

BEFORE THE BOARD OF COMMISSIONERS
OF 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 Contiguous Tax)
Lots Totaling Approximately 422 Acres,)
Approximately 245 acres to be mined; including)
Floodplain and Greenway Permits, and Imposition)
Of a Limited Use Overlay, PAZ-02-04, FP-04-04)
and WRG-04-04; Applicant Joe Bernert Towing,)
Inc.; and Declaring an Emergency)

ORDINANCE 752

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON (the Board) sat for the transaction of county business on December 21, 2004, Commissioners Kathy George, Mary P. Stern and Leslie Lewis being present.

IT APPEARING TO THE BOARD that on April 20, 2004, Joe Bernert Towing, Inc. (the "applicant") submitted an application to the Department of Planning and Development for an alluvial sand and gravel mining operation on Grand Island, adjacent to the Willamette River; and

IT APPEARING TO THE BOARD, that on September 9, 2004, the Yamhill County Planning Commission held a duly noticed public hearing to consider the application. The record remained open for written submittals from all parties until September 16, 2004; for rebuttal until September 23, 2004; and until September 28, 2004 for applicant's final statement. Thereafter, on October 7, 2004 a quorum of eight Commissioners present recommended approval of the applications in a six to two vote; and

IT APPEARING TO THE BOARD that this matter was heard by the Board on November 4, 2004; continued to November 30, 2004 for public agency reports; and to December 2, 2004 for deliberation, at which time the Board voted unanimously to accept the recommendation of the Planning Commission; approve the applications; and continue the matter for preparation of findings for approval; NOW THEREFORE;

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 Lots 5314-100, 200 and 300, and 5315-300 and 400.

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 the Conditions of Approval attached and incorporated herein by reference.

Section 3. The findings attached as Exhibit "A" and incorporated herein by reference are hereby adopted in support of this ordinance.

Section 4. This ordinance being necessary for the health, safety and welfare of the citizens of Yamhill County, and an emergency having been declared to exist, is effective upon passage.

DONE at McMinnville, Oregon, this 21st day of December, 2004.

ATTEST

YAMHILL COUNTY BOARD OF COMMISSIONERS

JAN COLEMAN

County Clerk



Kathy George

Chair

KATHY GEORGE

By

Anne B. ...

Deputy Anne B. ...

Mary P. Stern

Commissioner

MARY P. STERN

FORM APPROVED BY:

Rick Sanai

Rick Sanai

Assistant County Counsel

Leslie Lewis

Commissioner

LESLIE LEWIS

EXHIBIT A
FINDINGS IN SUPPORT OF APPROVAL
AND
CONDITIONS OF APPROVAL
ORDINANCE 752

Background Facts:

- Applicant:** Joe Bernert Towing, Inc.
31200 SW Industrial Way
Wilsonville, Oregon 97070

Phone: (503) 682-2527
Fax: (503) 682-1922
- Tax lots:** Township 5S, Range 3W, Sections 14 and 15, Tax Lots 14-100, 200 and 300, and 15-300 and 400. (\pm 422 acres) Also described as Tax account Nos. R531400100, 200 and 300; R531500300 and 400; (collectively referred to in this narrative as the "site" or the "subject property").
- Owner:** Joe Bernert Towing, Inc.
31200 SW Industrial Way
Wilsonville, Oregon 97070
- Site Size:** \pm 422 acres, which includes all contiguous tax lots owned by applicant. The proposal is to mine 245 acres of the site, to be reclaimed to farm and wildlife habitat uses.
- Site Location:** 17595 SE Lower Island Road, Dayton, Oregon 97114. The site is located on the east side of Lower Island Road, just north of the intersection of Lower Island Road with Grand Island Loop.
- Site Zoning:** "Exclusive Farm Use" (EF-80)
- Access:** Access to the site is by private drive, to Lower Island Road. Farm access will continue by way of the existing drive. Mining access will be through Tax Lot 5S3W-15-300
- On-Site Land Use:** The site is currently in farm use, with two dwellings and numerous farm buildings adjacent to Lower Island Road. Portions of the site (including the existing farm complex) will continue in commercial agricultural use for the life of the project.

Site Characteristics: The site is bordered by the Willamette River to the north and east. Most of the site is relatively flat or rolling terrain, consisting of open fields, meander scars and wooded sloughs. Elevations range from 87 to 104 feet above mean sea level with most of the site around 92 feet. The farm buildings are located on an upper terrace above a lower floodplain area. Duke Landing at the northernmost end of the site forms a slough extending southward into the site. At the mouth of the slough, the Corps of Engineers has installed a low dike and a 36-inch culvert. The slough contains wetlands that will be preserved, and a dedicated but undeveloped portion of Dukes Landing Road (County Road 474). A raised, wooded area extends south along the river, widening to 800 feet at the southern boundary of the site. This feature physically and visually separates the proposed mining area from the river.

Surrounding Planning, Zoning and Land Use: The surrounding area is zoned EFU and is used for farming. Within 1,500 feet of the mining area there are 20 parcels that Yamhill and Marion County tax rolls show as having dwellings or being otherwise improved. (Dwellings on some of these properties may be greater than 1500 feet from the mining area, but are nevertheless included in impact area analysis.) Farms in the area are generally 100 or more acres. On Grand Island, farm uses typically include filberts, sweet corn, raspberries, Marion berries, beans and vegetable row crops. 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.

Utilities: The dwellings on the property are served by on-site well and septic systems. The existing and proposed mining operations do not require domestic water service. Toilet facilities are located at the existing dwellings and alternatively, portable facilities will be located on upland portions of the site near the existing dwelling and agricultural buildings for use by employees.

Fire Protection: Dayton Rural Fire Protection District

Previous Actions: Docket CFP-01-92 approved a replacement dwelling now located on Tax Lot 5315-400, at 17595 SE Lower Island Road, Dayton.

Proposed Use: Aggregate materials—sand and gravel—will be removed from 245 acres of the 422-acre site over an estimated period of 30 years. During that period, areas of the site that are not mined will continue to be farmed or will be maintained and enhanced for use as wildlife habitat and open space. Processing of materials removed from the site into Portland cement will take place at existing off-site facilities.

Reclaimed Use: Sequential reclamation, with 41 acres immediately east of the slough to be reclaimed as farmland. An additional 27 acres of Class I soils on the upper terrace will be preserved as farmland. The remainder of the site will be transformed over the life of the project into emergent and shrub wetlands with sinuous shorelines, interspersed with upland forested areas and ponds, and hydraulically connected to the Willamette by the existing slough. An estimated 112 acres will be reclaimed as open water fish and wildlife habitat; 69 acres as emergent wetland habitat; 12 acres as wetland shrub habitat and 11 acres as upland forest habitat. 177 acres of the site will not be mined, and none of the existing 42 acres of forested areas on the site will be mined. Undisturbed buffer areas will be enhanced over the life of the mine, and approval is requested for an equestrian/hiking trail in the greenway for use by neighbors. This project has been designed to be a showcase for riparian and farmland restoration in the Willamette Valley.

Findings and Conclusions for Approval:

The applicant has demonstrated compliance with the applicable criteria of the Yamhill County Comprehensive Plan and Zoning Ordinance, Goal 5, and the Goal 5 Rule for Aggregate, OAR 660-023-0180 as detailed in these findings. The record of these proceedings provides the factual basis for approval. Conditions of Approval adopted as part of Ordinance 752 ensure compliance with all applicable standards. The Board has considered and weighed all evidence, arguments and testimony received by the Planning Commission and the Board in these proceedings and has voted unanimously to approve.

On April 20, 2004 the applicant, Joe Bernert Towing, 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. Requested approvals included a comprehensive plan amendment to add the site to the county's inventory of mineral and aggregate resources; amendment of the site's comprehensive plan designation from AFLH to Quarry; and a zone change from Exclusive Farm Use (EF-80) to Mineral Resource (MR-2). In conjunction with the requested PAPA, the applicant sought a Floodplain permit. Additionally, the applicant requested approval of a Willamette River Greenway permit, to allow development of an equestrian/hiking trail in the greenway for use by neighbors, and to allow construction of portion of a low flow channel for seasonal fish passage. No other mining activities will take place within the greenway.

1. **Goal 5 Rule Compliance.** 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 to utilize Goal 5 mineral and aggregate resources. By its terms and as confirmed by LUBA and the Oregon Court of Appeals, OAR 660-23-0180 supercedes

pre-existing local standards for approval of plan amendments and zone changes to allow aggregate mining. This narrative addresses the requirements of the Goal 5 rule. Following Goal 5 rule analysis, the applicant has provided floodplain overlay findings and certifications, greenway findings, and other cautionary findings to ensure full compliance of the proposal with state law and local ordinances. The maps, studies and other materials submitted by the applicant, and testimony and evidence received through the hearing process, support the Board's adoption of these findings for approval.

1.1 Completeness of Application.

1.1.1. OAR 660-23-0180(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 660-23-030(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 submitted all of the information required by this section. Operating hours are specified in the Conditions of Approval.

1.2 Significance of the Resource. OAR 660-023-180(3) establishes standards for determining whether an aggregate resource is "significant" and can therefore be processed under the Goal 5 rule for aggregate. OAR 660-23-180(3) states:

"(3) An aggregate resource site shall be considered significant if adequate information regarding the quantity, quality, and location of the resource demonstrates that the site meets any one of the

criteria in subsections (a) through (c) of this section, except as provided in subsection (d) of this section:

“(a) A representative set of samples of aggregate material in the deposit on the site meets Oregon Department of Transportation (ODOT) specifications for base rock for air degradation, abrasion, and sodium sulfate soundness, and the estimated amount of material is more than 2,000,000 tons in the Willamette Valley, or 100,000 tons outside the Willamette Valley; (emphasis added)

The Board finds, based on the studies, test results, analysis and other information provided by the applicant, that the mining area contains approximately 17.5 million tons of quality, water-lain aggregate deposits, which significantly exceeds the 2 million ton minimum quantity required by the Goal 5 rule.

ODOT specifications for base rock are described in a 1996 ODOT manual, entitled “Standard Specifications for Highway Construction.” The specifications require a level of durability measured through abrasion and air degradation tests. To demonstrate resistance to abrasion, the representative set of samples must demonstrate no more than 35% loss. The air degradation test measures the rate at which rock degrades through attrition, and a passing score for base rock is no more than 30% loss and 75 mm sediment height. ODOT’s specifications for base rock do not require that base rock samples meet any standard for sodium sulfate soundness.

A representative set of samples from the subject property has been tested for compliance with ODOT specifications for base rock, and the results were provided to the County. The samples tested were from locations on the site and all of the samples exceeded ODOT’s baseline standards for air degradation and abrasion and would be suitable for use as base rock under applicable ODOT specifications. For abrasion, the materials tested had an average percent loss of 17.3 percent; the standard allows a maximum of 35% loss. For degradation, the tested material averaged 19.98 percent, with a sediment height of 33 mm; the standard allows up to 30% and a maximum sediment height of 75 mm. The materials also performed well when tested for soundness, and are suitable for production of high quality cement and concrete.

