FILM 68 PAGE 026

IN THE BOARD OF COMMISSIONERS OF THE STATE OF OREGON 99 NOV -5 A11 :55

FOR THE COUNTY OF YAMHILL

SITTING FOR THE TRANSACTION OF COUNTY BUSINESS

In the Matter of an Ordinance Relating to Planning Dockets Z-01-98 and SU-01-98, Tax Lot 3230-100 applicant Baker Rock Crushing Company; Confirming the Validity of Ordinance 650; Determining after Public Hearing on Remand from the Land Use Board of Appeals that the Applicant had Satisfied Yamhill County Comprehensive Plan Policy V.A.1.b, LUBA No. 98-141; Declaring an Emergency.	)	ORDINANCE 674

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON ("the Board") sat for the transaction of county business in formal session on November 4, 1999, commissioners Robert Johnstone, Thomas E.E. Bunn and Ted Lopuszynski being present.

THE BOARD MAKES THE FOLLOWING FINDINGS:

A. On August 4, 1998 the Board adopted Ordinance 650 to approve the application of Baker Rock Crushing Company to site an Asphalt Batch Plant on Tax Lot 3230-100. County records regarding Baker Rock's application are memorialized in Planning Dockets Z-01-98 and SU-01-98. In its operative part, Ordinance 650 provided as follows:

> "Section 1. The Official Zoning Map of Yamhill County is hereby amended on the approximately 18 acre portion of the 20 acre tract known as Tax Lot 3230-100 as specified in the attached Exhibit "B" to reflect a zoning designation of "HI".
>
> "Section 2. Aggregate processing and an asphalt batch plant is hereby determined to be similar to permitted uses in the "HI" (Heavy Industrial) district.
>
> "Section 3. The findings attached as Exhibit "A" and incorporated herein by reference are hereby adopted in support of this ordinance.
>
> "Section 4. A Limited Use Overlay is hereby applied to that portion of tax lot 3230-100 that is rezoned to "HI" (Heavy Industrial). Under the Limited Use Overlay, permitted uses shall be limited to those uses the applicant has described as being part of its proposal, which include the installation of an asphalt batch plant, the on-site processing and storage of finished products and materials necessary for the production of asphalt, and other uses incidental thereto. Under the Limited Use Overlay to be applied to the site, all other uses listed as allowed in the Heavy Industrial District under YCZO § 703.02 will only be allowed subject to established conditional use procedures. In addition, the approval of the Limited Use Overlay shall be subject to the following conditions:

B.O. 99-814

"1. An application for site design review shall be submitted and approved by the county prior to any change in the type or scale of uses occurring on the parcel. As part of the site design review, the developer may be required to complete off-site road improvements if the city and county Public Works Directors determine that the roads that will be used to transport materials to and from the site are inadequate to handle the truck traffic generated by the use.

"2. All necessary DEQ permits shall be obtained for the asphalt batch plant.

"3. A floodplain development permit shall be obtained prior to any new development that will occur on portions of the parcel that are below 100 feet in elevation above sea level. Development includes grading, excavation, placement of fill material and structures.

"4. A Willamette River Greenway permit shall be obtained prior to any new development in the Greenway.

"5. Trucks used for transporting materials to and from the facility shall be required to use the existing truck route from the site via 14th Street, River Street, 11th Street, Wynooski Road, and Highway 219, to the extent the route remains as a designated truck route.

"Section 5. 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."

B. The City of Newberg appealed Ordinance 650 to the Land Use Board of Appeals, asserting the Board had committed a series of errors in approving Baker Rock's application. The case number assigned to the appeal by the Land Use Board of Appeals was LUBA No. 98-141.

C. On July 29, 1999 the Land Use Board of Appeals issued a Final Opinion and Order in LUBA No. 98-141. LUBA rejected all assignments of error raised by the City of Newberg in its appeal of Ordinance 650 except for one. The assignment of error sustained by LUBA was the City's contention that the County erred in failing to consider Yamhill County Comprehensive Plan Policy V.A.1.b which provided as follows:

"Yamhill County will, in making land use decisions relative to industrial or other uses likely to pose a threat to air quality, consider proximity of the proposed uses to residential areas and meteorological factors such as seasonal prevailing wind direction and velocity."

D. Because LUBA sustained the single assignment of error, it remanded the County's land use decision in Ordinance 650 back to Yamhill County. LUBA No. 98-141 was not appealed to the Oregon Court of Appeals and therefore became the final appellate decision on the matter.

E. On October 28, 1999 the Board held a pubic hearing in Room 32 of the county courthouse to consider the LUBA remand of Ordinance 650. Public Notice of the hearing had provided that the only evidence or testimony which would be accepted must relate to Yamhill County Comprehensive Plan Policy V.A.1.b. After the chair had opened the public hearing, the City of Newberg requested the Board to expand the scope of the public hearing in order for the City to address issues in addition to Plan Policy V.A.1.b. After considering the City's request, the Board determined that the hearing should proceed as noticed, and that the Board would only accept evidence and testimony relevant to Plan Policy V.A.1.b.

F. After consideration of preliminary matters described in paragraph (E), the Board proceeded with the public hearing to consider the LUBA remand of Ordinance 650. Proponents and opponents introduced evidence and testimony related to air quality and meteorological conditions in order for the Board to consider the affect of Yamhill County Comprehensive Plan Policy V.A.1.b.

G. At the conclusion the public hearing on October 28, 1999 the chair announced the record of the hearing was closed to the receipt of additional evidence. The Board then deliberated the issue and determined that the applicants had satisfied Plan Policy V.A.1.b, and that the decision made by Ordinance 650 should be confirmed. The matter was continued until November 4, 1999 for staff to prepare findings in support of the Board's tentative decision of October 28, 1999. NOW, THEREFORE,

THE YAMHILL COUNTY BOARD OF COMMISSIONERS ORDAINS AS FOLLOWS:

Section 1. Confirmation of Ordinance 650.

The land use decision made by Ordinance 650, August 4, 1998 is hereby confirmed.

Section 2. Compliance with Plan Policy V.A.1.b.

In accordance with the Final Opinion and Order in LUBA No. 98-141, July 29, 1999, the Board has considered whether Yamhill County Comprehensive Plan Policy V.A.1.b precludes the Board from approving Baker Rock Crushing Company's application through the Board's adoption of Ordinance 650. The Board specifically finds that Baker Rock Crushing Company has satisfied YCCP V.A.1.b, and that Ordinance 650 should be confirmed.

Section 3. Findings in Support.

In support of this Ordinance, the Board adopts the Findings attached and incorporated as Exhibit "A."

///

///

Section 4. Emergency clause.

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 immediately.

AYES: Commissioners Johnstone, Bunn and Lopuszynski.

NAYS: None.

DONE at McMinnville, Oregon on November 4, 1999.

ATTEST

YAMHILL COUNTY BOARD OF COMMISSIONERS

CHARLES STERN
County Clerk

Chairman ROBERT JOHNSTONE

By: Carol Ann White
Deputy CAROL ANN WHITE

Commissioner THOMAS E. E. BUNN

FORM APPROVED BY:

JOHN M. GRAY, JR.
Yamhill County Counsel

Commissioner TED LOPUSZYNSKI

whitec\plan\bakreord.wpd

EXHIBIT "A"
ORDINANCE 674

FINDINGS FOR APPROVAL
ON REMAND
ZONE MAP CHANGE APPLICATION
BAKER ROCK CRUSHING COMPANY
DOCKET NO. Z-01-98

A. Type of Application:

The applicant, Baker Rock Crushing Company, is seeking a zone map change for most of its property, tax lot 3230-100. The property is currently zoned "Mineral Resource-2" (MR-2), and the applicant has requested that the property be zoned "Heavy Industrial" (HI). The applicant intends to place an asphalt batch plant on the upper terrace of the property, following site design review. To that end, the applicant has also requested from the County a determination that an asphalt batch plant is a heavy industrial use, similar to other uses allowed in the HI zone.

