

AGENDA COVER MEMO

DATE: **OCTOBER 4, 2006 (memo)**
 OCTOBER 18, 2006 (first reading)
 NOVEMBER 1, 2006 (second reading/public hearing)

TO: **LANE COUNTY BOARD OF COMMISSIONERS**
 EUGENE CITY COUNCIL

DEPT: **PUBLIC WORKS DEPARTMENT/LAND MANAGEMENT DIVISION**

PRESENTED BY: **STEPHANIE SCHULZ / PLANNER**

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

I. MOTION

1. For October 18, 2006: I move approval of the first reading and setting the second reading and public hearing on Ordinance No. PA 1238 for November 1, 2006 at 7:00 p. m. in Harris Hall.
2. For November 1, 2006: Alternative motions after the public hearing:
 - A. I move to hold the record open for the submittal of additional information.
 - B. I move to approve Ordinance No. PA 1238 with the current findings.
 - C. I move to tentatively approve Ordinance No. PA 1238 subject to revised findings to be prepared for final action.
 - D. I move to tentatively deny the application and direct staff to prepare an Order with appropriate findings for final action.

II. ISSUE OR PROBLEM

The applicant Delta Property Co. requests that the Goal 5 Inventory for Significant Mineral and Aggregate Sites be amended to allow a 72.31 acre expansion of the existing 474 acre sand and gravel operation. The application is a "Post-Acknowledgement Plan Amendment" (PAPA) as provided for by LCDC Statewide Planning Goal 5 Rule for mineral and aggregate resources, OAR 660-023-180. The Metro Plan Designation is proposed to be changed from "Agriculture" to "Sand & Gravel" and the zoning changed from "E30/Exclusive Farm Use (LC 16.212)" to "SG/Sand, Gravel & Rock Products (LC 16.217)". The proposal requests a variance to Lane Code 16.217(4)(b)(v)(dd) to excavate within the 150' setback in order to

complete a low permeability barrier to reduce groundwater flow into the excavated area. The Planning Commission has forwarded this matter to the Board with a recommendation. This Ordinance, accompanied by findings prepared by the applicant (to be delivered in a supplemental packet), sets the matter before the Board for adoption, modification, or denial. The same information is provided to the City Council for consideration of the Metro Plan Amendment.

III. PROCEDURE

Because this is a Type II Metro Plan Amendment, it requires approval of both the Home City of Eugene and Lane County. The City of Springfield has elected to opt out of the decision process.

The Board of Commissioners has established and generally follows these hearing procedures:

1. Announce the purpose of the hearing and explain the rules of conduct;
2. Disclose any ex parte contacts and call for abstentions from the Board and Eugene City Council;
3. Request the Director or staff to present an introductory report, explain any graphic or pictorial displays which are a part of the report, read findings and recommendations, if any, and provide such information as may be requested by the Board and the City Council;
4. Allow the applicant to be heard first, on its own behalf or by representatives.
5. Allow the neighboring residents to be heard, on their own behalf or by representatives.
6. Allow staff persons of public agencies to be heard;
7. Allow other persons to be heard;
8. Allow the Director to present any further comments or information in response to testimony and evidence offered by any interested persons.
9. Allow the applicant to rebut, on his own behalf or by representative, any testimony previously presented to the Board and City Council.
10. Conclude the hearing of testimony at this time and close the record, unless the Board or City Council wants to continue the hearing or leave the record open.
11. At the conclusion of the public testimony, the Board and Council have several options:
 - a) They can continue the hearing to a date and time certain for the purposes of hearing additional testimony before commencing with deliberations; or
 - b) Leave the record open for additional written testimony. The Board and Council must determine reasonable time periods for the record to remain open for the submittal of additional written information by the applicant and opponents; or
 - c) Move directly to deliberations at a time specified by the Board and Council in either joint or separate meetings, and make a decision based on findings of fact and conclusions in response to the record and testimony.
12. At the conclusion of deliberations, the Board and Council have several options:
 - a) the Board and Council may adopt Ordinance's for each jurisdiction with the supporting findings of fact prepared by the applicant; or
 - b) the Board and Council may assign the drafting of revised findings of fact and conclusions to the applicant for adoption at a subsequent Reading; or
 - c) the Board and Council may take action to tentatively deny the request, and assign the drafting of Order's for denial to the Director or counsel for the opponents.

IV. DISCUSSION

A. Definitions:

This report includes several terms or phrases that are defined in OAR 660-023-180(1). Definitions applicable to this proposal are provided below:

(a) **Aggregate resources** are naturally occurring concentrations of stone, rock, sand and gravel, decomposed granite, limestone, pumice, cinders, and other naturally occurring solid materials commonly used in road building or other construction.

(b) **Conflicting use** is a use or activity that is subject to land use regulations and that would interfere with, or be adversely affected by, mining or processing activities at a significant mineral or aggregate resource site as specified in subsection (5) (b) and section (7) of this rule.

(c) **Expansion Area** is an aggregate mining area contiguous to an existing site.

(d) **Farmland** means land planned and zoned for exclusive farm use pursuant to Goal 3 and OAR chapter 660, division 033.

(e) **Mining** is the extraction and processing of mineral or aggregate resources, as defined in ORS 215.298(3) for farmland, and in ORS 517.750 for land other than farmland.

ORS 215.298 (3) Mining in exclusive farm use zone; land use permit. For purposes of ORS 215.213(2) and ORS 215.283 (2) and this section, "mining" includes all or any part of the process of mining by the removal of overburden and the extraction of natural mineral deposits thereby exposed by any method including open-pit mining operations, auger mining operations, processing, surface impacts of underground mining, production of surface mining refuse and the construction of adjacent or off-site borrow pits except those constructed for use as access roads. "Mining" does not include excavations of sand, gravel, clay, rock or other similar materials conducted by a landowner or tenant on the landowner or tenants' property for the primary purpose of reconstruction or maintenance of access roads and excavation or grading operations conducted in the process of farming, or cemetery operations, on-site road construction or other on-site construction or on surface impacts of underground mines

(f) **Minimize a conflict** means to reduce an identified conflict to a level that is no longer significant. For those types of conflicts addressed by local, state or federal standards (such as the Department of Environmental Quality standards for noise and dust levels), to "minimize a conflict" means to ensure conformance to the applicable standard.

(g) **Mining area** is the area of a site within which mining is permitted or proposed, excluding undisturbed buffer areas or areas on a parcel where mining is not authorized.

(h) **Protect** means to adopt land use regulations for a significant mineral or aggregate site in order to authorize mining of the site. For purposes of subsection (2)(d) of this rule, "protect" also means to limit or prohibit new conflicting uses within the impact area of the site and to limit or prohibit new conflicting uses within the impact area of the site.

(i) **Thickness of the aggregate layer** means the depth of the water-lain deposit of sand, stones, and pebbles of sand-sized fraction or larger, minus the depth of the topsoil and nonaggregate overburden.

Acronyms:

AASHTO – American Association of State Highway and Transportation Officials

ASTM – American Society for Testing and Materials

ESEE – Environmental, Social, Economic and Energy (a type of analysis)

LRAPA – Lane Regional Air Protection Authority

PAPA – Post Acknowledgement Plan Amendment

SCRO – Santa Clara Residents Organization

B. Background

On August 11, 2005, an application was received to amend the Metro Plan Goal 5 Inventory of Significant Mineral and Aggregate Sites to include the subject property and designate it in the Metro Plan for mining. The application is a "Post-Acknowledgement Plan Amendment" (PAPA) for gravel extraction. Statewide Planning Goal 5 was amended on June 14, 1996, and became effective September 1, 1996. Oregon Administrative Rule 660, Division 23 was also amended in 1996, and was

subsequently amended in May 2004. This application is being reviewed pursuant to the May 2004 amended OAR provisions that were in place at the time of application (August 2005) under OAR 660, Division 23 regarding mineral and aggregate resources.

The 72.31 acre subject property is located within the Eugene-Springfield Metropolitan Plan Boundary, outside the Eugene city Urban Growth Boundary, north of Beltline Road on Division Avenue, west of the Willamette River, in Township 17S, Range 4W, Section 12.

The subject property is identified as:

Map 17-04-12-20, tax lot 3600

Map 17-04-12-00, tax lots 3600, 3601, 3700

Map 17-04-12-31, tax lots 5600, 6200, and a portion of 100

Map 17-04-12-40, tax lots 300, 400, and a portion of 600

Pursuant to Metro Plan policy C-18, sand and gravel sites identified as significant on the Metro Plan Diagram of Goal 5 Resources shall be protected in accordance with the requirements of the Goal 5 rule.

The Metro Plan designation for the property is Agriculture (Ag), and the decision to amend the Plan Designation to Sand and Gravel (S&G) and the determination of significance of the resource site under Goal 5 criteria is a regional two jurisdiction decision of Eugene as the Home City and Lane County. The property is zoned Exclusive Farm Use (E-30) and lies within a Floodplain Combining Zone (FP-RCP). The property is not located within the Willamette Greenway.

The property is bounded by residential development to the west, and south, residential development and agriculture to the north, and the existing 474 acre Delta Property aggregate mining and processing site to the east (DOGAMI ID #20-012). James Lane and Admiral Street intersect with the northern boundary, and the western and southern boundaries run parallel with Echo Lane and Hunsaker Lane, respectively. There are three residences on the site, owned by the applicant. The site is rolling farmland within the floodplain of the Willamette River. The most prominent local features are an old quarry pit on the south side of the site and an oxbow remnant waterway which encompasses the western boundary of the site.

The Lane County and Eugene Planning Commissions received public testimony at two joint public hearings held on November 15, 2005 and January 17, 2006. The record remained open for the submittal of additional materials until March 31, 2006. In joint public meetings held on July 25 & August 30, 2006, the Planning Commissions deliberated on the application. See Attachment 2 for the minutes of these joint meetings. Both Planning Commissions are recommending denial, for the reasons set forth under each step of the Goal 5 analysis process described in this memo and in their meeting minutes.

C. Classification of Amendment

LC 12.215 Referral of a Plan Amendment. [Eugene Code 9.7720]

All Metro Plan amendments affecting land outside the city limits of either city shall be referred to the other city for consideration of Regional Impact. Lane County shall participate in the hearing and decision of all Metro Plan amendments outside the city limits. All Metro Plan amendments affecting land inside the city limits of one city shall be referred to the other city and Lane County so that they may participate as parties to the hearing. All referrals shall occur within 10 days of the plan amendment initiation date. Any referral that is provided for the purpose of determining Regional Impact shall be answered by the referral jurisdiction within 45 days of the receipt of the referral.

LC 12.225 Metro Plan Approval of a Plan Amendment. [Eugene Code 9.7715]

(b) Type II. (ii) Between the City Limits and Plan Boundary. To become effective, a Metro Plan Type II amendment between the city limits and the Plan Boundary must be approved by the Home City and Lane County. Exception: If the non-home City, after referral of the proposal, determines that the amendment has Regional Impact, and, as a result of that determination, chooses to participate in the hearing, all three governing bodies must approve the amendment.

See Attachment 4 for the Public Notice & Referral sent to City of Springfield in November 2005 and their response, which was considered by Springfield City Council for determination of any regional impact on November 4, 2005. Springfield chose not to participate in the hearings at this time, leaving Eugene and Lane County to conduct the two jurisdiction approval process.

Metro Plan Amendment Criteria

LC 12.225 (2) Criteria for Approval of Plan Amendment. [Eugene Code 9.7730(3)]

The following criteria shall be applied by the Board of Commissioners in approving or denying a plan amendment application:

- (a) The amendment must be consistent with the relevant Statewide Planning Goals adopted by the Land Conservation and Development Commission; and*
- (b) Adoption of the amendment must not make the Metro Plan internally inconsistent.*

Review for conformance with the Statewide Planning Goals and the Oregon Administrative Rules occurs later in this report. Lane County and the City of Eugene are required to comply with the Oregon Administrative Rules (OAR's) that implement the Statewide Planning Goals. Metro Plan Policy is implemented by identifying significant aggregate Goal 5 sites as Sand & Gravel Resources by Plan Designation and the appropriate zoning pursuant to the Goal 5 Rule.

OAR 660-023-180(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 PAPA, or at periodic review as specified in Section (9) of this rule.**

This proposal is a request for a Post Acknowledgement Plan Amendment (PAPA) to add this site to the significant Mineral & Aggregate Resource Inventory. The property owner submitted the application as a PAPA in August 2005.

D. Analysis

Lane County is required to amend the acknowledged mineral and aggregate inventory in response to this application for a Post Acknowledgement Plan Amendment (PAPA). The Rule evaluation criteria for a PAPA are separated into seven analytical steps for this project:

- Step 1. Determine if the PAPA information is adequate.
- Step 2. Determine if the resource site is significant.
- Step 3. Determine if conflicts from mining can be minimized.
- Step 4. Weigh the ESEE consequences of un-minimized conflicts and determine whether to allow mining.
- Step 5. Determine the ESEE consequences of potential new conflicting uses within the impact area.
- Step 6. Determine if the rezoning requirements of LC16.252 are met, and if the variance setback request should be granted under LC 16.271(7). Only the Board will consider and make the

decision on the rezoning and variance because it is a Lane Code Chapter 16 amendment and decision implementing the Metro Plan amendment.

Step 7 Develop a program to allow mining.

STEP 1: ADEQUACY OF THE INFORMATION

OAR 660-023-0180(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 660-023-0300 except 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 requirements of OAR 660-023-0030, except where those requirements are expanded or superceded for aggregate resources as provided in subsections (b) through(d) of this section and sections (3), (4), and (8) of this rule;*

OAR 660-023-0300 (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 approval of an aggregate site following sections (4) and (6) of this rule shall be adequate if it provides sufficient information to determine whether the requirements in those sections are satisfied. An application for a PAPA concerning a significant aggregate site following sections (3) and (5) of this rule 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;*

The determination of site significance due to quality, quality, and site location as contiguous to an existing mining operation is discussed in detail under Step 2, below.

(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)*

The expansion site is proposed for consideration as an amendment to the reclamation plan approved by DOGAMI in 1987 and 1995. See **File Record No. 17 and Exhibit 49.**

(c) *A traffic impact assessment within one mile of the entrance to the mining area pursuant to section (5)(b)(B) of this rule;*

Lane County Transportation Planning has waived the traffic impact analysis requirement under LC 15.697 (1) – see **Exhibit 30.** Substantial improvements to the road system in this area are planned and scheduled out for the next twenty years in transportation system plans.

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

Proposals to minimize conflicts with existing uses are included in the application and identify the potential conflicts that have been considered in the public involvement process. Step 3 analyzes the conflicts minimization proposals in depth.

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

There is a site plan in the application.

The Lane County Planning Commission voted 4-2 that there was adequate information submitted in the PAPA application.

The Eugene Planning Commission found unanimously that there was adequate information submitted in the PAPA application.

STEP 2: SIGNIFICANCE OF THE RESOURCE

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

The criteria in section (3) of this OAR is applicable to this PAPA application.

OAR 660-023-180 (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 the 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 more than 500,000 tons outside the Willamette Valley;

This criterion requires review of two characteristics of the resource: quantity and quality. The estimated quantity of the resource must exceed 2 million tons. The applicant's report concludes that there is over 8 million cubic tons of material present beneath the site, an amount well in excess of the 2 million cubic ton requirement.

The quality of the resource must meet ODOT standard specifications for highway construction. The original sampling methodology is described in *Exhibit 1, Evaluation of Aggregate Resources: Delta Sand and Gravel Expansion Area*, by EGR & Associates. Issues raised under the quality criterion include:

- adequacy of methodology used to test the material
- adequacy of bore hole coverage
- adequacy of the data recorded from the samples taken

Elaboration of the issues are found in the following submittals:

Exhibit 1 -- *Evaluation of Aggregate Resources: Delta Sand and Gravel Expansion Area*, by EGR & Associates, Inc. in the original application.

File Record No. 18 – Memo from Shane Hughes, PE, EGR & Associates, Inc.

Exhibit 19 – Letter from Mark H. Reed, Mineral Resource Geologist.

Exhibit 33a -- *Testimony of Concerned Santa Clara Residents Organization (SCRO) on Delta Mining Expansion Proposal* – Mark H. Reed testimony in response to EGR analysis (ASTM Standard Practice for Sampling Aggregates)

Exhibit 46 – Letter from Karen Reed

Exhibit 47 – Letter from Ralph Christensen, Senior Geologist, EGR & Associates, Inc. (ASTM Standard Practice for Sampling Aggregates)

Exhibit 50 – letter from Steve Cornacchia

Exhibit 62 – Letter from Mark Reed

The record contains expert geologic testimony on both sides of this issue. The applicant's analysis by EGR and Associates was reviewed by another certified geologist, and the SCRO resource geologist also reviewed the data and submitted comments. The AASHTO ASTM Standard Practice for Sampling Aggregates language describes the sampling protocol for roadside or bank run sand and gravel deposits under Appendix D75, section X2.3.2.

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

This provision is not applicable because Lane County has not established a lower threshold for significance than Subsection (a) above.

- (c) *The aggregate site is on an inventory of significant aggregate sites in an acknowledged plan on September 1, 1996.*

This provision is not applicable because the expansion site has not been included on the inventory of significant aggregate sites of the Metro Plan.

- (d) *Notwithstanding subsections (a) and (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 soils on Natural Resource and Conservation Service (NRCS) maps on June 11, 2004; or

This provision is not applicable because there are no Class I soils on the site.

(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;

Due to the percentage of Class II classification soils, the aggregate site cannot be considered significant unless the average thickness of the aggregate layer within the mining area exceeds 60 feet in Lane County. "Thickness of aggregate layer" is defined above as "the depth of the water-lain deposit of sand, stones, and pebbles of sand-sized fraction or larger, minus the depth of the topsoil and nonaggregate overburden." The applicants' report concludes that the average cumulative width of the aggregate layer is 70.5 feet with a maximum overburden of 4 feet. Based upon the evidence in the record, it appears to staff that the applicant has demonstrated that there exists a "significant" Mineral & Aggregate Resource at the site.

The Lane County Planning Commission voted 4-2 that the sampling method for the quality analysis of the aggregate was inadequate to determine significance of the resource. This vote is the initial basis for the Lane County Planning Commission recommendation to deny the application.

The Eugene Planning Commission voted 3-2 that the applicant has demonstrated there exists a "significant" Mineral & Aggregate Resource at the site and the analysis of potential conflicts under Step 3 with conditions to minimize those conflicts proposed by the applicant is warranted.

The Planning Commissions proceeded jointly to develop a recommendation for their elected officials under Step 3.

STEP 3: MINIMIZE CONFLICTS

OAR 660-023-180(5): 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.

- (a) *The local government shall determine an impact area for the purpose of identifying conflicts with proposed mining and processing activities. The impact area shall be large enough to include uses listed in subsection (b) of this section and shall be limited to 1,500 feet from the boundaries of the mining area, except where factual information indicates significant potential conflicts beyond this distance. For a proposed expansion of an existing aggregate site, the impact area shall be measured***

from the perimeter of the proposed expansion area rather than the boundaries of the existing aggregate site and shall not include the existing aggregate site.

The 1500 ft. impact area is measured from the boundary of the proposed mining expansion area, and is shown on maps provided by the applicant on an aerial photo base in the record. Issues of conflict raised during the Planning Commission public testimony and included in the written record are for: dust, noise, groundwater, wetlands & sensitive habitat, traffic, flooding, and agricultural impacts.

Concern for potential impact to an elementary school property outside the 1500' impact area has been raised in **Exhibit 9** — letter from J.P. Lauch, 4J Facilities Manager.

Impacts beyond 1500' were raised for groundwater impacts and impacts to agricultural practices in:

Exhibit 16 – letter from Kate Perle

Exhibit 18 – notes from Kevin Jones oral testimony.

Exhibit 33 -- SCRO testimony

Exhibit 36 – Hydrology-Geology Report by Mali Kupilas

The Joint Planning Commissions deliberated and considered whether or not the impact area extended beyond the 1500' minimum as they considered each conflict 'type'. Both Planning Commissions found that none of the conflicts extend beyond the 1500 ft. minimum impact area as measured from the perimeter of the expansion site.

(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.

Approved land uses within the 1500' impact area consist of low density residential, aggregate production and processing, and agricultural operations. Conflicts were predicted due to dust, noise, groundwater, flooding, wetlands and agriculture.

For determination of conflicts from proposed mining of a significant aggregate site, the local government shall limit its consideration to the following:

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

Written submittals and oral testimony identified conflicts between these existing uses and associated activities primarily for people living in the adjacent residential neighborhoods that are sensitive to discharges of dust for health reasons and noise as a quality of life conflict.

Concern about these issues are found in submittals from neighboring residents and elaboration of these issues are found in testimony provided by SCRO experts. See the following:

Exhibits 1 – 8; and Exhibits 10, 12, 14, 15, 21, 22, 25, 27, 33, 38, 39, 41, and 42.

Exhibit C to this Ordinance (PA 1238) contains the conditions proposed by the applicant to minimize identified conflicts. Both Planning Commissions found there were conflicts with dust, noise, groundwater, wetlands and sensitive habitat, and agriculture. The Lane County Planning Commission additionally identified a conflict with flooding. The analysis of the impact area and proposed minimization conditions were considered in joint deliberations and votes taken for each conflict, see discussion starting on page 12 of this memo.

(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;

The applicant requested a waiver of the analysis of potential traffic conflicts due to the proposed project under **Lane Code 15.697 (1)**: *A traffic impact analysis may be required as part of a complete land use application for any of the following:*

(c) any plan amendment proposal unless waived by the County Engineer as specified below;

LC 15.697 (2) *The County Engineer or designee may waive traffic impact analysis requirement specified above when:*

(b) In the case of a plan amendment or zone change, 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. Whether the scale and size of a proposal may be considered insignificant may depend on the existing level of service on affected roadways. Generally, a waiver to traffic impact analysis will be approved when:

(i) the plan designation or zoning that results will be entirely a resource designation.

See **File Record No. 42, Exhibit 30** for the County Engineer waiver of the requirement for a traffic impact analysis under LC 15.697(2). The County agreed with the applicants analysis that the scale and size of the proposed extraction rate in the expansion area does not warrant detailed traffic analysis of roadway performance. This waiver releases the applicant from the requirement to conduct further traffic impact analysis. See **Exhibit 45** for Land Watch letter asserting this analysis must be completed.

Both Planning Commissions considered the traffic conflict analysis waiver and public works response, and both voted unanimously that there is no conflict due to traffic under the Goal 5 Rule.

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

Not applicable to this PAPA.

(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;

There are two wetlands identified on the site, a pond and a Willamette River remnant oxbow. The pond is an-old quarry pit, created by gravel extraction prior to 1977, and it is identified on the Division of State Lands (DSL) Wetland Inventory and the Lane County Metro Plan Goal 5 Inventory. Safe Harbor provisions applicable to the pond were adopted by Lane County for Goal 5 Resources outside the UGB and within the Metro Plan Boundary though Ordinance No. 1197 in 2004. The oxbow remnant is also on the DSL Wetland Inventory, and the Eugene Goal 5 Wetlands Inventory. It is identified as Site E-57, a segment of the East Santa Clara Waterway. The Eugene Goal 5 Inventory has been adopted by the Board of Commissioners, however, the resource protection measures for City of Eugene sites within the UGB has not yet been co-adopted by the Board.

Elaboration of wetland issues are found in the following submittals:

Exhibit 1 – *Digital Model of Existing Excavation Site and New Expansion area*, by EGR & Associates, Inc. in the original application.

Exhibit 13 – letter from Bromley Newton LLP

Exhibit 16 – letter from Kate Perle

Exhibit 21 – letter from Greg & Renee See

Exhibit 23 – Letter from Hutchinson, Cox, Coons, DuPriest, Orr, & Sherlock, P.C.

Exhibit 33 – Natural Resources/Wetlands Report by Ethan Perkins Ph D.

Exhibit 57 – rebuttal from EGR & Associates to Dr. Perkins

Exhibit 65 – rebuttal to EGR from DuPriest

(E) Conflicts with agricultural practices; and

Agricultural practice occurs on the site, in the impact area and beyond. Testimony from actual neighboring farmers/gardeners is mixed, with some statements of no negative impact. Much of the testimony provided by the agricultural experts is general in nature, identifying potential impacts to crops grown for commercial purposes that are not found within the 1500' impact area. Elaboration of the issues are found in the following submittals:

Exhibits 16 & 33i -- letter and memo from Kate Perle

Exhibits 18 & 33j – letter and memo from Kevin Jones

Exhibit 19 – letter from Mark Reed

Exhibit 20 – letter from Karen Lawrence

Exhibit 18 – Letter from Karen Reed

Exhibit 24 – memo from Dewey Hofer

Exhibit 33f – Report from Ross Penhallegon, OSU Extension Service

Exhibit 34 – Farmland Protection flier, 1000 Friends of Oregon

Exhibit 35 – memo from Michael Mishka Sloan.

Exhibit 36 – Hydrology-Geology report by Malia Kupilas

Exhibit 40 – Cost Estimate for Changes in Ag. Practices at Full Circle Community Farm

Both Planning Commissions found the conflicts with agricultural impacts did not extend beyond the 1500 ft. impact area.

(F) Other conflicts for which consideration is necessary in order to carry out ordinances that supersede Oregon Department of Geology and Mineral Industries (DOGAMI) regulations pursuant to ORS 517.780;

No other conflicts that supersede DOGAMI regulations have been identified.

(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.

OAR 660-023-180(5)(g) defines "Minimize a conflict": to reduce an identified conflict to a level that is no longer significant. For those types of conflicts addressed by local, state or federal standards (such as the Department of Environmental Quality standards for noise and dust levels) to "minimize a conflict" means to ensure conformance to the applicable standards."

This means that any conflicts identified above in subsections (A) through (D) are minimized if the applicant brings the conflict into conformance with an applicable local, state, or federal standard. A

separate standard (ORS 215.296) applies to the minimization of conflicts with agricultural practices. Many of the minimization techniques rely upon excavation to occur in specific phases, to specific levels and to proceed when the existing operation has exhausted the existing supply of aggregate.

The Planning Commissions considered each conflict's extent of impact and the proposed minimization conditions, separately voting on each conflict under Step 3 of the Goal 5 analysis. Ordinance No. PA 1238 Exhibit C provides the conditions proposed for inclusion in the plan to allow mining to ensure conformance with applicable local, state, or federal standards.

NOISE CONFLICTS

Noise has been identified as a discharge from the proposed mining area that conflicts with nearby residential uses. The noise producing components are haul trucks, dump trucks, and the excavator and front end loader that extract the gravel and transfer it into trucks that move the material to the existing processing facility. The entire expansion area is subject to the noise threshold requirements. Daly-Standlee & Associates, Inc. (DSA) analyzed the future noise impacts inclusive of the ambient noise from the existing adjacent processing operation owned by the applicant. The applicants noise study was amended in response to public concerns raised at the Planning Commission hearing that some additional residential development had occurred in the impact area that was not included in the original analysis. DSA updated the noise impact analysis, and determined that without mitigation, DEQ noise standards would be exceeded at the residences on site owned by the applicant, and approved uses within the noise limit boundary could also be affected, but the proposed minimization for the zones adequately reduces the conflict to acceptable levels. The revised analysis and zone of impact map is in **Exhibit 49**.

Exhibits and reports by Arthur Noxon, SCRO affiliated Acoustical Engineer raises issues with the study methodology performed by DSA. Dick Ruth, in **Exhibit 61**, responds to the technical aspects of the opposing arguments regarding the methodology used by DSA.

Minimization of Noise Conflicts -- Addressed by DEQ Noise Regulations of OAR 340-35-035. The analysis used the more restrictive DEQ standards for new sources in both the allowable statistical noise limits category and ambient degradation limit category. Historically, DEQ did not require this level of compliance for the extension of quarries into contiguous areas. The applicant proposes the predicted noise can be reduced by the alternate mining procedures shown on PA 1238 Exhibit C #1 - #12 to levels that would conform to the applicable DEQ standards by the development of lifts in stages, limiting the use of noise producing equipment, and limiting the hours of operation.

