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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 Large Holding to Quarry; a zone change from EF-80 Exclusive Farm Use to MR-2 Mineral Resource for a parcel of approximately 169 acres, PAZ-05-03, Tax Lots 4335-201 and 301 (the "Hester Property"), Applicant C.C. Meisel; and Declaring an Emergency	))))))	ORDINANCE 745

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON (the Board) sat for the transaction of county business on August 19, 2004, Commissioners Kathy George, Mary P. Stern, and Leslie Lewis being present.

IT APPEARING TO THE BOARD that the Planning Commission heard from the applicant and opponents at a duly noticed public hearing on November 6, 2003, and voted to forward the application without recommendation to the Board for review, and

IT APPEARING TO THE BOARD that the matter was heard by the Board at several duly noticed public hearings, the last being on June 22, 2004 . The Board heard testimony, considered the evidence from the applicant, opponents, and staff and deliberated and voted 2-1 to approve the application (Commissioner Mary P. Stern voting in the negative). NOW, THEREFORE,

IT IS HEREBY ORDAINED BY THE BOARD that C.C. Meisel's application is approved with the conditions of approval detailed in the findings attached as Exhibit "A", incorporated herein by reference. 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 this 19th day of August, 2004, at McMinnville, Oregon.

ATTEST:

JAN COLEMAN
County Clerk

By: Anne M Britt
Deputy Anne Britt

YAMHILL COUNTY BOARD OF COMMISSIONERS

Kathy George
Chair KATHY GEORGE

Mary P Stern
Commissioner MARY P. STERN

Leslie A. Lewis
Commissioner LESLIE LEWIS

APPROVED AS TO FORM:

Rick Sanai
Assistant County Counsel

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EXHIBIT "A"

YAMHILL COUNTY BOARD OF COMMISSIONERS
FINDINGS OF FACT AND CONCLUSIONS OF LAW

PAZ-05-03

APPLICANT: C.C. Meisel, Inc.

OWNER: C.C. Meisel, Inc.

LOCATION: Approximately three miles southeast of Dayton, Oregon and approximately one-quarter mile northeast of Nichols Road (T4S, R3W, Tax Lots 4335-201 and 301, commonly known as the Hester property).

SUMMARY OF DECISION: This decision allows, with conditions, mineral and aggregate extraction on the 169-acre Hester property. In reaching this decision, we have followed the administrative rules related to post-acknowledgement plan amendments ("PAPA") set forth at OAR-660-023-0180. We have verified that the application is complete, reviewed the facts and established an impact area; listed existing and approved land uses and specified predicted conflicts consistent with the administrative rule; identified reasonable and practical measures that would minimize conflicts identified; performed an alternative ESEE analysis in the event our determinations about minimization are deemed incorrect; established and attached conditions using a limited land use overlay; identified post-mining use; performed a "new use" ESEE analysis to determine whether to allow, limit or prevent new conflicting uses within the impact area; and adopted land use regulations to limit post-mining use as required by the administrative rule. We add the site to the County's goal 5 significant mineral and aggregate inventory, approve mining and establish conditions and impact area restrictions with a Limited Land Use Overlay.

PROCEDURAL HISTORY: The application was submitted in September 2003 by the owner/applicant, C.C. Meisel, Inc. The matter was reviewed by County Planning staff and a staff report recommending approval with conditions was issued on November 6, 2003. Subsequently, the Yamhill County Planning Commission met to review the staff recommendation, accept testimony and evidence, and make a recommendation. The Planning Commission's final vote resulted in a tie vote with the determination the matter would be forwarded to the County Board of Commissioners without a recommendation. Beginning in January 2004, the Yamhill County Board of Commissioners conducted several extensive public hearings in this matter, and reviewed hundreds of pages of testimony. Final deliberation on the matter was delayed to allow the Board of Commissioners to review the draft technical report of the Department of Geology and Mineral Industries ("DOGAMI") issued in response to the applicant's concurrent application to that agency for reclamation and operating approval under ORS Chapter 517. All parties were provided an opportunity to review the DOGAMI technical report and comment as the record was kept open until July 22, 2003. On that date, the Board of

Commissioners voted unanimously to list the site as a significant mineral and aggregate resource in the Yamhill County Comprehensive Plan. The Board of Commissioners then voted 2-1 to approve the applicant's request and change the comprehensive plan and zoning designation on the property, establish conditions through a limited land use overlay, and allow surface mining at the site.

FACTUAL BACKGROUND: This application was initiated by the applicant property owner, C.C. Meisel, under the provisions of the Goal 5 Administrative Rule, OAR 660-023-0180. This is a post-acknowledgment plan amendment that will be referred to as a "PAPA" in this findings document. It is important to note that the application does not request mineral and aggregate processing at the Hester property site. The application is for extraction only and all processing of materials will occur at the applicant's existing plant on Mallard Lane, approximately two miles to the north.

The Hester property is approximately 169.3 acres in size and rises about 20 to 25 feet above the average river level of the adjoining Five Islands' reach of the Willamette River. Property topography is generally undulating to level and ranges from approximately 79 to 98 feet NGVD. Topographic relief on the property is on the order of 10 to 15 feet and is expressed as small ridges and swales. The property consists of open fields that have been in use for various kinds of crop production. The property also contains small wooded areas, generally near the property perimeter. The current zoning of the property is EF-80, Exclusive Farm Use. The Willamette River borders the property in the extreme southeast corner and the Willamette River Greenway crosses the property in the southeast corner. No operations are proposed within the Willamette River Greenway. There are no buildings on the Hester property, and none are proposed as part of this application.

Land use in the general area consists of existing gravel operations and large scale commercial farm operations. To the north and east of the property are existing and active mineral and aggregate extraction operations. Farming operations are generally located to the west and south of the operation. Farms in the general area include hay, berries, vegetables and other crops, and a dairy farm. A significant portion of the land immediately west of the Hester property is used to raise feed for dairy herd and for manure disposal. The adjacent mineral and aggregate operation to the east is zoned MR-2 mineral resource and is identified in the County's Goal 5 inventory as Coffee Island Site C. Other mineral and aggregate operations in the area are permitted as conditional uses. Access to the site is via an easement, Nichols Road (a county road), Green Acres Road (a county road) and Highway 221 (a state highway). The Hester property is located within the 100-year floodway and 100-year floodplain of the Willamette River.

The NSCS soil survey map for Yamhill County shows that most of the soils on the property are mapped as Class II. The NSCS soil survey does not map any Class I or unique soils on the property.

THE PAPA PROCESS: The PAPA process set forth in the Goal 5 administrative rule provides a template for the County's decision-making process for this application. OAR 660-023-0180(7) states that the PAPA rule shall "be directly applied" in the local government's consideration of a PAPA application. Consistent with LUBA and Court of Appeals case law, the Goal 5 PAPA rule for aggregate establishes a comprehensive regulatory scheme that is intended to supersede local review standards for aggregate. As such, the basis for our decision is the standards set out in the PAPA administrative rule and the County's zone change criteria and comprehensive plan goals and policies do not apply. This was made clear in the initial County staff report and also made clear orally in several points during the proceedings before the County Board of Commissioners. No party has raised a conflicting point of view and we will apply the PAPA rule and its methodologies to our decision in this matter.

PART I. THE APPLICATION PROVIDED BY C.C. MEISEL WAS ADEQUATE. The PAPA rule at OAR 660-023-0180(6) sets out the criteria to be followed by a local government in determining whether information in an initial PAPA submittal is adequate. The administrative rule contains the following five criteria in determining application adequacy:

(A) "Information regarding quantity, quality and location is sufficient to determine whether the standards and conditions in section (3) of this [PAPA] rule are satisfied." We find that the initial application materials submitted by the applicant contained detailed narrative, technical reports prepared by certified engineering geologists and detailed maps, field exploration logs, analysis, testing reports, and schematics. We find that these documents submitted as part of the initial application provided the County planning staff and this Board with significant information related to the location, quality and quantity of sand and gravel resources on the Hester site and the significance of those resources. We incorporate herein by reference the facts and findings from Part II below related to resource significance. Based on this information, we find and conclude that the application provided the County with adequate information regarding quality, quantity and location, and that the information was sufficient to determine whether the standards and conditions of OAR 660-023-0180(3) would be satisfied. We find and conclude that this standard is met.

(B) "A conceptual site reclamation plan." We find that the applicant, as part of its initial submission, submitted a conceptual operating and reclamation plan, including numerous maps and schematics showing reclamation, grading, planting and setback information. We find and conclude the submissions by the applicant were adequate for our review. We also note that the PAPA rule indicates that final approval of the reclamation plans rests with DOGAMI, rather than the local government, except under a statutory provision which does not apply in Yamhill County. Cognizant of this consideration, we have accepted into the record, and reviewed as part of our deliberations, DOGAMI's technical review related to reclamation issues. Based on all these facts and findings, we conclude that C.C. Meisel's PAPA application provided an adequate conceptual site reclamation plan for review. We find and conclude this standard is met.

(C) "Traffic impact assessment within one mile of the entrance to the mining area pursuant to section (4)(b)(B) of this rule." We find that as part of its initial application, applicant submitted a traffic impact analysis prepared by a registered professional traffic engineer. We find that the traffic impact analysis assessed traffic conditions within and without one mile from the entrance of the mining area. The traffic assessment included traffic counts and computer model analysis of traffic issues. Based on these facts and findings, we conclude that this PAPA application included an adequate traffic impact assessment for our review. Accordingly, we find and conclude that this standard is met.

(D) "Proposals to minimize any conflicts with existing uses preliminarily identified by the applicant within a 1,500-foot impact area." We find that as part of the initial application, the applicant submitted a narrative and evaluation report dated August 22, 2003. This narrative report comprehensively addressed the PAPA application and included considerations of the impact analysis for existing and improved uses within the impact area. Also, included were conflict identification and assessment and proposals to minimize conflicts with existing uses that were preliminarily identified in the application. Accordingly, we find and conclude that this PAPA application adequately addressed conflicts, impact areas and proposals to minimize conflicts and that this standard is met.

(E) "A site plan indicating location, hours of operation, and other pertinent information for all proposed mining and associated uses." We find that in addition to the extensive narrative and evaluation report, applicant's initial submission provided detailed site plan maps, aerial photographs, and significant other pertinent information related to fisheries resources, wetlands resources, mineral and aggregate resources, conflicts, and conflict resolution. We find that the documents and site plans submitted indicated the location, hours of operation and other pertinent information relevant to a review of the proposed use. Based on these facts and findings, we conclude that the PAPA application contained an adequate site plan indicating the appropriate and pertinent information for proposed mining and associated uses. Accordingly, we find and conclude that this standard is met.

We wish to make it clear that we are not relying solely on the applicant's initial submissions. We find that the initial submissions by the applicant were supplemented by materials submitted by both the opponents and proponents during this land use proceeding. Both opponents and proponents submitted additional expert reports; maps; site plans, including pertinent information such as location, hours of operation and others; other written and visual testimony concerning quantity, quality and location and significance of the mineral resource; proposed reclamation plans; traffic impact assessments within one mile of the entrance to the mining site; the impact area; conflicts with existing uses, and the minimization of conflicts. As such, we find and conclude that the initial applicant was adequate and that during this PAPA process, we have received and reviewed information that is adequate to allow us to make a decision regarding this application under the guidance and methodology of the PAPA rule.

PART II. MINERAL AND AGGREGATE RESOURCE SIGNIFICANCE:

Using the guidelines of the PAPA process, the County is required to determine whether or not the mineral and aggregate resource at the Hester site is significant. The rule provides that 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 a certain specific criteria laid out in the PAPA rule. The PAPA rule requires a representative set of samples of aggregate material from the deposit at the site to meet Oregon Department of Transportation ("ODOT") specifications for base rock, and further requires that the estimated amount of material at the Hester site must be more than 2 million tons because the site is located in the Willamette Valley, as defined in the PAPA rule. We received, and weighed, significant information, including expert testimony, on the issue of significance.

(A) Resource Quality. The PAPA rule requires, as an initial threshold, that the mineral and aggregate resource on the site must meet certain ODOT test specifications. We find that applicant's certified engineering geologists, Kuper Consulting LLC, completed a visual inspection of the site, visual inspection of adjacent sand and gravel sites, and reviewed the geology of the Hester property area as part of their analysis. We also find that under their supervision, a total of five air-rotary borings and eighteen exploratory trenches were excavated, and three monitoring wells were installed on the Hester property. We further find that the wells and trenches are distributed over all parts of the site, north to south and east to west. We further find that water well reports on the site and adjoining area were examined. We further find that a certified engineering geologist observed and documented air-rotary borings and collected representative bucket samples to be tested for quality. We find that the certified engineering geologist took the bucket samples directly to an industrial testing laboratory for analysis against ODOT criteria for base aggregate. We find that all samples passed the laboratory analysis and that no other laboratory analysis was provided for our consideration by opponents of the project. We find that all samples easily passed ODOT's specification for base rock for abrasion and degradation tests. We further find that while ODOT has specific soundness criteria for asphaltic concrete aggregate, ODOT does not have soundness criteria for base aggregate. As such, we find and conclude that representative samples of aggregate material at the site cannot fail ODOT's base rock specifications for sulphate soundness and, therefore, samples from the site, by definition, are in compliance with all necessary and applicable base rock specifications provided by ODOT.

We note that Mr. Reid, an academic, contested the conclusions of applicant's certified engineering geologist with regard to significance of the rock resources. After a thorough reading of Mr. Reid's materials and listening to his testimony, we find that he did not take the position that the rock on the Hester site was not high quality, not significant, and not present in the required quantity. Rather, his primary focus was on the testing methodology which he argued did not consist of representative samples. We find that in the judgment of the

certified engineering geologists who supervised the drilling on site and collection of aggregate materials, the aggregate materials provided to the testing laboratory were, in fact, a representative sample. We further find that there is no requirement in the PAPA rule outlining a specific methodology for representative samples and conclude that judgment of certified engineering geologists is an important mechanism for our review in determining whether or not a set of samples is representative. We find that, for our review, demonstrated experience in the sand and gravel industry and professional registrations are extremely important in making a professional judgment as to the nature of a representative set of samples and in demonstrating expertise for the purpose of establishing a representative nature of samples. We find that, by his own admission, Mr. Reid has recently developed an interest in sand and gravel matters and that his areas of academic expertise do not focus on sand and gravel issues. We further find that Mr. Reid is not a registered professional geologist or certified engineering geologist in the state of Oregon. We find and conclude that these facts adversely affect Mr. Reid's credibility in this process. We further find that applicant's experts are registered professionals and have years of experience in assessing quality and quantity of mineral and aggregate deposits and, as such, we find their testimony to be credible. We further find the opponents' geohydrologist (a registered professional geologist) made favorable comments as to the nature of the gravel resource at the Hester site and his hydrogeology analysis is dependent on the fact that there is significant gravel resource at the Hester site. Finally, we find that Professor Scott F. Burns of Portland State University reviewed the methodology used by applicant's consultants and concluded the methodology followed the standard practice that should be followed in the state of Oregon. We further find that Dr. Burns' stated that the methodology for calculating the thickness and volume of sand and gravel deposit at the Hester site was "good and conservative" and we find this statement persuasive. We find that Professor Burns has a high degree of professional expertise in the area of sand and gravel resources as he has done studies of Willamette Valley sediments between Salem and Portland, has published a map on the depths of sediments in the Willamette Valley with DOGAMI, and has conducted research in the immediate area of the Hester property, including a recent review of a student's stratigraphy thesis approximately a mile away from the site. We also find that Dr. Burns is a registered geologist in the State of Oregon. We find Dr. Burns to be credible and that his information reinforces the credibility of applicant's consultants with regard to the representative nature of the set of samples and the samples' qualification under ODOT specifications.

B. Resource Quantity and Location. We find the number of test drillings and borings equally distributed across the site, and that for a site of 169 acres, the number of borings and exploratory trenches created by the applicant provide enough reference points to provide a good representation of the top and bottom of the sand and gravel deposits and understand the thickness or depth of the sand and gravel resource. We find that the test drilling logs are adequate in giving depth and sediment descriptions, and the sample frequency within the borings is adequate, particularly because with rotary airdrill, the sediments were continuously observed by a certified engineering geologist. As we conclude in Part II A above, we find that the samples taken fully meet all applicable necessary ODOT specifications. We find that the methodology used for calculating the thickness and volume (e.g., "width of the mineral aggregate resource")

was conservative and adhered to the standard of practice that should be followed in the state of Oregon for mineral and aggregate extraction. Based on these facts and findings, we conclude that a representative set of samples of material in the deposit has been taken, that the sand and gravel materials on the site meet the necessary and applicable ODOT specifications for base rock, and that the amount of material and the deposit exceeds 2 million tons. We note that the estimate of material present on the site provided by applicant's consultants is approximately 10,600,000 tons. We find this figure to be credible and not to have been challenged by any other expert testimony.

We note that at the conclusion of the evidence, it is apparent that setbacks on the site will be increased in the southeast portion of the property near the Willamette River. We wish to dispel any argument that these setback restrictions might reduce the amount of sand and gravel material on the site below 2 million tons as is required by the PAPA rule for significant mineral and aggregate sites in the Willamette Valley. We find that DOGAMI's technical review proposed no depth limitations for cells 4 and 5 at the site. We further find that even if mining were completely prohibited on all other cells at the site (e.g., cells 1A, B, C, D and E, cell 2 and cell 3), there would be sufficient material available in cells 4 and 5 to significantly exceed the 2 million ton threshold standard required for the Willamette Valley. We emphasize that we do not believe, nor do we find, that mining will be completely restricted or eliminated in all the other cells on the Hester property. Our intention is only to emphasize that were this deemed to be an issue, mining of cells 4 and 5 alone would have sufficient volume to meet the required 2 million ton PAPA quantity standard for sites in the Willamette Valley. Cells 4 and 5 encompass an area that is more than 1,000 feet wide (east to west) and 2,300 feet long (north to south). As such, the area of cells 4 and 5 significantly exceeds 50 acres. We find that as a conservative average, each acre at the site contains more than 60,000 tons of sand and gravel resource (10.6 million available tons divided by 169.3 acres). We find that using a conservative calculation, 60 tons per acre multiplied by the 50 available acres of cells 4 and 5 alone yields more than 3 million tons of available sand and gravel resource material at the site. We find this significantly exceeds the threshold requirement of 2 million tons in the Willamette Valley. We perform this calculation not to suggest there is only 3 million tons of material available on the site, but to demonstrate our findings and conclusion that even if there are significant development restrictions on the site, significantly more than the threshold amount of 2 million tons is available on the Hester property for extraction. We find, under DOGAMI's technical report, that mining will be permitted on cells 1C, 1D, 1E, 2 and 3 in addition to cells 4 and 5 and that this additional mining would increase the available amount of sand and gravel beyond the 3 million tons we have calculated for cells 4 and 5 alone. As such, we find and conclude that the amount of sand and gravel material available for mining the Hester property greatly exceeds 2 million tons. We further find the significance determination must be made by Yamhill County under 8 OAR 660-023-0180(3) which contains three alternatives (a), (b) and (c). We further find that (a), (b) and (c) are listed in the disjunctive (subsection 3(b) uses the term "or.") We find that representative samples from the Hester site show the necessary and applicable base rock specifications are met and that the more than 2 million tons of sand and gravel material are available on the site. We find and conclude that this is sufficient to satisfy the disjunctive

standard and that we do not have to address local government standards or whether the site is currently on an inventory. However, as part of this findings document, we reach a decision which places the site on the County's significant aggregate site inventory and in our acknowledged comprehensive plan.

We further find that the PAPA rule, to balance the considerations of Goal 5 mineral and aggregate resources with the considerations of valuable farm soil, requires an analysis of the width of the aggregate layer or thickness of the sand and gravel resources, minus the depth of the topsoil and nonaggregate overburden. We find that significance depends on the width of the aggregate layer which varies depending on where the site is located. The Goal 5 PAPA rule reads as follows:

> "Notwithstanding subsections (a) through (c) of this section, 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 aggregate site is not significant if the criteria in either paragraphs (A) or (B) of this subsection apply:
>
> "(A) More than 35 percent of the proposed mining area consists of soil classified as Class I on Natural Resource and Conservation Service (NRCS) maps on the date of this rule; or
>
> "(B) More than 35 percent of the proposed mining area consists of soil classified as Class II or 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."

We find that the mineral and aggregate resource under review in this application is located in Yamhill County at the location identified on page one of these findings. We find that the NRCS maps in the record indicate there is no Class I soil nor any unique soil on the Hester property. We further find that the same NRCS maps indicate that more than 35 percent of the proposed mining area consists of soils classified as Class II. We further find that the applicant's certified engineering geologist drilled a significant number of borings on the site and an additional number of trenches on the site for the purpose of determining the average width or (thickness) of the aggregate layer on the Hester property. We find that this drilling and trenching established enough reference points to determine the width or thickness of the sand and gravel resource on the site. We find that we have been provided with charts and cross-sections in addition to textual narrative that addresses the issue of the average width of the aggregate layer within the mining area. We find generally that the site has floodplain deposits (the overburden) that overlay the sand and gravel materials. We find that all these deposits and materials are water lain in that they were deposited by various flood events over geologic time. We find that

these floodplain deposits (the overburden) vary in depths across the site from four feet to approximately 18 feet and that the estimated average thickness of the floodplain deposits (the overburden) across the site is approximately 12 feet. We find that underneath this overburden layer is a fluvial sand and gravel deposit that is the aggregate resource at the Hester site. We find the thickness of the sand and gravel resources on the site, underneath the overburden, ranges from 35 to 53 feet. We further find that underlying the sand and gravel aggregate resource is a blue clay layer that is encountered across the property at depths ranging from 46 to 61 feet below present surface elevations at approximately 39 feet NGVD. We find this blue clay layer marks the lower limit of the sand and gravel resources on the site. We further find that the air-rotary borings on the site, together with the geology of adjacent gravel pits and well logs in the area, demonstrate that the blue clay layer forms the base, and the floodplain deposits (the overburden) forms the ceiling of the aggregate resource (sand and gravel) at the Hester site. We find that the total thickness of the sand and gravel deposit, the resource on the Hester property, varies from approximately 35 to 53 feet in width. We find and conclude that this exceeds the 25 feet required in the PAPA rule for mining areas that have predominantly Class II soils. We find that the work of applicant's certified engineering geologist with regard to the thickness is credible and that even the opponent's hydrogeology experts accepted the characterization of the gravel resource on the site for purposes of their reports. We further find that the methodology used by the applicant's consultants is sound and consistent with good industry practice as indicated in the report of Dr. Scott F. Burns of Portland State University, who we specifically find to be credible because of his special expertise in engineering geology, his professional registration, and his familiarity with Willamette Valley sediments.

