



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

635 Capitol Street, Suite 150

Salem, OR 97301-2540

(503) 373-0050

Fax (503) 378-5518

www.lcd.state.or.us



NOTICE OF ADOPTED AMENDMENT

06/19/2012

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

FROM: Plan Amendment Program Specialist

SUBJECT: Yamhill County Plan Amendment
DLCD File Number 005-10A

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: Tuesday, July 03, 2012

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 Acknowledgment or 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 than it was mailed to DLCD. As a result, your appeal deadline may be earlier than the above date specified. NO LUBA Notification to the jurisdiction of an appeal by the deadline, this Plan Amendment is acknowledged.

Cc: Ken Friday, Yamhill County
Jon Jinings, DLCD Community Services Specialist
Amanda Punton, DLCD Natural Resources Specialist
Gary Fish, DLCD Transportation Planner

<paa> YA/email



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

DATE STAMP

DEPT OF

JUN 13 2012

LAND CONSERVATION AND DEVELOPMENT

For Office Use Only

Jurisdiction: **Yamhill County**

Local file number: **PAZ-01-10/WRG-01-10**

Date of Adoption: **June 7, 2012**

Date Mailed: **June 12, 2012**

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? Yes No Date: 3/15/2010

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".

The request is for a zone change to allow a sand and gravel operation. The request also includes an application for a Willamette River Greenway permit. Note: the zone change application does not allow an asphalt batch plant. (The County previously amended its Goal 5 Comprehensive Plan inventory to add this approximately 224.5 acres to the Goal 5 inventory.)

Does the Adoption differ from proposal? No, no explanation is necessary

Plan Map Changed from: **AFLH Ag/Forestry Large Holding** to: **Q - Quarry**

Zone Map Changed from: **EF-80 Exclusive Farm** to: **MR-2 Mineral Resource**

Location: **The south end of Grand Island**

Acres Involved: **224.5+**

Specify Density: Previous: **NA**

New:

Applicable statewide planning goals:

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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 005-10A (18179) [17080]

DLCD file No. _____

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

Local Contact: **Ken Friday**

Phone: (503) 434-7516 Extension: 3630

Address: **525 NE Fourth Street**

Fax Number: 503-434-7516

City: **McMinnville**

Zip: **97128**

E-mail Address: **fridayk@co.yamhill.or.us**

ADOPTION SUBMITTAL REQUIREMENTS

This Form 2 must be received by DLCD no later than 5 working 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 the adopted amendment, please print a completed copy of Form 2 on **light green paper if available**.
3. Send this Form 2 and one complete paper copy (documents and maps) of the adopted amendment to the address below.
4. Submittal of this Notice of Adoption must include the final signed ordinance(s), all supporting finding(s), exhibit(s) and any other supplementary information ([ORS 197.615](#)).
5. Deadline to appeals to LUBA is calculated **twenty-one (21) days** from the receipt (postmark date) by DLCD of the adoption ([ORS 197.830 to 197.845](#)).
6. In addition to sending the Form 2 - Notice of Adoption to DLCD, please also remember to notify persons who participated in the local hearing and requested notice of the final decision. ([ORS 197.615](#)).
7. Submit **one complete paper copy** via United States Postal Service, Common Carrier or Hand Carried to the DLCD Salem Office and stamped with the incoming date stamp.
8. Please mail the adopted amendment packet to:

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

9. **Need More Copies?** Please print forms on **8½ -1/2x11 green paper only if available**. If you have any questions or would like assistance, please contact your DLCD regional representative or contact the DLCD Salem Office at (503) 373-0050 x238 or e-mail plan.amendments@state.or.us.

IN THE BOARD OF COMMISSIONERS OF THE STATE OF OREGON
FOR THE COUNTY OF YAMHILL
SITTING FOR THE TRANSACTION OF COUNTY BUSINESS

In the Matter of a Comprehensive Plan Amendment)
From Agriculture Forestry Large Holding to)
Quarry; a zone change from EF-80 Exclusive Farm)
Use to MR-2 Mineral Resource, for Tax Lot)
5326-600 and a Portion of an Undesignated Tax Lot)
Totaling Approximately 224.5 acres with 175 acres)
to be mined; a Greenway Permit, and Imposition)
of a Limited Use Overlay, PAZ-01-10 and)
and WRG-01-10; Applicant Baker Rock Resources)
Inc.)

ORDINANCE 873

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON (the Board) sat for the transaction of county business on June 7, 2012, Commissioners Leslie Lewis, and Kathy George being present and Mary P. Stern being excused.

IT APPEARING TO THE BOARD that, on January 19, 2010, Baker Rock Resources, Inc. (the "applicant") submitted an application to the Department of Planning and Development for an alluvial sand and gravel mining operation on Grand Island, within the Willamette River floodplain; and

IT APPEARING TO THE BOARD, that on May 6, 2010, and June 3, 2010, the Yamhill County Planning Commission held duly noticed public hearings to consider the application, and that the application was considered by the Board in hearings held on November 10, 2010 and on December 2, 2010; and

IT APPEARING TO THE BOARD that on March 17, 2011, the Board voted two-to-one in favor of accepting the recommendation of the Planning Commission regarding the significance of the resource, (Commissioner Stern voting no) and in favor of adopting an Ordinance (No. 865) adding the site to the County's Goal 5 aggregate inventory as a significant aggregate resource, which decision has been affirmed by the Land Use Board of Appeals and Oregon Court of Appeals; and

IT APPEARING TO THE BOARD that, completion of the Goal 5 process for the subject property was continued to May 17, 2012, when the hearing was reopened at the point of staff recommendation; and

IT APPEARING TO THE BOARD that, based on the record of proceedings as settled by order of LUBA (No. 2011-035), and based on the recommendation of staff and deliberation of the Board on May 17, 2012, the Board voted two-to-one (Commissioner Stern voting no) to approve the applications, and to continue the matter for preparation of findings for approval; NOW THEREFORE;

B.O. 12-271

IT IS HEREBY ORDAINED BY THE BOARD AS FOLLOWS:

Section 1. The Comprehensive Plan and Zoning Maps of Yamhill County are hereby amended as specified in the attached Exhibit "B" and incorporated herein by this reference, to reflect a plan designation of Quarry and a zoning designation of Mineral Resource-2 (MR-2) for Tax Lot 5326-600 and a portion of an adjacent undesignated Tax Lot, as shown on Exhibit "B" of this ordinance.

Section 2. A Limited Use Overlay is established for the entire MR-2 zone. Uses allowed are limited to substantially conform to the plans submitted by the applicant and Conditions of Approval attached and incorporated herein by reference.

Section 3. The requested Greenway permit is granted.

Section 4. The findings attached as Exhibit "A" and incorporated herein by reference are hereby adopted in support of this ordinance.

DONE at McMinnville, Oregon, this 7th day of June, 2012.

ATTEST

YAMHILL COUNTY BOARD OF COMMISSIONERS

REBEKAH STERN DOLL
County Clerk

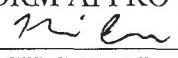

LESLIE LEWIS

By 
Deputy ANNE




Commissioner KATHY GEORGE

FORM APPROVED


RICK SANAI
County Counsel

EXCUSED
Commissioner

MARY P. STERN

ORDINANCE 873

B.O. (2-27) Page 2

ORDINANCE NO. 873 - EXHIBIT A

FINDINGS IN SUPPORT OF APPROVAL

These Findings in Support of Approval are based on the record developed by the Board and Submitted to the Land Use Board of Appeals in LUBA No. 2011-035, as supplemented by the Staff Recommendation received by the Board of Commissioners and the deliberation conducted on May 17, 2012. With regard to Planning Docket PAZ-01-10 and WRG-01-10, the Board of Commissioners of Yamhill County finds as follows:

1. Background Facts

- Applicant and Owner:** Baker Rock Resources, Inc.
- Tax lot:** Township 5S, Range 3W, Section 26, Tax Lot 600 (TL 5326-600), and a portion of an undesignated lot north of, and adjacent to, Tax Lot 600.
- Site Size:** According to the applicant, ±224.5 acres (referred to in this narrative as the “site” or the “subject property”). County Assessor records indicate that Tax Lot 600 is ±174 acres. The original 1852 U.S. Survey Plat map (recorded in 1860) showed the property line separating U.S. Lots 1, 2 and 3 from lots 4, 5, and 6, as the banks of a navigable river (the main stem Willamette). Since that time, the northern boundary of the site has become a narrow slough, and the original riverbank has meandered north as well. The record establishes that the site is at least 220 acres, of which 175 acres will be mined. The entire ownership will be reclaimed concurrently for fish and wildlife habitat and public recreation uses.
- Site Location:** SE Upper Island Road, on the southern end of Grand Island, approximately 10 miles south of Dayton, Oregon. The site is bordered to the south by SE Upper Island Road, and to the north by an unnamed slough of the Willamette River, which is the outlet for “Sutter” or “Skeeter” Creek.
- Site Zoning:** “Exclusive Farm Use” (EF-80), with Floodplain Overlay Zone; Willamette River Greenway Overlay Zone (fish channel).
- FIRM 41071c 0635D shows that all of the property is located within the 100-year floodplain. The same map

BD.12-271

indicates that nearly the entire parcel is within the 100-year floodway. The floodway prohibits the placement of dwellings and structures. The area that is not in the floodway is approximately 11 acres, and is located adjacent to Upper Island Road at the southern end of the property.

Access: Access to the site is by Upper Island Road.

On-Site Land Use: The site is currently in farm use, with no dwellings or farm buildings. In recent years the site has been planted with grass, corn and beans. Portions of the site will continue in commercial agricultural use until mined. Mined areas will be sequentially reclaimed. Once mining is complete, the perpetual end use is fish and wildlife habitat, with a conservation easement allowing public recreation access or (if possible at the time of complete reclamation) as dedicated parkland.

Site Characteristics: The site is located on the southern end of Grand Island. The site is a cultivated field, and is surrounded by a wooded slough along its northern and northwestern edge, and Upper Island Road along the southwest and southern edge of the property. All of the proposed mining will take place in the existing field, which would continue in farm use as mining progresses. The site is flat to moderately sloping to the north, at an elevation of up to 100 feet above mean sea level.

Surrounding Planning, Zoning and Land Use: Areas south and southwest of the site, across Upper Island Road, are forested; part of Willamette Mission State Park; and subject to a Park and Recreation Overlay Zone. The park contains a side channel of the Willamette River; is mostly forested; and is used for hunting and passive recreation. The main channel of the Willamette River is to the south of the site and south of the State Park.

To the north, northwest and northeast, across the wooded slough, are cultivated fields that are zoned for exclusive farm use and in large-scale commercial production. The surrounding area is zoned EFU and is used for farming. Within 1,500 feet of the mining area, there are three dwellings that the applicant has been able to identify, all on lands zoned EFU.

Area farms are generally large scale and intensive, of 100 or more acres. Farm uses on Grand Island include filberts, sweet corn, raspberries, Marion berries, cherries, peaches, apples, beans and vegetable row crops. Smaller farms (as small as one to eight acres) grow a wide variety of fruits, vegetables, seed and grains, pursue small-scale animal husbandry, community supported agriculture marketing, farm stands, farmers markets, and U-pick. The Marion County side of the river also contains farm uses which include grass seed, bush beans, wheat, sweet corn, hops, red clover and vegetable row crops.

Farm soils in the area are generally high-value, are often droughty, and are generally most productive when irrigated. Much of the island is within the floodplain and/or floodway and is subject to frequent inundation due to flood events.

The applicant has an existing, smaller, aggregate site in the vicinity, which holds a conditional use permit for aggregate mining. The applicant has agreed to relinquish the right to mine the existing site if permission is granted to mine Tax Lot 5326-600. (see Condition of Approval #27)

Utilities: The proposed mining operations do not require domestic water service. Portable toilet facilities will be provided for use by employees.

Fire Protection: Dayton Rural Fire Protection District

Previous Actions: There are no previous land use approvals affecting the subject property on record.

Proposed Use: The proposal is to mine approximately 175 acres of the ± 221.5-acre site. High quality aggregate materials—sand and gravel—will be removed from the site over an estimated 30 years. During that period, areas of the site that are not mined will continue to be farmed. Mined areas will be sequentially reclaimed and enhanced for use as wildlife habitat and open space. The only processing proposed to take place on the site is screening and sorting. All other processing will take place off-site, most likely at the applicant's existing processing facilities in Dayton.

Reclaimed Use:

The approved reclaimed uses are “of right” farm uses (creation, restoration and enhancement of wetlands), fish and wildlife habitat, and public recreation to the extent allowed by law. Over the life of the project, open water areas would be created with slopes approved by DOGAMI, and additional shallow areas, peninsulas and an island, to improve the resulting lake for wildlife habitat and recreation uses. Emergent and shrub wetlands would be planted and maintained with native vegetation, including grasses, shrubs, forest and wetland species. Water and wetland areas would be hydraulically connected to a side channel of the Willamette River by a connection channel. Undisturbed buffer areas would be maintained and enhanced over the life of the mine. Following completion of mining and reclamation, the applicant will either establish a Conservation Easement to protect the site in perpetuity for fish and wildlife uses and public recreation, or dedicate it for use as public parkland, as allowed by law at the time reclamation is complete. (see Condition of Approval #3)

2. Applicable Law Effective September 1, 1996, the Land Conservation and Development Commission adopted OAR Chapter 660 Division 023, concerning local government review of post-acknowledgement applications for plan amendments and related approvals necessary to utilize Goal 5 mineral and aggregate resources (the “Goal 5 rule”). By its terms and as confirmed by LUBA and the Oregon Court of Appeals, OAR 660-023-0180 supercedes pre-existing local standards for approval of plan amendments and zone changes to allow aggregate mining. The Ordinance supported by these findings is adopted pursuant to the requirements of the Goal 5 rule.

3. Scope of This Approval and Connection to Ordinance No. 865

3.1 Under the Goal 5 rule for aggregate, once the quantity, quality and location of a natural resource listed in the rule is documented with sufficient specificity, a local government must determine whether or not the resource is “significant.”

3.2 The applicant’s request, that the County amend its Comprehensive Plan inventory of significant mineral and aggregate resource sites to list the subject property, was approved by Ordinance No. 865, adopted March 31, 2011. Findings 3 through 7 of Ordinance No. 865 are incorporated into these findings by reference. Those findings address the requirements of the Goal 5 rule, as they relate to the significance of the resource. Findings 3 through 7 also reflect the geological characterization of the site accepted by the Board as a basis for its review of the proposed operating and reclamation plans, and proposed environmental and community conflict minimization.

3.3 The County established the significance of the resource in Ordinance No. 865, and is now, through this Ordinance, completing the Goal 5 process for the site. Ordinance No. 865 has been affirmed by LUBA and the Court of Appeals. A petition for discretionary review has been filed by opponents with the Oregon Supreme Court.

3.4 This decision, in consideration of the significance determination in Ordinance No. 865, approves the remaining requests for land use approval detailed in file PAZ-01-10/WRG-01-10 including: a request to amend the site's Comprehensive Plan designation from AFLH to Quarry; a request for a zone change from Exclusive Farm Use (EF-80) to Mineral Resource (MR-2); and a request for a Willamette River Greenway development permit, to allow seasonal fish passage to the Willamette River. County maps indicate that a portion of Tax Lot 600 is within the Willamette River Greenway. Construction of a low flow channel for seasonal fish passage to the Willamette River will take place within the Greenway, and findings addressing the Greenway standards are included, *infra*. Construction of the fish passage will enhance the overall value of the site as fish and wildlife habitat, during both operating and reclaimed phases.

3.5 As detailed in these findings, the applicant has demonstrated compliance with Goal 5 and the Goal 5 Rule for Aggregate, OAR 660-023-0180. The maps, studies and other materials submitted by the applicant, and testimony and evidence received through the hearing process, support the Board's decision and its adoption of these findings. The Board has considered and weighed the evidence, arguments and testimony received by the Planning Commission and the Board in these proceedings, and a majority of the Board has voted to allow mining of the site as proposed by the applicant and as limited by the Conditions of Approval. Based on the record and in consideration of the limiting conditions, the Board concludes that all potential conflicts between the proposed uses and other identified uses in the area can be minimized as required by the Goal 5 rule.

4. Completeness of Application

4.1 On January 19, 2010, the applicant, Baker Rock Resources, filed applications with the Planning Department for a Post-Acknowledgement Comprehensive Plan Amendment, zone change and permission to mine (referred to collectively as a "PAPA") to allow aggregate mining on the subject property. The application was "deemed complete" by Planning Department staff, as of March 15, 2010.

4.2. OAR 660-023-0180(6) states:

"In order to determine whether information in a PAPA submittal concerning an aggregate site is adequate, local government shall follow the requirements of this section rather than OAR 660-023-030(3). An application for a PAPA concerning a significant aggregate site shall be adequate if it includes:

(a) Information regarding quantity, quality, and location sufficient to determine whether the standards and conditions in section (3) of this rule are satisfied;

- (b) A conceptual site reclamation plan (NOTE: Final approval of reclamation plans resides with DOGAMI rather than local governments, except as provided in ORS 517.780);
- (c) A traffic impact assessment within one mile of the entrance to the mining area pursuant to section (4)(b)(B) of this rule;
- (d) Proposals to minimize any conflicts with existing uses preliminarily identified by the applicant within a 1,500 foot impact area; and
- (e) A site plan indicating the location, hours of operation, and other pertinent information for all proposed mining and associated uses.”

The Board finds that the applicant has submitted all of the information required by this section necessary to establish compliance with the Goal 5 rule. These responses by the applicant, as supplemented by the applicant during the proceedings, address (a) through (e) as follows:

- (a) The quantity, quality and location of aggregate resources on the site were described in the application and supplemented during the proceedings.
- (b) A conceptual site reclamation plan was provided with the application materials and refined during the proceedings before the Board. (See esp. Lidstone and Associates Goal 5 report and hearing testimony.)
- (c) The applicant submitted a traffic impact assessment with the application and supplemented it in the course of the hearing and with additional proposed mitigating conditions.
- (d) Proposals to minimize conflicts within the 1500-foot analytical impact area required by the rule was submitted with the application. The Board’s analysis in the course of the hearings included the entire island. Significant evidence regarding land uses taking place and/or proposed for the island and its access road was considered by the Board. The conditions adopted as part of the requested approval and through a Limited Use Overlay, ensure that all potential conflicts are minimized, within 1500 feet and elsewhere on the island. (see attached Conditions of Approval)
- (e) A vicinity map was provided with the application, along with a site plan and numerous supplemental plan diagrams. Conditions #7-9 describe the operating hours at the site. The County posted the entire application on its planning website, and provided mailed notice of Board hearing to the entire island, to allow proper vetting of the detailed application submitted by the applicant.

5. Significance of the Resource.

5.1 OAR 660-023-0180(3) establishes standards for determining whether an aggregate resource is “significant” and can be processed under the Goal 5 rule for aggregate. As noted, the significance of the resource at the site was established by the Board by Ordinance No. 865. The findings in support of significance have been incorporated into

these findings by reference and are based on the same record. As established by Ordinance No. 865, the aggregate resources at the site exceed the quality and quantity requirements of OAR 660-023-0180(3)(a) and are therefore “significant” under the requirements of the Goal 5 Rule for aggregate.

5.2 Findings addressing OAR 660-023-0180(3)(b), (c) and (d) were adopted by Ordinance 865. In this case, the site meets the initial significance requirements of the rule because the quantity exceeds two million tons and the quality exceeds ODOT specifications for base rock, as required by OAR 660-23-0180(3)(a).

5.3 The Soil Maps and descriptions are located in Tab 8 of the application. Soils are also discussed in the Lidstone study in Tab 11 of the application, (section 2.0 and Figure 2), and in the wetland delineation in Tab 13 (pages 4-5 and Figure A-4). The mining area contains the following types of soils, as shown on NRCS maps available on June 11, 2004:

- Newberg silt loam (Nw)
- Newberg fine sandy loam (Nu); and
- Cloquato silt loam (Cm).

All of these soils are considered by the NRCS Soil Survey as “Well-drained (Cloquato) and somewhat excessively drained (Newberg).” Most of the soils on-site are Newberg silt loam, with an area of Newberg fine sandy loam to the south and bands of Cloquato silt loam extending into the site from the northeast. The Soil Survey also notes that: “These soils are intensively farmed and are well suited to crops.” The Wetland Delineation and Assessment at Tab 13 indicates that: “Observations of soil conditions during the site visits confirmed the presence of the mapped Newberg and Cloquato soils” and that “most of the site has been subject to soil manipulation in the form of common industrial agricultural practices such as tilling, crop rotating, fertilizing, and the application of lime * * *.” All of the soils present on the site are Class II (see descriptions in Tab 8 and on pages 4-5 of Tab 13, Wetland Delineation, of the application (Record volume 4 of 4). Because more than 35% of the mining area consists of Class II soils, the applicant was required to establish that the average thickness of the aggregate deposit within the mining area exceeds 25 feet. The applicant established that the average thickness of the aggregate deposit at the site is 44 feet. A map showing where boreholes were placed was located in Figure 3 of Tab 11 of the application. The drill logs were contained in Appendix B. Those parts of the deposit that can be reached with an excavator will be mined “wet,” and the operating cell will be temporarily dewatered to mine the lower part of the deposit.

6. Identification of Impact Area. OAR 660-23-0180(5) states:

“(4) For significant mineral and aggregate sites, local governments shall decide whether mining is permitted. For a PAPA application involving an aggregate site determined to be significant under section (3) of this rule, the process for this decision is set out in subsections (a) through (g) of this

section. A local government must complete the process within 180 days after receipt of a complete application that is consistent with section (8) of this rule, or by the earliest date after 180 days allowed by local charter.

“(a) The local government shall determine an impact area for the purpose of identifying conflicts with proposed mining and processing activities. The impact area shall be large enough to include uses listed in subsection (b) of this section 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.”

6.1 The decision in this case took more than two years, including numerous hearings and appeals. The 1500-foot impact area for the site was shown on an aerial photograph in Tab 6 of the application. Tab 7 is a map that identifies the location and size of tax lots in the impact area (from the Lidstone report in Tab 11, Figure 7 and Appendix A). The designated impact area first addressed in detail by the applicant included all areas within 1500 feet of the proposed mining area except “undisturbed buffer areas,” which are excluded from the impact area by the above quoted section and OAR 660-023-0180(1)(i). The applicant did not identify any factual information that indicated significant potential conflicts beyond the 1500-foot impact area identified and analyzed by the applicant.

6.2 Nevertheless, persons living on, and/or owning property on, Grand Island testified to potential impacts beyond 1500 feet—the entire island. For the most part, these claims were that there would be an increased risk of catastrophic flooding, erosion, or groundwater impacts to the entire island, attributable to the project, which the Board has concluded are unfounded. Testimony was also received asserting that farm uses throughout the island would be impacted by truck traffic that would use the same bridge and roads, which the applicant has effectively rebutted and the County has addressed through additional conditions of approval. The record contains extensive testimony regarding properties around the island, the characteristics of the river along the entire island, and perceived impacts from this project to properties and or uses on the island. The area of analysis considered by the Board in this case includes the entire island, where factual information (testimony submitted) alleged impacts beyond 1500 feet. Notice of the Board hearing was provided to the entire island. The Board has considered all testimony received in reaching its conclusion that the applicant’s conceptual mining and reclamation plan, and the limiting Conditions of Approval, effectively minimize potential conflicts to properties and uses within 1500 feet of the site, and beyond 1500 feet and including the entire island.

7. Identification of Existing or Approved Land Uses and Sensitive Uses Within the Impact Area.

OAR 660-23-0180(5)(b) states, in relevant part:

“(b) The local government shall 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 local government. * * * ”

7.1 The applicant has identified three dwellings within 1500 feet of the proposed mining area. All three dwellings are located across a forested slough from the northwest extraction boundary. All the identified dwellings are located in EFU zones, but all are considered “approved land uses,” and are “sensitive” uses.

7.2 There are other houses on the island and along the County road to Highway 221. Notice lists and other evidence indicate that there are more than 40 (and perhaps as many as 50 dwellings on the island and/or along the island access road. None of these dwellings are within sight or sound of the project. The locations of dwellings, other perceived “sensitive” uses, and farm uses and practices identified by witnesses as taking place throughout the island, are accepted by the Board.

7.3 The island is approximately 3,882 acres, and is sparsely populated because so much of it is within the floodplain and floodway of the Willamette River. The applicant has demonstrated that all potential impacts to sensitive uses required to be addressed by the Goal 5 rule have been addressed. Minimization of conflicts to properties and uses within 1500 feet is strong evidence that uses beyond 1500 feet are unlikely to be impacted. Considering evidence of potential impacts to dwellings on the island and/or farm uses existing on Grand Island and beyond 1500 feet, the Board concludes that all identified potential conflicts to such uses are minimized, as assured through the conceptual mining and reclamation plans and Conditions of Approval. There are no residential zones or “existing platted lots” within the impact area where conditional or final approvals to construct dwellings or other sensitive uses have been granted by Yamhill County. The impact area does not extend across the river, into Marion County. The Board has identified no “existing or approved land uses within the impact area that will be adversely affected by proposed mining operations.” The following findings identify potential conflicts, and explain why those conflicts are not “predicted” and why sensitive uses within the impact area will not be adversely affected by proposed mining operations.

