



June 21, 2018

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OVER THE COUNTER

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JUN 21 2018

OWRD

RE: Expedited Secondary Application S-88508  
Request to Proceed with Expedited Application Review Process  
Our File No.: 123805-182220

Dear Mr. French and Mr. Grew:

Our office represents Andreas and Carol Blech and Sunny Valley Sand & Gravel Inc. On their behalf, we submit this letter regarding the Oregon Water Resources Department's review of Application S-88508 under the permit to use stored water process outlined in ORS 537.147 and OAR 690-340-0060. We have reviewed the public comments that were submitted in opposition to the application in mid-March 2018. The comments do not raise public interest issues that warrant application of the ORS 537.150 *et seq.* application review process. For the reasons explained below, we therefore ask that you proceed to review the application under the expedited process outlined in ORS 537.147 and OAR 690-340-0060.

**Overview.** The public comments submitted to the Department do not specifically raise public interest issues identified in ORS 537.170(8). Many do not even cite to this statute or provide a rationale as to how their comments fall within the scope of the issues in ORS 537.170(8). See ORS 537.153(2)(b) (requiring identification of the specific public interest that would be impaired or detrimentally affected, and how it would be impacted); OAR 890-340-0060(7). Other comments are aimed at Transfer App. No. 12837, rather than the application to use stored water that is at issue here (S-88508). Still other comments raise issues not material to the Department's issuance of a permit to use stored water. Those comments are directed to the underlying storage applications that have now been issued as modified permits, to a groundwater application and limited license that were withdrawn. None of these matters are at issue in the Department's consideration of S-88508, therefore none are relevant to the public interest issues

the Department would consider under ORS 537.140(8), if it applied. Finally, a few comments raise questions about land use approvals. As further explained below, the status of the land use process is not a public interest issue that would trigger a review of stored water use application under ORS 537.150 *et seq.* See ORS 537.147(3). Moreover, based on the circumstances of the land use approvals and pending appeals, the Department's rules direct it to condition the permit or place the application on hold pending the outcome of the appeals. There is no basis to deny the application. The following paragraphs further address each of these issues.

**The opponents' comments are unrelated to the application to use stored water.** A number of comments are directed at the sand and gravel operations planned by Sunny Valley, and ask the Department to determine whether the project—as opposed to the water right at issue—should be authorized. These comments fall outside the water-related public interest issues listed in ORS 537.170(8) and therefore fall outside the Department's consideration under ORS 537.147. The proposed activities, land use approvals, and their impacts are issues that fall within Josephine County's land use and permitting jurisdiction—and the project has undergone extensive land use proceedings during which such comments were fully vetted, considered and addressed by Josephine County and the Board of County Commissioners. Other issues raised will be addressed through the DOGAMI, Oregon Department of Environmental Quality, and other agency permitting processes that have been or will be conducted prior to the commencement of the gravel mining operations. For example, Sunny Valley has an NPDES 1200-A Stormwater Permit, issued by the Department of Environmental Quality, for the project and activities. See Attachment 1 (email from DOGAMI confirming status of 1200-A permits and 2018 invoice for Sunny Valley's renewal). This permit addresses water quality concerns along with other issues that fall outside the public interest considerations for the Department.

In the Josephine County proceedings, Sunny Valley also addressed, with multiple expert reports, the potential impacts to surface and groundwaters. See Attachment 2 (excerpts from October 8, 2014, Josephine County Board of County Commissioners, Findings of Fact, Conclusions of Law). Relying upon reports from scientists at Terra Science Inc. and Shannon and Wilson, etc., the Board found that Sunny Valley's mining plan included collection of groundwater into detention/recharge ponds or infiltration swales, which are intended to recharge the groundwater zone. *Id.*, p. 46 (Attachment 2, p. 9). The Board also found, based on the expert reports, that the groundwater flow path would remain the same during and after mining. *Id.* The Board further determined that (like here) opponents did not offer any meaningful rebuttal of these points and therefore denied their contention that there would be impacts to ground and surface waters as a result of the mining plan. The Board did a thorough job analyzing these resources issues, as it must. And, as noted below, their determination was ultimately upheld on June 4, 2018, by the Land Use Board of Appeals ("LUBA"). The water right application process is not the appropriate forum to raise and debate issues that are and will continue to be addressed by other processes and under the oversight of other public agencies. Opponents' comments go afield from the public interest issues that are to be considered by the Department.

Opponents' comments also frequently refer to concerns or issues opponents have with the underlying storage water rights, in particular that those water rights will result in the appropriation of groundwater from surrounding areas. The storage permits are separate from the application to use stored water, S-88508. Concerns about the storage rights should have been and some were raised in the context of the reservoir water right application processes. The issues raised there were addressed and resolved through the conditions included in the modified reservoir permits recently issued by the Department. For example, permit conditions in R-15319 and R-15320 require Sunny Valley to construct the reservoirs to have a minimum bottom elevation above the water table seasonal high and to prevent the intrusion of groundwater "at all times." As such, not only are opponents' arguments about groundwater appropriation as a result of the storage activities immaterial to the current application but they have already been addressed by the Department's orders and through the modified storage permits. Opponents have no grounds to assert that the storage water rights allow unlawful groundwater appropriation or that their concerns about those applications raise public interest issues for purposes of application S-88508.

Opponents also raise concerns about a groundwater application and limited license that was withdrawn. Those matters are also not material here, because the applications are no longer pending, nor relevant to the present application to use stored water. Similarly, groundwater that seeps into a gravel pit that is not put to a beneficial use is not subject to the Department's water right statutes because no water use authorization is required where the material is not being put to a beneficial use. See Technical Operations Manual, Section 03.02 (August 15, 2008). And, the holes where gravel is excavated from are not regulated as well, no matter how hard opponents attempt to argue otherwise. See OAR 690-200-0005(2)(b). These extraneous issues are not relevant to the application to use stored water, nor do they fall under the Department's regulatory authority. Opponents' comments are far afield from the issues the Department must consider in evaluating whether to proceed with the expedited permit review process for stored water use applications.

Opponents' comments are mostly unrelated to the present application and the remaining comments that are relevant do not raise public interest issues sufficient to upend the use of stored water application review process set forth in ORS 537.147. The Department should proceed with the expedited review. OAR 690-340-0060.

**The comments do not raise public interest issues.**

**ORS 537.170(5)**

**(a) Conserving the highest use of the water for all purposes.** The comments suggest that some of the beneficial uses listed in ORS 537.170(8)(a)—in particular, fishing, wildlife, domestic use, public recreation, and scenic attraction—will be impaired or detrimentally impacted. But, mining and industrial are also purposes for which water is to be conserved and put to use, too. Opponents' selective view of what waters of the state should be used and

conserved for is an insufficient basis for creating a public interest issue. It is in the public interest to conserve and use water for mining and industrial purposes as well.

**ORS 537.170(5)**

**(b) Maximum economic development.** Opponents also assert their view that the best economic use of water is fishing, wildlife, domestic use, public recreation and scenic attraction. Therefore, they automatically conclude that use of water for other purposes precludes maximum economic development within the downstream waterways. From a practical perspective, this argument does not make sense. Application S-88508 is for water that will already be appropriated under a storage water right and that is not therefore available for any of opponents' instream-based uses. Moreover, mining and industrial uses undoubtedly provide for economic development. Precluding the use of water that is already stored on the property where it is to be used specifically for a sand and gravel operation would limit economic development, not maximize it. The comments do not raise a public interest issue so as to warrant the Department upending the normal ORS 537.147 process for review of an application for a permit to use stored water.

**ORS 537.170(5)**

**(c) Waters available for beneficial use.** The pending water right application is to use stored water that will have already been appropriated into off-channel multipurpose storage reservoirs. Therefore, approval of this application will not reduce live flow that is otherwise available for beneficial uses. Opponents' comments inaccurately assume otherwise. On the other hand, the application does propose to use water stored for multipurpose uses for beneficial uses. If that use is precluded, stored waters available for beneficial use will not be put to beneficial use. It is therefore in the public interest to authorize the proposed use, not preclude it. This situation exemplifies the reason for the expedited review process in ORS 537.147. These waters have already been appropriated for storage for multipurpose uses. On the other hand, the public interest is not harmed by using stored waters that have already been approved for storage. If they cannot be used, the original storage right will be undermined and water will not be put to full beneficial use. The comments do not raise a public interest issue that warrants application of the extended review process in ORS 537.150.

**ORS 537.170(5)**

**(d) Amount of water available for beneficial use.** On this point, opponents' comments do not pertain to the application to use stored water. Instead, their comments focus on the already issued reservoir permits. The reservoir-directed comments are premised on opponents' presumption that the Department would not condition the storage permits to preclude inadvertent appropriation of groundwater. As can be seen in the relevant orders on reconsideration and modified permits R-15320 and R-15319, the Department has conditioned both of the storage permits to prevent the intrusion of groundwater into the reservoirs. Therefore, not only do opponents fail to raise a public interest issue as it pertains to the application to use stored water

but they also fail to make their case (if it were to be relevant) as it relates to the already-permitted storage water rights.

**ORS 537.170(5)**

**(e) Prevention of wasteful, uneconomic, impracticable or unreasonable uses.**

Opponents take issue with use of an application to use water for mining purposes. As noted earlier, however, the water to be used is water already stored in off-channel reservoirs for multipurpose uses. It is not wasteful, uneconomic, impractical or unreasonable to use the stored water for sand and gravel mining, which is one of the multipurpose uses for which the stored water is approved. Opponents' comments do not raise a public interest issue.

**ORS 537.170(5)**

**(f) Vested and inchoate rights, use of waters of the state, and means to protect such rights.** Opponents' view is that the application would unlawfully appropriate groundwater and impair existing water rights. This concern does not fall within the scope of the public interest elements set forth in ORS 537.170(8)(f). This public interest issue is focused on protecting the ability of water users to exercise water rights approved by the Department. Here, the application to use stored water is entirely consistent with this goal—it allows Sunny Valley to put the stored water it has already appropriated under permits R-15319 and R-15320 to use and protect the use of the stored water rights. Opponents' comments are once again focused on perceived impacts from the storage water permits not the application to use stored water that is actually at issue here. These concerns are not properly raised with regard to this application, but even if they were, the Department has already conditioned the storage water rights to prevent appropriation (characterized as "intrusion" by opponents) of groundwater, and thereby addressed the concerns improperly raised by opponents in this case.

**ORS 537.170(5)**

**(g) State water resources policy.** Opponents argue that the application would not consider existing rights, established duties of water and relative priorities concerning the use of waters of the state. ORS 536.310. This argument does not make sense. The application is to use stored water that is an existing water right. Therefore, the application to use the stored water is consistent with this policy. In addition, there are no other applications to use the stored water, and because the reservoirs are located on the private lands where the water is to be used, there is no basis to anticipate additional applications that would compete for priority from the stored water. Opponents' comments simply do not apply to the circumstances presented here. Other comments list the policy elements from ORS 536.310, but make no explanation for how the surface water application would be inconsistent with any of those elements or simply restate the issues that have already been addressed above. Moreover, ORS 536.610 outlines the elements that the Department is to consider in "formulating the water resources program," and are not necessarily to be considered on an individual basis for each permit application. Allowing the use of stored water for a beneficial use such as sand and gravel mining does not conflict with ORS

Dwight French  
Scott A. Grew  
June 21, 2018  
Page 6

536.310. It simply conflicts with opponents' narrow view of the types of beneficial uses that the Department should allow no matter the scope of the Department's authority to authorize beneficial use of stored water. Opponents have not articulated a concrete public interest issue associated with the state water resource policy.

**ORS 537.310(12).**

Opponents also suggest that the human consumption preference is at issue here. It is not. No other water users are competing for the use of the water stored in the reservoirs, and human consumption preference only comes into play under those circumstances—i.e., when there are competing requests for the same source of water.

In sum, opponents have not asserted grounds or the basis for the Department to determine that public interest issues have been raised so as to warrant review of the application under ORS 537.150 *et seq.*

**Land use appeals are not a basis to either deny the application or process it under ORS 537.150.**

Finally, opponents ask the Department to deny the application to use stored water on the grounds that land use approval has not yet been issued. This request does not comport with the statutes and regulations that guide the Department's actions in this matter.

As part of the application, Josephine County provided the Department with a LUCS confirming that land use approvals have been obtained. That LUCS is dated January 24, 2018, and has not been appealed or otherwise challenged. The LUCS was based on the December 7, 2016 decision of the Josephine County Board of Commissioners, which found that each of Sunny Valley Sand & Gravel, Inc.'s land use related applications were approved. *See* Attachment 2, Findings of Fact and Conclusions of Law and Decision on Remand (December 7, 2016). The deadline for challenging the LUCS has passed.

Nonetheless, Rogue Advocates indicates that it has pursued an appeal of the Board's December 7, 2016 decision approving the land use that would be served by the pending water right application and that the Department should therefore deny the permit application. On June 4, 2018, LUBA affirmed the Board's 2016 decision, and there are presently no other pending appeals on the Board's decision. *See* Attachment 4.

Both because of the unchallenged LUCS and because of this further affirmation of the Board's decision, the Department should proceed to process the application and issue the permit. To the extent the Department considers some other action, the Department's rules direct that, rather than deny the application, it place conditions on the timing of permit issuance or place the application on hold pending completion of the land use process. *Compare* OAR 690-005-0035(4)(c) with (4)(d) (denials are appropriate when the applicant is not pursuing land use approvals or has been denied land use approvals, permit conditions or placing the application on

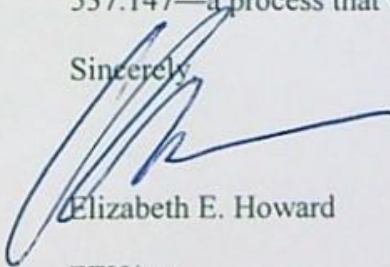
Dwight French  
Scott A. Grew  
June 21, 2018  
Page 7

hold is the approach when local land use approvals are pending). Here, the Josephine Board of County Commissioners has issued an approval for the mining activities that the water would be used for, and the County has issued a LUCS confirming those approvals. Furthermore, Sunny Valley participated in Rogue Advocates' appeal of these determinations, which led to affirmation of the Board's decision, and will continue to seek affirmation of the existing land use approvals should there be further appeals. Therefore, the Department does not have a basis or grounds to deny the application. OAR 690-005-0035(4)(c). Rather, if it does anything other than proceed to issue the permit, it should simply condition use of the permit on successful completion of the land use appeals (i.e., final approval of the Board's decision) or hold the application pending resolution of the appeals.

Furthermore, and most important here, the status of land use approvals does not require that the Department process the application under ORS 537.150. It is only public interest issues that trigger a departure from the ORS 537.147 review process, and opponents have not established a public interest issue sufficient to upend the normal expedited review of a water right application to use stored water.

In sum, opponents have failed to raise material issues that directly apply to the public interest factors and therefore fail to raise legitimate public interest issues that warrant the Department's departure from the ORS 537.147 review process. ORS 537.147 was created specifically to allow an application for use of storage water right to proceed without the extensive public interest and review process opponents request. Opposition to a project does not translate into public interest issues with an application to use water already stored on the property where it is intended to be used. Sunny Valley and the Blechs therefore requests that the Department proceed to process the application to use stored water from the reservoirs for which they have existing permits for multipurpose storage under the expedited process outlined in ORS 537.147—a process that was designed specifically for this type of application.

Sincerely,



Elizabeth E. Howard

EEH/cw  
Attachments

cc: Andreas Blech

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BEFORE THE BOARD OF COUNTY COMMISSIONERS  
FOR JOSEPHINE COUNTY, OREGON

Regarding:

- (1) Post-Acknowledgment Plan Amendment to the Josephine County Comprehensive Plan to Designate a Goal 5 Significant Mineral and Aggregate Resource Site;
- (2) Comprehensive Plan and Zoning Amendment to Apply the Mineral and Aggregate Resource Zoning (MARZ) Designation; and
- (3) Site Plan Review for Proposed Aggregate Mining and Processing Operations.

Owners: Andreas & Carole Blech, Blech, LLC

Applicant: Sunny Valley Sand & Gravel, Inc.

Representatives:

Dorian Kuper, CEG – Kuper Consulting, LLC

Corinne Celko, Attorney – Emerge Law Group

Steven Pfeiffer, Attorney – Perkins Coie, LLP

FINDINGS OF FACT

and

CONCLUSIONS OF LAW

and

DECISION ON REMAND

PREAMBLE

In this matter, the Josephine County Board of Commissioners ("Board") considered applications from Sunny Valley Sand & Gravel, Inc. ("Applicant") for a post-acknowledgment comprehensive plan amendment ("PAPA Application"), corresponding Comprehensive Plan and zoning amendment ("Zone Change Application"), and Site Plan Review ("Site Plan Review Application") to allow development of an aggregate mining and processing operation on undeveloped land located generally at 153 Daisy Mine Road in Josephine County, Oregon. The property is identified as Assessor's Map T 34 S, R 5 W, Section 8, Tax Lots 400 & 1002 and Map T 34 S, R 5 W, Section 7, Tax Lots 1200 & 1300. The zoning is Woodlot Resource (WR) and Rural Residential (RR-5). The applications shall be collectively referred to herein as the "Applications."

For the reasons explained below, and based upon the identified evidence and argument in the record, the Board finds that the Applications satisfy all applicable approval criteria. The Board has considered the opponents' issues and contentions to the contrary and does not find these to be persuasive for the reasons discussed herein. Accordingly, the Board approves the Applications, subject to the conditions identified below.

### **Summary of Project**

The Applications request permission to mine and process aggregate materials from an approximately 212-acre site located near the southwest corner of the intersection of Placer Road and Daisy Mine Road ("Property" or "Site"). The total excavation area is approximately 112 acres in size, will be set back at least 50 feet from the Property lines, and all mining operations will be located above the 100-year floodplain. Fill and excavation activities within wetland areas subject to state and/or federal regulation will also be avoided with the potential exception of a limited ephemeral ditch at the western Property boundary subject to any necessary state/federal authorizations. The active mining area will be fenced in one area above the existing highway on the eastern portion of the property for safety, and where possible, natural vegetation will remain along the Property lines to provide a visual buffer. Noise mitigation barriers will be located within the setbacks.

Applicant has estimated that there are approximately 6,900,000 tons of aggregate resource on the Property. Excavation will occur in eight phases over 20-40 years, generally progressing from the eastern portion of the Site toward the west and then to the southwest and back to the southeast. Once excavated, the material will be processed on-site through a crusher and then hauled off-site. Processing of the aggregate materials will occur in the southeastern portion of the site. The Property will be reclaimed to a series of ponds and lakes with sinuous slopes to provide biologic, hydrologic and geologic diversity along the shoreline. Reclamation will be in accordance with requirements set forth by DOGAMI and will consist of revegetation and stabilization of the mined areas.

The Property is primarily undeveloped, with the exception of a caretaker's residence on Tax Lot 1200. There are two easements on the Property for an electrical transmission line that traverses the Property in a northwest-southeast direction and a buried gas line that traverses the central portion of the Property from north to south. In addition, there is an easement from Daisy Mine Road to the west across the adjacent Tax Lot 1001 which currently provides access to the Property. A new access road is planned to enter the central portion of the Property off of Placer Road. Andreas and Carole Blech, and Blech, LLC, are the owners of the Property.

### **Notice**

On March 21, 2014 (and as revised on March 28, 2014) the County transmitted notice of the Applications to the Department of Land Conservation and Development ("DLCD") in accordance with ORS 197.610. Copies of those notices are set forth in the record.

On April 4, 2014, the County mailed notice of the public hearings on the Applications to owners of property located within 1,500 feet of the Property, Community Planning Organizations, agencies, and other interested persons. A copy of that notice is set forth in the record.

On June 24, 2016, the County mailed notice of the public hearing regarding remand of the decision related to the Applications by the Land Use Board of Appeals (LUBA) to the parties to the LUBA appeal. A copy of that notice is set forth in the record.

### **Planning Commission Proceedings**

The Planning Commission held a public hearing on the Applications on multiple dates: April 28, May 12, May 19, and June 2, 2014. At the hearing, the Planning Commission accepted oral and written testimony from staff, the Applicant, public agencies, proponents of the Applications, opponents of the Applications, and others. At the conclusion of the testimony, although the Planning Commission voted to make a recommendation to approve adding the Site to the County's inventory of significant mineral and aggregate sites, the Planning Commission was unable to make a recommendation to approve, limit or deny the mine operation. The Planning Commission vote was a tie at 3-3.

The Planning Commission was not required to and did not make an overall decision or recommendation to the Board on the Applications; however, the Planning Commission considered several issues, as detailed in the Staff Report to the Board, that were likely to arise again before the Board. There were no procedural objections that arose from the Planning Commission proceedings.

### **Board Proceedings**

The Board conducted a *de novo* review of the Applications.

On June 23, 2014, the Board held a public hearing on the Applications. Commissioners Keith Heck and Simon Hare were present. No one from the public challenged the ability of any member of the Board to participate in the matter.

At the hearing, Grace Zilverberg presented the Staff Report. Then, the Applicant presented its case. Following the Applicant's presentation, the Board accepted public testimony. The Board continued the hearing to June 27, 2014 for additional testimony. The following persons spoke in favor of the Applications: Michael Bird, Richard Emmons, Jim Frick, David Gaunt, Jim Brumbach, Bob Robertson, Eric Schaafsma, and Jack Swift. The following persons spoke in opposition to the Application: Jim Rodine, Vajra Ma, Steve Rouse, Bill Lorch, Jan Kugel, Steve Schneider, David Bish, Bob Kalin, Glenn Standridge, Carol Ahlf, Ed Brett, Christine Gardiner, Joanne Brett, Anne Smith, Rose Johnston, Suzanne Saporta, Darrel Gaustad, Betty Gaustad, Angela Henry, John Ahlf, Marion Schneider, Joe Boyer, Wolfgang Nebmaier, Gary Mackey, Irene Mackey, Ray Baxter, Dianne Getchell, Rachel Coome, Cindy Henry, Kris Quicker, Robert Loper, Malcolm Drake, Steve Klapp, Kristen Whitaker, and Dave Graves. The Applicant declined to provide oral rebuttal but requested the opportunity to provide written rebuttal on a condensed schedule.

The Board then closed the public hearing and held the record open as follows:

- Until July 7, 2014, at 4pm to allow any party to submit argument or evidence on any issue;
- Until July 14, 2014, at 4pm to allow any party to submit rebuttal argument or evidence;
- Until July 21, 2014, at 4pm to allow the Applicant to submit final written rebuttal argument; and
- On July 28, 2014, at 2pm the Board heard oral summations.

Various parties submitted written argument and evidence into the record in accordance with this schedule. These materials are all included in the record in this matter.

The Board reconvened on July 28, 2014. Commissioners Keith Heck and Simon Hare were present. The Board heard summations from the Applicant and opponents and then proceeded to deliberate on the matter. At the conclusion of deliberations, Commissioner Hare moved to approve the Applications, subject to staff's proposed conditions, as modified. Commissioner Heck seconded the motion. The Board adopted the motion, 2-0.

#### **Remand Proceedings**

The Board's final decision on the Applications was appealed to LUBA. On October 15, 2015, LUBA issued its Final Opinion and Order remanding the decision back to the County on six (6) specific issues:

1. Applicant's submittal of new evidence in Exhibits DDDDDD, EEEEE, HHHHH, and IIIII;
2. Staff submittal of new evidence from Williams Northwest Pipeline Company as Exhibit KKKKKK (erroneously described by LUBA as Exhibit LLLLLL);
3. Justification for introducing an inconsistent use into the area based on demand for aggregate;
4. An ESEE analysis to determine whether to allow, prohibit, or limit future conflicting uses;
5. The impacts of increased truck traffic on deer and elk; and
6. Response to Josephine County Comprehensive Plan Goal 7, Policy 3 regarding impacts to the Grave Creek Covered Bridge.

On May 25, 2016, the Applicant requested initiation of remand proceedings to address the issues raised by LUBA.

On July 18, 2016, the Board held a public hearing on the Applications, limited in scope to the issues remanded to the County by LUBA. Commissioners Walker, Heck and Hare were present at the remand hearing. Steve Rouse from Rogue Advocates raised the issue of alleging that Commissioners Heck and Hare made pre-hearing statements that could be construed as supporting the Applicant; however, Mr. Rouse did not provide the Board with the substance of

such alleged pre-hearing statements. Mr. Rouse did not challenge the ability of Commissioners Heck and Hare to participate in the hearing and did not ask for them to recuse themselves.

At the hearing, Grace Zilverberg presented the Remand Staff Report (Exhibit 1). Then, the Applicant presented its case. Following the Applicant's presentation, the Board accepted testimony from Steve Rouse, William Corcoran, and their expert witnesses.

The Applicant declined to provide oral rebuttal but requested the opportunity to provide written rebuttal on a condensed schedule.

The Board then closed the public hearing and held the record open as follows:

- Until July 25, 2016, at Noon to allow any party to submit rebuttal argument or evidence on any issue raised at the July 18, 2016 remand hearing;
- Until August 1, 2016, at Noon to allow any party to submit rebuttal argument or evidence to anything submitted during the first open record period; and
- Until August 5, 2016, at Noon to allow the parties to submit final written argument.

On August 15, 2016, at 9am the Board met to deliberate. At the deliberation hearing, Commissioner Walker challenged Commissioner Hare's ability to participate based on an alleged ex parte communication with the Applicant's representative, Andreas Blech. Commissioner Hare disputed that the communication rose to the level of an improper ex parte communication, described the subject communication with Mr. Blech, and stated that such contact did not affect his ability to remain impartial in making a decision in the matter.

At the deliberation hearing, the Board decided to re-open the record on the sole issue of addressing compliance with RLDC 46.040(D) and the Board's requirement to demonstrate that the change in designation will allow uses that are consistent with the character of the area or to demonstrate adequate justification for allowing an inconsistent use into the area. The Board held the record open as follows:

- Until September 6, 2016, at Noon to allow the Applicant to submit argument and evidence regarding compliance with RLDC 46.040(D);
- Until September 26, 2016, at Noon to allow the opponents to submit rebuttal argument and evidence to anything submitted during the first open record period; and
- Until October 3, 2016, at Noon to allow the parties to submit final written summation.

On October 10, 2016, at 9am the Board met to deliberate. Commissioners Walker, Heck and Hare were present. At the conclusion of deliberations, Commissioner Heck moved to approve the Applications on remand, subject to the original conditions and two additional conditions related to minimization of truck impacts on deer and elk. Commissioner Hare seconded the motion. The Board unanimously adopted the motion, 3-0.

## Applicable Criteria

The County's June 3, 2014 public notice identified the following criteria as applicable to the Applications:

*"Rural Land Development Code (RLDC): Article 46 ~ Amending & Updating the Comprehensive Plan; Article 66.1 ~ Mineral & Aggregate Resource Zone (MARZ); Article 91 ~ Aggregate Operating Standards; Josephine County: Goal 7 ~ Preserve Valuable Limited Resources, Unique Natural Areas and Historic Features; and Goal 11 ~ The Comprehensive Plan Shall Be Maintained, Amended and Updated As Necessary; Oregon's Statewide: Goal 2 ~ Land Use Planning; and Goal 5 ~ Natural Resource, Scenic and Historic Areas, and Open Spaces; OAR 660-023-0180 - Mineral and Aggregate Resources."*

For the reasons explained below, the Board finds that the County is preempted from applying local criteria to the PAPA Application and Zone Change Application, except for criteria under Article 66.1 and Article 91. Instead, the provisions of OAR Chapter 660, Division 23 are applicable to these two applications.

## Record Before the Board

The record before the Board consists of the following:

- Oral testimony presented by the Applicant and other parties at the public hearings in this matter on April 28, 2014; May 12, 2014; May 19, 2014; June 2, 2014; June 23, 2014; June 27, 2014 and July 28, 2014, as reflected in the official recordings of these hearings.
- Remand Staff Report (Exhibit 1) including Exhibit J – Deer and Elk Impact Study and Exhibit K – ESEE Analysis.
- Written testimony set forth in Exhibits 2 - 29 and Exhibits A - IIIIII.
- Oral testimony presented by the Applicant and other parties at the public hearings in this matter on July 18, 2016, August 15, 2016, and October 10, 2016, as reflected in the official recordings of these hearings.
- Written testimony set forth in Exhibits A-2 to A-14 and Exhibits O-3 to O-44.

## GENERAL FINDINGS AND CONCLUSIONS RELATED TO THE APPLICATIONS

1. The Board finds that, as described above, the County has followed the correct procedures in this matter by providing requisite notice to area landowners, DLCD, and other government agencies with jurisdiction and by conducting multiple public hearings for the Applications in accordance with the quasi-judicial procedures required by state and local law. Further, the Board finds that no one has raised any valid objection to the County's procedures in this matter or to the impartiality of any member of the Planning Commission or the Board.

2. As findings supporting approval of the Applications, the Board hereby accepts, adopts, and incorporates within this Decision by reference, in their entirety, the following materials: the Applicant's narrative for the Applications dated January 21, 2014, including all Figures, Plates,

Tables and Appendices; the letters from Steve Pfeiffer on behalf of the Applicant, dated April 28, 2014, May 5, 2014, May 27, 2014, July 14, 2014, and July 21, 2014; and the letters from Corinne Celko on behalf of the Applicant, dated May 25, 2016, July 17, 2016, July 25, 2016, August 1, 2016, August 5, 2016, September 6, 2016, and October 3, 2016. The above-referenced documents shall be referred to in these findings as the "Incorporated Findings." The findings below (the "Supplemental Findings") supplement and elaborate on the findings contained in the materials noted above, all of which are incorporated herein by reference.

3. The Board finds that the Applicant's Applications narrative, the Applicant's testimony received at the public hearings, the letters from Steve Pfeiffer on behalf of the Applicant, dated April 28, 2014, May 5, 2014, May 27, 2014, July 14, 2014, and July 21, 2014, the letters from Corinne Celko on behalf of the Applicant, dated May 25, 2016, July 17, 2016, July 25, 2016, August 1, 2016, August 5, 2016, September 6, 2016, and October 3, 2016, and the additional sources cited in these findings explain the need for imposing Conditions of Approval Nos. 1-42. The Board finds, based upon this substantial evidence, that each of these conditions is a reasonable condition that is feasible for the Applicant to comply with and is necessary to satisfy the applicable criteria presented in the Staff Report (Exhibit 1), the Remand Staff Report (Exhibit 1), and the Supplemental Findings presented below.

4. The Board finds that the record contains all evidence and argument needed to evaluate the Applications for compliance with the relevant criteria.

5. The Board finds that it has considered these relevant criteria and other issues raised through public testimony.

6. The Incorporated Findings list all of the applicable approval criteria, and demonstrate compliance with these approval criteria. These supplemental findings elaborate upon and clarify the Incorporated Findings, and primarily address issues raised in opposition to the Applications and on remand. These Supplemental Findings are grouped into issues, with findings included in response to each issue. The issues are organized in traditional outline format and are assigned chronological numbers and alphabetical letters as appropriate. In the event of a conflict between the Incorporated Findings and the Supplemental Findings, the Supplemental Findings shall control.

## **SUPPLEMENTAL FINDINGS FOR THE PAPA AND ZONE CHANGE APPLICATIONS**

### **I. STATEWIDE PLANNING GOALS ("GOALS")**

The Board finds that the Oregon Statewide Planning Goals apply to the PAPA Application and the Comprehensive Plan Amendment and Zone Change Application because they request post-acknowledgment plan amendments. ORS 197.175(2)(a); *Beaver State Sand and Gravel, Inc. v. Douglas County*, 43 Or LUBA 140 (2002) (post-acknowledgment plan amendment to add a new site to County's Goal 5 inventory must comply with applicable Goals). For the reasons explained below, the Board finds that the PAPA Application and the Comprehensive Plan Amendment and Zone Change Application are consistent with the Goals.

### **Goal 1: Citizen Involvement.**

**To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process.**

Goal 1 requires local governments to adopt and administer programs to ensure the opportunity for citizens to be involved in all phases of the planning process. The County has adopted such a program for PAPA's, and it is incorporated within the Josephine County Comprehensive Plan and RLDC and has been acknowledged by LCDC. Among other things, the County's program requires notice to citizens, agencies, neighbors, and other interested parties followed by multiple public hearings before the County makes a decision on the Applications. The Board finds that the County has complied with its adopted notice and hearing procedures applicable to PAPA's, including the notice requirements of RLDC, Chapter 3, Articles 31-33 and RLDC 66.150.C. Further, although Gregg and Diane Getchell claim that they did not receive the required impact area agreement notices, the Board finds that they appeared orally and in writing before the Board (see Exhibit T and Exhibit WWW), and have failed to show that they have been substantially prejudiced in any way by this inadvertent procedural oversight. See ORS 197.835(9)(a)(B). Therefore, the Board finds that the PAPA Application and the Comprehensive Plan Amendment and Zone Change Application are consistent with Goal 1. See *Wade v. Lane County*, 20 Or LUBA 369, 376 (1990) (Goal 1 is satisfied as long as the local government follows its acknowledged citizen involvement program).

### **Goal 2: Land Use Planning.**

**To establish a land use planning process and policy framework as a basis for all decisions and actions related to use of land and to assure an adequate factual base for such decisions and actions.**

The Board finds that the provisions of OAR chapter 660, division 23 establish the land use planning process and policy framework for considering the PAPA Application and the Comprehensive Plan Amendment and Zone Change Application. Further, the evidence in the record, which includes detailed expert reports across a number of disciplines, demonstrates that the PAPA Application and the Comprehensive Plan Amendment and Zone Change Application satisfy all applicable substantive standards of OAR chapter 660, division 23. As such, there is an adequate factual base for the County's decision. Therefore, the Board finds that the County has met the evidentiary requirements of Goal 2.

The Board further finds that Goal 2 requires that the County coordinate its review and decision on the Applications with appropriate government agencies. The County provided notice and an opportunity to comment on the Applications to affected government agencies, including the State Department of Land Conservation and Development. The Board addresses the comments from these agencies in the findings below. Therefore, the Board finds that the County has met the coordination requirements of Goal 2.



The County finds that the PAPA Application and the Comprehensive Plan Amendment and Zone Change Application are consistent with Goal 2.

**Goal 3: Agricultural Lands.**

**To preserve and maintain agricultural lands.**

The purpose of Goal 3 is to preserve and maintain agricultural lands for farm use. The Property is not zoned Exclusive Farm Use. LCDC has adopted the Goal 5 PAPA process to assist in the balancing between preservation and maintenance of agricultural lands and the need to protect significant mineral and aggregate resources. Following the provisions of the PAPA rule (which includes a conflict analysis and mandatory analysis of measures to minimize effects on agriculture uses and practices on agricultural lands), Goal 3 allows counties to authorize non-farm uses defined by LCDC that will not have a significant adverse effect on farms or farm practices. Measures are available to minimize the potential effects of Applicant's extraction activities on agricultural uses and farm practices on surrounding lands. As demonstrated by the discussion of ORS 215.296 below, Applicant's requested mineral and extraction use will not have any significant adverse effect on accepted farm practices or the cost of accepted farm practices on surrounding lands. As the mining plan is developed, Applicant will continue to farm the remaining portion of the Site that has yet to be mined. Because mineral and aggregate uses are allowed under state statute on agricultural lands and Goal 5 provides a process for balancing all statewide goals, the application complies and meets the requirements of Statewide Planning Goal 3. Therefore, the Board finds that the Applications are in compliance with Goal 3.

**Goal 4: Forest Lands.**

**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.**

Goal 4 requires maintaining the state's forest land base and related economy. The Property is primarily located on designated forest resource (FC/WR) land. A portion of the land has been harvested for timber and a portion of the property has been an open valley. Mining and processing of aggregate resources is permitted on forest lands under OAR 660-006-0025(4)(g). Reclamation of the site will result in ponds and lakes with forest surrounding the site. Therefore, the Board finds that the Applications meet Statewide Planning Goal 4.

**Goal 5: Natural Resources, Scenic and Historic Areas, and Open Spaces.**

**To protect natural resources and conserve scenic and historic areas and open spaces.**

Goal 5 identifies mineral and aggregate resources as a significant resource. As applied to mineral and aggregate sites, Goal 5 is implemented by OAR 660-023-0180. For the reasons

explained in these Supplemental Findings in response to OAR 660-023-0180(5)(b)(D), which reasons are incorporated herein by reference, the Board finds that there is substantial evidence in the whole record to support the conclusion that the PAPA Application and the Comprehensive Plan Amendment and Zone Change Application satisfy the requirements of OAR 660-023-0180, including how the location, quantity, and quality of the mineral and aggregate resource on the Property is significant; the identification of conflicts between the Project and allowed uses, including all other inventoried Goal 5 resources; identification of reasonable and practicable measures to minimize these conflicts; and the analysis of the economic, social, environmental, and energy consequences of allowing, not allowing, or limiting the Project based upon any conflicts that cannot be minimized.

For these reasons and the additional reasons set forth at pages 37-62 of the Application narrative, the Board finds that the PAPA Application and the Comprehensive Plan Amendment and Zone Change Application are consistent with Goal 5.

#### **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 Board finds for the reasons explained in these Supplemental Findings in response to OAR 660-023-0180(5)(b)(A), which reasons are incorporated herein by reference, the Applicant has minimized the conflicts between the Project and allowed uses, including conflicts relating to discharges to air, water, and land. Consistent with best management practices (BMP's) set out by the Oregon Department of Environmental Quality visible emission and nuisance requirements, the Applicant will minimize dust by controlling truck speed, graveling internal roads, using water to control dust, paving the access road, and promptly removing dirt and other material that might become airborne from paved portions. Storm water discharges will be directed on-site and will be handled through an NPDES 1200A permit, if necessary. Water taken from the individual mining cells through the dewatering process will be reintroduced on-site to maintain a water balance and protect groundwater resources. If present, turbidity in groundwater associated with mining below the water table will be filtered out on the natural processes of the aquifer and a 50-foot buffer is provided on all sides of the extraction site to make sure that turbidity does not move offsite. Extraction activities at the site will unavoidably result in disruption of surface land resources. This is necessary to meet the provisions of Goal 5 to protect and allow the use of mineral and aggregate resources. Pursuant to a DOGAMI permit and DOGAMI standards, reclamation will be accomplished to return disrupted land to ponds and lakes, ultimately improving the quality of land resources in the State. For the reasons set forth in the ARTIC report as to air quality (Application, Appendix H), the Shannon & Wilson report as to water quality (Application, Appendix B), the Terra Science Inc. reports (Application, Appendices D and E) and the Westlake report as to water quality (Application, Appendix J), the Board finds that the Applications are consistent with Goal 6. Further, the Board finds that no one contended on the record that the Project was inconsistent with Goal 6. Accordingly, the Board finds that the PAPA Application and the Comprehensive Plan Amendment and Zone Change Application are consistent with Goal 6.

### **Goal 7: Areas Subject to Natural Hazards.**

**To protect people and property from natural hazards.**

Goal 7 requires protecting people and Site from natural hazards. The Board finds that there are no identified or inventoried natural hazards in the general area of the Property, and with the exception of the access road, the mining project is not located within the designated floodplain. Further, the Project includes measures designed to reduce risk to people and the Property from natural hazards by providing mitigation measures for development of the access road and associated bridge within the floodplain. No known mapped landslides occur on the site. The mining plan addresses slope stability for cut-and-fill slopes. In the mining area, slopes cut into the sand and gravel resource will be stable at 2:1 (Application, Appendix L). For the access road, slopes cut into overburden will be stable at 2:1; and slopes cut into bedrock will be stable at 1 ½:1 or per an engineering geologists review during the construction of the access road. Fill slopes associated with the access road will be stable at 2:1 by following proper compaction of the fill in accordance with geotechnical recommendations. Further, the mining plan will meet DOGAMI requirements for slope stability. No one contended on the record that the Project did not satisfy Goal 7. The Board finds that the PAPA Application and the Comprehensive Plan Amendment and Zone Change Application are consistent with Goal 7.

### **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 Board finds that the Project does not involve any designated recreational or open space lands or affect access to any significant recreational uses in the area and, therefore, will not interfere with any existing recreational facilities. The Board finds that the PAPA Application and the Comprehensive Plan Amendment and Zone Change Application are consistent with Goal 8.

### **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.**

In general, Goal 9 is only applicable to areas within urban growth boundaries. The Property is located far from an urban area. Therefore, the Board finds that Goal 9 is not applicable to the Project. Alternatively, to the extent Goal 9 is applicable, the Board finds that the Project furthers the objectives of this goal by providing a material (sand and gravel) that is essential to the construction of a variety of infrastructure projects. Development of these infrastructure projects will support a variety of economic activities within the County. The demand for aggregate in the County and in other parts of western Oregon is great and continues to increase (Whelan, 1995). Transportation of aggregate over long distances significantly increases the product cost and

limits economical road, utility, and building construction. Local supplies of aggregate, therefore, are critical components of economic development. The site will assist in the maintenance of a local aggregate supply and support regional economic development. The Board finds that the PAPA Application and the Comprehensive Plan Amendment and Zone Change Application are consistent with Goal 9, to the extent it is applicable at all.

#### **Goal 10: Housing**

**To provide for the housing needs of citizens of the state.**

Goal 10 and its implementing rules require each local government to inventory the supply of buildable residential lands and to ensure that the supply of such buildable lands meets the local government's anticipated housing needs. The Board finds that the Applications will not affect the supply of residential lands in the County. However, the Board finds that the Project nevertheless furthers the objectives of this goal by providing a material (sand and gravel) that is essential to the construction and rehabilitation of many forms of housing. Therefore, the Board finds that the Applications are consistent with Goal 10, to the extent it is applicable.

#### **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 Board finds that the Project does not require the extension of public sewer, water, or storm drainage facilities, and Applicant does not propose to extend same. Further, for the reasons explained in these Supplemental Findings in response to OAR 660-023-0180(5)(b)(B) below, which reasons are incorporated herein by reference, the transportation and stormwater systems are adequate to serve the Project, subject to identified conditions. No one contended on the record that the PAPA Application and Comprehensive Plan Amendment and Zone Change Application would not be consistent with Goal 11. For the foregoing reasons, the Board finds that the PAPA Application and the Comprehensive Plan Amendment and Zone Change Application are consistent with Goal 11.

#### **Goal 12: Transportation.**

**To provide and encourage a safe, convenient and economic transportation system.**

Goal 12 requires providing a safe, convenient, and economic transportation system. The Project will further the objectives of this goal by providing a material (sand and gravel) that is essential to the construction and reconstruction of a variety of transportation projects, including roads, airports, railroads, sidewalks, and bikeways.

Goal 12 is implemented by the Oregon Transportation Planning Rule ("TPR"), which requires local governments to determine whether or not a proposed PAPA will "significantly affect" an existing or planned transportation facility. OAR 660-012-0060(1). A PAPA will "significantly affect" an existing or planned transportation facility if it will: (1) change the functional

classification of a facility; (2) change standards implementing a functional classification system; (3) as measured at the end of the planning period, result in types or levels of travel or access that are inconsistent with the functional classification of an existing facility; or (4) degrade the performance of an existing facility either below applicable performance standards, or if already performing below these standards, degrade it further. *Id.*

LUBA has stated that the initial question under the TPR is "whether the plan amendment causes a net increase in impacts on transportation facilities, comparing uses allowed under the unamended plan and zoning code with uses allowed under the amended plan and zoning code." *Griffiths v. City of Corvallis*, 50 Or LUBA 588, 593 (2005). This is commonly applied to require that an applicant compare the traffic associated with a reasonable worst case scenario development under the existing zoning district with a reasonable worst case scenario under the proposed zoning district.

