

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

In the Matter of an Ordinance Amending the)
Official Zoning Map from MR-2 (Mineral/Resource)
District) to HI (Heavy Industrial District))
on a portion of a 20 Acre Tract Known as Tax Lot) **ORDINANCE 650**
3230-100; Applicant Baker Rock Crushing Company;)
Planning Docket Z-01-98, SU-01-98; and Declaring an)
Emergency.)

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON (the Board) sat for the transaction of county business in special session on August 4, 1998, Commissioners Ted Lopuszynski, Robert Johnstone, and Thomas E.E. Bunn being present.

WHEREAS, on February 9, 1998, the Department of Planning and Development received an application by Baker Rock Crushing Company ("applicant"), Planning Docket Z-01-98, SU-01-98, and WRG-01-98 to change the Official Zoning Map from MR-2 (Mineral/Resource District to HI (Heavy Industrial District) on an approximately 18 acre portion of a 20 Acre Tract Known as Tax Lot 3230-100, and from PWS (Public Works/ Safety) to HI (Heavy Industrial District), on Tax Lot 3229-2700, to consider aggregate processing and an asphalt batch plant as similar to permitted uses in the HI district, and to approve a Willamette River Greenway permit to conduct the processing and batching within the Greenway; and

WHEREAS, on March 5, 1998 and March 19, 1998, the Yamhill County Planning Commission held a duly noticed public hearing to consider the application and thereafter voted 4-4 on a motion to approve the application, and voted unanimously to forward the application to the Board with no recommendation from the Planning Commission; and

WHEREAS, on June 11, 1998, the Board held a duly noticed public hearing to consider the matter, at which testimony and evidence was received, and the application for the Willamette River Greenway permit and the zone change request for Tax Lot 3229-2700 owned by the City of Newberg were both withdrawn, and the evidentiary record was left open until June 18, 1998 for additional written testimony and evidence, until June 25, 1998 for rebuttal, and until June 30, 1998 for final argument, at which time the evidentiary record was closed. On July 2, 1998, the Board deliberated and voted unanimously to tentatively approve the application, as amended, with conditions, and directed staff to prepare an ordinance and findings for approval; and

WHEREAS, on July 30, 1998, pursuant to ORS 215.422(3), the Board reopened the evidentiary record, placed on the record the written and oral communications received by the Board concerning their decision and announced the content of such communications and the participants' right to rebut the substance of the communication at a special session of the Board on August 4, 1998. On August 4, 1998, the Board held a duly notice hearing, disclosed certain additional alleged ex parte contacts, and accepted evidence and testimony limited to rebuttal of the substance of the alleged ex parte contacts disclosed by the Board.

WHEREAS, the findings and conclusions attached hereto as Exhibit "A" and incorporated herein by this reference provide justification for approval of the application for the amendment to the Official Zoning Map of Yamhill County and the similar use determination, and that approval thereof is in the best interests of the citizens of Yamhill County; Now Therefore,

THE YAMHILL COUNTY BOARD OF COMMISSIONERS ORDAINS 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:

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, Wynoski Road, and Highway 219, to the extent the route remains as a designated truck route.

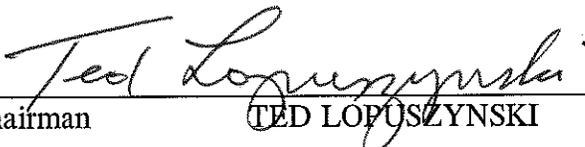
Section 5 This ordinance being necessary for the health, safety, and welfare of the citizens of Yamhill County, and an emergency having been declared to exist, is effective upon passage.

DONE at McMinnville, Oregon, this 4th day of August, 1998.

ATTEST

YAMHILL COUNTY BOARD OF COMMISSIONERS

CHARLES STERN
County Clerk

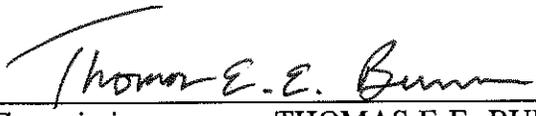

Chairman TED LOPUSZYNSKI

By: 
Carol Ann White


Commissioner ROBERT JOHNSTONE

FORM APPROVED BY:

JOHN C. PINKSTAFF
Assistant County Counsel


Commissioner THOMAS E.E. BUNN

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EXHIBIT "A"
ORDINANCE 650
FINDINGS FOR APPROVAL
ZONE MAP CHANGE APPLICATION
BAKER ROCK CRUSHING COMPANY
DOCKET NO. Z-01-98

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).

Under the applicant's proposal, the southeast corner of tax lot 3230-100 would retain its current zoning to accommodate plans for expansion of Roger's Landing Marine Park. The area that would remain in MR-2 zoning extends ± 350 feet west from the eastern boundary of tax lot 3230-100, which abuts Roger's Landing Marine Park. Zoning of this corner would remain MR-2, because parks are conditionally allowed in the MR district, but not in the HI district.

The applicant has indicated a willingness to lease, or otherwise make available, approximately one acre of riverfront property in this area to the county for park purposes, under terms to be negotiated. The applicant has also requested that the county determine that an asphalt batch plant is a heavy industrial use, similar to other allowed heavy industrial uses. The applicant intends to place an asphalt batch plant on the property, following site design review.

The City of Newberg was originally part of this application, and 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. Tax lot 3229-2700 was the site of the city's wastewater treatment plant, is currently zoned "Public Works/Safety" (PWS) and is being used by the city as a fill disposal area.

Based on the City's consent, the applicant originally requested that tax lot 3229-2700 be rezoned from PWS to HI, and that the county issue a Willamette River Greenway permit to allow installation of the plant within the greenway on tax lot 3229-2700. The City has since testified that it is opposed to the rezoning of its property and to the issuance of a greenway permit. Based on the city's objections, the applicant withdrew its request for a greenway permit on June 25, 1998. On July 2, 1998, the Board of Commissioners indicated that it was prepared to deny the request for rezoning of tax lot 3229-2700, because it appeared that the City had implicitly withdrawn its consent, and the applicant had no objection. The County has therefore denied the request to rezone tax lot 3229-2700, and also treats the actions of the City of Newberg and the applicant as a stipulated withdrawal of the request to rezone tax lot 3229-2700.

The City's consent to a zone change and issuance of a greenway permit for tax lot 3229-2700 was originally part of an arrangement between the City, the applicant, and Yamhill County, to facilitate expansion and improvement of Roger's Landing Marine Park. Even though the City of Newberg has withdrawn its support for the original "land swap" arrangement, the applicant has stated that it remains committed to facilitating park expansion onto its land.

Justification for Request:

A. Background Facts:

Tax lot: 3230-100

Applicant: Baker Rock Crushing Company

Owner: Hard Rock Enterprises

Parcel Size: ± 20.18 acres

Parcel Location: At the corner of 14th Street and Waterfront Street, south of the City of Newberg, on the Willamette River.

Parcel Zoning: County zone designation: "Mineral Resource" (MR-2) City of Newberg Comprehensive Plan Designation: "Industrial" (I). The Newberg Comprehensive Plan Map designation applies to this application, as described under "Applicable Review Criteria," below. Part of the parcel is within the Willamette River Greenway and Floodplain Overlay District.

Access: Fourteenth Street and Waterfront Streets. The existing access driveway is on Fourteenth Street, near College Street.

On-Site Land Use: Aggregate Processing Activities. The riverfront is developed with a dock and dolphin to allow the mooring of barges and the unloading of aggregate from the Willamette River and other facilities located along the river, which is then stockpiled on the southern end of the property near the river. At times, there has been a conveyor near the river for unloading barges and loading trucks. Rock crushing and processing are currently allowed uses of the property.

In the northwest corner of the property, above the floodplain, there are storage buildings and a truck scale. The site is fenced. There is also an indeterminant riparian area through the middle of the site, which includes a stream and several large ponds. The applicant has maintained these ponds and surrounding vegetation, and has proposed dedicating this natural area to public uses through a conservation/trail easement, which would connect Roger's Landing Marine Park to other publicly owned land south of the applicant's parcel.

Surrounding Planning, Zoning and Land Use: Tax Lot 3230-100 is within and completely surrounded by an area plan designated "Industrial" in the Newberg Comprehensive Plan. The boundary of the designated "Industrial" area is approximately 1500 feet at its closest location from the western boundary of the parcel, more than 300 feet from its closest point to the northern boundary of the property, and up to approximately 600 feet from the northern boundary. The area to the southwest of the property is also plan designated "Industrial," and includes the now closed Newberg Landfill. All land to the east of the property is also plan designated "Industrial." This area includes: 1) two parcels owned by the City of Newberg; 2) Roger's Landing Marine Park (which is owned by Smurfit Corporation and leased to Yamhill County); and 3) the Smurfit paper mill, an existing, 145 acre heavy industrial use. Roger's Landing is zoned AF-20. It contains parking lots, a boat ramp, and a water intake structure maintained by Smurfit Corporation. The park is surrounded on its northern and eastern border by the Smurfit Mill.

Of the two city parcels, tax lot 3229-2700 was originally part of this application. Tax lot 3229-2700 is situated at the base of a bluff along 14th Street, at the corner of 14th Street and River Street. It was once a wastewater treatment plant; is currently zoned "Public Works/Safety;" has no vegetation; and is currently being used by the City of Newberg as a fill area for waste soil, pavement, rocks and other materials. The southernmost of the two city parcels (Tax Lot 3229-2800) is vacant and contains almost no vegetation. It is also zoned "Public Works/Safety."

To the south, the subject parcel abuts the Willamette River and the now closed Newberg Landfill, which is owned by Yamhill County. The closed landfill will be subject to post-closure monitoring activities for the next 50-60 years, but is otherwise a vacant, grassy hill with vegetated riparian areas that are subject to annual flooding. To the west, on the eastern side of Waterfront Street, are two parcels containing dwellings. One of the dwellings is in a dilapidated condition and appears vacant. There are other residences on Waterfront Street. This area is zoned "Very Low Density Residential," 5 acre minimum (VLDR-5), and as stated, is plan designated "Industrial" by the City of Newberg. The dwellings in this area are separated from the existing structures on the applicant's parcel by vegetation and topography.

To the north is 14th Street, and across 14th Street is vacant land, including two approximately one acre vacant lots, and two lots owned by Smurfit Corporation totaling \pm 6.8 acres. These parcels are zoned Agriculture/Forestry, 10 acre minimum (AF-10), and plan designated "Industrial" by the City of Newberg. Just north of these lots is a railroad track, and the City Limits of Newberg. Just inside city limits, apartments have been constructed. A portion of the upper story of some of the apartments and the back wall of the apartment garages can be seen across the Smurfit property, when standing along 14th street on the subject parcel.

Water: Buildings on Tax Lot 3230-100 are serviced by the City of Newberg. River water is used for rock processing operations.

Sewage Disposal: There is an on-site septic system serving the office located on the parcel. No additional sewage disposal is required for the proposed use.

Fire Protection: Newberg Rural Fire Protection District

Previous Actions: 1973: Conditional use approval for sand and gravel stockpiling and processing (C-93-73).

1976: Zoning changed to MR (Z-89-76).

1980: Floodplain development permit, greenway permit and conditional use approval for placement of a portable concrete batching plant (C-387-80, CFP-18-80).

1991: Approval to alter the conditional use to relocate office, portable scales and access road.

B. Applicable Review Criteria

1. The request is to rezone all of tax lot 3230-100 from Mineral Resource (MR-2) to Heavy Industrial (HI), except for the southeast corner, which would remain MR-2 to accommodate expansion of Roger's Landing Marine Park. The applicant is also requesting a determination that operation of an asphalt batching facility is similar to other heavy industrial uses, and would be an allowed use in the heavy industrial zone.

2. For the requested zone change, the applicable review criteria are found in Yamhill County Zoning Ordinance (YCZO) § 1208.02, which reads as follows:

"1208.02 Review Criteria.

A quasi-judicial change to a zoning map may be authorized, pursuant to Subsection 1208.01, provided that the request satisfies all applicable requirements of this ordinance, and also provided that the applicant demonstrates compliance with the following criteria, except as provided in Subsection 1208.03:

A. The proposed change is consistent with the goals, policies and any other applicable provisions of the Comprehensive Plan.

