

IN THE BOARD OF COMMISSIONERS OF THE STATE OF OREGON

94-604

FOR THE COUNTY OF YAMHILL

SITTING FOR THE TRANSACTION OF COUNTY BUSINESS

FILED  
YAMHILL COUNTY, OREGON  
1994 SEP -9 AM 9:00  
CHARLES STERN  
COUNTY CLERK

In the Matter of an Ordinance )  
Amending the Yamhill County )  
Comprehensive Plan to add a new )  
site to the county's aggregate )  
inventory and conditional use )  
approval for a sand and gravel )  
extraction operation within the )  
Willamette River Greenway, )  
on a 40 Acre Portion of Tax Lot )  
5324-300; Docket PA-2-94 and )  
C-10-94; Applicant Audra )  
Hildebrandt and Kamph Rock )  
Crushing; and Declaring an )  
Emergency. )

ORDINANCE 579

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON (the Board), sat for the transaction of county business in regular session on September 7, 1994, Commissioners Dennis L. Goecks, Ted Lopuszynski, and Debi Owens being present.

WHEREAS, on April 28, 1994, Audra Hildebrandt and Kamph Rock Crushing ("Applicant") applied to the Department of Planning and Development for an amendment to the Yamhill County Comprehensive Plan to add a new site to the county's aggregate inventory and conditional use approval for a sand and gravel extraction operation within the Willamette River Greenway, on a 40 Acre Portion of Tax Lot 5324-300 as more particularly identified in Planning Docket PA-2-94 and C-10-94; and

WHEREAS, on July 7, 1994, the Yamhill County Planning Commission held a public hearing to consider the application and thereafter voted 6 to 1 to recommend to the Board that the Comprehensive Plan be amended and the conditional use be approved to grant the application, with certain conditions; and

WHEREAS, on August 3, August 10 and August 24, 1994 the Board held public hearings on the application and voted unanimously to grant tentative approval to the application, with certain conditions; and

WHEREAS, the findings and conclusions attached hereto as Exhibit "A" and by this reference incorporated herein provide a justification for the approval of the application, and contain the conditions which apply to the approval of the application; and

WHEREAS, the attached Exhibit "A" demonstrates that the proposed amendment to the Yamhill County Comprehensive Plan and conditional use approval are in the best interests of the citizens of Yamhill County; NOW THEREFORE,

94-604

THE YAMHILL COUNTY BOARD OF COMMISSIONERS ORDAINS as follows:

Section 1. The Yamhill County Comprehensive Plan is hereby amended as specified in the attached Exhibit "A" incorporated into this ordinance by reference, to add the 40 acre portion of Tax Lot 5324-300 identified in the attached Exhibit "B" incorporated into this ordinance by reference, as a new site on the county's aggregate inventory.

Section 2. A conditional use permit for aggregate extraction within the Willamette River Greenway is approved in accordance with the application, subject to the conditions set forth in Exhibit "A".

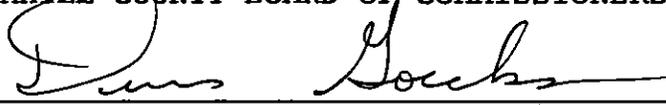
Section 3. The findings attached as Exhibit "A" and incorporated herein by this reference are adopted in support of this ordinance.

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

DONE at McMinnville, Oregon this 7th day of September, 1994.

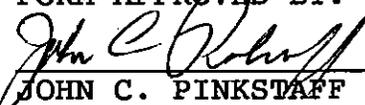
ATTEST  
BOARD OF COMMISSIONERS  
  
CHARLES STERN  
County Clerk  
BY:   
DANNIE MITCHELL  
Deputy

YAMHILL COUNTY BOARD OF COMMISSIONERS

  
Chairman DENNIS L. GOECKS

  
Commissioner TED LOPUSZYNSKI

FORM APPROVED BY:

  
JOHN C. PINKSTAFF  
Assistant County Counsel

(Not Available for Signature)  
Commissioner DEBI OWENS

cc\qlu94250.001

Accepted by Yamhill County  
Board of Commissioners on  
9-7-94 by Board Order  
# 94-604.

EXHIBIT "A"

ORDINANCE 579

Findings for Approval

DATE OF PLANNING

COMMISSION APPROVAL: July 7, 1994

DATE OF PRELIMINARY

BOARD OF COMMISSIONERS APPROVAL: August 24, 1994

DATE OF ADOPTION

OF IMPLEMENTING ORDINANCE: September 7, 1994

DOCKETS: PA-2-94  
C-10-94

REQUEST: Comprehensive Plan amendment to add a new site to the county's aggregate inventory and conditional use approval for a sand and gravel extraction operation within the Willamette River Greenway

APPLICANT: Audra Hildebrandt and Kamph Rock Crushing

PROPERTY OWNER: Audra Hildebrandt

TAX LOT: 5324-300

LOCATION: Approximately three miles west of Grand Island Junction off Upper Island Road

ZONE: AF-20 Agriculture/Forestry, WRG Willamette River Greenway overlay, and FP Floodplain overlay

FINDINGS:

A. Background Facts

1. Lot Size: The subject tax lot is 75.5 acres. The request applies to less than 40 acres of this lot. approximately 17 acres is to be excavated, with the remaining acreage for stockpiles and buffer area.
2. Access: Upper Island Road, a paved county road.
3. On-Site Land Use: The area proposed for the zone change is predominantly in woodlot use, including riparian and upland vegetation, with areas of very sparse soils which are thinly covered with grass, herbs, and shrubs. The remainder of the property is relatively flat and is in farm use (corn and beans this year).

