

BEFORE THE BOARD OF COMMISSIONERS OF LANE COUNTY, OREGON

ORDINANCE NO: PA 1352

IN THE MATTER OF AMENDING THE RURAL COMPREHENSIVE PLAN TO ADD THE SUBJECT 63-ACRE PROPERTY TO THE GOAL 5 INVENTORY OF SIGNIFICANT MINERAL AND AGGREGATE SITES, AMENDING THE RURAL COMPREHENSIVE PLAN DIAGRAM TO NATURAL RESOURCES: MINERAL, AND REZONING THE SUBJECT PROPERTY TO SAND AND GRAVEL ROCK PRODUCTS (SG), IN ACCORDANCE WITH OAR 660-023-0180, LANE CODE 16.252, LANE CODE 16.400, AND LANE CODE 12.050. (DEPARTMENT FILE 509-PA16-05971; APPLICANT: WILDISH SAND AND GRAVEL CO.)

**WHEREAS**, Lane Code 16.400 and 12.050 set forth procedures for amendment of the Rural Comprehensive Plan, and Lane Code 16.252 sets forth procedures for rezoning lands within the jurisdiction of the Rural Comprehensive Plan; and

**WHEREAS**, Oregon Administrative Rules (OAR) Chapter 660 Division 23 Section 0180 sets forth procedures for amendment of the Goal 5 Inventory of Significant Mineral and Aggregate Sites within Lane County as well as addressing requests for a Post-Acknowledgment Plan Amendment affecting those sites; and

**WHEREAS**, on December 15, 2016, Department File 509-PA16-05971 was submitted to the Land Management Division requesting a major amendment to the Rural Comprehensive Plan to add the subject 63-acre property to the Goal 5 Inventory of Significant Mineral and Aggregate Sites, to amend the Rural Comprehensive Plan Diagram to Natural Resources: Mineral, and to rezone the subject property to Sand and Gravel Rock Products (SG); and

**WHEREAS**, the Lane County Planning Commission reviewed the proposal in a public hearing on March 21, 2017, and deliberated and forwarded the matter to the Board with formal Planning Commission recommendation of approval on May 16, 2017; and

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

**WHEREAS**, the Board of County Commissioners has conducted a public hearing and is now ready to take action.

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

1. The Lane County Rural Comprehensive Plan is hereby amended to add the 63 acre subject property, identified as Assessor's Map 16-03-31-40, tax lots 1200 and 1300, and Assessor's Map 17-03-06, tax lots 100, 101, and a portion of 400, and as depicted on Exhibits "A" and "B," to the existing Goal 5 Inventory of Significant Mineral and Aggregate Sites identified and included in Appendix "D" of the "Mineral and Aggregate Resources Working Paper."

2. The Lane County Rural Comprehensive Plan is hereby amended to re-designate the 63 acre subject property from "Agriculture" (A) to "Natural Resource: Mineral" (NR:M). This is depicted on the Official Lane County Plan maps and further identified on the map detail attached as Exhibit "A" and incorporated herein.
3. The Lane County Official Zoning Map is amended to change the zone of the 63 acre subject property from "Exclusive Farm Use" (E-30) to "Sand and Gravel Rock Products" (SG). This is depicted on the Official Lane County Zone maps and further identified on the map detail attached as Exhibit "B" and incorporated herein.

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

The prior designation status and zone authorizations replaced by this Ordinance 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 or administrative agency of competent jurisdiction, such portion is deemed a separate, distinct and independent provision, and such holding does not affect the validity of the remaining portions hereof.

**ENACTED** this 22nd day of August, 2017



Pat Farr, Chair  
Lane County Board of Commissioners



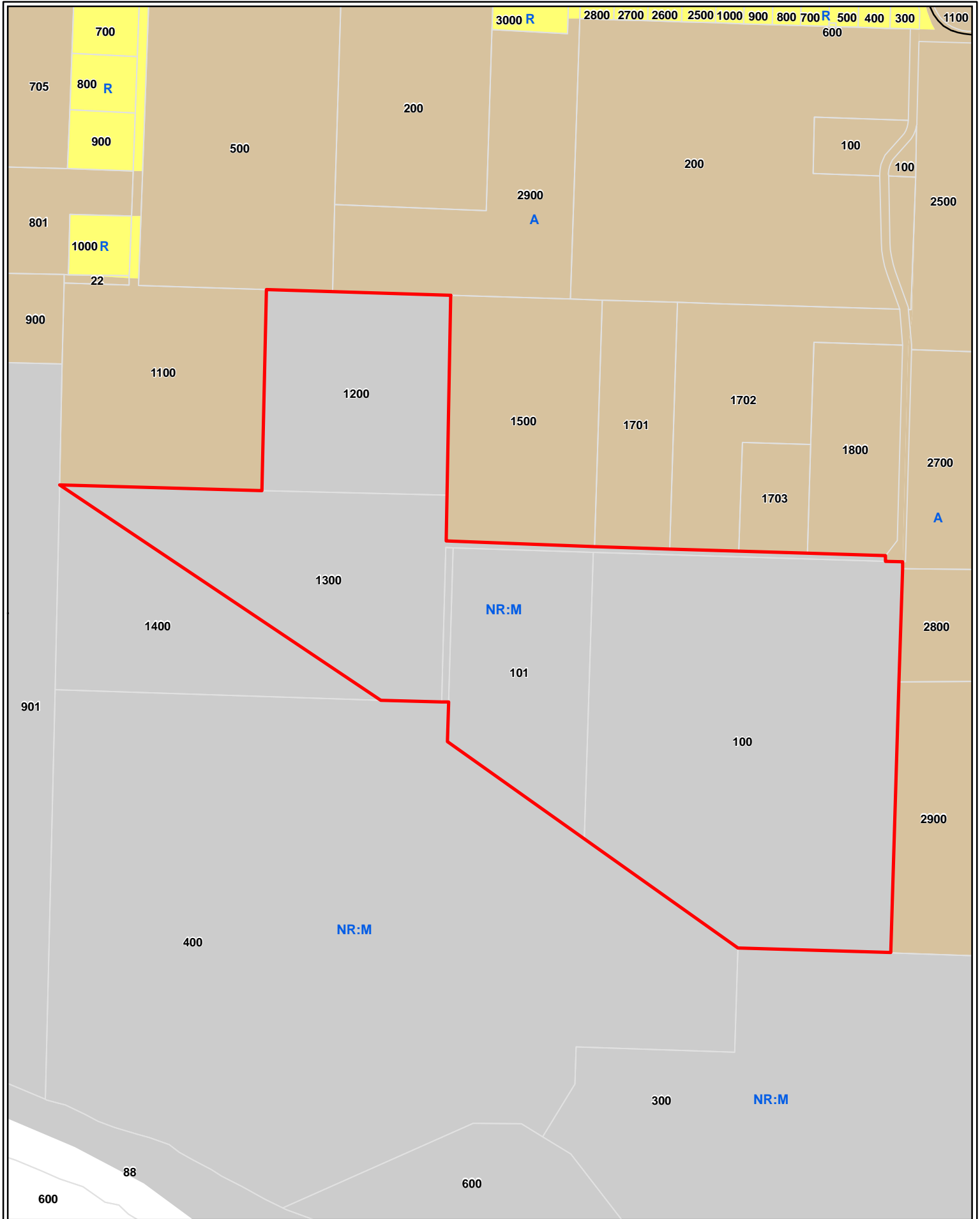
Recording Secretary for this Meeting of the Board

APPROVED AS TO FORM

Date



LANE COUNTY OFFICE OF LEGAL COUNSEL



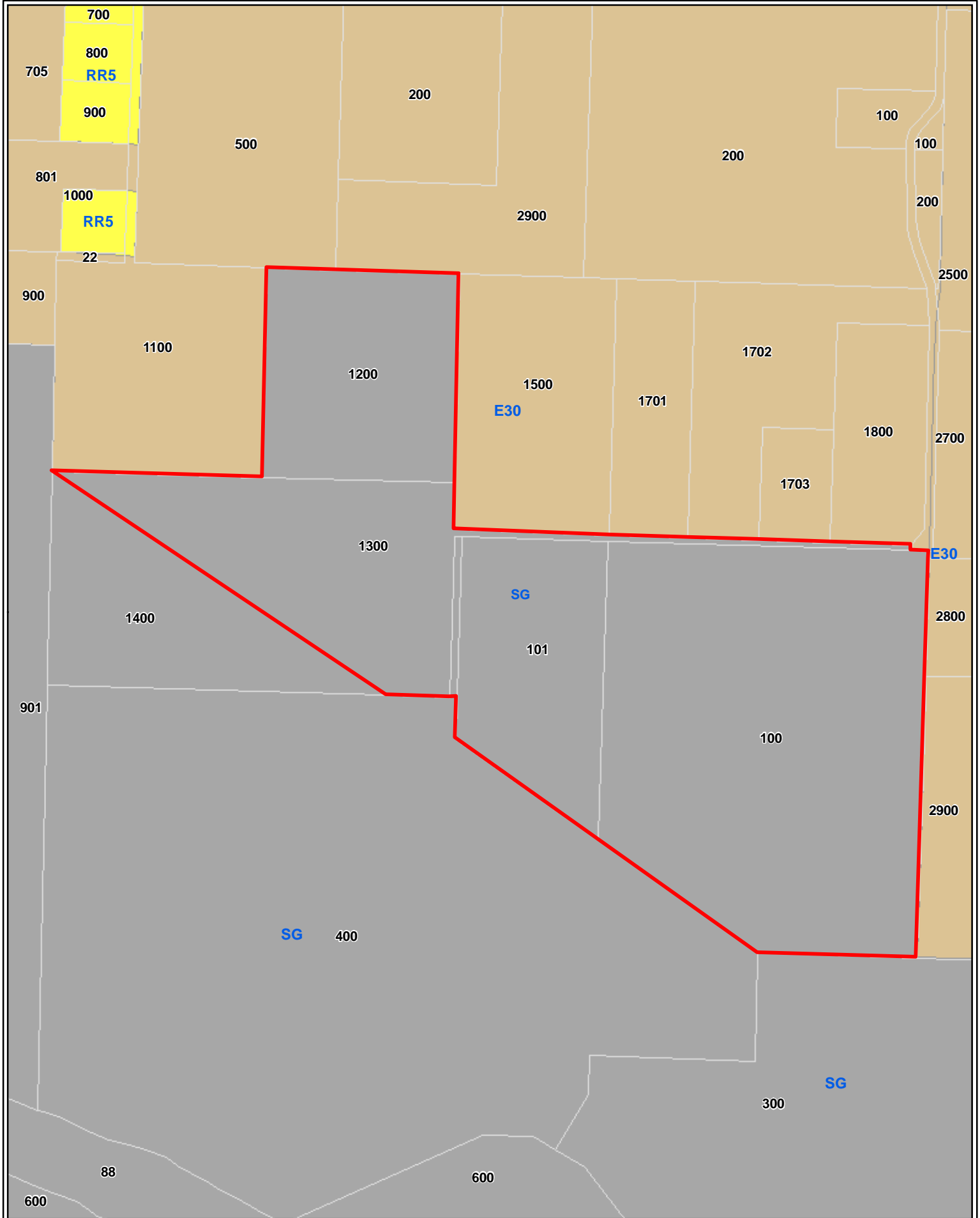
The information on this map was derived from digital databases on the Lane County regional geographic information system. Care was taken in the creation of this map, but is provided "as is." Lane County cannot accept any responsibility for errors, omissions or positional inaccuracy in the digital data or the underlying records. Current plan designations, zoning, etc., for specific parcels should be confirmed with the appropriate agency. There are no warranties, expressed or implied, accompanying this product. However, notification of any errors will be appreciated.

**Rural Comprehensive Plan Designation**

Subject_Property	A - Agricultural	NR:M - Natural Resource / Mineral
Taxlot	R - Residential	

EXHIBIT A  
 ORDINANCE NO. PA 1352  
 PROPOSED PLAN DESIGNATIONS  
 PLAN MAP DETAIL

Lane County, Oregon




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**Zoning**

- Subject\_Property
- E30 - Exclusive Farm Use (30 acre minimum)
- SG - Sand, Gravel and Rock Products
- RR5 - Rural Residential (5 acre minimum)
- Taxlot



**EXHIBIT B**  
**ORDINANCE NO. PA 1352**  
**PROPOSED ZONE DESIGNATIONS**  
**ZONE MAP DETAIL**


 LANE COUNTY  
 Lane County, Oregon

5/23/2017

**EXHIBIT C**  
**ORDINANCE NO. PA 1352**

**APPLICANT'S FINDINGS OF FACT AND CONCLUSIONS OF LAW**  
**WILDISH PLANT 2 NORTH SIDE SAND & GRAVEL MINE EXPANSION**

In support of the Board's adoption and enactment of Ordinance No. PA 1352, the Board makes the following findings of fact and conclusions of law with regard to department case file 509-PA16-05971.

**GENERAL FINDINGS AND CONCLUSIONS**

Wildish Sand and Gravel Co. (Wildish) is requesting approval of Lane County Rural Comprehensive Plan (RCP) amendments to add approximately 63 acres of its property to the Goal 5 Significant Aggregate Site Inventory of the RCP and to amend the Rural Comprehensive Plan Diagram from Agriculture to Natural Resource: Mineral. Wildish is also requesting that the subject property be rezoned from Exclusive Farm Use (E-30/RCP) to Sand, Gravel and Rock Products (SG/RCP) in tandem with approval of the RCP amendments. The subject property (hereinafter "expansion area") contains approximately 63 acres and is located immediately adjacent to the existing 450 acre Wildish mining site that has previously been approved for gravel mining by Lane County. The property is located in the Rural Comprehensive Plan approximately 1 mile southwest of the City of Coburg on the north side of the McKenzie River. The proposed plan amendments and rezoning will allow Wildish to expand its contiguous aggregate mining operation onto the expansion area.

Wildish was founded by T. C. Wildish in the Eugene-Springfield area and has been supplying the greater Lane County market with sand, gravel, crushed rock, asphalt concrete and ready mixed concrete ever since. Wildish is a family-owned, locally-owned, American-owned rock product supply company. In conjunction with its affiliated construction companies, Wildish has supplied material to and had a significant role in building Lane County landmarks such as the Hult Center, the Eugene airport and Autzen Stadium, as well as important infrastructure such as Interstate 5 and the Metro area wastewater treatment plant. Thousands of tons of aggregate, asphalt and concrete from Wildish are found all across the local communities in home foundations, schools, driveways, sidewalks, bike paths, roads, commercial parking lots, institutional facilities and industrial yards.

Known as the "Wildish Plant #2 North Side Site", the company owns approximately 725 contiguous acres located adjacent to the north side of the McKenzie River, south and west of Coburg Bottom Loop Road. Approximately 450 acres are currently zoned "Sand, Gravel & Rock Products" (SG/RCP); the remaining approximately 275 acres are zoned "Exclusive Farm Use (E-30/RCP)". This Plan amendment and zone change seeks to convert approximately 63 acres of E-30/RCP zoned land to SG/RCP. Exhibits A and C of the Wildish application show the location of the Wildish properties on the north shore of the McKenzie River, including the expansion area.

The 63 acre expansion area is contiguous to the existing and approved 450 acre Wildish aggregate mine zoned SG/RCP on the north side of the McKenzie River. Gravel mining operations on the contiguous 450 acre site were initiated in the 1960's and have continued to the present time. Both the expansion area and the existing 450 acre approved mining area are across the McKenzie River from the existing and permitted Wildish processing facility located on the south side of the river.

The proposed RCP amendments and rezone of the expansion area will allow the expansion of the existing Wildish aggregate site on the north side of the river – it does not establish a new one. The approval of the proposed expansion area does not affect operations on the currently approved 450 acre Wildish mining area nor does it affect the existing and approved Wildish processing facility on the south side of the McKenzie River. The approval for the existing mining activities on Wildish's 450 acres is set out in the following documents: Lane County Sand & Gravel Operations Plan PA 05-5022 (Exhibit D to the Wildish application); Department of Geology and Mineral Industries (DOGAMI) Operating Permit 20-0086 (Exhibit E to the Wildish application); Department of Environmental Quality (DEQ) General Water Pollution Control Facilities Permit 1000 (Exhibit F to the Wildish application); and Lane Regional Air Protection Agency (LRAPA) Air Contaminant Discharge Permit 208893 (Exhibit G of the Wildish application).

Sand and gravel operations in the expansion area will occur in the same manner as they are permitted in the existing SG/RCP zone (refer to Operations Plan, Exhibit D of the Wildish application). The primary activity consists of excavating sand and gravel with a hydraulic shovel and transporting the material on a conveyor belt across a private bridge over the McKenzie River to the company's processing plants located on the south side of the river. Wildish does not propose to process the material excavated from the expansion area in the existing mining site or the expansion area on the north side of the river. Just as the mined aggregate material from the existing 450 acre mining site is conveyed over the McKenzie River across the private bridge to the existing processing facilities on the south side of the McKenzie River, aggregates extracted from the expansion area will also be processed in the existing facility on the south side of the river. No additional truck traffic will be generated from the expansion site. No driveways are proposed for haul truck access to the expansion site from the public roadways. Wildish's finished rock products will continue to be loaded onto trucks at the company's existing facilities on the south side of the river for delivery to customers. Delivery trucks will continue to use the existing internal roadways and the driveways on the south side of the river that provide public road access to and from the existing processing facilities. Accordingly, application approval will result only in the applicant's use of the proposed expansion area as an additional source of aggregate material needed for the continuation of the applicant's business at its current location, and there will be no impacts to the local roadway system or impacts from rock processing that are not already occurring as a result of Wildish's current operations at its existing facility.

Gravel mining has been ongoing on the 450 acre Wildish property north of the river since the 1960's and the existing 450 acres is already zoned SG/RCP and is included in the County's 1984 inventory of significant Goal 5 sand and gravel resources. In 2004, approximately 125 of these acres were set aside for riparian habitat protection because they are located in the floodway of the McKenzie River. Therefore, approximately 28 percent of the sand and gravel resource acreage of Wildish's 450 acres currently zoned SG/RCP and is not available for extraction. The approval of mining on the 63 acre expansion areas to the SG/RCP zone replaces approximately one-half of the acreage of the existing Goal 5 significant sand and gravel resource that is not available for extraction because it is set aside for riparian protection. This replacement of gravel resources occurs at a location that is contiguous with the existing site, but significantly farther away from the river.

The “Wildish Plant #2 North Side Site” is part of a much larger area zoned for sand and gravel extraction and processing in the vicinity of the confluence of the Willamette and McKenzie Rivers. Due to deep deposits of high quality sand and gravel in this area, two other commercial sand and gravel operators also extract and process the resource in the area. Delta Sand & Gravel operates on the west side of the Willamette River; Eugene Sand & Gravel operates on the east side of the Willamette River as well as on the north side of the McKenzie River adjacent to and upstream from the Wildish site. Wildish also has an extraction and processing operation on the south side of the McKenzie River where the company’s predecessor began in the 1950’s.

Trucking costs are a major factor in determining the price of delivered sand, gravel and rock products, and therefore close proximity to urban areas where the majority of the products are used is a significant consideration. The Eugene-Springfield market benefits from lower trucking costs by having viable sand and gravel deposits nearby.

Depending upon economic conditions, Wildish employs as many as 500 miners, truck drivers, mechanics, construction workers, professionals and support staff annually. Typical hourly wages range from \$20 to \$35 and higher, plus medical, retirement and paid time off benefits.

Wildish employees have garnered national and state awards for their safety record and quality workmanship, and the company has earned honors for its ethical business practices. In May 2016 the Oregon Department of Geology and Mineral Industries recognized Wildish with the “Good Neighbor Award” for “unselfishly working with neighbors and the community in a spirit of cooperation to reflect a positive image of the mining industry, and for developing cooperative projects which benefit the environment and the community”.

Aside from its business activities, Wildish family members and company employees are involved in charitable and civic organizations, donating time, material and money to numerous not-for-profit groups. In 2010, the company sold 1270 acres of land adjacent to the Howard Buford Recreation Area to The Nature Conservancy. This sale included approximately 750 acres of land zoned for commercial sand and gravel purposes which are now dedicated to fish and wildlife habitat.

Approval of this application will result in a reasonable and logical expansion of a mineral and aggregate resource on land owned by a locally-owned and operated company and located in an area currently committed to aggregate production in close proximity to the Eugene-Springfield market. Approval of this application will also result in the continued long-term viability of a valuable and long-time contributor to the economic and social wellbeing of the Lane County, and more specifically, the Eugene-Springfield area.

