



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

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NOTICE OF ADOPTED AMENDMENT

06/21/2011

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

FROM: Plan Amendment Program Specialist

SUBJECT: Clackamas County Plan Amendment
DLCD File Number 001-11

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: Thursday, July 07, 2011

This amendment was submitted to DLCD for review prior to adoption with less than the required 45-day notice. 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: Steve Kopley, Clackamas County
Jon Jinings, DLCD Community Services Specialist
Amanda Punton, 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

DEPT OF

JUN 17 2011

LAND CONSERVATION AND DEVELOPMENT

DATE STAMP

For Office Use Only

Jurisdiction: **Clackamas County**

Local file number: **Z0500-10-CP**

Date of Adoption:

Date Mailed:

Was a Notice of Proposed Amendment (Form 1) mailed to DLCD? Yes No Date: 1/6/2011

Comprehensive Plan Text Amendment

Comprehensive Plan Map Amendment

Land Use Regulation Amendment

Zoning Map Amendment

New Land Use Regulation

Other:

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

The County has adopted a Post-Acknowledgement Plan Amendment (PAPA) to the Clackamas County Comprehensive Plan to an existing Goal 5 significant resource (mining site), to modify conditions of approval: increase an annual extraction cap, allow a rock crusher within the extraction area, and clarify the exact boundary of the approved extraction area. The site is presently located within a previously approved Mineral and Aggregate Overlay (MAO) zone.

Does the Adoption differ from proposal? Yes, Please explain below:

The proposed amendment is the same except the proposal was to lift the annual extraction cap;; the adopted amendment modified it from 75,000 cubic tons per year to 150,000 cubic tons per year.

Plan Map Changed from: **n/a**

to: **n/a**

Zone Map Changed from: **n/a**

to: **n/a**

Location: **T5S R3E, Section 17, Tax Lots 600, 690, 700, 790**

Acres Involved: **82**

Specify Density: Previous: **n/a**

New: **n/a**

Applicable statewide planning goals:

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Was an Exception Adopted? YES NO

Did DLCD receive a Notice of Proposed Amendment...

45-days prior to first evidentiary hearing?

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. _____

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

Local Contact: **Steve Koper, Planner**

Phone: (503) 742-4551 Extension: 0

Address: **150 Beaver Creek Road**

Fax Number: 503-742-4550

City: **Oregon City**

Zip:

E-mail Address: 97045

ADOPTION SUBMITTAL REQUIREMENTS

This Form 2 must be received by DLCD no later than 5 working 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 the adopted amendment, please print a completed copy of Form 2 on light **green paper if available**.
3. Send this Form 2 and **one complete paper copy** (documents and maps) of the adopted amendment to the address below.
4. Submittal of this Notice of Adoption must include the final signed ordinance(s), all supporting finding(s), exhibit(s) and any other supplementary information (ORS 197.615).
5. Deadline to appeals to LUBA is calculated **twenty-one (21) days** from the receipt (postmark date) by DLCD of the adoption (ORS 197.830 to 197.845).
6. In addition to sending the Form 2 - Notice of Adoption to DLCD, please also remember to notify persons who participated in the local hearing and requested notice of the final decision. (ORS 197.615).
7. Submit **one complete paper copy** via United States Postal Service, Common Carrier or Hand Carried to the DLCD Salem Office and stamped with the incoming date stamp.
8. Please mail the adopted amendment packet to:

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

9. **Need More Copies?** Please print forms on 8½ -1/2x11 **green paper only if available**. If you have any questions or would like assistance, please contact your DLCD regional representative or contact the DLCD Salem Office at (503) 373-0050 x238 or e-mail plan.amendments@state.or.us.

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF CLACKAMAS COUNTY, STATE OF OREGON**

In the Matter of an Application by Graves
Trinity, LLC for a Comprehensive
Plan Amendment to Modify
A Goal 5 Surface Mining Site.

} ORDER NO. 2011-30

File No.: ZO500-10-CPC

This matter coming regularly before the Board of County Commissioners, and it appearing that Graves Trinity, LLC made application for a Post-Acknowledgement Plan Amendment (PAPA) to modify a previously approved Goal 5 significant resource to modify conditions of approval for the Dhooge Road Quarry, T3S, R2E, Section 17, Tax Lots 600, 690, 700 & 790; and

It appearing that planning staff, by its report dated March 9, 2011, recommended approval of the application with conditions; and

It further appearing that the Planning Commission, at its February 28, 2011 meeting, recommended approval of the application with the conditions; and

It further appearing that after appropriate notice a public hearing was held before the Board of County Commissioners on April 13, 2011, at which testimony and evidence were presented, and that a preliminary decision was made by the Board;

Based upon the evidence and testimony presented, this Board makes the following findings and conclusions:

1. The applicant has applied for a comprehensive plan amendment to modify a previously approved Goal 5 significant aggregate resource, and the application can meet the applicable approval criteria with the application of appropriate conditions of approval. The Board adopts the findings and conclusions in Exhibit A hereto.

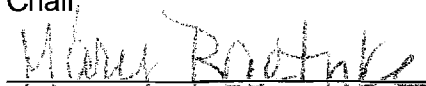
NOW, THEREFORE, IT IS HEREBY ORDERED that the requested comprehensive plan amendment is approved, subject to the conditions of approval attached hereto as Exhibit B.

DATED this 9th day of June 2011

BOARD OF COUNTY COMMISSIONERS



Chair



Recording Secretary

EXHIBIT A**FINDINGS IN SUPPORT OF APPROVAL****1. General Information**

File No: Z0500-10-CP

Applicant: Graves Trinity, L.L.C.; P.O. Box 289, Molalla, Oregon 97038

Owner: Same

Location: On the west side of South Dhooghe Road, between S. Munson Road and S. Young Road, approximately 2 miles south of the intersection of S. Highway 211 and S. Dhooghe Road (west of Colton).

Legal Description: The Comprehensive Plan amendment (PAPA) includes the property described as T5S, R3E, Section 17, Tax Lots 600, 690, 700, 790.

Comprehensive Plan Designation: Forest

Zoning Districts: TBR, Timber District / MAO; Mineral Aggregate Overlay District

Total Area Involved: The existing mining site includes approximately 82.12 acres.

On-Site Land Use: The site is currently in use as a quarry and for forest use.

Site Characteristics: The site consists of two ridges with a creek (Hancock Creek) separating two previously approved and inventoried mining areas.

Surrounding Planning, Zoning and Land Use: The surrounding area is almost entirely zoned "Timber." The applicant identified eight dwellings within 1500 feet of the mining/extraction area. Typical farm/forest uses in the area include small woodlots, grazing, and the commercial production and harvesting of trees.

Hearing Dates: February 28, 2011 and March 14, 2011 (PC), April 13, 2011 (BCC)

Service Providers:

Sewer: The subject property is not located within a public or private sewer district.

Water: Well.

Surface Water: The subject property is not located within a public or private surface water district. Surface water is regulated pursuant to Section 1008 of the ZDO. Surface water management for mining operations is regulated by the DOGAMI and / or DEQ.

Fire Protection: Canby Fire District

Agency and Property Owner Notification List:

Colton CPO
Colton Fire District #79
Colton School District
DTD, Traffic Engineering
County Weighmaster
Division of State Lands
Dept. of Land Conservation and Development
Dept. of Geology and Mineral Industries (DOGAMI)
Oregon Dept. of Transportation; Region 1
Oregon Dept. of Transportation; District 2C
Property Owners within 2,250 feet of the subject property

2. Summary of Approval:

The applicant has demonstrated compliance with the applicable criteria of the Clackamas County Comprehensive Plan and Zoning Ordinance, Goal 5, and the Goal 5 Rule for Aggregate, OAR 660-023-0180, as detailed in these findings. The record of these proceedings provides the factual basis for approval. Conditions of Approval adopted as part of this Board Order ensure compliance with all applicable standards. The Board has considered and weighed all evidence, arguments and testimony received by the Planning Commission and the Board in these proceedings and has voted unanimously to approve the applicant's request for:

2.1 A Post-Acknowledgement Plan Amendment (PAPA) to the Clackamas County Comprehensive Plan, to modify previous plan provisions for the site adopted in 1995 and 1996 (for Tax Lots 600, 690, 700, 790);

2.2 Modification of conditions of approval in File Nos. Z0393-93-CP / Z0394-94-Z. These files previously approved by the County recognized the subject property as a "significant" Goal 5 aggregate resource, approved a Mineral Aggregate Overlay (MAO) zoning district, and authorized mining within a designated extraction area, subject to conditions of approval. The entire site is located within the previously approved Mineral and Aggregate Overlay (MAO) zone;

2.3 Replacement of the existing plan map of the extraction area with a new, more precise map;

2.4 Modification of a previous condition limiting extraction to not exceed

75,000 cubic yards per calendar year. Extraction is now limited to 150,000 cubic yards per calendar year.

2.5 Modification of a previous condition, to allow operation of a rock crusher subject to compliance with DEQ noise standards; and

2.6 Additional clarifications and revisions, as detailed in the Conditions of Approval, Exhibit B to this Board Order.

3. Prior Land Use Approvals:

3.1 Mining at the Dhooghe Road site began prior to adoption of zoning in the area and the adoption of Section 708 (Mineral and Aggregate Resources District) of the Clackamas County ZDO. A portion of the mining operation is subject to a Grant of Limited Exemption Permit from the Oregon Department of Geology and Mineral Industries (DOGAMI), and is considered a nonconforming use.

3.2 File Nos. Z0393-93-CP / Z394-93-Z. This is the original PAPA (Post Acknowledgement Plan Amendment), which designated the existing mining site as a significant Goal 5 resource and approved a Mineral Aggregate Overlay zoning district on the property. The application was approved on January 12, 1995 and included 24 conditions of approval.

3.3 On December 14, 1995, the Land Conservation and Development Commission (LCDC) adopted a final order containing a "conflict analysis" for the site and "Specific Program Requirements" for the site, that were similar to the BCC order approved on January 12, 1995, but not identical.

3.4 On February 22, 1996, the Clackamas County Board of County Commissioners adopted Order No. 96-139. This order adopted the 93-page DLCDC drafted Goal 5 program, including an "Inventory and Significance Determination," a "Conflict Analysis" and a "Program to Achieve Goal 5" that included "Specific Program Requirements" for the Dhooghe Road Quarry.

3.5 On May 3, 1996, LCDC adopted a final order reaffirming its original December 14, 1995 final order in its entirety.

4. Goal 5 Rule Compliance. Effective September 1, 1996, the Land Conservation and Development Commission adopted OAR Chapter 660 Division 023, concerning local government review of post-acknowledgement applications for plan amendments and related approvals to utilize Goal 5 mineral and aggregate resources. By its terms and as confirmed by LUBA and the Oregon Court of Appeals, OAR 660-023-0180 supercedes pre-existing local standards for approval of plan amendments and zone changes to allow aggregate mining. Clackamas County's Mineral & Aggregate District ordinance was adopted in 1996 under the "old" Goal 5 rule, but in a manner that appears to have anticipated the adoption of the new rule. These findings address the requirements of the

Goal 5 rule as they apply to the application and the subject property. The maps, studies and other materials submitted by the applicant support these findings and establish compliance of the request with all applicable standards for approval. Revised conditions of approval (attached to this Board Order as Exhibit B) establish a Program to Achieve Goal 5 for the site as a refinement of the Program adopted in 1995 and in 1996.