The PAPA rule requires that the mineral and aggregate resource site must be considered significant in order for the remaining steps of the PAPA process to be completed. Based on our findings above, we conclude that the Hester site is significant. We find and conclude that adequate information about the quality, quantity and location of the resource has been provided and that information demonstrates that representative samples of the material in the deposit meet the necessary and applicable ODOT specifications. We further conclude that the material available on the site is greatly in excess of 2 million tons and we further conclude that the average width of the aggregate layer within the mining area averages between 35 and 53 feet and, therefore, exceeds the 25 feet required in Yamhill County. As such, we conclude that the significance standard in the PAPA rule is met.

Under the PAPA rule, we are next required to determine whether or not mining is permitted on the Hester site. The PAPA rule requires Yamhill County to determine an impact area, determine existing or approved land uses within the impact area that will be adversely affected by the proposed mining operations, and specify the predicted conflicts from those on a specific list within the PAPA rule. Once conflicts are identified, Yamhill County is required to determine reasonable and practical measures that would minimize the conflicts, and if reasonable and practical measures are identified, mining shall be allowed at the site.

PART III. IMPACT AREA:

The PAPA rule provides that Yamhill County must determine an impact area for the purpose of identifying conflicts with the proposed mining use. The rule instructs that the impact area should be large enough to include the conflicting uses listed in the rule and will ordinarily be limited to 1,500 feet from the mining area except where information indicates that significant potential conflicts exist beyond this distance. We find that the applicant initially proposed an impact area of 1,500 feet from the perimeter of the Hester site. During the hearing process, opponents introduced documents and testified that conflicts, particularly those related with groundwater drawdown, flood/erosion and dust, should be considered to extend beyond 1,500 feet. Also during the hearings process, the parties indicated that under the PAPA rule, the conflict area for road uses would need to be expanded to a greater distance as that distance is necessary to include the intersection with the proposed access route with the nearest arterial in the Yamhill County Local Transportation Plan, Highway 221. Applicant suggested "a cherry stem" impact area would follow the easements and county roads for the proposed area of the main route of travel to the intersection of Green Acres Road and Highway 221. We have reviewed the extensive evidence and testimony submitted by both the applicant and the opponents related to conflict issues and the appropriate distance for an impact area from the perimeter of the Hester site.

(A) Impact Area/Groundwater. With regard to the potential extent and distance of groundwater impacts, the opponents argued that dewatering of the mining cells on the Hester property would extend for more than a mile beyond the boundaries of the Hester site. Based on a review of the evidence, we find this not to be a credible position. We incorporate our analysis and findings from Parts I through X by reference. We find that applicant's hydrogeologist, Mr. Bruce of GeoEngineers, analyzed well logs in conjunction with applicant's certified engineering geologists; examined water rights records; examined permeability and reinfiltration issues, examined groundwater gradients, including gradient changes with changes in river stage; examined pumping and aquifer recharge rates, the shape of the mining cells, and proximity of recharge cells in analyzing groundwater drawdown from dewatering operations and mining site. We find that the methodology of Mr. Bruce is persuasive and credible, and we agree and accept his conclusion that aquifer drawdown from dewatering operations for dry mining at the Hester site will be largely attenuated within 700 feet of the excavations. Our acceptance of the methodology relies on the credibility of Mr. Bruce and comes in contrast to our determination with regard to the hydrogeology team of the opponents, including Mr. Luzier and Mr. Rinne. We find that the opponents' hydrogeologists failed to account for the closeness of the Hester site to the river with regard to recovery time from groundwater drawdown impacts. We further find that opponents' hydrogeologist appeared to assume in their testimony that C.C. Meisel would have multiple pits in operation at the same time resulting in multiple C.C. Meisel dewatering operations at the same time. We find that this assumption is not correct and that we have conditioned our approval to prevent the applicant from simultaneously

dewatering the Wilson and Hester property. We find that opponents' experts underestimated the amount of water available for recharge by failing to consider that mined-out cells have essentially 100 percent porosity (that is, they are completely water) while current conditions limit water availability for recharge based on the porosity of the existing sand and gravel structure, which we find is approximately 15 to 20 percent porosity. We further find that opponents underestimated the feasibility of infiltration/recharge cells and miscalculated the effects of groundwater gradient change for the finished ponds due to changes in impedience by the excavation activity. More fundamentally, we find the opponents hydrogeologist's application of the THEIS equation is based on a fundamentally incorrect assumption that there will be no recharge from any source at the site. We were particularly persuaded by the testimony of Mr. Frank Schnitzer from DOGAMI who indicated a water balance will be maintained at the site and that water balances have been maintained at similar sites throughout the Willamette Valley. We accept this testimony and find that a water balance will be maintained at the site. We find that the assumptions made by opponents' hydrogeologists reduce credibility of their testimony, and we do not find their testimony to be persuasive. As previously indicated, we find applicant's hydrogeologist used credible methodology, provided us with credible information and we are persuaded by his analysis of the minimal effects of groundwater drawdown in the mining operations. Based on these facts and findings, we conclude that the 1,500-foot impact area is appropriate and large enough to identify the groundwater conflict. We further find that there is a lack of credible factual information to indicate a significant potential groundwater conflict beyond the 1,500 foot impact area.

(B) Impact Area/Flood and Erosion. With regard to flood/erosion effects, we understand the opponents to argue that overland and backwater flooding events at the site could cause erosive effects that extend beyond the 1,500-foot impact area. We incorporate our analysis and findings from Parts I through X by reference. The applicant's hydrogeomorphologist, Ms. Lowe of PB Ports & Marine, Parsons Brinckerhoff Quade & Douglas, Inc., and the opponents' hydrogeomorphologists, Mr. Abbe and Mr. Sutherland of Herrera Environmental Consultants, Inc. and Pacific Water Resources, reached different conclusions with regard to potential erosive effects. Throughout the hearing process, we were provided information which alternatively supported the increased effects argued by the opponents or supported the minimalized effects argued by the applicant. In resolving this matter for the purposes of establishing an impact area, we again find the testimony and letters of Mr. Schnitzer of DOGAMI to be helpful and persuasive. Taken as a whole, we find that Mr. Schnitzer's testimony indicates there are mechanisms available to anticipate and control erosive flood forces to minimize and eliminate offsite consequences. We accept Mr. Schnitzer's testimony and find that a series of steps can be taken, including setbacks, plantings and engineered rock sills, to confine erosion and flood impacts to the Hester site, but in any event, to an area not larger than the 1,500-foot impact area. We believe the impact area for flood/erosion purposes must take into effect reasonable and practical measures that can and will be implemented at the site to reduce offsite erosion. Based on the evidence provided by Ms. Lowe and confirmed by Mr. Schnitzer of DOGAMI, we find that engineered sills on the site can be used at the Hester property to eliminate offsite erosion and impacts. Our conclusion in this regard is reinforced by evidence

provided by C.C. Meisel's existing extraction operations on the Wilson property approximately 200 yards north of the Hester site. On the Wilson property, during the winter of 2003-2004, backwater headcutting occurred where mining is ongoing. However, we find that the applicant provided aerial photographs and measured drawings that show the backwater headcutting is can be managed using standard erosion control techniques. We find that applicant's demonstration that erosion control can be managed is consistent with Mr. Schnitzer's testimony and explanations to us on how erosion can be proactively managed. Based on these facts and findings, we conclude that the 1,500-foot impact area for the purpose of identifying flood/erosion conflicts, either for overland or backwater flood impacts, is appropriate. We further find that overland flood possibilities exist in the general area because of changes in the river at Lambert Bend upstream from the Hester site. However, we find that after reviewing the evidence in the record, these erosive upstream forces are independent of activities on the Hester site and are occurring, and will continue to occur, even if no activity occurs on the Hester site. Accordingly, it is our conclusion that the 1,500-foot impact area is appropriate for erosion conflicts.

(C) Impact Area/Extraction Activity Dust. Opponents also argue that dust from the sand and gravel extraction on the Hester site will adversely affect crops and farming practices beyond the presumptive 1,500-foot impact area. We incorporate our analysis findings from Parts I through X by reference. We find that mining at the Hester site will be generally below the water table and will involve moist materials that will greatly minimize dust. We also find that ongoing gravel operations in the immediate area have existed for more than 30 years without complaints of adverse effects on adjoining crop lands. We find particularly persuasive the report by the Washington Department of Ecology which recommends good housekeeping measures and the use of water trucks to greatly reduce offsite dust impacts. We find these are reasonable, practical measures that minimize or eliminate dust emanating from the site and that these measures will be imposed by condition. We further find that the prevailing winds during the summer months when the Hester property is operating are generally to the east which pushes any onsite dust effects toward the river, and other mineral and aggregate operations and away from the opponents' properties. Based on all these facts and findings, we find and conclude that dust from activities on the Hester property will not significantly adversely effect agriculture activities beyond the presumptive 1,500-foot impact area, and conclude that the 1,500-foot impact area is appropriate for dust impacts.

(D) Impact Area/Traffic and Roads, Including Road Dust Impacts. With regard to the impact area for the traffic and local road conflicts, the PAPA rule requires conflicts to be considered for local roads that are 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 to include the intersection with the nearest arterial identified in the Local Transportation Plan. We incorporate our analysis and finding from Parts I through X by reference. In this case, we find that the nearest arterial is Highway 221. The PAPA rule does not specifically state the impact area must be defined to include the intersection with the nearest arterial (the rule refers to road conflicts, not specifically with the impact area), but we conclude it is logical that the impact area should encompass potential local road conflicts and should extend out to Highway 221. Applicant has

proposed that we adopt a "cherry stem" from the Hester site along easement and county roads to the intersection of Green Acres Road and Highway 221. A cherry stem is a narrow corridor that attaches to the main impact area and follows the road system to the intersection of Highway 221. We find that this is the correct application of the impact area to road conflicts because there are no major intersections between the Hester property and Highway 221, and the applicant's traffic study, which we accept, indicates that all intersections out to Highway 221 are acceptable from a traffic standpoint.

Opponents argue that because applicant's easement and Nichols Road are graveled, truck dust from the Hester operation will cause significant conflicts with agricultural crops all along the access route and, therefore, the impact area should be expanded to the full presumptive 1,500 feet for the full distance of the easement and county roads to the intersection of Green Acres Road and Highway 221. We incorporate our analysis and findings from Parts I through X herein, by reference. Our analysis of the facts leads us to conclude that this argument must fail for a number of reasons.

First, we find that the opponents' planning and land use services consultant provided information which indicates that as many as 333 agriculture-related vehicle trips per day currently travel on Nichols Road, an unpaved surface. We find there is no evidence in the record that any of these agricultural trips are accompanied by dust suppression methods, such as a water truck, which has been proposed by the applicant. This Board is unable to assign credibility to an argument that 333 agriculture-related trips per day on a gravel road do not cause agriculture-related dust conflicts, whereas truck trips from the gravel operation would cause crop losses, significant increases in costs, significant forced changes in farm practice, or other conflicts.

Second, we find that there are numerous reasonable and practical methods as outlined in the Washington Department of Ecology report to control, minimize and eliminate dust on gravel roads. As part of this approval process, significant conditions in this regard are imposed on the applicant to make sure there are no significant dust impacts. We believe the establishment of the impact area must take into consideration all facts, including control measures, that can be used to minimize or eliminate conflicts. We also believe that we must consider existing sources of dust, including dust generated by agriculture-related uses, in our analysis.

Third, we are persuaded by the written letter of Mr. Scott Freeburn, Air Quality Expert, that reasonable measures, particularly those pointed out in the Washington Department of Ecology report, which we find will, in fact, minimize and eliminate dust issues. We find that the applicant has water trucks that are available for the purpose of controlling road dust. We further find that the applicant has a uninterruptible guaranteed water source for road dust purposes in an amount sufficient to minimize or eliminate road dust issues. For all of these reasons, we believe the impact area for the local roads is properly designated as a "cherry stem," being the width of the easement, road and/or right-of-way from the outer edge of the 1,500-foot

impact area, through Nichols Road and Green Acres Road to the intersection of Green Acres Road and Highway 221.

PART IV. CONFLICT IDENTIFICATION THE PAPA RULE PROVIDES:

> "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, the PAPA rule defines "approved land uses" as 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.

We find there are no "approved land uses" as defined in the regulation because there are no residential zones in or near the impact area. We find that all the land in the general vicinity is EFU land or zoned for mineral and aggregate extraction. We are also unaware of any existing platted lots within the impact area and none have been identified in this matter. Our examination of land ownership records placed in the record confirm that there are no existing platted lots or residential zones in the area and that the area is large acreage zoned EFU and mining. We further find that we are unaware of the dwellings that would be allowed anywhere in the impact area because of the floodplain/floodway overlay, and that no such dwellings have been brought to our attention during this proceeding.

We find that existing land uses within the area are essentially farming uses. We find that the following typical crops are generally located in the conflict area:

- silage corn, alfalfa, grass seed, vegetables (corn, bush beans, squash, sweet corn, table beets, broccoli, cauliflower) grains, clover for green chop and seed, field corn, wheat, marionberries.

We further find that other crops such as sweet cherries, fresh market produce, including vegetables, strawberries, raspberries, rhubarb, boysenberries and apples may be grown in the general vicinity. We also find that there is a dairy farm nearby. We find the typical farming activities associated with these crops include planting, replanting, harvest, chopping, hauling, fertilizing, irrigating, pesticide and chemical application, manure application (dairy disposal), hauling, milking, furrowing, baling and transport. For a fuller list of farm crops, uses and practices, we incorporate by reference our analysis and findings in Parts I through X by reference. Based on the evidence presented, we find that the conflicts that can be predicted from a mineral and aggregate mining operation in proximity to these existing farming uses and practices would include dust, traffic, erosion associated with flooding, and groundwater conflicts associated with dewatering.

PART V. CONFLICT ANALYSIS:

The PAPA rule instructs us that for a determination of conflicts from a significant aggregate site, Yamhill County must limit its consideration to the following:

- 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;

- 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 site 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;

- Safety conflicts at existing public airports due to bird attractants (i.e., open wire impoundments). This paragraph shall not apply after the effective date of Commission rules adopted pursuant to Chapter 285, Or Laws 1995;

- Conflicts with other Goal 5 resource sites within the impact area that are shown on an acknowledged list of significant resources and for which requirements of Goal 5 have been completed at the time that PAPA is initiated;

- Conflicts with agricultural practices; and

- Other conflicts for which consideration is necessary in order to carry out ordinances that supersede Oregon Department of Geology and Mineral Industries (DOGAMI) regulations pursuant to ORS 517.780.

We find that safety conflicts with existing public airports due to bird attractants are not a conflict in this area as there is no airport within 10,000 feet of the perimeter of the Hester property or the impact area around the property. The closest airports are Newberg,

several miles to the northeast, and McMinnville, several miles to the northwest. We further find that conflicts related to ordinances that supersede DOGAMI regulations are not applicable in Yamhill County as the County does not have a separate and distinct reclamation ordinance and relies on DOGAMI for mined land reclamation regulation.

Once conflicts, as limited by the PAPA rule, are identified, Yamhill County is required to determine reasonable and practical measures that would minimize the conflicts identified. Special considerations, as discussed below, are used to determine whether measures proposed would minimize conflicts to agricultural practices under the provisions of ORS 215.296. If the County identifies reasonable and practical measures to minimize all identified conflicts, mining shall be allowed at the site. If conflicts can be minimized at the site, an alternative ESEE analysis is not required. If conflicts cannot be minimized, the County is required to perform an ESEE analysis as defined in the PAPA rule.

A. Conflicts due to noise. We find that the applicant has provided a detailed noise study prepared by Daly-Standlee & Associates, Inc., approved by a certified professional engineer with a professional subspecialty in acoustical engineering. We find that the noise study takes into consideration the mining activities on the site, the equipment that would be used on the site for mining activity, the nature and duration of the mining activity, the type and nature of the equipment to be used, and the location of noise recipients in the general area. We further find that the noise study takes into account the movement of the sand and gravel materials from the Hester property to the Mallard Lane processing site by truck. We find that this includes an analysis of the noise effects by trucks traveling on the Hester site, on the easement, on Nichols Road, on Green Acres Road, and out to Highway 221. We find that the noise report takes into account distances, line-of-sight, vegetation and topography in the area. We further find that the noise study took actual volume measurements of similar equipment and then modeled predicted future noise levels from activities at the site and transportation of the material from the site. We find that this is a persuasive analysis. Because of the extent of the detail of the analysis, including its comprehensive explanation of the noise control regulations and comprehensive explanation of how activities at the Hester site and transportation activities related to gravel extraction affect the noise levels, the professional study is credible. We further find that while there are concerns and complaints about noise expressed in the record, there is no countervailing expert testimony with regard to noise issues. Based on all of these findings and facts, we conclude that noise levels from activities associated with the Hester site will be in compliance with DEQ and noise standards without any special noise mitigation measures. We find that the compliance with DEQ standards minimizes the conflict, as required in the PAPA rule. We further find that DEQ noise standards are designed to protect health and locations of human habitation and, as such, compliance with the DEQ regulations reduces conflicts below a level that is significant. We find and conclude that because DEQ noise standards are met by the proposed use that noise conflicts associated with the proposed use of the Hester property can be, and are, minimized.

B. Conflicts due to dust. We find that the DEQ standards under Division 208, addressing visible emissions and nuisance requirements, are the appropriate and controlling regulations for dust emissions from gravel roads and gravel operations, and similar sources of air (dust) contaminates. We further find that there are a variety of safe, effective and commonly used dust control measures, including scheduled watering, application of dust control chemicals, limiting vehicle speed, proper maintenance of gravel road surface, and other mechanisms, that are, and can be, used to minimize dust emissions and comply with DEQ's Division 208 visible emission and nuisance standards. We find that Washington Department of Ecology Publication, *Alternatives to Hazardous Materials, Techniques for Dust Prevention and Submission* (rev. March 2, 2003) identifies the appropriate reasonable and practical methods for eliminating and minimizing dust emissions and meeting Division 208 requirements. We further find that the use of one or more of the techniques outlined in the Washington Department of Ecology publication will allow compliance with DEQ standards for dust from the Hester site and truck use of unpaved roads associated with that site. In reaching these findings, we are persuaded by the letter report of Scott Freeburn, a registered professional engineer with an air quality specialty. We are further persuaded by the fact that several aggregate sites have operated in the general area near the Hester property for more than 30 years without significant conflicts from extraction-related dust. With regard to road dust, we also find the opponents' arguments lack credibility and that, as we understand their arguments, we are asked to assume that up to 333 agricultural truck trips a day on paved roads will not cause dust problems, but any additional trips by gravel trucks traveling the same roads will cause problems. We find this position to inherently lack credibility. We incorporate our analysis and findings from Part III C and D above and Parts I through X by reference. Based upon these facts and findings, we conclude that reasonable and practical measures to minimize dust are available, and that these measures will allow dust emission from the operation of the Hester property and transportation associated with the property to meet DEQ dust requirements. We conclude, therefore, that dust conflicts can be minimized and dust conflicts will be reduced to a level that is not significant.

C. Conflicts due to Dewatering. The PAPA rule does not make it clear whether or not dewatering impacts are considered to be a "discharge" with regard to conflicts between the sand and gravel use of the Hester property and other existing and approved uses in the general vicinity. We will discuss dewatering as part of farm conflicts, below, but for purposes of our conflict minimization analysis, we will assume that dewatering would be deemed to be a "negative" discharge, and that it needs to be discussed as part of our general conflict minimization analysis. We incorporate our analysis and findings in Parts I through X by reference.

As part of the application, applicant has indicated that it will dewater individual cells on the Hester property to facilitate mining. Applicant proposes to pump down the water level in a particular extraction cell to the current working level in the cell to allow mechanized equipment to remove sand and gravel resources. We find that the applicant will use pumps to accomplish the dewatering and the dewatering will commence in the late spring (in the active mining cell) and will be maintained throughout the summer. We find that in the fall, pumping

activity will cease for the season and the water level in the mining cell will be allowed to equilibrate to the ambient aquifer level.

Applicant anticipated that there would be concern on the part of farm neighbors on the dewatering activity and, as part of its initial application, provided a hydrogeological analysis of the effects of dewatering and whether or not dewatering would pose a significant adverse effect to the surrounding farm uses that use groundwater as a source of irrigation water. Opponents expressed their concern that the annual dewatering cycle in the mining cell would affect their wells—essentially drying them out—in the summer months and thereby interfering with their ability to obtain irrigation or manure spreading water from the groundwater resource. Applicants submitted hydrogeology reports and opponents took a contrary position. In discussing the impact area above, we expressed our findings and conclusions with regard to the credibility of the experts. We incorporate those findings herein by reference.

We find the applicant's consultant, Mr. Bruce, provided full analysis of water drawdown issues. We find that his testimony before us was helpful and consistent with his written materials. We find particularly persuasive Mr. Bruce's rebuttal arguments pointing out the omissions in the analysis of the groundwater issues by the opponents' hydrologists.

We find that opponent's hydrologists, Messrs. Luzier and Rinne, disregarded recharge benefits, and the pivotal issue that water will not be taken out of the system by the dewatering and that the water balance would be maintained. We find this to be a significantly important point in our analysis of the situation. We find that if the water is not being exported out of the system; it is being reintroduced into an adjoining cell so the water balance will be maintained. As such, we assign lesser credibility to the opposing experts whose analysis did not fully consider the maintenance of the water balance on the site. Our opinion, findings and conclusions in this regard are bolstered by the testimony of Mr. Schnitzer of DOGAMI. We found Mr. Schnitzer's testimony to be straight forward and believable. We find that he indicated that mining operations similar to one requested in this case frequently occur in the Willamette Valley in gravels similar to those at the Hester site, without significant adverse drawdown effects on adjoining wells. Mr. Schnitzer also testified that some gravel dewatering operations reach several times the proposed depth of the extraction on the Hester property without significant adverse effects on wells in a general area. We find Mr. Schnitzer, because of his background in regulating mining operations, to be extremely informative and credible, and we accept his testimony. We find that Mr. Schnitzer's testimony reinforces the credibility of applicant's expert, Mr. Bruce. Further, we assign lesser credibility to the complaints of surrounding property owners and, in particular, their insistence on the fact that C.C. Meisel's replacement of two farmer's wells is proof that the damage to wells occurred. We find that the credibility of this argument is greatly reduced by the fact that none of the opponents whose wells were replaced ever complained to a regulatory agency, including DOGAMI and the Water Resources Department, that they had problems with the wells. We find this inconsistent with their testimony that their wells were heavily damaged and rendered unusable by mining activities at the nearby Wilson site. We find credible the applicant's explanation that he replaced the wells

because the company had a "no-fault" agreement with its neighbors that he intended to honor. We further find it critically important that the water placement program at the Wilson site "works well," in the words of an opponent, and find that water replacement systems (from wells to surface ponds at a gravel site) are an important way that groundwater conflicts can be minimized.