## **BACKGROUND INFORMATION**

### **General Site Findings**

The expansion area that is the subject of this application contains approximately 63 acres and is located contiguous to and north of the existing and approved 450 acre Wildish aggregate mining

site. The expansion area is located on the north side of the McKenzie River approximately 1 mile southwest of the City of Coburg. The property is currently zoned Exclusive Farm Use 30 (E-30). The expansion area is described as Assessor's Map 16-03-31-40, Tax Lots 1200 and 1300; and Assessor's Map 17-03-06, Tax Lots 100, 101 and a portion of 400 (refer to Exhibit C of the Wildish application). The property is bounded on the south and west by the existing 450 acre existing Wildish aggregate mining site (that is zoned SG/RCP) and on the north and east by agricultural land zoned E-30/RCP.

The expansion area is relatively flat and is primarily used for field crops, such as wheat production. The property is vacant and can be accessed from the west by Knox Lane and from the north by Smith Lane. Wildish has access to the expansion area via Funke Road and through the existing 450 acre mining site.

The overall site slope and drainage is to the south and west toward the McKenzie River. No seeps, springs or wetlands are located on the property.

### **Specific Land Use Request before the County**

Through a Post Acknowledgement Plan Amendment (PAPA) application before Lane County, Wildish seeks approval of the following:

1. An amendment of the Rural Comprehensive Plan Goal 5 Inventory of Significant Mineral and Aggregate Sites to include the subject property as a significant aggregate resource site;
2. An amendment to the Rural Comprehensive Plan diagram designating the subject property as Natural Resource: Mineral (NR:M); and
3. A change in the zoning of the subject property from Exclusive Farm Use (E-30/RCP) to Sand, Gravel & Rock Products (SG/RCP);

### **RURAL COMPREHENSIVE PLAN AMENDMENT FOR MINERAL AND AGGREGATE RESOURCES - APPLICABILITY OF 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.

The Land Use Board of Appeals decisions in *Morse Bros. v. Columbia County*, 37 Or LUBA 85 (1999) and *Eugene Sand and Gravel, Inc. v. Lane County*, 44 Or LUBA 50 (2003) confirm that OAR 660-023-0180(9) preempts the application of substantive local comprehensive plan



amendment or zone change approval criteria for PAPAs until such time as Lane County amends its comprehensive plan and land use regulations to comply with the Goal 5 Rule.

Lane County has not amended its RCP policies and regulations to adopt procedures and requirements consistent with the Goal 5 Rule for the consideration of PAPAs related to mineral and aggregate resources. The Lane Code does not contain specific criteria regarding the consideration of a PAPA proposing to add a site to the RCP's acknowledged list of significant aggregate sites and has not been amended to conform to the requirements of the Goal 5 Rule. Consistent with LUBA's guidance, the Lane County Board of County Commissioner's (hereafter referred to as the Board) concludes that the provisions of the Goal 5 Rule shall be directly applicable to Lane County's consideration of this application, subject to the procedural requirements in the applicable Lane County regulations.

## **GENERAL LANE CODE PROCEDURAL PROVISIONS FOR RCP AMENDMENTS**

### **Lane Code 16.400(8)(a): Classification of Amendments**

*LC 16.400(8)(a): Amendments to the Rural Comprehensive Plan shall be classified according to the following criteria:*

- (i) Minor Amendment. An amendment limited to the Plan Diagram only and, if requiring an exception to Statewide Planning Goals, justifies the exception solely on the basis that the resource land is already built upon or is irrevocably committed to other uses not allowed by an applicable goal.*
- (ii) Major Amendment. Any amendment that is not classified as a minor amendment.*

The Board finds that the proposed amendment to the Rural Comprehensive Plan Diagram and amendment to the Rural Comprehensive Plan Goal 5 Inventory of Significant Mineral and Aggregate Sites is classified as a Major Amendment to the Rural Comprehensive Plan because it is not limited to the Plan Diagram only.

### **Lane Code 16.400(6): Plan Amendment Procedures**

The Board finds Lane Code 16.400(6) contains general procedures for plan adoption and amendment and Lane Code 16.400(6)(a) through (g) outlines the procedures for Planning Commission consideration and recommendation, and for Board of County Commissioners hearing and action. Consistent with the requirements of the Goal 5 rule, and as Goal 5 lacks specific procedural guidance for local government hearings, the Board finds the Land Management Division is processing the application in accordance with these procedural requirements.

**Lane Code 16.400(6)(h)(iii)(bb) offers five justifications for plan amendments. It reads as follows:**

- (bb) For Major and Minor Amendments as defined in LC16.400(8)(a) below, the Plan amendment or component is:*

- (i-i) necessary to correct an identified error in the application of the Plan; or*
- (ii-ii) necessary to fulfill an identified public or community need for the intended result of the component or amendment; or*
- (iii-iii) necessary to comply with the mandate of local, state or federal policy or law; or*
- (iv-iv) necessary to provide for the implementation of adopted Plan policy or elements; or*
- (v-v) otherwise deemed by the Board, for reasons briefly set forth in its decision, to be desirable, appropriate or proper.*

This request is in conformance with Lane Code 16.400(6)(h)(iii)(bb)(iii-iii) above. The Board finds that the Land Use Board of Appeals decisions in *Eugene Sand* and *Morse Bros.* referenced above make it clear that OAR 660-023-0180(9) preempts the application of substantive local comprehensive plan amendment or zone change approval criteria to aggregate resource PAPAs until the local comprehensive plan and land use regulations have been amended to comply with the Goal 5 Rule. The Board finds the amendment is required to comply with the Goal 5 Rule (OAR 660-023-0180) pertaining to identification and protection of significant Mineral and Aggregate Resources and is justified in conformance with Lane Code 16.400(6)(h)(iii)(bb)(iii-iii).

**Lane Code 12.050 – Method of Adoption and Amendment.**

*(1) The adoption of the comprehensive plan or an amendment to such plan shall be by an ordinance.*

*(2) The Board may amend or supplement the comprehensive plan upon a finding of:*

- a. an error in the plan; or*
- b. changed circumstances affecting or pertaining to the plan; or*
- c. a change in public policy; or*
- d. a change in public need based on a reevaluation of factors affecting the plan; provided, the amendment or supplement does not impair the purpose of the plan as established by LC 12.005 above. (Revised by Ordinance No. 17-73, Effective 1. 16. 74; 15-77, 11. 11. 77)*

This request is in conformance with Lane Code 12.050(2)(b) above. The Board finds that the Land Use Board of Appeals decisions in *Eugene Sand* and *Morse Bros.* referenced above make it clear that OAR 660-023-0180(9) preempts the application of substantive local comprehensive plan amendment or zone change approval criteria to aggregate resource PAPAs until the local comprehensive plan and land use regulations have been amended to comply with the Goal 5 Rule. The Board finds the adoption of the Goal 5 Rule (OAR 660-023-0180) pertaining to Mineral and Aggregate Resources was adopted in 1996, after the 1977 adoption of LC 12.050, and that the Goal 5 PAPA rule is a significant change in circumstances affecting or pertaining to the RCP regarding Lane County’s provisions for Mineral and Aggregate resources.

**Lane Code 16.252: Rezoning Procedures and LC 16.400(8): Additional Amendment Provisions**

Lane Code 16.252(3), (5), (7), and (8) contains general procedures for zone changes. The Board finds the Land Management Division is processing the Applicant's request in accordance with these general procedural requirements.

**Lane Code 16.252(2)** contains additional approval criteria for zone changes.

***(2) Criteria. Zonings, rezonings and changes in the requirements of this chapter shall be enacted to achieve the general purpose of this chapter and shall not be contrary to the public interest. In addition, zonings and rezonings shall be consistent with the specific purposes of the zone classification proposed, applicable Rural Comprehensive Plan elements and components, and Statewide Planning Goals for any portion of Lane County which has not been acknowledged for compliance with the Statewide Planning Goals by the Land Conservation and Development Commission. Any zoning or rezoning may be effected by Ordinance or Order of the Board of County Commissioners or the Hearings Official in accordance with the procedures in this section.***

As discussed above, OAR 660-023-0180(9) preempts Lane County from applying substantive comprehensive plan amendment or zone change approval criteria to aggregate resource Post Acknowledgement Plan Amendments until the county has amended the Rural Comprehensive Plan and Lane Code to comply with the Goal 5 Rule. The Board finds that the Goal 5 Rule provides a basis independent from the Lane Code for consideration of PAPAs related to mineral and aggregate resources. In the event the LC 16.252(2) criterion would be deemed to apply to this mineral and aggregate PAPA, the Board finds that compliance with the Goal 5 Rule through the proposed rezoning would achieve the general purpose of Lane Code Chapter 16 and that protection of a significant mineral and aggregate resource is in the public interest. The Board concludes, therefore, that the county may amend or supplement the comprehensive plan pursuant to the direct authority of the Goal 5 Rule (OAR 660-023-0180(9)) and rezone the subject property under LC 16.252(2) if it is deemed applicable.

**APPLICATION OF THE GOAL 5 POST ACKNOWLEDGEMENT PLAN AMENDMENT PROCESS (PAPA)**

***OAR 660-023-0180(8): 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 (5)(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.*

The Board finds the Wildish application for a PAPA contains the following:

An analysis of the aggregate resource of the subject property, conducted by Steve LaFranchi, an Oregon Registered Geologist, is included in the application (Exhibit H to the Wildish application). The Board finds that the LaFranchi report contains relevant and credible evidence regarding the quantity, quality and location of the mineral and aggregate resource on the expansion property. The Board concludes that the application is complete with regard to this standard.

The Board finds that a conceptual site reclamation plan, included within the existing sand and gravel operations plan, is attached to the application as Exhibit D. The Board finds that reclamation is also discussed in the Wildish application narrative and additional materials. The Board finds that the site reclamation plan need only be conceptual in nature and that the final decisions regarding reclamation are made by DOGAMI pursuant to state statute. The Board finds that County staff has determined the reclamation plan submitted is adequate for review and the Board accepts the staff's finding. The Board concludes that the application is complete with regard to this standard.

A detailed traffic analysis, prepared by Karl Birky, an Oregon Registered Professional Engineer (Traffic) is included in the application (Exhibit N to the Wildish application). The Board finds that this analysis addresses all traffic issues for one mile from the Funke Lane entrance to the expansion area and also addresses traffic issues out to the intersection of Coburg Bottom Loop and Coburg Road, the nearest arterial. The Board also finds that the 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. The Board finds that approval of the application will result in changing the designation of the subject property from one resource designation (Agriculture) to another (Natural Resource). The Board finds that under this provision, the Lane County Engineer has determined to waive the traffic impact analysis requirements. Notwithstanding this waiver, the Board finds the applicant has provided a detailed traffic analysis. The Board concludes that the application is complete with regard to this standard.

The Board finds that multiple proposals to minimize conflicts with existing uses within a 1,500 foot impact area are contained in the application and the Board adopts the findings and conclusions below about minimization measures. The Board concludes that the application is complete with regard to this standard.

The Board finds that a site plan including all the necessary information is included in the application and that County staff has confirmed that the application is complete in this regard. The Board agrees with the assessment of staff and concludes that the application is complete in this regard.

The Board finds that in addition to the materials set out above, the Wildish application provides the County with substantial information and evidence upon which the Board can base its decision, including, but not limited to: Wildish Plant #2 North Side Expansion – Goal 5 Noise Study, Application Exhibit I; Proposed Expansion of the Existing Wildish Sand & Gravel Co. Plant #2 North Side Aggregate Resource Site Air Quality Evaluation, Application Exhibit J; FEMA “No Rise” Hydraulic Evaluation of Proposed North Side Expansion, Application Exhibit K; Evaluation of Proposed North Side Expansion in regard to Habitat Considerations under the National Marine Fisheries Service Biological Opinion of July 14, 2016, Application Exhibit L; Groundwater Characterization Report for Wildish Plant No. 2 North Side Site Expansion, Application Exhibit M; Due Diligence Report- Compliance with OAR 660-023-0180(5)(b)(d) – Wildish Plant 2 North Side Expansion, Application Exhibit O; Cultural Resources Records Review for the Wildish Plant 2 North Side Expansion Project Near Coburg, Lane County, Oregon, Application Exhibit P; Wildish Plant #2 North Pit Expansion, Wetland Determinations, Application Exhibit Q; and Wildish Plant 2 North Side Expansion Biological Assessment, Essential Fish Habitat and Floodplain Habitat Assessment, Application Exhibit R.

The Board also finds that notwithstanding the fact that County staff has applied professional expertise and determined the application to be complete, some opponents argue that it is not. The Board finds that these opponents’ concede that the location, quality and quantity data confirm the resource on site is significant and also concede that that a traffic assessment has been provided. However, these opponents complain that conceptual reclamation plan does not require concurrent reclamation. The Board finds that final reclamation is determined by the Department of Geology and Mineral Industries after the land use proceedings are completed, but before actual mining occurs on the expansion area. The Board finds that the Goal 5 rule recognizes that DOGAMI controls the reclamation process, and accordingly, only a conceptual reclamation plan is required. The Board finds that Wildish has submitted such a conceptual plan and accept the finding of the Lane County Planning Staff that the conceptual plan is adequate. These opponents also argue that there are insufficient proposals to minimize conflicts. To the contrary, the Board finds that Wildish has provided the input of numerous experts who have suggested reasonable and practicable measures to minimize all identified conflicts. These include measures to minimize noise (berms, mufflers, etc.), measures to minimize dust (wet mining, conveyors instead of trucks, use of water trucks, etc.) and measures to minimize any and all conflicts that are identified in the impact area. Lane County Planning Staff has confirmed that the suggested minimization measures are adequate and the Board agrees with the findings of Staff. These opponents complain that the site plan is insufficient. The Board finds that the site plan provided by Wildish includes all the pertinent

information required by the Goal 5 rule and agrees with Staff that the site plan is adequate for a completed application.

**OAR 660-023-0180(2):** *Local governments are not required to amend acknowledged inventories or plans with regard to mineral and aggregate resources except in response to an application for a post acknowledgement plan amendment (PAPA) or at periodic review as specified in section (9) of this rule.*

The Board finds that Wildish has submitted a land use application for a mineral and aggregate resource that requests an amendment of Lane County's acknowledged RCP. The Board finds that this is a PAPA as contemplated by the Goal 5 Rule and concludes that the County has an affirmative duty under the Goal 5 rule to receive and process the PAPA request.

**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 with respect to aggregate sites. When a local government is following the inventory process for a mineral or aggregate resource site under a PAPA, it shall follow the applicable requirements of OAR 660-023-0030, except where those requirements are expanded or superseded for aggregate resources as provided in subsections (b) through (d) of this section and sections (3), (4) and (8) under this rule.*

The Board finds that for this mineral and aggregate resource related PAPA, the provisions of OAR 660-023-0030 are superseded as specifically provided by the provisions of OAR 660-023-0180(2) (b) through (d) and OAR 660-023-0180(3), (4) and (8). The Board incorporates by reference herein the findings and conclusions under those subsections and conclude that the processes and criteria that the Board has applied in this matter are the correct ones for a mineral and aggregate PAPA.

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

The Board finds that the Wildish application concerns a mineral and aggregate resource that is in the Willamette Valley as defined in OAR 660-023-0180(1)(m) because the resource is located in that portion of Lane County that is east of the summit of the Coast Range. The Board further finds that the application concerns a mineral and aggregate resource site that contains significantly more than 2,000,000 tons of mineral and aggregate material. The Board incorporates by reference the "significance" findings and conclusions below. Accordingly, the Board concludes that the applicable provision under which the County must proceed with this PAPA is OAR 660-023-0180(3).

**OAR 660-023-0180(2)(c): Local governments shall follow the requirements of section (5) or (6) of this rule, whichever is applicable, in deciding whether to authorize the mining of a significant mineral or aggregate resource site.**

The Board finds, consistent with these findings and conclusions herein, that the Wildish expansion area site is significant because it contains more than 2,000,000 tons of high quality mineral and aggregate. Because the quantity of material on the expansion area exceeds 2,000,000 tons, the Board concludes that the provisions of OAR 660-023-0180(5) apply to this application as the provisions of OAR 660-023-0180(6) apply only to sites in the Willamette Valley that have less than 2,000,000 tons of aggregate material.

**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 applicable Oregon Department of Transportation (ODOT) specifications for base rock for air degradation, abrasion, and soundness, and the estimated amount of material is more than 2,000,000 tons in the Willamette Valley, or 500,000 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 September 1, 1996.*
- (d) Notwithstanding subsections (a) through (b) 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 June 11, 2004; 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 June 11, 2004, unless the average thickness 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.***

The Board finds that the application contains substantial, uncontroverted and adequate information regarding the quantity, quality and location of the aggregate resource on the Wildish expansion area. The Board finds that Environmental Science Associates, Inc. (ESA) was retained by the applicant to evaluate the quantity, quality and location of the mineral and aggregate material resource in the proposed expansion area. The ESA analysis was performed by Mr. Steve LaFranchi, an Oregon Registered Geologist and results of his evaluation are contained in the report titled "Wildish Plant 2 North Side Expansion Sand/Gravel Resource Evaluation Quality and Quantity" which is dated October 28, 2016. A copy of the report is included in the Wildish application as Exhibit H.

The Board finds that Mr. LaFranchi used a sonic drilling method which allowed an intact core sample of the mineral and aggregate resource to be logged and sampled for each exploratory boring to assess quality and quantity of the mineral and aggregate resource on the expansion area. The Board finds that Mr. LaFranchi observed the drilling of each boring on the expansion area, selected a representative set of samples of the aggregate material in the deposit on the expansion area, maintained sample integrity and delivered the representative set of samples to a professional testing laboratory for analysis under ODOT air degradation, abrasion and soundness specifications as required by the Goal 5 rule. Mr. LaFranchi concluded that the quality of the material on the site is "outstanding" and that it meets all Goal 5 quality standards. The Board finds Mr. LaFranchi's quality analysis to be expert geologist testimony that is credible and persuasive. The Board finds that there is no contrary testimony or evidence about the quality of the aggregate within the expansion area. The Board concludes that the aggregate material in the deposit on the expansion area meets the applicable ODOT quality standards as required by the Goal 5 rule.

Mr. LaFranchi also confirms that the expansion area (the mineable portion only after setbacks are subtracted) contains more than 9.9 million tons of extractable, high-quality mineral and aggregate resource. The Board finds Mr. LaFranchi's quantity analysis to be expert geologist testimony that is credible and persuasive. The Board finds that there is no contrary testimony or evidence about the quantity of aggregate within the expansion area. The Board concludes that the mineral and aggregate resource on the expansion area greatly exceeds the 2,000,000 ton significance threshold required by the Goal 5 Rule.

The Board finds, based on the Soils Classification Map (Exhibit S of the Wildish application) that the soils on the expansion area are predominantly Class II, with no Class I or Unique soils present. Under the Goal 5 Rule, as the expansion area has more than 35% Class II soils, the resource on the expansion area is not significant unless the average thickness of the aggregate layer within the mining area exceeds 60 feet. The Board finds that Mr. LaFranchi confirms that the average thickness of the aggregate layer on the expansion area averages approximately 100 feet. The Board finds Mr. LaFranchi's depth-of-resource analysis to be expert geologist testimony that is credible and persuasive. The Board finds no contrary testimony or evidence in the record. The Board concludes that the average thickness of the mineral and aggregate resource on the expansion area greatly exceeds the 60 feet required under the Goal 5 Rule.

The Board also notes that the opponents of the application concede that the site is significant. The Board further notes, 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 many years. The Board finds it reasonable, when there is additional drilling information on land immediately adjacent to an existing significant alluvial sand and gravel resource site, that the expansion area of an existing operating mine will also contain a significant deposit of aggregate material similar to that of the existing site.

Based on the evidence in the record and these findings herein, the Board concludes that the Wildish expansion area is an aggregate resource site that contains a significant mineral and aggregate resource that should be added to Lane County's RCP Goal 5 Significant Aggregate Site Inventory.

***OAR 660-023-0180(5): For significant mineral and aggregate sites, local governments shall decide whether mining is permitted. For a PAPA application involving an aggregate site determined to be significant under section (3) of this rule, the process for this decision is set out in subsections (a) through (g) of this section.***

As set forth above, the Board finds and concludes that OAR 660-023-0180(3) is the correct provision of the Goal 5 rule for a "significance" determination of the mineral and aggregate resource on the Wildish expansion area. In turn, based on expert testimony in the record, the Board has concluded that the Wildish expansion area is a significant mineral and aggregate resource that should be added to Lane County's RCP Goal 5 Significant Aggregate Site Inventory. Accordingly, the Board concludes that OAR 660-023-0180(a) through (g) provide the appropriate process for the County to determine whether mining should be permitted on the significant Wildish expansion area site.