8. Consideration of Potential Conflicts. The remainder of OAR 660-023-0180(5) (partially quoted above) states:

“(b) * * * For determination of conflicts from proposed mining of a significant aggregate site, the local government 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 under 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 Oregon Department of Geology and Mineral Industries (DOGAMI) regulations pursuant to ORS 517.780;”

8.1 Potential Discharges. As to:

“(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;”

8.1.1. Noise. Tab 16 contains a noise study prepared by Daly-Standlee & Associates, Inc., addressing potential noise impacts. Additional evidence regarding noise relied upon by the Board is located starting at page 139 and 1541 of the Record. The applicable standards are located in OAR Chapter 340, Division 35, containing Oregon

Department of Environmental Quality (DEQ) noise control regulations. Under these standards, the subject property is a new noise source on a previously unused site, for which the noise limits are the lower of the ambient statistical noise level, L10 or L50, plus 10 dBA (decibels on a weighted scale), or the noise level listed in OAR 340-035, Table 8.

8.1.1.1 The noise study began with a collection of data regarding the characteristics of the site and area. Ambient noises were measured at and near noise sensitive uses in the area using Larson Davis sound level meters. Information was then collected regarding proposed operations at the site, including the types of machinery, and the proposed location of haul roads, stockpiles, and other activities likely to generate noise. Analysis and modeling was then conducted, to predict the highest hourly statistical noise levels that might occur in a “worst case” scenario that overstates the number of sound sources that would operate simultaneously and the elevation of those sources. Based on the results of this analysis and modeling, a noise compliance boundary was established. Outside the boundary line, the noise caused by mining operations at the site will be below DEQ limits. In any situation in which the compliance boundary was identified as approaching noise sensitive uses, the study proposes conditions to ensure that no noise sensitive uses are within the compliance boundary. The study concludes that, if properly conditioned, the applicant will meet DEQ noise standards as to all noise sensitive uses within 1500 feet of the mining area. Berms will be constructed at locations indicated in Figure 10 of the noise study, and incorporated into the conceptual mine plan (R-1534). Berm construction will not be required for many years, even decades, due to the distance between sensitive uses and the initial mining cells. Appropriate muffling equipment and portable barriers will be utilized as necessary to ensure compliance with DEQ standards. Noise levels will be monitored throughout the life of the project as necessary to establish and control the compliance boundary. Berms of the type proposed are not prohibited in the locations proposed, as some have alleged. At any rate, there are numerous other methods of meeting noise standards through a combination of other types of noise barriers and muffling technologies.

8.1.1.2 The site and the entire island is rural and isolated. Noise is currently generated on site by farm equipment, irrigation pumps, trucks and other farm vehicles. Under the proposal, excavators will be used to mine, assisted by a dozer and front-end loaders. Materials will be sorted and screened on site, but all other processing will take place off-site, at existing facilities, most likely at the applicant’s Dayton facility. As indicated in the noise report and confirmed through the hearing, potential impacts to noise sensitive uses identified within 1500 feet of the project can be fully mitigated and minimized using reasonable and practicable measures. By minimizing impacts to sensitive uses within 1500 feet, the conceptual mining and reclamation plan and limiting conditions demonstrate noise impact minimization beyond 1500 feet. The applicant has demonstrated compliance with the Goal 5 noise standard and has agreed to imposition of enforceable conditions to ensure that the site complies at all times with DEQ noise standards as to all sensitive uses on the island.

8.1.2 Dust.

8.1.2.1 The proposal is to mine the site using an excavator. Dewatering of the active pond will take place as depths exceed the reach of excavators (approximately 20-25 feet below ground level). Until that point, all materials will be wet when removed, and will not generate dust. Conveyors or trucks traveling on interior haul roads will transport materials to the processing equipment to be located in the area of Cell 27, at the southern end of the site. The processing (screening and sorting) area will be located at least 2500 feet from the nearest identified dwelling. Wet material transported over conveyors is not anticipated to generate dust, and if dust develops, spray bars can be added to the conveyors. Potential dust from interior haul roads will be controlled using sprinkler systems and/or water trucks. Stockpiles may generate small quantities of dust, as may operations to remove topsoil and prepare areas for mining. In these circumstances, fugitive dust will be controlled through the use of water available from existing on-site wells and pumps, or from water in the mining pond. Dust from use of the access drive will be controlled using water as necessary to reduce potential dust conflicts in that area. Truck speeds, which will be limited as necessary to control noise, will also reduce dust generation. It should be noted that dust will also continue to be generated by farm uses on the subject property, uses that will continue for many years while mining progresses. The site has 2.5 acre feet of water rights per acre, a functioning irrigation system, electric power service to all sectors of the property, and water wheel sprinklers. There is more than adequate water available at the site to control dust as necessary. No dwellings are close enough to be impacted by dust predicted to be generated at the site.

8.1.2.2 No equipment proposed to be used at the site is currently required to obtain a DEQ air quality permit, but the applicant will be required to comply with DEQ fugitive dust standards. The applicable standard is OAR 340-208-0210(2):

“(2) No person may cause or permit any materials to be handled, transported, or stored; or a building, its appurtenances, or a road to be used, constructed, altered, repaired or demolished; or any equipment to be operated, without taking reasonable precautions to prevent particulate matter from becoming airborne. Such reasonable precautions may include, but not be limited to the following:

(a) Use, where possible, of water or chemicals for control of dust in the demolition of existing buildings or structures, construction operations, the grading of roads or the clearing of land;

(b) Application of asphalt, oil, water, or other suitable chemicals on unpaved roads, materials stockpiles, and other surfaces which can create airborne dusts;”

This is a nuisance standard, requiring all persons to use “reasonable precautions” to prevent particulate matter from becoming airborne. These regulations constitute the applicable standard for minimizing a dust conflict under the Goal 5 rule. As stated, potential dust impacts to dust sensitive uses in the impact area will be minimized due to the distance between proposed processing areas and the closest dwelling (approximately 3000 feet); through wet mining practices when mining the upper horizon; during all mining, by watering access roads and stockpiles as necessary to prevent dust generation; and by similar reasonable and practicable measures.

8.1.3 Other Discharges. No other potential discharges from the site have been identified that would present a discernable conflict to existing or approved land uses in the area. Surface and groundwater conditions have been studied extensively in this case to ensure that conflicts will not occur.

8.1.3.1 Surface Water. Hydraulically, low velocity backwater regularly floods the site prior to floodwaters entering from upstream. As such the site is in a backwater, non-erosive condition by the time fore-water enters the site. This means that the higher energy fore-water cannot gain the momentum needed to cause erosive damage to the land surface. This project will not change any flow directions or flow timing. In particular, it will not affect any of the sloughs or meander scars that currently allow the site to initially flood from downstream and establish its backwater condition. All aspects of the mining and reclamation plan have been designed to accommodate the natural hydrologic patterns and to prevent adverse hydraulic impacts to the Willamette River (see application Tab 11, sections 8 and 9) or to the project’s neighbors on Grand Island. An extensive geomorphic stability assessment was conducted for this project, which must also be approved by DOGAMI prior to mining. The geomorphic stability of the site will be monitored for the life of the project, by the State, until reclamation is complete and reclamation performance bonds are released. The completed ponds will improve the flood storage capacity of the site, and proposed revegetation will further impede flood velocities. Significant setbacks, (a minimum 350 feet from a side channel of the Willamette River); the applicant’s planting program; long-term monitoring; and full preservation of existing backwater channels to maintain existing flow patterns (low-velocity backwater flooding), will all ensure that accelerated channel change and/or “capture” of the site by the river, will be less likely to occur than it is now. Erosion control practices required by DOGAMI, progressive mining of only one or two small cells (3.8 to 8.7 acres) at a time, and their sequential reclamation to fish and wildlife habitat use, will provide on-site control of turbidity and eliminate off-site sedimentation. All areas subject to flooding and erosion will be properly seeded with a cover crop prior to the onset of winter flooding. These findings are supported by substantial evidence presented by the applicant’s consultants in the application and through testimony included in the record. The applicant effectively rebutted suggestions by some that mining the site would attract floodwaters or would increase the risk that a flood would destroy all or part of the island.

8.1.3.2 Groundwater. With regard to groundwater, dewatering of the active cell will occur only during the “dry” season, and only as necessary to reach the lower horizon of aggregate present at the site. The timing associated with dewatering is such that irrigation demand by many of the larger farm operations during the dry season is typically (although not always) met with surface water, and not groundwater, sources. To ensure that there is no impact to area groundwater wells, all water removed from a mining cell (when dewatered) will be reintroduced on-site in a recharge trench. No substantial amount of water will be permanently ‘removed’ from the unconfined upper aquifer. The lower aquifer is unaffected by the proposal. Section 6.2 of Tab 11 of the application discusses the analysis that has been conducted of existing wells within the impact area. Additional testimony pertaining to groundwater wells elsewhere on the island was submitted during the course of the proceedings and is consistent with the testimony and evidence presented by the applicant to demonstrate that groundwater impacts can be effectively minimized to a level at which they are not significant. Figure 4 of Tab 11 of the application shows that at least 15 wells are located within the impact area. Three irrigation wells are located downgradient of the mining site. The data collected, and well locations submitted by the applicant and others, indicate that mining will not impact or diminish the quality or quantity of water in any wells located within the impact area. Both DOGAMI and the Water Resources Department have assumed responsibility for investigating complaints regarding mining impacts to nearby wells used for both irrigation and domestic purposes. The reintroduction of water from the active mine cell proposed in this case is an accepted method for minimizing potential impacts to the quantity of water in nearby wells. The sands and gravels of the aquifer act as an effective filter, preventing particles of clay and silt generated by mining activities from traveling through groundwater to any of the wells identified within 1500 feet or elsewhere on the island. For all of these reasons, no significant other “discharges” are likely or predicted.

8.2 Traffic As to road conflicts, subparagraph (B), the “conflicts to local roads” standard, states:

“(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.”

8.2.1 This standard requires that all major intersections within one mile of the site access driveway be included in a traffic impact study unless a greater distance is necessary in order to include an intersection with the nearest arterial. The required study

was prepared by Lancaster Engineering and included in the application as Tab 15. The Lancaster study considers an area beyond the one mile radius of the site and examines geometrics and operations at the following intersections:

Highway 221/Grand Island Road
Grand Island Road/Upper Island Road
Upper Island Road/Site Access

8.2.2 The traffic study estimated that the proposed aggregate operation will contribute minimal amounts of daily traffic volumes to the study area intersections (an average of 13 total trips during the morning and evening peak hours and 74 total trips per day). Given the low trip generation and the low existing traffic volumes on these roadways, the report predicted no significant capacity issues at the Grand Island/Upper Island Road and Upper Island Road/Site Access intersections. The Highway 221/Grand Island Road intersection was assessed for potential Level of Service impacts, and the geometrics of all three intersections were evaluated to ensure that they have adequate site-distances and are adequate to accommodate truck-turning maneuvers in a safe and efficient manner.

8.2.3 The study in Tab 15 of the application indicated that there will be no significant potential conflicts to local roads from traffic operations associated with the proposed mining activities. The existing configurations of the Highway 221/Grand Island Road and Grand Island Road/Upper Island Road (eastern loop road) intersections are adequate to accommodate the anticipated truck turning maneuvers. The eastern portion of Grand Island Loop/Upper Island Road that accesses the site will need to be widened from its current 12-18 foot width to a pavement width of 24 feet consisting of two ten-foot travel lanes and two-foot wide paved shoulders on both sides. With these improvements, the roads accessing the site will all meet Yamhill County road design requirements. The applicant has also agreed to numerous additional conditions related to transportation infrastructure and ensuring that transportation conflicts will be minimized as required by the Goal 5 rule.

8.2.4 With regard to the bridge accessing Grand Island: the bridge was studied as part of a previous land use approval (Joe Bernert Towing), and found to be structurally safe. Additional study has confirmed this conclusion. The applicant has agreed to a condition of approval that requires its participation in additional studies and improvements to the bridge as are necessary in the future, to the same extent as those agreed to in the previous approval. Having two operators on the island with a stake in protecting the bridge, will provide financial safeguards ensuring its safety and functionality well into the future. These facts also rebut claims that additional truck traffic will significantly impact farm practices or costs on Grand Island. The bridge is adequate to accommodate farming, aggregate transport and use by residents. The applicant has also indicated an interest in removing materials from the site by way of a conveyor, which would diminish further, potential impacts to local roads and/or the bridge.

8.2.5 The Lancaster report and additional testimony received by the Board demonstrates that there are no significant potential conflicts between the proposal and local roads. No conflicts were found with regard to roadway capacity, roadway cross-section and alignment, or other truck related conflicts.

8.2.6 The Lancaster report also demonstrates compliance with Goal 12 and the Transportation Planning Rule in terms of providing and encouraging a safe, convenient and economic transportation system. Under OAR 660-012-0060(1), amendments to acknowledged comprehensive plans and land use regulations that significantly affect a transportation facility must 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 would:

“(a) Change[] the functional classification of an existing or planned transportation facility (exclusive of correction of map errors in an adopted plan);

(b) Change standards implementing a functional classification system; or

(c) As measured at the end of the planning period identified in the adopted transportation system plan:

(A) Allow 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;

(B) Reduce the performance of an existing or planned transportation facility below the minimum acceptable performance standard identified in the TSP or comprehensive plan.; or

(C) Worsen 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.”

As explained in the Lancaster report and as measured at the end of the TSP planning period, the proposed use will not change the functional classification of existing or planned transportation facilities, nor change standards implementing a functional classification system. The proposal will not allow types or levels of land uses that would result in levels of travel or access that are inconsistent with the functional classification of a transportation facility, and will not reduce the performance standards of any facility below the minimum acceptable level. Local roads are currently used primarily as farm

access roads, with good sight distances and alignment, neither of which will be significantly affected by the proposed use. Accordingly, the proposed use conforms to the Transportation Planning Rule and will not result in significant potential conflicts to local roads, in conformance with the Goal 5 rule.

8.3 Public Airports. Subparagraph (C) requires analysis of:

“(C) Safety conflicts with existing public airports due to bird attractants, i.e., open water impoundments. This paragraph shall not apply after the effective date of commission rules adopted pursuant to Chapter 285, Oregon Laws 1995;”

There are no “existing public airports” within 1500 feet of the site, elsewhere on the island, or anywhere near the site, and there are no identified safety conflicts with public airports.

8.4 Other Goal 5 Resources. Subparagraph (D) requires analysis of:

“(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;”

The Goal 5 rule states:

“The following resources shall be inventoried:

- a. Riparian Corridors, including water and riparian areas & fish habitat;
- b. Wetlands;
- c. Wildlife habitat;
- d. Federal Wild and Scenic Rivers;
- e. State Scenic Waterways;
- f. Groundwater resources;
- g. Approved Oregon Trails;
- h. Natural Areas;
- i. Wilderness Areas;
- j. Mineral and Aggregate Resources
- k. Energy Sources;
- l. Cultural Areas.

Local governments are encouraged to maintain current inventories of the following:

- a. Historic Resources;

- b. Open Space;
- c. Scenic Views and Sites.”

8.4.1 Within the Grand Island impact area, there are, arguably, many of the 12-15 categories of Goal 5 resources present. Additionally, as discussed in the applicant’s Natural Resource Evaluation, the stretch of Willamette River adjacent to Grand Island is home to two endangered fish species. Whether “the requirements of Goal 5 have been completed,” for which Goal 5 categories, is a separate question. As for Goal 5 aggregate resources: the Goal 5 process was completed for the Joe Bernert Towing site on Grand Island, by Ordinance 752, December 21, 2004. That 422-acre site was deemed a significant aggregate resource, with a 245-acre approved mining area, and reclamation to farm and wildlife habitat uses.

8.4.2 For purposes of this analysis, it is also noted that an undeveloped portion of Willamette Mission State Park is within the impact area, just west across Upper Island Road from the site. The park is heavily forested, and is used primarily for hunting and fishing, with some primitive camping. Arguably, the County has “completed the Goal 5 process” for the park—it is owned by the Oregon State Parks Department and zoned for “Parks Recreation and Open Space.” Along a side channel of the river, across Upper Island Road from the site, is a small day-use park and picnic area that is part of the State Park.

8.4.3 The Willamette River and Greenway is also a “riparian corridor,” that includes “water and riparian areas and fish habitat.” It is governed by its own Goal, No. 15. Goal 15 has been implemented by the County through YCZO Section 902 and is addressed in these findings. There are also wetlands, wildlife habitat, groundwater resources, “open space” and possibly even “natural areas” as defined by LCDC, that may or may not be “inventoried” in some manner, but for which no “program to achieve Goal 5” has been completed. The applicant has sought to protect all of these resources from potential negative mining impacts, and is proposing to reclaim the site with a hydraulic and fish connection to the Willamette River, as “water and riparian area[] and “fish habitat”; “open space”; “wetland, wildlife habitat” and as a scenic natural area with public recreational access. The planned, long-term use of the site is as a significant (non-aggregate) Goal 5 natural resource. This decision is being made under the Goal 5 rule for aggregate, but also with regard to the “carrying capacity” of the land and other factors normally associated with a decision to designate a Goal 5 resource as “significant” and to establish a “program to achieve the goal,” which is accomplished through this ordinance.

8.4.4 The Willamette River is identified in the Yamhill County Comprehensive Plan as “Fish Habitat.” (The property is not identified on any County adopted map as being in the big game winter range.) Section II, C, Goal 1, Policy j of the Yamhill County Goals and Policies states:

“It is the policy of Yamhill County to protect riparian vegetation from damage that may result from land use applications for development that is otherwise permitted outright or conditionally under county zoning regulations. To achieve this goal, Yamhill County will review land use applications for development in riparian areas in an effort to mitigate or prevent damage to riparian vegetation that might result from the development. For purposes of this policy, ‘riparian areas’ refers to areas within 100 feet measured horizontally from the ordinary high water line of streams identified as ‘Fish Habitat’ in the comprehensive plan inventory (Natural Resource Conservation Plan, Yamhill County, Oregon, May 1979 – U.S.D.A. – Soil Conservation Services), that are not regulated under the Forest Practices Act.”

The resource extraction area is not located in or near the riparian area described in the policy. With the exception of the construction of the fish channel, there will be no disturbance to any riparian area or riparian vegetation. As part of its effort to mitigate or prevent damage to riparian vegetation that might result from development of the fish channel, the applicant has proposed to disturb less than one acre, paralleling an existing irrigation pump access road. The proposal is consistent with the County’s Fish habitat Policy.

8.4.5 The applicant will preserve and enhance all riparian vegetation on the site. Mining will only take place within a long-cultivated field, with significant setbacks from all existing riparian vegetation. The applicant’s resource extraction area is set back a minimum of 350 feet from a side channel of the Willamette River (see revised conceptual mining plan, R-1534). The applicant has committed to plant a 50-foot buffer of native trees along the southern edge of the site upon approval, and to plant native shrubs, grasses and trees as the site is sequentially and concurrently reclaimed (see conceptual reclamation plan, R-2002-2003, 2026-2038, 1535). As noted, the long-term County-planned use for the site under this Ordinance is as fish and wildlife habitat, wetlands, and riparian habitat. The reclamation plan shows significant new riparian and upland vegetation, to be planted and established sequentially as mining progresses. The applicant has also commissioned studies to identify and protect fish and wildlife areas and habitats and otherwise sensitive natural areas, water areas and wetlands on the site and within the impact area. Significant additional testimony was submitted by the applicant during the course of the hearings to effectively rebut all claims of potential impacts of the project to riparian and/or other nearby natural resources, within 1500 feet of the mining area and/or elsewhere throughout the island.

8.4.6 The proposed mining and reclamation plans are based on hydraulic analysis, wetland delineation, and biological assessment. The proposed design will provide improved fish and wildlife habitat on the site, during and following mining activities. The applicant has identified existing fish and wildlife in the area, and has investigated to determine whether any endangered plants or animals are present or may be affected by the

proposal (See the Natural Resource Evaluation at R-2237 and follow-up testimony by the applicant's natural resources consultants at R-136). The applicant has also identified wetlands, and associated riparian areas on the site, for the purpose of protecting those areas, and to identify areas most amenable to restoration efforts. Finally, the applicant has commissioned a hydraulic analysis to ensure that existing hydraulic conditions, and proposed hydraulic connections during mining and following reclamation, will promote the applicant's wildlife restoration and enhancement goals (See Tabs 11, 13 and 14 of the application and testimony by the applicant's experts submitted into the record). The proposal does not conflict with the Willamette River, endangered fish or other species, the nearby State Park, or any identified Goal 5 resource, but will ultimately enhance the riverine environment and other resources listed in Goal 5 and the County's Plan and Zoning Ordinance as worthy of protection.

8.4.7 The applicant commissioned a wildlife study to address issues related to fish and wildlife habitat protection during mining and to ensure that the reclamation plans promote habitat values. The Natural Resource Evaluation in Tab 14 of the application (R-2237) did not identify any endangered, threatened or vulnerable animal or plant species that will be impacted by the proposed project. The applicant's proposal is expected to contribute to restoration of backwater channel complexity and habitat that is beneficial to fish and wildlife in appropriate areas along the Willamette River and elsewhere.

8.4.8 In this case the mine and reclamation plan are designed to improve fish and wildlife habitat in the area during operation and reclamation phases. Most of the existing field in which mining will take place floods frequently. If managed and reclaimed appropriately, the site has the potential to improve Willamette River fisheries and to augment the high-value wildlife habitat adjacent to the site in Willamette Mission State Park. The mining plan calls for the sequential development of 27 relatively small mining cells that will over time be consolidated into a roughly 175-acre lake, with peninsulas and an island. No mining will take place during any period in which the active cell is connected to the river. Excavation will cease each winter, and a connection channel set at average June 1st river elevation will allow fish that enter the site during winter flood events to leave again at times appropriate to their life cycle. Upon completion of mining in individual cells, the hydraulically-connected lake created by mining will be reclaimed as wetland and open water, with varying depths to accommodate a variety of species. The best habitat existing at the site will be preserved, and new habitat created. To the extent permitted by DOGAMI, underwater slopes and benches will be designed in a manner that will discourage the growth of invasive, non-native vegetation and improve the utility of the resulting ponds and wetlands as fish and wildlife habitat. Both the sequencing of cell construction and the final design are intended to establish high quality fish and wildlife habitat, hydraulically connected to the Willamette River in a manner that was prevalent in the area before the advent of up-stream storage reservoirs, revetments, bank armoring, channelization, and large-scale farming, which have all damaged the fish and wildlife resources of the river and area.

8.4.9 The applicant commissioned a delineation and study of wetlands that was included in Tab 13 of the application. Although none of the wetland resources on site are specifically identified in a county Goal 5 inventory, the applicant and the Board recognize the importance of protecting and mitigating harm to wetlands, and the necessity of doing so under state and federal law. The operating and reclamation plans are designed to protect all wetland and riparian areas on the site. The hydraulic analysis in Tab 11 of the application and additional testimony submitted through the hearing process also indicate that, from a geological and engineering standpoint, the mining and reclamation plans will succeed, and function as envisioned.

8.5 Potential Conflicts With Agricultural Practices. As to “(E) Conflicts with agricultural practices,”

8.5.1 OAR 660-023-0180(4)(c) states, in relevant part:

“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.”

8.5.2 ORS 215.296 provides in pertinent part as follows:

“Standards for approval of certain uses in exclusive farm use zones; violation of standards; complaint; penalties; exceptions to standards. (1) A use allowed under ORS 215.213 (2) or 215.283 (2) may be approved only where the local governing body or its designee finds that the use will not:

(a) Force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; or

(b) Significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.

(2) An applicant for a use allowed under ORS 215.213 (2) or 215.283 (2) may demonstrate that the standards for approval set forth in subsection (1) of this section will be satisfied through the imposition of conditions. Any conditions so imposed shall be clear and objective.

* * *

8.5.3 As explained in Schellenberg v. Polk County, 21 or LUBA 425, 440 (1991) and successive cases, the ORS 215.296(1) test requires that the county identify the accepted farm and forest practices occurring on surrounding farm lands, and then consider whether the proposed use will force a significant change in, or significantly increase the cost of, identified practices. ORS 215.203 defines “farm use,” and contains the following definition of “accepted farming practice” that is appropriate to reference in this circumstance. ORS 215.203(2)(c) states:

“As used in this subsection, ‘accepted farming practice’ means 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.”

