

W. A. B.

AGENDA COVER MEMO

DATE: JANUARY 22, 2008 (memo)
FEBRUARY 6, 2008 (Tenth Reading/Deliberations)
TO: LANE COUNTY BOARD OF COMMISSIONERS
DEPT: PUBLIC WORKS DEPARTMENT/LAND MANAGEMENT DIVISION
PRESENTED BY: STEPHANIE SCHULZ / PLANNER
TITLE: ORDINANCE NO. PA 1238; IN THE MATTER OF AMENDING THE EUGENE SPRINGFIELD METROPOLITAN AREA GENERAL PLAN (METRO PLAN) TO REVISE THE GOAL 5 SIGNIFICANT MINERAL AND AGGREGATE RESOURCES INVENTORY, REDESIGNATE FROM "AGRICULTURE" TO "SAND & GRAVEL", REZONE FROM "E30/EXCLUSIVE FARM USE ZONE" TO "SG/SAND GRAVEL AND ROCK PRODUCTS ZONE", AND ALLOW MINING ON 72.31 ACRES OF LAND PURSUANT TO THE GOAL 5 OREGON ADMINISTRATIVE RULES (OAR 660-023); AND ADOPTING SAVINGS AND SEVERABILITY CLAUSES (File No. PA 05-6151; Applicant: Delta Property Co.)

I. MOTION

Move to approve Ordinance No. PA 1238 with the attached findings and conditions.

II. BACKGROUND/ANALYSIS

The applicant Delta Property Co. requests that the Eugene-Springfield Metropolitan Area General Plan (*Metro Plan*) Goal 5 Inventory for Significant Mineral and Aggregate Sites be amended to allow a 72.31 acre expansion of the existing 474 acre sand and gravel operation. The application is a "Post-Acknowledgement Plan Amendment" (PAPA) as provided for by LCDC Statewide Planning Goal 5 Rule for mineral and aggregate resources, OAR 660-023-180. The Metro Plan Designation is proposed for amendment from "Agriculture" to "Sand & Gravel". The requested amendment also includes a zone change from "E30/Exclusive Farm Use (LC 16.212)" to "SG/Sand, Gravel & Rock Products (LC 16.217)" to allow mining and variance to Lane Code 16.217(4)(b)(v)(dd) to excavate and install a low permeability barrier (aquaclude) within the 150' setback in order to reduce groundwater flow into the excavated area.

The Board and Eugene City Council held joint hearings on November 1, 2006 and December 12, 2006, deliberated separately and then met in joint session on January 16, 2008. The Board presented to the Council its conclusions on the significance of the aggregate resource and minimization of conflicts through conditions in the operations plan. The joint elected officials discussed the matter without resolution of differences, and the Board set the tenth reading for February 6, 2008 to deliberate on the adoption of the proposed Ordinance that would approve the Delta request. Attached is a complete copy of the Ordinance, including map diagrams, findings, and conditions.

This Ordinance, with the conditions of operation and findings prepared by the applicant, sets the matter before the Board for adoption.

III. TIMING/NEXT STEPS

If the Eugene City Council takes action consistent with prior "straw votes", there will be no consensus on the amendment. The *Metro Plan* amendment process indicates the next steps as follows:

Metro Plan Chapter IV policy 7: ... Amendments for which there is no consensus shall be referred to the Metropolitan Policy Committee (MPC) for additional study, conflict resolution, and recommendation back to the governing bodies.

Metro Plan Chapter IV policy 8: Adopted or denied Metro Plan amendments may be appealed to the Oregon Land Use Board of Appeals or the Department of Land Conservation and Development according to applicable state law.

Lane Code provisions for Metro Plan Amendments are in Chapter 12. 12.235 Metro Plan – Plan Amendment Approval Process – Two Jurisdictions.

12.235 (5) Conflict Resolution Process The following process shall be used when the governing bodies do not enact identical decisions on the proposed Metro Plan amendment.

(a) The Metro Plan amendment shall be referred to the Metropolitan Policy Committee (MPC) within five days after the last governing body action. The MPC shall meet within 30 days of the referral to hear comments on the proposed amendment from the applicant, staff of the affected jurisdictions and interested persons. The committee may develop a recommendation to the governing bodies on the proposed amendment. The Metro Plan amendment shall be denied if the committee fails to act within 30 days of the referral date or if the governing bodies fail to adopt identical plan amendment actions within 45 days of receiving a recommendation from the committee.

(b) If the plan amendment is denied because of lack of consensus or committee inaction, within 5 days the planning director of the home jurisdiction where the application originated shall issue a denial decision on the amendment containing findings and conclusions on why the proposed amendment does not meet the approval criteria. Those findings and conclusions may incorporate findings and conclusions previously adopted by one or both of the governing bodies. The decision of the director is final.

IV. ATTACHMENTS

Ordinance No. PA 1238

Exhibit A – Metro Plan Diagram Amendment

Exhibit B – Official Plot Map #1005 Amendment

Exhibit C – Findings & Conditions.

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY, OREGON

ORDINANCE NO. PA 1238 IN THE MATTER OF AMENDING THE EUGENE-SPRINGFIELD METROPOLITAN AREA GENERAL PLAN (METRO PLAN) TO REVISE THE GOAL 5 SIGNIFICANT MINERAL AND AGGREGATE RESOURCES INVENTORY, REDESIGNATE FROM "AGRICULTURE" TO "SAND & GRAVEL", REZONE FROM "E30/EXCLUSIVE FARM USE ZONE" TO "SG/SAND, GRAVEL & ROCK PRODUCTS ZONE", AND ALLOW MINING ON 72.31 ACRES OF LAND PURSUANT TO THE GOAL 5 OREGON ADMINISTRATIVE RULES (OAR 660-023); AND ADOPTING SAVINGS AND SEVERABILITY CLAUSES (FILE PA 05-6151; DELTA PROPERTY CO.)

WHEREAS, the Board of County Commissioners of Lane County, through enactment of Ordinance PA 884, has adopted Land Use Designations and Zoning for lands within the planning jurisdiction of the Lane County Rural Comprehensive Plan; and

WHEREAS, the Board of County Commissioners of Lane County, on June 2, 2004, through enactment of Ordinance No. PA 1197, has adopted the 2004 update to the Eugene-Springfield Metropolitan Area General Plan (Metro Plan); and

WHEREAS, Lane Code 12.225 sets forth procedures for amendment of the Metro Plan, and Lane Code 16.252 sets forth procedures for rezoning lands within the jurisdiction of the Rural Comprehensive Plan and for the area outside the Metro Plan UGB and within the Metro Plan Boundary; and

WHEREAS, Oregon Administrative Rules (OAR) Chapter 660 Division 23 sets forth procedures for amendment of the Goal 5 Inventory of Significant Mineral & Aggregate Sites within Lane County as well as addressing requests for a post-acknowledgment plan amendment (PAPA); and

WHEREAS, in August 2005, application no. PA 05-6151 was made for a Type II Metro Plan Amendment to add to the Goal 5 Inventory of Significant Mineral & Aggregate Sites, redesignate from "Agriculture" to "Sand & Gravel" and concurrently rezone from "Exclusive Farm Use" to "Sand, Gravel & Rock Products" tax lots 3600, 3601, and 3700 of map 17-04-12-00; tax lot 3600 of map 17-04-12-20; tax lots 5600, 6200, and a portion of 100 of map 17-04-12-31; and tax lots 300, 400 and a portion of 600 of map 17-04-12-40; and

WHEREAS, the Lane County Planning Commission reviewed the proposal with the Eugene Planning Commission in public hearings on November 15, 2005 and January 25, 2006, deliberated jointly on July 25, and August 30, 2006 and forwarded the matter to the Board with formal Planning Commission recommendations; and

WHEREAS, evidence exists within the record indicating that the proposal meets the requirements of Lane Code Chapters 12 and 16, and the requirements of applicable state and local law; and

WHEREAS, the Board of County Commissioners has conducted public hearings and is now ready to take action;

NOW, THEREFORE, the Board of County Commissioners of Lane County Ordains as follows:

Section 1. The subject site, consisting of, tax lots 3600, 3601, and 3700 of map 17-04-12-00; tax lot 3600 of map 17-04-12-20; tax lots 5600, 6200, and a portion of 100 of map 17-04-12-31; and tax lots 300, 400 and a portion of 600 of map 17-04-12-40; shall be added to the Metro Plan Inventory of

ORDINANCE NO. PA 1238 ---IN THE MATTER OF AMENDING THE EUGENE-SPRINGFIELD METROPOLITAN AREA GENERAL PLAN (METRO PLAN) TO REVISE THE GOAL 5 SIGNIFICANT MINERAL AND AGGREGATE RESOURCES INVENTORY, REDESIGNATE FROM "AGRICULTURE" TO "SAND AND GRAVEL", REZONE FROM "E30/EXCLUSIVE FARM USE ZONE" TO "SG/SAND, GRAVEL & ROCK PRODUCTS ZONE", AND ALLOW MINING ON 72.31 ACRES OF LAND PURSUANT TO THE GOAL 5 OREGON ADMINISTRATIVE RULES (OAR 660-023); AND ADOPTING SAVINGS AND SEVERABILITY CLAUSES (FILE PA 05-6151; DELTA PROPERTY CO.)

Significant Mineral and Aggregate Sites. based on findings and conclusions as described in Exhibit "C" attached and incorporated herein.

Section 2. The Eugene/Springfield Metropolitan Area General Plan is amended by the redesignation of tax lots 3600, 3601, and 3700 of map 17-04-12-00; tax lot 3600 of map 17-04-12-20; tax lots 5600, 6200, and a portion of 100 of map 17-04-12-31; and tax lots 300, 400 and a portion of 600 of map 17-04-12-40; from "Agriculture" to "Sand and Gravel", such territory depicted on the Eugene Springfield Metro Plan Diagram and further identified on Exhibit "A" attached and incorporated herein.

Section 3. Tax lots 3600, 3601, and 3700 of map 17-04-12-00; tax lot 3600 of map 17-04-12-20; tax lots 5600, 6200, and a portion of 100 of map 17-04-12-31; and tax lots 300, 400 and a portion of 600 of map 17-04-12-40; are rezoned from "E-30/Exclusive Farm Use" (Lane Code 16.212) to "SG/Sand, Gravel & Rock Products" (Lane Code 16.217) subject to the conditions as set forth in Exhibit "C" attached, such territory depicted on Official Zoning Plot Map #1005 and further identified on Exhibit "B" attached and incorporated herein.

FURTHER, although not a part of this Ordinance except as described above, the Board of County Commissioners adopts Findings and Conditions as set forth in Exhibit "C" attached, in support of this action.

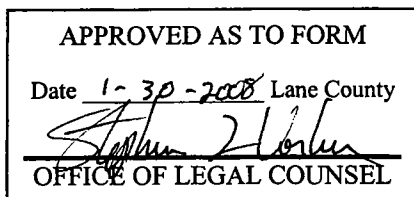
The prior designation and zone repealed by this Ordinance shall remain in full force and effect to authorize prosecution of persons in violation thereof prior to the effective date of this Ordinance.

If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof.

ENACTED this _____ day of _____, 2008.

Chair, Lane County Board of County Commissioners

Recording Secretary for this meeting of the Board



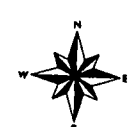
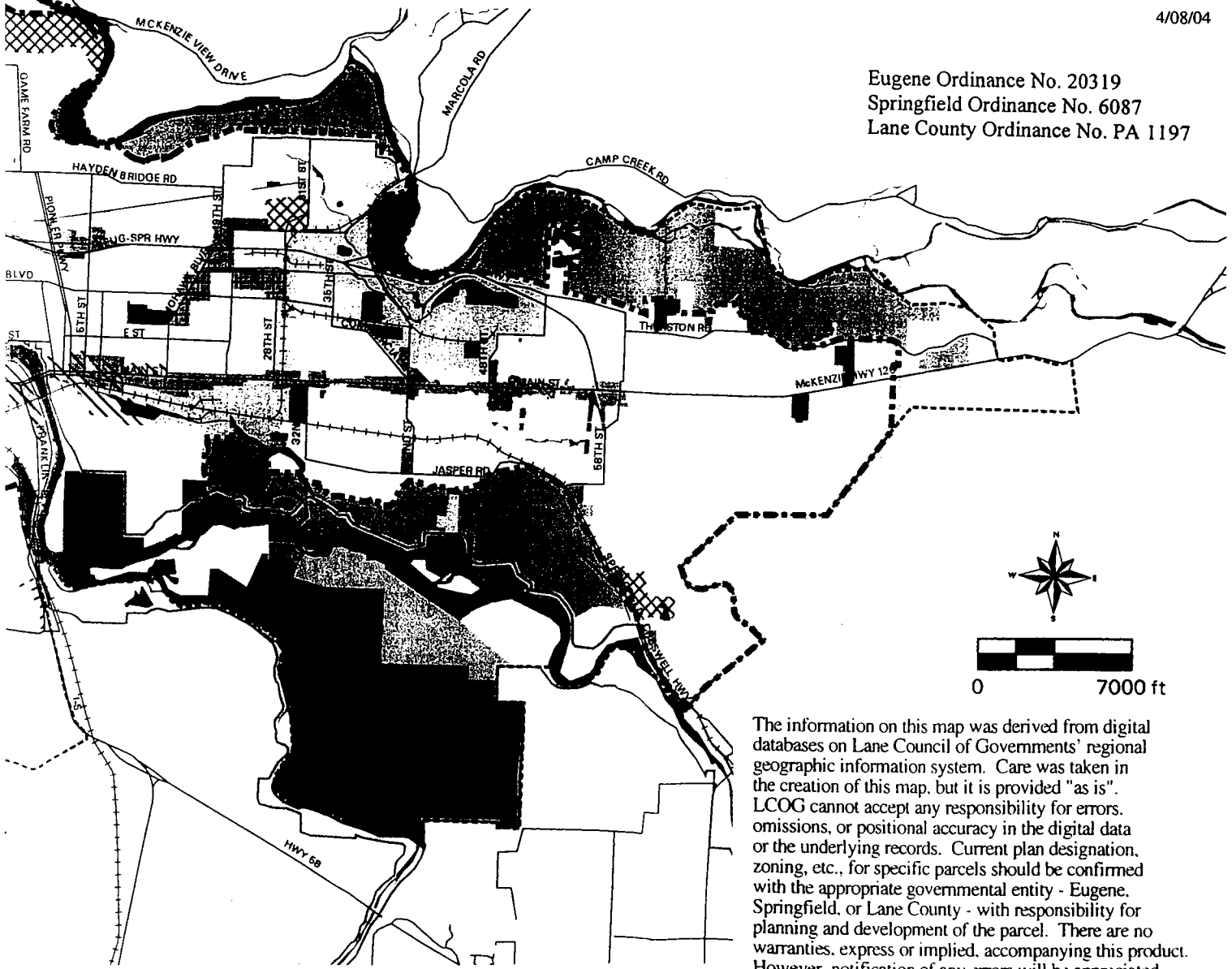
Eugene-Springfield Metropolitan Area General Plan Plan Diagram

(The interpretation and purpose of the Plan Diagram, and descriptions of the land uses and symbols shown, are contained in Chapter 11-G.)