To accommodate expansion of Roger's Landing Marine Park, the applicant has arranged to make available to Yamhill County approximately one acre of the riverfront portion of its property adjacent to the park. The southeast corner of tax lot 3230-100 would retain its current zoning, because parks are conditionally allowed in the MR district, but not in the HI district. The area that would remain in MR-2 zoning extends ±350 feet west from the eastern boundary of tax lot 3230-100.

On August 4, 1998, the Board of Commissioners (Board) approved the application. By Ordinance 650, the County rezoned tax lot 3230-100 from MR-2 to HI, determined that asphalt batching is a similar use to uses listed as allowed in the HI zone, and applied a Limited Use Overlay to the property, to limit allowed uses to those proposed by the applicant.

The City of Newberg (City) was originally part of this application, and had tentatively agreed to allow installation of the batch plant on tax lot 3229-2700, which the City owns and which is adjacent to the applicant's parcel. Ultimately, the City opposed the application to develop either its parcel or the applicant's parcel. Subsequent to the County's approval of the application, the City appealed to the Land Use Board of Appeals (LUBA) and the County's decision was remanded.

This document represents the County's additional findings supporting its decision to approve the application, in response to the Final Opinion and Order issued by LUBA on July 29, 1999, in LUBA No. 98-141 (LUBA Opinion). The record of the original proceedings on this application is included by this reference in the record of this proceeding on remand. The original findings of fact in this matter are hereby incorporated by reference in these findings, as if set out fully here. Reference should be made to the original findings for background information and findings regarding the County's decision that are not repeated or discussed below.

B. Summary of LUBA's Decision, LUBA No. 98-141

LUBA summarized the facts leading to its decision as follows:

> "The subject property is a 20-acre parcel located between 14th Street on the north and the Willamette River on the south, within the city's urban growth boundary (UGB) but outside the city limits. The property is bordered on the west by River Road with scattered rural residences further to the west. On the east, the property is bordered by two city-owned vacant parcels formerly used for landfill and sewage treatment purposes and a marine park called Roger's

Landing. Adjacent to Roger's Landing and the city-owned parcels to the east is the Smurfit pulp and paper mill on 145 acres of land zoned HI. To the north of 14th Street lay vacant property zoned for agricultural and forestry uses, and further north, a railroad line and residential uses that are within the city limits.

"The subject property is topographically marked by a steep escarpment that separates the lower portion of the property near the river within the river's flood plain from an upper bench. The lower portion of the property is located within the Willamette River Greenway. Intervenor has operated an aggregate processing and storage facility on the property for 25 years that has involved shipping aggregate to the site by barge, washing and crushing the rock, and then transporting the aggregate on trucks via 14th Street to its ultimate destination.[1] At the height of intervenor's aggregate operation in 1993, intervenor's operation produced 283,000 tons of aggregate and generated an average of 22 trucks per hour using the 14th Street truck route.

> "The subject property is designated 'industrial' under both the city and county comprehensive plans. In 1979, the city and county entered into an Urban Area Growth Management Agreement (UAGMA) that requires, in relevant part, that zone changes outside city limits but within the UGB 'shall be processed by Yamhill County and shall be forwarded to the City Council for its recommendation.' UAGMA VII(3)(a). Where the city's recommendation is required, the UAGMA provides that 'the City and County need not agree upon a decision.' UAGMA III(5)(b). The UAGMA does not specify what standards are applied in processing a zone change or other applications within the UGB, but does provide that:
>
> *'The 1979 Comprehensive Plan Land Use Map adopted by the City of Newberg on July 2, 1979, shall be the plan map for the area within the [UGB], and shall replace conflicting portions of the Yamhill County Comprehensive Plan Map (1974) pertinent to this area. Where said maps conflict, Yamhill County shall initiate the process necessary for consideration of a map amendment.' UAGMA III(l).'*(Italics added)

"Pursuant to UAGMA III(I), the county adopted Ordinance 214, which provides in relevant part:

> *'The [commissioners have] reviewed the City's Comprehensive Plan, a copy of which is attached and by this reference is made a part hereof, and hereby adopts the City Plan Map designations for that area of Yamhill County which is within the City's UGB and is outside of the corporate limits of the City. The Planning Director is hereby authorized and directed to amend the Yamhill County Comprehensive Plan [YCCP] Map accordingly.*
>
> *'In amending the [YCCP], where the [YCCP] does not have a designation which corresponds to the City Plan Map designation, the Director my designate such property as "Future Urbanizable Lands."*

---

[1] The Board notes that prior to the applicant's acquisition of the site, it was operated by Macaulay Rock Products.

(Italics added)

"In February 1998, intervenor and the city jointly applied to the county for (1) a zone change from MR-2 to HI, (2) a similar use determination, and (3) a Willamette River Greenway Permit for an area including the subject property and one of the adjacent city-owned lots. The purpose of the application was to allow intervenor to operate a permanent asphalt batch plant on the city lot. A permanent asphalt batch plant is prohibited in the MR-2 zone, but is allowed, subject to a similar use determination, in the HI zone. At some point thereafter, intervenor dropped plans to locate the plant on the city-owned lot, and instead proposed locating it on the lower portion of the subject property. As proposed, the asphalt batch plant would produce approximately 50,000 tons of asphalt per year, and generate five truck trips during the peak hour.

"Pursuant to UAGMA VII(3)(a), the application was forwarded to the city for its recommendation. The city council adopted a resolution that recommended denial of the requested zone change, similar use determination and Willamette River Greenway permit. Intervenor then withdrew its request for a Willamette River Greenway Permit, and modified its application to propose placing the asphalt batch plant on the upper bench of its property, outside the Willamette River Greenway. The commissioners conducted an evidentiary hearing on June 11, 1998, at which the city testified in opposition. On July 2, 1998, the commissioners closed the record, deliberated and voted to approve the zone change and similar use determination. The commissioners reopened the record on August 4, 1998, to receive testimony rebutting certain alleged ex parte communications, and on that date issued its written decision approving the requested zone change and similar use determination." LUBA decision, p. 2-5.

In its appeal to LUBA, the City made four assignments of error. LUBA identified nine additional subassignments of error, and determined that one of those subassignments was meritorious.