4. Surrounding Land Use: The site is west of and adjacent to the Willamette River. All surrounding land is in commercial agricultural use, consisting of row, field, orchard, and nursery crops. There are two dwellings within one-half mile of the proposed pit; both of these are more than one-quarter mile from the site.
5. Surrounding Zoning: All agricultural land in the area is zoned EF-40 Exclusive Farm Use while wooded areas are designated AF-20 Agriculture/Forestry.
6. Soils: Sheet 52 of the Yamhill County Soil Survey indicates that the soils on the subject 40 acres are predominantly comprised of Newberg silt loam (Nw) and Newberg fine sandy loam (Nu). These soils are rated Class II for suitability for cultivation. The applicant questions the accuracy of this survey, based upon a memo from the Department of Geology and Mineral Industries that states there is no soil cover and gravel is exposed at the surface (memo in Exhibit A, page A-25). Staff visited the site and there are indeed areas with little or no soil cover, and other areas that do have soil. The soil survey map acknowledges this with a symbol for gravel over a portion of the property.
7. Taxes: Farm deferral
8. The proposal does not include processing of the extracted material.

B. Oregon Revised Statute and Administrative Rule Provisions and Analysis

1. Oregon Revised Statute (ORS) 215.298(2) requires that a permit for aggregate mining in exclusive farm use zones be issued only for "a site included on the inventory in an acknowledged comprehensive plan." The proposal is for a new operation.
2. The county must consider the location, quantity, and quality of the resource to determine whether the site is "significant." "Statewide Goal 5 reads:

To conserve open space and protect natural and scenic resources.

Mineral and aggregate resources are specifically identified in the Goal as being a natural resource to be identified and protected. Oregon Administrative Rules (OAR) Chapter 660, Division 16, describes the requirements for complying with statewide Goal 5. This division requires that Goal 5 resources be inventoried by the county and determined to be "significant" or "not significant" based on the "location, quality, and quantity" of the resource site. Only

- significant sites are required to be placed on the inventory. The specific rule provisions that address these requirements are considered in the findings B.3 through B.6 below.
3. Oregon Administrative Rule (OAR) 660-16-000(2) requires determination of the location of the resource. Maps of the site have been included in the application (to be provided at the hearing). The location is well established.
  4. OAR 660-16-000(2) also requires a determination of the quality and quantity of the resource.
    - 4.1 Regarding quantity, a copy of the reclamation permit application submitted by the applicant to the Department of Geology and Mineral Industries (DOGAMI) states the excavation areas will be at least 28 feet deep. Using this is the average depth, 17 acres contains approximately 750,000 cubic yards of material. The applicant indicates that the estimated quantity of material is around 1,000,000 cubic yards. Inventoried sites along the Willamette River were estimated at the time of the inventory as having 1.2 to 1.7 million cubic yards of reserves, so the subject site is comparable. A memo from DOGAMI (Exhibit A, page A-25) states, "This does not appear to have the potential to be a large scale project, but would provide an additional source of sand and gravel for the local market."
    - 4.2 Regarding quality, sand and gravel from deposits along the Willamette River are generally of high quality. There was unrebutted testimony that the quality of the rock is essentially the same as other deposits being mined along the Willamette River. The quantity has been described by the applicant as over 1,000,000 cubic yards. There is testimony that because of setback and pit-depth limitations only a fraction of the existing material is available. The fraction is relatively large, however.
    - 4.3 The Board finds that, based on the location, quality and quantity of the resource, the site is significant, and therefore that the site should be added to the aggregate inventory in the Comprehensive Plan.
  5. OAR 660-16-005 requires identification of uses that may conflict with a significant inventoried site. The Board finds that no other existing or permitted uses in the area of the proposed site will conflict with efficient extraction of aggregate.
    - 5.1 The only other land use in the area is agriculture. This use is not anticipated to conflict with the aggregate extraction operation. Almost all of the surrounding area is within the floodway portion of the floodplain of the

Willamette River, so new residential development will not be permitted. The Board finds that since there are no conflicting uses, the remaining requirements under the Goal 5 Rule need not be addressed.

5.2 Opponents argued that there were conflicts which were required to be addressed by the county. The Goal 5 Rule (OAR 660-16-005) states:

"It is the responsibility of the local government to identify conflicts with inventoried sites. This is done primarily by examining the uses allowed in broad zoning districts established in the jurisdiction (e.g., forest and agricultural zones). A conflicting use is one which, if allowed, could negatively impact a Goal 5 resource site. Where conflicting uses have been identified, Goal 5 resource sites may impact those uses. These impacts must be considered in analyzing the economic, social, environmental and energy (ESEE) consequences:

(1) Preserve the Resource Site: If there are no conflicting uses for an identified resource site, the jurisdiction must adopt policies and ordinance provisions, as appropriate, which will insure preservation of the resource site.