8.5.4 For purposes of this analysis the “area” under consideration is Grand Island. No significant impacts have been identified within 1500 feet of the proposed mining area, and it is therefore highly unlikely that impacts could be identified beyond 1500 feet. Crops grown on Grand Island typically include filberts, sweet corn, raspberries, Marion berries, beans, cherries, arborvitae (nursery stock), vegetable row crops other crops identified by persons who submitted testimony at the hearings. There is also livestock, ‘exotic’ or otherwise. The 1500-foot impact area also includes parklands, and riparian areas associated with the Willamette River. Plowing, burning, application of herbicides and pesticides, disking of orchards and machine harvesting are accepted farm practices in the area under the ORS 215.203(2)(c) definition. There are also organic and sustainable agricultural practices taking place. Hops are grown on racks, and sheds are utilized, along with farm labor to tend and harvest the crops. Automated machinery and farm labor are both used extensively to tend and harvest many of the other crops noted. Farm machinery is routinely transferred from field to field on island roads, and use the access bridge to transport farm crops to Highway 221. Fields are typically irrigated by well or direct withdrawal from the Willamette River, its side channels and sloughs. No commercial forestry has been identified in the area, although forest uses accessory to agricultural uses likely take place.

8.5.5 As described in the application and further explained by the applicant through the hearing process, the applicant proposes to continue farming the site while mining occurs over the course of decades. The applicant’s operations are not expected to force a significant change in, or significantly increase the cost of, any identified or likely agricultural practices on the subject property or any neighboring property devoted to farm use or any property on Grand Island devoted to farm use or upon which agricultural practices are taking place, commercially or otherwise.

8.5.6 The proposal will not give rise to any new or increased conflicts with agricultural practices within 1500 feet or anywhere on Grand Island or elsewhere, including along the local access road to its intersection with Highway 221. Farms in the area are maintained with machinery of approximately the same scale and noise level as the proposed extraction equipment. Proposals to minimize noise and dust impacts to sensitive uses are expected to also minimize impacts to (decidedly less-sensitive) agricultural uses located nearby and elsewhere on the island or haul route. Most of the farm uses within 1500 feet (an area more likely to be affected than any other location on the island or haul route) take place across a densely wooded slough along the northern and northwest boundaries of the site. Farm uses adjacent to the east of the site will experience no greater impacts than with current use of the site, due to control methods and technologies required by the Conditions of Approval. Vegetated berms will also be utilized to separate mining

activities from neighboring uses, as specified in the plans. The operation will not impact groundwater in the area as explained in Tab 11, section 6.2. of the application and explained in great detail by the applicant's experts through written submittals and the hearing process. Erosion will be minimized (as explained by the applicant) by cessation of mining during flood season; by the use of cover crops; and by the design and sequential reclamation of the site. The applicant's aggregate extraction activities pose no conflicts with identified agricultural practices, and will not require changes in agricultural practices or increase agricultural costs in surrounding areas devoted to farm use.

8.5.7 As reclamation is completed, portions of the property will return to farm/rural uses allowed under the Goal 5 rule, including wetland, open space and wildlife habitat uses. The ponds and associated riparian areas to be developed as part of site reclamation are expected to significantly enhance backchannel fish and wildlife values in the area from those currently existing. Conceptual mining and reclamation plans were submitted and refined through the hearing process. A Wetland Delineation and Natural Resource Evaluation were submitted and supplemented in response to questions raised. The Hydraulic Analysis in Tab 11 of the application and clarifications of all scientific analysis through the hearing process also supports the feasibility of mining and reclaiming the site as proposed.

8.6 Finally, subparagraph (F) of OAR 660-023-0180(4)(b) requires analysis of:

“(F) Other conflicts for which consideration is necessary in order to carry out ordinances that supersede DOGAMI regulations pursuant to ORS 517.780”

The reference in the above section to “ordinances that supersede DOGAMI regulations” applies only to Columbia County.

8.7 In summary, due to the isolation of the site, the topography of the area and other factors identified in these findings, no conflicts of the type listed in OAR 660-023-0180(4)(b) have been identified.

8.8 Reasonable and Practicable Measures to Minimize Conflicts

Under OAR 660-23-0180(4)(c):

“(c) The local government shall 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 requirement 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.”

The County has not identified any conflicts that will not be minimized (if not eliminated) by the conditions contained in the (refined) mining and reclamation plans and limiting conditions of approval. These are “reasonable and practicable measures” that will allow small portions of the site: (3-9 acres) to be mined and reclaimed in compliance with existing laws and standards for limitation of dust, noise and other discharges. Perceived conflicts with sensitive uses and farm uses are unlikely to materialize as the project is completed and the site reclaimed. Reasonable and practicable measures have been identified by the applicant and County to minimize all identified conflicts as required by the Goal 5 rule, and mining is therefore allowed.

8.9 ESEE Analysis if Significant Identified Conflicts Cannot Be Minimized

Under OAR 660-23-0180(4)(d):

“(d) The local government shall determine any significant conflicts identified under the requirements of subsection (c) of this section that cannot be minimized. Based on these conflicts only, local government shall determine the ESEE consequences of either allowing, limiting, or not allowing mining at the site. Local governments 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.”

The probable duration of mining at the subject property has been estimated at 30 years, based on predicted levels of production. The proposed post-mining use of the site is farm use, wildlife habitat, open space, and as a stable wetland system. The current zoning of the site and impact area is EFU.

The County has identified no significant conflicts from the proposed operation that will not be minimized. Potential noise impacts will be minimized as identified in the noise study in Tab 16 of the application and in the Conditions of Approval. The applicant’s Mine Plan and Reclamation Plan for the site were designed principally to avoid creating conflicts with surrounding land uses. The excavation process is simple, involving

relatively few pieces of equipment—an excavator, two trucks, and one or two front-end loaders. Mining equipment and trucks to be used on the site will utilize muffling equipment and limit speeds as necessary to meet or exceed DEQ noise regulations. No blasting will take place. The site will be sequentially reclaimed. For all of the above reasons, the project is low impact, and designed to show environmental respect and consideration for the neighbors. Through the public hearing process extensive opposition testimony was received and weighed by the County in reaching the conclusions it has reached. That testimony was not sufficient to overcome evidence presented by the applicant demonstrating that all potential conflicts are in this case minimized through reasonable and practicable measures.

9. Permission to Mine Under OAR 660-23-0180(4)(e):

“(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 local government, shall not exceed the minimum review necessary to assure compliance with 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.”

Based on the information provided by the applicant and substantial evidence in the record as a whole, the County is granting to the applicant permission to mine the site as proposed and as limited by the Conditions of Approval.

10. Determination of Post-mining Uses

10.1 Under OAR 660-23-0180(4)(f):

“(f) Where mining is allowed, the local government 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 the Oregon Department of Geology and Mineral Industries regarding the regulation and reclamation of mineral and aggregate sites, except where exempt under ORS 517.780.”

10.2 The site contains Class II soils, as shown on soil maps in Tab 8 of the application and as discussed in Tabs 11 and 13. The applicant and the County recognize the value of these soils and of farming on Grand Island. Farming will continue as mining progresses. The site will be reclaimed as a stable wetland system with a diverse assemblage of native flora and wildlife habitat features.

10.3 A Condition of Approval states:

“3. Reclaimed Use. The site shall be sequentially reclaimed as it is mined, for use as fish and wildlife habitat, and eventual use for public recreation. Reclamation shall begin immediately upon receipt of final (unappealed) land use approval by planting of a 50-foot buffer of native trees (with the exception of the access driveway and reasonable neighbor farm access) between Upper Island Road and Cells 24, 1, 2, 3 and 4. As with all reclamation, the applicant shall take appropriate and recommended steps to ensure that the forested buffer survives to maturity. Upon final reclamation, the site shall be made available to the State of Oregon or other appropriate governmental entity for dedication and use as a public park, if allowed by law. If no such entity is available to accept dedication of the property as public parkland, the applicant shall establish a conservation easement on the site allowing reasonable public access and use in perpetuity.”

10.4 Upon completion of mining, preserved and reclaimed fish and wildlife habitat uses will occupy most of the reclaimed site. Fish and wildlife habitat and wetland mitigation banking are listed in the Goal 5 rule as acceptable reclaimed uses, as are uses listed in ORS 215.283(1). ORS 215.283(1)(m) is “Creation, restoration or enhancement of wetlands.” The reclaimed site will be hydraulically and ecologically connected to the Willamette River and its associated sloughs, riparian and wetland areas. DOGAMI has been consulted, and is responsible for approving the conceptual mine plan and conceptual reclamation plan. DOGAMI will undoubtedly impose various more specific conditions on mining and reclamation of the site by way of its operating and reclamation permit. Additional conditions may be imposed by the Division of State Lands through its oversight of fill and removal activities related to operation and reclamation of the site. Finally, the County has imposed numerous limiting conditions to ensure project success.

10.5 During the course of the proceedings, opponents claimed that park and/or recreation use cannot legally be made of the site as an end use. If, at the time reclamation of the entire site is complete, recreational activities are not allowed on the site, the

applicant and County must (of course) comply with restrictions in effect at that time. It is reasonable for the County to conclude that, even if dedication to public park use is not allowed, that conservation easements allowing the types of public recreation envisioned by the applicant will continue to be allowed in farm zones as a matter of right.

11. Greenway Development Permit

11.1 Explanation of Basis for Request

11.1.1 Yamhill County maps indicate that a portion of Tax Lot 600 (the mining site) is within the Willamette River Greenway. The county map shows the greenway covering approximately 25,000 square feet of the site, at a “crook” in the road near the western end of the site. Materials in Tab 17 of the application show where the County maps indicate the location of the greenway. Surveyor information is also included indicating that the location of any greenway on Tax Lot 600 is in error. For purpose of these findings it is assumed that the 2.9-acre “crook” in the county road is within the greenway. The area is subject to a 50-foot setback from the County road, so that less than 2.9 acres of the area will be mined.

The applicant also intends to maintain a seasonal connection of the operating pond and restored wetlands to allow fish that may winter on the site to escape in the spring. To accomplish this, a low flow connection channel will be constructed that will cross into the Willamette Greenway. The location of the greenway and the design and approximate location of the proposed low flow channel are shown on conceptual mining and reclamation diagrams presented by the applicant. The connection channel will be controlled by a gate during the operating phase and will be a permanent channel at the end of mining. The channel is expected to be inundated year round, and will be vegetated to improve water temperature. Less than one acre will be disturbed for the fish channel, which is proposed at a location that currently contains an irrigation pump access easement road.

11.1.2 No mining activities other than those described in this application will take place within, or negatively impact the greenway. All mined areas of the site adjacent to the greenway will be reclaimed for wildlife habitat, and since nearby portions of the site that are now being farmed will also be reclaimed as wildlife habitat, the overall quality of the greenway for environmental and recreational uses will be improved.

11.2 Why a Greenway Permit is Requested

11.2.1 As discussed elsewhere in these findings, the Goal 5 rule “supercedes” pre-existing standards for approval of plan amendments and zone changes to allow aggregate mining. Although it is possible that the County cannot use the standards of its zoning ordinance to deny mining that would otherwise be allowed under the Goal 5 rule, these Greenway findings, and issuance of a Greenway Permit, are established in an

abundance of caution to secure to the applicant permission to mine as specified in Ordinance 873.

11.2.2 Under YCZO 902.03:

“A. The provisions of this section shall apply to all land and water located within the WRG Overlay District of Yamhill County as indicated on the Official Zoning Map. The boundary of this District is shown in detail on the aerial photo maps of the Official Willamette River Greenway Boundary as adopted by the State of Oregon. A copy of this document is on file in the Yamhill County Department of Planning and Development and is hereby adopted by reference and declared to be a part of this section. Interpretation of the exact location of the boundary shall be made by the Director through use of the aerial photo maps.

“B. The WRG Overlay District shall be combined with at least one (1) underlying zoning district and may be combined with any zoning district pursuant to this ordinance. All property within the WRG Overlay District shall be subject both to the provisions of this section and to the underlying zoning district. Nothing in this section shall be construed as a waiver or suspension of the provisions of any underlying zoning district, or any other applicable overlay district.”

11.2.3 Under YCZO 902.04:

“All uses of land and water provided for in the specific underlying zoning district may be permitted in the WRG Overlay District, with the provisions that those uses which would result in a change of use, intensification of use, or development within the WRG Overlay District shall require a Greenway permit pursuant to the procedures set forth in subsection 902.05 for obtaining a Greenway permit, except for the following uses, which shall not require a Greenway permit: * * *”

11.2.4 Under YCZO 902.02(C), “development” means:

“any activity within the WRG Overlay District which would alter the elevation of the land, remove or destroy plant life, cause structures of any kind to be installed, erected, or removed, or a change of any kind from the conditions existing as of the effective date of this ordinance, but not including farm use.”

11.2.5 Mining, which will occur in part of the (disputed) 2.9 acre greenway area where it juts into Tax Lot 600, and the fish channel (less than one acre) are both “development.” A Greenway Development Permit is required, largely because the

“exception” list in YCZO 902.04 does not include an engineered low flow hydraulic connection. In this case, the proposed uses are “development” of a type that can occur in the underlying EFU zone and in the proposed Mineral Resource zone and which are permitted in the Greenway, under a greenway permit. Goal 15, which is implemented through YCZO Chapter 902 states, in section C.i.:

“Extraction of known aggregate deposits may be permitted when compatible with the purposes of the Willamette River greenway and when economically feasible, subject to compliance with ORS 541.605 to 541.695; ORS 517.750 to 517.900 and subject to compliance with local regulations designed to minimize adverse effects on water quality, fish and wildlife, vegetation, bank stabilization, streamflow, visual quality, noise, safety and to guarantee necessary reclamation.”

11.2.6 Yamhill County Comprehensive Planning Goal IV. C., also implemented by the Overlay, is:

“To protect, conserve, enhance and maintain the natural, scenic, historical, agricultural, economic and recreational qualities of lands along the Willamette River.”

11.2.7 YCZO 902.01, states:

“The purpose of the WRG Overlay District is to:

- A. Protect and preserve the natural, scenic and recreational qualities of lands along the Willamette River in Yamhill County;
- B. Preserve and allow the restoration of historical sites, structures, facilities and objects on lands along the Willamette River;
- C. Implement the goals and policies of the Comprehensive Plan and the State of Oregon’s Willamette River Greenway program;
- D. Establish standards and requirements for the use of lands within the Willamette River Greenway of Yamhill County; and
- E. Provide for the review of any intensification, change of use or development of properties located within the Willamette River Greenway of Yamhill County.”

As noted, mining of aggregate is specifically allowed under Goal 15. The applicant’s plans have demonstrated the economic feasibility of the mining and reclamation plans. The plans are specifically to be carried out in conformance with the DOGAMI regulatory provisions referenced in the rule, and with all applicable federal, state and local requirements referenced in the Goal. The YCZO overlay standards are acknowledged, and are interpreted by the County as intended to be consistent with Goal 15. Goal 15 states that the “special greenway considerations shall be taken into account” when

considering development requests within the greenway, suggesting discretion by local governments in applying their greenway standards. The Goal states specifically that mining of aggregate “may be permitted” within the greenway. The proposed development is compatible and consistent with the purposes of the overlay district.

11.2.8 To the extent the low flow channel is considered a use “accessory” to mining, it is nevertheless an allowed use in the greenway under a greenway permit. To the extent the county’s greenway map is not erroneous, and the greenway extends slightly onto Tax Lot 600, part of the disputed area will be maintained as a buffer, with very little mining proposed to take place within the (disputed) greenway “boundary.” These activities will be compatible with the purposes of the greenway. Reclamation of the site and either establishment of a conservation easement or dedication to park use will enhance the greenway over time.

11.3 Demonstration of Compliance with Greenway Standards

YCZO 902.06 states:

“Prior to issuance of a Greenway permit, the applicant must demonstrate compliance with the following considerations and criteria:”

The criteria, listed in subsections A-R of section 902.06, are listed separately below, with responses to each provided by the applicant and accepted by the County:

11.3.1 Under YCZO 902.06(A):

“(A) That the proposal conforms with the use provisions and standards and limitations of the underlying zoning district.”

To the County’s knowledge, there are no standards and limitations in the underlying EFU district that would prohibit mining of Tax Lot 600 or constructing what will essentially be a vegetated channel allowing water to enter and leave the site for a portion of the year. Additionally, the 1996 Goal 5 rule governs mining on the site, even if there are standards and limitations in the underlying zoning district that would otherwise prevent mining.

11.3.2 Under YCZO 902.06(B):

“(B) That the proposal is consistent with the purpose of the WRG Overlay District as provided in subsection 902.01.”

902.01 states:

“The purpose of the WRG Overlay District is to:

- A. Protect and preserve the natural, scenic and recreational qualities of lands along the Willamette River in Yamhill County;
- B. Preserve and allow the restoration of historical sites, structures, facilities and objects on lands along the Willamette River;
- C. Implement the goals and policies of the Comprehensive Plan and of the State of Oregon's Willamette River Greenway program;
- D. Establish standards and requirements for the use of lands within the Willamette River Greenway of Yamhill County; and
- E. Provide for the review of any intensification, change of use or development of properties located within the Willamette River Greenway of Yamhill County."

These "purposes" establish the aspirations behind the WRG zoning standards. They are not standards of approval, but are implemented by the standards that follow. The low flow connection is part of the applicant's proposal to protect, preserve, and enhance Willamette River fishery habitat and resources. The portion of Tax Lot 600 that county maps indicate is within the greenway is small, and only a portion of it is proposed for mining. As indicated in the survey materials in Tab 17 of the application, the County's maps are based on an incorrect road description. The location of the Greenway is shown on the zoning map as following a superceded and not legally correct description of the location of the County Road right-of-way. No mining is proposed within the actual Greenway, on the other side of the County Road. Mining that is proposed to take place within the Greenway as currently shown on the zoning map is exceedingly limited, because a 50-foot setback extends into the site from the County Road right-of-way. Regardless, the Board finds that both activities that may affect the Greenway are consistent with, and promote the purposes of the greenway, especially over the long term, as the site is reclaimed, but also over the short term under the limitations of the mining and reclamation plans and Conditions of Approval.

11.3.3 Under YCZO 902.06(C):

"(C) That the natural vegetative fringe along the river shall be maintained in order to assure scenic quality, protection of wildlife, protection from erosion and screening of uses from the river."

The portion of Tax Lot 600 shown by county maps to be within the greenway is in farm use, and is separated from the riparian vegetative fringe of the river by a County road. The low flow channel is being proposed for an area that is vegetated, but is also an access road to an irrigation pump. The existing vegetation in most of the greenway includes cottonwood, maple, willow and ash. The proposed channel would remove few, if any,

mature trees. As proposed, the low flow channel will not increase erosion or diminish the screening qualities of existing vegetation in the greenway. The existing forested riparian buffer will be sufficient to assure scenic quality along the river and to screen mining and processing uses from recreational and commercial river uses. Under a Condition of Approval, an additional 50-foot buffer of native forest vegetation will be planted along the County road on the southern edge of the site, providing additional buffering from Greenway uses. As stated, upon reclamation, which will occur sequentially, the entire area, in and adjacent to the greenway, will provide substantially better scenic quality, wildlife habitat and overall vegetative fringe than exists today.

11.3.4 Under YCZO 902.06(D):

“(D) That the quality of the air, water and land resources in and adjacent to the WRG Overlay District shall be preserved with any development, change of use, or intensification of use, within the WRG Overlay District.”

With the exception of a small amount of excavation proposed to take place within the (map indicated) greenway on Tax Lot 600, all mining activities will take place adjacent to, and outside of, the greenway, and will not impact the Greenway, as demonstrated through compliance with all other applicable standards, and in part due to the limiting Conditions of Approval. The quality of air resources will be maintained by compliance with existing DEQ regulations related to air pollution. Dust will be controlled in the mining area through wet mining, application of water to haul roads as necessary, use of conveyors as necessary to limit dust production, and a host of other suitable management practices. Neither proposed use within the greenway is expected to generate significant levels of dust, as discussed elsewhere in these findings. Water and land resources will be preserved by compliance with conditions imposed by the county, DOGAMI, DSL and possibly other agencies to protect such resources and to ensure that the reclaimed site will meet the expectations of the applicant, the community, the County, and reviewing agencies. As described in this narrative and the attached studies, this project will result in the establishment of land and water resources that are substantially more valuable as fish, wildlife and riparian habitat than the resources that now exist on the site. The development of a low flow channel will promote and enhance the value of the site as fish habitat, and will be designed in a manner to minimize the potential for erosion. The connection will be well vegetated, to keep water temperatures low and further promote wildlife and fishery values.

11.3.5 Under YCZO 902.06(E):

“(E) That lands exhibiting Class 1-IV soils for agricultural production shall be preserved and maintained for farm use.”

11.3.5.1 The mining area contains Class II agricultural soils. To the extent a portion of the mining area is within the greenway (and evidence submitted by the

applicant suggests that it is not) that area is insignificant. As for the low flow channel: it will be constructed in a riparian area that is not appropriate for commercial farming and is best suited for use as riparian buffer, wildlife habitat and recreation.

11.3.5.2 Goal 15 specifies that agricultural soils are to be preserved, and also states that aggregate mining is allowed, within the Greenway, under certain circumstances. The Goal 15 rule does not prohibit mining of aggregate on agricultural soils. The County has never interpreted its WRG overlay standards to prohibit mining simply because agricultural soils are present, and instead interprets the standards to allow mining where all of the standards are addressed and considered, taking into account the soil classifications and goal of preserving farm soils in all cases in EFU zones. In this case, minimal mining is contemplated in the small portion of Tax Lot 600 that is shown within the current boundary of the overlay. Most of the site is currently subject to seasonal flooding, and the proposed low flow connection will improve the habitat value of the site during both operating and reclaimed phases. As described elsewhere in these findings and in the studies and evidence submitted by the applicant, the reclaimed site will add needed back-channel complexity to the existing riverine system. Mining and reclamation of the site will improve the ecology and habitat value of the area. Upon reclamation, the riparian values of the area will be vastly improved over current conditions. The reclamation plan contributes to the ecological and scenic values of the greenway, and promotes traditional farm uses, “creation, restoration or enhancement of wetlands,” and riparian/wildlife habitat uses as allowed under the Goal 5 rule and State statutes. The standard is not intended to prevent any development on farm soils in the Greenway. If that were the case, no development would be allowed in the Greenway, a result that would render zoning code provisions governing the consideration of proposed development in the greenway, pointless. The proposal complies with the intent of YCZO 902.06(E), as interpreted by the County, in conformance with Goal 15.

11.3.6 Under YCZO 902.06(F):

“(F) That significant fish and wildlife habitats shall be protected.”

As described in the natural resource assessment in Tab 14 of the application, wildlife habitat now existing on the site and in surrounding areas will not be affected by the proposed use. The best existing habitat on the site will all be preserved. The low flow channel will protect and promote the fish and wildlife habitat values of the site. All of the existing sloughs and wet areas on the site will be preserved, and the value of the entire site as fish and wildlife habitat will be substantially improved as the site is sequentially mined and reclaimed.

11.3.7 Under YCZO 902.06(G):

“(G) That significant natural and scenic areas, viewpoints and vistas shall be preserved.”

There are no significant natural or scenic areas, viewpoints or vistas on the site, or that overlook the site. The operation will not be visible from the river due to topography, existing vegetation, and additional natural vegetation planned for the site. The riparian area along the river is currently wooded, with mature trees and understory vegetation that will not be impacted by the proposal.

11.3.8 Under YCZO 902.06(H):

“(H) That areas of ecological, scientific, historical or archeological significance shall be protected, preserved, restored, or enhanced to the maximum extent possible.”

There are no identified areas of ecological, scientific, historical or archeological significance on the site. No such resources are identified as existing on the site in any of the County’s Goal 5 inventories. The applicant has provided a wetland delineation, and will not disturb any identified wetlands, as demonstrated by the application and as presented by the applicant to rebut contrary claims by opponents. The applicant provided a study of wildlife in the area and designed all aspects of the project with sensitivity to existing and potential ecologic values. Willamette Mission State Park is adjacent to the site, and is an area of ecological and historical significance. As stated, the applicant is proposing to protect the reclaimed site through imposition of a conservation easement, or through dedication to park uses.

11.3.9 Under YCZO 902.06(I):

“(I) That areas of annual flooding, floodplains and wetlands shall be preserved in their natural state to the maximum possible extent to protect water retention, overflow and other natural functions.”

As described in the applicant’s Wetland Delineation (Tab 13 of the application) the Biological Assessment (Tab 14) and the Hydraulic Analysis (Tab 11) the proposal preserves existing wetlands and wet areas while allowing the removal of aggregate resources from the site. The water retention, overflow and other natural functions of the floodplain site are preserved through project design, and will be steadily enhanced as materials are removed from the site and sequential reclamation takes place. Existing riparian areas will be preserved in their natural state, and mining and reclamation of the site will not diminish the values listed in this section. The low flow channel will enhance the hydraulic function of the site during both operating and reclaimed phases. As clarified by the applicant in the course of the hearings, the project will not adversely impact, and will in fact improve the value of the site as a naturally functioning part of the Willamette riverine system, to the maximum extent possible consistent with the proposed uses. Areas of the site that are subject to annual flooding, are located in floodplains and floodways and are currently being farmed, will be reclaimed to a more natural state and

will provide floodplain complexity and connectivity that will enhance its use as wildlife and fish habitat. Hydraulically, the mining and reclamation plans will improve water retention, overflow and other natural functions of the site.