The Board finds that the aggregate resource in the site exceeds the quality and quantity requirements of OAR 660-023-0180(3)(a) and the site is therefore a “significant” aggregate resource site under the requirements of the Goal 5 Rule for aggregate. Subsections (b) and (c) do not apply. OAR 660-023-0180(3)(b) would allow a significance determination if:

“(b) The material meets local government standards establishing a lower threshold for significance than subsection (a) of this section; or

and OAR 660-023-0180(3)(c) would allow a significance determination if:

“(c) The aggregate site is on an inventory of significant sites in an acknowledged plan on the applicable date of this rule.”

The Board finds that neither of these subsections applies; Yamhill County has not adopted a lower threshold; and the subject property was not listed as a significant site in the County’s plan as of September 1, 1996, the effective date of the Goal 5 rule for aggregate resources. As stated, the significance of the resource has been demonstrated pursuant to OAR 660-023-0180(3)(a).

OAR 660-023-0180(3)(d) states:

“(d) Notwithstanding subsections (a) through (c) of this section, an aggregate site is not significant if the criteria in either (A) or (B) of this subsection apply, except for an expansion area of an existing site if the operator of the existing site on March 1, 1996, had an enforceable property interest in the expansion area on that date:

The Board finds that the site is not included in this exception, and the following subsections therefore apply:

“(A) [The site is not significant if] More than 35 percent of the proposed mining area consists of soil classified as Class I on Natural Resource and Conservation Service (NRCS) maps on the date of this rule; or

“(B) More than 35 percent of the proposed mining area consists of soil classified as Class II, or of a combination of Class II and Class I or Unique soil on NRCS maps available on the date of this rule, unless the average width of the aggregate layer within the mining area exceeds:

* * *

(ii) 25 feet in Polk, Yamhill, and Clackamas counties;”

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). The Soil Maps and descriptions provided by the applicant indicate that the mining area contains the following types of soils, as shown on NRCS maps available on the date of the rule, September 1, 1996: approximately nine acres of Chehalis Silty Clay Loam, Class I soil; 191.62 acres of Newberg Fine Sandy Loam; 29.67 acres of McBee Silty Clay Loam; and 15.46 acres of Newberg Silt Loam, all Class II soils. Because more than 35% of the mining area consists of Class I and II soils, the applicant must demonstrate that the average width of the aggregate layer within the mining area exceeds 25 feet.

The Board finds, based on the studies, test results, analysis and other information provided by the applicant, that the average width of the aggregate layer on the site is 29

feet. The site is therefore a significant aggregate resource, in compliance with the standards of the Goal 5 rule.

1.3 Identification of Impact Area. OAR 660-23-0180(4) states:

“(4) For significant mineral and aggregate sites, local governments shall decide whether mining is permitted. For a PAPA application involving a significant aggregate site, the process for this decision is set out in subsections (a) through (g) of this section. For a PAPA involving a significant aggregate site, a local government must complete the process within 180 days after receipt of a complete application that is consistent with section (6) of this rule, or by the earliest date after 180 days allowed by local charter. The process for reaching decisions about aggregate mining is as follows:

“(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.

The 1500-foot impact area for the site was identified on exhibits provided by the applicant. The designated impact area for purposes of the County’s Goal 5 analysis includes 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)(g). As will be described in more detail in the following section, the County has not identified any factual information that would indicate significant potential conflicts beyond the 1500-foot impact area identified in the record.

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

OAR 660-23-0180(4)(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. * * **

Twenty dwellings were identified by the applicant as located on tax lots wholly or partially within 1500 feet of the proposed mining area. Two of the identified tax lots with dwellings are located across the Willamette River, in Marion County. All of the identified dwellings are approved land uses and are sensitive uses. There are no other sensitive uses within the impact area, and 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, Marion County, or any other local government. The following sections of these findings identify potential conflicts, explain why those conflicts are not “predicted,” and explain why sensitive uses within the impact area will not be adversely affected by proposed mining operations.

1.5 Consideration of Potential Conflicts. The remainder of OAR 660-23-0180(4) (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. This paragraph shall not apply after the effective date of commission rules adopted pursuant to Chapter 285, Oregon Laws 1995;

“(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;

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

1.5.1 Conflicts Due to Noise, Dust, or Other Discharges. The Board finds as follows with regard 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;”

Noise. The applicant presented a noise study prepared by Daly Standlee and Associates addressing potential noise impacts. The applicable standards are located in OAR Chapter 340, Division 35, containing Oregon Department of Environmental Quality (DEQ) noise control regulations. OAR 340-035-0035 contains “Noise Control Regulations for Industry and Commerce” that regulate mining activities on the site. OAR 340-035-0010(47) defines a “Previously Unused Industrial or Commercial Site” as “property which has not been used by any industrial or commercial noise source during the 20 years immediately preceding commencement of construction of a new industrial or commercial source on that property.” OAR 340-035-0015(33) defines a “New Industrial or Commercial Noise Source” as: “any industrial or commercial noise source for which installation or construction was commenced after January 1, 1975 on a site not previously occupied by the proposed industrial or commercial noise source in question.”

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. L10 is the noise level equaled or exceeded 10% of any hour (six minutes), and L50 is the noise level equaled or exceeded 50% of an hour (30 minutes). In this case, the ambient degradation limits apply.

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 Model 700 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 being outside of the applicant's property boundary, the study proposed limiting conditions to ensure that no noise sensitive uses are within the compliance boundary. The study concluded that, if properly conditioned, the applicant will meet DEQ noise standards as to all noise sensitive uses in the impact area. Berms will be constructed at locations indicated in the noise study, and 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. Conditions of Approval ensure the applicant's compliance with DEQ noise limits (see Exhibit C, Conditions of Approval).

The Standlee report also considers, and proposes conditions to minimize potential impacts to, the dwellings owned by the applicant. However, those dwellings are not 'noise or dust sensitive' or "conflicting uses" under Goal 5 rule definitions. Under the Goal 5 Rule, a:

*"'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 * * *."*

(OAR 660-023-0180(1)(b)). The applicant's dwellings will not "interfere with" or "be adversely affected by" mining or processing activities, because they belong to the applicant. Because the applicant has legal control and authority over both the mining operation and the dwellings, they cannot be "conflicting uses." Their use is properly characterized as an ancillary use to the mining operation, promoting security and efficient use of the site for mining and farming. To the extent the dwellings were to be "adversely affected" by noise or dust, (which the applicant and County doubt) the applicant could resolve such problems by using the dwellings for exclusive use as caretaker residences supporting farming and mining on the site, as offices, or both. For these reasons, it is reasonable to conclude that the dwellings owned by the applicant are not "noise sensitive uses," or that if they are, they still cannot present a "conflict" to the applicant's mining operation because their use is subject to the applicant's control. The DEQ noise regulations for industry and commerce support this approach by allowing an exception for "noise sensitive property owned or controlled by the person who controls or owns the noise source."

Other than the dwellings discussed in this narrative, the area 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. All mining will take place within the floodplain and floodway, upon which it would be difficult, if not impossible, to site any new residences. As indicated in the attached report, impacts to noise sensitive uses in the impact area can be fully mitigated and minimized using reasonable and practicable measures as described above and in the attached study. The applicant has agreed to imposition of enforceable conditions to ensure that the site complies at all times with DEQ noise standards.

Dust. The proposal is to mine the site using an excavator, without dewatering the active mining pond. 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 stockpiles in Block 8. 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. 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. 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 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, which will continue while mining progresses. The site has very significant water rights (approximately 537 acre-feet), a functioning underground system of main irrigation lines and pumps, electric power service to all sectors of the property, and extensive sets of hand sprinkler lines. All of this equipment will be available to control dust as necessary. As with noise, potential dust impacts to the dwellings owned by the applicant are not conflicting uses subject to mitigation under the Goal 5 Rule.

No crushers or other machinery requiring DEQ air quality permits will be used at the site, 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 established by the applicant, the Board finds that 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.

Other Discharges. No other potential discharges from the site have been identified by the County that would present a discernable conflict to existing or approved land uses in the area. It should be noted, however, that the mine plan has been developed to accommodate on-going farming operations on the site, and includes a wetlands mitigation project that will restore riparian conditions to more closely approximate areas along the Willamette that existed during the pre-settlement era. Hydraulically, the site will continue to flood seasonally at times when it is not being actively mined, just as it does now—by backing into the site from the north by way of an existing slough at low velocities. Without dewatering, the operating pond and reclaimed wetlands will have a surface water elevation that approximates the elevation of the river, further ensuring that floodwaters will enter and exit the site in a stable manner. Significant setbacks, of 200-300 feet from the river for most of the site (and almost 800 feet in the southeast corner), along with the applicant’s planting program and low velocity backwater flooding, make any accelerated channel change and “capture” unlikely. Erosion control practices required by DOGAMI, mining by 10-15 acre cells, and sequential reclamation, will minimize 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. The applicant’s plans are also demonstrably feasible: a sister company of the applicant currently owns a commercial nursery and the applicant plans continued production of nursery stock suitable for use in wildlife habitat restoration on the site, and is currently involved in restoration projects elsewhere. For all of these reasons, no significant other “discharges” are likely or predicted.

1.5.2 Potential Conflicts to Local Roads. Subparagraph (B), the “potential 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.”

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 has been prepared by Kittelson & Associates, Inc. and is included in the record. The Kittelson study considered an area beyond the required one mile radius of the site and examined geometrics and operations at the following intersections:

- Highway 221/Grand Island Road

- Grand Island Road/Upper Island Road
- Lower Island Road/Site Access

The traffic study estimates that the proposed aggregate operation will contribute minimal amounts of daily traffic volumes to the study area intersections (an average of 74 truck trips per day plus no more than 10 round trip passenger car trips per day). Given the low trip generation and the low existing traffic volumes on these roadways, the report predicts no significant capacity issues at the Grand Island/Upper Island Road and Lower 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 are adequate to accommodate truck turning maneuvers in a safe and efficient manner.

The applicant's traffic study and other information received by the County during the hearing process establishes that there will be no significant potential conflicts to local roads from traffic operations associated with the proposed mining activities. The existing geometrics at the Highway 221/Grand Island Road and Grand Island Road/Upper Island Road intersection are adequate to accommodate the anticipated truck turning maneuvers with minor widening at the Highway 221/Grand Island Road intersection. In addition, a design has been proposed for the site access that meets the sight distance and geometric requirements of predicted site traffic. Further, improvements to Lower Island Road are recommended between the site access and the Upper Island Road/Grand Island Road intersection to meet Yamhill County standards. The County is imposing Conditions of Approval that further the conclusions of the traffic impact analysis.

The Kittelson report 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.

The Kittelson 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:

“(a) Changes the functional classification of an existing or planned transportation facility;

(b) Changes standards implementing a functional classification system;

(c) Allows types or levels of land uses which would result in levels of travel or access which are inconsistent with the functional classification of a transportation facility; or

(d) Would reduce the performance standards of the facility below the minimum acceptable level identified in the TSP."

As explained in the Kittelson report, 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 Board finds that 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.

