forest Lands. The purpose of Goal 4 is to conserve forest lands by maintaining the forest land base and to protect the state's forest economy by making possible economically efficient forest practices that assure the continuous growing and harvesting of forest species as the leading use on forest land consistent with sound management of soil, air, water, fish and wildlife resources and to provide for recreational opportunities and agriculture. There are no areas zoned for forestry use on-site, within the impact area or within the general vicinity. The extent that Goal 4 implicates agricultural uses, compliance with Goal 3 is sufficient to protect ancillary forest uses. As such, we conclude that the requirements of Goal 4 are met.

Goal 5: Open Spaces, Scenic and Historic Areas, and Natural Resources. We incorporate our findings above herein. The purpose of Goal 5 is to protect natural resources and conserve scenic and historic areas and open spaces. Natural resources protected under Goal 5 include significant mineral and aggregate resources. OAR 660-023-0180 establishes the appropriate procedure and process for consideration of Goal 5 issues in this application and is examined above. Following the provisions of OAR 660-023-0180 and the PAPA process ensures that the requirements of Goal 5 are met.

Goal 6: Air, Water, and Land Resources Quality. The purpose of Goal 6 is to maintain and improve the quality of the air, water and land resources of this state. We find that regulatory permits required as conditions of approval (see Conditions 4 and 13) will regulate particulate discharge and water runoff from the proposed aggregate operations, and satisfy this goal with regard to relevant pollutants. Additionally, we find that applicant will minimize dust by controlling truck speed, graveling internal roads, using water to control dust, paving portions of the internal truck paths, promptly removing dirt and other materials that might become airborne from paved portions, and engaging in wet mining practices to extract moist aggregates from the site. Storm water discharges will be directed on-site and will be handled through an NPDES 1200A permit. Water taken from the individual mining cells through the dewatering process will be reintroduced to maintain a water balance and protect groundwater resources. Turbidity in groundwater associated with mining below the water table will be filtered out on the natural processes of the aquifer and a 100-foot buffer is provided on all sides of the extraction site to ensure that turbidity does not move offsite.

Noise discharges are also covered under this goal. We incorporate our findings above with regard to noise. We find that applicant's design of the operation and conditions, such as hours of operation (see Conditions 20 and 21) satisfy this goal with respect to noise.

Extraction activities at the site will result in an unavoidable disruption of surface land resources as is inherent in the mining of aggregate. Pursuant to a DOGAMI permit and DOGAMI standards, reclamation will be accomplished to return disrupted land to open space, fish and wildlife habitat and some farmland (see Condition 4). The requirements of Goal 6 are met.

Goal 7: Areas Subject to Natural Disasters and Hazards. The purpose of Goal 7 is to protect people and property from natural hazards. Under this goal, developments subject to damage or that could result in loss of life shall not be planned nor located in known areas of natural disasters or hazards without appropriate safeguards. No residences or permanent structures are proposed for the site. The subject site is within the identified floodplain of the Willamette River. A floodplain development permit was submitted as a part of this proposal. The permit is evaluated below and we find that the floodplain development permit requirements are met.

A condition of approval (Condition 32), as requested by the applicant, requires that dewatering operations stop in the flood season (November 1 of the current year through May 1 of the next year). Timely, annual cessation of dewatering activity will allow the water level in the extraction cells to equilibrate with the groundwater level in the area, a level that is generally linked to the Willamette River. We find that this minimizes or eliminates flood hazard potential.

DPW expressed concern of possible erosion into Clear Lake and requested that an ingress/egress analysis be performed regarding the chance of erosion because of possible flow acceleration and turbulence caused by mining cells filling and emptying into the Willamette backwater and Claggett Creek flood flow. We find that since no impediments to floodwater flow will be installed, such as berms or dikes, flow patterns within the buffer areas remain similar and erosion is not expected. In addition, Condition 33 requires the applicant to obtain an ingress/egress analysis to address this issue or provide evidence that the analysis is not needed. We find that this issue is appropriately addressed by facts showing that.

We find that the extraction area proper is more than one mile from the Willamette River Channel and that river capture or avulsion of this magnitude is highly unlikely, particularly given that the flooding of the site occurs in a backwater fashion via Claggett Creek and Clear Lake providing for the slow introduction of floodwaters onto the site and reducing erosion. In addition, this site must be designed in cooperation with DOGAMI (see Condition 4) and we find that reclamation design inherently includes river capture issues minimize the potential for river capture. Floodplain development permit requirements and compliance with DOGAMI requirements will ensure that the requirements of Goal 7 are met.

Goal 8: Recreational Needs. The purpose of Goal 8 is to satisfy the recreational needs of the citizens of the state and visitors and, where appropriate, to provide for the siting of necessary recreational facilities including destination resorts. No destination resorts are planned for this area. The site is in an active farming area and does not currently provide for the citizens' recreational needs. The site will be reclaimed to wildlife habitat and open space, and will therefore offer potential opportunities for recreation. The requirements of Goal 8 are met.

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

The subject site has a significant quantity of high-quality sand and gravel that would be a significant economic asset to the state. It is consistent with the purpose of Goal 9 to protect

this mineral and aggregate resource. We incorporate our findings above and conclude that mineral and aggregate extraction will not significantly adversely affect another important economic activity, farming. Because agricultural uses will not be significantly adversely affected and because mineral and aggregate materials are essential building blocks for county and state economies, the requirements of Goal 9 are met.

Goal 10: Housing. The purpose of Goal 10 is to provide for the housing needs of the citizens of this state. No housing is proposed, nor will this proposal remove potentially urbanizable land that could be used for housing from any inventory. The proposed use of the site as a sand and gravel extraction area will provide a source for construction materials for building houses and infrastructure in Marion County. To the extent Goal 10 is applicable, its requirements are met.

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

As proposed, the mineral and aggregate operation will not require public service facilities. Power is available on the site and no other services are necessary. Sewage facilities are unnecessary as the applicant will use portable facilities. Water is available from on-site exempt wells. Activities at the proposed expansion site will not increase any demand for public services, such as fire, police, or schools. Because no additional public facilities or services are necessary to allow the proposed use, the requirements of Goal 11 is met.

Goal 12: Transportation. The purpose of Goal 12 is to provide and encourage a safe, convenient and economic transportation system.

Under OAR 660-012-0060(1), amendments to acknowledged comprehensive plans and land use regulations which significantly affect a transportation facility shall assure that allowed land uses are consistent with the identified function, capacity, and performance standards (e.g. level of service, volume to capacity ratio, etc.) of the facility.

Under OAR 660-012-0060(2), a plan or land use regulation amendment significantly affects a transportation facility if it:

- (a) Changes the functional classification of existing or planned transportation facility;
- (b) Changes the standards implementing a functional classification system; or
- (c) As measured at the end of the planning period identified in the adopted transportation plan (2030 for Marion County), the comprehensive plan amendment would:
 - (1) Allows land uses or levels of development that would result in types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;

- (2) Reduces the performance of an existing or planned transportation facility below the minimally acceptable performance standard identified in the TSP or comprehensive plan, or
- (3) Worsens the performance of an existing or planned transportation facility that is otherwise projected to perform below the minimum acceptable performance standard identified in the TSP or comprehensive plan.

We find that approval of the expansion site will result in no intensification of the levels of traffic currently permitted on the county road system. No new vehicle trips will be generated into the county traffic matrix. The transportation analysis of Kittleson & Associates which we find persuasive, demonstrates that the existing road system currently provides an adequate level of service for traffic associated with the existing and approved Windsor Island site, as well as all of the other uses (farm and residential) in the area, both currently and at the end of the planning period adopted in Marion County's Transportation Plan.

We find that because no new vehicle trips will be generated into the county transportation system by the activities at the expansion site, there will be no measurable effect from this application that would "significantly affect" any transportation facility or reduce the performance of any existing transportation system. The proposed use of the subject site satisfies the requirements of OAR 660-012-0060 in that it does not "significantly affect" any transportation facility, whether existing or planned. Conditions of approval require applicant to take continuing steps to protect safety, convenience and provide repairs for the economic use of roads in the area. Accordingly, we conclude that the requirements of Goal 12 are met.

Goal 13: Energy Conservation. The purpose of Goal 13 is to conserve energy. The proposed use will not be a high energy consumption operation. Further, the proximity of the expansion site to the processing facility and the market area reduces the transportation necessary to process and use the material thereby conserving energy. To the extent Goal 13 is applicable, its requirements are met.

Goal 14: Urbanization. The purpose of Goal 14 is to provide for an orderly and efficient transition from rural to urban land use, to accommodate urban population and urban employment inside urban growth boundaries, to ensure efficient use of land and to provide for livable communities. The proposed use is not an urban land use and the application does not request a change from rural uses to urban uses. The site is not located in an urban growth boundary. We conclude, therefore, Goal 14 is not applicable.

Goal 15: Willamette River Greenway. The purpose of Goal 15 is to protect, conserve, enhance, and maintain the natural, scenic, historical, agricultural, economic and recreational qualities of lands along the Willamette River as the Willamette River Greenway. The proposed site is approximately one mile from the Willamette River. A small portion of the proposed expansion site (tax lot 300, Section 21) is along the Willamette River Greenway boundary. We find that no activities of any type will occur at the western portion of the property that includes tax lot 300 and the greenway because if no activities occur on the portion of land within the greenway's boundary, we find and conclude that the requirements of Goal 15 are met.

Goals 16-19: Estuarine Resources, Coastal Shorelands, Beaches and Dunes, and Ocean Resources. There are no estuarine resources, coastal shorelands, beaches, dunes or ocean resources at the site or within the impact area. Goals 16 through 19 are not applicable.

Marion County Comprehensive Plan

56. Since OAR 660-023 is applied directly through MCRZO 120.400, and no examination of additional conflicts is allowed, no examination of the comprehensive plan is required.

MCZO 120.400

57. In addition to compliance with Statewide Planning Goals, the proposal must also meet the requirements of the MCZO. MCZO 120.400 sets forth requirements and standards for Mineral and Aggregate Resource Operations. MCZO 120.400 contains several sections that repeat OAR requirements and will not be repeated. We incorporate by reference our analysis, findings and conclusions above. The sections that do not duplicate OAR requirements are considered below.
58. MCZO 120.440. The approval shall specify which of the following uses are allowed:
- (A) Mining or quarrying operations for the extraction of rock, clay, soil, sand, or gravel.
 - (B) The following uses when in conjunction with a mineral and aggregate resource extraction operation:
 - (1) Processing, crushing, washing, sizing and screening of mineral and aggregate resources;
 - (2) Stockpiling of mineral and aggregate materials and earth products;
 - (3) Offices, shops or other accessory structures used for the management and maintenance of resource extraction and processing equipment;
 - (4) Sale of mineral and aggregate resources, asphalt, cement treated base, and concrete;
 - (5) Asphalt batch plants, cement treated base pug plants and/or concrete batch plants;
 - (6) Storage of equipment or machinery and maintenance facilities related to mineral and aggregate resource extraction processing or transportation equipment, provided that independent commercial storage or commercial maintenance facilities open to the general public or not directly related to resource extraction shall not be allowed unless permitted in the underlying zone;
 - (7) Transportation facilities and loading facilities related to mineral and aggregate resource mining and/or processing; and

- (8) Other incidental mineral and aggregate resource related activities including buildings, structures and other apparatus.

Mining operations for the extraction of rock and gravel at the expansion area are requested as part of this application. These uses are allowable uses and are permitted through this application because all standards are met and any conflicts are minimized in accordance with the Goal 5 rule. Accordingly, we find MCZO 120.440 is met.

- 59. MCZO 120.450 provides the criteria that must be met in order to grant a permit for mineral and aggregate operations (in addition to any criteria in the applicable zone):
 - (A) The proposed uses, activities and facilities are included in Section 120.440;
 - (B) A permit for mining of aggregate on farmland shall be issued only for a site included on an inventory in an acknowledged comprehensive plan as required under ORS 215.298(2);
 - (C) For sites that qualify as significant under requirements of OAR 660-[0]23-0180(3)(a) through (d), the county has completed the requirements of 660-[0]23-0180(5)(a) through (g) or;
 - (D) For sites that qualify as significant under requirements OAR 660-[0]23-0180(4)(a) through (c), the county has completed the requirements of 660-[0]23-0180(6)(a) through (d).
 - (E) For sites that do not qualify as significant only, the following criteria apply:
 - (1) The proposed use, as conditioned, will not substantially limit, impair, or preclude the use of surrounding properties for the uses permitted in the applicable zone;
 - (2) The proposed use, as conditioned, will not have a significant adverse effect on air or water quality;
 - (3) Adequate public and utility facilities and services to serve the use are available or will be made available prior to establishment of the use;
 - (F) New uses that batch and blend mineral and aggregate into asphalt cement may not be authorized within two miles of a planted vineyard. Planted vineyard means one or more vineyard totaling 40 acres or more that are planted as of the date the application for batching and blending is filed, pursuant to OAR 660-033-130(15).
- 60. We find that the proposed mining operations, extractions, temporary storage, transportation, and other incidental uses are all allowable uses included in Section 120.440. MCZO 120.450(A) is met.
- 61. We find that the PAPA application and record fully support the applicant's request that the expansion site be added to the County's significant Goal 5 mineral and aggregate inventory.

Through this approval, we include the site on an inventory in the county's acknowledged comprehensive plan as required under ORS 215.298(2). MCZO 120.450(B) is met.

62. We find that the site is significant under OAR 660-023-0180(3), fully meeting the requirements of OAR 660-023-0180(3)(a) through (d). The County has carefully completed the requirements of OAR 660-023-0180(5)(a) through (g) and, accordingly, MCZO 120.450(C) is met.
63. We find that the proposed site meets the test for significance set forth in OAR 660-023-0180(3) and that the application is not considered under the requirements of OAR 660-023-0180(4). As such, MCZO 120.450(D) is not applicable.
64. We find and conclude that the expansion site is significant and that the aggregate is of high quality and its quantity significantly exceeds the required amount required under Goal 5 for the Willamette Valley. As such, MCZO 120.450(E) does not apply.
65. The applicant does not request an asphalt batch plant for batching and blending of mineral aggregate into asphalt cement. The applicant requests a specific condition stating these uses are not allowed (see Condition 24). As such, to the extent MCZO 120.450(F) is applicable, it is met.
66. MCZO 120.460 provides standards for development and operation of mineral and aggregate operations. Unless specifically deleted or modified as part of the PAPA or conditional use approval, the following standards and requirements apply:
 - (A) Dimensional Requirements.
 - (1) Lot Area: The minimum area shall be that area necessary to meet setback requirements.
 - (2) Setbacks for mineral and aggregate extraction shall be:
 - (a) The extraction area must be at least 100 feet from any property line;
 - (b) The extraction area must at least 500 feet from a habitable building existing on adjacent property at the time the use is established;
 - (c) When a site abuts another mineral and aggregate site, no setback for mineral and aggregate extraction is required along the common boundary line, unless such setback is determined by the county to be necessary.
 - (3) Setbacks for mineral and aggregate processing and loading shall be as follows:
 - (a) One hundred (100) feet from any property line; and
 - (b) Five hundred (500) feet from a habitable building existing on adjacent property at the time the processing operation is established;

- (4) Setbacks for offices, shops, or other accessory structures shall be regulated by the zone in which the proposed operation is located.
 - (5) Storage of overburden is allowed within the setbacks. There shall be no setback for existing roads, internal truck paths or other transportation facilities. Any new roads, internal transportation or other transportation facilities shall not be located closer than 50 feet from a habitable building on adjacent property existing at the time storage commences.
 - (6) Height: The maximum height of any structure, except mineral and aggregate processing and extraction equipment, shall be eighty-five (85) feet.
 - (7) Signs: One sign not exceeding thirty-two (32) square feet in area is permitted at each entrance.
- (B) Screening and Fencing.
- (1) Fencing shall be required only if the site is adjacent to an urban or rural residential zone. When fencing is required, it shall be of cyclone type, a minimum of six (6) feet high. Any site owner or operator may voluntarily fence a site.
 - (2) Existing deciduous and evergreen vegetation within required setback areas that screen visibility of the operation from adjacent property or public roads shall be retained unless located within a vision clearance area or determined by the county to be a public safety hazard.
- (C) Access.
- (1) Access to sites that do not qualify as significant, the following standards apply;
 - (a) All private access roads connecting mineral and aggregate sites to public highways, roads or streets shall be paved or graveled. If graveled, the applicant shall provide a written agreement to the County to grade and treat the access road as needed during the period from June to September, or as determined in the conditional use, to reduce dust. If the access connects with a paved public road it shall be paved for a distance of 100 feet from the existing paved road.
 - (b) If access from a mineral and aggregate site is by graveled public highways, roads or streets, the applicant shall provide a written agreement to the County annually grade and treat the first two thousand (2,000) feet of such roadway, or as determined in the conditional use permit, to reduce dust impacts.
 - (c) Vehicular barriers or gates shall be required at all vehicular access points to the site. The gate shall be located no closer than 85 feet to

the public right-of-way unless a lesser distance is established as part of the continual use permit.

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

(2) For sites that qualify as significant, access requirements shall comply with OAR 660-[0]23180-(5)(b)(B).

(D) Hours of Operation.

(E) Environmental Standards.

(1) Any crusher, asphalt batch plant or concrete plant, shall have a valid DEQ permit.

(2) Owners or operators shall present evidence of the appropriate DEQ permits prior to commencing operations.

(3) Owners or operators of mineral and aggregate operations shall comply with the Department of Environmental Quality ("DEQ") sound levels in OAR 340-[0]35-035 for habitable buildings on nearby property.

(F) Safety Standards.

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

(G) Site Reclamation.

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

(H) Performance Agreements.

(1) The operator of a mineral and aggregate site shall provide the County with a letter and two copies of relevant documents that demonstrate the operator has in full force and effect the bond or security deposit with DOGAMI to assure conformance with the state-required reclamation plan. This information shall be provided to the County prior to commencing operations.

(2) Mineral and aggregate operations shall be insured for \$100,000.00 against liability and tort arising from production activities or incidental operations conducted or carried on by virtue of any law, ordinance, or condition and the

insurance shall be kept in full force and effect during the period of such operations.

Evidence of a prepaid policy of such insurance that is effective for a period of one (1) year shall be deposited with the County prior to commencing any mineral and aggregate operations. The owner or operator shall annually provide the County with evidence that the policy has been renewed.

(A) Dimensional Requirements. (Subsections A1-7)

These subsections set forth a minimum lot area (an amount of land necessary to meet setback requirements). They also provide for setbacks of at least 100 feet from any property line and 500 feet from any habitable building existing on adjacent property at the time the gravel operation is established. We find there is a general 100-foot setback and that the extraction area is clearly located more than 500 feet from any currently existing habitable building. There will be no processing of mineral and aggregate materials on the Expansion Site and the 100-foot setbacks indicated above meet the loading requirement of this section.

No offices, shops or other accessory structures are requested and, therefore, related setback requirements do not apply. Section 460(A) allows for storage of overburden within setbacks and provides that there are no setbacks for existing roads, internal truck paths or other transportation facilities. Applicant will store overburden in certain portions of the setback area. From the site plans, we find that such storage will not be any closer than 50 feet from any habitable building because there are no habitable buildings in the area. In addition, new roads or internal transportation tracks located at reasonable locations on the site and will not be located closer than 50 feet from any existing habitable building. There will be no processing equipment on-site and the mineral extraction equipment that will be used will be less than 85 feet in height. Even if the height maximum applied to extraction equipment, we find this standard is met. We find from the site plan and in the applicant's narrative, that all of the dimensional requirements of Section 120.460 are met by the proposed application.

(B) Screening and Fencing. (Subsections B1-2)

We find that there are no urban or residential zones on the site. The city of Keizer is approximately one quarter of a mile to the east. We also find that there is perimeter vegetation along Clear Lake and Claggett Creek and that this vegetation is in the setback area and will be preserved. The provisions of this standard are met.

after the County land use approval, but prior to commencement of operations on the Expansion Site (see Condition 4). Accordingly, the provisions of this subsection of the rural zoning ordinance are met.

(H) Performance Agreements. (Subsections H1-2)

We find that a performance bond is a condition precedent to obtaining the DOGAMI permit and we have adopted conditions that require evidence of the appropriate DOGAMI bond to the County prior to beginning operations at the Expansion Site (see Conditions 4 and 5). We have also required the applicant to be insured for \$100,000 against liability and tort arising from operations and to provide a copy of its liability insurance coverage to the County prior to commencing operations and provide annual updates to the County to demonstrate that insurance is in full force and effect (see Condition 19). Accordingly, the provisions of this subsection of the rural zoning ordinance are met.

Floodplain Development Permit – MCZO 178

67. The purpose of the floodplain overlay zone is to promote public health, safety and general welfare and to minimize public and private losses due to flood conditions. MCZO 178.050 contains permitting procedures and requirements, and MCZO 178.060 contains flood protection development standards.
68. We find that the subject property is located within the Floodplain Overlay Zone of the Willamette River. The Flood Insurance Rate Map #4101540192 G indicates that the expansion site is in an unnumbered A zone.
69. MCZO 178.050 contains the conditional use procedures and requirements. They are as follows:
 - (A) Except as provided in Section 178.040 a conditional use permit (Floodplain Development Permit) shall be obtained before construction or development begins within the Floodplain Overlay Zone. The conditional use permit shall include conditions ensuring that the Flood Protection standards in Section 178.060 are met.
 - (B) When base flood elevation data and floodway data have not been provided in accordance with Section 178.030, the applicant, with the assistance of the Zoning Administrator, shall obtain and reasonably utilize any base flood elevation data or evidence available from a Federal, State or other source in order to determine compliance with the flood protection standards. If data are insufficient, the Zoning Administrator may require that the applicant provide data derived by standard engineering methods.
 - (C) Prior to obtaining a building permit the owner shall be required to sign and record in the deed records for the county a declaratory statement binding the landowner, and the landowner's successors in interest acknowledging that the property and the approved development are located in a floodplain.
 - (D) Prior to obtaining a building permit, commencing development or placing fill in the floodplain the applicant shall submit a certification from a registered civil engineer

(C) Access. (Subsection C1-2)

We find that the Expansion Site is clearly a significant site and we find and conclude that there are reasonable, practicable measures that minimize any effect on local roads that are used for access and egress. In addition, as previously indicated in these findings, no new transportation impacts will accompany the proposed use because the application is not an intensification or enlargement of existing activities. We find the new crossing of Windsor Island Road can be conceptually designed to meet all objective standards related to site distance, road capacity, cross section elements, horizontal alignment, vertical alignment and similar items and that all access requirements of these provisions of the rural zoning ordinance, and the conditions we have imposed, can be met.

(D) Hours of Operation. (Subsections D1-3)

The County allows mineral and aggregate operations on Monday through Friday from 6 A.M. through 6 P.M. Applicant is requesting 7 A.M. to 6 P.M. operations on Monday through Friday. The code further allows transportation activity on Saturdays between 6 A.M. and 6 P.M. and the applicant is requesting transportation on Saturdays between 7 A.M. and 6 P.M. which meets the applicable standards. There will be no extraction or transportation activities allowed on Sundays and on the holidays indicated in the zoning ordinance (January 1, Memorial Day, July 4, Labor Day, Thanksgiving Day and December 25). No processing activities will occur on the Expansion Site. We find that this is an alluvial mineral and aggregate deposit and blasting will not be required and have adopted a condition that prohibits blasting. At this time, no request for a public emergency is appropriate nor is such request made by the applicant. Accordingly, all of the provisions of this section of the zoning ordinance are met.

(E) Environmental Standards. (Subsections E1-3)

No crusher, asphalt plant or concrete plant is requested on the site and the existing Windsor Island processing site currently has all required DEQ permits. As a condition of approval, applicant will be required to obtain a permit from the Department of Geology and Mineral Industries (see Conditions 4 and 13). As part of that permit process, a stormwater permit will be acquired. This permit is required to be in place prior to commencing operations on the site. We find that no other DEQ permit is necessary and, accordingly, the site will have all required permits prior to commencing operations. We find that the mineral and aggregate operation will comply with all DEQ sound levels for habitable buildings on nearby property. Accordingly, the standards in this portion of the zoning ordinance are met.

(F) Safety Standards. (Subsection F)

We have adopted a condition requiring that the Expansion Site access road will be gated and locked at all times when there is no activity or operation at the Expansion Site (see Condition 28). Accordingly, this safety standard in the zoning ordinance is met.

(G) Site Reclamation. (Subsection G)

We find that applicant prepared and submitted a preliminary reclamation plan as part of the application. We have added a condition that requires final DOGAMI approval be requested

demonstrating that a development or fill will not result in an increase in floodplain area on other properties and will not result in an increase in erosive velocity of the stream that may cause channel scouring or reduce slope stability downstream of the development or fill.

- (E) Reserved
 - (F) The applicant shall provide an elevation certificate signed by a licensed surveyor or civil engineer certifying that the actual elevations of all new or substantially improved manufactured homes, dwellings and structures meet the requirements of Section 178.060(A), (B) and (C), where applicable, as follows:
 - (1) Prior to construction (based on construction drawings), and
 - (2) Once the floor elevation can be determined (based on the building under construction), and
 - (3) Prior to occupancy (based on finished construction).
 - (G) A highway ready recreation vehicle may be located on a lot or parcel without a dwelling in a floodplain or floodway only during the non-flood season (June 1 through September 30), subject to the requirements in Section 126.40.
 - (H) In addition to other information required in a conditional use application, the application shall include:
 - (1) Land elevation in mean sea level data at development site and topographic characteristics of the site.
 - (2) Base flood level expressed in mean sea level data on the site, if available.
 - (3) Plot plan showing property location, floodplain and floodway boundaries where applicable, boundaries and the location and floor elevations of existing and proposed development, or the location of grading or filling where ground surface modifications are to be undertaken.
 - (4) Any additional statements and maps providing information demonstrating existing or historical flooding conditions or characteristics, which may aid in determining compliance with the flood protection standards of this overlay zone.
70. As part of the application, the applicant is seeking, and we grant, a Floodplain Development permit. Accordingly, MCZO 178.050(A) is satisfied.
71. We find that no detailed data exists for the subject site. However, a Registered Professional Engineer prepared a Floodplain Regulation Compliance Report, including various topographical maps, floodplain maps, cross sections of the Willamette River. We find this report to be helpful and persuasive. We find that it uses standard engineering methods to

establish flood elevations on the Windsor Island property are between 120 and 122 feet mean sea level (MSL). Accordingly, MCZO 178.050(B) is satisfied.