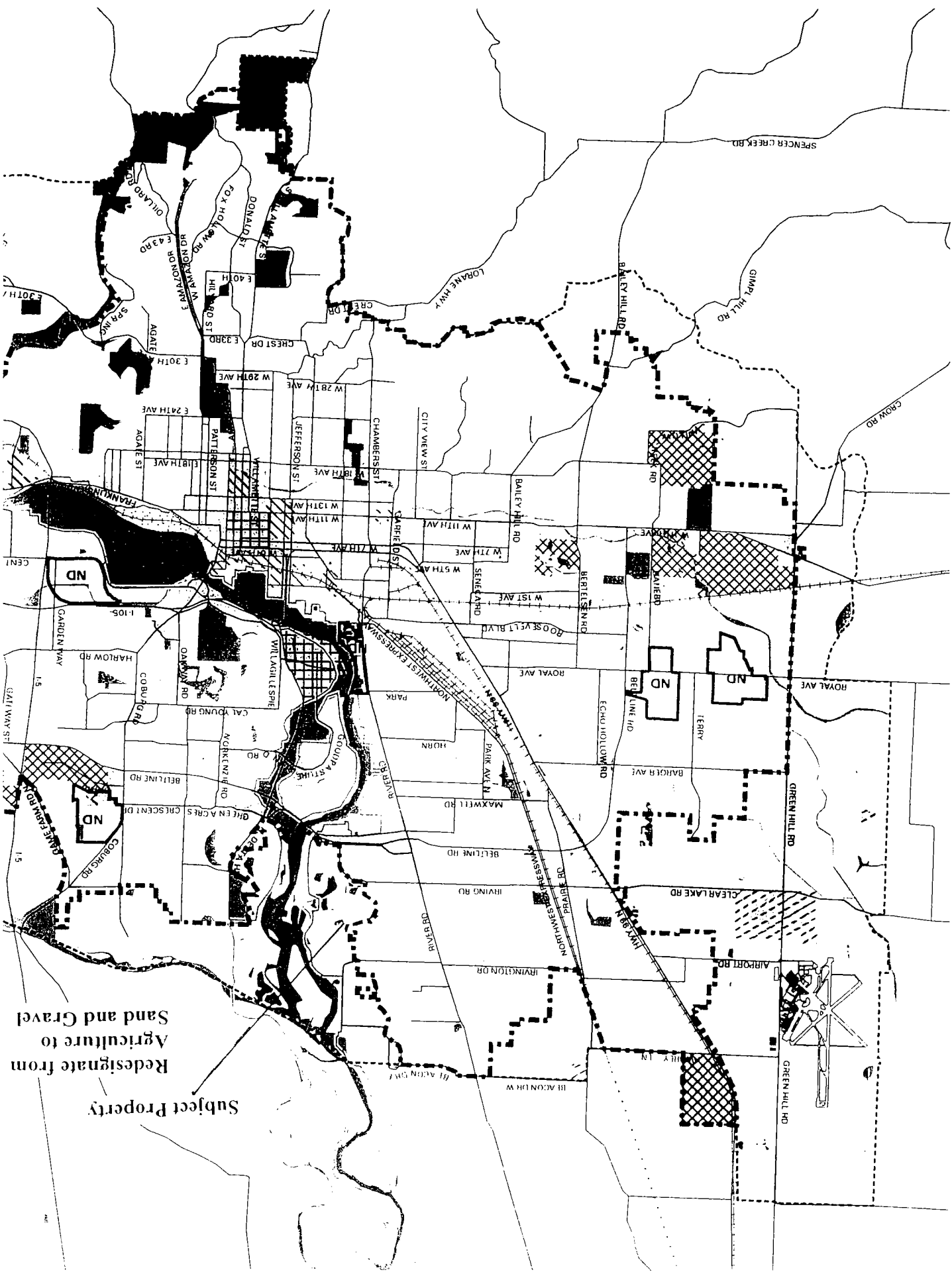
- | | | | | | | | |
|------------------|------------------------|--|----------------------------|--|--------------------------|--|-------------------|
| | Urban Growth Boundary | | Low Density Residential | | Light Medium Industrial | | Agriculture |
| | Metro Plan Boundary | | Medium Density Residential | | Campus Industrial | | Forest Land |
| | Railroads | | High Density Residential | | University Research | | Rural Residential |
| | Rivers and Ponds | | Commercial | | Government and Education | | Rural Commercial |
| Overlays: | | | Major Retail Centers | | Parks and Open Space | | Rural Industrial |
| | Mixed Use Areas | | Heavy Industrial | | Natural Resource | | Airport Reserve |
| | Nodal Development Area | | Special Heavy Industrial | | Sand and Gravel | | |
| | Willamette Greenway | | | | | | |

4/08/04

Eugene Ordinance No. 20319
 Springfield Ordinance No. 6087
 Lane County Ordinance No. PA 1197



The information on this map was derived from digital databases on Lane Council of Governments' regional geographic information system. Care was taken in the creation of this map, but it is provided "as is". LCOG cannot accept any responsibility for errors, omissions, or positional accuracy in the digital data or the underlying records. Current plan designation, zoning, etc., for specific parcels should be confirmed with the appropriate governmental entity - Eugene, Springfield, or Lane County - with responsibility for planning and development of the parcel. There are no warranties, express or implied, accompanying this product. However, notification of any errors will be appreciated.



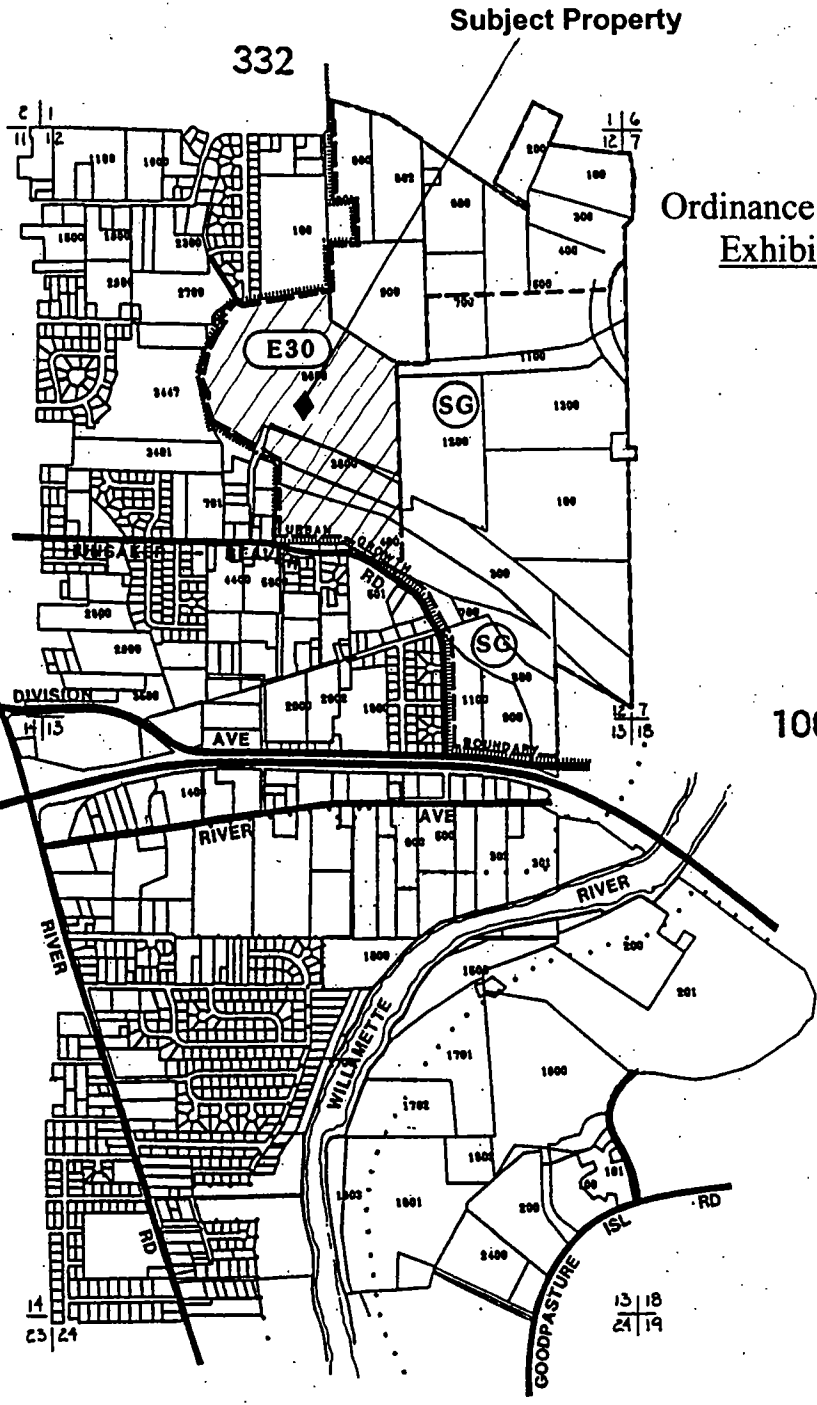
Subject Property
 Redesignate from
 Agriculture to
 Sand and Gravel


Rezone from
 'E30/Exclusive Farm Use' Zone
 to 'SG/Sand, Gravel and
 Rock Products' Zone

Subject Property

Ordinance No. PA 1238
 Exhibit B

FLOODPLAIN



	OFFICIAL ZONING MAP	PLOT# 1005
Twship Range Section 17 04 12 / 17 04 13 ()		
ORIGINAL ORD. # _____ PA 884 _____ DATE <u>2/29/1984</u> FILE # _____ REVISION # _____ ORD. # _____ DATE _____ FILE # _____		

FINDINGS OF FACT AND CONCLUSIONS OF LAW

In support of our adoption and enactment of Ordinance No. PA 1238, we make the following findings of fact and conclusions of law.

GENERAL FINDINGS AND CONCLUSIONS:

Delta Sand and Gravel Company is requesting approval of Eugene-Springfield Metropolitan Comprehensive Plan (Metro Plan) amendments to add 72.31 acres of its property to the Goal 5 Significant Aggregate Site Inventory of the Metro Plan and to re-designate that land from Agriculture to Sand and Gravel. The subject property would also be rezoned from Exclusive Farm Use to Sand, Gravel and Rock Products in tandem with approval of the Metro Plan amendments. The subject property contains 72.31 acres and is located adjacent to the existing Delta mining and processing facility. The property is adjacent to the Eugene Urban Growth Boundary and is located within the Metro Plan boundary. The proposed plan amendments and rezone will allow Delta Sand and Gravel Company to expand its aggregate mining site onto the subject property.

Delta Sand and Gravel Company is a local, family-owned and operated business that was founded by brothers Alan and Lee Babb. The Delta Companies and the Delta Sand and Gravel Company aggregate facility are located on property that has been owned and used by the Babb family for farming and sand and gravel production since 1927. That property, consisting of approximately 474 acres of land zoned for sand and gravel production, contains approximately 8,000,000 cubic yards of aggregate material remaining available for extraction, processing and sale. Delta Sand and Gravel Company estimates that based upon historical extraction rates, the remaining available aggregate material on that land will be depleted in 10 years. The company owns 72 adjacent acres of land, currently zoned Exclusive Farm Use, that is the subject of this application. Approval of the proposed plan amendment and rezone will allow the company to add that 72 acres of land to its inventory of aggregate resource and, through the use of that land for aggregate mining, extend the operational life of Delta Sand and Gravel Company by approximately 12-15 years.

The Delta Companies employ up to 135 persons annually. In 2004 they paid gross wages of over \$4,750,000 and paid considerable taxes associated with that employment base. With the approved use of the proposed expansion area Delta Sand and Gravel Company will continue providing that employment level and will continue to be a significant contributor to the Metro area economy for many years to come.

Approval of this application will result in a reasonable and logical expansion of an aggregate materials source on land owned by a locally-owned and operated company and located in an area currently committed to aggregate production. Approval of this application will also result in the continued existence of a valuable and long-time contributor to the economic and social well being of the Metro area.

BACKGROUND INFORMATION

General Site Description

The property (proposed expansion area) that is the subject of this application contains 72.31 acres and is located contiguous to and west of the existing Delta Sand and Gravel Company aggregate mining site. The property is located outside of the Eugene Urban Growth

Boundary and is located within the Metro Plan boundary. The property is zoned Exclusive Farm Use 30 (E-30). The property is described as Tax Lots 3600, 3601 and 3700 of Lane County Assessor's Map No. 170412; Tax Lot 3600 of Lane County Assessor's Map No. 1704122; Tax Lots 5600 and 6200 and a portion of 100 of Lane County Assessor's Map No. 17041231; and Tax Lots 300, 400 and a portion of 600 of Lane County Assessor's Map No. 17041240; The property is bounded on the east by the existing Delta Sand and Gravel Company aggregate mining site, on the west and south by residential land and on the north by residential and agricultural land.