Potential Local Road and Bridge Cross-Section Conflicts. During the proceedings to consider the applicant's proposal, questions were raised regarding cross section elements of local roads and the structural integrity of the Lambert Slough Bridge (Bridge No. 01496A) which serves as the sole land access to Grand Island.

A few years ago, state bridge inspectors began noting serious problems with shear cracks in reinforced concrete box girder bridges constructed between 1947 and 1962. "Shear" is strain that causes or tends to cause contiguous surfaces to slide relative to each other. When a shear crack is "working," the two sides are grinding or opening, and slowly increasing in width and length. Replacement and repair of state and local bridges due to the presence of working shear cracks has resulted in major public expenditures in recent years.

The Lambert Slough Bridge was built in 1964, and is approximately 633 feet long and 31+ feet wide. The main span is a reinforced concrete box girder. One approach span consists of pre-stressed concrete girders and the other of reinforced concrete deck girders (RCDG). The County previously scheduled and budgeted non-structural repairs to one of the eastern piers to protect exposed rebar. The scheduled repair is considered routine maintenance to correct a material failure, and is not load related.

However, during a recent routine inspection of the bridge, shear cracks were identified in the east abutment RCDG. In the area that the inspectors could access, the cracks were 0.020" (two one hundredths of an inch) wide. A follow-up inspection with a "snooper crane" was conducted by engineer Patrice Grenier on November 8, 2004. At that time, numerous additional shear cracks (more than 100) were noted in the span. As shown on diagrams included with the engineer's report, the cracks are as wide as .030 (thirty thousandths of an inch), although most of the cracks are narrower.

The main problem with the Lambert Slough Bridge appears to concern the RCDG portion of the structure. After reviewing the Grenier data and report, ODOT's Local Agency Load Rating Engineer Joe Charbonneau indicated that: "The condition of the RCDG portion of the structure would now be considered poor, due to the cracks." ODOT's engineer also

noted: "In our judgment, it would not be enough to warrant restricting the structure from Legal Loads."

Under federal requirements, ODOT is required to load-rate state bridges and to direct local governments to post bridges with load capacities that are insufficient for typical axle and tire configurations. County Public Works Director Bill Gille indicated that the Lambert Slough Bridge was last load-rated in 1994, and has never been "load-limited." He stated that the bridge was built for loads in excess of those associated with common axle configurations, and is not considered to be deficient or obsolete. Mr. Gille also noted that common gravel truck configurations are longer than the RCDG span of the bridge. The entire weight of such trucks would not be on the RCDG span at one time, but would be partially distributed to axles and tires on the approach road or on the main span.

As noted, the Goal 5 rule requires that the County consider "potential conflicts to local roads" and states that:

"Conflicts shall be determined based on clear and objective standards regarding sight distances, cross section elements, horizontal and vertical alignment, and similar items in the transportation plan and implementing ordinances."

The rule also states:

"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."

No "clear and objective" standard from the County's transportation plan or implementing ordinances has been identified that apply in this instance. With regard to "cross section elements" of local access roads and the bridge, the only "standard" likely to have relevance is a load limit, which does not currently exist and is not likely to be imposed in the near future. Load limits are based on axle weight and would apply equally to every truck using the road or bridge. The applicant has the same obligation to comply with a load limit, if one is ever imposed, as any other truck using the road or bridge.

The ability of state and local roads and bridges to accommodate common axle loads and configurations is vital to the local, state and regional economy. Lambert Slough Bridge and local Grand Island access roads are vital to the local farming community, and load limits would negatively impact the economy of the area. The applicant did not contribute to the current condition of the Lambert Slough Bridge or local roads but, like all bridge users, would be impacted by a load limit, which would increase trucking expenses. Alternative methods for transporting materials from the site, including barging or by slurry to Marion County, have not been fully developed at this time, suggesting that in the immediate future the applicant will need to use local access roads and the bridge to transport materials. The record also indicates that there is an existing gravel operation on the island, and that farm loads can be heavier per axle than those carried in common gravel truck configurations. No basis was presented for treating the applicant's trucks

differently from other trucks carrying legal axle weights, including those carrying agricultural commodities.

Weighing the evidence provided by all parties and agency recommendations, the Board finds that load limits are unlikely to be imposed on local access roads in the near future. ODOT stress fracture load rating analysis and standards are being revised based on a recent Oregon State University study indicating that certain types of shear cracks do not significantly reduce the load carrying capacity of a bridge or indicate impending failure. The applicant has demonstrated that all potential conflicts to local roads attributable to the proposed operation can be minimized to a level at which they are no longer significant. To ensure that potential conflicts with local roads are minimized as required by the Goal 5 rule, the applicant has agreed to reconstruct the portion of Lower Island road adjacent to the site to current County road standards and to contribute to studies of local access roads and the bridge. (see the Conditions of Approval)

1.5.3 Safety Conflicts With Existing Public Airports. Subparagraph (C) of OAR 660-023-0180(4)(b) 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;”

The Board finds that there are no “existing public airports” within the impact area or anywhere near the site, and no identified safety conflicts with public airports. (This section is also, apparently, no longer applicable due to the adoption of commission rules pursuant to the specified Oregon Law.)

1.5.4 Conflicts with Other Goal 5 Resources within the Impact Area. OAR 660-023-0180(4)(b)(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 Comprehensive Plan identifies the Willamette River, adjacent to the site, as fish habitat. It is unclear to what extent the river is included in the phrase “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.” The applicant has nevertheless attempted 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 to the greatest degree possible, effectively minimizing any potential conflicts to a level that is no longer significant. 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 the type of wildlife likely to exist on the site if it is restored properly (e.g., red-

legged frogs, western pond turtles). The applicant has also identified wetlands, and associated riparian areas on the site, for the purpose of protecting those areas to the extent possible, 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. The proposal does not conflict with the Willamette River, or any identified Goal 5 resource, but will ultimately enhance the riverine environment and other resources listed in Goal 5 as worthy of protection.

Fish and Wildlife Habitat. The applicant has commissioned wildlife studies to address issues related to fish and wildlife habitat protection during mining and to ensure that the reclamation plans promote habitat values. The applicant's Biological Assessment identifies wildlife existing and nesting in the vicinity, including bald eagles, spring Chinook salmon, winter steelhead, Oregon chub, red-legged frogs, western pond turtles and great blue herons. The report suggests methods for mitigating potential harm to wildlife on the site and in the vicinity of the site, and improving available and reclaimed habitat. The applicant also provided a "Revegetation Report" describing and supporting the applicant's plans to make the site a model for future efforts to restore backwater channel complexity and habitat in appropriate areas along the Willamette River and elsewhere.

In this case the mine and reclamation plan have been specifically 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. Over the years, flood events have diminished the quality of soils on the site for farming, but the site has tremendous capacity for improving Willamette River fisheries and as high-value wildlife habitat. The mining plan calls for the development of seven of nine mine blocks, each mined wet with no connection to any other water body during mining. Excavation will cease each winter, and a connection channel set at average June 1st river elevation (80.5 ft MSL) will allow fish that enter the pond during winter flood events to leave again at times appropriate to their life cycle. Upon completion of mining in individual cells of each block, the pond 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. To ensure the success of reclamation efforts, the applicant currently has stocks of native vegetation at its own nursery, and is currently engaged in a reclamation project in Wilsonville known as the Seely Ditch Project. The applicant has demonstrated the feasibility of developing and supplying the natural vegetation that will be needed for reclamation over the estimated 30-year life of the project. Both the sequencing of cell construction and the final design are intended to result in the establishment of 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.

Wetland and Associated Riparian Areas. The applicant commissioned a delineation and study of wetlands that is included in the record. Although none of the wetland resources on site are specifically identified in a county Goal 5 inventory, the County and applicant 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 to the greatest extent possible, and to provide all necessary mitigation required by law. The hydraulic analysis supports a conclusion that, from an engineering standpoint, the mining and reclamation plans will succeed, and function as envisioned.

1.5.5 Conflicts with Agricultural Practices. As to “(E) Conflicts with agricultural practices,” OAR 660-23-0180(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.

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.

* * *

As explained in Schellenberg v. Polk County, 21 or LUBA 425, 440 (1991) and successive cases, the ORS 291.296(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.”

For purposes of this analysis the “area” under consideration is the 1500-foot impact area. No significant impacts have been identified in the impact area, and it is therefore highly unlikely that impacts could be identified beyond 1500 feet justifying consideration of a larger area. Crops grown on surrounding lands on Grand Island typically include filberts, sweet corn, raspberries, Marion berries, beans, and vegetable row crops. The 1500-foot impact area also includes a section of the Willamette River and farming activities in Marion County to the east. Farm crops on surrounding lands in Marion County include the production of nursery stock, grass seed, bush beans, wheat, sweet corn, hops, red clover and other vegetable row crops. 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, and there are also organic and sustainable agriculture practices taking place. Hops are grown on racks, and sheds are utilized, along with farm labor, to tend and harvest. Farm labor is also used extensively to tend and harvest many of the other crops noted. No commercial forestry has been identified in the area, although forest uses accessory to agricultural uses likely take place.

As described in the application, the applicant proposes to continue farming the site before, during and after mining operations occur on the site. 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.

It is unlikely that the proposal will give rise to any new or increased conflicts with agricultural practices in the area. Farms in the area are maintained with machinery of approximately the same scale and noise level as the proposed extraction equipment. Because aggregate will be mined wet, potential dust production from mining activities is likely to be less than dust and other particulates associated with accepted farming practices, including plowing and disking. Additional buffering of neighboring farm uses is effectively provided by topography and vegetation, including the Willamette River and existing wooded channel scars along the southern boundary of the site. Vegetated berms will also be utilized to separate mining activities from neighboring uses. The operation will not impact groundwater in the area because no dewatering will take place, and the nearest downgradient well is over 2500 feet away. As detailed in the applicant’s plans, erosion will be minimized 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 poses 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.

As reclamation is completed, portions of the property will return to “farm uses,” (as defined in ORS 215.283(1)(g)), including commercial farming, open space and wildlife

habitat uses. The applicant is proposing to reclaim 41 acres of land as farmland just to the east of the slough at the northern end of the site. Along with the 27 acres of Class I soil retained in Block 7 and the 35 acres of Class II soils and farm buildings retained in Block 9, end use of the property includes 103 acres available for commercial agricultural activities, and 319 acres of preserved and reclaimed wetlands, open water and open space. As supported by the applicant's plans and exhibits, 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.

Potential Transportation Conflicts with Agricultural Practices

During the proceedings to consider the subject application, potential conflicts to local roads were discussed as potentially constituting or giving rise to conflicts with agricultural practices. Grand Island is a farm community and agricultural production is an important component of the local economy. The Lambert Slough Bridge is the only access for farm vehicles and trucks to and from the island. Use of area roads and bridges for movement of farm machinery, materials and products is part of the accepted farming activities/practices in the area. If a weight limit were imposed on the Lambert Slough Bridge or other local access roads, it would potentially force a significant change in, or significantly increase the cost of, farming on Grand Island. Such a limit would at the very least disrupt the local economy until funds for reconstruction or repair are identified and budgeted.