The subassignment of error that was sustained by LUBA concerned Yamhill County Comprehensive Plan Policy V.A.1.b., which reads:

"*Yamhill County will, in making land use decisions relative to industrial or other uses likely to pose a threat to air quality, consider proximity of the proposed use to residential areas and meteorological factors such as seasonal prevailing wind direction and velocity.*"

In the original proceedings, the Board failed to adopt findings addressing this policy, because no party argued that it might apply. Before LUBA, for the first time in these proceedings, the City argued "that the proposed asphalt batch plant will impact air quality, particularly with respect to nearby residential uses, and that the challenged decision must be remanded to address YCCP V.A.1.b." (LUBA Opinion, p. 10)

In response, the County argued that:

"YCCP V.A.1.b. is not applicable, because it is applicable only when a land use decision is likely to pose a threat to air quality." The county made findings with respect to other criteria that the applicant must obtain all necessary Department of Environmental Quality (DEQ) permits and satisfy

all applicable DEQ regulatory requirements, and that 'the very low levels of emissions' from the proposed plant do not pose human health risks. Record 23. To the extent complaints about emissions go to odor rather than health risks, the county argues that such complaints do not constitute evidence of a 'threat to air quality' within the meaning of YCCP V.A.1.b. We understand the county to argue that the Board should interpret YCCP V.A.1.b. as being limited to the kind of air quality concerns addressed by DEQ, and that the above findings and their supporting evidence 'clearly supports' a finding either that YCCP V.A.1.b. is inapplicable or that the proposed asphalt batch plant is consistent with that provision." (LUBA Opinion, p.11)

On this point, LUBA held as follows:

"We decline to interpret YCCP V.A.1.b. as the county suggests. It is not at all clear that YCCP V.A.1.b. is directed or limited to the types of emissions that DEQ regulates. To the extent the county relies on ORS 197.835(11)(b), findings that the plant's emissions do not pose human health risks do not 'clearly support' a finding of compliance with YCCP V.A.1.b."

It is also notable, for the purposes of the remand proceeding, that LUBA identified no other errors or oversights in the County's decision. In that regard, the County has already determined, as required by YCZO 1208.02(C), that:

"The proposed [zone] change is appropriate considering the surrounding land uses, and the density and pattern of development in the area * * *"

In determining that the applicant had met this requirement, LUBA stated:

"The city faults the county's finding regarding odor, noise, and dust impacts. The city argues that the evidence the county relied upon indicates that asphalt plants can be operated in proximity with residential development without causing noise and dust problems, but, according to the city, nothing in the record discusses the impacts of odor from asphalt plants.

"Intervenor responds by citing to evidence in the record that neighbors of the proposed asphalt plant in its former location had never complained regarding odor, noise, or other emissions. We agree with intervenor that the cited evidence constitutes substantial evidence supporting the county's findings regarding adverse impacts from odor, noise, and dust." LUBA Opinion, p. 18.

C: County's Interpretation of Plan Policy V.A.1.b.

1. The first step in addressing Plan Policy V.A.1.b. is for the Board to determine what it means. In this regard, Yamhill County Zoning Ordinance (YCZO) Section 1208.02 A, requires an applicant for a zone change to demonstrate that:

"*The proposed change is consistent with the goals, policies and any other applicable provisions of the comprehensive plan.*"

LUBA's opinion directs the Board to determine the extent to which plan policy V.A.1.b. is applicable to the applicant's proposal, what the policy means, and specifically, whether the Board intends through the policy to regulate air quality beyond the level of regulation that would be imposed by the Oregon Department of Environmental Quality (DEQ) under the Clean Air Act and state laws implementing the Act. LUBA did not fault any findings made by the Board, and did not interpret plan policy V.A.1.b. LUBA remanded the decision to allow the Board to articulate the

meaning of the policy and to adopt appropriate findings addressing it. The County adopted Plan Policy V.A.1.b., is entitled to interpret its meaning, and is entitled to deference for its interpretation.

2. The Meaning of the Express Language of Plan Policy V.A.1.b.

2.1 "Likely to pose a threat to air quality." By its terms, Plan Policy V.A.1.b. is relevant when Yamhill County is making a land use decision relative to industrial or other uses "likely to pose a threat to air quality." The Board interprets this phrase to relate to industrial and other uses likely to pose more than an incidental threat to air quality, and specifically to the types of air quality impacts regulated by DEQ, and the degree to which DEQ regulates those impacts. A facility is not "likely to pose a threat to air quality" if the applicant demonstrates that the facility will likely be able to obtain a DEQ air quality permit and be operated in conformance with the permit. The Board reserves judgment regarding whether the policy would be implicated in the case of a proposed facility requiring a "Title V" major source Air Contaminant Discharge Permit from DEQ. The Board nevertheless concludes, for all of the reasons stated herein, that the policy is not implicated by a proposal to construct a facility that is likely to be subject to a "minimal" or "regular" Air Contaminant Discharge Permit, and appears capable of obtaining such a permit.

2.2 The Board does not intend, through Plan Policy V.A.1.b., to independently regulate air pollutants or air quality impacts, or to impose restrictions under policy V.A.1.b. in addition to restrictions imposed by DEQ. As stated numerous times in the original findings for approval, the County relies on DEQ, its regulations and expertise, to ensure that air quality impacts of proposed development are adequately considered and mitigated. Based on testimony and evidence in the original record of these proceedings, the County concluded, and continues to conclude, that it is reasonable to expect that the applicant can meet all state and federal environmental regulations applicable to the proposed use. The facility is currently located at Farmington, Oregon, and operates under a regular Air Contaminant Discharge Permit issued by DEQ. A condition of approval requires the applicant to obtain all necessary DEQ permits, and if DEQ will not issue a permit, the facility cannot be operated on the subject property. To the extent any goal or policy of Yamhill County requires consideration of air quality impacts, the Board finds that compliance with those policies, including plan policy V.A.1.b., can be met through imposition of the condition.

2.3 The Board does not intend, through policy V.A.1.b., to regulate air quality impacts of proposed facilities, or to require applicants to consider "threats to air quality" that are incidental, are not regulated by, or are not of concern to DEQ. The Board intends for this policy to be directed and limited to the types of emissions that DEQ regulates and the degree of regulation imposed by DEQ, and for DEQ to continue to have sole authority to monitor and regulate air quality impacts.

2.4 Meaning of "consider." Webster's Third New International Dictionary (unabridged, 1993) defines "consider" to mean:

> "**1 :** to reflect on **:** think about with a degree of care or caution * * * 2 : REFLECT, DELIBERATE, PONDER * * * CONSIDER often indicates little more than *think about*. It may occasionally suggest somewhat more conscious direction of thought, somewhat greater depth and scope, and somewhat greater purposefulness." (no emphasis added)

2.4.1 The Board accepts this definition of the term. Since the Board is only required by the policy to "consider" the potential impact of a proposal, an applicant can be required by the policy only to ensure that the Board did in fact "think about" those impacts. There is no reasonable reading of the policy that would lead to a conclusion that the applicant must prove that such impacts do not exceed a certain level. Policy V.A.1.b. is satisfied if the record demonstrates that the Board (after determining that the proposed use is "likely to pose a threat to air quality") "thought about"

"proximity of the proposed use to residential areas and meteorological factors such as seasonal prevailing wind direction and velocity."

2.4.2 The Board also notes that it has also "thought about" the potential impacts of the proposed facility on the surrounding area under YCZO section 1208.02(C), which requires the County to find that:

> *"The proposed change is appropriate considering the surrounding land uses, the density and pattern of development in the area, any changes which may have occurred in the vicinity to support the proposed amendment and the availability of utilities and services likely to be needed by the anticipated uses in the proposed district."*

As stated, LUBA has already determined that, in the original proceedings, the applicant demonstrated compliance with this standard, and County findings addressing the standard are adequate. As part of its analysis of the evidence relied upon by the County, LUBA concluded that the record contains "substantial evidence supporting the county's findings regarding adverse impacts from odor, noise, and dust." LUBA Opinion, p. 18. The Board has therefore already considered the appropriateness of the use in relation to surrounding land uses, including residential uses, and has concluded that the zone change is appropriate in terms of the limited impacts likely to occur due to odor, noise and dust from the proposed facility.

