Oregon
Theodore R. Kulongoski, Governor

Department of Land Conservation and Development
635 Capitol Street, Suite 150
Salem, OR 97301-2540
(503) 373-0050
Fax (503) 378-5518
www.lcd.state.or.us

NOTICE OF ADOPTED AMENDMENT

6/21/2010

TO: Subscribers to Notice of Adopted Plan or Land Use Regulation Amendments

FROM: Plan Amendment Program Specialist

SUBJECT: Polk County Plan Amendment
DLCD File Number 005-01

The Department of Land Conservation and Development (DLCD) received the attached notice of adoption. Due to the size of amended material submitted, a complete copy has not been attached. A Copy of the adopted plan amendment is available for review at the DLCD office in Salem and the local government office.

Appeal Procedures*

DLCD ACKNOWLEDGMENT or DEADLINE TO APPEAL: Friday, July 02, 2010

This amendment was submitted to DLCD for review prior to adoption pursuant to ORS 197.830(2)(b) only persons who participated in the local government proceedings leading to adoption of the amendment are eligible to appeal this decision to the Land Use Board of Appeals (LUBA).

If you wish to appeal, you must file a notice of intent to appeal with the Land Use Board of Appeals (LUBA) no later than 21 days from the date the decision was mailed to you by the local government. If you have questions, check with the local government to determine the appeal deadline. Copies of the notice of intent to appeal must be served upon the local government and others who received written notice of the final decision from the local government. The notice of intent to appeal must be served and filed in the form and manner prescribed by LUBA, (OAR Chapter 661, Division 10). Please call LUBA at 503-373-1265, if you have questions about appeal procedures.

*NOTE: The Acknowledgment or Appeal Deadline is based upon the date the decision was mailed by local government. A decision may have been mailed to you on a different date than it was mailed to DLCD. As a result, your appeal deadline may be earlier than the above date specified. NO LUBA Notification to the jurisdiction of an appeal by the deadline, this Plan Amendment is acknowledged.

Cc: Austin McGuigan, Polk County
Jon Jinings, DLCD Community Services Specialist
Gary Fish, DLCD Regional Representative

<paa> YA

FORM 2

DLCD Notice of Adoption

This Form 2 must be mailed to DLCD within **5-Working Days after the Final Ordinance is signed** by the public Official Designated by the jurisdiction and all other requirements of ORS 197.615 and OAR 660-018-000

☐ In person ☐ electronic ☐ mailed

DATE STAMP

DEPT OF

JUN 14 2010

LAND CONSERVATION AND DEVELOPMENT

For Office Use Only

Jurisdiction: **Polk County**

Local file number: **PA 01-01/ZC01-01**

Date of Adoption: **6/9/10**

Date Mailed: **6/11/10**

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? X☐ Yes ☐ No Date: 2001

X Comprehensive Plan Text Amendment

☐ Comprehensive Plan Map Amendment

☐ Land Use Regulation Amendment

X Zoning Map Amendment

☐ New Land Use Regulation

☐ Other:

Summarize the adopted amendment. Do not use technical terms. Do not write "See Attached".

This case involves a request to amend the text of the Polk County Comprehensive Plan to include a 124 acre extraction area and 212 acre surrounding impacting impact area on the Polk County Inventory of Significant Mineral and Aggregate Resources and to add the ESEE analysis to the Polk County Comprehensive Plan Background Report. This case also involves a request to apply the Polk County Mineral and Aggregate overlay zone to the entire 335 acres in order to allow mining.

Does the Adoption differ from proposal? Yes

No longer includes asphalt batch plant

Plan Map Changed from: **Not in Sig. Res. Inventory** to: **Included in Sig. Res. Inventory**

Zone Map Changed from: **EFU** to: **EFU/Overlay**

Location: **2 miles north of the City of Independence on Hwy 51** Acres Involved: **124**

Specify Density: Previous: New:

Applicable statewide planning goals:

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19
☐	☐	☐	☐	X	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐	☐

Was an Exception Adopted? ☐ YES X NO

Did DLCD receive a Notice of Proposed Amendment...

45-days prior to first evidentiary hearing?	X Yes	☐ No
If no, do the statewide planning goals apply?	☐ Yes	☐ No
If no, did Emergency Circumstances require immediate adoption?	☐ Yes	☐ No

DLCD file No. 005-01 (11660) [16170]

Please list all affected State or Federal Agencies, Local Governments or Special Districts:

Local Contact: **Austin McGuian** Phone: **(503) 623-9237** Extension:

Address: **850 Main Street** Fax Number: **503-623-6009**

City: **Dallas** Zip: **97338** E-mail Address: **mcguigan.austin@co.polk.or.us**

ADOPTION SUBMITTAL REQUIREMENTS

This Form 2 must be received by DLCD no later than 5 days after the ordinance has been signed by the public official designated by the jurisdiction to sign the approved ordinance(s)
per ORS 197.615 and OAR Chapter 660, Division 18

1. This Form 2 must be submitted by local jurisdictions only (not by applicant).
2. When submitting, please print this **Form 2** on light **green paper if available.**
3. Send this Form 2 and **One (1) Complete Paper Copy and One (1) Electronic Digital CD** (documents and maps) of the Adopted Amendment to the address in number 6:
4. **Electronic Submittals: Form 2 – Notice of Adoption will not be accepted via email or any electronic or digital format at this time.**
5. The Adopted Materials must include the final decision signed by the official designated by the jurisdiction. The Final Decision must include approved signed ordinance(s), finding(s), exhibit(s), and any map(s).
6. **DLCD Notice of Adoption must be submitted in One (1) Complete Paper Copy and One (1) Electronic Digital CD via United States Postal Service, Common Carrier or Hand Carried to the DLCD Salem Office and stamped with the incoming date stamp.** (for submittal instructions, also see # 5)] **MAIL** the **PAPER COPY and CD** of the Adopted Amendment to:

ATTENTION: PLAN AMENDMENT SPECIALIST
DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
635 CAPITOL STREET NE, SUITE 150
SALEM, OREGON 97301-2540

7. Submittal of this Notice of Adoption must include the signed ordinance(s), finding(s), exhibit(s) and any other supplementary information (see ORS 197.615).
8. Deadline to appeals to LUBA is calculated **twenty-one (21) days** from the receipt (postmark date) of adoption (see ORS 197.830 to 197.845).
9. In addition to sending the Form 2 - Notice of Adoption to DLCD, please notify persons who participated in the local hearing and requested notice of the final decision at the same time the adoption packet is mailed to DLCD (see ORS 197.615).
10. **Need More Copies?** You can now access these forms online at **http://www.lcd.state.or.us/**. You may also call the DLCD Office at (503) 373-0050; or Fax your request to: (503) 378-5518.

BEFORE THE BOARD OF COMMISSIONERS
FOR THE COUNTY OF POLK, STATE OF OREGON

In the Matter of Plan Amendment PA 01-02 and ZC 01-01 to amend the Polk County Comprehensive Plan to include the subject 124-Acre Proposed Extraction Area and the Surrounding Area Extending 750-Feet from the Extraction Area Boundary on the Polk County Inventory of Significant Mineral and Aggregate Resources and to Apply the Mineral and Aggregate Overlay Zoning Designation to that area (Subject Property is Located on Assessment Map T8S, R4W, Section 2, Tax Lots 100, 103, 104, and 300; T8S, R4W, Section 3, Tax Lot 800; T8S, R4W, Section 11, Tax Lot 100)	)

ORDINANCE NO. 10-05

WHEREAS, Polk County land use decisions PA 01-02 and ZC 01-02 and implementing Ordinance Nos. 06-02 and 06-03 were remanded by the Land Use Board of Appeals (LUBA) for further consideration, pursuant LUBA Final Opinion and Order Nos. 2006-28, 2006-29, 2006-31 and 2006-32; and