11.3.10 Under YCZO 902.06(J):

“(J) That any harvesting of timber shall be done in a manner which will ensure that wildlife habitat and the natural scenic qualities found in the WRG Overlay District will be maintained and will be restored.”

No harvesting of timber is proposed. The mining area is an open agricultural field. At all times, efforts will be made to ensure that wildlife habitat and the natural scenic qualities of the greenway are protected and enhanced as outlined throughout these findings.

11.3.11 Under YCZO 902.06(K):

“(K) That the proposed development, change of use or intensification of use is compatible with the site, the surrounding area and the environment.”

The compatibility of the proposed use with agricultural uses and practices has been described elsewhere in these findings, demonstrating that the proposed development will be compatible with existing uses on the site and in the surrounding area. The proposed low flow channel has been engineered and designed to enhance the hydraulic function of the site, and will be vegetated to prevent erosion and to lower water temperatures. For all of the reasons already stated, the proposed limited development is compatible with the site, the surrounding area, and the environment.

11.3.12 Under YCZO 902.06(L):

“(L) That areas considered for development, change of use or intensification of use, which have erosion potential, shall be protected from loss by appropriate means which are compatible with the character of the Willamette River Boundary.”

The site is within the floodplain and floodway, and the applicant has established, through the hydraulic analysis in Tab 11 of the application and testimony during the proceedings, that the project will not affect the erosion potential of the river. The means of protecting the area from erosive loss are largely design and management techniques, including the 350-foot setback from the Willamette River side channel, the location of the processing area, and preservation of all existing sloughs and wetlands on the site. These management and design techniques are described extensively in response to other standards of approval. An additional forested buffer will be planted on the site. No rip-rap or other armoring is necessary or proposed within the Greenway or elsewhere on the site. Neither of the activities proposed to take place within the greenway have significant

erosion potential when done properly, and what potential does exist will be minimized through proper design and construction as has been specified by the applicant. The methods proposed by the applicant to protect all affected areas from erosive loss are compatible with the character of the Willamette River Boundary and Greenway.

11.3.13 Under YCZO 902.06(M):

“(M) That any extraction of aggregate deposits and reclamation shall be conducted in a manner designed to minimize adverse effects on water quality, fish and wildlife, vegetation, bank stabilization, stream flow, visual quality, noise and safety.”

This section makes clear that extraction of aggregate deposits is allowed in the greenway under certain circumstances that are not limited by the presence or absence of farm soils. To the extent this standard applies (it is not clear that any mining will take place in the actual greenway), it is met as demonstrated by the application and as explained further by the applicant in the course of the proceedings. As indicated, extraction of aggregate is proposed to take place (if at all) in a minor portion of the greenway, in part of an area that appears to be in the greenway due to a mapping error, and is not actually within the greenway. Nevertheless, the proposal is designed to minimize adverse effects on water quality, fish and wildlife, vegetation, bank stabilization, stream flow, visual quality, noise and safety, and reclamation is guaranteed through bonding and oversight by DOGAMI. The value of the site as fish and wildlife habitat will be dramatically improved over time, as the site is reclaimed, with public recreational access, promoting the overall goals and purposes of the Greenway.

11.3.14 Under YCZO 902.06(N):

“(N) That recreational needs shall be satisfied by public and private means in a manner consistent with the carrying capacity of the land and with minimum conflict with farm use.”

The proposed conservation easement or dedication of the entire reclaimed site to public park purposes is intended to benefit the neighborhood community and the general public. The area of Willamette Mission State Park in Yamhill County is currently used primarily for hunting and passive recreation consistent with the carrying capacity of the land and minimal conflicts with farm use (see other findings establishing the minimization of conflicts with farm use). The end use of the site, as specified in the conditions, will help to satisfy ever-growing recreational needs of the county and region, by either public or private means, consistent with the capacity of the land to accommodate such activities.

11.3.15 Under YCZO 902.06(O):

“(O) That maintenance of public safety and protection of public and private property, especially from vandalism and trespass, shall be provided to the maximum extent practicable.”

Portions of the low flow channel that enter the greenway will not pose a public safety threat, and are not expected to promote either vandalism or trespass. The impact to the greenway in this case is minimal (a fish passage channel) and not anticipated to have any impact to greenway uses. Mining uses will only take place in the agricultural field on the east side of the County road. Visitors to the park and greenway are unlikely to confuse the existing agricultural field or the mining project with park or public access areas, and are not likely to “accidentally” enter the mining area. To the extent vandalism and trespass already take place in the area, they are unlikely to be affected by the project. Under the mining and reclamation plan and conditions of approval, maintenance of public safety and protection of public and private property, especially from vandalism and trespass, are being provided to the maximum extent practicable.

11.3.16 Under YCZO 902.06(P):

“(P) That any development shall be located away from the river to the greatest possible degree. A minimum building setback line of fifty (50) feet from the ordinary high water line of the Willamette River shall be maintained, except for buildings and structures in conjunction with a water-related or water-dependent use.”

YCZO 902.02 contains the following relevant definitions:

“902.02 Definitions. For the purpose of this section, the following words, terms and expressions shall be interpreted in accordance with the following definitions, unless the context requires otherwise:

* * *

C. Development - any activity within the WRG Overlay District which would alter the elevation of the land, remove or destroy plant life, cause structures of any kind to be installed, erected, or removed, or a change of any kind from the conditions existing as of the effective date of this ordinance, but not including farm use.

D. Intensification of Use - any additions which increase or expand the area or amount of an existing use, or the level of activity.

E. Natural Vegetative Fringe - the natural vegetative area that provides a transition between the water of a river and the most landward edge of such natural vegetated area.

F. Ordinary High Water - the level to which waters ordinarily rise annually, usually represented by the line of permanent vegetation.

G. Water-Dependent Use - a use or activity which can be carried out only on, in, or adjacent to water areas because the use requires access to the water body for water-borne transportation, recreation, energy production, or source of water.”

No buildings are proposed, but approximately 2.9 acres of land is contained in the area where the boundary appears to jut into Tax Lot 600. That area includes a 50-foot mining setback, and part of mining cell 23. Approximately one acre of land would be disturbed adjacent to the slough (during construction) for the fish channel. These activities both constitute “development.”

The mine plan includes a minimum setback from the Willamette River (in this case the side channel) of 350 feet. With the exception of fish channel construction, no forest or riparian vegetation will be disturbed within 350 feet of the side channel. On site, no mining or haul road activities will affect the existing slough vegetation lines. The Fish Channel will connect the proposed ponds to the Willamette River and thereby allow fish migration and improved fish habitat. The proposed disturbance area for the fish channel will be revegetated, and will function in the same manner as existing and (once) numerous side channels on the native floodplain. The area of the proposed fish channel is currently an irrigation pump easement access road.

To the extent the low-flow channel is a “structure,” it is a water-dependent use as defined in the YCZO because it requires access to the river for the water-borne transportation of fish from the mining and reclaimed ponds, to the river, in order to operate. The remaining potential greenway areas, which also contain valuable aggregate resources, will be partially preserved as “buffer,” only partially mined, and reclaimed as fish and wildlife habitat. As noted, the area to be mined is separated from most of the greenway by a County road that was likely intended as the actual boundary of the greenway. No part of the operation will be visible from the river. As noted, the site will be reclaimed and over time enhanced as fish and wildlife habitat. The proposed vegetative buffer areas will direct development away from the river during the operation phase. Those areas, along with the mine itself, will be reclaimed to be integral parts of the riverine system, with improved backchannel complexity and fish and wildlife habitat values over those currently existing on site.

11.3.17 Under YCZO 902.06(Q):

“(Q) That public access where necessary and appropriate, shall be provided to and along the river by appropriate legal means for any public use or development.”

The excavation, washing and sorting aspects of the proposed use are considered industrial during operation phases. Agricultural use will also continue until excavation is complete. The end uses of the site are considered agricultural, rural, and open space, “fish and wildlife habitat” “wetlands,” and public-access or outright public recreation. Especially during mining phases, where machinery is operating and hazardous conditions may at times exist, it is not necessary or appropriate to provide or encourage the public to enter the mining area. The low flow channel is of simple design with engineered slopes, and while the public will not be encouraged to access the river by way of the channel, it will not present any greater dangers to the public than any other access to the river in the area where it will be located. Other public river access exists nearby and is clearly marked for that purpose, on public land (with an existing parking area, signage and related park facilities). It is not necessary for the applicant to provide additional access to the river, given current public park river access at this location. As indicated, most of the greenway in the area is currently in public park use, and the applicant is proposing end use of the site as an addition to Willamette Mission State Park or as available for public recreational use under a Conservation Easement.

11.3.18 Under YCZO 902.06(R):

“(R) That the development, change or intensification of use shall provide the maximum possible landscaped area open space or vegetation between the activity and the river.”

The applicant has maximized the amount of undisturbed buffer area to remain during all stages of excavation to the greatest extent possible consistent with the proposed development. The low flow channel is a minimal intrusion into the greenway. Consistent with this section, almost all of the open space and native vegetation between the proposed mine area and the river will be maintained and enhanced.

12. Goal Findings. The following findings address the consistency of this Ordinance with the Statewide Planning Goals.

12.1 Goal 1--Citizen Involvement. Goal 1 directs local governments to adopt and administer programs to assure citizen involvement in all phases of the planning process. The notice of hearing and all other elements of the hearings process before the Planning Commission and Board of Commissioners complied with applicable law and provided full opportunity for citizen involvement. The applicant also met with neighbors of the site. Numerous hearings were held, also demonstrating compliance with this goal.

12.2 Goal 2--Land Use Planning (Coordination and Factual Base). Goal 2 requires that the County coordinate its land use decisions with the plans of other affected

governmental units. Affected governmental units are those local governments, state and federal agencies and special districts that have programs, land ownerships, or responsibilities within the area affected. The County, all state agencies, and many federal resource agencies, have long-established coordination programs to facilitate review of land- and resource-use proposals, including mining.

The County provided notice of the proposal to the Dayton Fire Department; Division of State Lands; County Public Works; Yamhill Soil and Water Conservation District; Oregon Department of Land Conservation and Development; Oregon Department of Geology and Mineral Industries; Oregon Department of Fish and Wildlife; Oregon Department of Agriculture; Oregon Water Resources Department; Oregon Parks Department; Oregon Department of Transportation; Marion County and others and posted the application on-line. All comments received from affected governmental units were addressed through the County application and hearing process. By following established procedures in reviewing this application, the County is in conformance with Goal 2.

Goal 2 also requires that the County establish a factual basis for its decisions. A factual basis for the decision has been established through the course of the application and review process and was supplemented through the hearing process. The County's decision is supported by substantial evidence.

12.3 Goal 3--Agricultural Lands. Goal 3 directs local governments to preserve and maintain agricultural land. Goal 5 requires that the County inventory and protect aggregate resources. Once a significant resource is identified, even if it is located under agricultural land, the County is required to resolve conflicts identified by rule and if mining is allowed, to establish a "Program to Achieve Goal 5" for the site. Wetlands and wildlife habitat are allowed uses in EFU zones. In this case, conflicts between use of the site as a mining site and neighboring agricultural uses have been addressed in these findings and minimized through detailed mining and reclamation plans and limiting Conditions of Approval.

12.4 Goal 4--Forest Lands. Goal 4 directs local governments to "conserve forest lands." The site is plan designated "Agriculture Forestry Large Holding" and zone designated for Exclusive Farm Use. The extraction area is an open agricultural field. Commercial forestry uses are not taking place on the site and are not proposed. Forested areas of the site will be maintained and improved by the applicant as riparian fringe wildlife habitat; for recreational uses; and as a buffer between proposed uses and both neighboring residences and the Willamette River. Under the conceptual mining and reclamation plans, existing forested lands at the site will be conserved and enhanced, consistent with Goal 4.

12.5 Goal 5--Open Spaces, Scenic and Historic Areas and Natural Resources. Goal 5 is "To conserve open space and protect natural and scenic resources." The list of resources to be protected under Goal 5 includes aggregate resources. This approval is being granted in conformance with Goal 5 and the Goal 5 administrative rule. The relationship of this proposal to other Goal 5 resources is described in the record. The conceptual mine and reclamation plans and limiting Conditions of Approval minimize

potential impact to other Goal 5 resources in the area in conformance with Goal 5 and the Goal 5 interpretive rule.

12.6 Goal 6--Air, Water and Land Resources Quality. Under Goal 6, local governments must ensure that land uses do not threaten to violate, or violate, state or federal environmental quality standards. The Conditions of Approval require that the applicant obtain all necessary permits protecting water and land resource quality. DOGAMI provides notice to numerous state and federal agencies with jurisdiction or potential jurisdiction over the site, and incorporates and addresses comments in its permitting decisions. DSL, DEQ, the US Army Corps of Engineers, State and Federal Fish and Wildlife agencies, and the National Marine Fisheries Service all participate in permitting for the site. The applicant has submitted conceptual mining and reclamation plans and limiting conditions that establish the feasibility of designing the project to meet all environmental requirements for the site to a level consistent with Goal 6.

12.7 Goal 7--Areas Subject to Natural Disasters and Hazards. Goal 7 directs local governments to protect life and property from natural disasters and hazards. The subject property is within the floodway of the Willamette River. The applicant has submitted detailed studies by geologists and other specialists in hydraulic engineering and fluvial geomorphology. The applicant's hydraulic analysis, as it relates to applicable standards, demonstrates the feasibility of compliance with all applicable floodplain and floodway standards. The applicant's original analysis has been well supplemented by the applicant in the course of the proceedings. The Board has specifically weighed the credibility and substance of the applicant's testimony and contrary opponent testimony, and found the applicant's testimony more credible and complete than counter-testimony. This decision is consistent with Goal 7.

12.8 Goal 8--Recreational Needs. Goal 8 directs local governments to plan for the recreational needs of its citizens. The proposed reclaimed use of the site is for creation and enhancement of wetlands and fish and wildlife habitat, in a manner that also allows public recreational use. The applicant is proposing to dedicate the reclaimed site as parkland (to the extent allowed by law) at the time of full reclamation, and/or to record a conservation easement allowing public recreational use of the site consistent with its use as wildlife habitat and wetlands. This decision is consistent with and promotes Goal 8.

12.9 Goal 9--Economic Development. Goal 9 directs local governments to provide adequate opportunities for continued economic growth in Oregon. The focus of Goal 9 is on commercial and industrial development, primarily in urban areas. The applicant has indicated that the mining operation at the site will provide jobs in Yamhill County and raw materials essential for the construction of businesses, homes and infrastructure, promoting Goal 9. No local government Goal 9 inventories are negatively impacted by this decision.

12.10 Goal 10—Housing. Goal 10 is to provide for the housing needs of citizens of the state. No housing is proposed, nor will this proposal remove potential urbanizable

land that could be used for housing from any inventory. Goal 10 is not relevant to this decision.

12.11 Goal 11--Public Facilities and Services. 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.” This decision will not negatively impact any identified public facilities or services. Significant conditions of approval minimize potential impacts to transportation infrastructure. The availability of competitively-priced alluvial sand and gravel in local markets promotes business, community and local government efforts to provide “orderly and efficient” cost-effective public facilities and services, consistent with Goal 11.

12.12 Goal 12--Transportation. Goal 12 directs local governments “to provide and encourage a safe, convenient and economic transportation system.” Aggregate resources can affect the local transportation system, and are also needed to maintain such a system. To ensure compliance with Goal 12, the Transportation Planning Rule and local plans, the applicant submitted a traffic impact analysis. The applicant’s analysis, and additional information regarding local roads and the Lambert Slough Bridge presented during the hearing process, demonstrate compliance and consistency with Goal 12 and the Transportation Planning Rule.

12.13 Goal 13--Energy Conservation. Goal 13 declares that: “land and uses developed on the land shall be managed and controlled so as to maximize the conservation of all forms of energy, based upon sound economic principles.” Continued local production of aggregate will conserve significant amounts of energy otherwise necessary to import similar resources from more distant sites. This decision promotes and is consistent with Goal 13.

12.14 Goal 15--Willamette River Greenway. 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 County implements this goal through imposition of Willamette River Greenway Overlay zoning and development permitting. An insubstantial portion of the site may be affected by mining, and the fish passage channel would cross through the Greenway. Consideration of Goal 15 has been assured through County review of applicant-submitted detailed findings and information demonstrating compliance with all applicable Overlay standards. Compliance with Overlay standards, and consistency with Goal 15, is demonstrated by these findings.

12.15 Remaining Goals. None of the remaining Statewide Land Use Planning Goals, including Goal 14—Urbanization and Coastal Goals 16-19, are relevant to this Ordinance.

Rebuttal Findings

13. Impact Area

13.1 Under the Goal 5 rule, the “impact area” is:

“for the purpose of identifying conflicts with proposed mining and processing activities. The impact area shall be large enough to include uses listed in subsection (b) of this section 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.”

The “impact area” is an analytical tool. In this case, the applicant analyzed all impacts that are listed in the rule, considering all uses that are taking place within 1,500 feet of the perimeter of the mining area. In demonstrating that all conflicts can be minimized within 1,500 feet, there is no basis for concluding that impacts will occur beyond 1,500 feet.

13.2 Opponents have suggested that groundwater impacts, or flooding impacts, or dust, or noise impacts, or traffic impacts, will potentially harm farm uses on the entire island. Based on those claims, opponents have requested that the impact area be extended to include the entire island. There is no rational basis for many of the claims of the opponents that the proposal will harm uses miles away from the site. The record contains ample evidence of uses and practices taking place on the island. Potential conflicts identified by opponents are either addressed by the mine plan and conditions, or are not supported by scientifically verifiable data. The County acknowledges all of the information it has received regarding farm uses taking place on the island, and concludes that none of those uses are likely to be impacted “significantly” by the proposed operation—not within 1500 feet, and not elsewhere on the island beyond 1500 feet.

14. Minimization of Conflicts

14.1 Flooding

14.1.1 Throughout these proceedings it has been suggested that mining the site and leaving a large wooded lake will exacerbate flooding of the site, during operation, in its reclaimed state, or both. The best expert advice on flooding is the advice of Lidstone and Associates, based particularly on its study of the Willamette River in the vicinity of the project. The Board accepts the testimony of Lidstone and Associates as outweighing testimony presented by the opponents’ experts. Floodplain development is common enough, and dangerous enough, to be a Federal matter, that counties implement through their zoning codes.

14.1.2 The Goal 5 rule limits the “conflicts” that a local government can consider in deciding whether or not to approve a request for a post-acknowledgement plan amendment. A county is allowed to consider “conflicts due to noise, dust or other discharges.” With respect to these impacts, the rule states that they are considered “minimized” when applicable (generally, “clear and objective,” or numeric) “local, state

or federal standards” can be met.¹ In that case, “to ‘minimize a conflict’ means to ensure conformance to the applicable standard.”

14.1.3 “Flooding” is not listed in the Goal 5 rule as a conflict that needs to be minimized. “Flooding” is also not a “discharge” that fits into the category of “other discharges” in the Goal 5 rule. Webster’s uses almost an entire column to define “discharge,” with the closest definition being “a flowing or issuing out.”² It is the river that discharges floodwaters, not neighboring lands, which are the recipients of floodwater.

14.1.4 There is good reason for not lumping “flooding” into the phrase “other discharges” in the standard that requires an applicant to prove to the county that all “discharges” have been “minimized.” The design and regulation of mining operations in Oregon is the responsibility of the Department of Geology and Mineral Industries (DOGAMI). If a site is designed to “discharge” stormwater or process water, an applicant is required to prove to DOGAMI that EPA/DEQ standards are met. It is not the County’s responsibility to issue state or federal permits, or to judge local land use proposals on whether they meet applicable state or federal standards. The applicant need only demonstrate the feasibility of applying for and obtaining necessary permits.

14.1.5 Even if flooding of the site and surrounding properties is properly characterized as an “other discharge” and the applicant is required to show in these proceedings that potential flood impacts are “minimized,” the applicant has done so in this case. As was noted in the application:

“An extensive geomorphic stability assessment was conducted for this project, that must also be approved by DOGAMI, prior to mining, and will be monitored for the life of the project, by the State, until reclamation is complete. The completed ponds will improve the flood storage capacity of the site, and proposed revegetation will further impede flood velocities. Significant setbacks, (a minimum 350 feet from a primary slough of the river), along with the applicant’s planting program and predicted, continued low velocity backwater flooding, make accelerated channel change and ‘capture’ unlikely. Erosion control practices required by DOGAMI, mining cells of only 3.8 to 8.7 acres at a time, and continuous, sequential reclamation, will minimize the risk of turbidity and sediment loading. All areas subject to flooding and erosion will be properly seeded with a cover crop prior to the onset of winter flooding.”³

¹ OAR 660-023-0180(1)(g).

² Webster’s Third New International Dictionary (Unabridged ed., 1993) at 644.

³ Application narrative, Tab 3, page 14.

These statements, and the development plans, are backed by extensive data and analysis of the behavior of the river and of the site. Although flooding was much discussed by neighbors and the organized opposition, little need be added to what was included in the application to “rebut” the fearful, unsubstantiated conjecture that has been presented into the record of review.

14.1.6 As additional evidence to rebut claims of the potential for the project to cause catastrophic flooding is a letter from Frank Schnitzer (DOGAMI) provided a letter discounting claims made by opponents, and stating reasons why “there have been no pit captures of floodplain mines in the mid-Willamette Valley, even though some of the oldest sites are setback from the channel by only 100-150 feet.” (R-1776). He also stated: “DOGAMI agrees with the geomorphic conclusions by the applicant that the current geomorphic conditions are the result of gradual accretionary processes. We expect this slow migration of river banks to continue, with or without the presence of the proposed floodplain mine pond on the left bank floodplain.”

14.1.7 Additionally, to the extent “flooding” is an “other discharge,” there is a numeric local standard that applies, and under the Goal 5 rule, any identified potential flooding conflicts are “minimized” if the applicant can “ensure conformance to the applicable standard.”

14.1.8 The applicable local standards for development in the floodway are found in YCZO section 901. Under section 901.09, in a floodway, no “development” may take place:

“unless certification is provided by a registered professional engineer demonstrating through hydrologic and hydraulic analyses performed in conformance with standard engineering practice that the proposal will not result in any increase in flood levels during the occurrence of the base flood discharge.”

This is the applicable local standard. The “burden of proof” is on the applicant to “ensure conformance” with this standard, which the applicant has done through the stamped report of a registered professional engineer, who has demonstrated through hydrologic and hydraulic analyses that nothing proposed will increase flood levels during the occurrence of the base flood.

14.1.9 The analysis submitted in this case covers an extensive reach of the Willamette River, and goes far beyond the kind of analysis usually necessary to remove materials from a floodway. It is clearly feasible for the applicant to demonstrate conformance with the “no net rise” standard, and there is no basis for imposing a more stringent standard in this case. The existing standards protect all human activity in and near the floodway by requiring the kind of analysis the applicant provided. The County’s decision regarding whether flood “discharge” impacts can be minimized is based on

expert testimony received, and in consideration of the base flood standard in its code. As with all other floodplain and floodway decisions in the County, a Goal 5 decision is most reasonably based on scientific and engineering analysis of the kind submitted in this case, not anecdotal evidence, not conjecture or speculation.

14.2 Claimed Fish Channel Flood Impacts

14.2.1 Misunderstandings about the proposed fish channel has led to unwarranted fear about what is actually a very positive aspect of this project. The fish channel will vastly improve the quality of the site as fish and wildlife habitat by allowing fish access for feeding and refuge, without trapping them on the site.

14.2.2 The fish egress channel will consist of a gated culvert/pipe under Upper Island Road. The gate will be removed at full reclamation. The culvert and engineered channel will not encourage or exacerbate flooding, will not cause any erosion, and will not change the pattern or degree of severity of flooding at the site, or anywhere else on the island.

14.2.3 The fish egress channel proposed here has been used successfully on a number of active floodplain mines in western Oregon and has been required by ODFW and DOGAMI. DOGAMI is responsible for final review and approval of the fish egress culvert/channel, with input from a host of State and Federal agencies. ODFW is encouraging fish channels and DOGAMI is requiring them because they promote local fishery enhancement and because there is no evidence that a properly constructed fish egress connection will exacerbate either flooding or erosion.

14.2.4 From an engineering perspective, the fish egress channel and its stability has been “over designed” and the channel will be stable under a wide range of flow and flooding conditions. The proposed culvert/channel daylights into a side channel of the Willamette (not the mainstem) and the side channel has been progressively closing off since 1948. The side channel is backwater, and will rise and fall with the elevation of the main river- but without the main river’s velocities. The proposed location of the fish channel follows an existing road and irrigation water intake through the “leave strip” adjacent to the river. Baker Rock does not anticipate removing any significant trees in the construction of the fish egress channel, and is proposing to replant a large portion of the 50-foot leave strip on the site with native forest, as previously existed at the culvert/channel location.