In its report set forth in Appendix G, Sandow compared the reasonable worst-case trip generation scenario of the Site under the existing zoning designation (FC/WR and RR-5), with the reasonable worst-case trip generation scenario under the proposed zoning designation (MARZ). This comparison indicated that the Site would generate more trips under the proposed zoning designation; however, at the end of the planning period (2033), all site access points and off-site intersections were forecast to perform within acceptable performance standards during weekday AM and PM peak hours. Based upon these results, Sandow concluded that the Applications would not significantly affect any existing or planned transportation facilities for purposes of the TPR.

Therefore, the Board finds that the Applications are consistent with Goal 12 and the TPR.

### **Goal 13: Energy Conservation.**

#### **To conserve energy.**

Goal 13's objective is the conservation of energy. The Board finds that the Project will have a **significant positive energy** consequence. The energy consequences of allowing a mine are positive because the Property is proximate to the I-5 corridor where there is a demand for infrastructure improvements as well as being proximate to Grants Pass and surrounding small towns. Growth in the area will continue to create a demand for aggregate, especially for sand and gravel. Little of the resource is currently permitted in the Grants Pass area. Locating a mine near this area will reduce the distance the product must travel, resulting in lower fuel consumption. The Property's proximity to major transportation corridors, such as Interstate 5, also reduces fuel consumption and energy impacts compared to more remote locations.

The Board finds that the PAPA Application and the Comprehensive Plan Amendment and Zone Change Application are consistent with Goal 13.

**Goal 14: Urbanization.**

**To provide for an orderly and efficient transition from rural to urban land use.**

The Board finds that Goal 14 is not an applicable approval criterion for two reasons. First, the Property is located outside of any urban area. Second, aggregate mining is considered a rural land use and does not promote urbanization. Therefore, the Board finds that Goal 14 is not applicable.

**Goal 15: Willamette River Greenway.**

**To protect, conserve, enhance and maintain the natural, scenic, historical, agricultural, economic and recreational qualities of lands along the Willamette River as the Willamette River Greenway.**

The Board finds that no portion of the Property is located in the Willamette River Greenway, and no lands within the Greenway are affected by this proposal. Therefore, the Board finds that Goal 15 is not an applicable approval criterion for the PAPA Application and the Comprehensive Plan Amendment and Zone Change Application.

**Goal 16: Estuarine Resources**

**To recognize and protect the unique environmental, economic, and social values of each estuary and associated wetlands; and**

**To protect, maintain, where appropriate develop, and where appropriate restore the long-term environmental, economic, and social values, diversity, and benefits of Oregon's estuaries.**

The Board finds that no portion of the Property or the designated impact area is located within an estuary. As a result, the Board finds that the Project will not adversely affect any estuarine resources. Accordingly, the Board finds that Goal 16 is not applicable to the PAPA Application and the Comprehensive Plan Amendment and Zone Change Application.

**Goal 17: Coastal Shorelands.**

**To conserve, protect, where appropriate, develop and where appropriate restore the resources and benefits of all coastal shorelands, recognizing their value for protection and maintenance of water quality, fish and wildlife habitat, water-dependent uses, economic resources and recreation and aesthetics. The management of these shoreland areas shall be compatible with the characteristics of the adjacent coastal waters; and**

**To reduce the hazard to human life and property, and the adverse effects upon water quality and fish and wildlife habitat, resulting from the use and enjoyment of Oregon's coastal shorelands.**

The Board finds that no portion of the Property or the designated impact area is located within a coastal shorelands area. As a result, the Board finds that the Project will not adversely affect any coastal shorelands resources. Accordingly, the Board finds that Goal 17 is not applicable to the PAPA Application and the Comprehensive Plan Amendment and Zone Change Application.

**Goal 18: Beaches and Dunes.**

**To conserve, protect, where appropriate develop, and where appropriate restore the resources and benefits of coastal beach and dune areas; and**

**To reduce the hazard to human life and property from natural or man-induced actions associated with these areas.**

No portion of the Property or the designated impact area is located within a designated beach or dune. As a result, the Board finds that the Project will not adversely affect beach or dune resources. Accordingly, the Board finds that Goal 18 is not applicable to the PAPA Application and the Comprehensive Plan Amendment and Zone Change Application.

**Goal 19: Ocean Resources.**

**To conserve marine resources and ecological functions for the purpose of providing long-term ecological, economic, and social value and benefits to future generations.**

The Property does not include or abut any ocean resources, and the Project will not impact any ocean resources. No party contended in the County proceedings that Goal 19 was applicable to the PAPA Application and the Comprehensive Plan Amendment and Zone Change Application. Therefore, the Board finds that Goal 19 is not applicable to the PAPA Application and the Comprehensive Plan Amendment and Zone Change Application.

## **II. OREGON ADMINISTRATIVE RULES**

### **OAR 660-023-0180 Mineral and Aggregate Resources**

**(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 (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;**

### **QUALITY**

The Board finds that a representative set of samples from the site meet ODOT specifications for base rock as required by this rule. As support for this conclusion, the Board relies upon the

results of industry-standard tests, which demonstrated that seven (7) samples of aggregate materials from the site meet ODOT specifications for base rock, together with expert opinions from two geologists who analyzed the samples collected from the site.

Specifically, the Board finds that the Applicant presented test results reporting that seven (7) samples of aggregate materials from the site satisfied applicable criteria set forth in ODOT's *Standard Specifications for Highway Construction* (revised 2008, current edition) Section 02630 for air degradation, abrasion, and Sodium Sulfate soundness. See Table 1 of Appendix A of the Applications. The Board finds that an ODOT-accredited aggregate testing laboratory, Carlson Testing ("Carlson"), conducted these tests in accordance with industry standard. See Appendix A of the Applications (Aggregate Resource Evaluation and Significance Determination prepared by Kuper Consulting LLC, referred to herein as the "Significance Report").

The opponents' primary challenge with respect to the quality of resource, which is discussed more fully below, relates to the procedures and methodology used to test the site. However, for the reasons stated below, the Board finds that the seven (7) samples of aggregate material from the site meet applicable ODOT specifications for base rock for air degradation, abrasion, and soundness.

Mr. James, Registered Professional Geologist, Dr. Rodine, Certified Engineering Geologist, and Mr. Schneider argue 1) that the selected samples of aggregate material are not "representative" as required by the Goal 5 rule; 2) that the American Association of State Highway and Transportation Officials (AASHTO) standards controlled the sampling process; 3) that the number of borings and trenches were not adequate to characterize the significance of the sand and gravel deposits; and 4) that the aggregate in the Sunny Valley area is of poor quality, based on previous experience with other aggregate sources in the area.

First, the Board finds that these samples are a "representative set of samples of aggregate material in the deposit on the site" as required by the Goal 5 rule based upon the testimony of the Certified Engineering Geologists at Kuper Consulting, LLC. The Kupers testified that the samples were representative because they followed geologic methods accepted in the industry and used their best professional judgment in selecting them. See Kuper Consulting letters to Planning Commission dated May 5 and 27, 2014 (Attachment F and K to Staff Report, dated June 23, 2014), incorporated herein by reference as findings. Specifically, the Kupers testified that they characterized the site and selected samples based upon analysis of published geologic mapping of the site, review of water well logs in the surrounding area to observe geologic conditions within the wells, and the continuous physical observation of the materials encountered and produced by the drilling and trenching equipment used for the subsurface investigation (including excavation of 2 sonic borings on either end of the site, review of 2 water well logs located in between these 2 borings on the site, and excavation of 17 exploratory trenches on the site ranging in depth from 14 to 33 feet). *Id.*; see also Kuper Consulting letter to Board, dated June 18, 2014 (Exhibit G), incorporated herein by reference as findings; see also Application narrative, p. 39 and Appendix A.

The Kupers also testified that samples were continuously retrieved from the ground surface to the bottom of each boring for observation and testing of the material and were collected in one to two foot intervals. Kuper Consulting's letter to Board, dated June 18, 2014 (Exhibit G). Further,



the Kupers testified that approximately 4,200 pounds of samples were retrieved from the two borings, and that the borings were continuously geologically logged by a licensed engineering geologist with over 38 years of experience. *Id.* Additionally, the Kupers testified that a licensed engineering geologist with 35 years of experience worked with an excavator and a technician to excavate 17 exploratory trenches and geologically logged each trench, which were a minimum of 5 feet wide, 15 feet long and of varied depths, resulting in an additional 650 pounds of samples. *Id.* Trenches were placed across the site to confirm the continuity of the resource as well as to compare them to the findings within the borings. *Id.*

Based on the testimony and evidence by the Certified Engineering Geologists at Kuper Consulting, the Board does not concur with the assertion by Mr. James, Dr. Rodine and Mr. Schneider that the samples of aggregate material are not representative as required by the Goal 5 rule.

Secondly, the Board finds that the sampling process performed by the Applicant complies with all applicable standards, and that the number of borings and trenches were adequate to characterize the significance of the sand and gravel on the site. The Board finds that the Goal 5 rule (OAR 660-023-0180) incorporated the ODOT standards, but did not expressly incorporate any other standards. Goal 5 does not define "representative samples" and leaves the judgment up to the professional geologist to make that determination. The Kupers testified that, as with all geological analyses within the aggregate and construction industry, it is up to the professional geologist or engineer to decide what samples represent the soil or rock that underlie a site and then use professional judgment to assign laboratory tests on those representative samples. The Kupers testified that the ODOT, ASTM, and AASHTO methods require the use of judgment by discretion of the Certified Engineering Geologist in determining the "representative set of samples" for quality purposes under the Goal 5 Rule. Kuper Consulting letter to Planning Commission dated May 5, 2014 (Attachment F to Staff Report, dated June 23, 2014). The ASTM methods (ASTM D-75, Appendix X-2), under "Securing Samples", recommends that the rock material be inspected to determine "discernable variations". This requires the use of visual discretion and professional judgment and is a reason that the ASTM Note 2 states that "the investigation should be done only by a responsible trained and experienced person" (i.e. a Certified Engineering Geologist who can use the appropriate judgment to assure representative samples are selected). *Id.* The ASTM method suggests samples be chosen from different stratum "discernable to the sampler". This requires professional judgment. The same section also recommends that an "estimate" of the different materials should be made. Again, this requires the Certified Engineering Geologist's professional judgment and discretion. The same section leaves the number and depth of test holes to the judgment of the geology professional. *Id.*

Based on the technical field work and analyses conducted by Kuper Consulting, as described above and in the record, the Board does not concur with the assertion by Mr. James, Dr. Rodine and Mr. Schneider that the AASHTO standards control, and the Board finds that the Applicant's sampling process complied with all applicable standards and the number of borings and trenches were adequate to characterize the significance of the sand and gravel on the site.

Furthermore, the Board finds that subject test results and related expert opinions constitute substantial evidence to support the conclusion that the site satisfies the quality threshold of OAR 660-023-0180(3)(a). Mr. Schneider asserted that the aggregate in the Sunny Valley area is of

poor quality, based on his previous experience with other aggregate sources in the area. The Board finds that Mr. Schneider is not a geologist or an expert in characterizing or analyzing the distribution of subsurface rock materials or in understanding the quality threshold for purposes of the Goal 5 rule at a given site. Therefore, the Board finds Mr. Schneider's testimony regarding the quality of the material in the deposit on the site to be less credible than the testimony offered by the Kupers on this subject.

Although Mr. James and Dr. Rodine are geologists, the Board does not concur with their assertions that Kuper Consulting has not performed the proper work to conclude that the site is significant. The Board finds that substantial evidence in the record demonstrates that Kuper Consulting has successfully permitted at least 25 aggregate mining projects under Goal 5 criteria. Furthermore, the Board finds that Kuper Consulting's continuous presence during the excavations and material sampling, its detailed Significance Report, and the independent laboratory testing of the samples in accordance with Goal 5 criteria are more persuasive than the testimony of Mr. James and Dr. Rodine.

Lastly, on remand, opponents' attorney Sean Malone contended that the Site's aggregate was not high quality aggregate because it contained clay that would need to be cleaned before processing. However, the Board finds that, pursuant to State law, the standard applied under Goal 5 for determining the quality of an aggregate resource is whether or not the aggregate resource complies with ODOT specifications. See Exhibit A-9 and A-14. Accordingly, the Board finds that compliance with ODOT specifications is the only applicable standard and that cost of cleaning or other economic factors are not a proper consideration under Goal 5 and are irrelevant to a significance determination. Based on the Significance Report, and for the reasons detailed above, the Board finds that there is substantial evidence in the record that the subject site contains high-quality aggregate pursuant to Goal 5.

On the basis of the testimony presented, and for the reasons stated above, the Board finds that a representative set of samples of aggregate material in the deposit on the site meets applicable ODOT specifications for base rock for air degradation, abrasion, and soundness.

## QUANTITY

The Board finds that the site is located outside the "Willamette Valley" as that term is defined in OAR 660-023-0180(1)(m) because the site is located in Josephine County. Therefore, the Board finds that the rule requires that the estimated amount of material in the deposit on the site must exceed 500,000 tons to qualify as significant.

The Kupers estimate that the estimated amount of quality material in the deposit on the site is at least 6,900,000 tons. See Appendix A of the Applications. The Kupers reached this conclusion by examining a base topographic map and the logs of the on-site subsurface exploration; making allowances for setbacks, slopes, and the anticipated mining depth; and then interpolating the location of the resource between known points of elevation. *Id.* Westlake Engineering ("Westlake") supplemented this analysis by conducting industry-standard volumetric models. *Id.*

Mr. James and Dr. Rodine offered a counter-opinion regarding the quantity of the aggregate material in the deposit on the site on the bases of inadequate sampling and an undercalculation of percentage of clay or mud/debris material from historic landslides in the area.

The Board does not concur with Mr. James' and Dr. Rodine's testimony. The Board finds that the Kupers' analysis and testimony is particularly credible in light of their extensive expertise characterizing aggregate mines. See Exhibit D and *See* Kuper Consulting letter to Planning Commission dated May 5, 2014 (Attachment F to Staff Report, dated June 23, 2014). The Board relies upon the Kupers' expert testimony and finds that the estimated amount of quality aggregate in the deposit on the site far exceeds the minimum requirement of 500,000 tons.

## LOCATION

The Board finds that the site meets the locational requirements of this rule for two reasons. First, for the reasons explained above, which reasons are incorporated by reference, the Board finds that the site is located outside of the "Willamette Valley" and meets the quality and quantity thresholds applicable to an aggregate site outside of the Willamette Valley (more than 500,000 tons).

Second, the Board finds that the site is located in an area replete with aggregate resources. As support for this conclusion, the Board relies upon testimony from the Kupers that the site has an abundance of desirable and high-quality Quaternary-age Alluvial Gravels and Sands, not unlike other valleys in the area. See Appendix A of the Applications. The Board finds that the area of Placer has a long history of mining. The Board also finds that field work performed by two experienced Oregon licensed engineering geologists confirmed that the aggregate resource is located within the site.

### OAR 660-023-0180(3):

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

The Board finds that this subsection is not applicable because the County has not adopted standards establishing a lower threshold for significance than subsection (a) of this section.

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

The Board finds that the Property is not significant under this subsection because it was not on an inventory of significant aggregate sites in an acknowledged plan on September 1, 1996.

**(d) Notwithstanding subsections (a) and (b) of this section, except for an expansion area of an existing site if the operator of the existing site on March 1, 1996, had an enforceable property interest in the expansion area on that date, an aggregate site is not significant if the criteria in either paragraphs (A) or (B) of this subsection apply:**

(A) More than 35 percent of the proposed mining area consists of soil classified as Class I 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 . . .

The Board finds that the criteria in paragraphs (A) and (B) do not apply because, according to the applicable NRCS maps, no Class I or unique soils are mapped on the site, and no more than 10% of Class II soils are mapped on the site. See Aggregate Resource Evaluation and Significance Determination prepared by Kuper Consulting, LLC in Appendix A of the Applications. Therefore, no qualifying percentage of Class I or II soils are present. For these reasons, the Board finds that the Property is not rendered not significant due to soils.

In summation, the Board finds that the site is significant based upon its quality, quantity, and location.

OAR 660-023-0180:

**(5) For significant mineral and aggregate sites, local governments shall decide whether mining is permitted. For a PAPA application involving an aggregate site determined to be significant under section (3) of this rule, the process for this decision is set out in subsections (a) through (g) of this section. A local government must complete the process within 180 days after receipt of a complete application that is consistent with section (8) of this rule, or by the earliest date after 180 days allowed by local charter.**

The Board finds, for two reasons, that the County has correctly processed the Applications. First, as explained below, the County applied the criteria in subsections (a) through (g) of this section to decide that mining is permitted on the Property. Second, the Board finds that it rendered the final decision approving the Applications by signing written Findings of Fact and Conclusions of Law on October 8, 2014, as extended by the Applicant. Specifically, the County deemed the Applications complete on February 28, 2014. The Applicant provided the County extensions to the County's obligation. Therefore, the Board finds that it has complied with the procedural requirements of this section.

Furthermore, the Applicant requested initiation of remand proceedings on May 25, 2016, and the County held remand hearings starting on July 18, 2016. The Board moved efficiently through the remand process, holding its final deliberation hearing and approving the Applications on remand on October 10, 2016, in accordance with all applicable local laws.

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

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

The Board finds that the impact area for purposes of identifying conflicts with the proposed mine under the Goal 5 rules is limited to 1,500 feet from the boundaries of the mining area ("Impact Area"). See Figure 2 of Applications. For the reasons explained below, the Board finds that there is no factual evidence in the record that indicates significant potential conflicts beyond this distance.

#### EXPANSION OF IMPACT AREA TO ASSESS POTENTIAL GOAL 5 CONFLICTS

Opponents contend that the County should expand the Impact Area for purposes of assessing potential Goal 5 conflicts related to traffic, noise, toxic dust, water, and wildlife safety, but the Board denies these contentions for two reasons. First, the Board finds that there is no basis to expand the Impact Area to address conflicts beyond this area. OAR 660-023-0180(5)(a) permits expanding the Impact Area beyond 1,500 feet from the boundaries of the mine, but only when "factual information indicates significant potential conflicts beyond this distance." Opponents submitted a letter from Wolfgang Nebmaier identifying potential conflicts. See letter from Wolfgang Nebmaier dated May 30, 2014 (Exhibit 18). The letter provides no substantial evidentiary basis to expand the Impact Area, and substantial evidence in the record is to the contrary. As support for this conclusion, the Board relies upon and incorporates by reference the findings set forth immediately below in response to opponents' contentions concerning potential conflicts, as a basis to conclude that there is no basis to expand the Impact Area. The Board also relies on and incorporates herein as findings the letter from Applicant's attorney, Steve Pfeiffer, dated May 27, 2014 (Attachment K to Staff Report, dated June 23, 2014). As such, the Board finds that the opponents have not presented "factual information" of "significant potential conflicts" sufficient to require the Board to expand the Impact Area.

Second, the Board finds that the Project conditions of approval will adequately control potential conflicts relating to traffic, noise, toxic dust, water, and wildlife safety. The fact that these conditions protect resources within the 1,500-foot area ensures that locations that are even farther away are also adequately protected.

#### A. POTENTIAL TRAFFIC CONFLICTS

Although opponents contend that the County should expand the impact area to consider potential traffic conflicts, the Board finds that there is no legal basis to expand the Impact Area on these grounds. For the reasons explained below in response to OAR 660-023-0180(5)(b)(B), the Board finds that the Applicant's Transportation Impact Assessment prepared by Sandow Engineering, dated July 29, 2013 ("TIA") complies with the requirements of that subsection because it evaluates potential conflicts to local roads used for accessing the mine within one mile of the entrance to the mining site. See TIA at Appendix G of the Applications. Further, the TIA addresses each of the potential conflict areas recited in the rule. *Id.*

The Board finds that the Goal 5 administrative rule requires an analysis of potential transportation impacts within one mile of the site or to the nearest arterial, whichever is further.

The entrance to the site is proposed on Placer Road. *Id.* Placer Road does not intersect any arterial streets to the east. *Id.* To the west, the nearest major intersection is Sunny Valley Loop. *Id.* There are not intersections along the haul route to Interstate-5 ramps that are classified higher than a "Local Collector." *Id.* The TIA included a thorough analysis of potential conflicts from truck traffic generated by the site along the entire haul route. *Id.* The Board finds that since the TIA analyzed potential conflicts from truck traffic generated by the site along the entire haul route, and the County Public Works staff expressed concurrence with such analysis, there is no basis to expand the traffic impact area. The Board also finds that Mr. Nebmaier did not present substantial evidence to refute Sandow Engineering's documented calculations, nor has Mr. Nebmaier presented any expert testimony otherwise challenging the methodology or assumptions on which the TIA is based. The Board finds that substantial evidence in the record supports the TIA's findings, and accordingly, the Board finds that there is no basis to expand the Impact Area based on potential traffic conflicts.

#### **B. POTENTIAL NOISE CONFLICTS**

Opponents also contend that the Impact Area should be expanded to address potential noise conflicts. Noise experts Daly-Standlee & Associates, Inc. submitted the Sunny Valley Mine Noise Study, dated August 15, 2013 (the "Noise Study") (Appendix F to Applications). The Noise Study concluded, "If mitigation measures such as those discussed in this report are included in the approved mining plan, noise from the Sunny Valley Mine will comply with DEQ noise limits at all residences. Based upon DSA's [Daly-Standlee & Associates, Inc.'s] review of the mining plan submitted to the County, these mitigation measures have been incorporated into the plan under review by Josephine County and DOGAMI." Noise Study, p. 1. The Board finds that the Applicant has included the noise mitigation measures suggested in the Noise Study into its mining plan, and that conditions of approval ensure implementation of such mitigation measures. The Board also finds that because the Noise Study unequivocally documents compliance with DEQ noise regulations at all residences within and beyond the 1,500 Impact Area, there is no basis to expand the Impact Area based upon potential noise conflicts.

#### **C. POTENTIAL TOXIC DUST CONFLICTS**

Opponents also contend that the Impact Area should be expanded to address potential conflicts with toxic dust. Air quality experts at Arctic Engineering, Ltd. submitted a Potential Air Quality Impacts and Permitting Assessment Report, dated August 19, 2013 (the "Air Quality Report") (Appendix H of Applications). The Air Quality Report stated that the Applicant has implemented fugitive dust mitigation measures recommended by Arctic Engineering, Ltd. The Air Quality Report concluded:

"These combined actions and activities will more than suffice to comply with the requirements (OAR) of Chapter 340, Divisions 200 through 268, and reduce total particulate matter (PM) . . . by more than 95% from this aggregate removal operation and the trucking operations to the public roadway at Placer Road. By paving the access road from the scalehouse to Placer Road and utilizing an aggressive O&M Plan, fugitive emissions from

aggregate conveying/crushing operations and entrained road dust from trucking and hauling operations at the facility will be reduced to regulatory insignificant levels.” Air Quality Report, Section 6.0.1.

The Board finds that the Applicant has included the air quality mitigation measures suggested in the Air Quality Report into its mining plan and that conditions of approval will ensure implementation of such mitigation measures. The Board also finds that the Air Quality Report, along with the testimony from Dr. De Hoog, dated May 23, 2013, demonstrates that dust from the mine will be reduced to insignificant levels within the Impact Area. Therefore, the Board finds that there is no basis to expand the Impact Area based upon potential dust conflicts.

#### **D. POTENTIAL WATER CONFLICTS**

Opponents also contend that the Impact Area should be expanded to address water conflicts. Environmental consultants Shannon & Wilson, Inc. submitted a Hydrogeologic Evaluation, dated August 2013 (“Hydrogeologic Report”) (Appendix B of Applications), and Westlake Consultants, Inc. submitted an Erosion and Sediment Control and Storm Water Narrative, dated August 2013 (“Erosion and Sediment Control Report”) (Appendix J to Applications). The Board finds that both reports conclude that with appropriate mitigation, there will be no significant downstream impacts from the mine either within or beyond the 1,500-foot impact area boundary. Hydrogeologic Report, pp. 22-23; Erosion and Sediment Control Report, pp. 2-7. The Board finds that the Applicant has included the mitigation measures suggested in both reports into its mining plan, including a phased mining approach, infiltration swales, and a long-term groundwater monitoring program, which the reports demonstrate will ensure that no discharged water will leave the mine boundary because all discharged water will be processed on-site. *Id.* Additionally, the Board relies on the testimony of Mr. Bernard Smith, who testified at the May 12, 2014 Planning Commission hearing that all runoff from impervious surfaces associated with the haul road and the bridge will be captured and returned to the mining area with no discharge off-site. The Board further finds that opponents have not submitted any direct evidence refuting the Applicant’s experts and have not presented any expert testimony challenging the Applicant’s experts or their reports. Therefore, the Board finds that there is no basis to expand the Impact Area based on potential water conflicts.

#### **E. POTENTIAL WILDFIRE SAFETY CONFLICTS**

Opponents argued that increased traffic from the mining operation will create potential wildfire safety conflicts beyond the Impact Area because the haul route is the sole wildfire escape route available to residents in the area. However, the Board finds that wildfire safety is not a criterion required to be addressed by the Applicant under the controlling Goal 5 administrative rule or under County ordinance provisions implementing the same. Furthermore, the Board finds that the TIA submitted by Sandow Engineering demonstrates that Placer Road and associated intersections will continue to function adequately under applicable County road standards during mining activity, and the record contains no credible substantial evidence to the contrary. TIA, p. 22.

Based upon the foregoing, the Board limits the Impact Area to 1,500 feet from the boundaries of the mining area.

OAR 660-023-0180:

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

(5)(b) The local government shall determine existing or approved land uses within the impact area that will be adversely affected by proposed mining operations and shall specify the predicted conflicts. For purposes of this section, "approved land uses" are dwellings allowed by a residential zone on existing platted lots and other uses for which conditional or final approvals have been granted by the local government. For determination of conflicts from the proposed mining of a significant aggregate resource site, the local government shall limit its consideration to the following:...[A through F]

(5)(c) The local government shall determine reasonable and practicable measures that would minimize the conflicts identified under subsection (b) of this section. To determine whether measures would minimize conflicts to agricultural practices, the requirements of ORS 215.296 shall be followed rather than the requirements of this section. If reasonable and practicable measures are identified to minimize all identified conflicts, mining shall be allowed at the site and subsection (d) of this section is not applicable. If identified conflicts cannot be minimized, subsection (d) of this section applies.

The Board adopts joint findings in response to these two subsections below. First, regarding "approved uses," Applicant has identified the "approved uses" within 1,500 feet from the boundaries of the mining area as undeveloped, rural residential, and forestry uses. There are rural residential uses to the north and west of the area, and there are undeveloped and forestry uses to the east and south of the site. See Figure 2 and Table 1, Appendix M of Applications.

Although Edward Brett testified that he operates a nursery on his property within the Impact Area, and Joann Brett testified that she has an organic garden on her property within the Impact Area, the Board finds that such testimony was not supported by any specific evidence in sufficient detail to identify "accepted farm practices" that must be considered under ORS 215.296. See letters from the Bretts (Exhibit MM). Specifically, the Board finds that a nursery license does not constitute substantial evidence identifying "accepted farm practices." Furthermore, the Board finds that the Bretts did not contend that the Project would force a significant change in or significantly increase the cost of accepted farm or forest practices on their property. *Id.* Additionally, the Board finds that organic farming is not properly viewed as either a "farm use" or an "accepted farm practice." *Dierking v. Clackamas County*, 38 Or LUBA 106 (2000) (so holding). Moreover, although William and Elizabeth Corcoran testified that they have a business plan for a proposed winery on their property within the Impact Area and currently operate an agricultural business including a vineyard, fruit trees, berry field, vegetables, bee hives, timber and Christmas trees, the Board finds that such testimony was not



supported by any specific evidence in sufficient detail to identify "accepted farm practices" under ORS 215.296. See letters from the Corcorans (Exhibits YYY, ZZZ and GGGG). In addition, the Board finds that the Corcorans did not contend that the Project would force a significant change in or significantly increase the cost of accepted farm or forest practices on their property. *Id.*

Therefore, the Board finds that a reasonable person would rely upon the agricultural survey and the testimony and evidence of various Project consultants, as described herein, to support the conclusion that the Project will not generate any significant conflicts with agricultural practices on surrounding lands.

No party has identified any other "approved uses" within 1,500 feet of the proposed mining and processing area. Therefore, the Board finds that the Applicant's identification of "approved uses" accurately describes the "approved uses" within the Impact Area.

**OAR 660-023-0180 (5)(b) The local government shall determine existing or approved land uses within the impact area that will be adversely affected by proposed mining operations and shall specify the predicted conflicts. For purposes of this section, "approved land uses" are dwellings allowed by a residential zone on existing platted lots and other uses for which conditional or final approvals have been granted by the local government. For determination of conflicts from the proposed mining of a significant aggregate resource 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;**

As explained in more detail below, the Board finds that there are limited conflicts due to noise, dust, or other discharges to sensitive uses within the Impact Area; however, the Board finds that there are reasonable and practicable measures that will minimize these conflicts. The Board adopts these reasonable and practicable measures as conditions of approval in order to assure that the identified conflicts are minimized.

#### **NOISE:**

#### IDENTIFICATION OF CONFLICTS:

The Board makes the following findings as to the noise impacts of the Project:

- Pursuant to DEQ classifications, the Property is a "previously unused industrial or commercial site," because it has not been used by an industrial or commercial noise source in the 20 years prior to the commencement of mining operations on the Property. OAR 340-035-0015(47).
- As a result, the more restrictive of the following standards apply to the mine: (1) the maximum allowable noise levels for industrial and commercial noise sources set forth in

Table 8 of OAR 340-035-0035, which are set for 1%, 10%, and 50% of an hour; or (2) the “ambient noise degradation” levels which require that any “new industrial or commercial noise source” on a “previously unused industrial or commercial site” cannot produce noise sufficient to cause existing ambient noise levels to increase by more than 10 decibels (“dB”) pursuant to OAR 340-035-0035(1)(b)(B).

- The more restrictive of the two DEQ standards—and thus the one applicable to the Property—is the “ambient noise degradation” level (ambient noise levels plus 10 dB).
- There are 14 noise-sensitive uses (all single-family residences) within 1,500 feet of the site. The locations of these residences are shown in Appendix F, Figure 4 of Applications.
- Without mitigation, certain residences in the Impact Area could experience noise conflicts that exceed DEQ standards under a worst-case noise scenario because the predicted loudest hourly statistical noise levels at these residences could exceed the identified “ambient noise degradation” level. This worst-case scenario would occur when all equipment would be operating simultaneously throughout each hour of the workday.

As support for these conclusions, the Board relies upon the testimony of the Applicant’s acoustical engineer, Kerrie G. Standlee, P.E. of Daly Standlee and Associates (“DSA”). See Sunny Valley Mine Noise Study dated August 15, 2013 (Appendix F of Applications). In that study, DSA reached each of the conclusions adopted by the Board as findings above. *Id.* The Board finds DSA’s testimony to be particularly credible due to DSA’s substantial experience and its utilization of industry-standard equipment and methodologies. *Id.* The Board finds that a reasonable person would rely upon DSA’s testimony to reach the above conclusions regarding noise impacts associated with the Project.

Further, the Board finds that opponents’ contentions to the contrary do not undermine DSA’s testimony. The Board addresses each of the opponents’ contentions below.

## METHODOLOGY CONCERNS

First, although Wolfgang Nebmaier and Steve Schneider contend that the shape of Sunny Valley in the vicinity of the mine is like an amphitheater, which increases the noise levels produced by the proposed mining operations above those presented in the DSA Noise Study, the Board denies this contention because it misconstrues acoustic design principles of amphitheaters and of the noise modeling in the Noise Study. The Board finds that DSA appropriately took into account the topography of the surrounding area and sufficiently addressed mining generated noise and any impacts that the topography may have on the mining generated noise levels at residences in Sunny Valley.

The Board is persuaded by the testimony of DSA in its letter dated June 20, 2014 (Exhibit O), and adopts such letter and incorporates it herein as findings. Specifically, the Board finds that an amphitheater-like design is not enough to cause the noise amplification such as the opponents contend. The Board further finds that the noise modeling program used by DSA to predict the

noise levels at residences in the valley takes into account the topography of the surrounding area and, therefore, the Board finds that DSA correctly measured mining generated noise and any impacts that topography may have on mining generated noise levels.

Second, although Steve and Marion Schneider contend that DSA incorrectly measured ambient noise levels and incorrectly measured crusher noise levels from the Project as to area residences, the Board denies this contention because it misconstrues applicable law and the evidence in the record. The Board finds that DSA correctly measured ambient noise levels and crusher noise levels in its analysis.

Although the Schneiders contend that DSA erred by failing to make noise measurements during the summer months when Grave Creek has low water flow levels, the Board denies this contention because the Board finds that, available rain data shows that precipitation levels in May (when DSA measured) are representative of precipitation levels from late April through early October and because DEQ measurement guidelines require that ambient noise determination data be taken without emphasis on either noise peaks or unusual quiet. See letter from DSA dated July 7, 2014 (Exhibit TTTTT), adopted and incorporated herein as findings. Further, the Board finds that the ambient levels in May are representative of low-flow conditions, and that DSA correctly measured ambient noise levels. *Id.*

Additionally, although the Schneiders contend that DSA erred by incorrectly measuring crusher noise levels in its analysis, the Board denies this contention because the Noise Study took into consideration the distance and the frequency weighting of the particular crusher it used in its analysis. *Id.* The crushing and screening plant used in the Noise Study was measured at a distance of 80 feet and the frequency weighting used to measure the crusher was the A-weighted level, which is specified by DEQ noise regulations. *Id.* The Board finds that it is impossible to compare the crusher sound levels presented by the Schneiders with the levels used by DSA because the Schneiders do not provide a reference distance for their crusher sound levels, nor do they provide the frequency weighting used to measure their crusher sound levels. Therefore, the Board finds that the Schneiders have not submitted evidence sufficient to refute DSA's Noise Study. The Board is persuaded by DSA's testimony and finds that DSA correctly measured crusher noise levels in its analysis.

Further, the Board finds that the Schneiders' estimate of the noise levels emanating from the site to their house is not credible and not supported by substantial evidence in the record. The Board finds that audibility is not an approval criterion and is persuaded by DSA's mitigated noise contours, analysis, and noise predictions. *Id.*

Finally, although Wolfgang Nebmaier criticizes the Noise Study for not including the noise levels of "open" mufflers and "jake brakes" on haul trucks, the Board does not concur with this argument and finds that DSA used typical noise levels for haul trucks in its Noise Study. Typical noise levels for on-road haul trucks do not include noise from "open" mufflers and "jake brakes" because these are expressly forbidden by Oregon law. See letter from DSA, dated June 20, 2014 (Exhibit O), citing OAR 340-035-0030. The Board finds that it is reasonable for the Noise Study to exclude noise levels from truck parts that are illegal under Oregon law.

Accordingly, the Board agrees with the substantial evidence presented by DSA regarding the measurement and prediction of noise levels near residences.

#### UNSAFE NOISE LEVELS

Although David Bish contends that noise levels from the mine may result in hearing impairment for those living near the gravel pit based on a National Institute for Occupational Safety and Health (NIOSH) study, the Board denies this contention because the NIOSH study examined noise exposure levels for mine workers, not residents near the mines. *See* letter from DSA dated July 7, 2014 (Exhibit TTTTT). The Board is persuaded by the testimony of DSA, which stated that the sound levels addressed in the NIOSH study are for workers who are working on of in very close proximity to the mining equipment. *Id.* The Board finds that the DSA Noise Study demonstrates that the highest predicted mitigated sound level at a residence near the proposed mining operation is 47dBA, which is well below the NIOSH recommended exposure limit of 85dBA presented by Mr. Bish. The Board relies on the DSA Noise Study and finds that the noise levels for residents near the proposed mine are predicted to be well below the threshold for hearing damage.

#### NOISE IMPACT ON WILDLIFE

Although Ann Smith testified that noise levels from the site will adversely affect wildlife, the Board denies this contention because it is persuaded by the testimony of DSA that wildlife do not alter their natural habitats in response to noise being generated at a mining site so long as there is no threat to their well-being. *See* letters from DSA dated July 7, 2014 and July 11, 2014 (Exhibit TTTTT). The Board relies on the long-standing professional experience of the acoustical engineers at DSA and on DSA's testimony that the Environmental Protection Agency (EPA) has studied effects of noise on wildlife and other animals and produced documents concluding that wildlife and other animals will often react to a new noise source when first introduced, but then, if there is no physical threat to their well-being and if the noise level is in the range predicted to radiate from the proposed mine, will acclimate to the noise and return to their normal patterns. *Id.*

Additionally, although Steven Lawwill testified that the noise generated from the proposed mine will stress his cattle herd, lower the quality of his beef, and potentially reduce his calf production, the Board denies this contention for the same reasons discussed above. The Board relies on the expert opinions and acoustical studies of DSA and finds that the noise generated from the proposed mine will not stress Mr. Lawwill's cattle in any meaningful way and will not require him to modify his farming practice.

Accordingly, the Board agrees with the substantial evidence presented by DSA regarding the effect of noise on wildlife and other animals and finds that the noise levels predicted to emanate from the proposed mine will not adversely affect wildlife and other animals.

## VACANT LOT NOT INCLUDED IN NOISE STUDY

Although Gary Mackey requests that a noise study be conducted for his vacant lot within the Impact Area, the Board finds such additional study is not required nor necessary for three reasons. First, the Board relies on DSA's interpretation of the Goal 5 administrative rule and DEQ noise regulations and finds that the ambient noise impact assessment is to be addressed at existing dwelling units, not at unoccupied land. See letter from DSA dated July 7, 2014 (Exhibit TTTTT). Specifically, OAR 340-035-0035 states that the noise criteria must be met at "noise sensitive property." OAR 340-035-0015 defines "noise sensitive property," in part, as "real property normally used for sleeping." The Board finds that the use of the term "real property normally used for sleeping" indicates that a dwelling must be located on a parcel in order for there to be potential noise impact on a residence. Accordingly, the Board finds that an additional noise study of Mr. Mackey's property is not required because his property is vacant and unoccupied and, consequently, is exempt under the DEQ noise regulations based on the safe harbor rule of OAR 660-023-0180(1)(g).

Second and in the alternative, the Board finds that the Goal 5 administrative rule and DEQ noise regulations do not require that noise levels be predicted at every residence around the site; rather, noise levels are to be predicted at representative locations around the site. *Id.* According to the DSA Noise Study, the residences selected in the study are representative locations around the site, which were chosen because they have the greatest potential for being impacted by mining related noise. *Id.*; Noise Study, p. 22 (Appendix F of Applications). The Board relies on the analysis in the Noise Study and finds that residences R3 and R4 are closer to the site and are along the general sound propagation path between the site and Mr. Mackey's vacant lot. *Id.* The Board finds that the noise levels at Mr. Mackey's vacant lot will be in compliance with DEQ standards because the Noise Study demonstrates that the predicted mitigated noise levels at residences R3 and R4 are well below the noise standards for those locations. *Id.*

Third, although DLCD contends that OAR 660-023-0180(5)(b) requires that impacts be evaluated for dwellings allowed by a residential zone on an existing lot even if the lot is vacant, the Board denies this contention here. See letter from Amanda Punton at DLCD, dated November 26, 2013. The Board finds that OAR 660-023-0180(5)(b) defines "approved land uses" as dwellings allowed by a residential zone and other uses for which conditional or final approvals have been granted by the local government. The Board further finds that there is no evidence in the record demonstrating that Mr. Mackey's lot has received any county permits, including an approved building permit, in order to develop his lot. Therefore, the Board finds that Mr. Mackey's lot is not an "approved land use," and the Applicant is not required to include it in any noise study.

## OPERATING HOURS

Although Elizabeth Corcoran contends that the operating hours should be reduced to reduce the duration of noise to which residents are exposed, the Board denies this contention because it misconstrues applicable law and the evidence in the record. The Board finds that with the mitigation measures recommended by DSA, the noise levels from the site will be in compliance

with DEQ noise regulations, and that conditions of Project approval will ensure that such mitigation measures are implemented.

First, the Board finds that there is no criterion requiring mitigation to consist of reduction in operating hours and that no such mitigation is necessary. *See* letter from DSA dated July 7, 2014 (Exhibit TTTTT). The Board finds that the Noise Study demonstrates that with recommended mitigation measures (which do not consist of reduced operating hours), the noise levels from the site will comply with DEQ noise regulations.

Second, the predicted noise levels in the Noise Study are the worst-case noise levels that may occur during the life of the mine. *Id.* The mining-generated noise level at a residence will vary significantly over the life of the mine at the excavation area moves closer to and further from the receiver. *Id.* The Board relies on the testimony and analysis of DSA and finds that since the noise levels presented in the Noise Study are the worst-case scenario, the noise levels at any given residence around the site will be lower than those reported in the Noise Study for a significant portion of the life of the mine.

Accordingly, the Board finds that the noise mitigation measures recommended by DSA are sufficient, and that reducing the operating hours is not required nor necessary.

#### MEASURES TO MINIMIZE CONFLICT:

The Board finds that reasonable and practicable measures will minimize the limited conflicts identified by DSA. Specifically, the Board finds that implementing the following mitigation measures on the site will ensure that noise levels at each of the residences would conform with DEQ standards:

- Berms – 12 foot high berm along a portion of the eastern property boundary, quiet screens or up-close barriers for the crushing and screening plant, and a noise control berm northeast of R13
- Haul truck noise mitigation (source mitigation or berms)
- Quiet screens or up-close barriers for the vibratory screens
- A partial enclosure or up-close barriers for the trommel screen
- Up-close barriers or source mitigation for the portable generator

As support for this conclusion, the Board relies upon DSA's conclusions in the noise study. *See* Sunny Valley Mine Noise Study (Appendix F to Applications). The Board has incorporated these reasonable and practicable mitigation measures into the conditions of approval for the Project as follows:

“12. There shall be no blasting on the site.

25. All mining and processing of mineral and/or aggregate resources shall comply with OAR noise emission standards. The mine operator shall comply with the noise study prepared by Daly Standlee and Associates, Inc. (DSA) dated August 2013 that

attests that the circumstances of the site and/or proposed mitigation will bring the site into compliance. (RLDC §91.030.0)

26. The mine operator shall comply with the following noise mitigation measures proposed by DSA:

- a. Twelve-foot high berms shall be constructed along portions of the eastern property line as noise mitigation barriers.
- b. Fifteen-foot high berms shall be constructed northeast of receiver R13 as a noise mitigation barrier.
- c. Polyurethane or rubber screens or proximate berms or buffers shall be used to mitigate noise impacts associated with the operation of crushing and screening equipment when it is located in the processing (trommel) area and crusher operating area.
- d. Off-road equipment (excavators, front-end loaders, loading trucks, and bulldozers) used for internal site operations shall be fitted with broadband rather than traditional narrowband backup alarms.
- e. Mufflers shall be required for all on-site haul trucks.
- f. The genset shall be equipped with up close barriers or a muffler and inlet and outlet silencers.”