(2) Determine the Economic, Social, Environmental, and Energy Consequences: If conflicting uses are identified, the economic, social, environmental and energy consequences of the conflicting uses must be determined. Both the impacts on the resource site and on the conflicting use must be considered in analyzing the ESEE consequences. The applicability and requirements of other Statewide Planning Goals must also be considered, where appropriate, at this stage of the process. a determination of the ESEE consequences of identified conflicting uses is adequate if it enables a jurisdiction to provide reasons to explain why decisions are made for specific sites."

Opponents asserted that the county has not addressed conflicting uses adequately in the Goal 5 context. These conflicts have been based on the effects of the quarry on surrounding uses, not vice versa. The rule quoted above states, "A conflicting use is one which, if allowed, could negatively impact a Goal 5 resource site." Therefore, the ESEE analysis is only required when surrounding uses impede the operation of the aggregate resource site. (This is to be distinguished from the impact of the proposed operation on the surrounding area, which is a legitimate issue when considering the conditional use approval criteria, as discussed under paragraph C below.)

6. Opponents presented also presented rebuttal regarding the goal 5 requirement that a determination regarding the location, quantity, and quality of the resource. One party commented that the proposed pit-depth limitation imposed by DOGAMI, along with the testimony that less acreage is to be excavated than stated the applicant, reduces the quantity of available material considerably. The party contended that with these limitations the site is not a significant Goal 5 resource based on quantity.

By way of response there was new additional testimony from DOGAMI regarding the quality of the resource, stating it is essentially the same as other pits along the Willamette River and therefore a significant resource. The relative abundance of a resource in a particular region is germane to whether a specific site is significant. While there is no specific "need" criterion in the Goal 5 Rule or the conditional use standards, it can be considered in deciding whether a site is significant. Evidence has been submitted regarding the number of designated sites along the Willamette River and the reserves of aggregate at those sites. There has also been evidence submitted regarding the market unavailability of the rock from those sites. As a result, the Board finds the testimony supporting the position that this is a significant resource to be more persuasive than the opponent's testimony, and therefore concludes that this criteria is satisfied.

7. Opponents contended that the county must address Goal 12 and the Transportation Planning Rule (OAR Chapter 660, Division 12) OAR 660-12-060 states:

"(1) Amendments to functional plans, acknowledged comprehensive plans, and land use regulations which significantly affect a transportation facility shall assure that allowed land uses are consistent with the identified function, capacity, and level of service of the facility. This shall be accomplished by either:

"(a) Limiting allowed uses to be consistent with planned function, capacity and level of service of the transportation facility;

"(b) Amending the Transportation System Plan (TSP) to provide transportation facilities adequate to support the proposed land uses consistent with the requirements of this division; or

"(c) Altering land use designations, densities, or design requirements to reduce demand for automobile travel and meet travel needs through other modes.

"(2) A plan or land use regulation amendment significantly affects a transportation facility if it:

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

"(b) Changes standards implementing a functional classification system;

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

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

- 7.1 The Board finds that the affected roads are designated as Local Roads from the "four corners" to the site. Grand Island Road between "four corners" and Wallace Road is a major collector.
- 7.2 The Board finds<sup>d</sup> that the proposed use will not significantly affect a transportation facility under OAR 660-12-060(2)(a). The Director of Public Works stated the aggregate use will not change the functional classification of the roads. The Board finds under OAR 660-12-060(2)(b) that the county road maintenance plan does not establish construction standards for the various functional classifications. Determinations are, rather, made on a case-by-case basis.
- 7.3 The Board finds under OAR 660-12-060(2)(c) that the proposed use does not allow types or levels of land uses which would result in levels of travel or access which are inconsistent with the functional classification of a transportation facility. The Director did not believe that the additional level of traffic generated by the proposed use will be inconsistent with the Local Road classification.
- 7.4 The Board finds under OAR 660-12-060(2)(d) that the proposed use will not reduce the level of service of the facility below the minimum acceptable level identified in the TSP, because the county has not adopted a Transportation System Plan (TSP).
- 7.5 Based on the foregoing, the Board finds that the proposed use will not significantly affect a transportation facility, as defined in the Transportation Planning Rule. Therefore this is not a plan or land use regulation amendment subject to OAR 660-12-060(1).

8. Opponents raised objections based on statewide Goals 1, 2, 4, and 9. However, the Board does not find those objections persuasive for the following reasons:
  - 8.1 Goal 1 (Citizen Involvement). Notice as required by law was provided for each hearing on the request.
  - 8.2 Goal 2 (Land Use Planning). This goal requires the county to conduct comprehensive land use planning and sets out a process for taking "exceptions." No approval criteria for individual requests are included in the goal. There is no exception required or requested in this case. The issues raised do not address the requirements of the goal.
  - 8.3 Goal 4 (Forest Lands). The comment does not raise a specific issue to which the Board can respond, and therefore is not a basis for denying the request.
  - 8.4 Goal 9 (Economic Development) This goal addresses comprehensive planning, not review of individual land use actions, and therefore is not a basis for denying the request.