72. We find that no permanent structures were requested or are allowed onsite (see Condition 25). We have also attached a condition that if building permits are required, the applicant shall sign and record a declaratory statement prior to the issuance of any building permits (see Condition 39). Accordingly, MCZO 178.050(C) is satisfied.
73. We find that no building permit is requested nor is a building permit approved. We further find that a hydraulic study of the site and proposed operation was prepared by NHC and was submitted into the record. A hydrogeology report regarding the site and proposed operation was prepared by Shannon & Wilson, Inc., specifically by David J. Higgins, Certified Engineering Geologist, and was submitted into the record. MCZO 178.050(D), to the extent it is applicable, is satisfied.
74. We find that the criteria in MCZO 178.060(E)(1) and (E)(2) are not applicable because no new structures are proposed at the site. MCZO 178.050(F) is not applicable.
75. There is no request to locate a recreational vehicle on the expansion site. MCZO 178.050(G) is not applicable.
76. We find that applicant, as part of the extensive application package, submitted detailed topographic maps of the expansion site with land elevation area, base flood level area expressed in mean sea level data. Topographic conditions at the site are fully explained. Applicant also submitted a full site plan, including numerous drawings, showing the property location. The entire property, as indicated in this narrative, is within the 100-year floodplain of the Willamette River. The location of all extraction activities on the site is clearly indicated on the site plan. No structures are proposed and the application contains detailed flood impact analysis, including historical analysis of flooding conditions and anecdotal evidence of backwater flooding on the site. We find that all of this information is sufficient to allow the county in making an appropriate determination on floodplain compliance and, accordingly, the provisions of MCZO 178.050(H) are met.
77. MCZO 178.060 contains the county's flood protection standards. Overall, we find that no structures are requested, contemplated or approved in this application and, therefore, floodplain standards generally do not apply. However, we will provide findings with regard to each of the standards.

"178.060 (A) Dwellings, Manufactured Homes and Related Accessory Structures."

We find that there are no existing dwellings, manufactured homes or related accessory structures on the Expansion Site nor are any such structures proposed. Accordingly, the provisions of this section do not apply.

"178.060 (B) Manufactured homes in existing manufactured home parks."

We find no manufactured homes nor existing manufactured home parks exist on the Expansion Site nor are any proposed by the applicant. This standard does not apply.

"178.060 (C) Non-residential development."

We find that this section refers to physical structures (i.e., buildings) for any commercial, industrial or other non-residential use that may have floors, basements or elevated components. Such physical structures must be properly elevated and floodproofed in accordance with this section. This section also relates to agricultural structures which may be constructed to "wet floodproofing" standards under certain circumstances. As indicated in the application, no physical building or any type of structure with a floor, basement or elevated side (including commercial, industrial, non-residential or agricultural structures) will be constructed as part of this application. The applicant has proposed no structures of any type. We find that there will be excavations on the site and temporary storage piles related to mineral and aggregate extraction. However, excavation materials will not create any type of permanent vertical structure above the existing ground surface level and, in fact, the primary "structure" on the site will be the mining cells which, as indicated in the application, are below ground level. We find that any temporary storage or "surge" piles will be removed each year before November 1. Accordingly, the provisions of this section related to physical structures with floors and elevated components is not applicable.

178.060 (D) Anchoring."

This section requires any new construction, including manufactured homes, to be anchored to prevent flotation collapse or lateral movement. As indicated above, we find that there will be no structures of this type on the site and, therefore, the provisions of this section are not applicable.

"178.060 (E) Construction materials and methods

- (1) All new construction and substantial improvements below base flood level shall be constructed with materials and utility equipment resistant to flood damage, and the design and methods of construction are in accord with accepted standards of practice based on an engineer's or architect's review of the plans and specifications.*
- (2) All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damages."*

We find that no new physical buildings, including floors, sidewalls, basements or other features that are commonly associated with structures, will be constructed on the site. The site is a mineral and aggregate extraction area and no infrastructure is necessary to allow the proposed use. Temporary stockpiles, or "surge" areas serving the extraction uses, will be removed prior to November 1 on an annual basis. We find that, to the extent the mining cells themselves would be considered new construction or substantial improvements, the cells have been designed and engineered to reduce, minimize and eliminate flood damages. We find that applicant

has agreed that it will end mechanical dewatering of the extraction cells no later than November 1 of each year and this will allow the water level in the extraction cells to equilibrate prior to the onset of the flood season. We further find that in the event of a flood, gentle backwater flowing in an upstream direction through Claggett Creek and Clear Lake will initially reach the extraction site greatly reducing the possibility for significant erosion or flood damage. We find that the site has been engineered and designed using methods and practices that will minimize flood damages and, accordingly, conclude that this section is met.

"178.060 (F) Utilities."

This section relates to replacement water supply systems, sanitary sewage systems and electrical, heating, ventilation, plumbing and air conditioning systems that might be located on-site. We find that there are no new buildings that will have any HVAC or any utility-related requirements. We further find port-a-potties will be used on-site and no permanent sanitary sewage systems are required and that port-a-potties will be removed prior to November 1 of each year. We find that no replacement water system is required on the site and that there are existing wells to provide general water and drinking water will be supplied to workers on the site through standard water coolers located on removable equipment at the site. Because no new utilities are required at the site, we conclude this section is not applicable to the proposed use.

"178.060 (G) Developments, Generally."

This provision of the floodplain ordinance refers to residential developments involving more than one single family dwelling, such as subdivisions, manufactured home parks, multiple family dwellings and planned unit developments. No such development is proposed for the Extraction Site and this criterion is not applicable.

"178.060 (H) Storage of materials and equipment - Materials that are buoyant, flammable, obnoxious, toxic or otherwise injurious to persons or property, if transported by floodwaters, are prohibited. Storage of materials and equipment not having these characteristics is permissible only if the materials and equipment have low-damage potential and are anchored or are readily removable from the area within the time available after forecasting and warning."

We find that applicant will not store any fuels or flammable, obnoxious or toxic materials on the site. Equipment used in extraction and transportation will be fueled and lubricated at the applicant's existing shop area at the Windsor Island site. Accordingly, we find that there is no possibility for a mix of materials which might be injurious to the property or persons being transported by floodwaters from activity at the site. In addition, we find that

all of the equipment on the site (including extractors, trucks, front-end loaders, graders and port-a-potties) is readily removable from the site. We find that at the applicant's existing Windsor Island site, the applicant has, on a case-by-case basis, moved its equipment to the higher portions of the Windsor Island site when floodplain warnings have been announced. Even during the 1996 flood, applicant's equipment was safely placed in areas high enough to remain out of the floodwaters. We find that not only is all equipment that will be used on the Expansion Site removable within any warning time of a flood, but the applicant has agreed that it will stop dewatering activities on the site not later than November 1, and move equipment off the site during the flood season. Accordingly, the provisions of this standard are met.

"178.060 (I) Alteration of watercourses."

This provision relates to the physical altering or modification of a water course and requires consultation with the Division of State Lands and Department of Land Conservation and Development. We find that no water course exists on the Expansion Site and that the applicant has agreed to set back all activities from adjoining water bodies, including Clear Lake and Claggett Creek. Accordingly, no modification of water recourse is requested or required for the requested use and this section does not apply.

"178.060 (J) Floodways - Located within areas of floodplain established in Section 178.030 are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of floodwaters, which carry debris, potential projectiles and erosion potential the following provisions shall apply in addition to the requirement in (I):

- (1) Prohibit encroachments, including fill, new construction, substantial improvements and other development unless a certified technical evaluation is provided by a registered professional engineer or architect demonstrating that encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge. This evaluation may be submitted to the Federal Emergency Management Agency for technical review.*
- (2) If Section 1 above is satisfied all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of Section 178.060.*
- (3) The area below the lowest floor shall remain open and unenclosed to allow the unrestricted flow of floodwaters beneath the structure."*

As indicated above, we find that there are no structures which will have floors, side walls or other physical features and, therefore, this standard is not applicable. No new construction or development in the form of physical buildings is proposed for the site. We find that stockpiles and "surge" piles will be temporary and removed on an annual basis. The "substantial improvements" and "other developments" proposed for the site are mineral and aggregate extraction cells. Applicant has provided the certified technical

evaluation of Northwest Hydraulic Consultants that activities on the site will not result in any increase in flood levels during the occurrence of base flood discharge. We find this evidence credible and persuasive and adopt the report's conclusions as our own. We find that a Registered Professional Engineer for Northwest Hydraulic Consultants has certified that because of the physical location of the site, the operation of the site, and the way the site floods, there will be no increase in flood velocities during the occurrence of the base flood discharge. Accordingly, we conclude the provisions of this section are met.

"178.060 (K) Standards for Shallow Flooding Areas (AO Zones)."

This provision refers to shallow flooding areas on flood information maps that have been designated with the AO zone. We find, as indicated in the report of Northwest Hydraulic Consultants, that the general area is within the inferred 100-year floodplain and not within an AO zone. In addition, we find that no construction or substantial improvement of residential structures is proposed nor is any non-residential structure with a floor, utility, or sanitary facilities proposed as part of the application. Accordingly, the provisions of this standard do not apply.

Section 178.070 Generalized Floodplain Areas. *"Where elevation data is generalized, such as the unnumbered A zones on the FIRM, conditional use permits shall include a review and determination that proposed construction will be reasonably safe from flooding and meet the flood protection standards. In determining whether the proposed floodplain development is reasonably safe, applicable criteria shall include, among other things, the use of historical data, high water marks, photographs of past flooding, or data (e.g. an engineering study or soil and landscape analysis) may be submitted by qualified professionals that demonstrate the site is not in a floodplain. In such cases, a letter of map amendment may be required by the Zoning Administrator."*

We find that FEMA mapping does not cover the Expansion Site. However, we find that a Registered Professional Engineer has determined the floodplain elevations at the site through professional analysis, and the use of historical data and photographs of past flooding. We conclude that the site is in the floodplain and is being treated as a floodplain site and not as a site in the "generalized" floodplain area. As such, we find and conclude a letter of map amendment is not required and to the extent this standard is applicable, it is met by the proposed application.

Section 178.080 and Section 178.090 Variances and Variance Criteria.

These provisions provide variances from the flood control criteria in certain situations and provide specific criteria for issuance of a variance. We find that the application meets the standard requirements of the floodplain ordinance and a variance is not required. Accordingly, the variance procedures and criteria are not applicable to this application.

Section 178.100 Warning and Disclaimer of Liability. *“The degree of flood protection required by this overlay zone is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on occasion. Flood heights may be increased by man-made or natural causes. This zone does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This zone will not create liability on the part of Marion County, any officer or employee thereof or the Federal Insurance Administration for any flood damages that result from reliance on this chapter or any decision lawfully made thereunder.”*

Applicant's existing Windsor Island site is also in the floodplain of the Willamette River. We find that applicant understands the unpredictable nature of floods and flood events. We find that applicant has designed the extraction activities on the Expansion Site to minimize or eliminate any type of flood impact. We find that applicant understands the issuance of a floodplain permit by the County does not ensure that floods will not occur on the Expansion Site. We conclude that to the extent that this section represents an approval criterion, it is met under the proposed application.

Greenway Development Permit MCZO 179

78. Under MCZO 179.030, all activities, uses of land and site development requirements set forth in underlying specific zone districts within the Greenway Management Overlay Zone shall be permitted subject to obtaining a greenway development permit for all proposed development, change of use or intensification of land or water.

The underlying zone for the subject property is the EFU zone. MCZO chapter 136.0250(f) lists aggregate mining as a conditional use in the EFU zone. MCZO chapter 126 lists uses, accessory uses and secondary uses allowed in zones generally. A conditional use application under MCZO chapter 119 is not required because OAR 660-023-0180(5) incorporates conditional use protection and compatibility criteria. Therefore, no separate conditional use application is required.

79. Although Planning staff has treated this application as a request for a floodplain permit and a greenway permit, the file is somewhat unclear. The application combines both permits on one form with boxes to check for each type of permit sought by the applicant. In this case, neither box is checked. Planning staff treated the application as if it were an application for both types of permit and the applicant treated the application as though it was only for a floodplain permit. A review of the file reveals that the applicant only paid for one of the two permits in question and did not provide an analysis for a greenway permit. In addition, the applicant's letter of April 15, 2009, states that none of the applicant's activities will take place on the western portion of Tax Lot 300, Section 21. As currently aligned, the new haul road will merge with the existing access road several hundred yards east of the western border of Tax Lot 300. Therefore, the logical conclusion is that the applicant did not apply for a greenway permit. As a condition of approval the applicant will be prohibited from conducting any new activities in the greenway without first obtaining a greenway permit.

EXHIBIT B

The Marion County Board of Commissioners adopts the following conditions CP/FP09-03/Windsor Rock Products Inc..

Pursuant to the Marion County Rural Zone Code section 17.123.070 the following conditions apply to the 247 acres added to the to the Marion County Comprehensive Plan list of significant mineral and aggregate sites. These conditions are reasonably related to the specific development proposed, will serve the public interest of reducing land use conflicts, and are based upon standards adopted by the County. The conditions are necessary for the public health, safety and welfare.

Conditions of Approval

1. **Site Plan.** Prior to any extraction of aggregate, aggregate processing or removal of overburden, the applicant shall submit a detailed site plan for review and approval by the Planning Director. The site plan shall include:
 - a. All of the subject properties and a 1,500 foot impact area from the aggregate mining area.
 - b. The plan shall provide evidence of compliance with all the applicable uses and development standards in the ordinance including a detailed processing area that indicates the location of equipment such as crusher, loaders, structures, and truck parking areas.
 - c. The site plan shall delineate the standards for development and operation listed in Section 120.460 A, B, and C of the Marion County Rural Zoning Ordinance. The plan shall be identified as the "Official Site Plan" and signed by the Planning Director.
 - d. The site plan shall identify the location and use of all buildings, roadways, and public road access points, materials stockpiling areas, berms, equipment storage areas, and any areas that will be filled to an elevation greater than the natural grade. After approval, any modifications will require approval of a new site plan by the Planning Director.
 - e. The site plan shall indicate specifically where the loading area for the proposed operation shall be located or the loading area's distance from nearby property lines and habitable buildings on adjacent properties. The revised site plan shall clearly indicate the location where aggregate and processing operations will take place. The plan shall indicate an area titled "processing limits" and clarify exactly where area processing operations will occur. The area titled "processing limits" shall meet required setbacks from the nearest property line and from a habitable building that exists on adjacent property.

2. The applicant shall enter into a maintenance agreement with the DPW to assure maintenance of, and housekeeping at, the new intersection at the applicant's expense.
3. The applicant shall flag or otherwise mark the boundaries of the required setbacks before beginning excavation at the aggregate resource site.
4. Reclamation Plan.
 - a. Prior to any aggregate extraction, processing or preparation of the site for processing or extraction the applicant shall submit a reclamation plan. The plan shall be part of the reclamation plan submitted to DOGAMI.
 - b. The reclamation plan shall be designed to achieve wetland, ponds, farming and wildlife habitat use of the excavation area and shall include setback and other unexcavated areas within the entirety of the subject properties necessary for buffering these uses from surrounding land uses and activities. The plan shall provide for sequential reclamation of the excavation and buffer areas, and include procedures for monitoring implementation.
 - c. The reclamation plan shall include a wetland, ponds, farming and wildlife habitat program element that describes graphically and in a narrative form the specific process for reclamation of the site. The wetland, pond, and wildlife habitat program is integral to approval of aggregate extraction of these properties. The reclamation program shall be substantially completed within one-year of completion of the excavation of the properties.
 - d. The plan shall be subject to the approval of the Oregon Department of Fish and Wildlife and the County.
 - e. The plan shall be in conformance with DOGAMI reclamation plan and reclamation bond standards. The reclamation bond shall be in an amount sufficient to fully implement the wetland and the wildlife habitat reclamation plan.
 - f. In addition to any DOGAMI enforcement authority, the implementation of the reclamation plan is enforceable as provided under County enforcement laws.
5. Performance agreements shall be submitted prior to extraction activities as required by MCZO 120.460(H) that states that the applicant shall provide the county with a letter and two copies of relevant documents that demonstrate that

the operator has in full force and effect the bond or security deposit with DOGAMI to assure conformance with the state-required reclamation plan. The applicant shall also provide evidence of having the insurance required under this section.

6. The applicant shall satisfy the requirements of Marion County Fire District #1 and provide evidence that the requirements have been satisfied to DPW.
7. The mining operation shall follow procedures and recommendations for the mine plan as stated in the engineer's hydrogeology report unless otherwise instructed by Marion County or DOGAMI.
8. The applicant shall meet Marion County Public Works conditions for right-of-way dedication, access, roadway and any related improvements. These conditions shall be met to DPW's satisfaction.
9. Applicant shall maintain a dust mitigation plan during any extraction or transportation activities at the site. The plan shall include, but not be limited to providing gravel amendments on haul roads, using water trucks as necessary to control dust, and paving the approaches to the new haul road/Windsor Island Road intersection for at least 500 feet on both sides of Windsor Island Road.
10. Applicant shall provide a truck wash area or other means to reduce or eliminate the haul trucks from carrying soil or gavel onto the public roadway
11. Prior to the start of the aggregate extraction operation, the applicant shall submit a traffic control plan to DPW for review and approval. The applicant will be responsible for the implementation and maintenance of the plan agreed to by DPW.
12. Prior to the start of the aggregate extraction operation, the applicant shall provide evidence of obtaining any required permits from the DSL and the USACE or provide evidence that such permits are not required.
13. The applicant shall provide evidence of obtaining a National Pollutant Discharge Elimination System (NPDES) Industrial Storm-Water General 1200-A Permit for the discharge of stormwater from a point source to surface waters or to conveyance systems that discharge to surface waters. The NPDES permit is obtained through the State Department of Environmental Quality (DEQ).
14. The extraction area shall not exceed the area shown on the applicant's conceptual reclamation plan.
15. Except as otherwise approved herein, farming, wetland, ponds and wildlife habitat are the designated uses of the subject property. These shall be the

designated uses unless the county approves a conditional use permit for other uses allowable as a permitted or conditional use in the underlying zone.

16. When excavation is completed if the parcels remain in private ownership, the owner(s) shall record irrevocable deed restrictions, approved by the County, ensuring that the areas which are deemed wetlands, ponds, and wildlife habitat areas and buffers, shall be reserved for wildlife and wetland conservation use in perpetuity.
17. All processing and stockpiling shall be discontinued within six months of the date excavation is completed.
18. Outdoor lighting shall be on only during permitted hours of operation except for lighting required for safety near building and equipment parking areas. Outdoor lighting shall be shielded so it does not illuminate any adjacent property, public right of way, or wildlife habitat.
19. The applicant shall insure the proposed operation for \$100,000 against liability and tort arising from production activities or incidental operations conducted or carried on by virtue of any law, ordinance or condition, and the insurance shall be kept in full force and effect during the periods of operation. Evidence of a prepaid policy of said insurance that is effective for a period of one (1) year shall be deposited with the county prior to commencement of any mineral and aggregate operations. The owner or operator shall annually provide the county with evidence that the policy has been renewed.
20. The hours of operation for extraction, processing and transportation activities shall be from 7:00 a.m. to 6:00 p.m. Monday through Friday. Transportation activities shall be allowed on Saturday between the hours of 7:00 a.m. to 6:00 p.m. No extraction, processing transportation activity shall take place on January 1st, Memorial Day, July 4th, Labor Day, Thanksgiving Day, and December 25th.
21. The applicant shall be in compliance with acceptable DEQ noise levels. The applicant shall maintain hours of operation from 7:00 a.m. to 6:00 p.m. for noise mitigation.
22. An owner or operator may request and the Director may grant an exception to provide for additional hours of operation for a when additional hours of operation are need to alleviate a public emergency. Public emergency includes:
 - (a) Damage to public roads or structures that requires immediate repair.
 - (b) Road construction or repair that is scheduled during nighttime hours to reduce traffic conflicts.

23. Continuing compliance with the standards for development and operation in MCZO 120.460 shall be a condition of approval. The exception to this is section (D) of the ordinance concerning the hours of operation.
24. No batch plant, processing, or blasting shall be allowed at the expansion site.
25. No permanent buildings, berms, or stockpiles shall be allowed at the expansion site.
26. Existing deciduous and evergreen vegetation within the required setback areas that screen visibility of the operation from adjacent property or public roads shall be retained or replanted unless located within a vision clearance area or determined by the county to be a public safety hazard.
27. Applicant shall manage vegetation and signage at the new haul road/ Windsor Island Road intersection to protect intersection sight distance.
28. Access roads to the aggregate site shall be gated and locked when not in use.
29. Materials that are buoyant, flammable, obnoxious, toxic, or otherwise injurious to persons or property, if transported by floodwaters, are prohibited. Storage of materials and equipment not having these characteristics is permissible only if the materials and equipment have low-damage potential and are anchored or are readily removable from the area within the time available after forecasting and warning.
30. As required by DOGAMI, the applicant shall construct the Fish Connection described in the Northwest Hydraulics report.
31. The applicant shall maintain 100-foot setbacks from the extraction area and the property line on the west and from Clear Lake and Claggett Creek on the north, south and east of the extraction area. As agreed, the applicant shall not engage in activities of any type at the western portion of the property that includes tax lot 300 and the Willamette River Greenway without first obtaining a greenway permit.
32. The applicant shall end mechanical dewatering of any cell on the expansion site not later than November 1 of each calendar year and shall not begin mechanical dewatering of the expansion site before May 1 of each year.
33. The applicant shall have a floodwater ingress/egress analysis performed to determine if additional erosion and head cutting prevention measures are needed or provide evidence that the analysis is not need.
34. The applicant shall remove the access to the new haul road and related accessory traffic control at the end of the project.

35. In accordance with Marion County Driveway Ordinance 651, a driveway permit will be required for any new access or change in use of any existing access to the public right-of-way. Applicant will obtain a driveway permit from Public Works and will comply with DPW accesses standards to ensure safe ingress and egress.
36. Construction of improvements on the property shall not block historical or naturally occurring runoff from adjacent properties. Site grading shall not impact surrounding properties, roads or drainage ways in a negative manner.
37. The applicant shall obtain a Major Construction Permit from DPW.
38. One hundred foot setbacks shall be maintained from any property line and the aggregate processing and loading and five hundred foot setbacks shall be maintained from any habitable building existing on adjacent property at the time the aggregate processing operation is established.
39. If any building occurs in the floodplain that requires a building permit, a declaratory statement must be filed.
40. Prior to commencement of extraction activities, the operator shall provide DPW with design details for pavement sections for the new access and construction of the intersection to support heavy trucks.
41. The applicant shall be responsible for making a proportional share financial contribution for a future overlay(s) or reconstruction project along sections of the haul routes as identified by DPW.
42. The applicant shall submit to DPW approved engineering plans for the heavy haul crossing and enter into an agreement with the county for establishing the short and long term maintenance of the crossing and haul routes prior to the issuance of the major construction permit. The specific hauls routes are:

Windsor Island Road North from the subject property, south to the intersection with Lockhaven Drive North

Windsor Island Road North from the subject property, north to Wheatland Road at Ravenna Drive North via local roads
43. The applicant shall provide to DPW an approved traffic control plan prior to the issuance of the major construction permit.
44. The applicant shall provide to DPW a maintenance agreement accepting financial responsibility for maintaining traffic control devices associated with the project prior to the issuance of the major construction permit.

**BEFORE THE BOARD OF COMMISSIONERS
FOR MARION COUNTY**

In the Matter of the)	Case No. CP/FP 09-3
Application of:)	Clerk's File No. 5627
WINDSOR ROCK PRODUCTS)	Comprehensive Plan Amendment/ Floodplain Development Permit

AN ADMINISTRATIVE ORDINANCE

ORDINANCE NO. 1298

THE MARION BOARD OF COMMISSIONERS HEREBY ORDAINS AS FOLLOWS:

Section I. Statement of Purpose:

This matter comes before the Marion County Board of Commissioners, on the application of Windsor Rock Products ("applicant"). This application is for a comprehensive plan text amendment to add a mineral and aggregate site to the "significant sites" inventory of the Marion County Comprehensive Plan and a Floodplain development permit for property within the floodplain of the Willamette River. The subject property consists of 690.34 acres located in an EFU (Exclusive Farm Use) zone property which is addressed at 8425 Windsor Island Road, Keizer, T6S; R3W; Section 21; tax lots 200, 300 and T6S; R3W; Section 22; tax lot 3.

Section II. Procedural History:

The Marion County Hearings Officer held a duly noticed public hearing on this application on May 13, 2009, at which hearing the applicant requested a continuance in order to allow an opportunity to submit additional information. The Hearings Officer continued the hearing to May 20, 2009 to receive additional testimony and until June 3, 2009 for the applicant's rebuttal. No objections were raised as to notice, jurisdiction, conflicts, or to evidence or testimony presented. On September 18, 2009, the hearings officer referred this application to the Board of Commissioners with a recommendation for approval of the application.

The Board held a duly noticed public hearing on the subject application on November 4, 2009. Official notice was taken of the Planning Division file and the Hearings Officer's recommendation. The Board has reviewed all the evidence in the record, all arguments of the parties and is otherwise fully advised in the premises. This Ordinance represents the final decision of the Marion County Board of Commissioners, including finding of facts, conclusion of law and conditions of approval.