***OAR 660-023-0180(5)(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.***

***OAR 660-023-0180(5)(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: [see subsections A-F below]***

The Goal 5 Rule requires a determination of an impact area for mining and processing activities that are proposed as part of a PAPA. This requires an assessment of existing and approved land uses for purposes of identifying an impact area with regard to a specific set of limited conflicts set

out in the rule (noise, dust or other discharges; local roads used for mining access; airport safety due to bird attractants; other currently inventoried Goal 5 resources; agricultural practices; and local reclamation ordinances under ORS 517. 780). The Goal 5 rule further limits consideration 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 with existing and approved uses could occur beyond that distance.

The Board finds that the Wildish application proposes no processing activities on the expansion area. The application and record make it clear that all aggregate materials extracted from the expansion area will be transported by conveyor across an existing bridge to the currently Wildish processing facility on the south side of the McKenzie River. Further, the Goal 5 rule at OAR 660-023-0180(5)(g) makes it clear that Wildish’s currently approved aggregate processing area is allowed process material from the expansion area without requiring reauthorization of the existing processing operation. The Board finds that the record does not contain any evidence that a limit was placed on the currently approved processing operations at the time they were approved by Lane County. Similarly, OAR 660-023-0180(5)(a) makes is clear that when an expansion of an existing aggregate site is proposed, as in the application before the Board, the impact area shall be measured from the perimeter of the proposed expansion area rather than from the boundaries of the existing site and shall not include the existing site. Accordingly, the Board concludes that an impact area determined below for the requested expansion area does not include the existing and approved processing area on the south side of the river or the existing and approved mining area on the north side of the river. As a practical matter, this means that the impact area is located predominantly to the north, northwest and east of the expansion area with only tiny segments to the south along the McKenzie River.

The Goal 5 rule provides that within the impact area that is determined, conflicts must be predicted for existing or approved land uses. Consistent with the Goal 5 rule’s definition of “approved land uses”, the Board finds that most of the existing or approved land uses are dwellings on existing platted lots or farm uses. The Board finds the following ownerships, acreage, zoning and uses of the 69 properties that are located within 1,500 feet of the Wildish expansion area:

<b>Map</b>	<b>TL</b>	<b>Owner</b>	<b>Acreage</b>	<b>Dwelling</b>	<b>Zone</b>	<b>Use</b>
160331	703	Harbert	2.7	Y	RR-5	Residential
160331	704	Harbert	1	Y	RR-5	Residential
160331	705	Wildish	122	N	E-30	Corn/Winter Wheat/Grass Seed
<b>Map</b>	<b>TL</b>	<b>Owner</b>	<b>Acreage</b>	<b>Dwelling</b>	<b>Zone</b>	<b>Use</b>
160331	801	Wildish	23	N	E-30	Corn/Winter Wheat/ Grass Seed
160331	900	Schacher	5	Y	E-30	Pasture
1603311	101	Long Tooth	1.7	Y	RR-5	Residential
1603311	300	Phillips	2.4	Y	RR-5	Residential
1603311	500	Murphy	1	Y	RR-2	Residential
1603311	600	Murphy	1	Y	RR-2	Residential
1603311	800	Finlayson	1.7	Y	RR-2	Residential

1603311	1000	Tevepaugh	0.5	Y	RR-2	Residential
1603311	1100	Lindley	0.5	Y	RR-2	Residential
1603311	1200	Anderson	0.4	Y	RR-2	Residential
1603311	1300	Wilson	0.4	Y	RR-2	Residential
1603311	1400	Emerson	0.4	Y	RR-2	Residential
1603311	1500	Emerson	0.3	Y	RR-2	Residential
1603314	100	Wallberg	1	Y	RR-2	Residential
1603314	200	Miller	11	Y	E-30	Sage/Livestock (sheep)
1603314	300	Knapp	0.6	Y	RR-2	Residential
1603314	400	Davis	1	Y	RR-2	Residential
1603314	500	Mower	19	Y	E-30	Livestock (cow/yearling)
1603314	600	McBeath	1.5	Y	RR-5	Residential
1603314	601	Matoon	0.5	Y	RR-5	Residential
1603314	700	Laws	1	N	RR-5	Residential
1603314	800	Laws	1	Y	RR-5	Residential
1603314	900	Strait	1	Y	RR-5	Residential
1603314	1000	Parker	1	Y	RR-5	Residential
1603314	1100	Sorensen	12	Y	E-30	Pasture
1603314	1500	King	10	Y	E-30	Hay
1603314	1701	Armstead	5	Y	E-30	Fallow
1603314	1702	McKibben	8	Y	E-30	Sage
1603314	1703	Cleveland	2	Y	E-30	None
1603314	1800	Turner	5	Y	E-30	Fallow
16033141	100	Wuest	1	Y	E-30	None
16033141	200	Chambers	24	Y	E-30	Grass Seed/Fallow
16033141	300	Gray	0.2	Y	RR-2	Residential
16033141	400	Brown	0.2	Y	RR-2	Residential
16033141	500	Vintage	0.2	N	RR-2	Residential
16033141	600	Mint Acres	0.01	N	RR-2	Residential
16033141	700	Noyes	0.2	Y	RR-2	Residential
16033141	800	Bumgardner	0.2	Y	RR-2	Residential
16033141	900	Salter	0.2	Y	RR-2	Residential
16033141	1000	Hay	0.2	Y	RR-2	Residential
16033141	1100	Hay	0.2	Y	RR-2	Residential
16033141	1200	Glazebrook	0.2	Y	RR-2	Residential
16033141	1300	Nolan	0.2	Y	RR-2	Residential

<b>Map</b>	<b>TL</b>	<b>Owner</b>	<b>Acreage</b>	<b>Dwelling</b>	<b>Zone</b>	<b>Use</b>
16033141	1400	Grady	0.2	Y	RR-2	Residential
16033141	1500	Egberg	0.2	Y	RR-2	Residential
16033141	1600	Beisel	0.2	Y	RR-2	Residential
16033141	1700	Beard	0.2	N	RR-2	Residential
16033141	1800	Beard	0.2	Y	RR-2	Residential
16033141	1900	Werner	0.2	Y	RR-2	Residential
16033141	2000	Werner	0.2	N	RR-2	Residential

16033141	2100	Prater	0.2	Y	RR-2	Residential
16033141	2200	Miller	0.2	Y	RR-2	Residential
16033141	2300	Myers	0.2	Y	RR-2	Residential
16033141	2400	FNMA	0.2	Y	RR-2	Residential
16033141	2500	Cowan	1	Y	RR-2	Residential
16033141	2600	Pratt	1	Y	RR-2	Residential
16033141	2700	Ballard	1	Y	RR-2	Residential
16033141	2800	Haxby	1	Y	RR-2	Residential
16033141	2900	Brasch	10	Y	E-30	Sage
160332	2500	Bowser	10	Y	E-30	Fennel
160332	2401	Funke	24	N	E-30	Fennel
160332	2700	Funke	64	Y	E-30	Sage/Fennel
160332	2800	Wildish	6	Y	E-30	Winter Wheat
160332	2900	Funke	69	Y	E-30	Sage/Fennel
170305	200	Funke	38	Y	E-30	Sage/Fennel
170305	400	Funke	16	N	E-30	Sage/Fennel

As more fully discussed below, the Board finds 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 Board has analyzed all identified potential conflicts with mining of aggregate material on the expansion area that could have any adverse effect on existing or approved land uses or farm uses and practices within the general area. The Board’s analysis of the potential conflicts, together with identified mitigation measures, is discussed in the following sections and the Board incorporates the findings and conclusions herein by reference. Based on the evidence in the record and the Board’s analysis of the existing and approved land uses (including farm uses and practices), potential conflicts, and minimization measures, the Board concludes that there is no factual basis for conflicts beyond 1500 feet from the expansion area, and according no reason to establish an impact area larger in size than the 1500 foot limit suggested in the Goal 5 rule. The Board concludes and determines that the impact area for the Wildish expansion area is 1500 feet from the perimeter of the mining activity portion of the expansion area. The Board further finds and concludes that this 1500 foot impact area is large enough to include uses that are existing or approved land uses as set out in OAR 660-023-0180(5)(b).

**OAR 660-023-0180(5)(b)(A): For determination of conflicts from proposed mining of a significant aggregate site, the local government shall limit its consideration to the following:**

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

The Board finds that land uses on land surrounding the proposed expansion area, and within the impact area, consist of residential and agricultural uses. Eight residences are located a short distance north and east of the proposed expansion area on adjacent properties. These residences range from approximately 80 feet to 650 feet north of the boundary of the proposed expansion

area. Agricultural fields containing field crops of perennial rye grass, mint, fennel and sage are located within the impact area, east of the proposed expansion area. Field crops to the north are hay, sage and grass seed. Field crops to the west along Knox Road are wheat, corn and grass seed. Also, north of the proposed expansion area and east of Knox Road is a 19 acre property with a year-round cattle operation and further to the east on an 11 acre property is a winter/spring sheep operation. The existing 450 acre Wildish aggregate mine is located immediately adjacent to the south of the proposed expansion area and the Wildish processing facility is located further south across the McKenzie River from the Wildish property. The remaining residential uses within the impact area are located further away on Knox Road, Freedom Lane, Peppermint Lane and Coburg Bottom Loop Road.

Wildish, in its application, has identified 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. The opponents also raised potential conflicts in their written and oral testimony. The identified conflicts are as follows:

### **Noise**

The record contains a noise study prepared by Daly-Standlee & Associates, Inc. (Daly-Standlee), titled "Wildish Plant #2 North Side Expansion – Goal 5 Noise Study", dated October 11, 2016. This is attached to the Wildish application as Exhibit I. The noise study was prepared by an Oregon Registered Professional Acoustical Engineer. The noise study analyzes the noise environment and sets out steps that can be taken to ensure the noise radiating from operations on the proposed expansion area will be in compliance with all applicable DEQ noise regulations throughout the life of the mine. The Board incorporates by reference below these findings and conclusions related to accepted agricultural uses and practices.

The Board finds the proposed expansion area qualifies as an existing industrial noise source under the DEQ noise regulations because it is a contiguous expansion of existing mining activity that was in operation prior to January 1, 1975. While the opponents claimed that there was no mining activity on the north side of the McKenzie River before 1975, the Board finds that aerial photographs from 1963, 1965, 1966 and 1975 confirm that there was substantial commercial gravel mining on the north side of the river prior to 1975. The Board further finds that Mr. Jim Wildish provided written testimony that confirms mining on the north side of the McKenzie River. The Board finds that a graphic in the record demonstrates that the mining was on the currently approved Wildish mining site that is immediately contiguous with the expansion area. Because The Board finds that commercial mining activity occurred prior to 1975, the Board concludes, consistent with the longstanding policy of the Oregon Department of Environmental Quality, that the mining-generated noise is governed by the DEQ's maximum noise levels for existing industrial and commercial sources as set forth in the Daly-Standlee expert report. The Board finds that the DEQ noise limits provide an upper limit which may not be exceeded by the noise generated by operations in the expansion area. The Board finds the Daly-Standlee report to be credible and persuasive expert testimony that the DEQ standards will be met at all times by operations on the expansion area. The Board further finds that the DEQ noise limits are designed to protect the

health, safety and welfare of Oregon citizens from the hazards and deterioration in the quality of life imposed by excessive noise emission.

The Board finds that all mining excavation operations in the expansion area will occur with the shovel, hopper and conveyor system located below grade and that there will be no blasting or processing of aggregate within the expansion area and trucks are not used to haul aggregate from the existing extraction site, nor will they be used in the proposed expansion area. The aggregate will be extracted using a mining shovel that loads the aggregate into a hopper and then onto a conveyor belt system which transports the extracted aggregate across the McKenzie River to the existing processing area. The Board finds and concludes that the operations on the expansion area have been carefully designed to reduce and minimize noise impacts.

The Board finds that the mining shovel will be the main source of the mining-related noise that would radiate to residences near the expansion area. Three mitigation options were identified that may be used individually or in combination to reduce the impact of the shovel noise.

Mitigation Option 1 – Use better grade mufflers and radiator fan noise control to reduce the mining shovel’s noise level by at least 7dB or use a different piece of equipment, such as an excavator or front end loader that is at least 7dB quieter than the mining shovel.

Mitigation Option 2 – Construct noise reduction barriers along certain portions of the northern boundary of the expansion area. The required barrier heights and locations are discussed in the report.

Mitigation Option 3 – Orient the direction of mining so that there is always an up-close high-wall between the shovel and the nearby residences. This method alone only works for a portion of the expansion area, so either Mitigation Option 1 or 2 will also need to be employed as the excavation area gets closer to residences north of the expansion area.

The Board finds that the above noise mitigation measures have been recommended by a Registered Professional Acoustical Engineer. As discussed below, and with the modified condition language recommended by the Planning Commission, the Board has made these mitigation measures conditions of approval and finds that they are reasonable and practicable measures that can, and will, insure that noise generated by future mining operations in the proposed expansion area will comply with the DEQ noise regulations at all residential properties within the impact area. Therefore, the Board concludes that the potential noise impacts associated with mining activity in the proposed expansion area will be minimized consistent with the Goal 5 Rule.

The findings above, supported by the Daly Standlee noise study dated October 11, 2016, confirm that with conditions, the noise generated by the mining activities on the expansion area will comply with the applicable statistical noise level standards contained in OAR 340-035-0035, Table 7 and therefore be minimized. In the event that Table 7 would be deemed not to apply and that the ambient degradation standards of OAR 340-035-0035(1)(B) and corresponding Table 8 would be

deemed to apply, the Board makes the following alternative findings. The Board finds that Acoustics by Design (formerly Daly Standlee and Associates) prepared a supplemental noise study dated June 22, 2017 which specifically addresses the DEQ ambient degradation noise limits. The Board finds that the report fully addresses the ambient noise levels in the expansion area and that Table 3 of the supplemental noise study confirms that the mining activities proposed on the expansion area meet *all* DEQ noise requirements regardless of whether OAR 340-035-0035 Table 7 noise limits *or* OAR 340-035-0035(1)(B) and Table 8 noise limits would be applicable to the proposed expansion operations. The Board finds that the supplemental noise study is prepared by an Oregon Registered Professional Engineer (Acoustical) and that the supplemental study is credible and persuasive. The Board finds that no contrary evidence was presented into the record during the hearing process. The Board concludes that with the mitigation options proposed and the conditions attached to this decision, the potential noise associated with the proposed mining activity will comply with the applicable DEQ standard and is therefore minimized consistent with the Goal 5 Rule.

### **Dust and Engine Emissions**

Bridgewater Group Inc., a firm of Oregon registered professional engineers, prepared an evaluation of air quality issues associated with the proposed expansion area. Bridgewater's report is titled "Proposed Expansion of the Existing Wildish Sand & Gravel Co. Plant #2 North Side Aggregate Resource Site Air Quality Evaluation, November 2016, and is attached as Exhibit J to the Wildish application. The Board finds that the Bridgewater "Air Quality Evaluation", Exhibit J, is persuasive and credible expert testimony and the Board further finds that no contrary testimony or evidence related to air emissions was provided to the Board. The Board incorporates by reference below these findings and conclusions related to accepted agricultural uses and practices.

The Board finds that aggregate mining and processing activities could generate dust and diesel emissions and that uncontrolled, dust emissions could potentially create a nuisance condition with existing and approved rural residential and agricultural land uses within a 1,500 foot impact area, resulting in potential impacts. However, the Board finds that impacts from dust can and will be minimized to meet Lane Regional Air Protection Authority requirements by implementation of the LRAPA-approved Fugitive Dust Control Program and measures specified herein. The Board finds that Wildish currently has, and complies with, an LRAPA Fugitive Dust Control Program at its existing approved mining site. The Board finds that Wildish, as a condition of approval, will obtain an expansion of the LRAPA Air Contaminant Discharge Permit (Exhibit G) to include the expansion area and that compliance with this permit will minimize dust emissions are required by the Goal 5 rule. The Board finds that use of the conveyor system (instead of haul trucks) spraying water on travel ways, spraying conveyor transfer points, vegetating berms, and maintaining vegetated setbacks are reasonable and practical measures to ensure that dust emitted by the expansion operations will comply with DEQ and LRAPA standards. The Board finds LRAPA has issued no Notices of Violations related to opacity, fugitive emissions, nuisance conditions or particle fallout and that this demonstrates Wildish's ability to implement dust control conditions of approval.

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 equipment dispersed across the 63 acre expansion area, and the 150 foot setback required to be maintained from adjacent properties, exhaust emissions will likely dissipate before they reach nearby rural residences or farming practices on surrounding lands and therefore, the Board finds no significant conflict due to diesel exhaust will result from mining and processing activities associated with the proposed expansion area.

In addition, the Board finds the proposed expansion will not increase the number of diesel trucks entering or exiting either the existing mining site or processing facility because the number of offsite trucks and truck routes will remain the same with or without the project. In addition, the Board finds that offsite truck traffic will occur at the existing Wildish processing plants on the south side of the McKenzie River, well outside the impact area. Therefore, the Board finds no potential impacts from offsite trucks are associated with the proposed expansion area.

The Board concludes that potential conflicts due to dust and other emissions have been identified, but that they have been minimized as required by the Goal 5 rule.

### **Flooding**

As part of the operations in the proposed expansion area, Wildish may construct an earthen embankment of varying height and width along the northerly and eastern perimeter of the expansion area or portions thereof, for purposes of site security, operational safety, visual screening and/or attenuation of noise. To the extent that any flood impacts exist, they could be deemed an "other discharge" conflict. Wildish retained Watershed Science and Engineering's (WSE's) Bob Elliot, an Oregon Registered Professional Engineer, to update the hydraulic modeling done in 2006 by him when he was with Northwest Hydraulic Consultants (NHC). WSE evaluated these potential flood impacts in their report titled "FEMA "No-Rise" Hydraulic Evaluation of Proposed North Side Expansion" (attached to the Wildish application as Exhibit K). The Board finds that the WSE hydraulic analysis demonstrates that expansion of the excavation and construction of an embankment in the expansion area satisfies the flood hazard requirements of FEMA and Lane County.

Because a continuous mapped regulatory floodway does not extend to this particular reach of the lower McKenzie River at the confluence with the Willamette River, floodway boundaries were determined in 2006 by NHC as part of the implementation work for Wildish's existing and approved mineral and aggregate resource site on the north side of the McKenzie River. Using FEMA criteria, the 2006 modeling extended the mapped FEMA regulatory floodway downstream through the confluence area and into the Willamette River. This modeling facilitated a flood protection berm previously approved by Lane County which has since been constructed landward of the floodway boundary on the north side of the river, and extends along the lower 1.6 miles of the McKenzie River north bank and continues approximately another 0.4 miles below the confluence along the east bank of the Willamette River. Although not certified by the U. S. Army Corps of Engineers, the Board finds the berm was engineered and constructed to provide flood protection for the existing Wildish mineral and aggregate operations north of the McKenzie



River. The Board finds the expansion area is located further landward from the flood protection berm and that the expansion area is located well outside the floodway.

WSE updated the 2006 modeling using a more reliable 2D model based upon recent (DOGAMI, 2009) floodplain topographic LiDAR data. Using this computer model, WSE evaluated the expansion area for potential conflicts. The Board finds the WSE report is persuasive and credible expert testimony and the finds that no contrary testimony or evidence related to flood issues was provided to us. Based on the WSE analysis, the Board finds that, except for the western portion of the expansion area, the proposed earthen embankment around the indicated portions of the perimeter of the expansion area will remain outside the inundation limits of a 100-year flood event and thus cannot increase water levels above existing flood elevations. Furthermore, the Board finds a re-delineation of the FEMA effective BFEs onto the 2009 LiDAR also show the proposed embankments remaining outside of the 100 year flood limits, with the exception of the extreme western portion of the expansion area. The Board further finds that even with the earthen embankment extending into the western portion of the expansion area, the proposed berms on the expansion area meet “No-Rise” requirements within the currently mapped floodway.

The Board concludes that potential conflicts due to flood impacts, to the extent these would be deemed “other emissions” under the Goal 5 rule, have been identified, but that they have been minimized as required by the Goal 5 rule because they meet FEMA “No-Rise” standards (and the equivalent Lane County standards if those would be deemed applicable).

### **Groundwater**

Shannon & Wilson, Inc. prepared an evaluation of potential groundwater impacts associated with the proposed expansion area. The report was prepared by Oregon Certified Engineering Geologists. That evaluation titled "Groundwater Characterization Report for Wildish Plant No. 2 North Side Site Expansion", dated November 1, 2016, is included as Exhibit M in the Wildish application. The Board finds the Shannon & Wilson report is persuasive and credible expert testimony and the Board finds that no contrary expert testimony or evidence related to groundwater issues was provided to us.