Both Planning Commissions found unanimously that there is a conflict due to noise.

They both voted the noise conflict could be minimized to a level that meets the state DEQ standard. The Lane County Planning Commission vote was 3-2, with 1 abstention, and the Eugene Planning Commission vote was 3-2.

DUST CONFLICTS

Dust is identified as a discharge from the proposed expansion area that conflicts with nearby residents and negatively impacts farming activities. The applicants dust study, Air Quality Evaluation (Exhibit G in the Application) contains details regarding the dust impacts to be expected from the operation. Dust conflicts come from overburden removal, aggregate extraction, and truck traffic on haul roads from the expansion area to the processing plant on the existing approved operation.

Minimization of conflicts – Dust - addressed by DEQ Emissions Standards applied by Lane Regional Air Pollution Authority (LRAPA) through an Air Contaminant Discharge Permit (ACDP):

- Visible Air Contaminant Limitation (LRAPA 32-010)
- Particulate Matter Weight Standards (LRAPA 32-015)
- Particulate Matter Size Standard (LRAPA 32-055)
- Other Emissions (LRAPA 32-090)
- Rules for Fugitive Emissions (LRAPA 48-015)

This PAPA is for future mining of an adjacent expansion site. Delta's processing operation directly east of the expansion site operates under a current LRAPA permit (No. 20119). If approved, the proposed future mining expansion area will be added to the existing permit and compliance requirements will be updated to include the expansion area and conduct operations in a manner that complies with the applicable standards under the existing authorized permit. The existing operation is not under review in this PAPA application.

The submittals from the SCRO raises issue with the dust impact analysis and with the trustability of the applicant to meet the LRAPA requirements. LRAPA past violations are included in the written record. Additionally, some of the neighboring residents have health issues that are exacerbated by poor air quality, asthma and breathing problems and have raised that issue. The analysis conducted by Bridgewater models a conservative approach to the predicted conflict. The Planning Commissions had concerns about lack of analysis of additional impacts from dust if the setback variance request to complete a low permeability barrier (aquaclude) was granted. The location of the aquaclude and methodology for completion was considered to be a large factor in the determination of impacts for this conflict. See PA1238 Exhibit 'C', Conditions #13- #21 for dust minimization conditions proposed by the applicant.

Both of the Planning Commissions found unanimously that there is a conflict due to dust, and that the conflict due to dust could not be minimized to a level that meets the DEQ emission standards applied by LRAPA. Neither planning commission conducted further ESEE analysis because none had been provided by the applicant.

Lane County Planning Commission voted 3-2 with one abstention, and Eugene Planning Commission voted 3-2 that the conflict could not be minimized.

FLOODING CONFLICTS

The Lane County Flood Hazard requirements are found in Lane Code 16.244 Floodplain Combining Zone. Refer to applicant's submittal Evaluation of Potential Flood Impact (Exhibit H) The applicant describes how all activity will be below ground and not affect the base flood level. Federal Emergency Management Agency requirements as implemented by Lane County in Lane Code 16.244(7)(c)(ii): *"Where base flood elevations have been provided but floodways have not, the cumulative effect of any proposed development, when combined with all other existing and anticipated development, shall not increase the water surface elevation of the base flood more than one foot at any point."*

Gravel extraction activity does not impede floodwaters because extraction of the aggregate will proceed in a downward manner, and will not create any barrier's that impede flood flows. Conflicting testimony and photos submitted during the public hearing dispute that assertion. Residents in the neighborhood submitted photos of flooded streets (**Exhibits 41 & 42**) and provided testimony at the November 15th 2005 Hearing expressing concern that mining of the expansion area would exacerbate flooding in the surrounding neighborhoods, especially the new residential developments built within the impact area. The relationship between groundwater and surface water in a flood and uncertainty of

how the completion of the low permeability barrier would affect the flow of water was a factor in the Planning Commissioner recommendation.

The Lane County Planning Commission voted 5-1 that there was a conflict due to flooding, and they voted 4-2 that the conflict cannot be minimized to meet the FEMA standard.

The Eugene Planning Commission voted 3-2 that there was not a conflict due to flooding.

WETLANDS CONFLICTS

Wetland protection criteria is generally addressed by Division of State Lands (DSL) Fill/Removal Permit Requirements of OAR 141-85. Conflicts are likely to be minimized by demonstrating conformance with DSL requirements. The abandoned quarry pit and the East Santa Clara Waterway (Site E-57) are on the DSL & Local Goal 5 Inventories.

Minimization of conflicts – Wetlands -- There are setbacks required for mining operations under Lane Code 16.217. Completion of the low permeability barrier on the west/northwest boundary of the site that would parallel Site E57, was considered by both planning commissions to be an un-analyzed potential impact that should be addressed. The analysis provided by the applicant did not include consideration of the aquaclude impacts. Mining setbacks are greater than natural resource protection setbacks contemplated for Goal 5 resources.

Both Planning Commissions found that there is a conflict to wetlands. Lane County voted 4-2, and Eugene voted 3-2.

The Lane County Planning Commission voted 2-4 that impacts to wetlands could not be minimized.

The Eugene Planning Commission voted unanimously that any conflict with wetlands could be minimized.

GROUNDWATER CONFLICTS

Conflicts regarding groundwater are not addressed by any local, state or federal standards. When developing a program to allow mining, coordination occurs between DOGAMI as part of the inter-jurisdictional review in concurrence with the Oregon Water Resources Department. The monitoring plan requires DOGAMI approval. The applicant proposes to minimize the conflict with neighboring wells by completing a below grade low permeability barrier (aquaclude) along the edge of the expansion area to impeded the flow of groundwater into the pit that would be created by excavation of the site.

There was considerable testimony from neighboring residents during the planning commission hearing regarding the aquaclude. The neighborhood residents expressed concern with the lack of analysis of dust and noise impacts from activities conducted to complete the aquaclude, primarily because the aquaclude's proposed location will be closer to their homes than an expanded mining operation. The applicant asserts that the building of the aquaclude is not mining, therefore, it is not subject to analysis, and is not included in determining the impacts under analysis conducted by the applicant, such as digging out the overburden, and the slope ratio of the walls of the aquaclude. The aquaclude is proposed for construction within the 150' setback to reduce groundwater flow from the surrounding land.

The mining of the expansion area will be performed in a planned sequence that will put all ground water and rain water flowing by gravity across the open 300 acre pit to the pumps located at the excavated pond near the Willamette River that remove the water flowing into the pit. See **Exhibit 49** for detailed explanation of the proposed sequence to mine the expansion area.

Minimization of conflicts – Groundwater -- Addressed by Condition # 22 in Exhibit C, to complete a low permeability barrier along the outer perimeter edge of the expanded mining area to the depth of the older cemented alluvium to prevent seepage into the pit.

Both Planning Commissions found unanimously that there was a conflict due to groundwater. The low permeability barrier (aquaclude) is proposed as mitigation, and the applicant should map the specific proposed location for the low-permeability barrier.

The Lane County Planning Commission voted 4-2 that the aquaclude would not minimize the conflict with groundwater to an adequate level.

The Eugene Planning Commission found unanimously that the aquaclude would minimize conflicts with groundwater to an adequate level.

AGRICULTURAL CONFLICTS – minimization of conflicts with agricultural practices must be reviewed under the provisions of ORS 215.296(1) to determine 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 subject property is currently being farmed, which is an appropriate interim use for future gravel resource land. See **Exhibit 24** from Dewey Hofer, who is farming the expansion area under lease agreement with the owners. **Exhibits 16, 18 and 40**, from Full Circle Community Farm, provide another viewpoint of potential impacts to their existing operating family farm. Their farm is about a mile away in the River Road/Santa Clara area, outside the 1500' impact area identified for this PAPA. Expert general testimony regarding agricultural practices and conflicts with dust is provided by Ross Penhallegon, OSU Extension Agent for the southern Willamette Valley in **Exhibit 33f**.

Both Planning Commissions found that there was conflict to agricultural practices within the impact area. The Lane County vote was 4-2 and Eugene vote was 3-2.

The Eugene Planning Commissions voted unanimously that the conflicts with agricultural practices could be minimized to a level that does not force a significant change in accepted farm use nor increase the cost to conduct farming significantly.

The Lane County Planning Commission voted 4-2 that the conflicts with agricultural practices could NOT be minimized to a level that does not force a significant change in accepted farm use nor increase the cost to conduct farming significantly.

STEP 4:WEIGH ESEE ANALYSIS

OAR660-023-180(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 use of the site.

The joint Planning Commissions found adverse effects within the impact area. They agreed the conflict due to dust was one conflict identified under OAR 660-023-180(4)(b)(A) through (F) that could not be reduced below a significant level (minimized). In addition to dust, the Lane County Planning Commission found that conflicts could not be minimized for groundwater, wetlands, and flooding.

The applicant could prepare an ESEE analysis in accordance with this section of the Rule for review by the Board of Commissioners and Eugene City Council for consideration in the decision making process.

STEP 5: DETERMINE ESEE CONSEQUENCES OF NEW USES

OAR 660-023-180(5): 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 (4) of this rule, the local government decides that mining will not be authorized at the site.)

No potential new uses have been identified in the impact area. The site is adjacent to existing sand and gravel extraction and mostly developed residential zoned and agricultural zoned property. There is no need for an ESEE analysis of potential new uses.

STEP 6: LANE CODE 16.252 PROCEDURES FOR REZONING AND RURAL COMP PLAN AMENDMENTS

The Urban Transition Agreement between the city and county applies only within the UGB, so because the Delta expansion site is outside the UGB where Lane Code Chapter 16 zoning applies, the rezoning decision is a Lane County Board decision.

Lane Code 16.252(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 affected by Ordinance or Order of the Board of County Commissioners, the Planning Commission or the Hearings Official in accordance with the procedures in this section.

Lane County policies require that known resource sites within the County shall be conserved for both present and future uses through the application of Plan designations and compatible land use regulation measures. The appropriate Metro Plan designation for a significant mineral & aggregate site outside the Eugene-Springfield Metro UGB is "Sand and Gravel", and the land use regulation measures for this

use are found in the Sand, Gravel & Rock Products Zone (SG-RCP). In accordance with the rezoning criteria above, the use of the expansion area for aggregate production must be found consistent with the specific purposes of the proposed zone classification Sand, Gravel and Rock Products Zone (SG-RCP) as described below. The rezone is required to show consistency with the statewide planning goals. This zoning district must be applied upon demonstration that the site complies with the Goal 5 Administrative Rule and mining shall be allowed.

LC 16.217(1) Purpose. *The intent of the Sand, Gravel and Rock Products Zone (SG-RCP) is to:*

- (a) recognize that sand and gravel deposits within the County are an unrenewable natural resource.*
- (b) Identify and zone under this zone major deposits of sand and gravel, rock and related material resources.*
- (c) Provide for the utilization of this resource in a manner compatible with other land uses in the area.*
- (d) Encourage the regular, systematic and uninterrupted extraction and processing of such resources.*
- (e) Establish procedures for assuring protection of public health and safety on and adjacent to land used for extraction and processing.*
- (f) Prevent irresponsible extraction of material resources, to the detriment of the public.*
- (g) Provide standards to be observed during the extraction process with a view to ultimate utilization of the site.*
- (h) Carry out these purposes with the recognition of a need for said resources and the right of each property owner to make a reasonable use of his or her land.*
- (i) Implement the policies of the Rural Comprehensive Plan.*
- (j) Be applied only to those sites which have been evaluated consistently with the statewide planning goal 5 Administrative Rule conflict resolution process.*

LC16.217(3) Permitted Uses. *In the SG-RCP zone, the following uses are permitted, subject to the following restriction: For an property designated in the Eugene Springfield Metropolitan Plan as significant in terms of OAR 660-16.000/025 and designated as '1B', a Goal 5 ESEE consequences analysis per the Goal #5 Administrative Rule must first be completed. If the landowner and County do not agree on the method to achieve the Goal, the matter shall be forwarded to the Hearings Official for processing consistent with LC 16.100.*

The '1B' sites are those for which not enough information is available to determine significance. The expansion area is not a '1B' site, therefore, the Goal 5 ESEE analysis is not required under the Goal 5 rule or this section of Lane Code.

OREGON STATEWIDE PLANNING GOALS

As required under ORS 197.175(2)(a), Comprehensive Plan amendments must comply with the Statewide Planning Goals. The applicant's discussion of the Goals is found in their application.

Goal 1 Public Involvement

The County sent notice to neighbors and referrals to agencies on October 26, 2005, 20 days prior to the November 15, 2005 joint Planning Commission public hearing. The notice notified them of the opportunity to comment on this request to expand the existing Delta gravel extraction operation westward to the subject property. A Legal Ad announcing the November 15, 2005 public hearing before the planning commissions was published in the Register Guard on October 26, 2005 and a sign was placed on the subject property on that same date announcing the time, location, and applicable criteria for comments. Written notice and referral was sent to neighbors, interested parties, and agencies on October 12, 2006, 20 days prior to the joint public hearing before the Lane County Board of Commissioners and Eugene City Council on November 1, 2006. Legal Notice of the public hearing

before the elected officials was published in the Register Guard on October 12, 2006. A sign was posted on the subject property on October 12, 2006 announcing the time, date, and location of the November 1, 2006 hearing before the elected officials. By providing the notices required by state law and applicable local code, Goal 1 is complied with.

Goal 2 – Land Use Planning

Lane County has adopted the Metro Plan amendment process and policy framework as a basis for land use decisions in the Eugene-Springfield Metropolitan area. The Metro Plan is an acknowledged comprehensive plan, pursuant to provisions specified by DLCDC. The record shows coordination with affected governmental agencies and special districts were provided opportunity for comments. This proposal, and the process for reviewing the requested amendment follows the procedures outlined in Lane County and Eugene Codes thus the proposal is consistent with Goal 2.

Goal 3 –Agricultural Lands

The proposal would remove 72.31 acres of land from an agriculture designation to sand and gravel. Lane County policies require that known Goal 5 resource sites within the County shall be conserved for both present and future uses through the application of Plan designations and compatible land use regulation measures. The appropriate Metro Plan designation for a significant mineral & aggregate site is “Sand & Gravel.”

Goal 4 – Forest Lands

There are no Forest Lands in the vicinity of the expansion area, so this goal does not apply.

Goal 5 -- Open Spaces, Scenic and Historic Areas, and Natural Resources

The subject property is proposed to be redesignated from Agriculture, a resource designation, to Sand & Gravel, which is also a Goal 5 Natural Resource.

Goal 6 – Air, Water and Land Resources Quality

The mitigation measures proposed for inclusion in the Operations Plan are adequate to meet the emission requirements in the regulatory measures to maintain the quality of the airshed consistent with the standards set under this goal for the expansion area.

Goal 7 -- Natural Disasters and Hazards

The subject property is within the Floodplain Combining Zone. Proposed activity does not impact or raise potential for flooding because extraction occurs below grade, and does not increase the potential for impeding floodwater flow through the area.

Goal 8 – Recreational Needs

There are no recreational uses proposed or adjacent to the subject property, therefore this goal does not apply.

Goal 9 -- Economic Development

The approval of this PAPA would extend the local supply of gravel, which is a critical component of the built environment and commercial construction. Having local sources of this important resource available within the local market is important for economic development projects in central Lane County. Delta Property Company also pays family wages for the majority of the jobs within the company, improving the local economy for employees.

Goal 10 – Housing

The subject property is designated as agriculture and proposed for rezoning to sand and gravel, with no plans for residential use in the future. There are three homes on the subject property, owned and rented

out by the applicant. The eventual loss of these three dwellings will not measurably impact the acknowledged housing inventory for the Metro Area. Therefore, this PAPA does not conflict with the purpose and intent of this Goal.

Goal 11 – Public Facilities and Services

Approval of this PAPA would result in a natural resource use of the expansion area that will not require the extension of any public facilities or services in the future. Therefore, the PAPA is consistent with the intent and purpose of this Goal.

Goal 12 – Transportation

The applicant proposes to process the mined material from the expansion site on the adjacent property where the approved processing facility owned by the applicant is sited today, so that traffic is internal to the Delta Company Property. Lane County Transportation Engineering Division has waived the requirement for further analysis of impacts to local roads because the percentage increase of traffic on local roads is below the minimum required for further analysis. Because negligible increase in product delivery or service will occur if this PAPA is approved, the policies and objectives of Goal 12 are consistent with this proposal.

Goal 13 – Energy Conservation

The proposed use of the expansion site will provide continued stable and long term aggregate within close proximity to the Metro area market. From an energy conservation perspective, locating these resources close to construction activity reduces fuel use and maximizes energy efficiency during construction and development. Therefore, the PAPA is consistent with this Goal.

Goal 14 – Urbanization

The expansion site is outside the urban growth boundary and therefore is not urbanizable land. Only resource use is proposed for the site, no additional urban facilities or services apply to the site, therefore, the PAPA is consistent with this goal.

Goal 15 – Willamette River Greenway

The expansion area is outside the Willamette Greenway, so this Goal does not apply.

Goals 16, 17, 18, and 19 – Estuarine, Coastal Shorelands, Beaches and Dunes, and Ocean Resources

These are the Coastal Resources Goals that do not apply to this PAPA due to geographic location.

Setback Variance Criteria LC 16.217

The applicant has requested a variance to the setback requirements in LC 16.217 (4) (b) (v) Setbacks for Excavation. The variance would make it possible to allow the construction of a ‘low-permeability barrier’ (also called an aquaclude) within the setback area that would be designed and built to eliminate the flow of groundwater from the surrounding land into the pit created by aggregate mining.

LC16.217 (4)(v) Setbacks for Excavation. *Excavation shall not be conducted closer than 150 feet to any property boundary, except as herein provided.*

(aa) The Director may grant an administrative variance to decrease a setback upon showing that the eventual utilization of the site is compatible with a smaller setback up to the following minimums:

(i-i) Fifty feet from the boundary of any nonresidential zone, or the right-of-way of an existing street or road.

(ii-ii) One hundred feet from the boundary of a residential zone.

These minimums would apply within the setback if the variance is granted.

- (bb) The Director may grant an administrative variance to waive the setback from adjoining property in a Sand, Gravel and Rock Products Zone, if no flood hazard will result.*
- (cc) The setback area may be excavated to reduce the elevation thereof to the grade of an adjoining public street or road.*
- (dd) Excavation may be conducted within the setback area under a plan approved by the Director through an administrative variance whereby the excavated area will be refilled with other materials which will neither decompose nor pollute underground waters.*

The applicant proposes to construct the low permeability barrier within the setback, proceeding ahead of the mining extraction to the west, at a distance of 400 feet ahead of any excavation activity. The barrier is proposed to be at least 12 feet wide at the bottom (top of the cemented alluvial layer that stops the downward flow of water) and slope upward through the upper aquifer at a slope ratio that can vary from 1:5 to 2:1 to the original ground surface.

The request for placement within the setback area is to insure its separation from the excavated aggregate pit and to place the barrier's outer edge as close as possible to the surrounding off-site shallow aquifer. The barrier will be created by replacing excavated material with low permeability clay soil excavated from another area of Delta property. Clay soil will not decompose nor pollute underground water. Other clean impermeable material may be used in the aquaclude, and clay may be brought from outside the property from other jobs for use in the aquaclude.

- (ee) When excavation is completed adjoining a setback, the setback area shall be smoothed, all excavation debris removed, and all trees which are in an unsafe condition removed. However, such setback areas may be used for permitted uses under LC16.217(3)(b) and (c) above.*

The Reclamation Plan would include this requirement.

LC 16.217 (7) (b) Variances. *Variances to dimensional standards such as setbacks and slope ratios within this zone are subject to approval by the Director pursuant to LC 14.100 and must conform to the following criteria:*

- (i) The variance is not in conflict with the general purpose and intent of the zone.*
- (ii) There are exceptional or extraordinary circumstances applicable to the property involved.*
- (iii) The denial of the request would result in undue and unreasonable property loss to the applicant.*
- (iv) The variance will not be detrimental to the public welfare or convenience, nor injurious to the property or improvements of other owners of other property.*

Gravel extraction is not ordinarily conducted in close proximity to urban populated areas. The expansion area site is an extension of the existing Delta site, and without a variance to the setback requirements, some property available for mining would be lost. The detriment to public welfare as indicated in the neighborhood testimony in the record is considerable.

STEP 7: PROGRAM TO ALLOW MINING

OAR 660-023-180(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;

The Planning Commissions did not feel there was sufficient information regarding the location or functionality of the aquaclude to convince the majority that the conflicts due to dust (plus wetlands, flooding, and groundwater for the Lane County Planning Commission) were minimized.

(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.

If the application is approved, Staff recommends that any minimization measures to reduce or eliminate conflicts are compiled into a set of clear and objective conditions applicable to the Plan and implementing regulations adopted to allow mining of the expansion area.

- (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 applicant would amend the existing Operating and Reclamation Plan to include the expansion area. The existing reclamation plan for the adjacent mining and processing site is included in the record, see **File Record No. 17**. DOGAMI provides an update to Delta's Operating Permit Amendment Application in **Exhibit 49** that addresses the addition of the Expansion Area to the existing Plan upon approval. The conditions in Exhibit C to the Ordinance will be required to be included in an updated Operating and Reclamation Plan that includes the expansion area.

- (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.*

This provision permits the material excavated from the subject property to be transported to the adjacent existing Delta processing facility without further review of the existing processing operation.

C. Alternatives/Options

1. Hold the record open for the submittal of additional information from parties in this matter.

The Board and Council will hear a considerable amount of testimony on this application during the November 1st hearing. Presumably, the applicant or other parties will request the record to be held open for the submittal of additional information to respond to new evidence presented at the hearings. The following timeframes should be decided upon if this option is chosen.

- Period 1- Record open for submittal of additional written information by any party (including applicant) for ____ weeks;
 - Period 2 - Record open for any party to respond to items submitted during the previous open record period (including the public hearing) for ____ weeks;
 - Period 3 - Record open for final written argument from applicant for ____ weeks.
 - Written record closed. ____ / ____ / ____
2. Adopt the Ordinance as presented.
 3. Adopt the Ordinance with revised findings.
 4. Do not adopt the Ordinance and take tentative action to deny the application.

V. RECOMMENDATION

Under the Goal 5 Gravel Mining Post Acknowledgement Plan Amendment evaluation process, there are seven analytical steps: The joint Planning Commissions evaluated the proposal and testimony submitted through the public hearing process. The minutes of these meetings are attached, and this staff memo summarizes the specific recommendations from the planning commissions to the elected officials. Neither Planning Commission conducted further ESEE analysis because the applicant did not present one. Without an ESEE analysis, the planning commissions were not able to weigh the conflicts and conduct further analysis to provide recommendations for steps 4-6. The Planning Commissions recommendation for denial is based on failure to minimize conflicts with dust (for both) and dust, flooding, wetlands, groundwater and agricultural practices (for Lane County), and the lack of an ESEE analysis.

The Lane County Planning Commission felt that the PAPA information was adequate and that the resource was not significant. In addition, the Lane County Planning Commission did not find that the conflicts with dust, groundwater, wetlands and flooding could be minimized to an acceptable level and therefore cannot recommend approval of the application.

The Eugene Planning Commission felt the PAPA information was adequate and that the resource was significant. They concluded that all conflicts were minimized by the applicant except the dust conflict, which the Eugene Planning Commission majority did not believe could be minimized to an acceptable level.

VI. IMPLEMENTATION/FOLLOW-UP

The Ordinance does not contain an emergency clause. If the record is held open, additional readings will be scheduled and staff reports provided as necessary.

Upon final closure of the record, staff will prepare a final report and bring this item back to the Board and Council for deliberation and action.

VII. ATTACHMENTS

1. Ordinance No. PA 1238
 - Exhibit A – Metro Plan Diagram Amendment
 - Exhibit B – Official Plot Map #1005 Amendment
 - Exhibit C – Findings & Conditions (Findings from the applicant will be provided in a supplemental packet).
2. Application for Metro Plan Amendment and Rezone - AVAILABLE FOR REVIEW IN BOARD OFFICE
3. Joint Planning Commission Minutes – Hearings and Deliberations meetings
 - November 15, 2005, Public Hearing
 - January 17, 2006, Public Hearing
 - July 25, 2006, Deliberations
 - August 30, 2006, Deliberations
4. File Record Content Index for PA 05-6151
 - The bolded exhibits referred to in this report are referenced in this attachment.

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY, OREGON

ORDINANCE PA 1238 IN THE MATTER OF AMENDING THE EUGENE-SPRINGFIELD METROPOLITAN AREA GENERAL PLAN (METRO PLAN) TO REVISE THE GOAL 5 SIGNIFICANT MINERAL AND AGGREGATE RESOURCES INVENTORY, REDESIGNATE FROM "AGRICULTURE" TO "SAND & GRAVEL", REZONE FROM "E30/EXCLUSIVE FARM USE ZONE" TO "SG/SAND, GRAVEL & ROCK PRODUCTS ZONE", AND ALLOW MINING ON 72.31 ACRES OF LAND PURSUANT TO THE GOAL 5 OREGON ADMINISTRATIVE RULES (OAR 660-023); AND ADOPTING SAVINGS AND SEVERABILITY CLAUSES (FILE PA 05-6151; DELTA PROPERTY CO.)

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

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

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

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

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

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

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

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

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

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

ORDINANCE 1238 ----IN THE MATTER OF AMENDING THE EUGENE/SPRINGFIELD METROPOLITAN AREA GENERAL PLAN (METRO PLAN) TO REVISE THE GOALS SIGNIFICANT MINERAL AND AGGREGATE RESOURCES INVENTORY, REDESIGNATE FROM "AGRICULTURE" TO "SAND AND GRAVEL", REZONE FROM "E30/EXCLUSIVE FARM USE ZONE" TO "SG/SAND, GRAVEL & ROCK PRODUCTS ZONE", AND ALLOW MINING ON 72.31 ACRES OF LAND PURSUANT TO THE GOAL 5 OREGON ADMINISTRATIVE RULES (OAR 660-023); AND ADOPTING SAVINGS AND SEVERABILITY CLAUSES (FILE PA 05-6151; DELTA PROPERTY CO.)