Section III. Adoption of Findings and Conclusions:

After careful consideration of all facts and evidence in the record, the Board adopts as its own the Findings of Fact and Additional Findings of Fact and Conclusions of Law in Exhibit A, attached hereto, and by this reference incorporated herein.

Section IV. Action of Approval With Conditions:

Based upon the substantial evidence in the record, the findings and conclusions contained in Exhibit A, the Marion County Board of Commissioners does hereby **APPROVE** the application for a comprehensive plan amendment, identifying and listing the subject property on the Marion County inventory of significant aggregate sites, and approving the operating plan proposed by the applicant. This approval carries with it certain conditions, which are deemed to be necessary for the public health, safety and welfare. The Marion County Board of Commissioners adopts the conditions of approval attached hereto as Exhibit B, incorporated herein by this reference.

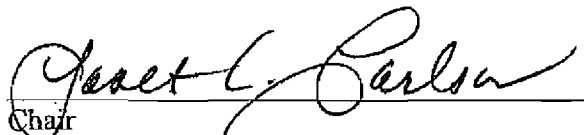
The requested Floodplain Development permit to allow aggregate extraction is hereby **GRANTED**, subject the conditions identified in Exhibit B, attached hereto and by this reference incorporated herein.

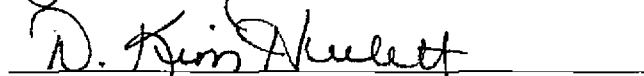
Section V. Effective Date:

Pursuant to Ordinance 669, this is an administrative ordinance and shall take effect 21 days after the adoption and final signature of the chair of the Marion County Board of Commissioners.

SIGNED and FINALIZED this 6th day of January 2010, at Salem, Marion County, Oregon.

MARION COUNTY BOARD OF COMMISSIONERS


Chair


Recording Secretary

***** JUDICIAL NOTICE *****

Oregon Revised Statutes, Chapter 197.830, provides that land use decisions may be reviewed by the Land Use Board of Appeals by filing a notice of intent to appeal within 21 days from the date this decision becomes final.

EXHIBIT A

The Marion County Board of Commissioners, after careful consideration of all the testimony and evidence in the record makes the following findings of fact and conclusions of law if Comprehensive Plan Amendment/Floodplain Development case # 09-03/Windsor Rock Products Inc.:

Findings of Fact

1. The subject property includes approximately 690.34 acres consisting of three tax lots. The property is designated Primary Agriculture in the Marion County Comprehensive Plan (MCCP) and is zoned EFU (Exclusive Farm Use). The property is also located in the identified 100-year floodplain of the Willamette River with a portion of the site situated within the Willamette River Greenway.
2. The subject property is located on the east and west side of Windsor Island Road, Keizer, Marion County, approximately 1.0 mile south of Simon Street. The parcel that contains the proposed extraction area is identified as T6S; R3W; S22; tax lot 300. This parcel currently is in farm use.
3. Adjacent to the expansion site, applicant currently operates an existing and permitted aggregate mining site (including processing operations) and also maintains aggregate operation on parcels under a lease agreement that include T6S; R3W; Section 16; tax lot 500 and T6S; R3W; Section 21; tax lot 350, owned by the State of Oregon. The applicant previously received Marion County approval for Comprehensive Plan Amendment/Floodplain/Greenway Permit Case No. 99-9 to expand the existing operation onto parcels to the north and added that site to the Marion County Comprehensive Plan list of significant aggregate sites under Statewide Planning Goal 5. Windsor Rock is operating the existing site under DOGAMI (Department of Geology and Mineral Industries) Permit Number 24-0083.
4. The parcels involved with this expansion request include the proposed extraction site on the east side of Windsor Island Road and two parcels on the west side of Windsor Island Road that provide access to the processing facility located near the river. The applicant is not proposing any processing in the expansion area and all processing activities will remain at the applicant's existing and permitted location. Therefore, the expansion proposal is for extraction only and affects 247 acres of the 651.78 total acreage of the tax parcels. Extraction is planned on 217 acres of the 247 acre area with the remaining acreage used for buffer areas and an access roadway. The expansion site is not currently listed on the Marion County Comprehensive Plan Mineral and Aggregate Inventory.
5. Farming operations surround the subject site, some of which contain dwellings. An existing aggregate site known as the Nisley Pit is located to the southwest and the Keizer city limits is situated approximately 1200 feet to the east. Surrounding properties are within the EFU (Exclusive Farm Use) zone except for the property to the east within the Keizer city limits. Clear Lake and Claggett Creek border the expansion parcel to the north, south, and east. An extensive riparian area generally follows the property boundary and dissects the northeast corner of the parcel.

6. We find that soil types on the property include Soil Conservation Service Soil Classifications II through VII. There is a significant amount of Class II soil on the expansion site, including Cloquato (Cm) and Newberg (Nu, Nw) and very small amount of McBee (Mb) soils. The hearings officer found that approximately 78.6% of soil on the subject site is comprised of Class II soil. Certified Engineering Geologists found that approximately 90% of the soils in the 217-acre extraction area are Class II soils. We find and conclude, whether determined from the entire acreage of the tax parcels comprising the expansion site (this was the hearings officer's methodology) or from the extraction site alone (this was the Certified Engineering Geologists' methodology), that more than 35% of the soils within the expansion site consist of Class II soils. Accordingly, as part of our decision, we must determine if the average thickness of the aggregate layer within the mining area exceeds 60 feet set forth in OAR 660-023-0180(3)(d)(B)(i) (see Relevant Findings below).
7. The request includes a Comprehensive Plan Amendment to add the extraction site to the list of significant mineral and aggregate sites by applying for a post acknowledgment plan amendment (PAPA) under provisions of Goal 5 and to allow mining of the property. The request includes only product extraction and removal in the expansion area and does not propose an expansion of the processing facility. The applicant also requests floodplain and greenway permit approval to carry out mining-related activities within the floodplain and greenway of the Willamette River.
8. The Marion County Planning Division requested comments on the subject application from a number of governmental agencies and area advisory committee member. The following entities responded:

Marion County Department of Public Works (DPW) reviewed the proposal and indicated a number of suggested conditions to address impacts created by approval of the proposed CP/FP/GW.

Marion County Fire District #1 responded by telephone that the District is satisfied that the proposal will be in compliance with the fire apparatus access roads on private property and address standards.

Marion County Tax Office provided tax information concerning the parcels.

City of Keizer commented that it was in agreement with recommendations from DPW.

Oregon Department of Fish and Wildlife (ODFW) indicated that the extraction design is adequate to address fish and wildlife issues and will continue to work with the applicant.

All other contacted agencies either failed to submit comments or stated they were not affected by the proposal.

Additional Findings of Fact and Conclusions of Law

1. Applicant has the burden of proving all applicable standards and criteria are met. We find and conclude that the applicant has met all applicable standards as set forth in our analysis in this Findings documents ("Exhibit A").

COMPREHENSIVE PLAN AMENDMENT

2. All Comprehensive Plan amendments are subject to review by the State Department of Land Conservation and Development (DLCD). The DLCD was notified as required by State law, but no response was received.
3. Comprehensive plan amendments must be in compliance with applicable Statewide Planning Goals. Goal 5 (Natural Resources, Scenic and Historic Areas and Open Spaces) sets the framework for land use decisions on natural resources, including mineral and aggregate resources. The purpose of Goal 5 is to conserve open space and protect natural and scenic resources. In Marion County, Goal 5 is implemented through Oregon Administrative Rule (OAR) 660-023, with MCZO 120.400 providing additional standards under which the mineral and aggregate site will be operated.
4. OAR 660-023 allows comprehensive plan amendments for the protection of significant mineral and aggregate sites via the post-acknowledgment plan amendment process. Under OAR 660-023, the county is first generally required to inventory significant Goal 5 resources and ultimately must determine whether mining will be allowed. As part of the process, the county must determine whether conflicts with other uses can be minimized. If conflicts cannot be minimized, the county must analyze the positive and negative economic, social, environmental, and energy (ESEE) consequences that could result from a decision to allow, limit or prohibit conflicting uses. The county must adopt comprehensive plan provisions and land use regulations to implement its decision regarding the site, based on its determinations regarding the Goal 5 criteria.

Inventory Process

5. According to OAR 660-023-030(1), inventories provide the information necessary to locate and evaluate resources and develop programs to protect such resources. Mineral and aggregate are Goal 5 resources. The general Goal 5 inventory process is divided into four steps:
 - (a) Collect information about Goal 5 resource sites;
 - (b) Determine the adequacy of the information;
 - (c) Determine the significance of the resource sites; and
 - (d) Adopt a list of resource sites.
6.
 - (a) When reviewing a site as a PAPA, OAR 660-023-0030(1) and (2) do not require a local government to collect information, but the local government may rely on information submitted by the applicant and other participants in the local process. The applicant has provided substantial information regarding this site as part of the application materials. Additional information was submitted by other participants. OAR 660-023-0180 provides specific guidelines for making a determination regarding the adequacy of the information and the significance of the resource sites.
 - (b) Under OAR 660-023-0030(3), if the information is determined to be inadequate, the local government shall not proceed with the Goal 5 process. The information concerning a resource site shall be adequate if it provides the location, quantity and quality (LQQ) of the

resource, including a map or description of the site, the value of the resource site relative to other known examples of the same resource, and an estimate of the relative abundance of the resource. As discussed below, we find and conclude that the information about the Windsor Rock Products expansion site is adequate.

The gross area of the proposed site consists of 690.43 acres and is made up of tax lots 63W210200, 63W210300, and 63W220300 near Keizer in Marion County, Oregon. Maps of the proposed site are included in the record. The applicant has applied for approval on approximately 247 acres with a total of 217 acres designated for excavation. Detailed location maps and schematics are found in the record. This is an expansion of an existing aggregate site. We find that the location of the site is clearly identified in the application. Quantity and quality are discussed below under OAR 660-023-0180.

(c) The significance of the resource is determined under OAR 660-023-0030(4), as modified by OAR 660-023-0180. The determination is based on the LQQ information, the supplemental or superseding significance criteria in OAR 660-023-0180, and any additional criteria adopted by the local government that are not in conflict with OAR 660-023-0180. Marion County does not have alternative significance criteria and specifically adopts OAR 66-023-0180. (See MC20 120.420 and 120.450.) Significance is more specifically addressed below under OAR 660-023-00180.

(d) Under OAR 660-023-0030(5), when the County determines that a resource site is significant, the site is included on a list of significant Goal 5 resources adopted as part of the comprehensive plan or land use regulation. The entire Goal 5 process is then completed for the site. The significance listing is more specifically addressed below under OAR 660-023-0180.

7. OAR 660-023-0180 requirements modify, supplement, or supersede certain requirements of the standard Goal 5 process in OAR 660-023-0030 through 0050. (See OAR 660-020-0180(2)(a)).
8. Under OAR 660-023-0180(2)(a), when the County is following the inventory process for a mineral or aggregate resource site under a PAPA, it shall follow the applicable requirements of OAR 660-023-0030, except where those requirements are expanded or superceded for aggregate resources as provided in subsections (b) through (d) of OAR 660-023-0180(2) and sections (3), (4) and (8) of OAR 660-023-0180.
9. Under OAR 660-023-0180(2)(b), the County shall apply the criteria in section 0180(3) or (4) of the rule, whichever is applicable, rather than OAR 660-023-0030(4), in determining whether an aggregate resource site is *significant*. Under OAR 660-023-0180(2)(c), the County shall follow the requirements of section (5) or (6) of the rule, whichever is applicable, in deciding whether to *authorize* the mining of a significant aggregate resource site, and OAR 660-023-0040 through 660-023-0050 in deciding whether to authorize mining of a significant mineral resource. Under OAR 660-023-0180(2)(d), for significant mineral and aggregate sites where mining is allowed, except for aggregate sites that have been determined to be significant under section (4) of this rule, local governments shall decide on a program to protect the site from new off-site conflicting uses by following the standard ESEE process in OAR 660-023-0040 and 660-023-0050 with regard to such uses.

OAR 660-023-0180(3) applies to resource sites with an estimated amount of material greater than 2,000,000 tons in the Willamette Valley. Applicant estimates, and we find, that more than 2,000,000 tons of material located are at this site. Since section (3) applies to this site, (5) also applies. Sections (4) and (6) apply to resource sites with an estimated amount of material of 2,000,000 tons or less in the Willamette Valley. Sections (4) and (6) do not apply and are not examined here.

10. Under OAR 660-023-0180(3), an aggregate resource site shall be considered significant if adequate information regarding the quantity, quality, and location (LQQ) of the resource demonstrates that the site meets any one of the criteria in (a) through (c), except as provided in subsection (d):
 - (a) A representative set of samples of aggregate material in the deposit on the site meets ODOT specifications for base rock for air degradation, abrasion, and sodium sulfate soundness, and the estimated amount of material is more than 2,000,000 tons in the Willamette Valley, or 100,000 tons outside the Willamette Valley.
 - (b) The material meets local government standards establishing a lower threshold for significance than subsection (a) above; or
 - (c) The aggregate site is on an inventory of significant aggregate sites in an acknowledged plan on the applicable date of this rule.
 - (d) Notwithstanding subsections (a) through (c) above, except for an expansion area of an existing site if the operator of the existing site on March 1, 1996 had an enforceable property interest in the expansion area on that date, an aggregate site is not significant if the criteria in either paragraphs (A) or (B) of this subsection apply:
 - (A) More than 35 percent of the proposed mining area consists of soil classified as Class I on Natural Resource and Conservation Service (NRCS) maps on the date of this rule; or
 - (B) More than 35 percent of the proposed mining area consists of soil classified as Class II, or of a combination of Class II and Class I or Unique soil on NRCS maps available on the date of this rule, unless the average width of the aggregate layer within the mining area exceeds:
 - (i) 60 feet in Washington, Multnomah, Marion, Columbia, and Lane counties;
 - (ii) 25 feet in Polk, Yamhill, and Clackamas counties;
 - (iii) 17 feet in Linn and Benton counties.
11. The applicant's site is located near Keizer, Marion County, Oregon. OAR 660-023-0180(1)(m) defines the Willamette Valley as including Marion County. The site is in the Willamette Valley and therefore it must have two million ton as a threshold matter to proceed with OAR 660-023-0180(3). Documents and test results provided by Certified Engineering

Geologists indicate the volume of material available from this site is estimated at 34,500,000 tons of aggregate present in the mining area. As indicated in this finding document, we find and conclude that this evidence related to resource quantity is credible and persuasive.

As part of the geologic investigation of the site, geologic mapping, review of water well logs in the general area, review of the approved Windsor Island site to the west (determined in 1999 to be a significant site by the County) and significant exploratory drilling were undertaken at the site.

To estimate the quantity of aggregate at the site, the Certified Engineering Geologists identified and contoured the top and bottom elevations of the aggregate deposit. The top elevations of the aggregate deposit (aggregate resource located below the topsoil and overburden) were identified using the sonic core borings and were mapped at two-foot contour intervals. The bottom elevations of the aggregate deposit were identified using sonic core borings, as well as the water well logs, and were mapped at two-foot contour intervals. We find this methodology is valid and provides credible evidence for our decision.

We find that the bottom elevations of the mineral and aggregate resource, for the purposes of volume calculations, were voluntarily constrained by Certified Engineering Geologists to the depth of the proposed operational mining floor at the aggregate site. We find, as shown on the Certified Engineering Geologist's Field Exploration Logs, the surface level of the site varies between approximately 115 feet mean sea level (MSL) to approximately 127 feet MSL. We find that the excavation depth proposed by the applicant based on the availability of the sand and gravel resource varies from approximately 66 feet to 85 feet along the western and central portions of the extraction area (see borings B-1 through B-5.) On the eastern side of the extraction area, the resources are present from approximately 71 to 100 feet MSL (see Boring B-6 through B-8). We further find that aggregate resources are present on the site below some of the bottom elevations selected, and, as a result, the geologist's quantity calculations are a conservative estimate of the quantity of aggregate present on the site. We further find that opponent, Mark Reed, on direct questioning from the Board, agreed the site had more than the 2 million tons required under the Goal 5 rule. Accordingly, we find and conclude that sufficient quantity (greater than 2 million tons) is available on the site as required under the Goal 5 rule.

OAR 660-023-0180(3)(a) requires that the aggregate resource must meet certain Oregon Department of Transportation (ODOT) quality standards for base rock. We find that aggregate from this site was tested at ACS Testing Inc. for the required three quality standards. The aggregate was tested in the laboratory for its ability to withstand abrasion and degradation. The abrasion test indicates how aggregate will withstand grinding actions. The air degradation test measures the quantity and quality of the material produced by attrition. Another test, the sodium sulfate soundness test, measures the quantity of material produced by repeated immersion in a corrosive solution of sodium sulfate.

We find that the abrasion and degradation tests confirm that the quality of the entire resource consistently meets and exceeds the required ODOT specifications for base rock. We further find that the sodium sulfate soundness test values for paving rock (a more stringent specification) are met and exceeded by nearly all the mineral and aggregate resource samples from the site. Certified Engineering Geologists provided detailed geologic analysis, which we find persuasive, as part of the application materials.

We find that ODOT's durability specifications require that an abrasion standard base (35% maximum loss, American Association of State Highway and Transportation Officials [AASHTO] method T-96) and a degradation standard (30% maximum loss and 3 inch sediment height, ODOT method TM-208) must be met. We find, however, that ODOT does not have a sodium soundness specification for base rock. Although the sodium soundness test does not apply to base rock, sodium soundness testing was conducted using a more stringent standard designed for paving rock (as opposed to base rock).

Witness Mark Reed testified in opposition. Under direct questioning from the Board of Commissioners, Mr. Reed conceded that the site had more than the required 2 million tons and therefore meets the quantity requirements of Goal 5. However, Mr. Reed challenged the quality conclusions of the Certified Engineering Geologists, claiming that there is not adequate information to make a decision, that the Certified Engineering Geologists had failed to select a representative set of samples, that the Certified Engineering Geologists failed to test the full vertical extent of the cores (and thereby missed a large percentage of the material to be tested), and that the Certified Engineering Geologists must not be allowed to use professional observation or geologic assessment in determining a representative set of samples under the Goal 5 rule. We have carefully examined this testimony, as well as the rebuttal testimony, the testimony of the Certified Engineering Geologists, material from Professor Scott Burns of Portland State University (also a Certified Engineering Geologist) and the summaries of conversations with an expert on the Army Corps of Engineers (ACE) testing methodology and an expert on the American Society of Testing Materials (ASTM) methodology that Mr. Reed attempts to apply in this PAPA. Before the hearings officer, Mr. Reed claimed that it was "well established" that under the Corps of Engineers standard and ASTM standard (designation D75-03) all material in vertically continuous sequence (i.e. from the drilling cores obtained by the Certified Engineering Geologist) must be sampled in order for there to be a representative set of samples. As an initial matter, we find Mr. Reed's testimony before the hearings officer relied on an outdated ASTM standard (designation D75-97 rather than D75-03). This does not bolster confidence in Mr. Reed's testimony nor confidence in the accuracy of that testimony. Our plain reading of the ACE and ASTM standards clearly shows that they do not require 100% testing of core samples for a sand and gravel deposit. We are particularly persuaded by the summary of conversations with Jim Hinds from the Army Corps of Engineer (the ACE RCC concrete expert). Mr. Hinds pointed out that the ACE standards for quarry rock deposits advocated by Mr. Reed are inapplicable because quarry rock deposits are different from alluvial sand and gravel deposits at issue in this application. We find that Mr. Hinds' comments demonstrate that Mr. Reed is attempting to mix apples and oranges and we find Mr. Hinds to be correct in this regard. Equally persuasive are the summary comments from Mr. Glenn Waite, the ASTM D-04 Committee Vice-Chair and D75 Task Group Chair. Mr. Waite is the individual to whom ASTM has entrusted specific responsibility for maintaining the D75 standard which Mr. Reed claims is applicable. We agree with Mr. Waite's statement that all appendices, including the X2 appendix, contrary to Mr. Reed's assertions, are non-mandatory and therefore do not provide a basis for disputing the representative set of samples tested by the Certified Engineering Geologists. We are also persuaded by the testimony of Professor Burns, a geology professor at Portland State University and a Certified Engineering Geologist. Professor Burns states that the approach used by the Certified Engineering Geologists determined a representative set of samples at this particular site meets the standard practice

in the field of aggregate mining. We find that Mr. Reed's arguments about the application of ACE and ASTM standards are intentionally misleading and flat wrong.

Mr. Reed further argues that Certified Engineering Geologists should not be allowed to use professional observation or geologic assessment to select a representative set of samples. We find, as pointed out by Professor Burns and confirmed by Mr. Waite, that use of professional judgment by Certified Engineering Geologists or other registered professionals is essential to provide the necessary judgment and expertise to select a representative set of samples. We find Mr. Reed's testimony is not credible or persuasive. We find that Mr. Reed used outdated standards, misquoted or misled with regard to standards and that his arguments do not withstand a straightforward reading of the standards, particularly given the clear explanations provided by experts who apply the standards on a regular basis.

Before the Board of Commissioners, Mr. Reed, joined by his spouse, Karen Reed, changed his argument slightly. We find that Mr. Reed concedes that his prior argument (about testing the entire drill core) is incorrect when he shifted his comments before the Board of Commissioners to argue that the entire face of a gravel pit must be sampled (as opposed to the entire drill core). We find this argument is obviously incorrect because this is an unexcavated site and that there is no open face to sample. Mr. Reed's next argument before the Board is that Certified Engineering Geologist "completely neglected" to consider 30% of the gravel thickness in the deposit on the site (at one point in his testimony, Mr. Reed claims 35% of the gravel thickness was not tested). We have reviewed the initial geology report of the Certified Engineering Geologists and subsequent materials. The Certified Engineering Geologists' reports show that samples were tested from each of the eight boring holes (from B1 through B8) and that all vertical horizons of the aggregate deposit on the expansion site were sampled and tested. There are three samples between 10 and 17 feet on the site. Three additional samples between 16 and 28 feet. There are three additional samples between 33 and 49 feet and three additional samples between 58 feet and 67 feet. Finally, there are four samples at the bottom of the deposit between 69 and 90 feet below ground surface. It is clear that the samples were selected to cover the entire vertical strata of the deposit and that no portion of the gravel resource on the site went untested. Mr. Reed's claim to the contrary is simply false.

We find the testimony of Mr. and Mrs. Reed does not detract from the credibility and persuasiveness of the materials submitted by the Certified Engineering Geologist. We find that the aggregate deposit on site is a large one, certainly more than the 2 million tons required to comply. We further find the sampling methodology provided adequate information and a representative set of samples were tested demonstrating that applicable quality standards were satisfied. We further find that the rock on the site consists of basalts or andesite from either the Cascades or coast range, that the rock on site is the same gravel deposit currently mined at the Windsor Rock Products site to the west and, therefore, the resource on the expansion site compares favorably with the value of other known aggregate resources in the county.

Accordingly, we conclude the estimated amount of material in the mining area significantly exceeds the two million ton Willamette Valley volume requirement and the site meets quality requirements. OAR 660-0230180(3)(a) is satisfied.

12. We further find that Marion County does not have local standards that establish a lower threshold for significance, and the subject site was not on the Marion County inventory of significant resources prior to the implementation date of OAR 660-023-0180(b) and (c) are not applicable.

13. Under the Goal 5 rule, gravel extraction operations on certain types of farmland (Class I, Class II, unique agricultural soil) must demonstrate deep sand and gravel deposits to be significant or the site is prevented from being "significant" by OAR 660-023-0180(3)(d). Put another way, if a mineral and aggregate extraction site in Marion County is located on land with more than 35% of Class II soil, the average thickness of the aggregate layer within the mining area must exceed 60 feet if the site is to be significant. We find, consistent with the Soil Survey for Marion County Area, Oregon, prepared by the Soil Conservation Service, the subject 690.34 acres contain no Class I or unique agricultural soils. However, whether we consider the entire 690-acre site, or the only 217 acres of actual disturbed area is considered, we find that more than 35 percent of the subject site is comprised of Class II soils. Therefore, to satisfy the criteria of OAR 660-023-0180(3)(d)(B)(i), the average thickness of the aggregate layer within the mining area on this Marion County site must exceed 60 feet.

The "average thickness of aggregate layer" is defined as the depth of the water-lain deposit of sand, stones, and pebbles of sand-sized fraction or larger, minus the depth of the topsoil and non-aggregate overburden. OAR 660-023-0180(1)(I). We find that the subsurface exploration by the Certified Engineering Geologists accurately and adequately establishes the average thickness of the topsoil, floodplain soils, and gravel/aggregate resource at the expansion site.

We find the total thickness of the aggregate layer for each of the eight cross-section borings were approximately as follows:

Boring 1:	60 feet	Boring 5:	78 feet
Boring 2:	70 feet	Boring 6:	56 feet
Boring 3:	60 feet	Boring 7:	82 feet
Boring 4:	48 feet	Boring 8:	92 feet

We find that the geologists calculated the average thickness of the mineral and aggregate resource with both mathematical and weighted average methods and we specifically adopt and accept their conclusion that the average thickness of the aggregate layer within the mining area is approximately 68 feet. We conclude that the average thickness of the aggregate layer at the mining area exceeds the 60-foot requirement of OAR 660-023-0180(3)(d)(B)(i).