The Board finds that within the 450 acres of the existing mining site, pumping to lower the groundwater level for mining operations began in March 2006, followed by mining excavation in July 2006. The Board finds that the mining operation plan proposed by Wildish for the expansion area is the same as the operation plan for the existing mining site which includes dry, open-pit mining and dewatering up to depths of 120 feet below the existing ground surface. Once the excavation extends below the water table, dewatering will be accomplished using pumps set in sumps excavated into the pit floor. Perimeter and cross-cutting trenches in the pit floor will be used to direct water to the sumps, where water will be pumped out of the pit into nearby recharge trenches. Excavation will occur in 35 to 40 foot vertical lifts using a large excavator or power shovel with maximum cut slopes that are ¼ horizontal to 1 vertical. The Board finds that no process water is anticipated to be generated on site.

The Board finds that 122 water well and drilling logs were collected and reviewed by Shannon & Wilson from the online digital archives of the Oregon Water Resources Department (OWRD) for sites within 1,500 foot impact area, as well as water well reports outside that area which were used to provide additional technical information for analysis. Based on the well log information, the Board finds that water wells near the proposed expansion area are used predominantly for irrigation and domestic purposes. Reported well depths in the impact area have an average depth of 70 feet. Static water depths range average approximately 13 feet.

Based on data from current exploration borings, observations from the existing Wildish mining pit, and area well logs, Shannon & Wilson analyzed potential ground water conflicts and determined that there are two principal ways in which mining in the proposed expansion area could potentially impact local groundwater. The first is the potential lowering of the local groundwater level due to dewatering of the mining pit. The second is the potential increase in turbidity within the aquifer due to mining below the water table.

Regarding the concern of lowering the local groundwater level, the Board makes the following findings based on the Shannon & Wilson report and finds it to be credible and dispositive. Groundwater levels in the impact area vary seasonally, consistent with changes in precipitation and the McKenzie River level. The overall groundwater gradient is toward the northwest, regardless of season. Dewatering could have a potential impact on two formations: the Course-grained Holocene Alluvium (CHA) and the Pleistocene Alluvium (PA). The CHA has a higher hydraulic conductivity than the PA and is less important to the overall evaluation of potential groundwater impacts because its saturated thickness is limited to less than 5 feet and it is assumed that the CHA would be dewatered essentially to a few inches of its contact with the surface of the PA. The Board finds that the average depth of wells in the impact area is 70 feet and that the static water depths range average approximately 13 feet. This means that water bearing zones for the average well in the impact area is well below the bottom depth of the CHA and the Board accepts the Shannon & Wilson conclusion that the focus of the groundwater analysis should be on the PA. Potential offsite impacts to groundwater levels in the PA *without mitigation* would be 5 feet or less at the Wildish property line for a dewatered pit excavated to a depth of 40 feet. The Board accepts the analysis in the report and find groundwater levels drawn down 5 feet or less are unlikely to impact well water supply and would not be considered a significant impact. The Board finds that dewatering impacts in the PA from the 120-foot deep excavation *without mitigation* become negligible (less than 5 feet of drawdown) at a distance of about 900 feet from the proposed expansion area (Wildish property line). The Board finds that dewatering for the mining activities in the proposed expansion area indicates that *without mitigation* the estimated drawdown for mining the expansion area with 120 foot deep excavation is only 2.36 feet at a distance of 1,500 feet. The Board finds this is not significant as it is substantially less than the annual variation in the groundwater level between the winter wet season and the summer dry season. The Board finds the average area water will depth is 46 feet below the average groundwater level and that none of the wells surrounding the existing mining operation have had to be replaced or deepened due to impacts from the last 10 years of dewatering. The Board finds that there will be no offsite impacts resulting from mining in the expansion area to a depth of 40 feet.

For mining to 120 feet, the Board finds that a reasonable and practicable measure—recharge trenches—is available to effectively minimize any dewatering effects. The Board finds that the expansion area is ideally suited for the successful use of recharge trenches. The hydraulic conductivity of the upper subsurface horizon (the CHA) is high and this allows for the ready acceptance of water from the recharge trench into the groundwater system. Wildish owns all the property to the south of the expansion area so the recharge focus will be to the north. The Board finds that Wildish is successfully using a recharge trench on its existing 450 acre site and the such trenches are successfully used all over the state in less ideal conditions.

Pursuant to ORS 517. 835, DOGAMI may require conditions on any surface mining operating permit to prevent or mitigate off-site impacts to groundwater resources from the removal of water from surface mining operations. DOGAMI may include groundwater monitoring as one of these conditions. The Board finds that a groundwater level monitoring program for the existing 450 acre mining site has been in place since 1996 which now includes 12 monitoring wells (two of which have been installed along the perimeter of the expansion area) and since the mining operations began dewatering in 2006, most wells show that groundwater levels in the area have remained generally unchanged since 1996, despite the onset of mine dewatering in 2006. The Board finds that for wells in which data are available both before and after the start of dewatering, and where the wells are separated from excavation activities by a recharge trench, the overall average difference between pre-pumping and post-pumping levels is less than 4 inches. The Board finds that ongoing dewatering has thus far had no net impact on groundwater level in area wells where recharge trench mitigation is in place. The Board finds that at the hearing it was established that the well replacement referred to by a neighbor occurred at a different location on the south side of the McKenzie River and occurred prior to dewatering of the existing 450 acre approved mining site. The Board further finds that this issue was addressed by a supplemental letter from Shannon & Wilson, Inc. dated June 21, 2017. The letter was prepared by an Oregon Certified Engineering Geologist and it confirms that mining operations on the north side of the river (where the proposed expansion is located) could not cause a water well failure on the south side of the river similar to that described in the testimony. The Board finds this analysis to be credible and persuasive and adopts the letters conclusion that the McKenzie River, in effect, serves as a massive natural recharge trench that provides protection to wells on the south side of the river. Based on these findings, the Board concludes that any water well-related conflicts to the south of the McKenzie River are fully minimized in that they are not significant.

Monitoring wells are located between active and proposed dewatering areas and surrounding water supply wells on adjacent properties. The monitoring objective is for unexpected groundwater level declines in the monitored wells to act as early warnings of potential impacts to neighboring supply wells. There are a number of reasons why a well may fail, including faulty screens, faulty pumps, sand infiltration, collapsed casing, and numerous others. However, if monitoring data and subsequent hydrogeological investigation indicate that a well in the impact area has been adversely affected by Wildish mining operations, the Board finds Wildish, or any future operator, has the ability to take action in a timely manner to correct the problem, including well replacement, if necessary, to a depth below mine dewatering drawdown at the location of the affected well at no cost to the well owner. This is a condition on the existing 450 acre mining site (see Exhibit D of

the Wildish application) and it is a condition that the Board attaches to operations on the expansion area.

Regarding the concern of turbidity, the Board finds the silt and clay released by the excavation will have little or no contact with the groundwater because the act of dewatering will cause groundwater on all sides of the excavation, including the bottom, to flow towards the excavation which will essentially confine turbidity to the excavation. Water removed by pumps for dewatering will be fed into recharge trenches. Any turbidity will settle to the bottom of the recharge trench and the remainder will be filtered out as it passes through the native soils below the trench. The Board finds the existing mining operation has used recharge trenches since 2006 and no reports of turbidity due to mining or dewatering of the active mine operation have been made. The Board finds that the turbidity associated with extraction activities will be captured and contained within the proposed setback areas and will not reach water wells beyond the proposed expansion area property boundary.

The Board finds the City of Coburg operates two municipal wells northeast of the proposed expansion area which are located more than 4,500 feet from any proposed mining activity in the proposed expansion area. The City of Coburg adopted a Drinking Water Protection Plan (DWPP) in 1997 that included the two existing wells and three locations for future wells. The Coburg Wellhead Protection Area Delineation report describes the local hydrologic environment and noted that groundwater locally flows from southeast to northwest. The Board finds the twenty-year time-of-travel zones for groundwater flowing to the existing City of Coburg wells and the three prospective well locations were delineated and do not extend to the proposed mining expansion area. The DWPP considers sand and gravel mining to be a potential risk to drinking water quality and quantity and relies on the DOGAMI for suggesting appropriate Best Management Practices (BMPs) to reduce the risk. Because Wildish already employs two important BMPs to protect groundwater by utilizing minimal equipment in extracting the resource and removing the mined material by an electric conveyor belt (instead of trucks) and because the proposed expansion area is not within the wellhead protection area for the existing or potential future City of Coburg wells (more than 4,500 feet distant), and because the direction of the groundwater flow which, in the area of the proposed expansion, is to the northwest, away from the City of Coburg wells, the Board finds that the contamination risk to the aquifer posed by the Wildish mining practices is low. The Board further finds, consistent with the Shannon & Wilson report, that *without mitigation*, drawdown in the PA for the 120 foot gravel excavation will be zero at the City of Coburg wells.

The Board finds storm water runoff will be managed on site in accordance with the provisions of Schedule A of Wildish' s DEQ Water Pollution Control Facilities Permit (see Exhibit F of the Wildish application).

The Board finds that recharge trenches, monitoring wells, and well replacement are reasonable and practicable measures that reduce any conflicts and impacts from dewatering to a level that is not significant. The Board further finds that the Board has conditioned the approval with these measures and that Wildish is capable of performing these measures. Through the use of these measures, the Board finds the mining in the proposed expansion area will have no net groundwater

impacts outside the Wildish property. Accordingly, the Board concludes that groundwater conflicts have been minimized as required by the Goal 5 rule.

**OAR 660-023-0180(5)(b)(B)**: *For determination of conflicts from proposed mining of a significant aggregate site, the local government shall limit its consideration to the following:*

*(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;*

Associated Transportation, Engineering & Planning, Inc. prepared an evaluation report of the transportation impacts associated with the proposed activities on the expansion area. That report was prepared by an Oregon Registered Professional Engineer (Traffic) and is titled "Transportation Impacts Wildish Plant #2 North Side Expansion Near Coburg, dated September 8, 2016 (see Exhibit N to Wildish application). The Board finds the report is persuasive and credible expert testimony and the Board finds that no contrary expert testimony or evidence related to transportation issues was provided to us.

Wildish has operated an extraction site in the immediate area for more than 40 years. Since Wildish constructed a private bridge across the McKenzie River in 2006, the Board finds that the extracted rock has been transported from the mining site across the river by conveyor belt. The Board finds that the extracted aggregate will not be transported on public roads until it has been processed on the south side of the McKenzie River. Mining of the proposed expansion area will result in no new trips being generated by the proposed expansion. There will be no new accesses created for hauling aggregate to or from the expansion area. The Board finds that the functional classification of Coburg Bottom Loop Road, Coburg Road and North Coburg Road will not change because of the expansion. The Board finds that the level of service metrics for the intersections of Coburg Bottom Loop Road at Funke Road and Coburg Road at North Coburg Road will remain within accepted standards over the next 20 years assuming existing traffic volumes increase at one percent per year.

The Board finds that traffic counts were made on Funke Road 150 feet south of its intersection with Coburg Bottom Loop Road as well as on Coburg Bottom Loop Road 150 feet north of its intersection with Funke Road to collect bidirectional classification counts for this analysis. The Average Daily Traffic (ADT) on Coburg Bottom Loop Road north of the intersection was 713 vehicles and includes traffic from homes, farms and the existing extraction site. The ADT on Funke Road was 137 vehicles. Based on the design capacity of Funke Road and Coburg Bottom Loop Road (3200 vehicles per hour), the existing counts from July 2016 are only 2% of the design capacity and the rural nature of the area will prevent any significant increases in this low volume

traffic. As no new traffic will be generated by the expansion area (above the existing gravel traffic already included in the traffic counts), the Board finds that the design capacity on the local roads will not be exceeded by the proposed Wildish expansion project.

The Board finds that traffic turning movement counts were obtained on August 10, 2016, at the intersections of Funke Road at Coburg Bottom Loop Road and Coburg Road (the closest arterial to the expansion area access point on Funke Road) at North Coburg Road. The data from the counts was modeled to determine the volume of capacity (v/c) ratio and the level of service (LOS) of the studied intersections. The counted traffic volumes were increased 20% to estimate the v/c and LOS in 20 years (assuming a one percent per year increase in traffic). The Lane County standard for v/c at intersections outside of an Urban Growth Boundary is 0.70 for free movements and 0.80 for the stopped approach. The v/c for both existing and future traffic volumes ranges from a current low of 0.036 on Funke Road at Coburg Bottom Loop Road to a projected maximum of 0.261 in 2036 on Coburg Bottom Loop Road at North Coburg Road, all of which are well below the established maximum standard. LOS C is generally an accepted target for rural areas highways. The existing and projected future LOS ratings meet or exceed this standard.

The Board finds that application approval will not result in any conflicts to local roads used for access and egress to the mining site; nor will approval result in any change in the applicant's current use of local roads that are used for access to and egress from its current mining and processing facility.

The Board also finds the County Engineer made a determination to waive the Lane Code requirement for a Traffic Impact Analysis. As the Board is unaware of any planned transportation facilities in the immediate area and none have been identified in the hearings, the Board agrees with, and accepts, the determination of the County Engineer.

Furthermore, the Board finds that, as contemplated by the Goal 5 rule, no conflicts to local roads will result from application approval. The proposed expansion area will serve as an additional resource extraction site that is adjacent to the applicant's existing facility. The applicant does not propose to process the material excavated from the expansion site on the expansion site. Instead, the applicant will continue to use the processing facilities that are already built and in use at its current processing facility on the south side of the McKenzie River by utilizing the existing bridge over the McKenzie River to convey the mined aggregate to the processing facility. No change to or modification of the applicant's existing aggregate processing methodology or facility (including access roads and entrances to public roads) will be required as a result of the proposed expansion of its aggregate resource site. Application approval will result only in the applicant's use of the proposed expansion area as an additional source of aggregate material needed for the continuation of the applicant's business at its current location.

The Board finds that Wildish requests this plan amendment and zone change to expand its aggregate resource base for the future. The Board finds that expanding the applicant's available resource base will not result in any increase in the number of vehicles leaving or entering the applicant's existing facility for the purpose of delivering its finished product to market. Because no increase in product delivery or service is associated with the applicant's proposed addition to its

source of aggregate material, the Board finds that no conflicts to local roads will result from approval of the application. This is consistent with the conclusion of the traffic analysis provided by the applicant and the Board specifically accepts and adopts the reasoning of Traffic Engineer Birky in this regard. The Board concludes that the Transportation Planning Rule, OAR 660-012-0060, is met because the requested mineral and aggregate expansion does not change the functional classification of an existing or planned transportation facility; does not change standards implementing a functional classification system; and does not, either currently or at the end of the planning period identified in the relevant adopted transportation system plan, result in types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility, degrade the performance of an existing or planned transportation facility such that it would not meet the performance standards identified in the relevant transportation systems plan or comprehensive plan, or degrade the performance of an existing or planned transportation facility that is otherwise projected to not meet the performance standards identified in the relevant transportation systems plan or comprehensive plan.

**OAR 660-023-0189(5)(b)(C):** *For determination of conflicts from proposed mining of a significant aggregate site, the local government shall limit its consideration to the following:*

*(C) Safety conflicts with existing public airports due to bird attractants, i. e. , open water impoundments as specified under OAR chapter 660, division 013;*

The Board finds that the Eugene Airport (Mahlon Sweet Field) is the only existing public airport in the Eugene area and Runway 16L-34R and its corresponding Approach Surfaces are located over 5 miles from the proposed expansion area and significantly outside the impact area. The expansion area is approximately 2.6 miles from the closest boundary of Lane County's Commercial Airport Safety Combining Zone (/CAS) associated with the airport. The Board finds that these distances exceed the restrictions for new water impoundments (of one quarter acre or larger) set out in ORS 836.623 and the implementing provisions of OAR 660-013. The Board finds and concludes that due to the distance separating the airport from the proposed expansion area, there will not be any safety conflict with an existing airport arising from any bird attraction by open water impoundment on the expansion area.

**OAR 660-023--0180(5)(b)(D):** *For determination of conflicts from proposed mining of a significant aggregate site, the local government shall limit its consideration to the following:*

*(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;*

### **Other Goal 5 Resources**

In 1984, when Lane County received Acknowledgement that its Rural Comprehensive Plan (RCP) met the Statewide Planning Program, it determined the "significance" of Goal 5 resources pursuant to the requirements of the Goal 5 Administrative Rule in effect at that time, i. e. , OAR 660 Division 16. The due diligence report (included Exhibit O of the Wildish application), identifies

any “significant” Goal 5 resources within the proposed Wildish expansion area and the associated Goal 5 1,500-foot impact area that would be subject to the conflicts analysis required under the provisions of OAR 660-023-0180(5)(b)(D). Under OAR 660-023-0180(5)(a), the impact area for the expansion of an existing aggregate site shall not include an existing aggregate site. The Board finds the area immediately to the south of the expansion area is the existing Wildish aggregate site that has been designated by Lane County as Natural Resource and zoned Sand Gravel & Rock Products and that the existing site is a natural expansion of this site and has equivalent impacts to those expected from the expansion. Consistent with the OAR 660-023-0180(1)(b) definition of “conflicting use”, the Board finds and concludes that the existing Wildish 450 acre site and the expansion area do not present any conflicts because operations on the sites would not interfere with or be adversely affected by the approved mining activities on either site.

With the exception discussed below, the Board finds no inventoried Goal 5 resources categorized by Lane County as “significant” Goal 5 resources located in the proposed Wildish expansion area or surrounding 1,500-foot impact area, other than the 450 acre existing Wildish aggregate site that is adjacent to the expansion area and previously designated Natural Resources and zoned Sand Gravel & Rock Products. The Board finds that a small portion of the north bank of the McKenzie River is within 1,500 feet of the southern boundary of the expansion area and that the McKenzie River is an inventoried Goal 5 resource. However, this portion of the McKenzie River is also adjacent to the existing and approved 450 acre Wildish aggregate operation which was identified as a significant mineral and aggregate site under Ordinance No. PA 892 (enacted September, 12, 1984). The Board further finds that the existing aggregate site is an intervening land use with exactly the same impacts as the expansion area and that these impacts were properly considered and weighed in the County’s 1984 decision. The findings for Ordinance No. PA 892 explain that even though the McKenzie River is important fish habitat, the Wildish mining operation (i. e. the existing and approved 450 acre site) is separated from the McKenzie River by a dike and therefore does not have a significant impact on the McKenzie River or fish habitat. The Board confirms this prior County finding and finds that the expansion is further separated from the river by an active Goal 5 mineral and aggregate mining operation. The existing operation is effectively buffered by the existing dike and the Board concludes that the proposed expansion area, which is much farther from the river is also effectively buffered from the river in a manner that prevents significant conflicts between the two Goal 5 resources.

### **Goal 5 Historic Resources**

The Board finds that there are no inventoried Goal 5 historic resources on the expansion area or impact area. Nonetheless, the application includes a cultural resources (archaeological and historical) report for the expansion area prepared by Heritage Research Associates, Inc. (HRA). The report is titled "Cultural Resources Records Review for the Wildish Plant 2 North Side Expansion Project Near Coburg, Lane County, Oregon" is attached to the application as Exhibit P. The Board finds the report indicates that there are no archaeological sites recorded in either the proposed expansion area or the surrounding impact area and none of the existing structures are listed in the Oregon Historic Sites Database. The Board also finds no recorded archaeological sites and none of the Goal 5 Resources (Historic Structures or Sites) listed in the Lane Manual are identified within either the proposed Expansion Area or the Impact Area. The Board concludes



there are no identified Goal 5 historic or cultural resources within either the proposed project area or the surrounding impact area, and accordingly, that there are no related historic resource conflicts.

### **Riparian, Wetland and Wildlife Habitat Resources**

The Board finds that there are no inventoried Goal 5 wetland resources in the expansion area. Nonetheless, the applicant provided a report from the Schirmer Satre Group titled “Wildish Plant #2 North Pit Expansion Wetland Determinations”, dated February 25, 2016 (see Exhibit Q to the Wildish application). Using methods prescribed by the U. S. Army Corps of Engineers 1987 Wetlands Delineation Manual (with updates), the report concludes that while some facultative (hydrophytic) vegetation is present in the expansion area, the other two defining characteristics of wetlands, i. e. , presence of hydric soils and wetland hydrology, are absent. The Board finds the report is persuasive and credible expert testimony and The Board finds that no contrary expert testimony or evidence related to these resources or related potential conflicts was provided. The Board concludes that because there are no wetlands in the entire expansion area, there are no conflicts with this Goal 5 resource.

The Board finds that there is no inventoried Goal 5 riparian areas or wildlife habitat on the expansion area. Nonetheless, Wildish retained Wetlands and Wildlife LLC to conduct a biological assessment of impacts that could be potentially associated with the expansion area. That evaluation titled "Wildish Plant 2 North Side Expansion Biological Assessment, Essential Fish Habitat and Floodplain Habitat Assessment", and dated August 15, 2016. (see Exhibit R to the Wildish application). The Board finds the report is persuasive and credible expert testimony and the Board finds that no contrary expert testimony or evidence related to riparian or habitat issues was provided.