WHEREAS, on September 19, 2007, the Polk County Board of Commissioners held a public hearing to further consider the matters on remand from LUBA. The Board of Commissioners initiated a legislative process for the consideration of adding the 124 acre mining area and 212 acre impact area to the Inventory of Significant Mineral and Aggregate Resources in the Polk County Comprehensive Plan and directed the Planning Commission to conduct a public hearing and make a recommendation on that matter; and

WHEREAS, the Board of Commissioners memorialized their initiation of the legislative process with adoption of Resolution 08-12; and

WHEREAS, on March 31, 2009 the Polk County Planning Commission held a public hearing on the remanded plan amendment, and kept the record open for the allowance of additional submittals. On June 2, 2009, the Planning Commission fully and openly deliberated and unanimously recommended to the Board of Commissioners approval of the legislative plan amendment to place the subject property on the Inventory of Significant Mineral and Aggregate Resources; and

WHEREAS, the Board of Commissioners held a public hearing on March 10, 2010 on all matters remanded, with due notice of such public hearing having been given and they provided an opportunity for public comments and testimony. The Board allowed all parties to be heard and to submit an unlimited amount of written materials. The Board then allowed the parties additional time to submit further written testimony; and

WHEREAS, On April 28, 2010 the Board fully and openly deliberated this matter and having reviewed the testimony and other evidence in the record, determined that on remand the county has complied with all applicable legislative criteria as required by LUBA, the record now contains adequate findings specific to weed control, the record reflects that the applicant has revised the site plan sufficient to

address the expanded hours issue, the record now contains additional and adequate findings specific to the Transportation Planning Rule, the record now contains additional and adequate information and data specific to trip generation in conjunction with recycled asphalt, and the applicant has submitted a new site plan that removes and withdraws the asphalt batch plant. Based on the Staff Report, the Planning Commission recommendation, the testimony, evidence and discussion at the public hearing and as found in the record, the Board determined that the applications comply with the criteria for approval, subject to the conditions identified in Exhibit "D"; now, therefore:

THE POLK COUNTY BOARD OF COMMISSIONERS ORDAINS AS FOLLOWS:

Sec. 1. That Polk County adopts the findings addressing LUBA Final Opinion and Order Nos. 2006-28, 2006-29, 2006-31 and 2006-32 in favor of PA 01-02 and ZC 01-01 (which includes a conditional use within the Exclusive Farm Use Zoning District and a Wildlife Habitat Management Plan) located in the Staff Report (Exhibit A) and as supplemented in the attached findings (Exhibit B). All findings which were adopted by Polk County in this case previously in Ordinance 06-02 and 06-03, are incorporated herein to the extent those findings are not inconsistent with the findings and conclusions contained herein. The findings adopted here are intended to supplement and clarify and correct deficient findings from the prior approval. Where ever there is a conflict in findings between this and prior adopted findings, the findings made here shall control.

Sec. 2. That Polk County amends the Polk County Comprehensive Plan Inventory of Significant Mineral and Aggregate Resources to include the approximately 124-acre proposed mineral and aggregate extraction site located one property south of 1620 Highway 51, Independence, Oregon (Subject property is located on Assessment Map T8S, R4W, Section 2, Tax Lots 100, 103, 104, and 300; T8S, R4W, Section 3, Tax Lot 800; T8S, R4W, Section 11, Tax Lot 100) and more specifically delineated on the extraction and impact areas site plan (Exhibit C).

Sec. 3. That Polk County amend the Polk County Zoning Map to designate the proposed 124-acre Extraction Area and Impact Area extending 750-feet outward from the Extraction Area, which are currently zoned Exclusive Farm Use, as Exclusive Farm Use with a Mineral and Aggregate Overly (MA Overlay) Zoning District, as depicted on Exhibit "C".

Sec. 4. That Polk County approves the conditional use of mining aggregate and other mineral and subsurface resources on the proposed 124-acre Extraction Area which is included in the County inventory of mineral and aggregate resources within the Exclusive Farm Use Zoning District.

Sec. 5. Conditions of Approval:

1. The identified extraction area shall include the area depicted on the site plan map attached as Exhibit "C" of this ordinance.

2. The identified impact area shall extend a uniform distance of 750-feet from the Extraction Area boundary.

3. The operator shall submit to the Planning Director, pursuant to PCZO 174.070 – 174.080, a site development plan in compliance with the standards under PCZO 174.060. The site development plan shall comprise the minimum standards under PCZO 174.060, the site-specific development plan requirements set forth in the ESEE Analysis, and the requirements identified as necessary for the implementation of the of the proposal by the Polk County Board of Commissioners (Exhibit D).

Sec. 6. An emergency is declared and the provisions of this ordinance become effective upon its adoption.

Dated this 9th day of June 2010, at Dallas, Oregon.

POLK COUNTY BOARD OF COMMISSIONERS

Mike Propes, Chair

Ron Dodge, Commissioner

Tom Ritchey, Commissioner

Approved as to form:

David Doyle
County Counsel

First Reading: _____

Second Reading: _____

Recording Secretary: _____

EXHIBIT A

POLK COUNTY COMMUNITY DEVELOPMENT
POLK COUNTY COURTHOUSE, DALLAS, OREGON 97338-3182
(503) 623-9237 FAX (503) 623-6009

AUSTIN MCGUIGAN
DIRECTOR

MEMORANDUM

TO: Polk County Board of Commissioners

FROM: Austin McGuigan, Community Development Director

DATE: February 25, 2010

SUBJECT: PA 01-02, ZC 01-01

OWNER: McKay Land Co. LLC

APPLICANT: CPM Development Corporation D.B.A. Valley Concrete and Gravel Company

Wednesday, March 10, 2010 Agenda

RECOMMENDATION:

Consider written and oral testimony regarding the Land Use Board of Appeals (LUBA) remand of Plan Amendment PA 01-02 and Zone Change/Conditional Use ZC 01-01, deliberate on the matter and make a final local decision.

ISSUE:

Should the Polk County Board of Commissioners adopt additional findings authorizing a Comprehensive Plan amendment, and a zoning map amendment as presented in PA 01-02 and ZC 01-01 in order to include the subject site on the Polk County Inventory of Significant Mineral and Aggregate Resources and to apply the Mineral and Aggregate Overlay Zoning Designation to approximately 124-acres of the 704-acre Exclusive Farm Use (EFU) zoned subject tract to allow aggregate mining and processing as well as asphalt and concrete production and all related uses normally associated with a gravel operation?

The Planning Commission has made a recommendation to the Board of Commissioners to amend the Comprehensive Plan to list the subject property on the inventory of significant aggregate sites. The Board of Commissioners will now make the final decision on that issue as well as whether the site can be mined, and if so under what circumstances and conditions.

BACKGROUND:

The applicant is requesting an amendment to the Polk County Comprehensive Plan to include the subject site on the Polk County Inventory of Significant Mineral and Aggregate Resources and to apply the Mineral and Aggregate Overlay Zoning Designation to approximately 124-acres of the 704 acre Exclusive Farm Use zoned subject parcel and to an impact area extending approximately 750 feet from the 124 acre extraction area.

The subject property is located one property south of 1620 Highway 51, Independence Oregon (Subject property is located on Assessment Map T8S, R4W, Section 2, Tax Lots 100, 103, 104, and 300; T8S, R4W, Section 3, Tax Lot 800; T8S, R4W, Section 11, Tax Lot 100)

The application was submitted on July 3, 2001. On October 23, 2001 a public hearing was conducted before the Polk County Hearings Officer and continued to November 20, 2001. On

January 21, 2002 the applicant requested the record to be reopened so that the proposed access road and bridge could be considered as part of the application for mineral and aggregate extraction, and to allow for the submittal of additional information addressing potential impacts on the Rickreall Community Water Association wells. On January 25, 2002, the Polk County Hearings Officer remanded the application back to the Polk County Planning Division.