We find that there are two aspects of the opponents' position about adverse effects from mining on groundwater. First, opponents point to seasonal effects caused by the site dewatering and argue that this will have a significant adverse effect on their ability to obtain irrigation or manure spreading water. Second, opponents argue that the water table will be permanently lowered once the Hester site is fully mined and reclaimed.

With regard to the seasonal effects, we find, as indicated by Mr. Bruce, there is some potential for conflict but that effects of dewatering will be largely attenuated within 700 feet from the border of the Hester site and, accordingly, well within the impact area. Mr. Bruce's candid assessment in this regard is another reason why we have assigned him credibility as opposed to the opponents' experts who consistently rejected mitigation measures and predicted possible conflicts with farm uses that we find are not consistent with reasonable and practicable minimization measures that are available. We find that applicant proposed numerous mitigation measures to minimize or eliminate adverse effects from the extraction cell dewatering. First, we find the site will be mined as individual cells and that mining of cells greatly reduces the amount of area that must be dewatered and, therefore, minimizes the effects of groundwater. We further find that the applicant will not export the water off site, but will reintroduce it in adjoining cells that have been mined out and thereby maintain a water balance in a general area. We further find that applicant has the ability, if necessary, to install recharge trenches at strategic locations between its mining activity and wells on adjoining property. We find that opponents' hydrogeologists argue that water may not be able to return to the groundwater because of turbidity introduced to the sand and gravel formation in a receiving cell. Contrary to this argument, we find that mine operators in the region who rely on dewatering typically excavate open trenches connected to sumps within the area to be mined and carefully excavate to avoid turbidity issues related to recharge. We find that the applicant's consultant and DOGAMI indicate the recharge trenches may have been successfully used. We accept this testimony and we find that this is an important minimizing strategy that is available in the event of a groundwater conflict. Most importantly, we find that applicant has offered to provide replacement water from its surface ponds for any farmer in the area that might experience an adverse effect on his or her irrigation well. We further find this surface water replacement strategy has been successfully employed at the Wilson pit approximately 200 yards north of the Hester site. We find that one of the farmers who receive replacement water through such a system testified that the system "worked well." We find that there is a provision in the Oregon Water Law statutes that allows such replacement by transferring the point of diversion.

We find opponents also argue that replacement well water is not appropriate for wells used for domestic or stock watering purposes. We find that any domestic wells are well

located significantly outside the 1500-foot impact area and are generally located up gradient from the Hester site. Based on all the facts and findings above, we conclude that such wells will not be affected. We find that one of the opponents argues that a well immediately adjacent to the Hester property is needed for domestic and stock water uses at the nearby dairy farm. We find this testimony not to be credible for a number of reasons. First, the well has been in place and capped for approximately 12 years and not used by the particular opponent. Second, we find that the opponent has several other existing wells that presently provide for the domestic stock watering needs of the dairy. Third and most importantly, we find that the argument the dairy cattle need pure well water for stock watering purposes is incorrect. We find the state field veterinarian, Mr. Mueller, indicates no state or federal regulations require that drinking water for dairy cows be potable water and that livestock frequently drink from surface water. We find this statement credible and find that it eliminates the opponent's argument that surface water cannot be provided for dairy cattle. We also find that opponents' own evidence from the Department of Agriculture indicates that treatment of surface water used for livestock is not generally considered essential.

Opponents' also argue that the water table will be permanently lowered once the site is reclaimed. We find that essential to this argument by hydrogeologist Luzier, groundwater in the reclaimed excavation area will permanently level out at approximately the same level as the Willamette River. We find that this is not the case because there will be a minimum setback buffer of considerable distance to the closest point to the river. We find that in the pre-mining cross section of groundwater at the Hester site, the groundwater surface adjacent to the bank drops to the river. We find this condition will continue to exist after mining because the buffer is undisturbed in the intrinsic permeability of this material and will continue to naturally impede groundwater flow to the river, causing the water level in the excavation to rise as the excavation extends upgradient. We further find that after the mining, the water level in the excavation will equilibrate to the average hydraulic head in the aquifer surrounding the excavation, not the elevation of the river as we read Mr. Luzier to allege. We further find the amount of gradient across the buffer will actually increase as the excavation expands westward and upgradient to the general direction of the groundwater flow because the groundwater head will correspondly increase on the downgrading side of the excavation. We find that this condition is caused because the groundwater flowing into the excavation has a higher head and cannot discharge from the downgradient side of the excavation as quickly as it enters due to impedance by the buffer. We find that as a result, the groundwater elevation in the excavation will tend to be higher than the current groundwater elevations reserved in monitoring wells on the site as the system equilibrates to the area of 100 percent permeability because the pond is 100 percent water and no longer contains water interspersed with the alluvial gravels. Based on these facts, we find and conclude that the groundwater gradient change to the south and west of the site will be a fraction of the change alleged by Mr. Luzier. We find that a related decline, if any, will not be significant because the wells near the excavation will not lose production as they will be closer to a water-filled excavation with 100 percent porosity whereas, under current conditions, wells near the Hester property rely on pumping from a gravel formation that is likely to have about 15 to 25 percent porosity. We find that the completed Hester site will serve as a large water reservoir

for recharge for irrigation wells in the area that will serve to offset any decline in static water level and eliminate any significant decline in well production. We further find that monitoring wells and peizometers will be in place to verify these conditions on an ongoing basis and that replacement water from a surface source is available as a further strategy to minimize any unforeseen effects. Based on all these facts and findings, we conclude that there are reasonable and practicable measures available to minimize water drawdown conflicts and reduce them to a level that is no longer significant. Accordingly, we find that this standard is met.

D. Conflicts with Turbidity and Stormwater. Opponents argue that turbid water from extraction operations might migrate in the groundwater and, as such, is a "discharge" that can cause conflicts. The exact nature of the conflict is not defined, but we assume that the opponents are concerned that the quality of water in nearby wells might be affected. We incorporate our analysis and findings in Parts I through X by reference. We find that this conflict is not supported by the facts. We find that the gravel structure of the aquifer acts as a filtering agent and cleans the groundwater as it travels through the aquifer. We find that only a short distance is necessary to clean turbidity from the water. We find that applicant's own hydrogeologist states that turbid groundwater quickly loses its sediment load in the pore spaces of sand and gravel. We find that Mr. Schnitzer of DOGAMI confirms the filtering capacity of the aquifer. We find that groundwater across the Hester site moves generally in a northerly and easterly direction toward the Willamette River, toward other gravel operations to the north and east, and generally away from wells to the west and south which could pose conflicts. We further find that the setbacks around the area will be at least 50 feet, and in the downgradient portions of the site near the Willamette River, setbacks will be significantly larger. As such, we find that turbid water generated by the proposed use will not migrate off site. We further find that monitoring wells will be in place to determine whether a potential problem might develop and allow for corrective action. We find that the ability to have replacement water from applicant's service ponds is another minimizing strategy in the event turbidity in offsite were to occur. Opponents also argue that exposed soil or stored overburden could possibly affect surface water quality or affect stream turbidity. We find that in non-flood situations, storm water will be directed into the on-site ponds or natural swales on the site and will not be sent off site. We find this is in keeping with general permits for storm water, that such permits are commonly obtained, and complied with, by sand and gravel operations and that there is no legal prohibition for obtaining such a permit at the Hester site. We find that obtaining such a general permit and complying with it by directing storm water on-site prevents off site turbidity and thereby complies with regulatory standards and reduces any effect to a level that is no longer significant. We find that many farmed parcels and existing gravel pits in the general vicinity have disturbed soil surfaces that are covered by water during flood events. We find, from an examination of aerial photos of the site during flood events, that the flow of Willamette River flood waters is extremely turbid and uniformly turbid from upstream areas near Lambert Bend to downstream areas near Weston Bend. We find no evidence that disturbed farm fields or existing gravel sites contribute to stream turbidity during overland flood events. We find that the only time surface waters will cross the site is during a flood event and that by definition, and by reference to aerial

photos, such the natural water during such flood event is extremely turbid. We find that we have been presented with no evidence that shows that gravel operations or disturbed fields in the area increase down stream turbidity. We further find that the applicant and operator cannot store overburden or sand and gravel material on the site above the surface level of the ground because of the floodway designation on the Hester site. We have conditioned our approval to require a permit for any such flood season storage and find that DOGAMI has a similar condition that prevents certain above- ground disposal or storage of overburden and material. We find that the applicant, if flood season storage of material is needed, will use inverted stockpiles that do not rise above the surface level. We further find that applicant will not store overburden on site during the flood season and will move overburden into mined out cells on an ongoing basis as mining proceeds. We further find that applicant, during the initial cell start up, can, if necessary, move overburden back into the initial excavation during the flood season. We further find that vegetation will be required to be preserved around the perimeter of the site and that additional vegetative plantings will be required by DOGAMI and that these plantings reduce water velocity, erosion and therefore, turbidity. We find that engineered rock sills will are required on site and that these will reduce turbidity by protecting soils from high water velocities. We find that lack of above-surface overburden or sand and gravel stock piles, vegetative plantings, on-going placement of overburden in extraction cells, and rock sills are reasonable and practicable measures that will eliminate or minimize of site surface water turbidity and reduce turbidity effects to a level that is not significant. Based on these facts and findings, we conclude that turbid water will not migrate offsite, that there are reasonable and practical measures to minimize turbidity and that turbidity will be reduced to a level that is no longer significant.

With regard to stormwater, we find that stormwater will be handled on site by redirecting runoff into pond locations. We find that natural drainage on site is toward the central swale which is a low point on the site. We find that the applicant's consultants have indicated that stormwater may be properly handled on site in compliance with all DEQ standards. We find that handling stormwater on site is a reasonable and practical measure that will minimize stormwater conflicts and reduce them to a level that is no longer significant. We further find that opponents argue that processing of sand and gravel resources admits the possibility that process waste could contaminate the groundwater. We find, from the beginning, that applicant has clearly indicated that there will be no processing on the Hester property. We find processing will occur at the applicant's existing Mallard Lane plant. We further find that applicant has available an environmentally sound and technically advanced portable oil bank system for replacement of fluids on outside equipment, in the event that would be necessary. We find the system is self-contained and protects against the inadvertent fluid spills which could contaminate water. We find that offsite processing and use of portable oil bank systems are strategies that minimize any potential onsite fluid or pollutant discharges and that these are reasonable and practical measures that will minimize these types of impacts and reduce them to a level that is no longer significant.

E. Conflicts from the Flood/Erosion. We find that a significant concern of the opponents is whether or not the Hester site would increase the adverse affects from a flood,

including flood-induced erosion. We find that the opponents indicated concern about overland floods (from the river across the Hester site) and backwater floods (water from the Dorsey and Sleger property backing up across the Hester property). We find that applicant's hydrogeomorphologist, Ms. Lowe, performed extensive modeling of flood effects across the Hester site, both backwater and overland, and was also able to physically observe the site as a flood event developed in early 2004. We further find that the opponents' hydrogeologist, from the Herrera Group in Seattle, took issue with the methodology of the applicant's expert and argued that a "no-rise" certification would not be able to be issued for the site and that the mining activity elevates the erosion risk to landowners in the general vicinity. We incorporate our analysis and findings in Parts I through X by reference. We have analyzed the facts, made credibility determinations regarding the various experts commenting to us on flood and erosion issues, and reached findings and conclusions regarding the alleged flood and erosion conflicts. We incorporate herein that analysis and our findings and conclusions by reference. We find Ms. Lowe's work to be comprehensive and on point. We particularly find that her rebuttal materials address the issues raised by the Herrera Group a clear and convincing manner. We find that her numerous physical visits to the site, familiarity with the terrain and the adjacent Willamette River, and her ability to observe a flood as it actually developed, significantly enhance her credibility. In the same manner, we find that the Herrera Group made erroneous comparisons about the land and the adjacent Willamette River. We are further persuaded by the letter report by David Brown & Associates, Inc. which, using first-hand professional knowledge of some of the Washington area sites referred to by the Herrera Group, points out the differences between those sites and the Hester property. We accept the David Brown report and note the difference between the Hester property and other properties that the Herrera Group attempted to use by analogy. We find that the David Brown report significantly diminishes the credibility of the Herrera Group.

We find with regard to the "no-rise" certification that Ms. Lowe indicates no net fill will be located on the site and, in general, a "no-rise" certification would not be required for the Hester site. We further find that Ms. Lowe indicates that in the event a "no-rise" certification might be required, the "no-rise" certification is clearly achievable. We find this testimony to be credible and we adopt it in our findings and conclude that in the event a "no-rise" certification is necessary, it is clearly achievable at the site.

With regard to the flood erosion issues, either from overland or backwater flooding, we find that the applicant has recognized from the beginning that spot armoring would be necessary to protect the site from both overland and backwater flood events. We find that spot armoring has been proposed for the appropriate areas on the site to protect from backwater and overland flood events. We find that DOGAMI will have the final authority on the engineering location and design of the rock sills, and we find and conclude that such rock sills are practicable, reasonable and clearly achievable at the site. We have conditioned to our approval to require the appropriate spot armoring. We find that spot armoring in the form of engineered rock sills is a reasonable and practical measure that will minimize flood erosion conflicts. We further reiterate our findings above, that the applicant has demonstrated backwater

erosion issues at the Wilson property, approximately 200 yards to the north, including back water and side slope erosion, can be managed and minimized in a controlled fashion. We find this very persuasive to us in terms of the applicant's ability to minimize erosion issues on the Hester property.

We further find that there are several additional, reasonable and practical measures that will serve to minimize or eliminate erosion issues at the property. These include equilibration of the water level in the extraction cells to river level by the onset of the flood season. We have made this a condition of our approval, and note that DOGAMI has also clearly conditioned the equilibration issue. We find that equilibration of the water level in extraction cells is a practicable and reasonable measure to minimize flood or erosion impacts. We also find that DOGAMI will require entry ramps into the extraction cells from the northwest end and proceeding to the cells in a southeasterly direction. We find that this ramping effect will tend to minimize headcutting from any backwater flood event, and as such, it is a reasonable and practical measure to reduce flood impacts. We further find that onsite vegetation will be maintained around the site parameter and additional vegetation will be planted on the site under DOGAMI's direction. We find that this is a reasonable and practicable method to reduce flood and erosion effects. Finally, we find that the site was always set back from the Willamette River a sufficient distance so that no activities would occur in the Willamette River greenway. However, we further find that during the application process, the setbacks from the Willamette River have been significantly increased. We find that this provides an additional measure of safety from river-related erosion issues, and we find that setbacks are reasonable and practicable methods to minimize flood and erosion conflicts. Consistent with our findings above, we find that the Willamette River, upstream at Lambert Bend, is undergoing changes, and these changes may have effects on downstream Willamette River sites. However, we find that nothing that is done at the Hester site will affect the changes upstream and that reasonable and practicable steps will be taken on the Hester site to minimize any erosive effects from the changes that occur upstream. We further find that DOGAMI is beginning an initiative which will include the mine owners in the general area, including the Hester site, and the farm owners in the area, many of whom are opponents to this application. We find that the DOGAMI initiative will take a systematic approach to river effects in an effort to help the farmers at the Lambert Bend area and merge the gravel operations in the area into productive habitat and a more beneficial riparian habitat complex. We believe this overall approach has merit and find that it too may be considered a measure that reasonably and practicably minimizes potential flood and erosion conflicts from mining. We note if a systematic approach can be achieved, we have added a condition to our approval, Condition 21, which seeks to promote this systematic effort by having the owner work with the county to explore farmland reclamation options consistent with DOGAMI requirements. We find that opponents' experts express concerns about large stock piles interfering with flood waters, but we find that applicant has proposed no large stock piles and recognizes that it cannot place the stock piles on the property during the flood season. We have provided a condition in this regard. We further find the applicant, from the beginning, has proposed "inverted" stock piles which are below ground storage areas where loosened gravel

material can be stored for easy access and that such inverted piles would be located at or below the existing ground surface and, therefore, not affect the passage of floodwaters across the site.

Under the PAPA rule, we are required to determine if there are reasonable and practical measures that will minimize identified conflicts and, in this case, related to flood and erosion issues. We find that increased setbacks, vegetative plantings, a requirement of equilibrating the water levels in the extraction cells during the flood season, and the construction of engineered rock sills on the site are all reasonable and practical measures that minimize flood erosion conflicts to a level that is no longer significant. Accordingly, we find and conclude that this section is met.

F. Local road conflicts. There was a significant amount of controversy at the public hearing with regard to access from the site on the county road system, including Nichols Road and Greenacres Road out to Highway 221. We incorporate our analysis and findings in Parts I through X by reference. Opponents initially took the position that there was no easement from the Hester property to Nichols Road. We find that applicant provided sufficient legal documentation to demonstrate the existence of an easement if an easement is, in fact, necessary to reach Nichols Road. We find that the easement held by C.C. Meisel allows use of the easement "without restriction" and we find this to be sufficient authorization for use of any type on the road, including farming trucks, gravel trucks or other vehicles. The opponents' then changed course and argued that Nichols Road is not a county road but is actually private property. We find that going back to 1929, there had been numerous attempts to dedicate Nichols Road to Yamhill County. We find that over the years, Yamhill County has, in fact, obtained deeded ownership interest in significant portions of Nichols Road. We further find that these deeded portions do not exactly line up with the road "as traveled" and that is currently used as part of our county road system. We further find there is evidence of county and public ownership in Nichols Road all the way to the Hester property. We further find the county has maintenance records for a significant portion of the "as traveled" route of Nichols Road. We are also persuaded by the testimony of our own county surveyor, Dan Linscheid, who states that county road crews have maintained Nichols Road for more than 75 years at varying lengths and levels of improvement. We further find that Nichols Road is a local road. We find that the Yamhill County roadway system configurations and road functional classification characteristics do not establish a 500 vehicle per day limit on local roads. We find that the Yamhill County Transportation System Plan lists only two functional requirements for local roads in the county. We find that under our transportation plan, local roads are required to: (1) primarily provide access to adjacent land and (2) must accommodate travel over short distances compared to collectors or arterials. We find that Nichols Road clearly meets the Yamhill County Transportation System Plan requirements for a local road, that it provides access only (not primarily) to four ownerships of adjacent land, and that traffic is accommodated over very short distances in comparison with collectors or arterials that run traffic over many miles. We find that there is no inherent limit on the number of vehicle trips for a local road in the Yamhill County Transportation System Plan. We find that the county may attach a resource road designation to a local road; but it is not required to do so. We find that with the proposed Hester

project, Nichols Road will continue to primarily provide access to four ownerships of adjacent land and will continue to accommodate travel over short distances, as compared to collectors and arterials. We find, as such, that Nichols Road will continue to function as a local road and that the proposed mining activities will not affect the functional classification. We find our Transportation System Plan breaks down local roads into a number of categories, including primary access roads, circulation roads, area roads (two lanes), and area roads (one lane). We find that Nichols Road is currently an area road (one lane). We have provided conditions that will require that C.C. Meisel upgrade Nichols Road in the "canyon" section to an area road (two lanes). We find that the portion of Nichols Road in the "canyon" area, when improved, will have a travel surface between 18 to 20 feet and up to two feet of shoulder. We find that we have further attached the condition requiring turn-outs on the remainder of Nichols Road which we find will remain as an area road (one lane). We find that the Transportation System Plan requires turn-outs on a single lane road at 800-foot intervals or less as directed by the county. We find that the physical characteristics of Nichols Road provide the county engineer with an ideal environment for establishment of turn-outs for the benefit of all users of the road. We find that the county's heavy equipment has used a turn around on Nichols Road. We further find a turn-around be required and that an area for a 60-foot circular turn-around is available on the Hester property to ensure this requirement is met. We find that the opponents' argue that the road is inadequate and that additional traffic from the gravel operation will cause conflicts. However, we also find that the opponents' own consultant indicated the farm trucks back up for each other and generally cooperate to make the road work for all users. We see no reason, given the small number of ownerships that Nichols Road serves, why all users are not able to continue cooperative use of the road and that this cooperation is a reasonably and practicable measure that will minimize conflicts. In addition, the attached conditions to our approval require significant improvements to the "canyon" section of Nichols Road. These will increase the width and safety for all users. In addition, we require turn-outs and legalization process so that all the landowners in the area will know the exact location of the road. Finally, we find that other gravel operations use a CB radio system to communicate and enhance road cooperation. We have attached a condition that requires trucks approaching the "canyon" section to stop, and an additional condition requiring trucks to use their CB radio so that road use can be coordinated. We find that road widening, use of turn-outs, provision of an enhanced road base, stop sign, and CB radio transmission are all reasonable and practicable measures that minimize truck conflicts on the road. We further find that legalization process for the road is available under state statute, and we find that the county has used this process before to successfully solve confusing road ownership situations and ensure the public interest in open transportation on the county road system is met.

The opponents argue that increased access on Nichols Road creates a potential for vandalism or litter. While we recognize that vandalism and litter do occur on rural roads, we find that there is nothing to prevent these activities from occurring now and that road improvements do not necessarily lead to increased vandalism and littering. We further find that with additional approved gravel operations, there will be fewer opportunities for vandals or litterers because there will be people present at the Hester site on a regular basis throughout the

summer. We also find that applicant is fully committed to working cooperatively with the farm neighbors in the event that oversized farm equipment needs to be relocated using Nichols Road. We find that such owner cooperation is a reasonable and practical measure and can minimize or even eliminate conflicts on the road. We find that, as a matter of perspective, Highway 221 is only 22 feet wide at the intersection of Greenacres Road, yet the road has a speed limit of 55 miles an hour and carries approximately 2,850 vehicles per day. We find that some of those vehicles are farm vehicles including heavy trucks and heavy equipment including slow-moving farm equipment. We find that conflicts with slow-moving farm equipment on Nichols Road can be accommodated by gravel truck traffic in the same matter as farm traffic is now accommodated by traffic on Highway 221. We find that opponent's transportation expert is a Seattle-based consultant who was unfamiliar with the type of number of farm vehicles that would use Nichols Road and a number of positioning movements that would be necessary for oversized equipment such as irrigation wheels or combined. We find that lack of this basic knowledge significantly adversely affects this consultant's credibility with regard to conclusions that he makes related to conflicts on Nichols Road. In contrast, we find that applicant's traffic expert visited the site, supervised collection of traffic count data, and recommended reasonable and practicable measures to minimize traffic conflicts. Based on all these facts and findings, we conclude that reasonable and practicable measures are available to minimize road-related conflicts and to reduce them to a level that is no longer significant.