The proposed expansion area has a varied history where most of the area has been used for agricultural production, which is currently the case. The Board finds that conditions on the site are the result of current agricultural uses, adjacent surface mining operations and the addition of a flood protection berm south of the expansion area which likely will reduce specific flood events significantly. Current uses (agriculture) and flood hazard mitigation (berm) significantly preclude the reestablishment of historic vegetated side channels of the McKenzie River; this in turn directly limits the Primary Constituent Elements which support native listed fully aquatic species from entering the expansion area.

The Board finds that the current vegetation within the expansion area can be categorized into four habitat types as described below:

- 1) Intensive crop rotation – all areas which are currently used in the production of crops including grass seed, corn, wheat, sage and fennel. This is the primary habitat type and covers 94% of the proposed expansion area. This habitat type is sprayed with herbicides and fertilizers and plowed yearly. The timing of these activities likely preclude any listed plant species from occurring in this habitat type.

- 2) Disturbed Forest remnant - areas which may have been left as upland forest prior to the introduction of forest activities. If undisturbed, these would be primary native elements within the proposed expansion area, an area otherwise currently surrounded by agriculture and weedy edges. However, the portions of the site falling into this category have been significantly disturbed and no significant forest vegetation remains on the site in a size that exceeds 6 inches dbh (diameter breast height).
- 3) Roads/developed - gravel roads accessing the expansion area are used for agriculture and adjacent mining activities. Developed areas are limited to barns and sheds. This habitat type covers less than 2% of the proposed expansion area.
- 4) Weedy edge/hedgerow - These habitats are typically dominated by black berries and separate agricultural and vacant forest habitats. This habitat type covers less than 2% of the proposed expansion area.

The Board finds there are currently no wetlands or waterways or other non-aggregate Goal 5 resources within the proposed expansion area or surrounding 1,500 foot impact area that have been inventoried by Lane County, other than the small portion of the McKenzie River that is separated by a dike and is discussed above. The 1983 revision of the Flora and Fauna Working Paper identifies the areas and species to address:

1. Areas and species identified in the 1983 revision of the Lane County Flora and Fauna Working Paper.
2. Lane County RCP Areas of Sensitive Bird Habitat (Lane Manual 11. 400). The Board finds there are no sites within the expansion area and no new sites (nests) were found within 1500 feet of the proposed expansion area.
3. Rare plants identified in Native Plant Society 1984 list and those currently listed by the State of Oregon and/or USFWS. Surveys were performed and the Board finds appropriate habitat for rare plant species was not found. Marginal habitats were surveyed at least once during the appropriate bloom times.
4. Noise impacts on fish and wildlife within 1500 feet of the expansion area. The Board finds there are no rare or Goal 5 species of fish and wildlife that would be affected by noise within the expansion area and the Board also finds no raptor species or rare bird nests were found within 1500 feet of the proposed expansion.
5. Big game and migratory bird routes affected by the expansion area. The Board finds the expansion area is not located in a designated significant Big Game Range Habitat area and Migratory bird routes will not be significantly impacted due to the proposed expansion because of the homogeneity of the expansion area and other locally suitable habitat. The Migratory Bird Treaty Act protects birds from "take"; this includes disturbing nests, eggs and young during the breeding season. Clearing of the expansion area should be done when nesting is least likely to reduce the likelihood of nest disturbance.

The Board finds native vegetation throughout the proposed expansion area is sparse due to intensive farming. The Board finds there are no off channel habitats within the mining area, nor are there areas which could be used for rearing, cover, predatory avoidance, forage or spawning. The Board finds the affected floodplain habitat within the expansion area has been documented

here as providing no significant benefit (function) to species during a major (up to 100 year) flood event as it currently functions.

In regard to listed species or adverse modification to Critical Habitat associated with the proposed mining expansion, the Board accepts and adopts the Wetlands and Wildlife LLC assessment that the proposed action will have no effect on the following species: Chinook Salmon; Steelhead; Bull Trout; or Oregon Chub. The Board further accepts and adopts the assessment's finding that the proposed action will also result in a no effect determination for the US Fish and Wildlife Service Listed Species of Lane County: Northern spotted owl, marbled murrelet, streaked horned lark, yellow-billed cuckoo, Bradshaw's desert-parsley, Kincaid's lupine, Nelson's checker-mallow, water howellia, Willamette daisy, and Fender's blue butterfly.

Because there are no inventoried Goal 5 resources on the expansion area or in the impact area with the exception of the existing 450 acre mining site and the small portion of the McKenzie River which are both discussed above, the Board concludes that there are no conflicts with other Goal 5 resources. In the event inventoried Goal 5 resources were deemed to exist on the expansion area or within the impact area, based on the expert testimony provided in the record, the Board concludes that there are no conflicts with other Goal 5 resources.

#### **Habitat Considerations under NMFS Biological Opinion**

In regard to the National Marine Fisheries Service Biological Opinion related to FEMA and how community participation in the National Flood Insurance Program can be implemented to reduce the impacts of floodplain development on anadromous fish species protected by the Endangered Species Act, the record includes a report prepared by Watershed Science and Engineering and titled *Evaluation of Proposed North Side Expansion in regard to Habitat Considerations under the National Marine Fisheries Service Biological Opinion of July 14, 2016*, dated November 2, 2016 (Exhibit L).

This report includes a number of observations and conclusions with regard to salmonid habitat protection at the proposed Wildish expansion area. As discussed above, there is no mapped (i.e., designated) floodway along this particular reach of the Willamette River and lower end of the McKenzie River. The data confirm that the proposed expansion area, including the location of the earthen embankment, lies beyond the new floodway boundary that was determined under the previous hydraulic analysis. The data also confirm that the entire expansion area, including the western portion, lies outside of the estimated 25-year floodplain. The updated analysis further demonstrates that, with the exception of a small amount of flood backwater within the most westerly portion of the expansion area, the proposed earthen embankment otherwise also lies outside of the reach of the 100-year flood waters and will not be inundated in the 100-year flood event. Therefore, the proposed expansion area cannot serve as salmonid habitat. For habitat assessment purposes, the existing flood protection berms have a physical effect on flood waters. Accordingly, for habitat analysis purposes, all of the flood protection berms were included in the topographic surface and 2D model, as a barrier to limit simulated flood waters from freely reaching and potentially accessing the proposed expansion area.

The modeling confirms that for non-FEMA purposes, no actual water from the projected 100-year flood event will reach any portion of the expansion area except for the extreme western tip. Onsite inspection and LiDAR data confirm that the western tip consists of a well-formed swale that will be inundated by the 100-year flood with or without the existing flood protection berm, with very shallow flood depths and no loss of flood storage. Wildish's proposed extraction operations to the east are not likely to increase the risk of fish entrapment within the swale. In fact, the western end of the earthen embankment would be expected to prevent any access of fish into the extraction activities of the expansion area. The inability of floodwaters to physically reach the swale prevents fish from reaching the swale.

Specifically, the evaluation concludes the following:

1. The proposed expansion area is not within the estimated 25-year floodplain;
2. The proposed expansion area is not within the floodway;
3. The proposed expansion area is not within a presently active channel migration zone;
4. The proposed expansion area is not within the riparian buffer zone (as measured 170 feet from the ordinary high water mark of the McKenzie River);
5. Excavation of the expansion area will not result in loss of significant flood storage;
6. The expansion area does not include trees exceeding 6 inch dbh (diameter breast height) located within the 100 year floodplain;
7. No impervious surfaces are planned within the expansion area; and
8. Excavation of the expansion area or construction of the earthen embankment will not adversely affect the hydrologic processes of the floodplain.
9. With the exception of the swale at the extreme western tip of the expansion area, excavation of the expansion area will not, and cannot, affect salmonid species as existing landforms are in place that will keep the area dry during a 100-year flood event. Construction of a permitted embankment at the swale area would prevent floodwaters from a 100-year event from entering the swale with minimal flood related effects that can be mitigated.

The Board finds the report is persuasive and credible expert testimony and the Board finds that no contrary expert testimony or evidence related to NMFS Biological Opinion or the ESA was provided.

No other Goal 5 resources shown on the RCP acknowledged list of significant resources exist within the impact area.

**OAR 660-023--0180(5)(b)(E): *For determination of conflicts from proposed mining of a significant aggregate site, the local government shall limit its consideration to the following:***

***(E) Conflicts with agricultural practices; and***

The Board finds that the Table, below, indicates the uses of surrounding properties within the impact area that are zoned Exclusive Farm Use (E-30/RCP) by map and tax lot and that these properties within the impact area are located to the east, north and northeast of the proposed expansion area.

**Surrounding Farm Use Table**

<b>Map</b>	<b>TL</b>	<b>Owner</b>	<b>Acreage</b>	<b>Dwelling</b>	<b>Farm Use</b>
160331	705	Wildish	122	N	Corn/Winter Wheat/Grass Seed
160331	801	Wildish	23	N	Corn/Winter Wheat/Grass Seed
160331	900	Schacher	5	Y	Pasture
<b>Map</b>	<b>TL</b>	<b>Owner</b>	<b>Acreage</b>	<b>Dwelling</b>	<b>Farm Use</b>
16033140	1100	Sorensen	12	Y	Pasture
16033140	500	Mower	19	Y	Livestock (cow/yearling)
1603314	200	Miller	11	Y	Sage/Livestock (sheep)
16033141	2900	Brasch	10	Y	Sage
16033140	1500	King	10	Y	Hay
16033140	1701	Armstead	5	Y	Fallow
16033140	1702	McKibben	8	Y	Sage
16033140	1703	Cleveland	2	Y	None
16033140	1800	Turner	5	Y	Fallow
16033141	200	Chambers	24	Y	Grass Seed/Fallow
16033141	100	Wuest	1	Y	None
160332	2500	Bowser	10	Y	Fennel
160332	2401	Funke	24	N	Fennel
160332	2700	Funke	64	Y	Sage/Fennel
160332	2800	Wildish	6	Y	Winter Wheat
160332	2900	Funke	69	Y	Sage/Fennel
170305	200	Funke	38	Y	Sage/Fennel
170305	400	Funke	16	N	Sage/Fennel

The Board incorporates the findings related to farm practices below. The Board finds the four properties to the east and adjacent to the proposed expansion area are planted sage, fennel and winter wheat and are part of 187 contiguous acres farmed by Funke Essential Oils. The Board finds there are five properties north of the proposed expansion area along Smith Lane that are 10 acres or less in size, each developed with a residence. The Board finds the King and McKibben properties are 10 and 8 acres, respectively, with hay produced on the King property and sage and grass seed on the McKibben property. The Board finds along the northwest portion of the proposed expansion area are larger properties (generally 10 to 19 acres in size) in pasture, wheat and sage. The Board finds the 19 acre Mower property is a cow/calf operation and the north half of the 11 acre Miller property is a sheep operation with the southern half in sage production. And the Board finds the 10 acre Brasch property is in sage and the southern one-third of the 24 acre Chambers property is in grass seed and lies fallow on the northern remainder. Further to the west off Knox Road, the Board finds the 12 acre Sorenson property and the 5 acre Schacher property are in pasture. The larger Wildish properties are leased to Malpass Farms, LLC which rotates field crops of wheat, corn, and grass seed.

The Board finds the Funke, Schacher and Sorenson farms are contiguous with the existing Wildish SG zoned lands and that the distance to the existing Wildish SG zoned lands for the nearby farms varies from the Mower farm at 400 feet to the Chambers farm at 1,500 feet. The Board finds Wildish' s existing excavation pit is immediately adjacent to the Funke and Malpass farming operations and that no conflict or significant impact to the accepted farm management practices or their costs has been noted, (Exhibit T in the Wildish application). The Board finds that the Funke and Malpass farming operations are typical in the area and the lack of adverse effects on these farms from mining operations that are immediately adjacent is noteworthy and instructive. The Board finds approval of the expansion area will not change the ongoing physical relationship these farming operations as there are no changes to how mining operations will be conducted on the existing mining area or on the expansion area. The Board finds any potential conflicts between mining and the existing agricultural uses and practices on the adjacent farming operation would have manifested themselves in the past and the Board concludes that future mining operations on the expansion area (which will be the same as current mining operations on the existing site), will not create conflicts with agricultural practices. As more fully discussed below with regard to ORS 215. 296, this public application process has identified numerous reasonable and practicable measures that will effectively reduce all adverse impacts from the mining operation on the expansion area to a level that they are no longer significant. The Board incorporates by reference these findings with regard to ORS 215. 296 and conclude that because identified potential conflicts with agricultural practices can be minimized through reasonable and practical measures, the proposed mining on the expansion area cannot force any significant change in accepted farm practices nor significantly increase the cost of accepted on surrounding lands devoted to farm use. The Board finds that the nearby farm operations within 1,500 feet, described above, have maintained field crops and livestock for many years and have co-existed with the nearby Wildish aggregate mine without conflict or significant impact to the accepted farm management practices or their costs and concludes that to the extent farm conflict are deemed to exist, they can be minimized through reasonable and practicable measures that the Board has identified through this public process, that can be practically implemented, and which the Board has imposed as conditions of approval on the operator.

The Board discusses OAR 660-023-0180(5)(c), related to reasonable and practicable measures to minimize Goal 5 conflicts below. The Board is mindful that this section requires the County to apply the requirements of ORS 215. 296, and the Board engages in that analysis below. The Board incorporates the analysis, findings and conclusions herein by reference.

**OAR 660-023--0180(5)(b)(F):** *For determination of conflicts from proposed mining of a significant aggregate site, the local government shall limit its consideration to the following:*

*(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;*

The Board finds that in Lane County there are no ordinances that supersede DOGAMI regulations pursuant to ORS 517. 780 and therefore, no consideration of other conflicts associated with such ordinances is necessary.

**OAR 660-023-0180(5)(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**

The Board incorporates the findings and conclusions related to noise above. The Board finds that with appropriate noise mitigation measures, noise generated by future mining operations in the proposed expansion area will comply with the DEQ noise regulations at all existing and approved uses in the impact area. The Board finds that the Daly-Standlee noise report identified the following noise minimization measures:

Mitigation Option 1 – Use better grade mufflers and radiator fan noise control to reduce the mining shovel’s noise level by at least 7dB or use a different piece of equipment, such as an excavator or front end loader that is at least 7dB quieter than the mining shovel.

Mitigation Option 2 – Construct noise reduction barriers along certain portions of the northern boundary of the expansion area. The required barrier heights and locations are discussed in the report.

Mitigation Option 3 – Orient the direction of mining so that there is always an up-close high-wall between the shovel and the nearby residences. This method alone only works for a portion of the expansion area, so either Mitigation Option 1 or 2 will also need to be employed as the excavation area gets closer to residences north of the expansion area.

The Board finds, as discussed below with the language modification recommended by the Planning Commission, these are reasonable and practicable measures and adopts the Daly-Standlee conclusion that, with implementation of the provided mitigation measures, the potential noise impacts associated with mining activity in the proposed expansion area will be minimized consistent with the Goal 5 Rule. The Board has imposed a condition of approval on the operator in this regard.

The Board incorporates by reference its findings and conclusions above regarding both the DEQ statistical sound levels (i.e. Table 7) and the ambient degradation sound levels (i.e. OAR 340-035-0035(1)(B) and Table 8). The Board concludes that the proposed minimization measures are

reasonable and practicable ways to comply with DEQ noise standards regardless of which DEQ standard is deemed applicable.

### **Dust**

The Board incorporates by reference the findings and conclusions related to dust above. The Board finds that the Bridgewater report included several dust minimization measures that will insure mining on the expansion area will comply with the controlling LRAPA airborne particulate matter emission standards and fugitive dust requirements. Bridgewater's list of proposed dust control minimization measures begins with the requirement that the LRAPA Air Contaminant Discharge Permit (ACDP) for the existing Wildish operation shall be followed on the proposed expansion site. This is a condition of approval that the Board has imposed on the operator. Bridgewater identifies the following dust control measures:

- Conveyor transfer points will be sprayed with water to minimize dust generation.
- The expansion area will be sprinkled with water as necessary to control dust during overburden removal, extraction operations and reclamation.
- A setback of 150 feet from adjacent property lines will be maintained around the expansion area boundary.
- Overburden will be used to construct berms surrounding the expansion area to provide a physical barrier for dust migration.
- Reclamation will consist of an open water feature with vegetated banks to minimize erosion and dust generation.

The Board finds these are reasonable and practicable measures and adopts the Bridgewater conclusion that, with implementation of the provided measures, the potential dust impacts associated with mining activity in the proposed expansion area will be minimized consistent with the Goal 5 Rule. The Board has imposed a condition of approval on the operator in this regard.

### **Flooding**

The Board incorporates the findings and conclusions related to flood conflicts above. The Board finds that, except for the extreme western portion of the expansion area, the proposed earthen noise, dust and safety embankment/berm around the indicated portions of the perimeter of the expansion area is outside the inundation limits of a 100-year flood event and thus cannot increase water levels above existing flood elevations. The Board finds locating a Goal 5 resource extraction project (and associated berms) in an area that is outside the 100 year flood elevations is a reasonable and practicable measure to minimize flood impacts and conflicts. The Board finds that even with a segment of the earthen embankment/berm extending into the extreme western portion of the expansion area, the proposal meets “No-Rise” flood requirements. The Board finds that requiring a flood plain permit before any construction of the embankment/berm at the westernmost portion of the expansion area would assure “No-Rise” compliance and is a reasonable and practicable measure to minimize flood-related impacts or conflicts. The Board has imposed such a condition on the operator as part of the approval.

### **Groundwater**



The Board incorporates the findings and conclusions related to groundwater conflicts above. The Board finds that the Shannon & Wilson report suggested multiple reasonable and practicable measures to minimize groundwater impacts and conflicts. These include the use and strategic placement of recharge trenches, routine groundwater level monitoring, monitoring of impacted water wells, and water well replacement, as necessary. The Shannon & Wilson report concludes that mining in the proposed expansion area will have no net impacts outside the Wildish property on domestic or irrigation wells if these minimization measures are implemented. The Board finds this conclusion to be persuasive and credible and the Board adopts it as the Board's own. The Board has imposed a condition of approval on the operator in this regard.

### **Agricultural Practices**

The Board incorporates the findings and conclusions relative to OAR 660-023-0180(5)(b)(E) herein by reference. When addressing whether reasonable and practicable measures would minimize conflicts with agricultural practices, the Goal 5 rule instructs that the provisions of ORS 215. 296 shall be followed. That statutory section provides as follows:

***ORS 215. 296 Standards for approval of certain uses in exclusive farm use zones: violation of standards; complaint; penalties; exceptions to standards.***

- (1) A use allowed under ORS 215. 213(2) or (11) or 215. 283(2) or (4) 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.***

The Board finds there are no lands devoted to forest uses within the impact area or surrounding lands in the general area. Accordingly, the Board concludes there cannot be, and are not, conflicts with forest practices and the proposed use cannot force significant changes in accepted forest practices or significantly increase the cost of accepted forest practices on surrounding lands.