As discussed in section 1.5.2 of these findings, the applicant is not responsible for the existing condition of any local roads or bridges. To the extent additional studies are necessary to clarify the condition of local roads or the bridge, the applicant has agreed to assist in the funding of such studies.

If a weight limit is imposed on the bridge, it will be imposed, not due to the actions of the applicant, but because the bridge lacks the capacity to carry otherwise legal loads, regardless of the contents of the truck or proposed use of the machinery crossing the bridge. It cannot, therefore, be concluded that the *applicant's proposal* would force a significant change in, or significantly increase the cost of, farming on Grand Island. From a factual and regulatory standpoint, the use by the applicant of local roads as specified in the application cannot be differentiated from agricultural use of the same roads, and as long as the applicant carries only legal loads, will have no greater impact on future load limits than agricultural vehicles and trucks. Neither the number of average trips proposed by the applicant nor the attributes of proposed vehicles carrying legal loads will force a significant change in or significantly increase the cost of farming on Grand Island. The applicant has for generations towed logs and barges on the Willamette River, and has indicated its continued interest in identifying alternative methods for transporting materials from the site. To the extent the applicant must use the bridge and local roads for transporting materials, the applicant will share with the farming community an interest in working to prevent the need for imposition of load limits.

1.5.6 Ordinances Superceding DOGAMI Regulations. 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.

In summary, due to the low impact type of mining proposed (wet mining, without blasting), topography of the area and other factors identified in these findings, few, if any, conflicts of the type listed in OAR 660-23-0180(4)(b) have been identified by the County.

1.6 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 Mine Plan, the Reclamation Plan, and proposed conditions of approval. To the extent conflicts have been identified, the applicant has proposed reasonable and practicable measures that serve to minimize such conflict to a level that is no longer significant, in compliance with the requirements of the rule.

1.7 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 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 applicant’s noise study and 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—one or two excavators, a bulldozer, 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 not be dewatered and will be sequentially reclaimed. For all of the above reasons, the project is low impact, and designed to show environmental respect and respect for the neighbors. To the extent the public hearing process raised conflicts that were not addressed by the applicant in its application, the applicant responded by providing additional information and analysis, by continuing to work with the community to address its concerns, and by agreeing to additional conditions of approval to ensure compliance. Under these circumstances, an additional ESEE analysis is not necessary or required.

1.8 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 in the application and from all parties to the Planning Commission and Board hearing process, the Board is granting permission to the applicant to mine the site as proposed and in conformance with the Conditions of Approval.

1.9 Determination of Post-mining Uses

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.”

The Board finds that the site contains Class I and II soils, as shown on NRCS soil maps. The County and the applicant both recognize the value of these soils and of farming on Grand Island. Farming will continue before, during and after mining occurs. No topsoil will be removed from the site. Topsoil will be retained on site for a variety of reclamation uses, in vegetated berms that will also diminish potential noise impacts. Approximately 41 acres of the site will be reclaimed as farmland, suitable for production of the same types of crops now produced on the site. Combined with farmland and infrastructure to be retained, 103 acres of the reclaimed site will be available for commercial agricultural activities. The remainder of the site will be reclaimed as a stable wetland system with a diverse assemblage of native flora and wildlife habitat features. Preserved and reclaimed fish and wildlife habitat uses will occupy approximately 319 acres of the reclaimed site. Additionally, “creation of, restoration of or enhancement of wetlands” is a listed permitted use in EFU zones under ORS 215.283(1)(p), and would be consistent with the existing EFU zoning of the site. 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 applicant has proposed numerous local conditions to ensure project success, as listed in Section 9 of these Findings.

2. Floodplain Development Permit

2.1 Explanation for Request. The subject property is within the floodplain and floodway of the Willamette River, and mining activities will take place in the floodplain and floodway. To ensure compliance with all arguably applicable floodplain and floodway regulations, the applicant submitted detailed, uncontroverted, hydraulic data and analysis. No permanent structures are proposed to be located in either the floodplain or floodway. No additional soils or subsoils will be stored in the floodplain or floodway. No utilities, such as water supply, sanitary sewers, electrical, heating, ventilation, plumbing or air conditioning will be installed as part of the project. Mining will occur in phases and reclamation will be sequential, as demonstrated by the record and explained elsewhere in these findings.

2.2 Required Information. Under YCZO 901.05:

“Except as provided in subsection 901.04, a floodplain development permit shall be obtained before the start of any construction or development within the FP Overlay District. In the event a variance is necessary for construction within the floodplain, such application shall be processed in conjunction with the floodplain permit application, and shall be subject to the provisions of National Flood Insurance Program in addition to applicable provisions of this ordinance.

“A floodplain development permit may be authorized pursuant to the Type B application procedure set forth in Section 1301 and subject to compliance with the review criteria listed in subsections 901.06 through 901.10. In addition to the notification requirements of Section 1402, written notice of the request and action taken will be sent to the Oregon Department of Fish and Wildlife. The following information may be required to be provided by the applicant:

A. Land elevation data expressed in feet above mean sea level, and topographic characteristics of the development site.

B. Base flood level on the site expressed in feet above mean sea level.

C. Plot plan, drawn to scale, showing location of existing and proposed structures, fill and other development; elevation of the lowest floor, including basement, of all structures; and locations and elevations of streets, water supply and sanitary facilities.

D. Elevation, expressed in feet above mean sea level, to which any structure has been floodproofed.

E. Certification by a registered professional engineer or architect that the proposed floodproofing methods for any nonresidential structure meet the floodproofing criteria in subsection 901.08.

F. Specific data regarding the extent to which any watercourse will be altered or relocated as a result of the proposed development.

G. Any additional statements, maps or information demonstrating existing or historical flooding conditions or characteristics which may aid in determining compliance with the flood protection standards of this ordinance.”

By prior interpretation, the Planning Department has determined that a Floodplain Development Permit is not required for activities that are limited to removal of materials from a floodplain or floodway. The applicant has nevertheless submitted information required by YCZO 901.05 and has demonstrated compliance. The proposal is to remove aggregate materials from areas currently designated as floodplain, flood fringe, and floodway. No variance was required; all required notice was provided; and all additional information necessary to establish conformance with this section has been provided by the applicant in the form of two professional studies based on empirical data.

2.3 Required Findings. Under YCZO 901.06:

“Prior to issuance of a floodplain development permit, the applicant must demonstrate that:

A. The proposed development conforms with the use provisions, standards and limitations of the underlying zoning district and other overlay district.

B. The proposed development, if located within the floodway, satisfies the provisions of subsection 901.09.

C. The proposed development will not increase the water surface elevation of the base flood more than one (1) foot at any point.

D. All applicable permits have been obtained from federal, state or local governmental agencies, and all applicable National Flood Insurance Program requirements have been satisfied.

E. The proposed development is consistent with policies j. and k. of the Comprehensive Plan, as amended by ordinance 471.”

Section II.C. of the Yamhill County Comprehensive Plan, states the County’s “Water Resources” goal: *“To conserve and to manage efficiently our water resources in order to sustain and enhance the quantity and quality of flows for all consumptive and non-consumptive uses and to abate flood, erosion and sedimentation problems.”* Policies j. and k. of Section II.C. state:

“j. 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. (Ord 471)

"k. It is county policy that land use management practices and nonstructural solutions to problems of erosion and flooding are preferred to structural solutions. Water erosion control structures, including riprap and fill, should be reviewed by the appropriate state permitting authority to insure that they are necessary, are designed to incorporate vegetation where possible, and designed to minimize adverse impacts on water currents, erosion, and accretion patterns."

The Board finds that the applicant's Hydraulic Analysis and other information submitted by the applicant demonstrates full compliance with YCZO 901.06. The Lidstone and Associates Hydraulic Analysis utilizes FEMA-approved models to conclude that during the "interim" mining phase and "final" reclaimed phase of the project, there will be no net rise in surface water elevation. The proposal is to remove materials from the floodplain, which is expected to decrease the surface of the base flood for several miles upstream of the site. Channel stability and flood velocities are discussed in section 8 of a separate report, entitled "Yamhill County Site - Permit to Mine Gravel - Post Acknowledgement Comprehensive Plan Amendment - And DOGAMI Reclamation Permit." The DOGAMI study supports the applicant's conclusion that the project will not cause channel scouring or reduce slope stability downstream of the site or elsewhere. Section 9 of the DOGAMI study demonstrates that, given the proposed operating and reclamation plans, the risk that river "capture" would occur at the site is low. The report concludes that the site "is hydraulically and geomorphically stable, and will be reclaimed to restore a diverse wetland habitat hydraulically connected to the Willamette River." The certification required by YCZO 901.09(B) is provided by Glen Krogman, a registered Oregon engineer, as part of the study.

Consistency with policies j. and k. is also assured by the applicant's proposal. No development will take place in riparian or fish habitat areas identified in the plan. All erosion control structures and practices will be reviewed by DOGAMI and other state agencies as necessary or required by law. As explained in Attachment 9 and elsewhere in this submittal, the project is well designed to minimize potential adverse impacts on water currents, erosion and accretion patterns.

2.4 Fill and Levee Restrictions. Under YCZO901.07(F):

“(F) Fills and Levees. Except for approved relocation of a water course, no fill or levee shall extend into a floodway area. Fills or levees in a flood fringe area shall be subject to the following:

- 1. Fills shall consist only of natural materials such as earth or soil aggregate and including sand, gravel and rock, concrete and metal.*
- 2. Any fill or levee must be shown to have a beneficial purpose and therefore to be no greater than is necessary to achieve that purpose, as demonstrated by a plan submitted by the owner showing the uses to which the filled or diked land will be put and the final dimensions of the proposed fill.*
- 3. Such fill or levee shall be protected against erosion by vegetative cover, rip-rap, bulkheading or similar provisions.”*

The applicant is proposing to remove materials from the floodplain and floodway, and is not proposing any “fills or levees.” The applicant’s Hydraulic Analysis establishes that the limited volumes of topsoil and subsoil that will remain on the site during mining and reclamation will not increase the base flood, and will be properly vegetated to prevent erosion.

2.5 Floodway Certification. Under YCZO 901.09(B):

“(b) Except those uses provided for in subsection 901.04, all development in the floodway shall be prohibited unless certification is provided by a registered professional engineer or architect that the proposal will not result in any increase in flood levels during the occurrence of the base flood discharge.

The certification required by this section is provided by registered Oregon engineer Glen Krogman, Listone & Associates, as part of the applicant’s Hydraulic Analysis and DOGAMI studies. As stated, no structures are proposed, and the project will improve the floodwater storage capacity of the site. Because the proposal is to remove materials from the site, the overall effect will be a net decrease in flood levels during the occurrence of the base flood discharge. In its reclaimed state, the base flood discharge immediately upstream of the site is predicted to decrease by .2 feet for 100-year events, due to a larger flow area and reduced roughness in the left overbank. That decrease will continue upstream for several miles due to the flat energy slope in this segment of the Willamette River. Mining will improve the flood capacity of the site, and turbid floodwater entering the site will tend to settle, due to lower backchannel velocities. The applicant has established conformance with County Floodplain Overlay standards and approval of a Floodplain Overlay Permit is granted by Ordinance 752.