The applicant provided additional information and, on November 23, 2004, another public hearing before the Polk County Hearings Officer was held for the application. On January 19, 2005, the Hearings Officer, at the request of opponents, ordered that the record be reopened for submissions in response to new evidence that was provided in the applicant's final written rebuttal. On May 10, 2005, the Hearings Officer ordered that the record be reopened a second time for the limited purpose of allowing opponents to submit a supplemental legal memorandum detailing why the applicant's reliance on the current version of the Transportation Planning Rule (TPR) should be impermissible.

The Hearings Officer made a recommendation of approval for PA 01-02, and ZC 01-01 on September 12, 2005, subject to conditions.

On November 9, 2005 the Polk County Board of Commissioners held a public hearing. The Board allowed all parties to be heard and to submit an unlimited amount of written materials.

On December 28, 2005 the Board fully and openly deliberated this matter and having reviewed the testimony and other evidence in the record, determined that sufficient information related to the location, quantity, and quality of the aggregate resource for the proposed quarry site demonstrates that the resource is significant as measured by the standards of Section 174.110 of the PCZO. The Board reviewed the Environmental, Social, Energy and Economic (ESEE) analysis, identified potential conflicting and sensitive uses, and has identified an impact area extending 750 feet outward from the boundary of the Extraction Area. Based on the staff report, the Hearings Officer recommendation, the testimony, evidence and discussion at the public hearing commenced on November 9, 2005, and as found in the record, the Board determined that the application complied with the criteria for approval of the application, subject to conditions.

A timely appeal of PA 01-02 and ZC 01-01 was made to LUBA in November of 2005. On December 8, 2006, LUBA issued its Final Opinion and Order (LUBA Nos. 2006-28, 2006-29, 2006-31 and 2006-32) remanding the decisions. LUBA denied several assignments of error, sustained others and remanded the decisions requiring further consideration and adoption of:

1. Adequate findings demonstrating that the plan amendment is following the proper procedure as a legislative amendment;
2. Adequate findings addressing weed control;
3. Adequate findings addressing notice for expanded hours;
4. Adequate findings addressing Oregon Administrative Rule (OAR) 660-012-0060(1);
5. Adequate findings addressing whether trip generation estimates include trips related to brining recycled asphalt to the site; and
6. Adequate findings addressing potential impacts of the proposed hot mixed asphalt concrete (HMAC) plant on especially sensitive crops.

The applicant requested a remand hearing before the Polk County Board of Commissioners. On September 19, 2007, the Polk County Board of Commissioners held a public hearing to further consider the matters on remand. At the remand hearing, it was suggested by opponents to the project that a remand be made to the Polk County Planning Commission. The Board of Commissioners agreed and initiated a legislative process for the consideration of adding the 124 acre mining area and 212 acre impact area to the Inventory of Significant Mineral and Aggregate Resources in the Polk County Comprehensive Plan. The Board of Commissioners directed the Planning Commission to hold a public hearing to consider the criteria identified in PCZO 115.060, as required in the LUBA order remanding this case, and make a recommendation on the

plan amendment proposal to the Board of Commissioners. The Board memorialized their initiation of the legislative process and direction to the Polk County Planning Commission with adoption of Resolution 08-12. The Resolution was subsequently appealed to LUBA by opponents. LUBA dismissed the appeal with Final Opinion and Order No. 2008-184, finding that the challenged resolution initiating the proposed comprehensive plan amendment process was not a final decision subject to LUBA's jurisdiction.

On March 31, 2009 the Polk County Planning Commission held a public hearing on the remanded plan amendment. It was noted during the hearing before the Planning Commission that the large exhibits from the previous record had not yet been returned from LUBA, and therefore were not available for review by the Planning Commission. Two days after the hearing, the large exhibits were retrieved from LUBA and placed with the remaining documents from the LUBA record at the Polk County Courthouse. Those large exhibits, as well as the entire, multi-volume set of record documents, were then available for inspection and review by the Planning Commission and the public prior to the close of the open record period, applicant rebuttal and deliberations.

The applicable legislative review and decision criteria were set forth in the staff report prepared for the Planning Commission. LUBA found that if there were only procedural differences between the legislative and non-legislative amendments, they might have agreed that the county's error in applying non-legislative procedures and criteria was a procedural error that would require opponents to demonstrate prejudice to their substantial rights. Among the applicable review and decision criteria for legislative and non-legislative amendments, there is only one criterion that differentiates a legislative amendment from a non-legislative amendment. This criterion requires a finding that the proposed change to the Comprehensive Plan (a text amendment in this case to include the project site on the Inventory of Significant Resources) is in the public interest and will be of general public benefit.

The siting of an aggregate operation is complex and involves a number of different and separate, but related, land use applications. The first such application is the decision to place the subject property on the list of significant aggregate sites in the Polk County Comprehensive Plan. On June 2, 2009 the Polk County Planning Commission considered the evidence in the record and public testimony against the criteria identified in PCZO 115.060 and made a recommendation to the Board of Commissioners to include the subject site on the Polk County Comprehensive Plan Inventory of Significant Mineral and Aggregate Sites. The findings below in this memo addressing PCZO 115.060 represent the findings of fact considered by the Planning Commission during their deliberation on the matter.

The next decision is to determine how, and to what extent and under what circumstances the site is allowed to be mined. This determination is made pursuant to the second land use application required here, that is, applying the Mineral and Aggregate Overlay Zone (MA).This zone change application is governed by the criteria in Chapter 111 and in Chapter 174, which provide the parameters for applying the MA zone and includes the requirement for an ESEE analysis in order to determine if and how mining should be allowed. The zone change portion of this package of applications will be made by the Board of Commissioners, and was not before the Planning Commission.

The final application that must be approved before mining is allowed is a conditional use permit which is governed by Chapter 119. The conditional use permit application will also be made by the Board of Commissioners, and was not before the Planning Commission.

Notice of the remand public hearing before the Polk County Board of Commissioners has been provided as required by PCZO chapter 111.340-111.370 to property owners within 750 feet from the outside perimeter of the subject tract, all participants of record, and applicable government agencies. Notice of the public hearing has been posted on the property and printed in the local *Itemizer Observer* newspaper 20-days prior to the public hearing date.

REMANDED ASSIGNMENTS OF ERROR AND ASSOCIATED FINDINGS:

1. Adequate findings demonstrating that the plan amendment is following the proper procedure as a legislative amendment;

To what extent the Planning Commission should deal with the various issues involved in this case was raised during their public hearing process. On the one hand the applicant has argued the scope of the hearing is limited to the single issue of public benefit based on the remand from LUBA, and the opponents argue that all the criteria in 115.060 should be addressed. While staff feels the applicant is correct and that the scope of the LUBA remand was limited, the Planning Commission determined that a conservative approach would be to make their recommendation based on the entire criteria of 115.060. This would present the Board of Commissioners with a recommendation on the plan amendment as a whole. The Planning Commission took this approach and considered all of the criteria listed under 115.060 when making their recommendation to the Board of Commissioners.

As discussed, the plan amendment that is required to be reviewed under the legislative amendment criteria is a text amendment to the Polk County Comprehensive Plan. The text to be amended is the inventory list of significant aggregate resources in Polk County, which is a part of the background and inventory portion of the comprehensive plan. The purpose of this listing is to identify properties where there is a location of aggregate in sufficient quantity and quality to meet the significance standard and thereby warrant being protected for potential future use. The mere placing of a site on this inventory list does not allow mining, it simply identifies the site as a potential for mining. In order to allow mining, the site has to be zoned to add the mineral and aggregate overlay zone to it, and a conditional use permit has to be issued. In addition to the plan amendment, zone change and conditional use permits, the Hearing Officer approved a permit for nonstructural floodplain development that was not challenged. State permits are also necessary from the Oregon Department of Geology and Mineral Industries (DOGAMI) and other state agencies including but not limited to the Oregon Department of Transportation (ODOT) and Oregon Department of Environmental Quality (DEQ).