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

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

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

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

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

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

ENACTED this _____ day of _____, 2006

Chair, Lane County Board of County Commissioners

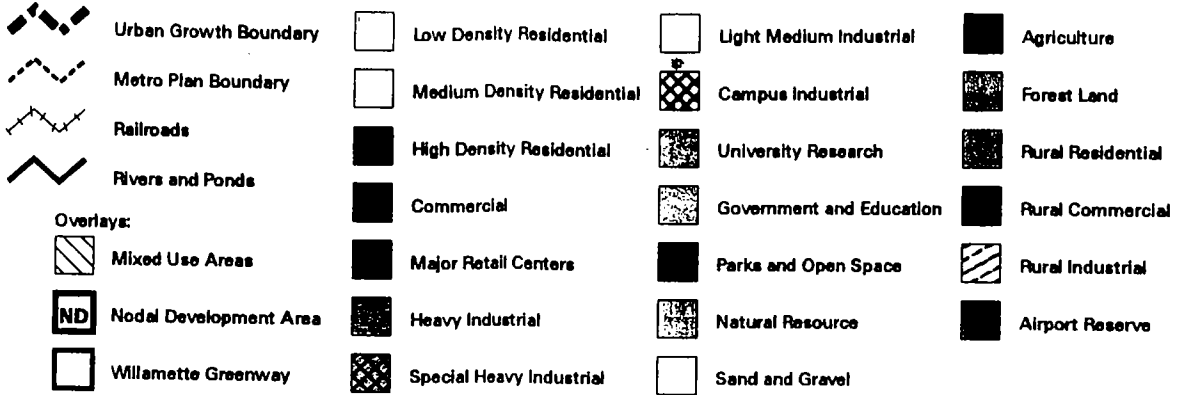
Recording Secretary for this meeting of the Board

APPROVED AS TO FORM
Date _____ Lane County

OFFICE OF LEGAL COUNSEL

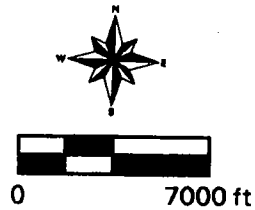
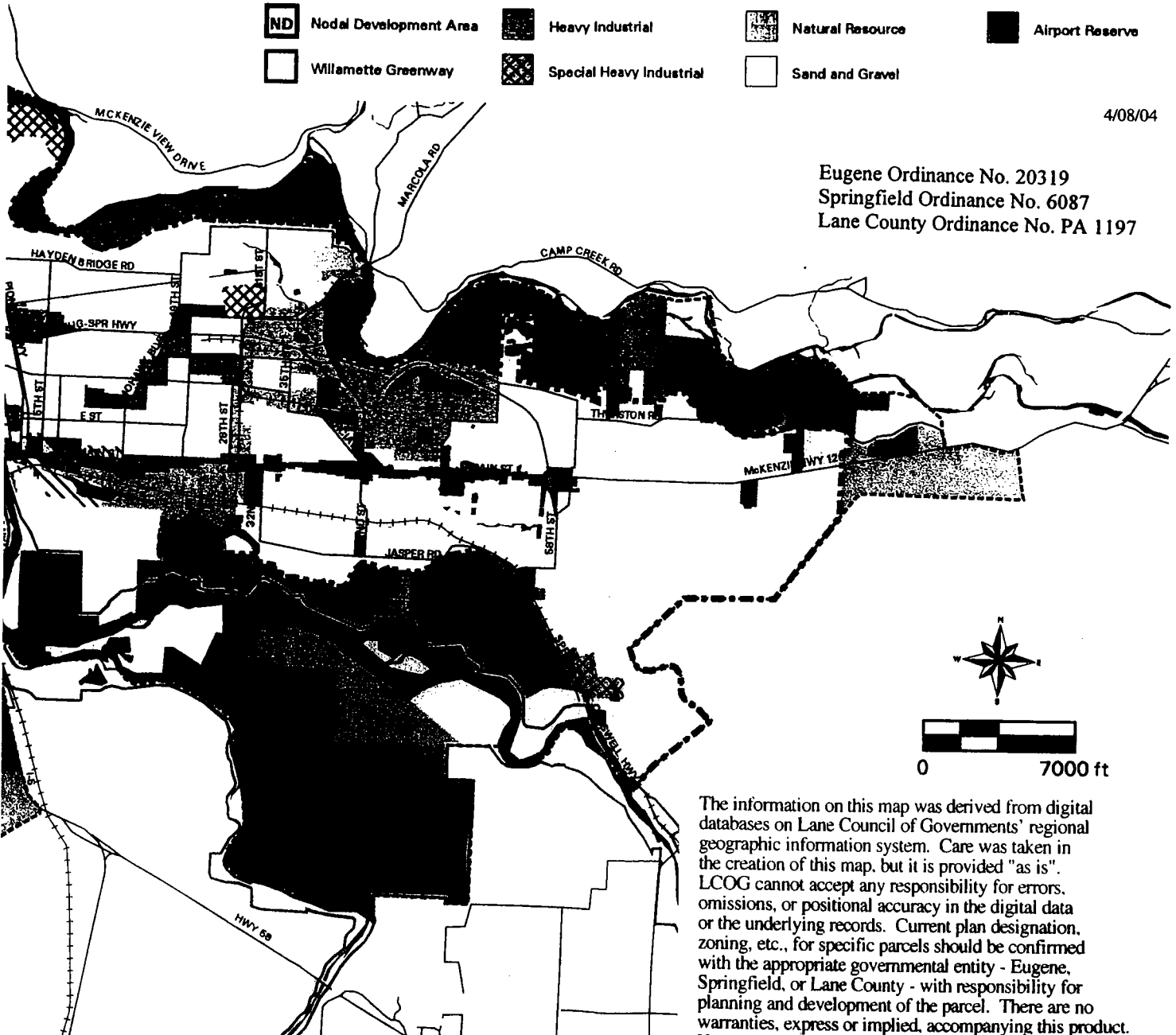
Eugene-Springfield Metropolitan Area General Plan Plan Diagram

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



4/08/04

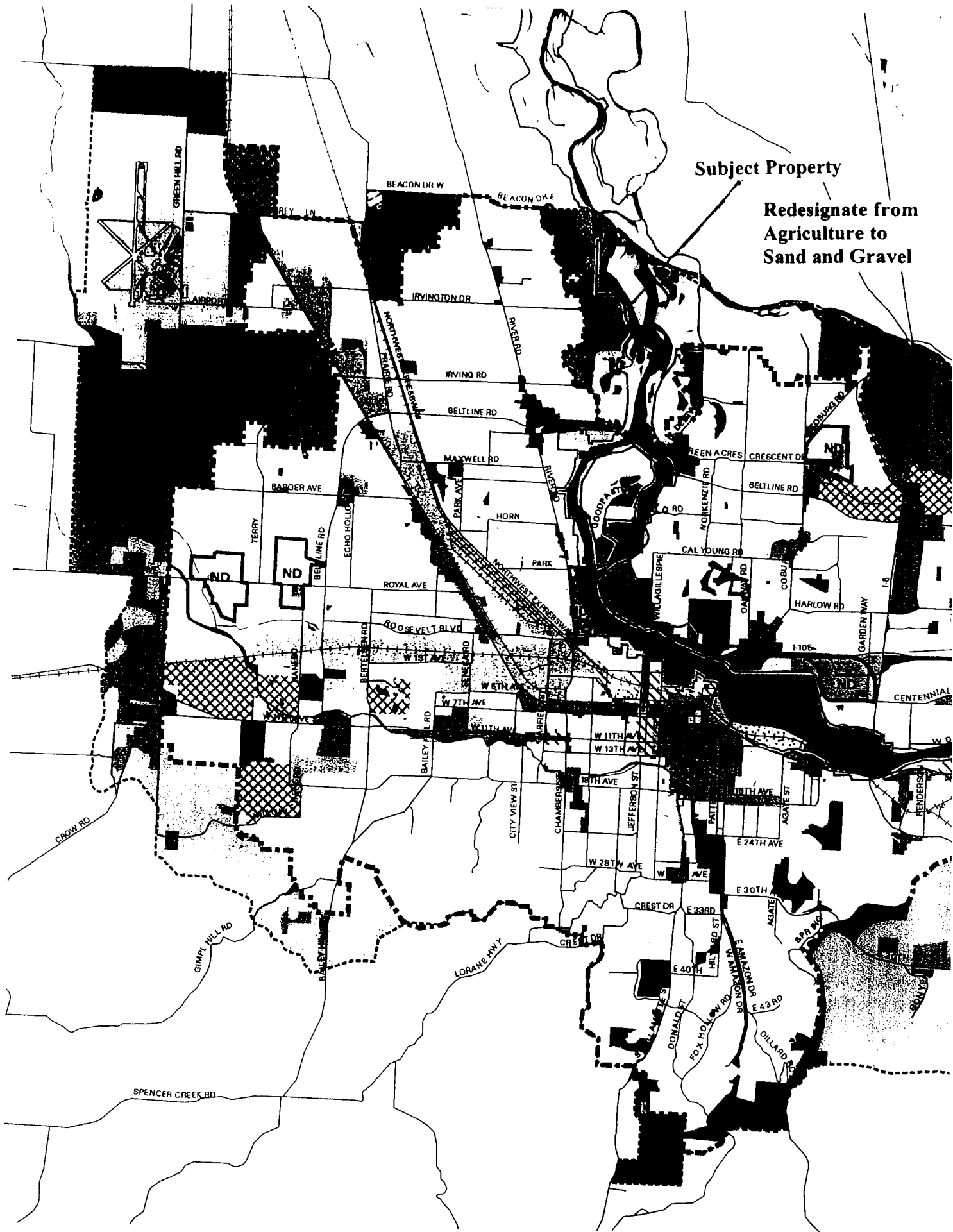
Eugene Ordinance No. 20319
 Springfield Ordinance No. 6087
 Lane County Ordinance No. PA 1197



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

Subject Property

Redesignate from
Agriculture to
Sand and Gravel



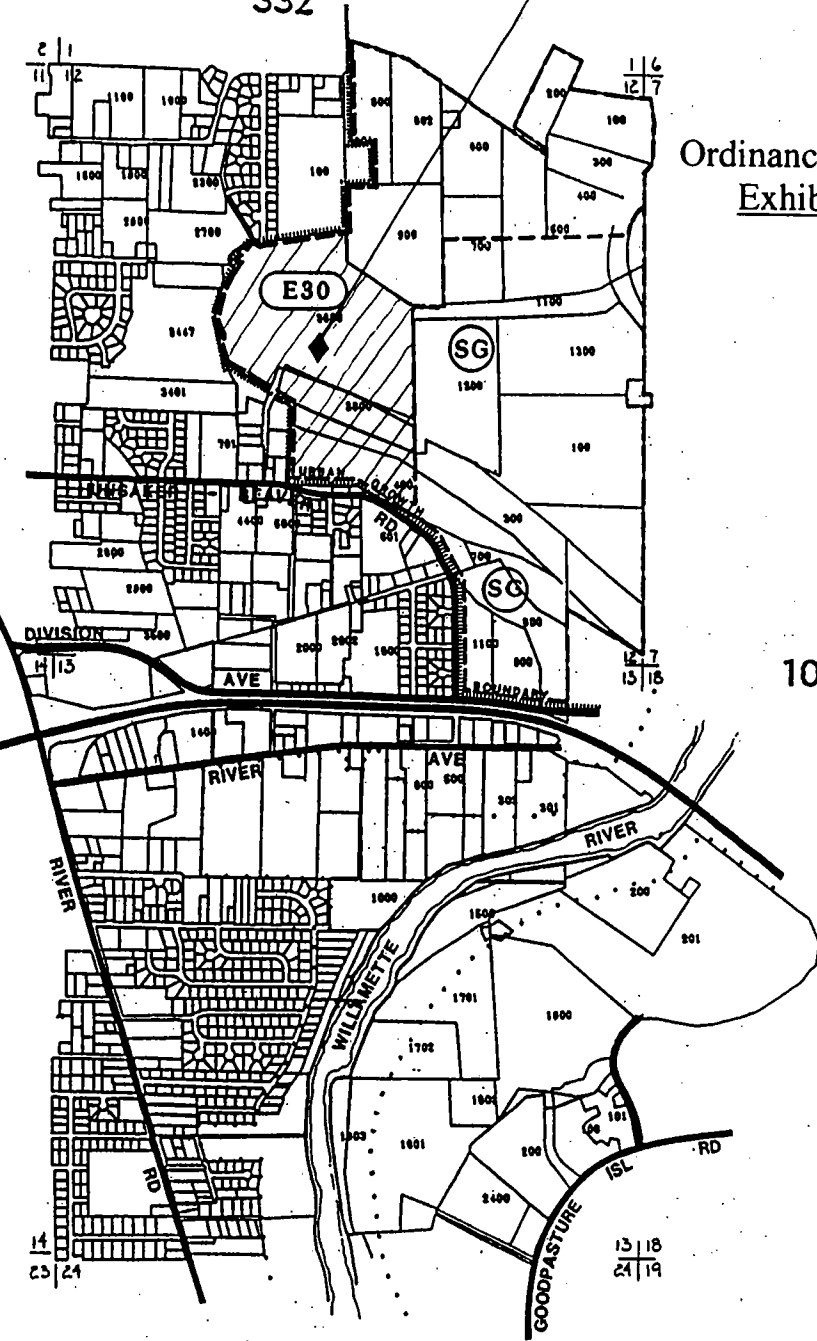
Rezone from
 'E30/Exclusive Farm Use' Zone
 to 'SG/Sand, Gravel and
 Rock Products' Zone

Subject Property

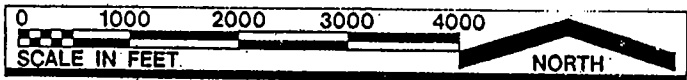
332

Ordinance No. PA 1238
 Exhibit B

FLOODPLAIN



1006



Lane county



OFFICIAL ZONING MAP

PLOT # 1005

Twship Range Section
 17 04 ~~12~~ / 17 04 ~~13~~ ()

ORIGINAL ORD. # PA 884 DATE 2/29/1984 FILE #

REVISION # ORD. # DATE FILE #

**Ordinance No. PA 1238
Metro Plan Amendment and Rezone
Delta Property Company**

**Conditions Necessary to Minimize Conflicts are Required to Become Part of Any
Operation Plan Reviewed or Approved under LC 16.217**

NOISE mitigation

All Zones:

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

Zone 1

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

Zone 2

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

Zone 3

Same restrictions as Zone 2 plus the following additional controls:

8. After overburden is removed, the front end loader removes a first lift of 13' of material by digging from the base of the first lift when the front end loader is within 550' of the western boundary of the Expansion area.

9. Excavator removes a second lift of 18' of material by digging from the base of the second lift (digging from below) when the excavator is within 800' of the western boundary of the Expansion Area.
10. If the excavator is operating at the same time as the front end loader, it must be 1500' or more away from any point on the western boundary of the Expansion area that is within 550' of the front end loader.

Zone 4

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

either

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

DUST mitigation

13. Implement standard dust minimization measures to minimize fugitive emissions from aggregate extraction. Dust suppressant shall be used as necessary. Add expansion area to the LRAPA-approved Fugitive Dust Control Program implemented on the currently permitted site.
14. Provide a water truck available at all times to sprinkle access roads, haul roads, and other vehicle traffic areas to keep dust emissions down.
15. Keep internal roadways used for onsite truck traffic away from property lines as far as practicable.
16. Trucks hauling dry, fine material and/or with visible emissions are required to be covered or wetted during transport off property.
17. Conduct the excavation in phases to minimize the size of the area being disturbed at any one time.
18. Maintain a minimum of 50' setbacks to all property lines at the boundary of the expansion area except near residential zoned properties where the setback shall be a minimum of 100'.

Existing Conditions in the Approved LRAPA permit Covering Current Operations:

19. Comply with the Fugitive Dust Control Program, required by LRAPA permit no.20119 for the expansion area, which will be added to the permit.
20. Conduct mining in phases to minimize the size of the disturbed area at any one time.
21. Vegetate mined areas to reclaim the land and minimize erosion and dust generation except where open water features exist in the reclamation plan.

GROUNDWATER

Condition proposed by the applicant:

22. Construct a low-permeability barrier in advance of proceeding with excavation in the expansion area consistent with the recommendations of EGR.

Existing Conditions in the Current DOGAMI Operating Permit (file record No. 17):

The permittee shall:

1. be sure all water leaving this operation complies with DEQ's effluent quality requirements.
2. maintain the dike between the site and the Willamette River so that the river does not erode into the pit.
3. construct perimeter roads on Confluence Island in a manner that they are armored against erosion.
4. follow the reclamation and operating plan labeled site 20-0131 for reclamation on Confluence Island.
5. comply with DEQ requirements regarding the backfilling activities in the main Delta Pit.
6. respread a minimum of 12 inches of topsoil over all reclaimed areas.
7. create fill slopes not to exceed 2H:1V, excavated slopes not exceeding 1.5H:1V, and pond slopes not to exceed 3H:1V to 6 feet below the low water level.
8. submit a Plan for Mining to the Sand and Gravel Review Committee for review of criteria in Lane Code 16.217 for review and approval.
9. obtain any necessary permits from regulatory agencies with hydrologic responsibility for plan approval.

10. conduct operations under a performance bond in the minimum amount of \$500 per acre and any additional dollar amounts determined by the Director to be necessary for site restoration.

★

COVER SHEET
APPLICATION

for

AMENDMENT OF THE EUGENE-SPRINGFIELD
METROPOLITAN COMPREHENSIVE PLAN MAP AND
SIGNIFICANT AGGREGATE RESOURCE SITE INVENTORY

and

ZONE CHANGE FROM EXCLUSIVE FARM USE (E-RCP)
TO SAND, GRAVEL AND ROCK PRODUCTS (SG-RCP)

DELTA PROPERTY COMPANY
999 Division Avenue
Eugene, Oregon

Submission Date:
August 12, 2005

★ Large Notebook hand delivered to BCC office,
Sept

MINUTES

Lane County Planning Commission
Eugene Planning Commission
Eugene Water and Electric Board Conference Room North

November 15, 2005
7 p.m.

PRESENT: Juanita Kirkham, Lisa Arkin, Ed Becker, Steve Dignam, James Carmichael, John Sullivan Nancy Nichols, Jozeph Zdzienicki, Todd Johnston, Lane County Planning Commission members; Kent Howe, Stephanie Schulz Staff;

Marlene Colbath, Chair; Phillip Carroll, John Belcher, Rich Duncan, John Lawless, Eugene Planning Commission Members; Steve Nystrom, Susan Muir, Kurt Yeiter, City of Eugene Staff

ABSENT: Randy Hledik, Eugene Planning Commission (recused)

- I. JOINT PUBLIC HEARING: PA 05-6151 – In the matter of amending the Eugene-Springfield Metropolitan Area General Plan to redesignate 72.31 acres from “Agricultural” to “Sand and Gravel,” amend the Goal 5 significant Aggregate Site Inventory to include the 72.31 acres, rezone the subject property from Exclusive Farm Use (E-RCP) to Sand, Gravel and Rock Products (SG-RCP). The proposal includes a request for two administrative variances to decrease setback provisions and to allow construction of a low permeability barrier within the setback area.**

Lane County Planning Commission Chair Steve Dignam convened the meeting at 7 pm. The commissioners present introduced themselves.

Addressing the audience, Mr. Dignam said the planning commissions had no decision making authority but would make recommendations to their respective elected officials which would be the Lane County Board of Commissioners and the Eugene City Council. He urged those who were going to testify to keep comments relevant to Oregon Statewide planning goals and guidelines.

Eugene Planning Commission President Mitzi Colbath opened the hearing for the Eugene Planning Commission. She called for declarations of *ex parte* contacts or conflicts of interest.

Lane County Planning Commission Member Todd Johnston recused himself from the proceeding for a conflict of interest.

Mr. Dignam opened the public hearing for the Lane County Planning Commission.

Eugene Planning Commissioner Rich Duncan noted that his company had done work in the same area but said he had no conflict of interest.

Lane County Planning Director Kent Howe provided the staff report. He said sand and gravel were protected resources under Goal 5. He acknowledged that the usual Goal 5 resources were wetlands, wildlife habitat, archeological sites, or historic/scenic resources but noted that because sand and gravel were non renewable resources they also fell under the Goal 5 rule and were protected. He outlined the process for approval of the application shown on an overhead projector. He said there was a clear and objective Oregon Administrative Rule to determine whether the site was deemed significant. He said Oregon Administrative Rule 660.023-180 dealt with the significance determination of a Gravel Resource Site.

1. **Determine if the Post Acknowledgement Plan Amendment (PAPA) information is adequate**
2. **Determine if the resource site is significant**
3. **Determine if mining conflicts can be minimized**
4. **Weigh the Economic, Social, Environmental, and Energy (ESEE) consequences and decide whether to allow mining**
5. **Determine the ESEE consequences of new uses on the resource site**
6. **Develop a program to allow mining.**

Lane County Planning Staff Stephanie Schulz continued with the staff report. She noted that notice for the public hearing had been sent out by direct mail as well as being published in local newspapers.

Ms. Schulz distributed written material that had been received after the staff report had been published.

Mr. Dignam called for testimony in favor of the application.

Steve Cornacchia, 180 East 11th Avenue, provided the applicant presentation for Delta Sand and Gravel. He distributed written material into the record. He called attention to the stamped document from Department of Geology and Mineral Industries, which is the current reclamation plan. He said DOGAMI had said the applicant had met the requirements for providing a reclamation plan for what would become of the land once extraction of the resource had been completed. He said the meeting packet included the permit application for adding the proposed expansion area to the existing DOGAMI permit and the reclamation plan that the applicant was currently operating under would be extended to the subject property. He said he submits a copy of the reclamation plan into the record. He stressed that the reclamation plan had been approved by DOGAMI.

Mr. Cornacchia submitted a letter from a local farmer who had farmed the expansion area in question and had provided a written evaluation of the quality of the land for farming purposes. He noted that the man had farmed the property for many years and did not think highly of the land for farming purposes.

Mr. Cornacchia submitted written material responding to statements written in the local paper. Regarding noise levels, Mr. Cornacchia said the inverse square law did not apply and said the physics of the matter were explained in the written material. He said Delta was placing itself under an additional requirement

which was an analysis of ambient noise levels. He said it would be demonstrated that the ambient noise levels from the quarry activities would also meet Department of Environmental quality noise standards.

Mr. Cornacchia said Delta Sand and Gravel had been a good neighbor in the area for 80 years. He showed an aerial map of the Delta property. He stressed that the company had conformed with every environmental and regulatory standard that had been applied. He showed the Delta area on the map and noted that a portion of the property abutted a residential area and stressed that there had been no citations or complaints filed against the company. He acknowledged that there had been a recent citation for dirt on River Loop Road that was still under discussion. He said demonstrating that the company did what it was supposed to do was how he defined a good neighbor. He said Delta was only asking to remove material from the area in question and was not requesting to move its rock crusher or any other processing equipment. He noted that it was the processing of the aggregate that made the most noise.

For the sake of comparison he called attention to a recent application filed by Eugene Sand and Gravel. He said the Delta application was completely different than that application. He reiterated the Delta had coexisted with residential neighbors without complaint for 80 years.

Reiterating Planning Director Kent Howe, Mr. Cornacchia noted that in 1996 LCDC decided that it was time to adopt rules for the siting of aggregate resources because of the significant opposition, concerns, and arbitrary decision making by the appropriate bodies. He said the new administrative rules were intended to create a system of objective criteria, demonstration and evidence. He acknowledged that every quarry application had faced opposition from nearby land owners. He stressed that applications were not a popularity contest but were instead a balance between the significant need for aggregate products and the land uses adjacent to quarries. He explained that the established standards and requirements contained methodologies for minimizing potential conflicts.

Mr. Cornacchia said if the company demonstrated that it met the established standards for noise and dust emanations then it had minimized any potential impacts. He said the noise study had divided the property into zones which required the company to do certain things to minimize noise in each of those zones. He said the company extraction operations occur below ground level and stressed that this lessened noise from the site. He said, because of concerns raised by nearby residents a noise study had been conducted at a new residential subdivision that was significantly further away than houses abutting the quarry site. This additional analysis was submitted into the record.

Mr. Cornacchia cited the staff report stating that there was a significant resource of gravel on the site. He said the analysis had determined that there was over 9 million tons of aggregate on the site. He noted that 2 million tons was the standard that determined significance of aggregate resources.

Mr. Cornacchia noted that the noise criteria enforced by DEQ stated that when a mine site was expanded onto a contiguous property the noise criteria that applied to the equipment in the old area also applied in the new area. He said this was a lesser standard than judging what noise would be on a new site. He said Delta had chosen to submit itself to the higher standards of noise mitigation. He said the higher standards required an analysis of ambient noise levels in addition to the decibel levels that occurred on the edges of the property and the noise study did include that.

Going back to dust, Mr. Cornacchia said Delta had complied with all dust regulations for 80 years. He noted that the standards for what the company had to do to be in compliance was included in the written

material submitted that evening. He said the company could produce 70 pounds of dust particulate per hour and still meet regulations. He said Delta currently emitted 22 pounds of particulate per hour.

Mr. Cornacchia called attention to the Lane Code requirements for setbacks from aggregate operations. He said setbacks were 150 feet. He said the setbacks could be reduced by the County department head. He said the variances being asked for were for reducing the setbacks to 50 feet near agricultural land and 100 feet for residential areas. He said the applicant had determined that there was a wetland near the site and said the 150 foot setback would be adhered to near that wetland area. He said the code required two things to grant a variance. The first was compatibility with the surrounding land. He said if the commissions came to the conclusion that the applicant had met the requirements for significance of the site and minimization of impacts, then the applicant had demonstrated compatibility under the law. The second test was that no flood hazard was created by mining. He noted that the applicant had an engineering report that stated that because the mining was done below ground level there was nothing present to impede flood waters in the area. He said those two findings demonstrated that the criteria had been met for the requested variance. He said for the other variance for installing a low permeability barrier in the setback area the commissions had to decide that the applicant would fill the area with material that was non pollutant and that would not decompose. He said the company had estimated that the 50 feet requested in the variance contained around the 400,000 tons of aggregate material.

Regarding running water, Mr. Cornacchia said the water that flowed through the first 15 to 20 feet of depth would not be allowed to run into the pit. He said the low permeability barrier would prevent this to ensure that the quarry did not impact ground water users in the area. He noted that all of the residential areas surrounding areas were all connected to public water sources but acknowledged that some had wells that were not used for domestic purposes. He said the barrier was there to protect groundwater sources.

Mr. Cornacchia noted that there was a staff report comment that the coarse aggregate material found in the analysis met ODOT requirements for use. He said the EGR report also included a statement that the fine aggregate samples did not meet ODOT requirements but noted that this was not injurious to the application. He stressed that the applicant was only required to demonstrate that coarse material met the ODOT requirements.

Mr. Cornacchia reiterated that Delta had been a good neighbor in the area for 80 years. He said the application showed that Delta would continue to be a good neighbor into the future.

Shane Hughes, EGR and Associates, 2535 Prairie Road, said his company specialized in civil engineering and hydrogeology. He said he had been licensed to practice civil engineering since 1982. He said he had been working for Delta Sand and Gravel for 13 years and were routinely asked to visit the site and consult with them on similar topics to what was under discussion as the public hearing that evening. He remarked that Delta was a good steward of the land.

Mr. Hughes said the applicant was required to show that there were 2 million cubic yards of resource that went to a depth of 60 feet in the area described in the application. He noted that staff had concluded that the quantity/depth criteria had been met. He said he had done a visual examination of an exposed face of aggregate. He said the exposed wall was entire eastern area of the proposed expansion area. He said a visual examination did not show if the aggregate thinned out as one moved west so he went as far west as possible on the site and bored a 80 foot hole and did not find the end of the resource. He added that two more holes had been bored in the middle of the site with the same result.

Regarding quality of the resource, Mr. Hughes noted that the staff report had said that fine aggregate fractions did not meet Oregon Department of Transportation standards. He clarified that all of the tests of all of the samples met the ODOT base standards which were required in the application but noted that OAR660.23180(3) stipulated a base rock test for sodium sulfide which was a chemical abrasion test for which ODOT did not have a standard. He said the closest ODOT test was a concrete standard. He noted that concrete tests were much more stringent than base rock tests. He said the coarse material met the more stringent concrete test and the fine material did not meet the concrete test. He said the intent of the process was to demonstrate that there was enough material of a good enough quality to be protected as a resource. He said the area had three times the amount of material that met the requirements of the test. He added that staff had raised concern that the evidence was based on too few borings. He called attention to the applicant's report and noted that the sample results of the borings that *had* been made were identical. He said 1000 more holes could be bored and the results would be the same.

Steve Recca, EGR and Associates, spoke as the Geologist for the applicant. He said EGR had been retained to determine if there would be ground water impacts as a result of the expansion of the current excavation. He said there were two methodologies to prevent ground water from getting into the pit. The first was to install ground wells around the pit or set up an impermeable area, (slurry walls), to prevent migration of ground water from entering the pit. He said both were standard construction techniques that were used in dams. He stressed that the slurry walls would be below ground so there would be no impact to flooding above ground. He said they were non structural components that could not be immediately placed against the pit wall and this was why they needed to be installed in the buffer zone. He added that the slurry walls would be constructed from on site materials left over from gravel extraction. He said the slurry walls would insure that there would be no inverse impacts to ground water and would reduce the cost of pumping water out of the pit.