3. Greenway Development Permit

3.1 Explanation of Basis for Request. The southwest and western edge of the lower terrace of the site is a slough, with seasonal high water and several ponds. The slough enters the Willamette at the northwest corner of the site. The natural entrance of the slough was modified in the 1970's by the Corps of engineers—it was blocked with a low, armored dike, over a 36-inch concrete culvert. At least during the operating phase, the applicant intends to maintain a seasonal connection of the operating pond and restored wetlands to allow fish wintering on the site to escape in the spring. To accomplish this, a low flow connection channel must be constructed that will potentially cross into the Willamette Greenway, just west of where the existing culvert is located. The location of the greenway and the approximate location of the proposed low flow channel are shown on Figure 9 of applicant's Attachment 2, and a schematic cross section is shown in Figure 11. The connection channel will be controlled by a gate during the operating phase and will be constructed as a permanent channel at the end of mining. The portion of the greenway that the channel will cross was chosen because it is currently degraded with rip rap and reed canarygrass, and does not contain wetlands. The channel is expected to be inundated year round, and will be vegetated to improve water quality.

Additionally, the applicant seeks authority for construction and maintenance of an equestrian/hiking trail within the greenway, adjacent to the river, for use by the neighbors. The intent is to allow such a trail to be designed and constructed over time through a cooperative approach with the neighbors, using low-intensity methods. As necessary, steps will be taken to prevent erosion during construction and use, using standard trail design and construction techniques. YCZO section 902.04 B. states that a permit is not necessary for activities to enhance public recreational uses on public lands, but it does not provide a clear exception from permitting for development of a limited-public access trail on private property. Due to higher elevations near the river; the presence of existing thick woods; and vegetation and proposed additional plantings in the buffer area, significant portions of the mining operation will not be visible from the river. No mining activities other than those described in the application materials 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.

3.2 Why a Greenway Permit is Required. 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."

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:"

Only a small portion of the greenway area of the site will be affected by the proposal. A Greenway Development Permit is required, because the "exception" list in YCZO 902.04 does not include an engineered low flow hydraulic connection or a limited-public equestrian/hiking trail. 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."

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.

3.3 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:

3.3.1 Underlying Zoning District. Under YCZO 902.06(A):

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

During the proceedings to consider Ordinance 752, no standards and limitations in the underlying EFU district were identified that would prohibit what will essentially be a vegetated channel allowing water to enter and leave the site for a portion of the year. The same is true for an equestrian trail, which does not appear to be a regulated use in EFU areas.

3.3.2 WRG Overlay District. 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.”

Subsection 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.”*

The low flow connection is part of the applicant’s proposal to protect, preserve, and enhance Willamette River fishery habitat and resources. The purpose of the equestrian trail is to improve recreational qualities of the greenway. Both activities are consistent with, and promote the purposes of the greenway.

3.3.3 Screening of Uses From the River. 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 low flow channel is being proposed for an area that is vegetated with reed canarygrass, a non-native, invasive species. The existing vegetation in most of the remainder of the greenway includes cottonwood, maple, willow and ash. The proposed equestrian trail will be installed in a manner that will protect to the greatest extent possible the natural vegetative fringe now existing along the river. Allowing use of the

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area by the neighbors will promote security in the area and foster a sense of stewardship. As proposed, neither the trail nor the low flow channel will 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. As stated, upon reclamation, which will occur sequentially and contemporaneously with mining, the entire area, in and adjacent to the greenway, will provide substantially better scenic quality, wildlife habitat and overall vegetative fringe than exists today.

3.3.4 Preservation of Air, Water and Land Resources. 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.”

All mining activities will take place adjacent to, and outside of, the greenway. 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, and use of conveyors as necessary to limit dust production. Neither proposed use within the greenway is expected to generate significant levels of dust. 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, and reviewing agencies. As described in these findings and the applicant's plans and studies, this project will result in the establishment of land and water resources that are substantially more valuable as fish and wildlife habitat than now exists. 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. The equestrian trail will be constructed using low intensity techniques and, as necessary, erosion control practices and technologies.

3.3.5 Class I-IV Soils Under YCZO 902.06(E):

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

The subject property is zoned for Exclusive Farm Use, and the proposed end use of the site is for farming and as wildlife habitat, both allowed uses in farm zones. The mining area contains agricultural soils, but the location of the low flow channel is predominantly armored bank and nuisance plants. The equestrian trail will be located in a riparian area that is not appropriate for commercial farming and is best suited for use as riparian buffer, wildlife habitat and recreation. Most of the portions of the site included within the greenway are not being farmed and contain natural vegetation that will be maintained and improved as the site is mined.

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In this case, the site is 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 studies 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 by creating more suitable habitat for western pond turtles, potential habitat for native frog species such as red-legged frogs, and extensive back-channel fish habitat. 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 (on retained and reclaimed farm land) and riparian/wildlife habitat (impoundments and wetlands) are farm uses and are uses that are allowed uses in farm zones (See also ORS 215.800 and 802). The proposal complies with YCZO 902.06(E).

3.3.6 Fish and Wildlife Habitats. Under YCZO 902.06(F):

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

As described in the applicant’s biological assessment (Chip Andrus, Water Work Consulting) wildlife habitat now existing on the site and in surrounding areas will not be affected by the proposed use. The best existing habitat within the greenway on the site will all be preserved. The low flow channel is proposed for a currently degraded area, and will promote the fish and wildlife values of the site. The equestrian trail will not impact any significant fish or wildlife habitat, and will be constructed using low-impact methods. Most 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.

3.3.7 Natural and Scenic Areas. Under YCZO 902.06(G):

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

The County has not identified any significant natural or scenic areas, viewpoints or vistas on the site, or that overlook the site. As stated, the operation will not be visible from the river due to topography and vegetation. The riparian area along the river lies at a higher elevation than the area to be mined and is currently wooded, with mature trees and understory vegetation. The applicant has indicated that this buffer area will be improved prior to mining and maintained during operation and reclamation.

3.3.8 Areas of Ecological, Scientific, Historical or Archeological Significance.
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.”

The County has not identified any areas of ecological, scientific, historical or archeological significance on or near the site. None of these resources are identified as

existing on or near the site in any of the county's Goal 5 inventories. The applicant has provided a study of wildlife in the area and designed all aspects of the project with sensitivity to existing and potential ecologic values.

3.3.9 Preservation of Wetlands. 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, Biological Assessment, Hydraulic Analysis and DOGAMI report, the proposal preserves existing wetlands and wet areas to the greatest extent possible consistent with the removal of aggregate resources from the site. The water retention, overflow and other natural functions of the site are being preserved to the greatest extent possible, 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 the equestrian trail 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.

3.3.10 Harvesting of Timber. 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. Some existing trees may be removed to facilitate mining operations, but such removal will not be part of a harvesting operation. Trees and stumps that are removed will be used on site for habitat improvements that will be occurring throughout the life of the project. 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.

3.3.11 Compatibility of Proposed Use. 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 improve water quality and temperature. The equestrian trail will be constructed using low impact methods in a manner that is intended to be compatible with existing vegetation and topography in the area.

3.3.12 Erosion Potential. 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 a Hydraulic Analysis and DOGAMI study, that the project will not affect the erosion potential of the river. The means of protecting the area from erosive loss are largely natural, management techniques that include placing stockpiles on higher ground, and maintaining most of the existing sloughs and wetlands 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, and what potential does exist will be minimized through proper design and construction.

3.3.13 Extraction and Reclamation. 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.”

To the extent this standard applies, it is met as demonstrated by all of the applicant’s submittals and as explained throughout these findings. No extraction of aggregate is proposed for any area 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.

3.3.14 Recreation. 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 equestrian/hiking trail is intended to be available for use by the local, neighborhood community, not the general public. In this manner, stewardship of the area will be fostered, but use of the area will not exceed the carrying capacity of the land and potential conflicts with nearby farm uses due to trespass and vandalism will be minimized.

3.3.15 Public Safety. 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.”

As stated, the trail will be constructed in cooperation with the neighbors and will be available to the neighbors but not to the general public. This approach is intended to

improve stewardship of the area while limiting or diminishing potential impacts due to vandalism and trespass, in conformance with this section. Portions of the low flow channel that enter the greenway will be located behind the existing low dike, will not pose a public safety threat, and are not expected to promote either vandalism or trespass.

3.3.16 Setback from Ordinary High Water Line. 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 902.03 G. defines “Water-Dependent Use,” in relevant part, as:

“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.”

The low-flow channel is a water-dependent use as defined in the zoning ordinance because it requires access to the river in order to operate. It will be located behind an existing low dike constructed from rip rap, in an area that is currently degraded. The equestrian/hiking trail is not a building or structure. Its location will be above the river, and away from the river to the greatest degree possible to prevent erosive impacts, considering its purpose as a scenic recreational trail. The remaining greenway areas, which also contain valuable aggregate resources, will be preserved and over time enhanced for the purpose of mitigating potential conflicts between the proposed operation and the scenic and recreational values of the greenway. 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.

3.3.17 Public Access. 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 proposed use is considered industrial during operation phases, and agricultural/natural resource in its final status as wildlife habitat and reclaimed farmland. Especially during mining phases, where machinery is operating and hazardous conditions may at times exist, it is inappropriate to encourage the public to enter the low flow channel or the mining area, and such entry will be discouraged. The proposed equestrian/hiking trail is intended for use by the neighbors, but not the general public, and will be posted to so indicate. A sign or signs posted at the trailhead will advise users that

the trail is for neighborhood use for recreational purposes only, and of the limitations on landowner liability provided under ORS 105.682.

3.3.18 Landscaped Area, Open Space or Vegetation. 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, and the proposed trail will be designed and built to minimize impact to existing vegetation, as required by this section. 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. The applicant has established conformance with Willamette River Greenway Overlay standards and approval of a Greenway Overlay Permit is granted by Ordinance 752.

4. **Goal Findings.** The following findings address the consistency of the proposed Comprehensive Plan amendment with the Statewide Planning Goals.

4.1 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 and has agreed to a condition of approval to facilitate continued dialogue between the applicant and the community, demonstrating compliance with this goal.

4.2 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; County Sanitarian; County Public Works; Division of State Lands; 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; and Marion County. 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.

4.3 Goal 3--Agricultural Lands. Goal 3 directs local governments to preserve and maintain agricultural land. The applicant's proposal is to maintain a portion of the site for agricultural uses. Mined areas of the site will be reclaimed for reclamation plan is for farming and wetland/wildlife habitat. The applicant has demonstrated that the proposed use will not force a significant change in, or significantly increase the cost of, surrounding lands devoted to farm or forest use. The County has adequately addressed Goal 3 elsewhere in these findings, and has determined that all conflicts between use of the site as a mining site and neighboring agricultural uses can be mitigated and are not significant.

4.4 Goal 4--Forest Lands. Goal 4 directs local governments:

"To conserve forest lands by maintaining the forest land base and to protect the state's forest economy by making possible economically efficient forest practices that assure the continuous growing and harvesting of forest tree species as the leading use on forest land consistent with sound management of soil, air, water and fish and wildlife resources and to provide for recreational opportunities and agriculture."