115.060. CRITERIA FOR LEGISLATIVE PLAN AMENDMENTS. A legislative plan amendment may be approved provided that the request is based on substantive information providing a factual basis to support the change. In amending the Comprehensive Plan, Polk County shall demonstrate:

(A) Compliance with Oregon Revised Statutes, and the statewide planning goals and related administrative rules. If an exception to one or more of the goals is necessary, Polk County shall adopt findings which address the exception criteria in Oregon Administrative Rules, Chapter 660, Division 4;

Findings: This standard was previously addressed by the Polk County Hearings Officer and Board of Commissioners. Findings addressing this criterion were adopted as part of Polk County Ordinance 06-02. However, LUBA remanded the findings addressing Oregon Administrative Rule 660-012-0060(1) which provides that a plan amendment "significantly affects" an existing transportation facility if it would reduce the performance of the facility below the minimum acceptable standard identified in the relevant transportation system plan, or worsen the performance of a facility otherwise projected to perform below the minimum acceptable standard, as measured at the end of the planning period identified in the transportation system plan. If an amendment "significantly affects" a transportation facility, the local government must put in place one or more measures specified in OAR 660-012-0060(2). LUBA's remand was based on the grounds that findings adopted by the County addressing the potential impact of the project on the Highway 22/51 intersection were not adequately supported by the record. Specifically, the findings lacked an adequate demonstration that the project would not worsen the performance of the Highway 22/51 intersection that is projected to perform below the minimum acceptable

performance standard identified in the Polk County Transportation Systems Plan (TSP). OAR 660-0012-0060 in relevant part:

660-012-0060

Plan and Land Use Regulation Amendments

(1) Where an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation would significantly affect an existing or planned transportation facility, the local government shall put in place measures as provided in section (2) of this rule to assure that allowed land uses are consistent with the identified function, capacity, and performance standards (e.g. level of service, volume to capacity ratio, etc.) of the facility. A plan or land use regulation amendment significantly affects a transportation facility if it would:

(a) Change the functional classification of an existing or planned transportation facility (exclusive of correction of map errors in an adopted plan);

(b) Change standards implementing a functional classification system; or

(c) As measured at the end of the planning period identified in the adopted transportation system plan:

(A) Allow land uses or levels of development that would result in types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;

(B) Reduce the performance of an existing or planned transportation facility below the minimum acceptable performance standard identified in the TSP or comprehensive plan; or

(C) Worsen the performance of an existing or planned transportation facility that is otherwise projected to perform below the minimum acceptable performance standard identified in the TSP or comprehensive plan.

(2) Where a local government determines that there would be a significant effect, compliance with section (1) shall be accomplished through one or a combination of the following:

(a) Adopting measures that demonstrate allowed land uses are consistent with the planned function, capacity, and performance standards of the transportation facility.

(b) Amending the TSP or comprehensive plan to provide transportation facilities, improvements or services adequate to support the proposed land uses consistent with the requirements of this division; such amendments shall include a funding plan or mechanism consistent with section (4) or include an amendment to the transportation finance plan so that the facility, improvement, or service will be provided by the end of the planning period.

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

(d) Amending the TSP to modify the planned function, capacity or performance standards of the transportation facility.

(e) Providing other measures as a condition of development or through a development agreement or similar funding method, including transportation system management measures, demand management or minor transportation improvements. Local governments shall as part of the amendment specify when measures or improvements provided pursuant to this subsection will be provided.

The applicant has provided additional findings addressing OAR 660-012-0060(1) in a letter dated September 14, 2007 to the Polk County Board of Commissioners from Kittleson and Associates, Inc, the transportation planning consultant hired by the applicant. The letter includes a revised analysis of 2020 traffic conditions at the Highway 22/51 intersection. The analysis concludes that the proposed development could be constructed without worsening the background deficiencies at the Highway 22/51 intersection while maintaining acceptable levels of service at the other study intersections provided the following provisions are implemented:

1) A traffic signal should be installed at the Highway 99W/Clow Corner Road intersection by 2020. The analysis of signal warrants indicates the intersection would meet at least two signal warrants by approximately the year 2008. The signal would be warranted as a result of background traffic growth, independent of traffic generated by the proposed development.

2) If an interchange is not constructed at the Highway 22/51 intersection by 2020, the proposed development traffic routing plan may need to be amended to include the hours of 7:00-8:00 a.m. and 3:00-6:00 p.m.

3) Implementation of a gated entry design. A gated entry design concept has been developed for the site access driveway that provides a positive and definitive means for controlling weekday peak hour movements into and out of the site (as related to Condition Y). This gate would be closed during the prescribed time periods to restrict access to the site from southbound Highway 51 while maintaining access from northbound Highway 51. Kittleson and Associates concludes that the net effect of this operation modification would incrementally improve the operation characteristics of the Highway 51/22 intersection relative to conditions that would otherwise exist as existing truck traffic associated with the existing aggregate mining operation that would be replaced by the proposed operation are making left and northbound right turn movements at the Highway 51/22 intersection during a typical weekday p.m. peak hour.

Kittleson and Associates found that recycled asphalt would be hauled to the site by the same trucks that haul away aggregate products, consistent with current operation at the existing Krauger Pit that the proposed project would replace, and therefore the vehicle trips generated by the recycled asphalt operation were implicitly included in the trip generation estimate of the original traffic study. Kittleson and Associates concludes that the proposed development would eliminate approximately 850 existing trips per year because there would no longer be a need to haul the recycled asphalt to the Salem asphalt plat, as it would be used at the new asphalt processing facility located on the project site.

Kittleson and Associates found that because the proposed development would essentially replace the existing Valley Concrete and Gravel operation in Independence (Kruger Pit), the net change in non-employee trips would be *de minimis*. Kittleson and Associates also found that because the proposed routing plan would divert the existing employee trips to Highway 99W during the peak hours, the overall effect would be a reduction in the number of turning movements at the Highway 22/51 intersection.

The Planning Commission considered these findings and determined that the application complies with this criterion. Based on the findings above, staff concludes that the application complies with this criterion.

(B) **Conformance with the Comprehensive Plan goals, policies and intent, and any plan map amendment criteria in the plan;**

Findings: This standard was previously addressed by the Polk County Hearings Officer and Board of Commissioners. Findings addressing this criterion were adopted as part of Polk County Ordinance 06-02. These findings were not a subject of the LUBA remand.

The EFU zone is a natural resources zone, as much more than just farming is allowed. In addition to farming, other natural resource activities that are allowed, either as outright permitted uses, or permitted by overlay and/or conditional use approval include: forestry, wetland creation, wildlife habitats, geothermal mining, as well as several types of mineral extraction. In addition, residential

uses, kennels, stables, various commercial uses and transportation and utility facilities are all allowed in the EFU zone. Because these natural resources must be taken where they are found, they are protected in their own right, and uses are balanced against each other. Where appropriate the Environmental, Social, Energy and Economic analysis is used to determine how agricultural and other natural resource uses coexist. Oregon law makes no current preference for one natural resource use over another, and neither does the Polk County Comprehensive Plan.

The goals to protect farmland are aspirational statements made to ensure EFU zoning is appropriately placed on land with agricultural soils. These goals do not mean that uses other than farming can not take place on the land. The list of non-farming outright and conditional uses that are allowed on farmland is long and extensive in both ORS Chapter 215 and in PCZO Chapter 136. These Comprehensive Plan goals are based on Statewide Planning Goal 3, which is balanced with Statewide Planning Goal 5 that requires protection of aggregate resources. These goals and policies are not exclusionary, and fit together in the balancing process identified in Goal 5 and its implementing rules. Where an aggregate facility meets the criteria, it is legally permitted to be sited on agricultural land, and the goals to protect farmland are not compromised.

The end result of this process is not the removal of land from its EFU designation. The EFU designation for the subject property would remain in place. What occurs is that the Mineral and Aggregate zone is overlaid on the EFU zone to control the mining that would take place. The EFU zoning would remain, and the overlay zone acts to add restrictions and protections. In addition, the applicant's reclamation plan for the site, submitted as part of the original application, would return all but the lake area back to farm use.