Karen Reed and Mark Reed argue that the Certified Engineering Geologists did not properly compute the average thickness of the aggregate layer. We have reviewed the couple's arguments. We find that it does not change our conclusion that the average thickness of the aggregate layer in the mining area is greater than 60 feet for the reasons that follow. The gist of the Reed argument is that the Certified Engineering Geologists did not provide an "average" for the average thickness, but rather provided "an opinion" and thereby failed to provide adequate information as required by the PAPA rule. Essentially, Mr. Reed argues

that the professional opinion of Certified Engineering Geologists is not necessary or allowed in the Goal 5 process. We fail to see how this argument is sincere when Mr. Reed also states in his comments the following: "Of course judgment is necessary to separate sedimentary layers for sampling and testing...." We find that the necessity for the opinion of the Certified Engineering Geologists is fully supported by the testimony of Professor Scott Burns (a Certified Engineering Geologist), who states that Mr. Reed's argument is "backwards." Professor Burns states, and we concur, that: "Without the use of professional judgment and professional discretion to form a professional opinion, it would be impossible to establish the average thickness of the underground resource. This is not, as argued by the Reed letter, simply a matter of mathematics. The Certified Engineering Geologists must review the data and apply his or her knowledge and judgment related to the underground conditions that are not readily visible." Professor Burns goes on to say that the Certified Engineering Geologists in this matter properly accounted for topsoil and floodplain soils, used appropriately located borings, all depths of the borings were considered and the east/west difference in the bottom of the gravel deposit was acknowledged. We find this persuasive and we find that the Reed argument is not credible.

Mr. Reed next argues that the Certified Engineering Geologists incorrectly used an arithmetic average and provides a college exam question as an example of why an arithmetic average is not appropriate. First, we find that the Certified Engineering Geologists used both an arithmetic average and a weighted average. Second, a cursory review of Mr. Reed's exam question shows that the boring holes used on the question are intentionally "grouped" so that the weight of the deeper holes (with thicker gravel deposit) is less pronounced than the weight of the more dispersed holes (where the thickness of the gravel deposit is shallower). We find it is misleading for Mr. Reed to make this type of argument when it is clearly observable that the Certified Engineering Geologists in this case did not "group" the boring holes on the Windsor site but rather distributed them evenly throughout the mining area. We find that advocating a misleading exam question that is not relevant to the actual work performed by the Certified Engineering Geologists adversely affects Mr. Reed's credibility. Finally, we agree with the rebuttal argument that Mr. Reed could have, from the data available, easily provided us with an average thickness of the aggregate layer based using whatever form of weighted calculation he felt appropriate. The fact that he did not do so, when the data are clearly available to allow him to perform such a calculation, leads to the inference, as correctly pointed out in rebuttal, that Mr. Reed knows that the average thickness of the aggregate layer on the mining site is in excess of 60 feet. This type of partisan and incomplete testimony is not helpful in the public hearing process and, more importantly, detracts from the credibility of Mr. Reed and strengthens our conclusion that the Certified Engineering Geologists provided correct data in this particular case. Fully considering the arguments of Karen Reed and Mark Reed, we do not find any reason to change our findings related to the average thickness of the aggregate layer in the mining area and our conclusion that the average thickness exceeds the 60 feet required by the PAPA rule.

Because we find that the average width of the aggregate layer exceeds 60 feet and satisfies subsection (B)(1) of 660-023-0180(3)(d), we conclude the criteria in OAR 660-023-0180(3)(d) are met.

14. Based on our review of all the evidence in the record offered by proponents and opponents, we conclude the subject site contains a volume of aggregate material far in excess of the two

million ton minimum standard (more than 15 times the required minimum); that the aggregate material meets the required ODOT standards for quality; that the mining area is not subject to the exception for Class II soils because the average width of the aggregate layer on site exceeds 60 feet. Therefore, we conclude OAR 660-023-0030(c) is satisfied.

15. Based on the above discussion, we find and conclude the subject expansion site is a significant aggregate resource site and Marion County will grant the applicant's request to amend the inventory and the Comprehensive Plan to list the expansion area as a significant aggregate site. The county must next determine whether to allow mining at the site.

ESEE Decision Process to Determine Whether to allow Mining

16. OAR 660-023-0040 generally provides that local governments shall develop a program to achieve Goal 5 for all significant resource sites based on an analysis of the economic, social, environmental, and energy (ESEE) consequences that could result from a decision to allow, limit, or prohibit a conflicting use. The four steps to be generally followed in conducting an ESEE analysis are:

- (a) Identify conflicting uses;
- (b) Determine the impact area;
- (c) Analyze the ESEE consequences; and
- (d) Develop a program to achieve Goal 5.

In general, local governments are not required to follow these steps sequentially, and some steps anticipate a return to a previous step. Findings must demonstrate that requirements under each of the steps have been met. The ESEE analysis need not be lengthy or complex, but should enable reviewers to gain a clear understanding of the conflicts and the consequences to be expected. The specific requirements to be followed by the county in assessing conflicting uses for significant mineral and aggregate sites are contained in OAR 660-023-0180(5).

17. Under OAR 660-023-0180(5), for a significant mineral and aggregate site, the county shall decide whether mining is permitted. For a PAPA application, the process for making this decision is set out in subsections 0180(5)(a) through (g).

- (a) The county must determine an impact area for the purpose of identifying conflicts with the proposed mining and processing activities. The impact area shall be large enough to include uses listed in (b) below and shall be limited to 1,500 feet from the boundaries of the mining area, except where factual information indicates significant potential conflicts beyond this distance. For a proposed expansion of an existing aggregate site, the impact area shall be measured from the perimeter of the proposed expansion area rather than the boundaries of the existing aggregate site and shall not include the existing aggregate site.
- (b) The county must determine existing or approved land uses within the impact area that will be adversely affected by proposed mining operations and shall specify the predicted conflicts. For purposes of this section, "approved land uses" are dwellings allowed by a residential zone on existing platted lots and other uses for which conditional or final approvals have been granted by the county. For determination of

conflicts from proposed mining of a significant aggregate site, the county shall limit its consideration to the following:

- (A) Conflicts due to noise, dust, or other discharges with regard to those existing and approved uses and associated activities (e.g. houses and schools) that are sensitive to such discharges;
 - (B) Potential conflicts to local roads used for access and egress to the mining site within one mile of the entrance to the mining site unless a greater distance is necessary in order to include the intersection with the nearest arterial identified in the local transportation plan. Conflicts shall be determined based on clear and objective standards regarding sight distances, road capacity, cross section elements, horizontal and vertical alignment, and similar items in the transportation plan and implementing ordinances. Such standards for trucks associated with the mining operation shall be equivalent to standards for other trucks of equivalent size, weight, and capacity that haul other materials;
 - (C) Safety conflicts with existing public airports due to bird attractants, i.e., open water impoundments as specified in OAR chapter 660, division 013;
 - (D) Conflicts with other Goal 5 resource sites within the impact area that are shown on an acknowledged list of significant resources and for which the requirements of Goal 5 have been completed at the time the PAPA is initiated;
 - (E) Conflicts with agricultural practices; and
 - (F) Other conflicts for which consideration is necessary in order to carry out ordinances that supersede (DOGAMI) regulations pursuant to ORS 517.780;
- (c) The county must also determine reasonable and practicable measures that would minimize the conflicts identified under subsection (b) of this section. To determine whether proposed measures would minimize conflicts to agricultural practices, the requirements of ORS 215.296 shall be followed rather than the requirements of this section. If reasonable and practicable measures are identified to minimize all identified conflicts, mining shall be allowed at the site and subsection (d) of this section is not applicable. If identified conflicts cannot be minimized, subsection (d) of this section applies.
- (d) The county shall determine any significant conflicts identified under the requirements of subsection (c) of this section that cannot be minimized. Based on these conflicts only, the county shall determine the ESEE consequences of either allowing, limiting, or not allowing mining at the site. The county shall reach this decision by weighing these ESEE consequences, with consideration of the following:
- (A) The degree of adverse effect on existing land uses within the impact area;
 - (B) Reasonable and practicable measures that could be taken to reduce the identified adverse effects, and

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

[We emphasize that this initial ESEE must be performed only if identified conflicts cannot be minimized.]

- (e) Where mining is allowed, the plan and implementing ordinances shall be amended to allow such mining. Any required measures to minimize conflicts, including special conditions and procedures regulating mining, shall be clear and objective. Additional land use review (e.g., site plan review), if required by the county, shall not exceed the minimum review necessary to assure compliance with these requirements and shall not provide opportunities to deny mining for reasons unrelated to these requirements, or to attach additional approval requirements, except with regard to mining or processing activities:
 - (A) For which the PAPA application does not provide information sufficient to determine clear and objective measures to resolve identified conflicts;
 - (B) Not requested in the PAPA application; or
 - (C) For which a significant change to the type, location, or duration of the activity shown on the PAPA application is proposed by the operator.
 - (f) Where mining is allowed, the county shall determine the post-mining use and provide for this use in the comprehensive plan and land use regulations. For significant aggregate sites on Class I, II, and Unique farmland, local governments shall adopt plan and land use regulations to limit post-mining use to farm uses under ORS 215.203, uses listed under ORS 215.213(1) or 215.283(1), and fish and wildlife habitat uses, including wetland mitigation banking. Local governments shall coordinate with DOGAMI regarding the regulation and reclamation of mineral and aggregate sites, except where exempt under ORS 517.780.
 - (g) Local governments shall allow a currently approved aggregate processing operation at an existing site to process material from a new or expansion site without requiring a reauthorization of the existing processing operation unless limits on such processing were established at the time it was approved by the local government.
18. To determine if mining is permitted for significant mineral and aggregate sites, the applicant must meet the provisions listed above under OAR 660-023-0180(5). An impact area limited to 1,500 feet must be delineated from the boundaries of the mining area, except where factual information indicates significant potential conflicts beyond this distance. A determination must be made concerning conflicts with existing or approved land uses within the impact area that will be adversely affected by the mining operation. Reasonable and practicable measures that would minimize identified conflicts must also be determined.
19. OAR 660-0230180(5)(a) provides that the impact area shall be limited to 1,500 feet from the boundary of the mining area, unless the facts indicate significant potential conflicts beyond 1,500 feet. To determine whether the impact area should be enlarged, conflicts, potential conflicts, and the extent to which the conflicts can be mitigated must be examined under

OAR 660-023-0180(5)(b). We find that there has been no evidence of conflicts submitted in this matter that would suggest that the impact area be enlarged beyond 1,500 feet. We address specific conflicts below.

Conflicts Due to Noise, Dust and Other Discharges

20. OAR 340-035-0035 contains Oregon Department of Environmental Quality (DEQ) noise control regulations. DEQ does not have a noise permitting process and does not fund a noise enforcement program. Meeting state noise standards will provide adequate protection to the public, and compliance with state noise rules must be ensured on a local level.

The applicant provided a noise study performed by acoustical engineers from Daly-Standlee & Associates, Inc. (DSA). DSA evaluated the noise levels predicted to occur from mining activities at the mining site and we find the DSA analysis is helpful and persuasive. It is important to note that no crushing, screening, or related processing activities will occur on the expansion site. As such, we find that the noise impact of the proposed operations is greatly reduced.

The methodology used by the acoustical engineer included the placement of five receivers in the vicinity of residences surrounding the extraction site that gathered noise data generated from the site. The study included haul trucks that are used in the excavation plan.

We find that the DSA noise study is persuasive and credible, and we adopt its findings as our own. We find that noise levels from mining operations will not conflict with dwellings located within the 1,500 foot impact area with the exception of noise between the hours of 6:00 a.m. and 7:00 a.m. for a dwelling located on tax lot 200. Although the applicant owns this dwelling, applicant agrees to limit the starting time to 7:00 a.m. to mitigate any potential noise conflict. We find that with the stated limit on hours of operation, noise generated from the expansion site will be in compliance with DEQ noise regulations. We find and conclude that DEQ noise standards are met and maintained, and that noise generated by the mining operation will not conflict with uses outside the 1,500 foot impact area. We find and conclude that revising hours of operation is a reasonable and practicable method to minimize noise conflicts.

Because the noise conflict can be mitigated to meet DEQ requirements, the applicant stated that the impact area need only go out approximately 800 feet and requests that the impact area be reduced from 1,500 feet to 800 feet. We find that under the Goal 5 Rule, the 1,500 foot impact area appears to be a minimum rather than a maximum requirement. The rule discusses under what circumstances the impact area may be expanded but does not discuss if or under what circumstances the impact area may be reduced. Therefore, we conclude that the impact area will remain at 1,500 feet for this ESEE analysis.

21. As with any sand and gravel operation, overburden removal, aggregate extraction, truck and equipment movement, and reclamation activities proposed at the Windsor Island Expansion Site are potential sources of dust. We find, however, that because there will be no crusher operated on the expansion site and all gravels extracted from the site will be transported to the existing and permitted processing site, a significant source of dust on the site is eliminated. In addition, we find that the aggregate that will be removed is located below the groundwater table and that this "wet extraction" will also greatly reduce dust from the

extraction process. We find that there are a number of dust minimization strategies that include providing gravel on haul roads, paving critical areas, controlling the speed of haul trucks, water dust suppression, wet handling of aggregate during extraction, and removal of stockpiles from the aggregate extraction area. Additionally, mining activities must comply with DEQ fugitive dust standards. We find that the current site has been in operation for 30 to 40 years and dust has been effectively minimized at that site. We find the above measures are clear, feasible, reasonable and practicable methods for controlling dust. We find and conclude that operations conducted in accordance with the listed dust control measures as a condition of approval will minimize potential conflicts with dust on existing uses.

22. We find that an evaluation of "other discharges" addresses conflicts with respect to turbidity in storm water runoff and turbidity in groundwater. Other than light discharges addressed below, no additional "other discharges" are identified by any party. We find that the mining plan for the expansion site will be designed to direct all storm water inward to reduce turbid storm water discharge. Soil areas that are not part of ongoing operations will be vegetated to reduce the possibility of turbid runoff. We find that that the surface area of the expansion site will continue to be farmed on a declining basis and that ongoing farming will help to curb water runoff and minimize erosion. The applicant will also be required to obtain a National Pollutant Discharge Elimination Permit. We find that the above measures are reasonable and practicable measures to minimize "other discharges."

DOGAMI and DEQ have joint regulatory authority over the treatment and discharge of storm water at mineral and aggregate extraction sites. Applicant, as a condition of approval, is required to obtain all required state or federal air and water quality permits and to operate in continual compliance with all state and federal permits. We find that applicant's current extraction operation has all necessary permits and therefore find it is feasible to obtain these permits for the expansion site. Compliance with these permits is a reasonable and practicable measure to reduce "other discharges."

Discharge of light is an "emission" that can be considered under OAR 660-023-0180, and must be controlled to prevent illumination of adjacent properties and sensitive habitat areas. We find that lighting controls, such as permitting lighting only during hours of operation and shielding, can minimize the discharge of light. Generally, all lighting should be directed away from Windsor Island Road. However, lighting required for safety near buildings and equipment is permissible. We find that it is feasible for the applicant to implement lighting controls such as directed or shielded lighting and reduced candlepower. We find that such measures, including those required in Condition 18, are reasonable and practical methods of minimizing light discharges.

23. We find that the delay of start-up operations until 7:00 a.m.; operations conducted in accordance with the stated dust control measures; and operations conducted in accordance with management practices that minimize other potential discharges from the extraction activities set forth herein and in the conditions of approval, are reasonable and practicable measures that minimize potential adverse impacts and we conclude that the application meets the criteria of OAR 660-023-0180(5)(b)(A).

Conflicts with Local Roads

24. The applicant submitted a Transportation Impact Analysis (TIA) prepared by Kittelson & Associates, Inc. The project manager for the TIA was a registered professional engineer. The TIA analyzed traffic impacts at the expansion site. We find the TIA to be informative and persuasive.

A private roadway identified as Quebec Street provides access from the existing site onto Windsor Island Road and will extend across the roadway and onto the parcel to the east and to the expansion area. Windsor Island Road is classified as a local road, and the nearest arterial is River Road (State Highway 219). The TIA presents information concerning existing conditions and conditions projected for 2012 when the expansion area is operational. The existing aggregate site generates approximately 380 daily trips and approximately 300 are truck trips during the peak season. We find that when the expansion site is operational (five days a week from June through October) it would generate 480 trips (240 in each direction) per day by off-road trucks on the haul road between the expansion extraction site and the existing processing area.

We find the proposed expansion site will not generate any new traffic into the public road system. The total volume of trucks and traffic inserted into the county's road matrix from the existing and proposed sites are projected to remain at the current approved level. Off-road haul trucks crossing Windsor Island Road will be generated by the expansion, but off-site truck deliveries from the expansion site will generally not be introduced into the county's road system. We find that approximately 24-25 new off-road truck trips per hour in each direction (between expansion site and the existing processing site) will be generated on the new private access road during peak hours. The proposal involves transporting the extracted aggregate in off-road haul trucks from the extraction site to the existing processing facility west of Windsor Island Road. The haul trucks used for the expansion site are designed for off-road use and would transport the aggregate from the mining area to the processing facility west of the roadway without entering the greater county road system.

We find that the proposed expansion site can be developed while maintaining required performance standards and safety on the surrounding transportation system. We find that since the processing facility (and related approved traffic) already exists and the expansion area will not increase the amount of trucking activity introduced onto public roadways in the county road matrix, no new traffic impacts are created by approval. We find and conclude that the current proposed expansion can be developed with minimal impact to the surrounding road system.

Although there will be no new traffic impacts if the expansion request is approved, the site is projected to be operational for a number of years and the area roads are all local roads that were not built to accommodate the level of traffic over the expected life of the project. To address this concern, DPW requested numerous conditions due to the long term affect on the transportation system. A new access point will be required for the new haul road and applicant will need to obtain an access permit from DPW. Once the haul road is no longer used, the applicant shall remove the accessory traffic control.

The applicant will be required to design and construct a pavement section at the new crossing and on Windsor Island Road that will accommodate the anticipated off-road haul truck traffic on Windsor Island Road as the current roadway was not built to sustain the amount of traffic projected by the new site. (See Conditions 35 and 40.) It will be the

2. The applicant shall enter into a maintenance agreement with the DPW to assure maintenance of, and housekeeping at, the new intersection at the applicant's expense.
3. The applicant shall flag or otherwise mark the boundaries of the required setbacks before beginning excavation at the aggregate resource site.
4. Reclamation Plan.
 - a. Prior to any aggregate extraction, processing or preparation of the site for processing or extraction the applicant shall submit a reclamation plan. The plan shall be part of the reclamation plan submitted to DOGAMI.
 - b. The reclamation plan shall be designed to achieve wetland, ponds, farming and wildlife habitat use of the excavation area and shall include setback and other unexcavated areas within the entirety of the subject properties necessary for buffering these uses from surrounding land uses and activities. The plan shall provide for sequential reclamation of the excavation and buffer areas, and include procedures for monitoring implementation.
 - c. The reclamation plan shall include a wetland, ponds, farming and wildlife habitat program element that describes graphically and in a narrative form the specific process for reclamation of the site. The wetland, pond, and wildlife habitat program is integral to approval of aggregate extraction of these properties. The reclamation program shall be substantially completed within one-year of completion of the excavation of the properties.
 - d. The plan shall be subject to the approval of the Oregon Department of Fish and Wildlife and the County.
 - e. The plan shall be in conformance with DOGAMI reclamation plan and reclamation bond standards. The reclamation bond shall be in an amount sufficient to fully implement the wetland and the wildlife habitat reclamation plan.
 - f. In addition to any DOGAMI enforcement authority, the implementation of the reclamation plan is enforceable as provided under County enforcement laws.
5. Performance agreements shall be submitted prior to extraction activities as required by MCZO 120.460(H) that states that the applicant shall provide the county with a letter and two copies of relevant documents that demonstrate that

the operator has in full force and effect the bond or security deposit with DOGAMI to assure conformance with the state-required reclamation plan. The applicant shall also provide evidence of having the insurance required under this section.

6. The applicant shall satisfy the requirements of Marion County Fire District #1 and provide evidence that the requirements have been satisfied to DPW.
7. The mining operation shall follow procedures and recommendations for the mine plan as stated in the engineer's hydrogeology report unless otherwise instructed by Marion County or DOGAMI.
8. The applicant shall meet Marion County Public Works conditions for right-of-way dedication, access, roadway and any related improvements. These conditions shall be met to DPW's satisfaction.
9. Applicant shall maintain a dust mitigation plan during any extraction or transportation activities at the site. The plan shall include, but not be limited to providing gravel amendments on haul roads, using water trucks as necessary to control dust, and paving the approaches to the new haul road/Windsor Island Road intersection for at least 500 feet on both sides of Windsor Island Road.
10. Applicant shall provide a truck wash area or other means to reduce or eliminate the haul trucks from carrying soil or gravel onto the public roadway
11. Prior to the start of the aggregate extraction operation, the applicant shall submit a traffic control plan to DPW for review and approval. The applicant will be responsible for the implementation and maintenance of the plan agreed to by DPW.
12. Prior to the start of the aggregate extraction operation, the applicant shall provide evidence of obtaining any required permits from the DSL and the USACE or provide evidence that such permits are not required.
13. The applicant shall provide evidence of obtaining a National Pollutant Discharge Elimination System (NPDES) Industrial Storm-Water General 1200-A Permit for the discharge of stormwater from a point source to surface waters or to conveyance systems that discharge to surface waters. The NPDES permit is obtained through the State Department of Environmental Quality (DEQ).
14. The extraction area shall not exceed the area shown on the applicant's conceptual reclamation plan.
15. Except as otherwise approved herein, farming, wetland, ponds and wildlife habitat are the designated uses of the subject property. These shall be the

designated uses unless the county approves a conditional use permit for other uses allowable as a permitted or conditional use in the underlying zone.

16. When excavation is completed if the parcels remain in private ownership, the owner(s) shall record irrevocable deed restrictions, approved by the County, ensuring that the areas which are deemed wetlands, ponds, and wildlife habitat areas and buffers, shall be reserved for wildlife and wetland conservation use in perpetuity.
17. All processing and stockpiling shall be discontinued within six months of the date excavation is completed.
18. Outdoor lighting shall be on only during permitted hours of operation except for lighting required for safety near building and equipment parking areas. Outdoor lighting shall be shielded so it does not illuminate any adjacent property, public right of way, or wildlife habitat.
19. The applicant shall insure the proposed operation for \$100,000 against liability and tort arising from production activities or incidental operations conducted or carried on by virtue of any law, ordinance or condition, and the insurance shall be kept in full force and effect during the periods of operation. Evidence of a prepaid policy of said insurance that is effective for a period of one (1) year shall be deposited with the county prior to commencement of any mineral and aggregate operations. The owner or operator shall annually provide the county with evidence that the policy has been renewed.
20. The hours of operation for extraction, processing and transportation activities shall be from 7:00 a.m. to 6:00 p.m. Monday through Friday. Transportation activities shall be allowed on Saturday between the hours of 7:00 a.m. to 6:00 p.m. No extraction, processing transportation activity shall take place on January 1st, Memorial Day, July 4th, Labor Day, Thanksgiving Day, and December 25th.
21. The applicant shall be in compliance with acceptable DEQ noise levels. The applicant shall maintain hours of operation from 7:00 a.m. to 6:00 p.m. for noise mitigation.
22. An owner or operator may request and the Director may grant an exception to provide for additional hours of operation for a when additional hours of operation are need to alleviate a public emergency. Public emergency includes:
 - (a) Damage to public roads or structures that requires immediate repair.
 - (b) Road construction or repair that is scheduled during nighttime hours to reduce traffic conflicts.

23. Continuing compliance with the standards for development and operation in MCZO 120.460 shall be a condition of approval. The exception to this is section (D) of the ordinance concerning the hours of operation.
24. No batch plant, processing, or blasting shall be allowed at the expansion site.
25. No permanent buildings, berms, or stockpiles shall be allowed at the expansion site.
26. Existing deciduous and evergreen vegetation within the required setback areas that screen visibility of the operation from adjacent property or public roads shall be retained or replanted unless located within a vision clearance area or determined by the county to be a public safety hazard.
27. Applicant shall manage vegetation and signage at the new haul road/ Windsor Island Road intersection to protect intersection sight distance.
28. Access roads to the aggregate site shall be gated and locked when not in use.
29. Materials that are buoyant, flammable, obnoxious, toxic, or otherwise injurious to persons or property, if transported by floodwaters, are prohibited. Storage of materials and equipment not having these characteristics is permissible only if the materials and equipment have low-damage potential and are anchored or are readily removable from the area within the time available after forecasting and warning.
30. As required by DOGAMI, the applicant shall construct the Fish Connection described in the Northwest Hydraulics report.
31. The applicant shall maintain 100-foot setbacks from the extraction area and the property line on the west and from Clear Lake and Claggett Creek on the north, south and east of the extraction area. As agreed, the applicant shall not engage in activities of any type at the western portion of the property that includes tax lot 300 and the Willamette River Greenway without first obtaining a greenway permit.
32. The applicant shall end mechanical dewatering of any cell on the expansion site not later than November 1 of each calendar year and shall not begin mechanical dewatering of the expansion site before May 1 of each year.
33. The applicant shall have a floodwater ingress/egress analysis performed to determine if additional erosion and head cutting prevention measures are needed or provide evidence that the analysis is not need.
34. The applicant shall remove the access to the new haul road and related accessory traffic control at the end of the project.