B. There is an existing, demonstrable need for the particular uses allowed by the requested zone, considering the importance of such uses to the citizenry or the economy of the area, the existing market demand which such uses will satisfy, and the availability and location of other lands so zoned and their suitability for the uses allowed by the zone.

C. 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.

D. Other lands in the County already designated for the proposed uses are either

unavailable or not as well-suited for the anticipated uses due to location, size or other factors.

E. The amendment is consistent with the current Oregon Administrative Rules for exceptions, if applicable."

3. For the similar use determination, YCZO § 703.04 states:

"Any use not specifically listed as a permitted use in this district that is similar in character, scale and performance to the permitted uses specified in subsection 703.02, may be allowed as a similar use subject to the provisions of Section 1206, and pursuant to the Type A application procedure set forth in Section 1301."

3.1 The permitted uses listed in § 703.02 are as follows:

- A. Grain elevators, feed mills and seed cleaning plants;*
- B. Manufacture of forest products, including sawmills, planing mills, plywood and particle board plants and pulp and paper mills;*
- C. Auto wrecking yards;*
- D. Animal slaughtering, meat-packing and rendering plants;*
- E. Facilities for the processing or production of oil, natural gas, geothermal resources or other hydrocarbons;*
- F. Manufacture of clay products, brick, tile and cement and including mining of materials used in production;*
- G. Outdoor storage of raw materials or finished products associated with any permitted use;*
- H. Temporary structures as may be required during construction of an authorized permanent structure. Such temporary structure shall be removed upon final inspection of the permanent structure by the Building Inspector;*
- I. Community or municipal water supply system;*
- J. Community or municipal sewer system; and*
- K. Signs, pursuant to the sign provisions set forth in Section 1006.*
- L. Dwelling for caretaker or watchman in conjunction with permitted use. If a dwelling is a mobile home it shall, in addition to the requirements of this section, also be subject to the mobile home standards set forth in Section 1002."*

3.2 The criteria for reviewing a similar use request are listed in YCZO § 1206, as follows:

"1206.01 Purpose and Scope.

The purpose of this section is to provide for those uses not specifically listed in a particular zoning district but which are similar in character, scale and performance to the permitted uses specified therein. Those zoning districts in which a similar use may be authorized are:

* * *

G. Heavy Industrial (HI)

* * *

1206.02 Review Criteria.

A similar use may be authorized pursuant to subsection 1206.01 above and subject to the Type A application procedure set forth in Section 1301 and provided that the applicant demonstrates that the proposed use satisfies the following criteria:

- A. The use is consistent with the purpose and scope set forth in subsection 1206.01 and with the purpose of the underlying zoning district; and*
- B. The use conforms with the applicable standards and limitations of the underlying zoning district."*

3.3 The "applicable standards and limitations" of the heavy industrial district are listed in YCZO § 703.07, as follows:

"In the HI District, the following standards and limitations shall apply:

A. Parcel Size and Dimensions.

- 1. Minimum Parcel Size. The minimum parcel size for any use shall be two (2) acres.*
- 2. Depth-to-Width Ratio. The maximum depth-to-width ratio for any newly-created parcel shall be 3:1.*

B. Setbacks.

The minimum setback for all yards shall be thirty (30) feet for all uses, and except five (5) feet for all yards for signs, and except as provided for accessory uses in subsection 703.07(6).

C. Parcel Coverage.

The maximum parcel coverage shall be appropriate to the use, subject to Section 1101 for site design review.

D. Access.

Before a principal use may be established on any parcel as provided in this section, the parcel shall have a legal, safe and passable means of access by abutting at least twenty (20) feet either directly upon a public road, or by a private easement which is at least thirty (30) feet in width for its entire length and which also abuts upon a public road for at least thirty (30) feet. Nothing

in this section shall be construed to vary or waive the requirements for creation of new access contained in any Land Division Ordinance legally adopted by Yamhill County.

E. Clear-Vision Areas.

A clear-vision area shall be maintained on the corner of any parcel at the intersection of any two of the following: county roads; public roads; private roads serving four or more parcels; and railroads. A clear-vision area shall contain no sight-obscuring structures or plantings exceeding thirty (30) inches in height within a triangle formed by the lot corner nearest the intersection, and the two points twenty (20) feet from this corner as measured along the parcel lines adjacent to the intersecting rights-of-way. Trees exceeding this height may be located such that their branches extend into this triangle, provided they are maintained to allow at least twelve (12) feet of visual clearance within the triangle below the lowest hanging branches.

F. Height.

- 1. The maximum building height for all structures shall be sixty (60) feet; and*
- 2. Appurtenances usually required to be placed above the roof level and not intended for human occupancy such as spires, belfries, cupolas, antennas, water tanks, ventilators, chimneys and wind generators are not subject to the height limitations of this ordinance.*

G. Accessory uses.

An accessory use shall comply with the standards and limitations for principal uses except as follows:

1. Structures.

- a. No separate accessory structure shall be erected within ten (10) feet of any other building on the same parcel.*
- b. An accessory structure not more than fifteen (15) feet in height, at least sixty (60) feet from a road, and at least ten (10) feet from any dwelling, may be located a minimum distance of three (3) feet from the property line in a side yard or rear yard.*

2. Fences, Walls and Hedges.

Fences, walls and hedges may be permitted in any required yard or along the edge of any yard, subject to the clear-vision requirements of subsection 703.07(E).

H. Off-street Parking.

Off-street parking and loading requirements for any use in the HI District shall be as provided in Section 1007."

- 4. Applicable Plan Map Designation.** The Newberg Urban Area Growth Management

Agreement, ("Management Agreement" or "Agreement") dated July 2, 1979, is applicable to this approval because the parcel in question is outside of the Newberg City Limits, and within the Newberg Urban Growth Boundary (UGB). Under the terms of the Agreement, zone changes outside Newberg City Limits but within the Newberg UGB are to be processed by Yamhill County. (p. 6) Under the same agreement, the Newberg Comprehensive Plan Map, also adopted July 2, 1979, is the applicable plan map for the area within the Newberg Urban Growth Boundary. The Management Agreement provides procedural requirements that have been complied with in reviewing this application, but does not include approval criteria relevant to this application.

When making a land use decision concerning property within the Agreement area, it is the county's responsibility to interpret the Agreement, and to make all interpretations of law related to the County's decision. The City retains its advisory function, under the procedures outlined in the agreement. The County interprets the Management Agreement to require only that the County apply City of Newberg *plan map designations* within the Newberg UGB. Other County interpretations of the Agreement and law applicable to this application are as outlined in these findings.

C. Findings and Conclusions for Approval

The applicant has demonstrated compliance with the applicable criteria of the Yamhill County Comprehensive Plan and Zoning Ordinance, as detailed in these findings. The record of these proceedings provides the factual basis for approval.

1. Zoning Map Amendment

1.1 The applicant has requested a zone change to allow installation of a permanent asphalt batching facility on tax lot 3230-100. The applicant has current authority to conduct rock crushing and processing on tax lot 3230-100.

1.2 YCZO § 1208.02(A) requires that the County find that: *"The proposed change is consistent with the goals, policies and any other applicable provisions of the Comprehensive Plan."*

1.2.1 The county finds that the goals and policies specified in this section are applicable to this approval, and that no other goals, policies or other provisions are applicable. The county has not identified any comprehensive plan goals or policies that are approval criteria. The goals and policies discussed in these findings below are aspirational and help to establish the context for decision making by the county.

1.2.2 The Goals and Policies of the Newberg Comprehensive Plan are not applicable to this application. Under the terms of the Newberg Urban Area Growth Management Agreement, only the Planning Map designations of the Newberg Plan are relevant to this application. No plan map amendments are being requested by the applicant, and the proposed industrial zoning and use of the subject parcel is consistent with the City's designation of the land as "Industrial" in its comprehensive plan. Indeed, under the City's comprehensive plan, designation of the subject parcel as "Heavy Industrial" is more appropriate than its current zoning. The City's plan states that "Heavy industrial uses should be located in the area near Smurfit Newsprint, an existing pulp and paper mill."¹ Both of the subject parcels are located in close proximity to the Smurfit mill.

¹ City of Newberg, "Comprehensive Plan Text Ordinance 1967 (7/2/79) (Last amended 11/4/96) p. 49.

1.2.3 Yamhill County Comprehensive Planning Goal § 1.H.1 states that the county will strive:

"To concentrate industries of similar types, service needs, and performance characteristics within designated areas of each of the existing urban centers; to encourage adequate land for new industrial development within urban growth boundaries; to encourage the relocation of existing industries from undesirable locations in order to eliminate land use conflicts; to attract new industries in accordance with the need to achieve a more balanced local property tax and employment base, while maintaining a high standard of environmental quality; and to protect the stability and functional aspect of industrial areas by protecting them from incompatible uses."

The proposed use promotes this goal. It is an industrial use that will be located in an area that has long been plan designated for industrial use by the City of Newberg, and is within an urban growth boundary near other industrial uses. The facility is of recent design, meets or can be conditioned to meet all applicable environmental requirements, and will be required by the Oregon Department of Environmental Quality (DEQ) to continue meeting those requirements. Because the site is designed to receive aggregate by existing river and road transportation networks, conforming the zoning of the site to its plan designation will help to maintain the functionality and stability of the area for industrial uses.

1.2.4 Yamhill County Comprehensive Plan Policy § 1.H.1.a. states:

"Heavy industrial uses with seasonal or high nuisance characteristics will be encouraged to locate or relocate only in or immediately adjacent to urban areas where all required services are available, well removed and shielded from existing or projected residential development; and conversely, that prime heavy industrial sites will be identified and protected from encroachment of other urban uses pending acquisition and development."

1.2.4.1 An asphalt batching facility is a heavy industrial use. During normal business hours the site will produce truck noise that is consistent with other common industrial operations. Particulates and gasses at the facility will be controlled by a bag house and other pollution control equipment. Proper design and operation of the facility will ensure compliance with all DEQ permits. The proposed use has lower nuisance characteristics than the rock crushing uses that are currently allowed on the subject parcel. The facility would be located immediately adjacent to an urban area, where all required services, such as water, electricity, roads, and river access are available. The proposed facility site along 14th street is isolated from the river and from Roger's Landing Marine Park. At that location, the facility would be separated from the nearest residential area to the north by a road, a railroad, and at least 260 feet of vacant land that is plan-designated for industrial uses by the City of Newberg, zoned AF-10 by the county, and owned by Smurfit Corporation. Buffering will be further enhanced by the 30 foot setback required in the heavy industrial zone, and by vegetative and other screening that can be required through site design review. As stated, the proposed use would be in an area that has long been plan designated and used for industrial uses. Site design review and setbacks ensure that the facility will be separated from neighboring uses and shielded from them to a level sufficient to prevent conflicts. The site, in close proximity to the city's

other heavy industrial sites and containing the only river barge access in the city of Newberg, is considered a prime heavy industrial site. Heavy industrial uses located on tax lot 3230-100 would be located in or adjacent to an urban area where all required services are available, and would be well removed and shielded from existing or projected residential development.

1.2.4.2 As discussed in other findings herein, substantial evidence in the record as a whole establishes that streets in the area are adequate for truck traffic anticipated to be generated by the proposed use of the site. The site appears to have adequate storm drainage, and to the extent additional storm drainage facilities or design is necessary, such facilities or design can be provided on site, and required as part of site design review.

1.2.4.3 The county interprets Comprehensive Plan Policy § 1.H.1.a to encourage siting of heavy industrial uses in areas where all services that are needed for the proposed use are available. There is substantial evidence in the record as a whole that all services the applicant requires for its proposed use are currently available to the site, and that no additional services will be required.

1.2.5 Yamhill County Comprehensive Plan Policy § 1.H.1.b. states:

"To the greatest extent possible, industrial areas will be located within urban growth boundaries. Those industrial areas located outside urban growth boundaries will be compatible with the industrial development goal and will be located where they can be adequately served by necessary major utility lines, including electric power substations, and transmission lines, trunk sewer lines, trunk water lines, and where appropriate, trunk gas lines."

The proposal promotes this policy because it would occur within the Newberg Urban Growth Boundary.