G. Conflicts with other Goal 5 resource. We find the PAPA rule requires an analysis of the Goal 5 resources within the impact area that are shown on an acknowledged list of significant resources for which Goal 5 requirements have been completed. We find that there are two possible inventoried Goal 5 resources in the impact area: the Willamette River, and groundwater. We incorporate our analysis and findings in Parts I through X by reference. We find that the Hester property touches the Willamette River only in the most southeasterly corner of the property. We find that the Willamette River is separated from the Hester property by the existing sand and gravel operation that borders along the majority of the eastern boundary of the Hester property. We find that from the start, this application was configured so that there would be no activities within the Willamette River Greenway which abuts the Willamette River in the general area of the Hester property. We find that the Willamette River Greenway is one of the mechanisms used by Yamhill County to protect and buffer the Willamette River resource. We find that through the application process, the setbacks from the Willamette River for the Hester operation have increased significantly. We find that this is in response to information developed regarding various river and flood functions at the site. We find that applicant, working through the Goal 5 PAPA process in Yamhill County and working with DOGAMI, increased setbacks in recognition of potential flood and erosion impacts. We further find that the applicant has agreed to leave in place all vegetation along the exterior portions of the site, and that this includes vegetation along the Willamette River. In addition, we find that there is a significant elevation difference between normal river levels and the Hester property. We find that the combination of setbacks, maintained vegetation, and the difference in elevation serve to screen activities on the site in an effective manner from any activities that would be conducted along the route of the Willamette River, such as boating, fishing, or other recreational activities, and that they are

reasonable and practicable measures to minimize or eliminate any potential conflicts with the river. As such, we find and conclude that the proposed gravel use has been designed and is conditioned in a way that minimizes any impact with the Willamette River. Fish resources, in particular, anadromous fish resources in the Willamette River are listed as a Goal 5 resource in the Yamhill County Acknowledge List of Significant Resources and we make the following findings. We find that it may be possible during infrequent late season high-water events for the fish to become entrapped in mining cells or ponds, but that fish entrapment will not be exacerbated vis-à-vis the current conditions on the Hester property by the proposed sand and gravel mining. We find that the site development plan has been created with significant setbacks from the Willamette River, and those setbacks have been increased through the PAPA process. We find that numerous practicable, reasonable and achievable options are available, in cooperation with regulatory agencies, to minimize any effects on the fish, including a no action alternative, an alternative that enhances escape opportunities by linking ponds to adjacent waterways and water bodies, and an alternative that engages fish recovery or fish salvage activities. We find that DOGAMI, charged with ultimate reclamation of the site, has indicated it will require a condition as part of its reclamation and operating permit for the establishment of a fish ingress and egress channel. We find the establishment of this fish ingress and egress channel is not prohibited as a matter of law. We further find that applicant has prepared the reclamation plan for the site to enhance fish habitat values and has worked with DOGAMI in this regard. We find these all to be reasonable and practicable measures that will minimize any conflicting fish resources in the event that those resources would be deemed a list of Goal 5 resource.

We also note that there are small areas of delineated wetlands to the southern portion of the site and a wetland "mosaic" area nearby. We find that these wetland areas have been carefully delineated by professional wetland scientists working in conjunction with a certified soil scientist. We find that more than 45 data points were developed as part of the wetland survey, and that only two wetland areas, the wetland area in the south and the "mosaic" wetland area, exist on the site. We find that from the beginning, the applicant planned to preserve the wetland area in the south and set back its operations from that area. We find that in part of the PAPA process, applicant agreed to keep its operations out of the wetland mosaic area and this area will now be preserved. Accordingly, we find that all wetlands on the site will not be disturbed and we find this to be a reasonable and practicable measure that will minimize any conflicts with wetlands, if they were deemed to be an identified Goal 5 resource.

With regard to groundwater, we incorporate herein our findings in Part I through X above as though fully set forth. We find that the Yamhill County Comprehensive Plan generally refers to groundwater resources as being protected. We find that applicant's groundwater expert, who we specifically find to be credible and persuasive, has indicated that there will be no significant short-term or long-term effect on groundwater. We find that the opponents' experts argue that there will be adverse effects, but for reasons previously stated, we find that the opponents' experts lack credibility and their information and testimony is not persuasive. We find that water balance will be maintained at the site as no water is being

exported and water that is taken from the aquifer through the dewatering process will be reintroduced to the aquifer as part of the regular operation of the site. We find that maintaining a water balance is a reasonable and practicable measure that will minimize any conflict with groundwater resources. We further find that use of the groundwater resource by neighboring farmers will be protected by a number of reasonable and practicable measures, including setbacks, recirculation of water to maintain a water balance, use of infiltration trenches as necessary, and the supply of alternative surface water from the extraction cells. We further find that applicant has installed groundwater monitoring wells and will install additional piezometers to monitor the effects on groundwater and to guide the use of various minimization measures available to protect the groundwater resources. We find that monitoring is a reasonable and practicable measure to help protect the groundwater resource and, thereby, minimize conflict with the groundwater resource. We further find that turbidity will be generated by the mining activities, but the turbidity will be filtered by the natural filtering capacity of the sand and gravel components of the aquifer structure within a few tens feet. We find the testimony of Mr. Schnitzer in this regard to be persuasive and credible. We find that numerous other similarly situation gravel pit operations in the Willamette Valley do not experience turbidity problems because of the natural filtering capacity of the sand and gravel resource.

Based on all of these facts and findings, we conclude the conflicts with identified Goal 5 resources, and additional resources that would potentially be deemed to be Goal 5 Resources, have been minimized by the proposed application and reduced to a level that is no longer significant. We find that there are no other Goal 5 resources or resource sites that have been identified and, therefore, we conclude that the standard has been met.

H. Conflicts with agricultural practices. We find that in analyzing conflicts with agricultural practices and in determining whether or not such conflicts can be minimized, we are to follow the requirements of ORS 215.296.

ORS 215.296 provides as follows:

> "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 a 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."

We find that property surrounding the Hester site, including the protions of the impact area within Marion County, other than those areas zoned for mineral and aggregate extraction, have comprehensive plan and zoning designations for farm use. We find that there

are no forest uses or practices on surrounding lands that are not linked to farm activity (e.g., clearing land for farming). We find that no party has identified any forest use or forest practices on surrounding land and, to the contrary, the parties have identified only farm uses and farm practices on the surrounding lands. As such, we conclude that the proposed activities will not have any adverse effects on forest practices on surrounding lands, either through forcing the significant change in the accepted forest practices or forcing a significant increase in cost in accepted forest practices because there are no forest practices around the property. We find that the wooded areas of the Hester property are generally co-extensive with the wetland areas that will be preserved as part of the application and ongoing use of the Hester site. We further find that tree and vegetation on the site will be maintained for flood and erosion control purposes, and we find it unlikely that the forest practices, that have been historically absent on the site, would occur in the future.

We find that the application provided a list of farm uses in the surrounding area and that list was supplemented by additional uses from the opponents of the project. We incorporate our analysis and findings in Parts I through X by reference. We find that the primary farm uses in the area are dairy farming and associated activities, farming for crops for human consumption, and farming for crops for animal consumption. We find that there are a variety of crops that are commonly planted and grown on the surrounding lands, that these crops include silage corn, alfalfa, grass seed, processed vegetables (including corn, bush beans, squash, table beets, broccoli, cauliflower), grains, clover (for greenchop and seed), fresh market produce (including vegetables, strawberries, raspberries, boysenberries, rhubarb and apples), field corn, sweet cherries, and wheat. We find from reviewing the Oregon State University Extension Service Enterprise Budgets for many of these crops and from reviewing the materials in the record, that the accepted farm practices generally associated with these crops and farm uses include: pesticide application, fertilizing, disking and harrowing, plowing, irrigating, pruning and tying, flailing, harvesting, cover crop planting, soil amendment, tilling, cultivating, mowing, rolling, planting, boom spraying, liming, training and pruning, push-and-burn slashing, herbicide application, insect control, disease control, tree removal and tree replacement, swathing, combining, hauling, weed spraying, hand-hoeing, fungicide application, frost control, dragging and rolling, topping, transportation, manure spreading, milking, bailing, cutting, and wind-rowing. We find that this is not an exhaustive list, but it is a list that adequately describes the main planting, fertilizing, irrigating, harvesting, transporting of crops and the feeding, animal husbandry, milking and transportation of dairy related products. We find that the term of "surrounding area" is not defined in the statute. We believe that the surrounding area is meant to include a large enough portion of the farmed area surrounding a mineral and aggregate site to allow for a reasonable analysis of types of crops that are grown, types of farm uses that are present, and the type of farm practices that are generally used in a reasonable area around the mineral and aggregate site. We find that the 1,500-foot impact area that we have established provides us with a good window on the types of farm activities generally present in the area, but we do not limit our analysis of the surrounding area to the 1,500-foot impact area. Rather, for purposes of insuring that the surrounding area meets the requirements that we have described above, we believe that the area considered should be the bottom land area from Lambert Bend in

the south to Weston Bend in the north (including Marion County), together with the outlying area of Slegers dairy farm that contains typical dairy farm uses and activities that rely on accepted farm practices in this portion of Yamhill county.

We also are cognizant that the opponents have made the argument that there can be individual effects on accepted farm practices as well as cumulative effects. In our analysis, we consider both individual facts on individual farm practices, crops and farm uses, as well as the cumulative effect on the greater farm economy including the multiple farm uses, farm crops and accepted farming practices in the surrounding area.

ORS 215.296 requires the county to determine whether significant change would be forced on accepted farm practices on surrounding lands, or whether costs of accepted farm practices on surrounding lands would be significantly increased. We know that the term "significant" is an important word in the statute and we are aware that changes in accepted farm practices can affect the profitability and, therefore, the viability of farm uses. However, Yamhill county is a farming county and we are aware that change is a constant in the farm community. We find that farmers must constantly deal with changes in markets, changes in weather, changes in commodity supports, changes in fuel and fertilizer costs, changes in competition, and numerous other changes that affect farms just like any other small business. Being a farming county, we also recognize that there is pride and dignity in farming the land and that farming is dedicated to the soil and, accordingly, is a dirty and dusty occupation. We find that it has been suggested to us, as a sister county has recently determined, that any change in the accepted farm practices on surrounding lands is significant. As such, the opponents have argued that any delay in farm transportation, any dust, any change in water level, or any inconvenience constitutes a violation of ORS 215.296. We specifically reject this reasoning and find, as the statute requires, that a change must be significant and must force a significant change in accepted farm practices surrounding land or significantly increase the cost of accepted farm practices on surrounding lands to be violative of ORS 215.296. We further find that in the context of the PAPA rule, we are required to determine reasonable and practicable measures that would minimize conflicts, that is, reduce the identified conflict to a level that it is no longer significant for accepted farm practices. We find that we are required to determine or identify these reasonable and practicable measures and, when addressing the standard of ORS 215.296, we must consider such measures in determining whether there is a significant forced change or a significant increase in costs to accepted farm practices on surrounding lands devoted to farm use.

Opponents raise a large list of issues in which they believe represent conflicts with agricultural practices and which they believe will force a significant change in accepted farm practices on surrounding land, or cause a significant increase in cost to accepted farm practices on surrounding lands devoted to farm use. We have reviewed the opponents list and the many letters and reports in the record, and have determined the objections fall into four basic conflict categories: flood and erosion conflicts, groundwater conflicts, dust conflicts, and road conflicts.

1. Flood and erosion conflicts with agriculture. With regard to flood and erosion conflicts, opponents argue that mining of the Hester property will exacerbate erosion and cause adverse effects to the farm land in the area. Opponents argue that backwater headcutting can produce erosion that affects adjacent fields and that erosion caused by overland flows could cause changes in the Willamette River that might divert its flow. Opponents also argue that the erosion could introduce silt and sedimentation in the fields making them difficult to farm. Opponents also argue that the county may not let DOGAMI regulate and condition the operation because the county does not know what DOGAMI will do with regard to erosion issues. We incorporate by reference herein our findings in Parts I through IV above.

We find that with regard to backwater headcutting erosion that such erosion will occur in a direction related to water flow. While this application was pending, parties were able to observe and provide the county with evidence on exactly how flood events occur at the site. We find that helpful evidence on backwater headcutting was provided by ongoing mining activities at the Wilson pit approximately 200 yards to the north. We find applicant's consultants and applicant's presentation in rebuttal with regard to backwater headcutting to be extremely persuasive. We were provided photographs about how the headcutting process works and schematic diagrams to explain the headcutting process. We find that headcutting processes either from backwater or overland flood events can be properly addressed and controlled before effects reach adjoining properties and thereby eliminating any adverse effects on the adjoining properties. We find particularly persuasive the evidence and testimony provided by Mr. Schnitzer of DOGAMI who indicated that the backwater headcutting issues can be controlled and, accordingly, adverse effects can be minimized. We find that strategically located engineered rock sills may be placed on the Hester property and that these will minimize and eliminate the headcutting that would occur off the Hester property and on the surrounding agricultural lands, and that these are reasonable and practicable measures that reduce headcutting effects to a level that is not significant. We have conditioned our approval on the construction of such sills and we find that DOGAMI's proposed conditions also address this issue in a manner that effectively minimizes and eliminates any offsite adverse effects on surrounding agricultural land and practices. Accordingly, we find and conclude that backwater headcutting and erosion effects will not force significant change to accepted farm practices on surrounding lands nor will they significantly increase the cost of accepted farm practices on the surrounding lands devoted to farm use.

With regard to overland flows and river changes, we find there was disagreement between the experts of the applicant and the opponents. We carefully considered conclusions of Ms. Lowe, applicant's expert, and have reviewed the criticisms of that report offered by the opponents' expert, the Herrera Group. We have also considered the testimony and evidence provided by Mr. Schnitzer of DOGAMI and, we have had an opportunity to look at evidence which describes how an actual flood event occurs on the Hester property. We find particularly persuasive the photographic evidence and the eyewitness narrative descriptions of the overland flood event were provided in applicant's rebuttal materials. We also find persuasive the report of David Brown & Associates that provides criticisms of the assumptions and analogies made in the

Herrera Group report. Ultimately, we find that the issue is not whether overland (or backwater) floods will occur - - they clearly will occur at the site as it is in the regulatory floodway. Rather, we find the issue is whether or not the Hester property may be mined in a manner which permits the overland flood events to occur and to continue to occur on a regular basis without causing significant adverse effects such as significant increase in costs and accepted farming practices or forced significant changes to accepted farming practices on surrounding lands devoted to farm use. Addressing and answering this question, we find the testimony and analysis of Mr. Schnitzer of DOGAMI to be extremely helpful, credible and persuasive. Based on the testimony by, and reports submitted by, Mr. Schnitzer, we find that engineered rock sills can be constructed initially or on a timed basis, to adequately handle and control the erosive effects of overland (or backwater) floods events. We find that an important part controlling erosive effects at the Hester property associated with overland (or backwater) floods is allowing the water level in the dewatered extraction cells to equilibrate so that by the time a flood event occurs, the ambient water level in the extraction will be as high as possible. We find that as dewatering pumping ceases at the mining site, extraction cells begin to refill as the groundwater in the area seeks equilibrium with the water table that is dominated by the nearby Willamette River. We further find that because the site is close to the Willamette River, an important factor in the ambient groundwater level is the level of the river. We find that as the river level rises, the level in the groundwater rises and, accordingly, the water level in the extraction cell is raised. We find that if water level in the extraction pond equilibrates with the groundwater level, the erosive complications related with an overland (or backwater) flood are greatly minimized. We specifically find that DOGAMI has addressed this issue and has imposed conditions that will require dewatering pumping to cease in time for the water level to equilibrate in the ponds prior to November 1, the commencement of the flood season. We find that this condition is a significant, reasonable and practicable measure that will minimize the erosive effects of overland (or backwater) flood events. We further find that vegetation plantings will minimize the erosive effect of overland (or backwater) floods. We find that DOGAMI, as part of its technical review and control over operating and reclamation procedures at the site has proposed vegetative plantings that will minimize flood effects. We find and conclude that a combination of increased setbacks, groundwater equilibration standards, engineered rock sills, and vegetative plantings provide management tools which, at the Hester site, will minimize or eliminate the erosive effects of floodwaters. As such, we find and conclude that the operation of the mining site at the Hester site will not create adverse floodwater effects that would force a significant change in accepted farm practices or significantly increase the cost of excepted farm practices on surrounding lands devoted to farm use.

We find that opponents' have argued that we cannot let DOGAMI perform its regulatory functions related to the reclamation and operation of gravel mines because we cannot know in advance what DOGAMI will do and to rely on DOGAMI would be an improper delegation. We find that this argument is without merit. We specifically continued the proceedings in this matter, not once but two times, in order to get full input from DOGAMI and receive their technical review and conditions. Reading the technical report and conditions provides us with confidence that erosion can be controlled on the site in a manner that minimizes

the effects on any surrounding property. We have adopted a condition that requires compliance with DOGAMI's conditions in addition to an additional condition in our approval that requires construction of the rock sills which we find are an important mechanism to minimize the erosive effects of flood waters.

Finally, we reject opponents' arguments that erosion across the site will cause mud in adjoining fields that will interfere and significantly adversely effect farming on surrounding lands. In the event that there is backwater headcutting, we find that the siltation deposit will be into the gravel pit as waters are flowing into the pit rather than out of the pit. We make a similar finding with regard to overland floods. We find that current flood activity across the site carries silt and the applicant's activities at the Hester property, with the conditions imposed, will not aggravate this effect. We have reviewed aerial photographs of flood events in the area and find that extremely turbid water containing suspended sediment blankets the entire bottomland area from Lambert Bend to Weston Bar. We find and conclude that nothing proposed by applicant would change or affect the inundation of the bottomland area by turbid waters during a large flood event and the resulting sediment that accompanies such a flood event. We find that the valuable soils in the area have been deposited by exactly these types of flood events. We further find that erosive cuts directly upstream and Lambert Bend have transported large amounts of sediment during flood events over the last few years. We do not find that the opponents claim that these natural events have caused a significant change in the farm practices or have significantly increased the cost of their accepted farm practices. Based on all these facts and findings, we conclude that there are numerous reasonable and practical measures to minimize flood and erosion effects and that the Hester property will not present flood or erosion effects that will force a significant change in accepted farm practices or significantly increase the cost of accepted farm practices on surrounding lands devoted to farm use.

2. Groundwater conflicts with agriculture. With regard to groundwater, opponents express concern that the applicant's dewatering of extraction cells would adversely affect the groundwater quantity in their irrigation or manure spreading wells. They also argue that domestic wells in the area could be adversely affected both in terms of quantity and quality. We incorporate by reference herein our findings and analysis in Parts I-X.

As with other conflicts we have examined in this matter, the applicant's expert indicates that there will not be any significant problems with groundwater; whereas, the opponents' experts indicate that there will be significant conflicts. We have carefully reviewed the testimony of both experts, and have weighed the evidence from both. We are persuaded that opponents' experts' arguments rely on a fundamentally faulty premise that when water is removed from the mining cell through the dewatering, it is removed from the system. We find that this leads opponents' experts to conclude that there will be significant adverse effects to the agricultural wells in the area from drawdown which cannot be minimized. We find that the water pumped from the mining cells, as part of the dewatering process, is returned to the aquifer and as such, we find and conclude that the opponents' experts' descriptions of drawdown effects are significantly overstated. We further find that opponents' experts also assume that C.C.

Meisel will concurrently operate the Wilson pit and the Hester property and dewater both at the same time. We find that applicant has categorically stated that this will not be the case. We find that applicant's experts agree that if the Wilson pit is not dewatered at the same time as the Hester property, the regional drawdown influence is lessened. We find this to be important consideration in our analysis and it lessens the credibility of opponents' experts and strengthens the credibility of the applicant's expert. We are further persuaded by the testimony of Mr. Schnitzer that dewatering is a standard and regularly occurring mining practice in the Willamette Valley, and that in similar situations, adverse effects on the irrigation wells have not been observed from similar mine dewatering operations. In addition, we find that the applicant has proposed numerous mechanisms to minimize the effects of its operation on groundwater that reduce the identified conflict with groundwater resources to a level that is no longer significant. We find that applicant will maintain setbacks from the edge of the property from the mining area. We further find that applicant will mine the site using individual cells rather than dewatering the entire site at one time. We further find that applicant has installed three groundwater monitoring wells and has agreed to install additional piezometers to monitor groundwater effects of its operation. We find that one of the opponents' major concern is that there would be a sudden loss of groundwater during a critical portion of a crop lifecycle. We find that monitoring the wells will allow any effects to be observed and that such effects are gradual in nature and do not occur overnight. More importantly, we find that applicant is willing and able to provide replacement surface water from its pits in the event any farmer in the area would experience problems with wells. We find that there is a regulatory mechanism to allow a shift from a groundwater well to a surface pond that can be implemented in a reasonable amount of time. We further find that applicant, in the past, has replaced groundwater wells with the surface pond water and that one of the opponents indicates that this system works well. We incorporate by reference herein our analysis and findings from Parts I-X. We further find that one of the opponents has two wells in fairly close proximity to the western border of the Hester site. However, we find from opponents' own evidence that these wells were put in in 1992, have not been used in 12 years, are capped, and are not "high producers." We find that the water that could be made available from these wells can be substituted with surface water as applicant has done at the Wilson site, and that this will not cause any significant change in farm practices or significant increase in cost in the farm practices of the particular farmer. The opponent argues that the water is needed for domestic stock watering purposes and, therefore, surface water will not suffice. We find that this argument is belied by the fact that the farmer has other wells that meet the domestic requirements for its dairy, and that the wells, which are claimed to be essential to farm operation, have been drilled, capped and unused for 12 years. We further find that the farmer's argument that potable water must be available for its dairy herd is not valid. We find that the state veterinarian indicates that potable water is not required and we find that applicant's own information from the Department of Agriculture indicates that surface water sources can provide water needed for stock watering and similar purposes. We further find that the opponents' own evidence indicates that water treatment is generally not considered essential for surface water used for livestock. As such, we find in opponents' arguments that its costs would be increased by the need to provide chlorination for the substitute water are unfounded and not credible.

Some opponents are concerned about domestic drinking water, but that the wells providing the drinking water are significantly beyond the impact area, which we find is significantly beyond where there is any possibility that the gravel operation would have an effect on their level. We further find that the drinking water wells are generally upgradient from the Hester site, and accordingly, turbidity cannot migrate to these wells under any conditions from the Hester site.