C. County Conditional Use Ordinance Provisions and Analysis

1. The conditional use portion of the subject request must comply with the standards and criteria in the *Yamhill County Zoning Ordinance (YCZO) Section 1202.02*, which provides as follows:
  - "A. The use is listed as a conditional use in the underlying zoning district;
  - "B. The use is consistent with those goals and policies of the Comprehensive Plan which apply to the proposed use;
  - "C. The parcel is suitable for the proposed use considering its size, shape, location, topography, existence of improvements, and natural features;
  - "D. The proposed use will not alter the character of the surrounding area in a manner which substantially limits, impairs, or prevents the use of surrounding properties for the permitted uses listed in the underlying zoning district;
  - "E. The proposed use is appropriate, considering the adequacy of public facilities and services existing or planned for the area affected; and
  - "F. The use is or can be made compatible with existing uses and other allowable uses in the area."

These criteria are addressed, respectively, in Findings C.2 through C.7, below.

2. The Board finds that the use is listed as a conditional use in the underlying zoning district, as required by YCZO §1202.02 A. YCZO Section 403.04(H)(2) lists "operations conducted for mining, crushing or stockpiling of aggregate..." as a conditional use in the AF-20 zone, subject to the standards of Section 404. The request is for mining and stockpiling sand and gravel.
3. The Board finds that the use is consistent with those goals and policies of the Comprehensive Plan which apply to the proposed use, as required by YCZO §1202.02 B.
- 3.1 Regarding Comprehensive Plan goals and policies, the land is currently planned and zoned for farm use. Policy II.A.1.a states:

"Yamhill County will provide for preservation of farm lands through appropriate zoning, recognizing comparative economic returns to agriculture and alternative uses, changing ownership patterns and management practices, changing market conditions for agricultural produce, and various financial incentives."

In addition, Policy II.A.2.a states:

"Yamhill County will continue to preserve areas for farm use which exhibit Class I through IV soils as identified in the Capability Classification System of the U.S. Soil Conservation Service."

The soils maps showed the site is predominantly Class II soil. However, Policies II.F.1.a and .b state:

"a. Mineral and aggregate resources will be recognized as a nonrenewable resource important to the growth and development of the county and the surrounding region.

"b. Yamhill County will continue to cooperate with state and federal agencies within the region to identify lands that are, can, or should be utilized for sources or processing of mineral aggregates; will determine present and future needs; and will formulate and implement necessary measures for the protection of such sources or sites; and sites that are found to be compatible with the Plan goals will be recognized through appropriate plan designations and zone districts on the Plan and zone maps."

- 3.2 The Comprehensive Plan commits the county to protect both farm and aggregate resources, so a determination regarding which use should prevail in this circumstance must be made. The site apparently has a significant quantity of rock (Finding B.4). Although the property is classified as Class I through IV soils under the Capability Classification System of the U.S. Soil Conservation Service, a more precise investigation of the property indicated that the area of the proposed operation does not include such soils, and that the site is not composed of the soils indicated on the soils map (Finding A.6). Based on the evidence submitted, (including DOGAMI testimony and an engineers' report) it was shown that the Soil Survey is inaccurate, and the proposed excavation site does not have Class I through IV soils as shown. Based on this, the Comprehensive Plan policy committing the county to preserve Class I through IV soils for farm use will not prevent approval of the request. There is no land being farmed due to unsuitability of the land. The Board finds that approval of the use will not conflict with the Comprehensive Plan.
- 3.3 Even if there were agricultural soils, which there are not, the Board finds that gravel is a more important resource to be developed than agricultural land in this circumstance. And even if there were agricultural land, the Board finds that such agricultural lands would produce less economic return than mineral extraction.
- 3.4 Opponents contended that the original staff report was in error wherein it described Plan policies regarding maintenance of agricultural land and protection of aggregate resources and indicated that the county must balance the two competing resources, farm and aggregate. Opponents argued the policy that requires the county to "continue to preserve those areas for farm use which exhibit Class I through IV soils as identified in the Capability Classification System of the U.S. Soil Conservation Service" is a prior determination that the agricultural resource prevails. However, as set forth above, the soil survey is inaccurate because there is little or no soil cover on the proposed excavation site. As a result, the Board is persuaded that there are no Class I through IV soils in the specific area of the proposed mineral extraction, and therefore there is no balancing of any competing agricultural resources required.
4. The Board finds that the parcel is suitable for the proposed use considering its size, shape, location, topography, existence of improvements, and natural features, as required by YCZO §1202.02 C. The size, shape, and topography of the parcel do not appear to limit the intended use. The natural features required include sand and gravel deposits, which

are existing. The use does not require improvements on the land other than on-site roads, which have been built.