The Planning Commission considered these findings and determined that the application complies with this criterion. Based on the findings above, staff concludes that the application complies with this criterion.

(C) **That the proposed change is in the public interest and will be of general public benefit; and**

Public Benefit: The Board of Commissioners must determine if the proposed text amendment would be in the public benefit and interest, and thereby comply with PCZO 115.060(C).This is the one criterion LUBA held had not been previously considered by Polk County, and was the basis of this remand from the Board of Commissioners. In assessing compliance with this criterion it is necessary to keep in mind what this text amendment proposes because that end result drives the ultimate analysis. The text amendment, and therefore the question upon which to judge compliance is whether or not the site should be listed on the inventory of significant aggregate sites in the Polk County Comprehensive Plan. The Board of Commissioners must consider, as did the Planning Commission, whether or not it is in the public benefit and interest to include the subject site on the Polk County Inventory of Significant Mineral and Aggregate Sites document.

The purpose of the inventory is to identify sites with a large quantity of good quality aggregate for future planning purposes. A site is identified on the list so that it shows up on the planning maps and if there are future land use actions in the area of the site, protection for the future use of the site can be taken into consideration. Under PCZO 174.110, a site cannot have the mineral and aggregate overlay zone that is necessary to allow mining, unless the site has been deemed significant and listed on the inventory.

The significance of a site is judged by PCZO 174.110(B)(1), which provides that the following criteria "shall be used in determining significance":

> *(A) Significant Aggregate Resources. An aggregate resource shall have at least 250,000 cubic yards of reserve and meet at least two of the following minimum requirements:*
>
> *(1) Abrasion: Loss of not more than 35% by weight;*

(2) Oregon Air Degradation: Loss of not more than 35% by weight;

(3) Sodium Sulphate Soundness: Not more than 17'% by weight.

The extraction area would be over 80 acres. There is approximately 9 feet of overburden, under which lies approximately 39 feet deep of sand and gravel. Engineer Boatwright calculated the yield from this mining area to be 4,643,193 tons of gravel resource. This tonnage equates to approximately 3,482,395 cubic yards of aggregate (each ton is the substantial equivalent of .75 cubic yards), considerably more than the 250,000 cubic yards required. The rock to be mined at this site is of good quality. Samples taken from the proposed mine site and tested by an independent laboratory indicate the rock from this site exceeds all county specifications for quality.

The presence of a significant quantity of good quality aggregate at this location has never been contested by opponents. The Board of Commissioners made findings and conclusions of significance in its original approval.

The need for a good supply of quality aggregate in Polk County has not been questioned. Aggregate is used in pavement for roads, foundations of homes, and construction of commercial and government buildings. Alluvial materials, such as sand and gravel, are generally preferred over quarry rock for most construction purposes, and is the only product suitable for making concrete. It is typically less expensive than crushed quarry stone, is just as strong and is believed to have a better appearance.

Alluvial materials are found near where a river flows or where a river flowed in the past, and therefore are mined rather than quarried. Aggregate is not just an end-product in itself, it is the raw material used in the manufacture of many vital construction products such as ready-mix concrete, asphalt, and lime and mortar. The primary uses of aggregate include pavement for roads, foundations of homes, and construction of commercial and government buildings.

According to the applicant, in Polk County, as in the rest of Oregon, about 16% of all aggregate used is for residential construction, nearly 30% is used for local roads and roughly the same amount is for non-residential construction. The remaining 25% is used for infrastructure and non-construction needs. Aggregate is used each time a citizen drives on a road, lives in a house, sends their children to school, or shops downtown in any of the county's cities.

It takes a lot of this material just to maintain a normal standard of living - an estimated 10 tons of aggregate every year for each Oregonian. That makes aggregate - not timber, steel, or glass - the most widely used construction material in this area. Since Polk County has over 64,000 residents, the arithmetic tells us that Polk County requires well over a half a million tons (375,000 cubic yards) of aggregate each and every year just to meet county needs. A construction boom, as has been experienced in the past, requires an even greater supply of aggregate.

This need for rock can't be supplied from just one or two sources. It is not practical nor prudent to only have one aggregate operation that would serve the entire county. Several operations strategically located minimize impacts, and keep costs down for every citizen who uses those 10 tons of aggregate a year. The reason for this is that transporting rock is extremely expensive.

Depending, of course, on the cost of fuel and other variables, the cost of delivered aggregate doubles for each 30 miles traveled from the source to the point of delivery. Some studies have shown the costs involved in transporting aggregate to be even more dramatic. For that reason, competition is fierce among gravel companies, and location near the market is the key to a successful business, and the provision of a good supply of affordable aggregate for the county. Cost of transportation is generally what creates the territory an aggregate business can economically serve. This is why an aggregate business in Keizer or South Salem can not serve Polk County, the cost of rock would be simply too high. Rock is a local business, and a sufficient supply of rock to fill the need must come from local sites.

There is currently more than enough demand and need to keep the few existing operators serving Polk County busy, even with the approval of the proposed site which would not be an additional

site, but is a replacement to the applicant's current aggregate source at the Krauger mine several miles to the south. This proposed site would primarily serve the needs of Polk County to the west and to the south of the site. Except in the most unusual circumstance, the needs of those in and near West Salem could more economically be served by facilities located there. Without a location near the heart of the county, everyone in Polk County who doesn't live in West Salem would have to pay a premium for their aggregate needs.

Polk County already benefits from a centrally-located facility. Currently, the applicants have its mining and some operations in the county at the Krauger site, with the remainder of operations in the City of Independence. Even with a division of the aggregate operation into two locations (which are proposed to be centralized at the new site for the new mine) the costs of aggregate products in Polk County are competitive.

According to the applicant, in the construction of a home in Dallas that is roughly 1,200 square feet, the foundation will require 50 or more tons of aggregate. The drains around the foundation another 20 tons. The garage or carport 10 more tons and the driveway another 20 tons. Conservatively, that's 100 tons, and a house with a basement and served by septic with a drain field will require twice that much. Depending on how the property is configured, the street in front of this new house will need another 150-250 tons. If this home is served locally with delivery within 5 miles, the 100 tons may cost $650. If served from 30 miles away, it may well cost $1400. (assumes cost at site of $5/ton and delivery of .30 per ton per mile.) Add to that 200 tons for the street improvements and now the total costs are $1950 versus $4200.

A mile of interstate highway requires 338,000 tons of aggregate. A county road, naturally, takes much less. A local county highway may need 50,000 tons of rock, which would be $325,000 per mile for local delivery, versus $700,000 per mile if delivered from a distance of just 30 miles away.

Polk County, several years ago approved an expansion of Valley Concrete's Krauger Pit site, south of the present proposed site, in recognition of the on-going need for aggregate in Polk County. In the Krauger Pit expansion approval, it was recognized that this expansion was only a stop-gap measure to bridge the gap for aggregate supply for Valley Concrete until it could obtain all the necessary approvals for a new permanent consolidated site.

The applicant has continually asserted that the current proposal would be a replacement site for Valley Concrete, not an additional site. In addition, the operations of Valley Concrete would be centralized at this location, thereby eliminating the Independence facility. The City of Independence is on record in this proceeding as being in favor of this application.

The proposed site will provide Polk County with a 20 year supply of high quality, affordable aggregate, as well as providing a long term home, and employment opportunities for the 40 plus employees of Valley Concrete. Valley Concrete has been providing aggregate products to Polk County, and it's residents, for over 50 years, and is the largest supplier of Ready-Mixed Concrete, and Aggregate Products, in the Monmouth/Independence/Dallas Area. This site will provide the Polk County public with a continued source of high quality affordable aggregates, which is in the public interest and which will be of general public benefit to all those living and working in Polk County.

Polk County's recognition of the public need and benefit for an adequate supply of aggregate goes back to the period in the early 1990's when the Goal 5 process was used to establish the initial list of significant aggregate sites in the county. The applicant's Hayden Island site was recognized and approved at that time, but has subsequently ran into difficulty with the elimination of access, a problem that the county has yet to fully address. Hayden Island is located entirely in the floodway, and therefore, does not allow for permanent processing facilities, and only allows for, seasonal extraction. Portable facilities could be used, but they would need to be moved off the island each winter.