1.2.6 Yamhill County Comprehensive Plan Policy § 1.H.1.e. states:

"Industrial uses will be located so that adequate buffer space is provided between incompatible land uses."

1.2.6.1 In the vicinity of the proposal is the largest heavy industrial facility in Yamhill County, a County Marine Park, and scattered housing. As stated, there are apartments to the north, within the City of Newberg.

1.2.6.2 Buffering for the proposed facility site is provided as specified in finding 1.2.4 and is adequate to meet this policy. There is substantial evidence in the record as a whole that neighboring heavy industrial uses are not incompatible with uses at Roger's Landing Marine Park, including letters from the Yamhill County Parks Division and the Director of the Oregon State Marine Board. The storage and transport uses that will continue to be made of the portion of tax lot 3230-100 located near the dock have occurred for many years, and are not incompatible with uses of Roger's Landing. The park has existed for many years in the shadow of the Smurfit pulp and paper mill, and has been compatible with that operation, which exceeds by many orders of magnitude the applicant's proposal. The county is working to expand the park onto a part of the applicant's property, and closer to existing industrial-type operations on the property, suggesting that the uses being made of the park are compatible with nearby industrial operations. Park use is greater in

evenings and on weekends, and park users usually launch their boats from the park for travel to other parts of the river. Existing buffering, stringent state and federal pollution control requirements that would apply to operation of the proposed facility, and additional buffering that could be required through site design review, all contribute to the adequacy of buffering in compliance with this policy.

1.2.7 Yamhill County Comprehensive Plan Policy § 1.H.(g) states:

"Agricultural, forestry and mineral resource-oriented industry will be accommodated in areas close to the resources utilized, provided that such industrial uses are compatible with any nearby urban development, city water supply and sewerage are not required, and waste discharges constitute no threat to the environment."

Asphalt production is a "mineral resource-oriented industry." The applicant intends to obtain materials by truck, but to also utilize barges and the existing docking/unloading facility on tax lot 3230-100. The applicant owns and operates a sand and gravel extraction site on the Willamette at river mile 65 in St. Paul, purchases aggregate from a facility on the river in Wilsonville, and has permits for removal of aggregate from the river. The applicant's barge facility on tax lot 3230-100 puts it in close proximity to those resources. The applicant has rights to use river water for processing activities, and does not need city water or sewer service, other than the facilities that are currently located on or available to tax lot 3230-100. No runoff or sewage will be discharged to the river, and air discharges will fully comply with all state and federal requirements and will not constitute a threat to the environment. The applicant has demonstrated compatibility of the proposal with nearby urban development as described throughout these findings, and consistency with Plan Policy § 1.H.(g).

The applicant has demonstrated that the proposed change is consistent with the goals, policies and applicable provisions of the Comprehensive Plan.

1.3 YCZO § 1208.02(B) requires that the County find that:

"There is an existing, demonstrable need for the particular uses allowed by the requested zone, considering the importance of such uses to the citizenry or the economy of the area, the existing market demand which such uses will satisfy, and the availability and location of other lands so zoned and their suitability for the uses allowed by the zone."

1.3.1 In addressing this finding, the County considers the Newberg area, including the urban and urbanizable land within the Newberg Urban Growth Boundary, to be the relevant area for analysis. This approach is reasonable, considering that 1) the use is an urban, heavy industrial use; 2) the use will be located within the Newberg UGB, in an area that has been plan designated "Industrial" by the City of Newberg based on the city's perceived present and future need for industrial zoned land; 3) the applicant has stated that its primary market for products from its proposed facility will be the area within the Newberg UGB (although it will also be able to serve rural Yamhill County and other nearby cities).

1.3.2 There is an existing, demonstrable need for heavy industry in the Newberg area.² Heavy industry provides jobs, and is an important component of a diversified economy. Yamhill County is largely rural, and industrial areas outside of urban growth boundaries in the county are exceedingly scarce. Land within urban growth boundaries is the appropriate place for industrial uses. Within the City of Newberg, there are only two parcels zoned for heavy industrial uses. One is part of the Smurfit Mill, and the other is the City's wastewater treatment plant. Neither is available--both are part of developed and fully operational facilities.

1.3.3 There are no undeveloped sites zoned for heavy industrial uses outside of the Newberg UGB in close proximity to the UGB boundary.

1.3.4 Within the Newberg UGB, there is only one site zoned heavy industrial by the county that is not currently developed. That site is a collection of tax lots containing at most 4-5 acres of developable land, next to the Smurfit wastewater treatment facility. It is not on the market, and is reportedly being retained by Smurfit Corporation as a reserve for future wastewater treatment uses. It is not "available" for the proposed use. At any rate, the existence of one alternative site zoned for heavy industrial uses cannot be deemed to satisfy an existing need or market demand for heavy industrial land--it gives the applicant and others wishing to develop heavy industrial uses only one choice. The Smurfit site is also not as well-suited for the anticipated use (and other heavy industrial uses) because it has no barge access. In order to fully use the Smurfit site, the applicant would need to truck aggregate from the subject parcel, (which is currently zoned for mineral aggregate uses including rock crushing), through the same truck route the applicant now proposes to use. If the applicant's zone change request is denied, tax lot 3230-100 would continue to be zoned for mineral aggregate uses, and use by the applicant of the Smurfit site for a batch plant would increase the impacts on the neighborhood along the truck route.

1.3.5 In its comprehensive plan, the City of Newberg has identified a need for industrially zoned land. Table IV-9³ to the city's Comprehensive Plan Text shows that the need for industrial land in the City of Newberg is rising from 490 acres needed in 1990, to 730 acres needed in the year 2000, and 1,087 acres in the year 2010. Table IV-1 of the plan shows that the city has justified the need for the amount of land it has plan designated "Industrial" within its urban growth boundary.⁴ The City's plan demonstrates that there is an existing, demonstrable need for industrially zoned land within the Newberg UGB, considering market demand, the location of other industrially zoned lands, and the suitability of available lands.

1.3.6 There is a need for asphalt in the Newberg area. Asphalt is used for new roads, road repairs and reconstruction, driveways, parking areas and other uses, and is important to the citizenry. The applicant has estimated that there is a market for approximately 48,000 tons of asphalt yearly in the Newberg area. There are also significant markets for asphalt in other nearby Yamhill County cities and in rural Yamhill County, and all of these markets are expanding as the population of Newberg and Yamhill County grows. Between 1990 and 1997, Yamhill County grew by 13,649 people, to its current population of 79,200, a growth rate of 20.8%. During the same period, Newberg

² The uses allowed by the requested zone are listed in YCZO § 703.02 and quoted above in the "Applicable Review Criteria" section of these findings.

³ City of Newberg, "Comprehensive Plan Text Ordinance 1967 (7/2/79) (Last amended 11/4/96) p. 51.

⁴ *Id.*, p. 39.

grew at a rate of 28.1%, to its current population of 16,765. Due to its close proximity to the Portland metropolitan area, Newberg can be expected to receive continued spillover from the Portland area as a result of high regional growth coupled with a tight Metro urban growth boundary.

1.3.7 Aggregate, the main ingredient in asphalt, is exceedingly heavy and its cost rises the further it must be transported. It costs approximately \$2.15 per hour, per ton to truck asphalt, which causes the cost of asphalt to rise significantly as the distance to the source increases. The record establishes that, due to a small number of local facilities, there is little competition in Yamhill County and Newberg area asphalt markets, which has resulted in significantly higher asphalt prices. This problem will be exacerbated as demand for asphalt paving products rises, without an increase in the number of local competitive suppliers.

The applicant has demonstrated compliance with YCZO § 1208.02(B).

1.4 YCZO § 1208.02(C) requires that the County 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."

1.4.1 For purposes of this analysis, the "area" is the area designated "Industrial" in the Newberg Comprehensive Plan; residential areas to the north of the subject property that abut the designated "Industrial" area, and residential areas along the designated truck route through which trucks accessing the site must travel.

1.4.2 The pattern and density of land uses surrounding the site, and the distance and buffering between the site and residential areas to the north, has been described elsewhere in these findings. The density of housing in the immediate vicinity of the subject parcels is very low by county or city standards. The "pattern of development in the area" is predominantly heavy industrial, considering: 1) the presence of the Smurfit mill, which is the largest heavy industrial use anywhere in Yamhill County; 2) the presence of a closed landfill subject to 50-60 years of post closure monitoring; 3) the past use of the City of Newberg parcels as a sewage treatment plant; 4) the use of the applicant's parcel, and current zoning of that parcel, for the transport, storage, sorting, crushing and other processing of aggregate.

1.4.3 As stated, there is also scattered housing to the west, and there are apartments to the north, within current city limits. Other findings herein establish that there is adequate buffering between the proposed use and these uses. Considering these surrounding land uses, as well as the density and pattern of development in the area, the proposed use is appropriate. No known changes have occurred in the vicinity to support or detract from the appropriateness of the proposed amendment. The vicinity is plan-designated by the City of Newberg for industrial uses, and remains appropriate for those uses.

1.4.4 The proposed change is also appropriate considering the existence of Roger's Landing Marine Park abutting the property to the east. The park has coexisted with the adjacent Smurfit Mill, and with aggregate processing and storage activities on tax lot 3230-100, for many years. The

applicant has proposed to make a major contribution to improvement of the park in two ways: first, by providing land for park expansion, and second, by providing a conservation/hiking easement through preserved areas on the applicant's property. These actions will significantly improve the public utility of the Newberg waterfront. To the extent the applicant's ability to participate in park improvements is facilitated by this approval, those anticipated improvements support this approval.

1.4.5 The requested change is also appropriate because industrial-type uses have historically occurred on the subject parcel. Tax lot 3230-100 has been the site of aggregate transport, storage and processing activities for many years, including operation of a rock crusher as a permitted use. The new designation will allow the applicant to make full use of the property in a manner that is fully consistent with its past use for aggregate processing and storage.

1.4.6 There is considerable discussion in the record concerning the appropriateness of the change considering possible impacts on the truck route to be used as access for the site, and the neighborhood along the truck route. The route of the trucks to and from the site will invariably be Wynoski Road to 11th Street to River Street to 14th Street.

1.4.6.1. This route passes through, and next to, industrial uses, but also passes through a residential area and by a community park. It has, however, been a designated truck route for many years. Garbage trucks used the route for decades to access the Newberg Landfill. The applicant, and the applicant's predecessor, have used this route to transport aggregate to and from its processing operations since 1973.

1.4.6.2 The applicant has current authority to use tax lot 3230-100 for transporting, storing and crushing aggregate. In 1993, at the height of its rock crushing operations, the applicant hauled 283,000 tons of rock from the site. That is an *average* of 22 full and empty trucks per hour, compared with 5 trips in a *peak* hour anticipated for operation of the proposed batch plant. Compared to potential impacts under current zoning, use of the property under the proposed zone change will result in greatly diminished impacts to the existing truck route and the neighborhood through which it passes. That impact will be further diminished to the extent the applicant is able to utilize river transport facilities currently located on the site.

1.4.6.3 The County is the Road Authority for the access route to the proposed facility. The County Public Works Director has indicated that Wynoski Road has been widened and improved to handle trucks; that 14th Street is somewhat narrow, but has been handling truck traffic adequately for years; that the slide area on 14th street has been repaired, and is stable; that 11th Street has also been widened and improved to handle truck traffic.

1.4.6.4 The applicant's Traffic Impact Review, performed by Kittleson & Associates, (dated June 10, 1998) indicates that the truck route providing access to the site is adequate for the proposed use, and will retain an adequate level of service considering the applicant's anticipated use. The Kittleson review is incorporated herein by this reference. Granting this approval will not significantly affect the functional capacity or level of service of the haul route. Existing access roads are adequate for the proposed use, and the applicant's proposed use will not unduly impact existing roads.

1.4.6.5 The applicant's Traffic Impact Review also identified several areas in which the truck route could be improved to more appropriately handle traffic generated by the proposed use,

as well as use by residents, other industrial and commercial users, and patrons of Roger's Landing. To the extent access road impacts are attributable to the applicant's proposed use, the applicant can be required to contribute to road repairs or improvements through the County's site design review.