5. The Board finds that the proposed use will not alter the character of the surrounding area in a manner which substantially limits, impairs, or prevents the use of surrounding properties for the permitted uses listed in the underlying zoning district, as required by YCZO §1202.02 D.
  - 5.1 There are not currently aggregate extraction operations on Grand Island, so a new use will be instituted. The use will not, however have off-site impacts that will limit, impair, or prevent the use of surrounding lands, which are predominantly in farm use. There will be additional traffic on the area roads, but this impact should not be so great as to cause an undue burden on agricultural use of the surrounding area.
  - 5.2 There was written testimony that the proposed use will alter the character of the area in a manner that will substantially limit, impair or prevent the use of surrounding properties for uses permitted in the zone (§1202.02(D)). The comment specifies noise, dust, danger, and degradation as the impacts, without specifying how these factors will limit, impair or prevent agricultural use or other uses permitted in the exclusive farm use and agriculture/forestry zones (the only districts on the island). There is insufficient specificity in the objections to determine how the proposed use would have this effect on uses permitted in the EF and AF zones. Therefore, the Board finds this evidence unpersuasive.
6. The Board finds that the proposed use is appropriate, considering the adequacy of public facilities and services existing or planned for the area affected, as required by YCZO 1202.02 E.
  - 6.1 The only public facilities required are roads and electricity. Electricity is available to the site. Paved county and state roads connect the site with potential market and processing locations. The county Public Works Director found that the county roads leading to the site would be inadequate without certain improvements because the roads are not currently adequately constructed to accommodate the rock hauling. He has informed planning staff that if the road is built to an appropriate standard, the road will be safe and it will handle the additional quantity and type of traffic. While the roads are paved, there are stretches of road only 13 feet wide, and the Public Words Director believes the road is not constructed adequately to withstand the quantity and weight of traffic produced by the aggregate use. The road is marginal but adequate for the existing farm and residential use, but with

the intensification of traffic impacts, the road will need to be improved. Because the requested use would be introducing a level of traffic that exceeds the capacity of the road, it is reasonable to require the operator to contribute to road improvements.

- 6.2 The Public Works Department has estimated the level use by farm implements on Grand Island Loop Road at 18,000 trips annually. The applicant informed staff they anticipate that approximately 25,000 cubic yards of material will be removed annually in trucks hauling eight to 10 cubic yards each, for 2,500 to 3,125 trips. Using the lower number, this means the proposed operation would contribute about 12 percent of the heavy traffic on the roads.
- 6.3 Much of the testimony addressed the adequacy of the public roads on the island to accommodate the use (§1202.02(E)). However, a condition that the road be improved will assure that the road will be adequate to accommodate the use. The Board finds that a condition requiring road improvements will insure compliance with this approval criterion.
- 6.4 There is also a statement that electric service on the island will be unable to handle the load. The DOGAMI representative indicated dewatering is no longer proposed, so the use should not place demands on electric service.
7. The Board finds that the use is or can be made compatible with existing uses and other allowable uses in the area, as required by YCZO 1202.02 F.
  - 7.1 The Board finds that no incompatibilities with surrounding uses have been identified. Traffic quantity and safety concerns were raised. There will be about one trip every 15 minutes, and two trucks with a 50-minute turnaround, which equates to about one per 25 minutes loaded or empty. The proposed level of activity will not be incompatible with agricultural or residential use, especially considering that heavy agricultural vehicles already in use on these roads.
  - 7.2 Opponents argued that there were other uses (fish and wildlife habitat, residential use, recreational use including Willamette Mission State Park across the river, and agriculture uses adversely impacted. The impacts include traffic quantity, traffic safety, noise, dust, water pollution, and erosion. However, there was testimony from the Oregon Dept. of Fish and Wildlife and DOGAMI that, with construction of channels connecting the pits to the river, the project will have potential benefits for fish habitat. The concerns regarding wildlife habitat have been non-specific. The engineers' report and DOGAMI testimony indicate that, with appropriate mitigation measures, erosion will not be significantly exacerbated. Traffic safety and

noise have not been addressed in detail by the applicant. The Board finds opponents claims that there will be adverse impacts unpersuasive.

8. YCZO Section 404.07 lists standards that operators of aggregate quarries are required to observe (Exhibit C). These operating standards regulate setbacks, screening, roads, blasting hours, and reclamation. No blasting or processing is proposed. Noise and dust standards rely on state regulations. The Board finds that the reclamation plan submitted with the application shows compliance with the standards regarding setbacks (subsection A), ponds (subsection C.3), and reclamation (subsection F). Roads are discussed in Finding C.6 above. Conditions requiring compliance with the other standards will apply to the new area.
9. The Board finds that with conditions, the request complies with the conditional use approval standards in Section 1202.02, and Section 404.07 of the *Yamhill County Zoning Ordinance*.

D. County Willamette River Greenway Ordinance Provisions and Analysis

1. A portion of the proposed extraction area is within the Willamette River Greenway (WRG) overlay zone. The stockpiling and staging areas are proposed to be located entirely outside the WRG boundary. Requests for land-use actions within the WRG overlay must comply with YCZO Section 902.06. These provisions follow. Findings for each are provided immediately following the ordinance standard.
2. YCZO §902.06 A provides:
  - "A. That the proposal conforms with the use provisions and standards and limitations of the underlying zoning district."

The Board finds that YCZO §902.06 A is satisfied based on Findings B.1 through B.8.

3. YCZO §902.06 B provides:
  - "B. That the proposal is consistent with the purpose of the WRG Overlay District as provided in Subsection 902.01."