The site is plan designated "Agriculture Forestry Large Holding," and is zoned for Exclusive Farm Use. The "propagation and harvesting of a forest product" is an allowed use in the current EFU zone and in the proposed MR-2 zone. Commercial forestry uses are not taking place on the site and are not proposed. Currently forested areas of the site will for the most part be maintained and improved by the applicant as fish and wildlife habitat; for recreational uses; and as a buffer between proposed uses and both neighboring residences and the Willamette River. The County has not identified any significant conflicts between proposed aggregate resource extraction operations and on-site or neighboring forests or forestry uses.

4.5 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 elsewhere in these findings. The Willamette River is identified as "fish habitat," and is being protected through the operating and reclamation plans as described in the plans and throughout these findings. The applicant intends to begin reclamation activities prior to mining the site; to mine and reclaim contemporaneously; and to reclaim most of the mined area as backchannel fish and wildlife habitat. There are no other identified Goal 5 resources located within the impact area that the applicant has not addressed, and all potential

impacts are minimized by the proposal to a level at which they are no longer significant. The proposal is in conformance with Goal 5.

4.6 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. Since the County does not administer state or federal statutes and regulations itself, it relies on the expertise of state and federal agencies, and coordinates with those agencies to ensure compliance with Goal 6. DOGAMI in particular regulates the site in consultation with all state and federal regulators with jurisdiction over the site or which have useful comments regarding on-site and surrounding resources. The County complies with Goal 6 by requiring the applicant to obtain and maintain compliance with all applicable state and federal permits required for the operation. The applicant's studies, plans, and supporting testimony and evidence establish the feasibility of the proposal, and there is a reasonable expectation that the mining operation will be able to comply with all state and federal environmental quality standards that it must satisfy in order to be completed as proposed.

4.7 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 floodplain and floodway of the Willamette River. For these reasons the applicant submitted detail studies by a specialist in hydraulic engineering and fluvial geomorphology. The applicant's hydraulic analysis established a basis demonstrating compliance with the County's Floodplain Overlay development standards. The studies establish that there will be no net rise in the water surface elevation for the base flood during mining or as a result of the reclamation plans. In its reclaimed condition, the site is expected to decrease the elevation of the base flood in the area just upstream of the site. The applicant's plans and analysis also establish that both the operating and reclamation plans have been designed to prevent an avulsive "capture" event at the site that could result in erosion, turbidity, property damage and damage to fish and wildlife habitat. DOGAMI is responsible for review and approval of the applicant's plans, and has commented favorably regarding the proposal. Oversight by state and federal agencies, and the conditions of approval, ensure compliance with the requirements of this goal.

4.8 Goal 8--Recreational Needs. Goal 8 directs local governments to plan for the recreational needs of its citizens. This proposal will not negatively impact any identified recreational facilities. The applicant is proposing to protect significant areas that are part of the Willamette River Greenway, and effectively buffer recreational users of the river from visual, noise and other potential impacts from the operation. The applicant has also obtained permission for construction of an equestrian/hiking trail in the Greenway, for recreational use by the neighbors. The proposed reclaimed uses are also consistent with outdoor recreational use, promoting Goal 8.

4.9 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. A 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 the proposal.

4.10 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 project or analysis.

4.11 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.” The use of this site does not require extensive public facilities or services, will not negatively impact any public facilities or services now available in or planned for the area and will not be impacted by such facilities or services.

4.12 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, establish compliance with Goal 12 and the Goal 12 rule. The conditions of approval provide additional mitigation for potential transportation impacts.

4.13 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.” The proposal does not require pumps or other machinery that potentially consume large amounts of energy. It is in the applicant’s best interest to use conveyors and attempt to devise methods for transporting gravel that minimize energy consumption and costs. The applicant has demonstrated a commitment to conserving energy consistent with Goal 13.

4.14 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. A portion of the site is affected by the WRG Overlay, and the applicant submitted detailed findings and information demonstrating compliance with all applicable Overlay standards. Compliance with Overlay standards also establishes compliance with Goal 15.

4.15 Remaining Goals. None of the remaining Statewide Land Use Planning Goals, including Goal 14--Urbanization and Coastal Goals 16-19, are relevant to this project or analysis.

5. Determining the ESEE Consequences of Potential Future Uses. The following findings provide additional Goal 5 analysis in support of the request.

5.1 Introduction. OAR 660-023-0180(5) states, in relevant part:

“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.”

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. The project is designed to allow continued farming and farm operations on a portion of the site with end uses that include reclaimed farmland, and fish and wildlife habitat. 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 Ordinance 752, subject to the Conditions of Approval.

The references in the Goal 5 rule for aggregate to OAR 660-23-0040 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.”

5.2 Identification of Uses that Could Conflict with Mining Uses. The applicant has identified the following existing and potential uses that could, under some circumstances, conflict with operation of the site. The Goal 5 Rule defines “conflicting use” for 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 * * *.”*

(OAR 660-023-180(1)(b)) As identified in the application and proceedings to consider Ordinance 752, within 1500 feet of the mining area there are 20 parcels that Yamhill and Marion County tax rolls show as having dwellings or as being otherwise improved. Dwellings on some of these properties may be greater than 1500 feet from the mining area but were nevertheless included in the impact area analysis. There are no residential zones or “existing platted lots” identified within the impact area. All of the neighboring houses are therefore either farm, nonfarm, or nonconforming uses. The opportunity for additional housing in the impact area is limited by applicable regulations and is further limited by floodplain and floodway hazards and restrictions. 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.”

In this case, this provision will also tend to diminish potential conflicts by providing notice to developers of potential dwellings well beyond the identified 1500-foot impact area. The applicant has not requested that the County impose further limitations on dwellings or other uses in the impact area.

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 impact area, and no other uses have been identified that would need to be limited to protect the aggregate resource site. A summary of uses identified in the impact area was provided by the applicant and additional descriptions of those uses follow.

Topographically, the site is located on the Willamette River floodplain, and can be described as gently undulating farmland with meander scars and old river channels. The

elevation of the site ranges from 87 to 104 feet above mean sea level. The existing dwellings on the site and in the impact area are located at the higher elevations, but not high enough to avoid being affected by seasonal flooding. 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 are all affected by surrounding floodplain and floodways. The mining area is separated from neighboring properties on three sides by natural boundaries, including the Willamette River, a buffer strip of trees and a densely vegetated wetland. Dwellings to the south of the site are above the operation, and separated by vegetation.

The closest residential property overlooks the eastern portion of the site. In that area, the mining boundary has been moved north to provide a 500-foot buffer. The closest mine block to that property is Block 4, of seven blocks to be mined over the course of the estimated 30-year operation. The applicant's reclamation plans indicate that the reclaimed condition of Block 4 will include upland shrub, wetland shrub, and a large block of emergent wetland. 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 discussed the project with local community members and neighbors and has agreed to on-going communication and response to concerns.

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.

The impact area is zoned for Exclusive Farm use. The applicant 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.

5.3 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 * * *.” As correctly described in the application, the “analytical” impact area extends 1500 feet from the proposed mining area. For purposes of analysis, the impact area includes all areas within 1500 feet of the proposed mining and accessory use areas except “undisturbed buffer areas or areas on a parcel where mining is not authorized” which are excluded from the impact area by OAR 660-023-0180(1)(g). OAR 660-023-040(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 conflict analysis under the Goal 5 rule for aggregate. No party has identified any uses allowed outright or conditionally outside of the 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 applicant has not identified, and is not requesting additional regulation of, conflicting uses beyond the existing notice requirement for new dwellings in EFU areas.

5.4 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.

5.4.1 Economic Consequences.

5.4.1.1 The economic consequences of allowing conflicting uses next 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.

5.4.1.2 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.

5.4.1.3 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.

5.4.1.4 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 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.

5.4.2 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.

5.4.3 Environmental Consequences. The mining area is isolated by topography and vegetation. The environmental consequences of limiting or prohibiting, in the impact area, 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.

5.4.4 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.

5.4.5 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 4 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.

5.5 Program to Achieve the Goal. In this case, the applicant has justified a decision to allow mining at the site, as limited by Ordinance 752 and the Conditions of Approval. approving the applicant’s request, the conditions of approval, and 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.

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 farm land, and fish and wildlife resources. The applicant has not proposed any limitations on surrounding uses, and no additional limitations are being imposed by Ordinance 752. 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.

5.6 Conformance of County Program to Achieve Goal 5 with OAR 660-023-0050. As previously explained, OAR 660-023-0180(5) of the Goal 5 rule for aggregate requires that local governments follow the standard ESEE process “to determine whether to allow, limit, or prevent new conflicting uses within the impact area of a significant mineral and aggregate site.” The aggregate rule specifically references OAR 660-023-0050, which states:

“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 660-23-040(5)(b) and (c)).

(2) When a local government has decided to protect a resource site under OAR 660-23-040(5)(b), implementing measures applied to conflicting uses on the resource site and within its impact area shall contain clear and objective standards. For purposes of this division, a standard shall be considered clear and objective if it meets any one of the following criteria:

(a) It is a fixed numerical standard, such as a height limitation of 35 feet or a setback of 50 feet;

(b) It is a nondiscretionary requirement, such as a requirement that grading not occur beneath the dripline of a protected tree; or

(c) It is a performance standard that describes the outcome to be achieved by the design, siting, construction, or operation of the conflicting use, and specifies the objective criteria to be used in evaluating outcome or performance. Different performance standards may be needed for different resource sites. If performance standards are adopted, the local government shall at the same time adopt a process for their application (such as a conditional use, or design review ordinance provision).

(3) In addition to the clear and objective regulations required by section (2) of this rule, except for aggregate resources, local governments may adopt an alternative approval process that includes land use regulations that are not clear and objective (such as a planned unit development ordinance with discretionary performance standards), provided such regulations:

(a) Specify that landowners have the choice of proceeding under either the clear and objective approval process or the alternative regulations; and

(b) Require a level of protection for the resource that meets or exceeds the intended level determined under OAR 660-23-040(5) and 660-23-050(1)."

Approval of this post-acknowledgement plan amendment is by Ordinance, which contains limiting conditions that apply specifically to the approvals granted, and which otherwise complies with this section.

6. Imposition of Limited Use Overlay

6.1 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 applicant has stipulated to imposition of 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 change with surrounding land uses and the overall appropriateness of the change, in conformance with the Yamhill County Zoning Ordinance and Comprehensive Plan.

6.2 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.

6.3 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 because the applicant has requested that the overlay be imposed, and to protect Goal 5 resources existing in the vicinity of the proposed site.

6.4 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 and the request of the applicant, the County is applying a Limited Use Overlay to the subject property, including the entire area plan designated “Quarry” and zoned MR-2. 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.

6.5 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.

6.6 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.

7. Findings Regarding Certain Testimony Received.

7.1 Explanation for Additional Findings. During the hearing process, opponents raised a number of concerns and objections. Many of the concerns raised by those in opposition to the project had previously been addressed by the applicant and have been clarified and explained in a manner satisfactory to the Board. Additional concerns have been addressed by changes to the text of the draft findings submitted with the application, or by the Conditions of Approval (see section 9 of this Exhibit to Ordinance 752). The most relevant issues raised during the hearing process are discussed in this section. All

other issues raised while the record was open were adequately addressed by the application and testimony of the applicant.