The site is relatively flat and is primarily used for grass production with the exception of approximately 5.5 acres of shrub nursery on the northeast portion of the property. Three residential sites with associated outbuildings are located on the property. Two excavated ponds (used for gravel extraction prior to 1977) are located on the property. A remnant meander scar of the Willamette River is located on the western boundary of the property.

The overall site slope and drainage is to the northwest toward the abandoned meander scar or oxbow of the Willamette River. On the southern portion of the property local drainage is towards the ponds. No seeps or springs have been located on the property. Trees flank the meander scar along the western boundary of the property and blackberries are predominant around the excavated ponds (with the exception of a few small trees at the western end of the ponds).

Description of Proposed Amendments.

The application before Lane County and the City of Eugene seeks approval of the following:

1. An amendment to the Metro Plan diagram designating the subject property as Sand and Gravel;
2. An amendment of the Metro Plan Goal 5 Significant Aggregate Site Inventory to include the subject property as a significant aggregate resource site;
3. A change in the zoning of the subject property from Exclusive Farm Use to Sand, Gravel & Rock Products;
4. An administrative variance to allow construction of a low permeability barrier within the setback area pursuant to Lane Code 16.217(4)(b)(v)(dd).

The subject property is located within the Eugene-Springfield Metropolitan Comprehensive Plan (Metro Plan) boundary and is located outside of the Eugene Urban Growth Boundary. Applications for amendments to the Metro Plan diagram regarding property located within the Metro Plan boundary and outside of the Eugene Urban Growth Boundary are filed with Lane County and require the approval of the City of Eugene and Lane County.

METRO PLAN AMENDMENT -LANE CODE CRITERIA

OAR 660-023-0180 is the Oregon Statewide Planning Goal 5 Rule regarding aggregate resources. OAR 660-023-0180(9) provides that if local governments have not amended their comprehensive plans and land use regulations to include procedures and requirements consistent with the Goal 5 Rule for the consideration of post-acknowledgement plan amendments (PAPAs) regarding aggregate resources, the procedures and requirements of the Goal 5 Rule shall be directly applicable to a local government consideration of a PAPA. Therefore, Metro Plan, Lane Code and

Eugene Code land use regulations related to PAPAs regarding aggregate resources are not applicable to this application. The Land Use Board of Appeals decision in *Morse Bros. v. Columbia County*, 37 Or LUBA 85 (1999) supports the conclusion that OAR 660-023-0180(9) preempts the application of local comprehensive plan amendment or zone change criteria to such PAPAs until the local comprehensive plan and land use regulations have been amended to comply with the Goal 5 Rule. Furthermore, the conflicts to be considered by local government are limited by the Goal 5 rule to conflicts with land uses and do not include conflicts with otherwise applicable local government regulations.

The Metro area jurisdictions have not amended the Metro Plan to adopt procedures and requirements consistent with the Goal 5 Rule for the consideration of such PAPAs. The Lane Code and the Eugene Code do not contain specific criteria regarding the consideration of a PAPA proposing to add a site to the Metro Plan's acknowledged list of significant aggregate sites and have not been amended to conform to the requirements of the Goal 5 Rule through periodic review. Therefore, only the provisions of the Goal 5 Rule shall be directly applicable to Eugene and Lane County's consideration of this application.

General Lane Code and Eugene Code provisions for the processing of Metro Plan amendments are as follows.

Lane Code 12.210 - Initiation of Plan Amendments.

(1) Who Can Initiate Metro Plan Amendments. An amendment to the Metro Plan can be initiated by the following persons or entities:

* * * * *

b) Type II Plan Diagram and Site Specific Text Amendments.

* * * * *

(ii) Between the City limits and the Plan Boundary: Any of the three governing bodies and citizens.

(2) When Plan Amendments Can be Initiated. Amendments to the Metro Plan shall be initiated and considered at the following times:

* * * * *

(b) Citizen initiated Type II Metro Plan amendments may be applied for at any time. The initial public hearing on an application shall take place within 60 days of acceptance of a complete application.

The subject property is within the Metro Plan boundary and outside of the Eugene Urban Growth Boundary. The application requests an amendment to the Metro Plan diagram which is a Type II Metro Plan amendment. The application constitutes a citizen-initiated Type II Metro Plan amendment which can be initiated at any time by citizens and can be considered at any time by the City of Eugene and Lane County.

Lane Code 12.225(2) - Approval Criteria

(2) Criteria for Approval of Plan Amendment. The following criteria shall be applied by the Board of Commissioners in approving or denying a plan amendment application:

(a) The amendment must be consistent with the relevant statewide planning goals adopted by the Land Conservation and Development Commission; and

(b) Adoption of the amendment must not make the Metro Plan internally inconsistent.

METRO PLAN AMENDMENT - EUGENE CODE CRITERIA

Eugene Code 9.7715 - Metro Plan - Initiation of Plan Amendments

(1) Who Can Initiate Metro Plan Amendments. An amendment to the Metro Plan can be initiated by the following persons or entities:

(b) Type II Plan Diagram and Site Specific Text Amendments.

2. Between the city limits and the plan boundary. By any of the 3 governing bodies and citizens.

*3. *** A citizen initiating a Type II Metro Plan amendment must own the property subject to the amendment.*

(2) When Plan Amendments Can be Initiated. Amendments to the Metro Plan shall be initiated and considered at the following times:

(b) Citizen-initiated Type II Metro Plan amendments may be applied for at any time. The initial public hearing on an application shall take place within 60 days of acceptance of a complete application.

The subject property is within the Metro Plan boundary and outside of the Eugene Urban Growth Boundary. The application requests an amendment to the Metro Plan diagram which is a Type II Metro Plan amendment. The application constitutes a citizen-initiated Type II Metro Plan amendment which can be initiated at any time by citizens and can be considered at any time by the City of Eugene and Lane County.

Eugene Code 9.7730(3) - Approval Criteria

(3) Criteria for Approval of Plan Amendment. The following criteria shall be applied by the city council in approving or denying a Metro Plan amendment application:

(a) The amendment must be consistent with the relevant Statewide Planning Goals adopted by the Land Conservation and Development Commission; and

(b) Adoption of the amendment must not make the Metro Plan internally inconsistent.

CONSISTENCY WITH GOAL 5

PAPA Definition.

A "PAPA" is a post-acknowledgment plan amendment. Approval of the subject application to amend the Metro Plan diagram and significant aggregate site inventory will constitute a PAPA.

Local Governments Are Required to Amend Acknowledged Inventories or Plans with Regard to Mineral and Aggregate Resources in Response to an Application for a PAPA If the Applicable Criteria Are Satisfied.

OAR 660-023-180(2)(a): A local government may inventory mineral and aggregate resources throughout its jurisdiction, or in a portion of its jurisdiction. When a local government conducts an inventory of mineral and aggregate sites in all or a portion of its jurisdiction, it shall follow the requirements of OAR 660-023-0030 as modified by subsection (b) of this section. When a local government is following the inventory process for a mineral or aggregate resource site filed under a PAPA, it shall follow only the applicable requirements of OAR 660-023-0030, except as provided in sections (3) and (6) of this rule.

Introduction - Significance Criteria.

OAR 660-023-0180(2)(b): Local governments shall apply the criteria in section (3) of this rule rather than OAR 660-023-0030(4) in determining whether an aggregate resource site is significant.

Introduction - Criteria for Allowing Mining on Significant Sites in Response to a PAPA.

OAR 660-023-0180(2)(c): Local governments shall follow the requirements of section (4) of this rule in deciding whether to authorize the mining of a significant mineral or aggregate resource site.

PAPA Submittal Criteria. OAR 660-023-0180(6)

(6) In order to determine whether information in a PAPA submittal concerning an aggregate site is adequate, local government shall follow the requirements of this section rather than OAR 660-023-0030(3). An application for a PAPA concerning a significant aggregate site shall be adequate if it includes:

(a) Information regarding quantity, quality, and location sufficient to determine whether the standards and conditions in section (3) of this rule are satisfied;

(b) A conceptual site reclamation plan;

(NOTE: Final approval of reclamation plans resides with DOGAMI rather than local governments, except as provided in ORS 517.780)

(c) A traffic impact assessment within one mile of the entrance to the mining area pursuant to section (4)(b)(B) of this rule;

(d) Proposals to minimize any conflicts with existing uses preliminarily identified by the applicant within a 1,500 foot impact area; and

(e) A site plan indicating the location, hours of operation, and other pertinent information for all proposed mining and associated uses.

This application for a PAPA contains the following:

An analysis of the aggregate resource of the subject property, conducted by EGR & Associates, Inc. (EGR), Oregon licensed and registered geologists, is attached as an exhibit to the application and our findings and conclusions regarding that analysis are further discussed below.

A conceptual site reclamation plan is attached as an exhibit to the application and our findings and conclusions regarding that plan are further discussed below.

Lane Code 15.697(1) provides that a traffic impact analysis may be required for any plan amendment proposal, unless waived by the County Engineer as specified in Lane Code 15.697(2). Lane Code 15.697(2) provides that the County Engineer may waive traffic impact analysis requirements specified in LC 15.697(1) when, in the case of a plan amendment, the scale and size of the proposal is insignificant, eliminating the need for detailed traffic analysis of the performance of roadway facilities for the 20-year planning horizon. Lane Code 15.697(2)(b) provides that, generally, a waiver to Traffic Impact Analysis will be approved when the plan designation that results will be entirely a resource designation or there is adequate information for the County Engineer to determine that a transportation facility is not significantly affected as defined in Lane County Transportation System Plan Policy 20-d. We find that approval of the application will result in the re-designation of the subject property from one resource designation (Agriculture) to another (Sand and Gravel). Specifically, the proposed plan amendment will result in the Metro Plan diagram designation of the subject property being changed to "Sand and Gravel" and in the county zoning of the property being changed to "Sand, Gravel and Rock Products." Furthermore, as more specifically addressed below, we find that approval of the application will not result in any additional traffic on any local roads and, consequently, will not significantly affect any transportation facility. Therefore, we find that the Lane County Engineer should waive the traffic impact analysis requirements of Lane Code.

Proposals to minimize conflicts with existing uses within a 1,500 foot impact area are contained in the application and our findings and conclusions regarding those proposals are further discussed below.

The location, hours of operation and other pertinent information for all proposed mining and associated uses is provided in the application, which contains the following consultants reports: Report on Noise Study (Daly-Standlee & Associates, Inc.) (hereinafter referred to as "Daly-Standlee") (Exhibit F); Air Quality Evaluation (Bridgewater Group, Inc.) (hereinafter referred to as "Bridgewater") (Exhibit G); Flood Impact Evaluation (EGR & Associates, Inc.) (hereinafter referred to as "EGR")(Exhibit H); and Digital Model-Groundwater (EGR)(Exhibit I).

We Find That The Aggregate Resource Site is Significant.

OAR 660-023-0180(3):

An aggregate resource site shall be considered significant if adequate information regarding the quantity, quality, and location of the resource demonstrates that the site meets any one of the criteria in subsections (a) through (c) of this section, except as provided in subsection (d) of this section:

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

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

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

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

(A) More than 35 percent of the proposed mining area consists of soil classified as Class I on Natural Resource and Conservation Service (NRCS) maps on the date of this rule; or

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

(i) 60 feet in Washington, Multnomah, Marion, Columbia, and Lane counties;

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

(iii) 17 feet in Linn and Benton counties.

We conclude and find that the subject property is a significant aggregate resource site. The application contains adequate information regarding the quantity, quality and location of the aggregate resource that demonstrates that the proposed expansion area meets applicable criteria of OAR 660-023-0180(3) as follows:

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

EGR was retained by the applicant to evaluate the aggregate material reserves in the proposed expansion area. We find that EGR is a long-standing engineering firm in Eugene, Oregon, with licensed and experienced engineers and that EGR is a legitimate technical resource that has the expertise and experience to conduct evaluations of aggregate material deposits in Lane County, Oregon.

EGR published the results of its evaluation in a report dated June 2005 and titled "Evaluation of Aggregate Resources: Delta Sand and Gravel Expansion Area." A copy of that report is attached as an exhibit to the application. EGR determined that coarse aggregate samples obtained during its field exploration of the expansion area meet ODOT base rock specifications. The report contains laboratory data demonstrating that the coarse aggregate (gravel) fraction present at the expansion site meets the base rock specifications required by ODOT and Goal 5. Similarly, the report demonstrates that all of the coarse aggregate samples meet the ODOT soundness requirements for Portland Cement Concrete. Furthermore, EGR concluded that the estimated volume of aggregate available within the proposed expansion area is 9,082,260 tons (more than four times the volume required by rule). That information demonstrates that the expansion area meets the criteria of OAR 660-023-0180(3)(a), and we find that EGR's report is credible and persuasive.

Opponents of the application testified that they believed that EGR's methodology for sampling should be challenged and that EGR's sampling and conclusions regarding the quantity, quality and location of the aggregate resource existing within the expansion area should be independently verified. However, opponents did not provide evidence to support their belief from any person or firm represented as geologists licensed by the State of Oregon and credentialed to provide expert testimony on the subject.

In testimony following the joint planning commission public hearing, EGR effectively rebutted the "evidence" and arguments of opponents regarding the quantity, quality and location of the aggregate resource. Furthermore, in testimony during the joint elected officials' public hearing, the applicant provided evidence to support its methodology and conclusions in the form of correspondence from ODOT and the Oregon Department of Geology and Mineral Industries (DOGAMI). ODOT's correspondence confirmed EGR's conclusion that material sampled from the aggregate deposit on the subject property met ODOT specifications for base rock and ODOT soundness requirements for Portland Cement Concrete (ODOT independently tested representative samples from the EGR borings to reach its conclusion). DOGAMI's correspondence confirmed that the sampling and conclusions by EGR and ODOT were correct and result in a finding that the subject expansion area contains a significant deposit of aggregate material and that the site is a significant aggregate site that meets the criteria of OAR 660-023-0180(3)(a).

We also note, for purposes of providing supporting reasoning for these findings, that the expansion area is proposed as an extension of an existing significant resource site that has been mined by the applicant for more than 80 years. We find it reasonable to expect that land immediately adjacent to an existing significant resource site and located in the area of an existing operating mine and the Willamette River will also contain a significant deposit of aggregate material similar to that of the existing site.