14.2.5 To be conservative, Lidstone & Associates modeled the velocities in the side channel as if it were the mainstem under a range of flows including the June 1 flow (17,100 cfs), the 2-year event, 5-year event, 10-year event, 25-year event and 100-year event (250,000 cfs). The HEC RAS model was calibrated to actual flooding conditions and also to the Yamhill County FIS model. Velocities against the bank (main channel bank) range from 1.15 feet per second (fps) to 4.16 (fps), none of which are erosive if the

bank is vegetated. The worst-case hydraulic event was identified by Lidstone as the 25 year event (Q=198,800 cfs) and in that event, the entire site, including all of the ponds, will be flooded. The bank of the side channel is heavily vegetated and nothing in the mining process will remove the vegetation. Baker Rock has committed to revegetate the fish egress channel as part of their reclamation plan, and to design the channel to require little or no long-term maintenance, and to act as a natural backwater channel into the reclaimed lake.

14.2.6 In summary, and as Chris Lidstone and Lidstone and Associates described in great detail at the hearings and in written testimony, geomorphic conditions are very suitable and accommodating for the proposed fish channel. The applicant's plans will not change the physical condition of the riparian area between the main channel and the side channel, and will decrease the erosive potential of the currently exposed farmed field through the planting of a 50-foot buffer of forest along the north edge of the road adjacent to the site. The engineering of the proposed culvert and channel is very conservative, and is well-designed for both the operating and reclaimed phases of the project.

15. Potential Groundwater Impacts

15.1 In this case, the applicant has appropriately addressed potential groundwater impacts through studies conducted and limiting conditions. The opponents have argued that the proposal would raise the water table to flood the slough, while lowering the water table so that wells drilled 50 or more feet into the unconfined aquifer and used for drinking water (not a great idea in the first place, when a deeper and more protected drinking water supply is available) will go dry. Nothing has been placed into the record or said at any hearing that supports these fear-based claims. Testimony of Chris Lidstone and Lidstone & Associates has rebutted these claims.

15.2 The County faced similar claims to those presented now, in review of an earlier (approved) application by C.C. Meisel. In that case, C.C. Meisel had been dewatering a much larger area than the 3-9-acre cell that Baker Rock is proposing to dewater in this case. With Meisel, the quantity of water in neighboring wells had diminished, and C.C. Meisel had been providing replacement water, in an apparent effort to be a good neighbor. Even in that case, investigation by the Department of Geology and Mineral Industries and the Department of Water Resources established that the Meisel dewatering operations had nothing to do with the quantity of water in any neighboring well.

15.3 The applicant's responsibility in this proceeding is to identify potential conflicts and to minimize them to the point where they can not be considered significant. The original Lidstone Report includes extensive, detailed analysis of groundwater conditions developed by experts in the fields of hydrology and hydrogeology. In response to fear-based, not science-based, testimony, the applicant moved the infiltration trench to the center of the site, proposed an extensive monitoring and testing program, and agreed

to a condition guaranteeing the quantity and quality of neighboring wells. Other activities on the island, including fertilizer, herbicide and pesticide use, have the potential to impact drinking water wells that pull water from the shallow unconfined groundwater on the island. The conditions proposed by Baker Rock and imposed by the County by Ordinance 873 will protect neighboring wells far beyond the protection being afforded to any other shallow domestic well, on the island or anywhere else in Yamhill County.

15.4 There is substantial evidence to support a conclusion that the applicant's proposed minimization techniques will be more than adequate to minimize potential harm to the quantity or quality of any neighboring well, even those drawing drinking water from the unconfined aquifer. The applicant has committed to establishing baseline conditions at neighboring wells; to monitor groundwater conditions continuously in its own monitoring wells; to make all information and data collected available to neighbors and members of the public through neighborhood meetings; and to take immediate steps to correct any problems that arise. These conditions are enforceable by the County, and the same requirements—that no gravel operation is allowed to harm neighboring wells—are enforced by both DOGAMI and the Department of Water Resources. Given the study completed by the applicant; the extensive conditions to ensure compliance; and the State regulatory system currently in place to protect neighboring wells, the applicant has met its burden of identifying and minimizing potential groundwater "discharges," under the Goal 5 rule, within 1500 feet and as to the entire island.

16. Dust Conflict and Minimization

16.1 In this case, potential conflicts with dust can be effectively minimized, using reasonable and practicable measures, to a level at which they are no longer significant. Potential dust conflicts were addressed by the applicant in its application narrative, at pages 13-14. The applicant also proposed a condition (#11) requiring dust control practices that will protect residences in the area and prevent generation of dust in violation of DEQ's Fugitive Dust Standard, which applies in this case.

16.2 Once again, DEQ's Fugitive Dust Standard states:

"(2) No person may cause or permit any materials to be handled, transported, or stored; or a building, its appurtenances, or a road to be used, constructed, altered, repaired or demolished; or any equipment to be operated, without taking reasonable precautions to prevent particulate matter from becoming airborne. Such reasonable precautions may include, but not be limited to the following:

(a) Use, where possible, of water or chemicals for control of dust in the demolition of existing buildings or structures, construction operations, the grading of roads or the clearing of land;

(b) Application of asphalt, oil, water, or other suitable chemicals on unpaved roads, materials stockpiles, and other surfaces which can create airborne dusts;”⁴

16.3 This is a nuisance standard, requiring all persons to use “reasonable precautions” to prevent particulate matter from becoming airborne, and applies to all aspects of the applicant’s operation. These regulations also constitute the applicable standard for minimizing fugitive dust conflicts under the Goal 5 rule. As stated, potential dust impacts to dust sensitive uses in the impact area will be minimized through wet mining practices; by watering access roads and stockpiles as necessary to prevent dust generation; and by similar reasonable and practicable measures. The applicant has demonstrated the feasibility of controlling both fugitive and non-fugitive dust.

16.4 The steps the applicant has already agreed to take to protect people from the impacts of dust, will also protect all identified farm practices in the area and along the haul route from dust. There is no rational basis for concluding that the applicant cannot control dust using available water and best management practices. Because “significant” dust will not be generated, it cannot “significantly” increase farm costs or force “significant” changes in farm practices anywhere near the site, including along the haul route. The opponents submitted no credible evidence or testimony that supports a finding that the proposed operation cannot control the generation of dust at the site or related to the haul route to prevent dust impacts to sensitive uses and/or farm uses in the area using reasonable and practicable measures.

16.5 In Molalla River Reserve, Inc. v. Clackamas County,⁵ (MRR) the county determined that the aggregate resource on the site was significant, but refused to allow mining, in part, due to the applicant’s supposed failure to demonstrate that dust conflicts could be minimized. The site was proposed for wet mining, but the applicant would also have operated a crusher. Remanding, LUBA directed the County to reconsider its conclusions regarding dust and dust suppression at the site, under the Goal 5 rule.

16.6 In its opinion, LUBA stated:

“With regard to dust conflict mitigation, we * * * conclude that the county’s findings are inadequate to explain the county’s conclusion that petitioner failed to demonstrate that dust conflicts can be minimized.”

LUBA acknowledged the obvious with regard to dust suppression by stating:

“Ultimately, it appears that access to water is a critical component in addressing dust conflict minimization.”

⁴ OAR 340-208-0210(2).

⁵ Molalla River Reserve, Inc. v. Clackamas County, 42 Or LUBA 251 (2002).

16.7 Baker Rock has access to sufficient water to prevent the generation of fugitive dust at the site. The same water can be used in a wheel wash trough for exiting trucks and to moisten loads leaving the site so that dust will not be generated along the haul route. A tank truck will be available during all periods when dust might otherwise be generated. Using readily available control technologies and management practices, the Baker Rock site will generate less dust than most agricultural uses, because most agricultural uses do not establish and maintain dust suppression programs.

16.8 Water is exceptional for controlling dust, and is plentiful on the site. Application of water, and best management practices, will reduce the dust-generating potential of areas of the site identified as susceptible to dust generation. Those areas will be monitored and maintained either by covering with clean gravel, vegetating, or watering with a water truck or pressure hose.

16.9 Best management practices that include wet mining will greatly diminish potential dust generation. Nevertheless, additional water remains an essential component ensuring that dust will not impact nearby dust sensitive uses, and will not force a significant change in, or significantly increase the cost of, any identified or likely agricultural practices on any neighboring (or other) property devoted to farm use.

16.10 Additionally, steps will be taken to ensure that no mud or dust is tracked onto the local County road, and that if any inadvertent tracking occurs, it is cleaned up in a timely manner. The applicant has agreed to all of these methods to minimize dust, in proposed condition #11. The opponent's testimony did not address the applicable standard (DEQ's Fugitive Dust Standard) or the program the applicant has proposed to minimize dust. The applicant must demonstrate that potential dust impacts, to sensitive uses and farm practices, are minimized. The Goal 5 standard, by requiring dust minimization to levels that protect people, will also protect dust-sensitive farm uses and crops. The standard is not a 'zero dust standard.' No farm enterprise will be forced to significantly change its practices or will incur significant cost increases due to the project. A zero dust standard does not apply to any other activity in the State of Oregon, including, most particularly, agricultural practices. No opponent has explained why it is not possible to control dust using readily available water and best management practices, as proposed by the applicant.⁶

⁶ In its MRR opinion, LUBA sustained the petitioner's first assignment of error, and stated:

"On remand the county must first address and resolve petitioner's contention that at least one 5,000-gpd well can be drilled on the subject property outside the quarter-mile "hydraulic presumption" area. If that issue is resolved in petitioner's favor, the county will then be in a position to determine whether the availability of that water changes the county's view about the need for additional mining operational detail in assessing dust conflicts. If the county remains of the view that additional mining detail is needed, the county must provide at least general

16.11 As in Molalla River Reserve, the applicant can legally drill a well on site capable of generating 5,000 gallons of water per day, for industrial uses.⁷ The site also has 2.5 acre-feet of water rights per acre, a functioning irrigation system, and electric service. Mining wet decreases dust generation; washing the gravel on site (as proposed) further reduces the potential of dust generation from stockpiles. Water is available on-site for cleaning the access drive (and road if necessary); wetting internal haul roads when necessary; maintaining a wheel wash; and adding moisture to dry loads of product leaving the site, if there is any possibility that the load would otherwise generate dust. These activities will not be necessary at all times, but they are reasonable and practicable methods that are well known to prevent dust generation.

16.12 In Molalla River Reserve, (as noted by LUBA), the applicant:

“presented evidence that 3,300 gpd would be more than enough to mitigate any dust conflicts that might otherwise be generated by the proposed mining operation. Petitioner’s hydrogeologist submitted evidence that minimizing dust impacts is a matter of having adequate water and that the amount of water necessary for dust control at aggregate sites will vary from site to site. According to petitioner’s expert, a hard rock mining site in Yamhill County calculated its worst-case water need scenario to be 5,500 gpd for dust suppression. The expert explained that this worst-case scenario was much worse than could be anticipated for the proposed mine because the Yamhill County site is not wet mining and has a large quarry floor requiring dust suppression. The proposed mine has no quarry floor and significant portions will be open ponds. Record 1049. The expert estimated that the proposed site would require no more than 3,300 gpd for dust suppression.”

LUBA ultimately determined that it was inappropriate for the County to:

guidance about how to go about providing that detail and using it to address dust conflict mitigation.”

⁷ ORS 537.545, entitled “Exempt uses,” state: (1) Except as provided in subsection (4) of this section, no registration, certificate of registration, application for a permit, permit, certificate of completion or ground water right certificate under ORS 537.505 to 537.795 and 537.992 is required for the use of ground water for:

* * *

- (a) Stockwatering purposes;
- (b) Watering any lawn or noncommercial garden not exceeding one-half acre in area;
- (c) Watering the lawns, grounds and fields not exceeding 10 acres in area of schools located within a critical ground water area established pursuant to ORS 537.730 to 537.740;
- (d) Single or group domestic purposes in an amount not exceeding 15,000 gallons a day;
- (e) Down-hole heat exchange purposes;
- (f) Any single industrial or commercial purpose in an amount not exceeding 5,000 gallons a day;
- (g) Land application [under specified circumstances]”

“ignore petitioner’s ‘worst case’ approach to addressing the questions of whether water will solve the dust conflict minimization problems that might be associated with the proposed mine and, assuming that is the case, whether 3,300 gpd is an adequate amount of water. As described above, the applicant’s original approach appears to be a reasonable means for resolving dust conflicts where there may be material variations in the quantity of water needed from site to site.” (at 6)

16.13 Dust that would otherwise be generated at the site if no controls were implemented is easily controlled with water available on the site. Less than 5,000 gpd of water will be necessary to control all identified sources of dust on the property, including the washing area, conveyors, stockpiles, exposed topsoil and overburden, and access roads. By maintaining the gravel cover of access roads; conducting stripping operations when soil conditions are least conducive to fugitive dust generation; wet mining when possible; seeding stockpiles and exposed soils; and applying water to any area susceptible to dust generation, dwellings and all identified farm practices taking place in the area and along the haul road will be protected from dust impacts.

16.14 The following additional explanation is intended to demonstrate that the site and operation can comply with all DEQ dust standards and that dust conflicts with residential and agricultural uses are minimized, by the operating plan, the reclamation plan, and operational conditions, to a level that is not significant.

16.15 Todd Baker and his family have operated quarries for three generations, including large upland quarries in Washington County, and alluvial sand and gravel mines in Yamhill and Marion Counties. As to dust, the subject property has many advantages over upland quarry sites. Quarries become quite dry in the summer and early fall, and traveled surfaces can require regular water spraying, especially during windy high-pressure weather events.

16.16 In this case, the site has two to 14 feet of topsoil and overburden, with a layer of relatively clean, quality sand and gravel underneath. When a cell is opened, the topsoil and overburden will be removed, separated and directly applied in the reclamation of a previously mined cell. Overburden will be used to reshape pond slopes and to form the peninsulas and other features of the reclamation plan. Topsoil will be used to cover all areas of the reclaimed site that are not under water with 18 inches of soil, which will be planted with native vegetation.

16.17 The water level of the river and the groundwater level in the floodplain are approximately the same, so the surface of the working pond is expected to approximate the level of the river. Down to the clay lens or interbed, there is a relatively clean deposit of sand and gravel, further cleaned by being mined from the bottom of a man-made pond. The wet rock and sand will be stockpiled and loaded onto conveyors to be sorted and, if

necessary, washed. The water in the stockpiles will drain into a settling pond designed specifically for that purpose. More exacting procedures may be specified by DOGAMI.

16.18 These plans are reasonable and will be refined with the input of DOGAMI and all state, federal or local agencies with an interest in the site. The operator's personal experience is that control of dust, noise and erosion at the site will improve project efficiencies, a conclusion that is accepted by the Board. A project that is operated well environmentally and seeks community good will benefit all involved. Baker Rock is capable of complying with DEQ air quality standards, and is committed to ensuring that the operation will be cleaner than required by law, reducing or eliminating complaints from the neighbors or DEQ regarding air quality at or near the site. Binding conditions help to ensure compliance over time.

16.19 When wet mining, saturated sand and gravel will be lifted out of the operating pond into a temporary stockpile, for washing and sorting. From there, and while still wet, a front-end loader will load aggregate into a hopper, where it will be rinsed and introduced wet into a screening facility. Sprayers will control dust at the sorting facility including the conveyors and conveyor junction points. Water will be the primary dust suppressant. The processing facility, including all of its screens and conveyors, does not require an Air Contaminant Discharge Permit, but must comply with Oregon Department of Environmental Quality standards.

16.20 Front-end loaders will generally be used to load stockpiled rock onto trucks for transport from the site. Processing areas will be treated, as necessary, with water. Product will not contain significant levels of fine particles and will still be moist or will be moistened when it is loaded into trucks for transport to job sites or off-site processing facilities. The on-site access road will be maintained to prevent generation of fugitive dust by use of a water truck.

16.21 Overburden removal activities, temporary topsoil and overburden stockpiles, and the shore of the operating pond have all been identified as potential sources of dust. To prevent the generation of fugitive dust from these sources: overburden removal will be scheduled to take place at a time when moisture levels are sufficient to prevent the generation of fugitive dust; topsoil and overburden will be stored in vegetated stockpiles; and the edge of the process water pond will be contoured to a slope of 6:1 and vegetated.

16.22 Dry weather and wind contribute to dust generation and transport (in summer and early fall). The summer fair weather pattern includes weaker average wind speeds but with dominant daytime vertical convection currents rising from warmer surface regions, continuing into October. Every ocean storm approaching from the west has south winds ahead of it for a longer time than the westerlies behind it, resulting in prevailing south winds during times when dust concerns are greatest. Numerous other weather and wind patterns were presented by opponents, many based on personal

experience. The best conclusion to draw is that south winds—toward Marion County—predominate at the driest times of the year, but that intensive winds in other directions are also possible, at any given location.

16.23 As the applicant has indicated throughout this proceeding, a three- to nine-acre “cell” will be stripped of topsoil and overburden. Topsoil will be segregated, and used directly in the reclamation of a previously mined cell. Overburden will be used in reclamation and in construction of the berms necessary for noise abatement and the process water pond. Those berms will be vegetated, seeded and watered. The processing area will include a washing and sorting facility. Because water is used in the washing process, that process does not generate dust. The area around the processing area, and the on-site haul road, are the most likely sources of dust. Those areas will be maintained with a clean layer of gravel, and water will be applied to them when weather conditions might result in dust generation or transport.

16.24 The vast majority of the 220+ -acre site will be in one of three stages, for the life of the project:

1. Undisturbed riparian and wetland areas (none will be disturbed);
2. In active farm use;
3. Reclaimed areas and a lake with shorelines that have been properly graded, covered with an 18-inch layer of topsoil, planted with native riparian and forest species, and maintained until well-established.

16.25 Of these, only the active mining cell, the processing area and temporary stockpiles, the access road and farm practices on site have the potential to generate dust. There is plenty of water available, and best management practices are available, to control all dust at the site to a point where no significant dust will be generated by the project. Other projects and/or situations identified by opponents, where dust is not being actively controlled through facility design and management to the detriment of people, animals and/or crops, are not under consideration here.

16.26 As for potential haul route dust: the applicant has already pledged to control tracking of dust or mud to any location off of the site. The best method for controlling dust and mud leaving an aggregate site is to pave the access apron or maintain it with clean gravel, and to install a wheel wash for all vehicles to pass through during times when tracking is likely to occur. A great many of the loads leaving the site will have high moisture levels because the product is moist when it leaves the ground (even when ‘dry’ mining); because it has been washed; and due to wet weather conditions. At all other times, best management practices and water are undisputedly available techniques for preventing dust generation from the site and from haul trucks passing by sensitive crops, animals or people.

16.27 For the most part, controlling dust is inexpensive, and the applicant would have no incentive to refuse or neglect to control dust at the site as proposed. This project is capable of preventing the generation of fugitive dust and, whether the site is mined or continues to only be farmed, no more than normal background dust will (continue to) be deposited on any dwelling or farm crop anywhere on Grand Island or elsewhere. Neighboring residents and farmers currently must take appropriate steps to protect themselves from dust generated by agricultural practices, and will incur no additional costs, and will not be forced to change any practices whatsoever, due to the limited nature of the mining operation at the site.

16.28 The opponents have presented no evidence of any kind suggesting that the methods proposed by the applicant are not capable of controlling dust. They have attacked the issue from the other end—positing that if massive amounts of dust are generated by the applicant and if no steps are taken by the applicant to control any dust, then huge amounts of dust could travel thousands of feet (the nearest home is more than 2,500 feet from the processing area) and impact people, crops and livestock. Dust that is not generated cannot be transported to other locations, regardless of wind direction or velocity.

16.29 Use of conveyors in the processing area will limit the need for internal haul roads, which generate more dust than conveyors. The speed of vehicles within the site will be controlled, further limiting the potential for fugitive dust generation. Un-mined areas of the site will be retained as vegetative buffers, with the additional seeding and planting of all unused areas of the site and overburden stockpiles to diminish the amount of bare soil on the site during all seasons. All of these reasonable and practicable measures will diminish and limit the amount of dust potentially generated by the operation and limit the transport of dust to any neighboring property or use. In this way, the potential dust conflict is reduced to a level at which it will not be significant and will not violate DEQ standards for fugitive dust.

17. Potential Noise Impacts

17.1 As explained in the application narrative and in Kerrie Standlee's detailed report in Tab 16 of the application, all noise generated at the site can be controlled to meet applicable standards using reasonable, practicable, and readily available methods. Binding conditions of approval (# 20, #21, #22, and #23) require that the applicant take all steps necessary to comply with noise regulations throughout the life of the project. If an activity or machine cannot comply with the state noise regulations as to any sensitive use in the area, that activity cannot take place.

17.2 An additional memorandum from Kerrie Standlee is also included with this submittal. That memorandum answers several questions that were asked by Margaret Scoggan, regarding the noise study. Ms. Scoggan lives to the northeast of the site behind a forested buffer that will not be disturbed by the applicant, and more than 2,500 feet

from the sorting and washing area. Her repeated claims to flaws in the noise study are all without merit. No crusher is being proposed, and no blasting. All other activities on site that could possibly lead to a violation of noise standards at Ms. Scoggan's residence or elsewhere have been studied and modeled. A segmented berm has been proposed, which will likely not be needed until cell 14 is mined, at least 15 years down the road. The proposed berm is specifically to protect the Scoggan residence from noise, and it was redesigned to address concerns voiced by the Scoggans and Jacksons. No evidence has been provided by Ms. Scoggan or any other party to support a finding that the applicant is not capable of monitoring noise at the site and taking appropriate steps to ensure state standards are met as to the Scoggan residence and all other noise sensitive uses in the impact area or elsewhere.

17.3 The site is isolated, and the nearest dwelling is more than 2,500 feet from the processing area, behind a wooded slough. The applicant's noise study indicated that in 15 years or more from the beginning of the operation, mining activities will have moved close enough to the Scoggans' residence and Jackson house that in a "worst-case" situation, state noise standards might be violated. It is for that reason that the applicant proposed a segmented vegetated berm of up to 18 feet in height, to provide a barrier directly between mining equipment and the two houses. If for any reason the berm cannot be built, and no other appropriate steps could be taken to minimize noise generation to meet state standards, no mining could take place in that area.

17.4 Noise minimization in this case is not complicated, and the applicant has committed to monitoring noise for the life of the project and taking whatever additional steps are required to control noise to meet applicable standards. No opponent has produced evidence to support a finding that reasonable and practicable measures are not readily available—now, and likely to continue to be available and to improve over the next 30 years. Better mufflers are produced all the time. Effective control technologies include mufflers, berms, and strategically placed straw bales.

17.5 The applicant is capable of controlling noise so that state standards are met as to all surrounding sensitive uses. To the extent the opponents are claiming that haul route truck noise will disturb their serenity, or require significant costs or significant changes in farm practices to protect animals from noise, or to drive away tourists seeking to harvest or purchase farm products: these claims are without merit. There is no basis in this case for the County to single out aggregate trucks as significantly increasing farm costs or causing changes, as opposed to any other kind of vehicle.

17.6 The continued promotion and success of agri-tourism on the island would likely result in far more vehicles on local roads than the "worst case" 64 trucks per day from the proposed operation. Based on the applicant's traffic study and all other information in the record, island roads are capable of easily handling all of the proposed gravel trucks projected to use island roads, with significant room to spare. The County cannot prohibit

a legitimate economic activity on the basis that truck noise will be generated, when no other legitimate economic activity is prohibited on that basis.

17.7 There is also no basis for concluding that the presence of, or sound of, gravel trucks, will cause an emotional response in visitors seeking to harvest or purchase farm products or visit tour facilities, causing them to cease visiting the island. There is no evidence that, over the life of this project, what is proposed will have any negative noise, dust or other impact whatsoever, real or emotional, on residents, farm practices, recreational visitors, or farm visitors.

18. Potential Wetland Impacts

18.1 A consultant for the organized opposition testified that, in looking at the site from a neighboring property and at Google Maps, he could see what looked like farmed, degraded wetland areas on the subject property. His key complaint is that the authors of the applicant's wetland delineation study failed to identify wetland areas that he believes he has identified.

18.2 From a factual standpoint, the farmed and degraded "wetlands on the property" identified by the opponent's consultant are all outside of the proposed mining area. The consultant failed to superimpose the mining plan onto his Google Earth map, such that his "arrow" points to an area that is within a 50-foot buffer on the eastern edge of the site, and his "pin" is in a large buffer area near the slough that the applicant does not propose to mine.

18.3 From a regulatory standpoint: The County has no jurisdiction over wetland development, and no basis for denying permission to mine based on the presence of wetlands. Even if that were not the case, in this case, the wetland delineation in the record demonstrates a deliberate effort on the part of the applicant to avoid mining wetlands, even degraded and farmed wetlands. To the extent the County needs to establish that the site can be mined substantially as proposed and that it is feasible for the applicant to apply for and/or obtain all necessary state and federal permits, the study in the record and correspondence by the County with DSL, establishes that feasibility. In this case and in every land use case, County land use approval, of itself, does not allow any use that otherwise requires a DSL, USACOE, or joint permit. A standard, "compliance with law" condition (#4 of the applicant's proposed conditions) ensures conformance. The Goal 5 rule does not require or allow the County to prohibit mining at the site due to the presence of wetlands, as alleged by the opponents. The applicant has nevertheless demonstrated that all identified potential conflicts with wetland resources on or near the site can be minimized to a level at which they cannot be considered significant.