George Staples and Gordon Loeschen, Delta Sand and Gravel, outlined the Delta property shown on the aerial map. Mr. Loeschen noted that there was a nearby Heron rookery as well as a tree nursery on the property. He stressed that neither had been adversely impacted by the quarry. Mr. Staples noted that 85 acres in the reclamation area on the site had been reclaimed to date. He added that the water table behind the impermeable barrier to be installed would be maintained at its current levels.

Mr. Staples said if the application were not approved then Delta had approximately 10 years of material to extract. He said if the expansion area were allowed it would add an additional 10-12 years for the company to operate in that area. He noted that a sound and sight barrier would be planted on top of the ground water dam. He said fir trees would be planted but would need time to be established. He stressed that the slurry wall would maintain ground water levels.

Mr. Staples said the rock crusher currently operating on the site would not be moved. He said Delta would be building a road out of recycled concrete that would lead to the crusher. He said this would reduce distance traveled in the crusher and air emissions from the trucks by 30 percent. He added that Delta would be installing sprayers which will reduce dust tracked onto the streets from the site.

Avon Lee Babb, 645 Spy Glass, said his father had been born on the property in 1895 and said the property in the application had been in Babb family ownership for over 110 years. He said he and his brother had started Delta in 1965 and noted that Delta supported many local social service providers, schools and hospitals. He noted that Delta had been awarded the National Award for Business Ethics. He

said Delta excavated approximately 7 acres of land per year and reclaimed 5 of those acres. His dream for the land was to see the land eventually developed into a regional park with miles of river frontage and a lake.

Alan Babb, 695 Fair Oaks Drive, spoke as the manager of Delta Sand and Gravel. He said the application was enough to show that all criteria and rules for expansion had been met. He urged the commissions to remember that the application was for an addition to an existing site and there would be no change in operations or additional trucks and truck routes. He said the land in question was not good farm land. He noted that he had done a lot of farm work on the land himself. He noted that some of the land was impossible to plow because of the amount of gravel in the soil.

Mr. Babb stressed that Delta was one of the few businesses that provided family wage jobs that had insurance benefits and pension for employees. He stressed that 217 families depended on Delta for their wages. He stressed that Delta offered extraordinary family wage jobs.

Mr. Babb said the current site had approximately ten years of resource left to extract. He said the time left to the operation was important for decisions that had to be made regarding machinery purchase. He said the expansion was vital for continued operations.

Dan Stotter, on behalf of Santa Clara Neighborhood Association, requested that the record be left open for 60 days to allow informed decision making by the commissions. He noted that many of the same experts who had spoken for Delta Sand and Gravel were not highly thought of by their scientific peers and had presented 'poor science' to the commissions. He said he had experts in geology, noise, ground water, flood impacts, wetlands, transportation and environmental resources who all needed 45 to 60 days to respond to the material presented by the applicant.

Mr. Stotter noted that the area in question was in close proximity to dense residential neighborhoods and schools and there were significant potential impacts. He added that the burden was on the applicant to show that there would be no impacts to surrounding areas. He reiterated that the applicant was providing poor scientific evidence. He raised concern over potential flooding in the area. He submitted written material into the record.

Robert Funk, 428 Gerald Avenue, maintained that the variances sought by the applicant would have potential flooding impacts. He said the impermeable wall was essentially an under ground dam that would cause the flooding of ground water in the surrounding area. He also raised concern over dust generated on the site and extra traffic from the site during summer months.

Jim Nepler, 49 Salty Way, said 100 home owners would be adversely affected by the expansion. He noted that his son had an asthma condition and raised concern over dust emanating from the quarry site. He expressed his distrust of the Delta Sand and Gravel Study. He commented that there needed to be more study of wind patterns to see how dust emitted from the quarry would dissipate. He added that it was the role of the commissions to determine if the applicant had met the criteria for approval but stressed that there was also a value judgment to be made on the part of the commissions. He said homeowners would lose property value if the application were approved.

Donald Faiman, 3536 Baywood Street, said he lived in a Type A flood zone. He said most of the houses in the area had been built just above the flood zone and did not have to pay flood insurance. He raised concern that if the barrier dam were built in the buffer area the flood zone would expand.

Brock Guentner, said he had just heard about the proposed expansion two weeks previously. He said nobody had said anything to him when he purchased his house about a possible quarry expansion. He urged that more time be granted for scientific evidence to be collected to refute what had been presented by the applicant. He added that the quarry should be responsible for where drainage water went when it left the quarry site. He urged the commissions to deny the application until more scientific evidence was submitted.

Joel Narva, 2830 Echo Lane, submitted written testimony into the record. He stressed that the Babb family were good citizens but commented that 'reclamation' was a relative term. He said Delta had filled in its pits with construction debris such as tires and chunks of broken cement. He also raised concern over flooding during winter months if the underground dam was constructed. He added concerns over noise and urged the commissions not to be fooled by decibel levels provided by the applicant. He said could hear the gravel trucks at his house at 1000 feet away.

Kate Pearle 4740 Wendover Street, urged the commissions to deny the application. She said the land in question was class two soil and prime farm land which was protected from development by state standards. She said the land was a significant source of local food. She said neighboring land would also be negatively impacted. She said farmers of the future would not necessarily be of the same positive opinion as the farmer currently working next to the quarry. She raised concern over the possible lowering of the water table in the area if the expansion of the quarry were allowed. She said farmers had documented lower water tables due to Delta's mining of gravel. She urged the commissions to ask for a site reclamation plan that reflected current best practices.

Jeff Sweet, 442 Gerold Avenue, only received notice two weeks previously. He urged the commissioners to pay special attention to the fact that the future expansion of the city would be to the north and around the quarry. He said commissioners needed to think about what the city would look like in 75-100 years and suggested that heavy industrial operations should be moved further out from the center of the City. He also raised concerns over the impact of quarry dust on children and homes in the area.

Mike Alltucker, President of Eugene Sand and Gravel, spoke in support of the application. He said he was keenly aware of the need for aggregate in the community. He cited a figure of ten tons per person per year as what was needed in the local area. He said that number would swell to 5.2 million tons needed per year in the near future. He stressed that the community needed the rock and support of the application was just good planning.

Corallee Whitely, 3535 Allan Street, raised concern that her house was in a flood plain and disturbance of the land would make flood hazards worse. She also raised concern that property values in the area would go down if the quarry were allowed to expand. She suggested that there should be a local vote by the people over the zone change. She expressed her opinion that quarries should be moved out of city limits and added that the applicant should provide an expert to show how flooding concerns would be addressed.

Gene Odell Pearle Jones 4740 Wendover, said that Delta Sand and Gravel was dumping trash into its gravel pit. He stressed the importance of having clean drinking water for the area.

Kevin Jones, 4740 Wendover Street, opposed the expansion because it would interfere with farming. He stressed that the expansion would affect farming in many ways. He said clean available well water was essential to his farming operation. He said Delta would not drill him a new well if his went dry because of quarry operations. He said dust was an area of concern when raising healthy crops and raised concern over dust emanating from the quarry. He said farmland had higher resource value than a quarry and noted that Lane County had less than 10 percent of prime farmland left.

Jeff Ankeny, 3120 Admiral, said his property bordered the north side of Delta's property and had never impacted his farming operation. He strongly supported the application and stressed the need for gravel in the community.

Kurt Eaton, 408 Salty Way, said his family lived in the 'significant impact area.' He said the area of question was significantly different than other land being used by Delta. He noted that the expansion area was bordered by residential areas on three sides and raised concern over dust emissions from the quarry. He asked that the commissions deny the application.

Mark Reed, 719 East Beacon Drive, said he was geologist and specialized in resource geology. He said he was concerned over supply of aggregate, supply of farmland, and high quality of scientific work in the context of government decision making. He said sampling was a key part of his work. He said there were excellent alternatives to sand and gravel in Oregon. As an example, he said basalt production could be increased. Mr Reed submitted material into the record.

Steve Hill 2942 Windgate Street, supported the application. He said property owners should have the right to do what they wanted with their own property. He urged the commissions to consider the need for gravel in Lane County. He stressed that Delta would do all it could to mitigate impacts and live by the letter of the law.

Clyde Beek, 55 Delay Drive, spoke as the owner of the tree nursery adjacent to the quarry that leases acreage on the subject property. He said he had lived on his property since 1945. He said his nursery made more dust than Delta ever thought of making and no one complained. He noted that an adjacent farmer made huge amounts of dust during his operations.

Regarding flooding, Mr. Beek said if Delta's pit had not been there in 1996 then there would have been flooding along Admiral Street. He noted that the land in question had been farmed by him in the past and he had lost 70 percent of his crop.

Regarding moving the quarry, Mr. Beek stressed that a quarry had to go where the aggregate was located.

Randy Hledik, Wildish Sand and Gravel Company, urged the commissions to consider that the amount of land designated in the Metropolitan Area General Plan for aggregate extraction had not changed in 20 years but during those 20 years millions of tons of aggregate had been mined and used in the local community. He said there was no substitute for raw aggregate for building material. He said future demand would further reduce supply. He stressed that aggregate was not a renewable resource. He stressed that Sand and Gravel was a Goal 5 resource and deserved the same protection as other resources with that designation. He said aggregate sources close to their point of use needed to be preserved for future use.

Greg See, 2746 Taito Street, showed his property on an overhead projector. He urged the commissions to deny the application because citizens had not had the opportunity to study and refute the scientific evidence presented by the applicant. He asked for a 90 day extension of the record to complete that work. He said the expansion would cause significant harm to the surrounding areas and added that no noise studies had been done for the residential areas further away from the quarry. He added that the people in the area needed proof that the underground dam would not affect the local water table. He acknowledged that Delta had been a good neighbor and provided good jobs but said the question was not about jobs but about a rezone that would affect the community.

Scott Landgreen, 296 Hunsaker Lane, said there was dust problem almost a half a mile from the existing quarry and his property would have a worse problem if the quarry were to expand. He also raised concern over flooding of his property. He added that he had received no notice of the planned expansion.

Russ Fish, 2795 Summer Lane, maintained that dust did blow to the south of the quarry. He said the land should stay zoned as agricultural and urged the commissions to deny the application.

Tyler Trumball, 445 Salty Way, raised concern over impacts to a very nice area if the quarry were to expand. He said expansion might force people out of the neighborhood if their property values decreased because of the quarry operation.

Seeing no one else wishing to testify, Mr. Dignam called for options from Planning Director Howe on how to proceed.

Mr. Howe recommended leaving the written record open for two weeks, two additional weeks for new information to be submitted and an additional week for applicant rebuttal. He said if commissioners had questions they could e-mail them to him.

Eugene Planning Commissioner Jon Belcher questioned whether there were any statutory requirements that would disallow extending the hearing for more than two weeks.

Mr. Howe said there were no such requirements.

Eugene Planning Commissioner John Lawless suggested leaving the record open for 90 days. He said two weeks seemed inadequate for research time.

Lane County Planning Commissioner Steve Carmichael agreed and suggested a longer period than two weeks.

Lane County Planning Commissioner Jozef Zdzienicki suggested leaving the record open for 90 days. He noted that some of the people who testified had said they received no notice.

Lane County Planning Commissioner Lisa Arkin supported the suggestion to leave the record open for 90 days. She stressed the need for the commissions to make an informed decision.

Planning Director Howe stated that the county met all legal requirements for public notice of the hearing.

Mr. Belcher supported leaving the record open for 90 days.

In response to a question from Ms. Colbath regarding future deliberation of the information in the record, Planning Director Howe said e-mailed commission questions would be responded to until the record was closed and then the commissions would go into deliberations. He said questions could still be answered by staff after the record was closed but no new information could be submitted after the record was closed. He said there needed to be a period for new information to be submitted, a period for reply, and a period for rebuttal of new information by the applicant.

Lane County Planning Commissioner John Sullivan noted that the attorney for the opposition only needed 60 days.

Steve Cornacchia suggested having another public hearing in 60 days where everyone who had testified that evening would be prohibited from testifying again to avoid repetition. He said all of the questions raised could be responded to by the applicant. He expressed his preference for a 30 day extension period. He said a 90 day period was excessive.

Planning Director Howe said there could be a 60 day extension and the commissions could continue the hearing on a date certain of January 17.

Mr. Zdzienicki said he did not agree with restricting who could speak at the next hearing.

Mr. Sullivan agreed and encouraged continuing the hearing to a date certain of January 17.

Mr. Duncan stressed that people who had not testified wanted to testify then they should be allowed. He expressed a hope that the testimony would not be repetitious.

Mr. Lawless supported 60 days while still leaving the record open during that time.

Mr. Dignam said he supported that idea.

Ms. Kirkham, seconded by Mr. Sullivan, moved to leave the public record open and continue the public hearing in 60 days (January 17, 2006) and preclude any testimony other than expert witnesses.

Mr. Zdzienicki said he would prefer 90 days but, in the interests of cooperation, would support the motion.

Ms. Arkin offered a friendly amendment which was accepted to allow the attorney for the opposition enough time to present a full argument.

The motion, as amended, passed unanimously.

Eugene Planning Commissioner Phillip Carroll expressed his discomfort with limiting/restricting anyone's testimony.

Ms. Colbath called for a motion from the Eugene Planning Commission

Mr. Belcher, seconded by Mr. Duncan, moved to adopt the motion of the Lane County Planning Commission but to remove the prohibition of public testimony.

City of Eugene Planner Steve Nystrom suggested a motion to continue the hearing on January 17. He said testimony will be limited to new evidence presented by anyone.

Mr. Belcher with the permission of his second withdrew his motion.

Mr. Belcher, seconded by Mr. Lawless, moved that the hearing be continued on January 17, 2006 and testimony be limited to new evidence provided by anyone who wished to speak.

The motion passes unanimously.

Mr. Sullivan said he supported the Eugene commission's motion.

Ms. Arkin, seconded by Mr. Zdzienicki, moved to withdraw the earlier Lane County Commission motion and adopt the motion of the Eugene Planning Commission.

The motion passed unanimously.

The hearing was continued to January 17. Planning Director Howe urged commissioners to forward questions to commission staff as soon as possible.

The meeting adjourned at 10:20 pm.

(Recorded by Joe Sams)

MINUTES

Lane County Planning Commission and Eugene Planning Commission
Council Chamber – Eugene City Hall – 777 Pearl

January 17, 2006
7:00 p.m.

PRESENT: Lisa Arkin, Ed Becker, Steve Dignam, James Carmichael, Todd Johnston, Juanita Kirkham, John Sullivan, Nancy Nichols, Jozef Zdzienicki, members

Mitzi Colbath, Rick Duncan, John Belcher, John Lawless, Phillip Carroll, Phillip Hudspeth, Eugene Planning Commission

Stephanie Schulz, Kent Howe Lane County Staff

Steve Nystrom, Kurt Yeiter, City of Eugene Staff

- I. CONTINUED JOINT PUBLIC HEARING: PA 05-6151 – In the matter of amending the Eugene-Springfield Metropolitan Area General Plan to redesignate 72.31 acres from “Agricultural” to “Sand and Gravel,” amend the Goal 5 significant Aggregate Site Inventory to include the 72.31 acres, rezone the subject property from Exclusive Farm Use (E-RCP) to Sand, Gravel and Rock Products (SG-RCP). The proposal includes a request for two administrative variances to decrease setback provisions and to allow construction of a low permeability barrier within the setback area.**

Commission Chair James Carmichael convened the meeting of the Lane County Planning Commission.

Eugene Planning Commission Chair Mitzi Colbath convened the meeting of the Eugene Planning Commission.

Mr. Carmichael thanked the audience for attending the hearing. He noted that the commission members were all volunteers who made recommendations to elected officials.

The commissioners present introduced themselves.

Lane County Planning Commissioner Todd Johnston recused himself from the meeting.

City of Eugene Staff Kurt Yeiter noted for the record that Eugene Planning Commissioner Hledik had also recused himself from the hearing.

Mr. Carmichael requested that the audience show courtesy for all speakers and acknowledge that everyone had a right to disagree. He urged those signed up to speak to not repeat testimony and keep testimony related to the issue.

Mr. Carmichael opened the public hearing for the Lane County Planning Commission.

Ms. Colbath opened the public hearing for the Eugene Planning Commission.

Lane County Planning Staff Stephanie Schulz provided the staff report. She noted that the written report contained answers to questions asked by the commissions during the previous public hearing. She said that some questions were more appropriately answered by the applicant and said those questions had been noted in the staff report.

Steve Cornacchia, 180 East 11th Avenue, spoke as the applicant's representative. He noted that LCDC had modified OAR 660-023-0180 and the application did not conform exactly to that modified wording. He said there was no substantive change or difference in the actual criteria that the applicant was required to address. He said LCDC had added paragraph 4 and a paragraph 6 but stressed that neither of which pertained to the application since both referred to a Post Acknowledgement Plan Amendment process that dealt with a piece of property that had less than two million tons of aggregate. He remarked that the applicant had 9 million tons of aggregate and therefore came under paragraph five of the OAR.

Mr. Cornacchia said the commissions had been provided with a memorandum from a City of Eugene transportation analyst that stated that the applicant had not addressed some provisions in Eugene Code regarding transportation. He reminded the commissions that the administrative rule was very specific about the criteria to be addressed by the applicant and to be considered by the commissions. He said if the City of Eugene and Lane County had not adopted regulations consistent with the Goal 5 rule then only the provisions of the Goal 5 Rule were subject to the proceeding. He noted that neither Lane County or the City of Eugene had adopted regulations consistent with the Goal 5 Rule and stated that the commissions had to operate under OAR 660-023-0180. He reiterated that the applicant had stated that the increase in its supply of aggregate would in no way affect the number of trips to and from the quarry. He also noted that the Lane County Transportation Division had determined that there was no traffic impact and a traffic impact analysis was not required.

Regarding the Lane Regional Air Pollution Authority permit, Mr. Cornacchia said the permit limited the production of aggregate at the facility to 2 million tons per year as well as a daily output requirement. He said the current LRAPA discharge permit remained valid until LRAPA issued a new permit. He said LRAPA was currently going through the process of issuing a new permit.

Mr. Cornacchia distributed/submitted additional written materials from David Standlee who had done the noise analysis for the applicant. He said the materials discussed the legitimacy of the calibration of the measuring instruments since a question had been raised at the last hearing. He added that there were some new houses that had been built in the Silver Meadows and Mr. Standlee had recommended that the Zone 4 protection area be expanded to move the DEQ compliance line at the edge of Delta's property.

Mr. Cornacchia said the applicant was amending the request of a variance for the setback where there had been a request to excavate in the setback to within 100 feet of properties and 50 feet on resource land. He said the request for the variance had been withdrawn for the entire length of the set back on the west side that abutted residential areas.

Mr. Cornacchia distributed a letter from himself to the commissions summarizing the reports provided by experts testifying for the applicant. He said all of the reports that evening were responses to the testimony raised by the opposition during the previous hearing.

Regarding ground water and the construction of a low permeability barrier, Mr. Cornacchia said several citizens had raised concern that the barrier would raise ground water levels and cause flooding. He stressed that surface and ground water were two different things and, in fact, ground water would move sideways once it reached the low permeability barrier and would continue to move sideways until it found an open way elsewhere. He reiterated that the water level would not be raised.

In response to a question from Lane County Planning Commission member Jozef Zdzienicki regarding the requested variance, Mr. Cornacchia said the request for variance on the west side of the property had been withdrawn but the request for the variance for remaining sides was still valid.

In response to a question from Lane County Commission member John Sullivan regarding the letters received and where it was stated that a Traffic Impact Analysis was not required, Ms. Schulz said the written material she had just distributed had an e-mail memorandum where that statement from Lane County Transportation Staff was shown.

Shane Hughes, Principal Engineer for EGR and Associates, noted that there had been concern on the part of the opposition about the low permeability barrier and whether it would cause flooding. Regarding surface water aspects, he said anything below the ground did not have anything to do with surface water. He said that during a flooding event it was assumed that the ground was saturated or of low enough permeability that there was no penetration. He called attention to pages 3-5 of his report regarding flood impacts as well as page 18 of the staff report. He said there were references to an adjustment to a vertical datum that had been transposed and noted that the actual number was 3.57 feet. He said there were planes of reference that surveyors took their measurements from including flood elevations. He noted that there were more than one datum and said that the two that were in use for the proceedings were NGVD 29 and NAVD 88. He said all of the site data was on the 88 datum and all of the flood data was on the 29 datum. He said, in order to make the numbers make sense when they were compared with one another they would have to be put on the same plane of reference. He stressed that this had nothing to do with altering flood elevations or FEMA mapping. He also stressed that all of the proposed activity for the project would be done below grade and excavation with no filling above grade or above grade sound berms so there would be nothing to impede flood waters and, in fact, the excavation would buffer against a flood should one occur.

In response to a question from Eugene Planning Commission member John Belcher regarding whether the low permeability barrier would cause the ground around it to be saturated faster, Mr. Hughes said the measurement of flood impacts did not include whether the ground was saturated. He said other experts would testify to the ground water level. He said the commissioners should also consider the excavation volume of the gravel pit itself.

In response to a question from Lane County Planning Commission member Steve Dignam regarding whether it was his contention that there was no increased risk of flooding as a result of the project, Mr. Hughes stressed that there was zero chance of increased flooding.

In response to a question from Mr. Zdzienicki regarding whether it was his contention that there would be no risk of flooding because of the installation of the low permeability barrier, Mr. Hughes said the low permeability barrier surrounding certain sides of the pit was designed to not allow ground water tables to be drawn down. He reiterated that this activity would have nothing to do with surface water flooding or the analysis of surface water.

Mr. Zdzienicki said the reason for the low permeability barrier was to prevent ground water from adjoining properties to seep into the pit.

Mr. Hughes said there were other experts for the applicant that had more knowledge of the issue but said his understanding of the reasoning behind the low permeability barrier was to prevent the ground water levels for adjoining properties to be drawn down.

Ralph Christensen, EGR and Associates, 2535 Prarie Road, submitted written material into the record. He said the low permeability barrier could better be described as a 'coffer dam' in a river. He said a coffer dam did not substantially change the water level of a river since the water would simply go around the dam and flow away. He said the barrier would reduce the amount of water seeping into the pit but would also hold the level of ground water stable in the areas around the quarry.

Regarding the concern that the barrier would cause flooding in the area, Mr. Christensen said in a flood situation the ground water would be measured and might hold as much as 1-3 cubic feet of water in a square foot of ground ten feet deep. He said a flood over the top of that would be measured in cubic feet per second so a cubic foot of ground ten feet deep, in extreme situations, could possibly hold three seconds of water before it was saturated. He stressed that it did not matter how much saturation of the ground there was during a flood event.

Regarding the concern that the low permeability barrier was unproven technology, Mr. Christensen said there were many references in the written report that the barrier was not new technology and had been made use of in many other locations.

MR. Christensen also commented on the replacability of gravel with basalt rack, and added that LCDC and ODOT had written a report on crushed aggregate and sand & gravel which stated that they were not the same thing. He said sand & gravel was preferentially used in concrete and it was not appropriate to switch that with quarried rock.

Regarding sampling, Mr. Christensen said there had been reference made by the opposition regarding the ASTM standards on how sampling was done. He stressed that it was particularly important to note that when open face mining was taking place, the prescribed method was a composite sample of rock from top to bottom. He said the same ASTM standard stated that the actual rock that should be samples was the processed rock that was ready to be sold. He stressed that the samples used for the quality analysis in the application were not the processed rock but composite samples that still met the requirements for being listed as a significant resource. He added that if the processed rock had been used as a sample then the resource quality rating would have been even higher.

In response to a question from Eugene Planning Commissioner Ms. Colbath regarding where ground water would go when it met the low permeability barrier, Mr. Christensen said the water would flow out into the Willamette River where all the ground water in the River Road/Santa Clara area was moving. He said during the winter when water levels were high enough the water would flow out through small channels that passed through that area.

In response to a question from Mr. Zdzienicki regarding the effect of the low permeability barrier on the east Santa Clara waterway which needed to be protected under Environmental, Social, Economic, and Energy, (ESEE) standards, Mr. Christensen said there was less water flowing in the waterway now than when the barrier was constructed. He noted that the water table would be raised to the bottom of the water way when the barrier was constructed. He remarked that the waterway was dry for a significant portion of the year.

In response to a question from Mr. Zdzienicki regarding the size of the setback from the waterway to protect its natural vegetation, Mr. Christensen said the setback had already been proposed by the applicant. He said setbacks were not part of his area of expertise but remarked a setback would be adequate as long as the vegetation was not

disturbed. He noted that the current ground water levels had been drawn down to such a degree that much of the natural vegetation in the water way had already been lost.

In response to a question from Lane County Planning Commission Member Lisa Arkin regarding how the higher water table caused by the low permeability barrier would affect nearby property owner's issue of insurance and the requirement of building one foot above the water table, Mr. Christensen said it was important to understand that the requirement was to build one foot above the 100 year flood level. He added that this was a surface water requirement. He stressed that the low permeability barrier would raise the ground water to its historic level which would be the same as what was found in the rest of the River Road/Santa Clara area. He said the barrier could not suddenly raise the water level above the ground water level in the rest of the area. He stressed that the ground water level around Delta would rise to that same level which was generally 8 feet below the surface during the winter.

Dick Ruth, PO Box 1491, Eugene, submitted written material into the record. He said he had worked in environmental dispute resolution as well as 13 years working at Lane Regional Air Pollution Authority. He said he had been interested in the Delta Sand and Gravel case because he had inspected the facility when he worked for LRAPA and was aware of the efforts the company made to "do the right thing." He said he had reviewed data regarding the wind patterns in the area because of the concern of the neighbors about dust blowing their way. He said his written material contained historical data from the meteorological site by Madison Middle School. He said the key point was that the chart showed very little wind blowing from the east (4 percent) both for the long term average and for the summer months or dry season. He said there should be very little wind born dust blowing into the neighbors on the west of the site since the wind blew so rarely from the east. He added that the wind was below six miles per hour for the most part which would also be to the neighbor's benefit.

Mr. Ruth said he had also done enforcement of noise reduction standards for the Department of Environmental Quality for Lane, Linn, and Benton Counties. He said he had reviewed the consultant's report on noise and was impressed by the detail of the examination of individual equipment. He said the applicant had done a very thorough job of understanding and mitigating noise of the operation.

In response to a question from Ms. Arkin regarding whether there would be significant dust impact to the northwest of the site, Mr. Ruth said the chart in his written material showed that 15 percent of the time the wind blew from the south east to the northwest. He said often those winds were associated with weather fronts moving through the area that often brought rain which would also mitigate dust. He stressed that the prevailing wind patterns were from the north/northwest in the summer time.

In response to a question from Lane County Planning Commissioner Steve Dignam regarding his qualifications, Mr. Ruth said he had worked for over 30 years in environmental fields including 13 years with LRAPA. He added that he was also the Director of Health, Safety, and Environment for an asbestos abatement company in Houston and said since 1990 he had been doing consulting on environmental site assessments and had also worked in environmental dispute resolution and mediation. He said his interest in mediation had attracted him to the Delta application. He said neighbors often wanted to have scientific data reviewed by someone who was more objective rather than from one of the opposing sides. He expressed the hope that the data he had collected would be reassuring to the neighbors.

Eugene Planning Commissioner John Belcher commented that, by the data shown on Mr. Ruth's written material, the wind blew from the southeast and south southeast 18.5 percent of the time for a total of one day out of four.