35. In accordance with Marion County Driveway Ordinance 651, a driveway permit will be required for any new access or change in use of any existing access to the public right-of-way. Applicant will obtain a driveway permit from Public Works and will comply with DPW accesses standards to ensure safe ingress and egress.
36. Construction of improvements on the property shall not block historical or naturally occurring runoff from adjacent properties. Site grading shall not impact surrounding properties, roads or drainage ways in a negative manner.
37. The applicant shall obtain a Major Construction Permit from DPW.
38. One hundred foot setbacks shall be maintained from any property line and the aggregate processing and loading and five hundred foot setbacks shall be maintained from any habitable building existing on adjacent property at the time the aggregate processing operation is established.
39. If any building occurs in the floodplain that requires a building permit, a declaratory statement must be filed.
40. Prior to commencement of extraction activities, the operator shall provide DPW with design details for pavement sections for the new access and construction of the intersection to support heavy trucks.
41. The applicant shall be responsible for making a proportional share financial contribution for a future overlay(s) or reconstruction project along sections of the haul routes as identified by DPW.
42. The applicant shall submit to DPW approved engineering plans for the heavy haul crossing and enter into an agreement with the county for establishing the short and long term maintenance of the crossing and haul routes prior to the issuance of the major construction permit. The specific hauls routes are:

Windsor Island Road North from the subject property, south to the intersection with Lockhaven Drive North

Windsor Island Road North from the subject property, north to Wheatland Road at Ravenna Drive North via local roads
43. The applicant shall provide to DPW an approved traffic control plan prior to the issuance of the major construction permit.
44. The applicant shall provide to DPW a maintenance agreement accepting financial responsibility for maintaining traffic control devices associated with the project prior to the issuance of the major construction permit.

applicant's responsibility to maintain the crossing, including but not limited to, removal of debris, paving 500 feet back from the edge of both of the travel lanes, providing a truck wash area or other means to minimize the potential for tracking oil and gravel onto Windsor Island Road. We find that the new crossing site is in the 100-year floodplain of the Willamette River and the new haul road is susceptible to repeated flooding, and therefore, the applicant will maintain the new crossing, including removal of any debris on the crossing and roadway. The applicant is required to submit a traffic control plan for review and approval due to the number of trucks using both haul roads and will be responsible for the implementation of the approved plan. (See Conditions 11 and 43.) Because of the added duration of the project, the applicant will need to improve the frontage of their property to county standards. (See generally, Conditions 2, 8, 27, 36, 37 and 38.)

Because of the length of time of the project and the continued presence of large trucks on the local roads, the applicant will need to improve the corner radii of the 90-degree curves along the haul routes of Ravena Drive N to Wheatland Road North and along the southern haul route of Wheatland Road North, north of the intersection with Lockhaven Drive North. Because of the impact of the truck traffic on the local roads over the life of the project, the applicant will need to make proportional share for future overlays or reconstruction of the haul route sections. Additionally because of the added duration of heavy trucks and the impacts on the roads, the applicant will need to obtain a Major Construction Permit and dedicate enough right of way to bring the right of way width up to 30 feet. (See generally, Conditions 37, 40 - 44.)

We find that no new traffic will be introduced into the county road system due to the expansion of the aggregate site. The only point of interaction with the county road system will be where the new haul road briefly crosses Windsor Island Road. We find that the applicant will upgrade the intersection by paving at least 500 feet on either side of the intersection to ensure the integrity and safety of the road and to help eliminate debris from being tracked onto Windsor Island Road. We find that the applicant, in conjunction with DPW, will engineer cross-section elements of the intersection for soundness of strength, foundation and site distance, and will be required to enter into a road maintenance agreement with the county for maintenance and upkeep of the intersection at the applicant's expense. (See generally, Conditions 40 - 44.)

We further find that the applicant also has a program to train its drivers to make them aware of the need to share the road with others and to be aware that farm vehicles are often on the roadway. In addition, the applicant also uses a mobile radar speed trailer to control the speed of its trucks.

The TIA identified two 90-degree curves on Windsor Island Road about one mile south of the access road that have potential issues and suggested that the county install advance warning signs to alert drivers. We find that the applicant has agreed to work with DPW on this issue. The TIA also addressed intersection sight distance for both the existing and proposed access road pursuant to AASHTO guidelines. Field conditions revealed that the speed of the northbound traffic in the 85th percentile was 54 mph with a recommended intersection sight distance of 675 feet and the speed of the southbound traffic in the 85th percentile was 21 mph due to a small-radius curve located to the north of the access roads. We find that this site has adequate site distance. The TIA stated that Windsor Island Road on either side of the new road approaches should be graded to provide a level intersection

platform to ensure adequate site distance. The TIA also recommended that the sight distance be measured again after the haul road approaches are constructed to determine whether there will need to be additional brush and tree removal. We find that the applicant has agreed to work with DPW on this issue.

We find that each of the items listed above (i.e., constructing an intersection where the haul road meets Windsor Island Road, clearing debris, checking site distance, etc.) are measures that reasonably and practicably minimize potential conflicts to local roads used for access and egress to the mining site. We have placed a number of conditions on the application and we find that each of these conditions (i.e., intersection improvements, DPW permits, road designs, maintenance agreements, etc.) are feasible and provide practicable mechanisms to minimize and eliminate local road conflicts. Because we find there are measures available to minimize conflicts with two local roads used for access and egress to the mining site, we conclude that the criteria of OAR 660-023-0180(5)(b)(B) are met by the proposed application.

Conflicts with Existing Public Airports

25. We find that there are no public airports in the area. Therefore, we conclude that OAR 660-023-0180(5)(b)(C) is not applicable.

Conflicts with Other Goal 5 Resources

26. The applicant submitted a Wildlife and Vegetation Assessment of the Windsor Island Expansion Site and Presumptive Impact Area prepared by Pacific Habitat Services, Inc. The assessment provided information and recommendations on natural resources in the impact area that included vegetation communities, water resources, wildlife habitat, fisheries, and a review of sensitive species. We find this report to be informative and persuasive. The mining area is bordered to the north, south, and east by the Clear Lake-Claggett Creek oxbow and a riparian buffer. Our defined 1,500 foot impact area around the expansion site includes the entire oxbow, and agricultural fields that extend to the east, west, north, and south. To the west, the 1,500 foot impact area also includes part of the existing Windsor Island Rock Products operations. We find that Clear Lake is identified on the Marion County Comprehensive Plan Fish and Wildlife Habitat Map as a "Sensitive River and Stream" (intermittent), but that it is not an inventoried Goal 5 resource.

We find that the expansion site currently is in agricultural production and that vegetation is sparse due to cultivation and herbicide use, except in areas that are currently in production. We find that using the method defined in the 1987 wetlands manual for "atypical situations" (due to the disturbance of the area caused by farming) that there are no jurisdictional wetlands within the general farmed area with the exception of one swale area. We find that the swale area is located outside the proposed extraction area but inside the southwest portion of the 1500-foot impact area and that the portion of the swale that is potentially jurisdictional wetlands is outside of the proposed extraction site. We find that the expansion site is designed to have no impact on and will have no impact on adjacent Clear Lake or Claggett Creek based on 100 foot setbacks (buffers) from the lake and storm water quality control.

We find that the subject site has little wildlife other than in the fall and winter when waterfowl, especially Canadian geese, forage in the fields. However there is an abundance suitable field foraging habitat in the Willamette Valley.

We find that Clear Lake and the associated reaches of Claggett Creek support a warm water fishery dominated by exotics, including large mouth bass and crappie.

We find that a potential project impact could occur during periods of flooding: salmonid entrapment in the extraction area. We find that the applicant has agreed to construct a fish ingress/egress channel between Clear Lake and the extraction area and that this channel will help to minimize and prevent salmonid entrapment in the mining area and allow trapped fish to escape. We find that the extraction operation will maintain a 100 foot riparian buffer that follows along the full extent of the riparian area located on the subject property.

The Northern Pacific pond turtle and the red-legged frog were found within the presumptive impact area but not within the proposed expansion site. We find that reclamation activities that include replacement of topsoil and revegetation on the pond slopes are appropriate conflict minimization measures for these species. One identified bird species that could inhabit the area is nesting Bald Eagles. An existing pair was identified near the existing mining operation. We find that the identified setbacks and preservation of nesting trees, redirecting outdoor lighting, and not allowing any extraction within the setback area are effective strategies to minimize potential conflicts with the eagles.

We find that ODFW provided a response to the proposal and indicated that overall, the project design adequately addresses fish and wildlife issues. The agency noted that ODFW would continue to work with the applicant to survey for wildlife and to assure the project will not result in permanent change in the Willamette River channel following flood events.

Based on the uncontroverted evidence provided in the PHS report, we find and conclude that there is no significant level of conflict between wildlife and vegetation resources in the general area and the requested extraction of mineral and aggregate resources on the expansion site. We further find that the Marion County Comprehensive Plan includes no inventoried Goal 5 resources, including wetlands, wildlife habitat, groundwater, fish habitat, or other Goal 5 resource within 1,500 feet of the expansion site. We further find that in the event there were Goal 5 resources identified in the site or that other fish, wildlife and habitat resources would need to be considered in the process, there are numerous identified and defined measures to minimize and reduce any conflicts. These measures include setbacks, stormwater control permits, fish ingress/egress channel, buffer areas, replacement of topsoil and revegetation of pond slopes. We find that these measures are reasonable and practicable measures of things that can be feasibly accomplished to minimize any potential Goal 5 or fish and wildlife habitat conflicts. We have also included conditions to obtain stormwater permits (see Condition 13), limitations on the extraction area, preservation of setbacks (see Condition 14) and reclamation conditions (see Condition 4) which we find also help to minimize conflicts. Accordingly, we find and conclude that the criteria of OAR 660-023-180(5)(b)(D) are met by the application.

Conflicts with Agricultural Practices

27. OAR 660-023-0180(5)(b)(E) requires an assessment of conflicts with agricultural practices. Therefore an analysis under OAR 660-023-0180(5)(c) is needed.

Under OAR 660-023-0180(5)(c), to determine whether proposed measures would minimize conflicts to agricultural practices, the requirements of ORS 215.296 shall be followed. In addition, under ORS 215.301(1), no application shall be approved to allow batching and blending of mineral and aggregate into asphalt cement within two miles of a planted vineyard. Under OAR 660-033-0130(15), planted vineyard means one or more vineyards totaling 40 acres or more that are planted as of the date the application for batching and blending is filed. We find that the applicant has not requested asphalt plant approval and there are no identified nearby vineyards and conclude that ORS 215.301(1), to the extent it is applicable, is met.

Under ORS 215.296(1), a use may be approved only where the local government finds that the use will not:

- (a) Force a significant change in accepted farm or forest practices on surrounding lands devoted to farm use; or
- (b) Significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.

We find that the impact area is not in forest zoning and there are no forest uses nearby. However, the nearby farm uses must be examined.

To demonstrate compliance with ORS 215.296(1), the county's findings must (1) describe the farm and forest practices on surrounding lands devoted to farm or forest use; (2) explain why the proposed use will not force a significant change in those practices; and (3) explain why the proposed use will not significantly increase the cost of those practices. *Schellenberg v. Polk County*, 21 Or LUBA 425, 440 (1991). In *Schellenberg v. Polk County*, 22 Or LUBA 673, 686 (1992), Polk County based its identification of accepted farm or forest practices on the definition of "accepted farming practice" in ORS 215.203(2)(c). LUBA found this was a correct approach to interpreting the virtually identical term accepted farm and forest practices in ORS 215.296(1).

ORS 215.203(2)(c) defines accepted farming practice as a mode of operation that is common to farms of a similar nature, necessary for the operation of such farms to obtain a profit in money, and customarily utilized in conjunction with farm use. Experimental farm practices or those atypical to area farms do not need to be evaluated. We find the following crops are grown on surrounding lands: beans, corn, grass seed, beets, wheat, hops, hay, ensilage, caneberrys, cover seed crops, feed grain, nursery crops, orchard crops (cherries, filberts, etc.), mint, row crops and flower seed. The identified farming practices included: plowing; disking; planting; harvesting; irrigating; fertilizing, the application of herbicides, pesticides and fungicides (including aerial application); transplanting, sorting; labor for predator control, transportation of crops to market, mint distilling, crop drying, seed sorting and primary product processing. As an initial matter, we find that mineral and aggregate activities as well as crushing, sorting and screening have occurred at the existing mining

location for 30 to 40 years with little or no impact on the surrounding farm uses and practices. The potential for impacts is greatly reduced at the expansion site because no processing, crushing, screening, or sorting will take place at the expansion site. We are particularly persuaded by the fact that the applicant has conducted mining activities at the Windsor Island site for years with no reported adverse effects to farm practices or to the cost of farm practices.

We find that dust impacts from the expansion site can be minimized through a variety of methods, including gravel on haul roads, paving critical areas, controlling the speed of haul trucks, water dust suppression, wet handling of aggregate during extraction, and removal of stockpiles from the aggregate extraction areas. Minimization and/or elimination of dust impacts is possible with these methodologies and will prevent significant impacts on agricultural practices.

With regard to traffic conflicts with agricultural practices, we find that the roads in the area are adequate and there have been no incident reports or increase in accidents related to existing and approved traffic from the existing Windsor Island operations. Because no new truck traffic will be generated into the greater county road system by activities on the expansion site, we find that there will not be any additional traffic conflicts with agricultural practices in the area. A road maintenance agreement between the applicant and the county will ensure upkeep of the intersection with Windsor Island Road, which will be the only potential interface between trucks from the expansion site and farm vehicles.

From hydrogeologic evidence in the record, we conclude that there will be no significant impact to groundwater in off-site wells and that the groundwater supply for farmers will not be threatened by the extraction activity. We find that there will be some groundwater draw-down related to dewatering activities at the mining site, but the draw-down can be managed and will not have a significant adverse effect on agricultural wells in the area.

We find that the location of the expansion site is ideal with intervening surface water sources supplementing groundwater levels to the north, south, east, and west. We find that effects on groundwater levels will be minimized. A farmer to the west, Doug Zielinski, stated that the drawdown would not have a significant effect on farming practices or cost. We find this evidence to be persuasive and credible, and conclude that there will be no significant forced changes in accepted farming practices or significant increases in costs to accepted farming practices.

The expansion site is in the floodplain and subject to periodic flooding events. If activities on the expansion site affect flood levels, agricultural practices in the area could be affected. From persuasive and un rebutted evidence in the record, we find that there will be no adverse effects on flood levels or flood velocities because there will be no permanent structures (including berms and stockpiles) located on the site. Accordingly, we conclude that floodplain related issues will not force significant changes in accepted farming practices or significant increases in cost to accepted farming practices.

With regard to noise, we do not see how noise will affect farming operations on surrounding land. We agree with the noise engineer that reasonable and practical measures are available to ensure compliance with noise standards. No noise intensive processing operations will occur on the expansion site and we conclude that noise issues associated

with the site will have no effect on the cost of accepted farming practices or force changes in accepted farming practices on surrounding lands.

The issue of vibration was raised as a potential issue for farm practices and activities. The information provided by Doug Zielinski is instructive. As a long-time farmer in the area, Mr. Zielinski states that vibration will not be a conflict with any kind of farming operation. Any potential vibration issues are eliminated by the 100 foot setback from the extraction operation. The Daly-Standlee engineer's report indicates no evidence to claim that any agricultural operations that are sensitive to ground-bourn vibrations. We find this report to be credible and persuasive, and we conclude that vibration issues associated with the site will have no effect on the cost of accepted farming practices or force changes in accepted farming practices on surrounding lands.

Opponents generally argued that taking the subject area out of farming would increase the cost of farming practices and that taking land out of agricultural production for non-farm uses forces changes in agricultural practices.

In testimony before the Board, Mr. Bruce Chapin made an interesting argument that any IRS acceptable farm deductible expense would qualify as "costs of accepted farm practices." Under this line of argument, Mr. Chapin argues that all 23 IRS Schedule F cost categories (i.e., current truck expenses, employee benefits programs, taxes, fertilizers and lime, insurance, hired labor, etc.) are in fact examples of costs of accepted farming practices. As an example, Mr. Chapin argues that the farm practice of fertilizing includes the cost of the fertilizer, the cost of fuel and lubricants, the cost of daily maintenance for the tractor, mechanical equipment and labor costs for the operators, including wages, workers' compensation, social security, unemployment, Medicare, etc. The thread of Mr. Chapin's argument is difficult to follow, but appears to be a permutation of the "critical mass" argument that will be discussed below. In any event, we believe the definition of accepted farming practice in ORS 215.203(2)(c) is the focus of our inquiry under 215.296. ORS 215.203(2)(c) connects accepted farming practices to farmers' efforts to obtain profit and money, and further requires that those practices be customarily utilized in conjunction with farm uses. To the extent Mr. Chapin's farm practices and customary uses and costs associated with customary uses fall into the definition provided in the statute, they are considered as part of these findings.

As an initial matter, we find that mineral and aggregate activities, as well as the related crushing, sorting, screening, and transportation uses, have occurred at Windsor Rock Products' existing mining location for 30 to 40 years with little or no impact on surrounding farm uses and practices. The potential for impacts is greatly reduced at the expansion site because only extraction will occur at the expansion site and there will be no processing, crushing, screening or sorting which could otherwise lead to the potential for conflicts or adverse impacts which would force changes to accepted farming practices in the surrounding area or would increase costs to accept farming practices in the surrounding area. We have previously concluded, and incorporate our findings and conclusions herein by reference, that conflicts with agricultural practices can be minimized through reasonable and practicable measures. However, we understand ORS 215.296 requires a different inquiry with regard to forced changes and increased costs of accepted farming practices and that minimization analysis must be supplemented by additional analysis directly related to

questions of increased costs and forced changes to accepted farming practices on surrounding lands.

First, we wish to make it clear that in considering "surrounding lands," we are not limiting our consideration to the particular tax lots subject to the application, or to the 1,500-foot impact area which we have identified around the entire application site. Rather, when addressing "surrounding lands" in this application, we are reviewing accepted farm practices that occur in a much broader area to provide a realistic assessment of accepted farm practices. As such, we are considering "surrounding lands" to be a larger segment of the farm area stretching from the city of Salem and Keizer in the south, to roughly the Mission Bottom Park in the north, and the city of Keizer and I-5 on the east, to roughly Wallace Road (Highway 221) on the west. We believe this area gives appropriate consideration to "surrounding lands" as defined in the statute and allows us to make the appropriate determinations with regard to whether or not approval of the PAPA application will force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use or significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use. Again, we note there are no forest zone plans or forest uses identified in the area so we will be referring solely to farm uses under the ORS 215.296 standard.

We find that noise and vibration are not conflicts that will change farming practices or increase farming costs. Both a local farmer (Mr. Zielinski) and Registered Professional Engineer provided us with persuasive testimony that noise and vibration will not cause problems with agricultural crops and we conclude that noise and vibration will not increase costs or force changes in accepted farming practices. With regard to dust, the applicant has demonstrated it will control dust with a number of strategies. Applicant has also demonstrated that at its existing operations, ongoing farming activities occur immediately adjacent to processing and mining activities without changing accepted practices or increasing the cost of accepted practices. We find no evidence in the record to suggest that any dust produced by the wet extraction method on the expansion site will cause any effect on agriculture. We find and conclude that applicant will take sufficient steps to control dust, and conditions are in place (see Condition 9) to ensure that dust impacts will not force significant changes to accepted farming practices or significantly increase the cost of accepted farm practices on surrounding lands.

With regard to other discharges, issues were raised with regard to potential changes in flood patterns and potential effects to agricultural and changes in availability of irrigation water through drawdown associated with the dewatering of the mining cells for aggregate extraction. We find that the applicant submitted a comprehensive floodplain analysis and a comprehensive hydrogeologic analysis, both of which are informative and persuasive. We find that the mining activities on the expansion site will have no effect on flood levels, flood velocities, flood elevations, flood insurance, or any other flood related impact that could adversely affect farming practices or increase farming costs. Similarly, we find there will be minimal drawdown on groundwater levels around the site in the range of 3.3 feet at 1,500 feet from the perimeter of the excavated area, falling to approximately one foot of drawdown at 4,000 feet from the excavated area. We find the testimony of Mr. Zielinski, the farmer immediately west of the application area (where the most extensive drawdown will occur) to be informative and persuasive. Mr. Zielinski states that drawdown will not have a significant effect on his farming practices or cost. We accept this testimony and find and

conclude that any drawdown associated with the watering from the mineral and aggregate extraction operations will not have any significant adverse effect on farming practices nor will it force a significant change or significantly increase the cost of accepted farming practices on surrounding lands.

With regard to transportation and the effects of farm costs, we note the application, as proposed, will not increase traffic levels on the county road system and, therefore, will not cause any additional conflicts, increase costs or forced changes in farming practices related to transportation of farmed goods on local roads that service surrounding lands. We also find that the conditions of approval require applicant to be responsible for a proportionate share of any road maintenance costs in the general area. Accordingly, any additional costs to the county road department, to the extent these could be argued to increase farm costs or force changes in accepted farming practices, will be avoided.

Mr. Chapin, Mr. Sweeney and the Oregon Farm Bureau make a further argument which may be generally described as the "critical mass" argument. By this, we understand the opponents to mean that approval of this mineral and aggregate expansion site will decrease the availability of farmland, availability of farm services, the ability of farmers to trade among themselves, and a variety of other interconnectivity factors between farmers thereby reducing "critical mass" necessary to maintain a farm economy and, by implication, forcing significant changes in the accepted farm practices on surrounding lands or significantly increasing the cost of accepted farm practices on surrounding lands. Mr. Chapin calls these costs "variable costs, fixed costs and non-cash costs" and argues they include the cost of obtaining machinery, repair costs, costs of accounting, costs of insurance, costs of financing, costs of information, and costs of farmland possession. All of these factors, in the view of Mr. Chapin, Mr. Sweeney and the Farm Bureau, will accompany the approval of this PAPA application and, by implication, force significant changes in accepted farm practices and significantly increase the cost of accepted farm practices on surrounding lands. Mr. Chapin argues that any loss of farmland will increase the cost of accepted farming practices by decreasing the amount of farmland for sale or lease, increasing competition for remaining farmland, increasing land purchase costs, increasing inheritance taxes, increasing land rental costs, reducing operation size left to absorb overhead, reducing opportunities to do custom work, reducing opportunities to rent or borrow equipment, reducing farmer-to-farmer markets, reducing sources and information, reducing infrastructure, reducing supporting suppliers and services, reducing available processors and other "critical mass" factors.

As a preliminary matter, we agree with our Hearings Officer's determination that while Mr. Chapin's concern with the conversion of farmland to mineral and aggregate mining is a legitimate concern, Mr. Chapin's philosophical position that mineral and aggregate extraction should be prohibited on high value farmland cannot trump the Goal 5 rule, state law and county ordinances that allow mining on Class II soils if all of the statutory and regulatory conditions are satisfied. We agree with the Hearings Officer's assessment that the materials submitted by Mr. Chapin do not invalidate any of the site-specific professional reports provided by the applicant which demonstrate to us that conflicts have been minimized with agricultural uses and that approval of this use will not force significant changes in accepted farm practices or increase the cost of accepted farm practices on surrounding land.

More specifically, we find that the facts simply do not support Mr. Chapin's arguments. We find particularly persuasive the argument of Mr. Zielinski, a farmer in the area. Mr. Zielinski

argues, and we agree, that the expansion site will not have an adverse affect on existing farmer-to-farmer and other economic relationships, but will actually strengthen them. Mr. Zielinski's position, which we believe is persuasive, is that Mr. Chapin's line of argument misses the point: it is not the land itself, but the strength of the farmer and the farming unit that gives rise to the ability to share expensive equipment and participate in farmer-to-farmer relationships that make up the "critical mass" championed by Mr. Chapin. Mr. Zielinski argues convincingly that if he can strengthen his farm unit by diversifying a portion of his less valuable land to a non-farm mineral and aggregate use, such diversification ultimately strengthens the farm economy (i.e., the "critical mass") of the surrounding area. Mr. Zielinski argues, and we agree, that by diversifying a portion of his less productive land into mineral and aggregate operations, he is actively and carefully stewarding land assets to best position his farm to weather economic downturns and have the economic strength to stay in the market. By diversifying and keeping his farm strong, Mr. Zielinski argues, and we agree, that it remains available as part of the local farm economy or "critical mass." We find this testimony to be powerful and convincing.

In addition, as pointed out in the testimony, the Chapin family made the same arguments regarding "critical mass" approximately 13 years ago before Marion County Board of Commissioners in opposition to another gravel pit in the Mission Bottom area. We find that in the meantime, the Chapin family has acquired large acreages of land (including parcels that abut Clear Lake opposite the Windsor Island expansion site), has expanded orchard holdings, and has diversified farm activities. They have continued to make farm alliances with other farmers and provided and given services to farmers in the area. In short, the Chapin family and Mr. Chapin have prospered in proximity to mineral and aggregate operations and the Mission Bottom area. We find that aggregate mining has not changed this fact or made the family any less successful by increasing costs or forcing changes in their accepted farming practices.

Finally, we find that the studies submitted by Mr. Chapin do not support that ongoing mineral and aggregate activity or approvals adversely affect "critical mass" in the farm community and, therefore, increase costs and force changes in accepted farming practices. To the contrary, we find the Willamette Valley has gained 911 new agricultural service businesses, including crop services, animal services, farm and labor management services, and others. In addition, we find that the Willamette Valley has gained 48 processing firms for food products. We find that the total gain for Willamette Valley agricultural service firms confirmed in the study provided by Mr. Chapin is approximately 368 percent. We find and conclude that with agricultural service firms expanding rapidly in the Willamette Valley, it is impossible to argue that this particular application, or the mineral and aggregate industry as a whole, will have an adverse effect on "critical mass" for farmers in the area. In short, we find and conclude that approval of the use requested in this PAPA application will not force a significant change in accepted farm practices on surrounding lands devoted to farm use, nor will it significantly increase the cost of accepted farm practices on surrounding lands devoted to farm use.

Conflicts with Local Reclamation Ordinances

28. OAR 660-023-0180(5)(b)(F) requires an assessment of conflicts for which consideration is necessary to carry out ordinances that supersede DOGAMI regulations pursuant to ORS 517.780. This refers to counties that have self-administered mine reclamation programs and

do not rely on DOGAMI and applies to Columbia County only. Marion County has not adopted any reclamation ordinances that supersede DOGAMI regulations. Accordingly, we find that the OAR 660-023-0180(5)(b)(F) criteria are not applicable.