Because DSA has determined that these measures will ensure conformance with the applicable DEQ standard, the Board finds that these measures will, by definition, minimize noise conflicts from the mine for purposes of OAR 660-023-0180. Accordingly, the Board adopts them as conditions of approval for the Project.

#### **DUST:**

#### IDENTIFICATION OF CONFLICTS:

The Board makes the following findings as to the dust impacts of the Project:

- Topsoil/overburden removal, stockpiling, aggregate extraction, truck and equipment movement, aggregate processing and reclamation activities proposed at the site are potential sources of dust;
- The Project does not intend to conduct blasting for mining of aggregate, so particulate matter emissions from such activity will not occur at the site.

The Board finds that there could be potential dust conflicts associated with the Project absent appropriate conflict minimization measures. As support for this conclusion, the Board relies upon the analysis of potential dust impacts of the mine (“Air Quality Impact Report”) prepared

by the Applicant's air quality expert, James De Hoog, Ph.D. of Arctic Engineering, Ltd. ("Arctic"). See Appendix H of the Applications.

The Board finds that Dr. De Hoog's testimony is particularly compelling because it is based upon his experience and expertise in evaluating the air quality impacts of other, more intensive mining operations and his knowledge of DEQ's air quality standards set forth in OAR chapter 340 division 208. The Board finds that a reasonable person would rely upon Dr. De Hoog's testimony to reach the above conclusions regarding potential dust impacts associated with the Project.

Further, the Board finds that opponents' contentions to the contrary do not undermine Dr. De Hoog's testimony. The Board addresses each of the opponents' contentions below.

### IMPACTS OF FUGITIVE DUST ON AIR QUALITY

Although opponents contend that fugitive dust from the site will adversely affect air quality and the environment in the Sunny Valley area, the Board denies this contention because the fugitive dust mitigation measures recommended by Arctic and adopted by the Applicant into its mining plan will reduce dust emissions to insignificant levels. See letter from Arctic, dated July 1, 2014 (Exhibit QQQQQ). The Board finds that Arctic appropriately took into account the impacts of fugitive dust on air quality and demonstrated that with recommended mitigation measures, fugitive dust will not cause detrimental air quality impacts beyond the site boundaries.

The Board is persuaded by the testimony of Arctic in its letter dated July 1, 2014 (Exhibit QQQQQ), and adopts such letter and incorporates it herein as findings. Specifically, the Board finds that the Applicant will undertake fugitive dust mitigation measures, including paving the initial access road from Placer Road to the quarry scale house with asphaltic concrete cement, and aggressively watering the access road when weather conditions are present that generate dust from either on-site mobile equipment or transportation activities of finished aggregate to market. *Id.* The Board also finds that the Applicant will develop and prepare an aggressive Air Quality Operations and Maintenance Plan ("O&M Plan") in coordination with Arctic and the Medford, Western Regional office of DEQ, which will include the following dust prevention measures:

- The use of water sprays or equivalent as needed to treat storage piles;
- Controlling vehicle speeds on unpaved roadways;
- Treating vehicular traffic areas (such as watering roads of affected areas of the site) under the Applicant's control;
- Operating all air contaminant-generating processes so that fugitive type dust associated with the operation will be adequately controlled at all times (such as by using water spray bars on aggregate crushers and screens);
- The planting of vegetation on topsoil stockpiles at the site;
- Prompt removal of "tracked-out" material from paved streets and roadways;
- Storing materials from contracted services in a covered container or other method equally effective in preventing the material from becoming airborne during storage and transfer.

*Id.*



The Board relies on the Air Quality Impact Report ( Appendix H to Applications) and the letter from Arctic dated July 1, 2014 (Exhibit QQQQQ) and finds that the dust mitigation measures listed above will reduce total particulate matter at the proposed mining operation by more than 95% and that dust from aggregate conveying/crushing operations and entrained road dust from trucking and hauling operations will be reduced to insignificant levels.

Accordingly, the Board finds that fugitive dust from the site will not adversely affect air quality and the environment in the Sunny Valley area.

### IMPACTS OF CRYSTALLINE SILICA DUST

Although opponents contend that the Project will produce dust containing Crystalline Silica, which can be blown a far distance and cause lung disease and other disorders, the Board does not concur with this contention based on the evidence and findings provided immediately below. The Board concludes that with the dust mitigation measures undertaken by the Applicant, the Project will be in compliance with applicable Air Contaminant Discharge Permit standards and, accordingly, any potential dust conflicts will be minimized to insignificant levels. *See* Air Quality Impact Report, dated August 19, 2013 (Appendix H) and OAR 660-023-0180(1)(g). The Board is persuaded by testimony of Arctic that water sprays in accordance with applicable DEQ requirements will fully control particulate matter emissions from aggregate sizing and storing activities.

The project does not include drilling or blasting of the bedrock at the site; therefore, particulate matter, including Crystalline Silica dust, will not be created. *See* Air Quality Impact Report (Appendix H to Applications) and the letter from Arctic dated July 1, 2014 (Exhibit QQQQQ). Accordingly, the Board finds that Crystalline Silica air emissions will not be present from such activities. The Applicant's project entails only aggregate sizing activities. *Id.* The Board relies on Dr. De Hoog's long-standing professional expertise as an Environmental Engineer with more than 15 years of air quality permitting, air quality source testing, and regulatory compliance experience with aggregate processing facilities, and is persuaded by Dr. De Hoog's testimony that aggregate sizing operations produce only a minimal amount of crushed aggregate, which is not readily airborne and limited to on-site workers. *Id.* The Board also relies on Dr. De Hoog's testimony that basic water spray systems without pressurization and chemical additives are effective at significantly reducing respirable silica. Finally, the Board finds that as an air quality protocol and safety measure going forward, the Applicant has agreed to test the aggregate resource in accordance with DEQ and Mine Safety and Health Administration (MSHA) requirements for silica composition, and will implement standard MSHA requirements for worker safety should an inordinate amount of silica be detected in the aggregate resource. *Id.*

Accordingly, the Board finds that the dust mitigation measures recommended by Arctic and undertaken by the Applicant are sufficient to ensure minimization of any potential dust conflicts, and that implementing such dust mitigation measures will reduce Crystalline Silica dust to insignificant levels.

## IMPACTS OF NATURALLY OCCURRING ASBESTOS (NOA)

Opponents contend that Naturally Occurring Asbestos (“NOA”) is present in Serpentine and Chrysotile deposits on the Applicant’s mining site and that mining such deposits presents air quality hazards. However, the Board does not agree with this contention based on the finding that there is no evidence in the record that NOAs exist in the aggregate proposed for mining and because the Board finds there is no basis for a conflict with air quality, as described in more detail below.

The Board relies on the statement by opponent Rogue Advocates, which admits that “[t]he deposits on [the Applicant’s] site have **NOT** been tested for the presence of asbestos.” Exhibit O-4 (emphasis added) (Letter to Board from Rogue Advocates, dated July 18, 2016). The Board finds that the only deposits that have been tested for asbestos are a couple of samples allegedly taken from adjacent public land. The Board finds that deposits taken from adjacent public land are not indicative of the existence of NOA deposits or the quantity of NOA deposits on the Applicant’s mining site.

Furthermore, the Board finds that the Applicant is proposing to mine the alluvial sands and gravels ABOVE the bedrock that was under them in Boring SVB-2. While evidence in the record shows that Boring SVB-2 encountered bedrock that may contain serpentine at the very bottom of the boring (approximately 79 feet deep), the Board finds that the Applicant will only be mining the sand and gravel above the bedrock. See Significance Report, Appendix A of Application, p. 11; see also DOGAMI Appendix L of the Application, p. 6 and 12. Therefore, the Board finds that there is no substantial evidence in the record that the Applicant will be mining any deposits containing NOAs.

Lastly, the Board relies on the letter from Applicant’s expert, Arctic Engineering, Ltd., dated July 25, 2016 (“Arctic Rebuttal”) (Exhibit A-4), in finding that there are no applicable regulations governing NOAs with which the Applicant, or any other mine operator, is required to comply. Rather, the Board finds that the only relevant air quality standards that the Applicant is required to comply with are established by the Oregon Department of Environmental Quality (ODEQ). As the Arctic Rebuttal restates, the Applicant is required to meet the standards for a General Air Contaminant Discharge Permit, and the Applicant can and will do so upon project approval.

Accordingly, the Board finds that there is no evidence in the record that NOAs exist in the aggregate proposed for mining, and there is no basis for a conflict with air quality.

## AIR QUALITY STANDARDS

Although opponents contend that the Project fails to comply with air quality standards established by other agencies, such as the American Lung Association, the American Medical Association, Wisconsin Department of Health Services, Gravel Watch Ontario, the Centers for Disease Control, NIOSH, Cobra Building, Central Oregon Safety and Health Administration, and the United States Department of Labor, the Board denies this contention because the air quality standards that the Applicant is required to meet for the proposed mining operation are not

established by any of the above agencies. See letter from Arctic dated July 18, 2014 (Exhibit HHHHHH). The Board finds that the relevant air quality standards that the Applicant is required to meet are established by the Oregon Department of Environmental Quality (DEQ) and not by any other organization or governmental agency.

#### MEASURES TO MINIMIZE CONFLICTS:

The Board further finds that these conflicts are minimized to a level that is not significant through compliance with the following reasonable and practicable measures, which the Board imposes as conditions of approval on the Project:

“12. There shall be no blasting on the site.

27. The mining operations shall comply with the most current air quality standards from Oregon Administrative Rules Chapter 340, Divisions 20, 21, and 28, for ambient air quality for a distance 500 feet in all directions from any public road or conflicting use located along the access road if the mining traffic is the primary cause of the road dust. (RLDC §91.030.B.2)

28. The main facility access road from Placer road to the scale house shall be paved to prevent the generation of dust.

29. The discharge of contaminants and dust caused from the mining and processing of mineral and/or aggregate resources shall comply with applicable DEQ ambient air quality and emission standards. The operator shall cease all mining and processing operation within one hour of the malfunction of any air pollution control equipment, and shall not resume operation until the malfunction has been corrected in compliance with applicable DEQ rules and standards. (RLDC §91.030.1)

30. On site surfaces travelled by off-road or on-road sources shall be watered whenever significant visible dust emissions (opacity approaching 20%) are observed behind or beside a moving vehicle.

31. Water sprayers shall be used to control dust emissions from crushers and screens operating on site.”

As support for this conclusion, the Board relies upon Dr. De Hoog's testimony that implementing the above mitigation measures on the site would ensure that fugitive dust levels would conform with DEQ standards. See Air Quality Impact Report by Arctic Engineering, Ltd., dated August 19, 2013, at sections 5.0 and 8.0 (Appendix H of the Applications); see also letter from Arctic, dated July 1, 2014 (Exhibit QQQQQ). The Board finds that, because Dr. De Hoog concluded that these measures would ensure conformance with DEQ standards, these measures will, under the safe harbor provision in OAR 660-023-0180(1)(g), by definition, minimize dust conflicts from the mine for purposes of OAR 660-023-0180. Although some opposition testimony expressed concerns about dust, the Board finds that it did not undermine the evidence presented by Dr. De Hoog.

Based upon the evidence cited above, the Board finds it necessary to impose the above six conditions on its approval of the Project to ensure conformance with applicable DEQ dust standards and to minimize dust conflicts associated with the Project.

#### **OTHER DISCHARGES:**

The Board finds that other potential discharges at the site include: (1) diesel engine emissions from onsite mobile equipment and vehicle travel; and (2) stormwater.

#### **Diesel Engine Emissions:**

#### **IDENTIFICATION OF CONFLICTS:**

The Board finds that there will be potential conflicts with allowed uses in the Impact Area resulting from the use of mining equipment and vehicles that generate diesel engine exhaust, which contains pollutants such as nitrogen oxides, carbon monoxide, and sulfur dioxide. As support for its conclusion, the Board relies upon the Air Quality Impact Report. See Appendix H of the Applications.

#### **MEASURES TO MINIMIZE CONFLICTS:**

The Board further finds that these conflicts are minimized to a level that is not significant through compliance with the following reasonable and practicable measures, which the Board imposes as conditions of approval on the Project:

“32. The majority (51% or more in terms of total fleet horsepower) of diesel engines powering off-road equipment shall meet federal Tier 2 off-road engine standards or better. This requirement shall be met by using equipment with engines originally built to meet these standards or through retrofit to reduce emissions to these levels.

33. On site idle times for heavy-duty diesel truck engines shall be limited to no more than five minutes per truck trip.”

As support for this conclusion, the Board relies upon Dr. De Hoog’s testimony that implementing these measures would ensure that diesel emission levels would conform with DEQ and EPA standards. See Air Quality Impact Report by Arctic Engineering, Ltd., dated August 19, 2013, at Section 6.0.2 (Appendix H of the Applications) and letter from Arctic dated July 1, 2014 (Exhibit QQQQQ). The Board finds that, because Dr. De Hoog concluded that these measures would ensure conformance with applicable DEQ and EPA standards, these measures will, under the safe harbor provision in OAR 660-023-0180(1)(g), by definition, minimize diesel emission conflicts from the mine for purposes of OAR 660-023-0180. The Board finds that Dr. De Hoog’s testimony was un rebutted.

Based upon the evidence cited above, the Board finds it necessary to impose the above two conditions on its approval of the Project to ensure conformance with applicable DEQ and EPA

air quality standards and to minimize conflicts resulting from diesel exhaust associated with the Project.

**Water:**

**IDENTIFICATION OF CONFLICTS:**

The Board finds that there will be no potential conflicts with approved uses in the Impact Area due to water quality or quantity. As support for this conclusion, the Board relies upon three sources. First, as to stormwater, the Board relies upon testimony from the Project civil engineer, Westlake Consultants, Inc. ("Westlake"). See Sunny Valley Sand And Gravel Erosion and Sediment Control and Storm Water Narrative dated August, 2013 at Appendix J of the Applications. As explained in Westlake's report, Applicant will develop and implement a stormwater control plan in accordance with the Best Management Practices for Reclaiming Surface Mines in Oregon, 1997 and DEQ 1200A standards. *Id.* The Applicant has obtained a 1200A permit, and it is current. *Id.* Further, Westlake explained that the Applicant has designed the Project such that there will be no offsite stormwater point discharge from the Property. *Id.* In short, the Board finds that there will be no stormwater flowing from the Property to offsite locations and that there will be no potential conflicts with approved uses in the Impact Area due to stormwater discharges.

Second, the Board relies upon the testimony of Project hydrogeologist Shannon & Wilson, Inc., which concludes that, although water quality and quantity conflicts could occur between the Project and nearby residential properties, absent minimization and mitigation measures, such conflicts will be minimized to a level no longer significant through the implementation of specific monitoring and, as necessary, binding mitigation measures. See Shannon & Wilson Sunny Valley Hydrogeology PAPA Report, dated August 2013 (Appendix B of Applications) and Groundwater Summary Discussion, dated June 18, 2014 (Exhibit H). One such mitigation measure is the preparation of a Spill Prevention Control and Countermeasure (SPCC) Plan to manage accidental spills and releases. The Board finds that compliance with the SPCC Plan, together with implementation of the stormwater management system, will prevent and mitigate impacts from spills and will ensure that the mechanical aspects of the mining operation (drilling, washing, crushing, hauling) will not be a possible groundwater contamination source. As support for this conclusion, the Board relies upon the expert opinion to this effect from Shannon & Wilson. See Hydrogeology PAPA Report dated August 2013 (Appendix B to Applications) and Groundwater Summary Discussion, dated June 18, 2014 (Exhibit H). The Board finds that this testimony is compelling in light of Shannon & Wilson's extensive experience and detailed analysis, which includes reviewing 68 wells within 3,600 feet of the Site and eleven months of precision groundwater elevation monitoring from onsite wells. *Id.*

Third, the Board finds that Applicant has demonstrated that all water necessary for the proposed operation has been appropriated to the Property and is legally available. First, the Board relies upon the fact that, as an industrial operation, the Project is an "exempt use" under state law and thus has a water right not to exceed 5,000 gallons per day. ORS 537.545. Further, the Board finds that, pursuant to this statute, no registration, certificate, or permit is required for such use of groundwater. *Id.* Second, for the reasons discussed in the letters from the Applicant's water

rights attorney, Martha Pagel, dated May 27, 2014, June 23, 2014, and July 7, 2014 (Exhibit S with attachments; Exhibit P P P P P), which reasons are incorporated herein by reference as findings, the Board finds that water for the Project is available and will be appropriated from a source authorized by permit from OWRD. The primary source of water for the Project will be from reservoir storage of surface waters. See letter from Martha Pagel, dated June 23, 2014 (Exhibit S). The Applicant has applied for water rights to divert water from Grave Creek and surface run-off during the months of January, February and March each year, for storage in three small reservoirs. *Id.* OWRD records show water is, in fact, available for the reservoir applications that are intended to provide water for mining operations. (Ex. S, Attachment 1, p. 9, OWRD Water Availability Report.) The three applications are currently on administrative hold with OWRD, pending successful completion of the land use process before the County, and an Administrative Law Judge has concluded that there has been no forfeiture of water rights and no basis for cancellation of the applications. (Ex. S, p.7; Ex. S, Attachment 6) The Applicant also has an existing and valid water right for irrigation use on the Site, if needed. *Id.* The Board finds that this testimony was not sufficiently rebutted or challenged.

Furthermore, the Board relies upon testimony from the Project hydrogeologist that, the risk of conflicting use of groundwater between the Project and local wells is unlikely:

“Seepage from the streambed supplies a saturated zone that recharges any groundwater flow paths, such as to wells. Consequently, the saturated zone beneath Grave Creek is highly likely to recharge shallow aquifers tapped by nearby wells. In technical terms, such a condition is termed a ‘recharge boundary,’ where a ready supply of groundwater can meet the demand for groundwater drawn from wells.”

See Shannon & Wilson Groundwater Summary Discussion dated June 18, 2014 (Exhibit H). The Board finds that, as explained in its Hydrogeology PAPA Report and Groundwater Summary Discussion, Shannon & Wilson reached this conclusion after conducting a comprehensive analysis of all OWRD-registered well logs within and beyond the designated 1,500-foot impact area from the Property. Hydrogeology PAPA Report at Sections 4.2 and 4.3. Moreover, the Board finds that this testimony was not rebutted or challenged with specificity by any expert.

Additionally, the Board finds that the mine will not reduce the flow of Grave Creek downstream because water lost naturally from Grave Creek along the Site is restored to Grave Creek by seepage a short distance downstream of the Site and this groundwater path will remain the same during and after mining of the Site. See letter from Shannon & Wilson, dated June 18, 2014 (Exhibit V V V V V). Moreover, the Board imposes a condition of approval requiring on-site monitoring wells to monitor groundwater levels. Therefore, the Board finds that a reasonable person would rely upon the testimony from Westlake, the Applicant’s water rights attorney, Martha Pagel, and Shannon & Wilson to conclude that all water necessary for the proposed operation can be appropriated to the site and is legally available and that all water conflicts can be minimized to a level that is not significant.

## MEASURES TO MINIMIZE CONFLICTS:

Because there are no identified conflicts associated with offsite stormwater discharges, the Board finds that it is not required to identify measures that would minimize such conflicts.

The Board further finds that conflicts with water quality and quantity are minimized to a level that is not significant through compliance with the following reasonable and practicable measures, which the Board imposes as conditions of approval on the Project:

“20. Water used in the mining or processing of mineral and/or aggregate resources shall be appropriated from a source authorized by permit from the Oregon Department of Water Resources. With the exception of onsite process water released to onsite settling ponds turbid water shall not be released into lakes, ponds or watercourses. (RLDC §91.030.0)

21. Additional monitoring wells and hydrogeologic testing, coupled with ongoing groundwater level monitoring, will establish baseline conditions and identify early groundwater level declines should they occur during mining operations. Pressure transducers with dedicated dataloggers shall be installed to automate monitoring of groundwater levels. Both shall be located and protected to allow long-term use without disruption by mining. The existing observation wells shall be replaced if and when they are decommissioned due to the progression of mining activity.

22. Monitoring data shall be reviewed and reported to DOGAMI at quarterly intervals for a minimum of 3 years and shall continue per DOGAMI requirements until mining activities are complete. This monitoring program shall document current conditions and identify any recommended mitigation measures that must be implemented to counter substantial loss of the water resource for the nearby residences.

23. Infiltration trenches shall be constructed around each mine cell. The water applied to the infiltration trench shall provide a positive hydrostatic head in the sand and gravel that reduces groundwater declines adjacent to the mine cells. Monitoring as well as observed seepage into the active site shall be utilized for development of final design and evaluation of mitigation measures as necessary. Should proactive infiltration fail or be deemed inappropriate, well improvements such as resetting pumps at deeper depths, well deepening, or changes in the mining operation shall be considered as alternative mitigation options to alleviate water quality or quantity impacts.

24. Prior to mine operation, a final Spill Prevention Control and Countermeasure (SPCC) Plan shall be developed for the facility substantially consistent with the sample document provided by the U.S. Environmental Agency.”

**OAR 660-023-0180 (5)(b) The local government shall determine existing or approved land uses within the impact area that will be adversely affected by proposed mining operations and shall specify the predicted conflicts. For purposes of this section, “approved land uses” are dwellings allowed by a residential zone on existing platted lots and other uses for which**

conditional or final approvals have been granted by the local government. For determination of conflicts from the proposed mining of a significant aggregate resource site, the local government shall limit its consideration to the following: . . .

(B) Potential conflicts to local roads used for access and egress to the mining site within one mile of the entrance to the mining site unless a greater distance is necessary in order to include the intersection with the nearest arterial identified in the local transportation plan. Conflicts shall be determined based on clear and objective standards regarding sight distances, road capacity, cross section elements, horizontal and vertical alignment, and similar items in the transportation plan and implementing ordinances. Such standards for trucks associated with the mining operation shall be equivalent to standards for other trucks of equivalent size, weight, and capacity that haul other materials;

#### IDENTIFICATION OF CONFLICTS:

The Board makes the following findings as to each potential conflict to local roads used for access and egress to the mining site within one mile of the entrance to the mining site:

- Sight Distance: There are existing trees, shrubs, and roadside embankment slopes along portions of Placer Road that could affect vehicular flow. This could create a potential conflict to local roads absent appropriate minimization or mitigation measures.
- Road Capacity: The Placer Road at the Access Driveway, Sunny Valley at Placer Road and Leland Road at Lariat Drive intersections were evaluated by Sandow. These intersections are forecast to operate within acceptable performance standards established by Josephine County of a Level of Service (LOS) of LOS D or better. Actual analysis by Sandow indicate an LOS A for those intersections during the AM and PM peak hours in both 2013 and 2033, with the proposed mine operation. No road capacity improvements are required as a result of the proposed development.
- Cross Section Elements: The Haul Route has an average pavement width of 22-24 feet, paved shoulders of 0 - 2 feet, and gravel shoulders of 0 - 5 feet. The cross section elements meet minimum functional standards for existing roadways. No cross section improvements are required as a result of the proposed development.
- Horizontal and Vertical Alignment: Sandow evaluated the Haul Route to Interstate 5 for permanent height and side obstacles that would restrict truck traffic. There were no horizontal or vertical alignment issues that would restrict truck traffic. No horizontal or vertical alignment improvements are required as a result of the proposed development.
- Safety: Roadway safety is evaluated for an existing roadway based on how the roadway operates and how the roadway will be projected to operate in the future. There is no indication of locations along the Haul Route with geometric issues or a history of crashes that would be perpetuated by an increase in roadway traffic or an increase in truck traffic from the Project.

As support for these conclusions, the Board relies upon the testimony of the Applicant's traffic engineer, Sandow Engineering ("Sandow"), who completed an analysis of existing conditions, projected transportation impacts of the proposed mine, and compliance with applicable standards. See TIA, dated July 29, 2013, in Appendix G of the Applications at p. 28. In the TIA,



Sandow reached each of the conclusions adopted by the Board as findings above. Based on Sandow's analysis, the Board finds that implementation of vegetation removal and earthen embankment modifications to minimize conflicts at the on-site driveway location, the intersection of Edgerton Lane / Placer Road and the intersection of Leland Road / Lariat Drive by the imposition of mandatory Condition No. 18, such conflict minimization is achieved and such conflicts are rendered no longer significant.

Further, the Board finds that opponents' contentions to the contrary do not undermine Sandow's testimony. The Board addresses each of the opponents' contentions below.

### **COVERED BRIDGE**

Although opponents contend that haul trucks generated by the Project will use the covered bridge at the intersection of Sunny Valley Loop and Placer Road, thereby increasing traffic, potentially damaging a bridge of historical significance and causing unsafe conditions, the Board does not concur with this contention because the covered bridge is not part of the Haul Route, is weight restricted, and its use by trucks will be prohibited by a condition of Project approval. The Board finds that the covered bridge will not be utilized by trucks generated by the Project.

The proposed Haul Route will not use the covered bridge. See Figure 2 of the TIA (Appendix G). The covered bridge is a narrow one lane bridge with a stated weight limit of 20 tons. See letters from Sandow, dated June 23, 2014 and July 14, 2014 (Exhibits M and UUUUU). As a condition of Project approval, trucks will not be allowed to use the covered bridge. Condition No. 19. For these reasons, the Board finds that the covered bridge will not be subject to unsafe or damaging conditions due to trucks generated by the Project.

### **ROADWAY MEASUREMENTS**

Although opponents contend that the roadway measurements by Sandow are inaccurate and that the affected roadways do not meet County roadway standards, the Board denies these contentions because such measurements were taken in accordance with industry design standards. The Board finds that the Placer Road, Sunny Valley Loop, and Leland Road roadway measurements provided by Sandow are accurate and demonstrates that the roadways meet County roadway standards.

Placer Road has a four-inch (4") white stripe and two four-inch (4") yellow stripes separated by a four-inch (4") buffer space. See letters from Sandow, dated July 7, 2014 and July 14, 2014 (Exhibit UUUUU). The industry standard measurement for travel lane design purposes, and the standard adopted by Oregon, is to measure from the center of the buffer space of the double yellow stripe to the center of the white stripe. *Id.* Robert Kalin also measured the road, but performed his measurements from the inside edge of the yellow stripe to the inside edge of the white stripe. *Id.*; see also letter from Robert Kalin, dated June 23, 2014 (Exhibit JJ). The Board finds that Sandow accurately performed all roadway measurements in accordance with industry standards. Conversely, the Board finds that Mr. Kalin did not perform his roadway measurements in accordance with industry standards.

The industry standard for average roadway width according to the American Association of State Highway and Transportation Officials (AASHTO) is to measure in sections from the outside edge of the pavement to the outside edge of the pavement, which includes the addition of any paved shoulders, and then provide a weighted average over the length of the roadway. *See* letters from Sandow, dated July 7, 2014 and July 14, 2014 (Exhibit UUUUU). The Board finds that Sandow accurately provided average roadway width measurements in accordance with industry standards. Conversely, the Board finds that opponents did not perform average roadway width measurements in accordance with industry standards because they did not provide a weighted average. *See* letter from Robert Kalin, dated June 23, 2014 (Exhibit JJ).

Additionally, the Board finds that Sandow and opponents did not measure the exact same roadway locations, making it difficult to directly compare measurements. *See* letters from Sandow, dated July 7, 2014 and July 14, 2014 (Exhibit UUUUU). The Board also finds that inconsistent striping on Placer Road results in variable measurements. *Id.*

Furthermore, although opponents contend that Sandow's roadway measurements are inaccurate because she used a tape measure rather than a grade rod, the Board finds this distinction does not affect the credibility of Sandow's analysis. The Board is persuaded by Sandow's analysis and her long-standing expertise as a professional traffic engineer, and the Board finds that her roadway measurements are accurate. Additionally, the Board finds that there is no substantial evidence in the record to refute Sandow's roadway measurements or analysis.

Furthermore, although some shoulder widths along Placer Road do not meet roadway standards for new construction, the Board finds that County roadway standards for new construction are not applicable to existing roadways. *Id.* According to AASHTO, the fact that roadways do not meet new design standards does not mean that existing roads are unsafe. *Id.* The Board finds that crash history indicates that existing shoulder width is not the cause of crashed within the area, and the Board finds that all shoulder widths along Placer Road meet the minimum functional standards. *Id.*; *see also* TIA (Appendix G to Applications).

For the reasons stated above, the Board finds that all of Sandow's roadway measurements are accurate and that substantial evidence in the record demonstrates that Placer Road meets all applicable roadway standards.

### **TRUCK TURNING RADIUS**

Although opponents contend that gravel trucks cannot safely make turns onto Placer Road, Sunny Valley Loop, Leland Road, and Lariat Road, the Board denies these contentions because the Board is persuaded by the truck turning analysis performed by Sandow, which demonstrates that, based on industry standards for trucks, these turns can be made by trucks safely and legally. *See* letters from Sandow, dated June 23, 2014, July 7, 2014 and July 14, 2014 (Exhibit 15) and Exhibit UUUUU). The Board finds that gravel trucks can safely and legally make turns onto Placer Road, Sunny Valley Loop, and Leland Road.

The truck turning analysis by Sandow was created using a design software program that uses design controls outlined in the American Association of State Highway and Transportation

Officials' (AASHTO's) manual, is based on industry standards for trucks, and is used by public agencies, such as ODOT, for determining truck paths on roadways and intersections. *Id.* The truck turning analysis shows that, based on industry standard driving path and turning radius controls, gravel trucks can make turns onto Placer Road, Sunny Valley Loop, and Leland Road safely and legally. *Id.* The Board relies on Sandow's truck turning analysis and finds that gravel trucks can make turns onto Placer Road, Sunny Valley Loop, and Leland Road safely and legally. Additionally, the Board finds that opponents' contentions to the contrary were not presented by an expert, were not supported by substantial evidence in the record, and did not reasonably call into question the conclusions reached by Sandow.

### URNS AT INTERSECTIONS

Furthermore, although opponents contend that it is illegal for a truck to travel outside of the yellow lines when making a turn at an intersection, the Board denies this contention because such maneuver is allowed by law and expressly acknowledged in the 2014-2015 Oregon Commercial Drivers Manual. *See* letters from Sandow, dated July 7, 2014 and July 14, 2014 (Exhibit UUUUU). Driving over double yellow lines indicating a no passing zone or highway divider is prohibited, except when a driver makes a turn at an intersection. ORS 811.420 and ORS 811.430. The ODOT Highway Design Manual ("HDM") states that an intersection designed to "accommodate" a truck means that "some level of encroachment upon other lanes is necessary for a vehicle to make a particular movement." HDM, Section 8.3.8. It is standard practice to design intersections to "accommodate" truck movements. *See* letters from Sandow, dated July 7, 2014 and July 14, 2014 (Exhibit UUUUU). Additionally, Section 2.7.6 of the 2014-2015 Oregon Commercial Drivers Manual provides recommendations for trucks making turns at intersections and provides:

"If you are driving a truck or bus that cannot make the right turn without swinging into another lane, turn wide as you complete the turn. . . . If you must cross into the oncoming lane to make a turn, watch out for vehicles coming toward you. . . ."

Therefore, the Board finds that it is not illegal for gravel trucks to cross the double yellow line when making a turn at an intersection.

### MINE ENTRANCE

Although opponents contend that the mitigation strategies to improve sight distance at the mine entrance are inadequate, the Board denies this contention because additional mitigation measures are not necessary nor feasible. The Board finds that the mitigation measures recommended by Sandow are reasonable and sufficient to achieve adequate sight distance at the mine entrance, and the Board adopts such mitigation measures as conditions of this approval.

There is adequate sight distance to the west, so there is no need for a deceleration lane or other additional mitigation measures. *See* letters from Sandow, dated July 7, 2014 and July 14, 2014 (Exhibit UUUUU); *see also* TIA (Appendix G of Applications). A deceleration lane is used to allow a truck to slow down in a separate lane away from the travel lane. *Id.* However, the Board

finds that a deceleration lane is not necessary because there is adequate sight distance to allow a car traveling on Placer Road to stop for a truck slowing down and entering the mine entrance. *Id.*

An acceleration lane is used to allow a truck to enter the roadway and get up to speed before merging into the traffic lane. *Id.* Adding an acceleration lane would require widening the roadway to the west of the site. *Id.* However, there is not enough right-of-way to construct an acceleration lane meeting AASHTO recommendations for lane width, lane length, and length of taper because the properties fronting the roadway in this area are privately owned and not owned by the Applicant. *Id.* Since widening the roadway is not feasible, Sandow recommended mitigation strategies, including removing the vegetative visual obstruction and providing a warning system alerting motorists of a truck entering the roadway. *Id.* The Board finds that the mitigation measures recommended by Sandow are reasonable and sufficient to achieve adequate sight distance at the mine entrance, and the Board adopts such mitigation measures as conditions of this approval.

## **ROADWAY SAFETY**

Although opponents contend that roadway elements along Placer Road present an increased probability of traffic accidents due to truck traffic, the Board denies this contention because the history of crash data does not indicate a safety concern that would be perpetuated by an increase in truck traffic. The Board finds that existing cross section elements of Placer Road, such as shoulder width, lane width, and the presence of a ditch, have not historically created safety concerns, and accordingly, the Board finds that there is no substantial evidence in the record demonstrating that a safety problem exists that will be perpetuated by increased truck traffic.

All reported crashes along Placer Road within the last six (6) years have been single vehicle crashes attributed to speeds too high for roadway conditions. *See* letters from Sandow, dated July 7, 2014 and July 14, 2014 (Exhibit UUUUU); *see also* TIA (Appendix G of Applications). With the added truck traffic, the total traffic volumes would be within the capacity that the roadway was designed for. *Id.* Based upon the study of traffic volumes and roadway geometry, there is no greater risk of a truck causing a traffic accident than any other road user. *Id.* Therefore, the Board finds that increased truck traffic on Placer Road will not create a safety problem.

## **TIA METHODOLOGY**

Although opponents challenge the methodology used in the TIA, the Board denies this contention because the TIA followed industry standard methodology. The Board finds that the methodologies used in the TIA are appropriate and produced accurate results.

Sandow conducted turning movement counts at the studied intersections consistent with ODOT and the Highway Capacity Manual's requirements for evaluating Level of Service at intersections. *See* letters from Sandow, dated July 7, 2014 and July 14, 2014 (Exhibit UUUUU); *see also* TIA (Appendix G of Applications). Sandow's counts were consistent with the data provided by Josephine County in its July 20, 2012 traffic count, and Sandow's counts were used

to supplement such county data. *Id.* Traffic counts fluctuate on a daily basis and it is standard in the industry to see a 10% change in traffic counts on a daily basis at the same locations. *Id.* Additionally, a spot speed study was performed at the site entrance and utilized the traffic count data by Josephine County in 2012. *Id.* Sandow based the sight distance analysis on a 55 mph speed limit to provide a more conservative analysis parameter and ensure adequate sight distance measures. *Id.*

The Board relies on industry standard methodologies and the data provided by Josephine County in 2012 and finds that the methodologies used in the TIA are appropriate and produced accurate results.

### **SCHOOL BUS**

Although opponents contend that increased truck traffic will cause safety problems for school buses, the Board denies this contention because the Applicant will mitigate such potential conflict. Sandow recommended school bus mitigation measures based on her long-standing experience as a professional traffic engineer and on the recommendations set forth in the Manual of Traffic Control Devices adopted by Oregon. *See* letters from Sandow, dated July 7, 2014 and July 14, 2014 (Exhibit UUUUU). The Board finds that the school bus mitigation measures recommended by Sandow are reasonable and sufficient to mitigate this potential conflict, and the Board adopts such mitigation measures as conditions of this approval.

### **OPPONENTS' ADDITIONAL CONTENTIONS**

Further, although several opponents express concern about the Project generating increased traffic (particularly truck traffic) and safety hazards, the Board finds that this testimony was generalized and speculative in nature. It was not presented by an expert, and it did not reasonably call into question the conclusions reached by Sandow. Therefore, the Board finds that a reasonable person would rely upon Sandow's testimony to conclude that, subject to the above-referenced conditions, the Project will minimize all potential impacts to local roads used for access and egress to the mining site along the Haul Route. The Board finds that the proposed conditions recommended by Sandow are reasonable, practicable, and will minimize any traffic conflicts with local roads. Accordingly, the Board imposes these measures as conditions of approval on the Project.

### **MEASURES TO MINIMIZE CONFLICTS:**

The Board further finds that reasonable and practicable measures will minimize these conflicts. Specifically, Sandow concluded that implementing the following mitigation measures on the site would minimize these potential conflicts to local roads for purposes of OAR 660-023-0180:

“15. The access or service road(s) to and from the extraction site to a public road shall meet the following standards:

- a. The most current air quality standards from Oregon Administrative Rules Chapter 340, Divisions 20, 21, and 28, for ambient air quality for a distance

500 feet in all directions from any public road or conflicting use located along the access road if the mining traffic is the primary cause of the road dust. (RLDC §91.030.B.2)

b. The applicable standards from Oregon Administrative Rules Chapter 340, Division 35, for vehicular noise control for a distance of 500 feet in all directions from any public road or conflicting use located along the access road. (RLDC §91.030. B.1)

c. The access point and approach shall be designed by a professional engineer, who shall assure adequate site distance and address road geometry.

d. The approach shall be constructed simultaneously with the proposed private bridge constructed across Grave Creek and shall not begin until the applicant has approval from all appropriate authorities, such as the Oregon Department of State Lands and the Army Corps of Engineers.

e. Applicant shall obtain an approved commercial road access permit from Public Works prior to the issuance of a development permit from Planning.

16. The applicant shall work with Three Rivers School District prior to each year to ascertain the safest school bus drop off and pick up locations. The applicant shall then provide permanent signage ahead of the selected school bus stops consistent with the requirements in the Manual of Traffic Control Devices which recommends that a "School Bus Stop Ahead" sign be placed ahead of any stop in which you cannot see 500 feet in advance. The applicant shall make every attempt to submit a letter of satisfaction from the Superintendent of Three Rivers School District to the Planning Director no later than the last working day in August each year.

17. Prior to initiation of truck hauling from the site, warning signage shall be placed on Placer Road near the approach to the mine site to warn others of trucks entering the roadway.

18. Trees and shrubs shall be cleared and the roadside shall be modified to provide sight distances at the mine access to Placer Road and at the intersections of Edgerton Lane / Placer Road and LeLand Road / Lariat Drive, as described in Section 7.0 of the submitted Sandow Traffic Report dated July 2013.

19. Gravel trucks shall not use the historic Grave Creek Bridge."

Based upon the evidence cited above, the Board finds it necessary to impose the above five conditions on its approval of the Project to ensure conformance with applicable site distance standards and to minimize conflicts resulting from site distance limitations associated with the Project roadway.

**OAR 660-023-0180 (5)(b) The local government shall determine existing or approved land uses within the impact area that will be adversely affected by proposed mining operations**

and shall specify the predicted conflicts. For purposes of this section, "approved land uses" are dwellings allowed by a residential zone on existing platted lots and other uses for which conditional or final approvals have been granted by the local government. For determination of conflicts from the proposed mining of a significant aggregate resource site, the local government shall limit its consideration to the following: . . .

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

IDENTIFICATION OF CONFLICTS:

The purpose of this aspect of the analysis is to ensure that the proposed mining use does not maintain water impoundments that attract birds, which can cause safety conflicts for nearby airports. As specified in OAR chapter 660, division 013, and ORS 836.623, the Board is only permitted to regulate water impoundments when they are located within 10,000 feet of a runway outside of an approach corridor and within 40,000 feet of a runway within an approach corridor for an airport with an instrument approach ("Regulatory Zone"). The Site is not located within the Regulatory Zone of any public airports. Therefore, the Board finds that the proposed mining use will not cause any safety conflicts with any existing public airports.

MEASURES TO MINIMIZE CONFLICTS:

Because there are no identified safety conflicts with existing public airports, the Board finds that it is not required to identify measures that would minimize such conflicts.

**OAR 660-023-0180 (5)(b)** The local government shall determine existing or approved land uses within the impact area that will be adversely affected by proposed mining operations and shall specify the predicted conflicts. For purposes of this section, "approved land uses" are dwellings allowed by a residential zone on existing platted lots and other uses for which conditional or final approvals have been granted by the local government. For determination of conflicts from the proposed mining of a significant aggregate resource site, the local government shall limit its consideration to the following: . . .

(D) Conflicts with Goal 5 resources 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;

IDENTIFICATION OF CONFLICTS:

The Board makes the following findings as to the existence of conflicts with inventoried Goal 5 resources:

- Riparian Corridors: ODFW Class I and II stream mapping was adopted by the County to inventory Riparian Corridors. The Riparian Corridor that occurs along Grave Creek and the main stem of Shanks Creek are considered "Class I" streams, and unnamed intermittent drainages and smaller forks of Shanks Creek are considered "Class II"

streams. There is a conflict with Grave Creek's Riparian Corridor in that there is a bridge proposed to cross Grave Creek for access to the site. The bridge abutments will be anchored within the Riparian Corridor, and a fill prism will be placed for the alignment of the access road.

In addition, there are two crossings planned across Shanks Creek for access to Mine Cells 6 and 7. The access is limited to minimal crossings for the excavation equipment to access the two cells, as the sand and gravel that is mined within those two cells will be transported via conveyor belt system across Shanks Creek. Mitigation of any impact to the Riparian Corridor will occur pursuant to the Applicant's Riparian Mitigation Plan as reflected in Appendix E to the Applications. Within the rest of the Project site, 50-foot setbacks from Grave and Shanks Creeks will be maintained. The mining would avoid any intrusion into inventoried riparian corridors because at least 50-foot setbacks will be maintained. The mining will not cause dewatering of these creeks, as water removed from the active mine cells will be pumped into infiltration trenches that surround the various mine cells. This water will infiltrate back into the adjacent sand and gravel and aquifer, decreasing the potential for dewatering the creeks. This conflict is discussed in more detail below.

- Federal Wild and Scenic Rivers: No conflicts because no inventoried resources within the area.
- Oregon Scenic Waterways: No conflicts because no inventoried resources within the area.
- Oregon Recreation Trails: No conflicts because no inventoried resources located within the Site or the Impact Area.
- Natural Areas: No conflicts because no inventoried Natural Areas within the Site or Impact Area.
- Wilderness Areas and Open Space: No conflicts because no inventoried Wilderness Areas and no inventoried Open Space either on the site or within the Impact Area.
- Scenic Views and Sites: No conflicts because no inventoried Scenic Views and Sites within the site or Impact Area.
- Wetlands: No conflicts, as wetlands are being avoided on site with the potential exception of a very limited ephemeral ditch located at the western site boundary, which would be impacted subject to any necessary state/federal authorizations.
- Wildlife Habitat: "Deer Winter Range" has been inventoried by the County both on site and within the Impact Area. Impacts include temporary deterrence of daytime use due to activity on the site and due to increased truck traffic on the Haul Route. Those impacts from disturbance would be relatively short-term as deer are quick to habituate or adapt to routine activity. This conflict is discussed in more detail below.

As support for these conclusions, the Board relies upon the analysis of the scientists at Terra Science, Inc. ("TSI"), who conducted an analysis of potential conflicts between the Project and inventoried Goal 5 resources, as well as on the analysis of floodplain issues on remand by Thornton Engineering, Inc. at Exhibits A-5 and A-8, and on the deer and elk report on remand by Northwest Resource Solutions, LLC at Exhibit 1 – Remand Staff Report, Exhibit J. *See also* "Natural Resource Assessment for the Sunny Valley Sand & Gravel Project," by TSI dated August 2013 at Appendix D of the Applications ("TSI Goal 5 Report"). In that report, TSI



reached each of the conclusions adopted by the Board as findings above. *Id.* The Board finds TSI's testimony to be particularly credible due to the site-specific nature of TSI's observations, TSI's knowledge of the Project, TSI's scientific training, and TSI's experience conducting natural resource assessments.