18.4 As outlined in the application narrative (p. 18-19) and elsewhere in these findings, subparagraph (D) of OAR 660-023-0180(4) requires the applicant to address:

(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.”

18.5 The County has not identified and inventoried any “significant” wetlands either at the site or within the analytical “impact area,” and has not ‘completed the requirements of Goal 5’ for any wetlands on Grand Island. ‘Completing the requirements of Goal 5’ would mean that the County had established the quantity, quality and location of the wetlands, determined that they were significant, and adopted a “program to achieve the Goal.”⁸ No inventoried, “significant” wetlands have been identified by the opponents or their consultants, real or imagined, that could serve as the basis for denying permission to mine in this case.

18.6 The application included every study the applicant believed would be necessary to fully permit the site with DOGAMI and other agencies, including DSL. The law does not require or allow the county to substitute its judgment for DOGAMI or DSL regarding permits within the jurisdiction of those agencies. The County’s responsibility is to determine if it is feasible for the applicant to obtain other required permits, and to impose conditions requiring that all other permits be obtained. Condition #4 helps to ensure compliance in this case.

18.7 In this case, the applicant is allowed, under existing rules, to mine wetlands located on the property, so long as mitigation is provided. The applicant has proposed reclamation of the entire site as open water, wetland and riparian fringe. The applicant is proposing to protect all identified wetlands on the site. Even if an area of degraded, farmed wetland were identified within the mining area, it is DSL, not the County, that would decide whether those areas could be mined. It is at that hypothetical time that DSL will consider whether the proposed reclamation plan, a mixture of open water, submergent wetland and riparian vegetation, is sufficient mitigation for the loss of any identified, farmed, degraded wetlands on the property.

18.8 Though there may be jurisdictional issues of concern to DSL with regard to the site, there are no prohibitions that would prevent Baker Rock from mining the site as proposed. Final design and required mitigation are the responsibility of DOGAMI, DSL, and other State and Federal agencies, not the County. The opponents’ ‘wetland’ objections have no basis in fact and no legal significance.

19. Potential Traffic Impacts

⁸ See OAR 660-023-0100, which is included in the DLCD and ODOT “Planning for Aggregate” guide provided by planning staff and included in the record.

19.1 Gravel trucks are subject to the same weight-per-axle limitations as every other similar vehicle, and the law does not allow the County to discriminate against Baker Rock in its use of public roads. As the applicant's traffic study demonstrates, 64 gravel trucks per day in the "worst case," is "minimal," and there is plenty of available capacity now and as projected into the future.

19.2 As for the bridge: A report issued on October 20, 2010, describes the results of expert study of the bridge, conducted for Yamhill County. The report establishes the strength of the bridge and its ability to withstand the stresses of all current traffic, and traffic predicted to be generated by both Joe Bernert Towing and Baker Rock. The report concludes that:

- "Under the present operating conditions, the bridge should continue operational performance well into the future, barring unforeseen natural or manmade hazards.

- Increasing the volume of heavy truck traffic [to levels anticipated at both aggregate sites] will produce marginal increases in the equivalent stresses in the bridge. These stresses are sufficiently small so that continued operational performance of the bridge is expected." (page 11)

19.3 Additional evidence has now been submitted that further supports the applicant's position that it has met the traffic impact minimization standard of the Goal 5 rule. That evidence is in the form of additional conditions (see, especially, Condition #12) requiring significant road improvements by the applicant, unless the applicant establishes a method of moving mined materials off of the island without using island roads. Conveyance off of the island may be accomplished by conveyor or barge, but if that is not possible, the applicant's agreed upon road improvement exactions include widening and repaving the local access road. A paving specialist has indicated to the County that the proposed improvements would be adequate to accommodate gravel trucks well into the future. To the extent the Public Works Department or the Planning Commission identified a potential traffic "conflict," the applicant has proposed road improvements that minimize that potential conflict to a level at which it can no longer be considered significant. The opponents have offered no evidence that the proposed road improvements will not be adequate to minimize identified potential conflicts with local roads.

20. Potential Farm Impacts

20.1 The standard protecting farm practices requires a County finding that the use will not:

- “(a) Force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; or

- (b) Significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use”⁹

Baker Rock is required, under other State standards, to minimize potential impacts to all “sensitive” uses in the impact area. Sensitive uses include homes, churches, and schools. Baker Rock has designed the project to minimize all impacts to nearby homes, the roads and bridge; and other Goal 5 resources; and to meet all objective environmental standards that apply. It is not reasonable to conclude that people and their homes within 1500 feet of the project will not be impacted, but that “farm practices” taking place over the entire island will be significantly impacted. The question is whether Baker Rock’s proposed use of the site will “force a significant change” or “significantly increase the cost” of farm practices on surrounding lands.¹⁰

20.2 With regard to conditional use approvals in farm zones, ORS 215.296(2) states:

“(2) An applicant for a use allowed under ORS 215.213(2) or 215.283(2) may demonstrate that the standards for approval set forth in subsection (1) of this section will be satisfied through the imposition of conditions. Any conditions so imposed shall be clear and objective.”

ORS 215.296 also contains a detailed process requiring county enforcement of conditions of approval intended to protect farming. Subsection (4) states:

“(4) Upon receipt of a complaint [of a condition protecting farm uses] filed under this section or ORS 215.218, the local governing body or its designee shall:

- (a) Forward the complaint to the operator of the use;
- (b) Review the complaint in the manner set forth in ORS 215.402 to 215.438; and

⁹ ORS 215.296(1).

¹⁰ See Von Lubken v. Hood River County, 118 Or App 246, 846 P.2d 1178 91993): “significant” is not a term of art, but “simply connotes a question of degree that is more a matter of fact than of law (at 250). Court rejected petitioner’s argument that “significant” means “anything more than trivial or frivolous.” (Id.):

“The substance of the statute addresses the concern in McCaw and Hopper that agricultural uses not be displaced by or subjected to interference from non-farm uses. The words “significant” and “significantly” limit, *251 rather than supplement, the protections that the statute affords.”

That is, not all impacts to farm uses are prohibited, even if the identified impacts are greater than what would be considered trivial or frivolous, they would still be allowed, unless they are “significant” impacts.

(c) Determine whether the allegations made in a complaint filed under this section or ORS 215.218 are true.

(5) Upon a determination that the allegations made in a complaint are true, the local governing body or its designee at a minimum shall notify the violator that a violation has occurred, direct the violator to correct the conditions that led to the violation within a specified time period and warn the violator against the commission of further violations.

(6) If the conditions that led to a violation are not corrected within the time period specified pursuant to subsection (5) of this section, or if there is a determination pursuant to subsection (4) of this section following the receipt of a second complaint that a further violation has occurred, the local governing body or its designee at a minimum shall assess a fine against the violator.

(7) If the conditions that led to a violation are not corrected within 30 days after the imposition of a fine pursuant to subsection (6) of this section, or if there is a determination pursuant to subsection (4) of this section following the receipt of a third or subsequent complaint that a further violation has occurred, the local governing body or its designee shall at a minimum order the suspension of the use until the violator corrects the conditions that led to the violation.”¹¹

20.3 Yamhill County Zoning Ordinance, section 1406 states:

“In the event a building or other structure is, or is proposed to be, located, constructed, maintained, repaired, altered, or used, or any land is, or is proposed to be, used, in violation of an ordinance or regulation designed to implement the Yamhill County Comprehensive Plan, the governing body of the county or a person whose interest in real property in the county is or may be affected by the violation, may, in addition to other remedies provided by law, institute injunction, mandamus, abatement, or other appropriate proceedings to prevent, temporarily or permanently enjoin, abate, or remove the unlawful location, construction, maintenance, repair, alteration or use.”

20.4 The County, (through Ordinance No. 865) has amended its comprehensive plan to identify the site as a significant aggregate resource. The County is now adopting a

¹¹ See also, ORS 215.050 and 215.190, authorizing counties to adopt comprehensive planning, zoning and subdivision ordinances, and prohibiting actions in violation of such “ordinance[s]” and “regulation[s]”.

“program to achieve Goal 5” for the site. In this case, the conceptual plans and the conditions of approval are the program to achieve the goal, and are “regulations.” Although this zoning code section allows broad enforcement of the proposed conditions locally, most local aggregate-related complaints are resolved between the complainant and the operator or through state agency pressure before any action is necessary locally.

20.5 Since 1987, Yamhill County has also had a “citation ordinance” allowing enforcement of land use violations, including violation of the county’s zoning ordinance and regulations, through the issuance of a citation into Circuit Court.¹² A departure from the terms of any condition of approval adopted by County ordinance that amends the comprehensive plan and establishes zoning overlays, is a violation of the zoning ordinance, and is enforceable through the citation ordinance and also through injunction, mandamus or abatement proceedings.¹³

20.6 Aggregate has been extracted from farm and forest areas in Yamhill County for as long as there has been an economy in Yamhill County. Well-planned and regulated gravel extraction and hauling do not force farmers to change practices or to incur additional costs. Gravel is commonly used in farm operations. Dwellings impose far greater limitations on agricultural development and production than gravel mining. Farmers utilize large equipment and trucks, similar to gravel miners. There is no basis for discriminating against one industry’s use of public roads to transport their product, or for promoting one sector of the resource economy and restricting another.

20.7 Some opponents, including many who do not live on or near Grand Island, would ask the County to use the farm use standard to ‘vote for agriculture over aggregate.’ That approach is a misuse of the standard.

20.8 In other words, some opponents are asking the County to stretch the farm conflict standard in ways the County has never stretched it before, in its many applications of the standard. The standard was not meant to prohibit mining in farm areas when conditions of approval effectively mitigate and render insignificant every identified potential impact to nearby farm uses, existing or that may appear in the future. There is room for agriculture and aggregate production in Yamhill County and on Grand Island.

20.9 As an example: the applicant is not required to prove that proposed aggregate extraction operations will have no impact on any farm operation in the vicinity. The ‘significantly increase cost or require significant changes’ standard has never required ‘zero potential impact.’ Homes and crops exist on roads used by gravel trucks and every manner of vehicle all over the state, without any significant impact to any of them. The applicant has nevertheless proposed appropriate conditions to prevent impacts to its neighbors and those living along the haul route and elsewhere on the island.

¹² See Yamhill County Ordinance No. 755.

¹³ See, also, YCZO section 1202.06 on enforcement of conditional use permit conditions.

20.10 Especially with regard to the haul route: allowing every other kind of truck to use public roads and denying that right to gravel trucks is not equitable or legal. The rule requires that local road “conflicts” are to be “based on clear and objective standards” that are “equivalent to standards for other trucks.”¹⁴ The applicant has reduced all such conflicts as required by the rule.

20.11 The Goal 5 rule incorporates the modern view that all businesses should be allowed equal access to public roads, whether or not they traverse farmland. This is the County’s general view, to not deny to one party or type of use the right to use local roads because there are farm practices taking place along those roads. Farm practices of the kind described by the neighbors and also by the organized opposition indicate a diverse farming community with both ‘industrial’ farming operations and ‘micro’ farms, and everything in between. There is successful agricultural tourism taking place on the island and elsewhere, and efforts continue to expand development of mostly small organic farms or to raise specialized or ‘exotic’ livestock.

20.12 Nothing that has been proposed by the applicant will impact the existing or proposed farm practices of anyone along the public road that the applicant has proposed to use to remove product from its property. There is no reason to believe that Baker Rock cannot control the amount of dust generated by its trucks using reasonable and practicable technologies. The moisture content of sand and gravel leaving the site will necessarily be high, because it is being removed from below the water table. Prior to loading onto trucks on-site, sprayers will immobilize dust that might be present in the otherwise pre-washed material. A wheel wash will be installed at the entrance to the site, and a water truck will be available at all times it is possible to generate dust, to suppress it. Expressed fears regarding impacts to residents and farm uses along the haul route, that outrageous amounts of dust will be generated by the site and then dumped directly onto residents, crops and farm animals, are not supported by the record in this case.

20.13 Eugene Sand & Gravel v. Lane County

20.13.1 In Eugene Sand & Gravel v. Lane County,¹⁵ the applicant proposed to mine 240 acres of a 575-acre tract containing Class I and II soils. Forty-five million tons were to be mined over the course of 20-30 years. Processing proposed for the site included a crusher, a concrete manufacturing facility, and asphalt batch plants. The Baker

¹⁴ OAR 660-023-0180(5)(b)(D): “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.”

¹⁵ 44 Or LUBA 50; 189 Or App 21, 74 P.3d 1085 (2003).

Rock proposal is to mine 175 acres, and produce less than 24 million tons, over the course of an estimated 30 years, with no crusher, and no concrete or asphalt batch plants.

20.13.2 The fight in Eugene Sand & Gravel was waged as 'aggregate vs. agriculture' (or vice versa). While finding that conflicts with dust and traffic were minimized as to all sensitive uses in the area (dwellings and people), the county determined that those conflicts were not minimized as to agricultural uses in the area, including two, existing farm stands. The proposals in Eugene Sand & Gravel and in this case are not the same, and the course taken by the Lane County Board of Commissioners in that case is not justified in this case.

20.14 Geese Predation

20.14.1 The opponents have claimed that open water areas at the Baker Rock site will increase geese predation, significantly increasing farm costs and/or requiring significant changes in farm practices. The opponents are not correct. The applicant has submitted a memorandum to the record from wildlife and wetland scientist and ecologist Sarah Hartung, discussing the geese predation issue. That memo clarifies that additional ponds at the Baker Rock site will not alter the existing patterns of Canada geese feeding or roosting. As testimony received from the opponents confirm, roosting sites are already available in the area (directly across the river). Those ponds were mined "old style" and not reclaimed. It is not roosting sites that draw geese, but fertilized crops. The geese eating Grand Island crops are roosting at sparsely vegetated un-reclaimed ponds already located in the area. The well-vegetated reclaimed open water and wetland areas proposed by the applicant will not be "sterile" by any means, but no lake can compete with fertilized agricultural fields as a food source for geese.

20.14.2 As noted by Ms. Hartung, "The proposed reclamation plan for Grand Island would increase wetland functions and values for a multitude of wildlife species including aquatic mammals, amphibians, shorebirds, waterfowl and songbirds."

20.14.3 The report also states that: "Canada geese avoid shorelines with dense cover (e.g. trees and shrubs) because of the potential danger of concealed predators" (as proposed by the applicant). Baker Rock's lake shoreline will be planted with native vegetation, and will benefit all wildlife in the area.

20.14.4 Ms. Hartung's report also notes that the Oregon Goose Depredation Task Force specifically did not recommend limitation on the creation of new lakes, wetlands, and wildlife habitat. Geese predation will need to be addressed in the coming years, not by limiting the development of fish and wildlife habitat, but through the methods outlined in the task force recommendations. There is no substantial evidence that any activity or use proposed by the applicant will significantly increase geese predation on Grand Island or force significant increases in the cost of addressing the geese predation problem, which currently exists on the island and elsewhere in the Willamette Valley.

20.15 Dust Impacts to Agriculture

As detailed above, application of water controls dust. Basic erosion control practices, commonly available, also control the generation of dust. Prevailing winds during the driest of times blow away from most farm uses on the island (south and east). There is no rational basis for believing that the proposed operation will create anything more than incidental dust, which is easily controlled using water and management practices. Claims that dust from the site may be contaminated are speculative, not supported with evidence, have been rebutted, and are rejected by the Board for these reasons. Incidental, inert dust does not kill or damage crops, animals, or people. Agricultural practices, if conducted without using control techniques, can generate far more dust (and mud on roadways) than the proposed operation. Baker Rock is required to control dust by the conditions of approval and also by state regulators (DOGAMI and DEQ).

20.16 Traffic Impacts to Agriculture

20.16.1 As discussed above, the applicant has offered significant infrastructure improvements and has otherwise demonstrated that all potential conflicts with local roads have been minimized. The opponents have claimed that gravel trucks driving by farm uses or on the same roads with agri-tourists will force significant changes in agricultural practices and/or significantly increase farm costs.

20.16.2 The opponents' claims lack a factual or legal base. Under the interpretation of ORS 215.296 offered by the opponents, even if the applicant demonstrates that local roads have the capacity necessary to handle all proposed gravel truck traffic, and the bridge has adequate capacity, and the roads can be improved to accommodate gravel trucks, the County should still deny the application on the basis that gravel trucks will force a significant change in farm practices and/or significantly increase farm costs, on farms adjacent to the publicly owned haul route.

20.16.3 There is no basis for concluding that gravel trucks, traveling on public roads that are not restricted to any other user, should be restricted or prohibited from driving by organic crops or exotic sheep. The intent of ORS 215.296 is to protect agricultural practices from significant impacts, not to prohibit use of public roads by legitimate industries solely because they use vehicles that travel through farmland.

20.16.4 Three parties have proposed, as hypothetical, or possible future uses of their property, farm stands, two of which might be located on or near public roads providing access to the site. DLCD, in a letter that was submitted into the record, cites Dierking v. Clackamas County,¹⁶ suggesting that when a "planned use is much more than

¹⁶ 38 Or LUBA 106; 170 Or App 683, 12 P.3d 1085 (2000).

a hypothetical or possible use” of neighboring farmland, the county must determine whether the proposed use will “significantly impact” those uses.

20.16.5 In Dierking, the petitioner’s property was properly viewed as devoted to use as an herb farm and botanical garden “by virtue of the expenditures that the petitioner has already made and the plans that he is developing.” That is certainly not the case with any of the produce stands proposed in this case, in which no expenses, planning or permits have been identified in relation to the stands. Testimony that someone along the haul route wants some day to have a produce stand, with nothing more, does not make the use an “agricultural practice” or an “accepted farming practice.” The county is not required or allowed to consider farm uses that are not existing, approved, or at the very least, currently being implemented in some form. There are no existing or approved farm stands along the haul route. No application has been made for a farm stand, which at the very least would require county findings to approve (see ORS 215.283(1)(o)).¹⁷ No evidence of any expenditures toward development of any of the hypothetical farm stands has been presented that would warrant “significance” analysis on the part of the applicant or County.

20.16.6 Nevertheless, there is no rational basis for concluding that the proposed operation would interfere with farm stands located along the haul route. The roads in question are designed to accommodate both cars and trucks, and even the cumulative impact of all possible aggregate trucks using the haul route will not significantly affect a farm stand or stands, hypothetical or existing. Commercial enterprises, including farm stands, are routinely located on roads and highways having much greater traffic than proposed, without ill effect. There is no rational basis for concluding that the applicant’s proposed 64 trucks per day will have any impact whatsoever on a hypothetical or existing farm stand. Lane County’s findings that trucks associated with a much larger proposal would impact two existing farm stands, is not a basis for concluding that the applicant’s proposal will harm two or three hypothetical, non-existent farm stands.

21. Ability to Reclaim the Site as Proposed

¹⁷ ORS 215.283(1)(o) states: “The following uses may be established in any area zoned for exclusive farm use: (o) Farm stands if:

(A) The structures are designed and used for the sale of farm crops or livestock grown on the farm operation, or grown on the farm operation and other farm operations in the local agricultural area, including the sale of retail incidental items and fee-based activity to promote the sale of farm crops or livestock sold at the farm stand if the annual sale of incidental items and fees from promotional activity do not make up more than 25 percent of the total annual sales of the farm stand; and

(B) The farm stand does not include structures designed for occupancy as a residence or for activity other than the sale of farm crops or livestock and does not include structures for banquets, public gatherings or public entertainment.

21.1 Some opponents claim that the site cannot be reclaimed as proposed. ORS 215.283 (1) lists the uses that may be established “of right” in any area zoned EFU, and includes: “(p) Creation of, restoration of or enhancement of wetlands.” That use is allowed outright. Imposition of a conservation easement is not a land use action, but a real property title transaction. Such easements are promoted by state law.¹⁸ Private landowners are also encouraged to allow public recreational access to their land through state statutes that limit liability and provide legal immunity to such owners.¹⁹ The Goal 5 rule adds to the list of “as of right” uses in farm zones: “farm uses under ORS 215.203” and “fish and wildlife habitat uses, including wetland mitigation banking.” OAR 660-023-0180(4)(f). Also, the applicant’s proposed condition does not allow or prohibit future use of the property as a public park. Only one land use is allowed: “fish and wildlife habitat,” which is being made possible by “creation of, restoration of or enhancement of wetlands,” a use permitted unconditionally and “of right” in EFU zones and under the Goal 5 rule.

21.2 The feasibility of creating quality fish and wildlife habitat and a quality place for outdoor public recreation has also been questioned by opponents. The unconfined Willamette Aquifer will continually flow through the lake in the same direction as the river, continually replacing and replenishing the water in the lake. Wind also moves water on a large open surface, making the pools in the slough and “Skeeter Creek” a far greater potential source of vectors than the lake. A 175-acre lake, with proper slopes and associated peninsulas, wetlands and forested areas, if done properly, will be a quality habitat for fish and wildlife and a quality public recreation area.

21.3 The studies submitted by the applicant, conceptual operating and reclamation plans, proposal for contemporaneous, sequential reclamation, and the conditions of approval, demonstrate the feasibility of creating quality back-channel fish and wildlife habitat as the site is mined and reclaimed. Back-channel habitat along the Willamette that was common pre-settlement has been systematically destroyed through channelization of the river, beginning in the 1930s. This loss of channel diversity can be reversed, and some back channel diversity can be restored, to the benefit of the fishery, through progressive reclamation design. The lake will be hydraulically connected to the river, allowing refuge and a source of food for anadromous and local fisheries. In the long term, the habitat values of Grand Island are improved by limited mining and reclamation projects like the one proposed.

21.4 The original conceptual reclamation was outlined in detail by Chris Lidstone in his report submitted with the application (see Tab 11 starting at page 18). The applicant also commissioned ecologist Sarah Hartung to review the conceptual reclamation plan. Her review and suggestions (Memorandum dated December 30, 2010) confirm the feasibility of the reclamation plan and suggest additional enhancements. Contrary to the

¹⁸ See ORS 271.715-795.

¹⁹ See ORS 105.682 and 105.688, Oregon Recreational Use Immunity Statute.

picture painted by opponents, her report states: “Creating functionally suitable habitat for wildlife at the Grand Island site is achievable with proper site preparation, installation, maintenance, and monitoring.” The County accepts this conclusion.

22. Response to the Scoggans and the Jacksons

22.1 The site is immediately surrounded by the park; by large farming operations; and by two dwellings that are not on the haul route. The dwellings are owned by the Scoggans and the Jacksons. During the course of the proceedings, Mr. Jackson provided evidence of ownership of less than three acres of the “site” that contains the slough and part of the cultivated field adjacent to the slough. No mining, berms, or other mining activities have been proposed on or within 50 feet of the slough or cultivated field that was subject to dispute during the course of the proceedings.

22.2 Mr. Jackson claims, without support, that mining activities will increase the water levels in “Skeeter Creek” and in the slough that the creek drains into. Lidstone provided a credible explanation regarding the behavior of the recharge trench and factual support for the conclusion that the trench would not affect the level of water in the slough or creek. The applicant moved the location of the groundwater recharge trench to the middle of the site to provide greater assurance to him that this would not occur. The trench has been moved so that it will be no closer than 1,500 feet from the point where Skeeter Creek meets the slough. (see revised conceptual Mining Plan, R-1534, or compare, R-2018 and 2019) Monitoring wells to be established by the applicant on the site will provide years of data necessary to address any concerns regarding changes in groundwater levels, so that corrective action can be taken. The applicant’s data and analysis establish that such changes are unlikely.

22.3 The County does not accept Mr. Jackson’s conclusion that the proposal will cause or increased flooding in either Skeeter Creek or the slough. The applicant’s consultants have established that there will be no change in the base flood. The modeling and analysis provided by Lidstone and Associates is the kind acceptable to both the Federal Government and the County for establishing compliance with the “no net rise” standard that applies. The proposed noise berm, which will not be necessary for at least 15 years from the start of operations, has been segmented, even though the un-segmented original berm would also meet the “no net rise” standard. Mr. Jackson has not provided any credible evidence that the cost of farming his property will significantly increase or that he or anyone else farming his property will have to “significantly” change their practices.

22.4 The Scoggans own the closest dwelling to the mine area boundary. The dwelling is located more than 500 feet from the mine area boundary, on a nine-acre parcel. It is separated from the mine area by a heavily wooded slough that will not be disturbed. The

dwelling is more than 2,500 feet from the screening and washing area.”²⁰ Neither the Scoggans’ nor the Jacksons’ dwellings or properties are located on the haul route, and it is not necessary to drive by the site to reach either property.