Opponents also made arguments about water quality, primarily that turbidity would get into the groundwater and somehow affect the use of water for irrigation. We find that applicant's expert and opponents' experts agree that there is a significant filtering capacity provided by the sand and gravel within the aquifer and that this natural filtering capacity eliminates turbidity. We find that Mr. Schnitzer from DOGAMI states that turbidity is not a problem in similar mining projects, and we find his statement to be credible and persuasive. As such, we find that turbidity problems are not found in these types of mines in the Willamette Valley and are not expected at this site. We find that nearly all the wells that are points of concerns for the opponents are generally upgradient from the Hester property and we find that turbidity generally does not travel against the flow of groundwater. Opponents also argue that surface water may contain Erwinia, a substance that causes certain vegetable crops to mold. We find that this Erwinia is associated with all types of water (groundwater as well), and is a a phenomenon that is related to the timing and duration of irrigation, not the source of water. Accordingly, we find that turbid water or surface irrigation water will not cause any significant increase to the cost of accepted farm practices or force any significant change in accepted farm practices on the surrounding lands.

3. Agricultural conflicts with dust. Opponent's argue that dust from the gravel operation and from the use of the easement and Nichols Road access, will interfere with the ongoing farming in the surrounding area. Opponents argue that dust will adversely affect bees, stunt crops, cause drops in value for crops that cannot be washed, reduce the nutrient value of crops used for silage, and will affect the farmer's selection of crop rotation and use of their land. We incorporate by reference herein our findings and analysis Parts I-X.

As we indicated above, we believe that the applicant's arguments in regard to dust are lacking credibility because the applicant indicates that it will generate up to 333 vehicle trips per day on a gravel road and no dust of abatement was indicated for any of these trips. We find that the opponents' representative indicated that dust from these trips did not cause adverse effects, but additional dust created by gravel trucks would cause significant adverse effects. We believe this position inherently lacks credibility. We find that 333 truck trips per day, or even a fraction of that number, would have the potential to create significant dust problems and yet none of the farmers in the area have pointed to any current impacts or any significant adverse effects from this road dust. More to the point, we find that there are numerous reasonable and practicable measures to minimize or eliminate dust associated with the gravel operation and accompanying use of roads. We are particularly persuaded by the Washington Department of

Ecology publication that lists a number of ways in which road dust effects may be minimized relative to agricultural production and agricultural activities. These include adding gravel amendments to dirt roads, reducing vehicle speed, using good housekeeping measures, and using water trucks to control dust effects. We find that applicant has agreed to use all of these measures and we have added conditions to ensure that applicant's operations are conducted in a manner that will not allow significant adverse effects from dust. We find that utilizing these good housekeeping measures for dust suppression measures will minimize dust relative to agricultural uses and practices in the surrounding area, that is to say, that use of these dust suppression measures will reduce dust conflicts to a level that is no longer significant. Opponents' argue that there may not be enough water to control dust. Contrary to this argument, we find that applicant has significant experience in dust control at its other rock locations around the county and that applicant controls a number of water trucks that can be used, and are effectively used, for dust suppression along roads and at extraction sites. We further find that the applicant may obtain 5,000 gallons a day of water from an exempt well on the Hester site and the applicant, at its other operations, uses water from a commercial source for dust controls needs. In addition, we find that applicant has indicated that at maximum operation, no more that 500 gallons an hour of water will be needed for complete dust control at the site and on the access road. We find that based on applicant's broad experience in Yamhill county with dust control requirements that this amount is reasonable and proper. We find that the necessary amount of water for dust control is available and that applicant has the necessary equipment to deliver the water in an effective way to minimize dust conflicts with agriculture. Opponents argue that Nichols Road has an impermeable service and that water placed on the road for dust control might drown plants and crops along the margins of the road. We have traveled Nichols Road and do not believe its gravel surface is impermeable. We further find that it rains frequently in Yamhill county, even during the times when crops are planted. If the roads were truly impermeable and the opponents' argument was truly credible, mid-season showers would cause the plants to die independent of any water truck activity. As such, we find this argument is not credible and we do not find the use of water trucks will significantly adversely affect farming practices nor significantly increase the cost of accepted farm practices nor force significant changes in accepted farm practices on surrounding land devoted to farm use.

4. Conflicts with roads. Opponents' argue that conflicts over the use of Nichols Road and connecting easements to the county road will occur and that the traffic generated by applicant's use will cause traffic delays and, thereby, increase farm costs. They also argue that gravel truck congestion on the road will alter farm practices in that equipment cannot be moved in a timely basis. We incorporate by reference herein our findings and analysis in Parts I-X.

As we have analyzed and concluded above, we find that applicant has a valid access from the Hester property through Nichols Road to Green Acres Road to Highway 221. We further find that Nichols Road has been used in varying widths and distances as a county road for more than 50 years and that any deficiencies in the road location can be cured through the statutory legalization process. We further find that Nichols Road is a local road that serves only a limited number of property ownerships. We further find that it can be improved,

consistent with the county Transportation System Plan, to fully function as a local road and serve the needs of the farmers, the applicant and the public. We further find that the opponents' own testimony (that the road is badly in need of the improvements that we have required through conditions) creates delays on the road for the farming community which, we find, would be minimized or eliminated by our imposed conditions. We find it unusual that the farmers do not attribute increased costs to of the delays caused by other farm uses of the road and we further find that the failure to do so subtracts credibility from their argument that delays from other users of the road greatly increase their costs or force them to change accepted farming practices. We further find that the opponents' own consultants indicate that the farmers coordinate among themselves to minimize road conflicts. We find that this type of coordination is a reasonable and practicable measure that can be used to minimize--that is, to reduce to a level that is no longer significant--conflicts on the road between farm users and the applicant. Applicant has suggested numerous measures for cooperation including a stop sign at the top of the hill, turn out lanes, widening of the steep canyon portion of the highway, coordination of movement of special equipment (such as oversized irrigation reels to ensure that farmers have ability to timely move this equipment), and use the CB radios to maintain contact and coordination among all users of the road. We find and conclude that these are reasonable and practicable ways to avoid delays and interruptions of equipment movement on the road. We further find that the use of these coordination mechanisms has worked in the past and will continue to work in the future, and as such these are reasonable and practicable methods to reduce conflicts on the road system to a level that is no longer significant. We find that with the road improvements we have required as a condition of our approval, delays will be minimized and interruption of equipment movements and movements of farm products will be minimized. We further find that applicant's traffic expert and our planning staff have recommended a stop sign at the top of the "canyon" section of Nichols Road. In addition, we find that the applicant has agreed to maintain reduced truck speeds on Nichols Road. We find that both of these are reasonable and practicable measures that will minimize any concerns about safety uses of the road. We further find that the use of CB radios and coordinated use of the road will greatly increase the overall safety of all users of the roads, including gravel trucks, farm trucks and the public. As such, we are not persuaded by the opponents' argument that road conflicts will create delays that will cause increased costs or force changes in accepted farming practices. Based on all these facts and findings, we conclude that road conflicts are minimized, that is, reduced to a level that is no longer significant and that use of the road by applicant's gravel trucks will not force a significant change in accepted farm practices nor significantly increase the cost of accepted farm practices on surrounding lands devoted to farm use.

PART VI. STATEWIDE PLANNING GOALS

Because this is a comprehensive plan change, we find that we must analyze each of the statewide planning goals that are applicable to this matter. We further find that our

analysis of the goals is guided by ORS 197.340 which provides that Yamhill County shall give the goals equal weight in any matter in which the goals are required to be applied or considered. For our analysis of the goals, we incorporate by reference our analysis and findings in Parts I through X.

GOAL 1: CITIZEN INVOLVEMENT

Goal 1 requires citizen involvement and insures an opportunity for all citizens to be involved in all phases of the planning process. We find that land use planning matters in Yamhill County are opened to open to all citizens and that this matter was attended by public interest groups, the media, state agencies, proponents and opponents of the application. We find that many of these groups offered written evidence in addition to their oral testimony. We further find that over a period of more than nine months, the county held hearings both before the Planning Commission and the Board of Commissioners in which the evidence and testimony was received and considered from all sources, including private individuals, groups, public agencies and others. We find that the county followed the Goal 5 PAPA process and its process guidelines which ensures an opportunity for all citizens to be involved. Accordingly, we find that Goal 1 is met with regard to this application and weighs in favor of approval.

GOAL 2: LAND USE PLANNING

We find that the purpose of Goal 2 is to establish a land use planning process and policy framework as a basis for all decisions related to the use of land and to assure an adequate factual base for any land use decisions and actions. We find that our planning process in this matter follows the Goal 5 PAPA rule and that the PAPA rule provides policy framework and a basis for decision making in this matter. We find that the PAPA rule dictates certain factual information that must be provided as an initial matter to ensure that an application is complete. We find and determine that this application is complete based on the initial factual submissions. We find that throughout the hearing process, we have received fact and opinion information and that we have used this information in the Goal 5 PAPA framework to reach our decision. As such, we find and conclude that Goal 2 is met by this application and weighs in favor of approval.

GOAL 3: AGRICULTURAL LANDS

We find the purpose of Goal 3 to preserve and maintain agricultural lands. We find that Yamhill County is a farming county and that farming is extremely important to the county's economy and culture. We incorporate our finding from Parts I through X. As indicated by our staff and staff recommendation to the Board, Yamhill County takes seriously its requirement to preserve and maintain agricultural lands.

We also recognize that aggregate resources are a fundamental building block of the county and these resources are incorporated in our streets, sidewalks, homes and businesses

and are a necessary part of life in the county. Our task is to balance the requirement to preserve agricultural land with the requirement that we protect significant aggregate resource sites. We find that the legislature has provided that gravel applications may be allowed in the EFU zones. We further find the LCDC has adopted the Goal 5 PAPA process to assist in the balancing between preservation and maintenance of agricultural lands and the need to protect significant mineral and accurate resources. We find that we have followed the provision of the PAPA rule which includes a conflict analysis and mandatory analysis of measures to minimize affects of agricultural uses and lands. We further find that Goal 3 allows counties to authorize nonfarm uses defined by LCDC that will not have significant adverse effects on accepted farm or forest practices. We find that the Goal 5 PAPA rule is an LCDC rule that allows the county to do this task and evaluate whether there are significant adverse effects on farm practices. We incorporate by reference herein our analysis of agricultural conflicts from Part I through X. We find that we have reviewed the factual information provided to us and that we have balanced the competing values of agricultural land preservation and maintenance with protection of the Goal 5 resource. We further find that the aggregate extraction use that we have approved in this action is located on farm land that will continue to be farmed, on a declining basis, for many, many years into the future. We find that the applicant has committed to working with tenant farmers on the site to maximize opportunities for continuing farm and agricultural productivity. We further find as a condition of our approval, we have required the applicant to work with the county to maximize the opportunities, consistent with proper reclamation of the site, for continued agricultural use and productivity. We further find that all relevant and identified conflicts with surrounding agricultural activities, uses and practices have been minimized and that this minimization allows for maximum agricultural productivity on surrounding lands and ensures that there is no forced change in any accepted farm practice or any significant increase in cost of any accepted farm practice on surrounding lands devoted to farm use. We find that all parties in this matter recognize that the highest quality gravel is frequently located underneath the highest quality farm land. We wish that this fact were different and that we could effectuate protection of significant sand and gravel resources without the need to affect agricultural land. However, we find that wildlife regulatory agencies are increasingly prohibiting mining companies from taking gravel out of the Willamette River and this regulatory activity forces the sand and gravel industry to move to upland sites such as the Hester property. We find that the Hester site is a significant Goal 5 mineral and aggregate resource site and in balancing the goals and making determinations under the PAPA process, the balance tips in favor of approving this allowable nonfarm use occurring within the farm zone in Yamhill County. Based on these facts and findings, we find that Goal 3 is met and that Goal 3 weighs in favor of approval.

GOAL 4: FOREST LAND

We find that the purpose of Goal 4 is to conserve forest lands by maintaining a forest land base. We find that the Hester site and all the property in the vicinity is zoned either for the mineral and aggregate or for exclusive farm use. We find that there are no forest uses in the area and that the property in the vicinity is not part of the county's forest land base and does

not contribute to the state's forest economy. As such, we find that Goal 4 is not applicable to this application.

GOAL 5: NATURAL RESOURCES, SCENIC, HISTORIC AREAS AND OPEN SPACES

We find that the purpose of Goal 5 is to protect natural resources and conserve scenic and historic areas and open spaces. We incorporate by reference our analysis and findings in Parts I through X. We find that the administrative rules for Goal 5 provide a mechanism for complying with the goal. We further find that the PAPA rule establishes the appropriate procedure and process guidance for consideration of Goal 5 issues in this matter. We further find that as part of our Goal 5 analysis, we have considered conflicts that might arise between the proposed Goal 5 mineral and aggregate use on Willamette River, fish in the Willamette River, wetlands, and groundwater, which we find to be the only listed and inventoried Goal 5 resources in the vicinity. To the extent that it will be deemed necessary, we find that there are no historic structures on the Hester site or within the impact area or the adjoining area. We also find, in the extent that it will be deemed necessary, that the Hester site as it will be reclaimed from the approved mineral and mining uses will consist of riparian areas, water areas, fish habitat, wetlands, wildlife habitat, and open space. We find that these are significant Goal 5 values and, although not formally inventoried, will be significant future Goal 5 resources for Yamhill County.

We also find that we have identified a significant mineral and aggregate resource through our process and that we have planned for final interim and transitional uses of the property as wetland and backwater habitat, as well as for the primary use of mineral and aggregate extraction. We finally conclude that by following the administrative PAPA rule, that we have complied with Goal 5 and that the standard is met and weighs in favor of approval. We incorporate by reference herein our analysis in the findings above, including ESEE future use analysis and the alternative ESEE analysis.

GOAL 6: AIR, WATER AND LAND RESOURCES QUALITY

We find that the purpose of Goal 6 is to maintain the quality of air, water, and land resources of the state. We incorporate our analysis and finding from Parts I through X. We find that there are no processing uses of aggregate requested with this application and, as such, waste and process discharges from the site are not present. We find that air quality concerns related to dust and groundwater concerns have been raised. We find that through the hearing process, we have identified reasonable and practicable measures that minimize and eliminate air and water conflicts. We find that either an applicable regulatory standard has been met (e.g., DEQ Section 208 requirements for dust) or that conflicts have been reduced to a level that is no longer significant (e.g., groundwater). We find that storm water discharges will be handled on site in compliance with a permit, which we find capable of being issued for this site. We find that turbidity in the groundwater will be minimized and eliminated by the natural filtering process of the existing sand and gravels in the buffer areas and cell walls. We further find that

from review of aerial photographs of flood events, that flood waters entering the site are extremely turbid and the proposed mining operations, including open water and disturbed and undisturbed surfaces, will not have any significant effect on the turbidity of rising flood waters that already have a heavy sediment content as they rise and cover the site. We find that no new sewage treatment is necessary and that the applicant will use port-a-potties as it does at its other sites for all sewage issues. We find the groundwater resource will be monitored and it will be protected by setbacks which serve to filter out turbidity. We further find that the water balance will be maintained and the groundwater that is taken out of the aquifer on the property as part of the dewatering operations will be reintroduced into the same aquifer at recharge sites. We find that there will be disruption of land resources during mining, but that this is an unavoidable consequence of protecting and allowing the use of mineral and aggregate resource. We further find that this disruption will be reclaimed to open space, fish, wildlife habitat and open water, and that these will be significant land resource assets for Yamhill County which will improve the quality of land resources in the state.

We find that geology is not an exact science, but nonetheless information developed for this site provides us with a reasonable understanding of the location of the water resources at the proposed site and surrounding areas and the effects of dewatering related to mining. We further find that we are persuaded that dewatering of other mining sites in the area has not had an adverse effect on groundwater. We are further persuaded by the testimony of DOGAMI that the site can be mined without harm to water resources using reasonable techniques, and that similar sites throughout the Willamette Valley are mined without harm to groundwater or surface water resources. On balance, the information before us convinces us that mining proposed for the Hester property will not adversely affect water resources and, therefore, will maintain and improve the quality of water resources in the state. Conditions attached to our approval require monitoring which will further serve to protect and enhance water resources of the state. With regard to water quality, we find that opponents argued that rock processing-related chemicals could get into the water. However, we find that no processing of mineral and aggregate resources will take place at the site and, therefore, no chemicals associated with gravel processing (e.g., asphalt, concrete, and by products) have the possibility of entering at the site. We further find that the applicant has a mechanical system for maintenance of vehicles and if maintenance is required on site, this will prevent release of fluid chemicals from machinery into the gravel area.

With regard to the quality of land resources in the state, we find the proposed site will be reclaimed for wildlife and fish habitat purposes and will serve as open space. We find that pursuant to conditions, the topsoil will be saved for reclamation and that the applicant has agreed to work with the county to reclaim as much of the property as possible, consistent with DOGAMI reclamation requirements, to agricultural purposes. We are particularly impressed by the reclamation requirements of DOGAMI which we conclude are appropriate and feasible. We conclude the reclamation will provide protection for land resources in the state. For all these reasons, we finally conclude that Goal 6 is met and weighs in favor of approval.

GOAL 7: AREAS SUBJECT TO NATURAL HAZARDS

We find that the purpose of Goal 7 is to protect people and property from natural hazards. We incorporate our analysis and findings from Parts I through X. We find that there is a significant amount of testimony in this matter related to flood and erosion hazards from the nearby Willamette River. We find that the Yamhill County's counties Greenway designation in the vicinity will not be disturbed and will provide a natural buffer of the Hester property from the Willamette River flood and erosion processes. In addition, we find that the applicant will set back the operations significantly pursuant to DOGAMI conditions regarding mining operation and reclamation. We find that this setback serves to protect property from natural hazards associated with flooding and erosion from the river, and protect people as well. We find that hazard issue has been coordinated by the county with notice given to county governments, interested parties, and government agencies, and has also been coordinated by DOGAMI which has sent its technical report for review by other state agencies. We find that stormwater on the site will be managed internally and in compliance with the appropriate general permit and permit standards. We find that engineered rock sills, significant tree plantings and setback areas will be required at the site as part of the DOGAMI process. We find that these are measures that minimize or eliminate hazards related to floods and erosion. We further find that no structures or above-ground stock piles will be maintained on the site during the flood season, and we find that there will be no rise in any floodwater events as a result of the activities that we have approved. Based on all these facts and findings, we conclude that the proposed application will not adversely affect flood and erosion potential at the site and, accordingly, all people and property continue to be protected from natural hazards in the area. We find that no other natural hazards have been identified in this proceeding. Accordingly, our decision complies with Goal 7. This goals weighs in favor of protecting the site for mineral and aggregate uses.

GOAL 8: RECREATIONAL NEEDS

The purpose of Goal 8 is to satisfy the recreational needs of the citizens and visitors and, where appropriate, to provide for the siting of necessary recreational facilities including destination resorts. We find that in the general area, farming and gravel extraction are the two principal land-based uses and that limited access and private ownership limit recreation opportunities. However, we also find the Willamette River runs adjacent to the most southeastern portion of the Hester site and generally to the east of the site. The Willamette River presents important recreational opportunities to the people of Yamhill County and the state. We find that all perimeter vegetation along the site will be maintained and that significant setbacks have been established. We find the site will be set back beyond the Willamette River Greenway in compliance with additional setbacks required as part of DOGAMI operating permit. We further find that there will be tree planting required at the site. We find that a combination of saving existing trees, setbacks and planting additional trees serves to screen the Willamette River, and the recreational users of that river from activities on the site. As such, we find that the

proposed activity will have no effect on the recreational needs of the citizens and that the ability to continue to use the adjacent Willamette River for recreational uses will be protected. We further find that the Hester site will be reclaimed for habitat, wetland and open space purposes. We find that this reclamation of the property will serve to increase recreational capabilities of the county both in terms of area available for natural purposes and for areas that are favorable for enhancing fisheries resources. We find that this helps satisfy the recreational needs of the citizens of the state. In the extent that is applicable, we find that Goal 8 is met and that this goal weighs in favor of our decision to protect the site for mineral and aggregate uses.

GOAL 9: ECONOMIC DEVELOPMENT

We find that the purpose of Goal 9 is to provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare and prosperity of Oregon's citizens. We incorporate our analysis and findings from Parts I through X. We find that mineral and aggregate materials, such as sand and gravel, are essential building blocks for the county and state economies, as they are necessary for infrastructure projects (streets, roads, sewers, etc.) and are an essential construction material in the residential, commercial and industrial sectors. We find that sand and gravel are basic building blocks for all types of structures and that sand and gravel are incorporated into construction through concrete, base materials, access roads, sidewalks and in many other ways. We find that sand and gravel are essential to a healthy growing economy in the county and the state. We find that this particular site has a large quantity of high-quality sand and gravel that will be available to the county for a significant period and, therefore, will be a significant economic asset to the county. We find that C.C. Meisel Company, the applicant, has a significant business in the county and is an important source of jobs. We find that protecting this site and allowing it to be used for mineral aggregate extraction will protect jobs and payroll, and thereby aid the economy of the county. We find that the failure to preserve high-quality sand and gravel sites that are favorably situated to serve market areas ultimately leads to higher prices and undependable levels of supply for these critical construction materials. We find that lack of dependable supply, or higher prices for sand and gravel products, could directly or indirectly increase the cost of roads in the county, the affordability of homes in the county, and the amount of tax money that is required to purchase road construction and repair materials. We find that protecting this particular site protects a resource with significant importance to serve Yamhill County with quality sand and gravel materials that are important to the county's economic well-being. We further find that the site will be available for agricultural uses on a declining basis while the rock operation is ongoing. We further find that the site will not have a significant adverse impact on farm practices on surrounding lands and we incorporate our findings in Parts I-X. We find that neighboring farms will continue to be able to produce crops and agricultural products as they have in the past, and they will continue to contribute to the county economy, notwithstanding the existence of the sand and gravel operation as their neighbor. We find that this is consistent with agricultural operations in the area which have flourished side-by-side with sand and gravel operations in this general area for more than 30 years. We further find that once the rock operation has been completed, the site will be reclaimed in the manner that provides fish and wildlife habitat that

will be a valuable economic asset to the county in the future. For all of these reasons, we find and conclude that Goal 9 is met and that our approval of the site will have a positive effect on the economy of the county and state. We conclude that Goal 9 supports our decision to protect this resource site and approve mining on the Hester property.

GOAL 10: HOUSING

The purpose of Goal 10 is to provide for the housing needs of the citizens of the state. We find that Goal 10 is largely a concern with the residential use of lands in urban and urbanizable areas. We find that we are outside those areas and within the 100-year floodplain and floodway of the Willamette River. As such, we find that the Hester property would not be buildable and would never be an appropriate place for housing. However, we also find that the proposed use of the site, sand and gravel extraction, will provide a long-term source for Yamhill County of critical materials used in building houses and used in the infrastructure, including sewer, water, road and sidewalk infrastructure. As such, we find that to the extent Goal 10 is applicable, it is met and weighs in support of our decision to protect this resource site for mineral and aggregate use.