The current application avoids all the problems inherent in the Hayden Island site which is already approved, and allows the Valley Concrete facilities to be combined into one site. This is a

tremendous benefit to the county citizenry, as it eliminates the hauling between mining and processing, and removes the urban location in favor of a consolidated rural site where the buffers and controls are much easier to implement and control.

It is in the best interest of the public to have an ample supply of aggregate products readily available to the public at a reasonable price. The public needs aggregate for the building trades; for agriculture, for landscaping; for roads and highways; and for the construction of commercial buildings. The subject property exceeds by a large margin all the "significance" standards of the Polk County Code, and its location and company operating history in Polk County is such that it is certain that the rock and rock products will be continuously available and affordable. Without an adequate supply of aggregate the economy of the county would suffer, and the county road system would deteriorate faster. If the supply of aggregate is allowed to dwindle, the price will necessarily increase for the product that is available. The effect is less can be done overall in the county, and the cost of doing that lesser amount would be higher. Protecting this resource is important to Polk County and is in the best interests of the public.

When considering compliance with 115.060(C), there is no basic difference in the meaning of and the use of the two phrases of the code ("public interest" and "general public benefit"). Both phrases carry the same meaning. The analysis is based on the decision of whether or not the approval of the aggregate site in the comprehensive plan as a significant site would be good for the Polk County citizenry. If something is in the public interest, then preserving and protecting it is also for the general public benefit. The notion of "interest" establishes the general concept that something is good for the public, and when that something is implemented, thereby serving and fulfilling the public interest, that action is for the "public benefit."

In terms of this application, the preservation and protection of this site where the rock is abundant in good quality is for the public interest, and the utilization of the site to fulfill the county's need for aggregate products provides the public benefit. The Planning Commission considered these findings and determined that the application complies with this criterion. Based on the findings and conclusions above, staff concludes this application complies with PCZO 115.060(C).

The following is a summary of the issue topics raised before the Planning Commission. Not all of these relate to the approval criteria, and therefore are not relevant. However, these issues were considered by the Planning Commission and some findings may be warranted explaining the role of the issue as either relating to the criteria or not.

Traffic: Transportation issues were one of the main topics of discussion during the hearing process before the Planning Commission. Although it was within the purview of the Planning Commission to deal with the traffic issues as submitted in the proceeding before them, it must be understood that transportation issues and any potential conditions of approval are part of the decision to be made by the Board of Commissioners on whether to allow mining or not. That decision then comes in the zone change process and conditional use permit process that are separate and distinct from the text amendment. Therefore, it is necessary to keep in mind that the plan amendment process is to determine if the site should be listed on the significant aggregate site inventory, and not if, or how the site should be mined.

On the issue of the Highway 51/22 intersection, LUBA found the proposed future improvements to that intersection were too conceptual to meet the legal standard for reliance at that time; that all turning movements at the intersection needed to be evaluated in the Transportation Impact Analysis (TIA); and that the condition of approval regarding routing around the intersection was not sufficient based on the findings and conclusions contained in the original decision.

To address these issues, the applicant commissioned a new TIA to address these issues. This TIA, using the 2020 planning horizon and assuming no improvements to the intersection, with the revised routing plan and the new gated entry design, determined that the Valley Concrete operation would not worsen the existing background deficiencies at the Highway 51/22 intersection.

Alternative routing of trucks was discussed in detail. Mandatory truck routing is commonplace in this industry, and is already in use with the applicant's other facilities. Data sheets for routing, employee discipline procedures and the new gated entry were determined to be sufficient by the applicants the traffic engineers to ensure compliance and not worsen the performance of the intersection.

There was additional discussion about truck trips related to recycled asphalt product (RAP). The remand was based on an assumption that RAP was a new activity that would be taking place at this site that was not already taking place at the applicants existing Krauger site. During this proceeding, the applicant stated that RAP has been and continues to be a part of the Krauger operation and is not a new activity. The applicant specifically stated that previously used asphalt is dropped off at the Krauger Pit site and accumulated until winter when it is then shipped to the applicants Salem facility where it is processed. As an existing activity, the trucks related to RAP are already in the existing traffic stream. The applicant contends that by processing the asphalt recycling at the proposed site instead of shipping it off to Salem, there would be fewer trucks in the traffic stream.

Water: This is an issue that was discussed in significant detail before the Hearings Officer and the Board of Commissioners in prior proceedings. Water impacts were not one of the specific issues that were remanded by LUBA. Water issues were raised before the Planning Commission by several opponents. However, no new information to support their position was presented other than an opinion from opponents Hydrogeologist Jeff Barry that was not supported with substantial evidence. Therefore, the findings and conclusions made by the Board of Commissioners that were resolved in favor of the project could remain in effect.

Specialty Crop Impacts: This is an issue that was also discussed in significant detail before the Hearings Officer and the Board of Commissioners in prior proceedings. Many of the letter attachments to opponent submittals are duplicates from those previously submitted. In its remand, LUBA held there was not sufficient findings or supporting evidence for the conclusion that the proposed HMAC plant would not cause a change in the farm practices or increase the cost thereof. This was a ruling relating to the zone change determination that would allow mining and was not an issue with regard to listing the site on the inventory.

In response to the evidentiary issue, the applicant submitted a memorandum and product information from the leading manufacturer of HMAC plants demonstrating that these facilities are environmentally safe. While the exact nature of the plant to be purchased and used at the proposed facility is not yet known, the applicant has stated that it would be substantially similar to the plant used by the applicant now at its Salem facility.

In response to the findings issue, this will be addressed by the Board of Commissioners in their decision on mining, and will be simply a matter of drafting findings based on the evidence in the record that adequately addresses the ultimate mining approval criteria. LUBA felt the county's approval did not adequately address the issue.

All HMAC operations are licensed and regulated by the Oregon Department of Environmental Quality (DEQ). The fact that the HMAC plant would have to obtain and maintain a DEQ air quality discharge permit in order to be in operation, led to the conclusion that there are no harmful airborne contaminates that would emit from the HMAC plant, and therefore there would be no contaminates migrating from the site to neighboring farms. The end result of this analysis is that since no contaminates will leave the site, there can be no changes required or costs incurred relative to something that does not occur.

The fact that no emissions leave the site means that there is no impact on the neighbors regardless of the type of crop. ORS 215.301 is not relevant to this proceeding. That statute relates only to vineyards and provides no logical connection to other crops.

Dust is another issue that was raised. There are expert studies in the record that the proposed operation would not generate dust in the manner alleged, and that no adverse impacts off-site would occur from dust. This issue was resolved in the earlier proceeding, and no new evidence

was presented. Therefore, the findings and conclusions made by the Board of Commissioners that were resolved in favor of the project could remain in effect.

(D) **Compliance with the provisions of any applicable intergovernmental agreement pertaining to urban growth boundaries and urbanizable land.**

Findings: This standard was previously addressed by the Polk County Hearings Officer and Board of Commissioners. Findings addressing this criterion were adopted as part of Polk County Ordinance 06-02. These findings were not a subject of the LUBA remand. There are no intergovernmental agreements pertaining to Urban Growth Boundaries applicable to the subject property.

The Planning Commission considered these findings and determined that the application complies with this criterion. Based on the findings above, staff concludes that the application complies with this criterion.

2. Adequate findings addressing weed control;

This remanded issue relates to the interpretation of Condition Y imposed in the original approval. This condition was intended to provide a maintained vegetative buffer between the aggregate operation and adjoining farmland. The Board of Commissioners had originally determined that weed control within the buffer strip was required within the language of the condition as crafted, interpreting the meaning of maintenance to include weed control.