Although opponents contended that groundwater was an inventoried Goal 5 resource, the Board denies this contention because the Board finds that there is no evidence in the record demonstrating that groundwater is a Goal 5 resource inventoried by the County. Therefore, the Board finds that groundwater is not an inventoried Goal 5 resource for purposes of this analysis.

Further, the Board finds that opponents' contentions to the contrary do not undermine TSI's testimony. The Board adopts specific findings as to each of these contentions below.

### IMPACTS TO GRAVE AND SHANKS CREEKS

Although opponents contend that development of the Project will constitute a significant conflict with the Grave and Shanks Creek riparian corridors and fishery resources, the Board denies this contention for three reasons. First, Applicant will place bridge footings or conveyance support structures outside and landward of the identified jurisdictional boundaries of Grave and Shanks Creek in order to span the creeks and avoid direct impacts to Grave and Shanks Creeks, their habitat, associated wildlife, and floodplains. *See* TSI Goal 5 report set forth at Appendix D; *see also* letter from TSI dated July 21, 2014 (Exhibit EEEEEEE). Second, Applicant will provide 50-foot buffers around Grave and Shanks Creeks, which exceed Oregon Department of Fish and Wildlife's (ODFW's) requirements for inventoried Class I and II streams. *Id.*; *see also* letter from TSI, dated June 23, 2014 (Exhibit I).

Third, Applicant has modified its operational plans and diversion schedules by omitting one water reservoir from its plans and by scheduling to divert water from Grave Creek only during those dates specifically approved by Oregon Water Resources Department (OWRD). *See* letter from TSI, dated June 23, 2014 (Exhibit I). Furthermore, ODFW has determined that the proposed use of water for storage during the months of January, February and March will not result in a detrimental impact to fish. (Exhibit S, Attachment 1, p. 13-18.)

Lastly, the Applicant's mining plan includes collection of groundwater into detention/recharge ponds or infiltration swales, located between the mine cells and the riparian setback boundaries of Grave and Shanks Creeks, which are intended to recharge the groundwater zone within the Site. *See* "Natural Resource Assessment for the Sunny Valley Sand & Gravel Project," by TSI dated August 2013 at Appendix D of the Applications. Furthermore, water lost naturally from Grave Creek along the Site is restored to Grave Creek by seepage a short distance downstream of the Site, and this groundwater flow path will remain the same during and after mining. *See* letter from Shannon & Wilson, dated June 18, 2014 (Exhibit VVVVV). Therefore, the Board finds that dewatering of the mine will not significantly reduce stream flow of Grave or Shanks Creeks.

Because Project equipment will span the jurisdictional boundaries of Grave and Shanks Creeks, and because the Applicant will provide 50-foot buffers around Grave and Shanks Creeks, the Board finds that conflicts with their riparian corridors will be adequately mitigated.

Furthermore, based on the changes to the Project's operational plans and diversion schedules, and based on the mining plan, the Board finds that any conflicts with fishery resources or downstream systems are adequately mitigated. The Board also finds that although opponents reiterated their contention in later submittals, they did not offer any meaningful rebuttal of the points made by TSI. Therefore, the Board denies the opponents' contentions on this issue.

On remand, opponents also contended that the Applicant's flood study plan, created by Thornton Engineering, Inc., ("Flood Study") (Appendix E to Applications) does not match the current FEMA FIRM map for the project area and that the Applicant's proposed bridge over Grave Creek encroaches into the floodway, triggering the need for a "no-rise" analysis. For the reasons stated below, the Board denies this contention.

The Board relies on the July 25, 2016 letter from Applicant's expert, Thornton Engineering, Inc. at Exhibit A-5, and its' original Flood Study (Appendix E to Applications), and the Board finds that the project is located within a FEMA A Zone, where no Base Flood Elevations or Floodway has been determined. Accordingly, the Board finds that the project will not modify the existing floodway or the effective Base Flood Elevations because FEMA has not determined them. Furthermore, the Board finds that the record shows that Thornton Engineering, Inc. properly established the floodway boundary on the site, and the Board also finds that substantial evidence in the record demonstrates that no permanent structures are proposed within the floodway of Grave Creek or Shanks Creek and that the project will not modify the Special Flood Hazard Area. *See Flood Study, Sheet 5 and Revised Riparian Mitigation and Landscape Plan for SVSG, dated February 14, 2014, Figure 4A* (Appendix E to Applications). Therefore, the Board finds that a Conditional Letter of Map Revision, and/or a FEMA map amendment are not required and are not applicable to this project. Additionally, the Board finds that the Applications narrative, Plate 2, shows the bridge crossing Grave Creek, which will span the floodplain of the creek. Since the Flood Study demonstrates that the proposed bridge abutments are outside of the calculated Floodway boundary, the Board finds that a "no-rise" analysis is not required and is not applicable to this project.

#### **NOISE IMPACTS TO WILDLIFE**

Although opponents contend that noise generated by the Project will create a significant conflict with wildlife, such as deer, the Board denies this contention because it is persuaded by the testimony of DSA that wildlife do not alter their natural habitats in response to noise being generated at a mining site so long as there is no threat to their well-being. *See* letters from DSA dated July 7, 2014 and July 11, 2014 (Exhibit TTTTT). The Board relies on the long-standing professional experience of the acoustical engineers at DSA and on DSA's testimony that the Environmental Protection Agency (EPA) has studied effects of noise on wildlife and other animals and produced documents concluding that wildlife and other animals will often react to a new noise source when first introduced, but then, if there is no physical threat to their well-being and if the noise level is in the range predicted to radiate from the proposed mine, will acclimate to the noise and return to their normal patterns. *Id.*

The Board finds this testimony compelling because it offers an expert prediction based upon case studies. Therefore, the Board denies the opponents' contentions on this issue.

## UNLAWFUL "TAKE" OF WILDLIFE

Although opponents contend that development of the Project will result in an unlawful "take" of Golden eagles and Northern Spotted Owls, the Board denies this contention for three reasons. First, the Board finds that OAR 635-044-0130(1)—which prohibits the "take" of any protected wildlife—is not an approval criterion applicable to the Applications because no provision of law (the "take" rule, the Goal 5 rule, statute, local code, or case law) states as much. Second, and likewise, the Board finds that the County lacks the authority to enforce "take" rules in this context because, again, no provision of law grants this authority.

Third, the Board finds that, even if the "take" rule applied, a reasonable person would not conclude, based upon the evidence in the whole record, that development of the Project would actually result in a "take." Applicant will begin operations beyond the distance of the quarter (1/4) mile and half (1/2) mile protection areas for the Golden eagle sites. *See* Sunny Valley Sand and Gravel -- Aggregate Extraction/Mining Excavation Golden Eagle Risk Assessment prepared by Northwest Resource Solutions ("NRS"), dated July 3, 2014 ("Golden Eagle Report") (Exhibit OOOOO); *see also* letter from NRS dated July 17, 2014 (Exhibit IIIII). It will take approximately 15 to 20 years before the proposed operations would enter the proximity of a quarter (1/4) mile of the existing eagle site. *Id.* Even if the existing nest is still present after 15 to 20 years, appropriate mitigation measures will be applied during the nesting seasonal restriction. *Id.* The Board finds that such mitigation measures are feasible because during the nesting seasonal restriction, the Applicant can conduct operations outside of the mitigation radius. Therefore, the Board finds that opponents have not undermined TSI's testimony that the Project will not result in a "take" of any wildlife.

## ENDANGERED PLANT SPECIES

Although opponents contend that the Project poses a conflict with the endangered plant species Gentner's fritillary (*Fritillaria gentneri*), the Board denies this contention for three reasons. First, the Board finds that this subsection is concerned with conflicts with Goal 5 inventoried resources, and the County has not designated Gentner's fritillary as an inventoried resource. For this reason alone, the Board finds that there is no merit to the opponents' contention.

The Board finds that, in conjunction with completing its Goal 5 resources analysis, TSI completed a comprehensive assessment of the Property for a variety of threatened and endangered species, including those listed by the County and state and federal agencies. *See* TSI Goal 5 report set forth at Appendix D; *see also* letter from TSI dated July 21, 2014 (Exhibit EEEEE). As reported by TSI, the County has not designated Gentner's fritillary as an inventoried resource. *Id.* The Board finds the opponents' statements suggesting the possibility that other species could be present to be speculative.

Second, the Board finds that review under the Endangered Species Act of 1973 ("ESA") is triggered exclusively by a federal permit or funding decision, and that the ESA is not an applicable approval criterion subject to this Board's review. *See* letter from Applicant's attorney, Steve Pfeiffer, dated July 21, 2014 (Exhibit FFFFFF); *see also* letter from TSI dated

July 21, 2014 (Exhibit EEEEEEE). Third, the Board finds that identified populations of Fritillary were located in areas on the site that would not be disturbed for approximately ten years. *See* letter from TSI dated July 21, 2014 (Exhibit EEEEEEE). The Board also finds that TSI's recommended seasonal surveys three years prior to disturbing suitable habitat in order to identify potential sensitive species populations are reasonable and adequate to assure self-compliance with state and federal ESA regulations. *Id.*

#### **GOLDEN EAGLES AND NORTHERN SPOTTED OWLS**

Although opponents contend that the Project poses a conflict with threatened or endangered Golden eagles and Northern Spotted Owls, the Board denies this contention for three reasons. First, the Board finds that this subsection is concerned with conflicts with Goal 5 inventoried resources, and the County has not designated Golden eagle or Northern Spotted Owl habitat or nests as inventoried Goal 5 resources. *See* letter from NRS dated July 17, 2014 (Exhibit IIIII). For this reason alone, the Board finds that there is no merit to the opponents' contention.

Second, the Board finds that review under the ESA is triggered exclusively by a federal permit or funding decision, and that the ESA is not an applicable approval criterion subject to this Board's review. *See* letter from Applicant's attorney, Steve Pfeiffer, dated July 21, 2014 (Exhibit FFFFFF); *see also* letter from NRS dated July 17, 2014 (Exhibit IIIII). Third, the Board finds that proposed operations will not enter the proximity of the quarter (1/4) mile protection area for Golden eagle sites until 15 to 20 years from the start of the mining operation. *Id.* The Board also finds that even if the Golden eagle nests are still in existence 15 to 20 years from now, NRS's recommended seasonal restriction is reasonable and adequate to assure self-compliance with state and federal ESA regulations. *Id.*

#### **IMPACTS OF TRUCK TRAFFIC ON DEER AND ELK**

Although opponents contend on remand that increased truck traffic resulting from the project would conflict with deer and elk, the Board finds that any conflict between truck traffic and deer and elk can be sufficiently minimized. The Board relies on the report, dated May 16, 2016, from Northwest Resource Solutions, LLC ("NWRS Report") (Exhibit I – Remand Staff Report, Exhibit J), which found that the proposed mine would not likely result in a significant conflict with deer and elk and that any conflict due to the risk of truck collisions with deer and elk could be sufficiently minimized to a level that was not significant.

Specifically, the Board finds that only 0.0022 miles of Placer Road, located west of the Property entrance along the Haul Route, has the potential to impact deer via daily material hauling because the remaining area of the road within the project Impact Area lies east of the Property entrance and is not utilized for daily hauling. *See* NWRS Report. The Board also finds that based on the historic population density of five (5) deer per square mile within the Evans Creek Wildlife Management Unit, within which the project area lies, the project Impact Area likely contains very few deer. *Id.* Furthermore, the Board finds that there is a small Elk population living in the vicinity of the project and that elk generally avoid roads when they are open for use. *Id.*

Furthermore, the Board finds that the mitigation measures suggested by NWRS in the form of posting of deer and elk warning signs and posting of reduced speed limits further minimizes any potential impact. Additionally, the Board finds that the articles submitted by opponents regarding annual deer and elk migration and wildlife crashes support NWRS's conclusion that the posting of deer and elk warning signs to alert drivers to wildlife and the posting of reduced speed signs to require drivers to slow down would significantly minimize the impact of truck traffic on deer and elk. The Board finds that the proposed conditions recommended by NWRS are reasonable, practicable, and will minimize any traffic conflicts with deer and elk. Therefore, the Board imposes these measures as conditions of approval on the Project.

Accordingly, and based upon the expert testimony of NWRS, given the limited size of the project impact area, the short haul route, and the limited deer and elk populations within the vicinity of the project area, together with the minimization measures noted above, the Board finds that the project will not result in a significant conflict with the deer and elk population due to the de-minimus risk of truck collisions with deer and elk on Placer Road.

For the reasons stated above, the Board finds that the impact from truck traffic on deer and elk is sufficiently minimized to allow the proposed mine.

Alternatively, notwithstanding the findings above regarding the successful minimization of this conflict, the Board conducted an analysis of the ESEE consequences of the mine that is limited to assessing this potential conflict and also finds that the ESEE consequences of allowing, not allowing, or limiting the mine are as follows:

**Economic:**

Allowing Mine: The Board finds that the economic consequences of allowing the mine are myriad and positive. For example, operations from the proposed aggregate mine (the "Project") will provide direct economic impacts by creating jobs and generating ad valorem tax revenue.

Additionally, the Board finds that the economic consequences of allowing a mine on the Property also provide cost-savings because the Property is proximate to the Rogue Valley and Applegate Valley regions, as well as to major transportation facilities such as I-5, resulting in lower transportation and delivery costs, and in turn, lower costs for end users of the aggregate product. As support for this conclusion, the Board accepts Applicant's testimony that sufficient aggregate does not currently exist in order to support the needs of the region. See Exhibits A-10 through A-14.

The Board finds that there are no negative economic consequences to allowing the Project.

Not Allowing Mine: The Board finds that if the County does not allow the mine in order to protect deer and elk from traffic impacts, the County will not reap any of the economic benefits associated with the Project as described above.

The Board finds that there are no identifiable positive economic consequences to protecting the deer and elk and not allowing the Project.

Limiting Mine: The Board finds there are no identifiable positive economic consequences of protecting the deer and elk and limiting the mine.

The Board finds that the negative economic consequences of limiting the mine are the loss of at least a portion of the positive economic consequences of allowing the mine. Further, the Board finds that approving the mine, but limits truck movement on the haul route by also requiring protection of the conflicted deer and elk, will be tantamount to not allowing the mine at all because it would not be financially feasible to conduct mining operations on the Property in such a limited manner. In that case, the Board finds that the negative economic consequences of limiting the mine are the loss of the positive economic consequences of allowing the mine.

**Social:**

Allowing Mine: The Board finds that the positive social consequences of allowing the mine include: (1) the positive social esteem for the workers employed at the mine; (2) the social benefits associated with utilizing aggregate from the mine to complete needed local and regional transportation improvements; and (3) the social benefits of using less fuel and traveling less by utilizing aggregate from the mine rather than from mines that are farther away.

The Board finds that the negative social consequence of allowing the mine is the potential loss of deer and elk; however, the Board finds that, on balance, this consequence is low because the potential loss of deer is between zero (0) and six (6) deer per year and between zero (0) and two (2) elk per year. As support for this conclusion, the Board relies on the report from Northwest Resource Solutions, LLC, dated May 17, 2016 (Exhibit I – Remand Staff Report, Exhibit J).

Not Allowing Mine: The Board finds that the positive social consequence of not allowing the mine is the protection of deer and elk.

The Board finds that the negative social consequences of not allowing the mine are that the workers at the mine would not have the social esteem associated with employment, the region would not utilize its natural resources to serve the greater good, and there would be increased fuel consumption and traffic in order to acquire aggregate from mines that are farther away.

Limiting Mine: The Board finds that limiting the mine will limit the positive and negative social consequences described above. The Board finds that the degree to which these consequences are limited will be directly tied to the degree that the mine itself is limited. However, as stated above, the Board finds that approving the mine, but limiting its extent by also requiring protection of deer and elk by limiting truck movement along the haul route, will be tantamount to not allowing the mine at all because it would not be financially feasible to conduct mining operations on the Property in such a limited manner. In that case, the Board finds that the negative social consequences of limiting the mine are the loss of all of the positive social consequences of allowing the mine.

## **Environmental:**

Allowing Mine: The Board finds that there are positive environmental consequences of allowing the mine. The Board finds that allowing the mine would result in reduced diesel fuel consumption and accordingly, reduced diesel fuel emissions, caused by not having to truck needed aggregate from adjacent counties.

In the alternative, even if the environmental consequences of allowing the Project are negative because it may reduce the deer and elk population, the Board finds, for the reasons explained in this ESEE that, on balance, the overall positive consequences of allowing the Project exceed these few negative consequences of allowing the Project. Furthermore, as recommended in the report from Northwest Resource Solutions, LLC, dated May 17, 2016 (Exhibit I – Remand Staff Report, Exhibit J), the Applicant agrees to implement the mitigation measures of providing deer/elk warning signage along the haul route, and posting reduced speed signage along the haul route as suggested in the report. Therefore, the Board finds that the slight reduction in deer and elk population is not a basis to deny or further condition the Project.

Not Allowing Mine: For the reasons stated above, the Board finds that the environmental consequences of not allowing the mine are neutral. The Board reaches this conclusion because, although not allowing the mine will protect deer and elk, it will also preclude all of the positive consequences of allowing the Project, as noted above.

Limiting Mine: The Board finds that the environmental consequences of limiting the mine are also neutral. While limiting the mine may protect some deer and elk, limiting truck movement along the haul route will be tantamount to not allowing the mine at all because it would not be financially feasible to conduct mining operations on the Property in such a limited manner.

## **Energy:**

Allowing Mine: The Board finds that the energy consequences of allowing the mine are positive and substantial for two reasons. First, as explained above, the Board finds that mining the aggregate resource will facilitate completion of many needed transportation improvements, which will, in turn, provide greater capacity and smoother surfaces. As a result, vehicles on roads throughout the region will be able to consume less fuel because they will spend less time idling in traffic and/or confronting substandard road conditions. Second, the Board finds that the energy consequences of allowing a mine are also positive because the Property is proximate to the I-5 corridor where there is a demand for infrastructure projects, as well as proximate to Grants Pass and other small cities, all locations where there is a significant amount of growth and demand for aggregate. The Board finds that locating a mine near these markets will reduce the distance the product must travel, resulting in lower fuel costs.

The Board also finds that the Property's proximity to major transportation corridors, such as I-5, also reduces fuel costs and energy impacts compared to more remote locations.

The Board finds that the negative energy consequences of allowing the mine are that it will employ vehicles and machinery that will consume fuel in conjunction with completing

extraction, processing, and distribution activities. However, the Board finds that the Project operator will have at least two incentives to utilize fuel-efficient equipment. First, the Board finds that fuel is expensive and becoming more so. Second, because Project operations will be subject to compliance with state and federal air quality standards, the Project operator will need to purchase and utilize late-model equipment which is designed to comply with U.S. Environmental Protection Agency standards. Thus, the Board finds that, on balance, the negative energy consequences are not likely to be significant.

Not Allowing Mine: The Board finds that the positive energy consequences of not allowing the mine are that there will be no utilization of mine-related equipment and trucks and, thus, no related consumption of fuel.

The Board finds that the negative energy consequences of not allowing the mine are that the region would not reap any of the positive energy consequences of allowing the mine. For example, if the mine is not allowed, the aggregate resource underneath the Property will not be used to facilitate completion of needed transportation improvements. As a result, vehicles will spend more time idling in traffic and thus consume more fuel.

Further, the Board finds that the region will need to locate a mine in another location, likely in a more remote location, which will generate additional vehicle miles traveled and a larger carbon footprint.

Limiting Mine: The Board finds that limiting the mine will limit the positive and negative energy consequences described above. The Board finds that the degree to which these consequences are limited will be directly tied to the degree that the mine itself is limited.

Having identified these ESEE consequences, the Board must weigh them with the following considerations:

(A) The degree of adverse effect on existing land uses within the Impact Area;

In the event the mine is allowed and truck traffic impacts zero (0) to six (6) deer per year and zero (0) to two (2) elk per year, the Board finds that there is some adverse effect on existing land uses within the Impact Area.

(B) Reasonable and practical measures that could be taken to reduce the identified adverse effects; and

As explained above, Applicant has proposed reasonable and practical measures that will reduce the identified adverse effect in two ways. First, Applicant will provide deer/elk warning signs along the haul route to alert drivers to the potential presence of deer and elk in the area. Second, Applicant will post reduced speed signage along the haul route at the seasonal times recommended by Northwest Resource Solutions, LLC in their May 17, 2016 report (Exhibit I – Remand Staff Report, Exhibit J). Based upon the foregoing, the Board finds that it could impose these mitigation measures as conditions, which the Board finds constitute reasonable and practical measures to reduce the identified adverse effect to deer and elk along the haul route.



(C) The probable duration of the mining operation and the proposed post-mining use of the site.

Applicant testified that the probable duration of the mining operation is 20 - 40 years, depending upon market demand. As explained in its earlier findings, the Board finds that the post-mining uses of the Property are those allowed as of right and conditionally under a current map designation or such other uses as may be allowed under future alternative designation, or allowed by law. Thus, the Board finds that the mining operation is of limited duration, and the proposed post-mining use of the Property will be consistent with the law and surrounding uses.

Based upon the foregoing analysis, the Board finds that, on balance, the positive economic, social, environmental, and energy consequences associated with allowing the mine outweigh the negative consequences both in number and degree. Further, the Board finds that the additional considerations favor allowing the mine because there is only one potential adverse effect to wildlife resources, the Board will condition approval of the mine upon reasonable and practical measures to reduce that potential adverse effect, and the mine will have a limited lifespan followed by reclamation as a permitted use. For these reasons, the Board finds that the ESEE consequences support allowing mining on the Property.

#### MEASURES TO MINIMIZE CONFLICTS:

For County inventoried resources, federal wild and scenic rivers, Oregon scenic waterways, Oregon recreation trails, natural areas, wilderness areas, open space, scenic views and sites, and wetlands, no conflict exists. Therefore, the County can find that no measures are needed to minimize conflicts.

For the County inventoried riparian corridors pursuant to Section 66.150.D and wildlife habitat, the Board finds that conflicts can be minimized to a level that is not significant through compliance with the following measures:

“6. Mining and processing mineral and/or aggregate resources shall be set back from the top of bank of any stream in compliance with Article 72.040(B) (*Special Setback Requirements*). Existing native vegetation shall be maintained in the setback area. (RLDC §91.030.K).

34. No excavation or processing shall occur within the riparian corridor. All mining and processing activity shall be set back 50 feet from the ordinary high water mark of Grave and Shanks Creeks. (RLDC §72.040. B.1)

35. No mining activity shall occur within the 100 year flood hazard area of Grave and Shanks Creeks. The floodplain boundaries shall be flagged or fenced and avoided by all mining activity. (RLDC §91.030.L)

36. Construction of the access road to Placer Road shall occur above the ordinary high water mark of Grave Creek and shall comply with the standards contained in Article 69.1 -Flood Hazard Overlay of the RLDC. (RLDC §91.030.L)

37. The applicant shall not fill, excavate or otherwise disturb wetlands on the site until permits are obtained from the Department of State Lands (DSL) and the Army Corps of Engineers and implements any required pre-disturbance mitigation.
38. No mining activity- excavation or processing- shall occur within the boundaries of any on-site wetlands.
39. The applicant shall follow the mitigation measures contained in the Riparian Mitigation Plan prepared by Terra Science, Inc., dated August 2013, and the mitigation measures contained in the Golden Eagle Risk Assessment prepared by Northwest Resource Solutions, Inc., dated July 3, 2014.
40. The applicant shall install native trees and shrubs in accordance with the County screening regulations.
41. Access roads adjacent to the mining area boundaries shall be graveled with crushed rock with nominal sizing of at least one inch maximum dimension.
43. Warning signs shall be posted along the Haul Route to alert drivers to the presence of deer and elk;
44. Reduced speed signs shall be posted along the Haul Route at seasonal times, as recommended by the NWRS deer and elk report, Remand Exhibit 1 – Staff Report, Exhibit J.”

As support for this conclusion, the Board relies upon TSI’s testimony, NRS’s testimony, and NWRS’s testimony that these measures will minimize the identified conflicts to a level that is not significant. *See* TSI Goal 5 Report set forth in Appendix D of the Applications and NRS’s Golden Eagle Report (Exhibit OOOOO) and NWRS’s deer and elk report (Exhibit 1 – Remand Staff Report, Exhibit J). Based upon the evidence cited above, the Board finds it necessary to impose the above conditions on its approval of the Project to minimize conflicts with identified Goal 5 resources. The Board finds that the Project operating plan, as conditioned, incorporates all such measures.

**OAR 660-023-0180 (5)(b) The local government shall determine existing or approved land uses within the impact area that will be adversely affected by proposed mining operations and shall specify the predicted conflicts. For purposes of this section, “approved land uses” are dwellings allowed by a residential zone on existing platted lots and other uses for which conditional or final approvals have been granted by the local government. For determination of conflicts from the proposed mining of a significant aggregate resource site, the local government shall limit its consideration to the following: . . .**

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

#### IDENTIFICATION OF CONFLICTS:

The Board finds that the Project will not generate any significant conflicts with agricultural practices on surrounding lands. As support for this conclusion, the Board relies upon the results of Applicant's agricultural survey. See Table 1, Appendix M of the Applications. The Board finds that Applicant's survey identified 9 parcels with low-intensive, small-scale agricultural activities (limited to livestock grazing, greenhouses, and private gardens), within one mile of the Property. *Id.* None of these activities appeared to be for commercial purposes. *Id.* In short, the Board finds that only isolated, small-scale agricultural practices are occurring on surrounding lands.

Further, as explained above, the Board finds, based upon the testimony of various Project consultants, and subject to adoption and implementation of various minimization measures, there will be no significant conflicts between the Project and allowable uses, including farm uses, within the Impact Area.

The Board finds that, due to the limited nature and small scale of existing, non-commercial, agricultural practices, the relative lack of proximity to the mining operation, and the various measures that will minimize Project conflicts to a level that is insignificant, the Project will not force a significant change in or significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use. Therefore, there will be no conflicts between the Project and agricultural practices.

Although Edward Brett testified that he operates a nursery on his property within the Impact Area, and Joann Brett testified that she has an organic garden on her property within the Impact Area, the Board finds that such testimony was not supported by any specific evidence in sufficient detail to identify "accepted farm practices" that must be considered under ORS 215.296. See letters from the Bretts (Exhibit MM). Specifically, the Board finds that a nursery license does not constitute substantial evidence identifying "accepted farm practices." Furthermore, the Board finds that the Bretts did not contend that the Project would force a significant change in or significantly increase the cost of accepted farm or forest practices on their property. *Id.* Additionally, the Board finds that organic farming is not properly viewed as either a "farm use" or an "accepted farm practice." *Dierking v. Clackamas County*, 38 Or LUBA 106 (2000) (so holding). Moreover, although William and Elizabeth Corcoran testified that they have a business plan for a proposed winery on their property within the Impact Area and currently operate an agricultural business including a vineyard, fruit trees, berry field, vegetables, bee hives, timber and Christmas trees, the Board finds that such testimony was not supported by any specific evidence in sufficient detail to identify "accepted farm practices" under ORS 215.296. See letters from the Corcorans (Exhibits YYY, ZZZ and GGGG). In addition, the Board finds that the Corcorans did not contend that the Project would force a significant change in or significantly increase the cost of accepted farm or forest practices on their property. *Id.*

Therefore, the Board finds that a reasonable person would rely upon the agricultural survey and the testimony and evidence of various Project consultants, as described herein, to support the

conclusion that the Project will not generate any significant conflicts with agricultural practices on surrounding lands.

MEASURES TO MINIMIZE CONFLICTS:

Because there are no identified conflicts with agricultural practices, the Board finds that it is not required to identify measures that would minimize such conflicts.

**OAR 660-023-0180 (5)(b) The local government shall determine existing or approved land uses within the impact area that will be adversely affected by proposed mining operations and shall specify the predicted conflicts. For purposes of this section, "approved land uses" are dwellings allowed by a residential zone on existing platted lots and other uses for which conditional or final approvals have been granted by the local government. For determination of conflicts from the proposed mining of a significant aggregate resource site, the local government shall limit its consideration to the following: . . .**

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

The Board finds that there are no other conflicts for which consideration is necessary. The Board finds that the County has adopted Ordinance 2006-002, which incorporates OAR 660-023-0180 and DOGAMI requirements with minor language changes. Therefore, the Board finds that the County does not have any ordinances that supersede DOGAMI regulations pursuant to ORS 517.780.

**OAR 660-023-0180(5)(d) The local government shall determine any significant conflicts identified under the requirements of subsection (c) of this section that cannot be minimized. Based on these conflicts only, local governments 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.**

For the reasons explained in response to subsections (3) and (4) above, the proposed conditions of approval will minimize all identified conflicts. Therefore, the Board does not need to conduct an analysis of the ESEE consequences of the mine.

**OAR 660-023-0180 (5)(e) Where mining is allowed, the plan and implementing ordinances shall be amended to allow such mining. Any required measures to minimize conflicts,**

including special conditions and procedures regulating mining, shall be clear and objective. Additional land use review (e.g., site plan review) if required by the local government, shall not exceed the minimum review necessary to assure compliance with these requirements and shall not provide opportunities to deny mining for reasons unrelated to these requirements, or to attach additional approval requirements, except with regard to mining or processing activities:

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

(B) Not requested in the PAPA application; or

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

The Board finds that its approval of the Project complies with this subsection. First, the Board is rendering its final decision of approval by signing these Findings of Fact and Conclusions of Law to: (1) designate the Property as a significant Goal 5 mineral and aggregate resource in the County Comprehensive Plan text and map relating to the County's inventory of significant Goal 5 resources; and (2) apply the Mineral and Aggregate Resource Zone (MARZ) designation to the Property. Second, the Board finds that its conditions of approval are clear and objective. As support for this conclusion, the Board finds that the Staff Report (Exhibit 1) and the Remand Staff Report (Exhibit 1) included most of the final conditions, and no party contended that these conditions were not clear and objective. Third, the Board finds that its decision also approves the Site Plan for the Project, which is consistent with the approvals for the PAPA Application and the Comprehensive Plan Amendment and Zone Change Application. Further, the Board finds that there are no additional land use reviews required for the Project.

**OAR 660-023-0180 (5)(f) Where mining is allowed, the local government shall determine the post-mining use and provide for this use in the comprehensive plan and land use regulations. For significant aggregate sites on Class I, II and Unique farmland, local governments shall adopt plan and land use regulations to limit post-mining use to farm uses under ORS 215.203, uses listed in ORS 215.213(1) or 215.283(1), and fish and wildlife habitat uses, including wetland mitigation banking. Local governments shall coordinate with DOGAMI regarding the regulation and reclamation of mineral and aggregate sites, except where exempt under ORS 517.580.**

The Board finds that the Project is not located on Class I, II, or Unique farmland. See Appendix A of the Applications. Therefore, the Board is not required to limit post-mining uses to farm uses under ORS 215.203, uses listed in ORS 215.213(1) or ORS 215.283(1), or fish and wildlife habitat uses.

Further, the Board finds that the Applicant has proposed, and the Board determines, that post-mining uses of the Property are those allowed as of right and conditionally under a current map designation or such uses as may be allowed under future alternative designation, if allowed by law.

Finally, the Board finds that the Applicant has included a conceptual reclamation plan with the Applications. See Appendix L, Plate 4 of the Applications. The Applicant has testified that it has submitted this plan to DOGAMI for approval.

The Board finds that the Applications satisfy the requirements of this subsection.

**OAR 660-023-0180 (5)(g) Local governments shall allow a currently approved aggregate processing operation at an existing site to process material from a new or expansion site without requiring a reauthorization of the existing processing operation unless limits on such processing were established at the time it was approved by the local government.**

The Board finds that this section is not applicable because the Project is not a currently approved aggregate processing operation at an existing site.

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

Pursuant to this section, the local government shall determine the ESEE consequences of either allowing, limiting, or preventing new conflicting uses within the impact area of a significant mineral and aggregate site. Local governments shall reach this decision by following the standard ESEE process, 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.

As discussed below, future new conflicting uses are those that are permitted outright or conditionally within the zone applied to the Applicant's proposed aggregate mine (the "Property") and in its impact area. The Property is proposed to be rezoned to the Mineral and Aggregate Resource Zone ("MARZ") within Josephine County. The properties located off-site and within its impact area are zoned Farm Resource (FR), Forest Commercial (FC), Woodlot Resource (WR), Serpentine (S), and Rural Residential (RR-5).

**(A) Identify Conflicting Uses:**

The uses permitted outright, with a land use review, and conditionally in the MARZ include the following:

1. Agriculture, farming, and related farm use;
2. Conservation and management of fish and wildlife resources;
3. Conservation and management of soil, air and water quality and watersheds;
4. Fish and wildlife habitat enhancement;
5. Forest operations or forest practices,
6. Public road and highway construction and reconstruction projects;
7. Temporary on-site structures and physical alterations to the land which are auxiliary to and used during the term of a particular forest operation or practice;
8. Wetlands, the creation of, restoration of or enhancement.
9. Exploration for mineral and aggregate resources;
10. Mining and processing of aggregate resources;
11. Private hunting and fishing operations without any lodging accommodations;
12. Temporary, portable facilities for the primary processing of forest products;
13. Uninhabitable structures accessory to fish and wildlife enhancement;
14. Water intake facilities, canals and distribution lines for farm irrigation and ponds;
15. Caretaker or night watchman's manufactured dwelling when used in conjunction with one of the uses listed in this section;
16. Cement and asphalt batching, rock processing and crushing;
17. Dog kennels;
18. Home occupation;
19. Log scaling and weight stations;
20. Permanent facility for the primary processing of forest products;
21. Personal use landing strips used in conjunction with a use permitted in this section;
22. Propagation, cultivation, maintenance and harvesting of aquatic species;

23. Public and private utilities;
24. Solid waste disposal at a qualifying site; and
25. Mining and processing of mineral resources.

The uses permitted outright, with a land use review, and conditionally in the FR zone include the following:

1. Agriculture, farming and farm use;
2. Temporary detours of public roads and highways;
3. Onsite filming;
4. Forest product propagation or harvesting;
5. Reconstruction or modification of public roads and highways;
6. Wetlands;
7. Accessory buildings;
8. Replacement dwelling for a dwelling listed on the National Register of Historic Places;
9. Alteration, restoration or replacement of a lawfully established dwelling;
10. Irrigation canals, delivery lines, and structures and operational facilities associated with such district;
11. Development within roads and highways;
12. Signs;
13. Utility facility service lines and accessory facilities or structures;
14. Application of reclaimed water, agricultural or industrial process water or biosolids for agricultural, horticultural, or silvicultural production, or for irrigation in connection with an allowed use;
15. Bottling water;
16. Churches;
17. Dwellings in conjunction with farm use;



18. Accessory farm dwelling;
19. Relative farm help dwelling;
20. Farm crop processing facility;
21. Farms stands;
22. Fire service facilities providing rural fire protection services;
23. Geothermal resource exploration and production;
24. Greyhound kenneling, breeding and training for racing;
25. Mineral exploration;
26. Model aircraft site used for takeoff and landing;
27. Residential home or facility in an existing dwelling;
28. Schools;
29. Solid waste disposal site;
30. Utility facilities necessary for public service;
31. Winery;
32. Personal use airports and helicopter pads;
33. Animal shelter expansion or replacement of existing shelter;
34. Propagation, cultivation, maintenance and harvesting of aquatic or insect species;
35. Armed forces reserve center;
36. Commercial activities in conjunction with farm uses;
37. Community centers owned by government agency or nonprofit organization;
38. Composting facilities;
39. County fairgrounds activities or expansion;
40. Destination resort;

41. Dog kennels;
42. Firearms training facility;
43. Forest products processing facility;
44. Geothermal resource mining and processing;
45. Golf courses;
46. Home occupation business;
47. Mass gatherings;
48. Mining, crushing, stockpiling, and processing of aggregate;
49. Living history museum;
50. Private or public parks and playgrounds, hunting and fishing preserves, and campgrounds;
51. Improvement of road and highway facilities;
52. Room and board arrangements for up to five (5) unrelated persons in existing residences;
53. Solid waste disposal site;
54. Towers for transmitting signals;
55. Utility facilities for the purpose of generating power for public use by sale;
56. Water extraction and bottling;
57. Wildlife habitat conservation and management plan; and
58. Medical hardship dwelling.

The uses permitted outright, with a land use review, and conditionally in the FC and WR zones include the following:

1. Forest operations or forest practices;
2. Temporary on-site forest operation auxiliary structures;
3. Physical alterations to the land auxiliary to forest practices;
4. Caretaker residences for public parks and public fish hatcheries;

5. Conservation of soil, air and water quality and to provide for wildlife and fisheries resources;
6. Destination resorts;
7. Geothermal, gas, oil and other associated hydrocarbons exploration;
8. Farm use;
9. Fish and wildlife enhancement structures;
10. Forest labor temporary camps;
11. Primary processing forest products;
12. Private hunting and fishing operations;
13. Mineral and aggregate resources exploration;
14. Solid waste disposal site;
15. Towers and fire stations for forest fire protection;
16. Utility distribution lines;
17. Water intake facilities, canals and distribution lines for farm irrigation and ponds;
18. Road widening;
19. Alteration, restoration or replacement of a lawfully established dwelling;
20. Airport expansions;
21. Asphalt and concrete batch plants accessory to temporary highway projects;
22. Cemeteries;
23. Communication facilities for television, microwave and radio facilities;
24. New electric transmission lines;
25. Fire stations for rural fire protection;
26. Firearms training facility;
27. Private temporary fishing accommodations;

28. Forest management research and experimentation facilities;
29. Home occupations;
30. Private hunting operations;
31. Log scaling and weigh stations;
32. Logging equipment repair and storage;
33. Mass gatherings;
34. Mining and processing of oil, gas, or other subsurface resources;
35. Navigation and aviation aids;
36. Private and public parks, and campgrounds;
37. Public road and highway projects and transportation facilities and improvements;
38. Reservoirs and water impoundments;
39. Utility facilities for the purpose of generating power;
40. Water intake facilities, related treatment facilities, pumping stations, and distribution lines;
41. Youth camps; and
42. Medical hardship dwelling.

The uses permitted outright, with a land use review, and conditionally in the S zone include the following:

1. Cement and asphalt batching, rock processing and crushing;
2. Exploration, mining and processing of aggregate and other mineral resources or other subsurface resources;
3. Family day care dwelling;
4. Farm use;
5. Forest management;
6. Log scaling and log storage;

7. Public road and highway construction and reconstruction projects;
8. Recycling centers;
9. Residential care facility or home;
10. Resource recovery facilities;
11. Sewage disposal plants, pumping or treatment facilities, water storage reservoirs and similar public facilities;
12. Sewage transfer sites;
13. Signs;
14. Single-family dwelling or manufactured dwelling;
15. Temporary facilities for the primary processing of forest products produced on the property;
16. Utility or communication facilities necessary for public services;
17. Waste transfer centers;
18. Destination resort;
19. Fire attack landing strips for airplanes and helicopter pads, emergency protection facilities; fire towers, public work yards, and temporary logging labor camps;
20. Home occupations;
21. Hunting and fishing preserves, archery, rifle, and pistol target ranges;
22. Open, non-commercial storage of up to 4 motor vehicles;
23. Recreation sites, including parks, campgrounds and conference grounds;
24. Research and interpretive facilities related to the preservation of unique natural conditions or communities and the conservation and management of wildlife resources;
25. Mass gathering;
26. Medical hardship dwelling; and
27. Temporary storage of an unoccupied manufactured dwelling.

The uses permitted outright, with a land use review, and conditionally in the RR-5 zone include the following:

1. Accessory buildings;
2. Agriculture, farming and farm use;
3. Family day care dwelling;
4. Farm and forest products stands;
5. Forest management, production and harvesting of timber resources;
6. Public road and highway construction and reconstruction projects;
7. Residential care home or facility;
8. Single-family dwelling or manufactured dwelling;
9. Single-family dwelling for a farm worker and the farm worker's immediate family;
10. Boat landing and docks;
11. Campgrounds;
12. Cement and asphalt batching, rock processing and crushing;
13. Cemeteries;
14. Churches;
15. Destination resort;
16. Exploration, mining and processing of aggregate and other mineral resources;
17. Home occupations;
18. Indoor animal husbandry;
19. Kennels;
20. Parks, playgrounds and community centers;
21. Public or private schools;
22. Public facilities;
23. Real estate tract sales office;

24. Recreational resort;
25. Residential dormitories or housing in conjunction with public or private schools;
26. Rodeo grounds and golf courses;
27. Sanitary landfills, and non-hazardous waste disposal site;
28. Signs;
29. Storage open for up to 4 motor vehicles for non-commercial purposes;
30. Utility and communication facilities;
31. Temporary mass gathering;
32. Medical hardship dwelling; and
33. Temporary storage of an unoccupied manufactured dwelling.

**(B) Determine the Impact Area:**

A local government shall determine an impact area for each significant resource site. The Board has already determined that the impact area for the significant mineral and aggregate resource site is limited to 1,500 feet from the boundaries of the mining area. See Figure 2 of the Applications. As support for this conclusion, see the findings in response to OAR 660-023-180(5)(a), above.

Therefore, the Board finds that it is required to conduct an analysis of the ESEE consequences of the future conflicting uses listed above that are limited to the impact area described above.

Based upon the above-listed future conflicting uses only, the Board finds that the ESEE consequences of allowing, limiting, or preventing the future conflicting uses are as follows:

**Economic:**

Allowing Conflicting Uses: The Board finds that the economic consequences of allowing the full range of future conflicting uses are myriad and positive. For example, farming has, and will continue to, contribute significantly to the economy in the region. Furthermore, private road and highway construction projects, as well as the siting of public and private utilities, will provide direct economic impacts by creating jobs and providing necessary infrastructure for commerce.

The Board finds that there are no negative economic consequences to allowing the full range of future conflicting uses.

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Preventing Conflicting Uses: The Board finds that if the County does not allow future conflicting uses, the County will not reap any of the economic benefits associated with such uses as described above.

The Board finds that there are no identifiable positive economic consequences to preventing all future conflicting uses.

Limiting Conflicting Uses: The Board finds there are no identifiable positive economic consequences of limiting future conflicting uses.

The Board finds that the negative economic consequences of limiting future conflicting uses are the loss of at least a portion of the positive economic consequences of allowing them.

**Social:**

Allowing Conflicting Uses: The Board finds that the positive social consequences of allowing future conflicting uses include: (1) the positive social esteem for the workers employed at such uses; (2) the positive social esteem for the owners of the properties establishing such uses; (3) the social benefits associated with contributing to the overall good, such as with conservation of natural resources; and (4) the social benefits of using less fuel and traveling less by utilizing local facilities rather than traveling to other counties for such facilities.

The Board finds that there are no identifiable negative social consequences of allowing future conflicting uses.

Preventing Conflicting Uses: The Board finds that if the County does not allow future conflicting uses, the County will not reap any of the social benefits associated with such uses as described above.