4.1 Completeness of Application.

OAR 660-023-0180(8) states, in relevant part:

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

(b) A conceptual site reclamation plan (NOTE: Final approval of reclamation plans resides with DOGAMI rather than local governments, except as provided in ORS 517.780);

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

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

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

4.1.1 The quantity, quality and location of aggregate resources on the site has been previously established by a Cascade Earth Sciences report dated October 16, 1992. The report was formally adopted by the County in 1995, when the County established that the site is a Significant Aggregate Resource, and the site was added to the County's Comprehensive Plan Inventory of Significant Aggregate Resources. The County's decision to add "Dhooge Road Quarry" to the County's list of significant aggregate sites was confirmed in LCDC's order and County adoption of the order, in 1996.

4.1.2 A conceptual site reclamation plan was provided by the applicant. Sequential reclamation is proposed, as required by the original approval. The entire site will be reclaimed to forest and wildlife uses.

4.1.3 The required traffic impact assessment was provided by the applicant.

4.1.4 The existing, limited ‘regulatory’ impact area was established in 1995, and is shown on the existing Site Plan adopted by the County in 1995 and 1996. No changes to this regulatory impact area are requested. For purposes of the application, Goal 5 analysis was conducted within an area extending 1,500 feet of the site as depicted on the aerial photographs provided by the applicant. The identification of conflicting uses is discussed in the application and the attached reports. Mitigation measures necessary to minimize conflicts have all been incorporated into the mine plan and conceptual reclamation plan, and are otherwise described in the application.

4.1.5 Existing operations at the quarry are detailed on two diagrams in the application. The new site plan (Exhibit C to this Board Order) is a refinement of the diagram adopted in 1996. Hours of operation are specified in the conditions, as otherwise specified or limited by ZDO 708.05.

4.2 Significance of the Resource. OAR 660-023-0180(3) establishes standards for determining whether an aggregate resource is “significant” and can therefore be processed under the Goal 5 rule for aggregate. OAR 660-023-0180(3) states:

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

“(a) A representative set of samples of aggregate material in the deposit on the site meets applicable Oregon Department of Transportation (ODOT) specifications for base rock for air degradation, abrasion, and soundness, and the estimated amount of material is more than 2,000,000 tons in the Willamette Valley, or more than 500,000 tons outside the Willamette Valley; (emphasis added)

4.2.1 The significance of the resource was established by the applicant and accepted by the County in 1995, and again in 1996. As described in the ESEE analysis, which is part of the County’s Order originally amending its aggregate inventory to add the site as a significant aggregate resource:

“The area designated ‘Extraction Area’ on the attached Exhibit A is a significant site. Evidence in the record, including the Cascade Earth Sciences report, proves that the quantity and quality standards of ZDO 708.02D are met.”

4.2.2 The ESEE analysis states: “As presented in the referenced Cascade Earth Science report (1992), the site is characterized by uniform quality which exceeds the aggregate material standards set by ODOT.” (page 3) The ESEE analysis also states: “Based on exploratory trenching on the site and calculations performed by Cascade Earth Science, the estimated reserves for the area of expansion are 1.25 million cubic yards.” (page 3) The CES report indicates that, based on five drill holes, “the andesite bedrock continues

to a depth of at least 35-40 feet below the present ground surface and is at least 100 feet in thickness.” Estimated reserves were based on excavation 35-40 feet deep. Mining depths are currently more than 80 feet. It is possible that greater depths could be mined in the future, subject to additional site design and State regulatory oversight.

4.2.3 Using a standard conversion for in-place density of andesitic rock, one cubic yard of in-place rock equals approximately 2.36 tons. Therefore, 1.25 million cubic yards of in-place rock equates to approximately 2.9 million tons. Aggregate available at the site exceeds the two million ton requirement of the ‘new’ (1996) Goal 5 rule, for sites in the Willamette Valley.

4.2.4 ODOT specifications for base rock require a level of durability measured through abrasion and air degradation tests (AASHTO T96 and ODOT TM 208). To demonstrate resistance to abrasion, the representative set of samples must demonstrate no more than 35% loss. The air degradation test measures the rate at which rock degrades through attrition, and a passing score for base rock is no more than 30% loss and 75 mm sediment height.

4.2.5 A representative set of samples from the subject property were taken in 1992. The Cascade Earth Science report accepted by the County in 1995 stated that the quality of the rock present at the site is “outstanding,” and concluded: “It is my professional opinion based on the Carlson Testing, Inc. analysis of samples taken from the Dhooge Road Quarry expansion area, that the andesite and basalt lava flow deposit at this site is characterized by uniform quality which consistently exceeds the aggregate material standards set by ODOT.”

4.2.6 The aggregate resource in the site exceeds the quality and quantity requirements of OAR 660-023-0180(3)(a) and is therefore “significant” under the requirements of the Goal 5 Rule for aggregate.

4.2.7 OAR 660-023-0180(3)(b) states: “(b) *The material meets local government standards establishing a lower threshold for significance than subsection (a) of this section.*” Clackamas County has not adopted a lower threshold.

4.2.8 OAR 660-023-0180(3)(c) states that an aggregate site is significant if:

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

The subject property was listed as a significant site in the County’s plan as of September 1, 1996. It is therefore significant because it meets the quantity and quality requirements of the rule, and because it qualifies as a significant site under OAR 660-023-0180(3)(c).

4.2.9 OAR 660-023-0180(3)(d) states:

“(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:

The applicant owned the entire site prior to March 1, 1996. For this reason, and because the site has already been deemed significant and is listed in the County's Comprehensive Plan Inventory of Significant Aggregate Sites, (and because the site is not farmland,) the following sections do not apply:

“(A) [The site is not significant if] More than 35 percent of the proposed mining area consists of soil classified as Class I on Natural Resource and Conservation Service (NRCS) maps on June 11, 2004; or

“(B) More than 35 percent of the proposed mining area consists of soil classified as Class II, or of a combination of Class II and Class I or Unique soil, on NRCS maps available on June 11, 2004, unless the average thickness of the aggregate layer within the mining area exceeds:

** * **

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

In this case, the site has already been deemed significant, and no further significance determinations are being requested by the applicant, or are allowed under the County's zoning code or the 1996 Goal 5 Rule. The site is a significant aggregate resource because it was deemed significant on January 12, 1995, and again on February 22, 1996, prior to the adoption of current rules and as part of the County's Periodic Review of its aggregate inventories, which was acknowledged by the Department of Land Conservation and Development and Land Conservation and Development Commission in "Work Task Approval Order 95-WKTASK-00533" (December 14, 1995) and "Reconsideration of Work Task Approval Order 95-WKTASK-00533" (May 31, 1996). As noted, the site is also significant because it meets the quantity and quality requirements of the Goal 5 rule.

4.3 Identification of Impact Area. OAR 660-023-0180(5) states:

*“(5) For significant mineral and aggregate sites, local governments shall decide whether mining is permitted. For a PAPA application involving a significant aggregate site under section (3) of this rule, the process for this decision is set out in subsections (a) through (g) of this section. * * * For a PAPA involving a significant aggregate site, a local government must complete the process within 180 days after receipt of a complete application that is consistent with section (6) of this rule, or by the earliest date after 180 days allowed by local charter. The process for reaching decisions about aggregate mining for sites determined to be significant under section (3) of this rule is as follows:*

“(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-foot analytical impact area for the site is shown in the application submittal. The designated impact area includes all areas within 1500 feet of the proposed mining area except “undisturbed buffer areas,” which are excluded from the impact area by the above quoted section and OAR 660-023-0180(1)(g). The Goal 5 rule does not require that the applicant revisit and re-analyze conflicts that were already deemed minimized as part of the existing ESEE analysis adopted in 1995. The applicant is seeking in this proceeding to modify existing limiting conditions regarding production at the quarry, and crushing. To that end, the applicant is addressing the potential conflicts that might occur if the proposed amendments to existing conditions are granted. As will be described in more detail in the following findings, the county has not identified any factual information that would indicate that significant potential conflicts exist beyond the 1500-foot impact area identified by the applicant, that must or should be studied and addressed under the Goal 5 Rule for aggregate.

4.4 Identification of Existing or Approved Land Uses and Sensitive Uses Within the Impact Area

4.4.1 OAR 660-023-0180(5)(b) states, in relevant part:

*“(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.
* * **”

4.4.2 The applicant has reviewed County records and aerial photographs in an effort to identify all dwellings and other sensitive uses in the impact area. Through that review the applicant identified eight structures believed to be dwellings within 1500 feet of the proposed mining area. Neighbors on Dhooghe Road, to the north, east, and south of the site, are currently provided notice of blasting events. Structures identified as dwellings in and near the impact area are all considered to be noise sensitive uses, and the applicant’s noise report listed 13 receptors (see Figure #4 and page 12 of noise report). Identified dwellings within the impact area include:

4.4.2.1 Northwest:

TL 53E08 01800
19422 S. Munson Road

R8 in the noise study. This dwelling would have been impacted by noise if the rock drill and dozer were operated at the same time at the northern end of the site. The noise report recommended limitations on rock drill and dozer use in this area. The applicant has minimized the identified potential noise conflict by removing the area in question from the mine plan.

4.4.2.2 North:

TL 53E08 01900
19430 S. Munson Road

R11 in the noise study. This dwelling would have been impacted by noise if the rock drill and dozer were operated at the same time in the northern end of the site. Mitigation—a better muffler for the dozer—would have been required if the dozer and rock drill were both operated at the same time in the far north of the site. The area in question has been removed from the mine plan, ensuring compliance with noise standards as to this dwelling.

4.4.2.3 Northeast:

53E08 02100
31798 S. Dhooghe Road
(receives notice of blast events)

R12 in the noise study, which predicts that standards will be met at this dwelling without additional mitigation. Located approximately 1,260 feet from the mining area.

4.4.2.4 East:

53E17 00304
32350 S. Dhooghe Road
(receives notice of blast events)

R1 in the noise study, which predicts that standards will be met without additional mitigation. Located on a hill, approximately 1,400 feet from the mining area.

53E17 00301
32448 S. Dhooghe Road
(receives notice of blast events)

R2 in the noise study, which predicts that standards will be met without additional mitigation. Approximately 1,310 feet from the mining area.

TL 53E17 00500
32471 S. Dhooghe Road

R3 in the noise study. Located approximately 450 feet from the eastern property line of the site and approximately 730 feet from the mining area. The noise study predicts that standards will be met at this dwelling without additional mitigation.

4.4.2.5 Southeast:

53E17 01200
32516 S. Dhooghe Road
(receives notice of blast events)

R4 in the noise study, which indicates that this dwelling is on a hill, approximately 1,440 feet from the mining area. Standards predicted to be met without additional mitigation.

53E17 01104
32553 S. Dhooghe Road
(receives notice of blast events)

R6 in noise study. 750 feet from nearest mining area. Modeling indicates that mitigation is necessary to prevent impacts—i.e., don't run the dozer and a rock drill near the southern end of the site, at the same time, or, put a higher-grade muffler on the dozer. Berms and other types of barriers may also be employed, as necessary to block the line of site between an identified noise source and the dwelling.