2.5 Meaning of phrase "proximity of the proposed use to residential areas and meteorological factors such as seasonal prevailing wind direction and velocity."

2.5.1 The express language of Plan Policy V.A.1.b. requires that the Board, under specified circumstances, consider "*proximity of the proposed use to residential areas and meteorological factors such as seasonal prevailing wind direction and velocity.*" The text and context of the provision leads the Board to conclude that it directs the Board to consider meteorological factors that may tend to aggravate or mitigate the impact of a proposed facility on nearby residential areas. Thus, the Board is not required to consider all meteorological phenomena that might be in play in the area of the proposed development, but only those meteorological factors likely to create, exacerbate, or mitigate impacts on nearby residential areas.

2.5.2 Webster's Third New International Dictionary, (Unabridged, 1993) defines "meteorological" to mean, "relating to meteorology." Webster's defines "meteorology" to mean, "**1 a :** a science that deals with the atmosphere and its phenomena (as variations of heat, moisture, or winds)—compare CLIMATOLOGY **b :** a science that deals with weather and weather forecasting **2 :** the atmospheric phenomena and weather of a region." Webster's defines "weather" to mean " **1 :** state of the atmosphere at a definite time and place with respect to heat or cold, wetness or dryness, calm and storm, clearness or cloudiness ; meteorological condition."

2.5.3 The County finds that the only meteorological factors that are relevant to this discussion are the ones raised by participants in the original and remand proceedings: "seasonal prevailing wind and velocity, " and temperature inversions. The Board has received no evidence suggesting that any other weather phenomena are relevant to this decision, or would tend to create, exacerbate, or mitigate to any significant degree the impact of the facility on nearby residential areas. The Board concludes that meteorological factors other than temperature inversions and seasonal prevailing wind and direction are not significant in assessing the possible impacts of the proposed facility, and accepts as true and adequate the information regarding temperature inversions and seasonal prevailing wind direction and velocity submitted by the applicant.

3. The purpose and underlying policy of Plan Policy V.A.1.b. In the Yamhill County Comprehensive Plan, the "Introduction to 1979 Amendments (Ord. 206)" states:

"Implementation of the County goals and policies can occur several ways. Many are implemented through county ordinance. Other goals and policies will apply to individual issues or proposals put forth by both private and public sectors. Still others will require action dependent upon the County's fiscal resources through time.

When certain goals and policies conflict with others, the final decision will require a weighing of the merits in order to achieve a balanced decision. Through time, the goals and policies are guides for consistent, reasonable and balanced land use decisions."

3.1 As described above, the Board interprets Plan Policy V.A.1.b. to relate to industrial and other uses likely to pose more than an incidental threat to air quality. The policy is not implicated if the applicant demonstrates that the facility will be subject to a "minimal" or "regular" Air Contaminant Discharge Permit, and is likely to receive and to be operated in conformance with the permit. When implicated, the policy requires the Board to consider wind direction, velocity, and other relevant meteorological phenomena, and whether these phenomena are likely to cause, exacerbate, or mitigate air quality impacts to nearby residential areas.

3.2 The policy itself is located in Section V. of the plan, entitled "Environmental Quality." Subsection A. is entitled "Air, Water and Land Resources Quality." The "Goal Statement" under Section V.A. is:

"1. To conserve and to protect natural resources, including air, water, soil and vegetation and wildlife, from pollution or deterioration which would dangerously alter the ecological balance, be detrimental to human health, or compromise the beauty and tranquility of the natural environment."

3.3 The Goal stated in Section V.A. is clearly aspirational, and not an approval criteria. It states an ideal that serves as a basic consideration for the County when developing the implementing regulations in its zoning ordinance. To further understand the context and purpose of policy V.A.1.b, all of the policies under Goal Statement V.A.1. are listed here:

"a. Yamhill County will cooperate with the State Department of Environmental Quality in enforcing state and federal regulations designed to achieve a high air quality.

b. Yamhill County will, in making land use decisions relative to industrial or other uses likely to pose a threat to air quality, consider proximity of the proposed use to residential areas and meteorological factors such as seasonal prevailing wind direction and velocity.

c. Yamhill County will cooperate with the State Department of Environmental Quality in implementing noise control regulations.

d. Consideration will be given to adopting an ordinance requiring environmental impact review of all major public and private development proposals and the social and economic costs and benefits associated with any particular development proposal will be properly evaluated prior to public endorsement or approval.

e. In order to maintain and improve the quality of the county's air, water and land resources, Yamhill County will seek to minimize irreversible and other long-term impacts in its development of energy resources; support efforts, where feasible, for the appropriate and efficient recovery of energy

as a means to reduce waste problems, and encourage a program to recover and recycle used motor oil."

3.4 The context of policy V.A.1.b. supports the Board's conclusion that it is aspirational, and not an approval criteria. Goal V.1. and its related policies describe the County's interest in considering the environmental impact of its decisions, and addressing conflicts between proposed development and environmental amenities. If the goal and its policies were not aspirational, but were instead taken at face value as approval criteria, no development could be approved, because all development proposals impact the natural environment. Considering the language of the policy, the comprehensive plan introduction, the aspirational purpose of Section V. of the plan in general, as well as the specific purpose of policy V.A.1.b., the Board concludes that the policy is not an approval criteria, and is satisfied if the record demonstrates that the Board considered the extent to which meteorological factors, such as seasonal prevailing wind direction and velocity, cause, exacerbate, or mitigate the impact on nearby residential areas of a facility that is likely to pose a threat to air quality.

3.5 When interpreting policy V.A.1.b., the Board finds that there is no significant difference between the "purpose" of the policy, or its "underlying policy," and that for the purpose of this discussion the two are one and the same.

3.6 The Board's consideration of the purpose and underlying policy of policy V.A.1.b. does not alter its conclusion that the policy does not require the applicant to address air quality impacts other than to comply with a condition of approval that the applicant obtain all necessary permits required by DEQ.

3.7 It is also important to note the Board's responsibility, when interpreting its comprehensive plan policies, to weigh, or balance, potentially conflicting policies. As stated, the introduction to the 1979 amendments to the plan requires such balancing in order to resolve conflicts between provisions, and to provide consistent decision making over time.

In this regard, the Board notes the extensive findings made in Ordinance 650 interpreting and addressing other Yamhill County Comprehensive Plan Policies. For instance, Comprehensive Planning Goal 1.H.1 and Policies 1.H.1., 1.H.1.b., and other policies under Goal 1.H.1, promote the goal of locating industrial uses within urban growth boundaries, in areas that are plan designated for industrial uses. Goal 1.H.1. encourages the County to "protect the stability and functional aspect of industrial areas by protecting them from incompatible uses." Policy 1.H.1.a. also urges the County to protect industrial areas "from encroachment of other urban uses." In weighing the relative importance of Policy V.A.1.b. against these other goals and policies, the Board finds that industrial facilities capable of complying with applicable state and federal environmental regulations should be located, whenever possible, within urban growth boundaries, (UGB) and within plan-designated industrial areas. In this instance, the Board declines to interpret Policy V.A.1.b. in a manner that would foreclose an industrial use from locating within a UGB in a plan-designated industrial area.