1.4.6.6 The applicant's proposed use is consistent with the overall heavy industrial character of the area. The applicant is not proposing to intensify its use of the parcels, only to change the type of processing that will occur on the property. Allowing the requested zone change will result in lesser traffic impacts on the neighborhood along the truck route than are likely given the current zoning of the property. The applicant's proposal will not cause an inappropriate increase in street damage or traffic impacts on vicinity streets from the situation that presently occurs or is likely to occur given current allowed use of the parcel.

1.4.7 The proposed change is appropriate considering the availability of utilities and services likely to be needed by the anticipated uses in the proposed district. When an applicant has provided sufficient detail regarding its anticipated long-term use of the property subject to a zone change application, the county interprets YCZO § 1208.02(C) as requiring the County to consider only the applicant's proposed use as the "anticipated use." In this instance, the applicant has described the use it intends to make of the subject parcel in sufficient detail, and has stated that all utilities and services that it is likely to need for its anticipated use are available at the site. Those services, including, but not limited to, sewer, water, electricity and other energy sources, fire and police protection, schools, street lighting and all other services and utilities, exist to the level they are likely to be needed by the applicant for its anticipated uses.

1.4.8 As an alternative to finding 1.4.7, and only to the extent a reviewing authority does not accept the County's interpretation of its ordinance found in finding 1.4.7, the county finds that the proposed change is appropriate considering the availability of utilities and services likely to be needed by heavy industrial uses in the proposed district. This criterion does *not* require that the site have services available for all conceivable heavy industrial uses. As stated, all public utilities and services that would be necessary for heavy industrial uses generally are available at the site, and are currently adequate for heavy industrial uses generally. Although there is no evidence that City sewer service is currently available at the site, lack of current sewer service alone is not sufficient to make the proposed change inappropriate. The site is within the Newberg Urban Growth Boundary, and arrangements could conceivably be made to obtain sewer service from the City. It is also conceivable that appropriate sewage treatment facilities could be constructed on-site to accommodate a specific heavy industrial use other than the use proposed by the applicant. No use could be made without all necessary permits, which might limit the types of heavy industrial uses that could be made on the property. The fact that not all heavy industrial uses could ultimately be permitted at the site does not make the zone change inappropriate.

1.4.9 In addition to the above findings, the "anticipated uses" specified in YCZO § 1208.02(C) consist solely of the applicant's proposed uses, because the county is imposing a Limited Use Overlay on the subject parcel under YCZO § 904, limiting uses allowed outright on the property to the uses that have been proposed by the applicant.

1.4.10 In support of their opposition to this application, the City of Newberg submitted a letter dated April 7, 1998 from the Mayor, which states in pertinent part:

a. "the City held a legislative public hearing on this issue which included testimony from fourteen opponents. Many of the opponents would live in the area of the proposed asphalt plant and expressed concerns regarding traffic, odor, noise, dust and other impacts on the area."

b. "The City Council discussed the conflicts in the Newberg Comprehensive Plan. Specifically, the Plan provides for industrial uses in this area, but also mentions the need for complying with the Willamette River Greenway policy.

c. "The community, since the Comprehensive Plan was developed, has started to place a higher value on the Willamette River Greenway concepts than retaining this area as an industrial site. The Council expressed a commitment to joining into a partnership with Yamhill County to plan the area for more recreationally oriented uses. A specific time line for this partnership was not discussed, but the council expressed hope that it would be in the not too distant future.

The Board has considered, but finds the City's arguments unpersuasive for the following reasons:

a. Although this informs the Board of the number of opponents who expressed concerns about traffic, odor, noise, dust and other impacts, this statement merely states there are concerns, and does not contain any specific testimony or evidence to explain the nature and extent of such "concerns" so that it does not raise any issues with sufficient specificity to allow the parties or the Board to respond to the issues. If such general concerns are sufficient to raise the issues, then the Board finds that each of the concerns have been adequately addressed as follows:

First, the traffic impacts were addressed in the Traffic Impact Review by Kittleson & Associates as described in finding 1.4.6. which found among other things that the truck route to the site is adequate for the proposed use.

Second, the odor, noise, and dust are subject to regulatory jurisdiction of DEQ, and as a condition of approval under the Limited Use Overlay, the applicant will be required to obtain all necessary DEQ permits and satisfy all applicable DEQ regulatory requirements. The applicant submitted evidence (publication by the National asphalt Pavement Association (NAPA) entitled "Modern Asphalt Plants Are Designed to Operate in a People Environment ") describing Hot Mix Asphalt (HMA) facilities and products, that there is no evidence that the very low levels of emissions pose human health risks, that they are subject to EPA storage and emission standards prevent release of liquids, dust and smoke. The Board finds that it is feasible for the HMA plant to satisfy EPA and DEQ requirements and to operate without the adverse environmental impacts suggested by the opponents. A condition will be placed upon the approval to assure compliance with applicable environmental regulations.

b. The City refers to the Newberg Comprehensive Plan in general, but fails to explain how the city plan (as opposed to the city plan map) applies as approval criteria, or which specific provisions in the city plan the city is raising. The city acknowledges that the city plan provides for industrial uses in this area, without explaining how the city plan designation of HI can be ignored. The City states that the plan mentions the need for complying with the Willamette River Greenway policy, but the Willamette River Greenway is not relevant because the applicant amended their application to move the site of the plant to an area of their property which is above the 100-year floodplain and outside the greenway making a Greenway permit unnecessary.

c. The City's statement that the community, since the Comprehensive Plan was developed, has started to place a higher value on the Willamette River Greenway concepts than retaining this area as an industrial site, again fails to provide a basis for ignoring the City's HI plan map designation for the subject property. Unless and until the city's HI plan map designation is changed, the Urban Area Growth Management Agreement requires that plan map designation be applied, and this is so notwithstanding that community greenway values may have changed since adoption of the HI plan map designation, and the city now wants to plan the area for more recreationally oriented uses at some unspecified time in the future.

1.4.11 In support of their opposition to this application, the City of Newberg submitted a Resolution dated April 16, 1998 with attached Findings, which include the following contentions:

a. Criteria for a Willamette River Greenway Permit have not been met.

b. "Surrounding area includes Willamette River, Rodgers Landing, the Smurfit mill and residential neighborhoods."

c. "Traffic patterns of heavy trucks through residential neighborhoods" and "adjacent to the recreational uses of the boat landing" will have significant impacts, generating 20-22 truck trips per day.

d. "The recreational use and enjoyment of the boat landing areas would be seriously disturbed" by the associated silo, the heated asphalt processing and truck traffic.

e. "Credible" testimony of opposition regarding impacts of "odor, noise, and air quality, water quality, and land quality impacts."

The Board has considered, but finds the City's arguments unpersuasive for the following reasons:

a. The criteria for a Willamette River Greenway Permit are not relevant because the plant will be sited outside of the greenway.

b. By its statement that the "surrounding area includes Willamette River, Rodgers Landing, the Smurfit mill and residential neighborhoods," the City is apparently arguing that the zone change is not appropriate considering the surrounding area. See YCZO section 1208.02(C) (listing surrounding area as one of the factors to be considered along with pattern of development in the area. The city does not explain how these surrounding uses make the proposed use inappropriate. Assuming however they mean that the proposed use is not compatible with the residential and marine park uses, then the City's arguments must fail for the following reasons:

First, the City's Industrial Plan Map designation is the predominant designation in the area. The higher density residential neighborhood within the city north of the subject property is ly close to the heavy industrial Smurfit paper mill. North of the subject site lies the Smurfit railroad spur, and other parcels which are City Plan Map designated Industrial and zoned HI and used for wood stockpiling. An asphalt batch plant could be established within the HI zoned property. Although there are a few residences in the VLDR-5 zone to the west of the subject property, those residences in the VLDR zone are as close to the HI zoned property to the north. Thus, those residences are already impacted by the heavy industrial Smurfit paper mill, and potentially by other future HI uses to the north.

Second, the Rodgers Landing park is already adjacent to a heavy industrial use in the Smurfit paper mill. Also, there is no conflict with the existing or proposed development or uses at the park according to the letter dated June 9, 1998 from the Oregon State Marine Board and the letter dated June 4, 1998 from the Yamhill County Park Board.

c. The City also argues that the proposed zone change should be denied because "traffic patterns of heavy trucks through residential neighborhoods and adjacent to recreational uses of the boat landing will have significant impacts, generating 20-22 truck trips per day." However, the truck traffic from rock crushing operations in the past has generated an average of 22 truck trips per hour (see finding 1.4.6.2) and the truck route to the site is adequate for the proposed use see Traffic Impact Review by Kittleson & Associates (as described in finding 1.4.6.). And the Marine Board and Park Board did not find conflicts with the marine park due to traffic problems.

d. The City's contention that boat landing areas would be seriously disturbed by the associated silo, asphalt processing and truck traffic, is not persuasive in light of the testimony to the contrary by the agencies (Marine Board and Yamhill County Park Board) with jurisdiction over the marine park.

e. The City's reference to "credible" testimony of opposition regarding impacts of "odor, noise, and air quality, water quality, and land quality impacts" and "dust and noise" adds little to the general conclusory statement contained in the letter from the Mayor, except that it adds the words water quality and land quality impacts. First, as required by a condition of approval, applicants will be required to obtain any necessary air discharge permits from DEQ, and a water quality discharge permit from DEQ for any discharges to the Willamette River. Second, it is unclear what the City means by land quality impacts, but assuming that means effects upon the river uses, there is no anticipated development within the Greenway, and, as required by a condition of approval, if there is such development, a Greenway permit will be required which would address land quality impacts. Third, the city presented no evidence that applicant will not be able to obtain the necessary DEQ permits or will violate DEQ regulatory requirements.

In conclusion, the Board finds that the request conforms to the underlying Comprehensive Plan map designation of Industrial, an asphalt batch plant will not have a significantly greater impact than aggregate processing activities that have occurred on the property in the past, and there is adequate access to the site via a designated truck route.

1.4.12 In support of their opposition to this application, the City of Newberg submitted letter dated June 17, 1998 from Mike Soderquist, Director to the city's Community Development Office, which suggests a concern that truck traffic might use other city streets instead of the truck route. However, the Board has considered, but finds the City's arguments unpersuasive because the applicant will be required, as a condition of approval, to use the designated truck route for the access route to the facility.

The applicant has demonstrated compliance with YCZO § 1208.02(C).

1.5 YCZO § 1208.02(D) requires that the County find that:

"Other lands in the County already designated for the proposed uses are either unavailable or not as well-suited for the anticipated uses due to location, size or other factors."

1.5.1 This criterion requires that the County consider other lands in the county that are already designated for the proposed uses, and determine whether they are as well-suited for the anticipated use considering location, size or other factors. Findings addressing YCZO § 1208.02(A) and (B) are relevant in addressing this criterion. Those findings establish that: 1) it is important for the applicant to establish the proposed use in the Newberg area; 2) the use is an industrial use that is intended to serve primarily the Newberg market; 3) industrial uses serving predominantly the Newberg market are most appropriately located on land plan designated industrial, within the Newberg UGB; 4) there are no other heavy industrial lands within or near the Newberg UGB that are available for the proposed use; 5) even if it were "available," the only identified existing site is not as well-suited for the proposed use because it does not have barge access, and its use as a batch plant would increase impacts along the 11th Street truck route. Tax lot 3230-100 has been used for aggregate transport, storage and processing activities over the last 26 years, and is currently configured for such uses.

None of the other sites have established river transport facilities. Due to size, location, and configuration as an aggregate processing operation, the subject property is well suited for the proposed use. Other sites are not as well-suited.

1.5.2 It has been noted that the current zoning of the site would theoretically allow operation of a batch plant as a conditional use. However, YCZO § 404.04 F. 1. allows only a *portable* batch plant as a *conditional use* in the MR-2 zone. This use is not equivalent to the applicant's proposal, and is not adequate for the applicant's purposes. In the first place, the MR-2 zone was designed to apply to resource extraction areas, which are normally found on large parcels in rural areas. The setbacks that apply to extraction and processing in the MR-2 zone are generally 500 feet, meaning that the only place processing could occur on the applicant's parcel is on the floodplain (YCZO § 404.07 A. 2.) The Board has received considerable testimony to the effect that the plant should not be located in close proximity to the river, and the applicant has addressed those concerns by proposing to place the facility away from the river. That can only be done if the property is rezoned for heavy industrial uses. In addition, the applicant has stated that a portable batch plant, which is temporary by nature, cannot adequately respond to market conditions, and would not allow the applicant to offer the level of competition most likely to cause reductions in the price of asphalt in the Newberg area. A permanent operation allows for certainty of operations, certainty that is not available with a temporary facility. With a permanent facility, the company can more appropriately anticipate changing market requirements. The economics of batching operations, and the ability of the applicant to invest in site improvements, both increase markedly if the applicant is allowed to be a permanent participant in local markets.