Limiting Conflicting Uses: The Board finds that limiting future conflicting uses will limit the positive social consequences described above. The Board finds that the degree to which these consequences are limited will be directly tied to the degree that the conflicting uses, themselves, are limited.

**Environmental:**

Allowing Conflicting Uses: The Board finds that there are positive environmental consequences of allowing some future conflicting uses. Allowing certain future conflicting uses would result in conservation and management of fish and wildlife resources; soil, air and water quality and watersheds; fish and wildlife habitat enhancement; and wetlands.

The Board also finds that there are negative environmental consequences of allowing some future conflicting uses, such as an increased carbon footprint, utilization of natural resources, and air, noise and light pollution.



Therefore, the Board finds that the environmental consequences of allowing conflicting uses are neutral.

Preventing Conflicting Uses: For the reasons stated above, the Board finds that the environmental consequences of not allowing conflicting uses are neutral. The Board reaches this conclusion because, although not allowing conflicting uses will prevent all new development, it will also preclude all of the positive consequences of allowing certain conflicting uses, as noted above.

Limiting Conflicting Uses: The Board finds that the environmental consequences of limiting conflicting uses are also neutral. While limiting conflicting uses may protect some of the environmental consequences of development, it will also limit the positive consequences flowing from future conflicting uses.

#### **Energy:**

Allowing Conflicting Uses: The Board finds that the energy consequences of allowing some conflicting uses are positive. For example, uses such as road and highway construction or reconstruction will facilitate completion of many needed transportation improvements, which will, in turn, provide greater capacity and smoother surfaces. As a result, vehicles on roads throughout the region will be able to consume less fuel because they will spend less time idling in traffic and/or confronting substandard road conditions. Furthermore, the Board finds that the energy consequences of allowing conflicting uses are also positive because the Property is proximate to the I-5 corridor, as well as proximate to Grants Pass and other small cities, all locations where there is a significant amount of growth and demand for goods like farm goods and forest products. Locating future conflicting uses near these markets will reduce the distance the goods must travel, resulting in lower fuel costs.

The Board also finds that the Property's proximity to major transportation corridors, such as I-5, also reduces fuel costs and energy impacts compared to more remote locations.

The Board also finds that the energy consequences of allowing some conflicting uses are negative, in that some conflicting uses will result in increased energy impacts, such as destination resorts and schools.

Therefore, the Board finds that the energy consequences of allowing future conflicting uses is neutral.

Preventing Conflicting Uses: The Board finds that the positive energy consequences of not allowing future conflicting uses are that there will be no development or distribution of goods and, thus, no related consumption of fuel.

The Board finds that the negative energy consequences of not allowing future conflicting uses are that the region would not reap any of the positive energy consequences of allowing them.

Therefore, the Board finds that the energy consequences of preventing future conflicting uses is neutral.

Limiting Conflicting Uses: The Board finds that limiting conflicting uses will limit the positive and negative energy consequences described above. The Board finds that the degree to which these consequences are limited will be directly tied to the degree that the conflicting uses, themselves, are limited.

Having identified these ESEE consequences, the Board must weigh them and develop a program to achieve Goal 5.

Based on the ESEE analysis provided above, the Board determines that future conflicting uses should be allowed fully, notwithstanding the possible impacts on the resource site. The Board finds that none of the possible future conflicting uses will have a substantially negative impact on the aggregate mining site.

Based on the Applicant's testimony, the Board finds that the probable duration of the mining operation is 20 - 40 years, depending upon market demand. As explained in its earlier findings, the Board finds that the post-mining uses of the Property are those allowed as of right and conditionally under a current map designation or such other uses as may be allowed under future alternative designation, or allowed by law. Thus, the Board finds that the mining operation is of limited duration, and the proposed post-mining use of the Property will be consistent with the law and surrounding uses.

Based upon the foregoing analysis, the Board finds that, on balance, the positive economic, social, environmental, and energy consequences associated with allowing future conflicting uses outweigh any negative consequences both in number and degree. For these reasons, the Board finds that the ESEE consequences support allowing future conflicting uses on the Property within the impact area.

**OAR 660-023-0180(8) In order to determine whether information in a PAPA submittal concerning an aggregate site is adequate, local government shall follow the requirements of this section rather than OAR 660-023-0030(3). An application for approval of an aggregate site following sections (4) and (6) of this rule shall be adequate if it provides sufficient information to determine whether the requirements in those sections are satisfied. An application for a PAPA concerning a significant aggregate site following sections (3) and (5) of this rule shall be adequate if it includes:**

**(a) Information regarding quantity, quality, and location sufficient to determine whether the standards and conditions in section (3) of this rule are satisfied;**

For the reasons set forth at pages 42-47 of the Applications narrative and Appendix A of the Applications, which reasons are incorporated herein by reference, the Board finds that the PAPA Application includes the information required by this subsection. Further, for the reasons set forth above in response to OAR 660-023-0180(3), the Board denies the contentions from

opponents that the Applicant provided incomplete information regarding quantity, quality, and location of the aggregate material in the deposit.

**(b) A conceptual site reclamation plan;**

The PAPA Application includes a conceptual reclamation plan at Appendix L, Plate 4 of the Applications. The Board finds that the PAPA Application includes the information required by this subsection.

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

For the reasons set forth at pages 56-57 of the Applications narrative and the TIA at Appendix G of the Applications, which reasons are incorporated herein by reference, the Board finds that the PAPA Application includes the information required by this subsection. Further, for the reasons set forth above in response to OAR 660-023-0180(5)(b)(B), the Board denies the contentions from opponents that the Applicant provided incomplete information regarding traffic impacts.

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

For the reasons set forth at page 48-63 of the Applications narrative, which reasons are incorporated herein by reference, the Board finds that the PAPA Application includes the information required by this subsection. As additional findings in response to this subsection, the Board incorporates by reference the findings and conditions set forth above in response to OAR 660-023-0180(5)(c), which explain the Applicant's proposals to minimize conflicts with existing uses within the Impact Area.

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

For the reasons set forth at pages 12-15 of the Applications narrative and the phasing and mining plan presented in Plates 3 and 4 in Appendix L of the Applications, which reasons are incorporated herein by reference, the Board finds that the Applications include the information required by this subsection.

**OAR 660-023-0180(9) Local governments shall amend the comprehensive plan and land use regulations to include procedures and requirements consistent with this rule for the consideration of PAPAs concerning aggregate resources. Until such local regulations are adopted, the procedures and requirements of this rule shall be directly applied to local government consideration of a PAPA concerning mining authorization, unless the local plan contains specific criteria regarding the consideration of a PAPA proposing to add a site to the list of significant aggregate sites, provided:**

**(a) Such regulations were acknowledged subsequent to 1989; and**

(b) Such regulations shall be amended to conform to the requirements of this rule at the next scheduled periodic review after September 1, 1996, except as provided under OAR 660-023-0250(7).

The Board finds that the County has amended its comprehensive plan and land use regulations under County Ordinance 2006-002 to adopt the procedures and requirements of OAR 660-023-0180, including specific criteria regarding the consideration of a PAPA concerning mining authorization. Thus, in accordance with this subsection, the Board finds that the County is required to directly apply both the substantive requirements and procedures of County Ordinance 2006-002 that are consistent with OAR 660-023-0180, and the requirements and procedures of OAR 660-023-0180, when evaluating a PAPA concerning mining authorization. *See also Morse Bros., Inc. v. Columbia County*, 37 Or LUBA 85 (1999), *aff'd* 165 Or App 512 (2000); *Eugene Sand & Gravel, Inc. v. Lane County*, 44 Or LUBA 50, 96 (2003), *aff'd* 189 Or App 21 (2003) ("The Goal 5 rule for aggregate establishes a comprehensive regulatory scheme that is intended to supersede local review standards for aggregate.")

The Board further finds that, in accordance with this subsection and the referenced case law, only the provisions of County Ordinance 2006-002 that are consistent with OAR 660-023-0180 and the provisions of OAR 660-023-0180, themselves, are applicable to the PAPA and Zone Change Applications.

The Board finds that, subject to these findings, the County has properly applied the relevant provisions of County Ordinance 2006-002 and OAR 660-023-0180 to the PAPA Application and the Comprehensive Plan Amendment and Zone Change Application.

### **III. RLDC ARTICLE 66.1 - MINERAL & AGGREGATE RESOURCE ZONE (MARZ)**

The Board finds that the PAPA Application and the Comprehensive Plan Amendment and Zone Change Application satisfy the applicable approval criteria set forth in the RLDC as follows:  
**66.130 - Permitted Uses**

**The following uses, with accessory uses, shall be permitted using Ministerial Review Procedures (Article 22), unless Site Plan Review is required (Article 42), in which case uses shall be permitted using Quasi-judicial Review Procedures (Article 22). Uses shall also meet the applicable development standards listed in Section 66.180. In all cases except farm uses, a Development Permit shall be required for final approval (Article 41). . . .**

**B. Mining and processing of mineral and aggregate resources subject to the conditions under which mining is permitted in the MARZ approval, or the Special Property Development Standards contained in Article 91.030 (*Special Property Development Standards for Aggregate Operations*).**

The Board finds that all of the Applicant's proposed uses (mining and processing and accessory uses) are permitted within the MARZ.

#### 66.150 - Placing Land Within the Mineral and Aggregate Resource Zone

Only lands that are determined to be a significant mineral and aggregate site (including on-site buffer areas in the control of the mine operator or owner), and which have been authorized for mining pursuant to OAR 660-023-0180 (*Mineral and Aggregate Resources*), shall be placed within the MARZ. . . . An application to designate lands within the MARZ shall meet the following requirements:

A. **Application Requirements.** An application to amend the comprehensive plan and zone maps shall be submitted with the required fees. The application content shall comply with Article 46.030 (*Plan Amendment Application Requirements*) and with OAR 660-023-0180 (*Post-Acknowledgment Plan Amendment Application Requirements*). The application shall demonstrate compliance with criteria contained in Article 46.040 (*Plan Amendment Review Criteria*) and OAR 660-023-0180 (*Definition of Significant Site; Impact Area Conflict Minimization/Resolution; Limitation of New Conflicting Uses*).

The County deemed the Applications complete on February 28, 2014. The Board finds that the content of the Applications complied with Article 46.030 and OAR 660-023-0180. Additionally, for the reasons explained above in response to the criteria of OAR 660-023-0180, which reasons are incorporated by reference herein, the Board finds that the Applicant has demonstrated compliance with OAR 660-023-0180. Further, the Board finds, for the reasons set forth below under the heading "Article 46.040 - Plan Amendment Review Criteria," which reasons are incorporated herein by reference, Applicant has demonstrated compliance with the criteria contained in Article 46.040.

#### Article 46.040 - Plan Amendment Review Criteria

A. **Amendments to a plan and zone map shall demonstrate compliance with all applicable statewide and county goals and policies.**

For the reasons explained above in Section I, "Statewide Planning Goals," which reasons are incorporated herein by reference, the Board finds that the Applications demonstrate compliance with all applicable statewide planning goals. Further, the Board finds that the Applications demonstrate compliance with all applicable county goals and policies as follows:

#### County Goals and Policies

**Goal 1 – To preserve and maintain agricultural lands and the rural character of Josephine County.**

The Board finds that the Site is in a rural location within the county. Most of the area is forested with scattered homes in a rural setting. See Appendix M of Applications. Most tax lots in the vicinity of the Site are zoned either Forest Commercial/Wood Lot Resource or Rural Residential – 5 acre minimum. *Id.* Accordingly, the Board finds that no land in the immediate vicinity of the Site is zoned Agricultural (Exclusive Farm/Farm Resource – EF/FR). Therefore, the Board finds that no agricultural lands will be impacted by the project

With regard to maintenance of the rural character of Josephine County, the Board finds that aggregate operations, approved and authorized under RLDC Article 66 (MARZ) and Goal 5, are allowed uses under the RLDC. Further, the Board notes that enactment of RLDC Article 66 through Ordinance No. 2006-002 on March 8, 2006 expressly included the County's basic policy to effectively address any conflict between aggregate operations and the quality of rural residential uses and other natural resources through the County's permitting process, which is consistent with the requirements of OAR 660-023-0180 and which honor and protect the County's rural environment. See Aggregate Resource Policy E, p. 4 of Ordinance No. 2006-002. Therefore, for the reasons explained herein in response to OAR 660-023-0180 and RLDC Article 66, the Board finds that since the Project meets the criteria of OAR 660-023-0180 and RLDC Article 66, the Project also meets this Goal.

**Goal 2 – To conserve and develop the forest lands of Josephine County.**

As presented in Goal 1, the land in the vicinity of the Site, as well as on the Site is primarily forested. The Board finds that the forest in the vicinity will not be impacted by the Project. Scattered trees exist on the eastern and southeastern portions of the site. See Appendix J, Existing Conditions - Site Map. Much of the Site's existing vegetation will be preserved, and no mining will take place on the steep mountainsides north of Grave Creek or south of Cell 6 in order to protect the forest for future uses. *Id.* at BMP & Operations Site Map; see also Plate 2 - Phasing and Mining Plan of Applications. Therefore, the Board finds that where there is timber on the Site's mountainsides, the land will be preserved for future forestry uses. Finally, the Board finds that mining and processing of aggregate resources is permitted on forest lands under OAR 660-006-0025(4)(g). Therefore, the Board finds that approval of the Applications will allow for appropriate development of forest lands in the County.

**Goal 3 – Provide land allocations to encourage a wide variety of safe and affordable housing.**

The Site is currently under FC/WR and RR-5 zoning. This zoning allows for minimum housing development. The Applications request a rezone to MARZ for mining purposes. The Board finds that the current and future zoning for this Site do not lend themselves to future housing developments. Therefore, the Board finds that this Goal is inapplicable.

**Goal 4 – Plan and develop facilities and services that are needed, and can be afforded, by the residents of the county.**

This Goal directs the County to provide for public facilities and services. Specifically, the Goal addresses encouragement for future public water supply systems, development of a transportation master plan, airport facilities, educational services as well as recreational opportunities on public lands. The Board finds that the proposed mine does not require planning and development for any additional facilities and services. See Applications narrative, p. 41. Therefore, the Board finds that the Applications are consistent with this Goal.

**Goal 5 – To diversify, expand and stabilize economic opportunities for the betterment of the county.**

This Goal encourages protection of land to provide for development of diversified commercial

and industrial bases. The Board finds that mining on this Site provides for long term employment for a skilled work force. *See* Applications narrative, p. 19. Additionally, the mining will generate products to improve the infrastructure (roads, bridges, water systems, etc.) and future housing (concrete, sand, gravels, and asphalt) needs of the County. *Id.* The Board finds that these Applications meet the criteria of this Goal.

**Goal 6 – Prevent loss of life and property due to natural and man-made hazards.**

The mining on the Site will stay above the 100 year floodplain, reducing any potential for flood issues on the Site. *See Appendix K* of Applications. Trees will be thinned and removed in places where mining will take place, reducing the potential for fire on the Site. *See* Applications narrative, p. 19. The reclamation plan includes a series of ponds and lakes that can be utilized for wildfire control, as well as prevention of loss of life if there is a fire in the valley. *See Appendix L* of Applications. The Applicant plans to make these water features available to appropriate fire fighters in case of fire emergencies. *Id.* No known landslides are mapped on the site, as the property is a broad valley with treed mountainsides to the north and south. *See* Applications narrative, p. 19. No mining activity will take place on the mountainsides, which in turn reduces the potential for any landsliding. *See Plate 2 - Phasing and Mining Plan* of Applications. The Board finds that by mining in the areas planned, no natural or man-made hazards are anticipated.

**Goal 7 – Preserve valuable limited resources, unique natural areas and historic features,**

**Policies 1.A through 1.E**

County Goal 7 states that “Josephine County is especially rich in natural and cultural resources that are important to the vitality of the local economy and the general livability of rural areas.” These resources include mineral and aggregate deposits, among others. “It is therefore the purpose of this goal to develop policies, supported by implementing land use regulations that will protect and enhance the county’s natural and cultural resources in balance with individual property rights and competing land uses.” *Italicized* sections below are quoted from Ordinance 2006-002 regarding aggregate resources.

**Policy 1 - Aggregate Resource Policies**

*A. ADMINISTRATIVE RULE IMPLEMENTATION. The policies contained within this goal implement the requirements for the mining of significant mineral and aggregate sites as authorized by Oregon Administrative Rule (OAR), Chapter 660, Division 23, entitled, Procedures and Requirements for Complying with Statewide Goal 5, except as modified under Collaborative Problem Solving Authority as described in subsection C below.*

*B. BASE INFORMATION. This section describes the documentation upon which the policies were based.*

*C. COLLABORATIVE REGIONAL PROBLEM SOLVING AUTHORITY. The standards and procedures for an Impact Area Agreement described within these policies and implemented in the Rural Land Development Code (code) are derived from Collaborative Regional Problem Solving Authority pursuant to ORS 197.656.*

D. **DEFINITIONS.** *This section presents definitions for the county policies.*

E. **BASIC MINERAL AND AGGREGATE POLICY.** *This section acknowledges the importance of these resources to the economy of the county and the need to have a stable and adequate supply. It is also known that mining and hauling frequently involve significant impacts on nearby existing and future land uses and public facilities. These impacts may adversely affect the quality of rural residential uses and other natural resources. It is the basic policy of Josephine County to effectively address these conflicts during the permitting of new and expanded significant mineral and aggregate mining in ways that are consistent with the requirements of OAR 660-023-0180, and which also honor and protect the county's exceptional rural environment.*

To apply this policy, the Ordinance states a Site under consideration must meet Goal 5 requirements. Those sites that meet those requirements will be placed in a Mineral and Aggregate Resource Zone (MARZ). In addition, those sites must address Operating Standards (Article 91 of the RLDC) as well as attempt to secure an Impact Area Agreement (IAA) for the site.

The Goal cites the importance of special features (archaeological or historic sites) and limited resources (mineral deposits and sensitive wildlife habitat) and the fact that these may be endangered unless protected from the encroachment of incompatible land uses.

The Board finds that there are no archaeological or historic sites on the Site. See Appendix I of Applications. Additionally, the Board finds that there are significant mineral resources (sand and gravel) on the site. See Appendix A of Applications. Finally, the Board finds that although there is sensitive wildlife habitat on the Site, the impacts to such habitat will be minimized to a level that is insignificant through the implementation of mitigating measures. See Appendix D of Applications and the discussion in response to OAR 660-023-0180(5), above. Although there are Class 1 and 2 streams crossing the site, the Board finds that the vegetation associated with these streams will be protected through minimum 50 foot setbacks, in accordance with this Goal. See Appendix E of Applications. The Board finds that through this application process and Comprehensive Plan Amendment and Zone Change, the "limited resources" of sand and gravel are being protected from encroachment, and the impact area for this Site has been analyzed and will allow for protection to the mining Site. Therefore, the Board finds that these Applications meet this Goal and associated policies.

### **Policy 3 – Historic Sites and Places.**

*The Board of County Commissioners shall support the identification of historic sites in Josephine County and encourage the preservation of historic artifacts and ensure that incompatible uses are not established adjacent to sites identified in the National Register of Historic Sites and Places. A historic sites review committee shall be established to determine conflicts with primary historic resources and requests for alteration.*

The Board finds that under Goal 7, Policy 3, the Board shall encourage the preservation of historic artifacts and ensure that incompatible uses are not established adjacent to sites identified in the National Register of Historic Sites and places. The Board finds it is undisputed that the



proposed mining site is not adjacent to the Covered Bridge or grave site. The Board finds that the only part of the project that is adjacent to the Covered Bridge and grave site is the haul route, which consists of a public road that was originally established, and is currently used, for the conveyance of natural resources in the region and was in existence long before the project was proposed.

The Board finds that Goal 7, Policy 3 is concerned with the preservation of the Covered Bridge and grave site themselves. As the haul route will not cross the Covered Bridge or grave site, the Board finds that the haul route will not impact the preservation of the Covered Bridge or grave site. Therefore, the Board finds that Goal 7, Policy 3 is not applicable to the use of an existing public road adjacent to a recognized historic site.

**Policy 6 – Wildlife Protection.**

*The County shall provide for wildlife protection. When a nest site or rookery is identified and when a significant activity is proposed nearby, there shall be consultation with the Oregon Department of Fish and Wildlife to mitigate impacts . . . .*

The Board finds that proposed operations will not enter the proximity of the quarter (1/4) mile protection area for Golden eagle sites until 15 to 20 years from the start of the mining operation; therefore, the Board finds that consultation with ODFW is not required. Letter from NRS dated July 17, 2014 (Exhibit IIIIII). The Board also finds that even if the Golden eagle nests are still in existence 15 to 20 years from now, NRS's recommended seasonal restriction is reasonable and adequate to assure self-compliance with state and federal ESA regulations. *Id.* The Board finds that the conditions imposed under Condition No. 39, which includes following the mitigation measures contained in the Golden Eagle Risk Assessment prepared by Northwest Resource Solutions, Inc., dated July 3, 2014, ensure compliance with this policy.

**Goal 8 – Pollution shall be controlled.**

This Goal requires the Board of County Commissioners to monitor and maintain acceptable standards to avoid air, water and noise pollution. The Board finds that these Applications present mitigation measures to protect these elements through a variety of Best Management Practices as well as requests for specific State and Federal permits/standards to protect against pollution. *See Appendices B, F, H, and J of Applications.* Technical studies associated with the site include Air Quality, Acoustical, Storm Water and Groundwater analyses to protect against pollution from the proposed mining. *Id.* The Board finds that these reports and the Applications meet this Goal.

**Goal 9 – Development and preservation of energy.**

This Goal encourages the reduction of energy use by residents of the County. Energy conservation in design of developments, use of alternative energy sources and better insulation are the policies presented. The Board finds that this goal is inapplicable to the mining and processing of aggregate resources.

Goal 10 - To depict a land use pattern to guide future uses, to implement the desires of the county and to meet the requirements of the State of Oregon.

**Policy 1.K**

- I. *MINERAL AND AGGREGATE RESOURCE ZONE (MARZ). Properties which have been designated significant mineral or aggregate resource sites, and which have been approved for mining in compliance with the requirements of Oregon Administrative Rule-660-023-0180, shall be placed in the Mineral and Aggregate Resource Zone (MARZ). Significant aggregate sites located within the Farm Zones that qualify for review using conditional use procedures shall not be placed in the MARZ.*

For the reasons explained above in response to the criteria of OAR 660-023-0180, which reasons are incorporated herein by reference, the Board finds that the Site should be designated a significant mineral and aggregate resource site and approved for mining. The Board finds that by rezoning the Site to MARZ, the site will be protected for mining, a long term land use within the area. Therefore, the Board finds that these Applications meet this Goal and policy.

**Goal 11 – The Comprehensive Plan shall be maintained, amended, and updated as necessary.**

This Goal provides the rules and procedures for maintaining, amending and updating the Comprehensive Plan. This application specifically meets the criteria for amending the Comprehensive Plan by inventorying the Site and amending the Comprehensive Plan. In accordance with Policy (2) of this Goal, the purpose of this plan amendment is to allow aggregate mining at the Site and protect the site for future mining use as well as from future sensitive uses that may impact the mining. A map showing the new protected Site is presented on Figure 2 of the Applications, in accordance with Policy (3) of this Goal. This application will be presented and reviewed by the Planning Commission and Board of County Commissioners in the public hearing process, as required by this Goal. Therefore, the Board finds that these Applications meet the criteria of this Goal.

**Goal 12 – Procedures shall be established for the planning and zoning of unincorporated communities as needed and desired by the rural residents of Josephine County.**

This Goal addresses the desire by rural residents to establish “unincorporated communities”. The Board finds that this Goal does not apply to the proposed mining Site, as there is no desire to create this type of community.

- B. **Requests involving changes for lands from a resource designation to a non-resource designation shall either comply with statewide exception criteria contained in Oregon Revised Statutes 197.732, and as implemented in Oregon Administrative Rules, Chapter 660, Division 4, or demonstrate the land is non-resource pursuant to the criteria contained in Section 46.050 below.**

The present Applications involve a request for changes from Forest Commercial/Woodlot Resource (FC/WR) and Rural Residential - 5 acre (RR-5) zones to the Mineral and Aggregate

Resources Zone (MARZ). The Board finds that since the MARZ is a resource designation and the proposed use is allowed under Goal 3, this criterion does not apply.

**C. Requests involving changes to the plan and/or zone maps shall demonstrate the land has adequate carrying capacity to support the densities and types of uses allowed by the proposed plan and zone designations. The adequacy of carrying capacity, at a minimum, shall be evaluated using the criteria listed below. The criteria are to be considered together to determine whether the geography of the land is suited to support the kind of development associated with the proposed designations. \* \* \***

- 1. The proposed density and types of uses can be supported by the facility, service and other applicable development standards contained in this code or contained in other applicable federal, state and local rules and regulations governing such densities and types of uses;**

For the reasons explained in response to Article 91 (Special Property Development Standards for Aggregate Operations) below, which reasons are incorporated herein by reference, the Board finds that the proposed density and type of use can be supported by the applicable development standards specifically for mineral and aggregate operations contained in the code, and the proposed density and use meets all applicable property development standards. Additionally, for the reasons in Section I regarding Statewide Planning Goal 12, above, which reasons are incorporated herein by reference, the Board finds that the proposed density and type of use is supported by an adequate transportation system and the Applications will not significantly affect any existing or planned transportation facilities for purposes of the Transportation Planning Rule. Finally, for the reasons explained in Section II regarding OAR 660-023-0180, above, which reasons are incorporated herein by reference, the Board finds that the proposed use complies with all applicable standards contained in Statewide Planning Goal 5 and OAR 660-023-0180.

- 2. Other physical characteristics of the land and surrounding area make the land suitable for the proposed density and types of uses, to include consideration of existing or potential hazards (flood, wildfire, erosion), the degree of slopes, the presence of wetlands, geologic formations, mineral deposits and any other similar natural or man-made conditions or circumstances;**

The topography on the Site consists of hillsides to the north, southwest and central eastern portion of the Site and a valley that trends east-west through the Site where actual mining will take place. Applications narrative, pp. 10-12. The proposed use would be situated on the Sunny Valley alluvial floor above the determined floodway and 100-year floodplain in a rural, unincorporated portion of the County. *Id.* The valley is characterized by a broad, convex alluvial terrace that separates two westerly flowing drainages. *Id.* The Site is primarily undeveloped and contains one (1) small wetland area totaling approximately 0.03 acres, which has been delineated on the southwestern portion of the Site and will not be impacted by the proposed mining operation and a very limited ephemeral ditch, which may be impacted subject to applicable state/federal authorizations. *Id.* Historically, the Site has been used for agricultural purposes, including cattle grazing. Some logging has also occurred on the Site. Surrounding uses include undeveloped land and rural residences. *Id.* Previous exploratory drilling and trenching on the subject property in the 1930's and 1980 (Payne, 1980) indicated that the gravels were deep and

the boulders large. *Id.*

Further, the Board finds that there are no identified or inventoried natural hazards in the general area of the Property. No known mapped landslides occur on the Site, and the mining plan addresses slope stability for cut-and-fill slopes. *See* Application, Appendix L.

For the reasons explained in response to the criteria in OAR 660-023-0180, above, which reasons are incorporated herein by reference, the Board finds that the aggregate resource found on the Site meets and exceeds the quality standards for base aggregate under OAR 660-023-0180, and the Site qualifies as a significant aggregate resource site under Goal 5. *See Appendix A* of Applications. Additionally, for the reasons cited and incorporated above, the Board finds that the Site contains at least 6.9 million tons of aggregate, far exceeding the quantity criteria of 500,000 tons required by OAR 660-023-0180. The Board finds that based on the subsurface work performed and presented in Appendix A, there is a significant aggregate resource on the Site.

Therefore, the Board finds that the physical characteristics of the land and surrounding area make the Site suitable for the proposed density and aggregate mining operation.

**3. The land in its natural state accommodates the proposed uses and densities, or special alterations or mitigation plans can make the land achieve the carrying capacity described under items [1] and [2] above;**

Little site preparation is required before mining begins on the Site. Applications narrative, pp. 12-15. Some trees will be removed as mining progresses across the Site. *Id.* Topsoil and overburden will be excavated to build noise mitigation barriers in the eastern portions of the Site. *Id.* Natural vegetation will remain along the Site lines to provide a visual screen. *Id.*

For the reasons above and those explained in response to conflict minimization under OAR 660-023-0180, above, which reasons are incorporated herein by reference, the Board finds that the land in its natural state and with the stated special alterations or mitigation plans can accommodate the proposed use and make the land achieve the required carrying capacity.

**4. Development pursuant to the proposed uses or densities will not significantly increase the risk from hazards to the residents of the development, the area or the general public.**

For the reasons explained in response to potential conflicts and conflicts minimization under OAR 660-023-0180, above, which reasons are incorporated herein by reference, the Board finds that the Applicant has evaluated the potential risk from hazards, such as noise, dust or other discharges, and traffic, to the impact area. The Applicant has identified potential hazards/conflicts, analyzed the potential impact of such hazards/conflicts within the defined impact area, and proposed measures to mitigate such impacts where necessary. *Id.* With implementation of the proposed mitigation measures, which the Board has imposed as conditions of approval, the Board finds that the proposed development will not significantly increase the risk from hazards to the area or the general public.

5. Features of the development will not result in future maintenance costs to the public for the infrastructure needed to serve the development and the area that are atypically higher than expenses for other developments in the same plan and zone designations (examples of infrastructure include streets, bridges, storm drain facilities, erosion and sediment control facilities, and other similar public infrastructure facilities); and

Infrastructure such as bridges, storm drainage, erosion and sediment control, and water and septic services will be private on-site facilities, which will not result in future maintenance costs to the public. See Applications narrative, pp. 31-32. The bridge over Grave Creek will be a private bridge built on the Site serving only the owner, mining operator, employees, and invitees. *Id.* Storm drainage and erosion and sediment control will be handled on-site. *Id.* An exempt domestic well on site will be used for drinking water purposes, as well as for dust suppression, toilet and nursery needs. *Id.* Flush-type toilets will use non-potable water brought into the Site. *Id.* Waste will be stored in an underground holding tank to be pumped, as necessary. *Id.* No septic or leach field system is planned. Irrigation will continue utilizing the diversion point from Grave Creek in accordance with the irrigation water rights currently on the property. *Id.*

While additional electrical service is desired for the shop area, there is current electrical service to the Site already, and there are two easements on the Site for an electrical transmission line that traverses the Site. *Id.* Therefore, the Board finds that any future maintenance costs for electrical service or for use of the public roads surrounding the Site will not be atypically higher than expenses for other developments within the MARZ.

6. Special circumstances exist at or near the site that justify increased risks, expensive or complex mitigation plans, or higher infrastructure costs to the public from the development. This criterion can be used to consider specific community needs that have arisen within the area since the existing zoning was implemented at the site. Examples of circumstances which might support the application of this criterion are . . . the location or discovery of unique natural resources . . . and any other circumstance that establishes a special need or benefit to the community that justifies increased risks and costs. This criterion shall not be used to modify the requirements of criterion [1] above.

For the reasons explained in response to the criteria of OAR 660-023-0180, which reasons are incorporated herein by reference, the Board finds that the Site is rich in sand and gravel (aggregate) resources. The Board also finds that these resources provide the foundation for base rock, which, in turn, is an essential component for many needed public road improvements. Appendix A of Applications. The Board finds that the Site will provide aggregate for future private developments as well as public needs, and that designating the Site as a significant resource and allowing the proposed use will serve the public interest and justifies any increased risks or costs associated with the development.

In summary, the Board finds that in considering the six (6) criteria discussed above together, the Site has adequate carrying capacity to support the density and type of use allowed by the proposed plan and zone designations.

**D. The density and types of uses authorized by the proposed plan and zoning designations are appropriate based on the requirements of subsection [1] or [2] below:**

**1. The change in designations at the location is consistent with the character of the surrounding area. Consistency shall be demonstrated by a detailed review of the relationship between the area covered by the proposed change in designations and the surrounding area, subject to the following rules. \* \* \* \***

The Board finds that the Applicant has conducted a detailed review of the relationship between the area proposed to be changed to the MARZ designation and the surrounding area. The detailed review studied the subject property, which is comprised of one approximately 143-acre parcel zoned Woodlot Resource (WR), an approximately 40-acre parcel also zoned WR, an approximately 14-acre parcel also zoned WR, and an approximately 12-acre parcel zoned Rural Residential 5 (RR-5). See Exhibit A-10 and A-14. The detailed review also studied the parcels adjacent to and near the subject property, which consist of large 100+-acre lots owned by the BLM and a private individual, medium-sized 40-acre lots owned by Josephine County, and smaller privately-owned lots ranging in size from 5-acre to 20-acre lots. See Josephine County online mapping system. These surrounding lands are a mix of WR, RR-5, Serpentine (S), and Forest Commercial (FC) zones. The Board finds that the dominant land use pattern is a mix of farm, forest, and residential uses. Of the approximately 200+ acres comprising the subject property, the Board finds that only about 100 acres is actually proposed to be mined. The Board also finds that the mining site is located in a valley, leaving the rest of the subject property, totaling around 100 acres, to serve as a heavily-treed hillside buffer between the mining site and adjacent properties. See Figure 1 and Plate 1 of the original application.

The Board finds that the detailed review also studied the northern Josephine County area along Grave Creek and the Sunny Valley community. See Exhibit A-10. The Board finds that the Applicant's site is located less than one-half mile southwest of the former town of Placer, Oregon. The Board finds that historic records and literature regarding the northern Josephine County and Placer area detail a mining history that goes back over 150 years. See letter from Sunny Valley Sand & Gravel, Inc. entitled, "The Mining History of Northern Josephine County," dated September 5, 2016. The Board finds that the history of the area demonstrates that significant mineral and aggregate resources were discovered in the 1800's, that mining was a large part of the economy in the area thereafter, and that the area continues to be rich in quality mineral and aggregate resources that are needed today.

The Board finds that the subject property's acreage and ownership is similar to the parcel sizes and ownership patterns in the area. With regard to zoning, the Board finds that the WR, S and FC zones all constitute resource zones, which are consistent with the proposed MARZ designation of the subject property. Furthermore, the Board finds that mining and processing of aggregate and mineral resources is allowed as a conditional use in the WR zone, which is the zoning of the parcel that the Applicant seeks to establish its mining operation. The Board also finds that the portion of the subject site that is proposed to be mined is located in a valley surrounding by a natural physical hillside buffer, which makes the property as a whole consistent with the forested character of the area.

The Board finds that there are two (2) pockets of RR-5 zoned lands located adjacent to and near the subject properties – one pocket to the north-west and one pocket to the north-east. See attached zoning map from the Josephine County mapping system. The Board finds that the RR-5 zoned property that is immediately adjacent to the north-west of the subject properties is separated from the site by Grave Creek, and the remainder of the RR-5 zoned lands to the north-west of the site are further separated from the site by Placer Road. The Board finds that the pocket of RR-5 zoned lands to the north of the subject site on the east side of the property are also separated from the site by Grave Creek and Placer Road. The Board finds that there is only one tax lot (TL 1001) to the east of the site that is not separated by Grave Creek or Placer Road; however, the Board finds that an engineered sound berm has been designed between the mining site and TL 1001. See Plate 2 of the Applications.

Finally, the Board finds that the character of the area includes significant mineral and aggregate resources, as first discovered in the 1800's. In 1975, State Geologist, Herbert Schlicker stated, "As a source of sand and gravel from deposits in the river valleys, Quaternary sediments represent one of the County's more important mineral resources." See p. 45 of the initial PAPA Application. The Board finds that this is exactly the type of resource that will be mined on the subject site. The quality and quantity of the aggregate on the subject site meets ODOT specifications, and the Board has already found that the site meets all Goal 5 criteria for a significant aggregate resource site; therefore, the Board finds that the site is worthy of the MARZ designation. Although changing the designation of the subject site to the MARZ designation may be inconsistent with the rural residential nature of some of the surrounding lands, the Board finds that such inconsistency is minor based on the detailed review of the surrounding area detailed above.

**2. Demonstrate how the introduction of inconsistent density or uses into an area is justified. This demonstration may be based upon changes in the area resulting from rezonings, new residential, commercial, industrial or resource development, the introduction or improvement of public facilities and services, changes in demographics, changes in plan inventories, and other similar circumstances. The application shall show how the proposed change in designations, in the context of the foregoing circumstances, implements applicable state and/or county goals and policies. The more the change introduces inconsistent densities and uses into an area, the greater the burden on the applicant to justify the basis for the change.**

As previously mentioned, the Board finds that although the proposed change in designations may introduce a use that is inconsistent with some of the rural residential land in the surrounding area, such change is minor given the history of the surrounding area and the majority of the uses and designations in the surrounding area. The Board finds that the introduction of the proposed mineral and aggregate resource use into the area is justified for three (3) reasons. First, the Board finds that the Site is rich in high-quality sand and gravel (aggregate) resources, which provides the foundation for base rock, which, in turn, is an essential component for many needed public road improvements. Appendix A of Applications. The Site contains an abundance of aggregate resources that far exceed the quantity threshold under OAR 660-023-0180. *Id.* Secondly, the Board finds that there is a lack of permitted sand and gravel sites in Josephine County of any magnitude, and this Site will provide needed aggregate for future private developments as well as public needs. As evidenced by records from the Oregon Department of

Geology and Mineral Industries (DOGAMI) and records from the Department of State Lands (DSL), the Board finds that the Applicant is the one and only sand and gravel aggregate site in Josephine County that has proven to meet Goal 5 standards for the location, quality, and quantity of its aggregate resource. See Exhibits A-10 and A-11.

While the Steam Beer Mine, Mahanna Quarry, and Brimstone Mine (Brimstone does not have a DOGAMI permit) received conditional use approval by Josephine County to operate, the Board finds that none of these mines have undergone the Goal 5 process to prove that the quality and quantity of their aggregate meets ODOT specifications. The Board finds this is significant because, as demonstrated in Exhibit O-30, Mr. Rubrecht from the Josephine County Public Works Department stated that the Public Works Department always uses ODOT certified rock for its projects. The Board finds that Josephine County is responsible for 570 miles of county rights-of-way, 200 bridges/structures, and encompasses a large portion of I-5, which is the only designated State Freight Highway in the county. KC letter, pp. 4-5 (Exhibit A-11). The Board finds that the County's maintenance obligations and infrastructure improvement projects all require aggregate, which could range from 10,000 tons to 100,000 tons of aggregate per year. KC letter, p. 4 (Exhibit A-11). Since there are currently no Goal 5-approved sand and gravel aggregate mines in Josephine County that are not played out or reclaimed, the Board finds that there is a dearth of quality sand and gravel aggregate to meet Public Work's needs. The Board also finds that there will be a future need for sand and gravel aggregate in anticipated improvements such as the STIP projects and the for anticipated airport improvements.

At this time, the Board would like to address opponents' contention that the ODOT standard for quality of aggregate "is not the only standard that can apply to determining the true quality of the overall resource." See Malone letter, dated September 26, 2016, p. 9. While it may be possible for other standards of quality to exist, the Board finds that Oregon State law mandates that the standard applied under Goal 5 for determining the quality of an aggregate resource is compliance with ODOT specifications. The Board finds that under Oregon State law, the Applicant has proven that its aggregate meets ODOT specifications.

Additionally, the Board relies on the letter from James DeHoog of Arctic Engineering, Ltd., dated August 31, 2016, and finds that there is a current and future need for aggregate products to meet the demand for new single-family homes and new commercial projects (such as the addition of an In-N-Out Burger, a health care facility in Northwest Grants Pass, and the Red Robin franchise in the Allen Creek area). See Arctic letter, p. 2. Based on Mr. DeHoog's professional judgment as a real estate developer, a member of the City of Grants Pass Budget Committee, and as an environmental engineer, the Board finds that there is, and will continue to be, a need for cost-effective sand and gravel aggregate products (such as what the Applicant's proposed mine will produce) within Josephine County and the surrounding area. *Id.*

Furthermore, the Board finds that while there are other rock and dredge tailing mines operating within Josephine County, there are no sand and gravel aggregate sites operating in the County. The Board relies on the testimony in Exhibit O-27, in which Mr. Standridge states, "I did find that sand is being trucked in and is expensive in this area." Therefore, the Board finds that there is a lack of sand and gravel aggregate sites in the area, and the Board finds that the Applicant would meet the currently unmet demand for sand in the County. The Board notes that other



mine owners, such as Copeland, Robco, and Stein Enterprises, who state that there is no shortage of aggregate, are competitors of the Applicant and stand to gain from a denial of the Applicant's mine; therefore, the Board is not persuaded by their testimony.

Lastly, the Board finds that the Applicant has demonstrated that a need for quality sand and gravel aggregate exists to meet demand created by Josephine County Public Works, the Seismic Report and Oregon's Statewide Transportation Improvement Program (STIP), which identifies transportation projects and programs on the federal, state, city, and county transportation systems. The Board finds that current STIP projects include an estimated \$40 million dollars of roadway construction located in southern Douglas County and northern Josephine County, which is near the Applicant's site. KC letter, p. 7. The Board also finds that future STIP projects include an estimated \$45 million dollars' worth of planned transportation projects. *Id.* at 8. All of these planned improvements will require quality aggregate, and the Board finds that availability of sand and gravel aggregate will require mines near major transportation corridors that can supply the local and regional need.

The Board relies on the information contained in Exhibit O-29, which demonstrates that the Oregon Transportation Commission has funded the first part of Phase I of the Seismic Plan, and that the legislature has formed a joint committee on transportation to prepare for a funding request during the 2017 Legislative Session. This request has a very high priority in the 2017 Legislative Session. The Board finds that funding for future ODOT STIP projects will also be considered during future Legislative Sessions. The Board concludes that transportation improvements for highways, roads, bridges, and private development are always needed and will continue to be needed in the future.

For the reasons stated above, the Board finds that there is a need for ODOT-quality sand and gravel aggregate to meet the demand for such resource for use in local, regional, and state transportation system maintenance and improvement projects. The Board also finds that the Applicant's site is the ONLY sand and gravel aggregate site within Josephine County that has undergone the Goal 5 process to validate that the location, quality and quantity of its aggregate meets ODOT specifications. The Board finds that the mineral and aggregate resource significance of the site is exactly what Statewide Planning Goal 5 and Josephine County Goal 7 were implemented to protect.

Therefore, the Board further finds that designating the Site as a significant resource and allowing the proposed use will serve the public interest.

Finally, the Board finds that the Applicant will be subject to conditions of approval ensuring that the Applicant will mitigate any off-site impacts associated with mine operations, including by incorporating screening and barriers, following best management practices, limiting hours for mining activities, establishing voluntary setbacks, and by implementing a reclamation plan. Conditions of approval, Nos. 1-42. The Board finds that these mitigation measures will ensure that the development poses no more than an insignificant impact on surrounding existing or allowed uses within the impact area or to the public at large.

Finally, and most importantly, the Board finds that application of the MARZ designation, which allows aggregate mining and processing uses upon demonstration of significant aggregate resource, implements Statewide Planning Goal 5 and the Basic Mineral and Aggregate Policies

adopted pursuant to Ordinance No, 2006-002. The record includes substantial evidence that the Site includes significant aggregate deposit which may be made available to meet the demand for aggregate resources in the County through application of the MARZ designation, as proposed.

For these reasons, the Board concludes that this criterion is met.