The Oregon State University Extension Service has developed "Enterprise Budgets" which identify accepted farm practices for a number of agricultural pursuits. Representative OSU enterprise budgets are contained in Exhibit U of the Wildish application. Although such budgets have not been developed specifically for sage and fennel oil crops or Willamette Valley sheep and cow/yearling operations, the Board finds that the Natural Resource Conservation Service assisted Wildish in identifying accepted farm practices for these agricultural activities. The Board finds the farm uses in the area surrounding the proposed sand and gravel expansion area fall into generally identifiable farm practices categories with many areas of overlap (i. e. many farm crops and uses have fertilizing and irrigating as accepted practices). The Board finds the following

listings of farm practices to be typical and representative of farm practices used in the area surrounding the expansion area:

Grass seed operations

Fall preparation: fertilizer and herbicide

Spring ground preparation: herbicide and fertilize spray, disk, chisel plow, lime

Planting: disk, harrow and row, drill

Insect, weed and fungus control: herbicide, insecticide and fungicide spray

Swather

Combine harvest

Bale and stack

Flail and cut

Haul seed

Sweet corn operations

Field preparation: lime, v-ripper, rotovator, fertilizer, disk harrow and harrow roller

Weed control: herbicide

Planting: cycloflo corn planter

Weed control: herbicide

Irrigation

Fertilizer

Row harvester

Haul corn

Flail chop

Winter wheat operations

Field preparation: chisel plow, dicing and harrow roller

Planting: drill seed

Weed and fungus control: herbicide and fungicide spray

Fertilize

Combine harvest

Haul wheat

Flail and cut

Sage or fennel operations

Field preparation: disk and chisel plow, rotovate

Planting: drill sage seed, plant fennel root

Fertilize

Weed and fungus control: herbicide and fungicide spray

Swather

Combine harvest New Holland Field Chopper

Haul to oil distillery

(Sage can also be harvested for seed using standing header combine)

Native hay operations

Native hay with no establishment required  
Fertilize  
Irrigate  
Swather  
Rake  
Bale and stack  
Haul hay bales

Willamette Valley sheep operations

Pasture feed March through October  
Shear ewes in May  
Fall vaccinate, worm and treat for parasites  
Hay feed November through February  
Fence repair  
Tag and shear in October  
Winter lambing (December-January)

Cow/yearling operations

Pasture fertilizer  
Irrigation  
Cross fencing for rotational grazing  
Cows/Calves vaccinated in April and treated for external parasites  
Cows and replacement heifers are tested for pregnancy in fall  
Culled replacement heifers and yearling steers are sold in October  
Cull cows sold in November  
Fall/Winter pasture fed  
Fed salt and minerals

The Board finds that Wildish has been mining its existing extraction site north of the McKenzie River since 2006 and farmers in the area state that none of the accepted farm practices associated with their farm uses on surrounding lands devoted to farm uses have suffered any forced significant change or significant increase in cost due to the nearby mining activity. The record contains testimony from Funke Essential Oils and Malpass Farms, both farming adjacent to the existing Wildish 450 acre mining site. These adjacent farmers confirm that they grow a wide variety of crops ranging from specialty crops for oil production (fennel, mint and sage), to direct consumption crops (corn), to food processing crops (wheat), to specialty non-consumption crops (grass seed). These adjacent farmers confirm that noise, dust and irrigation- related activities from mining on the existing Wildish mining operation, which the Board finds will be the same as the proposed mining operations on the expansion area, have had no effect on their accepted farming, which the Board finds includes a wide range of accepted farm practices. The Board finds that the testimony of these farmers is credible and persuasive and confirms that there are not forced significant changes in accepted farm practices in the surround area nor significant increases in the costs of accepted farm practices in the surrounding area.

The Board finds that there is only one farm practice that potentially could be impacted from the proposed mining expansion: irrigation. It is possible that dewatering for mining could adversely affect water availability or the cost of water that is used for irrigation. To its credit, Wildish has fully addressed this issue through the Shannon and Wilson report and the Board incorporates the findings and conclusions above herein by reference. Directly stated, the Shannon & Wilson report, using a conservative interpretation of the groundwater data, has concluded that with the proposed minimization measures, the proposed mining on the expansion area will have no net groundwater impacts outside the Wildish property. Even the *unmitigated* drawdown effects of the dewatering on the expansion area (i. e. a scenario with no recharge trenches or other mitigation which cannot occur because of the conditions the Board has imposed) are approximately 5 feet at the property line for a 40 foot deep excavation and approximately 5 feet at 900 feet from the property line for a 120 deep excavation. The Board agrees with the Shannon & Wilson analysis and its conclusion that this *unmitigated* drawdown is not significant. The Board also agrees with the Shannon & Wilson analysis and conclusions that increased pump costs associated with this *unmitigated* drawdown are not significant. The Board emphasizes that there are reasonable and practicable measures to reduce any groundwater drawdown from dewatering related to mining activities on the expansion area and The Board finds that groundwater drawdown *will* be mitigated and minimized. The Board finds that recharge trenches are the primary minimization measure and that recharge trench methods are currently used successfully at the existing Wildish 450 acre mining area and at other locations around the state. The Board concludes that use of recharge trenches, coupled with an extensive monitoring well program and a firm commitment to well replacement, if necessary, provides ample protection to prevent any forced change in accepted farm practices or increased costs of accepted farm practices in the surrounding area from any irrigation-related effect of dewatering the expansion area for mining operations. The Board has imposed a condition on the operator in this regard which the Board finds is fully capable of being implemented (i.e., a recharge trench and 12 monitoring wells are already in place) and that will prevent forced significant changes or significantly increased cost to accepted farm practice in the surrounding area.

Opponents raised one additional issue at the public hearing that the Board wishes to address: that use of recharge trenches would cause mosquitos. The record contains written testimony from Mr. Hledik of which confirms that existing recharge trenches are free of mosquito larvae. This testimony is competent and provides substantial evidence to confirm that mosquitos will not be an issue with recharge trenches. Opponents seek to disqualify this testimony because Mr. Hledik has recused himself in this matter as the Planning Commission Chair. The Board rejects this argument. The Lane County Planning Commission Bylaws, adopted by the Board of Commissioners on September 13, 2016 provide that any planning commissioner must abstain from taking part in any “discussion or deliberation on the matter.” See Article VIII of the Bylaws. Consistent with the Oregon Constitution, the Lane County Planning Commission Bylaws specifically provide that nothing in the Article VIII of the Bylaws (relating to recusal for conflict of interest) “is intended to deprive a Commission member of the right to act as a citizen and present testimony or evidence as a citizen to the Commission. ” The Board finds Mr. Hledik’s testimony is clearly proper and persuasive.

Accordingly, the Board concludes that the requirements of the Goal 5 rule, including analysis under ORS 215. 296, are met because approval of this application will have no significant adverse effect on the farm practices occurring on Exclusive Farm Use zoned lands within the surrounding area and that the proposed expansion area will not force a significant change in those accepted farm practices and will not significantly increase the cost of those practices. As the provisions of Lane Code 16. 212(10)(f) and (g) mirror the provisions of ORS 215. 296, the Board concludes that they are met in the event they would be deemed applicable.

**OAR 660-023-0180(5)(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;***
- (B) Reasonable and practicable measures that could be taken to reduce the identified adverse effects; and***
- (C) The probable duration of the mining operation and the proposed post-mining uses within the impact area.***

The Board incorporates the findings above by reference herein. The Board finds that the applicant has demonstrated, through the analysis and evaluations of expert testimony that all identified potential 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 conflicts have been identified, reasonable and practicable minimization measures have been identified, and conditions have been imposed on the operator to insure implementation of the minimization measures.

The Board finds that pursuant to OAR 660-023-0180(1)(f) a conflict is deemed minimized when it is reduced to a level that is no longer significant, which can be achieved through conformance with the applicable local, state or federal standard. Based upon the Board's analysis of the record, as discussed herein, the Board finds and concludes that all significant potential conflicts can be minimized. Accordingly, the Board finds that the Board is not required to determine the ESEE consequences of allowing, limiting or not allowing mining for existing or approved land uses within the impact area. OAR 660-023-0180(5)(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. The Board finds that reasonable and practicable measures have been identified to minimize all identified potential significant conflicts. Consequently, the Board concludes that an ESEE analysis under the requirements of OAR 660-023-0180(5)(d) is not required for application approval. As set out below, the Board has analyzed the ESEE consequences of new off-site conflicting uses as required by OAR 660-023-0180(7).

**OAR 660-023-0180(5)(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.*

The Board incorporates the findings and conclusions above herein by reference. Based on the Board's analysis, the Board finds and concludes that the applicant has shown that the applicable PAPA criteria have been satisfied. Accordingly, the Board's decision is to allow mining within the proposed expansion area.

Following the Board's decision to allow mining, the Board hereby instructs staff to prepare the proper ordinance to: (i) amend the Lane County RCP Goal 5 Significant Aggregate Site Inventory to include the proposed expansion area within the inventory; and (ii) amend the Rural Comprehensive Plan map to designate the subject property as "Natural Resource". Consistent with those amendments, further instruct staff to prepare the proper ordinance to concurrently rezone the expansion area to the Sand, Gravel and Rock Products (SG-RCP) zone.

The Planning Commission determined, and the Board agrees, that the mining-generated noise on the expansion area is governed by the DEQ's maximum noise levels for existing industrial and commercial sources as set forth in the Daly-Standlee expert report. When adopting its recommended conditions, the Planning Commission modified the exact language of the Daly-Standlee report to insure that the DEQ maximum noise level standards for an existing industrial and commercial source would be met, but using language that does not limit the possible mitigation and minimization options available to the operator to meet such standards. The Board agrees with the Planning Commission approach and confirms that DEQ standards must be met to minimize noise conflicts. The Board also incorporates by reference its findings and conclusions above regarding the operator's ability to comply with both the DEQ statistical noise limits and the DEQ ambient degradation standard. To implement the Board's decision to allow mining within the proposed expansion area, and to insure that DEQ noise standards will be met at all times by mining operations on the expansion area regardless of which DEQ standard is deemed to apply, the Board's ordinance shall include the following special conditions and procedures on the operator that regulate mining on the approved expansion area:

## **NOISE**

The operator shall mitigate noise impacts in order to keep the mining operation in the expansion area in compliance with the DEQ noise standards in effect at the time of this

approval. In addition to the minimization measures identified below, the operator may use any other noise control measures that assist with compliance or provide independent compliance with the DEQ standards in effect at the time of this approval.

Based on the report prepared at the time of this application by Daly-Standlee & Associates, Inc. dated October 11, 2016 titled “Wildish Plant #2 North Side Expansion – Goal 5 Noise Study”, the following mitigation measures shall be implemented by the operator individually or in combination:

- a. Use better grade mufflers and radiator fan noise control to reduce the mining shovel’s noise level, or use a different piece of equipment, such as an excavator or front-end loader, that is quieter than the mining shovel.
- b. Construct noise reduction barriers within the 150 foot setback along certain portions of the northern boundary of the expansion area that meet the required barrier heights and locations recommended by Daly-Standlee & Associates, Inc.
- c. Orient the direction of mining so that there is always an up-close high-wall between the shovel and the nearby residences. This method alone only works for a portion of the expansion area, requiring either one or the other of the mitigation measures above to be utilized in combination as the excavation gets closer to residences north of the expansion area.

## **DUST**

The operator shall add proposed expansion area to the LRAPA-approved ACDP Fugitive Dust Control Program that is applied to the existing Wildish mining site and the program shall be implemented on the expansion area.

The expansion area shall be sprayed with water as necessary by the operator to control dust during overburden removal, extraction operations and reclamation.

The conveyor belt transfer points shall be sprayed by the operator with water to minimize dust generation.

A setback of 150 feet from adjacent property lines where no commercial aggregate extraction activity is allowed shall be maintained by the operator around the expansion area boundary except for those areas abutting Wildish property where no setback is required.

The operator shall use overburden from on-site to construct berms at locations designated in the application within the 150 foot setback surrounding the expansion area to provide a physical barrier for dust and noise mitigation.

Upon reclamation, the operator shall plant vegetation on the banks of the proposed water feature to minimize erosion and dust generation.

## FLOODING

A floodplain development permit shall be obtained by the operator before constructing berms in the 150 foot setback area in the western-most portion of the expansion area or excavating in the western-most portion of the expansion area that is within the 100-year floodplain.

## GROUNDWATER

The operator shall measure the groundwater levels in designated on-site monitoring wells, including the two within the 150 foot setback area, on a quarterly schedule and reported provided to DOGAMI. If groundwater levels in the on-site monitoring wells, or in existing off-site wells located within the 1,500-foot impact area, show significant declines outside expected seasonal and operational variations and such declines are suspected to be related to mine dewatering, the following actions shall be implemented by the operator in a timely manner:

- a. The operator will report matter to the DOGAMI hydrogeologist within 14 days.
- b. The operator will have a professional hydrologist investigate the problem.
- c. A copy of the findings will be provided by the operator to DOGAMI and any affected off-site well owner.
- d. If the findings show that mine dewatering is more likely than not to be adversely affecting an existing offsite well, the operator will work cooperatively with DOGAMI and take action to correct the problem, including well replacement if necessary at no cost to the affected well owner.

## GENERAL

The operator shall conduct the mining operation as presented in the Applicant's narrative and as depicted on the submitted maps and site plans.

***OAR 660-023-180(5)(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.***

The Board finds that the applicant's proposed reclamation plan for the expansion area outlines that post-mining use of the property will be for fish and wildlife habitat uses. The Board finds that this



is consistent with the requirements of the Goal 5 rule and the Board determines that the post-mining use shall be fish and habitat uses. The Board further determines that setback areas not required for fish and habitat uses may be used post-mining for farm uses under ORS 215. 203 and uses listed under ORS 215. 213(1) and 215. 283(1). County staff is directed to coordinate with DOGAMI on reclamation for the site.

**OAR 660-023-0180(5)(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.*

The Board finds that the applicant will process material excavated from the proposed expansion area at its existing processing facility located adjacent to the proposed expansion area. The Board finds that 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 shall allow the existing Wildish Sand and Gravel Co. aggregate processing facility to process material excavated from the proposed expansion area and nothing in this decision shall effect the operation of the existing processing facility.

**OAR 660-023-0180(7):** *Except for aggregate resource sites determined to be significant under section (4) of this rule, local governments shall follow the standard ESEE process in OAR 660-023-0040 and 660-023-0050 to determine whether to allow, limit or prevent new conflicting uses within the impact area of a significant mineral and aggregate site. (This requirement does not apply if, under section (5) of this rule, the local government decides that mining will not be authorized at the site. )*

The Board has determined that the proposed expansion area contains a significant Goal 5 mineral and aggregate resource and the Board has authorized mining at the expansion site. Accordingly, the Goal 5 rule requires the Board to analyze the Economic, Social, Environmental and Social (ESEE) consequences of allowing, limiting or preventing new conflicting uses within the impact area. The provisions of OAR 660-023-0040 instruct that the ESEE analysis need not be lengthy or complex, but that it should enable reviewers to gain a clear understanding of the conflicts and ESEE consequences to be expected. The Board is instructed to identify conflicting uses, determine the impact area, analyze the ESEE consequences, and develop a program to achieve Goal 5.

**Identify Conflicting Uses.** The Board has previously identified potentially existing and approved land uses and incorporate by reference herein the findings and conclusions in this regard. The Board finds that new conflicting uses within the impact area will be essentially the same as existing uses, namely dwellings and farm uses. The future uses allowed outright and conditionally in the zone applied by the Board's decision (RCP/SG) are contained in Lane Code 16. 217 and the Board incorporates them herein by reference. The future uses allowed outright and conditionally in zones that exist in the impact area (E-30/RCP and RR/RCP) are contained in Lane Code 16.212 and 16.290. The Board incorporates all these uses herein by reference. The

Board notes that there is substantial overlap in the uses allowed in the RR and E-30 zones and that two important uses in each zone are residential uses and farm uses. The Board finds that the allowed uses in the two zones can be grouped into 7 categories of uses that have similar attributes: (1) Farm uses, including but not limited to: farming, composting, poultry and other farm product processing, forest uses, aquaculture, commercial activities related to farm uses, and others; (2) Dwelling-related uses, including but not limited to: residences, mobile homes, home occupations, schools, community centers, and others; (3) Transport/utility-related uses, including but not limited to: transportation facilities, airports, fire facilities, utility tower, power generation, waste disposal, and others; (4) Park-related uses, including but not limited to wetlands/habitat uses, campgrounds, water bottling, golf, and others; (5) Kennel/stable-related uses; (6) Mineral and aggregate-related uses; and (7) Miscellaneous uses, including but not limited to: filming, firearms training, landscaping business, wineries, and others. The Board finds that these 7 categories largely share the types of conflicts that the Board has previously identified above in that they can be sensitive to noise and dust and may have water needs that would depend on groundwater in the rural area. The Board finds that many of the uses listed above are highly unlikely to occur in the impact area because of the existing residences in the impact area and nearby the impact area. By way of example, the Board finds that it is highly unlikely that waste disposal, airport or power generation facilities could be located in the impact area because of space concerns and the proximity to existing uses (i. e. residences) that permanently occupy land in the impact area. Other uses, such as sand and gravel-related uses or kennels, simply do not conflict because they have similar attributes (i. e. noise or dust) that are the same as the potential conflicts the Board has analyzed for the proposed mineral and aggregate use. The Board has previously concluded that any conflicts with residential uses and farm uses that are created by the external effects of the proposed mineral and aggregate extraction use (i. e. noise, dust, flooding, groundwater, transportation, etc. ) have countervailing minimization measures that reduce the level of any potential conflict to a level that is no longer significant. The Board has also previously concluded that there are no other Goal 5 resources/resource sites in the impact area which present any conflict with the proposed mining activity. The Board incorporates the analysis, findings and conclusions above in this regard.

**Determine the Impact Area.** The Board has previously concluded that the impact area for the proposed mineral and aggregate expansion area is limited to 1500 feet from the boundaries of the mining site. The Board incorporates the analysis, findings and conclusions above in this regard and the Board reiterates that the 1500 foot impact area is the defined area for the Board's analysis under OAR 660-023-0180(7). The Board finds that the County is required to conduct an analysis of the ESEE consequences of the future potential conflicting uses identified above to determine whether the County should allow, limit or prohibit a conflicting use within the 1500 foot impact area to protect the significant mineral and aggregate resource.

**Analyze the ESEE Consequences.** Based on the uses allowed in the E-30 and RR RCP zones, which the Board finds fall into seven general categories of potentially conflicting uses as identified above, the Board finds and conclude as follows:

## **ECONOMIC:**

*Allowing Conflicting Uses:* The Board finds that while not all the conflicting uses can actually be developed in the impact area, there are positive economic consequences associated with allowing future conflicting uses in the impact area that are within the seven categories the Board has identified. The Board finds mineral and aggregate-related uses in the impact area would not conflict with the approved mineral and aggregate use on the expansion area and such uses have the same economic impacts whether they are inside or outside of the impact area. The Board finds that farming-related uses can provide continuing positive contributions to the Lane County economy. Similarly, the Board finds that dwelling-related uses can provide construction jobs and the economic benefits to the residents. Utility-related uses and Park-related uses can provide economically valuable services and recreation opportunities to the residents of Lane County. Kennel/stable-related uses can provide economically valuable and needed services to the community. Miscellaneous uses such as films or landscaping businesses in the impact area can contribute to the economic diversity and strength of Lane County. The Board fully recognizes that the mineral and aggregate use that the Board is approving has great long term economic value to Lane County and that Goal 5 requires that resource to be protected. However, the Board also recognizes, as set forth in the findings and conclusions above, that the mineral and aggregate mining proposal presented to the Board fully minimizes all its conflicts in a way that does not significantly affect the seven categories of conflicting uses in the impact area, including future uses, which the Board has identified. The ability of this mineral and aggregate resource operation to minimize conflicts with existing dwelling and farm uses means that it can insulate itself from conflicts from future uses in the impact area. Accordingly, it makes sense to allow the future potentially conflicting uses because the economic benefits of such uses will not adversely affect the economic output of the mining activity and will create additional economic good for Lane County.

*Preventing Conflicting Uses:* The Board finds that if the conflicting uses are not allowed, Lane County will needlessly lose the economic value of these future uses when the mineral and aggregate resource operation has demonstrated it can fully minimize any conflicts. The ability of both uses to co-exist tips the scale away from preventing future conflicting uses under the economic prong of the ESEE analysis. The Board decides not to prevent conflicting uses based on the economic prong of the ESEE analysis.

*Limiting Conflicting Uses:* The Board finds that the mineral and aggregate resource can fully minimize its external conflicts with all categories of future uses. Therefore limiting future conflicting uses will limit future economic returns to Lane County without providing additional protection to the mineral and aggregate resource. The Board decides not to limit conflicting uses based on the economic prong of the ESEE analysis.

## **SOCIAL**

*Allowing Conflicting Uses:* The Board finds that while not all the conflicting uses can actually be developed in the impact area, there are positive potential social consequences associated with allowing future conflicting uses in the seven categories the Board has identified. The Board finds mineral and aggregate-related uses in the impact area would not conflict with the approved mineral

and aggregate use on the expansion area and such uses have the same social impacts whether they are inside or outside of the impact area. The Board finds that farming-related uses can provide continuing positive social contributions to Lane County in that farming provides social benefits to those who engage in farming and those who benefit from the products produced by farmers. Similarly, the Board finds that dwelling-related uses can provide social benefits of housing to the residents in the area. Utility-related uses and Park-related uses can provide socially beneficial services and socially beneficial recreation opportunities to the residents of Lane County. Kennel/stable-related uses can provide socially valuable and needed services to the community in that they allow for the care of pets that may be assigned significant value by citizens. Miscellaneous uses such as films or landscaping businesses in the impact area can contribute to the social diversity and provide the social benefits of jobs and diverse activities for the citizens of Lane County. The Board fully recognizes that the mineral and aggregate use that the Board is approving has great long term social value to Lane County in that mineral and aggregate materials form critical building blocks for infrastructure (i. e. roads, sewers, etc. ) that provide enormous social benefits. The Board fully recognizes that Goal 5 requires that significant mineral and aggregate resource be protected. However, the Board also recognizes, as set forth in the Board's findings and conclusions above, that the mineral and aggregate mining proposal presented to the Board fully minimizes all its conflicts in a way that does not significantly affect the seven categories of conflicting uses in the impact area, including future uses, which the Board has identified. The ability of this mineral and aggregate resource operation to minimize conflicts with existing dwelling and farm uses means that it can insulate itself from conflicts from future uses in the impact area. Accordingly, it makes sense to allow the future potentially conflicting uses because the social benefits of such uses will not adversely affect the economic output and corresponding social benefits of the mining activity and will create additional social good for Lane County.