1.5.3 Portable batch plants are allowed uses in MR-1 zones and, as stated, are allowed conditionally in MR-2 zones. Other than the applicant's parcel, MR zones are resource extraction sites, and are usually found in rural areas. These sites are not available for a permanent batch plant, and are less suitable for the production of asphalt than the proposed site, which is located within the UGB of the area containing the primary market for the products of the facility, on property plan-designated industrial, which also has barge access and all other necessary utilities. Batch plants in MR zones in rural areas are more likely to be prohibited or objectionable as being too close to an established, sizable vineyard. Batching asphalt is an urban, industrial use that is most appropriately located in an urban industrial area. The predominance of vineyards in Yamhill County makes temporary or permanent batch plants in conjunction with mineral resource extraction sites less suitable than the proposed site.

The applicant has demonstrated compliance with YCZO § 1208.02(D)

1.6 YCZO § 1208.02(E) requires that the County find that:

"The amendment is consistent with the current Oregon Administrative Rules for exceptions, if applicable."

The applicant does not need, and is not requesting, an exception from statewide planning goals. This section is inapplicable.

2. Similar Use Determination

2.1 Asphalt batching, mineral and aggregate processing and stockpiling are not specifically listed as permitted or conditional uses in the HI district, but may be allowed under YCZO §§ 703.04 and 1206, which are set forth in the "Applicable Review Criteria" section, above.

2.2 YCZO § 1206.02(A) states that, in order to approve a "similar use," the county must find that: "The use is consistent with the purpose and scope set forth in subsection 1206.01 and with the purpose of the underlying zoning district." Section 1206.01 states:

"The purpose of this section is to provide for those uses not specifically listed in a particular zoning district but which are similar in character, scale and performance to the permitted uses specified therein."

The purpose of the Heavy Industrial zoning district is stated in YCZO §703.01 as follows:

"The purpose of the HI District is to provide for industrial uses with high-nuisance characteristics that are incompatible with adjacent urban residential uses or for industrial uses where space or performance characteristics demand a specialized locale. All required services shall be available to the site, including necessary major utility lines and sewer and water facilities. Whenever appropriate, heavy industrial uses shall be located within urban growth boundaries so that necessary urban-level services can be provided in an efficient and economic manner."

2.2.1 As noted above under "Applicable Review Criteria," the list of permitted heavy industrial uses in YCZO § 703.02 includes the following:

"(E) Facilities for the processing or production of oil, natural gas, geothermal resources or other hydrocarbons;

(F) Manufacture of clay products, brick, tile and cement and including mining of material used in production;

(G) Outdoor storage of raw materials or finished products associated with any permitted use."

2.2.2 The stockpiling and processing of aggregate into asphalt is similar in character, scale and performance with uses listed in §703.02(E), (F) and (G). Asphalt production includes the processing of hydrocarbon products by mixing them with aggregate. The manufacture of cement and of asphalt both involve the processing and blending of aggregate with other materials to form a product suitable for pavement and other construction uses. Stockpiling of aggregate constitutes the outdoor storage of raw materials associated with asphalt production.

2.2.3 Since asphalt production is similar in character, scale, and performance to permitted uses in the HI zone, allowing it as a permitted use in the zone, along with related processing and storage activities, is consistent with the purpose and scope of YCZO § 1206.01.

2.2.4 Asphalt production is also consistent with the purpose of the HI zone. Due to modern emission control systems, properly designed, constructed and operated asphalt batch plants do not have "high-nuisance characteristics" that would make them incompatible with adjacent urban residential uses. However, an asphalt batch plant *is* a heavy industrial installation, and one that

demands a specialized locale due to space and performance characteristics. All utilities and services required for operation of an asphalt batch plant are currently available to the site, and the site is within an urban growth boundary.

2.2.5 As described elsewhere in these findings, aggregate requires significant areas for stockpiling and storage. The proposed site contains areas that are not well-suited for most uses, but are well suited for the delivery and storage of aggregate. The proposed site has been designed, constructed, and used extensively for the delivery of aggregate by barge, and the storage of aggregate in areas near the dock. Allowing the proposed use will allow the county to participate in design improvements to the property (through site design review), and will allow the applicant to facilitate improvements to Roger's Landing Marine Park adjacent to the facility.

2.2.6 Because aggregate, the main ingredient in asphalt, is heavy, batch plants "demand a specialized locale" that is close to the source of production of aggregate or close to the market being served. For that reason, batch plants are sometimes installed at extraction sites in rural areas. However, given the number of vineyards in the county, and the perception that asphalt and wine production are incompatible, placing the use within its primary market area, near its shipping hub, is a better solution.

2.2.7. To the extent repairs to the truck route are necessary to facilitate applicant's proposed use, the applicant's contribution to such repairs can be apportioned and required as part of site design review. These findings describe a number of reasons why it is most appropriate for this particular heavy industrial use to be located within urban growth boundaries. Allowing it to be so located also allows urban-level services to be provided to the facility in an efficient and economic manner.

The applicant has demonstrated compliance with YCZO § 1206.02(A).

2.3 YCZO § 1206.02(B) states that, in order to approve a "similar use" the county must also find:

"The use conforms with the applicable standards and limitations of the underlying zoning district."

2.3.1 Applicable standards in the HI district include minimum setbacks of 30 feet, 60 foot maximum building height for all structures, and frontage on a public road or access by easement.

2.3.2 The County interprets this criterion to require that the applicant describe its proposed use with sufficient detail to allow the county to determine if the applicant is likely to be able to obtain necessary building permits, complete site design review, and carry out its plans for use of the subject property. This criterion does not require that the county receive and review completed plans for the facility at this stage of the proceedings.

2.3.3 In accordance with the above interpretation, the applicant has described its proposed use of the property to include construction and operation of an asphalt batch plant. The plant itself is currently in operation at another location, where it is being replaced with a much larger facility. The applicant has described the proposed facility, and submitted a picture of it to the record. The county concludes that the applicant has made a sufficient showing for the purposes of this section that the

proposed facility conforms to applicable standards and limitations of the Heavy Industrial zoning district, as set out under "Applicable Review Criteria," above. The proposed asphalt batch plant and the existing aggregate processing and stockpiling can conform to these standards.

The applicant has demonstrated compliance with YCZO § 1206.02(B).

3. Additional Findings to Address Concerns of City of Newberg

3.1 Pursuant to ORS 197.763(6), the Board closed the evidentiary record in these proceedings on June 30, 1998, and on July 2, 1998, the Board, by a 3-0 vote, made an oral tentative decision approving the application under the applicable criteria, and directed staff to prepare an ordinance and findings which would constitute the final written decision. After the tentative decision but before the final decision, City of Newberg, by letter dated July 8, 1998, requested reconsideration of the Board's tentative decision. Although the City's letter of July 8, 1998 is part of the record of these proceedings for purposes of appeal to LUBA, the Board did not reopen the evidentiary record and the City's July 8, 1998 letter is not part of the evidentiary record in these proceedings. However, in the interests of intergovernmental cooperation, the County makes the following additional findings in support of its decision. These findings address concerns raised by the City of Newberg that are contained in the record of this proceeding, to the extent those concerns may not be addressed elsewhere in these findings. Many, if not all, of these additional findings may be unnecessary because they address matters that were not raised in a manner requiring, under state law or county ordinance, that they be addressed by the county. To that extent, these additional findings should not be considered evidence that the County believes any of the issues addressed in these additional findings were properly raised or are otherwise relevant to the county's decision.

3.2 Interpretation of Newberg Urban Area Growth Management Agreement

3.2.1 As stated above, the Newberg Urban Area Growth Management Agreement ("Management Agreement") applies to this approval. Under the Management Agreement, the Newberg Comprehensive Plan Map, adopted July 2, 1979 is the applicable plan map for the area within the Newberg Urban Growth Boundary. The Management Agreement provides procedural requirements that have been complied with in reviewing this application, but does not include approval criteria relevant to this application.

3.2.2 The subject parcel is within Yamhill County, and is not within the City of Newberg. Section VII.3 of the Management Agreement states, in relevant part:

"The City of Newberg and Yamhill County recognize that each jurisdiction has authority to zone within its legal boundaries. However, the Urban Growth Boundary recognizes the eventual assumption of authority by the City of Newberg. Therefore, the following procedures are established:

a. Zone change outside city limits but within the Urban Growth Boundary. The application shall be processed by Yamhill County and shall be forwarded to the City Council for its recommendation."

3.2.3 The Yamhill County Planning Commission held hearings on the proposal on March

5 and March 19, 1998. Following a deadlock vote, the proposal was forwarded to the Board of Commissioners without recommendation. The proposal was also forwarded to the Newberg City Council for its recommendation. The City of Newberg held a hearing on the proposal on April 6, 1998, and voted to recommend denial of the applicant's request. The proceedings of the City of Newberg, and its recommendation, are part of the record of this proceeding.

3.2.4 The County has fully complied with the requirements of the Management Agreement. There is nothing in the Management Agreement suggesting that the county should, or must defer to the City of Newberg in interpreting Yamhill County ordinances or plan provisions that apply to the proposed use. There is nothing in the agreement suggesting that the County must apply City of Newberg zoning ordinance or comprehensive plan provisions in reviewing the proposed use or any other land use applications for parcels within the Newberg UGB that are not within the City of Newberg.

3.3 County Justification for Determination that City's "Industrial" Plan Designation Allows County Zone Designation of "Heavy Industrial" without a Plan Map Amendment

3.3.1 At no time during the period during which the evidentiary record was open in these proceedings did the City of Newberg claim that its "Industrial" plan map designation was not the applicable plan designation for heavy industrial uses. At no time did the City claim that an amendment to the Newberg Plan or Plan Map would be required before the county could rezone the subject parcel to accommodate "Heavy Industrial" uses.

3.3.2 In a staff report to the City Council dated March 25, 1998, City Manager Duane Cole and City Community Development Director Michael Soderquist indicated that the city's Willamette River Greenway policies conflict with the Industrial Plan Map designation of the site. City staff concluded its report by recommending that the site be rezoned to Heavy Industrial.⁵

3.3.3 The text of the Newberg Plan, page 45, states , under "Plan Classifications," as follows:

"For the purpose of evaluating and eventually implementing the proposed Comprehensive Plan, descriptions of land use classifications are essential. Explanations of the map designations are as follows:

* * *

9. Industrial Use Areas (IND) The objective of this designation is to provide land for a variety of light industrial, heavy industrial and industrial park areas.

Heavy industrial uses should be located in the area near Smurfit Newsprint, an existing pulp and paper mill. Other designated areas should be developed to light industrial or industrial park type uses."
(emphasis added)

3.3.4 The Smurfit Mill is within 750 feet of the subject parcel, in a plan designated "Industrial" (IND) area. The mill itself, (including smokestack), is located on the western edge of

⁵ "Request for Council Action," Resolution No. 98-2104, March 25, 1998, p. 3.

the Smurfit Mill property, directly adjacent to Roger's Landing Park. The subject parcel is "located in the area near Smurfit Newsprint."

3.3.5 The County finds that there is nothing in the Newberg Comprehensive Plan or zoning ordinances indicating that the City's Industrial Zone is not the appropriate zone for Heavy Industrial Uses, or that some other zone *is* the appropriate zone. To the contrary, the plan indicates that Heavy Industrial uses are appropriate in areas plan designated "Industrial" and that such uses should be located in the area near Smurfit Newsprint, where the subject parcel is located.