4.4.2.6 South:

No dwellings were located in the impact area to the south of the site. A dwelling that is approximately 2,120 feet to the south was studied because it is located on a hill. The noise study concluded that standards would be met at this location, without additional mitigation.

4.4.2.7 Southwest and West:

There are no dwellings or other sensitive uses within the impact area, to the southwest or west of the site.

4.4.3 The applicant notes that there may be dwellings that have not been identified, and that new dwellings could be established within 1500 feet of the site. The county does not anticipate that any potential new dwellings will be affected more or differently than the 13 receptors listed and studied in the noise report.

4.4.4 All of the identified dwellings are approved land uses and are sensitive uses. To the county's knowledge, there are no other sensitive uses within the impact area, and

there are no residential zones or “existing platted lots” within the impact area where conditional or final approvals to construct dwellings or other sensitive uses have been granted by Clackamas County. Additionally, at the time of the application, the County had not approved any new sensitive uses in response to any Measure 37 claims in the impact area and, to the applicant’s knowledge, no such claims were pending.

4.4.5 The Avison Lumber Company property (T5S, R3E, S 17, T.L. 1101, 1105, 1106, 1107, 1109, 1110, and 1600, and S 20, T.L. 600 and 800), has been granted Measure 49 authority (by DLCD) to construct three dwellings south of the site, and potentially within 1500 feet of the site. The applicant anticipates that such dwellings may be constructed, and has designed the project to minimize off-site noise impacts and other potential conflicts.

4.5 Conflict Minimization. The following findings identify potential conflicts, and explain why those conflicts are not “predicted” and why sensitive uses within the impact area will not be adversely affected by proposed mining operations. The project has been designed to minimize conflicts with neighboring or nearby residential, agricultural and recreational uses.

4.5.1 An ESEE analysis was adopted for this site establishing that all identified conflicts within 750 feet of the mining area were minimized. The county is only required to revisit those findings and conclusions in this proceeding to the extent that the applicant is requesting that existing limiting conditions be modified. The following analysis establishes that crushing can be accommodated at the site without creating significant conflicts within 1500 feet of the site; and that the 75,000 cubic yard per year restriction can be modified without creating significant conflicts to local roads or otherwise.

4.6 Consideration of Potential Conflicts.

4.6.1 The remainder of OAR 660-023-0180(5) (partially quoted above) states:

*“(b) * * * 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;

“(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.

“(C) Safety conflicts with existing public airports due to bird attractants, i.e., open water impoundments. This paragraph shall not apply after the effective date of commission rules adopted pursuant to Chapter 285, Oregon Laws 1995;

“(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;

“(E) Conflicts with agricultural practices;

“(F) Other conflicts for which consideration is necessary in order to carry out ordinances that supersede DOGAMI regulations pursuant to ORS 517.780;”

4.6.2 As to:

“(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;”

4.6.3 Noise.

4.6.3.1 Potential noise conflicts are outlined above and in these findings. The application included a noise study addressing potential noise impacts. The applicable standards are located in OAR Chapter 340, Division 35, containing Oregon Department of Environmental Quality (DEQ) noise control regulations. Under those standards, the subject property is an existing noise source on a previously used site, for which the noise limits are those listed in OAR 340-035, Table 8.

4.6.3.2 The noise study began with a collection of data regarding the characteristics of the site and area. Information was then collected regarding proposed operations at the site, including the types of machinery, and the proposed location of haul roads, stockpiles, and other activities likely to generate noise. Analysis and modeling was then conducted, to predict the highest hourly statistical noise levels that might occur in a “worst case” scenario that overstates the number of sound sources that would operate simultaneously and the elevation of those sources. Based on the results of this analysis and modeling, a noise compliance boundary was established. Outside the boundary line, the noise caused by mining operations at the site will be below DEQ limits, without mitigation. In any situation in which the compliance boundary was identified as encompassing a sensitive use, the study proposes conditions to ensure that no noise

sensitive uses are within the compliance boundary. The study concludes that the applicant will meet DEQ noise standards as to all noise sensitive uses in the impact area.

4.6.3.3 Other than the dwellings discussed in this narrative and/or discussed in the noise study, the area is rural and isolated. Noise is currently generated on site by trucks accessing the site, by occasional blasting, and by portable crushing equipment that has been brought on to the site from time to time. As indicated in the applicant's noise report, impacts to noise sensitive uses in the impact area can be fully mitigated and minimized using reasonable and practicable measures as described above and in the attached study. Enforceable conditions have been established requiring that the site comply at all times with DEQ noise standards.

4.6.4 Dust.

4.6.4.1 Graves Quarry has been operated for decades. The ESEE analysis that is part of the County's Comprehensive Plan aggregate inventory materials, addresses dust impacts as follows:

“The prevailing direction of wind in Clackamas County is from the west. The wind will carry dust generated from the mine operation toward existing dwellings located along Dhooge (sic) Road. All existing and future roads within the site will be graveled. A water truck may be necessary onsite during the summer months for use for dust suppression on all roads. In addition, a dense forested buffer to be retained around the periphery of the site will help minimize dust produced by mining operations.”

4.6.4.2 As has been demonstrated by operation of Graves Quarry over the course of decades, potential conflicts with dust have been minimized, are minimized currently, and will continue to be minimized, using reasonable and practicable measures, to a level at which they are not significant. A water truck, with a 3200 gallon capacity, is maintained on-site at all times, and is used as necessary to control fugitive dust and to maintain the entrance drive. Forested buffers have been retained, as indicated in the original ESEE analysis for this site. The entrance has been paved, to prevent tracking of dust onto the road. Adequate water has always been available on site to fully accommodate the operation.

4.6.4.3 The applicant is proposing to operate a crusher on site. An Air Contaminant Discharge Permit is required for the processing, crushing and screening facility (which must also comply with DEQ Noise standards (see ZDO § 708.05(5)). For mobile processing facilities, the owner/operator of the mobile facilities holds and maintains compliance with the Air Contaminant Discharge Permit.

4.6.4.4 Dust is effectively controlled at the processing facility through compliance with the terms of the DEQ permit by the operator of the facility. During dry conditions, sprayers are operated at the crushing facility, using water pumped from the on-site

storage pond. Because crushing facilities are regulated and permitted under Department of Environmental Quality standards, the potential dust conflict related to the crusher is minimized if the operator ensures conformance to the applicable standard. (See OAR 340-226-0216; 340-226-0300(5) and (6); 340-226-0210) The proposed facilities will be designed to meet or exceed all applicable DEQ standards, and by law must be maintained and operated to meet those standards. For the crusher and conveyors, all non-fugitive emissions must meet opacity and particulate size limitations.

4.6.4.5 The applicant will also continue to be required to comply with the DEQ fugitive dust standard. The applicable standard is OAR 340-208-0210(2) which states:

“(2) No person may cause or permit any materials to be handled, transported, or stored; or a building, its appurtenances, or a road to be used, constructed, altered, repaired or demolished; or any equipment to be operated, without taking reasonable precautions to prevent particulate matter from becoming airborne. Such reasonable precautions may include, but not be limited to the following:

(a) Use, where possible, of water or chemicals for control of dust in the demolition of existing buildings or structures, construction operations, the grading of roads or the clearing of land;

(b) Application of asphalt, oil, water, or other suitable chemicals on unpaved roads, materials stockpiles, and other surfaces which can create airborne dusts;”

This is a nuisance standard, requiring all persons to use “reasonable precautions” to prevent particulate matter from becoming airborne, and applies to all aspects of the applicant’s operation. These regulations also constitute the applicable standard for minimizing fugitive dust conflicts under the Goal 5 rule. As stated, potential dust impacts to dust sensitive uses in the impact area will continue to be minimized by watering access roads and stockpiles as necessary to prevent dust generation; and by similar reasonable and practicable measures. The applicant has demonstrated the feasibility of controlling both fugitive and non-fugitive dust, and has demonstrated that all potential dust conflicts can be minimized to the point where they will no longer be significant as to sensitive uses, and all other uses taking place in the area.

4.6.5 Other Discharges. No other potential discharges from the site have been identified that would present a discernable conflict to existing or approved land uses in the area. As to groundwater: the applicant is not mining into any groundwater aquifers, and mining into an aquifer could not take place without DOGAMI review. As to surface water: the applicant has designed and installed a stormwater control system for all currently disturbed areas of the site, and has obtained an NPDES permit from DEQ/DOGAMI. To date, the control system has resulted in no discharges of stormwater to Hancock Creek. The DOGAMI permit application for the remainder of the site demonstrates the feasibility of similarly controlling surface water runoff for all currently undisturbed areas of the site, and establishes that no off-site impacts, or impacts to

Hancock Creek, will occur. The site is well oriented for containing surface water on site and subsurface conditions make groundwater transport highly improbable. Hancock Creek vegetated buffers, required by existing County approval conditions, are well established and maintained. Erosion control practices required by DOGAMI, including the stormwater control and retention facilities identified in the operating plan, have eliminated, and will continue to eliminate, the potential for turbid water to leave the site. The applicant's plans are also demonstrably feasible: the methods proposed for controlling discharges from the site are all readily available and widely used. For all of these reasons, no significant other "discharges" are likely or predicted.

4.6.6 Minimization of Potential Local Road Conflicts

As to subparagraph (B), the "conflicts to local roads" standard requires an analysis of:

"(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."

4.6.6.1 This standard requires that all major intersections within one mile of the site access driveway be included in a traffic impact study unless a greater distance is necessary in order to include the intersection with the nearest arterial. South Dhooghe Road (the site frontage and access) is a County Road, and is classified as a minor arterial road. The nearest intersections within one mile of the site are with South Munson Road, and South Young Road. The applicant's traffic study considered these two intersections, and identified no significant conflicts, currently and/or at anticipated traffic levels.

4.6.6.2 The "applicant" in the previous approvals was the County, which did not submit a traffic impact assessment in 1994-5. To minimize potential conflicts in the absence of a traffic impact assessment, the County limited the amount of aggregate that could be mined from the site to 75,000 cubic yards per year. To respond to future economic conditions that may raise the demand for aggregate from Graves Quarry, the applicant requested that the 75,000 cubic yard cap be removed. The County has modified the cap, to state that aggregate and mineral extraction shall not exceed 150,000 cubic yards per year, without Planning Director review and approval of new noise and traffic studies. The applicant's traffic impact assessment describes potential impacts of allowing mining of more than 75,000 cubic yards of material per year. The report demonstrates that proposed mining and aggregate production beyond the existing cap will not create any significant traffic impacts or conflicts.

4.6.6.3 The traffic study includes detailed information on traffic counts, trip generation calculations, and level of service calculations. Existing traffic was studied, as were estimated future traffic impacts if the quarry is allowed to excavate more than 75,000 cubic yards of gravel per year. The applicant's traffic engineer testified that if the quarry were to increase its operation to 150,000 cubic yards per year (under favorable economic conditions that do not currently exist) approximately 12,500 loaded trucks would leave the site, each carrying about 12 cubic yards of rock. This would average just under 42 trucks per day (84 trips including both inbound and outbound movements). Adding expected employee trips would increase the total to 90 trips per day. The quarry is not currently producing 75,000 cubic yards per year, but if it were, the average number of trips would be 48 per day. Even under the worst case at 150,000 cubic yards per year, the studied intersections and the intersection of Highway 211 and Dhooghe Road will operate at less than 10 percent of capacity through the year 2024.