In response to a question from Mr. Sullivan regarding noise and the indication in his report that he was satisfied with the mitigation efforts proposed by Delta Sand and Gravel and whether the methods used were typical methods that noise was mitigated to DEQ requirements, Mr. Ruth said the typical method was to handle mitigation efforts in a step by step fashion. He said the most obvious mitigation efforts were carried out first and if more was needed then other efforts could be made. He reiterated that the study conducted by Delta was thoroughly done and he had been impressed. He added that there were equipment specific things that could be done to reduce noise further.

In response to a question from Ms. Arkin regarding if the wind data near Madison Middle School was the same as the data collected at the airport, Mr. Ruth said he had not made that specific comparison but commented that the data should be basically the same since the topography was a broad scope open valley so there were not hills in the way. In spite of that he said he would expect some differences since there were trees around the neighborhoods and there was also an open pit to the east. He said the topographic differences would not really change the patterns of the seasons. He said when low systems came through there was some wind from the south and south southeast and reiterated that those winds often brought rain with them. He said he had checked the rain patterns for the last 53 years and almost every day over the long term there had been at least 2/100 of an inch of rain. He reiterated that rain was a mitigating factor and said the wetness of the site was a benefit.

Ms. Arkin commented that she had seen other Wind Rose graphs and had seen indications of wind from the south and southeast during the non summer months.

Mr. Ruth suggested looking at the long term chart because it contained the full history of the entire site.

In response to a question from Ms. Colbath regarding his remarks about noise enforcement, Mr. Ruth said he had experience with noise enforcement while working for the Department of Environmental Quality, (DEQ), but remarked that the applicant had a primary noise enforcement specialist from Beaverton that had done the study he had reviewed.

George Staples, Delta Sand and Gravel, said he was testifying to answer some of the questions that had been raised by the commissions. Regarding the type of soil to be used for the low permeability barrier proposed for around the new site, he said there were clay deposits on site that could not be used for sand and gravel purposes and that material would be put into the barrier as well as clean fill dirt that could be used to fill in the barrier.

Regarding the reclamation plan required to be done by Delta, Mr. Staples said Delta was required to have a conceptual reclamation plan turned in and as part of the process there would be references to the reclamation plan in place at the current time. He said the information submitted to the record included a letter from Randy Moore who worked for the Department of Geology and Mineral Industries, (DOGAMI), which stated the progress of Delta in the reclamation process. He said Delta had a reclamation plan for some years and expressed a hope that, after approval of the application, DOGAMI would put final conditions on a reclamation plan that Delta would have to abide by.

Regarding truck traffic on Hunsaker Lane and the concern raised by Rob Funk, Mr. Staples said there were two exits from Delta that were used. He said trucks were weighed and then exited to River Avenue and the second gate used by Morse Brothers to exit onto Division Avenue. He said other access was for entrance only. He said trucks did not travel on Hunsaker since everything going west would use Division Avenue. He acknowledged that empty trucks entering the facility would travel on Hunsaker Lane to relieve traffic congestion at River Road and Beltline. He said the amount of traffic on Hunsaker Lane would fluctuate depending on the amount of work that Delta was involved with in that area. He stressed that traffic levels had nothing to do with the amount of rock being produced

or the amount of reserves built up. He reiterated that traffic on Hunsaker would be a result of the projects that Delta was involved in.

Regarding the concern over noise levels at the site from the residents of Silver Meadows, Mr. Staples called attention to the graph in the meeting packet showing administrative controls to keep noise compliance boundaries at the property line.

In response to a question from Eugene Planning Commission member Rick Duncan regarding trucks on Hunsaker and whether they were always empty, Mr. Staples said they were commonly empty but some trucks brought in dirt that had been excavated from another site. He said it would depend on the job being done.

In response to a question from Ms. Arkin regarding the location of the asphalt batching plant on the site, Mr. Staples said Delta did not have an asphalt batching plant nor a concrete plant but noted that Morse Brothers had those facilities located directly behind the company's main office. He said Morse Brothers facility was located due north of the Delta office.

In response to a question from Ms. Arkin regarding the light colored green on the map of Zone 4, Mr. Staples said Zone 4 was the most strictly controlled area of all the zones. He said the zone combined the restrictions of the other three zones in addition to specific restrictions imposed by Delta regarding the number of trucks that could be loaded during an hour's time. He said this made the zone the quietest zone of the four since it was closest to residences. He said the noise mitigation boundary had been moved to Delta's property line so that any houses built in the Silver Meadows area would be within the noise mitigation standards.

In response to a question from Ms. Arkin regarding the distance from the property line to the new subdivision, Mr. Staples said estimated that it was several hundred feet.

In response to a question from Mr. Zdzienicki regarding whether Delta had increased its mining since the last traffic impact analysis, Mr. Staples said a graph would be shown regarding production rates. He said Delta had increased its production by approximately one percent per year.

In response to a question from Mr. Zdzienicki regarding whether there was a filtering process for fill dirt on the site, Mr. Staples said Delta looked at material in the field because there was a lot of potential junk in the dirt. He reiterated that the material was inspected in the field before being trucked to the Delta site because Delta was inspected by the Department of Environmental Quality on site. He said if there was any question of contaminants or any other debris he was called in to test the material.

Lee Babb, 645 Spyglass, spoke as the co-owner of Delta Sand and Gravel. He said the land had been owned by his family who had worked on the land for over 60 years. He stressed that it was the decision of the commissions whether Delta would have the opportunity to work the land and turn the property into something useful to the community. He said opportunities such as that did not come very often. He stressed that his family had been and would continue to be good stewards of the land and added that Delta had reclaimed approximately five acres of land per year. He said Delta recycled tires, asphalt, dirt and rock. He urged the commissions to look to the future when making a decision and stressed that Delta was needed in the community.

Avon Lee Babb, 695 Fair Oaks Drive, spoke as the co-owner of Delta Sand and Gravel. He expressed his desire to have a positive recommendation from the commissions to the Board of County Commissioners and the Eugene City Council. He urged the commissions to remember that Delta was only asking for an addition to an existing site. He

stressed that there would be no change in existing operations. He noted that he was asking for a longer life for his company. He stressed that additional resource did not mean increased production. He said things did not work that way. He said economics and demand controlled what could be produced and sold. He stressed that Delta competed for its contracts and customers. He said the amount of resource Delta had did not have anything to do with what demand and the market allowed. He stressed that Delta had to earn its customers. He said he had never been interested in growth for growth's sake. He acknowledged that Delta had grown some over the years and could grow more in the future. He said the company would have to grow as its customers grew and demand increased. He reiterated that Delta would have to grow to keep up with its customers and remarked that if a company like his was out of supply then it was out of business. He reiterated that he was asking for a longer life for the company. The company's application stood on its own merits. He urged the commissions to remember when making their decisions that Delta had given up 45 acres of resource land to protect a heron rookery near the site. He stressed that his company provided more than family wage jobs and extraordinary benefits for his employees and added that he would like to continue doing that for another 20 years.

Gordon Loeschen, 28700 Lake Side Drive in Corvallis, said he had worked for Delta Sand and Gravel for 20 years. He showed an aerial map of the Delta property to illustrate the setback limits proposed by Delta.

Mr. Loeschen showed a graph of production rates since 1964. He said there had been an average of one percent growth per year since that time.

Dan Stotter, 627 Country Club Road, spoke as the attorney for the opposition. He spoke in opposition to the application. He submitted expert written testimony into the record on aggregate/geology, air pollution, natural resources/wetlands, groundwater hydrogeology, and noise impacts. He said the first section of the packet contained information on aggregate and geologic resource criteria required by the PAPA process in the Oregon Administrative Rules. He said the information was supplied by Dr. Mark Reed who was an economic geologist at the University of Oregon. He said the next section contained information on air pollution impacts of the proposal and was presented by Camile Sears who had more than 25 years experience as an expert in air pollution and air dispersion modeling as well as risk assessment. He said the health and medical impacts of particulate were provided by Dr. Stephen Kimberly who specialized in internal medicine. He said the information on natural resources and wetland issues was provided by Dr. Ethan Perkins who is a highly respected natural resources expert and wetlands consultant. He stated that the ground water and hydrogeology was prepared by Malia Kupillas who was an expert on ground water and hydrogeology issues. The section on noise and sound impacts was prepared for noise engineer Arthur Noxon. Regarding agricultural impacts, Mr. Stotter said the information was prepared by Ross Penhallegon who was an agricultural expert working for the Oregon State University Extension Service. He added that this section contained letters from nearby impacted farms that detailed the significant increased costs and changing farm practices that would result from the application.

Mr. Stotter requested an extension of the hearing to address the new information submitted by the applicant.

Mr. Stotter presented written information on air pollution from the report written by Camille Sears. He said the report stated that the Delta's air quality evaluation was based on flawed and inadequate information and was unreliable. He said her conclusion was that the applicant's air quality conclusions were not supported by appropriate evidence in the record. He said one of the most interesting sections of the report was the section on meteorological conditions including wind direction and velocity. He said she had indicated that if the proposed expansion were approved the dust exposure problems to the west of the area would increase significantly. He said the area would be impacted with inhalation particulate matter 60 percent of the time during the dryer months and 50 percent of the time the entire year. He said one of her greatest concerns was that there was no air dispersion

modeling for the proposal. He said without air dispersion modeling the commissions had no basis to make a decision on:

1. Whether the proposed expansion would cause significant air pollution and dust fallout impacts,
2. Whether the project would or could be mitigated to minimize potential impacts, and
3. The degree and downwind distance that potential significant impacts would occur which was important to determine the proper impact area for the PAPA administrative rule analysis.

Mr. Stotter said there was no assurance to the public that there were not significant pollution impacts. He added that Ms. Sears was a specialist in air pollution impacts and dismissed the testimony of Dick Ruth because he had not listed his degree as part of his qualifications. He said Ms. Sears had determined that there were serious and significant air pollution impacts to farms and residents near the site.

Dr. Stephen Kimberly, 85296 Ridgetop, spoke in opposition to the application. He said he was a board certified specialist in internal medicine and had also been past president of the Alliance for Lung Cancer. He said he had extensive training in lung and pulmonary diseases. He said he could not speak to the amount of dust that would be created by the proposed expansion. He remarked that there had already been testimony to that topic and speculated that the amount of dust created would be significant. He said there would definitely be health effects from the dust of the quarry. He said miners who were exposed to coal dust had a much higher incidence of lung disease. He said his concern was that rock dust varied in size ranged from 2-10 microns and remarked that particulate matter in that size range would increase the episodes of bronchitis, asthma attacks and chronic obstructed pulmonary disease. He said COPD was a leading cause of death in the United States and was increasing dramatically. He said one of the leading causes of COPD was chronic bronchitis. He said, over time, the lungs would lose elasticity and fibrotic tissue would form in the lungs and COPD would occur. He added that rock dust was chemically reactive and said there would be reaction in lung tissue that, in addition to causing more fibrous tissue, *might* lead to lung cancer. He said children that were exposed to rock dust would be found to have slowly developing lungs and would be more susceptible to bronchitis.

In response to a question from Lane County Planning Commissioner Nancy Nichols regarding whether some of the particulate would fall out of the air, Dr. Kimberly said those who were working to mine the rock would be the most exposed to particulate but remarked that, given the statements made by Camile Sears about residents being exposed to wind born dust 50 percent of the year, the dust would be by no means innocuous.

In response to a question from Ms. Arkin regarding his assessment of the additional particulate matter added to the pollution in the area, Dr. Kimberly said it would increase health risks in terms of the lungs for a significant portion of the community. He said it had been estimated that every ten years of exposure to dust doubled the chance of lung disease from particulate matter. He acknowledged that he was not an expert in rock processing but speculated that the activities at Delta would produce 1 million tons of rock per year and that a ton or more of particulate matter would be dispersed into the air.

Mr. Dignam commented that a farmer living nearby the site had testified at the previous hearing that he generated significantly more dust than was generated by Delta Sand and Gravel. He added that he lived on a gravel driveway shared by five families. He questioned how the dust generated by Delta was different from other dust generated in Lane County.

Dr. Kimberly said the difference was in the type of dust. He said the farmer in his field raised dirt dust. He said dust from processing rock was different from dirt around gravel on a driveway. He said the type and size of particles could cause chemical reactivity. He said older people and people with existing lung conditions would be much more susceptible to problems associated with rock dust.

In response to a question from Mr. Belcher regarding the amount of particulate matter speculated to be raised by processing a million tons of rock and whether the need for gravel would prompt the same amount of dust in another location, Dr. Kimberly said that was not his area of expertise. He added that he had not read anything that quantified the amount of dust that would be produced.

Mr. Dignam questioned whether Dr. Kimberly was familiar with the geology of the site. He noted that Delta had indicated that they would not increase production of rock and questioned whether the new area had more potential to generate more of the 'bad' dust or whether the discussion was over the same amount of dust that was currently generated by the operation.

Dr. Kimberly said he had no information as to the geology of the Delta site nor could he give an educated opinion about any changes in dust generated by the facility. He said there was a possibility that the new area being proposed would be better in terms of dust production than what was happening currently but added that it also could be worse.

Ethen Perkins, 2410 Monroe, spoke as a wetlands consultant and a natural resources specialist for the opposition. He said, in his professional opinion, the use change of the land would have the adverse effect of removing on site waters that recharged the local aquifers. He added that aquifer interfaced with an abandoned river meander or oxbow wetland expression above the 375 foot elevation contour. He said the reduced onsite flow of water would require state and federal wetlands permits and a mitigation plan based on an approved wetland delineation. He noted that none of this had been provided by the application. He said the outlined zoning change plan submitted by the applicant did not avoid significant adverse impact to the wetland despite mining occurring outside of the wetland itself. He said the low permeability barrier would impede movement of water through the local aquifer and would change the existing wetlands functions and values and would not adequately replace them. He cited wetland vegetation, songbird habitat, amphibian habitat, nitrogen removal, and phosphorous retention as examples. He added that western pond turtle breeding on the site should be documented in areas where breeding might occur. He also said that the possibility of red legged frogs should also be examined. He said if either of those species were present on the site then the possible impacts of the proposed zone change should be analyzed fully. He added that there should be analysis of possible down stream impacts to salmon such as migration and breeding habitat. He recommended that the application should be denied. He said the details of the mining reclamation were insufficient and, as example, said the low permeability barrier, if left in place, would not be restored to pre-mining conditions.

In response to a question from Ms. Arkin regarding whether there was a map of the wetlands in the record, Mr. Perkins said one of the problems with the application was that the wetland area was only briefly described. He said the area was essentially on the oxbow area with the tree lined on the west of the project as he understood it. He added that it did not include the already existing ponds which could also be wetlands but were not part of the proposal.

In response to a question from Ms. Arkin regarding the low permeability barrier and whether water would flow around it, Mr. Perkins said it would but noted that the barrier was close to the existing wetland and remove any water flowing off the surfaces that were further out into the present field. He said the ground water would be held in place and would therefore be elevated.

In response to a question from Ms. Nichols regarding whether the wetlands permits and mitigation plans for the wetland were done when the housing development nearby was constructed, Mr. Perkins said it was always advisable to have them since the law required that wetlands not be diminished in size or value. He said a good developer would have looked at those things but said he did not know if the particular developer had followed through with permits and biological assessments.

Mr. Sullivan said he had concerns that there had been very little agency input regarding riparian corridors, wetlands and wildlife habitat. He questioned whether Mr. Perkins thought that if the Department of State Lands and Oregon Department of Fish and Wildlife investigated the site their assessments would agree with his own.

Mr. Perkins said he thought the agencies would agree with him but acknowledged that he had not walked on the site and collected specific information and had only presented a general analysis.

In response to a question from Mr. Sullivan regarding whether in his opinion the agencies should be requested to make those inquiries, Mr. Perkins said the request should be made to determine that the wetland boundary mentioned in the application was accurate and to look at possible effects to nearby wetlands.

In response to a question from Mr. Sullivan regarding whether he had been on the property at all, Mr. Perkins reiterated that he had not been on the land but had rendered an opinion based on the information in the application.

Mr. Belcher asked for a map of the wetlands along the boundary of the application to be provided.

Malia Kupillas, President of Pacific Hydro Geology, said she was registered geologist with a specialty in hydro geology. She said she had reviewed the reports that were prepared as part of the application as well as the computer model. She said after reviewing both of the reports she said there had not been enough information given to show that ground water would not be affected. She noted that information was missing. She said the applicant had stated that ground water and surface water were separate bodies and stressed that this was not true. She stressed that ground water and surface water were connected and impacts to one would also impact the other. She said ground water would go where it was easiest to flow. If the easiest was to go up because the soil was more permeable then it would go up. She said the computer model submitted by the applicant failed to show what would really happen. She said her biggest question was about the low permeability barrier. She said the computer model showed two scenarios. The first was a dam that enclosed the new area and another scenario around the entire operation. She said both scenarios would have an impact on ground water. She said what the applicant had not shown was that a coffer dam like barrier could not be built as described in the application because a full circle barrier was not planned to be constructed. She said there was no map that showed where the barrier was supposed to be constructed. She remarked that excavating for the barrier would mean excavating wetlands.

Ms. Kupillas noted that the Santa Clara area was developed with the current ground water levels which were lower because of the current mining activities. She said there had been no analysis of what could happen if the low permeability barrier were constructed and the natural ground water returned. She remarked that the residential developments had been constructed under the assumption of current ground water levels and their concerns over flooding were valid. She said the only difference between ground water and surface water was the ground level. She said if ground water levels were raised to a certain point then there would be surface flooding. She said the water in the oxbow lake was filled by ground water exposed to the surface.

In response to a question from Ms. Nichols regarding when the excavation was finished and refilled and if there would be impacts to nearby homeowners, Ms. Kupillas said that was a problem that had not been addressed by the applicant. She said refilling the area, depending on the fill material, could cause additional problems. She said the applicant's report did not talk about the impacts of the low permeability barrier and opined that this was essentially mining in an area where no mining should be allowed. She noted that the top of the barrier would be 130 feet wide and 12 feet at the bottom.

In response to a question from Ms. Arkin regarding how deep the barrier would be, Ms. Kupillas said the applicant had proposed a depth of 30 feet.

In response to a question from Ms. Arkin regarding whether it was possible that the water would flow beneath the barrier, Ms. Kupillas said the reality was that the barrier was only partial and was really just slowing down water flow. She said water would still be able to flow in the older alluvium below the barrier. She said there were wells that could produce up to 100 gallons per minute from those lower gravels. She said water would still be flowing into the pit and the applicant was expecting water to be coming through.

Mr. Zdzienicki commented that originally the applicant was proposing a 30 foot depth with an excavation to 60 feet. He remarked on the 30 foot discrepancy.

In response to a question from Mr. Zdzienicki regarding whether the Silver Meadows housing development was located on topsoil on top of gravel, Ms. Kupillas said she was not familiar with the specific development.

In response to a question from Mr. Zdzienicki regarding whether the area just to the west of the housing development had gravel as well, Ms. Kupillas said it was.

Mr. Zdzienicki questioned whether, if the excavation for low permeability barrier would go 30 feet below the barrier, the ground water in the development to the west be slowly drained away with the land drying out and vegetation being impacted as a result.

Ms. Kupillas said that was possible. She said the current water levels were lower than they should be because of the current activities of Delta Sand and Gravel. She said Delta was trying to install a low permeability barrier to have less of an effect on the ground water level. She said the applicant was hoping that 'less of an effect' would mean ground water rising to previous levels. She said the problem with that assumption was that there would still be water flowing into the excavation. She said if water levels outside of the barrier built up it could create more pressure for the water to go lower and come out beneath the low permeability barrier.

In response to a question from Mr. Dignam regarding what would happen if the water did flow through or under the barrier, Ms. Kupillas said nearby domestic wells and irrigation wells could go dry.

In response to a question from Mr. Dignam regarding whether it was her contention that the low permeability barrier would lower ground water levels while still being a risk of flooding to nearby housing, Ms. Kupillas there was a possibility of negative impacts whichever way the water went.

Mr. Dignam commented that he was uncertain how the low permeability barrier could both cause flooding *and* cause wells to go dry.

Mr. Belcher noted that Mr. Christianson had testified that there would be no more than a 1-3 cubic foot capacity for ground water in a 10 foot deep range and that this was a very small figure when compared with the foot per second measurement for surface flood water. He questioned how Ms. Kupillas would respond to that.

Ms. Kupillas said she envisioned a bath tub and how much water it would hold with or without being filled with marbles. She said the issue was not flood waters coming from surface water but the water table coming up high enough to reach the surface.

In response to a question from Ms. Nichols regarding the water from people's wells that seeped into the excavation would then be pumped into the Willamette River and could not be given back to those who lost water, Ms. Kupillas said the current plan was to pump water into settling ponds and then let it filter into the Willamette River. She said she had worked with other situations where mining operations had affected wells and water had been given back to farmers but remarked that this only worked for irrigation and not for drinking water.

In response to a question from Eugene Planning Commission Member Rick Duncan regarding whether there was a significant change in ground water levels because of the new excavation that had not already occurred with the current pit, Ms. Kupillas said there had already been a change in ground water with the existing pit. She said the plan is for expansion to a new area that would be closer to that impacted land.

In response to a question from Mr. Duncan regarding whether there would be a reduction in problems as the pit was reclaimed, Ms. Kupillas acknowledged that there could be but surmised that if the materials used to fill the pit were lower permeability then there would be lower water storage capacity for ground water.

In response to a question from Mr. Duncan regarding whether in the long run (20-30 years), when the pit was eventually filled in and whether the ground water would then stabilize itself, Ms. Kupillas said the ground water would be stabilized at a new equilibrium. She speculated that the pit would be reclaimed with lower permeability soils and create a draw down cone of depression. She said the closer a well came to the lower permeable soils there would be well interference issues.

In response to a question from Mr. Belcher regarding if the application were approved and whether at the end of the mining process the low permeability barrier should be left or removed as part of the mitigation process, Ms. Kupillas said it would make sense in the interests of ecology to leave it.

Mr. Sullivan commented that much of the testimony provided by Ms. Kupillas was based on the applicant's 'lack of good science.' He questioned whether it was her opinion that the matter could be addressed if the correct procedures were taken.

Ms. Kupillas said she was not able to complete the evaluation of impacts that could happen because of lack of information in the application. She said she could say whether everything would be fine if proper procedures were followed, but not enough information was supplied by the applicant.

Lane County Planning Commissioner Juanita Kirkham noted that the commission needed a vote to proceed in a meeting past 10 pm.

Ms. Arkin, seconded by Lane County Planning Commissioner Ed Becker, moved to extend the meeting until no later than 11 pm. The motion passed unanimously.

Mr. Carmichael called for a 10 minute break.

Arthur Noxon, 3690 County Farm Road, spoke as a state licensed acoustic engineer. He said he had worked in the community and held a masters degree in physics and mechanical engineering. He said he had helped put in many rock quarries in neighborhood areas. He submitted a 30 page report into the record. He said the DSA noise impact study done by the applicant had missed several sections of the Code established by the Department of Environmental Quality. He cited impulse noise and tonal noise as examples of noise types that were not mentioned in the applicant's report. He added that there was a fatal flaw in the applicant's report in that there was no mention of how those noise types would be mitigated. He added that all truck traffic off site should be accounted for. He said the applicant's report had mentioned the matter in one sentence. He noted that the applicant had stated that trucks would leave on Division and return via Hunsaker Lane. He said he had been unaware of that process and speculated that there were other gates entering the Delta site that had not been mentioned. He raised concern over 'giant dump trucks weaving their way through winding rural roads.' He remarked that Delta was not considering the truck noise generated by vehicles returning to the Delta site. He said truck noise was part of the DEQ regulations that protected the community from noise impacts. He said the report from Delta showed an unacceptable level of work.

Mr. Noxon said the noise impact boundary zone survey done by the applicant had not taken the new development in Silver Meadows into account. He said noise from the rock crusher was used for the report data and not total ambient noise levels.

In response to a question from Mr. Zdzienicki regarding whether he had made on site measurements, Mr. Noxon said he had not made measurements on site.

In response to a question from Ms. Colbath regarding whether there would be construction noise on the site, Mr. Noxon said that information was in his written material submitted into the record.

Mark Reed, 719 East Beacon Drive, spoke as a geologist on his own behalf. He submitted written material into the record. He said he was addressing the issue of deposit significance under the Goal 5 rule for sand and gravel. He said the gravel resource in the proposed expansion area failed to meet the significant resource standard of the Goal 5 rule concerning aggregate. He said the samples failed because the four samples tested by the applicant were not a representative set as required under the Goal 5 rule and therefore the applicant had not met the burden of proof that the resource met the Oregon Department of Transportation requirements for quality. He said an additional problem was that one of Delta's bore hole log descriptions fell short of providing adequate information to demonstrate whether the deposit contained sufficient thickness of sand and gravel. He said the significance test, under the Goal 5 rule, was there to determine whether there was sufficient thickness of gravel to justify 'destruction' of farmland. He said the significance test was completely unrelated to whether the deposit could be mined profitably and was simply a question of whether legal requirements had been met.

Regarding significance criteria, Mr. Reed said the key issue was representative sampling. He said the fundamental failing of the Delta samples was that they violated established protocol for representative sampling because shallow grade rock had been mixed with poor quality rock from deeper in the deposit. He said the deeper rock could fail the standard but, actually, that could not be established because the sample mixed that deeper rock with high quality rock. He used a loose analogy about the average age of 100 people in a room and whether they could all be served alcohol. He said the answer was no because fifty eight of the people could be two years old and forty two of the people could be forty eight years old which would result in an average age of 21. He said the analogy fit the example of the samples submitted into the record from Delta. He said sampling standards required that geologic

units that were separate from each other be sampled separately. He said there were at least two geologic units in the area. He said the established methods for sampling were well known to geologists and had been established by the American Society for Testing and Materials. He added that the Army Corps of Engineers had established requirements for gravel sampling. He said one of the key features of those standards was that the importance of obtaining representative standards cannot be emphasized too strongly since failure to do so could provide misleading and inaccurate information even if the tests were completed properly. He noted that if visual inspection indicated that there was considerable variation in the material then separate samples from different depths should be obtained.

Mr. Reed accused EGR & Associates of intentionally mixing the samples in defiance of the standards thereby improving the apparent quality of the rock. He added that Bore Hole Log Number Three contained errors in the content and geologic description and therefore did not meet the adequate information standards.

In response to a question from Ms. Arkin regarding a statement from Ralph Christensen that the appropriate test was to compile a composite sample, Mr. Reed said ASTM did say something to that effect but added that the composite needed to be a representative sample of the face. He said this would be representative of what was being produced from the pit as opposed to the standard requiring separate samples from distinguishable layers. He reiterated his contention that the samples were distinguishable and needed to be sampled separately.

In response to a question from Mr. Belcher regarding the standards that he had mentioned the quarry should be following and whether they were required by DOGAMI, Mr. Reed said the Goal Five rule called for 'a representative set' and did not provide a reference for what would be called a representative set. He said the standards he had mentioned were industry standards that defined a representative set and acknowledged that there was no explicit legal link to those standards in the law.

Doug DuPriest, Attorney representing Joel and Theresa Narva, said the Narva's owned property close to the proposed expansion site and had serious reservations and concerns over the impacts of the application. He said the application understated the impacts on nearby properties and neighbors as well as proper measures to mitigate those impacts. He said the Narva's were particularly concerned about noise. He submitted written testimony from Mr. Noxon. He said the DSA report did not define the difference between administrative mitigation and structural mitigation. He said there are administrative mitigation procedures that people should comply with. He said DEQ had stated that administrative mitigation was an interim measure and not a permanent measure. He said the applicant did not provide any structural mitigation measures. He said Delta had failed to combine excavation loading and haul truck noise into one noise source or event which would result in a rating of over 50 percent and different standards would apply. He said Delta created statistical noise levels from interviews and not measurements and underestimated excavator noise by eight decibels. He said the applicant's noise predictions fell 16 decibels short of reality and added that the data used to develop the statistics was not fully disclosed. He added that the applicant had used federal standards for dump truck noise because they allowed a higher level of noise than the Oregon State standards.