**E. Requests involving changes to the plan and/or zone maps within established exception areas shall demonstrate the change complies with the criteria contained in Oregon Administrative Rule 660-004-0018 governing plan and zone changes within exception areas.**

This criterion is inapplicable because the Applications do not involve changes to the plan and/or zone maps within established exception areas.

**66.150.C Failure to Obtain an Impact Area Agreement.**

**If the mine operator is unable to enter into an impact area agreement with any of the property owners within the impact area, documentation of the operator's efforts to reach such an agreement shall be submitted to the Planning Director with the application or within 30 days from the time when a completed application is accepted by the county.**

The Board finds that the Applicant was unable to enter into an Impact Area Agreement (IAA) with any property owners within the impact area. However, based on the Staff Report, which documents the conclusion that all applicable IAA requirements have been met, the Board finds that the Applicant complied with all applicable IAA requirements.

**66.150.D Significant Riparian Corridors.**

**Mining proposals considered under this Section shall demonstrate that all conflicts with acknowledged significant riparian corridors have been minimized or resolved by an ESEE analysis. In addition to the notice requirements otherwise required by Chapters 2 and 4 of this code, written notice shall be given to the Oregon Departments of Geology and Mineral Industries (DOGAMI), Division of State Lands (DSL), Environmental Quality (DEQ) and Fish and Wildlife (ODFW) for mining proposals that will impact acknowledged significant riparian corridor.**

For the reasons explained in response to OAR 660-023-0180(5) above, which reasons are incorporated by reference as findings herein, the Board finds that all conflicts with acknowledged significant riparian corridors have been minimized. Further, the Board finds that DOGAMI, DSL, DEQ, and ODFW received notice of the Applications on June 3, 2014.

**66.170 - SITE RECLAMATION**

This section requires a DOGAMI operating permit and approved reclamation plan, in accordance with ORS 517.750 through 517.900. The Board finds that the DOGAMI operating permit and reclamation plan was presented to the County and has been submitted to DOGAMI for review. Plates 2 and 4 and in Appendix L of the Applications. DOGAMI cannot issue its permit until the County land use action is complete. Therefore, the Board imposes a condition of approval

requiring that the DOGAMI operating permit and approved reclamation plan be presented to the County prior to initiation of mining. The Board finds that with such condition, this section is met.

## 66.180 – GENERAL PROPERTY DEVELOPMENT STANDARDS

### A. Permit Review Requirements

The County requires specific permit requirements that are in conformance with Articles 20, 21, 22, 40, 41, 42, 44 and 45 as applicable to the Site application request. For the reasons explained below, the Board finds that the Applications will comply with Articles 20, 21, 22, 40, and 41. As explained below, the Board finds that Article 42 for Site Plan Review does not apply because Ordinance 2006-002 has imposed specific development standards for aggregate operations under Article 91. The Board further finds that Articles 44 and 45 are for Variances and Conditional Uses, respectively, and do not apply because the Applicant is not requested any variances or conditional uses. The Articles that do apply are addressed herein.

- **Articles 20 – 22:** *The purpose of this Chapter is to establish the procedures to be used in the review of various land use applications and the issuance or denial of land use permits in Josephine County. Articles 20 through 22 include the basic review provisions (20), pre-application review (21) and permit review procedures (22).*

The Board finds that the Applicant and the County have followed the correct procedures in review of these Applications.

- **Article 40:** *The purpose of this Article is to establish the basic procedures for the submission of applications for land use permits in Josephine County.*

The applications are requesting the following types of actions: a post-acknowledgement plan amendment to designate the Site as a significant mineral and aggregate resource, and a Comprehensive Plan map and text amendment and Zone Change to the MARZ. The Board finds that the procedures have been followed for these Applications, as outlined in Article 40.

The Board also finds that in accordance with Article 40, the Applicant requested to consolidate all land use actions into one review process per 40.030 D. The Board further finds that the Applicant followed all applicable procedures in submitting these Applications, and the County deemed the Applications complete on February 28, 2014.

- **Article 41:** *The purpose of this Article is to set out basic rules for the issuance, time limit, extension, expiration and revocation of land use permits.*

The Board finds that it is feasible for the Applicant and the County to comply with this Article.

- **Article 42:** *This Article addresses Site Plan Review.*

RLDC 91.020.A provides “All applications for the mining or processing of mineral

and/or aggregate resources *in zones other than the Mineral and Aggregate Resource Zone (MARZ) and the Aggregate Resource Zone (AR)* shall be processed as Conditional Use Permits (Article 45), with a Site Plan Review (Article 42), and shall utilize Quasi-judicial Review Procedures as set forth in Review Procedures (Article 22).” (Emphasis added). The Board finds that since the Applicant is requesting that the Site be placed in the MARZ, Site Plan Review under Article 42 is not required.

As support for this finding, the Board relies on RLDC 91.030, which sets forth special property development standards specific to aggregate operations that function as site plan review. Moreover, the Board finds that pursuant to OAR 660-023-0180(9), while a local government may adopt procedures and requirements for the consideration of PAPAs concerning aggregate resources, such local procedures and requirements must be consistent with the aforementioned OAR. The Board finds that the criteria under Article 42 is generic, while the development standards under Article 91 are specific to aggregate sites. Any local procedures and requirements for aggregate sites must be consistent with the OAR. The Board finds that only the specific standards under Article 91 are consistent with the OAR; therefore, the Board finds that those are the site plan review standards adopted by the county for aggregate sites.

**B. Property Development Standards**

1. **Article 81:** *The purpose of these standards is to ensure safe ingress and egress to and from properties; to minimize street congestion and traffic hazards, to protect the future operation of transportation facilities, to provide safe and convenient access to businesses, public services, and places of public assembly; and to make vehicular circulation more compatible with surrounding land uses.*

**Finding:** The Applicant submitted a TIA by Sandow (Appendix G of Applications), which presents an analysis of the site access from Placer Road to the Site and demonstrates that access to and from the Site will be safe and that street congestion and traffic hazards will be minimized. The TIA also presents mitigation measures for site distance concerns at intersections. Based on the TIA, the Board finds that the access road and all roads along the Haul Route can meet the development standards of Article 81. Additionally, Thornton Engineering, Inc., has prepared conceptual design drawings for the access road (Appendix K of Applications), and the Board finds that such designs demonstrate that the access road will comply with the development standards of Article 81.

2. **Article 91:** *Standards for development of mineral and aggregate operations. The purpose of this Article is to provide clear and objective development standards and review procedures for approval and operation of mineral and aggregate mining and processing sites located in any zone where these uses are authorized.*

A. *A Development Permit shall be obtained before any mining and/or processing of mineral or aggregate resources occurs. The applicant shall also obtain all other permits required by this code and other licensing or permitting entities having jurisdiction over the operation. The continuance of additional permits and approvals in good standing shall be a condition for the continuance of the county's Development*

*Permit. The performance of the standards contained in this Article shall also be conditions to the issuance and continuance of the Development Permit.*

**Finding:** Based on the testimony of the Applicant, the Board finds that the proposed mining and reclamation plans have been submitted to DOGAMI for its approval of an operating permit and of the reclamation plan. See Appendix L of Applications. Furthermore, for the reasons explained herein, the Board finds that it is feasible for the Applicant to obtain a Development Permit.

**B. An access or service road(s) to and from the extraction site to a public road shall meet the following standards:**

*1. Meet applicable standards from Oregon Administrative Rules Chapter 340 Division 35 for vehicular noise control for a distance of 500 feet in all directions from any public road or any conflicting use located along the access road.*

**Finding:** For the reasons explained in these Supplemental Findings in response to OAR 660-023-0180(5)(b)(A), which reasons are incorporated herein by reference, the Board finds that all roads from the extraction site to a public road will be constructed and maintained to ensure compliance with applicable state standards for noise control, subject to compliance with the following condition:

“15. The access or service road(s) to and from the extraction site to a public road shall meet the following standards: \* \* \*

b. The applicable standards from Oregon Administrative Rules Chapter 340, Division 35, for vehicular noise control for a distance of 500 feet in all directions from any public road or conflicting use located along the access road.  
*(RLDC §91.030. B.1).”*

*2. The most current air quality standards from Oregon Administrative Rules Chapter 340 Divisions 20, 21, and 28 for ambient air quality for a distance of 500 feet in all directions from any public road or any conflicting use located along the access road if the mining traffic is the primary cause of the road dust. Where more than one mining operation uses the same road, all operators shall be proportionately responsible for the cost and management of dust abatement measures based on vehicle trips per day.*

**Finding:** For the reasons explained in these Supplemental Findings in response to OAR 660-023-0180(5)(b)(A), which reasons are incorporated herein by reference, the Board finds that all roads from the extraction site to a public road will be constructed and maintained to ensure compliance with applicable state standards for ambient air quality, subject to compliance with the following conditions:

“15. The access or service road(s) to and from the extraction site to a public road shall meet the following standards:

a. The most current air quality standards from Oregon Administrative Rules Chapter 340, Divisions 20, 21, and 28, for ambient air quality for a distance 500 feet in all directions from any public road or conflicting use located along the access road if the mining traffic is the primary cause of the road dust. (RLDC §91.030.B.2).”

*C. The extraction area shall be substantially screened from the view of existing conflicting uses, subject to the following specifications:*

- 1. Mining and processing equipment, whether in use or in storage, shall be screened. Stockpiles of aggregate do not need to be screened and may themselves function as screening.*
- 2. Screening may consist of natural vegetation and landscape features, or may be supplied by planting vegetation or placement of berms, fences or other similar development features. If vegetation is used as screening it shall be maintained alive.*

**Finding:** Applicant also submitted a landscape plan identifying existing vegetation and topographic features within the extraction area that will be preserved to provide adequate screening. See Appendix E to Applications. Additionally, in areas where existing vegetation and/or topographic features are not adequate to provide effective screening or cannot be preserved due to conflicts with mining activities, Applicant has proposed specific types and densities of plantings. *Id.* No one contended that the Project would not comply with this standard.

Based upon the testimony presented, the Board finds that the Site Plan Review Application complies with this standard, subject to compliance with the following condition:

“3. The extraction area shall be substantially screened from the view of existing conflicting uses, subject to the following specifications:

- a. Mining and processing equipment, whether in use or in storage, shall be screened. Stockpiles of aggregate do not need to be screened and may be used for screening.
- b. Screening may consist of natural vegetation and landscape features, or may be supplied by planting vegetation or placement of berms, fences or other similar development features including the proposed cyclone fence installed along excavations exceeding 3:1

slope and noise mitigation barriers. If vegetation is used as screening it shall be maintained alive.

c. Earthen berms shall be stabilized with ground cover.

d. Visual screening may not be required if the topography, growing conditions or other circumstances at the site make it impractical or otherwise unnecessary to shield the site from the view of conflicting uses. (RLDC §91.030.C)."

3. *Earthen berms shall be stabilized with ground cover.*

**Finding:** For the reasons explained in these Supplemental Findings in response to OAR 660-023-0180(5)(b)(A), which reasons are incorporated herein by reference, the Board finds that the Applicant has proposed landscaping of topsoil/overburden stockpiles to minimize air quality conflicts. The Board finds that the Site Plan Review Application complies with this standard, subject to compliance with Condition No. 3(c), described above.

4. *Visual screening may not be required if the topography, growing conditions or other circumstances at the site make it impractical or otherwise unnecessary to shield the site from the view of conflicting uses.*

**Finding:** As stated above, Applicant also submitted a landscape plan identifying existing vegetation and topographic features within the extraction area that will be preserved to provide adequate screening. See Appendix E to Applications. The Board finds that this standard is met.

D. *On-site parking shall be provided for all employees, customers and official visitors.*

**Finding:** As shown on the Site Plan, parking will be provided on site. See Appendix J, Site Development Map, Sheet 1 of 2. The Board finds that this standard is met.

E. *A safety fence must be constructed to protect the extraction site from vehicular or pedestrian intrusion whenever the site is within 200 feet from a public road or an off-site residence, or where the quarry is developed with hazardous vertical cuts. The safety fence may consist of orange vinyl fence material commonly used at construction sites.*

**Finding:** No safety fence is necessary, given the remoteness of the site, with the exception of a safety fence at the top of the processing/staging area. See Appendix L, DOGAMI Reclamation Plan Set, Plate 3. The Board finds that this criterion is met.

F. *All mining and processing of mineral and/or aggregate resources shall meet and maintain the permit requirements of the Oregon Departments of Geology and*

*Mineral Industries (DOGAMI), Division of State Lands (DSL), and Environmental Quality (DEQ).*

**Finding:** For the reasons explained in these Supplemental Findings in response to OAR 660-023-0180(5)(b)(A), which reasons are incorporated herein by reference, the Project's mining and processing of mineral and/or aggregate resources will comply with applicable state air quality and emission standards and applicable state and federal water quality standards, subject to relevant conditions imposed in this decision. The Board finds that an application has been submitted to DOGAMI for the operating permit and approval of the reclamation plan. See Appendix L of Applications. The Board imposes Condition No. 14, which requires that all permits required by DOGAMI, DEQ, DSL, and OWRD, or any other required state or federal permits, shall be provided to the County Planning Director, and that all mining and processing of mineral and/or aggregate resources shall meet and maintain those permit requirements. Therefore, with this condition, the Board finds that the Site Plan Review Application satisfies this section.

*G. All mining and processing of mineral and/or aggregate resources shall comply with OAR noise emission standards. Compliance for the purpose of issuing a development permit can be demonstrated by a report from an acoustical engineer attesting that the circumstances of the site and/or proposed mitigation will bring the site into compliance.*

**Finding:** For the reasons explained in these Supplemental Findings in response to OAR 660-023-0180(5)(b)(A), which reasons are incorporated herein by reference, the Board finds that the Project will comply with all applicable noise emission standards. The Board finds that the acoustical report (Appendix F of Applications) demonstrates that the proposed Project meets OAR noise emission standards by following Best Management Practices (BMP's) and employing specifically designed berms for further protection. Therefore, the Board finds that the Site Plan Review Application satisfies this section.

*H. All mining and processing of mineral and/or aggregate resource sites shall meet the erosion control and site drainage standards contained in Article 83 (Erosion Control & Storm Drain Facilities) of this code, as well as any permit requirements imposed by DOGAMI, DSL, DEQ, or any other state or federal regulation.*

**Finding:** The Board finds that Sunny Valley Sand & Gravel Erosion and Sediment Control and Storm Water Narrative by Westlake Consultants, Inc. (Appendix J to Applications) shows that the Project will employ specific erosion control and site drainage designs and demonstrates that the project will meet the standards in RLDC Article 83. The Board also finds that the Site currently has a DEQ Storm water 1200A permit, which will continue to evolve as the Site is mined.

*I. The discharge of contaminants and dust caused from the mining and processing of mineral and/or aggregate resources shall comply with applicable DEQ ambient air quality and emission standards. The operator shall cease all mining and processing operation within one hour of the malfunction of any air pollution control*



*equipment, and shall not resume operation until the malfunction has been corrected in compliance with applicable DEQ rules and standards.*

**Finding:** For the reasons explained in these Supplemental Findings in response to OAR 660-023-0180(5)(b)(A), which reasons are incorporated herein by reference, the Board finds that the Project's discharge of contaminants and dust caused from the mining and processing of mineral and/or aggregate resources will comply with applicable DEQ standards for ambient air quality, subject to compliance with the following conditions:

27. The mining operations shall comply with the most current air quality standards from Oregon Administrative Rules Chapter 340, Divisions 20, 21, and 28, for ambient air quality for a distance 500 feet in all directions from any public road or conflicting use located along the access road if the mining traffic is the primary cause of the road dust. (RLDC §91.030.B.2)

28. The main facility access road from Placer road to the scale house shall be paved to prevent the generation of dust.

29. The discharge of contaminants and dust caused from the mining and processing of mineral and/or aggregate resources shall comply with applicable DEQ ambient air quality and emission standards. The operator shall cease all mining and processing operation within one hour of the malfunction of any air pollution control equipment, and shall not resume operation until the malfunction has been corrected in compliance with applicable DEQ rules and standards. (RLDC §91.030.1)

30. On site surfaces travelled by off-road or on-road sources shall be watered whenever significant visible dust emissions (opacity approaching 20%) are observed behind or beside a moving vehicle.

31. Water sprayers shall be used to control dust emissions from crushers and screens operating on site.

32. The majority (51% or more in terms of total fleet horsepower) of diesel engines powering off-road equipment shall meet federal Tier 2 off-road engine standards or better. This requirement shall be met by using equipment with engines originally built to meet these standards or through retrofit to reduce emissions to these levels.

33. On site idle times for heavy-duty diesel truck engines shall be limited to no more than five minutes per truck trip."

*J. Excavation and stockpiling shall be set back from property lines so that the lack of lateral support and the angle of repose of the geologic deposit will not undermine or intrude onto adjoining lands. An additional setback may be required to allow the placement and maintenance of fencing.*

**Finding:** Based on testimony from the Applicant and Plate 3 and Appendix L of the Applications, the Board finds that the excavations and stockpiling are set well back from the property lines. Therefore, the Board finds that there is no concern that a lack of lateral support or angle of repose of the geologic deposit will undermine or intrude onto adjoining lands. Furthermore, the Board finds that the imposition of Condition No. 5, which requires that excavation and stockpiling shall be set back from property lines so that the lack of lateral support and the angle of repose of the geologic deposit will not undermine or intrude onto adjoining lands assures compliance with this standard.

**K. Mining and processing of mineral and/or aggregate resources shall be set back from the top of the bank of any stream in compliance with Article 72.040 (B) (Special Setback Requirements). Existing native vegetation shall be maintained in the setback area.**

**Finding:** Based on the Mining Plan (Plate 3 of Applications), the Board finds that the Project maintains a minimum setback of 50 feet from any creek, stream or ephemeral ditch on the Site. The Board finds that no development will take place within those setbacks and vegetation will not be disturbed, except as allowed by the site-specific mining program applicable to the Property. As explained in detail above, Applicant is proposing to span Grave and Shanks Creeks to avoid direct impact to the jurisdictional boundaries of those waters. See Appendix E of Applications. Additionally, Applicant has proposed 50-foot buffers from all Class I and II streams. The Board finds that these site-specific determinations control over the special setback standards set forth in this subsection.

**L. Mining and processing of mineral and/or aggregate resources within Flood Hazard Areas as defined in Section 11.030 (Terms Defined) shall comply with the standards contained in Article 69.1 (Flood Hazard Overlay) of this code.**

**Finding:** Based on the Flood Study prepared by Thornton Engineering, Inc. (Appendix K of Applications), the Board finds that this standard does not apply because there will be no mining or processing below the 100-year floodplain. The Board finds that since all mining and processing will be located ABOVE the 100-year floodplain, this standard is inapplicable.

**M. The hours of operation for the mining and processing of mineral and/or aggregate resources shall occur between 8 am and 6 pm for conditional uses, and 7 am to 9 pm for MARZ. The days of operation shall be Monday through Saturday, excluding the following holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day. Maintenance of equipment may take place at any time.**

**Finding:** The Board finds that the Project satisfies this standard, subject to compliance with the following condition of approval:

“2. Mining (including but not limited to excavation and processing) is restricted to the hours of 7:00 AM to 5:00 PM Monday through Friday. No mining operations shall occur on Saturday or Sunday. No mining (including but not limited to excavation and processing), shall take place on Saturdays or any of the following legal holidays: New Year’s Day, Memorial Day, the Fourth of July, Labor Day, Thanksgiving Day, and Christmas Day. Maintenance may take place Monday through Saturday, 7:00 AM to 9:00 PM.”

*N. The hours for blasting at the extraction site shall be limited to 10 am to 3 pm for operations authorized as conditional uses, and 7 am to 6 pm for operations authorized within the MARZ. The permitted days shall be Monday through Friday, excluding the holidays listed in subparagraph M above.*

**Finding:** The Board finds that this standard is inapplicable because no blasting at the extraction site is proposed. Furthermore, the Board finds that the imposition of Condition No. 12, which prohibits blasting on the Site, assures compliance with this standard.

*O. Water used in the mining or processing of mineral and/or aggregate resources shall be appropriated from a source authorized by permit from the Oregon Department of Water Resources. With the exception of onsite process water released to onsite settling ponds, turbid water shall not be released into lakes, ponds or watercourses.*

**Finding:** For the reasons discussed in the letters from the Applicant’s water rights attorney, Martha Pagel, dated May 27, 2014 and June 23, 2014 (Exhibit S and attachment), which reasons are incorporated herein by reference as findings, the Board finds that water for the Project will be appropriated from a source authorized by permit from OWRD. The primary source of water for the Project will be from reservoir storage of surface waters. *See* letter from Martha Pagel, dated June 23, 2014 (Exhibit S). The Applicant has applied for water rights to divert water from Grave Creek and surface run-off during the months of January, February and March each year, for storage in three small reservoirs. *Id.* The three applications are currently on administrative hold with OWRD, pending successful completion of the land use process before the County. *Id.* The Applicant also has an existing and valid water right for irrigation use on the Site, if needed. *Id.* The Applicant has no plans to use groundwater, and the Applicant has applied for a limited license from OWRD to provide temporary authorization for constructing one of the reservoirs while it awaits completion of the County land use process and final processing of the water right applications. *Id.* The proposed temporary uses of the stored water would be for fire protection and irrigation, which uses are allowed under current land use designations. *Id.*

The Board finds Ms. Pagel’s testimony and evidence compelling given her 8 years as Director of OWRD and her 14 years in private law practice with an emphasis on water rights and water law. *Id.* Therefore, the Board finds that it is feasible for the Applicant to obtain water rights for the Project and that water for the Project will be appropriated from a source authorized by permit from OWRD.

The Board further finds that Project surface water will be managed in a manner that meets all applicable state water quality standards and DOGAMI requirements. As support for this conclusion, the Board relies upon testimony from the Project civil engineer, Westlake Consultants, Inc., that the Project complies with stormwater management requirements of all applicable agencies, including DOGAMI (as to stormwater generated on-site) and OWRD (as to stormwater generated off-site). See Sunny Valley Sand & Gravel Erosion and Sediment Control and Storm Water Narrative at Appendix J of the Applications. Further, Westlake explained that Applicant has designed the Project such that there will be no offsite stormwater point discharge from the Project. *Id.*

The Board finds that the Project complies with this standard.

*P. Failure to perform or continue to perform any of the standards required by this Section shall render the development permit void and subject to any and all enforcement procedures contained in this code or as authorized by any other law, rule or civil authority.*

**Finding:** The Board finds that it is feasible for the Applicant to perform or continue to perform the standards required by this Section.

3. **Article 91.040: Site Reclamation: No mining operation authorized pursuant to this Article shall commence without the operator furnishing to the Planning Director a copy of a DOGAMI operating permit and approved reclamation plan, or a certificate of exemption, issued pursuant to the requirements of ORS 517.750 through 517.900 (Reclamation of Mining Lands) and implementing administrative rules. The county shall defer to DOGAMI regarding all aspects of the reclamation plan and its administration. Reclaimed land uses for the site must be authorized by post-mining zoning.**

**Finding:** Based on the testimony of the Applicant, the Board finds that the Applicant has submitted to DOGAMI an application for an operating permit and approved reclamation plan. See DOGAMI Reclamation Plan Set prepared by Kuper Consulting, LLC at Appendix L of Applications. Based upon this testimony and subject to imposing the following conditions of approval, the Board finds that the Project satisfies this standard:

“14. Prior to the issuance of a Development Permit, all permits required by DOGAMI, DEQ, DSL, WRD, or any other required state or federal permits shall be provided to the Josephine County Planning Department. (RLDC §91.030.F) All mining and processing of mineral and/or aggregate resources shall meet and maintain those permit requirements including the following:

- a. The applicant shall not initiate mining and activities on the site without the operator furnishing to the Planning Director a copy

of a DOGAMI operating permit and approved reclamation plan, or a certificate of exemption, issued pursuant to the requirements of ORS 517.750 through 517.900 (*Reclamation of Mining Lands*) and implementing administrative rules. The county shall defer to DOGAMI regarding all aspects of the reclamation plan and its administration. Reclaimed land uses for the site must be authorized by post mining zoning.”

4. **Article 69.2: Deer Overlay.** *The purpose of this overlay is to restrict development so that critical deer winter range habitat is protected.*

**Finding:** The Board finds that this Article refers to proposed residential development and restrictions based on housing density. The Board finds that since the Applicant is not proposing residential development, this Article does not apply.

5. **Article 83: Erosion and Sediment Control.** *The standards and criteria for erosion and sediment control provide for the design of projects so as to minimize the harmful effects of storm water runoff and the resultant inundation and erosion from projects, and to protect neighboring downstream and downslope properties from erosion and sediment impacts.*

**Finding:** The Board finds that this Article has been addressed in the Westlake Sunny Valley Sand & Gravel Erosion and Sediment Control and Storm Water Narrative at Appendix J of the Applications. Westlake has designed a storm water plan for the existing conditions and for geologic exploration on the Site for which the DEQ issued a Storm water 1200A permit in May 2013. Based on the testimony of the Applicant and the Mining Plan (Plate 3 of Applications), the Board finds that as the Site is mined, the storm water plan will evolve to current conditions at that time. The Board finds that Project process or storm water will not go offsite during mining. Based on the Flood Study by Thornton (Appendix K of Applications), the Board further finds that there will be no erosional impacts up or down stream of the access road and bridge area construction.

6. **Article 69.1: Flood Hazard Overlay.** *It is the purpose of this Overlay to minimize public and private losses due to flood conditions in specific areas...*

**Finding:** Based on the Flood Study by Thornton (Appendix K of Applications), the Board finds that mining will occur on the Site ABOVE the 100-year floodplain, and that the access road and bridge to be constructed over Grave Creek will include embankment fill within the floodplain, but not the floodway. The Board further finds that placement of this fill will not increase the water surface of the 100-year flood event more than one foot.

The Board relies on the July 25, 2016 letter from Applicant's expert, Thornton Engineering, Inc. (Exhibit A-5), and its' original Flood Study (Appendix K of Applications), and the Board finds that the project is located within a FEMA A Zone, where no Base Flood Elevations or Floodway has been determined. Accordingly, the Board finds that the project will not modify the existing floodway or the effective Base Flood Elevations because FEMA has not determined them. Furthermore, the Board finds that the record shows that Thornton Engineering, Inc. properly established the floodway boundary on the site, and the Board also finds that substantial evidence in the record demonstrates that no permanent structures are proposed within the floodway of Grave Creek or Shanks Creek and that the project will not modify the Special Flood Hazard Area. See Flood Study, Sheet 5 and *Revised Riparian Mitigation and Landscape Plan for SVSG, dated February 14, 2014, Figure 4A* (Appendix E to Applications). Therefore, the Board finds that a Conditional Letter of Map Revision, and/or a FEMA map amendment are not required and are not applicable to this project. Additionally, the Board finds that the Applications narrative, Plate 2, shows the bridge crossing Grave Creek, which will span the floodplain of the creek. Since the Flood Study demonstrates that the proposed bridge abutments are outside of the calculated Floodway boundary, the Board finds that a "no-rise" analysis is not required and is not applicable to this project. Therefore,, the Board finds that this Article is met.

7. **Article 75: Parking.** *The purpose of off-street parking is to establish and maintain areas for efficient and convenient parking for residential, civic, commercial, and industrial uses and to provide a safe means for discharging people and products from ground transportation.*

**Finding:** Based on Appendix J, Site Development Plate 1, the Board finds that off-street parking will be established for those who work and visit the mining site in the staging area in the southeastern portion of the Site.

8. **Article 72: Height, setbacks and accessory structures.**

#### **72.040 - SPECIAL SETBACK REQUIREMENTS**

*Special use and structure siting restrictions shall apply to development within the following protected areas:*

A. **Significant Mineral & Aggregate Site Setback Area.** *The following special setback rules apply to significant mineral and aggregate sites existing on the county's acknowledged inventories as of April 18, 2001, unless different measures are established pursuant [to] OAR 660-023-0180 or an Impact Area Agreement (IAA) that complies with the requirements of Article 66.150.B of this code. In applying significant aggregate resource site setbacks, the following rules shall apply:*

**Finding:** The Board finds that the Site is not a significant mineral and aggregate site existing on the County's acknowledged inventory as of April 18, 2001, and further finds that the Site is not

subject to pending enforcement proceedings. Therefore, the Board finds that the special setback requirements of this subsection do not apply.

**B. Stream Setbacks.** *No structure, excluding fences, boat landings, docks, bridges, hydroelectric facilities, pumping, or water treatment facilities, shall be located closer than 50 feet to the banks of any Class 1 stream, or 25 feet to the banks of Class 2 water courses as defined by the Oregon State Department of Fish and Wildlife;*

- *This setback area shall be maintained, to the greatest extent feasible, in stabilized vegetation;*
- *Streamside vegetation that provides shading of the surface waters shall be retained;*
- *Existing streamside vegetation shall be maintained to the greatest extent possible during construction and development.*

**Finding:** Based on the Mining Plan (Plate 3 of Applications), the Board finds that the Project maintains a minimum setback of 50 feet from any creek, stream or ephemeral ditch on the Site. The Board finds that no development will take place within those setbacks and vegetation will not be disturbed, except as allowed by the site-specific mining program applicable to the Property. As explained in detail above, Applicant is proposing to span Grave and Shanks Creeks with a bridge or conveyance system to avoid direct impact to the jurisdictional boundaries of those waters. See Appendix E of Applications. Additionally, Applicant has proposed 50-foot buffers from all Class I and II streams and water courses. The Board finds that since bridges and other conveyance systems are excluded from the stream setback requirements, the Project meets the standards set forth in this subsection.

9. **Article 85: Utilities.** *This Article describes the criteria necessary to meet for the addition of utilities to the site.*

**Finding:** The Board finds that there currently are electrical services to the Site. Applications narrative, p. 41. Based on the testimony of the Applicant, the Board also finds that the Applicant will be applying for additional electrical services for the shop area and that there is no evidence that additional electrical services will not be available. *Id.*

Flush type toilets will use non-potable water brought to the Site. *Id.* Waste will be stored in an underground holding tank to be pumped, as necessary. *Id.* No septic and leach field system is planned. Irrigation will continue utilizing the diversion point from Grave Creek in accordance with the irrigation water rights currently on the property. *Id.* Therefore, the Board finds that additional utilities to the Site are not necessary.

10. **Article 84: Water Standards.** *The purpose of this Article is to require prior testing and approval of development in order to reasonably assure an adequate and safe water supply for all citizens of Josephine County. A related purpose is*

*to determine the availability, impact, and water quality for the users of ground water in Josephine County.*

*The criteria in Article 84. E. states Any change in the use of commercial or industrial zoned property, or a change in the use of any property to a commercial or industrial use, after the effective date of this code requiring more than 1600 gallons per day total, shall successfully complete a major or minor pump test, as determined by the Water Resources Director as a condition of site plan review and prior to the issuance of a Development Permit.*

**Finding:** The Board finds that the Project will maintain applicable state water quality standards and DOGAMI requirements pertaining to groundwater. As support for this conclusion, the Board relies upon the testimony of Project hydrogeologist Shannon & Wilson, Inc., which concludes that, although conflicts may occur between the Project and nearby residential properties, these conflicts can be minimized by implementing monitoring and mitigation measures. See Shannon & Wilson Sunny Valley Hydrogeology PAPA Report, dated August 2013 (Appendix B of Applications) and Groundwater Summary Discussion, dated June 18, 2014 (Exhibit H). The Board finds that this testimony is compelling in light of Shannon & Wilson's extensive experience and detailed analysis, which includes reviewing 68 wells within 3,600 feet of the Site and eleven months of precision groundwater elevation monitoring from onsite wells. *Id.* Accordingly, the Board finds that the measures identified by Shannon & Wilson will ensure that the Project complies with applicable state standards regarding water quality and DOGAMI requirements pertaining to water quantity. Therefore, the Board imposes these measures in the following conditions of approval:

“20. Water used in the mining or processing of mineral and/or aggregate resources shall be appropriated from a source authorized by permit from the Oregon Department of Water Resources. With the exception of onsite process water released to onsite settling ponds turbid water shall not be released into lakes, ponds or watercourses. (RLDC §91.030.0)

21. Additional monitoring wells and hydrogeologic testing, coupled with ongoing groundwater level monitoring, will establish baseline conditions and identify early groundwater level declines should they occur during mining operations. Pressure transducers with dedicated dataloggers shall be installed to automate monitoring of groundwater levels. Both shall be located and protected to allow long-term use without disruption by mining. The existing observation wells shall be replaced if and when they are decommissioned due to the progression of mining activity.

22. Monitoring data shall be reviewed and reported to DOGAMI at quarterly intervals for a minimum of 3 years and shall continue per



DOGAMI requirements until mining activities are complete. This monitoring program shall document current conditions and identify any recommended mitigation measures that must be implemented to counter substantial loss of the water resource for the nearby residences.

23. Infiltration trenches shall be constructed around each mine cell. The water applied to the infiltration trench shall provide a positive hydrostatic head in the sand and gravel that reduces groundwater declines adjacent to the mine cells. Monitoring as well as observed seepage into the active site shall be utilized for development of final design and evaluation of mitigation measures as necessary. Should proactive infiltration fail or be deemed inappropriate, well improvements such as resetting pumps at deeper depths, well deepening, or changes in the mining operation shall be considered as alternative mitigation options to alleviate water quality or quantity impacts.

24. Prior to mine operation, a final Spill Prevention Control and Countermeasure (SPCC) Plan shall be developed for the facility substantially consistent with the sample document provided by the U.S. Environmental Agency.”

Although opponents contend that potential contaminants from the Project may enter groundwater and potentially pollute offsite wells, the Board finds that Applicant has addressed this concern in two ways. First, as noted above, approval of the Applications is subject to Condition No. 24, which requires Applicant to prepare a Spill Prevention Control and Countermeasure (SPCC) Plan to manage accidental spills and releases. The Board finds, based upon the explanation set forth in the Hydrogeology PAPA Report dated August 2013 (Appendix B to Applications), that Applicant’s SPCC will, at minimum, include:

- Facility diagram;
- Site security measures;
- Descriptions of proper petroleum product transfer procedures and other activities that might result in a release;
- Descriptions of all appropriate Best Management Practices (BMPs), including those associated with the containment and other countermeasures that would prevent oil spills from reaching navigable waters;
- A Spill Contingency Plan specifically designed for the proposed Sunny Valley Sand & Gravel Project;
- Personnel training practices and schedule;
- Descriptions of record-keeping practices; and
- Management approval.

Further, the Board finds that compliance with the SPCC Plan, together with implementation of the stormwater management system, will prevent and mitigate

impacts from spills and will ensure that the mechanical aspects of the mining operation (drilling, washing, crushing, hauling) will not be a possible groundwater contamination source. As support for this conclusion, the Board relies upon the expert opinion to this effect from Shannon & Wilson. See Hydrogeology PAPA Report dated August 2013 (Appendix B to Applications) and Groundwater Summary Discussion, dated June 18, 2014 (Exhibit H). The Board finds that no one rebutted or challenged this testimony with specificity.

Further, the Board finds, for the reasons set forth below under the heading "Availability of Water," which reasons are incorporated herein by reference, Applicant has demonstrated that all water necessary for the Project has been appropriated to the Property and is legally available.

Finally, as additional findings in support of its conclusion that the Site Plan Review Application satisfies this standard, the Board accepts, adopts, and incorporates by reference, the explanations set forth in Shannon & Wilson's submittals into the record dated June 18, 2014 and June 23, 2014 (Exhibit H); July 14, 2014 (Exhibit VVVVV); and July 21, 2014 (Exhibit DDDDDD).

#### AVAILABILITY OF WATER

The Board finds that Applicant has demonstrated that all water necessary for the proposed operation has been appropriated to the Property and is legally available. As support for this conclusion, the Board relies upon three sources. First, the Board relies upon the fact that, as an industrial operation, the Project is an "exempt use" under state law and thus has a water right not to exceed 5,000 gallons per day. ORS 537.545. Further, the Board finds that, pursuant to this statute, no registration, certificate, or permit is required for such use of groundwater. *Id.* Second, for the reasons discussed in the letters from the Applicant's water rights attorney, Martha Pagel, dated May 27, 2014, June 23, 2014, and July 7, 2014 (Exhibit S with attachments; Exhibit PPPPP), which reasons are incorporated herein by reference as findings, the Board finds that water for the Project is available and will be appropriated from a source authorized by permit from OWRD. The primary source of water for the Project will be from reservoir storage of surface waters. *See* letter from Martha Pagel, dated June 23, 2014 (Exhibit S). The Applicant has applied for water rights to divert water from Grave Creek and surface run-off during the months of January, February and March each year, for storage in three small reservoirs. *Id.* OWRD records show water is, in fact, available for the reservoir applications that are intended to provide water for mining operations. (Ex. S, Attachment 1, p. 9, OWRD Water Availability Report.) The three applications are currently on administrative hold with OWRD, pending successful completion of the land use process before the County. *Id.* The Applicant also has an existing and valid water right for irrigation use on the Site, if needed. *Id.* The Board finds that this testimony was not sufficiently rebutted or challenged.

Third, the Board relies upon testimony from the Project hydrogeologist that, the risk of conflicting use of groundwater between the Project and local wells is unlikely:

“Seepage from the streambed supplies a saturated zone that recharges any groundwater flow paths, such as to wells. Consequently, the saturated zone beneath Grave Creek is highly likely to recharge shallow aquifers tapped by nearby wells. In technical terms, such a condition is termed a ‘recharge boundary,’ where a ready supply of groundwater can meet the demand for groundwater drawn from wells.” See Shannon & Wilson Groundwater Summary Discussion dated June 18, 2014 (Exhibit H).

The Board finds that, as explained in its Hydrogeology PAPA Report and Groundwater Summary Discussion, Shannon & Wilson reached this conclusion after conducting a comprehensive analysis of all OWRD-registered well logs within and beyond the designated 1,500-foot impact area from the Property. Hydrogeology PAPA Report at Sections 4.2 and 4.3. Further, the Board finds that this testimony was not rebutted or challenged with specificity by any expert. Therefore, the Board finds that a reasonable person would rely upon the testimony from the Applicant’s water rights attorney, Martha Pagel, and Shannon & Wilson to conclude that all water necessary for the proposed operation can be appropriated to the site and is legally available.

#### **Site-Specific Program to Achieve Goal 5 Adopted as part of the CCCP**

The Board finds that the PAPA Application and the Comprehensive Plan Amendment and Zone Change Application conform with the site-specific program to achieve Goal 5 adopted as part of the Comprehensive Plan because the Board has reviewed the Applications together and is issuing a single decision approving all of the Applications with a common set of conditions.

#### **OTHER ISSUES RAISED DURING THE LOCAL PROCEEDINGS**

##### **Impacts to Property Values**

Several area residents expressed concern that development of the Project would adversely affect their property values. However, the Board notes that OAR 660-023-0180(5)(b) limits the Board’s consideration to specific conflicts, which do not include diminution of property values. Accordingly, the Board cannot make a decision to deny, condition, or otherwise consider the Project based upon potential impacts to property values. See *Buel-McIntire v. City of Yachats*, 63 Or LUBA 452 (2011) (error to deny application based upon factor that was not applicable approval criterion).

##### **Archeological or Cultural Sites**

Although several area residents expressed concern over the Project’s potential conflicts with archaeological or cultural sites, the Board denies this contention. Under OAR 660-023-

0180(5)(b)(D), the Board is only required to consider conflicts with Goal 5 resource sites that are on an acknowledged list of significant resources inventoried and identified in the County's Comprehensive Plan and that are located within the prescribed 1,500-foot impact area. The Board finds that there are no archeological or cultural Goal 5 mapped resource sites on the Site or within the impact area. See Cultural Resources Records Review by Heritage Research Associates, Inc., dated June 18, 2013 (Appendix I to Applications). Therefore, the Board finds that potential conflicts with archeological or cultural sites is inapplicable to this review.

### **DOGAMI Application**

Although opponents expressed concern that the Applicant's DOGAMI application may be incomplete, the Board denies this contention for two reasons. First, the DOGAMI application is not before this Board and the status of its completeness is not an applicable approval criterion. Accordingly, the Board cannot make a decision to deny or condition the Project based upon potential incompleteness of the DOGAMI application. See *Buel-McIntire v. City of Yachats*, 63 Or LUBA 452 (2011) (error to deny application based upon factor that was not applicable approval criterion). Second, the entire DOGAMI Operating Permit and Reclamation Plan Application is included in Appendix L to the Applications. Under RLDO 66.170, the County shall defer to DOGAMI regarding all aspects of the reclamation plan and its administration. Therefore, the Board does not concur with the opponents' contentions in this regard and finds the DOGAMI application inapplicable to this review.

### **Morrill Act**

Although several opponents argued that the Site cannot be designated as a significant mineral and aggregate site and placed in the MARZ because land grants under the Morrill act of 1862 expressly excluded mineral lands, the Board denies this contention. For the reasons explained in the letters from Applicant's attorney, Steve Pfeiffer, dated May 5, 2014 (Attachment E to Staff Report, dated June 23, 2014) and July 14, 2014 (Exhibit SSSSS), which reasons are adopted and incorporated by reference as findings herein, the Board finds that the designation of the site as non-mineral in character for purposes of public land grants has no bearing on, and does not prohibit, the County's ability to designate the Site as a significant mineral and aggregate resource site to be placed in the MARZ.

Further, although opponents also argued that Josephine County does not have jurisdiction to add the Site to the County's inventory of significant aggregate sites because the Site's subsurface mineral rights are subject to a federal mineral reservation, the Board denies this contention. For the reasons explained in the letter from Applicant's attorney, Steve Pfeiffer, dated May 5, 2014 (Attachment E to Staff Report, dated June 23, 2014), which reasons are adopted and incorporated by reference as findings herein, the Board finds as follows: 1) the County is authorized under its adopted Ordinance No. 2006-002 to maintain an inventory of significant mineral and aggregate sites by adding and deleting sites as needed; 2) the Applications are appropriately signed by persons having a valid and proprietary interest in the land; 3) substantial evidence in the form of the BLM General Land Office Records and the deeds vesting title of the Site demonstrate that the Site is not subject to any federal mineral reservation and that it is unnecessary for the Applicant to obtain a federal mining permit; 4) the opponents have not demonstrated that they

have standing to challenge the original agricultural scrip patent; and 5) even if the Site were subject to a federal mineral reservation, such reservation does not cover the sand and gravel resource on the Site because sand and gravel are not valuable minerals for the purposes of certain land grants issued by the federal government. *BedRoc Ltd., LLC v. US*, 541 US 176 (2004).

In summary, the Board finds that the federal government did not select and transfer the Site under the provisions of the Morrill Act, knowing that it was mineral land, but reserving the mineral rights. The Board further finds that the Morrill Act does not preclude nor prohibit the County from adding the Site to its inventory of significant mineral and aggregate sites.