The purpose section of this section of the ordinance directs the county to implement the Goals and Policies of the Comprehensive Plan and the State's Willamette River Greenway program. The only Greenway goal is:

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

Compliance with this goal will be ensured by requiring adherence to the review criteria in YCZO Section 902.06. The policies under this goal do not add approval criteria to be applied to individual requests.

Even assuming that the policies were approval criteria, the Board finds that YCZO §902.06 B is satisfied for the following reasons. In the purpose section of WRG Overlay, protection of natural, scenic, and recreational qualities of lands along the Willamette River is paramount. The site plan indicates that the existing vegetation from the high water mark of the Willamette for 150 feet into the parcel will remain. Because there will be a condition requiring the excavation be setback at least 150 feet from the ordinary high water mark, there will be no adverse impact on the recreational use, scenic qualities, or any other part of the natural qualities of lands along the river.

There was testimony from opponents that the operation would be detrimental to the Willamette River Greenway because of erosion, affect on fish and wildlife habitat, scenic quality, and recreation.

The Board finds opponents' arguments unpersuasive for the following reasons.

First, the Board finds that this is private land and for that reason recreational use of the property is not a relevant consideration.

Second, even assuming there is an impact, the only apparent impact on recreational use is noise. The applicant testified that noise will not be excessive ("Less noise than a combine"). The use most sensitive to the effects of noise is recreation along the Willamette River, because the surrounding area in the nearby vicinity of the request is agriculture, which will not be affected. Noise from the proposed operation will not be incompatible with recreation because that use also typically generates noise (power boats).

There was also conflicting testimony whether the operation will be visible from the river. The Board finds more persuasive the evidence that there the operation will not be visible from the river due to the topography and the 150 foot setback requirement. The Oregon Parks and Recreation Department raised the issue of rock trucks using Wheatland Road, but the applicant has not proposed using that route.

Third, the 150 foot setback condition will assure that there is no adverse impact from noise on the recreational uses along the river.

Fourth, erosion and fish and wildlife habitat are not adversely impacted, based on the testimony of applicants, and the concerns regarding wildlife habitat were non specific and therefore not persuasive. With recommended mitigation measures, the proposed pits will not create excessive erosion.

An impact on recreation not previously raised is that the pits will be a danger to recreational users of the river. The applicant contends that it is private property and recreation will not take place around the pits.

Wetlands have been raised as an issue as well. There is evidence that there may be wetlands in the proposed excavation area. This should be determined, but not necessarily prior to conditional use permit approval.

There have been other comments pertaining to Greenway approval criteria regarding wildlife habitat, groundwater quality, and natural areas. The nature of these impacts have not been specified adequately to enable the Board to evaluate the merit of these arguments, and therefore the Board finds that the request is, with conditions, consistent with the Greenway approval criteria.

4. YCZO §902.06 C provides:

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

The Board finds that YCZO §902.06 C is satisfied. The 150-foot setback addressed above will ensure compliance with this WRG standard.

5. YCZO §902.06 D provides:

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

The Board finds that YCZO §902.06 D is satisfied. The use should have no adverse impact on air quality. Water and land quality may be affected by erosion from the site. This is addressed under criterion (1), below.

6. YCZO §902.06 E provides:

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

The Board finds that YCZO §902.06 E is satisfied. The soil survey indicates the soils on the property are rated Class II, and as such should be maintained for farm use. There is evidence, however, that the soil survey is incorrect, and the soil characteristics are actually not as suitable for agriculture as portrayed. The property is not, and apparently has not ever been, in farm use. It should also be noted that less than half of the proposed excavation area is within the WRG overlay.

7. YCZO §902.06 F provides:

"F. That significant fish and wildlife habitats shall be protected."

The Board finds that YCZO §902.06 F is satisfied. The property is not identified as significant wildlife habitat in the comprehensive plan. The applicant indicated that the project will enhance habitat for upland birds and waterfowl. The Willamette River fishery should be protected by the 150-foot setback addressed above. The comment from the Oregon Department of Fish and Wildlife indicates this is appropriate.

8. YCZO §902.06 G provides:

"G. That significant natural and scenic areas, viewpoints and vistas shall be preserved."

The Board finds that YCZO §902.06 G is satisfied. No significant natural area has been identified on the site. The scenic quality from the Willamette River will be maintained by requiring a 150-foot setback from high water.

9. YCZO §902.06 H provides:

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

The Board finds that YCZO §902.06 H is satisfied. No features with significance in these areas have been identified.

10. YCZO §902.06 I provides:

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

The Board finds that YCZO §902.06 I is satisfied. The property is entirely within the 100-year floodplain and the floodway of the Willamette River. Aggregate extraction within a floodplain is not normally considered a problem because removal of material would be expected to either have no effect on the flood elevation or reduce it. There is rip-rap proposed as erosion mitigation in this request, but the quantity of material placed on the banks of the pits will be considerably less than the quantity of aggregate removed. The development is not expected to increase the flood elevation. Removal of material will not adversely affect flood elevations, and no structural improvements are proposed. Applicants testified that the proposed ponds will serve to attenuate flood waters during "peak" events and diminish downstream and on-site consequences. The operational plan for the site has been designed in accordance with the recommended rise/run requirements of DOGAMI. The nature of the use is such that the excavation, stockpiling, and staging areas cannot be "preserved in their natural state." The DOGAMI operating permit application submitted with the county application (Exhibit A) indicates that land will be cleared for mining one cell at a time (with five total cells), and each cell will be reclaimed when mined out, so only a portion of the site will be disturbed at one time. The Board finds that the condition requiring that the proposed operation and reclamation plan be followed will insure compliance with this criterion.