Regarding the statement from the applicant that there would be no increased production on site, Mr. DuPriest said if the market supported increased production then there could be impacts on the neighbors as a result. He said a critical point was that if the level of production was maintained at its current levels, the change in location of activities relative to neighbors could cause additional impacts. He said Delta was trying to skip over or short circuit the process of analysis of the consequences of what they were proposing.

Debra Higby, Sierra Club, 1281 Dalton Drive, said the expansion of Delta was not acceptable. She said to allow an open pit mine next to an established neighborhood with the associated 'noise, dust, loss of soils, flooding, and ground water contamination' was inappropriate development. She surmised that Delta had not used good scientific methodology to analyze noise levels on the west side of the site. She speculated that neighbors would be 'bombarded' by noise from the site. She said the neighbors had been unaware of the expansion plans of the quarry when they purchased their homes.

Regarding dust, Ms. Higby said Delta had admitted that dust from the site could cause a potential conflict with nearby land uses by creating a nuisance condition.

Ms. Higby said application materials referred to nuisance and annoying throughout the report. She said the word choice shifted attention that Delta's mining practices were potentially damaging to people and could cause respiratory problems to the very young and old.

Regarding wind, Ms. Higby urged the commissions to rely on experts and scientific information. She submitted written material into the record.

James Nepler, 49 Salty Way, commented that Dr. Kimberly's statements showed that people who worked around quarries had a variety of serious health problems due to dust and those effects would extend to properties beyond the Delta Site. He cited the air pollution report from Camille Sears had stated that Delta's air quality conclusions were unsupported. He said her report had concluded that properties to the west of the site would be impacted with inhaleable particulate matter 60 percent of the time during dry months and 50 percent of the time during the rest of the year. He acknowledged that these statements did not match the Wind Rose Chart testimony submitted by Dick Ruth but urged the commissions to consider the fact that there were homes to the north and south of the Delta site which would make up for the discrepancy in the stated percentages. He added that Ms. Sears had stated Delta did not use air dispersion monitoring.

Mr. Nepler noted that he had children with asthma and said dust and diesel fumes had a horrifying effect on people with that condition. He remarked that it would be like watching his children drown on dry land. He urged the commissions to carefully consider the reports of the opposition and use a healthy measure of skepticism when reviewing the reports generated by Delta Sand and Gravel.

Joel Narva, 2830 Echo Lane, said his property abutted the proposed expansion. He said the sound analysis provided by Delta were grossly understated. He noted that he could already hear the noise from the quarry. He surmised that the noise would become worse but acknowledged that it was difficult to tell how much worse.

Regarding water issues, Mr. Narva said the City of Eugene had a responsibility to the new residences in the Silver Meadows subdivision. He said there was much more urban storm water runoff from that subdivision and remarked that this would add to flooding problems created by the proposed low permeability barrier. He said decisions that the City had already made were impacting the nearby wetland and drainage ways.

Jeff Wisner, 423 Gerold Avenue, raised concern over the low permeability dam and surmised that water would fill storm drains and possibly cause flooding. He raised concern that the barrier would bring up the flood elevation from one to three feet.

Mr. Wisner said natural resources and wetlands were of great concern to the neighborhood organization and raised concern that the proposed expansion would negatively impact those wetlands.

Kersten Sweet, 414 Gerold Avenue, raised concern that Delta had not done enough research to show the effectiveness of the low permeability barrier. She reiterated her opinion that there was not enough information provided by the applicant. She submitted photos of a storm drain heading towards the Santa Clara Waterway. She said she had never seen water in the drain at such high levels.

Nina Lovenger, 40093 Little Fall Creek Road, Fall Creek, offered testimony on behalf of Land Watch Lane County. She said the group was concerned over the loss of farmland in Lane County as well as the adverse impacts to agricultural areas caused by dust generated from the proposed quarry expansion. She said ongoing agricultural use of the expansion area was more appropriate for the nearby residential areas than a quarrying operation which would compromise the health of those living nearby.

Greg See, 2746 Tato Street, submitted pictures of flooding on Summer Avenue and Gerold Avenue. He said there were no plugged drains that he could see. He said the photos were within the 'impact area' of the proposed expansion.

Kate Pearle, 4740 Wendover Street, said she farmed on East Beacon Drive approximately one mile from the proposed expansion site. She expressed her concern over the loss of farm land in the Eugene area. She surmised that the soils in the proposed expansion area were prime farmland soils that could help feed local residents for the 'rest of time.' She said the proposed expansion site was prime farmland soil and should be used for food production. She said Delta's report stating that the land was not suitable for farming was patently false. She said if a farmer was willing to 'work with the soil' to produce the most abundant crops the outcome would be astonishing. She said the proposed expansion site lacked nothing in terms of productivity and remarked that the current owners did not have enough imagination to make it productive.

Kevin Jones, 4740 Wendover Street, submitted written material into the record. He said if the expansion lowered water tables then his farm would be impacted. He said his farm required irrigation in the dry season. He said he was outside the stated impact zone but did not agree with the stated impacts of the proposed mining activity.

Jean Odell Pearle Jones, 4740 Wendover Street, said his parents drew water from an agricultural well. He said he liked farming with his parents and said the proposed expansion could easily make the well on his parent's property go dry. He added that the proposed expansion would cause kids to get asthma and said he did not want people in the area to get sick.

Kevin Matthews, 1192 Lawrence Street, spoke as a representative of Friends of Eugene. He said the hearing represented a generational clash. He said a generation ago the application would have been approved because people were ignorant of the accumulating impacts. He said it was not clear from the application whether it would be feasible to legally and responsibly develop the mine. He acknowledged that it could be possible but stressed that it was clear that the case for expansion had not been made and that it was environmentally irresponsible to expand the mine.

Robert Emmons, 40093 Little Fall Creek Road, Fall Creek, said the applicant had asked to be relieved of the need to do a traffic study but noted that Goal 5 called for analysis of potential conflicts to roads within one mile of the mining site. He said the City and the County could not waive the requirement for a traffic impact analysis.

Mr. Carmichael called for applicant rebuttal.

Mr. Cornacchia said he had heard new information that evening and what concerned him the most was the testimony challenging methodology used by the consultants for the applicant. He suggested a 30 day extension of the record to be used for response to new material submitted that evening and not for the submittal to new evidence.

Mr. Stotter said there was a written request to allow a response any new information and noted that State Law specifically provided the right to provide responsive evidence to any new information submitted by the applicant. He said it would be a procedural violation to not allow rebuttal to new information submitted by the applicant.

Mr. DuPriest said if the applicant put in new information then the opposition had the right to rebut that information. He asked for time to review any new information by the applicant and provide a response.

Lane County Planning Director Kent Howe offered a suggested timeline. He suggested leaving the written record open for 30 days for anyone to submit new evidence, allow response to that information by anyone who wanted to respond for an additional 14 days and then allow the applicant to provide final rebuttal for an additional 14 days.

Mr. DuPriest suggested 30 day periods for each side on new evidence to be submitted.

Mr. Stotter said it would make more sense to allow the opposition to respond with new evidence to rebut any evidence submitted by the applicant's representatives.

Mr. Cornacchia said there had to be an end to new evidence being submitted. He suggested 30 days for the applicant, 30 days for opposing rebuttal, and 14 days for final applicant rebuttal.

Mr. Howe suggested a new timeline. He said the record could be left open for written testimony provided by anyone for 30 days. He said an additional 29 days, (until Friday, March 17), would be allowed to respond to any new evidence but with no new evidence to be submitted. He said 14 days could then be allowed for final applicant rebuttal.

Mr. Stotter said it would be a violation of state law to not allow new evidence to be submitted in response to new evidence submitted by the applicant.

Mr. Belcher, seconded by Mr. Duncan, moved that the applicant be allowed 30 days to submit new information in response, and the opponents 29 days to respond to that new information, to be followed by applicant rebuttal period of 14 days. The motion passed unanimously.

Mr. Dignam, seconded by Mr. Zdzienicki, moved to pass the same time periods as were approved by the Eugene Planning Commission. The motion passed unanimously.

Ms. Colbath closed the public hearing on behalf of the Eugene Planning Commission.

Mr. Carmichael closed the public hearing on behalf of the Lane County Planning Commission.

Mr. Howe said there would be separate deliberations for the commissions in April.

The meeting adjourned at 10:30 pm. (Recorded by Joe Sams)

MINUTES

Lane County Planning Commission
Eugene Planning Commission
Harris Hall - Lane County Courthouse

July 25, 2006
5:30 p.m.

Lane County Planning Commission: James Carmichael, Chair; Ed Becker, Vice Chair; Lisa Arkin, Stephen Dignam, Todd Johnston, (recused from the proceeding), Nancy Nichols, Jozef Zdzienicki, Commissioners; Juanita Kirkham and John Sullivan; Absent

Thom Lanfear, Stephanie Schulz Matt Laird, Staff

Eugene Planning Commission: Marlene Colbath, Chair; John Belcher, Rick Duncan, Phillip Carroll, John Lawless, Commissioners; Randy Hledik (recused from the proceeding), Phillip Hudspeth, Absent

Kurt Yeiter, Staff

I. WORKSESSION

Deliberations: PA05-6151/ In the matter of amending the Eugene Springfield Metropolitan Area General Plan to redesignate 72.31 acres from Agriculture to Sand and Gravel, amended the Goal 5 Significant Aggregate Site Inventory to include the 72.31 acres, rezone the subject property from Exclusive Farm Use zone to Sand, Gravel and Rock Products zone. The proposal includes a request for two administrative variances to decrease the setback provisions of LC 16.217(4)(b)(v) pursuant to LC 16.217(4)(b)(v)(aa) in order to construct a low permeability barrier within the setback area pursuant to LC 16.217(4)(b)(v)(dd).

Lane County Planning Commission Chair James Carmichael called the meeting of the Lane County Planning Commission to order.

Eugene Planning Commission Chair Marlene Colbath convened the meeting for Eugene Planning Commission.

Mr. Carmichael called for public comment on items not related to items on the agenda that evening.

There were no members of the public wishing to speak.

Mr. Carmichael called for a staff update.

Lane County Planning staff Stephanie Schulz provided an outline for the work session deliberation. She outlined the steps for discussion

1. Determine if the PAPA information is adequate

2. Determine if the resource site is significant
3. Determine if conflicts from mining can be minimized
4. Weigh ESEE consequences and determine whether to allow mining
5. Determine ESEE Consequences of potential new conflicting uses within the impact area
6. Determine if the application meets the Lane Code rezoning requirements of LC 16.252 and if the variance to the mining setback should be granted under LC 16.217(7); **Note: The rezoning and setback variance determination recommendation is a single jurisdiction decision for the Lane County Planning Commission.**
7. Developing a program to allow mining. (Step Six of the Goal Five Rule)

Ms. Schulz said staff would like recommendations for each step even if it was a recommendation to deny. She said recommendations needed to be based on the information in the record so elected officials could know the entire scope of the process used by the planning commissions in order to proceed.

Mr. Carmichael recommended taking each step one at a time with individual votes.

Lane County Planning Commissioner Jozef Zdzienicki questioned which steps would be combined decisions for the two commissions.

Ms. Schulz said there would be joint deliberations until step six. She said the item for the variance request was for Lane County only.

Step 1. Adequacy of the Information

City of Eugene Principal Planner Kurt Yeiter stated for the record that Eugene Planning Staff concurred with the County staff report.

Ms. Schulz said the applicant needed to provide information regarding quantity, quality and location sufficient to determine whether the standards and conditions were satisfied. She said County staff felt that conditions had been satisfied. She said the conceptual site reclamation plan was listed as Exhibit 49 in the record. She said the full reclamation plan had been provided during the written record process.

Regarding the Traffic Impact Analysis, Ms. Schulz said Lane County Planning had waived the traffic impact analysis. She said staff had reviewed the information provided by the applicant and had determined that the increase in traffic was not sufficient to require further analysis. She noted that road improvements were scheduled for the next 20 years in that area.

Regarding minimizing conflicts with existing uses, Ms. Schulz noted that information was included with the staff report as Attachment Two. She added that a site plan was also required to determine if the application had the basic information provided. She said the applicant had provided enough information to meet the application threshold basis for the application.

In response to a question from Ms. Colbath regarding hours of operation and whether 8 am. to 10 pm. was a standard time frame for hours of operation for businesses in the County, Ms. Schulz said the times were in response to noise limitations established by the State. She said noise requirements changed at 10 pm. Mr. Yeiter added that the hours proposed were also consistent with the City's noise ordinance.

Mr. Zdzenicki commented that he did not believe the applicant had adequately addressed conflicts in Step 3 and therefore he could not approve step one.

Regarding adequacy of the record, Commission member Lisa Arkin commented that the applicant's record was inadequate in terms of information on noise, air pollution and impacts to ground water.

Mr. Belcher commented that the planning commissions were the first body to review the record. He noted that commission staff felt that the information was sufficient to meet the requirements of the application. He said if the commissions felt that the information was insufficient then it could vote to deny and the record would be opened again and both parties would have a chance to respond before the elected officials. He said he would vote that the information in the record was sufficient.

Commission member Steve Dignam said there was no reason to disagree with the staff recommendation. He maintained that there was sufficient information in the record that met the requirements of the process.

Mr. Carmichael called for a vote from the commissions on step 1.

Commission member Steve Dignam, seconded by, Commission member Ed Becker, moved to approve the provided information in Step One. The motion passed 5:1 with Ms. Arkin voting in opposition.

Eugene Planning Commissioner John Lawless, seconded by Eugene Planning Commissioner Rick Duncan, moved to recommend that the Eugene Planning Commission approve the staff recommendation that Step One information was adequate. The motion passed unanimously.

Step 2. Significance of the Resource

Ms. Schulz said this item came under the heading of Oregon Administrative Rule, (OAR), 660-023-180(3). She noted that there had been a lot of input on the topic from the applicant and the opposition. She said determination was based on quantity and quality. She said the testimony from Shane Hughes had adequately explained at the public hearing how gravel was deposited in a river. She added that there was some question raised as to whether samples could be mixed or not. She said staff had reviewed the State Highway Safety Standards Appendix D75 Section X2.3.2, entered into the record by both the applicant and the opponents, which discussed sampling of bank run sand and gravel deposits which stated that samples should be thoroughly mixed and quartered if necessary. She said staff had determined that mixing of samples was appropriate. She added that the site in question was not on the inventory of significant aggregate sites in the Metro Plan. She said that in higher quality soils the thickness of the aggregate layer must exceed 60 feet in Lane County. She said the applicant had shown that the thickness was 70.5 feet and therefore had met the quantity threshold requirement and they have also shown that the quality was at a high enough level of significance to meet that part of the standard for step two, therefore, the significance threshold is met.

Mr. Zdzenicki said he was conflicted on the two different versions on how the samples should be taken. He said he was not convinced by the applicant's argument.

Ms. Colbath questioned whether any state offices had been contacted to get information regarding mixing of samples.

Ms. Schulz said she had not communicated with anyone in a state office. She said she was basing her conclusion on the pages in the official hand book that had been submitted into the record. (Exhibit 33a)

Ms. Colbath expressed her concern that there was no independent opinion on mixing samples from a State office.

In response to a question from Mr. Belcher regarding a previous application with Eugene Sand and Gravel and whether there was any information on sample analysis in that case that could shed light on the matter, Associate Planner Thom Lanfear said there were similar issues raised in that application. He said the commissions were faced with the dilemma of competing reports from qualified experts and would have to weigh the evidence in the record and make a decision. He added that information from that previous application was not part of the record for the current matter.

Mr. Zdzienicki said it would have been prudent to involve the state to clarify the matter.

Ms. Schulz replied that referrals had been sent out to state agencies but there had been no replies.

Ms. Arkin said the report from EGR and Associates stated that 75 percent of the expansion site was class 2 soils. She stressed the importance of the measurements because there was a trade off between prime farmland and aggregate resource. She stressed the importance of establishing the accuracy of the sampling that had been done. She said she seriously considered the testimony of Dr. Mark Reed who had said the material was mixed when it should not have been and had stated that there was only 25 feet of aggregate on the site in question. She noted that the documents quoted by Ms. Schulz said that samples should be mixed from each stratum of deposits. She said she felt that the applicant had not convinced her that appropriate sampling had been done. She added that there were questions about bore hole three and the accuracy of the data provided. She commented that the applicant could have 'cherry picked' spots for bore holes and remarked that the proof provided was not strong.

Eugene Planning Commissioner Rick Duncan said he understood the sampling process was a way to make an estimate of the total amount of resource that was available. He said to be judged significant, it needed to be equal to or greater than 2 million cubic tons. He stressed that the applicant's sample showed 8 million cubic tons. He questioned whether a poorly taken sample could make up for a 6 million cubic ton difference.

Mr. Dignam acknowledged that there were conflicting expert testimonies in the record. He said it was not a leap of faith that there was a significant aggregate resource in that area since gravel companies had been mining gravel there for decades. He said it was not a hard assumption to determine that there was significant resource on the site and said he intended to vote for step two.

Mr. Duncan said he would support step two as well since it was hard to believe that a sample could be wrong by 6 million cubic tons.

Mr. Belcher said he had no questions about quantity but questioned whether the quality was sufficient.

Ms. Colbath agreed and said sampling done from different strata would have answered those questions. She said she believed there was adequate supply but said the problem was that quality was difficult to determine.

Commission member Nancy Nichols said if visual inspection indicated that there was considerable variation then individual samples should be taken from each well defined stratum. She said the quantity was there but questioned whether the quality was adequate.

Mr. Zdzienicki said river deposits varied from year to year. He said testing of the stratification was very important since there could be long periods without gravel being deposited. He said the quality issue had not been addressed adequately enough for him to vote in favor.

Mr. Carmichael said the task of the commission was to evaluate the testimony and consider which was the most credible. He said Step Two was to determine whether there was significant resource. He said there was clearly a substantial resource present on the site and added that another piece of evidence was that the applicant had grown up on the property and was willing to make a substantial investment to mine the resource. He said the applicant would not be present if the resource available would not allow the company to operate in the future. He said he would vote in favor of Step Two.

Mr. Dignam agreed and added that Ms. Schulz had solicited state comment on the matter but the State chose not to respond. He said the lack of response did not signify agreement with one party or another. He stressed that the commissions needed to make a decision based on the evidence in the record.

Mr. Lawless said he hated to be in a situation to make a decision which he felt he was unqualified to make. He said he had no concerns about the quantity of aggregate present on the site. He said the applicant had stated that both of the lower samples had met the standard without the prime rock being sampled. He said there was no reason to not support both the quantity and quality standards provided by the applicant.

Ms. Arkin acknowledged that quantity of resource was present on the site because of the large acreage but noted that farmland was also a significant resource. She said quality of rock also had to be present. She said testimony by Dr. Reed had stated that processing samples could allow the applicant to discard what was not acceptable and get a high quality sample. She surmised that pre test processing violated Oregon Administrative Rules.

Mr. Belcher said there was not sufficient information for him to vote to support Step two.

Ms. Colbath said the reason for sampling was to have a methodology that supported confidence in the result. She said she did see the information in the record to inspire her confidence in the sampling process. She said she did not feel that the way the sampling was done followed a strict standard and added the record did include an independent analysis from an objective party. She said she would vote against step two.

Mr. Duncan said there were comments made that the sampling done was not an independent analysis. He stressed that EGR and Associates *were* an independent organization of which Delta Sand and Gravel was only a single client. He said the company was licensed by the State and stressed that he had a hard time questioning the methods used for sampling since the company did that sort of work for a living.

Ms. Colbath said there was another expert that said the sampling was not done properly. She said if there was a second opinion available which favored one side or the other she would be sure about her vote.

In response to a question from Mr. Duncan regarding whether a person testifying on the sampling had to have a certain level of certification from the State, Ms. Schulz said she believed that to be true. She said all of the experts in the record had provided credentials as part of their testimony.

Ms. Colbath reiterated that she would like to see a second opinion regarding the matter of sampling.

Ms. Schulz said the commission could not place a condition on approval. She said the commissions needed to make either a yes or no vote on the facts in the record.

Mr. Lawless expressed a hope that the bodies making final decisions would ask a state agency to judge which of the opinions on sampling should be taken.

Mr. Dignam said it would be interesting to have a third opinion but remarked that bringing in other experts could go on and on. He stressed that the commissions needed to make decisions based on the information already in the record.

Ms. Arkin said she would be voting no on step two because she felt that the record was incomplete. She said that anyone could make errors and stressed that she did not believe the errors were made on purpose. She remarked that there had been a similar case previously that had hinged on a 'few feet' which was determined not to be present.

Mr. Duncan, seconded by Mr. Lawless, moved to accept the staff recommendation that the applicant had demonstrated the existence of significant material resource on the site. The motion passed 3:2 with Mr. Belcher and Ms. Colbath voting in opposition.

Mr. Dignam, seconded by Mr. Carmichael, moved for approval of step two. The motion failed 4:2 with Mr. Dignam and Mr. Carmichael voting in favor.

Step 3. Minimize Conflicts

Ms. Schulz said the first part of step three was determining the impact area. She said the Oregon Administrative Rule stated that the impact area shall be large enough to include uses listed and shall be limited to 1,500 feet from the mining area except where factual information indicates that additional conflicts existed beyond that distance. She said issues with dust, noise, groundwater, wetlands and sensitive habitat, traffic, flooding, and agriculture had all been identified in the public hearing. She said there had also been a concern raised in the record regarding the elementary school that was beyond the 1,500 foot impact area to the north. She added that there was also testimony that impacts went beyond 1,500 feet. She said she did not concur with that opinion and the 1,500 foot limit was appropriate in her view. She said the County Engineer had reviewed the testimony from the applicant and had submitted a notice into the record stating that the requirements for triggering a traffic impact analysis had not been met. She noted that there was an exhibit in conflict with that opinion in the record. Regarding conflicts with other Goal 5 resource sites within the impact area, Ms. Schulz said the case included wetlands in the area. She noted that there was an oxbow remnant of the East Santa Clara Waterway on the Eugene Wetlands

Inventory. She said timing was important in that adoption Eugene's Goal 5 inventory had not been completed. She said the oxbow wetland could not be considered because the Goal 5 Inventory protection measures have not yet been approved by the City and the County. She said there was a pond on the site that was in the County's Goal 5 resource inventory but noted that it was not considered a jurisdictional wetland under Division of State Lands rules. She said there was also a section about agricultural practices which did not have a specific agency that provided specific thresholds to meet. She noted that there was testimony from a community farm owner in the record who had raised concern over groundwater impacts.

Regarding minimizing conflicts, Ms. Schulz called attention to Attachment Two of the staff report which contained the mitigation conditions proposed by the applicant to address the required criteria.

- **Dust**

Staff Recommendation: The commissions should find that there is a conflict due to dust that can be minimized to a level that meets DEQ emission standards as applied by LRAPA.

Mr. Duncan said sand and gravel operations were allowed to produce a specific amount of material per year. He remarked that if the amount of material produced per year did not increase then there should not be more dust created than the operation was currently generating.

Ms. Schulz said the issue was not about how much material was mined but how much particulate was put in the air. She said there was not a strict correlation with volume of material produced.

Mr. Duncan reiterated that there would not be more mining than what was currently being done so if Delta was meeting dust standards currently then there was no conflict.

Ms. Schulz said the expansion area would be included in the current LRAPA permit. She said the possible conflict had more to do with whether dust was being generated at once or over a longer period of time.

Mr. Duncan stressed that the operation would not change significantly from what was currently being done.

Mr. Lawless said there was also an issue of proximity of dust to the impact area.

Mr. Carroll noted that the Lane Regional Air Pollution Authority (LRAPA) permit enforced DEQ standards. He said as long as the applicant met that standard then there was no conflict. He acknowledged that dust conflicted quality of life but it was measured by how much was produced by the facility. He stressed that the issue was how much dust the facility produced. He said if the standard for dust emanation criterion was met then Delta was meeting the standard for dust emission.

Mr. Dignam confirmed that LRAPA regulated dust emissions. He said he was not prepared to second guess LRAPA. He said he was comfortable with the dust issue as long as the LRAPA standards were met.

Ms. Colbath said her concern was whether the particulate emission met the approval threshold.

Ms. Arkin said the reason LRAPA enforced DEQ standards was for impacts on human health. She stressed that dust had an impact and that was what the regulation was all about. She said there was an

expert in the record who had stated that many neighborhoods would be impacted by dust emissions from the site. She added that there was also a physician on record talking about pulmonary diseases and other health impacts to nearby residential areas. She noted that the applicant did not do an air dispersion model for the west end of the site and said this was a serious oversight and an inadequacy in the record. She said the expansion area was in closer proximity to neighbors and would therefore produce 50 to 60 percent more particulate matter. She said increased exposure to particulate matter would actually decrease longevity. She said she would like to hear from the applicant as to whether it could do better mitigation measures on dust emissions.

Ms. Nichols commented that the dust mitigation portion of the applicant's report mentioned less than normal setbacks and remarked that this did not seem like mitigation of impacts.

Mr. Zdzienicki said the LRAPA permit had not yet been given. He raised concern over making a blanket decision that the expansion area would be included in the same permit that was currently in use.

Mr. Becker said there had been no quantitative analysis of dust impacts as part of the record. He questioned how it was assumed that the applicant would comply with dust emission standards when there had been no analysis.

Mr. Carmichael stressed that there was currently mining going on and there was currently an LRAPA permit. He said dust emissions were being examined according to LRAPA standards. He said if mining continued at its current level in a different area then a logical person would assume that whatever was currently going on now would be going on in the future. He said the issue was whether there would be more or less dust emissions. He acknowledged that there was some concern from commissioners that dust could be a conflict but expressed his opinion that dust emissions would not be a greater concern than it currently was.

Mr. Becker said his issue was the closer proximity of mining operations to nearby residential areas. He noted that the opposition had claimed that there would be 50 percent more dust particulate in the air.

In response to a question from Mr. Belcher regarding whether LRAPA changed its standards according to proximity to residential areas, Mr. Lanfear said the LRAPA standard was a maximum contaminate level based on proximity to the source of the emissions.

Mr. Duncan said analysis of dust emissions was an ongoing process. He stressed that analysis was going on all the time. He said LRAPA would make the determination as to what was acceptable dust emission.

Mr. Carroll said it was difficult to arrive at an objective resolution to the issue. He said if the applicant met the applicable standard then the commissions would have to find that standards had been met. He said the issue was a matter of the total production of dust by the facility and whether that production met the established standard.

In response to a question from Mr. Dignam regarding whether other communities in Oregon had an organization similar to LRAPA, Mr. Lanfear said he did not know of any other area that had an organization similar to LRAPA.

Mr. Dignam stressed that Lane County was fortunate in that there was an expert organization that did nothing but monitor pollution levels. He said he did not feel that he needed to second guess LRAPA when it came to dust emission standards.

Ms. Arkin said LRAPA did not have the staff or the funding to do fence line testing of dust emissions. She said LRAPA was sampling the quality of the air for a large area and could not pin point problem areas. She said if the neighbors complained about dust emissions LRAPA had no means to address the issue. She added that there was a DEQ standard for emissions that was enforced but referred to another application where the applicants had gone beyond the enforced standard for emissions.

Ms. Arkin noted that the record contained a letter from School District 4J stating that the expansion site was close to a planned school site and expressed concern over health to the children due to particulate matter generated by Delta.

Mr. Becker said the emission standard would be the same as it was currently and would not change regardless of proximity to residential areas and as long as the facility met the standard then proximity would not matter.

Mr. Zdzienicki said LRAPA was a complaint driven agency that did no analysis unless someone made a complaint.

Ms. Colbath said LRAPA would be the body to enforce stricter standards for dust emissions. She acknowledged that it would be hard to enforce those standards and expressed a desire to look at other mitigation measures that might be taken. She said she would assume that all mitigation measures would be included in the application but raised concern that staff was trusting that an LRAPA permit would be issued and questioned whether there was any evidence that the permit would be confirmed.