### **FEMA Floodway Compliance**

Although opponents contend that FEMA's regulations are triggered due to development in the Grave Creek and Shanks Creek floodway, the Board denies this contention. The Board relies on the July 25, 2016 letter from Applicant's expert, Thornton Engineering, Inc. (Exhibit A-5), and its' original Flood Study (Appendix K of Applications), and the Board finds that the project is located within a FEMA A Zone, where no Base Flood Elevations or Floodway has been determined. Accordingly, the Board finds that the project will not modify the existing floodway or the effective Base Flood Elevations because FEMA has not determined them. Furthermore, the Board finds that the record shows that Thornton Engineering, Inc. properly established the floodway boundary on the site, and the Board also finds that substantial evidence in the record demonstrates that no permanent structures are proposed within the floodway of Grave Creek or Shanks Creek and that the project will not modify the Special Flood Hazard Area. *See Flood Study, Sheet 5 and Revised Riparian Mitigation and Landscape Plan for SVSG, dated February 14, 2014, Figure 4A* (Appendix E to Applications). Therefore, the Board finds that a Conditional Letter of Map Revision, and/or a FEMA map amendment are not required and are not applicable to this project. Additionally, the Applications narrative, Plate 2, shows the bridge crossing Grave Creek, and two areas for conveyors over Shanks Creek, which will span the floodplain of both creeks. Therefore, the Board finds that FEMA's floodway regulations are inapplicable. Since the Flood Study demonstrates that the proposed bridge abutments are outside of the calculated Floodway boundary, the Board finds that a "no-rise" analysis is not required and is not applicable to this project.

### **IAA Procedural Requirements**

Although Gregg and Diane Getchell contend that the record is missing the necessary copies of certified mail receipts to all impact area property owners, the Board denies this contention for two reasons. First, the Staff Report documents the conclusion that all applicable IAA requirements have been met. Second, even if the Getchells did not receive the impact area agreement notices, they knew about the Applications and actively participated in the proceedings before the County. *See* letters from the Getchells at Exhibit WWW. The Getchells have failed to show that they have been prejudiced in any way by this inadvertent procedural oversight. *See* ORS 197.835(9)(a)(B). Therefore, the Board finds that Applicant committed no substantive procedural error.

### **Applicable Criteria**

Although opponents contend that the Applications fail to address and comply with RLDC 31.070(B), which requires preservation of the character of an area and conservation of property values, the Board denies this contention and finds that RLDC 31.070 is not an applicable approval criterion.

Pursuant to OAR 660-023-0180(9), while a local government may adopt procedures and requirements for the consideration of PAPAs concerning aggregate resources, such local procedures and requirements must be consistent with the aforementioned OAR. *See Morse Bros., Inc. v. Columbia County*, 37 Or LUBA 85 (1999), *aff'd* 165 Or App 512 (2000); *Eugene Sand & Gravel, Inc. v. Lane County*, 44 Or LUBA 50, 96 (2003), *aff'd* 189 Or App 21 (2003). Josephine County has adopted Ordinance No. 2006-002, which implements local procedures and requirements for placing land within the MARZ. Nowhere does Ordinance No. 2006-002 require compliance with RLDC 31.070 in placing land within the MARZ. Nor could it since RLDC 31.070 is a generic criterion that is not consistent with the OAR criteria and that is superseded by the more specific plan amendment review criteria set forth in RLDC Article 46.040 for review and approval of an aggregate PAPA.

For the reasons stated above, the Board finds that RLDC 31.070 is not an applicable approval criterion and is not required to be addressed nor complied with by the Applicant.

### **Letter from DLCD**

Amanda Punton of DLCD submitted a letter, dated November 26, 2013, which addressed Goal 5 riparian resources, the applicability of the ESA, and platted lots in residential zones. The Board responds to each item as follows:

Although DLCD contends that the Goal 5 rule be applied when new uses could be conflicting uses with a particular significant Goal 5 resource site on an acknowledged resource list, the Board finds that while this contention is true, it is irrelevant to the subject Applications. The Board finds that the Applicant appropriately applied the Goal 5 rule under OAR 660-023-0180 to its PAPA based on OAR 660-023-0250(3)(a), which requires application of the Goal 5 rule when a PAPA creates or amends a resource list in order to protect a significant Goal 5 resource or to address specific requirements of Goal 5. The Board finds that since the Applications include a PAPA to add the Site to the County's inventory of significant mineral and aggregate resource sites, compliance with the Goal 5 rule is required. For the reasons explained above in response to OAR 660-023-0180, which reasons are incorporated by reference as findings herein, the Board finds that the Applicant appropriately applied and complies with the Goal 5 rule.

Additionally, although DLCD contends that the County should require additional measures to protect ESA listed fish and their habitat, the Board denies this contention for two reasons. First, the Board finds that review under the ESA is triggered exclusively by a federal permit or funding decision, and that the ESA is not an applicable approval criterion subject to this Board's review. *See* letter from Applicant's attorney, Steve Pfeiffer, dated July 21, 2014 (Exhibit FFFFFFFF); *see also* letter from TSI dated July 21, 2014 (Exhibit EEEEEEE). Second, for the reasons explained

above in response to OAR 660-023-0180(5)(b) and specifically, in response to impacts to Grave and Shanks Creeks, which reasons are incorporated herein by reference as findings, the Board finds that the Project will not constitute a significant conflict with the Grave and Shanks Creeks fishery resources, and that ODFW has determined that the Applicant's proposed use of water from Grave Creek will not result in a detrimental impact to fish.

Lastly, although DLCD contends that OAR 660-023-0180(5)(b) requires that impacts be evaluated for dwellings allowed by a residential zone on an existing lot even if the lot is vacant, the Board denies this contention here. The Board finds that OAR 660-023-0180(5)(b) defines "approved land uses" as dwellings allowed by a residential zone and other uses for which conditional or final approvals have been granted by the local government. The Board further finds that there is no evidence in the record demonstrating that there is any vacant lot that has received any county permits, including an approved building permit, in order to develop the lot within the Impact Area. Therefore, the Board finds that there are no vacant lots that are "approved land uses," for which additional analysis is required.

### **Record Objections**

On remand, the Board reopened the record to allow opponents the opportunity to rebut the letters from Applicant's experts that were submitted during the period allowed for final written argument during the original proceedings below. The Board finds that opponents were given ample opportunity to rebut and respond to Exhibits DDDDDD, EEEEE, HHHHH, and IIIII. The Board considered these exhibits, as well as opponents' rebuttal of such exhibits, in addressing the various issues raised by these submittals, as further described in these findings.

### **Demand for Aggregate**

Although opponents contend that there are other aggregate mining operations in the county and that there is no demand for additional aggregate resources in the county, the Board does not concur with this contention as a reason to deny the Applications. The Board finds that demand for aggregate is not an applicable approval criterion, in and of itself. To the extent that demand for aggregate is relevant to the issue of consideration of compliance with RLDC 46.040(D)(2), it is considered and discussed in connection with the findings regarding such section, above.

### **Access**

Although opponents contend that access to the mine is restricted because the Applicant does not have an adequate easement to cross Joe Boyer's land to enter the Site, the Board denies this contention. The Board finds that there is substantial evidence in the record, including the Applicant's Phasing and Mining Plan (Plate 2 to Applications), which shows that the Applicant will access the mine through a new access road, which lies to the west of Mr. Boyer's property and does not cross Mr. Boyer's property. The Board finds that since the Applicant demonstrates adequate access to the Site without the need for an easement from Mr. Boyer, the opponent's contention has no merit.

### **Disaster Preparedness / Seismic Risk**

Although opponents contend that earthquake hazards or other natural disasters would lead to catastrophic consequences for the proposed mine, the Board denies this contention as a valid reason to deny the Applications for three reasons. First, the Board finds that this issue is not linked to any applicable approval criteria, and the Board further finds that opponents have failed to demonstrate that disaster preparedness or seismic risk is an applicable approval criterion. For this reason alone, the Board does not concur with this contention as a reason to deny the Applications. Second, the Board finds that there is no substantial evidence in the record demonstrating that the catastrophic consequences that the opponents warn against will indeed occur. Lastly, the Board relies on the testimony and evidence of Shannon & Wilson, Inc., which states that there is no technical basis to support the opponent's catastrophic predictions, and that design studies will address seismic hazards and appropriate mitigation for key infrastructure on the Site. *See* letter from Shannon & Wilson, dated July 7, 2014 (Exhibit VVVVV). For these reasons, the Board finds that the opponent's contention has no merit.

### **Pipeline and Transmission Towers**

On remand, the Board reopened the record to provide opponents with the opportunity to rebut and respond to the letter from Williams Northwest Pipeline Company (Exhibit KKKKKK), which was submitted into the record by staff during the original proceedings below. The Board finds that opponents had ample opportunity to rebut and respond to Exhibit KKKKKK.

Although opponents contend that the Williams Northwest LNG pipeline and the PacifiCorp transmission towers are threatened by slope instability due to the proposed mine, the Board denies this contention for three reasons. First, the Board relies upon the testimony of Applicant's expert consultant, Shannon & Wilson, Inc., who states that enlarged buffers between pits were incorporated into the current mine plan in consideration of pipeline and transmission tower stability. *See* Shannon & Wilson's letter, dated July 7, 2014 (Exhibit VVVVV). Furthermore, the Board finds that the Applicant has contacted and been working with Williams Northwest and PacifiCorp to develop designs that meet the standards for earthwork adjacent to the pipeline and transmission towers. *See* email communications between the Applicant's representative, Andreas Blech, Williams Northwest representative Jean Brady and PacifiCorp representative Scott Mease attached to Shannon & Wilson's letter, dated July 7, 2014 (Exhibit VVVVV). Secondly, as demonstrated in Exhibit KKKKKK, Williams Northwest Pipeline Company is not concerned that the establishment of the subject mining operation will negatively affect the pipeline or its stability. Thirdly, the Board imposes a condition of approval prohibiting mining within 20 feet to the west and within 40 feet to the east of the pipeline and prohibiting mining within 20 feet from the transmission towers. *See* Condition No. 7. Based on the testimony from Shannon & Wilson, the evidence in the record, and with the imposition of Condition No. 7, the Board finds that mining will not create slope instability problems for the pipeline and transmission towers. Furthermore, the Board finds that there is no substantial evidence in the record demonstrating that mining outside of the stated buffer areas while working with the design standards of Williams Northwest and PacifiCorp will cause slope instability problems for the pipeline or transmission towers. Therefore, the Board does not concur with the opponent's contention as a reason to deny the Applications.



### **Access Road Stability**

Although opponents contend that the proposed access road to the Site is geotechnically unstable, the Board denies this contention for two reasons. The Board relies on the explanation of expert engineering geologists at Shannon & Wilson, Inc. in their Preliminary Geologic Hazards Report, dated September 9, 2013, and their letter, dated July 7, 2014 (Exhibit VVVVV), which explanation is adopted and incorporated by reference as findings herein. First, the Board finds that based on the Preliminary Geologic Hazards Report, dated September 9, 2013, the mapped roadway alignment is feasible and likely to be geotechnically stable. Second, the Board finds that there is no substantial evidence in the record demonstrating any deep-seated or large-scale instability or demonstrating any dormant or active landslides impacting Placer Road. *Id.* Therefore, the Board finds that substantial evidence in the record demonstrates that it is feasible and likely for the proposed access road to be designed in a manner that is geotechnically stable.

### **Liquefaction**

Although opponents contend that the debris flow deposit underlying the Site poses a liquefaction hazard, the Board denies this contention. The Board relies on the explanation of expert engineering geologists at Shannon & Wilson, Inc. in their letter, dated July 7, 2014 (Exhibit VVVVV), which explanation is adopted and incorporated by reference as findings herein. The Board finds that based on soil mechanics and the subsurface explorations performed by the Applicant's consultants, substantial evidence in the record demonstrates that seismic liquefaction of the Site's debris flow deposit is unlikely. The Board relies on the testimony of engineering geologists Shannon & Wilson and finds that the mixed material comprising the Site is not susceptible to mass liquefaction, and that the slope on the Site is stable. For these reasons, the Board does not concur with opponent's contention as a reason to deny the Applications.

### **Bias and Ex Parte Contact**

At the outset of the remand hearing, opponents contended that Commissioners Heck and Hare were potentially biased in favor of the Applicant and against the opponents based on certain pre-hearing comments from the Commissioners. However, the audio file submitted by opponents containing the allegedly biased pre-hearing comments was corrupt and neither County Counsel, Applicant's attorney, nor the Board could open the file. The Board has never received an audio file or transcript of the alleged pre-hearing comments suggesting bias on the part of the Commissioners.

To demonstrate bias, a party must show that the decision maker prejudged the application and was incapable of making a decision based on the evidence and argument before him. *Claus v. City of Sherwood*, 62 Or LUBA 67 (2010). Pre-hearing public statements that could be construed as supporting an application does not, by itself, suffice to demonstrate reversible bias. *Id.* Commissioners Heck and Hare were not given an opportunity to address the substance of any alleged pre-hearing comments because such comments were not provided. The Board finds that opponents failed to provide the substance of any alleged pre-hearing comments suggesting bias on the part of Commissioners Heck and Hare; therefore, the Board finds that opponents

failed to demonstrate that Commissioners Heck and Hare prejudged the application and were incapable of making a decision based on the evidence and argument before them.

During the remand proceeding, opponents' attorney Sean Malone argued that Commissioners Heck and Hare should recuse themselves from the proceedings due to bias. However, as previously mentioned, neither opponents nor Mr. Malone ever provided a working audio file or a transcript of the alleged pre-hearing comments suggesting bias on the part of the Commissioners. The Board finds that there is no basis for Commissioners Heck and Hare to have recused themselves from the remand proceedings. The Board finds that there is no substantial evidence that Commissioners Heck and Hare prejudged the application or were incapable of making a decision based on the evidence and argument before them.

At the outset of the remand hearing, Chair Walker described what she believed to be an ex parte contact between Commissioner Hare and Andreas Blech, a representative for the Applicant. Commissioner Hare explained that the contact took place in the public office reception area with other county staff present where he learned that Mr. Blech had come into the planning office to request an exhibit log from the remand hearing, but was told by planning staff that one was not available. Commissioner Hare stated that after he confirmed with Mr. Blech that he had not received a copy of staff's exhibit log, Commissioner Hare requested that staff prepare one so that the parties were aware of what has been submitted into the record. Commissioner Hare also stated that he did not believe such contact rose to the level of an inappropriate ex parte contact. Nevertheless, Commissioner Hare stated that such contact did not affect his ability to remain impartial in making a decision in this matter. The Board agrees with Commissioner Hare and finds that the contact with Mr. Blech was procedural in nature, that the content of the communication did not include anything substantive concerning the land use matter at issue, and therefore, that the contact did not constitute an ex parte contact. Furthermore, the Board finds that opponents were provided ample opportunity to rebut the contact, but that the contact did not raise any issue that was capable of rebuttal. Moreover, opponents have failed to demonstrate that such contact affected Commissioner Hare's ability to remain impartial in his decision-making. Therefore, the Board rejects opponents' arguments regarding bias and ex parte contact.

#### SUMMARY AND CONCLUSION

Based upon the cited and incorporated evidence and argument and the findings of fact and conclusions of law stated above, the Board finds that the Applications, as conditioned, satisfy all applicable approval criteria. Therefore, the Board approves the Applications, subject to the

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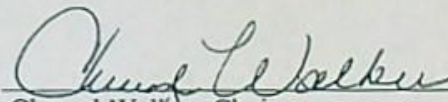
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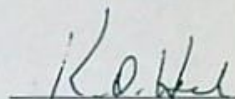
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conditions set forth in the "Conditions of Approval," attached hereto as Attachment A, and by this reference incorporated herein.

Adopted this 1<sup>th</sup> day of December, 2016, by the Josephine County Board of Commissioners.

JOSEPHINE COUNTY  
BOARD OF COUNTY COMMISSIONERS

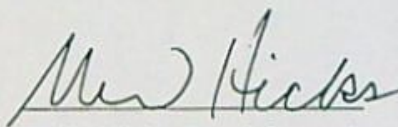
  
Cheryl Walker, Chair

  
K.O. Heck, Vice-Chair

**Absent at Signing**

\_\_\_\_\_  
Simon G. Hare, Commissioner

Approved as to form:

  
Wally Hicks, Legal Counsel

ATTACHMENT A  
"CONDITIONS OF APPROVAL"

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1. A development permit shall be obtained before any mining and/or processing of mineral or aggregate resources. The applicant shall also obtain all other permits required by this code and other licensing or permitting entities having jurisdiction over the operation. The continuance of additional permits and approvals in good standing shall be a condition for continuance of the county's development permit. The performance of the standards required by this Article shall also be necessary for the issuance and continuance of the development permit. *(RLDC §91.030.A)*

**General Operations Related Conditions**

2. Mining (including but not limited to excavation and processing) is restricted to the hours of 7:00 AM to 5:00 PM Monday through Friday. No mining operations shall occur on Saturday or Sunday. No mining (including but not limited to excavation and processing), shall take place on Saturdays or any of the following legal holidays: New Year's Day, Memorial Day, the Fourth of July, Labor Day, Thanksgiving Day, and Christmas Day. Maintenance may take place Monday through Saturday, 7:00 AM to 9:00 PM.
3. The extraction area shall be substantially screened from the view of existing conflicting uses, subject to the following specifications:
  - a. Mining and processing equipment, whether in use or in storage, shall be screened. Stockpiles of aggregate do not need to be screened and may be used for screening.
  - b. Screening may consist of natural vegetation and landscape features, or may be supplied by planting vegetation or placement of berms, fences or other similar development features including the proposed cyclone fence installed along excavations exceeding 3:1 slope and noise mitigation barriers. If vegetation is used as screening it shall be maintained alive.
  - c. Earthen berms shall be stabilized with ground cover.
  - d. Visual screening may not be required if the topography, growing conditions or other circumstances at the site make it impractical or otherwise unnecessary to shield the site from the view of conflicting uses. *(RLDC §91.030.C)*
4. On-site parking shall be provided for all employees, customers and official visitors. No on-street parking is allowed unless specifically permitted. *(RLDC §91.030.D)*
5. Excavation and stockpiling shall be set back from property lines so that the lack of lateral support and the angle of repose of the geologic deposit will not undermine or intrude onto

adjoining lands. An additional setback may be required to allow the placement and maintenance of fencing. (RLDC §91.030.J)

6. Mining and processing of mineral and/or aggregate resources shall be set back from the top of the bank of any stream in compliance with Article 72.040 (B) (*Special Setback Requirements*). Existing native vegetation shall be maintained in the setback area. (RLDC §91.030.K)
7. No mining shall occur within 20 feet to the west and 40 feet to the east of the Williams pipeline crossing the property or within 20 feet from the PPL electrical towers. All practical measures of safety relative to this operation should be explored and implemented to provide the highest level of safety.
8. There shall be no mining or processing activity within the flood hazard area. (RLDC §91.030.L)
9. All mining and processing of mineral and/or aggregate resource sites, access road construction, and bridge construction across Grave Creek shall meet the erosion control and site drainage standards contained in Article 83 (*Erosion Control & Storm Drain Facilities*) and per the Westlake Consultants storm water and erosion control plan, as well as any permit requirements imposed by DOGAMI, DSL, DEQ, or any other state or federal regulation.
10. Slope inclinations shall not exceed an average slope of 1:1 (horizontal to vertical) within the excavation during mining.
11. Extraction and processing activities shall be limited to those areas of the site labeled as appropriate for such activities and depicted on the site plan dated August 2013.
12. There shall be no blasting on the site.
13. The mining operator shall carry a comprehensive liability policy covering mining and incidental activities during the term of the operation and reclamation with an occurrence limit of at least \$1,000,000.
14. Prior to the issuance of a Development Permit, all permits required by DOGAMI, DEQ, DSL, WRD, or any other required state or federal permits shall be provided to the Josephine County Planning Department. (RLDC §91.030.F) All mining and processing of mineral and/or aggregate resources shall meet and maintain those permit requirements including the following:
  - a. The applicant shall not initiate mining and activities on the site without the operator furnishing to the Planning Director a copy of a DOGAMI operating permit and approved reclamation plan, or a certificate of exemption, issued pursuant to the requirements of ORS 517.750 through 517.900 (*Reclamation of Mining Lands*) and implementing administrative rules. The county shall defer to

DOGAMI regarding all aspects of the reclamation plan and its administration. Reclaimed land uses for the site must be authorized by post mining zoning.

- b. The applicant shall obtain DEQ approval of a Spill Prevention Controls and Countermeasures Plan and shall comply with same.
- c. The applicant shall obtain all appropriate permits from Oregon Water Resources Department (OWRD) for the utilization of water for processing.

#### Traffic Related Conditions

- 15. The access or service road(s) to and from the extraction site to a public road shall meet the following standards:
  - a. The most current air quality standards from Oregon Administrative Rules Chapter 340, Divisions 20, 21, and 28, for ambient air quality for a distance 500 feet in all directions from any public road or conflicting use located along the access road if the mining traffic is the primary cause of the road dust. (*RLDC §91.030.B.2*).
  - b. The applicable standards from Oregon Administrative Rules Chapter 340, Division 35, for vehicular noise control for a distance of 500 feet in all directions from any public road or conflicting use located along the access road. (*RLDC §91.030. B.1*).
  - c. The access point and approach shall be designed by a professional engineer, who shall assure adequate site distance and address road geometry.
  - d. The approach shall be constructed simultaneously with the proposed private bridge constructed across Grave Creek and shall not begin until the applicant has approval from all appropriate authorities, such as the Oregon Department of State Lands and the Army Corps of Engineers.
  - e. Applicant shall obtain an approved commercial road access permit from Public Works prior to the issuance of a development permit from Planning.
- 16. The applicant shall work with Three Rivers School District prior to each school year to ascertain the safest school bus drop off and pick up locations. The applicant shall then provide permanent signage ahead of the selected school bus stops consistent with the requirements in the Manual of Traffic Control Devices which recommends that a "School Bus Stop Ahead" sign be placed ahead of any stop in which you cannot see 500 feet in advance. The applicant shall submit a letter to the Planning Director no later than the last working day in August each year confirming an agreement with the Three Rivers School District specifying times during which haul trucks will not operate between the Site and I-5 to allow for school buses. The applicant shall make every attempt to submit a letter of satisfaction from the Superintendent of Three Rivers School District to the Planning Director no later than the last working day in August each year.

17. Prior to initiation of truck hauling from the site, warning signage shall be placed on Placer Road near the approach to the mine site to warn others of trucks entering the roadway.
18. Trees and shrubs shall be cleared and the roadside shall be modified to provide sight distances at the mine access to Placer Road and at the intersections of Edgerton Lane / Placer Road and LeLand Road / Lariat Drive, as described in Section 7.0 of the submitted Sandow Traffic Report dated July 2013.
19. Gravel trucks shall not use the historic Grave Creek Bridge.

#### **Groundwater Related Conditions**

20. Water used in the mining or processing of mineral and/or aggregate resources shall be appropriated from a source authorized by permit from the Oregon Department of Water Resources. With the exception of onsite process water released to onsite settling ponds turbid water shall not be released into lakes, ponds or watercourses. (RLDC §91.030.0)
21. Additional monitoring wells and hydrogeologic testing, coupled with ongoing groundwater level monitoring, will establish baseline conditions and identify early groundwater level declines should they occur during mining operations. Pressure transducers with dedicated dataloggers shall be installed to automate monitoring of groundwater levels. Both shall be located and protected to allow long-term use without disruption by mining. The existing observation wells shall be replaced if and when they are decommissioned due to the progression of mining activity.
22. Monitoring data shall be reviewed and reported to DOGAMI at quarterly intervals for a minimum of 3 years and shall continue per DOGAMI requirements until mining activities are complete. This monitoring program shall document current conditions and identify any recommended mitigation measures that must be implemented to counter substantial loss of the water resource for the nearby residences.
23. Infiltration trenches shall be constructed around each mine cell. The water applied to the infiltration trench shall provide a positive hydrostatic head in the sand and gravel that reduces groundwater declines adjacent to the mine cells. Monitoring as well as observed seepage into the active site shall be utilized for development of final design and evaluation of mitigation measures as necessary. Should proactive infiltration fail or be deemed inappropriate, well improvements such as resetting pumps at deeper depths, well deepening, or changes in the mining operation shall be considered as alternative mitigation options to alleviate water quality or quantity impacts.
24. Prior to mine operation, a final Spill Prevention Control and Countermeasure (SPCC) Plan shall be developed for the facility substantially consistent with the sample document provided by the U.S. Environmental Agency.

### Acoustic Related Conditions

25. All mining and processing of mineral and/or aggregate resources shall comply with OAR noise emission standards. The mine operator shall comply with the noise study prepared by Daly Standlee and Associates, Inc. (DSA) dated August 2013 that attests that the circumstances of the site and/or proposed mitigation will bring the site into compliance. *(RLDC §91.030.0)*
26. The mine operator shall comply with the following noise mitigation measures proposed by DSA:
  - a. Twelve-foot high berms shall be constructed along portions of the eastern property line as noise mitigation barriers.
  - b. Fifteen-foot high berms shall be constructed northeast of receiver R13 as a noise mitigation barrier.
  - c. Polyurethane or rubber screens or proximate berms or buffers shall be used to mitigate noise impacts associated with the operation of crushing and screening equipment when it is located in the processing (trommel) area and crusher operating area.
  - d. Off-road equipment (excavators, front-end loaders, loading trucks, and bulldozers) used for internal site operations shall be fitted with broadband rather than traditional narrowband backup alarms.
  - e. Mufflers shall be required for all on-site haul trucks.
  - f. The genset shall be equipped with up close barriers or a muffler and inlet and outlet silencers.

### Air Quality Related Conditions

27. The mining operations shall comply with the most current air quality standards from Oregon Administrative Rules Chapter 340, Divisions 20, 21, and 28, for ambient air quality for a distance 500 feet in all directions from any public road or conflicting use located along the access road if the mining traffic is the primary cause of the road dust. *(RLDC §91.030.B.2)*
28. The main facility access road from Placer road to the scale house shall be paved to prevent the generation of dust.
29. The discharge of contaminants and dust caused from the mining and processing of mineral and/or aggregate resources shall comply with applicable DEQ ambient air quality and emission standards. The operator shall cease all mining and processing operation within one hour of the malfunction of any air pollution control equipment, and shall not



resume operation until the malfunction has been corrected in compliance with applicable DEQ rules and standards. (RLDC §91.030.1)

30. On site surfaces travelled by off-road or on-road sources shall be watered whenever significant visible dust emissions (opacity approaching 20%) are observed behind or beside a moving vehicle.
31. Water sprayers shall be used to control dust emissions from crushers and screens operating on site.
32. The majority (51% or more in terms of total fleet horsepower) of diesel engines powering off-road equipment shall meet federal Tier 2 off-road engine standards or better. This requirement shall be met by using equipment with engines originally built to meet these standards or through retrofit to reduce emissions to these levels.
33. On site idle times for heavy-duty diesel truck engines shall be limited to no more than five minutes per truck trip.

#### **Wetland/Riparian/Flood Related Conditions**

34. No excavation or processing shall occur within the riparian corridor. All mining and processing activity shall be set back 50 feet from the ordinary high water mark of Grave and Shanks Creeks. (RLDC §72.040. B.1)
35. No mining activity shall occur within the 100-year flood hazard area of Grave and Shanks Creeks. The floodplain boundaries shall be flagged or fenced and avoided by all mining activity. (RLDC §91.030.L)
36. Construction of the access road to Placer Road shall occur above the ordinary high water mark of Grave Creek and shall comply with the standards contained in Article 69.1 - Flood Hazard Overlay of the RLDC. (RLDC §91.030.L)
37. The applicant shall not fill, excavate or otherwise disturb wetlands on the site until permits are obtained from the Department of State Lands (DSL) and the Army Corps of Engineers and implements any required pre-disturbance mitigation.
38. No mining activity- excavation or processing- shall occur within the boundaries of any on-site wetlands.
39. The applicant shall follow the mitigation measures contained in the Riparian Mitigation Plan prepared by Terra Science, Inc., dated August 2013 and the mitigation measures contained in the Golden Eagle Risk Assessment prepared by Northwest Resource Solutions, Inc., dated July 3, 2014.
40. The applicant shall install native trees and shrubs in accordance with the County screening regulations.

41. Access roads adjacent to the mining area boundaries shall be graveled with crushed rock with nominal sizing of at least one inch maximum dimension.

**Wildlife Related Conditions**

42. Warning signs shall be posted along the Haul Route to alert drivers to the presence of deer and elk.
43. Reduced speed signs shall be posted along the Haul Route at seasonal times, as recommended by the NWRS deer and elk report (Remand Exhibit I – Staff Report, Exhibit J).

**Failure to Perform Condition**

44. Failure to perform or continue to perform any of the standards required by this Section shall render the development permit void and subject to any and all enforcement procedures contained in this code or as authorized by any other law, rule or civil authority. (RLDC §91.030.P)

BEFORE THE BOARD OF COUNTY COMMISSIONERS  
FOR JOSEPHINE COUNTY, OREGON

Regarding:

- (1) Post-Acknowledgment Plan Amendment to the Josephine County Comprehensive Plan to Designate a Goal 5 Significant Mineral and Aggregate Resource Site;
- (2) Comprehensive Plan and Zoning Amendment to Apply the Mineral and Aggregate Resource Zoning (MARZ) Designation; and
- (3) Site Plan Review for Proposed Aggregate Mining and Processing Operations.

Owners: Andreas & Carole Blech, Blech, LLC

Applicant: Sunny Valley Sand & Gravel, Inc.

Representatives:

Dorian Kuper, CEG – Kuper Consulting, LLC

Steven Pfeiffer, Attorney – Perkins Coie, LLP

FINDINGS OF FACT  
and  
CONCLUSIONS OF LAW  
and  
DECISION

**PREAMBLE**

In this matter, the Josephine County Board of Commissioners ("Board") considered applications from Sunny Valley Sand & Gravel, Inc. ("Applicant") for a post-acknowledgment comprehensive plan amendment ("PAPA Application"), corresponding Comprehensive Plan and zoning amendment ("Zone Change Application"), and Site Plan Review ("Site Plan Review Application") to allow development of an aggregate mining and processing operation on undeveloped land located generally at 153 Daisy Mine Road in Josephine County, Oregon. The property is identified as Assessor's Map T 34 S, R 5 W, Section 8, Tax Lots 400 & 1002 and Map T 34 S, R 5 W, Section 7, Tax Lots 1200 & 1300. The zoning is Woodlot Resource (WR) and Rural Residential (RR-5). The applications shall be collectively referred to herein as the "Applications."

For the reasons explained below, and based upon the identified evidence and argument in the record, the Board finds that the Applications satisfy all applicable approval criteria. The Board has considered the opponents' issues and contentions to the contrary and does not find these to

be persuasive for the reasons discussed herein. Accordingly, the Board approves the Applications, subject to the conditions identified below.

### **Summary of Project**

The Applications request permission to mine and process aggregate materials from an approximately 212-acre site located near the southwest corner of the intersection of Placer Road and Daisy Mine Road ("Property" or "Site"). The total excavation area is approximately 112 acres in size, will be set back at least 50 feet from the Property lines, and all mining operations will be located above the 100 year floodplain. Fill and excavation activities within wetland areas subject to state and/or federal regulation will also be avoided with the potential exception of a limited ephemeral ditch at the western Property boundary subject to any necessary state/federal authorizations. The active mining area will be fenced in one area above the existing highway on the eastern portion of the property for safety, and where possible, natural vegetation will remain along the Property lines to provide a visual buffer. Noise mitigation barriers will be located within the setbacks.

Applicant has estimated that there are approximately 6,900,000 tons of aggregate resource on the Property. Excavation will occur in eight phases over 20-40 years, generally progressing from the eastern portion of the Site toward the west and then to the southwest and back to the southeast. Once excavated, the material will be processed on-site through a crusher and then hauled off-site. Processing of the aggregate materials will occur in the southeastern portion of the site. The Property will be reclaimed to a series of ponds and lakes with sinuous slopes to provide biologic, hydrologic and geologic diversity along the shoreline. Reclamation will be in accordance with requirements set forth by DOGAMI and will consist of revegetation and stabilization of the mined areas.

The Property is primarily undeveloped, with the exception of a caretaker's residence on Tax Lot 1200. There are two easements on the Property for an electrical transmission line that traverses the Property in a northwest-southeast direction and a buried gas line that traverses the central portion of the Property from north to south. In addition, there is an easement from Daisy Mine Road to the west across the adjacent Tax Lot 1001 which currently provides access to the Property. A new access road is planned to enter the central portion of the Property off of Placer Road. Andreas and Carole Blech, and Blech, LLC, are the owners of the Property.

### **Notice**

On March 21, 2014 (and as revised on March 28, 2014) the County transmitted notice of the Applications to the Department of Land Conservation and Development ("DLCD") in accordance with ORS 197.610. Copies of those notices are set forth in the record.

On April 4, 2014, the County mailed notice of the public hearings on the Applications to owners of property located within 1,500 feet of the Property, Community Planning Organizations, agencies, and other interested persons. A copy of that notice is set forth in the record.

### **Planning Commission Proceedings**

The Planning Commission held a public hearing on the Applications on multiple dates: April 28, May 12, May 19, and June 2, 2014. At the hearing, the Planning Commission accepted oral and written testimony from staff, the Applicant, public agencies, proponents of the Applications, opponents of the Applications, and others. At the conclusion of the testimony, although the Planning Commission voted to make a recommendation to approve adding the Site to the County's inventory of significant mineral and aggregate sites, the Planning Commission was unable to make a recommendation to approve, limit or deny the mine operation. The Planning Commission vote was a tie at 3-3.

The Planning Commission was not required to and did not make an overall decision or recommendation to the Board on the Applications; however, the Planning Commission considered several issues, as detailed in the Staff Report to the Board, that were likely to arise again before the Board. There were no procedural objections that arose from the Planning Commission proceedings.

### **Board Proceedings**

The Board conducted a *de novo* review of the Applications.

On June 23, 2014, the Board held a public hearing on the Applications. Commissioners Keith Heck and Simon Hare were present. No one from the public challenged the ability of any member of the Board to participate in the matter.

At the hearing, Grace Zilverberg presented the Staff Report. Then, the Applicant presented its case. Following the Applicant's presentation, the Board accepted public testimony. The Board continued the hearing to June 27, 2014 for additional testimony. The following persons spoke in favor of the Applications: Michael Bird, Richard Emmons, Jim Frick, David Gaunt, Jim Brumbach, Bob Robertson, Eric Schaafsma, and Jack Swift. The following persons spoke in opposition to the Application: Jim Rodine, Vajra Ma, Steve Rouse, Bill Lorch, Jan Kugel, Steve Schneider, David Bish, Bob Kalin, Glenn Standridge, Carol Ahlf, Ed Brett, Christine Gardiner, Joanne Brett, Anne Smith, Rose Johnston, Suzanne Saporta, Darrel Gaustad, Betty Gaustad, Angela Henry, John Ahlf, Marion Schneider, Joe Boyer, Wolfgang Nebmaier, Gary Mackey, Irene Mackey, Ray Baxter, Dianne Getchell, Rachel Coome, Cindy Henry, Kris Quicker, Robert Loper, Malcolm Drake, Steve Klapp, Kristen Whitaker, and Dave Graves. The Applicant declined to provide oral rebuttal but requested the opportunity to provide written rebuttal on a condensed schedule.

The Board then closed the public hearing and held the record open as follows:

- Until July 7, 2014, at 4pm to allow any party to submit argument or evidence on any issue;
- Until July 14, 2014, at 4pm to allow any party to submit rebuttal argument or evidence;
- Until July 21, 2014, at 4pm to allow the Applicant to submit final written rebuttal argument; and

- On July 28, 2014, at 2pm the Board heard oral summations.

Various parties submitted written argument and evidence into the record in accordance with this schedule. These materials are all included in the record in this matter.

The Board reconvened on July 28, 2014. Commissioners Keith Heck and Simon Hare were present. The Board heard summations from the Applicant and opponents and then proceeded to deliberate on the matter. At the conclusion of deliberations, Commissioner Hare moved to approve the Applications, subject to staff's proposed conditions, as modified. Commissioner Heck seconded the motion. The Board adopted the motion, 2-0.

### **Applicable Criteria**

The County's June 3, 2014 public notice identified the following criteria as applicable to the Applications:

*“Rural Land Development Code (RLDC): Article 46 ~Amending & Updating the Comprehensive Plan; Article 66.1 ~ Mineral & Aggregate Resource Zone (MARZ); Article 91 ~ Aggregate Operating Standards; Josephine County: Goal 7 ~ Preserve Valuable Limited Resources, Unique Natural Areas and Historic Features; and Goal 11 ~ The Comprehensive Plan Shall Be Maintained, Amended and Updated As Necessary; Oregon's Statewide: Goal 2 ~ Land Use Planning; and Goal 5 ~ Natural Resource, Scenic and Historic Areas, and Open Spaces; OAR 660-023-0180 - Mineral and Aggregate Resources.”*

For the reasons explained below, the Board finds that the County is preempted from applying local criteria to the PAPA Application and Zone Change Application, except for criteria under Article 66.1 and Article 91. Instead, the provisions of OAR Chapter 660, Division 23 are applicable to these two applications.

### **Record Before the Board**

The record before the Board consists of the following:

- Oral testimony presented by the Applicant and other parties at the public hearings in this matter on April 28, 2014; May 12, 2014; May 19, 2014; June 2, 2014; June 23, 2014; June 27, 2014 and July 28, 2014, as reflected in the official recordings of these hearings.
- Written testimony set forth in Exhibits 1 - 29 and Exhibits A - IIIIII.

### **GENERAL FINDINGS AND CONCLUSIONS RELATED TO THE APPLICATIONS**

1. The Board finds that, as described above, the County has followed the correct procedures in this matter by providing requisite notice to area landowners, DLCD, and other government agencies with jurisdiction and by conducting multiple public hearings for the Applications in accordance with the quasi-judicial procedures required by state and local law. Further, the Board

finds that no one has raised any valid objection to the County's procedures in this matter or to the impartiality of any member of the Planning Commission or the Board.

2. As findings supporting approval of the Applications, the Board hereby accepts, adopts, and incorporates within this Decision by reference, in their entirety, the following materials: the Applicant's narrative for the Applications dated January 21, 2014, including all Figures, Plates, Tables and Appendices and the letters from Steve Pfeiffer on behalf of the Applicant, dated April 28, 2014, May 5, 2014, May 27, 2014, July 14, 2014, and July 21, 2014. The above-referenced documents shall be referred to in these findings as the "Incorporated Findings." The findings below (the "Supplemental Findings") supplement and elaborate on the findings contained in the materials noted above, all of which are incorporated herein by reference.

3. The Board finds that the Applicant's Applications narrative, the Applicant's testimony received at the public hearings, the letters from Steve Pfeiffer on behalf of the Applicant, dated April 28, 2014, May 5, 2014, May 27, 2014, July 14, 2014, and July 21, 2014 and the additional sources cited in these findings explain the need for imposing Conditions of Approval Nos. 1-42. The Board finds, based upon this substantial evidence, that each of these conditions is a reasonable condition that is feasible for the Applicant to comply with and is necessary to satisfy the applicable criteria presented in the Staff Report and the Supplemental Findings presented below.

4. The Board finds that the record contains all evidence and argument needed to evaluate the Applications for compliance with the relevant criteria.

5. The Board finds that it has considered these relevant criteria and other issues raised through public testimony.

6. The Incorporated Findings list all of the applicable approval criteria, and demonstrate compliance with these approval criteria. These supplemental findings elaborate upon and clarify the Incorporated Findings, and primarily address issues raised in opposition to the Applications. These Supplemental Findings are grouped into issues, with findings included in response to each issue. The issues are organized in traditional outline format and are assigned chronological numbers and alphabetical letters as appropriate. In the event of a conflict between the Incorporated Findings and the Supplemental Findings, the Supplemental Findings shall control.

## **SUPPLEMENTAL FINDINGS FOR THE PAPA AND ZONE CHANGE APPLICATIONS**

### **I. STATEWIDE PLANNING GOALS ("GOALS")**

The Board finds that the Oregon Statewide Planning Goals apply to the PAPA Application and the Comprehensive Plan Amendment and Zone Change Application because they request post-acknowledgment plan amendments. ORS 197.175(2)(a); *Beaver State Sand and Gravel, Inc. v. Douglas County*, 43 Or LUBA 140 (2002) (post-acknowledgment plan amendment to add a new site to County's Goal 5 inventory must comply with applicable Goals). For the reasons explained below, the Board finds that the PAPA Application and the Comprehensive Plan Amendment and Zone Change Application are consistent with the Goals.

### **Goal 1: Citizen Involvement.**

**To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process.**

Goal 1 requires local governments to adopt and administer programs to ensure the opportunity for citizens to be involved in all phases of the planning process. The County has adopted such a program for PAPA's, and it is incorporated within the Josephine County Comprehensive Plan and RLDC and has been acknowledged by LCDC. Among other things, the County's program requires notice to citizens, agencies, neighbors, and other interested parties followed by multiple public hearings before the County makes a decision on the Applications. The Board finds that the County has complied with its adopted notice and hearing procedures applicable to PAPA's, including the notice requirements of RLDC, Chapter 3, Articles 31-33 and RLDC 66.150.C. Further, although Gregg and Diane Getchell claim that they did not receive the required impact area agreement notices, the Board finds that they appeared orally and in writing before the Board (*see* Exhibit T and Exhibit WWW), and have failed to show that they have been substantially prejudiced in any way by this inadvertent procedural oversight. *See* ORS 197.835(9)(a)(B). Therefore, the Board finds that the PAPA Application and the Comprehensive Plan Amendment and Zone Change Application are consistent with Goal 1. *See Wade v. Lane County*, 20 Or LUBA 369, 376 (1990) (Goal 1 is satisfied as long as the local government follows its acknowledged citizen involvement program).

### **Goal 2: Land Use Planning.**

**To establish a land use planning process and policy framework as a basis for all decisions and actions related to use of land and to assure an adequate factual base for such decisions and actions.**

The Board finds that the provisions of OAR chapter 660, division 23 establish the land use planning process and policy framework for considering the PAPA Application and the Comprehensive Plan Amendment and Zone Change Application. Further, the evidence in the record, which includes detailed expert reports across a number of disciplines, demonstrates that the PAPA Application and the Comprehensive Plan Amendment and Zone Change Application satisfy all applicable substantive standards of OAR chapter 660, division 23. As such, there is an adequate factual base for the County's decision. Therefore, the Board finds that the County has met the evidentiary requirements of Goal 2.

The Board further finds that Goal 2 requires that the County coordinate its review and decision on the Applications with appropriate government agencies. The County provided notice and an opportunity to comment on the Applications to affected government agencies, including the State Department of Land Conservation and Development. The Board addresses the comments from these agencies in the findings below. Therefore, the Board finds that the County has met the coordination requirements of Goal 2.



The County finds that the PAPA Application and the Comprehensive Plan Amendment and Zone Change Application are consistent with Goal 2.

**Goal 3: Agricultural Lands.**

**To preserve and maintain agricultural lands.**

The purpose of Goal 3 is to preserve and maintain agricultural lands for farm use. The Property is not zoned Exclusive Farm Use. LCDC has adopted the Goal 5 PAPA process to assist in the balancing between preservation and maintenance of agricultural lands and the need to protect significant mineral and aggregate resources. Following the provisions of the PAPA rule (which includes a conflict analysis and mandatory analysis of measures to minimize effects on agriculture uses and practices on agricultural lands), Goal 3 allows counties to authorize non-farm uses defined by LCDC that will not have a significant adverse effect on farms or farm practices. Measures are available to minimize the potential effects of Applicant's extraction activities on agricultural uses and farm practices on surrounding lands. As demonstrated by the discussion of ORS 215.296 below, Applicant's requested mineral and extraction use will not have any significant adverse effect on accepted farm practices or the cost of accepted farm practices on surrounding lands. As the mining plan is developed, Applicant will continue to farm the remaining portion of the Site that has yet to be mined. Because mineral and aggregate uses are allowed under state statute on agricultural lands and Goal 5 provides a process for balancing all statewide goals, the application complies and meets the requirements of Statewide Planning Goal 3. Therefore, the Board finds that the Applications are in compliance with Goal 3.