Findings: Condition Y of the original adopting ordinance was inserted in order to address and satisfy the issue raised neighboring property owner Madjic Farms who requested that within the 60 foot buffer strip the applicant should be "required to control all weeds on the Oregon Noxious Weed List as well as hard to control perennial weeds such as blackberry, morning glory and Canada thistle." The adopted condition was more generic in its maintenance requirement than requested.

LUBA apparently assumed the County overlooked this request, and determined they could not be sure if the language of the condition actually applied to weed control or not. For that reason this issue was remanded for further proceedings.

It has been the intent of the County to require weed control in the vegetative buffer. Using the language recommended by Madjic Farms, as recited by LUBA, to establish that weed control is a part of Condition Y, the condition has been redrafted to include that specific text. The revised proposed Condition Y is as follows:

> *Applicant, on a weekly basis during the normal growing season, shall use weed control methods to control all weeds on the Oregon Noxious Weed List, and difficult to control perennial weeds such as blackberry, morning glory and Canadian thistle, and also any volunteer tree sprouts within the 60 foot buffer strip adjacent to the Madjic Farms (T8 R4 Section 10 Tax Lot 100) property.*

By adopting specific language, the issue raised by Madjic Farms is fully and completely addressed, and the clarity sought by LUBA is provided.

The applicant reports that the proposed maintained buffer strip would actually be better than the current or normal condition of the area around the Madjic Farms property that is punctuated with weeds and blackberries when left unattended. Certainly in its natural and pre-existing condition the subject property produces weeds that have the potential to migrate, in such a way that the neighboring farm operator must employ some farm practices currently to deal with this natural condition. By requiring weed control in the buffer strip the applicant contends that the overall situation would be made better for the Madjic Farms farm operation as to weed control.

3. Adequate findings addressing notice for expanded hours;

The applicant applied for, and in the original approval was granted, increased operating hours pursuant to PCZO 174.060(C)(3) which can not be approved if Sensitive Uses are located within 750 feet of the mining area. Although it was recognized that the operator dwelling was located slightly within 750 feet of the mining area, it was determined that since the dwelling was associated with the mining operation it would not be considered to be a Sensitive Use subject to the 750 foot separation requirement.

Findings: LUBA determined that the operator/owner dwelling is a Sensitive Use regardless of its relationship to the mining operation. Since the dwelling was located slightly closer to the mining area than the allowed 750 feet, this issue was remanded for correction by LUBA.

The primary allowance for increased hours comes when "there are no Sensitive Uses within 750 feet of the mining site." PCZO 174.060(C)(3)(a). The applicant has elected to shrink the mining area so that the dwelling exceeds the 750 foot separation requirement. The revised site plan showing the 750 foot separation requirement as now being satisfied was submitted during the original remand hearing before the Board of Commissioners in September 2007.

It has been established that there are no other Sensitive Uses within 750 feet of the mining site, and shrinking the mining area boundary does not include any new or different property. Therefore, the revised site plan satisfies the remand of LUBA in considering the dwelling to be a Sensitive Use and requiring it to be at least 750 feet away from the mining area before the extended hours may be granted. The application is therefore in compliance with PCZO 174.060(C)(3)(a).

4. Adequate findings addressing Oregon Administrative Rule (OAR) 660-012-0060(1);

In the original approval, the Transportation Planning Rule (TPR) (OAR 660-012-0060) compliance findings were found to be deficient by LUBA because it was determined that the County could not rely on the proposed future improvements to the Highway 51/22 intersection, and that the routing condition to keep truck movements out of the intersection was not developed well enough. To supplement the information on traffic stated above in Section 1(A) and (C), the following additional analysis should be considered specifically with regard to compliance with the TPR.

Findings: The Oregon Highway 51/22 intersection is operationally deficient currently for certain turn movements at peak hour, and improvements to the intersection are inevitable to address the current situation, however the future reconstruction of that intersection will not be considered here.

The critical turning movement at peak hour according to the Transportation Impact Analysis (TIA) for this project is the southbound turn from Highway 22 onto Highway 51. Through traffic on Highway 22 is not an issue. The eastbound turn from Highway 51 onto Highway 22 is similarly not an issue. Through traffic on Highway 51 is not involved since no truck traffic goes through, and such a movement would be nearly impossible to make in any event.

According to the TIA and supplemental reports and information provided by the applicants traffic consultant, Kittleson & Associates, the critical southbound turn from Highway 22 onto Highway 51 during the peak hour involves 1 site generated truck trip in the current situation. With the new facility, it is expected that there would be 2 site generated truck trips that would need to make that critical turning movement during the peak hour. The TIA and supplemental reports indicate there is an average of 500 trips through the critical intersection during the peak hour. One new truck trip is a small percentage of the total traffic through that intersection, and two total trips is a very manageable number to control and to remove from the critical turning movement. The applicant relies on a series of operational mandates that will ensure the two truck trips would not make the southbound turn from Highway 22 onto Highway 51. The effect of implementation of the operational mandates is that the one truck turning movement now in the system would be

removed, and no new truck trip/movements in that critical turn would be added. The end result is that the intersection would be made slightly better than it is currently by the removal of one truck trip, which then means that the relocation of the Valley Concrete operation would have no adverse impact on the 51/22 intersection. Where a new project does not significantly affect an existing transportation facility, the TPR is complied with.

A. Routing Condition: The applicant has significantly bolstered and improved its operational mandates with regard to requiring site generated truck trips to avoid the southbound turning movement from Highway 22 onto Highway 51 during peak hour.

Of all the site generated truck trips, 75% are owned and controlled by the applicant. The other 25% are independents who come onto the site by the permission of the applicant. The applicant's truck drivers are mandated by company policy to follow certain haul routes, and the location of the trucks is monitored by GPS tracking equipment installed on all trucks. Between the training drivers receive, their company manual, dispatch instructions and the GPS tracking system, there is universal compliance with all company routing instructions.

Mandatory route control and truck monitoring is commonplace in the trucking industry generally, and has been in place with the applicant's other facilities for some time. Mandatory routing is not a new idea, and it is effective and enforceable.

The applicant's mandatory routing in this case would prohibit the southbound turning movement at the intersection of Highways 51 and 22, and have those trucks go through that intersection in a westerly direction and take an alternative route to the proposed facility. For the applicant's own trucks, the force of employment is the best assurance for compliance. The driver's are trained, they have a company manual, they are dispatched along a specific route, and their location is monitored by a GPS tracking system. According to the applicant, driver's who violate company policy, of which mandatory routing is one, are subject to discipline and/or discharge.

Independent trucks that haul from the new facility are also controlled by mandatory routing. To ensure compliance with the routing plan, a data sheet would be used for all drivers and visitors instructing them on appropriate routing, and particularly to not make the southbound turning movement at the 51/22 intersection. The applicant states that independent driver's who are discovered to have violated the mandatory routing would be subject to having access privileges revoked. To further ensure compliance with the routing plan, a new gated entry design would be used on Highway 51 that would prohibit entry to the site during the critical pm peak hour time period.

The applicant states that the mandatory routing plan would also apply to employee's and suppliers of the proposed facility. The TIA and related memoranda indicate that such traffic is already included in the background since this is a replacement facility for Krauger, and is *de minimis* in any event.

To put this issue in perspective, during the critical peak hour there is only one truck trip currently, with the addition of one more from this proposed facility. The one trip is already in the background analysis, so the key is the one additional trip that marginally and theoretically makes the intersection operate less efficiently and triggers the TPR. Assuming the mandatory routing is 75% successful, that removes 1.5 truck trips from the intersection, leaving only 0.5 trip through the intersection, less than is currently there and the deficiency caused by the one additional trip is removed, and the project then still would not substantially affect the transportation facility and the TPR would be complied with. The applicant asserts that the mandatory routing plan would be nearly 100% effective given the procedures and facilities that will be in place.

The question posed by the TPR is whether or not this project would significantly affect the 51/22 intersection. By definition in that rule, this approval would significantly affect the intersection if (as measured at the end of the planning period in 2020), the one additional truck trip worsens the performance of the intersection that is already projected to perform below the minimum acceptable standards.