22.5 None of the claims made by Ms. Scoggan have merit as is demonstrated by the application and record in this case. The proposal includes reasonable safeguards to protect the Scoggans’ residence from noise impacts, as demonstrated by the noise study (Tab 16 of the application) and follow-up review by Kerrie Standlee (letter dated November 1, 2010 submitted to the record). An earthen berm is a known, effective barrier to noise, and it is reasonable to expect that the applicant can obtain a floodplain permit to construct the berm. Mining can only take place in conformance with DEQ requirements as to the Scoggans’ residence, meaning that either the applicant will achieve compliance, or mining will not take place. Given existing noise control technologies and options, it is reasonable to expect compliance. The noise study is not flawed as alleged by Ms. Scoggan, and she has presented no evidence that contradicts the conclusions of the study or the effectiveness of the applicant’s noise minimization program, outlined in the mine plan and Conditions of Approval.

22.6 As for potential groundwater impacts: as with every well located within 1500 feet of the site, the conditions require that the applicant offer to provide significant testing services to the Scoggans to determine the quantity and quality of their domestic water supply, which is drawn from the unconfined, shallow, Willamette Aquifer. The Conditions of Approval contain the applicant’s guarantee not to impact the quality and quantity of water in the Scoggans’ well or any other well. The infiltration trench was moved away from the Scoggans’ well, and continuous monitoring will take place at two wells on the subject property, so that quality or quantity concerns can be identified early and addressed. The applicant has demonstrated that there will be no impact from dewatering on neighboring wells, but if any issue arises, the operator will stop dewatering until the issue is resolved. The applicant has offered complete transparency regarding all aspects of the operation, (including the operation of the infiltration trench), and to provide all data and analysis directly to the neighbors, and through community meetings required by the Conditions of Approval.

23. Credibility Finding. The Board has weighed the credibility of all expert and lay witnesses in this case and has concluded that the applicant’s experts are more credible and that the applicant has carried its burden to demonstrate compliance with all applicable standards, and has rebutted all arguments to the contrary that have any bearing on the applicable standards.

²⁰ Cell 1 is 2,500 feet away from the Scoggans’ residence. From there, mining progresses away from the Scoggans’ residence and doesn’t come within 2,500 feet again until cell 10 is mined. The noise berm likely will not be needed for legal compliance until Cell 14 is mined. There are 26 cells, but cells 3, 4 and 5 are the largest, meaning that, even when close to half of the site is mined, it will still be 2,500 feet from the Scoggans’ residence.

24. Determining the ESEE Consequences of Potential Future Uses.

24.1 Introduction.

24.1.1 The following findings support the County's decision to not limit potentially conflicting future uses on properties surrounding the subject property or elsewhere on Grand Island. In making this decision, the County is required to follow OAR 660-023-0180(2)(d) and 0180(7).

24.1.2 OAR 660-023-0180(2)(d) states:

“(2)(d) For significant mineral and aggregate sites where mining is allowed, * * * 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.”

24.1.3 OAR 660-023-0180(7) states:

“(7) * * * local governments shall follow the standard ESEE process in OAR 660-023-0040 and 660-023-0050 to determine whether to allow, limit, or prevent new conflicting uses within the impact area of a significant mineral and aggregate site. * * *”

24.1.4 Following these sections, in deciding on a program to protect the site from new off-site conflicting uses, the County has decided to allow all future land uses that are currently allowed in proximity to the site and elsewhere on Grand Island, in conformance with existing law.

24.1.5 In this case, the applicant has outlined the potential conflicts that may arise from its proposed operations and has demonstrated that all potential impacts are minimized to a level at which they are no longer significant, at the boundaries of the project. The project is designed to allow continued farming and farm operations on a portion of the site with end uses that include fish and wildlife habitat, and creation, restoration and enhancement of wetlands. The design of the project and community outreach efforts by the applicant are intended to decrease potential impacts to the community; to local infrastructure; and to water, riparian, fish and wildlife resources. The Limited Use Overlay and Conditions of Approval help to ensure that the project can be completed in compliance with local, state, and federal regulations. Because the applicant has demonstrated minimization of potential conflicts and has presented a sound proposal for mining and reclaiming the site, mining is authorized as specified in this Ordinance, subject to the Conditions of Approval.

24.1.6 The references in the Goal 5 rule for aggregate to OAR 660-023-0040 and 660-023-0050 are to sections entitled “ESEE Decision Process” and “Programs to Achieve Goal 5.” The purpose of the following findings are, as directed by the Goal 5 rule, to:

“enable reviewers to gain a clear understanding of the conflicts and consequences to be expected. The steps in the standard ESEE process are as follows:

- (a) Identify conflicting uses;
- (b) Determine the impact area;
- (c) Analyze the ESEE consequences; and
- (d) Develop a program to achieve Goal 5.” (OAR 660-023-0040(1))”

OAR 660-23-040 states, in relevant part:

“(2) Identify conflicting uses. Local governments shall identify conflicting uses that exist, or could occur, with regard to significant Goal 5 resource sites. To identify these uses, local governments shall examine land uses allowed outright or conditionally within the zones applied to the resource site and in its impact area. Local governments are not required to consider allowed uses that would be unlikely to occur in the impact area because existing permanent uses occupy the site. The following shall also apply in the identification of conflicting uses:

(a) If no uses conflict with a significant resource site, acknowledged policies and land use regulations may be considered sufficient to protect the resource site. The determination that there are no conflicting uses must be based on the applicable zoning rather than ownership of the site. (Therefore, public ownership of a site does not by itself support a conclusion that there are no conflicting uses.)

(b) A local government may determine that one or more significant Goal 5 resource sites are conflicting uses with another significant resource site. The local government shall determine the level of protection for each significant site using the ESEE process and/or the requirements in OAR 660-023-0090 through 660-023-0230 (see OAR 660-023-0020(1)).

(3) Determine the impact area. Local governments shall determine an impact area for each significant resource site. The impact area shall be drawn to include only the area in which allowed uses could adversely affect the identified resource. The impact area defines the geographic limits within which to conduct an ESEE analysis for the identified significant resource site.

(4) Analyze the ESEE consequences. Local governments shall analyze the ESEE consequences that could result from decisions to allow, limit, or

prohibit a conflicting use. The analysis may address each of the identified conflicting uses, or it may address a group of similar conflicting uses. A local government may conduct a single analysis for two or more resource sites that are within the same area or that are similarly situated and subject to the same zoning. The local government may establish a matrix of commonly occurring conflicting uses and apply the matrix to particular resource sites in order to facilitate the analysis. A local government may conduct a single analysis for a site containing more than one significant Goal 5 resource. The ESEE analysis must consider any applicable statewide goal or acknowledged plan requirements, including the requirements of Goal 5. The analyses of the ESEE consequences shall be adopted either as part of the plan or as a land use regulation.”

24.2 Identification of Uses that Could Conflict with Mining Uses.

24.2.1 OAR 660-023-0010, “Definitions,” states

“As used in this division, unless the context requires otherwise:

(1) ‘Conflicting use’ is a land use, or other activity reasonably and customarily subject to land use regulations, that could adversely affect a significant Goal 5 resource (except as provided in OAR 660-023-0180(1)(b)). Local governments are not required to regard agricultural practices as conflicting uses.”

OAR 660-023-0180(1)(b) defines “conflicting use” for the purpose of mineral and aggregate resource review, as follows:

“‘Conflicting use’ is a use or activity that is subject to land use regulations and that would interfere with, or be adversely affected by, mining or processing activities at a significant mineral or aggregate resource site * * *.”

Using either definition, the County has identified the following existing and potential uses that could, under some circumstances, if they were to take place in close proximity to the mining area, conflict with operation of the site.

24.2.2 As identified in the application and proceedings to consider this Ordinance, within 1500 feet of the mining area there are three dwellings. There are no residential zones or “existing platted lots” identified within this area. All of the neighboring houses are, therefore, either farm, nonfarm, or nonconforming uses. The opportunity for additional housing within 1500 feet of the site is limited by applicable regulations and is further limited by floodplain and floodway hazards and restrictions.

24.2.3 It should also be noted that YCZO section 402.08.A.6, governing new dwellings in EFU zones, states:

“Prior to issuance of any residential building permit for an approved dwelling located within 1 mile of an area which has been designated in the plan or zone or otherwise approved by Yamhill

County for mineral resource uses, the landowner shall be required to sign an affidavit acknowledging the following declaratory statement and record it in the deed and mortgage records of Yamhill County;

“The subject property is located in an area designated for mineral resource uses. It is the County policy to protect mineral resource operations from conflicting land uses in such designated areas. Accepted mineral resource and quarry practices in this area may create inconveniences for the owners or occupants of this property. However, Yamhill County does not consider it the responsibility of the operator of a mineral resource operation to modify accepted practices to accommodate the owner or occupants of this property, with the exception of such operator’s violation of State law.”

This provision does not limit potentially conflicting uses, but may diminish potential conflicts by providing notice to developers of potential dwellings, well beyond the usually-identified 1500-foot impact area. The applicant has not requested that the County impose further limitations on dwellings or other uses within 1500 feet, on the island, or elsewhere, and no additional limitations are warranted in this case.

24.2.4 All of the identified dwellings are approved land uses and are sensitive uses. No other “sensitive” uses have been identified by the applicant within the 1500-foot impact area, and no other uses have been identified that would need to be limited to protect the aggregate resource site. The applicant has established that all conflicts can be minimized as to those uses, suggesting that if additional dwellings were constructed within 1500 feet of the site, the applicant would be able to minimize conflicts as to those dwellings in like manner. Again, due to the location of the site on a floodplain and adjacent to a State Park, additional nearby dwellings seem unlikely.

24.2.5 A summary of uses identified in the impact area was provided by the applicant and additional descriptions of properties and uses taking place on Grand Island, beyond 1500 feet, were submitted into the record in the course of the proceedings. Topographically, the site is located on the Willamette River floodplain. The elevation of the site ranges from 94 to 106 feet above mean sea level. The existing dwellings in the impact area and elsewhere on the island are located at the higher elevations, but not high enough to avoid being affected by seasonal flooding (blocked access). As an extreme example, the 1996 flood isolated and otherwise dramatically impacted dwellings in the impact area, seen on the 1996 aerial photo as islands in a vast lake. Farming operations and dwellings in the impact area and elsewhere on the island are all affected by surrounding floodplain and floodways. The mining area is separated from neighboring dwellings by a wooded slough.

24.2.6 The relationship of the site to its neighbors is described in the application and elsewhere in these findings. Due to physical separation, topography, vegetative buffers, and the use of berms and other control techniques, impacts to existing and potential noise and dust sensitive uses is minimized. To further minimize potential

community impacts, the applicant has agreed to on-going communication and response to concerns.

24.2.7 As to all existing and potential uses identified, noise and dust sensitive uses are the uses most likely to conflict with an aggregate mining operation. This is because mining operations are unlikely to be impacted by neighboring uses unless the neighboring users object to mining operations, and pursue those complaints in legal and administrative forums. For reasons stated elsewhere in these findings, the County does not believe that farming practices within 1500 feet or elsewhere on the island will experience any significant impacts from the proposed operation and reclamation of the site.

24.2.7 The impact area is zoned for Exclusive Farm Use and for Park use. The land zoned for park use is mostly forested, and dedicated to open space and passive recreation (mostly hunting, fishing, picnicking, and some camping). Uses existing and anticipated to take place on Grand Island under State Park master planning are not expected to interfere with mining operations in any way.

24.2.8 The County has identified the following uses as being allowed, outright or conditionally, in EFU areas, and has identified whether they have the potential to be conflicting uses under the Goal 5 definition. For uses not on this list, the County notes that such uses are not likely to occur in the impact area due to existing permanent uses that would likely foreclose them from being developed under any circumstances. The list is deliberately over-inclusive. In fact, many of these uses are also unlikely to occur in the impact area because they are foreclosed by existing uses and parcelization, topography, or know hazards.

Use	Potential Conflicts	No Potential Conflicts
Farm uses, including:		
Raising, harvesting and selling of crops		X
Feeding breeding, selling and management of livestock, poultry, furbearing animals or honeybees		X
Dairying and the selling of dairy products		X
Preparation and storage of farm products raised for human or animal use		X
Distribution by marketing or otherwise of farm products		X
Other agricultural use, horticultural use, animal husbandry or		

any combination thereof		X
Farm buildings		X
Propagation and harvest of forest products		X
Facilities to process forest products		X
Log truck parking		X
Wetland enhancement		X
Propagation, cultivation, maintenance and harvesting of aquatic species		X
Dwellings, all types	X	
Commercial activities in conjunction with farm use		X
Greyhound breeding		X
Home occupation		X
Dog kennel		X
Winery	X	
Farm Stand		X
Mineral, aggregate, oil and gas uses		X
Personal use airports	X	
Transportation facilities		X
Utility facilities		X
Transmission towers		X
Landfills		X
Power Generating facilities		X
Public or Private Schools	X	
Churches	X	
Cemeteries		X
Private or public parks, playgrounds, hunting and fishing preserves, campgrounds, community centers	X	
Golf Courses		X
Daycare centers	X	
Bed and Breakfast residence or inn	X	

The County has already discussed in these findings the potential conflicts between the proposed operation and other Goal 5 resources in the impact area. The County has identified no Goal 5 resources in the impact area that conflict with use of the site for alluvial aggregate resource extraction, and that must be limited or prevented in order to allow operation and reclamation of the site as proposed.

24.3 Determining the Impact Area. As stated in OAR 660-023-0180(5), when mining is allowed, local governments are directed to “follow the standard ESEE process in OAR 660-023-0040 and 660-023-0050 to determine whether to allow, limit, or prevent new conflicting uses within the impact area * * *.” OAR 660-023-0040(3) requires the

establishment of an impact area for considering neighboring uses that must be limited or prevented to protect aggregate resources. For purposes of these findings, the County has considered potential conflicting uses within the same 1500-foot area as utilized for initial conflict analysis under the Goal 5 rule for aggregate. Parties before the County in these proceedings requested that potential impacts from the project on uses beyond 1500 feet, including the entire island, be considered. The entire island was provided notice of the proceedings and potential impacts to sensitive uses and farm uses taking place on the island, beyond 1500 feet, were considered. No party identified any uses allowed outright or conditionally outside of the original 1500-foot “analytical” impact area that could conceivably adversely affect development of the site for aggregate extraction. Furthermore, as noted above, the County’s existing regulations establish a notice requirement for new dwellings that is appropriate in this instance. The County has not identified, and is not imposing additional limitations on potentially conflicting uses within 1500 feet of the mining area or elsewhere on the island. These conclusions are the same whether analysis considers the impact area to be 1500 feet from the mining area, or the entire island. Because no significant impacts to the mining site have been identified within 1500 feet of the site, they are unlikely to occur elsewhere on the island.

24.4 Analysis of ESEE Consequences. In conformance with OAR 660-023-040, this section analyzes the economic, social, environmental and energy consequences (ESEE) of allowing, limiting or prohibiting, within the 1500-foot impact area, uses that potentially conflict with mining operations at the site. The potential impacts of all potentially conflicting uses are sufficiently similar that they are all addressed here as a group. As an example, the siting of a church, school, or dwelling might result in the generation of similar complaints regarding the generation of noise or dust by the mining operation.

24.4.1 Economic Consequences.

24.4.1.1 The economic consequences of allowing additional conflicting uses close to the mining site are that extraction of the resource may be severely curtailed or prohibited by complaints from neighbors. Concerns or objections voiced by neighbors may add to the cost of mining through appeals, litigation, or by requiring mitigation measures that would otherwise be unnecessary if the conflicting uses were not present. Controversy about mining aggregate could add uncertainty and potential delay for permit decisions at key times during construction bid processes. All of these potential outcomes could result in higher prices for construction materials. The constraints to mining operations that might be necessary to mitigate potential conflicts with surrounding land uses might result in higher mine operating costs.

24.4.1.2 In the present case, however, the applicant has demonstrated an ability to work with neighbors to address their concerns regarding mining operations. The applicant has demonstrated a willingness to communicate with, and respond to, the neighbors and community, and to conduct the operation in compliance with law and recommended management practices. It is not the owner’s intent to establish operating or

reclamation conditions that will require the restriction of neighboring uses. To the contrary, the applicant is willing to do what it must to prevent mining impacts from occurring beyond the boundaries of the site and applicable setbacks.

24.4.1.3 As detailed in the applicant's submittals, the applicant has demonstrated that all conflicts that the mining operation might generate as to neighboring uses can be mitigated by the imposition of conditions. This fact strongly supports the corresponding finding that neighboring uses will not generate complaints regarding mining operations, and are unlikely to have a significant impact on the mining operations. To the extent neighboring uses may increase the cost of mining the site, the operator has already accepted those costs in order to prevent conflicts with existing neighboring uses. To the extent residents elsewhere on the island may increase the cost of mining through lawsuits or complaints, those conflicts are not related to "sight" or "sound" conflicts (because they are not within 'sight or sound' of the project), are not distinguishable from such complaints received from any quarter of the population, and do not pose an economic conflict that can be minimized by preventing conflicting uses or users.

24.4.1.4 The economic consequences of limiting or prohibiting, in the impact area, uses that potentially conflict with use of the site for aggregate extraction are all impacts to the owners of neighboring properties, not to the site operator. Those consequences could include diminished property values, if the prohibited or limited use is the actual highest and best use of the property.

24.4.2 Social Consequences. The County has identified no significant adverse social consequences related to allowing conflicting uses next to the resource site. The social consequences of limiting or prohibiting, in the impact area, uses that potentially conflict with use of the site for mining are, as with economic aspects, all borne by the owners of neighboring properties, not by the site operator.

24.4.3 Environmental Consequences. The mining area is isolated by topography and vegetation. The environmental consequences of limiting or prohibiting, in the impact area or elsewhere on the island, uses that potentially conflict with use of the site for mining aggregate are generally positive, since development restrictions generally result in greater environmental protection. The environmental benefits of such restrictions inure to the general public, but do not tend to result in greater protection of the aggregate resource, and cannot be justified on that basis.

24.4.4 Energy Consequences. The County has not identified energy consequences of allowing, in the impact area, uses that may conflict with use of the site for aggregate extraction. Energy consequences would result only if the operator were forced to curtail or cease operation due to neighbor complaints, a result that the applicant considers remote given the operators efforts, and requirements of the Conditions of Approval, to mitigate potential impacts on existing uses in the impact area. Energy consequences of limiting or prohibiting, in the impact area, uses that potentially conflict

with mining operations are equally nebulous, but might be negative if local residences must travel greater distances to conduct activities that might otherwise be conducted within the impact area.

24.4.5 Consideration of Applicable Statewide Goal and Acknowledged Plan Requirements. OAR 660-023-0040(4) requires that, when conducting an ESEE analysis, the County must “consider any applicable statewide goal or acknowledged plan requirements, including the requirements of Goal 5.” Section 12 of these findings establishes the consistency of the proposed comprehensive plan amendment with the statewide planning goals, and is adequate for the purposes of OAR 660-023-0040(4) in this instance. There are no known acknowledged Comprehensive Plan provisions that would change the conclusions of this analysis such that uses otherwise allowed within 1500 feet of the mining area or elsewhere on the island would need to be prohibited or restricted to protect the aggregate site.

24.5 Program to Achieve the Goal.

24.5.1 In this case, the applicant has justified a decision to allow mining at the site, as limited by this Ordinance and the Conditions of Approval, subject to oversight by DOGAMI and other governmental agencies. The County has determined that both the resource site and the conflicting uses are important compared to each other, and, based on the ESEE analysis, the conflicting uses should be allowed to the extent that they are currently allowed and likely to occur. Existing notification requirements are sufficient, and no additional restrictions or program are necessary to achieve Goal 5 with regard to uses within the impact area that may conflict with mining activities allowed at the site.

24.5.2 In this case, the applicant has presented a limited mining plan that addresses the needs of the community and neighbors; will allow continued farming and farm operations on a portion of the site; and reclamation to wetlands and fish and wildlife resources. The applicant has not proposed any limitations on surrounding uses, and no additional limitations are being imposed by this Ordinance. The applicant has demonstrated that potential conflicts between mining activities and existing or potential nearby development can be minimized through appropriate operation planning and management techniques.

24.6 Conformance of County Program to Achieve Goal 5 with OAR 660-023-0050.

OAR 660-023-0050, states, in relevant part:

“Programs to Achieve Goal 5.

(1) For each resource site, local governments shall adopt comprehensive plan provisions and land use regulations to implement the decisions made pursuant to OAR 660-23-040(5). The plan shall describe the degree of protection intended for each significant resource site. The plan 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 (see OAR 660-023-0040(5)(b) and (c)).” (emphasis added)

In this case, the County has chosen the option in OAR 660-023-0040(5)(c) to allow fully uses that may potentially conflict with mining. The ESEE analysis in this case demonstrates that the identified potentially conflicting uses are of sufficient importance relative to the resource site, and that analysis and these findings establish the reasons that additional restrictions on potentially conflicting uses are not warranted in this case.

25. Imposition of Limited Use Overlay

25.1 The applicant has specified that it intends to use the subject property for mining alluvial sand and gravel deposits, and has provided the County with an explanation of the proposed use that is adequate to make findings of compliance with all applicable standards. The applicant’s plans describe the approximate location and scale of extraction, stockpiling, sorting, hauling and sale of aggregate from the site. Asphalt batching and concrete batching are not proposed by the applicant and are not allowed. Blasting is not allowed. To dispel any concerns that uses might occur on the subject property that are otherwise allowed under MR-2 zoning but are not specified in the application, the County is imposing a Limited Use Overlay Zone on the subject property, under YCZO § 904. Imposition of the Limited Use Overlay Zone as specified herein, improves the compatibility of the proposed zone change with surrounding land uses and the overall appropriateness of the change, in conformance with the Yamhill County Zoning Ordinance and Comprehensive Plan.

25.2 The purpose of the Limited Use Overlay District is stated in YCZO § 904.01, as follows:

“The purpose of the Limited Use Overlay District is to limit permitted use(s) and activities in a specific location to only those uses and activities which are justified and approved through Comprehensive Plan exceptions under ORS 197.732 or other authorized statutory or administrative rule procedure.”

It is appropriate in this instance to limit the permitted uses and activities on the subject property to only those uses and activities that the applicant has justified as meeting applicable standards.

25.3 YCZO § 904.02 states as follows:

“The LU Overlay District shall apply to that specific area for which a reasons exception has been taken or other area as deemed appropriate to protect Goal 5 resources. The Limited Use Overlay District is intended to carry out the administrative rule requirement for exceptions pursuant to OAR 660-04-018 and ORS 197.732 and for Goal 5 resource protection pursuant to OAR 660-16-010.”

The LU Overlay is more restrictive than the underlying zone. It is appropriate in this instance to apply the LU Overlay to protect Goal 5 resources existing in the vicinity of the proposed site. In Yamhill County, as to Goal 5 aggregate resources, OAR 660-16-010 has been superceded by OAR 660-023-0180.

25.4 The uses permitted in the MR-2 zone are listed in YCZO § 404.03 as follows:

“In the MR-2 District, the following uses shall be permitted:

- A. Quarry or mining operations for the extraction of rock, clay, soil, sand and gravel;
- B. Exploration for oil, natural gas or geothermal resources;
- C. Rock crushing, washing or screening;
- D. Stockpiling of rock or earth products in conjunction with the operation of the mineral resources business on-site;
- E. A dwelling for the owner, in conjunction with a permitted use as established by subsections 404.03(H) and 404.03 (I);
- F. A dwelling and accessory structures for the caretaker or watchman in conjunction with the operation of a mineral resource business;
- G. Storage of heavy equipment in conjunction with the operation of the mineral resource business on-site;
- H. Farm uses;
- I. Propagation and harvesting of a forest product; and
- J. Manufacture and storage of brick and tile.”

Numerous conditional uses are also allowed in the MR-2 zone, including permanent and portable concrete batching and hot-mix batching plants (YCZO 404.04). YCZO § 904.03 states:

- “A. When the Limited Use Overlay District is applied, the uses permitted in the underlying zone shall be limited to those specifically referenced in the ordinance adopting the Limited Use Overlay District.
- B. The Limited Use Overlay District may be used to require conditional use approval for uses normally permitted outright.
- C. Reasonable conditions may be imposed in the Limited Use Overlay District as are necessary to assure compliance with the provisions of the Comprehensive Plan and this ordinance.
- D. Until the overlay has been removed or amended, the only permitted uses in an LU district shall be those specifically referenced in the adopting ordinance.”

In conformance with YCZO § 904.03, the County is applying a Limited Use Overlay to the subject property, including the entire area plan designated “Quarry” and zoned MR-2 (See Attachment “B” of Ordinance 873). Under the Limited Use Overlay, permitted uses are limited to those uses the applicant has described as being part of its proposal, and as further conditioned and limited by the Conditions of Approval. The Conditions of Approval, located in the final section of these findings, are adopted under YCZO §904.03.C. The applicant has met the requirements for imposition of a Limited Use Overlay.

25.5 YCZO § 904.04, “Procedures” states:

- “1. The Limited Use Overlay District is to be applied through a zone amendment application utilizing the Type C process at the time the underlying zone is being changed in the case of an exception.
2. It shall not be necessary to disclose in the public hearing notice of a zone change that a Limited Use Overlay may be applied.
3. The ordinance adopting overlay zone shall, by section reference or by name, identify those permitted uses in the zone that will remain permitted uses or become conditional uses. The description of the permitted or conditional use may be qualified as necessary to achieve the intent of the LU overlay zone.”