Based upon the applicant's testimony, EGR's report described above (which report we incorporate herein by reference as additional findings in support of our conclusion), and ODOT's and DOGAMI's confirmation of the applicant's testimony and conclusions contained in the EGR report as more specifically described above, and the fact that the applicant is proposing to expand an existing aggregate site containing a significant deposit of aggregate material, we find that the subject property is a significant aggregate site as defined by the Goal 5 administrative rule.

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

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

(i) 60 feet in Washington, Multnomah, Marion, Columbia, and Lane counties;

In its report, EGR estimated that the average width (depth) of the aggregate layer within the expansion area is 70.5 feet. The 1997 Lane County Soil Ratings for Forestry and Agriculture, which are based upon U.S. Department of Agriculture Natural Resources Conservation Service data and methodology, map the soils covering the expansion area as predominantly Class II soils (Newberg fine sandy loam, Newberg loam, Chehalis silty clay loam, Newberg urban land complex and Camas gravelly sandy loam). While more than 35% of the expansion area is covered in Class II soils, the average width of the aggregate layer within the expansion area is estimated by EGR to be 70.5 feet, with a maximum overburden width of 4 feet, which exceeds the 60-foot requirement of OAR 660-023-0180(3)(d)(B)(i). Accordingly, we find that the expansion area contains a quantity of aggregate material sufficient to meet the requirements of the administrative rule.

We Find That The Criteria for Allowing Mining of the Site are Satisfied.

OAR 660-023-0180(4):

(a) The local government shall determine an impact area for the purpose of identifying conflicts with proposed mining and processing activities. The impact area shall be large enough to include uses listed in subsection (b) of this section and shall be limited to 1,500 feet from the boundaries of the mining area, except where factual information indicates significant potential conflicts beyond this distance. For a proposed expansion of an existing aggregate site, the impact area shall be measured from the perimeter of the proposed expansion area rather than the boundaries of the existing aggregate site and shall not include the existing aggregate site.

The term "mining area" as used above is defined at OAR 660-023-0180(1)(g) as:

“the area of a Site within which mining is permitted or proposed, excluding undisturbed buffer areas or areas on a parcel where mining is not authorized.”

The Goal 5 Rule defines “mining” as:

**“the extraction and processing of mineral or aggregate resources, in the manner provided under ORS 215.298(3).”
OAR 660-023-0180(1)(h).**

The definition of “mining area” restricts the review of impacts to 1,500 feet from the boundary of the area where mining is proposed to occur, unless factual information indicates that a significant potential conflict from mining could occur with existing and approved uses beyond that distance. We find no credible factual information in the record to indicate or demonstrate that analysis of a larger impact area is required for the proposed mining activity. The applicant has analyzed all potential conflicts with mining of aggregate material on the expansion area within an impact area extending 1,500 feet from the perimeter of the proposed expansion area. The land uses of that impact area and the potential conflicts, with identified mitigation measures, are discussed in the following sections.

(b) The local government shall determine existing or approved land uses within the impact area that will be adversely affected by proposed mining operations and shall specify the predicted conflicts. For purposes of this section, "approved land uses" are dwellings allowed by a residential zone on existing platted lots and other uses for which conditional or final approvals have been granted by the local government. For determination of conflicts from proposed mining of a significant aggregate site, the local government shall limit its consideration to the following:

(A) Conflicts due to noise, dust, or other discharges with regard to those existing and approved uses and associated activities (e.g., houses and schools) that are sensitive to such discharges;

We find that land uses on land surrounding the proposed expansion area, and within the impact area, consist of residential, agricultural and industrial uses. Residences are located south, west and north of the proposed expansion area. The nearest residence is located approximately 90 feet north of the boundary of the proposed expansion area. A single agricultural field containing nursery tree stock is located within the impact area, northeast of the proposed expansion area. The existing Delta Sand and Gravel Company facility is located directly east of the proposed expansion area and the Eugene Sand and Gravel facility is located further east across the Willamette River from the Delta Sand and Gravel Company property.

The applicant has identified the potential conflicts from the proposed mining of the subject property due to noise, dust and other discharges associated with mining and processing activities in the proposed expansion area. Those conflicts are as follows:

Noise

The applicant retained Daly-Standlee, Oregon registered engineers, to prepare a noise study for the proposed expansion area. The report on that study titled "Report on Noise Study for Delta Sand & Gravel New Mining Area" and dated June 14, 2005, is attached to the application as an exhibit. The report concludes that certain areas within the impact area could be subjected to mining activity noise above the limit allowed by the Oregon Department of Environmental Quality (DEQ) for a "new noise source" on a "previously unused site." We incorporate that report herein by reference as additional findings in support of our decision on the application.

Dust and Engine Emissions

The applicant retained Bridgewater, a firm of Oregon registered professional engineers, to prepare an evaluation of air quality issues associated with the proposed expansion area. Bridgewater's report on that evaluation titled "Air Quality Evaluation" and dated June 1, 2005, is attached to the application. The report concludes that aggregate mining and processing activities could generate dust and potentially create a nuisance condition for the nearby residences due to unusual or annoying amounts of dust present in the ambient air.

Other "discharges" under the administrative rule could be defined to include air emissions from diesel engines. However, the Bridgewater report concludes that due to the small quantity of onsite excavation equipment and haul trucks and the distant location of the equipment to one another and the proposed expansion area boundary, no conflict due to diesel exhaust will result from mining and processing activities associated with the proposed expansion area.

We incorporate the Bridgewater report herein by reference as additional findings in support of our decision on the application.

Flooding

The applicant retained EGR to prepare an evaluation of flood impacts associated with the proposed expansion area. EGR's report on that evaluation titled "Evaluation of Potential Flood Impacts: Delta Sand and Gravel Expansion Area" and dated June 6, 2005, is attached to the application. The evaluation concluded that the method of mining the proposed expansion area will not result in a potential to impede flood flow, to reduce flood storage volume within the flood plain or to increase the velocity of water flowing across the site. The report concludes that the method of mining completely avoids any potential adverse flood impacts associated with mining activities on the proposed expansion area and, therefore, that no conflicts associated with flooding will result from mining and processing activities on the proposed expansion area. We incorporate EGR's report on its evaluation of potential flood impacts herein by reference as additional findings in support of our decision on the application.

Groundwater

The applicant retained EGR to prepare an evaluation of groundwater impacts associated with the proposed expansion area. The report on that evaluation titled "Digital Model of Existing Excavation Site and New Expansion Area" and dated June 2005, is attached to the application. The report concluded that the proposed expansion of excavation (of the expansion area) could have an effect on groundwater resources in the immediate vicinity of the excavation. As accumulated water (rainwater and groundwater flowing into the excavations) is pumped from the excavations, the groundwater table could be lowered radially outward from the excavation edge. EGR noted that expansion of excavation in the area will not significantly affect municipal water supply system users in the area and that only one known significant groundwater user still

exists in the vicinity of excavation site. The report concludes that that user is the plant nursery immediately to the north of the site that has already experienced most of the impact it will experience from present or expanded excavation. The report concluded that mitigation may be required if other significant groundwater users exist in the vicinity of the excavation. We incorporate the EGR report on its evaluation of groundwater impacts herein by reference as additional findings in support of our decision on the application.

(B) Potential conflicts to local roads used for access and egress to the mining site within one mile of the entrance to the mining site unless a greater distance is necessary in order to include the intersection with the nearest arterial identified in the local transportation plan. Conflicts shall be determined based on clear and objective standards regarding sight distances, road capacity, cross section elements, horizontal and vertical alignment, and similar items in the transportation plan and implementing ordinances. Such standards for trucks associated with the mining operation shall be equivalent to standards for other trucks of equivalent size, weight, and capacity that haul other materials;

We find that approval of the application will not result in any conflicts to local roads used for access and egress to the mining site. Approval of the application will not result in any change in the applicant's current use of local roads used for access to and egress from its facility. The proposed expansion area will merely be an additional area of land, adjacent to the applicant's existing facility, used by the applicant to provide the resource that it processes on its existing site into a marketable product. No change or modification of the applicant's existing aggregate processing methodology or facility will be required as a result of the proposed expansion of its resource extraction site. Approval of the application will result only in the applicant's use of the proposed expansion area as an additional, continual and consistent source of aggregate material needed for the continuation of the applicant's business, at its current level of operation and production, at its current facility. We find that that use will not result in any increase in the number of vehicles leaving or entering the applicant's facility for the purpose of delivering its finished product to market. Furthermore, we find that that use will not result in an increase in the number of third party vehicles servicing applicant's business. Because no increase in product delivery or service is associated with the applicant's proposed addition to its source of aggregate material, no conflicts to local roads will result from approval of the application.

Furthermore, we find that Delta's Air Contaminant Discharge Permit (ACDP) from the Lane Regional Air Pollution Authority (LRAPA) for its existing mining and processing facility on the adjacent Delta property requires that Delta's rock crushing facility remain in its current location and provides a limitation on the amount of aggregate material produced from that facility. Opponents have argued that adding the increased aggregate resource of the expansion area to Delta's inventory of that resource will result in Delta producing more aggregate products, increasing its delivery of those products to customers and increasing traffic on local roads. We do not find the opponents' argument to be persuasive or credible. In addition to our reasons and findings set out in the paragraph immediately above, we find that the ACDP limitations on Delta's production of aggregate material supports Delta's assertion that it will not be producing or delivering more aggregate products than it currently does (and is authorized to) and, therefore, will not be increasing traffic on local roads.

(C) Safety conflicts with existing public airports due to bird attractants, i.e., open water impoundments. This paragraph shall

not apply after the effective date of commission rules adopted pursuant to Chapter 285, Oregon Laws 1995;

The Eugene Airport is the only existing public airport in the general metropolitan area and is located several miles from the proposed expansion area and outside the impact area. Due to that distance separating the airport from the proposed expansion area, we find that any bird attraction by open water impoundment on the expansion area will be negligible if at all. Furthermore, this provision is no longer applicable since the December 23, 1996 effective date of adoption of division 13 of OAR Chapter 660, which carries out Chapter 285, Oregon Laws 1985.

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

No other Goal 5 resources shown on a Metro Plan acknowledged list of significant resources exist within the impact area. However, opponents have argued that a meandering scar of the Willamette River is located on a portion of the northwestern boundary of the expansion area and that it constitutes a wetland. The opponents further argue that the existence and operation of the aquaclude (see discussion below regarding the aquaclude) will negatively impact the water levels of the wetland and, consequently, the functions of the wetland. EGR, in testimony provided during the planning commission joint public hearing and deliberation, testified that the aquaclude would not produce the types of impacts to the wetland argued by the opponents. EGR and the applicant provided further testimony during the elected officials' joint public hearing in which they explained that the aquaclude would be constructed in a manner that leaves the top elevation of the clay-filled aquaclude one foot below the measured elevation of the wetland, approximately six to eight feet below ground surface. EGR testified that even if the opponents' argument that the aquaclude would negatively impact surface water that flows through the wetland was correct (which argument is specifically refuted by EGR's testimony), the modification to the aquaclude construction that positions the aquaclude beneath the measured elevation of the wetland will ensure that its existence and operation will not negatively impact the wetland. We find that EGR's testimony and evidence regarding the aquaclude to be persuasive and reasonable and based on that evidence we find that approval of the application will not result in negative impacts on the wetland.

(E) Conflicts with agricultural practices; and

We find that approval of the application will not conflict with agricultural practices within the impact area. The only property within the impact area currently committed to agricultural use is tax lot 900, located on the subject property's northern boundary. The owner of tax lot 900 has maintained nursery tree stock on that property for many years without conflict or negative impact from the nearby Delta Sand and Gravel Company operating facility. The owner of tax lot 900 testified that he did not believe that Delta's mining within the expansion area would have negative effect on or conflict with his agricultural operation. The facility's existing excavation pit is immediately south of tax lot 900, well within 1500 feet of the agricultural use of tax lot 900. Approval of the application will not change the physical relationship of tax lot 900 to the excavation area. We further find that any potential conflicts, even though not existing in the past and not identified for the future, that have been identified in this application (noise, dust, flooding, groundwater, traffic, etc.) relative to other existing uses, would be equally minimized relative to agricultural uses by the application of the mitigation measures identified below in this section.

(F) Other conflicts for which consideration is necessary in order to carry out ordinances that supersede Oregon Department of

***Geology and Mineral Industries (DOGAMI) regulations
pursuant to ORS 517.780;***

No ordinances that supersede DOGAMI regulations pursuant to ORS 517.780 have been identified and therefore, no consideration of other conflicts associated with such ordinances is necessary.

(c) The local government shall determine reasonable and practicable measures that would minimize the conflicts identified under subsection (b) of this section. To determine whether proposed measures would minimize conflicts to agricultural practices, the requirements of ORS 215.296 shall be followed rather than the requirements of this section. If reasonable and practicable measures are identified to minimize all identified conflicts, mining shall be allowed at the site and subsection (d) of this section is not applicable. If identified conflicts cannot be minimized, subsection (d) of this section applies.

Noise

Daly-Standlee concluded that, with appropriate noise mitigation measures, noise generated by future mining operations in the proposed expansion area will comply with the most demanding interpretation of the DEQ Noise Regulations for Industry and Commerce at all residential properties around the proposed expansion area.

Daly-Standlee begins its analysis of potential noise impact by stating that certain areas within the impact area may be subjected to mining activity noise above the limit allowed by the DEQ for a “new noise source” on a “previously unused site.” DEQ noise limits for a new noise source on a previously unused site (OAR 340-35-0015(14) and 340-35-0035(1)(b)(B)(i) (Table 8)) are more restrictive than the noise limits for “existing noise sources” (OAR 340-35-0015(17) and 340-35-0035(1)(a) (Table 7)). Daly-Standlee states that historically DEQ has ruled that when a mine site is expanded onto contiguous property, noise criteria which applied to the equipment before expansion shall also apply to the equipment while in the expansion area. Because aggregate mining has been occurring on the 474 adjacent acres of Delta Sand and Gravel Company ownership since 1927, it could be argued that the existing mining operation is an “existing noise source” and that the expansion area should be subjected to the less stringent existing noise source criteria under that historic DEQ interpretation. However, it could also be argued that the proposed expansion area is an “unused site” and that equipment moved to that area should be considered a “new noise source on a previously unused site.”