*Preventing Conflicting Uses:* The Board finds that if the conflicting uses are not allowed, Lane County will needlessly lose the social value of these future uses when the mineral and aggregate resource operation has demonstrated it can fully minimize any conflicts. The fact that both uses can co-exist tips the scale away from preventing future conflicting uses under the social prong of the ESEE analysis. The Board decides not to prevent conflicting uses based on the social prong of the ESEE analysis.

*Limiting Conflicting Uses:* The Board finds that the mineral and aggregate resource can fully minimize its external conflicts with all categories of future uses. Therefore limiting future conflicting uses will limit any potential future social benefits to Lane County (e.g. open space with farm-related uses or future parks) without providing additional protection to the mineral and aggregate resource. The Board decides not to limit conflicting uses based on the social prong of the ESEE analysis.

## **ENVIRONMENTAL**

*Allowing Conflicting Uses:* The Board finds that while not all the conflicting uses can actually be developed in the impact area, there are positive and negative potential environmental consequences associated with allowing future conflicting uses in the seven categories the Board

has identified. The Board finds mineral and aggregate-related uses in the impact area would not conflict with the approved mineral and aggregate use on the expansion area and such uses have the same environmental impacts whether they are inside or outside of the impact area. The Board finds that farming-related uses can provide continuing positive environmental contributions to Lane County in that farming can provide open space and environmentally conscious products in the local market to the benefit of the citizens of Lane County. However, farming impacts can also have a negative impact on the environment (i. e. dust, equipment noise, pesticides, etc. ) The Board finds that dwelling-related uses provide fewer environmental benefits on rural resource lands in the impact area. Rural housing can assist in achieving a rural environmental life style, but comes at an environmental cost to open space. Utility-related uses and Park-related uses can provide environmentally beneficial services (i. e. solar installations) and environmentally beneficial recreation opportunities to the residents of Lane County, but there are many environmental negatives as well (i. e. waste disposal odors, energy generation noise, etc. ). The Board finds that kennel/stable-related uses provide few environmental benefits, but can allow for the care of pets that may be assigned significant value by citizens. The Board finds that many miscellaneous uses such as films or landscaping businesses in the impact area do not meaningfully contribute to environmental values, but that other uses in the category (i. e. wineries) contribute much like farming uses. The Board fully recognizes that the mineral and aggregate use that the Board is approving has great long term value to Lane County in that mineral and aggregate materials form critical building blocks for infrastructure (i. e. roads, sewers, etc.) that provide enormous benefits. The Board fully recognizes that that there are potential environmental impacts from mining, but further recognizes that Goal 5 requires that a significant mineral and aggregate resource must be protected as long as environmental impacts can be fully minimized. The Board finds, as set forth in the Board's findings and conclusions above, that the mineral and aggregate mining proposal presented to the Board fully minimizes all its environmental conflicts in a way that does not significantly affect the seven categories of conflicting uses in the impact area which the Board has identified, including future uses. The Board also finds that the use of the property after reclamation (primarily to fish and wildlife habitat) provides enduring long term environmental values. The Board finds that there are environmental pluses and minuses to both the mineral and aggregate use and future uses and that the environmental balance is generally neutral. Accordingly, it makes sense to allow the future potentially conflicting uses because the potential, if minimal, environmental benefits of such uses will not adversely affect the economic output and benefits of the mining activity and will create additional good for Lane County without compromising the long term environmental benefits of the reclaimed habitat on the expansion site.

*Preventing Conflicting Uses:* The Board finds that if the conflicting uses are not allowed, Lane County will needlessly lose the potential environmental value of these future uses, regardless of how small, when the mineral and aggregate resource operation can fully minimize any conflicts. The ability of both uses to co-exist tips the scale away from preventing future conflicting uses under the environmental prong of the ESEE analysis. The Board decides not to prevent conflicting uses based on the environmental prong of the ESEE analysis.

*Limiting Conflicting Uses:* The Board finds that the mineral and aggregate resource can fully minimize its external conflicts with all categories of future uses. Therefore limiting future conflicting uses will limit future potential environmental benefits, no matter how small they will

be, without providing additional protection to the mineral and aggregate resource. The Board decides not to limit conflicting uses based on the environmental prong of the ESEE analysis.

## **ENERGY:**

*Allowing Conflicting Uses:* The Board finds that while not all the conflicting uses can actually be developed in the impact area, there are positive energy consequences from allowing some future conflicting uses in the seven categories the Board has identified. The Board finds mineral and aggregate-related uses in the impact area would not conflict with the approved mineral and aggregate use on the expansion area and such uses have the same energy impacts whether they are inside or outside of the impact area. The Board notes that it is important to protect mineral and aggregate resources close to urban markets to prevent increased use of energy for the transportation of the material. The Board finds that farming-related activities use energy and that locating a mine site next to a farm use does not significantly increase farm energy use. Similarly, the Board finds that dwelling-related activities use energy and this use is not affected by mining activities. Some utility-related uses and can provide energy benefits (i. e. power generation uses and transmission lines), but that others (i. e. airports, roads, disposal sites) use energy. The energy benefits from this category of uses are relatively neutral. The Board finds that park-related uses and kennel/stable-related activities can use energy, but are relatively energy neutral. Miscellaneous future uses such as films or landscaping businesses in the impact area use energy, but are relatively neutral for purposes of an energy analysis. The Board fully recognizes that the mineral and aggregate use that the Board is approving has great long term energy benefits to Lane County in that it is close to the market (reducing truck travel) and uses conveyor belts (again reducing truck travel and associated energy use). The Board further recognizes that Goal 5 requires significant mineral and aggregate resource to be protected. However, the Board also recognizes, as set forth in the findings and conclusions above, that the mineral and aggregate mining proposal presented to the Board fully minimizes all its conflicts in a way that does not significantly affect the seven categories of conflicting uses in the impact area, including future uses, which the Board has identified. The ability of this mineral and aggregate resource operation to minimize conflicts with existing dwelling and farm uses means that it can insulate itself from conflicts from future uses in the impact area. Accordingly, it makes sense to allow the future potentially conflicting uses because the any energy benefits that may accrue from such uses will not adversely affect the economic output of the mining activity and will not create adverse energy implications for mineral and aggregate operations.

*Preventing Conflicting Uses:* The Board finds that if the conflicting uses are not allowed, Lane County will needlessly lose the energy value of these future uses (regardless of how small) when the mineral and aggregate resource operation has demonstrated it can fully minimize any conflicts. The ability of both uses to co-exist tips the scale away from preventing future conflicting uses under the energy prong of the ESEE analysis. The Board decides not to prevent conflicting uses based on the energy prong of the ESEE analysis.

*Limiting Conflicting Uses:* The Board finds that the mineral and aggregate resource can fully minimize its external conflicts with all categories of future uses. Therefore limiting future conflicting uses will limit any potential future energy returns to Lane County, even if they are very

small, without providing additional protection to the mineral and aggregate resource. The Board decides not to limit conflicting uses based on the energy prong of the ESEE analysis.

**Develop a program to Achieve Goal 5:**

The findings and conclusions and the Board’s ESEE analysis provides the basis for a program to achieve Goal 5. The Board has concluded that the Wildish expansion site is a significant mineral and aggregate resource and Goal 5 requires the County to properly protect the resource, with particular focus on future uses in the impact area. Through the findings and ESEE analysis above, the Board concludes that the Wildish expansion site with its location immediately contiguous to an existing mining operation, with substantial setback required between other uses, and with operating limits that the Board has imposed through conditions, can minimize all conflicts with existing uses. The Board finds that some of these uses, for which conflicts are fully minimized, are dwellings that are as close as 80 feet from the Wildish property line and farm uses and practices that are contiguous with the Wildish property.

The Board’s findings and ESEE analysis leads the Board to the conclusion that the expansion area can minimize all conflicts with existing and approved land uses and essentially “self-protect” the resource through operational controls. Because of the sensitive nature and close proximity of these existing and approved land uses, the Board finds that Wildish can also minimize all conflicts with future land uses potentially permitted in the impact area which could potentially conflict with the mineral and aggregate extraction operations.

The mineral and aggregate resource on the expansion area is important, and must be protected under Goal 5, but the Board’s analysis leads the Board to the conclusion that the Board does not need to impose special restrictions on the lands within the impact area to either limit or prevent future conflicting uses. Simply stated, the Board finds that the Wildish expansion area has been carefully designed from the beginning to eliminate or minimize conflicts on all uses outside of the Wildish property. The operations features that minimize control for existing uses will also minimize future impacts on future uses that might be established in the impact area. Further, the Board has placed clear and objective conditions on operations at the expansion site that the Board finds will reasonably prevent future conflicts between the mining operation the Board is permitting and any potential future uses. Because the Board’s analysis leads the Board to conclude that all conflicts with existing and future uses in the impact area are minimized, the Board further concludes that the Board does not need to limit or prevent future conflicting uses in the impact area. By minimizing conflicts, the Board finds that any existing or potential future conflicts are reduced to a level that is no longer significant, essentially that all conflicts have been eliminated. Accordingly, the Board finds and concludes that the existing Lane County acknowledged policies and land use regulations, along with the conditions the Board has imposed, are sufficient to protect the resource, and based on the Board’s ESEE analysis, the Board chooses not to prevent or limit future uses in the impact area.

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

Compliance with the Goal 5 rule 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 14 of the Lane Code provides for a notification and participation process for all quasi-judicial land use matters. Notices of public evidentiary hearings were published in a newspaper of general circulation in the county in conformance with ORS 197. 763. In addition, the Board finds that Wildish sent letter to, and met with, surrounding residents and land owners to provide information on the proposal. By providing the notices required by state law and the Lane Code and by conducting public hearings before its planning commission and Board of Commissioners, the Board finds that the process followed by Lane County has provided ample opportunity for citizen involvement. The Board concludes that the requirements and intent of Goal 1 are satisfied.

### **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. Substantial evidence must support of the conclusion that the applicable criteria have been met. As explained above in these findings, the Goal 5 rule (OAR 660-023-0180) supersedes the Lane County Rural Comprehensive Plan amendment process in this situation because Lane County has not amended its comprehensive plan to meet the requirements of the Goal 5 rule. Accordingly, specific standards that must be addressed to process and justify a change of the RCP Plan diagram or inventory in this matter are those contained in the Goal 5 rule, which provides a comprehensive policy framework and process for decision in this matter. The record in this matter is substantial and provides ample factual evidence to support the Board's findings and conclusions. Accordingly, the Board concludes that the requirements and intent of Goal 2 are met.

### **Goal 3 - Agricultural Land**

*To preserve and maintain agricultural lands.*

The Board incorporates by reference herein the findings and conclusions above related to agricultural lands issues. 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 all Class II soils. The subject property contains no Class I soils.

The Board finds 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, the subject property is a significant resource site for aggregate purposes. The Goal 5 administrative rule recognizes that aggregate resources may be mined in areas of agricultural soils. OAR 660-023-0180(3) allows the mining of significant mineral and aggregate resource sites on Goal 3 agricultural lands provided certain factual requirements are met, including the quality and quantity of the mineral and aggregate resource and the average thickness of the aggregate layer (60 feet in Lane County). The Goal 5 rule also provides a specific mechanism for resolution of conflicts between farm uses and practices and mineral and aggregate operations. The Board finds that the predicate factual conditions required under the Goal 5 rule are met to conclusively demonstrate that the mineral and aggregate resource within the expansion area is significant. The Board further finds that the Goal 5 rule represents the appropriate mechanism for reconciling Goal 3, with its directive to protect farm land, and Goal 5, with its directive to protect significant mineral and aggregate resources. Because the Board finds that the requirements of the Goal 5 rule are fully met for this significant mineral and aggregate resource, the Board concludes that approval of the application is consistent with the purpose and intent of Goal 3.

#### **Goal 4 - Forest Lands.**

##### *To preserve forest lands for forest use.*

The Board finds that Goal 4 is not applicable to this application. There has previously been a legislative determination by Lane County, as embodied in the acknowledged Rural Comprehensive 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. The site location is in the middle of the Willamette Valley agricultural area and is not a forest land area.

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

##### *To conserve open space and protect natural and scenic resources.*

The Board incorporates by reference herein the Board's findings and conclusions above related to other Goal 5 resources. The Board finds that no Goal 5 resources have been inventoried by Lane County on the subject site or the corresponding impact area. The subject property and impact area, as discussed in the Board's findings and conclusions above, which the Board incorporates herein by reference, have not been included in any inventory of needed open space or scenic areas defined by Goal 5, nor has it been identified in the RCP as having any historic, cultural or natural resources which need to be preserved and/or protected. The Board finds the absence of natural vegetation is the result of past and present intensive commercial agricultural activity and rural residential development. The Board finds no sloughs, streams or wetlands currently exist within the expansion area.

The Board finds a standard review of records and literature was conducted for the 63 acre expansion area and surrounding impact area did not locate archaeological sites recorded in either the proposed expansion area or the surrounding impact area. Additionally, the Board finds the Grande Ronde and Siletz Indian tribes were contacted and given the opportunity to comment, but no responses were received. None of the existing structures are listed in the Oregon Historic Sites Database. No recorded archaeological sites and none of the Goal 5 Resources (Historic Structures or Sites) listed in the Lane Manual are identified within either the proposed Expansion Area or the Impact Area. In summary, the Board finds there are no identified Goal 5 historic or cultural resources within either the proposed project area or the surrounding impact area.

With respect to wetlands, a wetland determination in accordance with accepted U. S. Army Corps of Engineers wetland delineation criteria and found no wetlands in the expansion area. The Board incorporates the findings and conclusions above related to the small portion of the McKenzie River that is in the extreme southeastern portion of the impact area. The Board finds the McKenzie River is considered Essential Fish Habitat and the Board further finds that no adverse modification would take place as the proposed expansion area is set back from the McKenzie River approximately 1,500 feet. Known eagle use site in the Southern Willamette Valley were assessed and the potential for impacts to nesting, roosting and foraging sites for Bald Eagle and Golden Eagle were considered. The Board finds there are no known nest sites within two miles of the proposed expansion area. Given that the proposed expansion area is located approximately 1,500 feet from suitable nesting, foraging and roosting habitat, the proposal meets applicable federal guidelines. Three rare plant surveys were performed during the spring and summer months to address presence and absence and the Board finds no rare plant species were found.

The Goal 5 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 inventoried in the Lane County RCP. Within the rule framework that limits considerations regarding Goal 5 resources to identified sites, the Board finds no conflicts with Goal 5 resources have been identified. The Board concludes, consistent with the Board's analysis in these findings, that the Board's decision identifies, inventories and protects a significant Goal 5 mineral and aggregate resource which will not conflict with any Goal 5 resources.

#### **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 air sheds, degrade land resources or threaten the availability of such resources. The Board incorporates by reference herein the findings and conclusions above related to air, water and land quality issues. The State of Oregon 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 air shed 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 air shed 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. The Board finds Wildish Sand & Gravel Co. currently operates its existing, adjacent, facility under an ACDP issued by LRAPA 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 any operator conducts mining activity on the expansion site, the Board has imposed a condition that requires implementation of the Fugitive Dust Control Program on the expansion area to assure that its operations continue to comply with applicable state and federal air standards.

Storm water and wastewater discharges are regulated under administrative rules and the requirements of the applicant's Department of Environmental Quality (DEQ) General Water Pollution Control Facilities Permit. The Board finds the mining operation requires no onsite systems for domestic water or sewage disposal. Any operator on the expansion area will necessarily need to comply with these DEQ requirements designed to protect water quality.

A reclamation plan has been prepared and is required to be approved by DOGAMI with respect to restoring land quality. The Board finds uses of the reclaimed expansion area will be consistent with all Goal 5 requirements. The Board finds the protection of the reclaimed expansion area for natural resource activity and allowable uses will maintain the quality of the land.

Therefore, the Board concludes 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 Board incorporates by reference herein the findings and conclusions above related to flood issues. The Board finds that the effect of existing and approved flood control dikes/berms has the physical effect of isolating the expansion area from the 100 year flood, except at the extreme western tip of the expansion area. If a noise/safety berm is constructed in the extreme northwest location of the expansion area, the Board finds that a flood plain development permit is required by a condition that the Board has imposed and the applicable "no rise" standard can be met to allow such a permit to be secured. The Board finds that the mining methodology on the proposed expansion area will not impede flood flow, reduce flood storage volume within the floodplain or

increase the velocity of water flowing across the proposed expansion area. The Board finds no other natural hazards on the expansion area or impact area. The Board concludes 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.*

The Board finds that there has been a legislative determination by Lane County through its comprehensive planning process, as implemented by the RCP diagram, that the subject property is not needed for recreational facilities or opportunities. Identified recreational needs have been provided for on other sites within Lane County.

Therefore, the Board concludes that approval of the proposed amendments are consistent with Goal 8, to the extent that it is applicable.

**Goal 9 - Economy of the State.**

*To diversify and improve the economy of the state.*

Goal 9 is primarily focused on economic activities vital to the health, welfare, and prosperity of Oregon's citizens. The Board finds that the proposed use of the expansion area will contribute to the economy of Lane County 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.

The Board further finds 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 Lane County and more specifically the Eugene-Springfield 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. The Board finds that the mineral and aggregate materials produced from the expansion area will be incorporated into many necessary infrastructure building blocks, such as roads, which are critical to the economy of Lane County and the State of Oregon. Therefore, the Board concludes 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 Lane County 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 RCP and is not planned for residential use.

The subject property and impact area is primarily EFU land (E30/RCP) which is intended primarily for farm uses, not residential use. The Board finds that approval of the proposed expansion area will not measurably impact the existing or future housing stock in Lane County, nor will it 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. The Board further finds that approval of the expansion area will secure a long term source of mineral and aggregate construction materials that are essential to future housing development and related construction. Therefore, to the extent it is applicable, the Board concludes that approval of the application will be consistent with the intent and purpose 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. The Board finds that Wildish has designed the proposed application in a way that it feeds raw mineral and aggregate material over an existing private bridge on the McKenzie River to an existing processing facility. The Board finds approval of the application will not result in the need for extension of public facilities and services to the expansion area beyond those already in place at the existing processing facility to the south of the McKenzie River. The Board finds this application provides a nearly unique situation where a significant mineral and aggregate resource can be fully developed without public infrastructure improvements. To the extent that Goal 11 is applicable to the application, the Board concludes 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 Board incorporates by reference herein the findings and conclusions above related to transportation issues. 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 LCDC 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."*

The Board incorporates by reference herein, the findings and conclusions above related to transportation issues. The Board finds 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 its facility. 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 processing facility on the south side of the McKenzie River. The Board finds that approval of the expansion area will not result in any increase in the number of vehicles leaving or entering the applicant's existing processing facility for the purpose of delivering its finished product to market. Approval of the expansion area 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, the Board finds that no Lane County area transportation facility will be significantly affected as a result of approval of the application. Also, providing sand and gravel aggregate material in close proximity to the major market reduces truck traffic miles on the public roadways, thereby furthering the policies and objectives of Goal 12.

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

### **Goal 13 - Energy Conservation.**

#### *To conserve energy.*

The Board finds 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 Eugene-Springfield market. From an energy conservation perspective, an aggregate mining site located within close proximity to the Eugene-Springfield area is highly preferable to a supply site located outside the Eugene-Springfield area which requires trucks to transport the material, processed or otherwise, to the Eugene-Springfield area for use. Approval of the application will result in the establishment of a source of aggregate material without an increase in energy consumption associated with substantial truck travel to deliver the material from a more remote location. The Board further finds that the use of electric conveyors to move material to the existing processing area across the McKenzie River eliminates the need for substantial truck traffic and greatly assists in the conservation of energy.

Therefore, the Board concludes 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.*

The expansion area is located outside any urban growth boundary. Only resource use is proposed for the site and no urban facilities or services are required to support that use.

To the extent that Goal 14 is applicable to the application, the Board concludes 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 Board finds 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 Board finds the subject property contains no estuarine resources and the Board concludes that Goal 16 is not applicable.

**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 Board finds the subject property contains no coastal shorelines and the Board concludes that Goal 17 is not applicable.

**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 Board finds the subject property contains no beaches or dunes and conclude that Goal 18 is not applicable.

**Goal 19 - Ocean Resources.**

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

The Board finds the subject property contains no ocean resources and conclude that Goal 19 is not applicable.