29. We have analyzed both OAR 660-023-0180(5)(c) and OAR 660-023-0180(5)(b)(E) above and conclude that both criteria are met by the application. We have adopted appropriate conditions.
30. We find that identified conflicts are minimized, or have been reasonably conditioned to be minimized or eliminated. We find and conclude that because the conflicts from the project can be minimized, the initial ESEE analysis under OAR 660-023-0180(5)(d) is not required.
31. Based on our findings and conclusions above, we decide that mining shall be allowed on the site and with these findings and this ordinance, amend the county's comprehensive plan to grant approval to allow such mining. We have placed conditions on our approval, including the requirement for a site plan review (see Condition 1). Consistent with OAR 660-023-0180(5)(e), the site plan condition requires additional "fine tuning" information and does not provide the county with an opportunity to deny the application for unrelated reasons. We find this is the minimum review necessary to ensure compliance with our approval decision.
32. We determine, consistent with ORS 215, that the post mining use of the property is wildlife and fish habitat with a limited amount of farming. The preliminary reclamation site plan submitted by the applicant indicates that the extraction process consists of a series of cells which will be mined and reclaimed as the mining process moves from cell to cell from south to east progressing to the north. As a condition of approval, the applicant is required to provide proof that it has a valid permit from DOGAMI prior to beginning any extraction work. As conditioned, we find that OAR 660-023-0180(5)(f) is met. The League of Women Voters, Mr. Sam Sweeney, 1,000 Friends of Oregon and Mr. Chapin all argue that the applicant should be required to reclaim the excavation to farmland after the mineral and aggregate operations are completed. We find that reclamation to farmland is not a requirement of the Goal 5 process. We, therefore, find that this is a straw argument for denial of the application because the opponents know that reclamation to farmland is not possible at the expansion site due to the depth of gravels (up to 92 feet) and lack of topsoil (zero topsoil in places) on the expansion site. Applicant has indicated a willingness to reclaim as much farmland as possible, but we specifically reject the suggestion that our approval be conditioned on full reclamation of the extraction area to farmland.
33. We find that the applicant has a currently approved aggregate processing operation adjoining the subject site. No reauthorization of the existing processing operation is required. As such, OAR 660-023-0180(5)(g) is satisfied.
34. We find that this application is examined under OAR 660-023-0180(5) and that OAR 660-023-0180(6) is not applicable.

ESEE Analysis for Future Conflicting Uses

35. OAR 660-023-0180(7) requires that an ESEE analysis be done to determine whether future conflicting uses in the impact area should be allowed, limited, or prohibited. We find generally that the development potential of the area for new dwellings and other uses is

substantially limited based on the restrictive provisions of the EFU zone and the restrictive provisions of the floodplain and greenway zones. The ESSE analysis framework is found at OAR 660-023-0040 and 050.

36. Under OAR 660-023-050(2), when a local government has decided to protect a resource site under OAR 660-023-040, implementing measures applied to conflicting uses on the resource site and within its impact area shall contain clear and objective standards. A standard is considered clear and objective if it is a fixed numerical standard, is a nondiscretionary requirement, or is a performance standard that describes the outcome to be achieved by the design, siting, construction, or operation of the conflicting use, and specifies the objective criteria to be used in evaluating outcome of performance.
37. The land within the impact area is zoned EFU and, therefore, we find that potential conflicting uses would be those uses allowable in the EFU zone. A complete list of the allowable uses in the EFU zone is contained in MCZO 136.
38. Under OAR 660-023-0040(2), the county is not required to consider uses that are “unlikely to occur.” We find that because the expansion site and impact area are entirely within the 100-year floodplain, it is unlikely that most of the uses identified in MCZO 136 would occur in the impact area. We find generally that structures that are allowed in the EFU zone would generally not be permitted in the floodplain. We find a second group of possible uses in the impact area that includes such things as roadways and utilities. However, we find that, these activities, too, are unlikely to be located in the floodplain. We find and conclude that since these groups of structures, roadways and utilities are not likely to occur within the impact area, there is no potential for conflict with the proposed use.
39. We find a third group of uses that have some similarity with aggregate and mining resources but that do not create conflicts. The activities include other gravel extraction operations, exploration for other minerals and gasses, and model aircraft activities. These uses share common noise, dust and/or vibration issues with the approved use and, therefore, do not create conflicts. A fourth group of uses that could be allowed in the EFU zone would be expansion of existing uses, such as dog kennels and replacement dwellings. We find that there are currently no dwellings to replace or dog kennels to expand in the impact area with the exception of one dwelling belonging to the applicant located within the impact area. Given the location and ownership of the dwelling, we find that it is unlikely that there would be a request for a replacement dwelling.
40. Based on our analysis above related to a lack of conflict and adverse effect on farming uses and practices, we find there would be no conflict with farm stands. As indicated above, we find that there is no propagation or harvesting of forest products in the surrounding area and, therefore, there is no conflict. Even if forest products were to be propagated and harvested, we find that they are similar to agricultural products and based on our reasoning for agricultural products, we find there would be no conflict. The use requested, will be reclaimed to fish and wildlife habitat which will include wetland areas. In addition, the mineral and aggregate extraction site will exist adjacent to existing wetland areas and we find there will be no effect on those existing wetland areas. As such, we do not believe that creation, restoration or enhancement of wetlands presents any potential conflict with the proposed use. We find that on-site filming and accessory activities generally occur only in the areas that produce the type of image that is wanted for the film. Accordingly, if an

individual wanted to make a movie at a gravel pit, they could film in the area of the proposed use. If they did not want this image as part of the film, they would choose a different area for on-site filming. We find the gravel operation is a long-term and ongoing operation and, accordingly, will not interrupt on-site filming and accessory activities and there is no potential conflict between this use and the proposed use.

We find that propagation, cultivation, maintenance and harvesting of aquatic species, public parks, open areas and playgrounds are unlikely to occur in the impact area. However, if they did occur, there could be potential conflicts; namely, potential water level conflicts with aquaculture ponds and potential noise and dust conflicts with public parks, open areas and playgrounds.

41. As indicated earlier in this findings document, we have established an impact area of 1,500 feet. The primary concern in analyzing the practical effects of the proposed use for purposes of impact area analysis is noise. We agree with the report of acoustical engineers, and find that noise impacts from operations at the site are fully minimized to meet DEQ standards at approximately 800 feet from the perimeter of the extraction site. We find that noise impacts are successfully minimized anywhere outside of the line delineated "DEQ Noise Compliance Boundary" in the acoustical engineers report. Because noise can effectively be controlled below DEQ standards at approximately 800 feet from the perimeter of the proposed use, potential uses (including noise sensitive dwellings and structures) allowed in the EFU zone (or other zones) could create a conflict with the proposed use (or vice versa) due to noise effects of the proposed use, only if they are located within 800 feet of the perimeter of the extraction site. In other words, we find that beyond 800 feet, noise emissions are controlled within DEQ limits and do not present a conflict. Accordingly, for noise sensitive issues such as dwellings, structures and public parks, open areas and playgrounds that are located beyond the defined "DEQ Noise Compliance Boundary" (approximately 800 feet from the perimeter of the proposed use) do not create conflicts that must be analyzed. Accordingly, any park, replacement dwelling, open area, playground or other noise sensitive use located more than 800 feet does not create a conflict and this would include the houses on the bluff that are within the UGB for the city of Keizer. We find that noise sensitive uses occurring outside the 800-foot distance (DEQ Noise Compliance Boundary) could exist without causing the mining operation to violate DEQ standards and conversely the proposed use could operate without causing a noise-based conflict with these potential uses because DEQ standards would be met. However, we find that noise sensitive issues, such as a replacement dwelling or public parks, open areas and playgrounds within the 800-foot "DEQ Noise Compliance Boundary" could potentially create a conflict.

With regard to aquaculture ponds, the potential conflict we see is that dewatering of the extraction site could affect groundwater levels adjacent to the site and, therefore, potentially affect an aquaculture operation near the site. We have already determined that general farming activities identified by the applicant and opponents in the hearing process would not be adversely affected by groundwater drawdown projected in the hydrogeologic report. However, we find that aquaculture ponds might be level-sensitive and the projected drawdowns within 1,500 feet of the site (3.3 feet or more) could, at least in theory, cause a minor conflict with aquaculture activities. Beyond 1,500 feet, the potential drawdown is 3.3 feet or less and we do not see how this would be a substantial difficulty on any aquaculture activity. Accordingly, we confirm the impact area of 1,500 feet is appropriate and

we will address the ESEE consequences on aquaculture activities specifically under each prong of the ESEE analysis.

42. The economic consequences of proposed aggregate extraction site are substantial. The mining operation could lead to numerous jobs in the area as the aggregate could be used for numerous infrastructure projects including new roadways as well as maintaining the current infrastructure. Because the aggregate source is local, it would help reduce the cost to area projects. In addition, it will be a source of employment for many years and will have a spill over affect in support related to industries such as construction.

If new conflicting uses are fully allowed, including aquaculture, positive economic consequences could be that landowners could fully develop their property. Negative economic consequences to the mining operation of fully allowing the conflicting uses could be that the mining operation would be out of compliance with noise standards if, for example, a new public park was allowed within 800 feet of the extraction area perimeter in the impact area. Compliance with noise standards is placed on the noise source, in this case, the applicant. If a new aquaculture use were allowed within the impact area, there could be potential water conflicts that could have an adverse economic effect on both the proposed use and the aquaculture use. However, we see no reason why this potential conflict could not be fully eliminated by directing the dewatering flow from the quarry into the aquaculture pond(s) to maintain water levels. In addition to eliminating a potential conflict with aquaculture, this would also serve as a recharge point to help maintain groundwater levels and the water balance. As such, the economic loss of aquaculture may be overstated.

If new conflicting uses area limited, there still could be positive economic advantages. Specific limitations could be placed on the new use along with the landowner's acknowledgement of the existence of the aggregate operation. This would reduce the economic burden on the aggregate operation as there would be fewer costs associated with mitigation measures. If new uses were limited and had to take into account the mining operation before the use was allowed, both the option of proceeding with development as well as protecting the resource is preserved. For example, if aquaculture uses were required to coordinate with the water levels of the proposed use, economic consequences would be avoided and the positive economic benefits of both uses could be achieved. Because of the EFU and floodplain designations, uses are very limited in the impact area, and such limitations on conflicting uses have little potential for causing economic consequences to the landowner.

If new conflicting uses are prohibited in the impact area, positive economic consequences could include that the operation continue as proposed with no pressure from new development with benefits (revenue, taxes) generated by the operation remaining the same. Having a local source for aggregate would reduce the cost of providing new infrastructure and maintaining the existing infrastructure. It is unlikely that any non-farm economic activity (including aquaculture) could take place on the property because it is located in the floodplain that limits possible uses so such a prohibition would have a small economic effect. The current economic use of the property is farming and that use would not be prohibited thereby providing at least the current economic use of the property.

Prohibiting conflicting uses could cause landowners to lose some potential development opportunities, but we find these potential losses to be speculative and remote. The applicant

does not feel that conflicting uses should be prohibited and proposes that a recorded acknowledgement of the ongoing mining activities would be sufficient to protect the mineral and aggregate resource in conjunction with the existing EFU and floodplain restrictions. We believe this is a common sense solution that allows potential conflicting uses to assess conflicts and modify operations to achieve maximum economic output for both the potential conflicting use and the approved gravel use.

43. Social consequences from allowing the mining operation are that it contributes to maintaining a stable regional economy and provides jobs for local residents thereby helping them maintain their standard of living. The operation will generate revenue to help local schools and roads and generally add to the quality of life in the area.

Possible positive social consequences from fully allowing conflicting uses in the impact area are that the landowners would be able to develop their farm property, subject to regulations, without additional limitations. However, because the impact area is located in the floodplain, future uses are very limited and farming is most likely the activity that will take place. We also find that potential aquaculture is limited because the floodplain location provides the possibility of seasonal overflow and escape of the water-related aquaculture species. Accordingly, all the potential positive consequences of aquaculture (social, economic, environmental and energy) may be overstated.

If new possible conflicting uses are limited in the impact area, possible negative social impacts could be the sense of loss of property rights and resentment of the imposition of additional development constraints for landowners. Again, because the area is within the floodplain, it is unlikely that a conflicting use (a dwelling, park, playground or aquaculture operation) would be located in the impact area. Potential conflicting uses such as public parks are also unlikely because they are incompatible with farming operations that predominate in the area. We agree with the applicant that limiting conflicting uses, beyond a recorded acknowledgment, is unnecessary because it is impractical to place structures or other conflicting use in the floodplain.

The possible positive social consequences from prohibiting new conflicting uses could be the benefit to the general public of having readily available aggregate to maintain the communities' infrastructure. Possible negative consequences could be that landowners within the impact area would be slightly limited on the use of their property. It is unlikely that any conflicting uses (structures in particular) would be located within the impact area because the area is within the floodplain. There would be potential social conflicts for both farming and mining operations if conflicting uses were allowed in the impact area. We agree with the applicant that a recorded acknowledgment is sufficient to avoid or minimize any social conflicts.

44. Environmental consequences from the proposed use will be minimized because the expansion site is located in an upland area and setbacks will be maintained from the nearby water bodies. The applicant will meet DEQ requirements, wildlife habitat will not be removed, and the site will be reclaimed to fish and wildlife habitat.

If new conflicting uses (i.e., structures, aquaculture operations or parks) are fully allowed the environmental consequences could be that the mining and aggregate operation would be unable to meet DEQ noise requirements. Also, new developments would need new septic

and sewer systems that would create the potential for runoff. Aquaculture operations might need higher water levels if located near the proposed use. Allowing new development in the impact area would also deplete farmland and possibly wildlife habitat.

Limiting new conflicting uses could be used as a means to protect the mineral and aggregate resource. The applicant suggests for future use applications, the county might require the recording of an acknowledgement statement or a waiver of right of remonstrance to the mining operation. We agree with the applicant that with this minimal limitation, the conflicting uses could be allowed in the impact area and the resource would be protected. In addition, recognition by proposed conflicting aquaculture uses of the ongoing dewatering operations at the expansion site would allow those operations to proceed while recognizing that there might be groundwater drawdown associated with the adjoining activities on the proposed site. The county's current EFU and floodplain requirements and zoning procedures, combined with a simple statement or waiver, provide a median way for landowners and the applicant in that both could pursue future activities under defined conditions that are understood at the time of the expansion approval. As part of the permitting process for a proposed new use, this statement or waiver would identify environmental interaction between potential conflicting uses and the proposed expansion site and defining the parameters at the time of approval. Again, it is unlikely that there would be any conflicting use in relation to the proposed extraction site because of the zoning and being in the floodplain. The applicant suggests that for future uses, the only limitation necessary is recorded acknowledgment in deed records or waivers of right of remonstrance for any new use considered. We agree that this would strike a balance between concerns for the conflicting use and preserving the resource.

If new conflicting uses were prohibited in the impact area, there would be no environmental consequences to the proposed use. The evidence presented demonstrates that the operation meets the environmental requirements outside of the impact area including noise. If no new development is allowed within the impact area, future environmental impacts of that development are eliminated. It is very unlikely that any dwelling would be placed in the area because of the floodplain and EFU zoning. Rather than prohibiting potential future conflicting uses, limitations can be placed on the conflicting uses through the county's current zoning process. This will balance the concerns for both the aggregate and mineral resource as well as future uses.

45. The energy consequences of allowing the proposed extraction include efficient on-site operation and maintenance of local aggregate supplies. A local supply of aggregate will help construction schedules and avoid delays and inefficiencies in labor and petroleum consumption due to transporting aggregate-related construction materials into the market area from greater distances.

Allowing new conflicting uses would have a negative energy impact because it could increase energy consumption by potentially requiring aggregates to be transported by truck to the Salem area from distant locations (which increases fuel consumption). Allowing a new use in the impact area could require the aggregate operation to consume additional energy to meet DEQ noise and other discharge related standards. Additionally, if new uses are allowed, they could cause the expansion site to cease operation thereby causing additional energy to be used to import sand and gravel from sources much further away.

If new conflicting uses are limited within the impact area, negative energy impacts could be reduced. Specific requirements can be followed that would allow both the landowner and the applicant to conform their activities to a specific standard. For example, if a dwelling was proposed in the impact area, a waiver or right of remonstrance, or similar recorded statement, can be required by the county at the time of the future application to protect the aggregate and mineral resource and certain construction details, such as double paned windows, might be required. The result of such a moderate limitation would be to allow no additional energy consumption but at the same time protect the dwelling from noise consequences. Similarly, a statement or waiver can be required from an aquaculture operation to confirm that water levels may vary with gravel extraction and assure that aquaculture operations are adjusted to reflect these levels and reduce energy inputs. Again, it is highly unlikely that a dwelling would be placed in the impact area because of the zoning and being in the floodplain.

No negative energy consequences would result to the proposed operation from prohibiting conflicting uses in the impact area. It could continue its normal operations and no energy would be expended to protect conflicting uses from potential conflicts. The applicant does not feel that prohibition is necessary because conflicting uses are unlikely to occur in the impact area due to zoning and floodplain considerations.

46. While it appears unlikely that any conflicting uses will take place in the impact area because of the zoning and location within the floodplain, we agree with the applicant's suggestion that a simple recorded statement or waiver of remonstrance shall be considered at the time of application for a county permit for potential conflicting noise sensitive use that wishes to locate within the "DEQ Noise Compliance Boundary" (i.e., approximately 800 feet from the perimeter of the extraction area), or any aquaculture use applies for a permit within the impact area. These extremely limited measures leverage the existing zoning ordinance of the county and assure common sense notice, discussion and issue resolution for potential conflicting uses in the impact area. See Section 52 below.

Adequacy of PAPA Application

47. OAR 660-023-0180(8) establishes the criteria for determining whether a PAPA application concerning a significant aggregate site is adequate. The PAPA application is adequate if it includes:
 - (a) Information regarding LQQ (location, quality, and quantity) sufficient to determine whether the standards and conditions in OAR 660-023-0180(3) are met;

The applicant has submitted a detailed report from professional geologists to demonstrate the specific location of the site, the nature of the sand and gravel deposit and detailed information regarding the quality and quantity of the mineral and aggregate deposits. LQQ issues and OAR 660-023-0180(3) were discussed above and we incorporate that discussion by reference. We find that the information provided by the applicant is sufficient regarding LQQ standards to determine whether the proposed resource site satisfies standards in OAR 660-023-0180(3). We conclude that OAR 660-023-0180(8)(a) is satisfied.

- (b) A conceptual site reclamation plan;

The applicant has submitted substantial plan sets and drawings that demonstrate the location of the site, proposed mining and operations activities, and the conceptual reclamation plan which are sufficient for the County to analyze the application. We conclude that OAR 660-023-0180(8)(b) is satisfied. However, we note that final approval of the reclamation plan resides with DOGAMI after County approval is obtained. ORS 517.780. As a condition of approval, the applicant is required to provide the county proof of a permit from DOGAMI before any work can be conducted on the proposed site (see Conditions 4 and 5).

- (c) A traffic assessment within one mile of the entrance to the mining area pursuant to section (5)(b)(B) of this rule;

The applicant provided a full traffic analysis/assessment and based on that analysis, we find that there will be no increase in traffic introduced into the general County road system above existing permitted traffic levels from the existing and approved Windsor Island facility as the instant application is a designation and protection of future resource for applicant's ongoing business. We incorporate by reference our discussion under the "Conflicts with Local Roads" section above and find and conclude that the applicant provided sufficient information to satisfy OAR 660-023-0180(8)(c).

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

We find that the applicant submitted an analysis of the identified conflict groups set out in the Goal 5 rule and proposed methods to minimize the potential conflicts as more fully discussed above. We incorporate that discussion by reference and find and conclude that OAR 660-023-0180(8)(d) is satisfied.

- (e) A site plan indicating the location, hours of operation, and other pertinent information for all proposed mining and associated uses.

We find that the site plan documents and application provide detailed information about the site plan and hours of operation. The applicant also provided a detailed analysis of the proposed operation, noting that no blasting will be needed and that the extraction will take place well below the surface elevation.

As set out earlier, we find that the active site area consists of approximately 247 acres with 217 acres actually being used as the extraction site and the remaining 30 acres providing a buffer/setback. Access to the site is from Windsor Island Road and applicant will build a haul road on the expansion site. The extraction process will move generally from south to east and then to the north in a series of mining cells. We find that reclamation will be ongoing and that the final reclamation plan calls for a series of water features which will provide for fish and wildlife habitat as well as potentially allowing some of the land to be reclaimed for farmland.

Because of the possibility that the noise may exceed DEQ regulations for the applicant owned house in the impact area, the applicant has requested that the hours of operation begin at 7 a.m. rather than 6 a.m. as allowed under the ordinance.

MCZO 120.460(D) specifies the hours of operation. It provides:

Hours of Operation.

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

Consistent with the applicant's request and our ordinance, we establish the hours of operation from 7:00 a.m. to 6:00 p.m. Monday through Friday. Activities on Saturday will be limited to transportation activities only and the Saturday hours will be from 7:00 a.m. to 6:00 p.m. No transportation or extraction activities will be take place on Sundays or on January 1st, Memorial Day, July 4th, Labor Day, Thanksgiving, or December 25th.

The PAPA application contains the information required by OAR 660-023-0180(8) and is, therefore, adequate to allow the initiation of Goal 5 evaluation and approval of the Expansion Site. Based on all these findings, we conclude that OAR 660-023-0180(8)(e) is satisfied.

48. Under OAR 660-023-0180(9), the county must amend its comprehensive plan and land use regulations to be consistent with the OAR. Until such time as local governments make those changes, the Goal 5 rule (OAR 660-023-0180) is applied directly to the PAPAs concerning aggregate resources. Marion County's comprehensive plan states that the OARs shall be followed with the exception for standards in Ordinance Chapter 120.400. Chapter 120.400 is discussed below. We find that OAR 660-023-0180(9) is satisfied.

Program to Achieve Goal 5

49. Under OAR 660-023-0050(1), the county must adopt comprehensive plan provisions and/or land use regulations to implement the decisions made pursuant to OAR 660-023-0040. The plan amendment shall describe the degree of protection intended for the significant resource site. The plan amendment and implementing ordinances shall clearly identify those conflicting uses that are allowed and the specific standards or limitations that apply to the

allowed uses. A program to achieve Goal 5 may include zoning measures that partially or fully allow conflicting uses.

50. Under OAR 660-023-0050(2), when a local government has decided to protect a resource site under OAR 660-023-0040, implementing measures applied to conflicting uses on the resource site and within its impact area shall contain clear and objective standards. A standard is considered clear and objective if it is a fixed numerical standard, is a nondiscretionary requirement, or is a performance standard that describes the outcome to be achieved by the design, siting, construction, or operation of the conflicting use, and specifies the objective criteria to be used in evaluating outcome of performance.
51. The applicant has not requested to impose any zoning limitations or setbacks on future dwellings located on adjacent property, but has instead requested that a notification or declaratory statement be recorded as part of the decision process in the unlikely event a conflicting use would request land use approval within the impact area. We find that the development potential of the area for new dwellings and other uses is substantially limited based on the ESEE analysis, the restrictive provisions of the EFU zone, and the restrictive provisions of the floodplain and greenway zones, but that such a recorded statement is a good idea.
52. We agree with the applicant that a minimally intrusive notice or declaratory statement is all that is required in the event a conflicting use or request land use approval within the impact area. Section 136.100(c) of the MCZO provides a template or declaratory statement that may be required in certain instances for conflicting uses in an EFU zone. We believe that no additional zoning restrictions or limitations are required within the 1,500-foot impact area. However, we believe that if noise sensitive uses request land use approval within the DEQ Noise Compliance Boundary (i.e., within approximately 800 feet of the perimeter of the extraction area) or if an aquaculture operation requests approval within the impact area, it is appropriate for those conflicting uses to sign a recordable "Declaratory Statement" recognizing the mineral and aggregate use. Accordingly, as part of our program to achieve Goal 5, in the unlikely event that a noise sensitive use would request land use approval within the DEQ Noise Compliance Boundary (i.e., approximately 800 feet from the perimeter of the extraction area) or an aquaculture operation would request approval within the impact area, these conflicting uses shall be required to sign a Declaratory Statement substantially equivalent to the Declaratory Statement contained in MCZO 136.100(c) with regard to recognizing the existence of the approved mineral and aggregate resource on the expansion site, an acknowledgment of potential conflicts and waiver of action related to lawful operation of approved mineral and aggregate extraction activities onsite.
53. Under OAR 660-023-0060, Marion County is required to provide timely notice to landowners and opportunities for citizen involvement during the inventory and ESEE process. Notice of the hearing before the hearings officer and Board of Commissioners was adequately given and notice was properly posted on the application property. No objections to notice were made.
54. Under OAR 660-023-0070, if measures to protect significant resource sites inside UGBs affect the inventory of buildable lands in acknowledged plans, other requirements apply. We find that this is not an application for a resource site within a UGB, and buildable lands are not affected. We conclude this standard is not applicable.

Statewide Planning Goals

55. All comprehensive plan amendments must be consistent with statewide planning goals. The requested PAPA is a comprehensive plan amendment, and therefore, must comply with statewide planning goals. We make the following findings and conclusions with regard to each of the statewide planning goals:

Goal 1: Citizen Involvement. The purpose of Goal 1 is to develop a citizen involvement program that ensures the opportunity for citizens to be involved in all phases of the planning process. The public notice and hearings afforded under Marion County's land use processes provided an opportunity for citizen communication and input to this matter. Marion County's required notice and hearing processes ensure that the requirements of Goal 1 are met.

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

Under this goal, each plan and related implementation measure shall be coordinated with the plans of affected governmental units. Affected governmental units are those local governments, state and federal agencies and special districts which have programs, land ownerships, or responsibilities within the area included in the plan. Implementation measures can be site specific.