Delta Sand and Gravel Company has elected to address potential noise impacts of a new noise source on a previously unused site and to subject its future aggregate extractions to the more restrictive DEQ noise limits for such a noise source. Because Daly-Standlee states that certain areas within the impact area may be subjected to mining activity noise above the limit allowed by the DEQ for a new noise source on a previously unused site, this application must demonstrate that the potential noise impacts can be minimized. OAR 660-023-0180(1)(g) provides that noise conflicts are considered minimized under the rule when the relevant DEQ noise regulations (OAR 340-035-0035) are met.

Daly-Standlee concluded that with appropriate mitigation measures, noise generated by mining activity at the proposed expansion area will comply with the most demanding interpretation of DEQ regulations at all residential properties within the impact area. We find the Daly-Standlee study to be thorough and its conclusions to be highly credible.

Specifically, Daly-Standlee proposes a variety of mitigation measures starting with limiting the first and second lift mining operations to the time period from 7 o'clock AM to 10 o'clock PM. Daly-Standlee proposes alternative mining procedures at various locations of the proposed expansion area. Those alternative procedures are provided in Tables 7 and 8 of the noise study. The study further concludes that if the proposed alternative procedures are followed during the first and second lifts then no noise mitigation will be required for the third and subsequent lifts. That statement is based upon the fact that due to the depth of operating equipment below grade (surface level), the noise barrier effect provided by the face of the excavation combined with the distance effect will reduce noise to a level in compliance with the DEQ noise restrictions at all locations within the impact area.

Application opponents challenged the Daly-Standlee report arguing that its methodology and conclusions were flawed. In response, Daly-Standlee conducted an analysis of the arguments and conclusions of the opponents' consultant and found that many of the consultant's assertions and assumptions were made in error and did not contain either a scientific or legal foundation to support the consultant's conclusions or to effectively challenge the analysis and conclusions of Daly-Standlee. The Daly-Standlee rebuttal report was entered into the record of this proceeding. We incorporate the Daly-Standlee rebuttal report herein by reference as additional findings in support of our decision. We find that Daly-Standlee's rebuttal of the opponents' arguments is persuasive and credible. Furthermore, we find that all of Daly-Standlee's analysis and conclusions, including its rebuttal of the opponent's arguments and claims, provides significant and persuasive evidence that the DEQ noise level requirements will be met or exceeded through implementation of the proposed mitigation measures.

We further find that the initial construction of the aquaclude, which involves the removal, stockpiling and return of topsoil and overburden to the trench during the surface digging, constitutes a construction project that is exempt from DEQ noise level requirements. We also find that the applicant's method of construction of the aquaclude, including the creation of temporary berms of the stockpiled topsoil and overburden, will not produce noise levels in excess of DEQ requirements even if the project were to be deemed extraction rather than a construction project. We find that the remainder of the construction of the aquaclude, because it involves the extraction and use of the aggregate material for aggregate production, does not constitute a construction project. We find further that Daly-Standlee has adequately demonstrated in its subsequent report placed into the record of the proceeding during the elected officials' public hearing that the remainder of the construction of the aquaclude as proposed by the applicant will not produce noise levels in excess of DEQ requirements.

Daly-Standlee concludes that, with implementation of the provided mitigation measures, the potential noise conflicts associated with mining activity in the proposed expansion area will be minimized consistent with the Goal 5 Rule and, based upon the Daly-Standlee analysis and conclusions, which we find to be credible and reasonable, we find accordingly.

Dust

Bridgewater concluded that with the appropriate dust minimization measures, mining of the proposed expansion area will comply with LRAPA airborne particulate matter emission standards and fugitive dust requirements and, based upon Bridgewater's analysis and conclusions, we find accordingly. We note that for those types of conflicts addressed by local state or federal standards, to "minimize a conflict" means to ensure conformance to the applicable standard (OAR 660-023-0180(1)(g)). Lane County's airshed is protected and regulated by LRAPA and the applicant currently holds an Air Contaminant Discharge Permit (ACDP) from LRAPA for its existing mining and processing facility on the adjacent Delta property. That ACDP requires that the rock crushing facility of the applicant remain in its

current location and also provides a limitation on the amount of rock produced from that facility. We find that the activities proposed for the expansion area will become subject to the current LRAPA ACDP (and regulated thereby) and we find that the applicant has demonstrated that its activities proposed for the expansion area will conform to the standards contained in the current LRAPA ACDP.

Bridgewater provides the list of proposed dust control measures that includes the requirement that the expansion area shall be included within the LRAPA ACDP for the existing Delta Sand and Gravel Company operation, and that the provisions of that ACDP shall be followed by the applicant on the proposed expansion site. A copy of the ACDP is attached to the application. The ACDP requires that the LRAPA-approved Fugitive Dust Control Program be followed at the existing company site. The expansion area shall be added to the ACDP and the Fugitive Dust Control Program shall be implemented on the proposed expansion area. Bridgewater recommends additional dust control measures and those measures are listed below in these findings.

Opponents of the application testified that they believe that the applicant cannot minimize dust conflicts from the proposed mining with nearby residential land uses and believe that the aggregate extraction process (mining) creates conflicting amounts of dust.

We find that potential dust conflicts have been demonstrated to result primarily from three activities associated with mining and processing of aggregate material. Those activities are 1) excavation of the site for aggregate material, 2) transport of the excavated material to the processing facility and 3) the processing facility (rock crushing operations). We find that the current ACDP includes provisions that regulate the manner in which those activities occur on the existing Delta facility site and that control the applicant's production of airborne particulate matter at a level that meets LRAPA (and Oregon Department of Environmental Quality) standards.

Furthermore, we find, based upon testimony provided by the applicant during the elected officials' joint public hearing (in the form of a video of the current extraction process on the existing mining site), that the process of mining the material does not produce dust as has been claimed by the opponents of the application. The applicant's video is very clear in its depiction of the mining operation and the fact that the mine wall contains significant amounts of groundwater and is in a continual wet condition. The video also clearly demonstrates that the mining of that wet wall produces virtually no dust. The video also contains a clear demonstration that the watered haul roads (as required by the LRAPA ACDP) from the extraction site to the rock crusher do not produce significant amounts of dust.

Finally, we note that the applicant has testified that its request is merely to add the expansion area's additional aggregate material to its current inventory and that the processing facility (the rock crusher and associated facilities) will remain at its current LRAPA-regulated location and will not produce finished aggregate material in excess of its current LRAPA ACDP-mandated levels. The location of the processing facility and its production level is strictly regulated by the ACDP. The applicant has testified that the location of that facility and its production levels will not change as a result of approval of this application. Therefore, the entire Delta site, and all activities thereon, will continue to be regulated by the ACDP. By law, Delta's ongoing compliance with the ACDP requirements ensures that any potential dust conflicts from any of those activities is and will be minimized. We find the applicant's testimony to be persuasive, credible and reasonable.

We find that the applicant's requirement to operate all expansion area mining and processing activities in conformance with the current LRAPA ACDP (modified to add the expansion area to the existing permit and its requirements), and the applicant's demonstration

that it will operate within the expansion area in conformance with the permit requirements provides a legal basis to conclude and find that any potential dust conflicts from the proposed mining of the expansion area have been, and will be, minimized as required by Goal 5. We do not find the opponent's evidence or arguments to the contrary to be credible or persuasive.

Flooding

EGR has concluded that the Delta Sand and Gravel Company method of mining will create no obstructions or other physical features that could impede flood flows across the proposed expansion area. Essentially that conclusion means that flood flows should not be impeded across the proposed expansion area if no fill occurs within the floodway. All mining activity proposed for the expansion area will occur as excavation taking place below existing ground surfaces. Within that mining methodology, overburden will be removed and stockpiled in areas higher in elevation than base flood elevations and/or stockpiled at locations on company property that are below existing ground elevations. EGR concludes that the proposed mining methodology on the proposed expansion area will not impede flood flow, reduce flood storage volume within the flood plain or increase the velocity of water flowing across the proposed expansion area. EGR further concludes that the proposed mining methodology completely avoids all potential flood impacts.

Opponents of the application argue that the existence and operation of the aquaclude (see subsequent discussion and findings regarding the aquaclude) will cause flooding on adjacent residential lands because groundwater will be prevented by the aquaclude from migrating from those lands to the mining site during heavy rain events. EGR has addressed that argument and has demonstrated, in its rebuttal materials provided during the planning commission joint public hearing and deliberation, that the movement of groundwater is not connected to surface water that constitutes flooding during such events. Nevertheless, in response to the opponents' claims, the applicant and EGR have provided a modified aquaclude construction that leaves the top elevation of the clay-filled aquaclude one foot below the measured elevation of the wetland that exists on the meandering scar, approximately six to eight feet below ground surface. While continuing to impede the rate of flow of groundwater from the adjacent property to the expansion area (and mining pit), we find that that modified design of the aquaclude will allow the passage of a limited amount of groundwater from the adjacent property over the clay material and into the mining area during heavy rain events. That design will also ensure that the aquaclude has no negative impact on the water level of the wetland at different times during the year. We find that EGR has provided significant evidence to support its conclusion that the aquaclude will minimize potential conflicts resulting from the movement of groundwater from adjacent lands to the mining area and that its existence and operation will not produce or increase flooding on adjacent lands.

We find that approval of the application will not result in flooding conflicts with adjacent land uses.

Groundwater

EGR recommends that a low permeability barrier, groundwater dam or other flow restriction of the upper aquifer should be constructed, at the applicant's expense, as the excavation proceeds to the west. EGR concludes that the construction of a low permeability barrier could actually result in lower pumping of water, with significant benefit to the aquifer and area groundwater users. That low permeability barrier has been termed the "aquaclude" by EGR and the applicant.

EGR recommends that excavation should begin on the east side of the expansion area and that the aquaclude should proceed ahead of the excavation to the west. Construction of the aquaclude should occur before excavation comes within 400 feet of its location. The aquaclude should be at least 12 feet wide at the bottom and slope upward through the upper aquifer from 1:5 to 2:1 to the original ground surface. The aquaclude should be placed within the setback area to insure its separation from the excavation proper and to place its outer edge as close as possible to the surrounding off-site shallow aquifer. EGR also recommends that a buttress of native material be left between the aquaclude and the excavation area proper.

EGR's ultimate conclusion is that placement of a low permeability barrier around most of the excavation should result in restoring groundwater levels around the excavation pit to near pre-development levels. DOGAMI has provided the applicant with its preliminary concurrence with EGR's ultimate conclusion. A copy of correspondence from the agency to the applicant is included with EGR's evaluation attached to the application. The correspondence states that "there may actually be a slight mounding of the ground water in the shallow aquifer within close proximity to the barrier thus eliminating the possibilities of drawdowns which could impact supply wells within the area."

We find EGR's evidence regarding the benefit and effectiveness of the aquaclude to be persuasive and credible and that the aquaclude will effectively minimize any groundwater impact while at the same time not adversely impacting the wetland.

Construction of the aquaclude within the setback area requires an administrative variance pursuant to Lane Code. Lane Code 16.217(4)(b)(v)(bb) and (dd) provide:

(bb) The Director may grant an administrative variance to waive the setback from adjoining property in a Sand, Gravel and Rock Products Zone, if no flood hazard will result.

(dd) Excavation may be conducted within the setback area under a plan approved by the Director through an administrative variance whereby the excavated area will be refilled with other materials which will neither decompose nor pollute underground waters.

Lane County's approval of the administrative variance requires a demonstration that no flood hazard will result from operating within the setback and that the excavated area will be refilled with other materials which will neither decompose nor pollute underground waters. As discussed above in our findings regarding flooding, EGR has provided adequate and significant evidence that the existence and operation of the aquaclude will not result in flooding of adjacent lands. The applicant and EGR testified that the trench constructed for the aquaclude will be filled with clay material excavated from other locations on the applicant's adjacent ownership and operation. We find that the proposed clay material for the aquaclude is a natural soil that will not decompose and will not pollute underground waters. Furthermore, we find that the applicant and EGR have demonstrated that the criteria for approval of the administrative variance, provided by LC 16.217(4)(b)(v)(bb) and (dd), have been met and that the administrative variance should be granted.

(ORS 215.296 Standards for approval of certain uses in exclusive farm use zones. (1) A use allowed under ORS 215.213 (2) or 215.283 (2) may be approved only where the local governing body or its designee finds that the use will not:

(a) Force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; or

(b) Significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.)

As stated previously in these findings, the established agricultural use of tax lot 900 and the established mining operations of the adjacent existing facility have co-existed for many years without conflict. We find that approval of this application will not change the relationship between the two adjacent uses and will not result in conflict between the two uses. Accordingly, approval of this application will have no effect on the farm practices occurring on tax lot 900, will not change those practices and will not significantly increase the cost of those practices on tax lot 900. We further find that the historical relationship between the two uses, as testified by the applicant and the owner of the adjacent agricultural land, coupled with the immediate location of each to the other, provides a factual basis for the reasonable conclusion that approval of this application is consistent with ORS 215.296.