3.3.6 The City's "M-3 Heavy Industrial District" is described in the City of Newberg Development Code as follows:

10.40.392 The M-3 Heavy Industrial District is intended to create, preserve and enhance areas containing manufacturing or related establishments which are potentially incompatible with most other establishments, and is typically appropriate to areas which are most distant from residential areas, and which have extensive rail or shipping facilities. The M-3 district is intended to be consistent with the "industrial" designation of the Comprehensive Plan. (emphasis added)

3.3.6.1 Elsewhere in these findings, the County has established that the applicant's proposed use will be adequately buffered from residential areas, and that the site includes developed Willamette River barge access.

3.3.6.2 The County finds that its Heavy Industrial district is substantially similar to and consistent with the City's M-3 zone, and is also consistent with the "Industrial" designation of the City's comprehensive plan.

3.3.7 Section 10.40.394 of the City of Newberg's Development Code describes the "Permitted Buildings and Uses" in the M-3 zone to include the following:

*"Industrial and commercial buildings and uses. All manufacturing, warehousing, wholesaling, **compounding**, assembling, **processing**, storing, researching, treating or testing or any combination thereof of items, materials, goods, or natural mineral resources is permitted.*

In addition, all industrial and commercial uses not listed elsewhere in the Code, and those uses listed in 10.40.384 are permitted." (emphasis added)

3.3.8 The county finds that the uses allowed in the City's M-3 zoning district are substantially similar to uses allowed in the County's Heavy Industrial zoning district.

3.3.9 The County finds that the current Newberg Plan Map designation for the subject parcel accommodates the county's "Heavy Industrial" designation, as well as the use for the subject property proposed by the applicant.

3.4 Consideration of Newberg Comprehensive Plan Goals and Policies

3.4.1 This section includes a description of Newberg Comprehensive Plan Goals and Policies as they relate to the proposal. As stated elsewhere in these findings, none of these Goals and Policies apply to the proposal. These findings are provided in the alternative, in case a reviewing authority determines that the Newberg Comprehensive Plan Goals and Policies do apply to this approval.

3.4.2 The County has not identified any Newberg Comprehensive Plan goals or policies that are approval criteria.

3.4.3 As part of its original application, the applicant submitted proposed findings addressing City of Newberg comprehensive planning goals and policies. The County subsequently has determined that none of the Newberg goals and policies apply to this approval. However, to the extent a reviewing authority determines that such goals and policies do apply, or need to be considered for some other reason, the applicant has demonstrated that the proposed change is consistent with all applicable Newberg comprehensive planning goals and policies.

3.4.4 These findings address the following Goals and Policies of the "City of Newberg Comprehensive Plan Text Ordinance 1967." ("Newberg Plan"):

II. Goals & Policies -

D. Wooded Areas;

E. Air, Water, and Land Resource Quality;

F. Areas Subject to Natural Disasters and Hazards;

G. Open Space, Scenic, Natural, Historic and Recreational Resources;

H. The Economy;

J. Urban Design;

K. Transportation;

M. Energy; and

N. Urbanization.

3.4.5 Newberg Planning Goal II. D.--Wooded Areas. Those portions of Goal II.D. and its related policies that are even remotely related to the proposal are discussed in this section:

"Goal: To retain and protect wooded areas.

Policies: 1. Existing wooded areas shall be encouraged to remain as open areas for wildlife habitat and limited recreational use.

2. Development in drainageways shall be limited in order to prevent erosion and protect water quality. Trees provide needed protection from erosion and should be maintained."

The applicant's proposed use of the site will primarily utilize areas that are currently committed to industrial type uses, including the storage and processing of aggregate. Remnants of the natural "gallery forest" characteristic of the Willamette River and its setting can be found on the site and

on adjoining lands. The conceptual site plan developed by the applicant recognizes the need to maintain and reestablish this landscape element by extending existing areas of natural vegetation into and through the site. The applicant has not proposed development in any know drainageway.

3.4.6 Newberg Planning Goal II. E.--Air, Water, and Land Resource Quality.

"Goal: To maintain, and where feasible, enhance the air, water and land resource qualities within the community.

Policies:

- 1. Development shall not exceed the carrying capacity of the air, water or land resource qualities within the community*
- 2. Water quality in the Willamette River and tributary streams shall be protected.*
- 3. As public sanitary sewer systems become available, all development shall connect to the public system. To encourage economic development, the City may permit subsurface sewerage disposal where the system meets State and County requirements and where unique circumstances exist.*
- 4. The Newberg airshed shall be protected from excessive pollution levels resulting from urbanization.*
- 5. New industry should be located in areas which minimize impacts upon the air, water, and land resource base, as well as upon surrounding land uses.*
- 6. The City will cooperate with State and Federal agencies which regulate environmental quality and shall adhere to the standards established by these agencies in the issuance of any permits or approvals given by the City. This policy is intended to cover discharges and emissions which may impair air, water or land quality or exceed the established standards for noise and other emissions.*
- 7. The threat of excessive noise will be considered when reviewing land use requests. In addition, any new commercial and industrial developments shall conform to DEQ noise pollution standards.*
- 8. The City will continue to support soil conservation measures designed to prevent unnecessary losses through excavation, stripping, erosion, and sedimentation.*
- 9. The City will seek abatement of the aesthetic degradation of the environment resulting from blighted neighborhoods, indiscriminate waste disposal, offensive outdoor storage.*
- 10. The City shall promote community cleanup programs.*

11. The City will continue to encourage and support the three R's of recycling (re-use, reduction and recycling).

3.4.6.1 The issues raised by this goal are addressed elsewhere in these findings, particularly those findings addressing Yamhill County planning goals and policies. The proposed use will be subject to regulation by the State Department of Environmental Quality, and will not exceed the carrying capacity of the air, water or and resource base. There will be no water emissions or polluted runoff from the site, but the applicant will be required to comply with all local, state and federal laws, including but not limited to those related to surface water drainage, air and water discharges and noise. The facility will mix asphaltic cement with aggregate, and will have a bag house and any other equipment required to control air pollution as deemed necessary by DEQ.

3.4.6.2 The proposed site will minimize impacts upon the air, water, and land resource base, as well as upon surrounding land uses, because, as proposed, it will be adequately buffered from surrounding land uses. Additional screening and buffering requirements can be addressed through site design review. The area is near other heavy industrial uses in the Newberg area, in an area that the Newberg Plan states is appropriate for heavy industrial uses.

3.4.6.3 The site and area are characterized by past and present industrial uses. The applicant's property is an operational mineral aggregate processing site. The neighboring City of Newberg property is a decommissioned waste water treatment site. Following closure and demolition of the City's site in 1988 it was leveled and filled. The impact of past industrial uses is clearly evident on and around the site. The applicant's long term plans include the minimization of on-site aggregate processing. Use areas will be designed and implemented to improve site operation efficiencies. Areas of concern include appropriate screening of operational areas, containment and channeling of water runoff, and site operations in accordance with operational permit requirements established by state agencies. Specific attention will be given to the containment and appropriate discharge of site generated water runoff and processing emissions. Primary site operations will occur in three locations, all of which are currently operational under authority of the MR-2 Zoning District. These areas consist of the materials intake point, barge slips at the rivers edge, the upland office/scale, stockpile and shop area, and the proposed asphaltic batch plant location. The batch plant will be sited out of the Greenway, away from the neighboring Roger's Landing Park, and within required setbacks. The proposed use of the property will result in noise levels that are significantly reduced from those that are currently allowed and anticipated at the site from crushing operations. The operator of the facility will be required to comply with DEQ noise pollution standards.

3.4.6.4 The remaining policies related to this goal (8 through 11) are directed to City of Newberg efforts. The applicant has not proposed extensive excavation or stripping of the property. The aesthetics of the site will be addressed through site-design review.

3.4.7. Newberg Planning Goal II. F.--Areas Subject to Natural Disasters and Hazards:

"Goal: 1. The City will coordinate with the Federal Emergency Management Agency to ensure continued compliance with federal flood plain regulations.

2. *The largest floodplain area within the Urban Growth Boundary is located within the Willamette Greenway. As such, this area will be subject to Greenway plans and regulations.*

3. *In other areas of potential or existing hazards, development shall be subject to special conditions. Reasonable development may be permitted in these areas when it can be shown, based on sound engineering and planning criteria, that adverse impacts can be mitigated and kept to a minimum. Hazardous areas shall be considered to be lands with slopes 20% or greater, potential and existing slide areas, fault areas, and areas with severe soil limitations."*

The proposed location of the asphalt batch plant is not in a floodplain, greenway, or area of potential or existing hazards. There is an escarpment on the property along 14th street that has a slope of greater than 20%, but there is no development planned for this area. This area of road slumped or slid during the 1995-96 heavy rain events. The County Public Works Director has indicated that this slope has been stabilized, and that 14th Street is suitable for uses proposed by the applicant. There is also an access road on the property that is moderately sloped, at a 3-10% gradient. The proposal will not subject life or property to any additional risks from natural disasters and hazards.

3.4.8 Newberg Planning Goal II. G.--Open Space, Scenic, Natural Historic and Recreational Resources. Those portions of Goal II. G. and its related policies that are even remotely related to the proposal are discussed in this section:

Goals: 1. To ensure that adequate land shall be retained in permanent open space use and that natural, scenic and historic resources are protected.

2. To provide adequate recreational resources and opportunities for the citizens of the community and visitors.

3. To protect, conserve, enhance and maintain the Willamette River Greenway.

Policies:

1. Open Space & Natural Resources Policies

e. The floodplains and natural drainageway areas in Newberg should be preserved with a largely open character to provide a basic open space framework for the community. The capacities of these areas shall be maintained to provide a natural storm water and natural drainage system as well as to continue to provide a natural habitat for local fish and wildlife. Natural drainageways should be kept in open space uses. Bicycle and pedestrian pathways might be included in these areas. Care should

be taken to minimize disturbances in these often erosive and steep areas. All uses should be compatible with the specific sites.

* * *

2. Scenic Resources Policies a. The City shall take steps to maintain and improve the visual quality of the City.

* * *

3. Historic Resources Policies a. The continued preservation of Newberg's designated historic sites and structures shall be encouraged.

* * *

4. Recreation Policies a. Recreational facilities and services shall expand to meet growing recreational demands.

* * *

b. To ensure that adequate lands shall be available for recreation, areas which are suitable recreational sites due to locational and natural qualities shall be designated as park land on the land use plan map. Other less specific park sites shall also be indicated on the plan.

* * *

5. Willamette River Greenway Policies a. Newberg will encourage the protection, conservation, enhancement and maintenance of the Willamette River Greenway.

b. Newberg recognizes the importance of the Willamette River as a regional resource which should be maintained for its natural, scenic, economic, recreational, agricultural and historic value.

* * *

d. Recreational activities shall be encouraged consistent with the statewide Willamette River Greenway Goal.

e. Newberg should actively promote programs to preserve the Willamette River for recreational and open space uses.

f. Additional public access to the river should be provided in the Newberg area.

g. The current boat launching site is a proposed acquisition area, which in cooperation with Yamhill County, should be purchased for public use when funds become available.

h. The City shall encourage the establishment of river oriented uses such as boat landings, docks and people oriented attractions such as restaurants and tourist or community related facilities.

i. Existing waterfront parklands shall be developed to maximize their water orientation.

j. The City's Willamette Greenway program will emphasize the recreational use of the Greenway.

k. Waterfront recreational and park development along the Willamette River will be given emphasis to provide recreational resources for future generations.

m. New development within the floodplain shall conform to Flood Hazard and stream corridor protection regulations.

n. Public and private recreational development will be encouraged on sites suitable for the proposed uses.

o. The City will seek to establish increased public access to areas of prime recreational significance and the development of additional water based recreational opportunities.

p. Developments within the Greenway shall be encouraged to donate land within the 100 year flood plain to either the City or Chehalem Park and Recreation District. Transfer of development rights and other alternative approaches should be considered as a way of implementing this policy.

q. The use of the riverfront for commercial, residential and open space recreation purposes shall be encouraged, preserving as nearly as possible the natural character of the area.

r. Extractive processes should be screened from view, should control dust through watering or other acceptable practices, and should consider limiting their hours of operation to daylight times only.

s. All sites will be planned for re-use upon depletion of the resource. The property owner is responsible for planning and reconstructing the site. Re-use of the site will be consistent with the land use policies outlined in the comprehensive plan."