4.6.6.4 The applicant's traffic engineer also studied the adequacy of site access, site distances and the safety of local roads accessing the quarry. The access driveway to the site is paved, and is currently designed to accommodate truck-turning maneuvers in a safe and efficient manner. No safety or other problems have been noted with the access driveway, and none are predicted if traffic at the entrance is increased in good economic times.

4.6.6.5 The applicant's traffic report demonstrates that there are no significant potential conflicts between the proposal and local roads. No conflicts were found with regard to roadway capacity, roadway cross-section and alignment, or other truck related conflicts.

4.6.6.6 The Lancaster report also demonstrates compliance with Goal 12 and the Transportation Planning Rule in terms of providing and encouraging a safe, convenient and economic transportation system. Under OAR 660-012-0060, amendments to acknowledged comprehensive plans and land use regulations that significantly affect a transportation facility must 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. Under OAR 660-012-0060(1), a plan or land use regulation amendment significantly affects a transportation facility if it:

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

(b) Changes standards implementing a functional classification system;

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

(A) Allows 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.”

The proposed use will not change the functional classification of existing or planned transportation facilities, nor change standards implementing a functional classification system. The proposal will not allow types or levels of land uses that would result in levels of travel or access that are inconsistent with the functional classification of a transportation facility, and will not reduce the performance standards of any facility below the minimum acceptable level. Local roads are currently used primarily as forest, farm and farm-residence access roads, with good sight distances and alignment, neither of which will be significantly affected by the proposed use. Accordingly, the proposed use conforms to the Transportation Planning Rule and will not result in significant potential conflicts to local roads, in conformance with the Goal 5 rule.

4.6.6.7 ODOT submitted recommendations regarding site distance improvements at the Highway 211 / Dhooghe Road intersection. ODOT’s recommendations have been incorporated into the conditions of approval.

4.6.6.8 The Clackamas County Engineering Division submitted recommendations regarding road improvements. Those recommendations have been addressed in the conditions. The specific elements of mitigation to be provided by the operator will be established as part of a road maintenance agreement to be established as part of Mineral and Aggregate Overlay Permit review. It has been generally understood that improvements are required to a section of Dhooghe Road that has an undulating surface, and that the applicant will be required to contribute its roughly proportionate share of the costs of correcting the undulating section of roadway.

4.6.7 Minimization of Potential Conflicts With Existing Public Airports

Subparagraph (C) requires analysis of:

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

The staff report included a detailed explanation of compliance with this requirement, which is accepted by the Board. There are no “existing public airports” within the impact area, and no identified safety conflicts with public airports. To the County’s knowledge, there are no aviation overlays or aviation laws that restrict or regulate uses proposed for the site. Open water impoundments are not limited or restricted at the site by County ordinance or state law. There are no predicted conflicts between the site and any identified existing public airport.

4.6.8 Minimization of Potential Conflicts with Other Goal 5 Resource Sites

Subparagraph (D) requires analysis of:

“(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;”

4.6.8.1 Goal 5 resource sites within the impact area that are shown on an acknowledged list of significant resources include Hancock Creek. To comply with a condition of approval imposed in 1995-6, and to ensure compliance with the Goal 5 rule, the applicant commissioned a Biological Inventory Report for the site and surrounding area. Hancock Creek bisects the site, and has been conscientiously protected by the applicant. No amendments to the existing conditions or site plan now proposed will have any greater impact on Hancock Creek—it will be protected by the existing vegetative buffer strips and through implementation of the existing NPDES permit and stormwater detention facility installed at the site. Since the applicant obtained an NPDES permit for the site and installed a stormwater control system, no stormwater has flowed from the site into Hancock Creek.

4.6.8.2 The Biological Report recommended the following measures to minimize impacts to sensitive fish and wildlife, which have also been reviewed by both the Oregon Department of Fish and Wildlife and the Department of Geology and Mineral Industries:

“Detain and treat stormwater run-off according to DOGAMI and DEQ regulations.

Maintain the existing 50 to 200-foot setback from Hancock Creek as a protected buffer.

Intensify the control of non-native, invasive weeds. Target weeds include Scotch broom, tansy ragwort, thistle, and Himalayan blackberry.

Schedule Timber harvesting from September to March to avoid the breeding season for birds.

Implement the reclamation plan which includes planting several species of native trees and understory species.

Place large wood (> 20 inches dbh) in the reclaimed areas along with native plantings to enhance wildlife habitat.”

The applicant has implemented these recommendations, and is proposing to reclaim the entire site, even those portions that he is not required to reclaim under state law. Since assuming complete control over the operation of the quarry in January, 2008, the condition of the site has improved dramatically, by all accounts. The applicant has pledged to continue management of the site in a manner most likely to minimize conflicts with fish and wildlife, and to reclaim the site for forestry and wildlife uses.

4.6.8.3 Fish and Wildlife Habitat. Hancock Creek is identified as a medium Type-F stream on the River and Stream Conservation Area (RSCA) Map. This stream is also identified as a wetland on the National Wetland Inventory (NWI) maps. The RSCA purpose statement refers to designated stream conservation areas along the corridors of fish-bearing streams in Clackamas County in order to minimize erosion, promote bank stability, maintain and enhance water quality and fish and wildlife habitats, and preserve scenic quality and recreational potentials.

As noted, potential impacts to Hancock Creek were addressed in the program to achieve Goal 5 adopted by the County in 1995-96. The applicant has inventoried fish and wildlife in the area, and is not proposing any changes to the previous approval that will create new conflicts with identified resources. The refinements to the site and reclamation plans, more precisely identifying the Hancock Creek ravine, ensure its continued protection as mining continues. In this case the mine and reclamation plan have been specifically designed to protect fish and wildlife habitat in the area during operation and when the site is reclaimed to forestry and wildlife habitat.

4.6.8.4 Wetland and Associated Riparian Areas. No wetland or riparian areas on the site have been mined, and all of them are protected under the existing approval. No refinements proposed in the application will result in any impacts to Hancock Creek or its associated riparian areas.

4.6.9 Minimization of Conflicts With Agricultural Practices

As to:

“(E) Conflicts with agricultural practices,”

OAR 660-023-0180(5)(c) states, in relevant part:

“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.”

ORS 215.296 provides in pertinent part as follows:

“Standards for approval of certain uses in exclusive farm use zones; violation of standards; complaint; penalties; exceptions to standards. (1)

A use allowed under ORS 215.213 (2) or 215.283 (2) may be approved only where the local governing body or its designee finds that the use will not:

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

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

*(2) An applicant for a use allowed under ORS 215.213 (2) or 215.283 (2) may demonstrate that the standards for approval set forth in subsection (1) of this section will be satisfied through the imposition of conditions. Any conditions so imposed shall be clear and objective. * * **

4.6.9.1 As explained in Schellenberg v. Polk County, 21 or LUBA 425, 440 (1991) and successive cases, the ORS 291.296(1) test requires that the county identify the accepted farm and forest practices occurring on surrounding farm lands, and then consider whether the proposed use will force a significant change in, or significantly increase the cost of, identified practices. ORS 215.203 defines “farm use,” and contains the following definition of “accepted farming practice” that is appropriate to reference in this circumstance. ORS 215.203(2)(c) states:

“As used in this subsection, ‘accepted farming practice’ means a mode of operation that is common to farms of a similar nature, necessary for the operation of such farms to obtain a profit in money, and customarily utilized in conjunction with farm use.”

4.6.9.2 For purposes of this analysis the “area” under consideration is the 1500-foot impact area. With the exception of a small sliver of land in the southwest corner of the impact area, (zoned AG/F), the entire impact area is zoned “Timber.” The site was originally zoned for forest practices, and forest and farm practices take place, on forestland, in the surrounding area. No significant impacts to farm or forest uses have been identified in the impact area, and it is therefore highly unlikely that impacts could be identified beyond 1500 feet justifying consideration of a larger area. Surrounding lands are typically used for forestry and grazing. Plowing, burning, application of herbicides and pesticides, disking of orchards and machine harvesting would be accepted farm practices if conducted in the area under the ORS 215.203(2)(c) definition, as would organic and sustainable agriculture practices. Farm equipment and laborers are typically used to tend livestock and harvest farm crops. Commercial forestry practices include access road construction, tree harvest (manually and mechanically), application of herbicides and/or pesticides, and replanting. No conflicts have been identified with any of these uses to date, and none are predicted as a result of the condition and site plan refinements requested in the application.

4.6.9.3 The applicant has been a commercial forester for many years. He proposes to continue management of the timber resources on the site as mining progresses, and to reclaim the site for forestry uses. The applicant’s operations are not

expected to force a significant change in, or significantly increase the cost of, any identified or likely agricultural practices on any nearby property devoted to farm use.

4.6.9.4 It is unlikely that the proposal will give rise to any new or increased conflicts with agricultural practices in the area. Farms in the area are maintained with machinery of approximately the same scale and noise level as the proposed extraction equipment, and reasonable and practicable measures are available to control noise. Dust is being effectively controlled at the site, with a water truck that is always on site. Berms have been constructed, and additional buffering of nearby farm uses is effectively provided by topography and forest vegetation. Erosion is currently being minimized through management practices. All stormwater runoff is controlled on-site, and will continue to be controlled under state permit as mining progresses. The applicant's aggregate extraction activities poses no conflicts with identified agricultural practices, and will not require changes in agricultural practices or increase agricultural costs in surrounding areas devoted to farm use.

4.6.10 In summary, due to the low impact type of mining proposed, topography of the area and other factors identified in these findings, no conflicts of the type listed in OAR 660-023-0180(5)(b) have been identified.

4.7 Reasonable and Practicable Measures to Minimize Conflicts

Under OAR 660-023-0180(5)(c):

“(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 requirement 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.”

The County has not identified any conflicts that will not be minimized by the conditions contained in the proposed operating plan, conceptual reclamation plan, and conditions of approval.

4.8 ESEE Analysis if Significant Identified Conflicts Cannot Be Minimized

Under OAR 660-023-0180(5)(d):

“(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.”

4.8.1 The proposed post-mining use of the site is forestry use, wildlife habitat and open space. The current zoning of the site is Timber, with a Mineral Aggregate Overlay. There is Timber and Agriculture/Forestry land within the impact area.

4.8.2 The County knows of no significant conflicts from the proposed operation that will not be minimized. Potential noise impacts will continue to be minimized as identified in the noise study. The applicant's operating and conceptual reclamation plans for the site were designed principally to avoid creating conflicts with surrounding land uses. The excavation process is simple, involving relatively few pieces of equipment. Mining equipment and trucks to be used on the site will utilize muffling equipment and limit speeds as necessary to meet or exceed DEQ noise regulations. Blasting is infrequent. The topography of the site has allowed a portable crusher to be operated without any complaints from property owners or residents nearby. The significant fish and wildlife habitat associated with Hancock Creek is currently being protected, and will continue to be protected under this approval. For all of the above reasons, the project is low impact, and designed to show environmental respect and respect for the neighbors. Detailed ESEE analyses were adopted by the County for this site, in 1995 and 1996. None of the refinements to the existing program to achieve Goal 5 for this site alter the basic conclusion of that earlier analysis, and no new analysis is necessary. During the public hearing process, no conflicts were raised that have not been addressed by the applicant. The County is therefore not required to conduct any additional ESEE analysis. The conditions establish reasonable and practicable measures to reduce potential conflicts.