7.2 Potential Conflicts with Local Roads and the Lambert Slough Bridge. Section 1.3.2 of these findings, "Potential Conflicts to Local Roads" includes a subsection entitled "Potential Local Road and Bridge Cross-Section Conflicts."

7.3 Access Road. Concerns were raised regarding the access road to the mining operation, through Tax Lot 400 in the southwest corner of the site. In response, the applicant has agreed to move the access road to a location north of the existing dwellings and agricultural buildings on the subject property.

7.4 Other Traffic Impacts. Neighbors remain concerned regarding the safety of gravel trucks on local roads, which are narrow and must be shared with farm equipment, pedestrians and bicyclists. As explained by the applicant, most of the mining traffic will exit the site from Tax Lot 300, turn left onto Lower Island Road, and turn right at the intersection of Lower Island Road and Grand Island Road, and then head toward Dayton. The applicant's farm traffic will also exit the site from TL 300 and follow the same route. The only residences on the Island the applicant's trucks will pass are the two houses on the Hester property (which the applicant owns), the Rockhill residence, and four other residences on Grand Island Road. The applicant's trucks will not pass the Hehr residence, nor any of the twenty-six other residences located along Grand Island Road in the opposite direction of the proposed haul route. The ability to avoid passing in front of all these residences was a key factor in the applicant's choice of the site. For purposes of insulating the neighborhood joggers and hikers and equestrians from its traffic, the applicant has agreed to facilitate construction of a hiking and bridle trail along the riparian boundary of the site, as well as a hiking/jogging trail from the general area of the residence on Tax Lot 500 (Hehr residence), to the bridle trail. Weighing the testimony and evidence received and the applicant's response, the Board finds that these additional potential conflicts with local roads are appropriately minimized by the applicant's proposal and minimization is ensured through the Conditions of Approval.

7.5 Limitation on Trucks per Day. In response to concerns that truck traffic could exceed the applicant's estimate of the number of trucks per day, the applicant has agreed to a condition stating: "The operator shall retain a record of the average number of gravel truck trips per day, based on the tickets issued at the truck scale, to verify in the Community Involvement Meetings that the operator is abiding by its commitment to limit the average number of such truck trips to 74 trips per day." This condition helps to ensure that potential conflict to local roads continue to be minimized over the life of the project. The limitation of 74 trucks per day spread over 13 hours (7:00 a.m. to 8:00 p.m.) is an average of less than six trucks per hour.

7.6 Need for Additional Road Enhancement. As discussed in section 1.3.2 of these findings, the applicant has agreed to fund a study of the cross section elements of local roads used for ingress and egress to the site. The applicant has also agreed to improve the portion of the access road adjacent to the site to County Standards. Additional requirements related to the need for a shoulder and the potential cost of a shoulder is the

responsibility of the County, and County Public Works Department. The applicant does not expect to be hauling material from the site for approximately three years. To be equitable, all users of the road should be involved in planning for and funding of County road improvements, so that no one user ends up being burdened with more than that user's *pro rata* share of the cost. The Board agrees with the applicant that it would be especially important to have Baker Rock and the commercial nurseries who also use the road and bridge involved in the discussions. Formation of a Local Improvement District might be a solution, but that would require a vote of all the users and agreement on *pro rata* contributions. At any rate, the Board does not believe that the application should be denied based on the lack of shoulders or other aspects of local roads, considering all of the evidence and agreed upon exactions in this case.

7.7 Barging. It was noted during the hearing process that barging of aggregate is more efficient and would reduce potential impacts to local roads. The applicant is in the barging business, and would much prefer to obtain permission from the United States Army Corps of Engineers to barge gravel down the river. This is a direct, economical method of transportation, and the applicant's Wilsonville plant is located on the river and was designed to receive raw material from barges. Barging would eliminate the unnecessary use of fossil fuels, and wear and tear on local roads. It would be quicker and cheaper for the applicant, and it would use the river in the same way that the applicant has used the river for five generations – to barge their goods to market. However, the river is too shallow at present to float a barge, and current Corps policy makes a permit to dredge out the channel almost impossible to obtain. Barging is not regulatorily feasible at this time, and is probably many years off. The applicant is not required to barge materials in order to demonstrate compliance with any identified standard or requirement, but it is in the applicant's best interest to continue to seek answers to the regulatory constraints that prohibit barging at this time.

7.8 Hours of Operation. Requests were made during the hearing process to limit the applicant's hours of operation. The applicant has responded that the requested hours of operation are necessary considering the applicant's agreement to limit the average number of truck trips per day. If the County takes away hours or days the trucks will have to be spread over a shorter time span. Rather than cutting down on the applicant's potential hours of operation, the County agrees that it makes more sense to study the road issues and solve directly whatever problems are discovered. The applicant has agreed to participate in such studies, as specified in the Conditions of Approval. The applicant is also willing to participate in any identified problems between gravel trucks and the potential for conflict with school bus stops. However, with reasonable diligence, the applicant has been unable to establish that a problem is likely to occur that needs to be addressed. If a problem in this regard develops, the community will have an opportunity to bring it to the attention of the applicant at community meetings required by the Conditions of Approval.

7.9 Operating Days. Requests were made during the hearing process for limits to operating days. Under the Conditions of Approval:

“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.”

The Board finds that these hours are reasonable, and greater restrictions are not warranted to minimize identified conflicts. The company is currently closed on Saturday and Sunday, so the applicant would not be planning any hauling operations on those days. However, the applicant has indicated that it is sometimes necessary to do site work on the property or maintenance on the equipment when this type of work would otherwise interfere with day-to-day operations. The applicant has also indicated that if it ever had a specific reason to open on Saturdays, it would in good faith discuss the issue with the community first.

7.10 Winter Operations. Questions were raised during the hearing process regarding winter operations. During the months of December, January and February there will be no extraction, and all the extraction equipment will be moved out of the lower portions of the property, to avoid the risk of damage from flooding. If the rains are heavy in November, the applicant has explained that it may cease extraction activities even earlier. Hauling will occur during all twelve months of the year. As noted in the above Condition, no hauling or other activity will take place on specified holidays, along with up to a total of five additional days if requested by the neighborhood in the course of our Community Involvement program. (For instance, the weekend preceding Halloween, when local pumpkin patch owners have the largest number of customers.) The applicant has only requested that the scheduled “blackout” days be discussed in advance, so operating plans can be formulated around them.

7.11 Community Involvement. In response to requests that DOGAMI and the Yamhill County Road Department be included in neighborhood meetings, the applicant has indicated that both agencies will be welcome at the meetings. The applicant is currently working on a neighborhood project with DOGAMI, trying to get the United States Army Corps of Engineers to grant a permit to allow removal of a large gravel plug near Lambert Bend, which would alleviate some of the localized erosion caused by flows being redirected around the obstruction.

7.12 Allowed Mining Uses. In response to concerns that uses could take place on the site that have not been identified by the applicant, the applicant has agreed to imposition of a Limited Use Overlay zone and Conditions of Approval that limit uses on the site to those identified in the applicant’s plans and further limited by the Conditions of Approval. Uses that are significantly different than those proposed and/or described in the Conditions of Approval are not allowed.

7.13 Mitigation of Dust. The applicant has proposed to use sprinklers for dust suppression, rather than a water truck, but has a water truck that could be used if necessary. The applicant and County expect that farming activities will be more of a potential dust source than mining because the gravel will come out of the ground *wet*, and will be hauled up to the stockpiles *wet*, which means that the internal movement of gravel on the site should not produce significant levels of dust. If for some reason they do, the applicant has enough sprinklers and piping equipment on site to handle the problem. The only other potential source of dust is the handling of the gravel when it is loaded from the stockpiles into trucks for hauling off-site. At that point, the applicant has complete control of the dust situation because it will be handling the gravel in a level yard and loading into trucks at a set location. Once loaded, the trucks simply exit the site. The best way to control dust in this environment is to have sprinklers set on the stockpile, much like a log yard. The applicant will not have any crushing plant or other processing plant on site, which is a typical source of dust in these types of operations. As part of the applicant's storm water management, the applicant will install a wheel wash that all trucks will have to use before they exit the site.

7.14 Topsoil for Reclaimed Farmland. During the proceeding to consider Ordinance 752, it was suggested that the applicant should be required to apply five feet of topsoil to any areas reclaimed for agricultural use. The Board finds that the applicant has made its proposal for reclamation of land for commercial agricultural use to be in good faith and to be technically feasible. The applicant has indicated that more flexibility to its plan to restore farmland will be necessary to ensure that the reclaimed land functions as well as Class I and II soils currently existing on the site. Depth alone should not be the issue. On the lower benches of the property, which is where the farmland reclamation project will be located, the topsoil depth ranges from zero to two feet. The three closest sample locations, WC-4, WC-5 and WC-6, had no topsoil, with the soil on the surface being logged as "lean clay." The applicant's goal is to restore the reclaimed farmland areas to the same or a better level of productivity than it presently has. The applicant currently estimates that the rebuilt soils will have approximately three to four feet of subsoil and approximately two to three feet of topsoil. A great deal depends on how accurately the applicant can segregate and stockpile the existing soils on the property. Other issues that will influence soil productivity are compaction, soil texture, and the amount of organic matter in the soil. The applicant will achieve appropriate levels of compaction first by using the "direct haul" method so that it handles the subsoil only once, when it is collected during mine cell preparation, and second, by avoiding driving its heavy equipment over it, which would result in excessive compaction. The applicant will achieve better texture than the existing soils by mixing the sandy and clayey soils together and testing the resulting mixture to achieve an appropriate water holding capacity that still has adequate drainage. The applicant will achieve an adequate nutrient and bacteriological profile by adding large quantities of chicken manure, growing cover crops immediately and making sure there is a cover crop during the rainy season, to minimize erosion. All of the above measures should ensure that the applicant will achieve its stated objective of better soil productivity in the post-mining phase than existed in the pre-

mining phase. The Board accepts the applicant's estimate that such results can be achieved within three years of completing reclamation, and the applicant's expectation that its farmer tenant will be able to bring the reclaimed areas back into production as a certified organic farm.

7.15 Speed Limit and Stop Signs. The applicant has indicated a willingness to follow the 40 mile per hour speed limit, as currently posted for Baker Rock/Dayton Sand & Gravel. However, a reduced speed limit may be warranted, and the applicant has indicated that it would not oppose lowering the speed limit to 25 miles per hour, if this would not inconvenience the other commercial users of the road. The applicant would also not oppose installation of a four-way stop sign, at the intersection of Grand Island Loop with Upper and Lower Island Roads. Stop signs are most appropriately based on warrants, or at least careful consideration through existing procedures—not as a collateral request received through a land use process. No data currently exists supporting the need for a four-way stop at the intersection in question. The applicant has not objected to stop signs at the requested location.