The Limited Use Overlay is being applied to the subject property following a Type C process that included full evidentiary public hearings before both the Planning Commission and Board of Commissioners. Staff reports issued during the review proceedings indicated that the Conditions of Approval would be applied by way of a Limited Use Overlay. In this case, the Limited Use Overlay is not employed for the purpose of changing permitted uses into conditional uses, but to provide community assurance that mining, operation and reclamation of the site will proceed substantially in the manner proposed by the applicant, as limited by the Conditions of Approval.

25.6 YCZO § 904.06, entitled “Site Plan Review” states:

“Uses approved in an LU District may be subject to Section 1101, Site Design Review. The LU Ordinance may indicate any special concerns or location requirements that must be addressed in the site plan. All other specifications and standards of the underlying zone remain in effect unless specifically altered by the site plan approval or adopting ordinance.”

The applicant has provided sufficiently detailed information regarding the nature of its proposed use, including mining and reclamation plans and studies. The Conditions of Approval contain additional limitations and requirements imposed under the LU Overlay. No additional County site design review is required by the zoning ordinance or the LU Overlay.

26. Conclusion

Having accepted and weighed all of the evidence submitted into the record, the Board concludes that all applicable standards and thresholds have been met, and adoption of this Ordinance completing the Goal 5 process for the site and allowing mining subject to limiting conditions, is justified. Based upon the information provided in the application and as presented by the applicant and others during the proceedings, the County hereby approves the applicant's request for a Post-Acknowledgement Plan Amendment and zone change, Greenway Permit, and permission to mine.

Conditions of Approval

1. Binding Nature of These Conditions. These conditions are binding on the applicant and the landowner, and shall inure to the benefit of, and are binding upon, all successors in interest to the applicant and the landowner.
2. Allowed Mining Uses. Mining is allowed only as proposed in the application, and as otherwise limited in these conditions. Allowed uses include extraction, stockpiling, sorting, hauling and sale of aggregate. Asphalt and/or concrete batching are not proposed by the applicant and are not allowed by this permit. Blasting is not permitted. Material stockpiles shall be removed from the site prior to November 1 of each year and shall not be maintained on the site until April 1 of the following year.
3. Reclaimed Use. The site shall be sequentially reclaimed as it is mined, for use as fish and wildlife habitat, and eventual use for public recreation. Reclamation shall begin immediately upon receipt of final (unappealed) land use approval by planting of a 50-foot buffer of native trees (with the exception of the access driveway and reasonable neighbor farm access) between Upper Island Road and Cells 24, 1, 2, 3 and 4. As with all reclamation, the applicant shall take appropriate and recommended steps to ensure that the forested buffer survives to maturity. Upon final reclamation, the site shall be made available to the State of Oregon or other appropriate governmental entity for dedication and use as a public park, if allowed by law. If no such entity is available to accept dedication of the property as public parkland, the applicant shall establish a conservation easement on the site allowing reasonable public access and use in perpetuity.
4. Agency Permits. The operator shall at all times remain in compliance with these conditions and with applicable state and federal agency permits and shall retain copies of these conditions and agency permits, available for public review.
5. Community Involvement, Contact Person and Notice List.
 - a. The operator shall provide the name and phone numbers of one or more persons responsible for the conduct of mining operations at the site who can be contacted by neighbors with questions or concerns. The operator shall respond to such calls within 24 hours and shall keep a record of the calls and the operator's responses.
 - b. Prior to commencement of mining operations, the operator shall convene a meeting with island residents, owners of property on the island, and owners and residents of property situated along the haul route to Wallace Road. The purpose of the meeting will be to discuss the status of the project and invite comments. Additional meetings will be convened by the operator at least three times annually during the first two years following commencement of gravel extraction at the site. At the end of the two-year period, the frequency of the meetings may be reduced, as the operator and the neighbors desire, except that for the life of the mine (until reclamation is complete as indicated by DOGAMI) the operator shall provide an opportunity to meet at least once every two years

with the above-listed parties having an interest in the project, to discuss the status of operations at the site and conditions in the vicinity.

c. Notice of all meetings required by this section shall be mailed by the operator to all owners of property on the island and along the designated haul route to the site, as shown in Yamhill County tax assessor records. The notice shall indicate the time and location of the meeting, which shall be held locally, and no farther than 25 miles from the site (generally, Dayton or McMinnville).

d. Upon request from the County, or a resident or owner of property on Grand Island or along the haul route to Wallace Road, the operator shall provide records of complaints and/or community interaction as requested, and be available to answer questions or discuss the results of studies and monitoring conducted by the operator. The operator may provide such information at an office of the operator in Dayton or McMinnville, or may provide access to such information by posting it at a web site that can be reasonably accessed by residents and owners of property on Grand Island or along the haul route to Wallace Road.

6. Security Lighting. Any security lighting that may be installed shall be directed downward and shall not cast light brighter than one-foot candle at the edge of the mining area.

7. Hours of Operation. Normal operating hours are expected to be 7:00 AM to 6:00 PM. No operations shall commence before 6:00 AM or continue after 7:00 PM, except maintenance activities conducted in compliance with DEQ noise standards. Other activities may take place in response to an emergency.

8. Operating Days. Mining activities are permitted Monday through Saturday. Mining activities shall not be permitted on Sundays or on any of the following holidays: New Years Day, Memorial Day, 4th of July, Labor Day, Halloween, Thanksgiving Day, the day after Thanksgiving Day, Christmas Eve, and Christmas Day. Additionally, through the community involvement program, the operator and interested neighbors may agree that there will be no hauling on up to five additional days, to accommodate special neighborhood events.

9. Temporary Exemptions. The County may grant a temporary exemption from the operating hours described in Condition No. 7 above for up to 20 workdays based on a request to the Planning Director for additional hours to satisfy special requirements of a public or private contract. If extended hours of operation are requested, the operator shall provide a copy of the request to interested neighbors.

10. Construction of Haul Roads. On-site haul roads shall be constructed and maintained as all-weather, hard surface roads sufficient to handle heavy construction equipment.

11. Mitigation of Dust. Dust shall be minimized by application of water; erosion control technology and management, to prevent the generation of airborne dust and the transport of dust off-site. The operator shall at all times control tracking of dust or mud at any location outside of the site. All dust, mud or product tracked or spilled by users of the facility shall be cleaned and/or removed by the operator as soon as reasonably possible. Tree planting and revegetation to prevent erosion and control dust shall be consistent with the DOGAMI approved operating and reclamation permit for the site.

12. County Road Improvement.

A. Prior to using County roads on the island for hauling excavated materials from the site, the operator shall provide or contribute to improvement of site access roads as follows:

1. Section A: Grand Island Road, Wallace Road to Four Corners intersection.

The operator shall widen the road from the existing nominal 20-foot width to a 24-foot width. The widened section would be 10 inches of rock base and four inches of HMAC base. The interface between the existing road and the widened section would be covered with a three-foot wide fabric prior to an overlay. The entire roadway would then be surfaced with a two-inch HMAC overlay. The operator would be required to perform the work, and be responsible for 50% of the cost and expense of construction, with the remainder to be paid for by other users.

2. Section B: Four Corners intersection to Upper Island Road Intersection.

The operator shall widen the road from the nominal 20-foot width to a 24-foot width. The widened section would be 10 inches of rock and four inches of HMAC base. The interface between the existing road and the widened section would be covered with a three-foot wide fabric prior to an overlay. The entire roadway would then be surfaced with a two-inch HMAC overlay. The entire cost of this section of road improvement will be paid for by the operator.

3. Section C: Upper Island Road to the site entrance.

The operator shall widen the road from a nominal 16-foot width to a 20-foot width. The widened section would be 10 inches of rock

and four inches of HMAC. The interface between the existing road and the widened section would be covered with a three-foot wide fabric prior to an overlay. The entire road would then be surfaced with a two inch HMAC overlay. That section of roadway that serves as a channel for rising water would be rebuilt to a section that would withstand the annual flood events. The elevation of the road shall be maintained at its current elevation unless a complete flood study indicated a change in elevation. Baker Rock Resources would provide a bond insuring the maintenance of this section of roadway for the life of the mine. The bond would exclude acts of nature. The bond would be adjusted every 10 years by the Portland CPI.

B. No improvements will be made prior to all required permits issued.

C. If an alternative method (or methods) of transporting aggregate and other mined materials from the site are adopted by the operator, such that any or all of the above segments of the haul route will not be used by aggregate trucks accessing the facility, the above improvement exactions shall not be required.

D. Yamhill County retains responsibility for acquiring any necessary right-of-way necessary for road improvements and to establish the line and grade of the roadway.

E. There are three existing bridges along the haul route from Wallace Road: (1) Lambert Slough Bridge; (2) an upstream bridge over a local creek/slough known as Skeeter or Sutter Creek; and (3) a north-south oriented bridge over an unnamed drainage. No pre-development improvements to any of these bridges is required. "NARROW BRIDGE" signs shall be posted in advance of narrow bridges, as specified by the Yamhill County Public Works Director. The operator agrees to support reasonable requests by the county for additional signage on the access road to Highway 221, or elsewhere.

F. The local creek/slough known as Skeeter or Sutter Creek enters the Willamette River at a location north and east of the site. The slough crosses Grand Island Loop Road in an unpaved depression in the road, at a location approximately 2.59 miles from the intersection of Grand Island Road, when traveling counterclockwise (south) from the intersection, along Upper Island Road. The operator shall not alter the slough crossing unless a hydrologic study is first conducted by a registered engineer, who certifies that altering the crossing will not change the flooding characteristics of the area.

13. Lambert Slough/Grand Island Bridge Requirements.

A. The bridge providing access to Grand Island across Lambert Slough (Bridge #01496) has shear cracks that have been mapped and monitored by ODOT. To the date of approval, these shear cracks have not required imposition of restrictive load limits. Additional analysis of bridge capacity may be necessary if the condition of the bridge deteriorates.

B. Following commencement of operations, the operator shall participate in the funding of any study of the bridge necessitated by deteriorating bridge conditions, if so requested by the County Public Works Director. The operator's proportion of the funding of a Lambert Slough Bridge study shall be limited to the operator's *pro rata* share of the trips across the bridge and shall be coordinated with County requests for similar levels of funding by other users of the bridge, such as local agricultural operators and other aggregate site operators that use the bridge.

C. Ordinary and regular maintenance of the Lambert Slough Bridge is the responsibility of the County. If the condition of the bridge deteriorates, following commencement of operations at the site and the hauling of aggregate or other materials from the site, the operator shall participate in the repair, reconstruction, or replacement of the bridge, to the extent bridge degradation is attributable to site operations (*pro rata*).

14. Signage. The operator shall install appropriate off-site signage regarding the safe operation of trucks entering and leaving the site, at the discretion of the Yamhill County Public Works Director. On-site, the operator shall maintain a sign at a prominent location on site, in clear view of, and capable of being read by, all truck drivers leaving the site. At a minimum, the sign shall state:

A. That all trucks entering or leaving the site must comply with a self-imposed maximum speed limit of 35 mph from the site to Wallace Road (State Highway 221);

B. That drivers must at all times yield to pedestrians, farm machinery and school buses;

C. That drivers must refrain from using engine brakes on Grand Island Road or Grand Island; and

D. The radio frequency or CB channel to tune to for informational correspondence regarding local roads and the Lambert Slough Bridge.

15. Speed Control on Haul Roads. The operator shall place 10 mph signs at appropriate locations along the internal haul road.

16. Access. Ingress and egress to and from the site for mining activities shall be solely: Upper Island Road from the entrance of the site, east and north to Grand Island Road, and Grand Island Road to Oregon State Highway 221. Use of Upper Island Road west and north of the site to its intersection with Grand Island Road shall be limited to employees in passenger vehicles and for local deliveries to customers located on or adjacent to this section of road.
17. Site Standards. The operation shall at all times remain in compliance with the Yamhill County standards in *Yamhill County Zoning Code section 404*, except to the extent those provisions are modified by these conditions or by operation of state law.
18. DOGAMI Permit. The property owner shall obtain an operating permit from the Oregon Department of Geology and Mineral Industries (DOGAMI) and shall maintain it during the life of the mine, including reclamation. A copy of the current permit and approved reclamation plan and performance bond shall be provided to the Planning and Building Department prior to mining the property, and upon each renewal anniversary.
19. Fill. Any fill imported to the site, for whatever reason, shall be “clean fill” within the meaning of Oregon DEQ regulation OAR 340-93-030(11).
20. Compliance with DEQ Noise Standards. Mining activities shall operate within the applicable noise standards of the Department of Environmental Quality. The operator shall use mitigation measures proposed in the June 10, 2009 Noise Study by Daly-Standlee & Associates (the “Noise Study”), or equivalent measures, to achieve compliance.
21. Noise Mitigation. Prior to mining in Cells 17 or 18, the applicant shall construct noise berms at locations indicated in Figure 6 of the Lidstone study (final version of Conceptual Mining Plan) or take any other steps necessary to meet DEQ noise standards at sensitive uses located northeast of the site. Any sound attenuation berm constructed at the site shall be designed to prevent rerouting of floodwaters and shall be segmented, not continuous. The location of the berm shall be generally as shown on conceptual plans provided by the applicant, as further refined or improved under state review or by the operator in compliance with applicable law. Otherwise, appropriate muffling equipment and portable barriers shall be utilized as necessary by the operator to ensure compliance with DEQ standards. Noise levels shall be monitored throughout the life of the project, and facility or operating practices shall be modified, as necessary to ensure compliance with law.
22. No Backup Beepers. The operator shall provide “smart” back-up alarms on all loaders and dozers that operate at the site. (“Smart” back-up alarms are those that

only emit backing alarm noises when they sense an object in their path, with the alarm increasing in volume as the distance to the object is reduced.)

23. Conveyors. In the event the operator substitutes a conveyor system in place of the haul trucks to transport aggregate to stockpile areas, the conveyor system shall be fitted with rubber screens at the transfer points to minimize the noise of aggregate material hitting a metal surface. The operator shall, if requested by the Community Planning Director, retain a reputable noise consulting engineer or firm, to conduct a noise test of the conveyor system to determine whether it complies with the DEQ noise standards, and shall make whatever modifications are necessary for the conveyor system to meet the DEQ standards.
24. Groundwater Well Monitoring. There are at least 2 domestic water wells and 13 irrigation water wells within 1500 feet of the mining area. Of those, at least one domestic well and all of the irrigation wells draw water from the shallow aquifer. The locations and well completion details of these wells are shown on Figure 4 and in Appendix D of the Lidstone report. To ensure that the operator will not adversely impact these wells or otherwise affect the groundwater resources of Grand Island, the operator shall implement the following groundwater conflict minimization measures:
 - A. Prior to mining, the operator shall establish two monitoring wells within the mining area (see revised Figure 6, Lidstone report). These wells will be located within mining cells 21 and 16, and will monitor water levels within the shallow aquifer and be used to obtain water samples. An infiltration trench will be constructed between the active, initial mining area (mining cells 1-12) and the monitoring wells. The location of this trench and of the monitoring wells will allow a minimum of ten years of data collection and analysis of water level and water quality. The location of this trench and monitoring wells will also allow the operator and the public to evaluate and address potential groundwater impacts in the early stages of mining.
 - B. Prior to mining, samples and readings shall be taken from each monitoring well. The purpose of this testing is to establish the baseline groundwater quality and static water level in the wells. With the permission of the owner, the operator will perform the same tests on any well located within 1500 feet of the mining area. An Oregon Registered Professional Geologist will oversee: collection of the data; delivery of samples for lab testing; reporting of the baseline results; and comparison to future data. All data and reports (baseline and periodic) will be supplied to the local District and, upon request, will be provided directly to owners or users of wells within the impact area. All well quality testing, including turbidity and for the contaminants listed below, shall be conducted by a qualified laboratory.

C. For any domestic well tested, the following water quality parameters will be measured:

1. Aluminum
2. Arsenic
3. Barium
4. Boron
5. Cadmium
6. Calcium and Magnesium
7. Chloride
8. Conductivity
9. Copper
10. Fluoride
11. Hardness
12. Iron
13. Lead
14. Lithium
15. Manganese
16. Nitrate
17. pH
18. Sodium
19. Sulfate
20. Zinc
21. Coliform
22. Iron bacteria
23. Turbidity

D. For any irrigation well tested, the following water quality parameters will be tested:

1. pH
2. Conductivity
3. Nitrate
4. Iron Bacteria
5. Hardness

E. Upon the request of the owner of a well located within 1500 feet of the mining area who has requested the above baseline quality and quantity testing, the operator shall have the following additional services performed on the well by an independent well inspection company:

1. Check the current pump settings;
2. Visually inspect the condition of the well and well casing;
3. Pull and inspect the pump, pump saver and controls; and

4. Perform a two-hour flow test with the well owner's pump and pump settings.

The results of such tests shall be provided to the operator, the owner of the well and, upon request of the well owner, to the local District.

F. Following commencement of mining at the site, monitoring well measurements shall occur monthly or more frequently as determined by site-specific conditions. At a minimum, water quality sampling and testing shall occur yearly.

25. Groundwater Guarantee.

A. In the event that corrective action for groundwater necessitates well deepening, well replacement or replacement water, the operator shall take corrective action as required by DOGAMI or as otherwise agreed between the operator and the affected well owner, without undue delay.

B. The operator shall guarantee the quality and quantity of water available at neighboring wells specified above commensurate with the use—domestic or irrigation. Potable replacement water is required in the replacement of all domestic wells. Irrigation quality water is required for the replacement of all irrigation wells. Any interruption in the water service or diminished quality occurring beyond the wellhead, in delivery or pumping systems, is not the operator's responsibility, but remains the responsibility of the well owners or users. Maintaining or replacing any part of the electrical connection, and servicing or replacing pumps within the wells, shall also remain the sole responsibility of the well owners or users.

C. The operator is not required by this condition to, and does not, make any representations as to the current or past quality or quantity of the water available in the wells, or its suitability or legality for domestic or other uses. The well owners or users retain responsibility for compliance with existing or future water standards or requirements, except to the extent that the operator's actions have caused those standards or requirements to be violated.

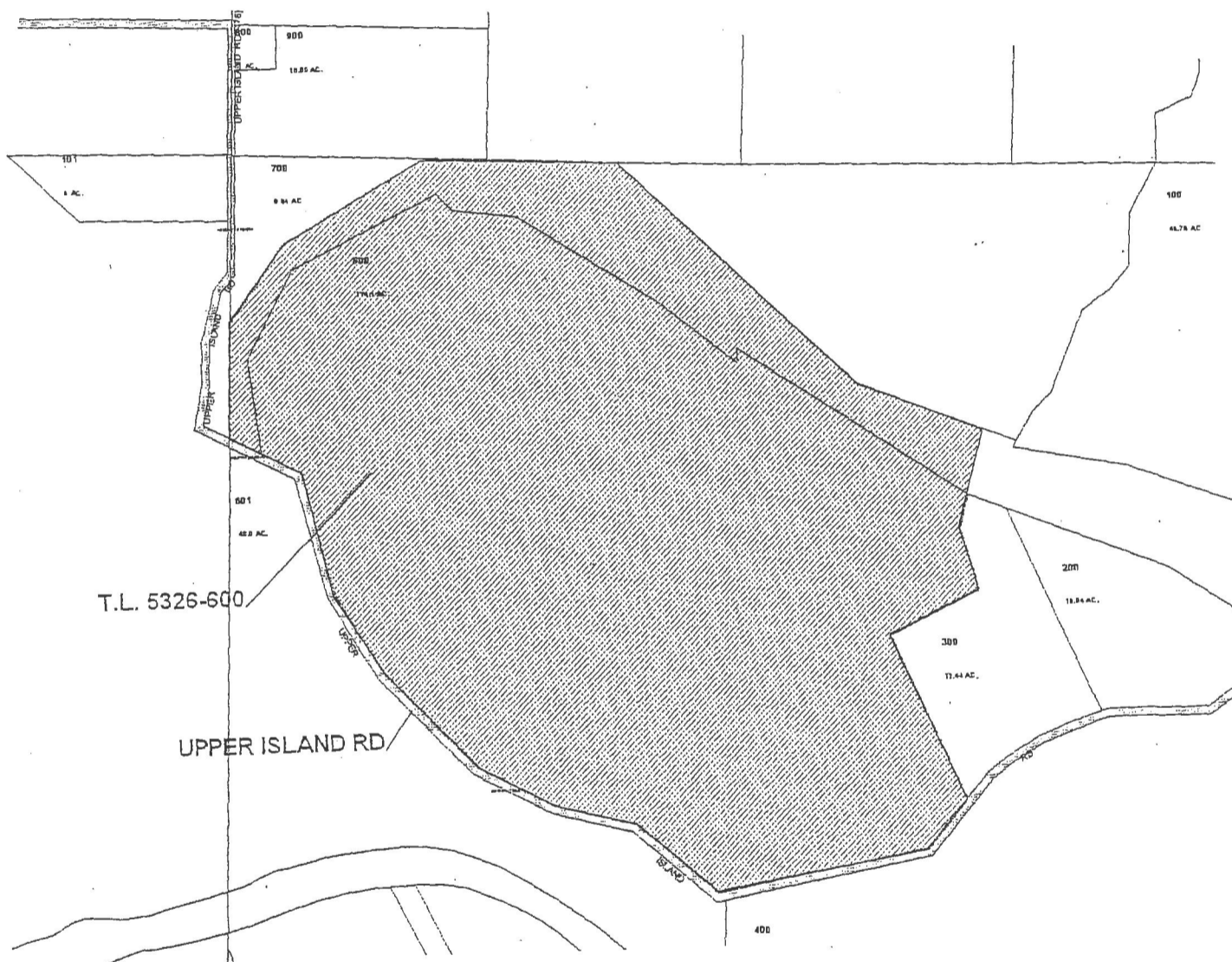
26. Slough Water Elevation Monitoring and Mitigation. Prior to mining and throughout the life of the project, the operator shall examine the water elevations in the slough adjacent to the mining area. To ensure that water levels in the slough are not increased due to the location of the infiltration trench originally proposed by the applicant, the trench shall instead be located farther from the slough and in greater proximity to the initial mining cells (specifically, within or in the vicinity of mining cells 13, 14, 21 and 25). (See Lidstone Figure 6). Prior to mining through or north of the trench or through a monitoring well, all previously collected groundwater data will be reviewed by a licensed professional

engineer or registered geologist. This data analysis shall consider the effects of relocating the trench. If data and analyses indicate potentially adverse groundwater impacts to surrounding properties or surface water impacts to the slough, the operator shall adjust the mining plan or take other steps as necessary to minimize potential, mine-related ground or surface water impacts. The results of all studies and data collection shall be maintained by the operator for review by island residents and property owners, upon request and/or by internet posting in a manner reasonably accessible to island residents and property owners. To the extent mitigation is identified by the operator or by DOGAMI that may reduce existing flood impacts or minimize potential impacts related to mining operations, the operator shall implement such mitigation at its own expense.

27. Release of Mining Rights. Once the operator has obtained all required local, state and federal approvals necessary to allow mining of the site described herein substantially as proposed by the operator, the operator agrees to relinquish all right to mine a portion of Tax Lot 5324-300, as originally requested in Docket PA-2-94 and C-10-94, and as allowed by Yamhill County Ordinance No. 579. To the extent necessary to carry out this condition, the operator shall seek repeal of Ordinance No. 579 by the county.
28. Limitation Pending Tax Lot Resolution. Prior to mining within 50 feet of any area not currently identified in county Tax Assessor records as part of TL 5326-600, the operator shall have the assessor's map corrected and/or otherwise resolve ownership of the property as being part of TL 5326-600.

END

EXHIBIT MAP FOR ORDINANCE NO. 873
ADOPTED BY THE YAMHILL COUNTY BOARD OF COMMISSIONERS
June 7, 2012
DOCKET PAZ-01-10/WRG-01-10
APPROVAL OF A ZONE CHANGE FROM EXCLUSIVE FARM USE (EF-80) TO
MINERAL RESOURCE (MR-2)

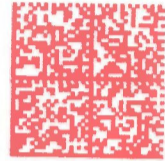


APPROXIMATE SCALE - 1 INCH = 800 FEET

CHANGE APPLIES TO THE ABOVE PORTION OF TAX LOT 5326-600 AND A PORTION OF AN UNDESIGNATED LOT NORTH OF AND ADJACENT TO TAX LOT 5326-600, AS IDENTIFIED ABOVE. ACTUAL SIGNIFICANCE BOUNDARY IS TO CENTERLINE OF UPPER GRAND ISLAND ROAD (see Tab 17 of Application)

B.O. 12-271

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LAND CONSERVATION
AND DEVELOPMENT

Dept. of Land Conservation and Development
Attn: Plan Amendment Specialist
635 Capitol Street NE, Suite 150
Salem, OR 97301-2540

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