4. Whether the county's interpretation of plan policy V.A.1.b. is contrary to a state statute, land use goal or rule that the comprehensive plan provision or land use regulation implements.

4.1 Section V. of the Yamhill County Comprehensive Plan is entitled, "Environmental Quality." Subsection "A" is entitled "Air, Water and Land Resources Quality." Notes in the Introduction to the Plan indicate that, while the plan has been updated to meet the requirements of the Statewide Land Use Planning Goals, the original Comprehensive Plan predated the adoption of those goals. A notation in the plan text indicates that Plan Policy V.A.1.b. pre-dated adoption of the Statewide Goals. Because Plan Policy V.A. has the identical title to Statewide Land Use Planning

Goal 6, the Board concludes that Plan Policy V.A. is intended to carry out Goal 6, which reads:

> *"To maintain and improve the quality of the air, water and land resources of the state.*
>
> *All waste and process discharges from future development, when combined with such discharges from existing developments shall not threaten to violate, or violate applicable state or federal environmental quality statutes, rules and standards. With respect to the air, water and land resources of the applicable air sheds and river basins described or included in state environmental quality statutes, rules, standards and implementation plans, such discharges shall not:*
>
> *1. exceed the carrying capacity of such resources, considering long range needs;*
>
> *2. degrade such resources; or*
>
> *3. threaten the availability of such resources.*
>
> *Waste and Process Discharges—refers to solid waste, thermal, noise, atmospheric or water pollutants, contaminants, or products therefrom. Included here also are indirect sources of air pollution which result in emissions of air contaminants for which the state has established standards."*

4.2 Plan policy V.A.1.b. has been acknowledged by the Land Conservation and Development Commission as being in compliance with the Statewide Land Use Planning Goals, including Goal 6. Goal 6 itself is therefore not directly applicable in these proceedings. However, Goal 6 supports the Board's interpretation of Plan Policy V.A.1.b. First, LUBA has established that "Goal 6 does not require a local government to demonstrate that its decision will not cause any adverse environmental impact on individual properties." Salem Golf Club v. City of Salem, 28 Or LUBA 561, 583 (1995). Second, Goal 6 is oriented to the kinds of discharges regulated by state and federal agencies, and states that those discharges "shall not threaten to violate, or violate applicable state or federal environmental quality statues, rules and standards." The Board's interpretation of policy V.A.1.b., that it is limited in scope to the types of emissions that DEQ regulates, is completely in sync with Goal 6.

D. Additional Findings of Fact and Conclusions of Law

1. The remand hearing was strictly limited to the acceptance of evidence and argument regarding the applicability of YCCP V.A.1.b. and whether the applicant has demonstrated compliance with the policy. The Board also finds that evidence in the original record, and findings adopted to address other plan policies and standards in the County's zoning code, support the Board's determination in this proceeding that Plan Policy V.A.1.b. has been met.

2. In the original findings adopted by the Board in this matter, the Board found that the facility would be capable of complying with DEQ regulations governing air quality, and attached a condition requiring that the applicant obtain all necessary DEQ permits. To fully address policy V.A.1.b., consistent with the above interpretations, the Board adopts the following findings.

3. Air Quality Information Submitted by the Applicant

3.1 The applicant submitted information in this proceeding regarding the DEQ permit process for its proposed facility. The applicant described three basic types of air contaminant discharge permits that are issued by DEQ: "minimal," "regular," and "Title V." Facilities that will

emit major quantities of pollutants (like the Smurfit Mill) operate under a Title V "major source" Air Contaminant Discharge Permit (ACDP). Very small facilities may under certain circumstances obtain a "minimal" permit, if the facility will emit less than five tons of particulates per year, and less than ten tons per year of any gaseous substance. All other facilities, including facilities of the type proposed for the subject parcel, are subject to a "regular" ACDP. The applicant has established that it intends to move an existing facility from a location on Farmington Road, and that the existing facility operates under a regular ACDP. Odor is a pollutant that is currently regulated by DEQ, and DEQ requires that the applicant control odor emissions at the Farmington Road facility.

3.2 The applicant stated that air quality impacts (including odor) from its proposed facility would be minimal, and would at no time reach levels that would be considered a significant health risk or nuisance, or would upset the quiet enjoyment of nearby residences. To support this position, the applicant submitted letters from six neighbors of the proposed facility at its current location on Farmington Road, and a map showing the location of the residences in relation to the facility. As stated, the applicant is proposing to move the Farmington Road facility to Tax Lot 3230-100. The letters are summarized as follows:

3.2.1 A letter from John and Luann Court, dated October 5, 1999, states that they have been neighbors of Baker Rock for over 15 years, and have never experienced a problem with Baker Rock. The letter also states: "We have never detected any offensive odors being emitted from the Asphalt Plant." The Courts are located east-southeast of the facility at its current location.

3.2.2 A letter from Eshraghi Nursery, dated October 14, 1999. The letter states, in relevant part: "We have been on this location since 1990. * * * I have never experienced any type of odor coming from the asphalt plant which is located directly behind both our growing area and retail store." The Eshraghi Nursery is located to the southwest of the facility at its current location.

3.2.3. A letter from Ron and Lucille Wold, dated October 15, 1999. The letter states, in relevant part, "We have lived as neighbors of Baker Rock Co. on its eastern side for 12 years. In that time we have not been aware of any condition that bothered us. There has been no odor of offensive emissions from an asphalt plant established there, we are not even aware of when that was done. Occasionally we will notice a plume of white steam so we know only by that that it is in operation."

3.2.4 A letter from Tualatin Hills Park & Recreation District, Jenkins Estate Center Supervisor, dated September 28, 1999, which states, in relevant part, "For many years we have been neighbors with Baker Rock and have a positive relationship with them. Never have we had a complaint from a client or staff regarding any odor from the Baker Rock Facility." The Jenkins Estate is located northeast of the facility at its current location.

3.2.5 A letter from Cooper Mountain Kennel, dated October 1, 1999, which states, in relevant part: "There has never been an odor from the Baker plant * * *" The Cooper Mountain Kennel is located due north of the facility at its current location.

3.2.6 A letter from Victor Pinkerton, dated October 17, 1999, which states that he has been a neighbor on Baker Rock's southern boundary for 19 years. The letter also states that "no problem exists" with the asphalt plant, and that "Odor, which may occur 2 times a year in the early morning calm, is nothing more than you would experience driving by a road being paved and for about the same length of time. It is not objectional or even worth considering for that matter."

3.3 Letters from neighbors of the facility at its current location support the applicant's claim that its facility will not generate excessive odors, and is not likely to create nuisance air quality conditions for surrounding uses at its proposed location. (Notably, the letters also support information submitted by the applicant regarding temperature inversions and wind direction and velocity in the Willamette Valley. Of the letters submitted, the only person to ever smell asphalt smelled it in an "early morning calm," no more than twice per year, along the southern boundary of the property.)

3.4 The Board recognizes that most industrial uses have nuisance characteristics or pose health risks, but specifically finds that the nuisance characteristics and health risks of the proposed facility are not significant, and are not likely to have a significant impact on nearby residences. The letters also describe the applicant as a conscientious neighbor, responsive to community needs. This aspect of the letters supports the applicant's claim that the proposed facility will be well run, minimizing the risk of incidents which may cause episodes of unacceptable air quality. The Board finds that this evidence, in conjunction with other evidence and testimony received in the original hearings and remand hearing, supports a conclusion that the proposed facility is unlikely to pose a threat to air quality, or to create health risks or nuisance conditions for residential areas in proximity to the proposed use or elsewhere.

