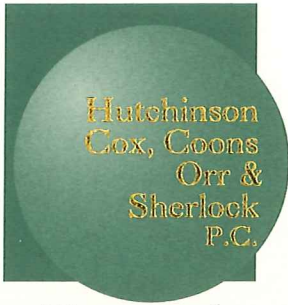


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June 6, 2013

Lane County Board of Commissioners  
c/o Rafael Sebba  
Lane County Land Management Division  
3050 N. Delta Hwy  
Eugene, OR 97408

RE: **Elective Board Review/June 11, 2013**  
Delta Property Co./Special Use Permit/Quarry Expansion  
County File No. PA12-06374  
Our Clients: Joel and Terese Narva  
Our File No. 6274/9064E

Dear Commissioners:

On behalf of our clients, Joel and Terese Narva, we submit the following letter to oppose Delta Property Company's request for a Board Elective Hearing on June 11, 2013. We request that the Board of Commissioners decline review of this appeal.

**Background**

The applicant urges the Board to review the Hearings Official's denial of a permit to mine gravel on 68 acres of Agricultural Land zoned for Exclusive Farm Use (EFU).

Applications for mining gravel on agricultural land usually require a post-acknowledgment plan amendment (PAPA) which requires a balancing of the resource quality with the quality of agricultural lands, and takes into account impacts on the surrounding neighborhood.

The applicant tried to avoid these requirements by seeking a Special Use Permit under Lane Code Section 16.212(4)(y). This Section allows mining on properties that are already on the Sand and Gravel inventory in the Lane County Rural Comprehensive Plan, if they do not adversely impact surrounding agricultural users. The applicant's primary problem is that its property is not on the inventory.

Lane County's Rural Comprehensive Plan inventory is specified in the plan as Appendix "D" in its Mineral and Aggregate Resources paper. *Rural Comp. Plan*, p. 29. This inventory is limited to 21 individual sites identified by assessor's map and tax lot number. The subject property is not among them. The Hearings Official noted this fact and denied the application on April 15, 2013.<sup>1</sup>

On May 2, 2013, he reviewed the applicant's arguments, and affirmed his decision without reconsideration.

1. Denial Of This Special Use Permit Is Not An Issue Of Countywide Significance.

Denying a special use permit for a site that is not on the County's inventory is not an issue of Countywide significance warranting Board review. The Hearings Official's decision is little more than a recognition that the County Code means what it says – a site has to be on the Rural Comprehensive Plan inventory before it can be mined under a Special Use Permit.

The applicant urges that the decision "shrink[s] the available resource in the Metro Plan area by about 75%." It does not do so. The County's resources remain the same as they were before. Those that are on Appendix "D" and incorporated into the Rural Comprehensive Plan inventory continue to be available for mining under a special use permit (as they always have been). Those that are not are still potentially available for mining under a PAPA.

The fact that a property is not on the County's adopted list and is not eligible for a special use permit is not a basis for Board review of the decision.

2. This Issue Is Not Likely To Reoccur With Any Frequency Because Other Applicant's Are Unlikely To Try To Obtain A Permit For Sites That Aren't On The Inventory.

This issue is unlikely to reoccur more than once because the County's inventory is clear. Future applicants are capable of reading the criteria in the County's Code and Rural Comprehensive Plan, and then looking at Appendix "D" to see if their site is eligible for mining under a Special Use Permit. This plain language is more than adequate policy direction on the issue. It is highly unlikely that a future applicant will mistakenly believe that

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<sup>1</sup> The Hearings Official also found that the applicant had failed to demonstrate that dust fallout from the proposed mining operation would not force a significant change in surrounding agricultural uses.

a site that is not on the list of identified site is nevertheless eligible for mining under a Special Use Permit.

3. There Is No Unique Environmental Resource At Issue.

Finally, there is no unique environmental resource warranting the Board's review. The applicant's gravel is not a unique resource. One needs simply to look further to the north and south of the site to locate other similar resources that are being actively mined.<sup>2</sup> As the applicant has failed to demonstrate that there is a unique environmental resource at issue, its request for Board review should be denied.

**Conclusion**

As the applicant has failed to demonstrate that its appeal warrants review by the Board, we hereby respectfully request that the Board decline further review of its Hearings Official's decision.

Very truly yours,

HUTCHINSON, COX, COONS,  
ORR & SHERLOCK, P.C.



Zack P. Mittge

cc: Client  
Bill Kloos

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<sup>2</sup> In fact, the applicant itself points to a 1978 study to argue that there are potentially thousands of acres of resources underlying agricultural lands in the area. While the County ultimately did not adopt this paper as its Goal 5 inventory, applicants still retain the ability to seek a PAPA for areas containing significant resources.