Ms. Schulz said the expansion area would be added to the existing permit. She added that LRAPA had said that it had completed the review of the proposal and the current permit remained valid. She noted that this was documented in the record.

Ms. Colbath questioned whether there was sufficient evidence about emissions to the west side of the site and questioned whether there was any detail in the record about an air dispersion model to the west of the site.

Ms. Schulz said east winds happened so infrequently that there was no concern among staff about dust mitigation to that side.

In response to a question from Ms. Colbath regarding how far the planned elementary school was from the site in question, Ms. Schulz said it was beyond the identified 1,500 foot impact area.

Mr. Lawless noted that there was a conflict due to dust that could be minimized to a level that met DEQ standards. He said the permit issued by LRAPA was a separate process. He said the issue was whether there were some mitigation methods that could meet LRAPA and DEQ standards. He said it was a separate matter whether LRAPA traveled around the boundaries of the property and took dust emission readings.

Mr. Belcher said LRAPA standards did not take into account the proximity to residents. The only option was some sort of setback to deal with that issue.

Mr. Zdzenicki added that the trucks used by the applicant would be driving a longer distance and creating a higher particulate count in the air. He said the wetness of the roads would be a factor in mitigating dust emissions.

A straw poll was taken which showed consensus among both of the commissions that there was a conflict with dust.

Mr. Duncan said the staff recommendation was to find that dust emissions could be minimized to DEQ standards as applied by LRAPA.

Mr. Dignam suggested asking staff's opinion as to whether the applicant's suggested mitigation measures were sufficient.

Mr. Lanfear said the commissions should use the conditions as proposed by the applicant, and determine whether those conditions are adequate to minimize the conflict to a level that it is no longer significant. No longer significant means do they meet the DEQ / LRAPA standards?

Mr. Duncan said LRAPA set the requirements for emissions. He said LRAPA was the agency to make the decision about emission standards. He said he would go along with a LRAPA decision about mitigation methods.

Mr. Lanfear said dust standards had to be met at every point where conflict in the impact area occurred.

Mr. Carmichael called for a straw vote regarding whether the applicant's suggestion for mitigation were adequate.

Mr. Becker said mitigation measures could not be proposed before an analysis was done.

Mr. Carroll commented that a straw vote was straying from the framework of the staff report. He maintained that it had not yet been decided whether dust conflicts could be mitigated. He said he would vote no in the straw poll because the commissions were missing the substance of the process.

The Eugene Planning Commission voted 4:1 that dust conflicts could be minimized.
Colbath voted no.

Ms. Colbath called for a straw vote on whether the minimization could occur with the conditions # 15-25 as listed on Attachment 2, the conditions, in the record.

Mr. Belcher suggested removing condition #22 which called for a reduction in minimum setbacks. He commented that reducing minimum setbacks in an area near residential housing was the last thing that should be done. He reiterated that LRAPA standards were identical without considering proximity to residential areas.

Mr. Lawless said impacts could be minimized by measures other than moving the line. There will be impacts at the edge of the neighborhood whether the setback was 50 feet or 150 feet. He said distance was only one way of minimizing impacts. He said the goal of minimization of impacts could be achieved without limiting setbacks.

Mr Duncan acknowledged that there was a conflict with dust but stressed that an extra 50 feet of setback would not make any difference what-so-ever.

Mr. Carmichael commented that the discussion was going beyond the information in the record. He said the record would be clear for the elected officials that there was concern over setback issues.

Ms. Arkin said all that needed to be said is that the conflict could be solved by requesting an ESEE analysis.

Mr. Lanfear noted that to request an ESEE analysis the commissions would have to find that there was a conflict that was not minimized. He stressed that the commissions would have to make that finding first.

Mr. Carmichael stressed that there was plenty of discussion in the record and requested that a straw vote be taken as to whether to exclude condition # 22.

Mr. Carroll said conditions were important to deliberations. He stressed that the commission was entitled to address the impacts of the proposed mining expansion. He said conditions could be called out for the elected officials to examine later in the process. He listed the conditions for which he had concern;

1. Number 15, regarding minimization measures, said watering roads might need to be looked at more often than every two hours depending on the presence of vehicles.
2. Number 18 regarding trucks hauling dry fine material being wetted or covered when transporting off the site, Mr. Carroll commented that if clay was being transported onto the site then that would contribute to dust emissions.
3. Mr. Carroll noted that part of the LRAPA permit required that no party could knowingly allow fugitive dust emissions. He said, given the proximity to residential areas, more stringent mitigations measures were justified.

Mr. Duncan seconded Mr. Carroll's comments. He reiterated Mr. Carmichael that the record and staff notes would point out the concerns of the commissions to elected officials making a decision later in the process.

Ms. Colbath stated that the comments of the commissioners stood by themselves and a straw vote was not required. She also had concern about Condition #22, as did Mr. Belcher.

The Lane County Planning Commission straw vote indicated 4:1:1 that dust could be mitigated.

Ms. Schulz clarified that there was consensus among the commissions that there was a conflict due to dust and the majority believed that the conflict could be minimized but not with the standards indicated in the staff report.

Mr. Lanfear said the commissions had essentially decided that the conflict had not been minimized. He said the commissions could not say 'yes' to one point and 'no' to the second. He said the question was whether the conflict had been minimized by the applicant's proposed standards.

Mr. Lawless said he would support the idea that the applicant's mitigation measures minimized the dust conflict.

Mr. Belcher stated if there was real concern over minimizing dust emissions, then the minimum standard setbacks would not be reduced by applicant request. He said he would not support the idea that the proposed mitigation measures could minimize dust emissions.

Mr. Carroll said the record was inconclusive as to whether minimization would address the issue of dust.

The straw poll result was that the proposed minimization measures would not address the dust conflict issue. The result was 3:2 with Commissioners Belcher, Carroll, and Colbath voting that the conflict could not be minimized with the conditions proposed by the applicant.

Regarding the issue of whether the applicant had provided the proper mitigation measures to minimize dust impacts, The Lane County Planning Commission took a straw poll with the result 2:3:1. Commissioners Dignam and Carmichael voting that the proposed measures were adequate, Commissioners Arkin, Zdzienicki and Nichols voting that the proposed measures were not adequate and Commissioner Becker abstaining.

Mr. Carmichael noted that the Lane County Planning Commission was approaching its time limit established in its by-laws. He called for staff comment as to when deliberations could be reconvened.

Ms. Schulz said the commissions should meet for further deliberations as soon as possible. She said nothing would be served by delaying the process.

There was general discussion on whether to continue deliberations separately or jointly. Ms. Colbath said it was imperative to continue jointly so commissioners could be aware of each other's deliberations and opinions.

Mr. Zdzienicki agreed with Ms. Colbath.

Mr. Dignam recommended that the commissions meet separately. He raised concern that the process was not going smoothly and said there was nothing to be lost by meeting separately and work their way through the listed issues. He suggested that the Lane County Planning Commission schedule further deliberations for the following week.

Mr. Becker disagreed. He said he was learning a lot from Eugene Planning Commission and the sum total of the people at the table was very beneficial. He expressed his desire to continue to meet jointly.

Mr. Duncan said there are a number of items that could be deliberated independently with the possibility of meeting jointly at a later time to discuss larger issues. He said it would be easier to meet separately in terms of scheduling.

Mr. Belcher disagreed. He reiterated Mr. Becker that the commissions were learning from one another. He said deliberations would not go quickly because of the nature of the proposal.

Mr. Dignam, seconded by Ms. Arkin, moved that the Lane County Planning Commission continue past its three hour deadline. The motion resulted in a tie vote. There was general consensus to continue the meeting until 10 pm.

- Noise

Staff Recommendation: The commissions should find that there is a conflict due to noise and the proposed mitigation measures are sufficient to minimize the noise impacts to a level that meets the State DEQ standard.

Ms. Schulz noted that there had been a lot of testimony regarding noise during the public hearings. She said there had been a new development after the first public hearing in that the applicant reexamined the noise zone map and had determined that “. . .without mitigation, DEQ noise standards would be exceeded at the residences on the site owned by the applicant and approved uses within the noise limit boundary would also be affected.”

Mr. Yeiter said the definitions in the administrative rules for minimization said that minimization meant to reduce an identified conflict to a level that was no longer significant. He said when there was an adopted standard, as was the case with noise, the commission should target that standard when considering mitigation measures.

In response to a question from Ms. Nichols regarding whether the City's noise limitation standards matched those of the State, Ms. Schulz said noise standards were established at the state level. Mr. Yeiter said the noise would not be coming from the city limits. He confirmed that City duration of noise standards were the same as those being proposed by the applicant.

Mr. Duncan said he would support the staff recommendation since the state standards were already established.

In response to a question from Mr. Belcher regarding how noise standards were enforced, Mr. Lanfear said there was no longer any state agency that enforced noise standards.

Mr. Zdzienicki said noise enforcement was a complaint driven process and stressed that proximity to residential areas was a conflicting issue.

Ms. Colbath said she agreed with staff that there was a conflict due to noise.

In response to a question from Mr. Duncan regarding complaints about noise and whether DEQ standards would be used to measure noise, Mr. Lanfear suggested a condition of approval that the operation

maintain the correct noise standards laid out by the Department of Environmental Quality. He said Lane County would then have the authority to enforce noise regulations.

In response to a question from Ms. Nichols regarding whether the commission had the authority to change the hours that noise was allowed, Mr. Yeiter said he did not know what the state standard was for lateness of noise but the applicant had agreed to use the City of Eugene noise standards.

Mr. Lanfear added that there was a certain level of noise allowed until 10 pm. and the applicant was not trying to operate until the established time limit.

Ms. Arkin said the suggested noise standards were hard to enforce. She said 10 pm. was late for families in the area to hear operations going on. She said she was saddened that the applicant could not take families and working class people into account. She said for the record that 10 pm. was a burden on neighbors and she felt sad for the people who would have to listen to it.

In response to a question from Mr. Carroll regarding whether excavation of the low permeability water barrier was a construction activity and therefore exempt from DEQ noise standards, Ms. Schulz said she did not agree with that conclusion.

Mr. Carroll said the issue had been raised by the opposition that excavation for the low permeability barrier should be included under DEQ noise standards. He said the applicant had stated that the excavation was a construction activity and therefore had a different noise standard.

In response to a question from Ms. Colbath regarding whether a construction permit would be issued, Ms. Schulz said it would be part of Delta's operating plan and not a separate permit.

In response to a question from Mr. Carroll regarding whether the applicant analyzed potential noise from the construction of the low permeability barrier, Ms. Schulz said the applicant had not.

In response to a question from Ms. Colbath regarding whether the construction of the barrier would be included in the time limits established in noise ordinances, Ms. Schulz said yes if the activity was included in the plan to allow mining.

Mr. Belcher said the equipment for constructing the low permeability barrier would not be below ground level like the mining equipment. He added that the construction would also be closer to residential areas.

Mr. Lawless said he agreed that there was a noise conflict issue. He said he was in favor of considering allowed hours of operation. He said if the mitigation measures proposed met DEQ standards then he saw no reason not to support the idea that the conflict could be minimized.

Ms. Arkin said the applicant failed to address the DEQ regulations for noise because they left out analysis of impulse noise, blasting noise, and tonal noise. She stressed that the applicant had not really addressed compliance with DEQ standards.

Mr. Becker said noise was a major issue for residents. He said the 10 pm. allowance seemed extreme to him and added that 7 am. operations on a Saturday also felt unreasonable to him. He suggested that the allowable hours of operation should be re-examined.

Mr. Carmichael said it appeared that staff and commissioner comments indicated that there was a noise issue. He stated for the record his hope that the elected bodies would take a close look at the noise issue.

Mr. Belcher commented that holding to the 150 foot setback would have a positive impact on noise mitigation.

Mr. Dignam said he believed there was a conflict due to noise but the mitigations suggested by the applicant were adequate. He said he would support the mitigation measures as proposed. He stressed the importance of looking at the big picture of all the mitigation measures being proposed.

The Eugene Planning Commission took a straw vote and established general agreement that there was a conflict due to noise.

Ms. Colbath called for a straw vote that the proposed mitigation measures were sufficient

Mr. Lawless reiterated that mitigation measures would comply with DEQ standards.

Mr. Belcher questioned whether the DEQ standards were sufficient for the neighbors. He added that construction of the low permeability barrier would have its own impacts and raised concern that there was not sufficient mitigation.

Mr. Lanfear said the conflict was minimized if the noise met DEQ standards.

The result of the straw vote was 3:2 with Commissioners Colbath and Carroll voting in opposition.

The Lane County Planning Commission took a straw vote and unanimously decided that there was a conflict due to noise

The Lane County Planning Commission took a straw vote on whether the conflict could be minimized by the proposed mitigation measures. The resulting vote was Commissioners Carmichael, Dignam, and Nichols voting yes, Commissioners Arkin and Zdzienicki voting no and Commissioner Becker abstaining.

- **Flooding**

Staff Recommendation: The Planning Commission should find that there was no conflict due to flooding.

There was consensus to review the record and address the flooding conflicts at a future meeting.

- **Groundwater**

Staff recommended that the Planning Commission find that there was a conflict due to groundwater that could be minimized by constructing the low permeability barrier. The applicant should be

directed to address the location of the low permeability barrier and map its specific location in the Operations Plan

Ms. Schulz said there had been a lot of groundwater testimony submitted into the record. She expressed her belief that the conflict could be minimized by the construction of the low permeability barrier.

In response to a question from Ms. Colbath regarding whether there had been other instances of similar barriers being used, Ms. Schulz said there had not. She said the applicant had made his case in the record regarding how the barrier would function.

Mr. Dignam clarified that a low permeability barrier had not been seen in *Lane County*. He said it was his recollection that the technique had been used successfully elsewhere. He stressed that this was a relevant fact and asked staff if there are other places this technology is used.

There was general consensus to table the item until a future meeting so staff could review the record for specific examples of the technology being used in other areas of the country and address the issues raised by the commission.

- **Traffic**

Ms. Schulz said staff had accepted and waived the applicant's requirement to conduct a traffic impact analysis because the level of change of traffic on the roads would not rise to a level of significance.

In response to a question from Mr. Belcher regarding concerns raised by the City Traffic Engineer, Mr. Yeiter said gravel permits had a life expectancy and truck traffic was worked in to that expectancy. He said the streets used were scheduled for improvements. He acknowledged that in the future the area would be more developed and there could be an issue in 20-30 years.

Ms. Colbath commented that the City was not sure what the long term plan was going to be for the roads/intersections and there was some movement to the idea of incremental impact and development paying its share for road improvements in the area.

Mr. Yeiter said the concern was that there would be more difficulty in the future when traffic levels increased due to future development if Delta was still operating at that time.

Ms. Schulz said the level of change in traffic did not rise to the threshold where the applicant was required to do further analysis. She noted that road improvements would be done in the future to increase traffic capacity in the area.

Mr. Zdzienicki said the projected growth in traffic was 1 percent. He said the current operating permit allowed 2 million tons per year and Delta was currently close to that limit so there would not be significant truck traffic added.

Mr. Belcher commented that it would be unfair to penalize Delta for any future growth and development in the area. He remarked that the City concern was not valid.

Mr. Duncan said he supported the staff conclusion.

Mr. Dignam said he accepted the staff conclusion. He stressed that there was no conflict with transportation in the application.

Ms. Colbath noted that the record showed that the applicant had stated that trips would not increase so there was no conflict.

Eugene Planning Commission took a straw vote with the result of unanimous consensus that there was no conflict due to traffic impacts.

Lane County Planning Commission took a straw vote with unanimous consensus that there was no conflict due to traffic impacts.

Next Steps

Ms. Schulz suggested meeting every Tuesday until the deliberations were completed.

There was general consensus to tentatively schedule further deliberations for August 8 and August 15.

The meeting adjourned at 10 pm.
(Recorded by Joe Sams)

Joint Meeting
Lane County and Eugene Planning Commissions
Harris Hall—125 East 8th Avenue

August 30, 2006
5:30 p.m.

PRESENT: Lane County Planning Commission: Jim Carmichael, Chair; Ed Becker, Vice-Chair; Juanita Kirkham, Lisa Arkin, Jozef Siekiel-Zdzienicki; John Sullivan; Staff: Stephanie Schulz, Kent Howe, Planning Department.

ABSENT: Lane County Planning Commission: Steve Dignam, Nancy Nichols, Todd Johnson.

PRESENT: Eugene Planning Commission: Mitzi Colbath, President; Rick Duncan, Vice President; Jon Belcher, Phillip Carroll, John Lawless members; Kurt Yeiter, Planning and Development Department.

ABSENT: City of Eugene Planning Commission: Randy Hledik, Phillip Hudspeth.

Mr. Carmichael convened the meeting of the Lane County Planning Commission at 5:30 p.m.

Ms. Colbath convened the meeting of the Eugene Planning Commission at 5:30 p.m.

Those present introduced themselves.

Mr. Carmichael noted there were no members of the public who wished to make Public Comment.

Ms. Schulz distributed a memorandum dated August 30, 2006; subject PA05-6151 Delta Sand and Gravel Post Acknowledgement Plan Amendment. Mr. Howe offered the staff report and explained the information on the handout, noting *I. Recommendations from July 25, 2006* described the work completed by the commissions, *II. Continued Deliberations* identified issues yet to be discussed.

Mr. Howe noted the role of the Planning Commissions was to determine if conflicts existed, and if so, had the applicant submitted mitigating proposals that would reduce and minimize those conflicts. Mr. Howe said with most of the issues, with the exception of the agricultural impacts, state standards needed to be met, adding if there was not a conflict under Goal 5, state standards were met. He said it was not necessary for the commissions to word smith conditions.

Ms. Arkin asked how resource site significance issues should be addressed when the Lane County and Eugene Planning Commissions held different views.

Mr. Howe replied that each of the commissions would make recommendations to their respective elected officials who would make the final decision. Mr. Howe opined different recommendations were not problematic.

Mr. Siekiel-Zdzienicki said he had voted yes on item *I. Step 1* of the straw poll, and wished to change his vote.

Mr. Carmichael noted no objections to Mr. Siekiel-Zdzienicki's request, and asked that the record reflect his request. He said the July 25, 2006 poll was only a straw poll.

In response to a procedural question raised at the August 29, 2006 Lane County Planning Commission meeting, Mr. Howe, upon consulting with the County Counsel, said it was not legally required for commissioners to listen to recorded tapes of prior deliberations they had missed.

Mr. Sullivan said he had listened to the tapes of the deliberations meeting in question.

In response to Ms. Colbath, Mr. Howe said if the impact area needed to be greater than 1,500 feet; it should be raised individually with each issue discussed. He added that Goal 5 established an automatic 1,500 foot impact area around the perimeter of the subject property in a PAPA plan amendment. Furthermore, he stated that because the variance process was a separate one, the commissioners should assume a request for a related variance was approved.

Mr. Howe concurred with Mr. Sullivan's assertion that that the applicant would not request a variance in the residential zoned area, but would ask for a variance in the agricultural area.

In response to Mr. Carmichael, Mr. Howe iterated that the variance issue had been adequately addressed, in that the assumption that the variance was approved.

In response to Ms. Arkin, Ms. Schulz said there was no map of the variance location in the record. However, a written legal description of the subject property, Exhibit 50, shows the site.

Responding to Mr. Belcher, Mr. Howe stated that the Planning Commissions could make a recommendation to the elected officials to address minimizing the impact of fencing at the site.

Mr. Carmichael opened the discussion, commencing with:

- ***Determine if mining conflicts can be minimized:***
 - ***Groundwater:***
 - ***Is there a conflict due to groundwater?***

Mr. Siekiel-Zdzienicki sought clarification of the location of the low-permeability barrier within the 150 foot setback.

Mr. Howe stated that the aquaclude had been well presented in the record around the perimeter of the expansion area.

Ms. Schulz said the aquaclude had never been removed from the proposal, explaining that it would be constructed to provide the mitigation for reduction of groundwater in the area. She concurred with Ms. Arkin's statement that EGR's February 16, 2006 Exhibit 55 contained a diagram that illustrated the groundwater barrier.

The question, Mr. Howe stated, was there conflict due to groundwater?

Ms. Colbath called for a Eugene Planning Commission straw vote that asked: *Was there a conflict due to groundwater without the aquaclude.* The result of the straw vote was 5:0 that there was a conflict due to groundwater.

The Lane County Planning Commission took a straw vote, 6:0 that there was a conflict due to groundwater.

Moving to the next issue, Mr. Carmichael asked,

- *Do you believe the groundwater conflict can be minimized through the applicant's proposed conditions?*

In response to Ms. Colbath, Ms. Schulz concurred that the maps illustrated that the aquaclude was outside of the 150 foot boundary of the adjacent uses.

Ms. Arkin stated that the EGR report stated that the groundwater would rise on the west side of the barrier, claiming that the level would not impact anyone. She added that both groundwater and surface water responded to influx of precipitation, which would cause a rise in the water table, and subsequent movement of groundwater.

Mr. Sullivan referred to a November 8, 2006 staff report, in which staff expressed concerns. He stated the report indicated there were no local, state or federal standards effecting groundwater, and responsible state agencies did not have the resources to conduct due diligence regarding groundwater concerns, although the Department of Geology and Mineral Industries (DOGAMI) did have enforcement authority through Goal 5. He asked how the staff concern had changed since November 8, and expressed concern that the responsibility for monitoring would fall directly on the elected officials.

Ms. Schulz responded that additional materials had been submitted in the record describing professional publications and discussions that described the technology as being useful and capable of providing the required protection for the groundwater.

Mr. Sullivan asserted that was one of the few places in the application that placed the onus on the elected officials was the governing agency of what was and what was not good groundwater.

Mr. Siekiel-Zdzienicki said a proposal stipulated that mitigation measures, i.e, the aquaclude, would be installed according to an approved plan by DOGAMI, the responsible state agency.

Mr. Sullivan this would fall on the operating plan for enforcement, which was a long way off. He said the Planning Commission could recommend to the elected officials that they require a barrier map.

Ms. Colbath asked if there was an oversight agency to review, as well as provide follow-up to ensure continued compliance.

Ms. Schulz was unaware of such an agency.

Mr. Siekiel-Zdzienicki opined the follow-up was complaint driven. He commented that in the expansion area for the quarry, the applicant would dig 60 feet to extract aggregate, while pumping water constantly. He said that the aggregate did not end at the expansion area, but continued to the residential area. He stated the aquaclude was planned for 30 feet because of an impermeable barrier of concrete and aggregate. He expressed concern that groundwater would be effected.

Mr. Carroll said the applicant's proposal indicated it would minimize groundwater conflict. He understood the impermeable barrier would not impound water, but rather would divert the water. He added the testimony offered at the public hearing did not convincingly argue against that diversion concept. He concluded this was a logical way to minimize the groundwater effect.

Mr. Belcher expressed frustration by his lack of knowledge and being forced to vote on an issue he did not clearly understand. He was challenged to understand how an aquaclude that prevented loss of groundwater in summer did not increase the chance of flooding in the winter.

The Eugene Planning Commission took a straw vote on: *If the conflict due to groundwater could be minimized through the conditions proposed by the applicant to a level that met applicable the state or federal standards, or if no government standard applied, could the conflict be minimized.* The result of the straw vote was 4:1 with Commissioner Belcher voting in opposition.

Mr. Belcher reconsidered his vote to be in favor of the straw poll later in the meeting. The revised result of the straw vote was unanimous, 5:0.

The Lane County Planning Commission took a straw vote the result of which was 2:4, with Commissioners Becker, Kirkham, Arkin and Siekiel-Zdzienicki voting in opposition.

○ **Wetlands and Sensitive Habitat:**

- ***Is there a conflict due to wetlands and sensitive habitat?***

Mr. Carroll asked if the variance requested for non-residential lands included a reduced set-back on adjacent properties on the northwest corner of the proposed site.

Ms. Schulz responded it would be outside of the 150 foot setback. She concurred with Mr. Carroll's query that since the setback under Goal 5 for gravel fell at least 150 feet from the meander scar wetlands, no conflict existed.

Referring to a July 17, 2006 staff report, Ms. Arkin noted comments that indicated a no fill and remove permit was necessary to minimize conflict. However, she saw the issue as having potential for a different impact, from either flooding or dewatering, that would create an impact on the wetlands. She said the issue was not only about construction or filling, but there could be impacts due to the presence or absence of water. She encouraged commissions to keep this in mind during their deliberations.

The Eugene Planning Commission took a straw vote on: *Is there a conflict due to wetlands and sensitive habitat?* The result of the straw vote was 3:2 with Commissioners Duncan and Carroll voting in opposition.

The Lane County Planning Commission took a straw vote the result of which was 4:2, with Commissioners Carmichael and Sullivan voting in opposition.

In response to a question from Mr. Carmichael, Mr. Howe said the intent of the question ("*Is there a standard that applies?*") was to serve as a reminder for commissioners to determine if there was a standard, and had the applicant met that standard. He reiterated that Goal 5 was a standard that applied to all the questions.

- ***Do we believe the wetlands conflict can be minimized through the applicant's proposed conditions?***

Ms. Arkin opined the applicant would need to file an Environmental Impact Statement (EIS) before the question could be answered, and she did not see an EIS in the file.

Mr. Siekiel-Zdzienicki said the Santa Clara Waterway extended beyond the 1,500 foot impact area, and an impact in one place would impact all the way along the 1,500 foot length to the river.

The Eugene Planning Commission took a straw vote on: *Do we believe the wetlands conflict can be minimized through the applicant's proposed conditions?* The result of the straw vote was unanimous 5:0.

The Lane County Planning Commission took a straw vote the result of which was 2:4, with Commissioners Becker, Kirkham, Arkin and Siekiel-Zdzienicki voting in opposition.

○ **Flooding:**

▪ ***Is there a conflict due to flooding?***

The Eugene Planning Commission took a straw vote on: *Is there a conflict due to flooding?* The result of the straw vote was 2:3, with Commissioners Duncan, Lawless, and Carroll voting in opposition.

The Lane County Planning Commission took a straw vote the result of which was 5:1, with Commissioner Siekiel-Zdzienicki voting in opposition.

▪ ***Do we believe the flooding conflict can be minimized to meet the FEMA standard?***

Mr. Duncan asserted that adherence to FEMA standards would result in minimization of conflicts.

Mr. Carmichael concurred with Mr. Duncan.

Mr. Howe stated that FEMA had drawn the line, and the subject property was not in the floodway but was in the floodplain. He added that proposal would not raise the floodplain by adding material. Rather, material would be extracted, and would not impact the floodplain.

Mr. Belcher stated material would be added by construction of the aquaclude, and could raise the water table. Mr. Howe said the aquaclude would be below groundwater. From the standpoint of this development contributing to the 100 year floodplain, the concept behind the floodway and floodplain was that all of the floodplain could be completely built and it would not increase the elevation in the floodway by more than one foot. He added the applicant was not proposing any development in the floodway. He said the entire floodplain could be filled, and it would not cause more than one foot of rise in the floodway. These conditions adhered to the FEMA modeling, and would not increase the likelihood of flooding.

Mr. Belcher said the issue was the ability of the subsurface to absorb water and prevent flooding.

Mr. Becker said the question asked if there was a conflict due to flooding, and did not discuss floodplain designations.

Mr. Duncan looked at groundwater or flood potential as something that occurred over a large geographic area, with the aquaclude being relatively small in comparison to where the groundwater and flood water would disperse. Any water that backed up would do so over several miles rather than in a small area, and would not have much impact.

Mr. Belcher again expressed his frustration over being asked to take action on an issue in which he was not an expert. He felt the local effect of placing a dam near housing could be significant if the water was not able to disperse over a much longer distance.