This is a site specific comprehensive plan amendment. Marion County notified and received responses from Public Works, City of Keizer, Marion County Fire District #1, Oregon Department of Fish and Wildlife, and the Marion County Tax Office. These responding entities addressed their concerns, but did not have any concerns that could not be alleviated with conditions, compliance with regulations, or with the continued work with the applicant. DEQ, ODOT, DSL, DOGAMI, LCDC, COE, and Federal Emergency Management Agency (FEMA) were also contacted but either failed to submit comments or stated that they were not affected by the proposal. The county's hearing process allows input from the public and coordination with interested state, local, and federal agencies. We find that the application provides factual support for the requested decision and that proper opportunities for government and citizen impacts were provided. The requirements of Goal 2 are met.

Goal 3: Agricultural Lands. We incorporate our findings and conclusions above related to agricultural uses and conflicts. The purpose of Goal 3 is to preserve and maintain agricultural lands for farm use. Goal 3 is balanced with Goal 5 under OAR 660-023-0180(3) and is also examined under ORS 215.296. The site is currently zoned EFU. ORS Chapter 215 provides that gravel extraction applications may be allowed in EFU zones. LCDC has adopted the Goal 5 PAPA process to assist in balancing between preservation and maintenance of agricultural lands and the need to protect significant mineral and aggregate resources. Inherent in the PAPA process is a conflict analysis and analysis of measures to minimize effects on agricultural uses so as to balance these potentially competing interests. We find that measures are available to minimize the potential effects of applicant's extraction activities on agricultural uses and farm practices on surrounding lands. We find and conclude that the approved mineral and aggregate use will not increase the costs of, nor force changes to, accepted farming practices on surrounding lands. Because

mineral and aggregate uses are allowed under state statute on agricultural lands, because Goal 5 provides a process for balancing all statewide goals, because agricultural conflicts can be minimized, and because we find no increased costs nor forced changes in accepted farming practices, we conclude that the application meets the requirements of Goal 3.

Goal 4: Forest Lands. The purpose of Goal 4 is to conserve forest lands by maintaining the forest land base and to protect the state's forest economy by making possible economically efficient forest practices that assure the continuous growing and harvesting of forest species as the leading use on forest land consistent with sound management of soil, air, water, fish and wildlife resources and to provide for recreational opportunities and agriculture. There are no areas zoned for forestry use on-site, within the impact area or within the general vicinity. The extent that Goal 4 implicates agricultural uses, compliance with Goal 3 is sufficient to protect ancillary forest uses. As such, we conclude that the requirements of Goal 4 are met.

Goal 5: Open Spaces, Scenic and Historic Areas, and Natural Resources. We incorporate our findings above herein. The purpose of Goal 5 is to protect natural resources and conserve scenic and historic areas and open spaces. Natural resources protected under Goal 5 include significant mineral and aggregate resources. OAR 660-023-0180 establishes the appropriate procedure and process for consideration of Goal 5 issues in this application and is examined above. Following the provisions of OAR 660-023-0180 and the PAPA process ensures that the requirements of Goal 5 are met.

Goal 6: Air, Water, and Land Resources Quality. The purpose of Goal 6 is to maintain and improve the quality of the air, water and land resources of this state. We find that regulatory permits required as conditions of approval (see Conditions 4 and 13) will regulate particulate discharge and water runoff from the proposed aggregate operations, and satisfy this goal with regard to relevant pollutants. Additionally, we find that applicant will minimize dust by controlling truck speed, graveling internal roads, using water to control dust, paving portions of the internal truck paths, promptly removing dirt and other materials that might become airborne from paved portions, and engaging in wet mining practices to extract moist aggregates from the site. Storm water discharges will be directed on-site and will be handled through an NPDES 1200A permit. Water taken from the individual mining cells through the dewatering process will be reintroduced to maintain a water balance and protect groundwater resources. Turbidity in groundwater associated with mining below the water table will be filtered out on the natural processes of the aquifer and a 100-foot buffer is provided on all sides of the extraction site to ensure that turbidity does not move offsite.

Noise discharges are also covered under this goal. We incorporate our findings above with regard to noise. We find that applicant's design of the operation and conditions, such as hours of operation (see Conditions 20 and 21) satisfy this goal with respect to noise.

Extraction activities at the site will result in an unavoidable disruption of surface land resources as is inherent in the mining of aggregate. Pursuant to a DOGAMI permit and DOGAMI standards, reclamation will be accomplished to return disrupted land to open space, fish and wildlife habitat and some farmland (see Condition 4). The requirements of Goal 6 are met.

Goal 7: Areas Subject to Natural Disasters and Hazards. The purpose of Goal 7 is to protect people and property from natural hazards. Under this goal, developments subject to damage or that could result in loss of life shall not be planned nor located in known areas of natural disasters or hazards without appropriate safeguards. No residences or permanent structures are proposed for the site. The subject site is within the identified floodplain of the Willamette River. A floodplain development permit was submitted as a part of this proposal. The permit is evaluated below and we find that the floodplain development permit requirements are met.

A condition of approval (Condition 32), as requested by the applicant, requires that dewatering operations stop in the flood season (November 1 of the current year through May 1 of the next year). Timely, annual cessation of dewatering activity will allow the water level in the extraction cells to equilibrate with the groundwater level in the area, a level that is generally linked to the Willamette River. We find that this minimizes or eliminates flood hazard potential.

DPW expressed concern of possible erosion into Clear Lake and requested that an ingress/egress analysis be performed regarding the chance of erosion because of possible flow acceleration and turbulence caused by mining cells filling and emptying into the Willamette backwater and Claggett Creek flood flow. We find that since no impediments to floodwater flow will be installed, such as berms or dikes, flow patterns within the buffer areas remain similar and erosion is not expected. In addition, Condition 33 requires the applicant to obtain an ingress/egress analysis to address this issue or provide evidence that the analysis is not needed. We find that this issue is appropriately addressed by facts showing that.

We find that the extraction area proper is more than one mile from the Willamette River Channel and that river capture or avulsion of this magnitude is highly unlikely, particularly given that the flooding of the site occurs in a backwater fashion via Claggett Creek and Clear Lake providing for the slow introduction of floodwaters onto the site and reducing erosion. In addition, this site must be designed in cooperation with DOGAMI (see Condition 4) and we find that reclamation design inherently includes river capture issues minimize the potential for river capture. Floodplain development permit requirements and compliance with DOGAMI requirements will ensure that the requirements of Goal 7 are met.

Goal 8: Recreational Needs. The purpose of Goal 8 is to satisfy the recreational needs of the citizens of the state and visitors and, where appropriate, to provide for the siting of necessary recreational facilities including destination resorts. No destination resorts are planned for this area. The site is in an active farming area and does not currently provide for the citizens' recreational needs. The site will be reclaimed to wildlife habitat and open space, and will therefore offer potential opportunities for recreation. The requirements of Goal 8 are met.

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

The subject site has a significant quantity of high-quality sand and gravel that would be a significant economic asset to the state. It is consistent with the purpose of Goal 9 to protect

this mineral and aggregate resource. We incorporate our findings above and conclude that mineral and aggregate extraction will not significantly adversely affect another important economic activity, farming. Because agricultural uses will not be significantly adversely affected and because mineral and aggregate materials are essential building blocks for county and state economies, the requirements of Goal 9 are met.

Goal 10: Housing. The purpose of Goal 10 is to provide for the housing needs of the citizens of this state. No housing is proposed, nor will this proposal remove potentially urbanizable land that could be used for housing from any inventory. The proposed use of the site as a sand and gravel extraction area will provide a source for construction materials for building houses and infrastructure in Marion County. To the extent Goal 10 is applicable, its requirements are met.

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

As proposed, the mineral and aggregate operation will not require public service facilities. Power is available on the site and no other services are necessary. Sewage facilities are unnecessary as the applicant will use portable facilities. Water is available from on-site exempt wells. Activities at the proposed expansion site will not increase any demand for public services, such as fire, police, or schools. Because no additional public facilities or services are necessary to allow the proposed use, the requirements of Goal 11 is met.

Goal 12: Transportation. The purpose of Goal 12 is to provide and encourage a safe, convenient and economic transportation system.

Under OAR 660-012-0060(1), amendments to acknowledged comprehensive plans and land use regulations which significantly affect a transportation facility shall assure that allowed land uses are consistent with the identified function, capacity, and performance standards (e.g. level of service, volume to capacity ratio, etc.) of the facility.

Under OAR 660-012-0060(2), a plan or land use regulation amendment significantly affects a transportation facility if it:

- (a) Changes the functional classification of existing or planned transportation facility;
- (b) Changes the standards implementing a functional classification system; or
- (c) As measured at the end of the planning period identified in the adopted transportation plan (2030 for Marion County), the comprehensive plan amendment would:
 - (1) Allows land uses or levels of development that would result in types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;

- (2) Reduces the performance of an existing or planned transportation facility below the minimally acceptable performance standard identified in the TSP or comprehensive plan, or
- (3) Worsens the performance of an existing or planned transportation facility that is otherwise projected to perform below the minimum acceptable performance standard identified in the TSP or comprehensive plan.

We find that approval of the expansion site will result in no intensification of the levels of traffic currently permitted on the county road system. No new vehicle trips will be generated into the county traffic matrix. The transportation analysis of Kittleson & Associates which we find persuasive, demonstrates that the existing road system currently provides an adequate level of service for traffic associated with the existing and approved Windsor Island site, as well as all of the other uses (farm and residential) in the area, both currently and at the end of the planning period adopted in Marion County's Transportation Plan.

We find that because no new vehicle trips will be generated into the county transportation system by the activities at the expansion site, there will be no measurable effect from this application that would "significantly affect" any transportation facility or reduce the performance of any existing transportation system. The proposed use of the subject site satisfies the requirements of OAR 660-012-0060 in that it does not "significantly affect" any transportation facility, whether existing or planned. Conditions of approval require applicant to take continuing steps to protect safety, convenience and provide repairs for the economic use of roads in the area. Accordingly, we conclude that the requirements of Goal 12 are met.

Goal 13: Energy Conservation. The purpose of Goal 13 is to conserve energy. The proposed use will not be a high energy consumption operation. Further, the proximity of the expansion site to the processing facility and the market area reduces the transportation necessary to process and use the material thereby conserving energy. To the extent Goal 13 is applicable, its requirements are met.

Goal 14: Urbanization. The purpose of Goal 14 is to provide for an orderly and efficient transition from rural to urban land use, to accommodate urban population and urban employment inside urban growth boundaries, to ensure efficient use of land and to provide for livable communities. The proposed use is not an urban land use and the application does not request a change from rural uses to urban uses. The site is not located in an urban growth boundary. We conclude, therefore, Goal 14 is not applicable.

Goal 15: Willamette River Greenway. The purpose of Goal 15 is to protect, conserve, enhance, and maintain the natural, scenic, historical, agricultural, economic and recreational qualities of lands along the Willamette River as the Willamette River Greenway. The proposed site is approximately one mile from the Willamette River. A small portion of the proposed expansion site (tax lot 300, Section 21) is along the Willamette River Greenway boundary. We find that no activities of any type will occur at the western portion of the property that includes tax lot 300 and the greenway because if no activities occur on the portion of land within the greenway's boundary, we find and conclude that the requirements of Goal 15 are met.

Goals 16-19: Estuarine Resources, Coastal Shorelands, Beaches and Dunes, and Ocean Resources. There are no estuarine resources, coastal shorelands, beaches, dunes or ocean resources at the site or within the impact area. Goals 16 through 19 are not applicable.

Marion County Comprehensive Plan

56. Since OAR 660-023 is applied directly through MCRZO 120.400, and no examination of additional conflicts is allowed, no examination of the comprehensive plan is required.

MCZO 120.400

57. In addition to compliance with Statewide Planning Goals, the proposal must also meet the requirements of the MCZO. MCZO 120.400 sets forth requirements and standards for Mineral and Aggregate Resource Operations. MCZO 120.400 contains several sections that repeat OAR requirements and will not be repeated. We incorporate by reference our analysis, findings and conclusions above. The sections that do not duplicate OAR requirements are considered below.
58. MCZO 120.440. The approval shall specify which of the following uses are allowed:
- (A) Mining or quarrying operations for the extraction of rock, clay, soil, sand, or gravel.
 - (B) The following uses when in conjunction with a mineral and aggregate resource extraction operation:
 - (1) Processing, crushing, washing, sizing and screening of mineral and aggregate resources;
 - (2) Stockpiling of mineral and aggregate materials and earth products;
 - (3) Offices, shops or other accessory structures used for the management and maintenance of resource extraction and processing equipment;
 - (4) Sale of mineral and aggregate resources, asphalt, cement treated base, and concrete;
 - (5) Asphalt batch plants, cement treated base pug plants and/or concrete batch plants;
 - (6) Storage of equipment or machinery and maintenance facilities related to mineral and aggregate resource extraction processing or transportation equipment, provided that independent commercial storage or commercial maintenance facilities open to the general public or not directly related to resource extraction shall not be allowed unless permitted in the underlying zone;
 - (7) Transportation facilities and loading facilities related to mineral and aggregate resource mining and/or processing; and

- (8) Other incidental mineral and aggregate resource related activities including buildings, structures and other apparatus.

Mining operations for the extraction of rock and gravel at the expansion area are requested as part of this application. These uses are allowable uses and are permitted through this application because all standards are met and any conflicts are minimized in accordance with the Goal 5 rule. Accordingly, we find MCZO 120.440 is met.

- 59. MCZO 120.450 provides the criteria that must be met in order to grant a permit for mineral and aggregate operations (in addition to any criteria in the applicable zone):
 - (A) The proposed uses, activities and facilities are included in Section 120.440;
 - (B) A permit for mining of aggregate on farmland shall be issued only for a site included on an inventory in an acknowledged comprehensive plan as required under ORS 215.298(2);
 - (C) For sites that qualify as significant under requirements of OAR 660-[0]23-0180(3)(a) through (d), the county has completed the requirements of 660-[0]23-0180(5)(a) through (g) or;
 - (D) For sites that qualify as significant under requirements OAR 660-[0]23-0180(4)(a) through (c), the county has completed the requirements of 660-[0]23-0180(6)(a) through (d).
 - (E) For sites that do not qualify as significant only, the following criteria apply:
 - (1) The proposed use, as conditioned, will not substantially limit, impair, or preclude the use of surrounding properties for the uses permitted in the applicable zone;
 - (2) The proposed use, as conditioned, will not have a significant adverse effect on air or water quality;
 - (3) Adequate public and utility facilities and services to serve the use are available or will be made available prior to establishment of the use;
 - (F) New uses that batch and blend mineral and aggregate into asphalt cement may not be authorized within two miles of a planted vineyard. Planted vineyard means one or more vineyard totaling 40 acres or more that are planted as of the date the application for batching and blending is filed, pursuant to OAR 660-033-130(15).
- 60. We find that the proposed mining operations, extractions, temporary storage, transportation, and other incidental uses are all allowable uses included in Section 120.440. MCZO 120.450(A) is met.
- 61. We find that the PAPA application and record fully support the applicant's request that the expansion site be added to the County's significant Goal 5 mineral and aggregate inventory.

Through this approval, we include the site on an inventory in the county's acknowledged comprehensive plan as required under ORS 215.298(2). MCZO 120.450(B) is met.

62. We find that the site is significant under OAR 660-023-0180(3), fully meeting the requirements of OAR 660-023-0180(3)(a) through (d). The County has carefully completed the requirements of OAR 660-023-0180(5)(a) through (g) and, accordingly, MCZO 120.450(C) is met.
63. We find that the proposed site meets the test for significance set forth in OAR 660-023-0180(3) and that the application is not considered under the requirements of OAR 660-023-0180(4). As such, MCZO 120.450(D) is not applicable.
64. We find and conclude that the expansion site is significant and that the aggregate is of high quality and its quantity significantly exceeds the required amount required under Goal 5 for the Willamette Valley. As such, MCZO 120.450(E) does not apply.
65. The applicant does not request an asphalt batch plant for batching and blending of mineral aggregate into asphalt cement. The applicant requests a specific condition stating these uses are not allowed (see Condition 24). As such, to the extent MCZO 120.450(F) is applicable, it is met.
66. MCZO 120.460 provides standards for development and operation of mineral and aggregate operations. Unless specifically deleted or modified as part of the PAPA or conditional use approval, the following standards and requirements apply:
 - (A) Dimensional Requirements.
 - (1) Lot Area: The minimum area shall be that area necessary to meet setback requirements.
 - (2) Setbacks for mineral and aggregate extraction shall be:
 - (a) The extraction area must be at least 100 feet from any property line;
 - (b) The extraction area must at least 500 feet from a habitable building existing on adjacent property at the time the use is established;
 - (c) When a site abuts another mineral and aggregate site, no setback for mineral and aggregate extraction is required along the common boundary line, unless such setback is determined by the county to be necessary.
 - (3) Setbacks for mineral and aggregate processing and loading shall be as follows:
 - (a) One hundred (100) feet from any property line; and
 - (b) Five hundred (500) feet from a habitable building existing on adjacent property at the time the processing operation is established;

- (4) Setbacks for offices, shops, or other accessory structures shall be regulated by the zone in which the proposed operation is located.
- (5) Storage of overburden is allowed within the setbacks. There shall be no setback for existing roads, internal truck paths or other transportation facilities. Any new roads, internal transportation or other transportation facilities shall not be located closer than 50 feet from a habitable building on adjacent property existing at the time storage commences.
- (6) Height: The maximum height of any structure, except mineral and aggregate processing and extraction equipment, shall be eighty-five (85) feet.
- (7) Signs: One sign not exceeding thirty-two (32) square feet in area is permitted at each entrance.

(B) Screening and Fencing.

- (1) Fencing shall be required only if the site is adjacent to an urban or rural residential zone. When fencing is required, it shall be of cyclone type, a minimum of six (6) feet high. Any site owner or operator may voluntarily fence a site.
- (2) Existing deciduous and evergreen vegetation within required setback areas that screen visibility of the operation from adjacent property or public roads shall be retained unless located within a vision clearance area or determined by the county to be a public safety hazard.

(C) Access.

- (1) Access to sites that do not qualify as significant, the following standards apply;
 - (a) All private access roads connecting mineral and aggregate sites to public highways, roads or streets shall be paved or graveled. If graveled, the applicant shall provide a written agreement to the County to grade and treat the access road as needed during the period from June to September, or as determined in the conditional use, to reduce dust. If the access connects with a paved public road it shall be paved for a distance of 100 feet from the existing paved road.
 - (b) If access from a mineral and aggregate site is by graveled public highways, roads or streets, the applicant shall provide a written agreement to the County annually grade and treat the first two thousand (2,000) feet of such roadway, or as determined in the conditional use permit, to reduce dust impacts.
 - (c) Vehicular barriers or gates shall be required at all vehicular access points to the site. The gate shall be located no closer than 85 feet to

the public right-of-way unless a lesser distance is established as part of the continual use permit.

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

(2) For sites that qualify as significant, access requirements shall comply with OAR 660-[0]23180-(5)(b)(B).

(D) Hours of Operation.

(E) Environmental Standards.

(1) Any crusher, asphalt batch plant or concrete plant, shall have a valid DEQ permit.

(2) Owners or operators shall present evidence of the appropriate DEQ permits prior to commencing operations.

(3) Owners or operators of mineral and aggregate operations shall comply with the Department of Environmental Quality ("DEQ") sound levels in OAR 340-[0]35-035 for habitable buildings on nearby property.

(F) Safety Standards.

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

(G) Site Reclamation.

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

(H) Performance Agreements.

(1) The operator of a mineral and aggregate site shall provide the County with a letter and two copies of relevant documents that demonstrate the operator has in full force and effect the bond or security deposit with DOGAMI to assure conformance with the state-required reclamation plan. This information shall be provided to the County prior to commencing operations.

(2) Mineral and aggregate operations shall be insured for \$100,000.00 against liability and tort arising from production activities or incidental operations conducted or carried on by virtue of any law, ordinance, or condition and the

insurance shall be kept in full force and effect during the period of such operations.

Evidence of a prepaid policy of such insurance that is effective for a period of one (1) year shall be deposited with the County prior to commencing any mineral and aggregate operations. The owner or operator shall annually provide the County with evidence that the policy has been renewed.

(A) Dimensional Requirements. (Subsections A1-7)

These subsections set forth a minimum lot area (an amount of land necessary to meet setback requirements). They also provide for setbacks of at least 100 feet from any property line and 500 feet from any habitable building existing on adjacent property at the time the gravel operation is established. We find there is a general 100-foot setback and that the extraction area is clearly located more than 500 feet from any currently existing habitable building. There will be no processing of mineral and aggregate materials on the Expansion Site and the 100-foot setbacks indicated above meet the loading requirement of this section.

No offices, shops or other accessory structures are requested and, therefore, related setback requirements do not apply. Section 460(A) allows for storage of overburden within setbacks and provides that there are no setbacks for existing roads, internal truck paths or other transportation facilities. Applicant will store overburden in certain portions of the setback area. From the site plans, we find that such storage will not be any closer than 50 feet from any habitable building because there are no habitable buildings in the area. In addition, new roads or internal transportation tracks located at reasonable locations on the site and will not be located closer than 50 feet from any existing habitable building. There will be no processing equipment on-site and the mineral extraction equipment that will be used will be less than 85 feet in height. Even if the height maximum applied to extraction equipment, we find this standard is met. We find from the site plan and in the applicant's narrative, that all of the dimensional requirements of Section 120.460 are met by the proposed application.

(B) Screening and Fencing. (Subsections B1-2)

We find that there are no urban or residential zones on the site. The city of Keizer is approximately one quarter of a mile to the east. We also find that there is perimeter vegetation along Clear Lake and Claggett Creek and that this vegetation is in the setback area and will be preserved. The provisions of this standard are met.

after the County land use approval, but prior to commencement of operations on the Expansion Site (see Condition 4). Accordingly, the provisions of this subsection of the rural zoning ordinance are met.

(H) Performance Agreements. (Subsections H1-2)

We find that a performance bond is a condition precedent to obtaining the DOGAMI permit and we have adopted conditions that require evidence of the appropriate DOGAMI bond to the County prior to beginning operations at the Expansion Site (see Conditions 4 and 5). We have also required the applicant to be insured for \$100,000 against liability and tort arising from operations and to provide a copy of its liability insurance coverage to the County prior to commencing operations and provide annual updates to the County to demonstrate that insurance is in full force and effect (see Condition 19). Accordingly, the provisions of this subsection of the rural zoning ordinance are met.

Floodplain Development Permit – MCZO 178

67. The purpose of the floodplain overlay zone is to promote public health, safety and general welfare and to minimize public and private losses due to flood conditions. MCZO 178.050 contains permitting procedures and requirements, and MCZO 178.060 contains flood protection development standards.
68. We find that the subject property is located within the Floodplain Overlay Zone of the Willamette River. The Flood Insurance Rate Map #4101540192 G indicates that the expansion site is in an unnumbered A zone.
69. MCZO 178.050 contains the conditional use procedures and requirements. They are as follows:
 - (A) Except as provided in Section 178.040 a conditional use permit (Floodplain Development Permit) shall be obtained before construction or development begins within the Floodplain Overlay Zone. The conditional use permit shall include conditions ensuring that the Flood Protection standards in Section 178.060 are met.
 - (B) When base flood elevation data and floodway data have not been provided in accordance with Section 178.030, the applicant, with the assistance of the Zoning Administrator, shall obtain and reasonably utilize any base flood elevation data or evidence available from a Federal, State or other source in order to determine compliance with the flood protection standards. If data are insufficient, the Zoning Administrator may require that the applicant provide data derived by standard engineering methods.
 - (C) Prior to obtaining a building permit the owner shall be required to sign and record in the deed records for the county a declaratory statement binding the landowner, and the landowner's successors in interest acknowledging that the property and the approved development are located in a floodplain.
 - (D) Prior to obtaining a building permit, commencing development or placing fill in the floodplain the applicant shall submit a certification from a registered civil engineer

(C) Access. (Subsection C1-2)

We find that the Expansion Site is clearly a significant site and we find and conclude that there are reasonable, practicable measures that minimize any effect on local roads that are used for access and egress. In addition, as previously indicated in these findings, no new transportation impacts will accompany the proposed use because the application is not an intensification or enlargement of existing activities. We find the new crossing of Windsor Island Road can be conceptually designed to meet all objective standards related to site distance, road capacity, cross section elements, horizontal alignment, vertical alignment and similar items and that all access requirements of these provisions of the rural zoning ordinance, and the conditions we have imposed, can be met.

(D) Hours of Operation. (Subsections D1-3)

The County allows mineral and aggregate operations on Monday through Friday from 6 A.M. through 6 P.M. Applicant is requesting 7 A.M. to 6 P.M. operations on Monday through Friday. The code further allows transportation activity on Saturdays between 6 A.M. and 6 P.M. and the applicant is requesting transportation on Saturdays between 7 A.M. and 6 P.M. which meets the applicable standards. There will be no extraction or transportation activities allowed on Sundays and on the holidays indicated in the zoning ordinance (January 1, Memorial Day, July 4, Labor Day, Thanksgiving Day and December 25). No processing activities will occur on the Expansion Site. We find that this is an alluvial mineral and aggregate deposit and blasting will not be required and have adopted a condition that prohibits blasting. At this time, no request for a public emergency is appropriate nor is such request made by the applicant. Accordingly, all of the provisions of this section of the zoning ordinance are met.

(E) Environmental Standards. (Subsections E1-3)

No crusher, asphalt plant or concrete plant is requested on the site and the existing Windsor Island processing site currently has all required DEQ permits. As a condition of approval, applicant will be required to obtain a permit from the Department of Geology and Mineral Industries (see Conditions 4 and 13). As part of that permit process, a stormwater permit will be acquired. This permit is required to be in place prior to commencing operations on the site. We find that no other DEQ permit is necessary and, accordingly, the site will have all required permits prior to commencing operations. We find that the mineral and aggregate operation will comply with all DEQ sound levels for habitable buildings on nearby property. Accordingly, the standards in this portion of the zoning ordinance are met.