## ISSUES RAISED BEFORE THE PLANNING COMMISSION

The Board finds that there were several issues raised by opponents to the application before the Planning Commission that have been addressed above, but the following is a summary of these issues and the Board's findings on these issues:

*“Undisturbed” buffer.* The Board finds that the Lane Code does not require either an undisturbed buffer or an undisturbed setback. The only activities prohibited in the required setback area are the excavation of the sand and gravel resource itself, and the location of equipment for processing operations, and even these activities are allowed within certain limitations. The Lane Code (LC) is instructive and confirms that only *mining excavation and mining equipment used for processing operations* are prohibited in the 150 foot setback area. Lane Code 16.217 is the relevant code provision in the rural area. To comply with this provision, Wildish has set back its mining excavation operations 150 feet from the property line, as shown on the operations plan in the record. The Board finds that the Lane Code contains no prohibitions for berms, recharge trenches or access roads within the setback area and specifically allows a wide variety of uses in the setback area. Under LC 16.217(b)(v)(ee) these allowable setback uses include: asphalt plants, concrete batch plants, aggregate product fabrication and sale, equipment storage, offices and warehouses, retail sale of sand and gravel products, gravel mining-related dwellings, accessory buildings, transportation facilities, signs and stockpiles and sedimentation pond (subject to a 25 foot setback). In sum, the Board finds there is no support in the Lane Code for the contention that the setback area must be “pristine” or “undisturbed”.

*Conditions “run with the land”.* At the Planning Commission hearing, individuals expressed confidence in Wildish's ability to run the operation, but expressed concern that a future non-Wildish owner might change things. Simply stated, the Board finds all Wildish's operations plans and conditions of approval adopted by the County “run with the land” and are binding on all future operators. There are two Oregon Supreme Court cases that assure this outcome. The Board is in agreement with, and accepts, the rebuttal analysis provided by Wildish and determines that the conditions imposed by the Board on this application bind Wildish and all future operations of the expansion area, if any.

*“Need”.* The argument was made to the Planning Commission that there is no “need” for the gravel in Tax Lot 100 because there are substantial alternative gravel resources in the County. The Board finds, that the Goal 5 rule eliminates “need” as a factor to be considered when analyzing whether or not to allow mining. Prior to the Goal 5 rule amendments in 1996, the Goal 5 rule stated that the County must consider “need” for the Goal 5 resource as part of its analysis. See, OAR 660-16-0000(1). This old Division 16 rule was superseded by the current Division 23 rule adopted in 1996. See OAR-660-23-0180. The new Division 23 rule, which Lane County is required to apply to this application, completely eliminated “need” as an approval consideration.

*“Groundwater monitoring history.”* Arguments were made to the planning commission about the groundwater monitoring history. The Board finds that Exhibit M to the Wildish application is a comprehensive Groundwater Characterization Report prepared by professional engineers



(Engineering Geologists) at Shannon & Wilson. Figure 3 of that report is a summary of groundwater data produced from an array of 12 monitoring wells. The data begin in March 1996 and continue through the date of the report (November 1, 2016). The Board finds that this is a significant groundwater monitoring history and, as more fully discussed above in these findings, specifically finds the Shannon & Wilson report to be credible and adopts its conclusions.

*Process laid out by Wildish application is an “exception” to normal rezoning standards.* The Board finds that process followed by the County in this matter is not a departure from normal practice, but rather the standard process in effect for more than 20 years in Lane County and statewide. Until Lane County acts to amend its land use regulations, the Goal 5 rule process provides the normal standards and procedures for gravel rezoning. The Board adopts its findings above on this issue.

*Lane County is required to approve the Wildish application.* The Board finds that Lane County, like any other local government in the state, is required to follow the law and the law does not require the County to approve any application. Lane County, like local governments applying the Goal 5 rule across the state, has approved sand and gravel operations when the standards are met and has not approved such operations when the standards are not met. The County is required to follow the process and evaluate the evidence submitted. The Board finds that this does not preordain that “only one outcome (i.e. approval) is possible.”

*The ESEE analysis is “inapplicable” in this Goal 5 process.* The Board finds that reasonable and practicable measures are available to minimize any identified conflicts with existing uses and therefore, the OAR-660-023-180(5)(d) ESEE does not have to be performed. The future use ESEE set out in OAR 660-023-0180(7) is applicable and this ESEE analysis has been performed by the County as set forth in the findings above.

*None of the 18 statewide goals can be considered in the Goal 5 process.* The Board finds that the Goal 5 process requires that the statewide planning goals be addressed. The statewide goals have been affirmatively addressed and have not been considered “inapplicable” in this Goal 5 process.

*The applicant is not the owner of the property.* The Board finds that the Lane Code provides that an application may be submitted by “any person with a legal interest in the property.” LC 14.050(1)(a). The LC further defines “person” as “[A]ny...firm, partnership or corporation, its heirs or successors or assigns or any agent of any of the aforesaid....” LC 14.015. The application is signed by James A. Wildish who is the president of the applicant (Wildish Sand & Gravel Co.) and president of the landowner (Wildish Land Co.). The Board finds that Mr. Wildish has full authority to file the application and is a “person” with legal interest in the property.

*There is no community need for the zone change or the gravel.* As discussed above, the Board finds that the Goal 5 rule eliminates “need” as a factor to be considered when analyzing whether or not to allow mining.

*Is rezoning an all or nothing proposition?* Before the Planning Commission, some opponents argued that the setback should be increased or that portions of the site be held for a “last resort”.

The Board finds that setbacks in the Lane Code are substantial and reduce the minable area on the Wildish site from 63 to 44 acres, a 30% reduction in the mineral and aggregate resource available for extraction. The Board finds that the 150 foot setback provided in the Lane Code will allow the appropriate berm/screening to be created and will also allow for the construction of recharge trenches to protect groundwater resources. With regard to the “last resort” argument, the Board finds that Goal 5 provides for protection of mineral and aggregate resources and the rule specifically states that this protection is for the actual use of the resource, not to preserve the resource in situ as implied by the “last resort” argument. The Board finds that ‘last resort’ argument is essentially a variation on the “need” argument. As set out in these findings, “need” is not a decision criterion in this application.

*The expansion area is not contiguous.* The Board finds that the Sand and Gravel Operations Plan for the adjoining Wildish site was approved by the County many years ago and that the existing site was zoned SG/RCP and included on Lane County’s significant inventory of Goal 5 sand and gravel resources. The record clearly shows that the expansion area is contiguous to the existing and approved site as it borders the existing area for more than 3,000 feet. The existing and expansion areas are contiguous and the expansion area is a bona fide expansion of an existing and approved Goal 5 resource as confirmed by the mining plan. The Board finds that the Goal 5 rule does not require the expansion area to be contiguous with the actual mining activity, just the existing site. See OAR 660-023-0180(1)(c) and (d). “Existing Site” and “Mining Area” are separate and distinct terms defined in the Goal 5 rule. See, OAR 660-023-0180(1)(c) and (i) and the Board finds that the expansion area is contiguous with the existing and approved Wildish mining site.

*What percentage of the existing Wildish site has been mined?* The Board finds, as indicated at the public hearing, that market forces determine the amount of mining. The Board finds that there is no way to fix in advance the number of acres of mine area that must be developed over the life of a sand and gravel mine. The Board finds that the expansion area provides future replacement resources for the Wildish company. The Board finds that this argument related to the percentage of the existing site is simply another variation of the “need” argument and that “need” is not a decision criterion in the Goal 5 process.

*Can the County require the expansion area to be mined last?* This particular argument made by the opponents would require the expansion area to be mined only after *all* other areas zoned for mining in the County’s RCP are mined. The Board finds that this argument is, in essence, a moratorium on mining in the expansion area and would hold Wildish hostage to the reserves held by other operators or even new sites approved in the future. The Board finds that the Goal 5 rule is very clear that to “protect” a significant mineral and aggregate site means to “authorize mining of the site”, not to preserve the resource in situ. See OAR 660-023-0180(1)(k). The Board finds that the opponents’ argument for a de facto moratorium on the expansion site is inconsistent with the Goal 5 rule.

*The application is not complete.* The Board incorporates our findings above and finds that County staff has applied professional expertise and determined the application to be complete. The Board agrees with County staff that the application is complete.

*Noise conflicts are not properly minimized.* Before the Planning Commission, the opponents argue that it is improper to “grandfather” 42 year old noise standards and that “current” DEQ noise standards should be considered and imposed. The Board incorporates its findings above and concludes that the DEQ noise standards applied to the application *are* the current standards. Before the Planning Commission, opponents argue that there was no mine operation on the north side of the McKenzie River prior to 1975. The Board adopts its findings above and concludes that commercial mining occurred on the existing Wildish site well before 1975 and that the appropriate noise standard is the standard identified in the October 11, 2016 noise study. However, in the event that the DEQ ambient degradation standard would be deemed the applicable noise standard in the matter, the Board adopts and incorporates its findings and conclusions above that the reasonable and practicable measures identified to reduce noise impacts fully minimize such impacts because they ensure that DEQ standards will be met regardless of whether the maximum noise table or the ambient degradation standard is applied to the proposed mining use. The Board concludes that meeting either possibly-applicable DEQ standard properly minimizes noise impacts as required by the Goal 5 rule.

*Will a well damaged by mining be replaced?* The Board finds that Wildish has requested a condition that allows DOGAMI to investigate well problems and if well damage is attributable to Wildish’s mining activities, the company will replace the damaged well as required by the self-imposed condition. We find that this condition is clear and enforceable in the event there is any adverse effect on a nearby well that is caused by mining on the expansion area.

*Mosquitos will be created by the recharge trenches.* The Board incorporates its findings above on this issue and finds that mosquitos will not be an issue with recharge trenches.

*Noise levels should be reduced below the maximum allowed.* The Board finds that the noise levels established by DEQ are designed to protect human health and welfare. The Goal 5 rule recognizes this and mandates that to minimize noise conflicts, the DEQ noise standard must be met. We incorporate our findings above and conclude that the DEQ standard will be met by mining activities on the expansion area and no special noise level that is less than the DEQ maximum allowable level is required.

*Lane County Code must apply to quasi-judicial rezoning matters.* Before the Planning Commission, the opponents argued that the Lane County Code provides specific approval criteria that the County must apply in this application. The Board incorporates its findings above and concludes that OAR 660-023-0180(9) and the *Eugene Sand* and *Morse Bros.* cases to make it clear that the substantive approval criteria of the Lane Code are not applicable.

*The County must impose enormous setbacks because there is plenty of room for a “wider footprint”, there is no immediate need for the gravel, and the greater setback might be necessary for reclamation.* The Board finds that a wider footprint will make mining operations easier, but also finds that the purpose of the application is to protect the sand and gravel resource for ultimate use and not to make operations easier. The 150 foot setback applicable to the expansion area already reduces the minable area from 63 acres to 44 acres (a 30% decrease). The Board finds that

additional setbacks are not warranted given that all identified conflicts can be minimized with the existing setbacks.

*Property was not purchased with sand and gravel zoning.* Before the Planning Commission, opponents argued that because the applicant didn't purchase the land with sand and gravel zoning, that a change to such zoning is not proper. The Board finds that this argument ignores that land uses change all the time and further ignores that there is a specific regulatory process for converting EFU land to Sand and Gravel zoning. Property owners may request changes in zoning under the appropriate land use process and if the application complies with the rules, local governments are authorized to change the zoning.

*The Lane RCP is intended to protect lands into the future and mining operations could be "immediately encircled" by berm. A future owner might not be as socially conscious as Wildish. Wildish should voluntarily agree to hold some of the property in reserve.* The Board finds that the Goal 5 rule is designed to protect sand and gravel resources that are an important and ongoing source of critical building materials for the entire Lane County community well into the future. Berms will be constructed and topsoil will be removed as part of mining. We find that Wildish's current extraction area is operated by sequencing overburden removal to allow for continued farming of the permitted area with incremental decreases in farmable land that correspond to incremental increases in the mining area. Leaving areas undisturbed for as long as possible reduces bonding costs and does not result in "immediate encirclement" of the site. The Board finds that the final height of any berm will be determined by the actual height requirements necessary to achieve DEQ noise compliance. Finally, as indicated above, the Board finds that all conditions of approval applied to the expansion area will run with the land and bind future owners (if any), even future owners who are not as socially conscious as Wildish.

## CONCLUSION

The Board finds that this application to (1) amend the RCP to include the Wildish expansion area in the RCP Goal 5 Significant Aggregate Site Inventory, (2) to designate the subject property as Natural Resource land in the RCP; and (3) to change the zoning of the property to Sand, Gravel & Rock Products zone consistent with the amended Rural Comprehensive Plan designation, demonstrates that all applicable criteria have been addressed and met. The Board further finds 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 subject to the following conditions of approval:

### **Ordinance No. PA 1352 Conditions of Approval**

## NOISE

1. The operator shall mitigate noise impacts in order to keep the mining operation in the expansion area in compliance with the DEQ noise standards in effect at the time of this

approval. In addition to the minimization measures identified below, the operator may use any other noise control measures that assist with compliance or provide independent compliance with the DEQ standards in effect at the time of this approval.

Based on the report prepared at the time of this application by Daly-Standlee & Associates, Inc. dated October 11, 2016 titled “Wildish Plant #2 North Side Expansion – Goal 5 Noise Study”, the following mitigation measures shall be implemented by the operator individually or in combination:

- a. Use better grade mufflers and radiator fan noise control to reduce the mining shovel’s noise level, or use a different piece of equipment, such as an excavator or front-end loader, that is quieter than the mining shovel.
- b. Construct noise reduction barriers within the 150 foot setback along certain portions of the northern boundary of the expansion area that meet the required barrier heights and locations recommended by Daly-Standlee & Associates, Inc.
- c. Orient the direction of mining so that there is always an up-close high-wall between the shovel and the nearby residences. This method alone only works for a portion of the expansion area, requiring either one or the other of the mitigation measures above to be utilized in combination as the excavation gets closer to residences north of the expansion area.

## **DUST**

2. The operator shall add proposed expansion area to the LRAPA-approved ACDP Fugitive Dust Control Program that is applied to the existing Wildish mining site and the program shall be implemented on the expansion area.
3. The expansion area shall be sprayed with water as necessary by the operator to control dust during overburden removal, extraction operations and reclamation.
4. The conveyor belt transfer points shall be sprayed by the operator with water to minimize dust generation.
5. A setback of 150 feet from adjacent property lines where no commercial aggregate extraction activity is allowed shall be maintained by the operator around the expansion area boundary except for those areas abutting Wildish property where no setback is required.
6. The operator shall use overburden from on-site to construct berms at locations designated in the application within the 150 foot setback surrounding the expansion area to provide a physical barrier for dust and noise mitigation.
7. Upon reclamation, the operator shall plant vegetation on the banks of the proposed water feature to minimize erosion and dust generation.

## **FLOODING**

8. A floodplain development permit shall be obtained by the operator before constructing berms in the 150 foot setback area in the western-most portion of the expansion area or excavating in the western-most portion of the expansion area that is within the 100-year floodplain.

## **GROUNDWATER**

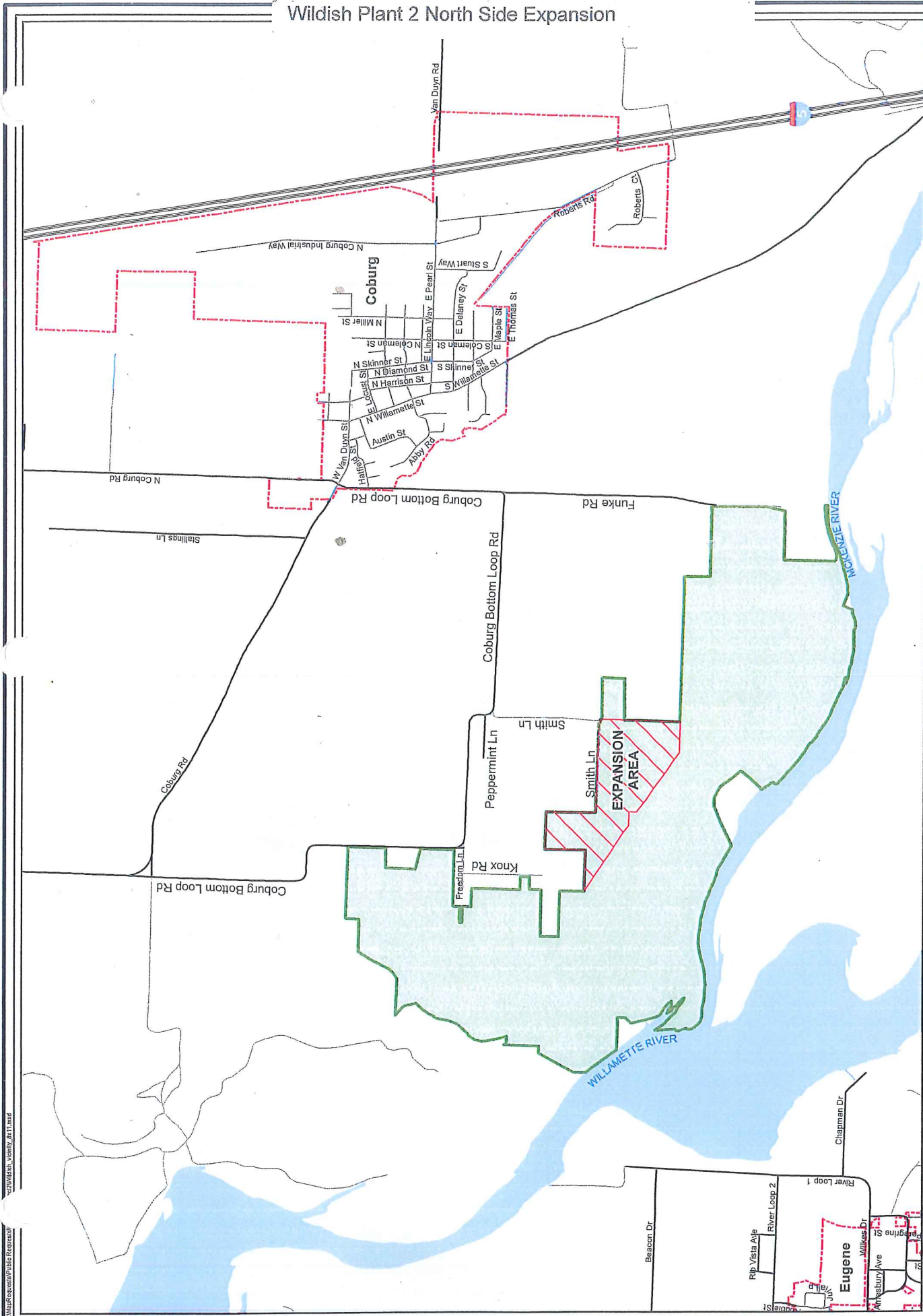
9. The operator shall measure the groundwater levels in designated on-site monitoring wells, including the two within the 150 foot setback area, on a quarterly schedule and reported provided to DOGAMI. If groundwater levels in the on-site monitoring wells, or in existing off-site wells located within the 1,500-foot impact area, show significant declines outside expected seasonal and operational variations and such declines are suspected to be related to mine dewatering, the following actions shall be implemented by the operator in a timely manner:
  - a. The operator will report matter to the DOGAMI hydrogeologist within 14 days.
  - b. The operator will have a professional hydrologist investigate the problem.
  - c. A copy of the findings will be provided by the operator to DOGAMI and any affected off-site well owner.
  - d. If the findings show that mine dewatering is more likely than not to be adversely affecting an existing offsite well, the operator will work cooperatively with DOGAMI and take action to correct the problem, including well replacement if necessary at no cost to the affected well owner.

## **GENERAL**

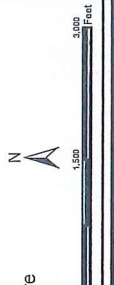
10. The operator shall conduct the mining operation as presented in the Applicant's narrative and as depicted on the submitted maps and site plans.

# ATTACHMENT 2

## Wildish Plant 2 North Side Expansion



**WILDISH PLANT 2 NORTH SIDE EXPANSION**  
**VICINITY MAP**  
 Lane County, Oregon  
 Drawn By: LCP/WRL  
 Date: 11/22/2016  
 Project: 11222016



- Interstate Highway
- County Road
- City Road
- Other Road
- Expansion Area
- Wildish Property
- Water Feature
- City Limits

The information on this map was derived from digital databases on the Lane County regional geographic information system. Care was taken in the creation of this map, and while we strive for accuracy, we do not warrant the accuracy of the data or the underlying records. Current plan designation, zoning, etc., for specific parcels should be confirmed with the appropriate agency. There are no warranties, expressed or implied, accompanying this product. However, notification of any errors will be appreciated.