***(d) The local government shall determine any significant conflicts identified under the requirements of subsection (c) of this section that cannot be minimized. Based on these conflicts only, local government shall determine the ESEE consequences of either allowing, limiting, or not allowing mining at the site. Local governments shall reach this decision by weighing these ESEE consequences, with consideration of the following:
(A) The degree of adverse effect on existing land uses within the impact area;***

We find that the applicant has demonstrated, through the analysis and evaluations of its professional consultants, that all potential significant conflicts to all existing and approved land uses within the impact area resulting from mining activities in the proposed expansion area can be minimized. All existing and approved land uses within the impact area have been identified. All potential and significant conflicts have been identified under the requirements of subsection (c) of this section. Reasonable and practicable measures have been identified to minimize all identified conflicts. A conflict is deemed minimized when there is conformance with the applicable standard. OAR 660-023-0180(1)(g). If an identified potential conflict can be demonstrated to comply with the applicable local, state or federal standard, an ESEE analysis is not required to determine whether the conflict has been reduced to a level that is no longer significant. Based upon the analysis and conclusions of the applicant's professional consultants, as discussed herein, we find that all significant potential conflicts can be minimized. Following that determination, we are not required to determine the ESEE consequences of allowing, limiting or not allowing mining within the proposed expansion area. OAR 660-023-0180(4)(c) provides that if reasonable and practicable measures are identified to minimize all identified conflicts, mining shall be allowed at the site and subsection (d) of that section is not applicable. We find that the applicant has demonstrated that reasonable and practicable measures have been identified to minimize all identified potential significant conflicts. Consequently, the requirements of OAR 660-023-0180(d) are not applicable to this application.

(e) Where mining is allowed, the plan and implementing ordinances shall be amended to allow such mining. Any required measures to minimize conflicts, including special conditions and procedures regulating mining, shall be clear and objective. Additional land use review (e.g., site plan review), if required by the local government, shall not exceed the minimum review necessary to assure compliance with these requirements and shall not provide opportunities to deny mining for reasons unrelated to these requirements, or to attach additional approval

requirements, except with regard to mining or processing activities:

(A) For which the PAPA application does not provide information sufficient to determine clear and objective measures to resolve identified conflicts;

(B) Not requested in the PAPA application; or

(C) For which a significant change to the type, location, or duration of the activity shown on the PAPA application is proposed by the operator.

We find that the applicant has demonstrated that Lane County and the City of Eugene can and should allow mining within the proposed expansion area. Following the decision to allow mining within the proposed expansion area, Lane County and the City of Eugene shall amend the Metro Plan map to designate the subject property as "Sand and Gravel", shall amend the Metro Plan Goal 5 Significant Aggregate Site Inventory to include the proposed expansion area therein and shall rezone the property to "Sand, Gravel and Rock Products."

To implement our decision to allow mining within the proposed expansion area, our respective ordinances shall include the following special conditions and procedures regulating that mining:

Noise

- Limit the first and second lift mining operations to the time period from 7 o'clock AM to 10 o'clock PM.
- Conduct all mining within the proposed expansion area consistent with the alternative mining procedures provided in Tables 7 and 8 of the Daly-Standlee noise study.

Dust

- Implement the LRAPA-approved Fugitive Dust Control Program on the proposed expansion area.
- The excavation will be kept in a wet condition by the seepage of groundwater into it.
- The excavation shall occur in phases to minimize the size of the area being disturbed at any one time.
- The main internal roadway (haul roads) used for onsite truck traffic shall be located as far as practicable from the boundary of the proposed expansion area.
- A water truck shall be available at all times to water the internal haul roads at a frequency specified by the Fugitive Dust Control Program.
- The proposed expansion area will be sprinkled with water as necessary to control dust during mining and/or overburden removal.
- Fifty-foot setbacks shall be maintained around the proposed expansion area boundary except near residences where the setback shall be 150 feet.
- Reclaimed areas will consist of open water features and vegetated areas to minimize erosion and dust generation.

Flooding

- All mining activity shall occur consistent with the proposed mining methodology of this application.

Groundwater

- A low permeability barrier shall be constructed in advance of proceeding excavation in the expansion area consistent with the recommendations of EGR.

(f) Where mining is allowed, the local government shall determine the post-mining use and provide for this use in the comprehensive plan and land use regulations. For significant aggregate sites on Class I, II and Unique farmland, local governments shall adopt plan and land use regulations to limit post-mining use to farm uses under ORS 215.203, uses listed under ORS 215.213(1) or 215.283(1), and fish and wildlife habitat uses, including wetland mitigation banking. Local governments shall coordinate with DOGAMI regarding the regulation and reclamation of mineral and aggregate sites, except where exempt under ORS 517.780.

We find that the applicant's proposed reclamation plan for the proposed expansion area outlines how the area will be sequentially transformed from open agricultural fields to other use consistent with this rule and land use laws in place at that time.

(g) Local governments shall allow a currently approved aggregate processing operation at an existing site to process material from a new or expansion site without requiring a reauthorization of the existing processing operation unless limits on such processing were established at the time it was approved by the local government.

We find that the applicant will process material excavated from the proposed expansion area at its existing processing facility located adjacent to the proposed expansion area. Lane County did not establish any limits on the processing of material from adjacent property when the existing processing facility was originally approved and established. Therefore, Lane County and the City of Eugene shall allow the existing Delta Sand and Gravel Company aggregate processing facility to process material excavated from the proposed expansion area.

APPROVAL OF THE PAPA IS CONSISTENT WITH OTHER APPLICABLE STATEWIDE GOALS.

Consistency with Goal 5 and OAR 660-023-0180 demonstrates consistency with other applicable statewide goals. Nevertheless, other applicable statewide goals are addressed below.

Goal 1 - Citizen Involvement

To ensure the opportunity for citizen involvement in all phases of the planning process.

Chapter Fourteen of the Lane Code provides for a notification and participation process for all quasi-judicial land use matters. Notices of public evidentiary hearings are required to be published in a newspaper of general circulation in the county in conformance with ORS 197.763. By providing the notices required by state law and the Lane Code and the public evidentiary hearings before its planning commission and board of commissioners, we find that Lane County satisfies the requirements and intent of Goal 1.

Chapter Nine of the Eugene Code provides for a notification and participation process for all quasi-judicial land use matters. Notices of public evidentiary hearings are required to be published in a local newspaper of general circulation in conformance with ORS 197.763. We find that by providing the notices required by state law and the Eugene Code and the public evidentiary hearings before its planning commission and board of commissioners, the City of Eugene satisfies the requirements and intent of Goal 1.

Goal 2 - Land Use Planning

To establish a land use planning process and policy framework as a basis for all decisions and actions related to the use of land and to assure an adequate factual base for such decisions and actions.

Goal 2 establishes a land use planning process and policy framework as a basis for all land use decisions, and requires development of an adequate factual base to support those decisions. A minor change is one that does not have significant effects beyond the immediate area of change, and is based on special studies or information. The justification for the specific change must be established by substantial evidence in support of the conclusion that the applicable criteria have been met.

Lane County has adopted a Metro Plan amendment process with specific standards that must be addressed to process and justify a change of the Metro Plan diagram or inventory. Substantial compliance with the applicable plan amendment criteria in Lane Code Chapter 12 (consistency with relevant statewide planning goals) constitutes compliance with applicable provisions. This application is supported by substantial evidence upon which the Lane County Board of Commissioners may conclude that the applicable criteria have been met.

The City of Eugene has adopted a Metro Plan amendment process with specific standards that must be addressed to process and justify a change of the Metro Plan diagram or inventory. Substantial compliance with the plan amendment criteria in Eugene Code Chapter 9 (consistency with relevant statewide planning goals) constitutes compliance with the applicable provisions. This application is supported by substantial evidence upon which the Eugene City Council may conclude that the applicable criteria have been met.

Goal 3 - Agricultural Land

To preserve and maintain agricultural lands.

Goal 3 provides for the protection of agricultural lands as those are defined under the goal. In western Oregon, agricultural land consists of primarily Class I through IV soils identified by the U.S. Department of Agriculture Natural Resources Conservation Service and includes other lands found suitable for farm use considering soil fertility, climatic conditions, availability of water and methodologies available for farm practices.

Soils on the subject property have been identified as containing 75 percent Class II soils. The subject property contains no Class I soils.

We find that the subject property also contains mineral resources of the quantity and quality that, pursuant to Goal 5 and the Oregon Administrative Rules implementing Goal 5, establish the subject property as a significant resource site for aggregate purposes. The administrative rules recognize that aggregate resources may be mined in areas of agricultural soils. OAR 660-023-0180(3)(d) allows the disturbance of significant resource sites in Lane County containing greater than 35 percent Class I or Class II soils and an average aggregate

layer width exceeding 60 feet in Lane County. OAR 660-023-0180(4)(b)(E) specifically requires that conflicts with agricultural practices be addressed in a PAPA application. The potential of such conflicts has been addressed in the sections pertaining to the Goal 5 rule.

We find that approval of the application will be consistent with the purpose and intent of Goal 3.

Goal 4 - Forest Lands.

To preserve forest lands for forest use.

We find that Goal 4 is not applicable to this application. There has previously been a legislative determination by the metropolitan jurisdictions, as embodied in the acknowledged Metro Plan, that the subject property is not forest land. This determination is validated by the fact that no forest resources exist on the subject property or on any surrounding land and there are no areas within the subject property that fall within the definition of forest land. Also, the soils of the subject property (Chehalis silty clay loam, Newberg loam, Newberg fine sandy loam, Newberg urban land complex and Camas gravelly sandy loam) have no designated Douglas Fir site index according to Lane County's 1997 Soil Ratings for Forestry and Agriculture.

Goal 5 - Open Space, Scenic and Historic Areas, and Natural Resources.

To conserve open space and protect natural and scenic resources.

There has previously been a legislative determination by the metro jurisdictions that no Goal 5 resources exist on subject site except wetlands, which are addressed in these findings. The subject property has not been included in any inventory of needed open space or scenic areas defined by Goal 5, nor has it been identified in the Metro Plan as having any historic, cultural or natural resources which need to be preserved and/or protected. Therefore, we find that approval of the proposed amendments will not result in any conflict with any Goal 5 resources.

With respect to wetlands, EGR, in its Evaluation of Aggregate Resources attached to the application, determined that there is a wetland located within the meander scar along the northwest boundary of the subject property. That wetland does not extend beyond the eastern bank of the meander scar and lies within the required 150' mining setback from the property boundary. Avoidance of wetlands in areas not covered by existing DOGAMI Mining Permits will be accomplished by limiting mining operations to areas outside the applicable setbacks from the expansion property boundary. All wetland area within the 150' setback shall be exempted from the administrative variance and the construction of the aquaclude shall occur outside of the wetland area. Two excavated ponds are located in the southern portion of the site, which were previously used in aggregate extraction and are currently covered by DOGAMI permits, and thus exempt from wetland regulation.

The Goal 5 Administrative Rule for mineral and aggregate resources specifically addresses other Goal 5 resources and limits considerations of conflict to "Goal 5 Resource Sites" that have been identified in the Metro Plan. We find that, within that rule framework that limits considerations regarding Goal 5 resources to identified sites, no conflicts with Goal 5 resources have been identified.

Goal 6 - Air, Water and Land Resources Quality.

To maintain and improve the quality of the air, water and land resources of the state.

Goal 6 requires that air, land and water resources of the state be maintained and improved by assuring that future development, in conjunction with existing development, does not violate applicable state and federal environmental quality standards, and does not exceed the carrying capacity of local airsheds, degrade land resources or threaten the availability of such resources. The State of Oregon, City of Eugene and Lane County have sufficient regulatory measures in place so as to ensure that existing land use activities, as well as any future development on the site, will not produce any unanticipated impacts resulting from the proposed amendments.

The Lane Regional Air Pollution Authority (LRAPA) regulates the Lane County airshed and the industries within it. LRAPA rules and permit requirements regulate the release of particulate matter into the air. Its permit system for emissions provides the regulatory measures that maintain the carrying capacity and quality of the airshed consistent with applicable state and federal environmental quality standards. An Air Contaminant Discharge Permit (ACDP) is required for the aggregate processing equipment and mining activities on the subject property. Delta Sand & Gravel Company currently operates its existing, adjacent, facility under an ACDP issued by LRAPA (Permit No. 20119) that permits and regulates dust emissions generated by (1) processing equipment; (2) storage piles; (3) roadways; and (4) yard activities. In addition to the specific standards for particulate matter emissions that apply to the process operations, the ACDP includes a requirement to follow the LRAPA-approved Fugitive Dust Control Program for the existing facility. When Delta Sand & Gravel expands its operations onto the proposed expansion site, it will implement the Fugitive Dust Control Program on the expansion area to assure that its operations continue to comply with applicable state and federal air standards.

Wastewater discharge is prohibited under administrative rules and the requirements of the applicant's DOGAMI permits. The mining operation requires no onsite systems for domestic water or sewage disposal.

A reclamation plan has been prepared and is required to be approved by DOGAMI with respect to restoring land quality. Uses of the reclaimed expansion area will be consistent with all Goal 5 requirements and will depend on land use regulations existing at that time. The protection of the expansion area for natural resource activity and the rehabilitation of it for reuse will maintain the quality of the land.

Therefore, we find that approval of the proposed amendments will not produce results that will be in conflict with or inconsistent with the purpose and intent of Goal 6.

Goal 7 - Areas subject to Natural Disasters and Hazards.

To protect life and property from natural disasters and hazards.

The expansion area is partially located within an un-numbered A zone of the Willamette River flood plain as illustrated on the Flood Area Insurance Map (FIRM) (Panel 1126 of 2975, effective June 2, 1999). It is located immediately west of a Flood Insurance Study (FIS) area that has defined floodways and base flood elevations of the Willamette River.

Because the floodway for the Willamette River is determined to be substantially east of the expansion area, the FIS has determined through definition of the floodway that the expansion area could be completely obstructed without increasing the water-surface elevation of the 100-year flood more than one foot at any point.

All mining activity proposed for the expansion area will occur as excavation taking place below existing ground surfaces. Overburden will be removed and stockpiled in areas with elevation higher than base flood elevations or in areas currently below existing ground elevations. That mining methodology will preclude the need for sound berms or flood containment berms that could impede flood flows across the expansion area. Berms associated with the construction of the aquaclude will be temporary in nature and will be removed by returning the material to the area of the aquaclude as construction occurs or prior to anticipated heavy rain events.

Therefore, we find that the proposed use of the expansion area will be consistent with the purpose and intent of Goal 7.

Goal 8 - Recreational Needs.

To satisfy the recreational needs of the citizens of the state.

We find that there has been a legislative determination by the Metro jurisdictions through its comprehensive planning process, as implemented by the Metro Plan diagram, that the subject property is not needed for recreational facilities or opportunities. Identified recreational needs have been provided for on other sites within the Metro urban area. Therefore, we find that approval of the proposed amendments are consistent with Goal 8.