7.16 Noise Mitigation. During an earlier discussion, a neighbor of the project requested additional consideration of a noise wall at the appropriate time prior to mining of Block 4. The County has modified the Conditions of Approval to address this issue as requested.

7.17 Rezoning of the Entire Site. During the proceedings to adopt Ordinance 752, the question was raised why the entire 422 acres needs to be included in the Goal 5 application, if extraction will occur on only a portion of the acreage. The answer is that "surface mining", as defined by state law, includes everything that is done or will ever be done, in conjunction with mining, even the ancillary activities. For the applicant's purposes, it is important that all areas that the applicant will rely on for site access and necessary buffer areas to minimize conflicts be included in the "Quarry" plan designation and the MR-2 zone that implements the plan designation. ORS 517.750(14)(a) defines "surface mining" as follows:

*"Surface mining" includes all or any part of the process of mining minerals by the removal of overburden and the extraction of natural mineral deposits thereby exposed by any method by which more than 5,000 cubic yards of minerals are extracted or by which at least one acre of land is affected within a period of 12 consecutive calendar months, including open-pit mining operations, auger mining operations, processing, surface impacts of underground mining, production of surface mining refuse and the construction of adjacent or off-site borrow pits (except those constructed for use as access roads). * * ** (Emphasis added)

All uses that are considered ancillary to mining are appropriately included in underlying "Quarry" and aggregate inventory designations. The plan and zone designations must correspond, to prevent mining and ancillary uses from occurring in areas that continue to be plan designated for agriculture. It is appropriate to plan and zone designate the entire

site for mining, including access, buffer and other areas that contribute to the applicant's ability to efficiently mine the site. Appropriate public safeguards are provided through the imposition of a Limited Use Overlay and Conditions of approval that specify the areas in which extraction is allowed. The applicant's submitted plans include sufficient specificity to determine substantially where all uses proposed for the site will take place, and the manner of operation and reclamation.

8. Conclusion. Having accepted and weighed all of the evidence submitted into the record, the Board concludes that all applicable standards have been met, and adoption of Ordinance 752 is justified, including: approval of the applicant's requested Post-Acknowledgement Plan Amendment and zone change; issuance of a Floodplain Development Permit and Greenway Permit; imposition of a Limited Use Overlay; and grant of permission to mine consistent with the following Conditions of Approval.

9. Conditions of Approval. The following Conditions of Approval are imposed by way of Ordinance 752 and the Limited Use Overlay.

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 batching, concrete batching and crushing are not proposed by the applicant and are not allowed by this permit. Blasting shall not be permitted.
3. 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 at the site office.
4. On-Site Contact Person. The operator shall provide the name and phone numbers of one or more persons responsible for the conduct of mining operations on 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.
5. Community Involvement. At least three times annually during the first two years following the issuance of Yamhill County's permit to allow surface mining on the site, the operator shall convene a meeting with interested neighbors, and shall discuss the status of the project and invite comments. The operator shall keep notes of the meetings and make the notes available to the neighbors and the Community Development Director, as requested. 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 the operator shall meet at least once every two years with the neighbors to discuss the status of operations of the site and conditions in the vicinity. The operator shall retain a record of the average number of gravel truck trips per day, based on the tickets issued at the

truck scale, to verify in the Community Involvement Meetings that the operator is abiding by its commitment to limit the average number of such truck trips to 74 trips per day.

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. No operations shall commence before 6:00 AM or continue after 7:00 PM.

8. Temporary Exemptions. The County may grant a temporary exemption from the operating hours described in Condition No. 7 above for up to 21 days based on a request to the Community Development 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.

9. 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.

10. Mitigation of Dust. Dust shall be minimized through the use of sprinklers.

11. Compliance with DEQ Noise Standards. Mining activities shall operate within the applicable noise standards of the Department of Environmental Quality, and shall use the mitigation measures proposed in the April 2004 Noise Study by Daly-Standlee & Associates (the "Noise Study") to achieve compliance.

12. 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.)

13. County Road Improvement and Bridge Study. The operator shall reconstruct the portion of Lower Island Road adjacent to the site to current Yamhill County Road standards, together with any improvements to the intersection of Lower Island Road and Grand Island Loop required by the Yamhill County Public Works Director. The operator shall participate in the funding of (1) a county study of the local roads, including speed limits, intersections, etc., and (2) the load capacity of the Lambert Slough Bridge, at any time after the operator has commenced extraction and hauling, if requested by the Yamhill County Public Works Director. The operator's proportion of the funding of the Lambert Slough Bridge study shall be limited to the operator's *pro rata* share of the trips across the Lambert Slough Bridge and shall be coordinated with County requests for similar levels of funding by other users of the Lambert Slough Bridge, such as the local agricultural operators and other aggregate site operators that use the bridge.

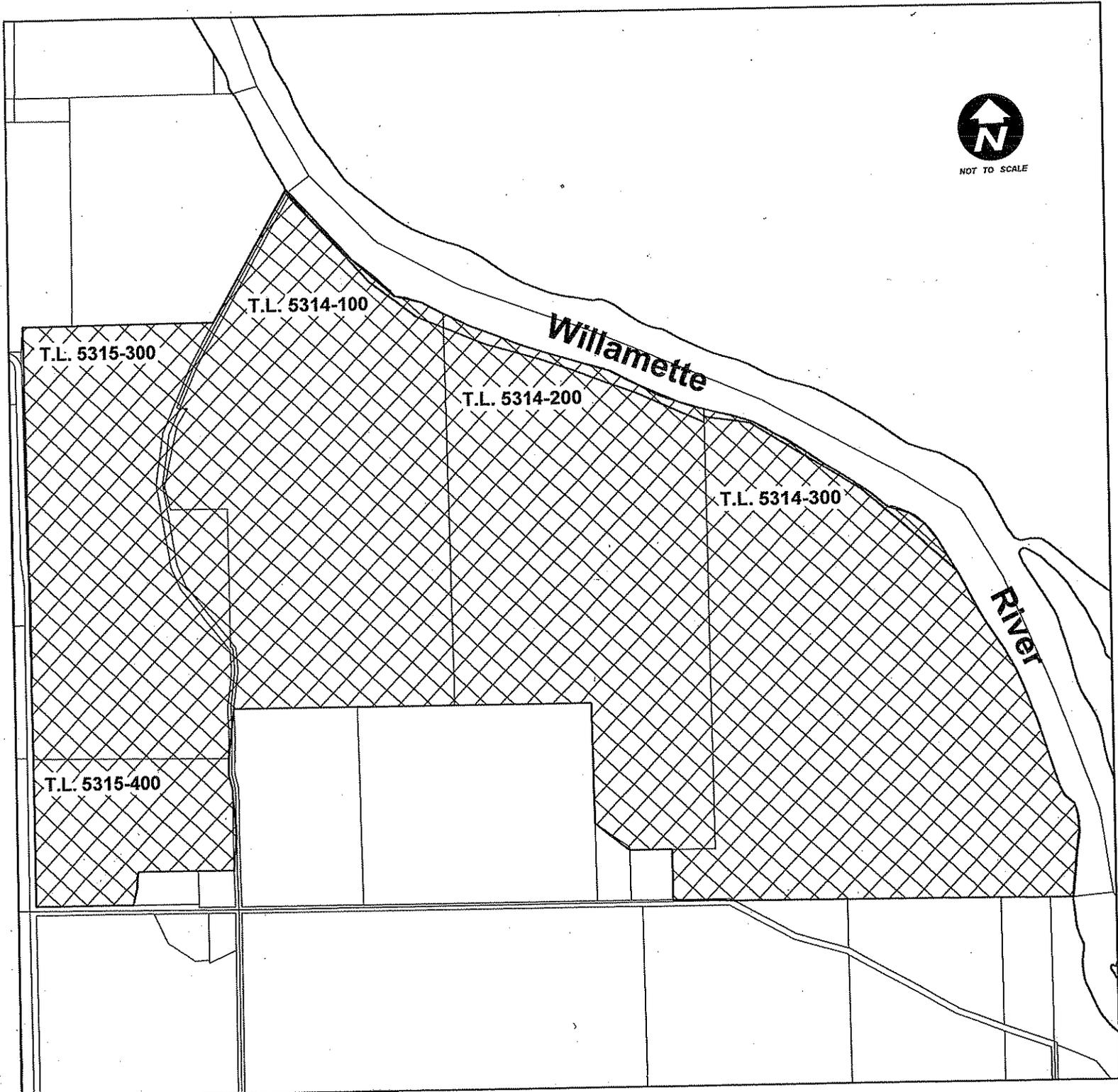
14. Signage. The operator shall install appropriate signage regarding the safe operation of trucks entering and leaving the site, at the discretion of the Yamhill County Public Works Director
15. Speed Control on Haul Roads. The operator shall place 10 mph signs at appropriate locations along the internal haul road.
16. Security Fencing. The mining area shall be separated from non-owned adjacent property by a fence of at least three (3) strands of wire.
17. Access Points. Ingress and egress to and from the site for mining activities shall be solely at the location of the proposed haul road on Tax Lot 300. Ingress and egress to and from the site for farm uses shall continue to be at the existing location on Tax Lot 300. Except for local deliveries to customers located on or adjacent to Grand Island Road, the haul route shall be limited to the route described on page 21 and depicted in Figure 6 in the applicant's April 2004 Traffic Impact Analysis by Kittelson & Associates.
18. 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.
19. Site Standards. The operation shall at all times remain in compliance with the Yamhill County standards in *Yamhill County Code 934.350-359*.
20. DOGAMI Permit. The property owner shall obtain a current 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 the each renewal anniversary.
21. Dewatering. There shall be no dewatering of the site.
22. Fill. Any fill imported to the site, for purposes of raising the grade in portions of the wetland enhancement project, or otherwise, shall be "clean fill" within the meaning of Oregon Department of Environmental Quality regulation OAR 340-93-030(11).
23. Noise Test if Necessary in Mine Block 4. Prior to the commencement of extraction activities within Mine Block 4, the operator shall, if requested by the Community Planning Director, retain Daly Standlee and Associates, or other reputable

noise consulting firm, to conduct a noise test to determine whether mining operations will comply with the DEQ noise standards, and shall make modifications necessary to meet the DEQ standards. This may include, without limitation, construction of a noise wall sufficient to mitigate noise to the point that it meets DEQ noise standards. The operator and Community Planning Director shall discuss the proposed modifications with the residents of the house on Tax Lot 500 southwest of Mining Block 4 prior to implementation.

24. Conveyors. In the event the operator substitutes a conveyor system in place of the haul trucks to transport aggregate across the site to the stockpile area, 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 Daly Standlee and Associates, or other reputable noise consulting 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. *END*

COMPREHENSIVE PLAN AMENDMENT FROM ILM 81 ACE 1508
AGRICULTURE/FORESTRY LARGE HOLDING (AFLH) TO QUARRY (Q)

ZONING MAP AMENDMENT FROM EF-80 AGRICULTURE/FORESTRY USE
TO MR-2 MINERAL RESOURCE



Prepared by Yamhill County Department of Planning and Development

Legend

 Area Subject to Amendment

3.0.04-887
ORDINANCE No.: 752
EXHIBIT "B"