3.5 The applicant has also stated that production from the plant will vary from hour to hour, day to day, and season to season. The applicant has stated that most paving occurs during the summer, and that although the plant will operate year round, the bulk of production will occur during the period of June, July, August and September, when weather is most conducive to construction projects. The Board received no information disputing the applicant's testimony in this regard.

4. Air Quality Information Submitted by Opponents

4.1 The City of Newberg participated in the remand proceeding through City Planner Barton Brierley, who submitted evidence related to air quality, including a web page from the Government of Newfoundland and Labrador, and a web page from the Tennessee Department of Environment and Conservation. The Newfoundland web page states that asphalt plants have the potential to emit considerable quantities of dust into the atmosphere, and to have other problems related to the spillage of petroleum products and waste disposal, necessitating "a standardized set of procedures to ensure adequate controls are in place at all sites and that pollution control equipment is being correctly used and maintained." The Tennessee web page states that, in Tennessee, an asphalt plant is an "air contaminant source" that requires a construction permit from the Tennessee Division of Air Pollution Control. Neither of these web pages constitutes substantial evidence of potential air quality impacts that have not been considered by the Board in the original proceedings or in these remand proceedings. The applicant will be subject to the jurisdiction of DEQ, and has already stated its intent and ability to obtain a "regular" Air Contaminant Discharge Permit from DEQ.

4.2 The City also submitted a letter to the Board dated October 27, 1999, which states that "The air quality threats of the asphalt plant are documented in many places in the record, including pages 180, 260, 263, 265, 266, 278, 283, 284, 286, 287, and 288." The documents referred to by the City are summarized as follows:

4.2.1 Record, p. 180—Letter from Mrs. Pauline Ogden, dated 6/8/98. Ms. Ogden states in her letter that asphalt smells when it is spread on roads, and that: "I can't fathom that there would be no fumes from the plant that is making it and loading those trucks with the hot tarry stuff and driving it through the neighborhood."

In her letter, Mrs. Ogden cites no evidence to support a claim that the plant will emit odors. She only states that she believes that it will. The applicant noted in response that when she is referring to "hot tarry stuff" being driven through the neighborhoods, she may be confusing asphalt trucks with torch-down roofers, who transport odorous loads of roofing tar. Torch-down roofing is, according to the applicant, virtually unregulated, and emits smoke and strong odors while it is being transported and applied. As for concerns that the proposed facility will emit a level of odor commensurate with the level emitted by the laying of asphalt pavement, the applicant testified that, according to information at EPA's web site, the largest source of emissions from asphalt is the road surface itself, during application. Contrary to the City's assertion, there is nothing in Mrs. Ogden's letter "documenting" a threat to air quality from the proposed facility.

4.2.2 Record, p. 260—Letter from Lisa Jenkins, Duck Pond Cellars. Ms. Jenkins states in her letter that wineries need protection from asphalt batch plants. She provides no evidence of this, nor does she provide any information regarding how emissions from the proposed facility would ever reach her winery, or any other winery. The data on wind velocity and direction in the record does not support a theory that the proposed facility will harm the grapes at Duck Pond Cellars, which is not in close proximity to the plant. This letter also does not document a threat to air quality from the proposed facility.

4.2.3 Record, p. 263—This is a newspaper article about a facility in Bend, not run by the applicant, which says nothing about air quality, and is totally irrelevant to this proceeding.

4.2.4 Record, p. 265—This is an editorial by Keith Hay, which also says nothing about potential air quality impacts from the facility, and is also totally irrelevant.

4.2.5 Record, p. 266—This is a letter to the editor of the Newberg Graphic from Kelly Highley, criticizing DEQ. There is no evidence in this letter relating to asphalt plants, much less evidence documenting that an asphalt plant represents a "threat to air quality."

4.2.6 Record, p. 278—This is the same letter from Keith Hay, mentioned above, which does not discuss air quality impacts from the facility, and does not document that an asphalt plant represents a "threat to air quality," as claimed by the City's letter.

4.2.7 Record, p. 283—Letter from Kelly Highley, undated. This letter contains no documentation regarding threats to air quality or asphalt plants. Its only references to air pollution are the following: "Then there is the noise and air pollution," and "And let's not forget about the smell."

4.2.8 Record, p. 284—Letter from Nancy Lesser, stating: "Rains & wind always develop from the SW—so all the noxious fumes would come my way & then into Newberg proper." This information is refuted by the City's own data on "average winds" and is also not information documenting that an asphalt plant represents a "threat to air quality."

4.2.9 Record, p. 286—Letter from Anna L. Beach. Referring to the Smurfit Mill, she stated that she sees a "trace of some substance on her car on clear days, and I'm sure we don't need any more fall outs, from the Asphalt plants." There is no evidence in this letter that there would be any "fallout" from the asphalt plant, which would employ a bag house to

contain emissions, and would not be a "major source" of air contaminants, like the Smurfit Mill.

4.2.10 Record, p. 287—Letter from Steve Wozniak. This letter states that "prevalent winds" are toward Newberg, and that "weather inversions would put emissions at ground level." This letter is a comment on the prevailing winds and meteorological conditions, but contains no evidence or "documentation" that an asphalt plant represents a "threat to air quality."

4.2.11 P. 288—Letter from Linda Mealue. This letter says, without any documentation, that an asphalt batch plant would be unhealthy. It also states that the plant would pollute the air, "Especially on our many inversion days." Again, there is no documentation in this letter of a "threat to air quality," as claimed by the City.

4.3 The City's letter points to every instance in the record where opponents either used the word "inversion" or offered unsubstantiated fears regarding environmental degradation from the plant. The letters themselves don't tend to prove anything except how certain people feel about the proposal, and do not, separately or in combination, constitute substantial evidence of a "threat to air quality" posed by the proposed facility.

4.4 Mrs. Pauline Ogden testified at the hearing. She described potential air quality impacts from the proposed facility, and stated that she talked to Kevin McGillivray at DEQ, who stated that an asphalt plant produces hydrocarbons, volatile organic compounds, and semi-organic compounds, and that all of these substances pose health risks. She stated that fugitive emissions will also be released from the facility, and provided other air quality information. The Board notes that, in response, the applicant stated that its facility will be fully permitted by DEQ, and will be operated in full conformance with its DEQ permit. The applicant stated that, the better the operator, the less likely there will be fugitive emissions due to mismanagement. The letters from neighbors of the plant at its existing location suggest that the applicant is a good neighbor and a conscientious member of the community in which the facility is currently located. The applicant also read into the record a portion of an Oregonian article, which states, in relevant part:

> "State environmental officials side with Huddleston's assertions that asphalt plants are generally clean and nonpolluting.
>
> "Steve Crane, an engineer with the stated Department of Environmental Quality, monitors asphalt operations. Of the 51 operations he has inspected this year, not one was out of compliance with strict state regulations.
>
> "'There's always a little black smoke that goes up when they fire up the boilers,' he says, 'But most of them I've seen are pretty doggone clean.'"

The Board notes Mrs. Ogden's concerns, but finds that the applicant is capable of operating the proposed facility in accordance with state environmental laws. The Board has attached a condition requiring that the applicant obtain all DEQ permits necessary for operation of the facility, and has concluded that the applicant is capable of operating the facility in conformance with law.