11. YCZO §902.06 J provides:

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

The Board finds that YCZO §902.06 J is satisfied. The applicant indicated that timber will be harvested from the operating area. If the reclamation is performed as discussed in the previous finding, habitat and scenic qualities should be adequately maintained.

12. YCZO §902.06 K provides:

- "K. That the proposed development, change of use or intensification of use is compatible with the site, the surrounding area and the environment."

The Board finds that YCZO §902.06 K is satisfied. As stated in the conditional use criteria findings, no incompatibilities have been identified. Traffic quantity and safety were considered. There was testimony that there will be about one trip every 15 minutes. The applicant stated there will usually be two trucks with a 50-minute turnaround, which equates to about one per 25 minutes loaded or empty. The definition of "compatibility" is different to different people, the proposed level of activity will not be incompatible with agricultural or residential use, especially considering that heavy agricultural vehicles already in use on the roads on Grand Island.

13. YCZO §902.06 L provides:

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

The Board finds that YCZO §902.06 L is satisfied. The Soil and Water Conservation District expressed concern regarding soil erosion, especially during flood events. They requested engineering be performed to assess the risk of erosion, and that they be permitted to review the report. The Commission may entertain this request, but DOGAMI normally provides review (not necessarily engineering) regarding erosion control requirements. The memo from DOGAMI on page A-25 of Exhibit A states that erosion can be controlled by maintaining a setback from the river overflow channel, sloping the excavation at 3:1, and limiting the depth of extraction. This appears to county staff to be adequate insurance of erosion control.

14. YCZO §902.06 M provides:

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

The Board finds that YCZO §902.06 M is satisfied. The proposed 150-foot setback from the high water line of the Willamette River and reclamation immediately following excavation addresses most of these concerns. No processing is proposed for the site, so noise will be minimized.

15. YCZO §902.06 N provides:

requirements would impinge on the extraction area with minimal benefit.

20. The Board finds that with conditions, the request complies with the approval standards for development within the Willamette River Greenway in Section 902.06 of the Yamhill County Zoning Ordinance.

#### CONCLUSIONS:

1. The request is for an amendment to the Yamhill County Comprehensive Plan to add a site to the county aggregate inventory and conditional use approval to allow sand and gravel extraction within the Willamette River Greenway.
2. The site is a significant aggregate resource.
3. There are no conflicting uses in the vicinity of the site.
4. Although there may arguably be conflicts with the Comprehensive Plan goal of conserving farmland, the beneficial aspects of the project considering other Plan policies balance the negative effects. The request is consistent with the intent and purposes of the goals and policies of the Plan when considered as a whole.
5. The Comprehensive Plan recognizes a need to develop aggregate resources.
6. With conditions, the request complies with the conditional use approval standards in YCZO § 1202.02.
7. With conditions, the request complies with the approval standards for development within the Willamette River Greenway in YCZO § 902.06.

#### DECISION:

Based on the above findings, analysis, and conclusions, the Board hereby approves the application by Kamph Rock Crushing and Audra Hildebrandt for a Plan amendment to add a site to the county aggregate inventory and conditional use for sand and gravel extraction within the Willamette River Greenway on a portion of Tax Lot 5324-300 with the following conditions:

1. Aggregate shall not be extracted within 150 feet of the normal high water line of the Willamette River, or greater distance as required by the Oregon Department of Geology and Mineral Industries. The high water line of river shall be established by survey and shall be submitted to the Army Corps of Engineers.

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

The Board finds that YCZO §902.06 N does not apply because no recreational uses are proposed or suitable for the site.

16. YCZO §902.06 O provides:

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

The Board finds that YCZO §902.06 O is satisfied. The applicant indicated that access will be controlled via the existing driveway to Upper Island Road. Public access onto the operating site will not be accommodated.

17. YCZO §902.06 P provides:

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

The Board finds that YCZO §902.06 P is satisfied. The proposed site plan indicates the operation will be setback 150 feet from the ordinary high water line.

18. YCZO §902.06 Q provides:

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

The Board finds that YCZO §902.06 Q is satisfied. Public access is not necessary or appropriate for this request."

19. YCZO §902.06 R provides:

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

The Board finds that YCZO §902.06 R is satisfied. The proposed 150-foot setback is reasonable. Additional setback

2. The operation and reclamation plans shall be implemented as proposed, including erosion control measures and wet-mining, and excavated pits shall be reclaimed within one year of operation in the subsequent pit.
3. Existing perimeter vegetation on all sides shall be retained for the duration of the mining operation.
4. The portions of Grand Island Loop and Upper Island Roads from the intersection of Grand Island, Grand Island Loop, and Upper Island Roads ("four corners") to the site shall be improved by August 1, 1995, or rock hauling activity shall be ceased until the roads are improved. These public road improvements shall consist of widening the road to 18 feet, base improvement, ditch improvement, and a 2 inch overlay at specifications required by the Public Works Director.
5. A wetlands determination shall be performed prior to excavation, and permits granted by the Oregon Division of State Lands and/or the Army Corps of Engineers, if required.
6. A minimum 50-foot setback shall be maintained between the excavation site and the backwater/slough to the north.
7. The excavated pits shall be linked with the Willamette River to allow fish passage. This shall be accomplished in a manner and at such time as determined by the Oregon Department of Geology and Mineral Industries through their permitting process, with the participation of the Oregon Department of Fish and Wildlife.