3.4.8.1 The site has not been designated as a natural, scenic or historic resource by the City of Newberg. The applicant's proposal does not impact any identified natural, scenic or historic resources or identified viewpoints.

3.4.8.2 The applicant has not requested authority to site a recreational facility, and is not negatively impacting any public or private recreational facilities. In response to testimony received at the hearing and withdrawal of the City of Newberg from the original application, the applicant moved the proposed site of the batch plant away from Roger's Landing Marine Park, and

out of the Willamette River Greenway. Current proposals will likely result in site improvements to areas of the subject property within the Greenway, including the extension of Roger's Landing Marine Park onto applicant's property, and the eventual dedication of a hiking trail/conservation easement through applicant's property, connecting the park with other publicly owned lands to the southwest. These improvements can only occur through future public/private cooperation including the applicant, but the applicant has stated a willingness to participate in such cooperative approaches in a manner that addresses Goal II. G. and related policies of the Newberg Plan.

3.4.8.3 The applicant is proposing to maintain existing uses on portions of its property, and to site a new asphalt batch plant on the northern end of its property, away from the floodplain and greenway. The applicant is also proposing to maintain the character of existing riparian areas on the property that currently serve as a natural drainage way across the property. Site design review will help to ensure that existing natural storm water and natural drainage systems are maintained on the site. The wetlands and riparian areas the applicant intends to maintain on the floodplain provide visual amenities, and also provide significant wildlife habitat. The use of the site for an asphalt batch plant, and the proposed location of that facility away from natural amenities, ensures compatibility with natural resources on the site and nearby public amenities.

3.4.8.4 The site has not been designated as park land on the City's planning maps, or in any of the City's inventories. It has been designated as industrial land. The applicant has proposed to participate in efforts to improve neighboring Roger's Landing Park by allowing expansion of the park onto the applicant's property. The State Marine Board has stated that the preferred alternative for park improvements, and the only one to meet the "critical objectives" for the project, involves expansion of the park onto the applicant's parcel. The Marine Board is willing to provide more than \$500,000 for park improvements that meet its critical objectives. The Marine Board and County Parks Department have also stated that the applicant's proposed use is compatible with the use of neighboring property for park purposes.

3.4.8.5 The applicant's proposal will help to maintain the Willamette River as a regional resource, including its natural, scenic, economic, recreational, agricultural and historic value. The applicant has offered to participate in riverfront improvements and public access proposals that could significantly improve the riverfront. At the same time, the applicant will maintain existing barge docking facilities on its property that are the only such facilities near the City of Newberg.

3.4.8.6 The applicant's willingness to participate in improvements to recreational facilities along the river, and to maintenance and improvement of natural areas on its property within the greenway, promotes Goal II. G. and many of the policies listed in relation to the Goal. The use of the river for commercial barge traffic does not, and will not, significantly interfere with recreational use of the river by boaters.

3.4.8.7 The opportunity to address the reclamation of the Newberg riverfront, from Roger's Landing to Chehalem Creek, requires both public and private participation. The applicant has stated its willingness to be a participant in that effort.

3.4.8.8 Denying the application will not result in improvements to the riverfront, since the site is currently zoned for aggregate resource processing and storage. Approving the application significantly promotes Goal II.G. and its policies by providing site design review

opportunities, promoting expansion of Roger's Landing Park, and promoting the applicant's abilities to provide other public access amenities within the Willamette River Greenway, as have been specified by the applicant.

3.4.8.9 "Extractive processes" are not currently taking place on the subject property, and are not being proposed by the applicant.

3.4.9 Newberg Planning Goal II. H.--The Economy. Those portions of Goal II.H. and its related policies that are even remotely related to the proposal are discussed in this section:

"Goal: To develop a diverse and stable economic base.

Policies: 1. General Policies:

** * **

b. The city shall encourage economic expansion consistent with local needs.

** * **

d. Newberg will encourage the development of industries which represent the most efficient use of existing resources including land, air, water, energy and labor.

** * **

2. Industrial Areas Policies:

a. Industrial expansion shall be located and designed to minimize impacts on surrounding land uses.

b. The city shall encourage industrial development, preferring firms that: Meet or exceed state or local environmental standards; Utilize the existing labor force and help to reduce seasonal unemployment fluctuations; and Are efficient consumers of energy

c. Newberg shall actively pursue the inclusion of large industrial sites within the urban growth boundary.

d. The City shall reserve land for industrial development prior to demand and attract new industries in accordance with future community needs.

** * **

f. Concerted community efforts should be made to see that industrial development expands outward from existing areas rather than occurring in haphazard patterns."

3.4.9.1 The need for an asphalt batch plant in the Newberg area, and the efficiency of this particular site, is discussed elsewhere in these findings, and helps to establish that Goal II. H. and related policies are met by the proposed use. The applicant's proposal promotes the most efficient use of the property since the property already has developed barge access. Energy and

economic efficiency will be promoted because asphalt used in the Newberg area will be produced locally, and heavy aggregate materials can be delivered to the site from facilities along the Willamette River, by barge.

3.4.9.2 The proposed facility will require skilled labor to operate, and the applicant has stated that it is an equal opportunity employer. The jobs offered by the applicant will be primarily year-round, and not seasonal.

3.4.9.3 The applicant's proposed facility will be located and designed to minimize impacts on surrounding land uses. The operator must obtain all required permits and complete site design review prior to operating.

3.4.9.4 The proposed facility will be required to meet state and local environmental standards, will utilize the existing labor force, will help reduce seasonal unemployment fluctuation by providing full time jobs, and will promote energy efficiency by providing asphalt near target markets, and by use of the river to transport aggregate.

3.4.9.5 The City designated the area for industrial use in its comprehensive plan, and the subject parcel will be used for industrial development as envisioned by the plan. The pattern of development in the area is not haphazard--it is occurring within the Urban Growth Boundary, in the immediate vicinity of other Heavy Industrial uses, as envisioned by the Newberg Plan.

3.4.10 Newberg Planning Goal II. J.--Urban Design. Those portions of Goal II.J. and its related policies that are even remotely related to the proposal are discussed in this section:

Goal: To maintain and improve the natural beauty and visual character of the city

* * *

2. Industrial Areas Policies:

- a. Industrial development should be encouraged to locate in industrial parks offering good access, buffering and landscaping.*
- b. Industrial developments should be well landscaped and maintained and existing trees should be preserved where possible.*
- c. Where industrial uses abut residential zones or uses, special development standards relating to setbacks, screening, signs, building height and architectural review should be established.*

* * *

6. Specific Plans a. The city shall encourage the use of specific plans to coordinate development and create neighborhood identity. Specific plans are intended to serve as master plans for land development or redevelopment and may be applied to one parcel or multiple parcels. Specific plans will be used to promote coordinated planning concepts and pedestrian oriented mixed use development.

* * *

3.4.10.1 The facility will not be located within the City, and is not subject to City site design review. The facility will be subject to county site design review, and the City and other interested parties may participate in that review. With proper buffering and site design review, the facility will improve the natural beauty of the site. The facility will not detract from the natural beauty of the City of Newberg, due to buffering and site design review, and because it is not being constructed in the City of Newberg.

3.4.10.2 The county will ensure, through site design review, that the site is properly landscaped and maintained, and that existing trees are preserved where possible.

3.4.10.3 The County will apply setbacks, screening, and limitations on signs, building height and other aspects of the project to improve compatibility between the proposed use and abutting residential uses.

3.4.10.4 No industrial park was located by the applicant that was suitable for the proposed use, and other findings herein establish the suitability of the subject property for the proposed use.

3.4.10.5 There is no "specific plan" that applies to the subject property.

3.4.11 Newberg Planning Goal II. K.--Transportation. Those portions of Goal II.K. and its related policies that are even remotely related to the proposal are discussed in this section:

"Goal 1: Establish cooperative agreements to address transportation based planning, development, operation and maintenance.

Policies:

a. The city shall coordinate with the State Department of Transportation to manage access to the state highway system and to implement the State Highway Improvement Program.

b. The city shall coordinate its Transportation System Plan with the planning process of other jurisdictions to assure adequate connections to streets and transportation systems outside city boundaries.

* * *

Goal 2: Establish consistent policies which require concurrent consideration of transportation/land use system impacts.

Policy: Transportation systems shall be used to guide urban development and shall be designed to serve anticipated future needs.

Goal 3: Promote reliance on multiple modes of

transportation and reduce reliance on the automobile.

Policies:

a. Design the transportation system and related facilities to accommodate multiple modes of transportation where appropriate and encourage their integrated use; and

1. The city shall plan for a network of transportation facilities and services including but not limited to air, water, rail, auto, pedestrian, bicycle and public transit.

** * **

Goal 4: Minimize the impact of regional traffic on the local transportation system.

Policies:

a. Enhance the efficiency of the existing collector/arterial street system to move local traffic off the regional system.

b. Provide for alternative routes for regional traffic.

** * **

f. Minimize the use of local streets for regional traffic.

** * **

h. The city actively supports the development of a bypass of the city along a southern alignment, and the development of a northern east/west minor arterial street.

** * **

Goal 7: Minimize the capital improvement and community costs to implement the transportation plan.

Policies:

** * **

h. Transportation facilities shall be designed to minimize impacts on:

- Present and planned land use patterns*
- Natural and scenic resources*

- *Air resource quality, including noise*
- *Water and land resource quality, and*
- *Existing and planned transportation facilities.*

I. New developments and existing developments undergoing expansion or modification shall be designed to accommodate planned long-term transportation improvement projects which are adjacent to the development.

j. The city shall encourage the use of specific area plans in order to minimize the impacts of transportation facilities on neighboring properties.

Goal 8: Maintain and enhance the city's image, character and quality of life.

Policies:

a. Adopt transportation/land use system design standards which emphasize visual and aesthetic quality.

** * **

c. Encourage plans which protect the integrity of existing neighborhoods, commercial, and industrial areas.

** * **

Goal 9: Create effective circulation and access for the local transportation system.

Policies:

** * **

b. Enhance existing and add alternative routes for local travel.

** * **

Goal 10: Maintain the viability of existing rail, water and air transportation systems.

Policies:

a. Encourage and support compatible transportation and land use development.

b. Evaluate and mitigate potential losses whenever possible.

1. The city shall maintain the viability of existing rail, water, and air transportation systems.

* * *

3.4.11.1 As discussed elsewhere in these findings, the proposed use will result in a decrease in truck traffic from historical levels of traffic generated at the site, and existing transportation facilities are adequate for the proposed use.

3.4.11.2 The applicant's proposed use will help to maintain facilities for the off-loading of barges that are located on the subject property, and thus will help to maintain the viability of existing water transportation systems, as specified in Newberg's planning goals and policies.

3.4.11.3 Potential impacts of the applicant's proposed use on traffic in nearby neighborhoods is discussed elsewhere in these findings. The applicant's proposal will protect the integrity of existing neighborhoods by utilizing an existing truck route that is suitable for the use, and will not harm the integrity of commercial or industrial areas.

3.4.11.4 The proposed facility will not increase or otherwise impact regional traffic.

3.4.11.5 If the Newberg by-pass is ever built, the presence of a local supplier of asphalt will provide competition and the lower prices for asphalt that inhere when markets are competitive, as discussed elsewhere in these findings.

3.4.11.6 Impacts on the transportation system from the proposed use will be decreased from impacts that are likely given the uses currently allowed on the subject property.

3.4.12 Newberg Planning Goal II.L--Public Facilities and Services, is not relevant to the proposal. All necessary services and facilities are available at the site, and no additional services are required, as discussed elsewhere in these findings.

3.4.13 Newberg Planning Goal II.M.--Energy. Those portions of Goal II.M. and its related policies that are even remotely related to the proposal are discussed in this section:

"Goal: To conserve energy through efficient land use patterns and energy-related policies and ordinances.

Planning Policies:

a. The city will encourage energy-efficient development patterns. Such patterns shall include the mixture of compatible land uses and a compactness of urban development.