4.5 Pat Haight testified at the remand hearing, essentially, that if there is any air pollution that would be generated by the facility, the County should deny the application. The Board declines to interpret Plan Policy V.A.1.b. in the manner proposed by Ms. Haight. Ms. Haight also stated her belief that the trucks transporting asphalt from the site will emit odors, from asphalt and from diesel exhaust. The Board notes Ms. Haight's concerns, but also notes that the County

does not regulate diesel or other vehicle exhaust—that is DEQ's responsibility. The Board also notes that the trucks will be traveling on a designated truck route. The applicant has stated that trucks transporting asphalt are not a significant source of asphalt odors, and Ms. Haight did not provide any evidence, other than her personal belief, disputing the applicant's claims.

4.6 Virginia Jungwirth testified at the remand hearing, with regard to air quality, that she and her husband smelled air pollution at their home near the proposed site, and later determined that the Smurfit plant was burning tires. The Board notes these concerns, but finds that they are not directly relevant to the applicant's proposal, or to the findings required by plan policy V.A.1.b.

4.7 Chris Lauringer testified that, as a petroleum derivative, asphalt is carcinogenic. The Board notes Ms. Lauringer's concerns, but repeats that air emissions from the facility will be regulated by DEQ, and declines to impose a "no impact" standard with regard to air quality impacts, under policy V.A.1.b.

5. Meteorological Information Submitted by the Applicant

5.1 The applicant submitted a letter from a meteorological consultant, Dr. Fred W. Decker, describing the seasonal prevailing wind direction and velocity in the vicinity of its proposed facility. Dr. Decker also submitted information documenting his expertise in the areas of meteorology, climatology, physics, astronomy and education, and the Board accepts that Dr. Decker is an expert in the field of meteorology.

5.2 Dr. Decker's letter states, in relevant part:

> "You have asked that I provide data and analysis regarding meteorological factors such as seasonal prevailing wind direction and velocity at a site south of Newberg, OR, along the Willamette River. The site has been identified to me as Tax Lot 3230-100 and is a 20 acre parcel. I understand that the proposal is to place an asphalt batch plant on the northern end of the property along 14th Street near Waterfront Street.
>
> "Pertinent wind speed and direction data are included in the following data sets:
>
> "Summer and winter wind roses for Newberg, Feb. '95 through Sept. '96.
>
> "Daily weather summary data for Newberg for the year ending 30 Sept. 1999.
>
> "Tabulated wind rose data for the most recent year at Aurora, OR, and at Salem, OR.
>
> "Long-term wind roses for Portland and Salem airport stations.
>
> "I have examined the foregoing wind data sets and considered them in the context of relevant seasonal weather patterns dominating the Willamette Valley. This examination led to the following summary statement of conclusions as to the seasonal prevailing winds at the Newberg site identified above for the asphalt batch plant.
>
> "During winter (Jan., Feb., Mar.) the prevailing wind blows from south at an estimated average speed of 8 mph. The speed at night (8 pm to 8 am) decreases on the average. The most frequent calm occurs in January about 35% of the time at night. The least frequent calm occurs during days (8 am to 8 pm) in February only 7% of the time.

"In spring (Apr., May, June) the prevailing wind blows from the west-southwest at estimated average speed of 7 mph. Calm occurs most often in April at night (31%) and least often in May during days (14%).

"In summer (July, Aug., Sept.) the prevailing wind blows from north at an estimated average speed of 5 mph. Calm occurs most often at night in September (54%) and least often in September days (25%).

"In fall (Oct., Nov., Dec.) the prevailing wind blows from south at estimated average speed of 6 mph. Calm occurs most often in October at night (30%) and least often in November during days (10%).

"The foregoing prevailing winds result from the dominance of storms approaching from the west beginning in October and continuing into spring interspersed with fair weather patterns increasing in May and June. In summer the dominant fair weather pattern prevails with weaker average wind speeds but with dominant daytime vertical convection currents rising from the warmer surface regions. This continues into October on the average until arrival of the fall storms. Each approaching storm from the west has south winds ahead of it for a longer time that the westerlies behind it, and this results in the prevalence of the south wind. The major fair weather pattern has a "ridge" of high pressure offshore to the west and north winds over the land. When this persists in summer or occurs at any time, northerly winds blow in the Willamette Valley."

5.3 The meteorological information submitted by the applicant establishes that during the times of highest plant output, (June, July, August and September) prevailing winds blow away from nearby residential areas. In June, winds are toward the Smurfit mill, at an estimated average speed of seven mph. In July, August, and September, prevailing winds are toward agricultural areas in Marion County, at an estimated average speed of five mph. Such winds would tend to mitigate or prevent potential air quality impacts from the proposed facility on residential areas in proximity to the site. Prevailing winds from the west-southwest during April, May and June would also tend to direct any emissions from the plant toward the Smurfit Mill, and also appear likely to mitigate potential air pollution impacts from the proposed facility. At other times of the year, prevailing winds are from the south, at 6-8 mph. The Board has not conducted pollutant transport modeling studies to fully assess the impacts of such winds on nearby residential areas, but does not interpret policy V.A.1.b. as requiring either the County or the applicant to conduct such studies. As stated, DEQ is responsible for regulating air quality impacts, and the County does not intend to regulate such impacts through policy V.A.1.B.

5.4 The Board finds that prevailing wind data submitted by the applicant is credible, reliable, and sufficient for the purposes of allowing the County to consider "seasonal prevailing wind direction and velocity" under policy V.A.1.b.

6. Meteorological Information Submitted by Opponents

6.1 The City of Newberg's letter dated October 27, 1999, also contained information regarding prevailing wind direction and velocity. The letter states:

"The City of Newberg has conducted wind pattern studies at its Waste Water Treatment Plant. This plant is within a mile of the subject property, and wind patterns there are similar to those at the subject property. These wind pattern studies show that prevailing wind patterns are from the north, northeast, south, and southwest (See Attachment C). Average wind speed is

> about 3 miles per hour. These wind patterns are also documented on page 284 and 287 of the record. These low average wind speeds tend to cause pollutants to drift in the air rather than being dispersed."

Exhibit C to the letter contains two wind roses, one exhibiting data on winds during May through October, and the other during November through April. The wind roses are not self-explanatory. Neither diagram indicates the period in which data was collected, or whether data from more than one season was collected. Mr. Brierley testified on behalf of the City regarding the data, but did not provide a detailed explanation in addition to his letter. His letter concluded that "Prevailing wind patterns would slowly carry pollutants from the site to nearby residential areas to the north and northeast."

6.2 The applicant's attorney rebutted Mr. Brierley's testimony. Todd Sadlo stated that the data cited in the City of Newberg's letter appeared to have been gathered and tabulated or analyzed without the assistance of a meteorologist. The applicant's consulting meteorologist used data from the sewage treatment plant in his analysis, but indicated to the applicant's attorney that the data from the sewage treatment plant was not adequate, standing alone, to establish *prevailing* winds. According to the applicant's attorney, a wastewater treatment facility official told the applicant's consulting meteorologist that the anemometer at the sewage treatment plant is too close to a roof line, and the readings must be adjusted upward to account for wind blockage. It is not clear whether the readings provided in the City's letter and exhibits have been adjusted to account for the location of the anemometer. The station is also not a certified meteorological station, so it is unclear whether it provides accurate readings. The applicant's attorney also noted that the wind roses attached to Mr. Brierley's letter appear to show winds predominantly from north to south in the period May through October, which would mitigate any air pollution impacts on residential areas in Newberg during the period in which most production will occur at the facility.