Ms. Arkin stated the groundwater and surface water effects could not be separated. She felt strongly the aquaclude could contribute to flooding in residential areas. Additionally, the applicant had stated they had

assumed that the Santa Clara Waterway would remove the ground and surface waters.

Mr. Lawless saw the aquaclude, not as a dam, but more as a storm water retention and infiltration pond, with the capacity to handle a rapid influx of water, as a best practice, providing a safety valve. This served as an overflow that would go into secondary stormwater management system. He saw the design as being practical and reasonable.

Ms. Colbath expressed concern that the aquaclude would cause flooding problems. In response to Ms. Colbath, Ms. Schulz said topographic maps were included in the record.

Mr. Howe iterated that the FEMA regulations were the applicable standard. He asked if the proposal would meet FEMA regulations, that being in a 100 year flood it would not raise the water level to one foot above the 100 year floodplain elevation. This was not in the floodway, and in a floodplain, the entire floodplain could be filled and it would not increase the floodway in violation of the FEMA requirement.

Mr. Howe said in this situation, the standard for the proposed extraction from the pit would be if it violated the FEMA 100 year floodplain requirements.

Ms. Arkin said stated the issue was not only about the applicant's site, but also adjacent areas, the impact area, and beyond the impact area. She added that applicant had stated that water would not only move horizontally but would also rise. She said that the EGR drawings did not show where the water table was located, or where the excavated dirt would be placed. She stated she did not believe the applicant had shown they could mitigate impacts to the neighborhoods to the west.

Ms. Schulz asked if the water would rise to one foot above the ground, which was the standard for the flood regulations. She added that digging gravel went downward, not upward.

Mr. Becker expressed concern about how the subterranean dam would impact adjacent neighborhoods.

Mr. Howe said the standard was within the impact area, and whether the FEMA 100 year floodplain standard could be met.

Mr. Sullivan accepted the statements by the area residents that they currently experienced flooding problems that existed before the excavation request. He said there was nothing in the record that indicated that the existing permit would exacerbate a flooding problem in that area. If the applicant met the FEMA requirement; the aquaclude could possibly diminish flooding possibilities in the area because it could become a reservoir for the water runoff the residents experienced. He emphasized this assertion was his opinion, and had not been scientifically proven.

Mr. Belcher expressed concern that the aquaclude could cause the land around the aquaclude to be more heavily saturated. He said he would vote that the flooding could be mitigated in hope that the value of deliberation would give both sides further opportunity to provide evidence before a final decision was made.

Mr. Siekiel-Zdzienicki stated the dam would work both ways, and it was unknown how it would function, making it difficult to determine if the flooding conflict could be minimized.

Ms. Colbath asked what recourse was available to FEMA if the aquaclude did not meet FEMA's standards.

Mr. Howe reiterated the Planning Commissions criteria: was there a standard and does the applicant meet that standard?

The Lane County Planning Commission took a straw vote on: *Do we believe the flooding conflict can be minimized to meet the FEMA standard?* The result of the straw vote was 2:4, with Commissioners Becker, Kirkham, Arkin and Siekiel-Zdzienicki voting in opposition.

The Eugene Planning Commission took a straw vote the result of which was 3:2, with Commissioners Belcher and Colbath voting in opposition.

○ **Agricultural Impacts**

▪ ***Is there a conflict due to agricultural impacts?***

The Eugene Planning Commission took a straw vote on: *Is there a conflict due to agricultural impacts?* The result of which was 3:2, with Commissioners Duncan and Lawless voting in opposition.

The Lane County Planning Commission took a straw vote the result of which was 4:2, with Commissioners Carmichael and Sullivan voting in opposition.

▪ ***Is there factual information in the record that indicates conflict with agricultural practices extends beyond 1,500 feet from the boundary of the expansion area?***

Mr. Sullivan expressed concern on how to appropriately apply the requirements. He noted the Full Circle Farm owner had testified he would be impacted by the proposed action, and asked how far beyond 1,500 feet should the commissions use as a guideline.

Mr. Howe said the only guidance available was that included in the rule, which stated the impact area was inside 1,500 feet. He added if there was convincing evidence in the record that the conflicts extended beyond 1,500 feet, the Planning Commission could then make a recommendation that the impact area should go beyond 1,500 feet.

Mr. Sullivan stated his vote would include that the applicant would have to be directed to address the issues, opining there must be other property owners within a mile of the proposed action that would also be impacted. Mr. Sullivan understood the Full Circle Farm concern was related to subsurface water. He had asked staff why a well was being use for residential purposes when public water was available, and been advised that the action was permitted but not recommended.

Mr. Siekiel-Zdzienicki stated that the Eugene Tree Nursery had a well failure that had been attributed to both aggregate excavation and the well had simply filled up.

Ms. Arkin stated testimony in the record from Oregon State University Extension Service staff cited concerns for dust raised by the mining operation that would settle on crops raising the cost of farming practices for dust removal, as well as some products from which the dust could not effectively be removed.

Mr. Howe clarified the statement under discussion: *Is there convincing factual information in the record that indicates conflict with agricultural practices extends beyond 1,500 feet from the boundary of the expansion area?* He asked if the commissioners were convinced by the information that was in the record that indicated conflict with agricultural practices extends beyond 1,500 feet. He added this was a discretionary issue for the commissioners.

The Eugene Planning Commission took a straw vote on: *Is there convincing factual information in the record that indicates conflict with agricultural practices extends beyond 1,500 feet from the boundary of the expansion area?* The result was unanimous, 0:5.

The Lane County Planning Commission took a straw vote the result of which was 2:4, with Commissioners Becker, Kirkham, Carmichael, and Sullivan voting in opposition.

- ***Can the conflict due to agricultural practices be minimized through the applicant's proposed conditions to a level that will not force a significant change in accepted farm use nor increase the cost to conduct farming significantly? The agricultural practices standard is found under the provisions of ORS 215.296.***

Ms. Colbath commented the person testified against the proposal and who lived within the 1,500 foot expansion area was leasing the property. She asserted a lessee, as a third party, did not have the same level of independence or authority to comment on the request.

Mr. Belcher said there would be no way to mitigate the conflict on a farm that would not exist if the request was approved.

Mr. Sullivan stated the owner had a right to farm or not to farm the property. If he chooses not to farm the property and chose to use Goal 5, Goal 5 took precedence over farm land if the owner could meet the requirements. He added whether it was a farm or not a farm was moot if the owner met the PAPA requirements since Goal 5 clearly superceded a farm.

Mr. Sullivan stated that the person who testified from OSU Extension Services was a good friend. He said it was important to look at the broader picture, asserting that farm land was extremely important and very valuable. He said the issue was not farm land versus Goal 5, but rather does the PAPA meet the requirements necessary for that owner to be allowed to use that property the way s/he chooses to.

The Eugene Planning Commission took a straw vote on: *Can the conflict due to agricultural practices be minimized through the applicant's proposed conditions to a level that will not force a significant change in accepted farm use nor increase the cost to conduct farming significantly? The agricultural practices standard is found under the provisions of ORS 215.296.* The result was unanimous, 0:5.

The Lane County Planning Commission took a straw vote the result of which was 2:4, with Commissioners Becker, Kirkham, Carmichael, and Sullivan voting in opposition.

The Planning Commissions took at recess from 7:19 p.m. to 7:31 p.m.

Mr. Carmichael reconvened the commissions. He stated the goal was to conclude the Step 3 discussion and proceed to Step 4.

Mr. Howe stated the commissioners had successfully completed Step 3, and each knew where their respective commissions stood on making recommendations to the elected officials on the various areas of potential conflict. Referring to the Goal 5 process flow chart previously distributed, Step 3 called for determining if the mining conflict could be minimized.

Mr. Howe recalled on the issue of dust, both Planning Commissions were recommending to the elected officials that the dust conflict was not minimized to the level that would meet DEQ and LRAPA standards through the conditions proposed by the applicant.

Mr. Howe said this was the time for each Planning Commission to make final recommendations to the elected officials. He explained that if the commissions felt an impact had not been minimized, the applicant

would need to go to Step 4. It would be appropriate at this time if the Planning Commissions chose to recommend whether or not this application met the requirements for a Metro Plan amendment.

In response to Ms. Colbath, Mr. Howe said if the elected officials felt the conflict had been minimized there was no need to go through the ESEE analysis. Otherwise, the applicant has the burden of going through the ESEE analysis.

Mr. Sullivan said he felt compelled to explain to the Board of Commissioners why he was in the minority on every vote. It might be appropriate for each commissioner be given an opportunity to explain clearly why there were in majority support or majority opposition.

Ms. Colbath said under their process, if there are any commissioners who were in the minority, a minority report could be forwarded to the Eugene City Council along with it's the Planning Commission's recommendations.

Mr. Carmichael noted consensus to follow Mr. Sullivan's suggestion.

Mr. Siekiel-Zdzienicki said the City of Eugene made a major mistake by not annexing but by allowing residential land along the future extraction area, rather than creating a heavy industrial to a light industrial to a commercial to a multi family to a buffer zone these problems would not exist if a buffer zone had been created. He said dust and water issues had not been adequately addressed, and he would deny the application because he did not think the issues could be mitigated.

Mr. Becker said it was difficult to support action that would move a mining operation within 150 feet of residential properties, and he would vote to deny the approval of the application.

Mr. Carroll had nothing further to add.

Mr. Duncan would wait until the minority report was published.

Ms. Colbath passed.

Mr. Sullivan said this was a difficult deliberation. This was a larger issue than an aquifer or a question of whether flood waters could be present, and cited several points supporting his position:

- The applicant clearly qualified as a PAPA as provided by LCDC. The property was contiguous to an existing, approved sand and gravel operations. Goal 5 resources would be protected and future approval would be subject to DOGAMI regulations in accordance with the Metro Plan.
- Many of the minimizations proposed would be measured only after construction began. He said he would support verification on conditions of approval by authorized authorities.
- State Goal 9, economic development, relied on this critical component for environmental and economic development.
- The applicant listened to the opponents, and had made some of the requested changes.
- This was an issue of balance, but the balance had to do with Goal 5, that stated when there was a conflict that could be minimized then Goal 5 superseded agricultural land.
- The Lane County comprehensive plan stated that the county was required to protect aggregate deposits from encroachment. The applicant did not encroach upon the residential area; rather, the residential area, through no fault of the residents, had encroached upon a very valuable Goal 5 resource that was needed in this area for both environmental and agricultural purposes.
- Randy Moore, from the responsible enforcement agency, had assured the commission in writing that if the application was approved by the Board of Commissioners and the Eugene City Council, he

would look at the plan to ensure that it was adequate, and ensured that no off site impacts would affect either the floodplain or groundwater. The letter had been entered into the record.

- Other conflicts would be minimized by the applicant and those conflicts would be monitored and authorized by DEQ through LRAPA and LCDC.

For those reasons, Mr. Sullivan was strongly in support of forwarding this to the elected officials who would approve or disapprove, and if they disapproved, would get the ESEE underway.

Mr. Belcher, although conflicted, was encouraged by the fact that issues had been raised for consideration by the elected officials.

Ms. Arkin said aggregate and farm land is Goal 5 resources. There was not convincing evidence in the record that the resource site was significant. She was concerned about health impacts such as dust leading to asthma and lung disease on school children and the children who lived in the nearby residences. The applicant had not provided sufficient modeling to demonstrate noise could be mitigated. She felt strongly that the neighbors' fear of flooding was a real fear. Ms. Arkin said that none of the agencies responsible for providing oversight had the funding and staffing to do so. She asserted the application did not meet the criteria to allow mining.

Ms. Kirkham said it was her responsibility as a Planning Commissioner to decide if the application convinced her 100 percent that they had met the criteria. Although there were many places where this application did convince her, she had concerns about dust and water. She wanted the county commissioners to look at dust, groundwater, wetlands and flooding.

Mr. Lawless said the Planning Commissions were in the position of pretending to know about things they knew nothing about. He expressed conflicted feelings due to the social, economic and civic nature of our land use, and goals and rules that required compact growth and reduction of travel. He agreed this was a matter of balance. He hoped that the responsible monitoring agencies would be able to fulfill their responsibilities. He was convinced the applicant would comply with applicable regulations. He said he would support moving this forward to the elected officials.

Concluding the discussion, Mr. Carmichael thanked the applicant for their patience; the citizens involved in the opposition who offered articulate, polite, and compelling comments; the Lane County and Eugene Planning Commissions for "hanging in there" for a long period of time, and doing their homework to reach reasonable conclusions to forward to the elected officials. He stated Mr. Sullivan articulated his feelings, while Ms. Arkin offered thoughtful opposing points. Mr. Carmichael opined there was a satisfactory solution to be found. He hoped the mining operation could continue, because it was a long term, good citizen of our community that was willing to participate in whatever mitigating forms to ensure the safety and well being of the people who moved close to that mining operation. He expressed optimism that as the elected officials proceeded they would take the commissioners' comments and thoughts to heart.

Ms. Colbath pointed out that on page 2 of the August 8, 2006 agenda packet, the vote recorded for the Eugene Planning Commission on the question *Do we believe the dust conflict can be minimized to a level that meets DEQ and LRAPA standards through the conditions shown in attachment 2?* was shown as 3 yes 2 no, while the information in the packet for today's meeting was corrected to 2 yes 3 no.

Ms. Colbath called for the motion.

Mr. Duncan, seconded by Mr. Lawless, moved to recommend to the Eugene City Council that the Planning Commission felt the PAPA information was adequate and that the resource was significant. All conflicts were able to be minimized by the applicant except the dust conflict, which the Planning

Commission majority did not believe could be minimized to an acceptable level. The motion passed unanimously, 5:0.

In response to a question from Mr. Siekiel-Zdzienicki, Mr. Howe stated that the Lane County Planning Commission needed to address the variance issue in its motion to provide direction to the Lane County Board of Commissioners.

The Lane County Planning Commission took a recess from 8:00 p.m. to 8:05 p.m.

Mr. Carmichael, seconded by Ms. Kirkham, moved to recommend to the Lane County Board of Commissioners that the Planning Commission felt the PAPA information was adequate and that the resource was not significant. Lane County Planning Commission did not find that the conflicts with dust, groundwater, wetlands and flooding were minimized and therefore could not recommend approval without an ESEE analysis.

Ms. Arkin stated the Planning Commission never discussed whether or not it could approve the motion with approval of an ESEE analysis.

Following a brief discussion, Mr. Carmichael withdrew the motion.

Ms. Arkin, seconded by Mr. Siekiel-Zdzienicki, moved to recommend to the Lane County Board of Commissioners that the Planning Commission felt the PAPA information was adequate and that the resource was not significant. In addition, the Lane County Planning Commission did not find that the conflicts with dust, groundwater, wetlands and flooding could be minimized to an acceptable level and therefore cannot recommend approval of the application.

Mr. Sullivan said he would vote against the motion. Addressing the members of the public in attendance, he said while he often spoke sternly and in a straightforward manner, he had a great deal of compassion for the residents, in that he faced many of the same challenges. He was confident that the Eugene City Council and Lane County Board of Commissioners would be highly compassionate towards the residents of the area to find balance in their decision. He applauded the residents for their patience, courtesy and respectful behavior.

The motion passed 4:2, with Commissioners Carmichael and Sullivan in opposition.

Mr. Belcher thanked the Lane County Planning Commission for their efforts throughout this difficult process.

Mr. Siekiel-Zdzienicki said it was good to have a different perspective brought forth by the Eugene Planning Commission on the issue. He added that the variance issue still needed to be discussed prior to the LCBCC meeting.

Mr. Howe said staff heard the frustration expressed by the lay members of the Planning Commission regarding their lack of experience and expertise. He added it was not expected that the commissioners would be experts on these issues, but rather it was the responsibility of the applicant and the opposition to provide convincing information. He added the LCBCC were not technical experts either, but relied upon the lay body to make recommendations that would help them as they worked their way through the process. He commended the commissioners for their work on the issue.

Ms. Colbath explained that the Eugene Planning Commission denied approval based on non-mitigating factors and based its approval on the 150 foot variance being approved.

Ms. Colbath adjourned the Eugene Planning Commission meeting at 8:15 p.m.

The Lane County Planning Commission took a brief one minute recess.

Mr. Carmichael said two issues needed to be addressed, that of a zone change request and the 1,500 foot setback.

Mr. Howe explained that because of where the Planning Commission ended up on the post acknowledgement plan amendment, PAPA, the Planning Commission was recommending that the applicant had not met the requirements for that, therefore, the Planning Commission could not proceed with the zone change and the variance.

Mr. Siekiel-Zdzienicki said the setback was like sacred land that served as a buffer zone—"don't mess with." The proposal to put the aquaclude in the setback was classified as construction by County Counsel, and construction should not be in the setback. He disagreed with the applicant that the aquaclude could be and should be in the setback. He said the UGB would gradually expand and it would be a mistake to minimize the setback where it adjoined the tree nursery. He opposed a variance from the setback.

In response to Ms. Arkin, Mr. Becker said the Planning Commission had made a recommendation in opposition to the zone change, thus the variance was a moot point.

Mr. Howe suggested that the Planning Commission determined that as a result of the recommendation of the PAPA not meeting the Metro Plan requirements, the application for the zone change and the setback variance were not appropriate to be dealt with at this time.

Mr. Carmichael asked if the Planning Commission was willing to accept Mr. Howe's statement as a motion.

Mr. Dignam proposed accepting Mr. Howe's statement as a motion. Mr. Becker seconded the motion. The motion passed unanimously, 6:0.

Mr. Carmichael said the next meeting would take place on at 5:00 p.m. on Tuesday, September 5, 2006.

Mr. Carmichael adjourned the Lane County Planning Commission at 8:23 p.m.

(Recorded by Linda Henry)

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FILE RECORD CONTENT SHEET
Delta Sand & Gravel Co. Metro Plan Amendment
Ordinance No. PA 1238



<u>No.</u>	<u>Item</u>	<u>Date</u>
		LAND MANAGEMENT DIVISION http://www.LaneCounty.org/PW_LMD/
1.	Application for Plan Amendment and Zone Change	8/12/05
	a) Exhibit A – Lane County Tax Assessor’s Maps	
	b) Exhibit B – Legal Property Description	
	c) Exhibit C – Official Zoning Map Plot # 1005	
	d) Exhibit D –LRAPA Air Containment Discharge Permit #202119	
	e) Exhibit E – Evaluation of Aggregate Resources: Delta Sand & Gravel Expansion Area (EGR & Associates, Inc.)	
	f) Exhibit F – Noise Study for Delta Sand & Gravel New Mining Site (Daly Standlee & Associates, Inc.)	
	g) Exhibit G – Air Quality Evaluation Proposed Expansion of the Existing Delta Sand & Gravel Co. Aggregate Resource Site (Bridgewater Group, Inc.)	
	h) Exhibit H – Evaluation of Potential Flood Impacts: Delta Sand & Gravel Proposed Expansion Area (EGR & Associates, Inc.)	
	i) Exhibit I – Digital Model of Existing Excavation Site and New Expansion Area (EGR & Associates, Inc.)(Groundwater Study)	
	j) Exhibit J – DOGAMI Operating and Reclamation Plan	
2.	Referral Letter to Agencies and nearby property owners	8/16/05
3.	DLCD Notice of Proposed Action	8/19/05
4.	Register Guard Legal Ad # 8616911	10/19/05
5.	Exhibit 1 -- Letter from Tony Fong	10/31/05
6.	Exhibit 2 – Letter from Mark Moehle	11/05/05
7.	Exhibit 3 – Letter from Brian & Karina Henderson	11/07/05
8.	Referral Response from City of Springfield, no regional impact	11/04/05
9.	Exhibit 4 – email from Kristen Sweet	11/11/05
10.	Exhibit 5 – email from James E. Knepler	11/13/05
11.	Exhibit 6 – email from Davin & Jeanine Anderson	11/13/05
12.	Exhibit 7 – email from Brock Guentner	11/13/05
13.	Exhibit 8 – letter from Kurt Eaton	11/13/05
14.	Exhibit 9 – letter from Jonathan P. Lauch, 4J Facilities Mgmt.	11/15/05
15.	Referral Response from Lane Co. Transportation Planning	11/15/05
16.	Lane County Staff Report for Joint PC’s Public Hearing	11/15/05
17.	DOGAMI Pre-Amendment Renewal of Operating & Reclamation Plan	11/15/05
18.	Memo from Shane Hughes, PE, EGR & Associates, Inc. response to staff concerns re: Rock Resource Quality	11/15/05
19.	Updated Noise Map with Mitigation submitted by Daly Standlee & Associates, Inc. at the Public Hearing (Expanded Zone 4)	11/15/05
20.	Letter from Daly Standlee clarifying noise physics as stated in RG	11/14/05
21.	Letter from Daly Standlee clarifying staff report statement regarding ambient noise	11/15/05
22.	Exhibit 10 – Letter from Donald Faiman	11/15/05
23.	Exhibit 11 – email from Charles Biggs	11/15/05
24.	Exhibit 12 – email from Rob Handy	11/15/05

FILE RECORD CONTENT SHEET

Ordinance No. PA 1238

<u>No.</u>	<u>Item</u>	<u>Date</u>
25.	Exhibit 13 – letter from Bromley Newton LLP	11/15/05
26.	Exhibit 14 – letter from Robert Funk	11/15/05
27.	Exhibit 15 – letter from Joel Narva	11/15/05
28.	Exhibit 16 – letter from Kate Perle	11/15/05
29.	Exhibit 17 – letter from Mike Alltucker	11/15/05
30.	Exhibit 18 – notes from Kevin Jones’ oral testimony	11/15/05
31.	Exhibit 19 – letter from Mark H. Reed	11/15/05
32.	Exhibit 20 – memo from Karen Lawrence	11/15/05
33.	Exhibit 21 – letter from Greg & Renee See	11/15/05
34.	Exhibit 22 – letter from Greg & Renee See	11/15/05
35.	Exhibit 23 – letter from Hutchinson, Cox, Coons, DuPriest, Orr, & Sherlock, P.C.	11/15/05
36.	Exhibit 24 – memo from Dewey Hofer, H & E Feeds	11/15/05
37.	Exhibit 25 – email from Coquette Lawrence	11/16/05
38.	Exhibit 26 – letter from Scott A. Smith	11/25/05
39.	Exhibit 27 – letter from Diane Paige	01/03/06
40.	Exhibit 28 -- Applicant response to County request for data	01/03/06
41.	Exhibit 29 -- Eugene Transportation Analyst response	01/06/06
42.	Exhibit 30 –Lane Co. Waiver from Traffic Impact Analysis under LC 15.697 (2)	01/13/06
43.	Minutes -- Joint Lane County & Eugene Planning Commission Hearing -- 11-15-05	01/17/06
44.	Staff Responses to Planning Commissioners Questions from 11-15	01/17/06
45.	Exhibit 31 – email from Janis Holmes	01/17/06
46.	Exhibit 32 – email from Phil Evonuk, Lane County Farm Bureau	01/17/06
47.	Exhibit 33 – Testimony of Concerned Santa Clara Residents on Delta Mining Expansion Proposal – PA05-6151	01/17/06
	a) Aggregate/Geology Resource Report responding to EGR report submitted by applicant – Mark H. Reed, author	
	b) Air Pollution Report on Fallout Impacts from the Proposed Expansion of Delta Sand & Gravel – Camille Marie Sears, author	
	c) Natural Resources/Wetlands Report – Ethan Perkins Ph.D., author	
	d) Groundwater/Hydrology Report – Malia R. Kupillas, R.G., C.W.R.E., author (same as Exhibit 36)	
	e) Noise Impacts Report – Arthur M. Noxon, PE, author (see also his written testimony presented at hearing and resume, Exhibit 37)	
	f) Agricultural Impacts Report – Ross Penhallegon, author (includes crop specific cost assessments of dust effects	
	g) Exhibit 34 -- Farmland Protection flier Q&A, 1000 Friends of Oregon, author	
	h) letter from Land Watch Lane County (same as Exhibit 45)	
	i) memo from Kate Perle (same as Exhibit 40)	
	j) memo from Kevin Jones (same as Exhibit 40)	
	k) Exhibit 35 – memo from Michael Mishka Sloan	
48.	Exhibit 36 – Hydrology-Geology Report, Malia Kupillas, author	01/17/06
49.	Exhibit 37 – Testimony and resume for acoustical engineer Noxon	01/17/06
50.	Exhibit 38 – viewpoints of concerned residents, photographs	01/17/06
51.	Exhibit 39 – memo from James E. Knepler	01/17/06

FILE RECORD CONTENT SHEET

Ordinance No. PA 1238

<u>No.</u>	<u>Item</u>	<u>Date</u>
52.	Exhibit 40 – Estimate for Cost of Change in Agricultural Practices at Full Circle Community Farm, K. Jones & K. Perle	01/17/06
53.	Exhibit 41 – photo of culvert at Miles Lane and Taito	01/17/06
54.	Exhibit 42 – photos of flooding on Summer St. and Gerald Ave.	01/17/06
55.	Exhibit 43 – letter from Sierra Club Debra Higbee, author	01/17/06
56.	Exhibit 44 – letter from Paul Atkinson, Laughing Stock Farm	01/17/06
57.	Exhibit 45 – letter from Land Watch Lane County	01/17/06
58.	Exhibit 46 – Letter from Karen Reed	01/17/06
59.	Exhibit 47 – Rebuttal to opposition from EGR & Assoc. addressing groundwater mitigation, flooding, alternative to alluvial aggregate, improper sampling accusation	01/17/06
60.	Exhibit 48 – Rebuttal to opposition from EGR & Assoc. addressing underground dam concerns, BFE datum adjustment	01/17/06
61.	Exhibit 49 – letter from George Staples, applicant's geologist includes DOGAMI update to Reclamation Plan and revised <u>noise</u> mitigation map and implementing measures	01/17/06
62.	Exhibit 50 – letter from Steve Cornacchia, applicant's attorney	01/17/06
63.	Exhibit 51 – memo from LRAPA	01/17/06
64.	Exhibit 52 – email from Charles Oppenheimer, noise consultant	01/17/06
65.	Exhibit 53 – Wind Rose Diagrams from LRAPA, Dick Ruth	01/17/06
66.	Exhibit 54 – Letter from Dan Stotter, attorney for the opposition	01/17/06
67.	Minutes – Joint Eugene and Lane Co PC Hearing Continuation	01/17/06
68.	Cover letter from Steve Cornacchia, attorney for applicant	02/16/06
69.	Exhibit 55 – EGR & Associates Inc. rebuttal to M. Reed & M. Kupilas regarding significance of the resource and groundwater	02/16/06
70.	Exhibit 56 – Bridgewater Group, Inc. rebuttal C. Sears air quality/dust	02/16/06
71.	Exhibit 57 – EGR & Associates, Inc. rebuttal to E. Perkins regarding wetlands	02/16/06
72.	Exhibit 58 – Daly Standlee & Associates, Inc. response to A. Noxon regarding noise	02/16/06
73.	Exhibit 59 – Peer review testimony from John Hector of Daly Standlee & Assoc. & of A. Noxon (noise)	02/16/06
74.	Exhibit 60 – Applicant response to A. Noxon testimony (noise)	02/16/06
75.	Exhibit 61 – Peer review testimony from Environmental Associates Inc. of A.Noxon study (noise) and C. Sears (air pollution)	02/16/06
76.	Exhibit 62 – Response to EGR's assertion of significance of the resource from Mark. H. Reed	03/17/06
77.	Exhibit 63 – Response to Bridgewater testimony (dust) from James E. Knepler	03/17/06
78.	Exhibit 64 – Letters from Robert Funk (dust, groundwater, noise)	03/17/06
79.	Exhibit 65 – Rebuttal to applicant from Doug DuPriest, attorney for Joel & Therese Narva (dust, noise, groundwater, wetlands)	03/17/06
80.	Exhibit 66 – Applicant's final rebuttal	03/31/06