4.9 Permission to Mine

Under OAR 660-023-0180(5)(e):

“(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, or to attach additional approval requirements, except with regard to mining or processing activities:

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

(B) Not requested in the PAPA application; or

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

Based on the information provided by the applicant and received through the public hearing process, the County is granting modifications to the previously granted permission to mine the site, subject to the site plan review requirements of Clackamas County Zoning and Development Ordinance Section 708.

4.10 Determination of Post-mining Uses

Under OAR 660-023-0180(5)(f):

“(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 the Oregon Department of Geology and Mineral Industries regarding the regulation and reclamation of mineral and aggregate sites, except where exempt under ORS 517.780.”

The site is zoned for timber and mineral/aggregate use, not farm use. As indicated, the applicant will reclaim the site for timber and wildlife habitat uses, as allowed by law. DOGAMI has been consulted, and is responsible for approving the conceptual mine plan and conceptual reclamation plan.

4.11 Goal 5 Rule Compliance Conclusion

Based upon the information provided by the applicant and received by the Board through the public hearing process, the Board finds that the applicant’s requests comply with all applicable standards of the Goal 5 rule for Aggregate, and all other applicable standards. Approval is therefore granted, of the refinements of the County’s specific program to achieve Goal 5 for the Graves Quarry, as outlined in Exhibits B and C of this Board Order.

5. Compliance with Statewide Planning Goals

The following findings address the consistency of the proposed Comprehensive Plan amendment with the Statewide Planning Goals.

5.1 Goal 1: Citizen Involvement: *To develop a citizen involvement program that ensures the opportunity for citizens to be involved in all phases of the planning process.*

This is a quasi-judicial land use application. The Clackamas County Comprehensive Plan and Section 1300 of the Zoning and Development Ordinance (ZDO) contain adopted and acknowledged procedures for citizen involvement and public notification. The application has been processed consistent with the notification requirements in Section 1302 of the ZDO including notice to individual adjacent and surrounding property owners within 2,250 feet of the subject property, notice in the local newspaper, and notice to affected agencies and dual interest parties. Notice to the Community Planning Organization (CPO) was provided, and the applicant discussed the proposal with the Chair of the Colton CPO. The Chair also attended the Planning Commission hearing, and did not offer any negative testimony. Advertised public hearings were conducted before the Clackamas County Planning Commission and Board of County Commissioners, which provided an opportunity for additional citizen involvement and input. The proposal is consistent with Goal 1.

5.2 Goal 2: Land Use Planning: *To establish a land use planning process and policy framework as a basis for all decision and actions related to use of land and to assure an adequate factual base for such decisions and actions.*

Goal 2 requires that the County coordinate its land use decisions with the plans of other affected governmental units. Affected governmental units are those local governments, state and federal agencies and special districts that have programs, land ownerships, or responsibilities with the area affected. The County, all state agencies, and many federal resource agencies, have long-established coordination programs to facilitate review of land- and resource-use proposals, including mining. The County provided notice of the application to all of the agencies listed in the General Information section of these findings, on January 6, 2011, well in advance of the first evidentiary public hearing.

Goal 2 also requires that the County establish a factual basis for its decisions. A factual basis for the decision has been established through the course of the application and review process and was supplemented through the hearing process. The County's decision is supported by substantial evidence, and is consistent with Goal 2.

5.3 Goal 3: Agricultural Land: *To preserve and maintain agricultural lands.*

The subject property is designated Forest on the Comprehensive Plan map. The application does not include any land designated Agriculture on the Comprehensive Plan

map. There are no identified impacts from the proposal to any agricultural uses in the area. The proposal is consistent with Goal 3.

5.4 Goal 4: Forest Land: To conserve forest lands by maintaining the forest land base and to protect the state's forest economy by making possible economically efficient forest practices that assure the continuous growing and harvesting of forest tree species as the leading use on forest land consistent with sound management of soil, air, water and fish and wildlife resources and to provide for recreational opportunities and agriculture.

The subject property is designated Forest on the County Comprehensive Plan map. No change in the Forest plan designation is proposed. The MAO designation allows continued mining of the site; with concurrent, sequential reclamation to forest uses and as fish and wildlife habitat. Mining is a temporary and partial use of the property, the remainder of which will remain available for forest use or will have been reclaimed to forest use. Aggregate is also used to construct logging roads, and helps to make possible economically efficient forest practices and sound management of forest lands and resources. The proposal is therefore consistent with Statewide Planning Goal 4.

5.5 Goal 5: Open Spaces, Scenic and Historic Areas, and Natural Resources: To conserve open space and protect natural and scenic resources.

Goal 5 resources include open space areas, scenic and historic resources and other natural features and resources, including mineral and aggregate resources. Chapter 3 of the Clackamas County Comprehensive Plan identifies significant Goal 5 resources within the County.

There are two Goal 5 resources present at the site: Hancock Creek, and the existing mining site. No other outstanding scenic views/sites, wilderness areas, historic sites or structures, cultural areas, potential or approved Oregon recreation trails identified in the Comprehensive Plan are located on the subject property.

The property was previously identified as a significant Goal 5 Mineral and Aggregate Resource site. All of the Goal 5 "balancing" required, was conducted in 1995-6, and has been supplemented by the applicant in this proceeding. Potential impacts to Hancock Creek have been, and continue to be, minimized, through imposition of setbacks, the NPDES permit for the site, and other limiting conditions. There are no other identified Goal 5 resources located within the impact area that the applicant has not addressed, and all potential impacts are minimized by the proposal to a level at which they are no longer significant. The proposal is in conformance with Goal 5.

5.6 Goal 6: Air, Water and Land Resources Quality: To maintain and improve the quality of the air, water and land resources of the state.

The County Comprehensive Plan and ZDO contain adopted implementing regulations to protect the air, water and land resources. These regulations, which include compliance

with both County and State requirements (DEQ, DOGAMI, etc.), include standards to regulate air, dust, water, erosion and noise. Compliance with these regulations will be required and applied to any future development proposals on the property. Compliance with these regulations will ensure the proposed mining operation maintains and improves the air, water and land resources in the area. The application is consistent with Goal 6.

5.7 Goal 7: Areas Subject to Natural Disasters and Hazards: *To protect life and property from natural disasters.*

The Board finds that there are no areas subject to natural disasters or hazards on or adjacent to the subject property. The proposal is consistent with Goal 7.

5.8 Goal 8: Recreational Needs: *To satisfy the recreational needs of the citizens of the state and visitors and, where appropriate to provide for the siting of necessary recreational facilities including destination resorts.*

The proposal does not involve any designated recreational or open space lands, or affect access to any significant recreational uses in the area. This project will have no impact on the recreational needs of the County or State. The proposal is consistent with Goal 8.

5.9 Goal 9: Economic Development: *"To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare and prosperity of Oregon's citizens."*

This Goal is intended to ensure Comprehensive Plans contribute to a stable and healthy economy in all regions of the state. Goal 9 also requires the County to provide for an adequate supply of sites of suitable sizes, types, locations, and services for a variety of industrial and commercial uses consistent with plan policies. Mining operations at the site will continue to contribute raw materials essential for the construction of businesses, homes and infrastructure, promoting Goal 9. No local government Goal 9 inventories are negatively impacted by the proposal, and it is consistent with Goal 9.

5.10 Goal 10: Housing: *"To provide for the housing needs of citizens of the state."*

This goal requires local jurisdictions to provide for an adequate number of needed housing units and to encourage the efficient use of buildable land within urban growth boundaries. No housing is proposed, nor will this proposal remove potential urbanizable land that could be used for housing from any inventory. Goal 10 is not relevant to this project or analysis.

5.11 Goal 11: Public Facilities and Services: *"To plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development."*

The use of this site does not require extensive public facilities or services, will not negatively impact any public facilities or services now available in or planned for the

area, and will not be impacted by such facilities or services. The extension of public sewer, water or storm drainage facilities is not proposed or required to support the proposed mining operation. Aggregate is also an important component of urban and rural, public and private water, sewer and stormwater management systems. The proposal is consistent with Goal 11.

5.12 Goal 12: Transportation: *“To provide and encourage a safe, convenient and economic transportation system.”*

Aggregate resources can affect the local transportation system, and are also needed to maintain such a system. To ensure compliance with Goal 12, the Transportation Planning Rule and local plans, the applicant submitted a traffic impact analysis with the application, and provided additional data and analysis during the hearing process. The applicant’s analysis, and review by County and State transportation planners, has addressed all applicable standards in the TPR and establishes compliance with Goal 12. The conditions of approval provide additional mitigation for potential transportation impacts. The proposal is consistent with Goal 12.

5.13 Goal 13: Energy Conservation: *To conserve energy.*

Goal 13 states that “land and uses developed on the land shall be managed and controlled so as to maximize the conservation of all forms of energy, based upon sound economic principles.” Aggregate is heavy. Providing aggregate for the local economy, from local sources, saves energy, promoting Goal 13.

5.14 Remaining Goals:

None of the remaining Statewide Land Use Planning Goals, including Goal 14: Urbanization; Goal 15: Willamette River Greenway; or Coastal Goals 16-19, are relevant to this project or analysis.

6. Compliance with Clackamas County Comprehensive Plan Policies:

Under the Goal 5 rule for aggregate, there are no general Clackamas County Comprehensive Plan Policies that are approval standards that could be the basis for a denial of the use. The Goal 5 rule preempts imposition of plan policy ‘standards’ that are not “conflicts” listed in the rule. The County is allowed, under the rule, to consider “Conflicts * * * based on clear and objective standards regarding sight distances, cross section elements, horizontal and vertical alignment, and similar items in the transportation plan and implementing ordinances.” The staff report included numerous proposed findings of compliance with County Comprehensive Plan policies that are not part of the County’s transportation plan or implementing ordinances, and are therefore not standards of approval applicable to the requested land use approval. The Board finds that the proposal is consistent with all plan policies discussed in the staff report. Compliance with transportation-related plan and implementing ordinances are addressed in this section.

6.1 Policy 9.0: *The county shall resolve issues relating to mine truck use of public roads as directed in county transportation plans and policies. The county reserves the right to make agreements with aggregate operators about the use of county roads independent from its decision in Goal 5 analysis.*

6.2 Clackamas County Pavement Management staff tested Dhooghe Road on February 9, 2011, with a falling weight deflectometer, to gather data associated with the structural soundness of the road. Pavement Management staff found that an approximately one quarter mile section of Dhooghe Road was experiencing subgrade or base failure ('undulating pavement'). The quarry is not currently approaching the existing extraction cap, but if the extraction cap is lifted, there is the potential for additional road damage. Some "rough proportionality" analysis has been provided by County transportation planning staff. This analysis will be completed through issuance of a site plan permit under ZDO Section 708, including negotiation of a road maintenance agreement.