6.3 The Board considered all information on prevailing wind direction and velocity that was provided or referenced during the hearing process, and finds that information regarding prevailing wind direction and velocity that was submitted by the applicant is more accurate and complete than the information submitted by the City of Newberg. To the extent there are conflicts between data submitted and analysis conducted by the City and by the applicant, the Board resolves such conflicts by relying on data submitted, and analysis conducted, by the applicant's meteorologist.

6.4 The City's letter also provided information for the Board to consider regarding the incidence of temperature inversions in the Newberg area. To document the incidence of temperature inversions as a meteorological factor relevant for the Board to consider under Plan Policy V.A.1.b., the City's letter cited a statement in the Yamhill County Comprehensive Plan, 1974, page 26, as follows:

> "While Yamhill County and the Willamette Valley may generally claim an equable and salubrious climate, the Valley is virtually enclosed by mountains and is poorly ventilated during periods of prolonged temperature inversions, giving rise to acute air pollution conditions, particularly in late summer and fall."

The City's letter also stated that additional documentation regarding inversions can be found at pages 179 and 288 of the record. Page 179 is a letter from Linda D. Mealue, received on June 9, 1998. It states, in relevant part:

> "A consideration to be looked at is Newberg's many inversion days & often a week or more affecting all of Newberg's 17,000 people. Many of these

people are elderly, children & infants, think of their health. If this plant were to the north of Newberg perhaps it would not harm so many people." (emphasis in original)

Page 288 of the original record is also from Linda Mealue. It states, in relevant part, and without documentation:

"This plant would be unhealthy for people with sinus, allergy, skin and respiratory problems. It is also a very likely source of cancer. * * * this plant would be polluting to our river & air (Especially on our many inversion days)!"

6.5 In response to the information submitted by the City of Newberg, the applicant's attorney stated that he read the statement from the 1974 County Comprehensive Plan to Dr. Decker, the applicant's consulting meteorologist, and that Dr. Decker stated that he did not know of "prolonged" inversions in either Newberg or the Willamette Valley generally. Dr. Decker stated that temperature inversions usually occur at night, in winter, and not usually in the summer. All-day inversions are most likely to occur only in the winter. Dr. Decker also stated that such inversions usually disappear in the morning, because the ground heats the cooler air near the ground and it rises, mixing with the already warmer air above.

6.6 The applicant's attorney also indicated that he had received an e-mail message from Dr. Decker on the morning of the hearing, documenting that most true inversions occur during the winter, at night, and that they are least likely to occur in March through October. Quoting from Dr. Decker's e-mail, Mr. Sadlo, an attorney for the applicant, stated:

"Stagnation and trapping of emissions in surface air occurs with an inversion in which the surface and the air next to it is actually cooler than the air aloft. This inverts the ordinary situation with wind movement and the air temperature progressively cooler at higher levels.

* * *

"The stagnation occurs mostly in the late fall and early winter, March and October being the transition months of decreasing occurrence and increasing occurrence, respectively.

* * *

"Whereas the winter occasions of inversion can last through periods of more than one full day, the inversions that develop during the night in late spring, summer, and early fall get destroyed by the solar heating of the surface so that they survive only briefly after dawn.

"An activity which releases heat to the air causes that air to rise buoyantly in convection currents going upward into the air above the inversion. Thus, a heat-releasing process like the batch asphalt plant actually propels air around it upward when the wind is calm at the surface. The pattern of air movement then resembles the smoke movement from a fire, the visible smoke rising some distance before getting carried laterally to the upper air currents. This beneficial convection upward occurs in all inversions but the very deepest and most extreme, those having the greatest temperature difference between surface chill and upper air warmth."

6.7 Considering the information regarding temperature inversions presented by all

parties to the original and remand hearings, the Board concludes that such inversions do occur, and when occurring, may exacerbate air pollution impacts of the proposed facility. The fact that such inversions are most likely to occur at night, in winter, decreases the potential impact from this meteorological phenomenon, considering that the proposed facility is not likely to be operated at night, and will operate at higher capacity during the drier summer months, when the incidence of the phenomenon decreases. The fact that the facility will produce heat also tends to mitigate the impact of a temperature inversion on operation of the facility, by causing pollutants to rise above the inversion.

7. Description of nearby residential areas

7.1 The Board made findings in the original proceedings on this matter that described residential uses in the area of the proposed use. The Board hereby finds that those findings are adequate to meet the requirement of Policy V.A.1.b that the Board "consider the proximity of the proposed use to residential areas," and that no further findings in that regard are necessary.

7.2 Exhibit "A" to Ordinance 650, page 3, paragraphs 3 and 4, describe residential uses in proximity to the proposed use. Finding C.1.2.4.1 (Ord. 650, Exhibit A, page 9) also describes the location of residences in relation to the site. No additional substantial evidence or information was received by the Board in the remand hearing that detracts in any significant way from the conclusions made in the original findings regarding the location and proximity of residential uses in relation to the proposed facility.

7.3 At the remand hearing, the City of Newberg submitted additional information for the Board to consider regarding residential areas in proximity to the proposed use. The City submitted a map (Attachment B to Barton Brierley letter dated October 27, 1999), showing homes and residential areas in proximity to the proposed use. In its consideration of proximately located residential areas, the Board notes that the information provided by the City supplements, and does not conflict with, information considered in the original proceedings.

8. Conclusions regarding impacts from the proposed facility on nearby residential areas that are caused, exacerbated, or mitigated by meteorological conditions, including seasonal prevailing wind direction and velocity

8.1 In the original proceedings on this matter, the Board found that "air discharges (from the facility) will fully comply with all state and federal requirements and will not constitute a threat to the environment." Findings, Ord. 650 Exhibit A, p. 11. Based on testimony and evidence submitted in the original proceedings on this matter and at the remand hearing, the Board finds that the proposed facility is not "likely to pose a threat to air quality." However, the applicant has also submitted sufficient information to allow the County to fully consider issues that the Board would need to consider if it determined that the facility *is* likely to pose a threat to air quality, and the Board has fully considered those issues.

8.2 Combining information in the record regarding nearby residential uses, air quality information relevant to the proposed facility, and information regarding seasonal prevailing wind direction and velocity and other relevant meteorological phenomenon, the Board finds that nearby residences may, on occasion, smell asphalt. Conflicting evidence has been received in this regard, and the Board concludes that, even if residents in close proximity to the proposed facility or elsewhere occasionally smell asphalt, such smells may or may not be attributable to the proposed facility. In any case, the Board concludes that such odors will be sporadic, and will not present a significant risk to human health, or significantly detract from the livability of residences, businesses or other uses in proximity to the proposed facility or

elsewhere. During times of highest plant output, (June, July, August and September) prevailing winds blow toward the Smurfit mill or to the south, away from most residential areas, and away from those residences in closest proximity to the proposed facility. In short, following its consideration of the factors that the Board is directed to consider under Policy V.A.1.b., the Board continues to conclude that the applicant has met its burden of demonstrating that the requested zone change and similar use determination, as limited by the Limited Use Overlay Zone, meets all applicable plan and zone requirements.

9. Conclusion

For the reasons stated herein the Board concludes that the applicant has demonstrated compliance with Yamhill County Plan Policy V.A.1.b.