GOAL 11: PUBLIC FACILITIES AND SERVICES

The purpose of Goal 11 is to plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development. We incorporate our analysis and findings from Parts I through X. We find that the proposed mineral and aggregate use does not need a significant level of public services. The electric power is provided to the site, water is available from on-site wells, and the sewage facilities are unnecessary as the applicant (as it does in its other gravel sites), will use port-o potties. We find that the proposed use is rural use because it is located in a rural portion of the county. We find that processing occurs at adjoining and nearby rural areas and that gravel extraction in Yamhill County is typically rural in nature. We find that while some of the product will be used in urban areas, we find that where the material is ultimately used does not, in and of itself, determine whether an activity is urban or rural. For example, agriculture is a rural land use in Yamhill County, but most of the food is consumed by urban residents. As such, we find that only a rural level of services is necessary for the site. We find that access along Nichols Road is a question that has been raised by opponents to this application. We incorporate our analysis and findings in Parts I-X. We find that access to the site is on a local road as that term is defined in the county Transportation System Plan. We find that local roads in the county Transportation System Plan travel a short distance and provide access by only a few properties. We find that Nichols Road is short and approximately four property ownerships access and have use of the road. We find that the road, as we have conditioned its improvement, is adequate to serve the rural nature of the limited number of property ownerships along the road. We note that the timing of the improvement, as established by our approval, will require the road to be upgraded prior to the use as a haul route for the approved mineral and aggregate operation. We find the remainder of the road system to be used by the proposed use is also adequate and that levels of

service are adequate and appropriate for rural uses. Based on these facts, we find that Goal 11 is met by the proposed use and that this goal mitigates in favor of our decision to approve the mineral and aggregate mining operation.

GOAL 12: TRANSPORTATION

We find the purpose of Goal 12 is to provide and encourage a safe, convenient and economic transportation system. We find that the goal provides a number of systemic planning guidelines and is implemented by the transportation planning rule, OAR 660, Division 12. We find that under the transportation planning rule, OAR 660-012-0060, the amendments to acknowledge comprehensive plans shall assure that the uses are consistent with function, capacity and performance standards of the transportation facility if the amendment "significantly affects" the transportation facility. We find that a planned amendment "significantly affects" a transportation facility if it changes the functional classification of an existing or planned transportation facility, changes the standards implementing a functional classification system, allows types or levels of land uses which would result in a level of travel or access which are inconsistent with the functional classification of a transportation facility, or would reduce the performance standards of the facility below the minimal acceptable level identified in the Transportation System Plan. For a variety of reasons, we find and conclude that the proposed application does not significantly affect the transportation facility. We incorporate herein by reference our analysis and finding in Parts I-X. We find that the functional classification of Nichols Road is a local road under the county Transportation System Plan. We find that the opponents argue that it is a resource road, but we specifically reject those arguments and find that there is no upper traffic limit placed on local road classifications in Yamhill County and that local roads do not automatically become resource roads by virtue on the number of average daily trips. As such, Nichols Road is a local road and will remain a local road notwithstanding the approval of the sand and gravel application. We find that nothing in our decision to improve the application changes the standards implementing the functional classification system in Yamhill County. We further find that our approval of the sand and gravel operation does not allow types or levels of land use which result in levels of traffic or access which are inconsistent with the functional classification of a transportation facility. We find that the level of service is acceptable on all roads and Nichols Road, with the increased traffic from gravel operations alone, or in conjunction with existing public and farm travel on the road, and will not result in a level of travel or access which is inconsistent with the local road classification of Nichols Road. As we have indicated previously, the local road functional classification is not related to the number of vehicle trips, but rather, to the length or distance of the road and number of properties served by the road. We find that nothing in our approval increases the distance of Nichols Road nor does it change the number of property ownerships (approximately four) that are serviced by Nichols Road. We further find that the increased traffic in and of itself, or cumulatively considered with the public and farm traffic that presently exists on the road, will not reduce performance standards of Nichols Road or any of the other roads in the area below the minimum accepted level identified in the country Transportation System Plan. We find we have conditioned our approval to include improvement that will

increase the ability of Nichols Road to handle traffic and meet performance standards of a local road in Yamhill County. We further find that the conditions imposed as part of our approval will increase the safety of Nichols Road by having all vehicles stop at the top of the "canyon" section, by having gravel trucks travel at low speed and by having trucks coordinate their movement with CB radios. We find that because the approval we are granting does not significantly affect the transportation facility, our decision complies with the transportation planning rule and assures that the requirements of Goal 12 are met. Accordingly, we find and conclude that the statewide planning Goal 12 is satisfied and that Goal 12 weighs in favor of our decision to protect the proposed gravel site.

GOAL 13: ENERGY CONSERVATION

We find the purpose of Goal 13 is to conserve energy. We find that the proposed site is close to applicant's existing processing facilities and the closeness will reduce the amount of truck transport for sand and gravel resources because of the nearby capability of processing sand and gravel. We find that reducing truck transportation saves energy as sand and gravel resources are primarily moved in Yamhill County by truck. We further find that the site is close to the McMinnville/Dayton/Newberg markets. We find that locating sand and gravel sites that are reasonably close to major market areas in the county reduces the transportation necessary to move sand and gravel material to where it will be ultimately used and, therefore, saves energy. We find that nothing has been brought to our attention in this proceeding that would lead us to conclude that any aspect of the activity of the site would increase the need for energy consumption as a result of our approval

To the extent that opponents make the argument that drops in groundwater will increase the amount of energy that they need to use to pump water to their irrigation systems, we find that this argument is not well taken. We have found that there will be no significant adverse impact to groundwater resources. We incorporate all our analysis and findings in Parts I-X. For these reasons, we find and conclude that the requirements of Goal 13 are met and that Goal 13 weighs in favor of our decision to protect the sand and gravel resource site.

GOAL 14: URBANIZATION

We find the purpose of Goal 14 is to provide for an orderly and efficient transition from rural to urban land use. We find that the proposed land use is rural in nature and that mineral and aggregate resource sites are typically located on the rural lands in Yamhill County. We find that the sand and gravel extraction sites typically require large acreage and large parcel size that is not consistent with urban uses. We find that in Yamhill County, most mineral and aggregate extraction takes place in predominantly rural areas. We find that nothing in our approval moves the Hester property or any of the surrounding area from rural to urban land use. As we have previously explained, we find that urban development is not feasible or possible on this site because of its location and the 100-year floodplain and floodway. We find that this site and proposed activity is rural in nature and that the final reclamation use of the property,

(fisheries and wildlife habitat) is rural in nature. Accordingly, we find and conclude that Goal 14 does not apply in this matter.

GOAL 15: WILLAMETTE RIVER GREENWAY

We find the purpose of Goal 15 is to protect, conserve, enhance and maintain the natural, scenic, historical, agricultural, economic and recreational qualities of lands along the Willamette River as the Willamette River Greenway. We find that in Yamhill County, the Willamette River Greenway is protected, and Goal 15 is implemented through, greenway designations along the Willamette River. We find that a portion of the southeast corner of the Hester property is within the Willamette River Greenway. However, we find from the beginning, applicant has planned that its operations will be set back from the Willamette River Greenway and no activities will occur in the Greenway. As such, we find that the proposed use meets the county's requirements for protecting the Greenway. We further find that additional setbacks will be required by DOGAMI and that existing vegetation along the river will be left in place and that additional trees will be planted on portions of the site between operations and the Willamette River as part of the DOGAMI approval process. We find that all of these measures tend to isolate the proposed use from the Willamette River Greenway and, accordingly, help preserve, protect, conserve, enhance and maintain natural, scenic, historical, agricultural, economic and recreational qualities of the lands along the Willamette River. Accordingly, we find and conclude that Goal 15 is met and that Goal 15 weighs in favor of our approval of the sand and gravel operation.

We find that Goals 16, 17, 18 and 19 are referred to as Estuarine Resources, Coastal Shorelands, Beaches and Dunes, and Ocean Resources. We find that the proposed site is many miles from the coastal areas and that none of these goals apply to our approval in this matter.

PART VII. STATUTORY PROVISIONS:

We find that the proposed use is a specific listed use under ORS 215.283(2)(b), and that mining, stockpiling of aggregate and other mineral resources are permitted under this statutory provision subject to the requirements of ORS 215.298. We find that ORS 215.298 requires a permit for mining more than 1,000 cubic yards of material or excavation preparatory to mining of a surface area of more than one acre. We find that the proposal before us is for permission to extract sand and gravel resources on a 169-acre parcel and a permit is necessary. We find that our approval in this matter is the permit contemplated under ORS 215.298. We further find a permit may be granted only for a site included on an inventory in the county's acknowledged comprehensive plan. We find that as part of our decision, we have so included this 169-acre parcel on Yamhill County's comprehensive plan inventory of significant aggregate resources. We find that the remaining provisions of ORS 215.298 define the term "mining" and do not have any direct bearing on the action in which we take. Because we have included the

Hester site in the comprehensive plan and inventory, and because we are granting a permit through this action, we conclude that the requirements of ORS 215.298 are satisfied.

In addition to the requirements of ORS 215.298, we find that the requirements of ORS 215.296 must be satisfied. We incorporate herein by reference our discussion, analysis and finding and conclusions in Parts I through X. Based on these facts, our analysis and our findings, we find and conclude that the proposed use will not force a significant change in the accepted farm practices, nor will it significantly increase the cost of the accepted farm practices on surrounding lands devoted to farm use. We further incorporate herein our findings and analysis under Goal 6 above. We emphasize that in our analysis and findings in this matter under the PAPA process, and in our discussion and analysis of the Goals, we have given the statewide Goals equal weight as required by ORS 197.340.

Opponents argue that ORS 215.253 is applicable to our decision. We find that ORS 215.253 generally prohibits local governments from enacting regulations that would restrict and regulate farm practices and structures. We have made significant findings in this matter, which we incorporate herein by reference, to demonstrate our belief and conclusion that the proposed use will not have a significant adverse effect on farm practices or farm costs. Because we find that the proposal will not create any significant adverse effect on farming activities on the surrounding lands, we conclude that the proposed use will not restrict and regulate farm structures or farm practices as contemplated by the statute. We find that the decision we have made is to allow use (sand and gravel resource mining) and that the use we permit through this decision is recognized as an appropriate use on the EFU lands by state statute. We find that it is our decision to approve a permissible land use, not to restrict or regulate farm structures or farm practices. In the event that any portion of our decision would be deemed a restriction on farmland, we further find that protecting the mineral and aggregate resources at the site, we are protecting a valuable asset necessary for the current and future health, safety and welfare of our citizens as described in these findings. As described in these findings, we are protecting a valuable sand and gravel resource to make it available to provide resource materials to our citizens on a long term basis for the benefit and protection of the health (e.g., gravel for sewers), safety (e.g., gravel for roads) and welfare (e.g., gravel for economic development) of the citizens of the state. For all these reasons, we find that to the extent it is deemed applicable, requirements of ORS 215.253 are met.

Opponents argue that ORS 197.175(2) is an applicable approval criteria in this matter. ORS 197.175(2) concerns procedural requirements related to the local government's adoption of comprehensive plans and land use regulation. We do not believe that these are a substantive approval criteria for our decision. Nevertheless, we find that we have exercised our planning and zoning responsibilities in a manner that is consistent with the statutory requirements of ORS 197.175(2) and, as instructed by the Court of Appeals, and the Land Use Board of Appeals through application of the PAPA rule for this sand and gravel application. Opponents also argue that ORS 197.180, related to state agency coordination, is an applicable approval criteria in this matter. ORS 197.180 concerns state agency coordination for the

planning process. We do not believe that this is an approval criteria for this decision. Nonetheless, we find that we have exercised our planning and zoning responsibility in a manner that allows a full coordination between Yamhill County, state and federal agencies. We find that we have provided an opportunity for our sister county, Marion County, to comment on this application and have provided full opportunity for state agencies to comment on the application. We find that at least three state agencies have, in fact, directly commented in this proceeding. We find that the state agency comments are helpful and provide valuable information that assisted us in reaching our ultimate conclusion to approve the application in this matter.

Opponents argue that the provisions of ORS 197.610-625 are applicable to the proposed use. These statutory provisions are post-acknowledgment procedures related to an amendment of local land use regulation. We find that these are not substantive approval criteria for the proposed sand and gravel use. Nonetheless, we find and conclude that we have reached our decision in compliance with the post-acknowledgment procedures set forth in ORS 197.610-625. Applicants also argue that the provisions of ORS 197.763 related to the conduct of hearing proceedings in this matter are applicable. We find that this provision is not a substantive approval criteria, but rather a procedural provision that guides the conduct of public hearings and the acceptance of evidence in this matter. We find that we have closely and fully followed the provisions of ORS 197.763 including providing significant additional time to opponents to provide rebuttal information and argument. We further find that no party has objected to the county's handling of the procedural matters covered under ORS 197.763 at any point in the hearing process.

Opponents also argue that ORS 215.110 applies to our decision in this matter. This is a statutory provision that allows the planning commission to make recommendations to the county board for ordinances intended to implement part or all of the comprehensive plan. The provision also enables the county board to enact, remand or repeal ordinances to assist carrying out the comprehensive plan. We find that these are not substantive approval criteria, but rather procedural mechanisms and that we have exercised our planning and zoning responsibilities in this matter and a manner that is consistent with a statutory requirements of ORS 215.110.

Finally, applicants also argue that ORS 215.402 to ORS 215.438, generally related to local decision making, are applicable approval criteria in this matter. We find that the statutory provisions generally outline the procedural steps of local governments and are to follow land use decisions, and that ORS 215.438 refers to governing body's authority over transmission towers. We find that none of these are substantive approval criteria, but rather set out the general framework in the county's decision making process. We find that the county has an acknowledged comprehensive plan and zoning ordinance, and that we have followed procedural requirements as modified by the PAPA rule. We note that the Court of Appeals and the Land Use Board of Appeals in the Eugene Sand & Gravel case have made it clear that the PAPA rule establishes a comprehensive regulatory scheme that is intended to supersede local review standards for mineral and aggregate siting applications under Goal 5. We find that it would be

an error for Yamhill County to base its approval or denial on local code provisions, and we have made it clear to all parties in the proceeding, both in our written notice and in oral comments, that the county's comprehensive plan and zoning ordinance do not apply in this matter. No party has objected to our continued proceeding in this manner and no one has objected to any procedural matters that were followed by the county in this permit process. For all these reasons, we find that we have complied with appropriate procedural requirements that are generally applied to land use decisions and in ORS 215.402 to ORS 215.437.

PART VIII. POST-MINING USE:

As indicated in these findings above, we find the proposed mining use for the site will be fish and wildlife habitat uses. We further find that we have added a condition to encourage retention and redevelopment of the Hester property, consistent with DOGAMI reclamation requirements, for farm uses under ORS 215.203. We find that our condition allows us to coordinate with DOGAMI in this regard and assure that fish and wildlife habitat uses and farm uses will be the only post-mining uses allowed on the property. We hereby amend our comprehensive plan and land use regulations to provide for this post-mining use for the Hester property.

PART IX. FUTURE USE ESEE:

The PAPA rule requires the local government to follow the "standard" ESEE process to determine whether to allow, limit or prevent new conflicting uses that could be created within the impact area of the significant mineral and aggregate site. This "future use" ESEE is designed to analyze the potential for new conflicting uses that adversely affect the mineral and aggregate use and vice versa. Yamhill County has a long standing policy that individual property owners within the impact area shall be notified that their future uses may be restricted. Future use ESEE provides a mechanism for analyzing and considering the effects of such restrictions on future uses in the impact area. The provisions of the PAPA rule provide for the future use ESEE state as follows:

> "For significant mineral and aggregate sites where mining is allowed, local governments shall decide on a program to protect the site from new off-site conflicting uses by following the standard ESEE process in OAR 660-023-0040 and 660-023-0050 with regard to such uses." OAR 660-023-0180(2)(d).
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> "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."
OAR 660-023-0180(5).

OAR 660-023-0040 identifies the steps in the standard ESEE process as follows:

Step 1. Identification of conflicting uses,
Step 2. Determination of impact area,
Step 3. Analysis of ESEE consequences, and
Step 4. Development of program to achieve Goal 5.

A. Identification of Future Conflicting Uses

"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."
OAR 660-023-0040(2).

We find that land uses allowed outright and conditionally at the mining site itself are not considered in the ESEE analysis because the mining operation that will occupy the property, for all practical purposes, will eliminate all other uses during the life of the operation (OAR 660-023-0040(2). In addition, we find gravel extraction uses and associated removal and transportation uses are also not considered a conflicting use with the mineral and aggregate resource under recent LUBA guidance. We find, based on a review of Yamhill and Marion County zoning ordinances and discussing with planners from the two counties, we reviewed the potential uses that could be permitted in the EF zone in Yamhill County and the EFU zone in Marion County. We find that because of the similar nature of the uses, there are no conflicts between mining at the Hester site and uses of nearby properties that are zoned for mining or where mining is otherwise permitted.

The Goal 5 rule provides that local governments are not required to consider uses allowed in the zone that would be "unlikely to occur" in the general vicinity. We find that most of the potential future allowed by applicable zoning uses are unlikely to occur in the area because the itself (along with most of the impact area), is in the 100-year floodplain and floodway of the Willamette River. We find that the floodplain and floodway are in the nature of permanent uses that occupy the site in that they are defined limits that restrict development. Accordingly, we find that most structures would not be permitted on the site, e.g., caretaker residences for public parks, churches and cemeteries, commercial kennels, destination resorts, dwellings, expansions

of existing airports or private airstrips or helipads (there are no airstrips in the area), processing facilities for farm products, fire stations, firearms training facilities, forest management resource and experimentation facilities, hardship dwellings, home occupations, additions to established dwellings (there are no dwellings in the area at this time), nonresidential accessory farm use structures, bottled water extraction operations, schools, private parks, playgrounds, community centers, residential homes and existing dwellings, room and board arrangements, seasonal farm worker housing, forest fire protection towers, utility facilities for public services (e.g., fire stations), utility facilities for the purpose of generating power, and wineries. All of these uses have significant structural components that must, by definition, accompany the use. We find that the entire Hester site and most of the 1,500-foot impact area are within the 100-year floodplain and floodway of the Willamette River and any new structures would not be allowed under the county's floodplain ordinance. Therefore, we consider it highly unlikely that any of these types of structure-related uses would ever occur on the site or the impact area and, therefore, we find that they do not have the potential for conflicting with the proposed use.

We find that a second set of uses could theoretically be located on the site or in the impact area, but because of the remote nature and location of the site or because of the location within the 100-year floodplain, it is extremely unlikely that these types of uses could ever possibly be located. These uses include climbing and passing lanes (there are no roads through the area and no bridges over the Willamette River, and all of the local roads in the area dead-end); commercial utility facilities such as sanitary sewer, domestic water line and generation of power (there are no homes for delivery of sanitary sewer or domestic water and no need for power generation); commercial activity in conjunction with farm use and farm stands (as there are no roads and no resident population in the area; there would be no demand for commercial activity related to farm uses such as farm stands that are typically located next to population centers or on high traffic traveled routes); disposal site for solid waste (location of the impact area within the 100-year floodplain eliminates consideration for a disposal site for solid waste); extension of water service lines (as indicated above, there is no population to support extension of a new water line). Because there are no large population centers anywhere near the proposed site, we find that it is highly unlikely that a waterline extension would occur on the site or near the impact area; improvements to public roads and highway-related facilities (although there may be some incremental improvements to the local roads related to the mineral and aggregate operation, we find the lack of population, lack of bridges across the Willamette River, and the dead-end nature of roads eliminates the need for public improvements and highway-related facilities); local distribution of utilities, such as electricity, telephone, and natural gas (the site is already served by electricity for the purposes of farm pumps; there is no population base to support installation of further electricity or natural gas; the availability of cell phone technology makes any need to put in a distribution infrastructure for telephones extremely unlikely to occur on the site, given the fact that no people live there); operations conducted for exploration of mining, crushing, and stockpiling aggregate or other sub-surface resources or mining processing of geothermal or hydrocarbon resources (these uses are directly related to the mineral and aggregate extraction and, as such, do not conflict with the uses that are proposed on

the site as they have similar impacts to mineral extraction and do not raise conflicts); permanent or temporary asphalt or concrete plants (again, these uses are related to the extraction use on the site and would not conflict; we find that applicant is **not** requesting an asphalt or concrete plant); public highway projects (as indicated above, though theoretically possible, the lack of population, lack of bridges and the dead-end nature of the local roads in the road make a public road or highway projects extremely unlikely).

We find that there is a third set of uses generally allowed on EFU lands that theoretically could be located on the site or within the impact area. Each one of these issues will be discussed and determination will be made as to whether or not the use conflicts with the proposed mineral and aggregate use and whether future protections are warranted for the mineral resource from the potential use (or vice versa) given the economic, social, environmental and energy consequences of each use.

- Aids to Navigation and Aviation. It is theoretically possible that Aids to Navigation could be needed for the Willamette River on a portion of the Hester property which abuts the Willamette River. However, as indicated above, we find that the applicant will not be making any use of the Willamette River Greenway. We find that this greenway strip along the river is the most logical area where navigation aids would be needed and as no gravel-related uses are planned for this area, there will be no conflicts with aids to navigation. With regard to Aids to Aviation, in the unlikely event that a state or federal agency would determine that an aviation aid would need to be located on the Hester site or in the impact area, we find that this could be accomplished without conflict to the mineral and aggregate use. We find that the setback areas are available and beacons or lights also could be located in the impact area or on selected pads within the extraction area. We find that these aids are not transportation, dust or noise sensitive and are not affected by terrestrial truck traffic or any other portion of the activity that the applicant proposes on the Hester site. Accordingly, there are no conflicts with Aids to Navigation and Aviation.

- Wetlands. We find that there are limited wetlands on the southern portion of the Hester site and wetlands in the general area outside the Hester property borders. Creation, protection and enhancement of these wetlands is an allowed use. As part of the mining operation plan submitted by C.C. Meisel, we find that wetlands on the site will be protected and wetland enhancements may be created as part of the reclamation plan once mining activities have ceased. Accordingly, we find that creation, restoration and enhancement of the wetlands is consistent with the proposed use and does not create a conflict. We find the operation proposed by C.C. Meisel will be wetland friendly and the creation and protection of wetlands will be part of the ongoing operations at the site. We find that offsite wetlands could be created in and around the site and in the impact area without any adverse consequence or effects on the proposed extraction operation. Accordingly, this use allowed under the Yamhill and Marion County codes is not a conflicting use.