* * *

The proposal is consistent with this goal and policy. The site is an operational mineral resource site. Its basic use will not change, but it will be used in a manner that optimizes its

efficiency and energy conservation. Transportation systems that provide for the most efficient delivery of resource materials at the most effective cost will be utilized. The site adjoins the Smurfit Newsprint mill property, the area designated by the city plan for heavy industrial uses, in accordance with the policy of compact energy-efficient urban development and land use.

3.4.14 Newberg Planning Goal II. N.--Urbanization. Those portions of Goal II.N. and its related policies that are even remotely related to the proposal are discussed in this section:

"Goals: 1. To provide for the orderly and efficient transition from rural to urban land uses.

* * *

3. To create a quality living environment through a balanced growth of urban and cultural activities.

Policies:

1. Urban growth boundary and urban reserve area policies

* * *

d. The urban growth boundary shall designate urbanizable land.

e. The city will support development within the areas outside the City limits but within the Newberg Urban Growth Boundary or Urban Reserve Area based on the following standards or restrictions:

* * *

New commercial and industrial uses will generally be discouraged within the UGB and Urban Reserve Area."

3.4.14.1 As described elsewhere in these findings, the proposed use is an urban use, and is most appropriately sited within an urban growth boundary. The statement that new industrial uses will generally be discouraged within the UGB is inconsistent with many other parts of the Newberg plan, including the plan map, which designates land for industrial development within the UGB; the land use needs inventory of the plan (p.39, 51) which shows the need for additional industrial land, and is presumably a basis for the "Industrial" plan map designation; and the industrial use classification explanation (p. 49) which states that heavy industrial uses should be located near the Smurfit Mill.

3.4.14.2 The County interprets this provision as discouraging the amendment of plan designations for areas within the UGB or urban reserves, to commercial or industrial

designations. As such, it is not relevant to the applicant's proposal, which is within an area that is currently plan designated for industrial uses by the City of Newberg.

3.5 City of Newberg Concerns Regarding Impacts From Heavy Industrial Uses that are not Proposed by the Applicant.

3.5.1 The applicant has specified that it intends to construct an asphalt batch plant on the property, and has provided the county with an explanation of the proposed use that was adequate to make findings of compliance with all applicable criteria. To dispel any concerns that the site might be used for Heavy Industrial uses that may have a greater impact on the surrounding area than the use proposed by the applicant, the applicant has agreed to imposition of a Limited Use Overlay Zone on the subject property, under YCZO § 904. Imposition of the Limited Use Overlay Zone as specified herein, improves the compatibility of the proposed change with surrounding land uses, and the overall appropriateness of the change, in conformance with YCZO § 1208.02 and applicable provisions of the Yamhill County Plan.

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

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

The county finds that it is appropriate in this instance to limit the permitted uses and activities on the subject property to only those uses and activities which the applicant has justified as meeting applicable criteria.

3.5.3 YCZO § 904.02 states as follows:

"The LU Overlay District shall apply to that specific area for which a reasons exception has been taken or other area as deemed appropriate to protect Goal 5 resources. The Limited Use Overlay District is intended to carry out the administrative rule requirement for exceptions pursuant to OAR 660-14-018 and ORS 197.732 and for Goal 5 resource protection pursuant to OAR 660-16-010."

The LU Overlay is more restrictive than the underlying zone. The county finds that it is appropriate in this instance to apply the LU Overlay because the applicant has requested that the overlay be imposed, and to protect Goal 5 resources existing in the vicinity of the proposed site.

3.5.4 The uses permitted in the Heavy Industrial zone are listed in YCZO § 703.02 as follows:

- A. Grain elevators, feed mills and seed cleaning plants;*
- B. Manufacture of forest products, including sawmills, planing mills, plywood and particle board plants and pulp and paper mills;*
- C. Auto wrecking yards;*

- D. Animal slaughtering, meat-packing and rendering plants;*
- E. Facilities for the processing or production of oil, natural gas, geothermal resources or other hydrocarbons;*
- F. Manufacture of clay products, brick, tile and cement and including mining of materials used in production;*
- G. Outdoor storage of raw materials or finished products associated with any permitted use;*
- H. Temporary structures as may be required during construction of an authorized permanent structure. Such temporary structure shall be removed upon final inspection of the permanent structure by the Building Inspector;*
- I. Community or municipal water supply system;*
- J. Community or municipal sewer system; and*
- K. Signs, pursuant to the sign provisions set forth in Section 1006.*
- L. Dwelling for caretaker or watchman in conjunction with permitted use. If a dwelling is a mobile home it shall, in addition to the requirements of this section, also be subject to the mobile home standards set forth in Section 1002."*

3.5.5 YCZO § 904.03 states:

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

3.6 In conformance with YCZO § 904.03 and the request of the applicant, the County finds that it is appropriate to apply a Limited Use Overlay to that portion of tax lot 3230-100 that the County is rezoning from MR-2 to Heavy Industrial. Under the Limited Use Overlay, permitted uses would 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 use listed as allowed in the Heavy

Industrial District under YCZO § 703.02 would only be allowed subject to established conditional use procedures.

3.7 In addition to the limited uses in the Limited Use Overlay described above, the approval of this application shall be subject to the following conditions:

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, Wyooski Road, and Highway 219, to the extent the route remains available as a designated truck route.

3.8 Contacts with Board Members

3.8.1 In this case, the Board held its evidentiary hearing in this proceeding on June 11, 1998. At the conclusion of that hearing the Board, in response to a request to leave the record open pursuant to ORS 197.763, ordered the record to remain open for additional written evidence until June 18, 1998, for written rebuttal until June 25, 1998, and for written legal argument until June 30, 1998, and the Board continued the docket item for deliberation on July 2, 1998, at which time it approved a zone change to allow the asphalt batch plant.

3.8.2 Before the final written decision, there have been instances of what may arguably be considered ex parte contacts with each of the members of the Board, as more particularly described below, in the form of: (1) a motion to reconsider filed by the City of Newberg against the zone change; (2) newspaper editorials against the zone change; (3) newspaper articles describing the zone change; (4) letters to the editor against the zone change; (5) television and radio reports regarding the zone change; (6) notes received from citizens regarding the zone change; and (7) telephone calls against the zone change.

3.8.3 Following these contacts, the City Attorney of Newberg advised the attorney for the

County that it is the City's position that the County is required to extend the proceedings for the purpose of disclosure of the ex parte contacts and to allow rebuttal, and that new evidence may be introduced during such extended proceedings, citing *Horizon Construction, Inc. v. City of Newberg (Horizon I)*, 114 Or App 249 (1992), and *Horizon Construction, Inc. v. City of Newberg (Horizon II)*, LUBA No. 93-065 (7/28/93).

3.8.4. The Board finds that *Horizon I* and *Horizon II* do not apply and that there is no requirement under ORS 215.422 for notice and opportunity for rebuttal where an ex parte contact is received after the decision has already been made and the board expressly states that the ex parte contacts could not be and were not relied upon by the Board in reaching their decision because the contacts came after the record was closed and after the decision had been made.

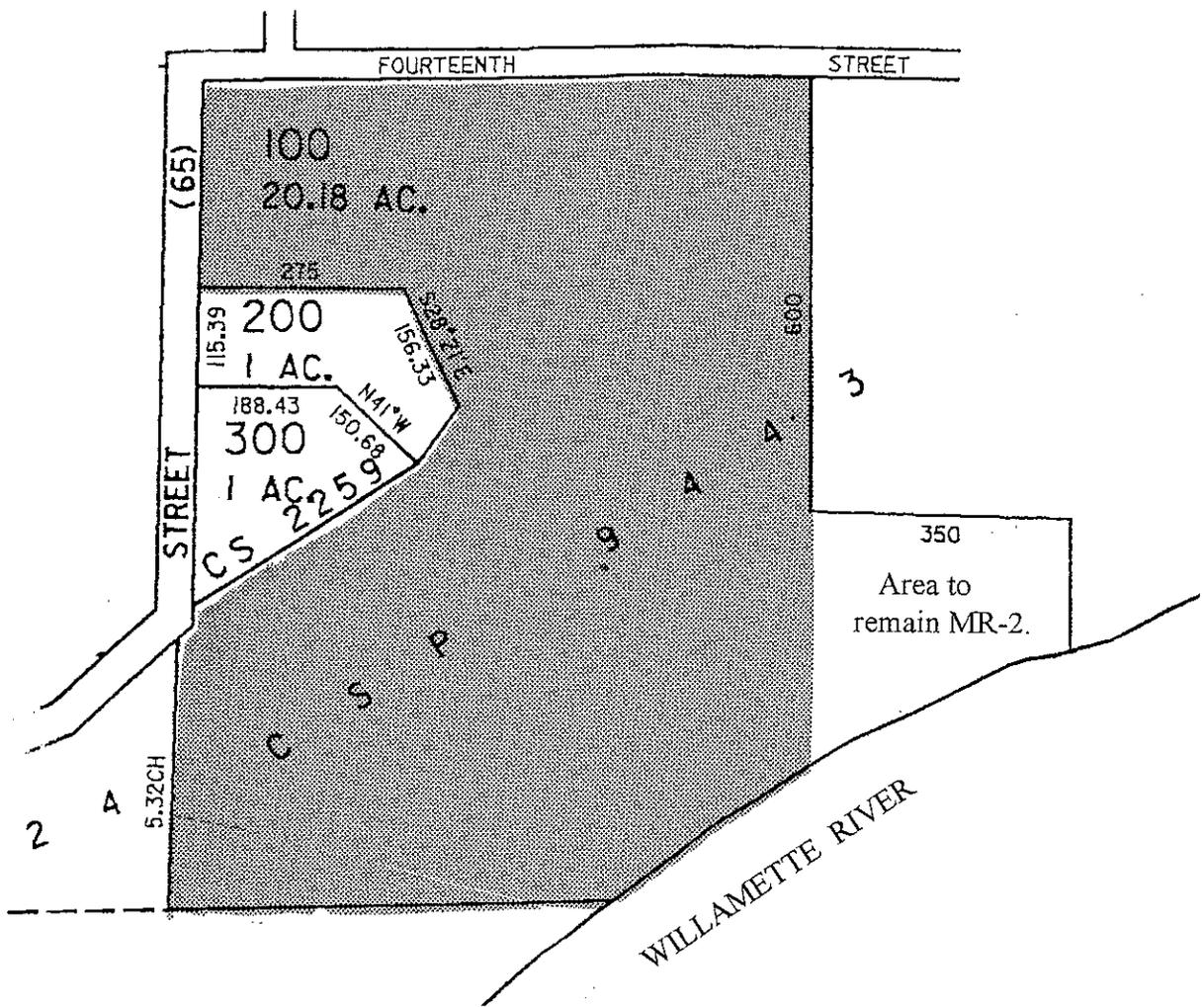
3.8.5. Moreover, the Board finds that to the extent that the ex parte contacts were received by the board after deliberations and orally voting to approve an application but before final written findings have been adopted, and were critical of the decision of the board, such communications were not relied on by the board in reaching its decision. *Cf. J.C. Reeves Corporation v. Washington County*, 31 Or LUBA ___ (1996), aff'd 147 Or App 241 (1997).

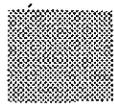
3.8.6. However, to the extent that the Board is required to consider such communications as ex parte contacts, on July 30, 1998, pursuant to ORS 215.422(3), the Board reopened the evidentiary record, placed on the record the written and oral communications received by the Board concerning their decision and announced the content of such communications and the participants' right to rebut the substance of the communication at a special session of the Board on August 4, 1998. On August 4, 1998, the Board disclosed certain additional alleged ex parte contacts, and accepted evidence and testimony limited to rebuttal of the substance of the alleged ex parte contacts disclosed by the Board. Giving due weight to all evidence received, the Board finds that no evidence received as a result of the hearing pursuant to ORS 215.422 provided a basis for changing its earlier decision.

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EXHIBIT "B" FOR ORDINANCE No. 650

ZONING MAP AMENDMENT FROM
MINERAL RESOURCE DISTRICT (MR-2) TO HEAVY INDUSTRIAL (HI/LU),
INCLUDING APPLICATION OF A LIMITED USE OVERLAY.




 AREA SUBJECT TO AMENDMENT:
 Tax Lot 3230-100, excluding approximately
 two acres in the southeast corner of the parcel.

Prepared by Yamhill County Department of Planning and Development