6.3 In 1995, approximately when this quarry was added to the Comprehensive Plan inventory of significant aggregate resources and 24 conditions of approval were established, the average daily traffic volume was 480 vehicles per day. The most recent County traffic count, in 2008, resulted in an average daily traffic volume of 330 vehicles per day. Traffic count data provided by the applicant, collected in July 2009, indicates that approximately 240 vehicles per day traveled Dhooghe Road during the period of observation.

6.4 The DTD, Traffic Engineering Staff submitted comments regarding the adequacy of the transportation system, and the applicant's traffic engineer provided additional data and analysis. The Board finds that all transportation related impacts have been addressed by the applicant and by County staff, and the conditions of approval include all requirements necessary to meet County transportation policies and regulations, and to minimize transportation conflicts under the Goal 5 rule.

6.5 The Oregon Department of Transportation submitted comments on the subject application. ODOT's final comments on the proposal, following additional transportation analysis, have been addressed by the conditions of approval. The applicant's traffic engineer submitted reports considering traffic impacts to year 2024, consistent with TPR requirements. Additional study was conducted, beyond the one-mile required by the Goal 5 rule, and including the Dhooghe Road/Hwy 211 intersection. The applicant has provided sufficient information in the record to demonstrate that lifting the 75,000 cubic yard extraction limitation would not have a "significant effect" on the affected transportation facilities, as required by the TPR. As conditioned, the proposal will not "*Worsen the performance of an existing or planned transportation facility below the minimum acceptable performance standard identified in the TSP or comprehensive plan.*" (OAR 660-012-0060(1)(c)(C))

6.6 In summary, this proposal is consistent with OAR 660-012-0060(1)(a) and (b)

because it does not result in a change in the functional classification of an existing or planned transportation facility, nor change the standards implementing a functional classification. The applicant has demonstrated that the County and State transportation systems will be adequate to accommodate anticipated traffic throughout the 20-year planning period. Conditions of approval will ensure conformance with all applicable transportation standards. The proposal is consistent with Goal 12 and meets the requirements of the Goal 12-Transportation Planning Rule.

6.7 Chapter 5: Transportation: *This Chapter outlines policies addressing all modes of transportation.* This Chapter contains six (6) distinct Sections addressing; 1) Roadways; 2) Transportation Demand Management; 3) Parking; 4) Transit; 5) Pedestrian and Bicycle Facilities and; 6) Freight, Rail, Air, Pipelines and Water Transportation. Each of these Sections is addressed below.

6.7.1 Roadways. The purpose of this Section is to create and maintain a safe, continuous County-wide road system that accommodates movement by all modes. The adopted County Roadway Standards are also used to ensure a safe and adequate road system.

6.7.2 Policy 14.0: *Plan and control access onto roads within the County, as shown on Table V-5, for urban areas and according to American Association of State Highway and Transportation Officials (AASHTO) guidelines for rural areas, for both new and existing uses, and coordinate with the Oregon Department of Transportation for access control on state highways. Access standards need to be applied in a flexible manner that maintains reasonable access to property when access cannot be denied.*

6.7.3 The subject property has an existing access drive to Dhooghe Road. Its location and use for quarry access predates zoning in the area, has continued as a nonconforming use, and existed at the time of MAO zoning of the site. The access is currently paved, with a gate. No change to the existing access driveway has been proposed.

6.7.4 Following additional study and analysis by the applicant's traffic engineer, the DTD, TE staff has reviewed the site access and determined that the location and design satisfies minimum AASHTO site distance and stopping distance standards. The Board finds that the evaluation of sight distances, completed by the applicant, is consistent with Roadway Standards practices and is also complete. All required intersection sight distances were provided, measured and calculated appropriately.

6.7.5 Policy 15.0: *Require right-of-way dedication, on-site improvements to the applicable roadway standard as shown on Table V-2 and V-3, and off-site improvements for new developments and land divisions necessary to handle expected traffic loads and travel by alternative modes.*

6.7.6 The applicant has demonstrated that this standard is met. Access to the site is primarily by way of Dhooghe Road north to State Highway 211. Dhooghe Road is designated as a minor arterial road. It is currently capable of handling quarry traffic, and

is predicted to continue to be capable of handling an increase in quarry traffic, with contribution by the applicant to correction of an “undulated” section of Dhooghe Road.

6.7.7 Policy 16.0: *Require development to be served by adequate roadway facilities.* The applicant has demonstrated that the proposed increase in the extraction limitation, from 75,000 to 150,000 and as specified in the conditions, will be served by adequate roadway facilities. This policy is met.

6.7.8 Policy 20.0: *Assess anticipated off-site traffic impacts caused by new developments and land divisions. The developer or subdivider may be required to participate financially or otherwise in the provision of off-site improvements, dedications or other requirements.*

6.7.9 This proposal may increase off-site traffic impacts, if economic conditions improve in a manner justifying excavation of more than 75,000 cubic yards of aggregate per calendar year. The submitted traffic impact analysis indicates no level of service problems with investigated intersections, even if the excavation ceiling is doubled. TE staff has concurred with this conclusion, which is to be anticipated when traffic volumes are very low, as in this instance. This policy is met.

6.7.10 There are no policies in the following sections of Chapter 5 that apply to the application: Transportation Demand Management; Parking; Transit; or Freight, Rail, Air, Pipelines and Water Transportation.

6.7.11 Pedestrian and Bicycle Facilities. This Section of the Chapter outlines policies for providing pedestrian and bicycle facilities. Dhooghe Road is not designated as a Planned Bikeway on Map V-7b. The DTD, Traffic Engineering staff has not recommended any additional right-of-way, on site or off-site improvements to the roadway. The Board concurs with planning staff’s conclusion that additional bike lane improvements are not warranted.

7. Determining the ESEE Consequences of Potential Future Uses. The following findings provide additional Goal 5 analysis in support of the request.

The existing Site map in the (LCDC approved) comprehensive plan “program to achieve Goal 5” for the site indicates that no “regulatory” impact area has been imposed, that would limit future uses near the site. The applicant is requesting that, consistent with the previous approval and the evidence in this case, the regulatory impact area should not be extended off-site. The Board concurs that potential impacts from mining can be controlled on-site; new sensitive uses are unlikely in areas that could be impacted by the mining operation; and potential new conflicting uses should not be limited beyond the limitations already contained in the zoning ordinance.

7.1 Introduction. OAR 660-023-0180(5) states, in relevant part:

“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.”

7.1.1 In this case, the applicant has outlined the potential conflicts that may arise from its proposed operations and has demonstrated that all potential impacts are minimized to a level at which they are no longer significant. The project is designed to allow existing forest and farm uses on-site and on neighboring properties, and to prevent significant off-site impacts. Limiting conditions of approval help to ensure that the project can be completed in compliance with local, state, and federal regulations. Because the applicant has demonstrated minimization of potential conflicts and has presented a sound proposal for mining and reclaiming the site, mining is authorized as specified in the Board Order adopted in this case, subject to the conditions of approval.

7.1.2 The references in the Goal 5 rule for aggregate to OAR 660-23-0040 and 660-023-0050 are to sections entitled “ESEE Decision Process” and “Programs to Achieve Goal 5.” The purpose of the following findings are, as directed by the Goal 5 rule, to:

“enable reviewers to gain a clear understanding of the conflicts and consequences to be expected. The steps in the standard ESEE process are as follows:

- (a) Identify conflicting uses;*
- (b) Determine the impact area;*
- (c) Analyze the ESEE consequences; and*
- (d) Develop a program to achieve Goal 5.” (OAR 660-023-0040(1))”*

OAR 660-023-040 states, in relevant part:

“(2) Identify conflicting uses. Local governments shall identify conflicting uses that exist, or could occur, with regard to significant Goal 5 resource sites. To identify these uses, local governments shall examine land uses allowed outright or conditionally within the zones applied to the resource site and in its impact area. Local governments are not required to consider allowed uses that would be unlikely to occur in the impact area because existing permanent uses occupy the site. The following shall also apply in the identification of conflicting uses:

(a) If no uses conflict with a significant resource site, acknowledged policies and land use regulations may be considered sufficient to protect the resource site. The determination that there are no conflicting uses must be based on the applicable zoning rather than ownership of the site. (Therefore, public ownership of a site does not by itself support a conclusion that there are no conflicting uses.)

(b) A local government may determine that one or more significant Goal 5 resource sites are conflicting uses with another significant resource site. The local government shall determine the level of protection for each significant site using the ESEE process and/or the requirements in OAR 660-023-0090 through 660-023-0230 (see OAR 660-023-0020(1)).

(3) Determine the impact area. Local governments shall determine an impact area for each significant resource site. The impact area shall be drawn to include only the area in which allowed uses could adversely affect the identified resource. The impact area defines the geographic limits within which to conduct an ESEE analysis for the identified significant resource site.

(4) Analyze the ESEE consequences. Local governments shall analyze the ESEE consequences that could result from decisions to allow, limit, or prohibit a conflicting use. The analysis may address each of the identified conflicting uses, or it may address a group of similar conflicting uses. A local government may conduct a single analysis for two or more resource sites that are within the same area or that are similarly situated and subject to the same zoning. The local government may establish a matrix of commonly occurring conflicting uses and apply the matrix to particular resource sites in order to facilitate the analysis. A local government may conduct a single analysis for a site containing more than one significant Goal 5 resource. The ESEE analysis must consider any applicable statewide goal or acknowledged plan requirements, including the requirements of Goal 5. The analyses of the ESEE consequences shall be adopted either as part of the plan or as a land use regulation.”

7.2 Identification of Uses that Could Conflict with Mining Uses. The County has identified the following existing and potential uses that could, under some circumstances, conflict with operation of the site. The Goal 5 Rule defines “conflicting use” for purpose of mineral and aggregate resource review, as follows:

“‘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 * * *.” (OAR 660-023-180(1)(b))

7.2.1 As identified in the application and proceedings in this case, within 1500 feet of the mining area there are eight dwellings. There are no residential zones or “existing platted lots” identified within the impact area (see discussion of Measure 49 potential dwellings, above). All of the neighboring houses are therefore either farm, nonfarm, forest or nonconforming uses. The opportunity for additional housing in the impact area is limited by applicable regulations.

7.2.2 All of the identified dwellings are approved land uses and are sensitive uses. No other “sensitive” uses have been identified by the applicant within the impact area, and no other uses have been identified that would need to be limited to protect the aggregate resource site.

7.2.3 The site is isolated, mostly forested, and surrounded primarily by forest uses. Due to physical separation, topography, vegetative buffers, and the use of berms and other control techniques, impacts to existing and potential noise and dust sensitive uses is minimized.

7.2.4 As to all existing and potential uses identified, noise and dust sensitive uses are the uses most likely to conflict with an aggregate mining operation. This is because mining operations are unlikely to be impacted by neighboring uses unless the neighboring users object to mining operations, and pursue those complaints in legal and administrative forums.

7.2.5 The impact area is zoned for Forestry, and can also accommodate farm uses. The applicant has identified the following uses as being allowed, outright or conditionally, in rural (EFU and Forest) areas, and has identified whether they have the potential to be conflicting uses under the Goal 5 definition. The list is not meant to be exclusive. At the same time, many of these uses are also unlikely to occur in the impact area because they are foreclosed by existing uses and parcelization, topography, or know hazards.