Goal 9 - Economy of the State.

To diversify and improve the economy of the state.

Goal 9 is primarily focused on commercial and industrial development within urban areas. To the extent that the goal is applicable to the application, we find that the proposed use of the expansion area will contribute to the economy of the Metro area through the employment of persons and by providing the natural resource for construction, both of which contribute to the economic health of the state of Oregon.

We further find that the proposed use of the expansion area will provide a stable and significant source of high-quality aggregate materials and products for use in the Metro area. Haul distance is a major cost component of the aggregate industry. Provision of sand and gravel aggregate material in close proximity to the major market assists in controlling the cost of construction for both private and public users. The continuation of an adequate, long-term, supply of that material in proximity to its major market will contribute to the economic health of the community and the State of Oregon.

Therefore, we find that approval of the application will be consistent with the intent and purpose of Goal 9.

Goal 10 – Housing.

To provide for the housing needs of the citizens of the state.

The primary purpose of Goal 10 is to ensure that sufficient buildable land is available to provide for a full range of housing needs within the urban area and to avoid creating shortages of residential land which would artificially restrict market choices in housing type, price range or location. The subject property has been designated agricultural in the Metro Plan and is not planned for residential use. There are three dwellings on the property that will eventually be displaced as a direct consequence of the proposed amendments. We find that approval of the

proposed amendments, and the eventual loss of the three dwellings, will not measurably impact the existing or future housing stock in the Metro Plan area, nor will they directly result in population growth, increase the demand for housing beyond previously acknowledged projections, or otherwise conflict with the purpose and intent of Goal 10.

Goal 11 - Public Facilities and Services.

To plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban development.

Approval of the application will result in a natural resource use of the expansion area. Significant levels of public services are not required for that use. Approval of the application will not result in the need for extension of public facilities and services to the expansion area beyond those existing at the current facility.

To the extent that Goal 11 is applicable to the application, we find that approval of the application will be consistent with the intent and purpose of the goal.

Goal 12 – Transportation.

To provide and encourage a safe, convenient and economic transportation system.

The intent of Goal 12 is implemented through the provisions of the State Transportation Planning Rule (TPR) (OAR 660, Division 12), which was adopted by LDC in 1991.

OAR 660-012-0060(1) requires that “*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.*”

We find that approval of the application will not result in any change in the applicant’s current (and future) use of local roads used for access and egress to it facility. The applicant testified that the proposed expansion area will only be used by the applicant to provide the resource that it processes on its existing site into a marketable product. The applicant testified that no change or modification of the applicant’s existing aggregate processing methodology or facility will be required as a result of the proposed expansion of its resource extraction site. Approval of the application will result only in the applicant’s use of the proposed expansion area as an additional, continual and consistent source of aggregate material needed for the continuation of the applicant’s business, at its current level of operation and production, at its current facility. The applicant testified that that use will not result in any increase in the number of vehicles leaving or entering the applicant’s facility for the purpose of delivering its finished product to market. That use will not result in an increase in the number of vehicles servicing applicant’s business. Because no increase in product delivery or service is associated with the applicant’s proposed use of the expansion area, we find that no Metro area transportation facility will be significantly affected as a result of approval of the application.

Therefore, we find that approval of the application is consistent with the intent and purpose of Goal 12.

Goal 13 - Energy Conservation.

To conserve energy

We find that the proposed use of the expansion area will provide a continued stable and long-term source of sand and gravel aggregate material within close proximity to the Metro area market. From an energy conservation perspective, an aggregate mining site located within the Metro area is highly preferable to a supply site located outside the Metro area which requires the transporting of the material, processed or otherwise, to the Metro area for use. Approval of the application will result in the establishment of a stable and long-term source of aggregate material without an increase in energy consumption.

Therefore, we find that approval of the application is consistent with the intent and purpose of Goal 13.

Goal 14 – Urbanization.

To provide for an orderly and efficient transition from rural to urban land use.

Only resource use is proposed for the site and no urban facilities or services, other than those currently provided, are required to support that use.

To the extent that Goal 14 is applicable to the application, we find that approval of the application would be consistent with its purpose and intent.

Goal 15 - Willamette River Greenway.

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

The subject property is not located within the Willamette River Greenway. Accordingly, Goal 15 is not applicable.

Goal 16 - Estuarine Resources.

To recognize and protect the unique environmental, economic, and social values of each estuary and associated wetlands; and

To protect, maintain, where appropriate develop, and where appropriate restore the long-term environmental, economic, and social values, diversity and benefits of Oregon's estuaries.

The subject property contains no estuarine resources.

Goal 17 - Coastal Shorelines.

To conserve, protect, where appropriate, develop and where appropriate restore the resources and benefits of all coastal shorelines, recognizing their value for protection and maintenance of water quality, fish and wildlife habitat, water-dependent uses, economic resources and recreation and aesthetics.

The subject property contains no coastal shorelines.

Goal 18 - Beaches and Dunes.

To conserve, protect, where appropriate develop, and where appropriate restore the resources and benefits of coastal beach and dune areas.

The subject property contains no beaches or dunes.

Goal 19 - Ocean Resources.

To conserve the long-term values, benefits, and natural resources of the nearshore ocean and the continental shelf.

The subject property contains no ocean resources.

7.0 INTERNAL CONSISTENCY OF METRO PLAN

As mentioned previously in Section 3.0 of this application, The Metro Plan has not been amended to adopt procedures and requirements consistent with the Goal 5 Rule for the consideration of PAPAs regarding the designation of significant aggregate sites. The Lane Code and the Eugene Code do not contain specific criteria regarding the consideration of a PAPA proposing to add a site to the Metro Plan's acknowledged list of significant aggregate sites and have not been amended to conform to the requirements of the Goal 5 Rule through periodic review. Therefore, only the provisions of the Goal 5 Rule are directly applicable to Eugene and Lane County's consideration of this application. Metro Plan goals and policies and land use regulations of Lane County and the City of Eugene are not applicable to this application.

9.0 CONCLUSION

We find that this application to amend the Metro Plan to designate the subject property as Sand and Gravel and include the subject property in the Metro Plan Goal 5 Significant Aggregate Site Inventory and to change the zoning of it to Sand, Gravel & Rock Products demonstrates that all applicable criteria have been addressed and met. We further find that this application demonstrates that the proposed amendments are consistent with applicable Statewide Planning Goals and Administrative Rules implementing those Goals. Based upon the evidence in the record and these findings of fact and conclusions of law, this application is approved.

**Metro Plan Amendment and Rezone
Delta Property Company
Conditions Necessary to Minimize Conflicts
Required to Become Part of Any Operation Plan Approved under LC 16.217**

**NOISE minimization
(zones shown on attached Diagram 'A')**

All Zones:

1. Begin first and second lift mining operations no earlier than 7:00AM and end mining operations no later than 10PM.
2. Retain the administrative controls of restricting the location of mining equipment to reduce mining noise.
3. Take advantage of the screening effect provided when the equipment is below grade.
4. First and second lift mining operations may be conducted separately or simultaneously.

Zone 1

5. No additional restrictions beyond adhering to the time limit above, conduct normal mining procedures for all three lifts.

Zone 2

6. Excavator removes a second lift of 18' of material by digging from the base of the second lift (digging from below) when the excavator is within 800' of the western boundary of the Expansion Area.
7. If the front end loader is operating at the same time as the excavator, the excavator must be 1500' or more away from any point on the western boundary of the Expansion Area that is within 800' of the front end loader.

Zone 3

Same restrictions as Zone 2 plus the following additional controls:

8. After overburden is removed, the front end loader removes a first lift of 13' of material by digging from the base of the first lift when the front end loader is within 550' of the western boundary of the Expansion area.
9. Excavator removes a second lift of 18' of material by digging from the base of the second lift (digging from below) when the excavator is within 800' of the western boundary of the Expansion Area.

10. If the excavator is operating at the same time as the front end loader, it must be 1500' or more away from any point on the western boundary of the Expansion area that is within 550' of the front end loader.

Zone 4

Same restrictions as Zone 3, *plus* one of the following additional controls when the front end loader is within 235' of the western boundary of the Expansion area:

either

11. Reduce noise generated by the front end loader by 2 dB relative to the CAT 980, either by adding a noise control package, or by replacing it with a quieter model.
- or
12. Limit the number of dump trucks loaded by the front end loader to 12 trucks per hour.

DUST minimization

13. Implement standard dust minimization measures to minimize fugitive emissions from aggregate extraction. Dust suppressant shall be used as necessary. Add expansion area to the LRAPA-approved Fugitive Dust Control Program implemented on the currently permitted site.
14. Surface improvement to haul roads shall be smooth, compacted gravel surface.
15. Provide a water truck available at all times to sprinkle access roads, haul roads, and other vehicle traffic areas to keep dust emissions down.
16. Keep internal roadways used for onsite truck traffic away from property lines as far as practicable.
17. Trucks hauling dry, fine material and/or with visible emissions are required to be covered or wetted during transport off property.
18. Conduct the excavation in phases to minimize the size of the area being disturbed at any one time.
19. Maintain a minimum of 50' setbacks to all property lines at the boundary of the expansion area except near residential zoned properties where the setback shall be a minimum of 150' except for the aquaculture construction.

Existing Conditions in the current LRAPA approved Delta permit that will apply to the expansion area upon approval of this Ordinance:

20. Comply with the Fugitive Dust Control Program. Currently required by LRAPA Permit No. 20119) –The expansion area shall be added to this permit or any other permit issued by LRAPA.
21. Conduct mining in phases to minimize the size of the disturbed area at any one time.
22. Vegetate mined areas to reclaim the land and minimize erosion and dust generation except where open water features exist in the reclamation plan.

GROUNDWATER minimization

**(aquaclade location cross-section shown on attached Diagram 'B')
(aquaclade location on site perimeter shown on attached Diagram 'C')**

23. Construct a low-permeability barrier (aquaclade) in advance of proceeding with excavation in the expansion area consistent with the recommendations of EGR. The highest point of the aquaclade will be one foot below the mapped wetland elevation in the drainage channel west of the excavation site that is a portion of Eugene Goal 5 Site E57. The wetland elevation is nominally 377.6 ft. above mean sea level, therefore, the top of the aquaclade would be constructed to an elevation of 376.6 ft. (NAVD 88).
24. The top of the aquaclade will be 6 to 8 feet below the natural grade in the vicinity of the adjacent drainage channel. The aquaclade will be topped with permeable materials and soil above the top elevation of the impermeable material and clay soil fill used to construct the aquaclade. Exhibit 219 in the PA1238 record (Diagram B) shows the cross-section schematic of the aquaclade in relation to the existing pit and the adjacent subdivision.
25. The applicant shall be fully responsible and shall defend, indemnify, and hold harmless the Lane County Board and all Lane County officers, employee's, and agents for any future failure of the aquaclade.

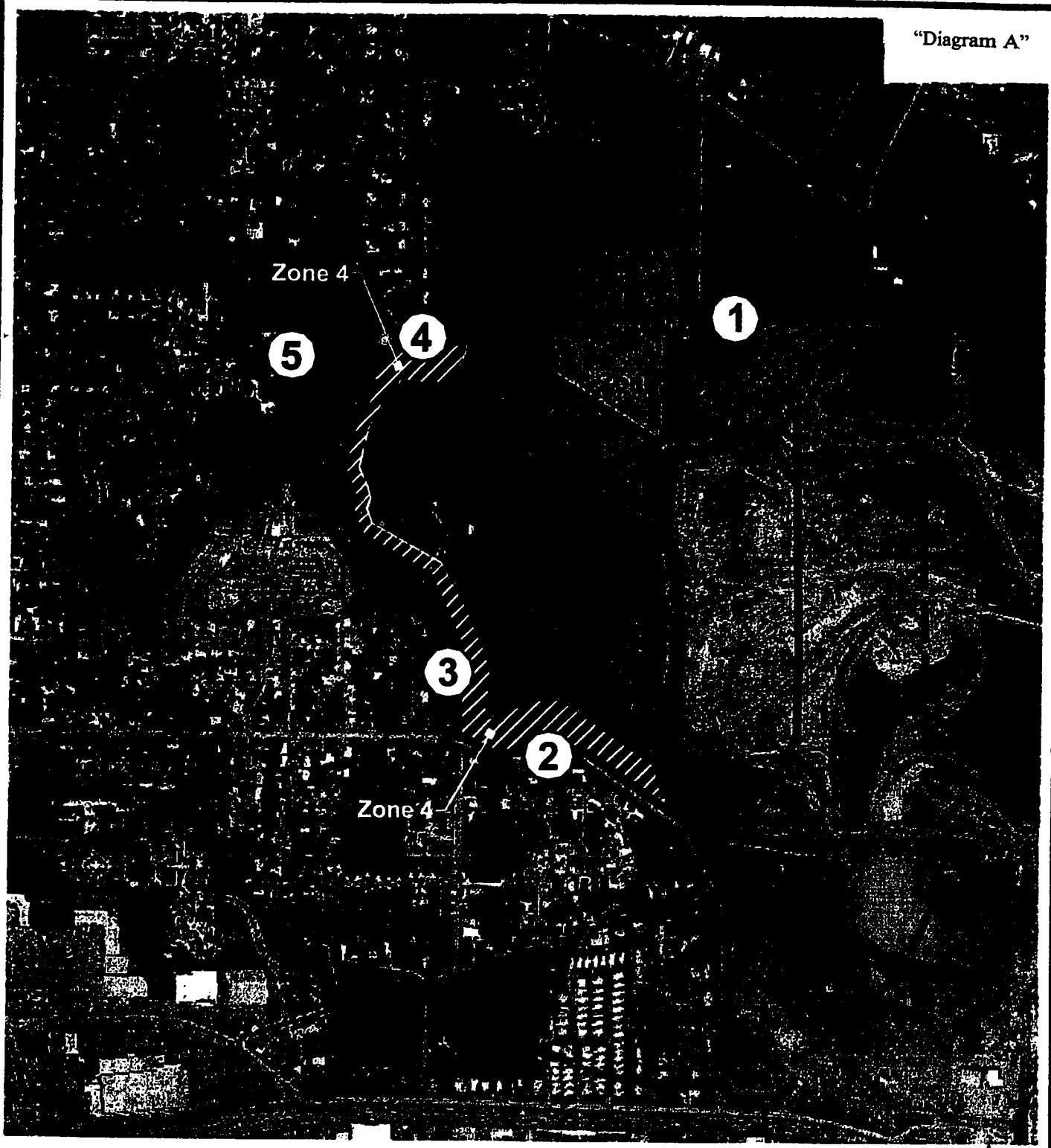
Current DOGAMI Operating Permit Conditions that Shall Continue and Apply to the Expansion Area:




The permittee shall:

1. be sure all water leaving this operation complies with DEQ's effluent quality requirements.
2. maintain the dike between the site and the Willamette River so that the river does not erode into the pit.
3. construct perimeter roads on Confluence Island in a manner that they are armored against erosion.