(F) Safety Standards. (Subsection F)

We have adopted a condition requiring that the Expansion Site access road will be gated and locked at all times when there is no activity or operation at the Expansion Site (see Condition 28). Accordingly, this safety standard in the zoning ordinance is met.

(G) Site Reclamation. (Subsection G)

We find that applicant prepared and submitted a preliminary reclamation plan as part of the application. We have added a condition that requires final DOGAMI approval be requested

demonstrating that a development or fill will not result in an increase in floodplain area on other properties and will not result in an increase in erosive velocity of the stream that may cause channel scouring or reduce slope stability downstream of the development or fill.

- (E) Reserved
- (F) The applicant shall provide an elevation certificate signed by a licensed surveyor or civil engineer certifying that the actual elevations of all new or substantially improved manufactured homes, dwellings and structures meet the requirements of Section 178.060(A), (B) and (C), where applicable, as follows:
 - (1) Prior to construction (based on construction drawings), and
 - (2) Once the floor elevation can be determined (based on the building under construction), and
 - (3) Prior to occupancy (based on finished construction).
- (G) A highway ready recreation vehicle may be located on a lot or parcel without a dwelling in a floodplain or floodway only during the non-flood season (June 1 through September 30), subject to the requirements in Section 126.40.
- (H) In addition to other information required in a conditional use application, the application shall include:
 - (1) Land elevation in mean sea level data at development site and topographic characteristics of the site.
 - (2) Base flood level expressed in mean sea level data on the site, if available.
 - (3) Plot plan showing property location, floodplain and floodway boundaries where applicable, boundaries and the location and floor elevations of existing and proposed development, or the location of grading or filling where ground surface modifications are to be undertaken.
 - (4) Any additional statements and maps providing information demonstrating existing or historical flooding conditions or characteristics, which may aid in determining compliance with the flood protection standards of this overlay zone.

70. As part of the application, the applicant is seeking, and we grant, a Floodplain Development permit. Accordingly, MCZO 178.050(A) is satisfied.

71. We find that no detailed data exists for the subject site. However, a Registered Professional Engineer prepared a Floodplain Regulation Compliance Report, including various topographical maps, floodplain maps, cross sections of the Willamette River. We find this report to be helpful and persuasive. We find that it uses standard engineering methods to

establish flood elevations on the Windsor Island property are between 120 and 122 feet mean sea level (MSL). Accordingly, MCZO 178.050(B) is satisfied.

72. We find that no permanent structures were requested or are allowed onsite (see Condition 25). We have also attached a condition that if building permits are required, the applicant shall sign and record a declaratory statement prior to the issuance of any building permits (see Condition 39). Accordingly, MCZO 178.050(C) is satisfied.
73. We find that no building permit is requested nor is a building permit approved. We further find that a hydraulic study of the site and proposed operation was prepared by NHC and was submitted into the record. A hydrogeology report regarding the site and proposed operation was prepared by Shannon & Wilson, Inc., specifically by David J. Higgins, Certified Engineering Geologist, and was submitted into the record. MCZO 178.050(D), to the extent it is applicable, is satisfied.
74. We find that the criteria in MCZO 178.060(E)(1) and (E)(2) are not applicable because no new structures are proposed at the site. MCZO 178.050(F) is not applicable.
75. There is no request to locate a recreational vehicle on the expansion site. MCZO 178.050(G) is not applicable.
76. We find that applicant, as part of the extensive application package, submitted detailed topographic maps of the expansion site with land elevation area, base flood level area expressed in mean sea level data. Topographic conditions at the site are fully explained. Applicant also submitted a full site plan, including numerous drawings, showing the property location. The entire property, as indicated in this narrative, is within the 100-year floodplain of the Willamette River. The location of all extraction activities on the site is clearly indicated on the site plan. No structures are proposed and the application contains detailed flood impact analysis, including historical analysis of flooding conditions and anecdotal evidence of backwater flooding on the site. We find that all of this information is sufficient to allow the county in making an appropriate determination on floodplain compliance and, accordingly, the provisions of MCZO 178.050(H) are met.
77. MCZO 178.060 contains the county's flood protection standards. Overall, we find that no structures are requested, contemplated or approved in this application and, therefore, floodplain standards generally do not apply. However, we will provide findings with regard to each of the standards.

"178.060 (A) Dwellings, Manufactured Homes and Related Accessory Structures."

We find that there are no existing dwellings, manufactured homes or related accessory structures on the Expansion Site nor are any such structures proposed. Accordingly, the provisions of this section do not apply.

"178.060 (B) Manufactured homes in existing manufactured home parks."

We find no manufactured homes nor existing manufactured home parks exist on the Expansion Site nor are any proposed by the applicant. This standard does not apply.

"178.060 (C) Non-residential development."

We find that this section refers to physical structures (i.e., buildings) for any commercial, industrial or other non-residential use that may have floors, basements or elevated components. Such physical structures must be properly elevated and floodproofed in accordance with this section. This section also relates to agricultural structures which may be constructed to "wet floodproofing" standards under certain circumstances. As indicated in the application, no physical building or any type of structure with a floor, basement or elevated side (including commercial, industrial, non-residential or agricultural structures) will be constructed as part of this application. The applicant has proposed no structures of any type. We find that there will be excavations on the site and temporary storage piles related to mineral and aggregate extraction. However, excavation materials will not create any type of permanent vertical structure above the existing ground surface level and, in fact, the primary "structure" on the site will be the mining cells which, as indicated in the application, are below ground level. We find that any temporary storage or "surge" piles will be removed each year before November 1. Accordingly, the provisions of this section related to physical structures with floors and elevated components is not applicable.

178.060 (D) Anchoring."

This section requires any new construction, including manufactured homes, to be anchored to prevent flotation collapse or lateral movement. As indicated above, we find that there will be no structures of this type on the site and, therefore, the provisions of this section are not applicable.

"178.060 (E) Construction materials and methods

- (1) All new construction and substantial improvements below base flood level shall be constructed with materials and utility equipment resistant to flood damage, and the design and methods of construction are in accord with accepted standards of practice based on an engineer's or architect's review of the plans and specifications.*
- (2) All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damages."*

We find that no new physical buildings, including floors, sidewalls, basements or other features that are commonly associated with structures, will be constructed on the site. The site is a mineral and aggregate extraction area and no infrastructure is necessary to allow the proposed use. Temporary stockpiles, or "surge" areas serving the extraction uses, will be removed prior to November 1 on an annual basis. We find that, to the extent the mining cells themselves would be considered new construction or substantial improvements, the cells have been designed and engineered to reduce, minimize and eliminate flood damages. We find that applicant

has agreed that it will end mechanical dewatering of the extraction cells no later than November 1 of each year and this will allow the water level in the extraction cells to equilibrate prior to the onset of the flood season. We further find that in the event of a flood, gentle backwater flowing in an upstream direction through Claggett Creek and Clear Lake will initially reach the extraction site greatly reducing the possibility for significant erosion or flood damage. We find that the site has been engineered and designed using methods and practices that will minimize flood damages and, accordingly, conclude that this section is met.

"178.060 (F) Utilities."

This section relates to replacement water supply systems, sanitary sewage systems and electrical, heating, ventilation, plumbing and air conditioning systems that might be located on-site. We find that there are no new buildings that will have any HVAC or any utility-related requirements. We further find port-a-potties will be used on-site and no permanent sanitary sewage systems are required and that port-a-potties will be removed prior to November 1 of each year. We find that no replacement water system is required on the site and that there are existing wells to provide general water and drinking water will be supplied to workers on the site through standard water coolers located on removable equipment at the site. Because no new utilities are required at the site, we conclude this section is not applicable to the proposed use.

"178.060 (G) Developments, Generally."

This provision of the floodplain ordinance refers to residential developments involving more than one single family dwelling, such as subdivisions, manufactured home parks, multiple family dwellings and planned unit developments. No such development is proposed for the Extraction Site and this criterion is not applicable.

"178.060 (H) Storage of materials and equipment - Materials that are buoyant, flammable, obnoxious, toxic or otherwise injurious to persons or property, if transported by floodwaters, are prohibited. Storage of materials and equipment not having these characteristics is permissible only if the materials and equipment have low-damage potential and are anchored or are readily removable from the area within the time available after forecasting and warning."

We find that applicant will not store any fuels or flammable, obnoxious or toxic materials on the site. Equipment used in extraction and transportation will be fueled and lubricated at the applicant's existing shop area at the Windsor Island site. Accordingly, we find that there is no possibility for a mix of materials which might be injurious to the property or persons being transported by floodwaters from activity at the site. In addition, we find that

all of the equipment on the site (including extractors, trucks, front-end loaders, graders and port-a-potties) is readily removable from the site. We find that at the applicant's existing Windsor Island site, the applicant has, on a case-by-case basis, moved its equipment to the higher portions of the Windsor Island site when floodplain warnings have been announced. Even during the 1996 flood, applicant's equipment was safely placed in areas high enough to remain out of the floodwaters. We find that not only is all equipment that will be used on the Expansion Site removable within any warning time of a flood, but the applicant has agreed that it will stop dewatering activities on the site not later than November 1, and move equipment off the site during the flood season. Accordingly, the provisions of this standard are met.

"178.060 (I) Alteration of watercourses."

This provision relates to the physical altering or modification of a water course and requires consultation with the Division of State Lands and Department of Land Conservation and Development. We find that no water course exists on the Expansion Site and that the applicant has agreed to set back all activities from adjoining water bodies, including Clear Lake and Claggett Creek. Accordingly, no modification of water recourse is requested or required for the requested use and this section does not apply.

"178.060 (J) Floodways - Located within areas of floodplain established in Section 178.030 are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of floodwaters, which carry debris, potential projectiles and erosion potential the following provisions shall apply in addition to the requirement in (I):

- (1) Prohibit encroachments, including fill, new construction, substantial improvements and other development unless a certified technical evaluation is provided by a registered professional engineer or architect demonstrating that encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge. This evaluation may be submitted to the Federal Emergency Management Agency for technical review.*
- (2) If Section 1 above is satisfied all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of Section 178.060.*
- (3) The area below the lowest floor shall remain open and unenclosed to allow the unrestricted flow of floodwaters beneath the structure."*

As indicated above, we find that there are no structures which will have floors, side walls or other physical features and, therefore, this standard is not applicable. No new construction or development in the form of physical buildings is proposed for the site. We find that stockpiles and "surge" piles will be temporary and removed on an annual basis. The "substantial improvements" and "other developments" proposed for the site are mineral and aggregate extraction cells. Applicant has provided the certified technical

evaluation of Northwest Hydraulic Consultants that activities on the site will not result in any increase in flood levels during the occurrence of base flood discharge. We find this evidence credible and persuasive and adopt the report's conclusions as our own. We find that a Registered Professional Engineer for Northwest Hydraulic Consultants has certified that because of the physical location of the site, the operation of the site, and the way the site floods, there will be no increase in flood velocities during the occurrence of the base flood discharge. Accordingly, we conclude the provisions of this section are met.

"178.060 (K) Standards for Shallow Flooding Areas (AO Zones)."

This provision refers to shallow flooding areas on flood information maps that have been designated with the AO zone. We find, as indicated in the report of Northwest Hydraulic Consultants, that the general area is within the inferred 100-year floodplain and not within an AO zone. In addition, we find that no construction or substantial improvement of residential structures is proposed nor is any non-residential structure with a floor, utility, or sanitary facilities proposed as part of the application. Accordingly, the provisions of this standard do not apply.

Section 178.070 Generalized Floodplain Areas. *"Where elevation data is generalized, such as the unnumbered A zones on the FIRM, conditional use permits shall include a review and determination that proposed construction will be reasonably safe from flooding and meet the flood protection standards. In determining whether the proposed floodplain development is reasonably safe, applicable criteria shall include, among other things, the use of historical data, high water marks, photographs of past flooding, or data (e.g. an engineering study or soil and landscape analysis) may be submitted by qualified professionals that demonstrate the site is not in a floodplain. In such cases, a letter of map amendment may be required by the Zoning Administrator."*

We find that FEMA mapping does not cover the Expansion Site. However, we find that a Registered Professional Engineer has determined the floodplain elevations at the site through professional analysis, and the use of historical data and photographs of past flooding. We conclude that the site is in the floodplain and is being treated as a floodplain site and not as a site in the "generalized" floodplain area. As such, we find and conclude a letter of map amendment is not required and to the extent this standard is applicable, it is met by the proposed application.

Section 178.080 and Section 178.090 Variances and Variance Criteria.

These provisions provide variances from the flood control criteria in certain situations and provide specific criteria for issuance of a variance. We find that the application meets the standard requirements of the floodplain ordinance and a variance is not required. Accordingly, the variance procedures and criteria are not applicable to this application.

Section 178.100 Warning and Disclaimer of Liability. *“The degree of flood protection required by this overlay zone is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on occasion. Flood heights may be increased by man-made or natural causes. This zone does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This zone will not create liability on the part of Marion County, any officer or employee thereof or the Federal Insurance Administration for any flood damages that result from reliance on this chapter or any decision lawfully made thereunder.”*

Applicant's existing Windsor Island site is also in the floodplain of the Willamette River. We find that applicant understands the unpredictable nature of floods and flood events. We find that applicant has designed the extraction activities on the Expansion Site to minimize or eliminate any type of flood impact. We find that applicant understands the issuance of a floodplain permit by the County does not ensure that floods will not occur on the Expansion Site. We conclude that to the extent that this section represents an approval criterion, it is met under the proposed application.

Greenway Development Permit MCZO 179

78. Under MCZO 179.030, all activities, uses of land and site development requirements set forth in underlying specific zone districts within the Greenway Management Overlay Zone shall be permitted subject to obtaining a greenway development permit for all proposed development, change of use or intensification of land or water.

The underlying zone for the subject property is the EFU zone. MCZO chapter 136.0250(f) lists aggregate mining as a conditional use in the EFU zone. MCZO chapter 126 lists uses, accessory uses and secondary uses allowed in zones generally. A conditional use application under MCZO chapter 119 is not required because OAR 660-023-0180(5) incorporates conditional use protection and compatibility criteria. Therefore, no separate conditional use application is required.

79. Although Planning staff has treated this application as a request for a floodplain permit and a greenway permit, the file is somewhat unclear. The application combines both permits on one form with boxes to check for each type of permit sought by the applicant. In this case, neither box is checked. Planning staff treated the application as if it were an application for both types of permit and the applicant treated the application as though it was only for a floodplain permit. A review of the file reveals that the applicant only paid for one of the two permits in question and did not provide an analysis for a greenway permit. In addition, the applicant's letter of April 15, 2009, states that none of the applicant's activities will take place on the western portion of Tax Lot 300, Section 21. As currently aligned, the new haul road will merge with the existing access road several hundred yards east of the western border of Tax Lot 300. Therefore, the logical conclusion is that the applicant did not apply for a greenway permit. As a condition of approval the applicant will be prohibited from conducting any new activities in the greenway without first obtaining a greenway permit.

EXHIBIT B

The Marion County Board of Commissioners adopts the following conditions CP/FP09-03/Windsor Rock Products Inc..

Pursuant to the Marion County Rural Zone Code section 17.123.070 the following conditions apply to the 247 acres added to the to the Marion County Comprehensive Plan list of significant mineral and aggregate sites. These conditions are reasonably related to the specific development proposed, will serve the public interest of reducing land use conflicts, and are based upon standards adopted by the County. The conditions are necessary for the public health, safety and welfare.

Conditions of Approval

1. Site Plan. Prior to any extraction of aggregate, aggregate processing or removal of overburden, the applicant shall submit a detailed site plan for review and approval by the Planning Director. The site plan shall include:
 - a. All of the subject properties and a 1,500 foot impact area from the aggregate mining area.
 - b. The plan shall provide evidence of compliance with all the applicable uses and development standards in the ordinance including a detailed processing area that indicates the location of equipment such as crusher, loaders, structures, and truck parking areas.
 - c. The site plan shall delineate the standards for development and operation listed in Section 120.460 A, B, and C of the Marion County Rural Zoning Ordinance. The plan shall be identified as the "Official Site Plan" and signed by the Planning Director.
 - d. The site plan shall identify the location and use of all buildings, roadways, and public road access points, materials stockpiling areas, berms, equipment storage areas, and any areas that will be filled to an elevation greater than the natural grade. After approval, any modifications will require approval of a new site plan by the Planning Director.
 - e. The site plan shall indicate specifically where the loading area for the proposed operation shall be located or the loading area's distance from nearby property lines and habitable buildings on adjacent properties. The revised site plan shall clearly indicate the location where aggregate and processing operations will take place. The plan shall indicate an area titled "processing limits" and clarify exactly where area processing operations will occur. The area titled "processing limits" shall meet required setbacks from the nearest property line and from a habitable building that exists on adjacent property.

2. The applicant shall enter into a maintenance agreement with the DPW to assure maintenance of, and housekeeping at, the new intersection at the applicant's expense.
3. The applicant shall flag or otherwise mark the boundaries of the required setbacks before beginning excavation at the aggregate resource site.
4. Reclamation Plan.
 - a. Prior to any aggregate extraction, processing or preparation of the site for processing or extraction the applicant shall submit a reclamation plan. The plan shall be part of the reclamation plan submitted to DOGAMI.
 - b. The reclamation plan shall be designed to achieve wetland, ponds, farming and wildlife habitat use of the excavation area and shall include setback and other unexcavated areas within the entirety of the subject properties necessary for buffering these uses from surrounding land uses and activities. The plan shall provide for sequential reclamation of the excavation and buffer areas, and include procedures for monitoring implementation.
 - c. The reclamation plan shall include a wetland, ponds, farming and wildlife habitat program element that describes graphically and in a narrative form the specific process for reclamation of the site. The wetland, pond, and wildlife habitat program is integral to approval of aggregate extraction of these properties. The reclamation program shall be substantially completed within one-year of completion of the excavation of the properties.
 - d. The plan shall be subject to the approval of the Oregon Department of Fish and Wildlife and the County.
 - e. The plan shall be in conformance with DOGAMI reclamation plan and reclamation bond standards. The reclamation bond shall be in an amount sufficient to fully implement the wetland and the wildlife habitat reclamation plan.
 - f. In addition to any DOGAMI enforcement authority, the implementation of the reclamation plan is enforceable as provided under County enforcement laws.
5. Performance agreements shall be submitted prior to extraction activities as required by MCZO 120.460(H) that states that the applicant shall provide the county with a letter and two copies of relevant documents that demonstrate that

the operator has in full force and effect the bond or security deposit with DOGAMI to assure conformance with the state-required reclamation plan. The applicant shall also provide evidence of having the insurance required under this section.

6. The applicant shall satisfy the requirements of Marion County Fire District #1 and provide evidence that the requirements have been satisfied to DPW.
7. The mining operation shall follow procedures and recommendations for the mine plan as stated in the engineer's hydrogeology report unless otherwise instructed by Marion County or DOGAMI.
8. The applicant shall meet Marion County Public Works conditions for right-of-way dedication, access, roadway and any related improvements. These conditions shall be met to DPW's satisfaction.
9. Applicant shall maintain a dust mitigation plan during any extraction or transportation activities at the site. The plan shall include, but not be limited to providing gravel amendments on haul roads, using water trucks as necessary to control dust, and paving the approaches to the new haul road/Windsor Island Road intersection for at least 500 feet on both sides of Windsor Island Road.
10. Applicant shall provide a truck wash area or other means to reduce or eliminate the haul trucks from carrying soil or gravel onto the public roadway
11. Prior to the start of the aggregate extraction operation, the applicant shall submit a traffic control plan to DPW for review and approval. The applicant will be responsible for the implementation and maintenance of the plan agreed to by DPW.
12. Prior to the start of the aggregate extraction operation, the applicant shall provide evidence of obtaining any required permits from the DSL and the USACE or provide evidence that such permits are not required.
13. The applicant shall provide evidence of obtaining a National Pollutant Discharge Elimination System (NPDES) Industrial Storm-Water General 1200-A Permit for the discharge of stormwater from a point source to surface waters or to conveyance systems that discharge to surface waters. The NPDES permit is obtained through the State Department of Environmental Quality (DEQ).
14. The extraction area shall not exceed the area shown on the applicant's conceptual reclamation plan.
15. Except as otherwise approved herein, farming, wetland, ponds and wildlife habitat are the designated uses of the subject property. These shall be the

designated uses unless the county approves a conditional use permit for other uses allowable as a permitted or conditional use in the underlying zone.

16. When excavation is completed if the parcels remain in private ownership, the owner(s) shall record irrevocable deed restrictions, approved by the County, ensuring that the areas which are deemed wetlands, ponds, and wildlife habitat areas and buffers, shall be reserved for wildlife and wetland conservation use in perpetuity.
17. All processing and stockpiling shall be discontinued within six months of the date excavation is completed.
18. Outdoor lighting shall be on only during permitted hours of operation except for lighting required for safety near building and equipment parking areas. Outdoor lighting shall be shielded so it does not illuminate any adjacent property, public right of way, or wildlife habitat.
19. The applicant shall insure the proposed operation for \$100,000 against liability and tort arising from production activities or incidental operations conducted or carried on by virtue of any law, ordinance or condition, and the insurance shall be kept in full force and effect during the periods of operation. Evidence of a prepaid policy of said insurance that is effective for a period of one (1) year shall be deposited with the county prior to commencement of any mineral and aggregate operations. The owner or operator shall annually provide the county with evidence that the policy has been renewed.
20. The hours of operation for extraction, processing and transportation activities shall be from 7:00 a.m. to 6:00 p.m. Monday through Friday. Transportation activities shall be allowed on Saturday between the hours of 7:00 a.m. to 6:00 p.m. No extraction, processing transportation activity shall take place on January 1st, Memorial Day, July 4th, Labor Day, Thanksgiving Day, and December 25th.
21. The applicant shall be in compliance with acceptable DEQ noise levels. The applicant shall maintain hours of operation from 7:00 a.m. to 6:00 p.m. for noise mitigation.
22. An owner or operator may request and the Director may grant an exception to provide for additional hours of operation for a when additional hours of operation are need to alleviate a public emergency. Public emergency includes:
 - (a) Damage to public roads or structures that requires immediate repair.
 - (b) Road construction or repair that is scheduled during nighttime hours to reduce traffic conflicts.

23. Continuing compliance with the standards for development and operation in MCZO 120.460 shall be a condition of approval. The exception to this is section (D) of the ordinance concerning the hours of operation.
24. No batch plant, processing, or blasting shall be allowed at the expansion site.
25. No permanent buildings, berms, or stockpiles shall be allowed at the expansion site.
26. Existing deciduous and evergreen vegetation within the required setback areas that screen visibility of the operation from adjacent property or public roads shall be retained or replanted unless located within a vision clearance area or determined by the county to be a public safety hazard.
27. Applicant shall manage vegetation and signage at the new haul road/ Windsor Island Road intersection to protect intersection sight distance.
28. Access roads to the aggregate site shall be gated and locked when not in use.
29. Materials that are buoyant, flammable, obnoxious, toxic, or otherwise injurious to persons or property, if transported by floodwaters, are prohibited. Storage of materials and equipment not having these characteristics is permissible only if the materials and equipment have low-damage potential and are anchored or are readily removable from the area within the time available after forecasting and warning.
30. As required by DOGAMI, the applicant shall construct the Fish Connection described in the Northwest Hydraulics report.
31. The applicant shall maintain 100-foot setbacks from the extraction area and the property line on the west and from Clear Lake and Claggett Creek on the north, south and east of the extraction area. As agreed, the applicant shall not engage in activities of any type at the western portion of the property that includes tax lot 300 and the Willamette River Greenway without first obtaining a greenway permit.
32. The applicant shall end mechanical dewatering of any cell on the expansion site not later than November 1 of each calendar year and shall not begin mechanical dewatering of the expansion site before May 1 of each year.
33. The applicant shall have a floodwater ingress/egress analysis performed to determine if additional erosion and head cutting prevention measures are needed or provide evidence that the analysis is not need.
34. The applicant shall remove the access to the new haul road and related accessory traffic control at the end of the project.

35. In accordance with Marion County Driveway Ordinance 651, a driveway permit will be required for any new access or change in use of any existing access to the public right-of-way. Applicant will obtain a driveway permit from Public Works and will comply with DPW accesses standards to ensure safe ingress and egress.
36. Construction of improvements on the property shall not block historical or naturally occurring runoff from adjacent properties. Site grading shall not impact surrounding properties, roads or drainage ways in a negative manner.
37. The applicant shall obtain a Major Construction Permit from DPW.
38. One hundred foot setbacks shall be maintained from any property line and the aggregate processing and loading and five hundred foot setbacks shall be maintained from any habitable building existing on adjacent property at the time the aggregate processing operation is established.
39. If any building occurs in the floodplain that requires a building permit, a declaratory statement must be filed.
40. Prior to commencement of extraction activities, the operator shall provide DPW with design details for pavement sections for the new access and construction of the intersection to support heavy trucks.
41. The applicant shall be responsible for making a proportional share financial contribution for a future overlay(s) or reconstruction project along sections of the haul routes as identified by DPW.
42. The applicant shall submit to DPW approved engineering plans for the heavy haul crossing and enter into an agreement with the county for establishing the short and long term maintenance of the crossing and haul routes prior to the issuance of the major construction permit. The specific hauls routes are:

Windsor Island Road North from the subject property, south to the intersection with Lockhaven Drive North

Windsor Island Road North from the subject property, north to Wheatland Road at Ravenna Drive North via local roads
43. The applicant shall provide to DPW an approved traffic control plan prior to the issuance of the major construction permit.
44. The applicant shall provide to DPW a maintenance agreement accepting financial responsibility for maintaining traffic control devices associated with the project prior to the issuance of the major construction permit.

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