Use	Potential Conflicts	No Potential Conflicts
Farm uses, including:		
Raising, harvesting and selling of crops		X
Feeding breeding, selling and management of livestock, poultry, furbearing animals or honeybees		X
Dairying and the selling of dairy products		X
Preparation and storage of farm products raised for human or animal use		X
Distribution by marketing or otherwise of farm products		X
Other agricultural use, horticultural use, animal husbandry or any combination thereof		X
Farm buildings		X
Propagation and harvest of forest products		X
Facilities to process forest products		X

Log truck parking		X
Wetland enhancement		X
Propagation, cultivation, maintenance and harvesting of aquatic species		X
Dwellings, all types	X	
Commercial activities in conjunction with farm use		X
Greyhound breeding		X
Home occupation		X
Dog kennel		X
Winery	X	
Farm Stand	X	
Mineral, aggregate, oil and gas uses		X
Personal use airports	X	
Transportation facilities		X
Utility facilities		X
Transmission towers		X
Landfills		X
Power Generating facilities		X
Public or Private Schools	X	
Churches	X	
Cemeteries		X
Private or public parks, playgrounds, hunting and fishing preserves, campgrounds, community centers	X	
Golf Courses		X
Daycare centers	X	
Bed and Breakfast residence or inn	X	

7.2.6 The County has already discussed in these findings the potential conflicts between the proposed operation and other Goal 5 resources in the impact area. The County has identified no Goal 5 resources in the impact area that conflict with use of the site for aggregate mining, and that must be limited or prevented in order to allow operation and reclamation of the site as proposed.

7.3 Determining the Impact Area. As stated in OAR 660-023-0180(5), when mining is allowed, local governments are directed to “*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 * * **.” As described in the application, the “analytical” impact area extends 1500 feet from the proposed mining area. For purposes of analysis, the impact area includes all areas within 1500 feet of the proposed mining and accessory use areas except “*undisturbed buffer areas or areas on a parcel where mining is not authorized*” which are excluded from the impact area by OAR 660-023-0180(1)(g).

OAR 660-023-040(3) requires the establishment of an impact area for considering neighboring uses that must be limited or prevented to protect aggregate resources. For purposes of these findings, the County has considered potential conflicting uses within the same 1500-foot area as utilized for conflict analysis under the Goal 5 rule for aggregate. No party has identified any uses allowed outright or conditionally outside of the 1500-foot “analytical” impact area that could conceivably adversely affect development of the site for aggregate extraction.

7.4 Analysis of ESEE Consequences. In conformance with OAR 660-023-040, this section analyzes the economic, social, environmental and energy consequences (ESEE) of allowing, limiting or prohibiting, within the 1500-foot impact area, uses that potentially conflict with mining operations at the site. The potential impacts of all potentially conflicting uses are sufficiently similar that they are all addressed here as a group. As an example, the siting of a church, school, or dwelling might result in the generation of similar complaints regarding the generation of noise or dust by the mining operation.

7.4.1 Economic Consequences.

7.4.1.1 The economic consequences of allowing conflicting uses within 1500 feet of the mining site are that extraction of the resource may be severely curtailed or prohibited by complaints from neighbors. Concerns or objections voiced by neighbors may add to the cost of mining through appeals, litigation, or by requiring mitigation measures that would otherwise be unnecessary if the conflicting uses were not present. Controversy about mining aggregate could add uncertainty and potential delay for permit decisions at key times during construction bid processes. All of these potential outcomes could result in higher prices for construction materials. The constraints to mining operations that might be necessary to mitigate potential conflicts with surrounding land uses might result in higher mine operating costs.

7.4.1.2 In the present case, however, the applicant has demonstrated the availability of reasonable and practicable measures to limit potential off-site impacts. The applicant has demonstrated a willingness to communicate with, and respond to, the neighbors and the community, and to conduct the operation in compliance with law and recommended management practices. It is not the owner’s intent to establish operating or reclamation conditions that will require the restriction of neighboring uses. To the contrary, the applicant is willing to do what it must to prevent significant mining impacts from occurring beyond the boundaries of the site and applicable setbacks.

7.4.1.3 As detailed in the applicant’s submittals, the applicant has demonstrated that all conflicts that the mining operation might generate as to neighboring uses can be mitigated by the imposition of conditions. This fact strongly supports the corresponding finding that neighboring uses will not generate complaints regarding mining operations, and are unlikely to have a significant impact on the mining operations. To the extent neighboring uses may increase the cost of mining the site, the operator has already accepted those costs in order to prevent conflicts with existing neighboring uses.

7.4.1.4 The economic consequences of limiting or prohibiting, in the impact area, uses that potentially conflict with use of the site for aggregate extraction are all impacts to the owners of neighboring properties, not to site operator. Those consequences could include diminished property values, if the prohibited or limited use is the actual highest and best use of the property.

7.4.2 Social Consequences. The County has identified no significant adverse social consequences related to allowing conflicting uses within 1500 feet of the resource site. The social consequences of limiting or prohibiting, in the impact area, uses that potentially conflict with use of the site for mining are, as with economic aspects, are borne by the owners of neighboring properties, not by the site operator.

7.4.3 Environmental Consequences. The mining area is isolated and buffered by topography and vegetation. The environmental consequences of limiting or prohibiting, in the impact area, uses that potentially conflict with use of the site for mining aggregate are generally positive, since development restrictions generally result in greater environmental protection. The environmental benefits of such restrictions inure to the general public, but do not tend to result in greater protection of the aggregate resource, and cannot be justified on that basis.

7.4.4 Energy Consequences. The County has not identified energy consequences of allowing, in the impact area, uses that may conflict with use of the site for aggregate extraction. Energy consequences would result only if the operator were forced to curtail or cease operation due to neighbor complaints, a result that the applicant considers remote given the operators efforts, and requirements of the conditions of approval, to mitigate potential off-site impacts. Energy consequences of limiting or prohibiting, in the impact area, uses that potentially conflict with mining operations are equally nebulous, but might be negative if local residences must travel greater distances to conduct activities that might otherwise be conducted within the impact area.

7.4.5 Consideration of Applicable Statewide Goal and Acknowledged Plan Requirements. OAR 660-023-0040(4) requires that, when conducting an ESEE analysis, the County must “*consider any applicable statewide goal or acknowledged plan requirements, including the requirements of Goal 5.*” Section 6 of these findings establishes the consistency of the proposed comprehensive plan amendment with the statewide planning goals, and is adequate for the purposes of OAR 660-023-0040(4) in this instance. To the extent that any of the acknowledged plan requirements discussed in the staff report are relevant to consider in this analysis, the Board concludes that none of those requirements or policies are implicated in this ESEE analysis.

7.5 Program to Achieve the Goal. In this case, the applicant has justified a decision to allow mining at the site, as limited by conditions of approval. The County has determined that both the resource site and the conflicting uses are important compared to each other, and, based on the ESEE analysis, the conflicting uses should be allowed to the extent that they are currently allowed and likely to occur. Existing notification

requirements are sufficient, and no additional restrictions or programs are necessary to achieve Goal 5 with regard to uses within the impact area that may conflict with mining activities allowed at the site.

In this case, the applicant has presented a limited mining plan that will allow continued forest uses on the site, and reclamation to forest uses, and fish and wildlife resources. The applicant has not proposed any limitations on surrounding uses, and no additional limitations are being imposed by this Board Order. The applicant has demonstrated that potential conflicts between mining activities and existing or potential nearby development can be minimized through appropriate operation planning and management techniques.

7.6 Conformance of County Program to Achieve Goal 5 with OAR 660-023-0050. As previously explained, OAR 660-023-0180(5) of the Goal 5 rule for aggregate requires that local governments follow the standard ESEE process “to determine whether to allow, limit, or prevent new conflicting uses within the impact area of a significant mineral and aggregate site.” The aggregate rule specifically references OAR 660-023-0050, which states:

“Programs to Achieve Goal 5.

(1) For each resource site, local governments shall adopt comprehensive plan provisions and land use regulations to implement the decisions made pursuant to OAR 660-23-040(5). The plan shall describe the degree of protection intended for each significant resource site. The plan and implementing ordinances shall clearly identify those conflicting uses that are allowed and the specific standards or limitations that apply to the allowed uses. A program to achieve Goal 5 may include zoning measures that partially or fully allow conflicting uses (see OAR 660-23-040(5)(b) and (c)).

(2) When a local government has decided to protect a resource site under OAR 660-23-040(5)(b), implementing measures applied to conflicting uses on the resource site and within its impact area shall contain clear and objective standards. For purposes of this division, a standard shall be considered clear and objective if it meets any one of the following criteria:

(a) It is a fixed numerical standard, such as a height limitation of 35 feet or a setback of 50 feet;

(b) It is a nondiscretionary requirement, such as a requirement that grading not occur beneath the dripline of a protected tree; or

(c) It is a performance standard that describes the outcome to be achieved by the design, siting, construction, or operation of the conflicting use, and specifies the objective criteria to be used in evaluating outcome or performance. Different performance standards may be needed

for different resource sites. If performance standards are adopted, the local government shall at the same time adopt a process for their application (such as a conditional use, or design review ordinance provision).

(3) In addition to the clear and objective regulations required by section (2) of this rule, except for aggregate resources, local governments may adopt an alternative approval process that includes land use regulations that are not clear and objective (such as a planned unit development ordinance with discretionary performance standards), provided such regulations:

(a) Specify that landowners have the choice of proceeding under either the clear and objective approval process or the alternative regulations; and

(b) Require a level of protection for the resource that meets or exceeds the intended level determined under OAR 660-23-040(5) and 660-23-050(1)."

Approval of this post-acknowledgement plan amendment is by Board Order, which contains limiting conditions that apply specifically to the approvals granted, and which otherwise complies with this section.

END

Exhibit B

Graves Quarry

CONDITIONS OF APPROVAL

Conditions for Extraction Area Uses within the Extraction Area

1. A complete application for a Mineral and Aggregate Overlay District Permit shall be submitted to the County for the existing mining operation and other proposed uses within 4 months of the date of the final decision. The Extraction Area Uses are subject to the Extraction Area Development Standards of Subsection 708.05 of the Mineral and Aggregate Resources District to the extent they are consistent with the remaining conditions of this approval.
2. The level of aggregate and mineral extraction shall not exceed 150,000 cubic yards per year, without Planning Director review and approval of new noise and traffic studies. The operator shall submit a record of the mineral and aggregate extracted from the site to the County by April 15 of each year.
3. A rock crusher is authorized in conjunction with this quarry as outlined in the submitted application. An asphaltic concrete batch plant, and cement batch plant shall not be operated within the Extraction Area.
4. The mining operator shall maintain the site at all times in conformance with the applicable noise standards of the Oregon Department of Environmental Quality. The operator shall use mitigation measures outlined in the April 15, 2010 Noise Study by Daly-Standlee & Associates, or equivalent measures, to ensure compliance. Noise levels shall be monitored throughout the life of the project as necessary to ensure compliance.
5. No surface water shall be discharged from the site into Hancock Creek except in conformance with an NPDES 1200-A permit or other authority from the Oregon Department of Environmental Quality.
6. The mining site perimeter including the perimeter with the Hancock Creek ravine shall be continuously bermed or graded by the mining operator, as necessary to direct runoff into the area affected by surface mining.
7. There shall be no activities associated with mining within the ravine containing Hancock Creek, except for the existing haul road on the west side of the creek and any necessary improvements to this road. The haul road crossing Hancock Creek shall be designed, constructed, maintained, and utilized in such a way to maintain the present condition of Hancock Creek and the ravine. The ravine setback is as

indicated on the 2010 Site Plan (dated March, 2011) attached and incorporated into these conditions. Processing and extraction shall take place only in areas specified on the 2010 Plan.