4. follow the reclamation and operating plan labeled site 20-01'31 for reclamation on Confluence Island.
5. comply with DEQ requirements regarding the backfilling activities in the main Delta Pit.
6. re-spread a minimum of 12 inches of topsoil over all reclaimed areas.
7. create fill slopes not to exceed 2H:1V, excavated slopes not exceeding 1.5H:1V, and pond slopes not to exceed 3H:1V to 6 feet below the low water level.
8. submit a Plan for Mining to the Sand and Gravel Review Committee for review of criteria in Lane Code 16.217 for review and approval.
9. obtain any necessary permits from regulatory agencies with hydrologic responsibility for plan approval.
10. conduct operations under a performance bond in the minimum amount of \$500 per acre and any additional dollar amounts determined by the Director to be necessary for site restoration.

"Diagram A"



-  New Mining Area
-  Goal 5 - 1500' Boundary
-  DEQ Noise Compliance Boundary with Mitigation



 Prediction Location

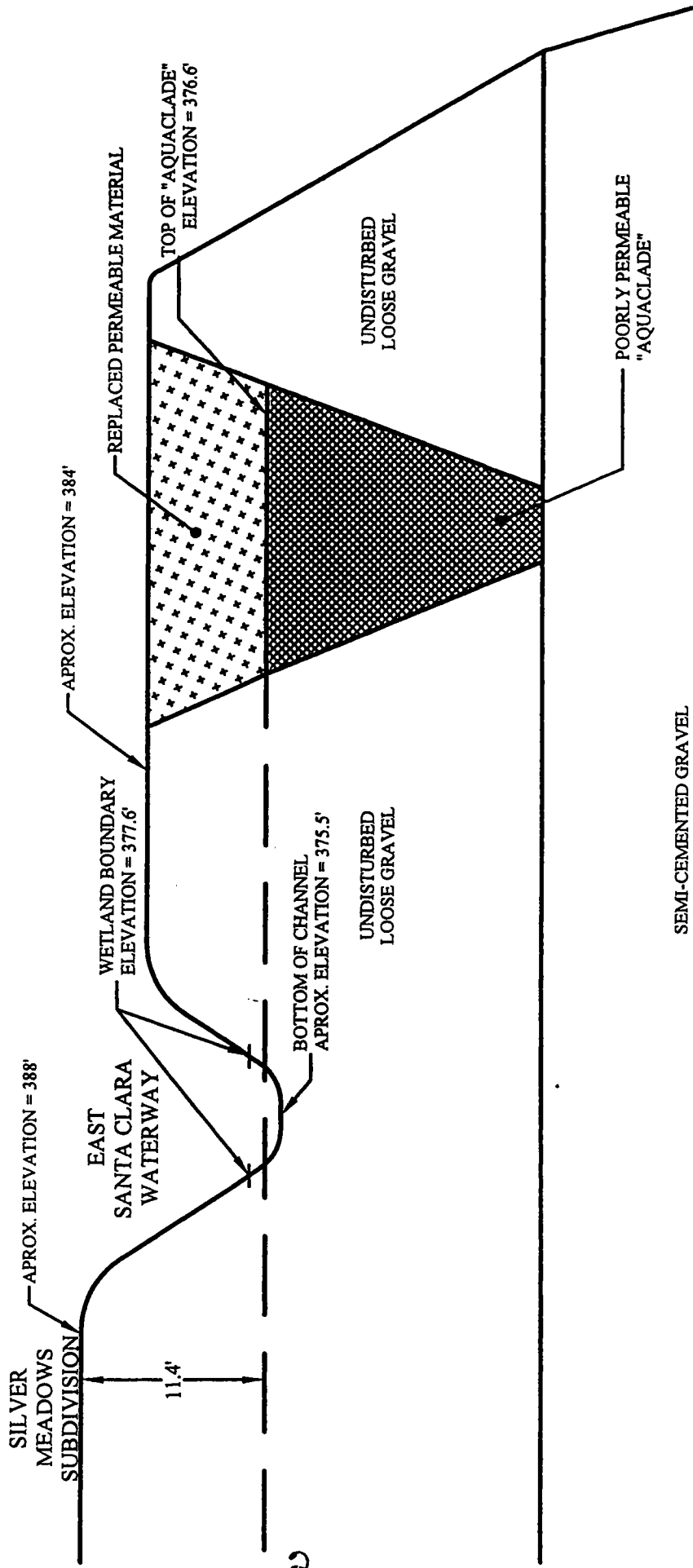
Map data provided by EGR and Associates, Inc.

Daly-Standlee & Associates, Inc.

ph: 503-646-4420
 fax: 503-646-3385
 email: DSA@acoustechgroup.com

Revised Site Generated Noise Analysis Map with Mitigation

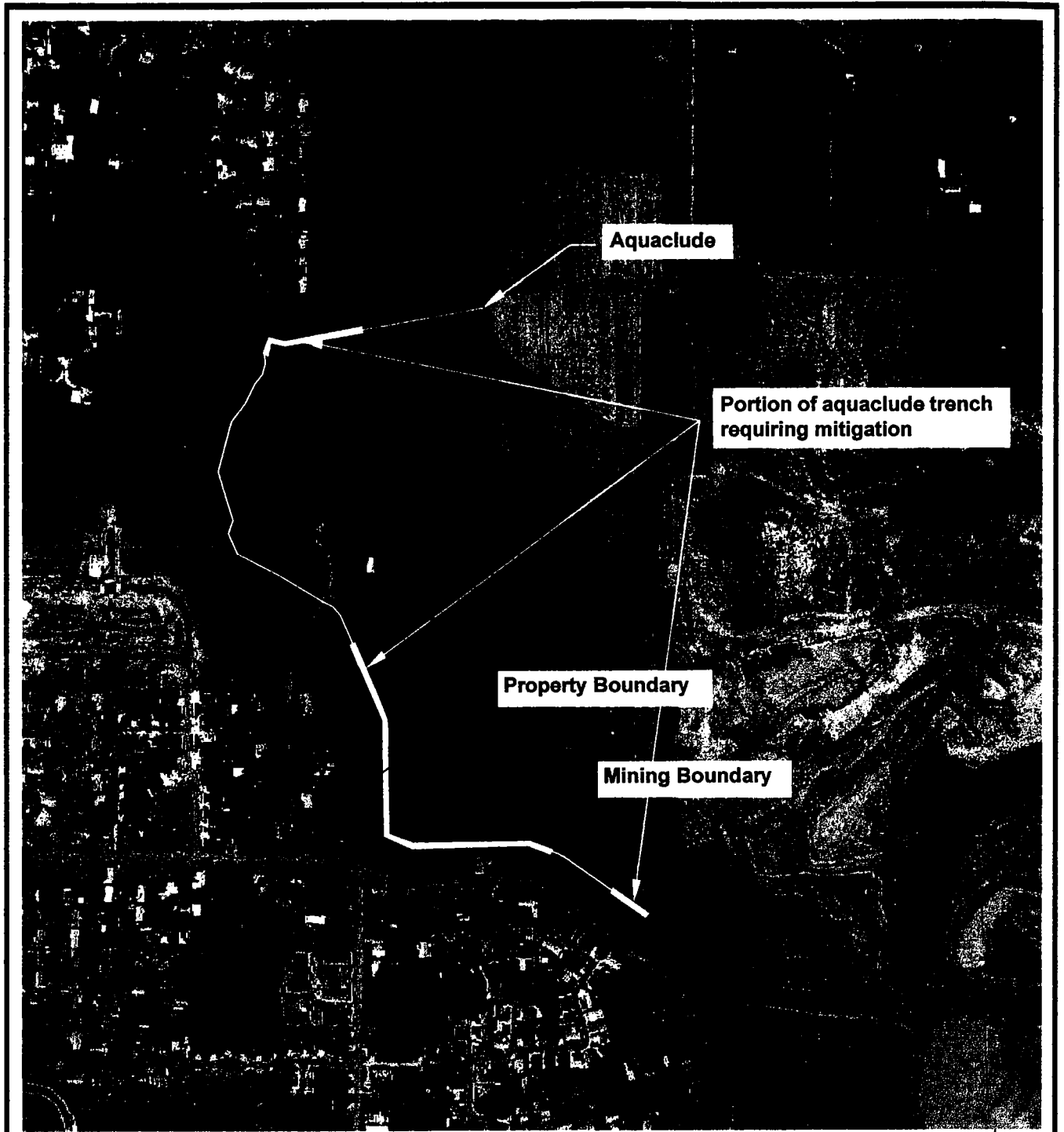
DESIGNED BY:	DRAWN BY: C. OPPENHEIMER	DATE: November 2005	PROJECT NO. 137041
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**PIT CROSS-SECTION
DELTA SAND AND GRAVEL**



2535B Prairie Road
Eugene, Oregon 97402
(541) 688-8322
Fax (541) 688-8087



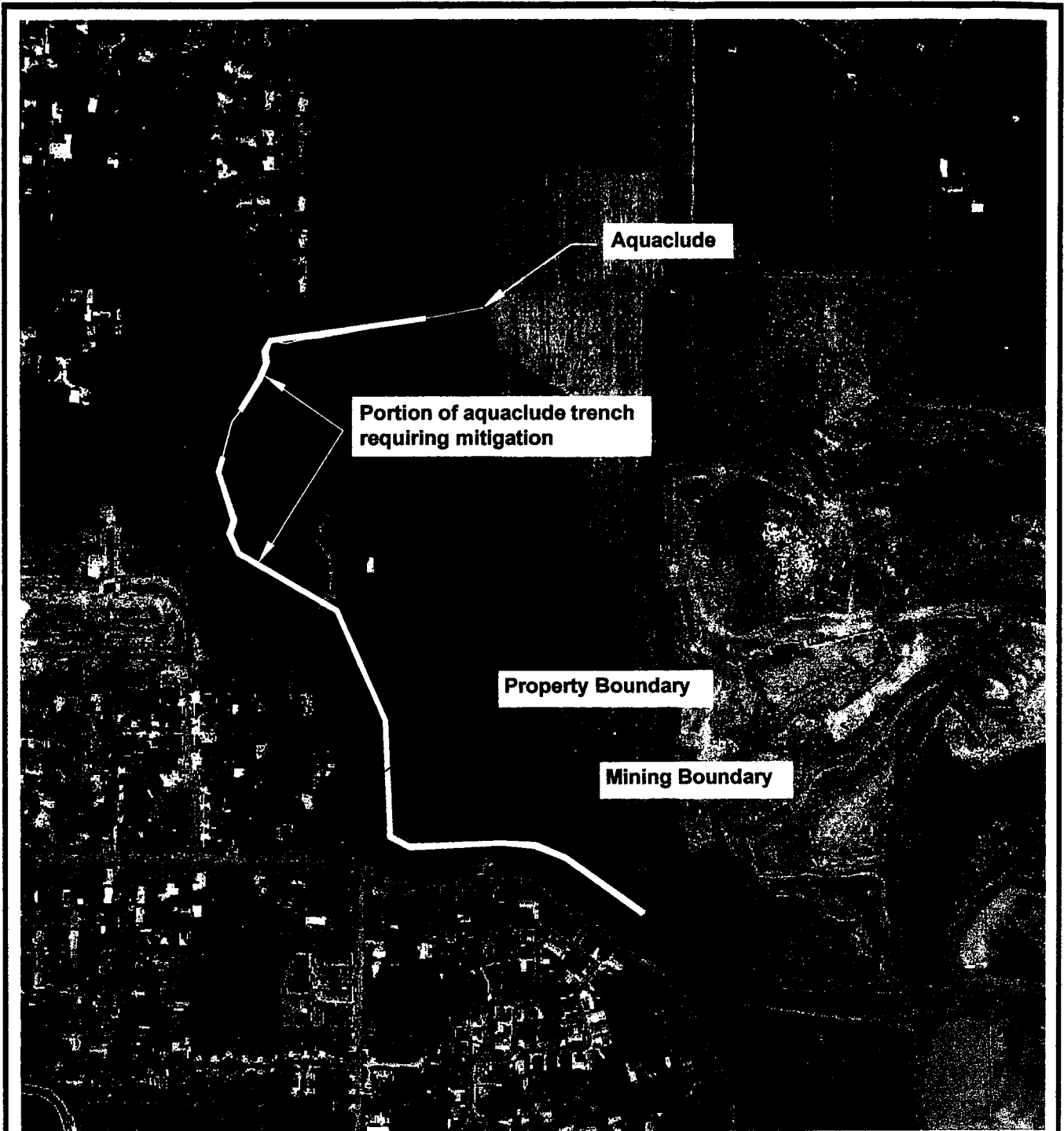
Map data provided by EGR and Associates, Inc.

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Portion of aquaclude trench where noise mitigation is required if excavation occurs less than 30 minutes per hour

DESIGNED BY:	DRAWN BY: C. OPPENHEIMER	DATE: October 2006	PROJECT NO 137045	Figure 2
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Map data provided by EGR and Associates, Inc.

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Portion of aquaclude trench where noise mitigation is required if excavation occurs more than 30 minutes per hour

DESIGNED BY:	DRAWN BY: C. OPPENHEIMER	DATE: October 2006	PROJECT NO. 137045	Figure 1
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