In this situation, compliance with the TPR is providing other measures such as conditions of approval consistent with OAR 660-012-0060(2)(e). According to the Rule, conditions of approval that mitigate the impacts of the approval to avoid further degradation to the performance of the intersection until such time as transportation improvements are made constitute compliance with the TPR. The imposed condition of approval on mandatory routing away from the critical intersection during the peak hour provides compliance with the TPR.

5. Adequate findings addressing whether trip generation estimates include trips related to brining recycled asphalt to the site; and

Although LUBA agreed the TIA included asphalt trucks and long term growth, it was confused about the relationship of recycled asphalt products (RAP) to the traffic calculations and therefore remanded this issue. LUBA considered recycled asphalt to be a new activity that is not currently existing at Krauger, and assumed there would be new traffic mostly from Salem coming to the site to deliver the old asphalt to be recycled. LUBA assumed the delivery to the site of RAP from Salem would involve the west bound left turn movement at the Highway 51 and 22 intersection, which they found to be deficient in another portion of their opinion, therefore LUBA must also have assumed this trip movement would take place during the peak hour evaluated in the TIA.

Findings: According to the applicant, RAP is not a new activity and it does not take place during the peak hour. The applicant states that RAP has been an activity at the Krauger site for many years. The movement of trucks into the operations area is not a new trip, since that same truck that arrives with RAP, will leave with rock. RAP is moved to the Salem operation for further processing only during off season and off peak travel hours. Nothing is proposed to change in this proposed replacement facility. The RAP operation would simply take place at the new site instead of at the Krauger site. The amount of RAP involved, how it arrives at the site and how it leaves the site are not proposed to change. The truck trips would not change. The applicant states that all RAP activities, since it has been an on-going part of the operation for years, were included in the background traffic and in the traffic counts for the new operation. The RAP trips do not impact the 51/22 intersection because they do not take place at the critical peak hour, but are in off season and off peak hours when the intersection operates without deficiency.

Because of the confusion this issue caused LUBA, some additional background is warranted for clarification. That applicant states that, as standard operating procedure Valley Concrete has long maintained a construction debris storage site at its current sand & gravel resource, the Krauger Pit. The reason for this is to provide additional value to its customers, especially contractors who need to dispose of construction debris, and desire to purchase aggregates to haul back to the construction site for new development. By accepting recycled asphalt products, the contractor can send a truck full of RAP to the mining operation, and return that same truck to the job site full of gravel. In this way, the contractor saves both fuel and trucking costs as the trucks are hauling fully loaded both ways.

Valley Concrete allows contractors who are buying aggregate products to use their operations area for the disposal of clean fill dirt, broken up concrete, and broken up roadway asphalt. The broken up roadway asphalt is stored in a separate pile. The applicant states that the reason for separating the roadway asphalt is that during the slow times of the year (off season and off peak), the broken up roadway asphalt is hauled to the Salem asphalt plant location. At the Salem facility the broken up roadway asphalt is processed by crushing and sizing it into a Recycled Asphalt Product (RAP) that can then be used in the production of Hot Mixed Asphalt Concrete (HMAC).

The existing haul route to get the RAP to Salem uses the Highway 51/22 intersection both going (loaded) and returning (unloaded) to the Krauger Pit. The applicant states that an average of approximately 10,000 tons per year of RAP is accepted as construction debris at the Krauger site and is then reloaded and hauled to the Salem facility in off season and off peak trucking times. Using an average truck load of 23.50 tons per load, approximately 425 truck loads of RAP are moved from Krauger Pit to the Salem asphalt plant location each year. These trips were accounted for in the TIA as existing activity, but are not important in the traffic analysis because

no RAP trip would occur during the critical peak hour period when there is an identified deficiency.

The applicant states that there would be no need for RAP accepted at the proposed site to be hauled to the Salem facility, as the RAP would be used at this location in the production of HMAC. By having the HMAC plant at the proposed site, the applicant actually eliminates the number of trips of RAP currently being hauled to its Salem facility, thereby reducing the number of truck trips using the Highway 51/22 intersection both going and returning by a total of 425 round trips per year. Nonetheless, this is not a significant factor since all such RAP trips would be during off season and off peak hours.

6. Adequate findings addressing potential impacts of the proposed hot mixed asphalt concrete (HMAC) plant on especially sensitive crops.

LUBA's remand with regard to the HMAC plant involved a determination that the findings document supporting the approval decision did not adequately address the potential impacts on farm practices or the cost thereof, and that additional evidence about the type of plant to be used should be provided. To supplement the information on the HMAC plant stated above in Section 1(C), the following findings should be considered specifically with regard to potential adverse impacts on crops from emissions coming from the HMAC plant.

Findings: The applicant has now submitted information provided by a leading manufacturer of HMAC plants, which information demonstrates these facilities are state of the art and environmentally safe. While the exact nature of the plant to be purchased and used at the proposed facility is not yet known, the applicant states that the plant at this facility would be substantially similar to the small plant described in the submitted materials. In addition, the actual plant purchased would be very similar to the plant used by the applicant now at its Independence site, and currently at its Salem facility.

The applicant's are experts in this industry, and as operators they are aware of all emissions and impacts from an HMAC plant. All of the applicant's current operations are fully licensed and regulated by the state of Oregon DEQ. The applicant has demonstrated a history of compliance with DEQ rules and regulations that extends over decades of operation.

Given the lack of negative emissions from the HMAC, and the necessity of compliance with DEQ regulations in order to be in operation, the proposed HMAC plant would have no known negative impact on surrounding farm operations. The lack of impacts compares generally with the lack of impact on farming operations from the mining and operations area of the proposed new facility. The facts of this case demonstrate compliance with ORS 215.296 and PCZO 136.060 (which are identical in their requirements), and PCZO 111.275(C), although a bit more generic, still refers to the criteria that the aggregate mine would not significantly adversely affect allowed uses on adjacent lands.

With regard to this issue, LUBA was concerned that the County's decision did not include adequate findings relating to the impacts, or lack thereof, from the HMAC. Therefore, the question that must be addressed here is whether or not the HMAC plant will cause the surrounding farmers to change farm practices or to increase the cost of farm practices in a significant way.

The record developed in this case has identified the types of crops and type of farm practices that are involved on surrounding lands. Some surrounding farmers have expressed concern over potential emission impacts to their crops.

The uncontested evidence from the applicant and from the detailed information on such plants from a manufacturer submitted by the applicant, and the fact that the HMAC plant would have to obtain and maintain a DEQ air discharge and contaminate permit in order to be in operation, demonstrates there is no evidence of harmful airborne contaminates that would emit from the HMAC plant, and therefore there would be no contaminates migrating from the site to neighboring farms. The end result of no contaminates leaving the site is that there could be no

changes required to farming practices or increased costs associated with those practices relative to the use of the HMAC plant at the proposed location.

The fact that no harmful emissions leave the site means there is no impact on the neighbors regardless if the crop is peppermint, vegetables, or any other type of crop detailed in the uncontested findings from the prior decision. No technical, scientific or expert evidence has been submitted that the HMAC plant would produce harmful emissions, or that any particulates from the HMAC will travel off-site to surrounding farms, or that any of such particulates would cause harm to any crops. Such speculation does not rise to the level of substantial evidence when compared to the information submitted that no harmful impacts to farming operations are generated from an HMAC plant at this location.

DISCUSSION/ALTERNATIVES:

The Board of Commissioners alternatives in this matter include the following:

1. Open the public hearing and receive testimony and evidence addressing the issues remanded by LUBA Nos. 2006-028, 2006-029, 2006-031 and 2006-032 Final Opinion and Order remanding this case; or
2. Other.

FISCAL IMPACTS:

No fiscal impacts to the County have been identified.

EXHIBITS:

A - LUBA Final Opinion and Order (LUBA Nos. 2006-28, 2006-29, 2006-31 and 2006-32)