8. All existing vegetation within 100 feet of the mean high water mark of Hancock Creek or within the Hancock Creek Ravine, whichever is greater, shall be retained, as more specifically indicated by contour lines on the 2010 Site Plan. This condition does not preclude any necessary improvements to the existing haul road.
9. Reports shall be submitted to the Clackamas County Department of Transportation and Development by the appropriate state agencies with regulatory authority on surface water and groundwater impacts of Mining and Processing within the Extraction Area for review as part of the County's site plan review for the Mineral and Aggregate Resources District Permit.
10. The mining operator shall be responsible for restoring any water source on properties within five hundred (500) feet of the applicable Extraction Area for which damage has been proven to water quantity and/or quality by virtue of mining and associated activities within that Extraction Area.
11. The mining operator shall design and construct, or maintain, infrastructure on site to ensure that dust, mud, rocks and other debris are not tracked onto Dhooghe Road by vehicles leaving the site. The paved entry driveway shall be maintained in a clean manner, and the operator shall be responsible for prompt clean-up of materials tracked from the site onto Dhooghe Road.
12. The Clackamas County Department of Transportation and Development shall be responsible for the brushing and mowing of the Dhooghe Road shoulders and/or ditch-bank areas from the Dhooghe road Quarry entrance to the intersection with State Highway 211 throughout the duration of the mining operation to maintain traffic safety.
13. The area affected by mining shall be substantially screened from adjacent properties as specified in zoning code section 708.05 B.
14. The mining operator shall provide a copy of the August 2009 Biological Inventory Report prepared for the site to the Oregon Department of Fish and Wildlife, and shall comply with the reasonable requests and recommendations of the Department with regard to the protection of endangered or threatened species, and protection and enhancement of the habitat values of Hancock Creek. Any activities, grading, bridge construction, etc. to improve the stream crossing for the existing haul road across Hancock Creek requires submittal and approval of a River and Stream Conservation Area Permit, if applicable.

15. Mining, processing and hauling shall be restricted to the hours of 7 a.m. to 6 p.m. Monday through Friday, and 8:00 a.m. to 5:00 p.m. Saturday. Drilling and blasting is restricted to the hours of 9:00 AM to 4:00 PM Monday through Friday. Notice of blasting events shall be provided as required in Section 708.05G(2). Telephone notice shall be given to nearby residents at least 24 hours, and again four hours, prior to blasting. Other activities may operate without restriction provided Department of Environmental Quality noise control standards are met. No operations shall take place on Sundays or the following legal holidays: New Years Day, Memorial Day, the Fourth of July, Labor Day, Thanksgiving Day and Christmas Day.
16. The Extraction Area uses are subject to the Extraction Area Reclamation Standards of Subsection 708.06 of the Mineral and Aggregate Resources District.
17. The extraction shall be substantially completed on the east side of the Hancock Creek ravine and the reclamation commenced before any extraction occurs on the west side of the ravine.
18. The sequential reclamation of this mining site is required. The area exposed for extraction and not being reclaimed shall be the minimum area needed to extract the depth of the identified aggregate resource consistent with these conditions of approval. This area shall be determined by the Department of Geology and Mineral Industries, and extraction shall be limited to one area at any given time.
19. To the extent they are not otherwise sold or removed for use elsewhere, topsoil and overburden from the Extraction Area shall be used for reclamation.
20. With the exception of areas of the site operated under a DOGAMI limited exemption, the mining operator shall have approval of an Operating Permit from the Department of Geology and Mineral Industries as required by law.
21. A Department of Environmental Quality, Air Contaminant Discharge Permit shall be obtained and maintained by the operator of the rock crusher and for any other regulated activities for the duration of this mining operation.
22. The post reclamation use of the property shall be limited to fish and wildlife and forest uses consistent with the TBR zoning district. All plant species used in reclamation shall be native species and approved in coordination with the DOGAMI and ODFW.
23. The violation of any of these conditions shall be cause for suspension or revocation of Clackamas County's Mineral and Aggregate Resources District Permit pursuant to Section 1305 of the ZDO.
24. The approval of this application granted by this decision concerns only the applicable criteria for this decision. The decision does not include any conclusion

by the County concerning whether the activities allowed will or will not come in conflict with the provisions of the federal Endangered Species Act (ESA). This decision should not be construed to or represented to authorize any activity that will conflict with or violate the ESA. It is the applicant, in coordination if necessary with the federal agencies responsible for the administration and enforcement of the ESA, who must ensure that the approved activities are designed, constructed, operated and maintained in a manner that complies with the ESA.

25. The applicant in cooperation with County staff shall remove the tree located on the south side of Hwy. 211 approximately 180 feet west of Dhooghe Road. An ODOT miscellaneous permit shall be obtained to authorize tree removal and any work in the Hwy. 211 right of way. The applicant shall be responsible for all costs associated with this condition.
26. The applicant in cooperation with County staff shall install vehicular traffic warning signs for trucks entering the roadway at the intersection of Hwy. 211 and Dhooghe Road to alert road users where truck entry to the intersection is unexpected. Sign installation shall comply with FHWA's MUTCD and Oregon's Sign Policy Guidelines. An ODOT miscellaneous permit must be obtained for any work in the Hwy. 211 right of way. The applicant shall be responsible for all costs associated with this condition.
27. Any frontage improvements in, or adjacent to Clackamas County right-of-way shall be in compliance with Clackamas County Roadway Standards.
28. Ingress to the site shall use the existing paved driveway approach intersecting with Dhooghe Road. All other on-site haul roads shall be graveled.
29. An operational water truck shall be maintained on-site for dust control on interior roadways and access road throughout the duration of the mining operations.
30. The operator shall maintain the ditch line along the southerly side of the driveway approach to ensure surface water runoff from the road ditch, flowing southerly to the northerly, is directed westerly onto the site and is not allowed to flow over the driveway approach. In addition, a water bar shall be installed and maintained to prevent surface water runoff from flowing off the driveway approach onto Dhooghe Road unless the existing design is deemed adequate by Clackamas County Engineering.
31. The applicant shall design and reconstruct the approximately one-quarter mile section of Dhooghe Road, located just southerly from its intersection with Munson Road where the road exhibits an undulating surface in accordance with Roadway Standards drawing C100 or sign a road maintenance agreement with Clackamas County for the applicant's proportional share of the maintenance of Dhooghe Road between the site driveway and Hwy. 211.

Conditions for Conflicting Uses allowed conditionally within the Impact Area.

1. The proposed use shall be subject to the Impact Area approval criterion of Subsection 708.08 D. of the Mineral and Aggregate Resources District.
2. The proposed use will not cause or threaten to cause the mining operation to violate environmental standards contained in permits issued by State and County agencies.
3. The proposed use will not cause the mining operation to violate noise control standards and ambient air quality emission standards as measured at the proposed use. It is the responsibility of the applicant for the proposed use to demonstrate whether standards are or can be met. Mitigation measures which may be necessary to assure standards compliance shall be the responsibility of the applicant and shall be a condition of approval.

END

Exhibit B

Graves Quarry

CONDITIONS OF APPROVAL

Conditions for Extraction Area Uses within the Extraction Area

1. A complete application for a Mineral and Aggregate Overlay District Permit shall be submitted to the County for the existing mining operation and other proposed uses within 4 months of the date of the final decision. The Extraction Area Uses are subject to the Extraction Area Development Standards of Subsection 708.05 of the Mineral and Aggregate Resources District to the extent they are consistent with the remaining conditions of this approval.
2. The level of aggregate and mineral extraction shall not exceed 150,000 cubic yards per year, without Planning Director review and approval of new noise and traffic studies. The operator shall submit a record of the mineral and aggregate extracted from the site to the County by April 15 of each year.
3. A rock crusher is authorized in conjunction with this quarry as outlined in the submitted application. An asphaltic concrete batch plant, and cement batch plant shall not be operated within the Extraction Area.
4. The mining operator shall maintain the site at all times in conformance with the applicable noise standards of the Oregon Department of Environmental Quality. The operator shall use mitigation measures outlined in the April 15, 2010 Noise Study by Daly-Standlee & Associates, or equivalent measures, to ensure compliance. Noise levels shall be monitored throughout the life of the project as necessary to ensure compliance.
5. No surface water shall be discharged from the site into Hancock Creek except in conformance with an NPDES 1200-A permit or other authority from the Oregon Department of Environmental Quality.
6. The mining site perimeter including the perimeter with the Hancock Creek ravine shall be continuously bermed or graded by the mining operator, as necessary to direct runoff into the area affected by surface mining.
7. There shall be no activities associated with mining within the ravine containing Hancock Creek, except for the existing haul road on the west side of the creek and any necessary improvements to this road. The haul road crossing Hancock Creek shall be designed, constructed, maintained, and utilized in such a way to maintain the present condition of Hancock Creek and the ravine. The ravine setback is as

indicated on the 2010 Site Plan (dated March, 2011) attached and incorporated into these conditions. Processing and extraction shall take place only in areas specified on the 2010 Plan.

8. All existing vegetation within 100 feet of the mean high water mark of Hancock Creek or within the Hancock Creek Ravine, whichever is greater, shall be retained, as more specifically indicated by contour lines on the 2010 Site Plan. This condition does not preclude any necessary improvements to the existing haul road.
9. Reports shall be submitted to the Clackamas County Department of Transportation and Development by the appropriate state agencies with regulatory authority on surface water and groundwater impacts of Mining and Processing within the Extraction Area for review as part of the County's site plan review for the Mineral and Aggregate Resources District Permit.
10. The mining operator shall be responsible for restoring any water source on properties within five hundred (500) feet of the applicable Extraction Area for which damage has been proven to water quantity and/or quality by virtue of mining and associated activities within that Extraction Area.
11. The mining operator shall design and construct, or maintain, infrastructure on site to ensure that dust, mud, rocks and other debris are not tracked onto Dhooghe Road by vehicles leaving the site. The paved entry driveway shall be maintained in a clean manner, and the operator shall be responsible for prompt clean-up of materials tracked from the site onto Dhooghe Road.
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END



OFFICE OF COUNTY COUNSEL

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D. Daniel Chandler
ASSISTANTS

CERTIFICATE OF MAILING

I hereby certify that the enclosed Board Order No. 2011-30, local file number Z0500-10-CP, was deposited in the mail on June 16, 2011

Signed: _____

A handwritten signature in blue ink that reads "Cheryl J. Cornelison".

Cheryl J. Cornelison, Administrative Assistant
Clackamas County Counsel's Office
(503) 655-8619



FIRST CLASS MAIL



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COUNTY
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OFFICE OF COUNTY COUNSEL
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DEPT OF
JUN 17 2011
LAND CONSERVATION
AND DEVELOPMENT

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