F:PA\PA-2-94.SR

H:\admin\pinkstj\pa-2-94.sr

EXHIBIT "B" TO  
ORDINANCE 579

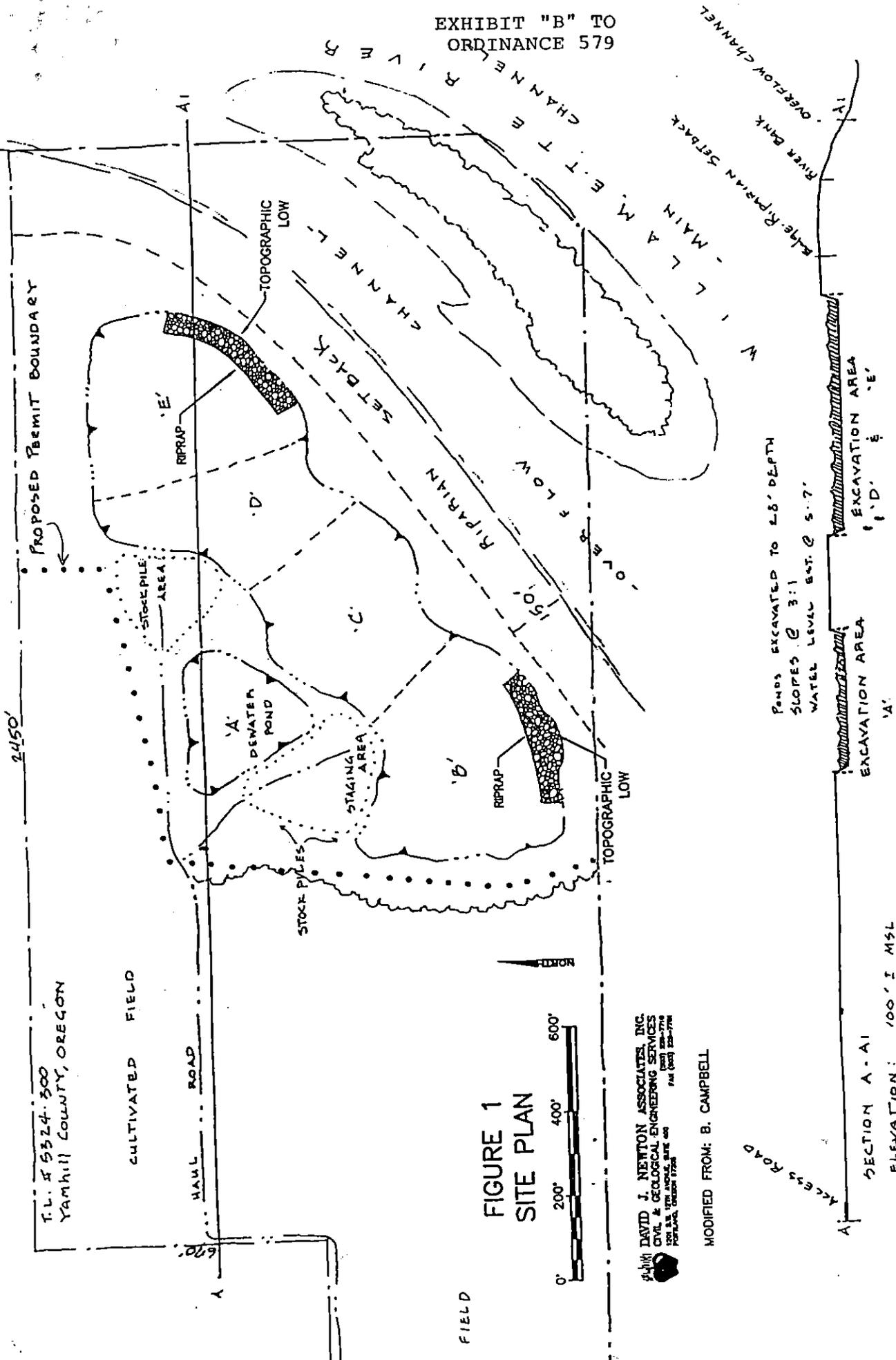


FIGURE 1  
SITE PLAN

DAVID J. NEWTON ASSOCIATES, INC.  
CIVIL & GEOLOGICAL ENGINEERING SERVICES  
1201 S.W. 10TH AVENUE, SUITE 400  
PORTLAND, OREGON 97204  
PHONE (503) 228-7740  
FAX (503) 228-7740

MODIFIED FROM: B. CAMPBELL

SECTION A-A  
ELEVATION: 100' I MSL