- Farm Uses. With regard to farm uses, we have analyzed and concluded that there are no significant adverse effects from the proposed operation in the form of dust, water or operational restrictions which would adversely affect farm uses to the extent that any farm practice would be significantly more expensive or a significant change would be forced on existing farm practices. We incorporate our analysis and finding herein from Parts I through X. Accordingly, we do not find any conflicts with farm uses in the area. However, in an abundance of caution, we include the location of additional wells in the impact area as a potential conflict that we need to balance.

- Filming Activities. We find that it is possible that filming activities could occur on or near the site. However, film producers normally hire location scouts to obtain locations that do not have activities that are inconsistent with the needs of the film. For this reason, we find that filming activities will not occur on the site unless they are related to the mineral and aggregate operation or in some other way linked to the operation in a way that there would be no conflicts. Accordingly, we find there are no conflicts presented by filming activities.

- Forest Operations, Forest Practices and Propagation and Harvestings of Forest Products Forest Management Activities. We find this use would include propagation and harvesting of forest products. As indicated previously in these findings, there are no forest operations or forest uses of any type in the general area. We find that in the event that forest use was established (such as poplar plantation for paper pulp purposes), we find that the operational characteristics of the forest use would be very similar to the farm uses in the area. We find that there would be no conflict with the forest uses just as there is no conflict with farm uses.

- Golf Courses. We find that golf courses are unlikely to be located in the area because they must be accompanied by a club house or some sort of permanent facility to ensure commercial success. We find that the permanent facilities would not be allowed in the floodplain and, therefore, we believe it is extremely unlikely that golf courses will be located in the area.

- Model Aircraft. We find that it is theoretically possible that model aircraft uses could be located in the impact area. However, we find that model aircraft are noisy and would not be adversely affected by any noise generated by the proposed mineral and aggregate extraction operation. We do not believe that there will be any other conflicts that could be raised by model aircraft uses in the impact area and, for this reason, do not believe that conflicts exist.

- New Electric Transmission Lines with 100-Foot Right-of-Way and Transmission Towers Greater than 200-Feet. We find that transmission towers and right-of-ways would not be allowed on the site itself because of the permanent mining uses that would occupy the site. We find, in theory, that new transmission lines could be located within the impact area. However, because the electrical transmission lines are permanent structures that have no external sensitivities, we find that no portion of the operation that is proposed by C.C.

Meisel would conflict in any way with transmission lines and their right-of-way as long as those are located within the impact area and not on the site.

- Hunting and Fishing Operations With or Without Accommodations. We find that it is theoretically possible that private hunting and fishing operations could locate within the impact area. As previously noted, we find that such operations with accommodations would not be appropriate as "accommodations" imply a permanent structure which would not be permitted in the floodplain which is co-extensive with the impact area. However, hunting and fishing operations without accommodations could locate in the impact area. We find that the proposed use will have no effect on the waters of the area that would likely be fished (the Willamette River) and, therefore, we see no conflicts with any fishing operations. Similarly, we find mineral and extraction sites are sought after by private hunters because they create and maintain habitat that is used by waterfowl. Accordingly, we find private hunting facilities in the impact area might be benefited by the presence of the mineral and aggregate operation. In addition, we find that hunting is a noisy activity and will not suffer interference with the ongoing operations at the Hester site. As such, we find that there is no conflict between private hunting and fishing operations in the proposed use.

- Propagation, Cultivation, Maintenance and Harvesting of Aquatic or Insect Species. This use refers to aquaculture which is a water-dependent use. We find it is unlikely that this type of operation would be located in the impact area. However, if a water-dependent cultivation use were to locate in the impact area, it is possible that the proposed use, if an extraction cell was dewatered, could suffer from interference with the water level related to cultivation of aquatic or insect species. Accordingly, we believe this is a potential conflict that needs to be limited in the impact area.

- Reconstruction or Modification of Public Roads and Highways. We find that to the extent that any improvements made to Nichols Road would be considered as reconstruction or modification of public roads and highways, there are no direct conflicts with the mineral and aggregate operation at the proposed Hester site. Accordingly, we do not find there is any conflict with this proposed use.

- Reservoirs and Water Impoundments. We find that if above-ground manmade reservoirs and water impoundments were created in the impact area, there would be no potential for conflict with the proposed mineral and aggregate use. However, we find that water impoundments or reservoirs constructed in-ground and could theoretically suffer a decrease in the water level in the event Applicant dewatered a mining cell nearby. For this reason, we find that reservoirs and water impoundments are uses that should be limited in the impact area.

- Uses to Conserve Soil, Air, and Water Quality and to Provide for Fish and Wildlife Resources, Including Uninhabitable Structures Accessory to Fish and Wildlife Enhancement and General Wildlife Habitat Conservation. We find that uses related to conservation of soil, air and water quality will be a part and parcel of the C.C. Meisel operation

on the Hester property. We do not believe that there are any conflicts on-site or in the impact area with any use that would conserve air, soil or water quality because those are the same reclamation goals and values being pursued by the company at the Hester site. We find that from a future use conflict perspective, the question is whether or not the location of habitat, fish and wildlife enhancement activities or providing for fish and wildlife resources in the impact area needs to be conditioned because of ongoing activities at the resource site or vice versa. We find that as part of C.C. Meisel's reclamation plan, the Hester property will be converted to fish and wildlife habitat on an ongoing basis as mineral and aggregate resources are extracted from the site. We find the ultimate plan is to preserve and enhance wetland areas, to create large open-water areas that link with divergent shorelines and emergent wetland areas to provide habitat conditions. We find that activities on the site are compatible with activities that could occur within the impact area related to fish and wildlife habitat conservation and habitat enhancement. We find that C.C. Meisel will work with the appropriate regulatory agencies to ensure a consistency of approach between its own habitat, conservation and development activities onsite as part of the reclamation process, and any activity of a similar nature which would occur in the impact area. We find that C.C. Meisel has pointed out to the regulatory authorities that many opportunities exist for wetland continuation and slough corridor areas in the general vicinity and C.C. Meisel is committed with working with regulatory agencies and other landowners in the area to link the fish and wildlife habitat that will be created as a result of the mining activities on the Hester property with other similar activities in the impact area and vicinity. As such, we find there is no conflict between these identified future fish and wildlife habitat issues and the requested extraction activities at the site.

- Water Intake Facilities. Because of the site's location near the Willamette River, we find that it is theoretically possible that commercial, industrial or agricultural water intake facilities would be located along the Willamette River. We find that these future activities would necessarily need to be located immediately on the bank of the river in order to gain access to the river water. We find that only a small portion of the Hester property (the southeast corner) is actually adjacent to the river. We find that in this particular area of the property and that C.C. Meisel has proposed a significant setback to keep all activities out of the greenway. The greenway area is the initial 300 feet from the Willamette River and is the area where a water intake facility would most likely be located. Accordingly, we find there is no conflict between the proposed mining activities and this portion of the impact area where a water intake facility might be located. The Willamette River does not abut the Hester property except in this setback greenway area and no activities on the site would prevent a future location of a water intake facility anywhere else along the Willamette River bank. We further find that given the lack of infrastructure in the area, we find it unlikely that a water intake facility would ever be located near the Hester site. Accordingly, we believe there are no conflicts with about future water intake facilities from the proposed use.

We have identified three possible future uses that would potentially sustain an adverse impact, or vice versa, for mineral and aggregate operations: propagation, cultivation, maintenance and harvesting of aquatic or insect species; new wells; and reservoirs or water

impoundments. The primary reason these future activities could cause a conflict with mineral and aggregate operations is that, as indicated in the hydrogeologist's report, dewatering of the extraction cells as part of the mineral and aggregate operation could result in a reduction of the groundwater level in the impact area. We find that this reduction would be largely attenuated at 700 feet from the edge of the extraction area, but the attenuation could potentially affect aquaculture, wells or water reservoirs if an adjoining landowner wished to locate them immediately adjacent to the Hester property.

Economic Consequences

If these three types of uses were allowed immediately adjacent to the Hester property, there could be an adverse economic effect on the gravel operation in that it would not be able to fully extract the mineral and aggregate resource located on the site because it might need to maintain larger setbacks to prevent slight adverse effects in the water impoundments or wells. We find that if the water reservoir, an aquaculture pond, or new wells were to be located by an adjoining landowner, they could be located outside the impact area thereby avoiding adverse economic effects on the future use as well as the established mineral and aggregate operation. For wells, we also find that the Applicant is willing to make surface ponds available for substitute water. For this reason, we believe the economic analysis tilts in favor of protecting the mineral and aggregate operation from these three limited potential future uses.

Social Consequences

We find that mineral and aggregate products are a basic product that allows construction of infrastructure such as streets and sewers which provide a large social benefit to the citizens of Yamhill County. By the same measure, future aquaculture ponds, wells or water reservoirs could be part of an operation that provides food products. Mineral and aggregate extraction, aquaculture, and water reservoirs and new wells all have social utility. However, we find that the mineral and aggregate resource is a location specific resource that cannot be moved. On the other hand, because of the large land holdings in the area, any landowner wishing to construct a water reservoir, aquaculture pond, or a new well could locate these facilities outside the impact area. For these reasons, we believe the balance shifts in favor of the mineral and aggregate resource against the potential future use involving aquaculture ponds, wells and reservoirs when examining the social consequences and conflict between the future use and the mineral and aggregate use.

Environmental Consequences

The mineral and aggregate operation will be reclaimed to provide wildlife habitat which we find to be a positive environmental value. It is assumed that an aquaculture pond and water reservoir could also be reclaimed for similar environmental benefits. We find there is some concern, that intensive fish farming creates the potential for "hot spots" in the soil and water because of waste that is produced by the captive fish population. We find that these

problems do not accompany the mineral and aggregate extraction operation. We find that both types of operations have potential future and environmental benefits, but aquaculture might have an environmental negative. In addition, as we have explained above with regard to the economic and social prongs of the analysis, the mineral and aggregate resource is location specific, whereas a water reservoir, an aquaculture pond or a new well could be located outside the impact area. For this reason, we believe the environmental prong of the analysis tips in favor of the mineral and aggregate operation.

Energy Consequences

We find that mineral and aggregate resources are location specific. We find that to provide an economic resource of critical base material, they must be located near the market area. We find that the Hester site is ideally situated in this regard. We find that if a future conflicting use were located in the impact area that caused operations to be stopped, there would be significant negative energy consequences in that gravel material would need to be brought into the Dayton/Newberg/McMinnville market are from a distance. We find gravel travels by truck and trucks use fossil fuel. We find that a water in a reservoir impoundment does not need to be moved and locating a reservoir impoundment outside the impact area, as opposed to an impact area, would have virtually no energy consequences. Similarly, products of an aquaculture pond would be taken to market, a difference in distance between locating an aquaculture pond within the impact area and outside the impact area there are virtually no adverse energy consequences. The same analysis applies to a new well that might be located within the impact area. For this reason, we find that the energy consequences prong shifts in favor of protecting the mineral and aggregate resources from the future location of aquaculture ponds or a reservoir within the impact area.

We find there will be a potential basis for conflict between the three identified future uses (aquaculture ponds, new wells and reservoirs) related to the possibility that the dewatering of the mining cell of the Hester property could have an adverse effect on reservoir, well or aquaculture activities, if those activities are located immediately adjacent to the Hester property. We further find that if the aquaculture or reservoir activities were located within the impact area particularly within 700 feet of the perimeter of the Hester site, they could have an adverse effect on the mining operations. Based on the ESEE consequences that we have analyzed above, we find the best result would be to provide a specific limitation on these three--and only these three--uses within the impact area. We find this will provide an appropriate level of protection for the mineral and aggregate resource while at the same time allowing the landowners in the area to use their property for in-ground reservoirs, wells or aquaculture activities.

Conclusion: Based on the facts and analysis of our entire findings document, we find that we need to impose limitations on only three potential future uses. We find, based on our analysis, that aquaculture activities and in-ground reservoirs shall not be located in the impact area. We further find that installation of new wells within 700 feet of the perimeter of the Hester property shall be coordinated with Oregon Water Resources Department and Oregon Department of Geology and Mineral Industries and that the owner and/or operator of the Hester property shall be notified of any such new wells. We are not prohibiting new wells, but consistent with the County's long-standing policy, we are warning individuals that new wells in the 700-foot perimeter from the Hester property are installed at the property owner's risk. We make these restrictions part of our comprehensive plan and apply these restrictions through the limited land use overlay used to implement our conditions of approval.

PART X. ALTERNATIVE ESEE ANALYSIS:

The PAPA process provides that if identified conflicts (from the PAPA list) can be minimized, the site must be added to the county's inventory and mining must be allowed. The PAPA rule also provides that the ESEE (Economic, Social, Environmental, Energy) analysis shall be done for any conflict (from the PAPA list) that cannot be minimized under the provisions of the rule. We find that all conflicts have been properly identified and can be minimized with reasonable and practicable measures. However, in the event Yamhill County's conclusion in this regard would be deemed incorrect and that any reviewing entity would conclude that significant conflicts identified under the PAPA rule cannot be minimized, we provide, as an alternative basis for our approval, an ESEE analysis of the consequences of our decision to allow the mining use at the Hester site. We incorporate by reference all our analysis and findings in this Findings document.

The PAPA rule defines "conflicting use" as 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 and aggregate resource site. The PAPA rule requires Yamhill County to determine whether existing or approved land uses within the impact area would be adversely affected, the degree of adverse effect, and reasonable and practicable measures that could be taken to reduce the identified adverse effects. The ESEE analysis must focus on the existing or approved uses and significant conflict from the limited list of conflicts delineated in the PAPA rule.

Because of the remote location site, its location within the floodway and floodplain of the Willamette River, and its proximity to currently existing mineral and aggregate uses, we find there are very few existing or approved land uses within the impact area. Zoning in the general vicinity to the east and north of the site is MR-2 mineral resource. Within the MR-2 zones, there are a number of mineral and aggregate uses. Because of the similarity of these uses, we find there is no conflict between the proposed use at the Hester property and the MR-2 resource and mining uses to the east and north.

The remainder of the area surrounding the property, including the impact area (properties to the west and south and across the Willamette River on the east) is EF or EFU, exclusive farm use. Other than the existing and approved mineral and aggregate uses located to the north and east, the only existing uses in this surrounding area are farm uses generally to the west and south. There are no "approved land uses" in the area (e.g., dwellings allowed by a residential zone in existing platted lots, or other uses for which conditional or final approvals have been granted by the local government). We find that credible evidence from the Marion County and Yamhill County planning staff indicates that there are no such approved uses anywhere in the impact area. We find that there are a series of potential uses generally allowed on EFU lands that theoretically could be located on the site or within the impact area. These include aids to navigation and aviation, wetlands, farm uses, filming activities, forest operations and forest practices, propagation of harvesting forest products, forest management activities, golf courses, model aircraft, electric transmission lines, rights of way and transmission towers, hunting and fishing operations with or without accommodations, aquaculture, construction or modification of public roads and highways, reservoir and water impoundments, fish and wildlife resource, general wildlife habitat conservation, including air conservation, air, water and soil quality conservation areas, and water intake facilities. We find that wetlands on the site will be protected as part of operating plan and, therefore, there are no conflicts with these wetlands. We find that general forestry operations and forest practices do not occur anywhere in the general vicinity. We find that all the other uses listed above are potential uses but are not existing or approved land uses. We will limit our alternative ESEE analysis to conflicts related to the existing farm uses in the impact area.

1. Economic Consequences Analysis

We find that numerous economic figures were put forward by the opponents to quantify the loss of economic value associated with 169 acres of farmland. We find that an appropriate measure of the loss to be that provided to the County by the Yamhill County Farm Bureau in its January 22, 2004 letter. We find that the Farm Bureau assumed that 150 acres of the 169-acre Hester site is tillable, and estimated that this would produce $100,000 per year of annual income. We find this would be farm gate income and not net profit. We find farm operations on the Hester site would undoubtedly provide payroll, although the jobs would be primarily minimum wage agricultural jobs. We also note that the current lessee at the Hester site has had significant problems conducting a profitable operation. We find that the total economic output of the Hester property for farm use, using the Farm Bureau figures and general worker wages, would be about $125,000 per year. We find that based on the current farmer estimates the farm gate at the Hester property to be approximately $423,000. We find that the economic value produced by farm activities on the Hester site would not exceed this amount on an annual basis. We find that there are numerous, reasonable and practicable measures to reduce identified conflicts on farm properties around the Hester site, including dust control measures (e.g., slow vehicle speeds, use of water trucks, gravel amendments to roads, wet mining operations), groundwater measures (infiltration trenches, monitoring wells, mining in cells, replacement of well water with surface water), and erosion measures (engineered rock sills, vegetative plantings)

that reduce identified conflicts and adverse effects on farms surrounding the Hester property. We find that these measures are effective in reducing effects and, therefore, protecting farm operations and farm values on adjacent property from being diminished by the gravel operations that we have approved. Accordingly, we find and conclude that the economic output of farms surrounding the Hester property will remain as in the past and will not be adversely affected to any significant economic degree by operations at the Hester property. Accordingly, the economic balance must look at the economic value of the Hester property's sand and gravel site as compared to the economic value of the Hester property as a farm site.

We find that the economic opportunity in Yamhill County that would be passed up, should the farm use be allowed to continue in preference over the gravel operation, is significant. We find that the average price per ton of material and aggregate material that would be removed from the site is approximately $7.50 per ton f.o.b. We find this value is a combined gate revenue figure from the aggregate materials produced on the site. We find this would include sand at approximately $8 per ton, round rock at approximately $6.50 per ton, pea rock at $8.50 per ton, and #10 minus rock at $7.50 per ton. We find that for each 100,000 yards of material extracted from the site, the average f.o.b. price would provide a gate revenue stream of $750,000. We find this makes the total economic value of the gravel pit to the county of up to $75 million. We find this is equivalent to 100 years of revenue at up to $750,000 a year, or 50 years of revenue (approximately 200,000 yards of material removed per year) at up to $1.5 million per year. We find that gate revenue from aggregate greatly exceeds the farm gate revenues. In addition, we find that the Hester site will have approximately four employees working at family wage rates and will require maintenance and mechanical personnel on a part-time basis. We find that the payroll directly related to the mineral and extraction site is expected to exceed $120,000 per year.

We find that tax revenue is also an economic consideration. We find that while farmed, the Hester site will remain in farm deferral providing small tax revenues to the county. We find that as areas are prepared for mineral extraction, tax revenues will rise as farm deferrals are recaptured, and the property is converted to nonfarm tax rates. In addition, we find that the mineral and aggregate operation will generate significant fuel and PUC taxes which are invested in Oregon and county roads. We find that approximately one-third of the output of the quarry will go directly into public contracts. We find that having local availability within reasonable trucking distance of high quality mineral round rock creates a competitive market and helps the county tax dollars (which purchase the rock) to be used to maximum efficiency. We find that failure to reserve the site has significant long-term negative economic effect to the county in this regard. We find that there is also economic value in having mineral and aggregate resources available for future generations.

The Goal 5 ESEE analysis also requires consideration of limited use of the resource along with the limited use of the conflicting farm use. We find that the project as proposed guarantees continuing limited agricultural use over a significant period of time as only a small portion of the site will be taken on an immediate basis for mineral and aggregate use.

We find that the remainder of the site will continue to be farmed and produce farm revenue long into the future while mineral and aggregate revenue continues to be produced alongside. We find that this concurrent stream of revenue makes the gravel use even more economically valuable. We find it would be impractical to try to limit the mineral and aggregate use and also allow limited agricultural use on the site, except on a declining use basis as proposed by the applicant. We find that it makes little economic sense for either a farmer or mineral and aggregate operator to make a necessary investment for a limited future return.

As recognized by the Yamhill County Farm Bureau, we find that rock extraction bestows an economic return with which agriculture cannot compete. While the Farm Bureau argues that this is a "temporary return," we find that future value of the economic stream of gravel production versus the future value of agricultural production is the only valid economic way to analyze the economic returns from the two uses. We find that the Farm Bureau reaches the proper conclusion: that agriculture cannot compete on an economic basis. We find that this is particularly true when the site use, as proposed, will continue to allow and encourage agricultural use on the Hester site well into the future as other portions of the site are mined. We find that if the mineral and aggregate use is not allowed, the farm use would continue, but the County would forego the economic value of mineral and aggregate resources which greatly exceed the economic value of farming.

An additional consideration is whether or not allowance of the proposed mineral and aggregate use would reduce the economic productivity of the adjoining farms. We find that the evidence shows this is not the case. With regard to the groundwater issue, farmers in the area have expressed concern about the effects on wells. However, we find that the alternative water arrangements provided by the mineral and aggregate industry work "very well." We find that it is evident that taking irrigation water from a single surface source is economically beneficial to the farm uses for three reasons: (1) there is only one pump rather than several pumps to maintain; (2) the pumping lifts are shorter for surface impoundments and decrease energy costs; and (3) ongoing maintenance problems (and costs) with underground wells are avoided.

Opponents have argued that dust will have an adverse effect on farm productivity and, therefore, the economic value of surrounding farms. However, we find that the inconsistency of the opponents' position was pointed out when opponents revealed that significant truck traffic (as many as 333 trips per day) currently travels on the gravel roads in the area without dust control and without any adverse effect on productivity. We find there are numerous reasonable and practical methods to minimize any adverse dust impacts from the operation on the farm community. We also find that the prevailing winds in the summer months, when the gravel operation would be operating, are to the northwest away from the neighboring farms.

Farmers have also indicated there may be economic delays associated with increased truck traffic on Nichols Road. However, we find that existing levels of truck traffic indicated by the farm community (up to 333 trips per day) currently may cause delays that

highlight the issues with the road system for existing farm uses. We find that the operator will be required to upgrade the road to provide a more advantageous and economic transportation system for both the mineral and aggregate uses and the farm uses, thereby decreasing economic costs to the farms of currently inadequate roads.

We find that an objective examination of the facts demonstrates that existing gravel uses will have a minimal degree of adverse effects, if any, on the farm uses within the general area. We find this is because reasonable and practicable measures are available to resolve transportation issues, water resources issues, dust issues and flood issues that have been assigned to the mineral and aggregate use by the opponents. In addition, we find that these numerous reasonable and practicable measures will reduce identified conflicts with the farm uses to an insignificant level so they do not cause significant increases in the cost of farm practices or force significant changes in accepted farm practices in surrounding areas.

We find that the duration of the mineral and aggregate use largely depends on market forces. We find that if the county economy is strong, the mining operation may be a 30 to 50 year (or more) resource for the county. We find that if the economy is weak, the Hester site would be a significantly longer-term economic asset in the county.

Finally, we find that the proposed post-mining for the site is habitat natural resource uses. We find this will be a future use that will add value to the bottomland area to provide recreation opportunities and plant and animal habitat. We find the proposed post-mining site is consistent with the farm uses in the area which are interspersed by wetlands and natural woodlands at the present time. As such, we find that the economic prong of the ESEE analysis strongly favors mineral and aggregate use.

2. Social Consequences Analysis

We find that social impacts of a proposed mineral and aggregate land use are somewhat abstract, but we find there are two main themes of social consequences analysis. First, farmers in the area have expressed unhappiness about a new use in the area which they believe conflicts with their ongoing farm operations. The second portion of the analysis is the social costs to the county of not adequately preserving for future generations mineral and aggregate resources that are essential for critical infrastructure and building blocks of the community, such as roads, sidewalks, sewers, commercial, residential and industrial construction.

Some members of the farm community have indicated displeasure with the proposed use on the Hester property. We find that the social costs to the community of the proposed change include disagreements among neighbors, arguments over the right to use public resources (e.g., water and roads) and general change in neighborhood patterns and accepted social order in a specific geographic area. We find that while the social effects are very real, we find two things counterbalance these adverse effects. First, we find that the mineral and aggregate industry is not new in the area and that there are significant gravel operations that

work side by side with farmers in the area without conflict. We find that Mr. Steve Wilson continues to farm his property notwithstanding that he shares the same parcel with a growing gravel operation. We find that the successful coexistence of mineral and aggregate farm uses demonstrates that the social consequences of allowing the mining use are not significant.

We find that the second countervailing point is that there is a significant social cost to the county of not taking the future-oriented action of protecting future reserves of a natural resource that is essential to the economic growth of the county. We find that mineral and aggregate siting applications become more and more complicated and that significant additional rules related to fisheries resources adversely affect the ability of the county to depend on traditional in-river gravel resources. We find that the Corps of Engineers is refusing to permit in-river bar removal operations notwithstanding the buildup of bars in the area and other areas along the river that cause severe erosion problems to local farms. We find that quarry sources in upland areas are increasingly populated with homes and quarry rock is not a substitute for river rock in many important applications. In addition, we find that mineral and aggregate resources are not something that can be immediately sited and approved when needed. We find that companies must plan for future operations in a realistic and forward-looking way that allows resources to be secured years in advance of their actual need. Failure to allow the use or limiting the mineral and aggregate use would have a significant social cost in this regard.

We find the degree of adverse social effects on existing land uses is small. We find that farmers will still be able to live and work in the area and the farm community will continue to be vibrant in Yamhill County notwithstanding the Hester property is moved to a sand and gravel use. In addition, we find there are reasonable and practical measures that are mandated as part of our approval to assure that the social impacts are minimized. For example, we find roads need to be improved so that all users can share. We find neighbors need to communicate and cooperate with regard to common resources such as roads and water. We find that all of these build a stronger social compact and a tighter social community. As indicated above, we find the duration of the mining will be up to 50 years or more. We find that this allows a significant amount of time for social impacts to be lessened by neighbors working together.

We find the post-mining use of the site is another common resource for the county: wildlife habitat. We find the post-mining use provides social utility not only for the neighbors but also for the entire population of the county as well. As such, we find that the social consequences prong of the ESEE analysis shifts in favor of allowing their own use.

3. Environmental Consequences Analysis

Environmental consequences identified by the neighbors include adverse effects on water supply for farm uses, dust generation which would have adverse effects on farm uses, and the possibility of erosion or "headcutting" that can adversely affect the land value of adjoining properties. We find there are reasonable and practical measures to solve the water

issues. We find that current farmers in the area who use surface impoundments, rather than existing wells, indicate that the system works "very well." Similarly, we find that there are significant measures available to reduce dust, including using water and nontoxic road coatings for dust suppression, reducing vehicle speeds and numerous other measures that reduce the effect of dust on existing farm uses within the impact area. We find that the Applicant has intentionally not provided for any processing or crushing of mineral and aggregate resource and similarly, the Applicant has not requested high value batching activities at the site which sometimes are accompanied by increased environmental discharges.

We find concerns are also voiced by the opponents that the proposed use will have adverse environmental consequences on land values by promoting erosion from the nearby Willamette River. We find that the applicant has worked carefully with the Department of Geology and Mineral Industries to develop an operating reclamation plan, including spot armoring at identified egress and ingress points that will eliminate headcutting. In addition, we find that the Applicant has agreed to a significantly larger setback while studies are done to determine the effect of the channel change to the Willamette River upstream at Lambert Bend. We find that one of the most interesting points of this analysis is that the adverse environmental consequence which is most feared by the neighbors is not one related directly to the mineral and aggregate operation, but rather the general threat of the river as, through natural processes, it cuts into farmland. We find the proposal has been designed to minimize and eliminate the possibility of headcutting so that the location of the mineral and aggregate resources extraction operations on the Hester property will not contribute to avulsive changes in the Willamette River. We also find that existing mineral and aggregate operations in the area over 40 years have not had a significant adverse environmental effect whether they are related to river channel changes, dust or conflicting uses of water. Importantly, we find that the Applicant has proposed numerous monitoring features directly related to environmental concerns about the groundwater resource. In addition to three existing monitoring wells that were initially installed, we find that Applicant will install an array of piezometers to the west and south sides of the property to monitor any potential adverse effects on water resources.

We find that because of the reasonable and practical measures proposed by the Applicant to reduce adverse effects, including those related to dust, water resources and river channel activities (including dust control measures, monitoring and water replacement for wells, if necessary, and armoring to prevent head cutting erosion), we find the degree of adverse environmental effects on existing land uses within the impact area will be minimal. As indicated above, we find that the probable duration of the mining operations will be up to 50 years or more depending on market conditions. We find the appropriate mechanisms are in place to ensure that environmental effects are minimized during the entire operating period of the proposed use. We find this includes dust control measures on the site and access roads, monitoring replacement measures for groundwater resources, and the strengthening of pits to avoid river channel changes.

Significantly, we find that the post-mining use of the site has high environmental values. We find there will be significant habitat improvements, including vegetation maintenance, native species planting, tree plantings, and efforts to provide undulating surfaces for the habitat areas that will be left after the mining is completed. We find these will provide a high-value environmental asset to county citizens for years to come. Based on all these facts, we find and conclude that believe the environmental prong of the ESEE analysis tips in favor of fully allowing the proposed mineral and aggregate use.

4. Energy Consequences Analysis

We find that energy analysis relating to the proposed use is largely theoretical. However, regardless of whether or not the proposal is allowed to go forward, we find that the energy uses on surrounding farm properties will remain approximately the same. We find that switching from wells to surface impoundments for irrigation uses (if required) may potentially reduce the amount of electricity and doing so will help reduce the energy costs for electricity necessary for irrigation. Similarly, we find the road improvements required of the Applicant will improve the current situation for farm trucks on narrow Nichols road.

We find that one of the main reasons for the Applicant's request to site the mineral and aggregate extraction operation at this particular location is its closeness to the existing processing plant of the Applicant and the existing McMinnville market. We find that by locating the operation close to the Applicant's Penland Plant, significant energy savings are achieved by reducing the amount of truck travel required to get the mineral and aggregate material to the processing area. Similarly, we find that by locating the operation near the McMinnville, Dayton and Newberg markets, significantly less energy is used in the form of truck fuel to move the resource to end users within the Yamhill county economy. We find that if the County made a policy decision to rely on more distant suppliers or more distant locations for mineral and aggregate resources, longer truck trips would be required to move the mineral and aggregate material consuming more fossil fuels. We find there are several reasonable and practicable measures that can and will be implemented to reduce the energy consequences on the farms, including road improvements and the option of taking irrigation water of surface impoundments rather than wells. We find that these will result in practical and real energy savings and ensure the degree of adverse effect on existing farm uses in the area is minimal. As indicated above, we find the proposed use will be in the area for up to 50 years or more, depending on market forces. We find that during this entire period of time, crossing two generations, the County will have a mineral and aggregate resource that is close to the market area and provides energy efficient, cost effective raw materials for growth in the county.

We find that the post-mining use of the site will be for wildlife habitat with open water ponds that may be available for continued future use for energy efficient irrigation. We find that not allowing mining at this site would necessarily mean that another mineral and aggregate site would have to be located farther away from the market and farther away from processing areas with increased energy costs and energy consumption to move the raw materials

from processing to the market. We find that limiting the mining use and limiting the agricultural use does not make sense outside of the Applicant's proposal to have ongoing agricultural activities occur on the site on a declining basis as the aggregate operation grows.

Based on all these factors, we believe that the energy prong of the ESEE analysis tips in favor of fully allowing the proposed mineral and aggregate extraction use.

We find and conclude that we have addressed all the appropriate decision criteria, and that there are no others. We place the Hester property on the County's significant Goal 5 mineral and aggregate inventory plan text and map, permit mining, establish an impact area and impose restrictions and conditions of approval with a limited land use overlay.

Exhibit A continued: Conditions of Approval

STAFF RECOMMENDATION - July 22, 2004

Based on the above findings, analysis and conclusions, staff recommends that the County Board of Commissioners approve of the request by C.C. Meisel for a Comprehensive Plan map amendment from Agriculture Forestry Large Holding to Quarry; a zone change from EF-80 Exclusive Farm use to MR-2 Mineral Resource, and placement of the 169 acres identified as Tax Lots 4335-201 and 301 on the Goal 5 inventory with a limited use overlay which contains the following conditions:

1. When haul trucks are operating, the owner shall have available and use a water truck on a daily basis for dust suppression on the Hester property and approach roads. Dust suppression shall use one or more of the techniques listed in the Washington Department of Ecology publication Techniques for Dust Prevention and Suppression (Pub. No. 96-433). The owner shall work with Yamhill County regarding the timing of the initiation of dust control methods.

2. The owner shall obtain the appropriate storm water discharge permit, if necessary.

3. There shall be no blasting allowed on site.

4. No asphalt or concrete plants shall be located on site.

5. The owner of the aggregate operation shall maintain and monitor existing wells during the mining season from the commencement of mining at the site as mining occurs. If an existing monitoring well is removed through mining, monitoring is no longer required at that location only. The monitoring information will be provided to DOGAMI. In addition, owner shall install four piezometers to track water levels. Two of these piezometers will be installed on the southerly side of the property and two on the westerly side of the property. If adjoining landowners are amendable, the piezometers would be placed at mutually agreeable points on the neighbors' property on the southerly and westerly sides. If the neighbors are not agreeable, the piezometers would be placed in the 50-foot setback along the property. If corrective action for groundwater (well deepening, well replacement or provision of replacement water for an existing well) is required by DOGAMI during the period of active mining at the site, the owner of the mining operation shall take corrective action as required by DOGAMI.

6. The owner of the aggregate operation shall obtain any necessary state or federal permits.

7. The owner of the aggregate operation shall install at least two erosion control and stabilization features (engineered rock sills), one for overland flood events and one for backwater flood events.

8. If wetland areas delineated on the site plan map are disturbed, the owner of the aggregate operation shall reclaim and/or mitigate disturbed wetland areas.

9. Hours of extraction operations at the site shall be 7 AM to 6 PM, Monday through Saturday. There will be no extraction operations after hours, on Sunday or on holidays except as required

by emergency, including the need to provide rock material at night for increased public safety in road construction projects. In the event emergency operations are required, the owner of the aggregate operation shall coordinate with the county planning staff.

10. 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 Director prior to mining the property.

11. The owner of the aggregate operation shall provide and maintain a DOGAMI reclamation bond and submit a copy of such bond to the county.

12. Prior to mining, the owner of the aggregate operation will provide the county with a receipt or paid invoice showing that the company has commercial/general liability insurance coverage.

13. The owner of the aggregate operation shall maintain existing natural vegetative fringe along the site perimeter.

14. The owner of the aggregate operation shall, during operations, conform to DEQ noise level limits at all habitable buildings on adjacent properties.

15. The owner of the aggregate operation shall establish 50-foot setbacks as indicated on the site plan. To ensure external setback integrity, external setbacks shall be measured and staked as follows when overburden removal occurs within 200 feet of the following external property boundaries: South Setback of Cell 1E; North and West Setbacks of Cell 3; West Setback of Cell 4; and West and South Setbacks of Cell 5.

16. The owner of the aggregate operation shall request the county to commence road legalization for Nichols Road pursuant to ORS 368.201. After legalization, the owner of the aggregate operation will perform the following minimum road improvements to Nichols Road and the easement to the operation:

    Four turnouts that are 10 feet wide and 125 feet in length shall be constructed along the access road to the aggregate operation. The location of said turnouts shall be consistent with the County Code and Transportation Plan.

    The 1,000-foot section of road traversing "the canyon," starting at the northeast corner of Tax Lot 5303-300 and continuing 1,000-feet to the east, along the Nichols Road right of way shall be improved to 20 feet in width with a 6" base of 2"-0 base rock and 2" of 3/4"-0.

    Said road improvements shall be inspected and approved by the Yamhill County Public Works Director. Any variance from the above requirements may be granted by the

Yamhill County Public Works Director pursuant to the County Code and County Transportation Plan. Yamhill County will endorse and promote discussions between landowners regarding access issues on Nichols Road with the goal of coordinating users of the road.

17. Yamhill County shall provide a stop sign to be located at the point in Nichols Road before it begins its descent into the canyon.

18. The owner shall provide two signs, to be placed in areas identified by the Public Works Director, that contain the CB channel and following or similar language:

"Entering commercial haul zone. Tune to CB Channel #____"

19. In the event that corrective action for groundwater, pursuant to Condition #5 above, necessitates well deepening, well replacement or replacement water, the owner shall, at the time DOGAMI makes such a determination, post a bond with DOGAMI in the amount of $100,000 or the amount necessary for well deepening, well replacement or provision of replacement water, or provide equivalent financial assurances. The bond, or equivalent financial assurances, shall remain in effect until the well deepening, well replacement, or provision of replacement water is completed.

20. The owner of the aggregate operation shall obtain a floodway permit approval prior to any above-ground stockpiling of aggregate during the flood season (November through April) or the placement of permanent structures within the floodway.

21. Prior to mining and consistent with DOGAMI reclamation requirements, the owner will work with Yamhill County to explore the possibility of returning areas of the site not reclaimed for wildlife habitat, to agricultural use.

22. Areas identified to be restored to agricultural use shall be restored with a minimum of three feet of topsoil.

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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	)	
Large Holding to Quarry; a zone change from EF-80	)	
Exclusive Farm Use to MR-2 Mineral Resource	)	ORDINANCE 745
for a parcel of approximately 169 acres, PAZ-05-03,	)	
Tax Lots 4335-201 and 301 (the "Hester Property"),	)	
Applicant C.C. Meisel; and Declaring an Emergency	)	

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON (the Board) sat for the transaction of county business on November 23, 2004, Commissioners Kathy George, Mary P. Stern, and Leslie Lewis being present.

IT APPEARING TO THE BOARD that the Planning Commission heard from the applicant and opponents at a duly noticed public hearing on November 6, 2003, and voted to forward the application without recommendation to the Board for review, and

IT APPEARING TO THE BOARD that the matter was heard by the Board at several duly noticed public hearings, the last being on June 22, 2004 . The Board heard testimony, considered the evidence from the applicant, opponents, and staff and deliberated and voted 2-1 to approve the application (Commissioner Mary P. Stern voting in the negative). Ordinance 745 and findings were adopted August 19, 2004. An additional hearing was held November 9, 2004 to consider supplementing the findings. The applicant and opponents appeared and were heard, and the Board voted 2-1 to approve the additional findings and illustrative map, attached as Exhibits "B" and "C", respectively. NOW, THEREFORE,

IT IS HEREBY ORDAINED BY THE BOARD that C.C. Meisel's application is approved with the conditions of approval detailed in the original findings and the supplemental findings attached as Exhibit "B", and map attached as Exhibit "C", incorporated herein by reference. 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 this 23rd day of November, 2004, at McMinnville, Oregon.

ATTEST:

JAN COLEMAN
County Clerk

By: Anne Britt
Deputy Anne Britt

APPROVED AS TO FORM:

Rick Sanai, Assistant County Counsel

YAMHILL COUNTY BOARD OF COMMISSIONERS

Chair KATHY GEORGE

Commissioner MARY P. STERN

Commissioner LESLIE LEWIS

Ordinance 745, Supplemental Findings and Map

BO-04-815

EXHIBIT "B"

SUPPLEMENTAL FINDINGS

PAZ-05-03

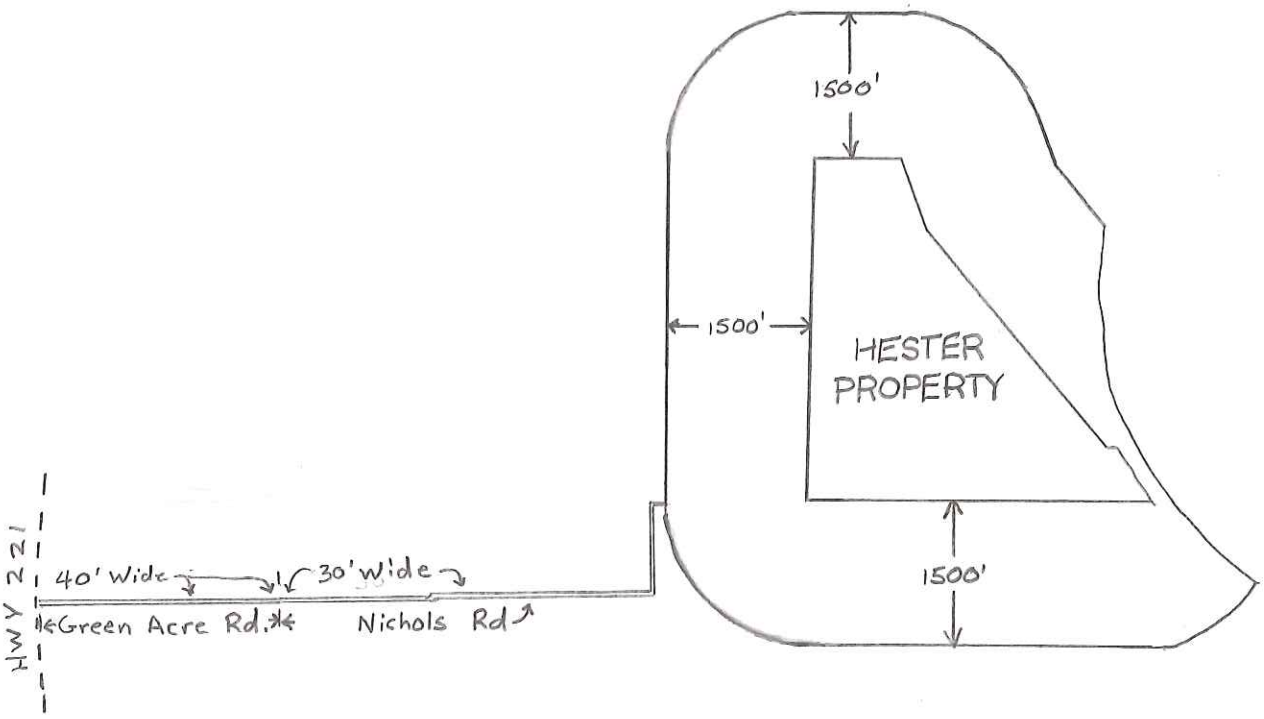
The Board makes and adopts the following Findings to supplement our Findings adopted August 19, 2004. These supplemental findings complete the county's reconsideration of its decision under the Notice of Withdrawal of Decision for Purposes of Reconsideration filed with the Land Use Board of Appeals on October 14, 2004. To our original findings (identified as Exhibit "A" to Ordinance 745), we add this Exhibit "B" and the attached map of the impact area, identified as Exhibit "C", incorporated herein by reference.

We hereby incorporate and append to our decision 22 conditions of approval. These conditions are found at Volume 1, Item 1, pages 70 to 72 of the Record in this matter and are labeled "STAFF RECOMMENDATION - July 22, 2004" and further identified by a hand written notation "Exhibit A continued: Conditions of Approval". These conditions are implemented and applied to the Hester property through a Limited Land Use Overlay zone which we hereby place on the property (T4S R3W, Tax Lots 4335-201 and 301).

Consistent with our analysis and our Findings of Fact and Conclusions of Law (Exhibit "A" to our August 19, 2004 decision), we adopt an impact area for the Hester property. The impact area shall be all lands within Yamhill County that are outside of the exterior perimeter of the Hester site, (T4S, R3W, Tax lots 4335-201 and 301) and within 1500 feet of that exterior perimeter, together with a "cherry stem" impact area out to the intersection of Green Acres Road and Highway 221. The ""cherry stem"" portion of the impact area is 30 feet wide for the length of Nichols Road (consistent with the smallest acceptable county right of way) and 40 feet for Green Acres Road (consistent with the actual dedicated right of way). A map of the impact area is attached and identified as Exhibit "C". Within the 1500 foot impact area, we are, consistent with our Findings of Fact and Conclusions of Law (Exhibit "A" to our August 19, 2004 decision at Volume 1, Item 1, Page 57), limiting the establishment of three uses in the impact area: (1) Propagation, Cultivation, Maintenance and Harvesting of Aquatic or Insect Species; (2) Reservoirs or Water impoundments; and (3) New wells. Items 1 and 2 above shall not be located in the impact area. With regard to new wells (item 3 above), we are NOT prohibiting new wells, but consistent with the County's long-standing policy, we are warning individuals that new well in within 700 feet from the perimeter of the Hester property may be installed, but that such installation is at the property owner's own risk. These two limitations and one warning are applied to the impact area through a Limited Land Use Overlay zone which we hereby place on the impact area, as described in this paragraph.

The Hester property (T4S R3W, Tax lots 4335-201 and 301) is hereby added to the Yamhill County inventory of Significant Goal 5 Mineral and Aggregate Sites that is maintained by the County consistent with Statewide Goal 5 and Section II, Subpart F of the Yamhill County Comprehensive Land Use Plan.

EXHIBIT "C" MAP FOR ORDINANCE NO. 745
ADOPTED BY THE YAMHILL COUNTY BOARD OF COMMISSIONERS
NOVEMBER 9, 2004
IDENTIFICATION OF THE IMPACT AREA
FOR THE "HESTER" SAND AND GRAVEL OPERATION



AREA APPLIES TO LAND IN YAMHILL COUNTY 1500 FEET FROM THE OUTSIDE BOUNDARIES OF TAX LOT 4335-201 AND 301 AND ALONG THE ACCESS OUT TO HIGHWAY 221 AS DESCRIBED ABOVE.

APPROXIMATE SCALE - 1 INCH = 2000 FEET

B.O.04-815