**Goal 4: Forest Lands.**

**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.**

Goal 4 requires maintaining the state's forest land base and related economy. The Property is primarily located on designated forest resource (FC/WR) land. A portion of the land has been harvested for timber and a portion of the property has been an open valley. Mining and processing of aggregate resources is permitted on forest lands under OAR 660-006-0025(4)(g). Reclamation of the site will result in ponds and lakes with forest surrounding the site. Therefore, the Board finds that the Applications meet Statewide Planning Goal 4.

**Goal 5: Natural Resources, Scenic and Historic Areas, and Open Spaces.**

**To protect natural resources and conserve scenic and historic areas and open spaces.**

Goal 5 identifies mineral and aggregate resources as a significant resource. As applied to mineral and aggregate sites, Goal 5 is implemented by OAR 660-023-0180. For the reasons

explained in these Supplemental Findings in response to OAR 660-023-0180(5)(b)(D), which reasons are incorporated herein by reference, the Board finds that there is substantial evidence in the whole record to support the conclusion that the PAPA Application and the Comprehensive Plan Amendment and Zone Change Application satisfy the requirements of OAR 660-023-0180, including how the location, quantity, and quality of the mineral and aggregate resource on the Property is significant; the identification of conflicts between the Project and allowed uses, including all other inventoried Goal 5 resources; identification of reasonable and practicable measures to minimize these conflicts; and the analysis of the economic, social, environmental, and energy consequences of allowing, not allowing, or limiting the Project based upon any conflicts that cannot be minimized.

For these reasons and the additional reasons set forth at pages 37-62 of the Application narrative, the Board finds that the PAPA Application and the Comprehensive Plan Amendment and Zone Change Application are consistent with Goal 5.

**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 Board finds for the reasons explained in these Supplemental Findings in response to OAR 660-023-0180(5)(b)(A), which reasons are incorporated herein by reference, the Applicant has minimized the conflicts between the Project and allowed uses, including conflicts relating to discharges to air, water, and land. Consistent with best management practices (BMP's) set out by the Oregon Department of Environmental Quality visible emission and nuisance requirements, the Applicant will minimize dust by controlling truck speed, graveling internal roads, using water to control dust, paving the access road, and promptly removing dirt and other material that might become airborne from paved portions. Storm water discharges will be directed on-site and will be handled through an NPDES 1200A permit, if necessary. Water taken from the individual mining cells through the dewatering process will be reintroduced on-site to maintain a water balance and protect groundwater resources. If present, turbidity in groundwater associated with mining below the water table will be filtered out on the natural processes of the aquifer and a 50-foot buffer is provided on all sides of the extraction site to make sure that turbidity does not move offsite. Extraction activities at the site will unavoidably result in disruption of surface land resources. This is necessary to meet the provisions of Goal 5 to protect and allow the use of mineral and aggregate resources. Pursuant to a DOGAMI permit and DOGAMI standards, reclamation will be accomplished to return disrupted land to ponds and lakes, ultimately improving the quality of land resources in the State. For the reasons set forth in the ARTIC report as to air quality (Application, Appendix H), the Shannon & Wilson report as to water quality (Application, Appendix B), the Terra Science Inc. reports (Application, Appendices D and E) and the Westlake report as to water quality (Application, Appendix J), the Board finds that the Applications are consistent with Goal 6. Further, the Board finds that no one contended on the record that the Project was inconsistent with Goal 6. Accordingly, the Board finds that the PAPA Application and the Comprehensive Plan Amendment and Zone Change Application are consistent with Goal 6.

#### **Goal 7: Areas Subject to Natural Hazards.**

**To protect people and property from natural hazards.**

Goal 7 requires protecting people and Site from natural hazards. The Board finds that there are no identified or inventoried natural hazards in the general area of the Property, and with the exception of the access road, the mining project is not located within the designated floodplain. Further, the Project includes measures designed to reduce risk to people and the Property from natural hazards by providing mitigation measures for development of the access road and associated bridge within the floodplain. No known mapped landslides occur on the site. The mining plan addresses slope stability for cut-and-fill slopes. In the mining area, slopes cut into the sand and gravel resource will be stable at 2:1 (Application, Appendix L). For the access road, slopes cut into overburden will be stable at 2:1; and slopes cut into bedrock will be stable at 1 ½:1 or per an engineering geologists review during the construction of the access road. Fill slopes associated with the access road will be stable at 2:1 by following proper compaction of the fill in accordance with geotechnical recommendations. Further, the mining plan will meet DOGAMI requirements for slope stability. No one contended on the record that the Project did not satisfy Goal 7. The Board finds that the PAPA Application and the Comprehensive Plan Amendment and Zone Change Application are consistent with Goal 7.

#### **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 Board finds that the Project does not involve any designated recreational or open space lands or affect access to any significant recreational uses in the area and, therefore, will not interfere with any existing recreational facilities. The Board finds that the PAPA Application and the Comprehensive Plan Amendment and Zone Change Application are consistent with Goal 8.

#### **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.**

In general, Goal 9 is only applicable to areas within urban growth boundaries. The Property is located far from an urban area. Therefore, the Board finds that Goal 9 is not applicable to the Project. Alternatively, to the extent Goal 9 is applicable, the Board finds that the Project furthers the objectives of this goal by providing a material (sand and gravel) that is essential to the construction of a variety of infrastructure projects. Development of these infrastructure projects will support a variety of economic activities within the County. The demand for aggregate in the County and in other parts of western Oregon is great and continues to increase (Whelan, 1995). Transportation of aggregate over long distances significantly increases the product cost and limits economical road, utility, and building construction. Local supplies of aggregate, therefore, are critical components of economic development. The site will assist in the maintenance of a

local aggregate supply and support regional economic development. The Board finds that the PAPA Application and the Comprehensive Plan Amendment and Zone Change Application are consistent with Goal 9, to the extent it is applicable at all.

#### **Goal 10: Housing**

**To provide for the housing needs of citizens of the state.**

Goal 10 and its implementing rules require each local government to inventory the supply of buildable residential lands and to ensure that the supply of such buildable lands meets the local government's anticipated housing needs. The Board finds that the Applications will not affect the supply of residential lands in the County. However, the Board finds that the Project nevertheless furthers the objectives of this goal by providing a material (sand and gravel) that is essential to the construction and rehabilitation of many forms of housing. Therefore, the Board finds that the Applications are consistent with Goal 10, to the extent it is applicable.

#### **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 Board finds that the Project does not require the extension of public sewer, water, or storm drainage facilities, and Applicant does not propose to extend same. Further, for the reasons explained in these Supplemental Findings in response to OAR 660-023-0180(5)(b)(B) below, which reasons are incorporated herein by reference, the transportation and stormwater systems are adequate to serve the Project, subject to identified conditions. No one contended on the record that the PAPA Application and Comprehensive Plan Amendment and Zone Change Application would not be consistent with Goal 11. For the foregoing reasons, the Board finds that the PAPA Application and the Comprehensive Plan Amendment and Zone Change Application are consistent with Goal 11.

#### **Goal 12: Transportation.**

**To provide and encourage a safe, convenient and economic transportation system.**

Goal 12 requires providing a safe, convenient, and economic transportation system. The Project will further the objectives of this goal by providing a material (sand and gravel) that is essential to the construction and reconstruction of a variety of transportation projects, including roads, airports, railroads, sidewalks, and bikeways.

Goal 12 is implemented by the Oregon Transportation Planning Rule ("TPR"), which requires local governments to determine whether or not a proposed PAPA will "significantly affect" an existing or planned transportation facility. OAR 660-012-0060(1). A PAPA will "significantly affect" an existing or planned transportation facility if it will: (1) change the functional classification of a facility; (2) change standards implementing a functional classification system; (3) as measured at the end of the planning period, result in types or levels of travel or access that

are inconsistent with the functional classification of an existing facility; or (4) degrade the performance of an existing facility either below applicable performance standards, or if already performing below these standards, degrade it further. *Id.*

LUBA has stated that the initial question under the TPR is "whether the plan amendment causes a net increase in impacts on transportation facilities, comparing uses allowed under the unamended plan and zoning code with uses allowed under the amended plan and zoning code." *Griffiths v. City of Corvallis*, 50 Or LUBA 588, 593 (2005). This is commonly applied to require that an applicant compare the traffic associated with a reasonable worst case scenario development under the existing zoning district with a reasonable worst case scenario under the proposed zoning district.

In its report set forth in Appendix G, Sandow compared the reasonable worst-case trip generation scenario of the Site under the existing zoning designation (FC/WR and RR-5), with the reasonable worst-case trip generation scenario under the proposed zoning designation (MARZ). This comparison indicated that the Site would generate more trips under the proposed zoning designation; however, at the end of the planning period (2033), all site access points and off-site intersections were forecast to perform within acceptable performance standards during weekday AM and PM peak hours. Based upon these results, Sandow concluded that the Applications would not significantly affect any existing or planned transportation facilities for purposes of the TPR.

Therefore, the Board finds that the Applications are consistent with Goal 12 and the TPR.

#### **Goal 13: Energy Conservation.**

##### **To conserve energy.**

Goal 13's objective is the conservation of energy. The Board finds that the Project will have a **significant positive energy** consequence. The energy consequences of allowing a mine are positive because the Property is proximate to the I-5 corridor where there is a demand for infrastructure improvements as well as being proximate to Grants Pass and surrounding small towns. Growth in the area will continue to create a demand for aggregate, especially for sand and gravel. Little of the resource is currently permitted in the Grants Pass area. Locating a mine near this area will reduce the distance the product must travel, resulting in lower fuel consumption. The Property's proximity to major transportation corridors, such as Interstate 5, also reduces fuel consumption and energy impacts compared to more remote locations.

The Board finds that the PAPA Application and the Comprehensive Plan Amendment and Zone Change Application are consistent with Goal 13.

#### **Goal 14: Urbanization.**

##### **To provide for an orderly and efficient transition from rural to urban land use.**

The Board finds that Goal 14 is not an applicable approval criterion for two reasons. First, the Property is located outside of any urban area. Second, aggregate mining is considered a rural land use and does not promote urbanization. Therefore, the Board finds that Goal 14 is not applicable.

**Goal 15: Willamette River Greenway.**

**To protect, conserve, enhance and maintain the natural, scenic, historical, agricultural, economic and recreational qualities of lands along the Willamette River as the Willamette River Greenway.**

The Board finds that no portion of the Property is located in the Willamette River Greenway, and no lands within the Greenway are affected by this proposal. Therefore, the Board finds that Goal 15 is not an applicable approval criterion for the PAPA Application and the Comprehensive Plan Amendment and Zone Change Application.

**Goal 16: Estuarine Resources**

**To recognize and protect the unique environmental, economic, and social values of each estuary and associated wetlands; and**

**To protect, maintain, where appropriate develop, and where appropriate restore the long-term environmental, economic, and social values, diversity, and benefits of Oregon's estuaries.**

The Board finds that no portion of the Property or the designated impact area is located within an estuary. As a result, the Board finds that the Project will not adversely affect any estuarine resources. Accordingly, the Board finds that Goal 16 is not applicable to the PAPA Application and the Comprehensive Plan Amendment and Zone Change Application.

**Goal 17: Coastal Shorelands.**

**To conserve, protect, where appropriate, develop and where appropriate restore the resources and benefits of all coastal shorelands, recognizing their value for protection and maintenance of water quality, fish and wildlife habitat, water-dependent uses, economic resources and recreation and aesthetics. The management of these shoreland areas shall be compatible with the characteristics of the adjacent coastal waters; and**

**To reduce the hazard to human life and property, and the adverse effects upon water quality and fish and wildlife habitat, resulting from the use and enjoyment of Oregon's coastal shorelands.**

The Board finds that no portion of the Property or the designated impact area is located within a coastal shorelands area. As a result, the Board finds that the Project will not adversely affect any coastal shorelands resources. Accordingly, the Board finds that Goal 17 is not applicable to the PAPA Application and the Comprehensive Plan Amendment and Zone Change Application.

**Goal 18: Beaches and Dunes.**

To conserve, protect, where appropriate develop, and where appropriate restore the resources and benefits of coastal beach and dune areas; and

To reduce the hazard to human life and property from natural or man-induced actions associated with these areas.

No portion of the Property or the designated impact area is located within a designated beach or dune. As a result, the Board finds that the Project will not adversely affect beach or dune resources. Accordingly, the Board finds that Goal 18 is not applicable to the PAPA Application and the Comprehensive Plan Amendment and Zone Change Application.

**Goal 19: Ocean Resources.**

To conserve marine resources and ecological functions for the purpose of providing long-term ecological, economic, and social value and benefits to future generations.

The Property does not include or abut any ocean resources, and the Project will not impact any ocean resources. No party contended in the County proceedings that Goal 19 was applicable to the PAPA Application and the Comprehensive Plan Amendment and Zone Change Application. Therefore, the Board finds that Goal 19 is not applicable to the PAPA Application and the Comprehensive Plan Amendment and Zone Change Application.

**II. OREGON ADMINISTRATIVE RULES**

**OAR 660-023-0180 Mineral and Aggregate Resources**

(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 (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;

**QUALITY**

The Board finds that a representative set of samples from the site meet ODOT specifications for base rock as required by this rule. As support for this conclusion, the Board relies upon the results of industry-standard tests, which demonstrated that seven (7) samples of aggregate materials from the site meet ODOT specifications for base rock, together with expert opinions from two geologists who analyzed the samples collected from the site.

Specifically, the Board finds that the Applicant presented test results reporting that seven (7)

samples of aggregate materials from the site satisfied applicable criteria set forth in ODOT's *Standard Specifications for Highway Construction* (revised 2008, current edition) Section 02630 for air degradation, abrasion, and Sodium Sulfate soundness. See Table 1 of Appendix A of the Applications. The Board finds that an ODOT-accredited aggregate testing laboratory, Carlson Testing ("Carlson"), conducted these tests in accordance with industry standard. See Appendix A of the Applications (Aggregate Resource Evaluation and Significance Determination prepared by Kuper Consulting LLC).

The opponents' primary challenge with respect to the quality of resource, which is discussed more fully below, relates to the procedures and methodology used to test the site. However, for the reasons stated below, the Board finds that the seven (7) samples of aggregate material from the site meet applicable ODOT specifications for base rock for air degradation, abrasion, and soundness.

Mr. James, Registered Professional Geologist, Dr. Rodine, Certified Engineering Geologist, and Mr. Schneider argue 1) that the selected samples of aggregate material are not "representative" as required by the Goal 5 rule; 2) that the American Association of State Highway and Transportation Officials (AASHTO) standards controlled the sampling process; 3) that the number of borings and trenches were not adequate to characterize the significance of the sand and gravel deposits; and 4) that the aggregate in the Sunny Valley area is of poor quality, based on previous experience with other aggregate sources in the area.

First, the Board finds that these samples are a "representative set of samples of aggregate material in the deposit on the site" as required by the Goal 5 rule based upon the testimony of the Certified Engineering Geologists at Kuper Consulting, LLC. The Kupers testified that the samples were representative because they followed geologic methods accepted in the industry and used their best professional judgment in selecting them. See Kuper Consulting letters to Planning Commission dated May 5 and 27, 2014 (Attachment F and K to Staff Report, dated June 23, 2014), incorporated herein by reference as findings. Specifically, the Kupers testified that they characterized the site and selected samples based upon analysis of published geologic mapping of the site, review of water well logs in the surrounding area to observe geologic conditions within the wells, and the continuous physical observation of the materials encountered and produced by the drilling and trenching equipment used for the subsurface investigation (including excavation of 2 sonic borings on either end of the site, review of 2 water well logs located in between these 2 borings on the site, and excavation of 17 exploratory trenches on the site ranging in depth from 14 to 33 feet). *Id.*; see also Kuper Consulting letter to Board, dated June 18, 2014 (Exhibit G), incorporated herein by reference as findings; see also Application narrative, p. 39 and Appendix A.

The Kupers also testified that samples were continuously retrieved from the ground surface to the bottom of each boring for observation and testing of the material and were collected in one to two foot intervals. Kuper Consulting's letter to Board, dated June 18, 2014 (Exhibit G). Further, the Kupers testified that approximately 4,200 pounds of samples were retrieved from the two borings, and that the borings were continuously geologically logged by a licensed engineering geologist with over 38 years of experience. *Id.* Additionally, the Kupers testified that a licensed engineering geologist with 35 years of experience worked with an excavator and a technician to excavate 17 exploratory trenches and geologically logged each trench, which were a minimum of



5 feet wide, 15 feet long and of varied depths, resulting in an additional 650 pounds of samples. *Id.* Trenches were placed across the site to confirm the continuity of the resource as well as to compare them to the findings within the borings. *Id.*

Based on the testimony and evidence by the Certified Engineering Geologists at Kuper Consulting, the Board does not concur with the assertion by Mr. James, Dr. Rodine and Mr. Schneider that the samples of aggregate material are not representative as required by the Goal 5 rule.

Secondly, the Board finds that the sampling process performed by the Applicant complies with all applicable standards, and that the number of borings and trenches were adequate to characterize the significance of the sand and gravel on the site. The Board finds that the Goal 5 rule (OAR 660-023-0180) incorporated the ODOT standards, but did not expressly incorporate any other standards. Goal 5 does not define "representative samples" and leaves the judgment up to the professional geologist to make that determination. The Kupers testified that, as with all geological analyses within the aggregate and construction industry, it is up to the professional geologist or engineer to decide what samples represent the soil or rock that underlie a site and then use professional judgment to assign laboratory tests on those representative samples. The Kupers testified that the ODOT, ASTM, and AASHTO methods require the use of judgment by discretion of the Certified Engineering Geologist in determining the "representative set of samples" for quality purposes under the Goal 5 Rule. Kuper Consulting letter to Planning Commission dated May 5, 2014 (Attachment F to Staff Report, dated June 23, 2014). The ASTM methods (ASTM D-75, Appendix X-2), under "Securing Samples", recommends that the rock material be inspected to determine "discernable variations". This requires the use of visual discretion and professional judgment and is a reason that the ASTM Note 2 states that "the investigation should be done only by a responsible trained and experienced person" (i.e. a Certified Engineering Geologist who can use the appropriate judgment to assure representative samples are selected). *Id.* The ASTM method suggests samples be chosen from different stratum "discernable to the sampler". This requires professional judgment. The same section also recommends that an "estimate" of the different materials should be made. Again, this requires the Certified Engineering Geologist's professional judgment and discretion. The same section leaves the number and depth of test holes to the judgment of the geology professional. *Id.*

Based on the technical field work and analyses conducted by Kuper Consulting, as described above and in the record, the Board does not concur with the assertion by Mr. James, Dr. Rodine and Mr. Schneider that the AASHTO standards control, and the Board finds that the Applicant's sampling process complied with all applicable standards and the number of borings and trenches were adequate to characterize the significance of the sand and gravel on the site.

Lastly, the Board finds that subject test results and related expert opinions constitute substantial evidence to support the conclusion that the site satisfies the quality threshold of OAR 660-023-0180(3)(a). Mr. Schneider asserted that the aggregate in the Sunny Valley area is of poor quality, based on his previous experience with other aggregate sources in the area. The Board finds that Mr. Schneider is not a geologist or an expert in characterizing or analyzing the distribution of subsurface rock materials or in understanding the quality threshold for purposes of the Goal 5 rule at a given site. Therefore, the Board finds Mr. Schneider's testimony regarding the quality of the material in the deposit on the site to be less credible than the testimony offered

by the Kupers on this subject.

Although Mr. James and Dr. Rodine are geologists, the Board does not concur with their assertions that Kuper Consulting has not performed the proper work to conclude that the site is significant. The Board finds that substantial evidence in the record demonstrates that Kuper Consulting has successfully permitted at least 25 aggregate mining projects under Goal 5 criteria. Furthermore, the Board finds that Kuper Consulting's continuous presence during the excavations and material sampling, its detailed Significance Report, and the independent laboratory testing of the samples in accordance with Goal 5 criteria are more persuasive than the testimony of Mr. James and Dr. Rodine.

On the basis of the testimony presented, and for the reasons stated above, the Board finds that a representative set of samples of aggregate material in the deposit on the site meets applicable ODOT specifications for base rock for air degradation, abrasion, and soundness.

#### QUANTITY

The Board finds that the site is located outside the "Willamette Valley" as that term is defined in OAR 660-023-0180(1)(m) because the site is located in Josephine County. Therefore, the Board finds that the rule requires that the estimated amount of material in the deposit on the site must exceed 500,000 tons to qualify as significant.

The Kupers estimate that the estimated amount of quality material in the deposit on the site is at least 6,900,000 tons. See Appendix A of the Applications. The Kupers reached this conclusion by examining a base topographic map and the logs of the on-site subsurface exploration; making allowances for setbacks, slopes, and the anticipated mining depth; and then interpolating the location of the resource between known points of elevation. *Id.* Westlake Engineering ("Westlake") supplemented this analysis by conducting industry-standard volumetric models. *Id.*

Mr. James and Dr. Rodine offered a counter-opinion regarding the quantity of the aggregate material in the deposit on the site on the bases of inadequate sampling and an undercalculation of percentage of clay or mud/debris material from historic landslides in the area.

The Board does not concur with Mr. James' and Dr. Rodine's testimony. The Board finds that the Kupers' analysis and testimony is particularly credible in light of their extensive expertise characterizing aggregate mines. See Exhibit D and See Kuper Consulting letter to Planning Commission dated May 5, 2014 (Attachment F to Staff Report, dated June 23, 2014). The Board relies upon the Kupers' expert testimony and finds that the estimated amount of quality aggregate in the deposit on the site far exceeds the minimum requirement of 500,000 tons.

#### LOCATION

The Board finds that the site meets the locational requirements of this rule for two reasons. First, for the reasons explained above, which reasons are incorporated by reference, the Board finds that the site is located outside of the "Willamette Valley" and meets the quality and quantity thresholds applicable to an aggregate site outside of the Willamette Valley (more than 500,000 tons).

Second, the Board finds that the site is located in an area replete with aggregate resources. As support for this conclusion, the Board relies upon testimony from the Kupers that the site has an abundance of desirable and high-quality Quaternary-age Alluvial Gravels and Sands, not unlike other valleys in the area. See Appendix A of the Applications. The Board finds that the area of Placer has a long history of mining. The Board also finds that field work performed by two experienced Oregon licensed engineering geologists confirmed that the aggregate resource is located within the site.

**OAR 660-023-0180(3):**

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

The Board finds that this subsection is not applicable because the County has not adopted standards establishing a lower threshold for significance than subsection (a) of this section.

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

The Board finds that the Property is not significant under this subsection because it was not on an inventory of significant aggregate sites in an acknowledged plan on September 1, 1996.

**(d) Notwithstanding subsections (a) and (b) of this section, except for an expansion area of an existing site if the operator of the existing site on March 1, 1996, had an enforceable property interest in the expansion area on that date, an aggregate site is not significant if the criteria in either paragraphs (A) or (B) of this subsection apply:**

**(A) More than 35 percent of the proposed mining area consists of soil classified as Class I 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 . . .**

The Board finds that the criteria in paragraphs (A) and (B) do not apply because, according to the applicable NRCS maps, no Class I or unique soils are mapped on the site, and no more than 10% of Class II soils are mapped on the site. See Aggregate Resource Evaluation and Significance Determination prepared by Kuper Consulting, LLC in Appendix A of the Applications. Therefore, no qualifying percentage of Class I or II soils are present. For these reasons, the Board finds that the Property is not rendered not significant due to soils.

In summation, the Board finds that the site is significant based upon its quality, quantity, and location.

OAR 660-023-0180:

**(5) For significant mineral and aggregate sites, local governments shall decide whether mining is permitted. For a PAPA application involving an aggregate site determined to be significant under section (3) of this rule, the process for this decision is set out in subsections (a) through (g) of this section. A local government must complete the process within 180 days after receipt of a complete application that is consistent with section (8) of this rule, or by the earliest date after 180 days allowed by local charter.**

The Board finds, for two reasons, that the County has correctly processed the Applications. First, as explained below, the County applied the criteria in subsections (a) through (g) of this section to decide that mining is permitted on the Property. Second, the Board finds that it is rendering the final decision approving the Applications by signing these written Findings of Fact and Conclusions of Law on October 8, 2014, as extended by the Applicant. Specifically, the County deemed the Applications complete on February 28, 2014. The Applicant provided the County extensions to the County's obligation. Therefore, the Board finds that it has complied with the procedural requirements of this section.

**(5)(a) The local government shall determine an impact area for the purpose of identifying conflicts with proposed mining and processing activities. The impact area shall be large enough to include uses listed in subsection (b) of this section and shall be limited to 1,500 feet from the boundaries of the mining area, except where factual information indicates significant potential conflicts beyond this distance. For a proposed expansion of an existing aggregate site, the impact area shall be measured from the perimeter of the proposed expansion area rather than the boundaries of the existing aggregate site and shall not include the existing aggregate site.**

The Board finds that the impact area for purposes of identifying conflicts with the proposed mine under the Goal 5 rules is limited to 1,500 feet from the boundaries of the mining area ("Impact Area"). See Figure 2 of Applications. For the reasons explained below, the Board finds that there is no factual evidence in the record that indicates significant potential conflicts beyond this distance.

#### **EXPANSION OF IMPACT AREA TO ASSESS POTENTIAL GOAL 5 CONFLICTS**

Opponents contend that the County should expand the Impact Area for purposes of assessing potential Goal 5 conflicts related to traffic, noise, toxic dust, water, and wildlife safety, but the Board denies these contentions for two reasons. First, the Board finds that there is no basis to expand the Impact Area to address conflicts beyond this area. OAR 660-023-0180(5)(a) permits expanding the Impact Area beyond 1,500 feet from the boundaries of the mine, but only when "factual information indicates significant potential conflicts beyond this distance." Opponents submitted a letter from Wolfgang Nebmaier identifying potential conflicts. See letter from Wolfgang Nebmaier dated May 30, 2014 (Exhibit 18). The letter provides no substantial evidentiary basis to expand the Impact Area, and substantial evidence in the record is to the contrary. As support for this conclusion, the Board relies upon and incorporates by reference the findings set forth immediately below in response to opponents contentions concerning potential

conflicts, as a basis to conclude that there is no basis to expand the Impact Area. The Board also relies on and incorporates herein as findings the letter from Applicant's attorney, Steve Pfeiffer, dated May 27, 2014 (Attachment K to Staff Report, dated June 23, 2014. As such, the Board finds that the opponents have not presented "factual information" of "significant potential conflicts" sufficient to require the Board to expand the Impact Area.

Second, the Board finds that the Project conditions of approval will adequately control potential conflicts relating to traffic, noise, toxic dust, water, and wildlife safety. The fact that these conditions protect resources within the 1,500-foot area ensures that locations that are even farther away are also adequately protected.

#### A. POTENTIAL TRAFFIC CONFLICTS

Although opponents contend that the County should expand the impact area to consider potential traffic conflicts, the Board finds that there is no legal basis to expand the Impact Area on these grounds. For the reasons explained below in response to OAR 660-023-0180(5)(b)(B), the Board finds that the Applicant's Transportation Impact Assessment prepared by Sandow Engineering, dated July 29, 2013 ("TIA") complies with the requirements of that subsection because it evaluates potential conflicts to local roads used for accessing the mine within one mile of the entrance to the mining site. See TIA at Appendix G of the Applications. Further, the TIA addresses each of the potential conflict areas recited in the rule. *Id.*

The Board finds that the Goal 5 administrative rule requires an analysis of potential transportation impacts within one mile of the site or to the nearest arterial, whichever is further. The entrance to the site is proposed on Placer Road. *Id.* Placer Road does not intersect any arterial streets to the east. *Id.* To the west, the nearest major intersection is Sunny Valley Loop. *Id.* There are not intersections along the haul route to Interstate-5 ramps that are classified higher than a "Local Collector." *Id.* The TIA included a thorough analysis of potential conflicts from truck traffic generated by the site along the entire haul route. *Id.* The Board finds that since the TIA analyzed potential conflicts from truck traffic generated by the site along the entire haul route, and the County Public Works staff expressed concurrence with such analysis, there is no basis to expand the traffic impact area. The Board also finds that Mr. Nebmaier did not present substantial evidence to refute Sandow Engineering's documented calculations, nor has Mr. Nebmaier presented any expert testimony otherwise challenging the methodology or assumptions on which the TIA is based. The Board finds that substantial evidence in the record supports the TIA's findings, and accordingly, the Board finds that there is no basis to expand the Impact Area based on potential traffic conflicts.

#### B. POTENTIAL NOISE CONFLICTS

Opponents also contend that the Impact Area should be expanded to address potential noise conflicts. Noise experts Daly-Standlee & Associates, Inc. submitted the Sunny Valley Mine Noise Study, dated August 15, 2013 (the "Noise Study") (Appendix F to Applications). The Noise Study concluded, "If mitigation measures such as those discussed in this report are included in the approved mining plan, noise from the Sunny Valley Mine will comply with DEQ noise limits at all residences. Based upon DSA's [Daly-Standlee & Associates, Inc.'s] review of

the mining plan submitted to the County, these mitigation measures have been incorporated into the plan under review by Josephine County and DOGAMI.” Noise Study, p. 1. The Board finds that the Applicant has included the noise mitigation measures suggested in the Noise Study into its mining plan, and that conditions of approval ensure implementation of such mitigation measures. The Board also finds that because the Noise Study unequivocally documents compliance with DEQ noise regulations at all residences within and beyond the 1,500 Impact Area, there is no basis to expand the Impact Area based upon potential noise conflicts.

### C. POTENTIAL TOXIC DUST CONFLICTS

Opponents also contend that the Impact Area should be expanded to address potential conflicts with toxic dust. Air quality experts at Arctic Engineering, Ltd. submitted a Potential Air Quality Impacts and Permitting Assessment Report, dated August 19, 2013 (the “Air Quality Report”) (Appendix H of Applications). The Air Quality Report stated that the Applicant has implemented fugitive dust mitigation measures recommended by Arctic Engineering, Ltd. The Air Quality Report concluded:

“These combined actions and activities will more than suffice to comply with the requirements (OAR) of Chapter 340, Divisions 200 through 268, and reduce total particulate matter (PM) . . . by more than 95% from this aggregate removal operation and the trucking operations to the public roadway at Placer Road. By paving the access road from the scalehouse to Placer Road and utilizing an aggressive O&M Plan, fugitive emissions from aggregate conveying/crushing operations and entrained road dust from trucking and hauling operations at the facility will be reduced to regulatory insignificant levels.” Air Quality Report, Section 6.0.1.

The Board finds that the Applicant has included the air quality mitigation measures suggested in the Air Quality Report into its mining plan and that conditions of approval will ensure implementation of such mitigation measures. The Board also finds that the Air Quality Report, along with the testimony from Dr. De Hoog, dated May 23, 2013, demonstrates that dust from the mine will be reduced to insignificant levels within the Impact Area. Therefore, the Board finds that there is no basis to expand the Impact Area based upon potential dust conflicts.

### D. POTENTIAL WATER CONFLICTS

Opponents also contend that the Impact Area should be expanded to address water conflicts. Environmental consultants Shannon & Wilson, Inc. submitted a Hydrogeologic Evaluation, dated August 2013 (“Hydrogeologic Report”) (Appendix B of Applications), and Westlake Consultants, Inc. submitted an Erosion and Sediment Control and Storm Water Narrative, dated August 2013 (“Erosion and Sediment Control Report”) (Appendix J to Applications). The Board finds that both reports conclude that with appropriate mitigation, there will be no significant downstream impacts from the mine either within or beyond the 1,500-foot impact area boundary. Hydrogeologic Report, pp. 22-23; Erosion and Sediment Control Report, pp. 2-7. The Board

finds that the Applicant has included the mitigation measures suggested in both reports into its mining plan, including a phased mining approach, infiltration swales, and a long-term groundwater monitoring program, which the reports demonstrate will ensure that no discharged water will leave the mine boundary because all discharged water will be processed on-site. *Id.* Additionally, the Board relies on the testimony of Mr. Bernard Smith, who testified at the May 12, 2014 Planning Commission hearing that all runoff from impervious surfaces associated with the haul road and the bridge will be captured and returned to the mining area with no discharge off-site. The Board further finds that opponents have not submitted any direct evidence refuting the Applicant's experts and have not presented any expert testimony challenging the Applicant's experts or their reports. Therefore, the Board finds that there is no basis to expand the Impact Area based on potential water conflicts.

#### **E. POTENTIAL WILDFIRE SAFETY CONFLICTS**

Opponents argued that increased traffic from the mining operation will create potential wildfire safety conflicts beyond the Impact Area because the haul route is the sole wildfire escape route available to residents in the area. However, the Board finds that wildfire safety is not a criterion required to be addressed by the Applicant under the controlling Goal 5 administrative rule or under County ordinance provisions implementing the same. Furthermore, the Board finds that the TIA submitted by Sandow Engineering demonstrates that Placer Road and associated intersections will continue to function adequately under applicable County road standards during mining activity, and the record contains no credible substantial evidence to the contrary. TIA, p. 22.

Based upon the foregoing, the Board limits the Impact Area to 1,500 feet from the boundaries of the mining area.

#### **OAR 660-023-0180:**

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

**(5)(b) The local government shall determine existing or approved land uses within the impact area that will be adversely affected by proposed mining operations and shall specify the predicted conflicts. For purposes of this section, "approved land uses" are dwellings allowed by a residential zone on existing platted lots and other uses for which conditional or final approvals have been granted by the local government. For determination of conflicts from the proposed mining of a significant aggregate resource site, the local government shall limit its consideration to the following:...[A through F]**

**(5)(c) The local government shall determine reasonable and practicable measures that would minimize the conflicts identified under subsection (b) of this section. To determine whether measures would minimize conflicts to agricultural practices, the requirements of ORS 215.296 shall be followed rather than the requirements of this section. If reasonable**

and practicable measures are identified to minimize all identified conflicts, mining shall be allowed at the site and subsection (d) of this section is not applicable. If identified conflicts cannot be minimized, subsection (d) of this section applies.

The Board adopts joint findings in response to these two subsections below. First, regarding "approved uses," Applicant has identified the "approved uses" within 1,500 feet from the boundaries of the mining area as undeveloped, rural residential, and forestry uses. There are rural residential uses to the north and west of the area, and there are undeveloped and forestry uses to the east and south of the site. See Figure 2 and Table 1, Appendix M of Applications.

Although Edward Brett testified that he operates a nursery on his property within the Impact Area, and Joann Brett testified that she has an organic garden on her property within the Impact Area, the Board finds that such testimony was not supported by any specific evidence in sufficient detail to identify "accepted farm practices" that must be considered under ORS 215.296. See letters from the Bretts (Exhibit MM). Specifically, the Board finds that a nursery license does not constitute substantial evidence identifying "accepted farm practices." Furthermore, the Board finds that the Bretts did not contend that the Project would force a significant change in or significantly increase the cost of accepted farm or forest practices on their property. *Id.* Additionally, the Board finds that organic farming is not properly viewed as either a "farm use" or an "accepted farm practice." *Dierking v. Clackamas County*, 38 Or LUBA 106 (2000) (so holding). Moreover, although William and Elizabeth Corcoran testified that they have a business plan for a proposed winery on their property within the Impact Area and currently operate an agricultural business including a vineyard, fruit trees, berry field, vegetables, bee hives, timber and Christmas trees, the Board finds that such testimony was not supported by any specific evidence in sufficient detail to identify "accepted farm practices" under ORS 215.296. See letters from the Corcorans (Exhibits YYY, ZZZ and GGGG). In addition, the Board finds that the Corcorans did not contend that the Project would force a significant change in or significantly increase the cost of accepted farm or forest practices on their property. *Id.*

Therefore, the Board finds that a reasonable person would rely upon the agricultural survey and the testimony and evidence of various Project consultants, as described herein, to support the conclusion that the Project will not generate any significant conflicts with agricultural practices on surrounding lands.

No party has identified any other "approved uses" within 1,500 feet of the proposed mining and processing area. Therefore, the Board finds that the Applicant's identification of "approved uses" accurately describes the "approved uses" within the Impact Area.

**OAR 660-023-0180 (5)(b) The local government shall determine existing or approved land uses within the impact area that will be adversely affected by proposed mining operations and shall specify the predicted conflicts. For purposes of this section, "approved land uses" are dwellings allowed by a residential zone on existing platted lots and other uses for which conditional or final approvals have been granted by the local government. For determination of conflicts from the proposed mining of a significant aggregate resource 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;**

As explained in more detail below, the Board finds that there are limited conflicts due to noise, dust, or other discharges to sensitive uses within the Impact Area; however, the Board finds that there are reasonable and practicable measures that will minimize these conflicts. The Board adopts these reasonable and practicable measures as conditions of approval in order to assure that the identified conflicts are minimized.

**NOISE:**

IDENTIFICATION OF CONFLICTS:

The Board makes the following findings as to the noise impacts of the Project:

- Pursuant to DEQ classifications, the Property is a “previously unused industrial or commercial site,” because it has not been used by an industrial or commercial noise source in the 20 years prior to the commencement of mining operations on the Property. OAR 340-035-0015(47).
- As a result, the more restrictive of the following standards apply to the mine: (1) the maximum allowable noise levels for industrial and commercial noise sources set forth in Table 8 of OAR 340-035-0035, which are set for 1%, 10%, and 50% of an hour; or (2) the “ambient noise degradation” levels which require that any “new industrial or commercial noise source” on a “previously unused industrial or commercial site” cannot produce noise sufficient to cause existing ambient noise levels to increase by more than 10 decibels (“dB”) pursuant to OAR 340-035-0035(1)(b)(B).
- The more restrictive of the two DEQ standards—and thus the one applicable to the Property—is the “ambient noise degradation” level (ambient noise levels plus 10 dB).
- There are 14 noise-sensitive uses (all single-family residences) within 1,500 feet of the site. The locations of these residences are shown in Appendix F, Figure 4 of Applications.
- Without mitigation, certain residences in the Impact Area could experience noise conflicts that exceed DEQ standards under a worst-case noise scenario because the predicted loudest hourly statistical noise levels at these residences could exceed the identified “ambient noise degradation” level. This worst-case scenario would occur when all equipment would be operating simultaneously throughout each hour of the workday.

As support for these conclusions, the Board relies upon the testimony of the Applicant’s acoustical engineer, Kerrie G. Standlee, P.E. of Daly Standlee and Associates (“DSA”). See Sunny Valley Mine Noise Study dated August 15, 2013 (Appendix F of Applications). In that

study, DSA reached each of the conclusions adopted by the Board as findings above. *Id.* The Board finds DSA's testimony to be particularly credible due to DSA's substantial experience and its utilization of industry-standard equipment and methodologies. *Id.* The Board finds that a reasonable person would rely upon DSA's testimony to reach the above conclusions regarding noise impacts associated with the Project.

Further, the Board finds that opponents' contentions to the contrary do not undermine DSA's testimony. The Board addresses each of the opponents' contentions below.

## METHODOLOGY CONCERNS

First, although Wolfgang Nebmaier and Steve Schneider contend that the shape of Sunny Valley in the vicinity of the mine is like an amphitheater, which increases the noise levels produced by the proposed mining operations above those presented in the DSA Noise Study, the Board denies this contention because it misconstrues acoustic design principles of amphitheatres and of the noise modeling in the Noise Study. The Board finds that DSA appropriately took into account the topography of the surrounding area and sufficiently addressed mining generated noise and any impacts that the topography may have on the mining generated noise levels at residences in Sunny Valley.

The Board is persuaded by the testimony of DSA in its letter dated June 20, 2014 (Exhibit O), and adopts such letter and incorporates it herein as findings. Specifically, the Board finds that an amphitheater-like design is not enough to cause the noise amplification such as the opponents contend. The Board further finds that the noise modeling program used by DSA to predict the noise levels at residences in the valley takes into account the topography of the surrounding area and, therefore, the Board finds that DSA correctly measured mining generated noise and any impacts that topography may have on mining generated noise levels.

Second, although Steve and Marion Schneider contend that DSA incorrectly measured ambient noise levels and incorrectly measured crusher noise levels from the Project as to area residences, the Board denies this contention because it misconstrues applicable law and the evidence in the record. The Board finds that DSA correctly measured ambient noise levels and crusher noise levels in its analysis.

Although the Schneiders contend that DSA erred by failing to make noise measurements during the summer months when Grave Creek has low water flow levels, the Board denies this contention because the Board finds that, available rain data shows that precipitation levels in May (when DSA measured) are representative of precipitation levels from late April through early October and because DEQ measurement guidelines require that ambient noise determination data be taken without emphasis on either noise peaks or unusual quiet. *See* letter from DSA dated July 7, 2014 (Exhibit TTTTT), adopted and incorporated herein as findings. Further, the Board finds that the ambient levels in May are representative of low-flow conditions, and that DSA correctly measured ambient noise levels. *Id.*

Additionally, although the Schneiders contend that DSA erred by incorrectly measuring crusher noise levels in its analysis, the Board denies this contention because the Noise Study took into

consideration the distance and the frequency weighting of the particular crusher it used in its analysis. *Id.* The crushing and screening plant used in the Noise Study was measured at a distance of 80 feet and the frequency weighting used to measure the crusher was the A-weighted level, which is specified by DEQ noise regulations. *Id.* The Board finds that it is impossible to compare the crusher sound levels presented by the Schneiders with the levels used by DSA because the Schneiders do not provide a reference distance for their crusher sound levels, nor do they provide the frequency weighting used to measure their crusher sound levels. Therefore, the Board finds that the Schneiders have not submitted evidence sufficient to refute DSA's Noise Study. The Board is persuaded by DSA's testimony and finds that DSA correctly measured crusher noise levels in its analysis.

Further, the Board finds that the Schneiders' estimate of the noise levels emanating from the site to their house is not credible and not supported by substantial evidence in the record. The Board finds that audibility is not an approval criterion and is persuaded by DSA's mitigated noise contours, analysis, and noise predictions. *Id.*

Finally, although Wolfgang Nebmaier criticizes the Noise Study for not including the noise levels of "open" mufflers and "jake brakes" on haul trucks, the Board does not concur with this argument and finds that DSA used typical noise levels for haul trucks in its Noise Study. Typical noise levels for on-road haul trucks do not include noise from "open" mufflers and "jake brakes" because these are expressly forbidden by Oregon law. *See* letter from DSA, dated June 20, 2014 (Exhibit O), citing OAR 340-035-0030. The Board finds that it is reasonable for the Noise Study to exclude noise levels from truck parts that are illegal under Oregon law.

Accordingly, the Board agrees with the substantial evidence presented by DSA regarding the measurement and prediction of noise levels near residences.

#### **UNSAFE NOISE LEVELS**

Although David Bish contends that noise levels from the mine may result in hearing impairment for those living near the gravel pit based on a National Institute for Occupational Safety and Health (NIOSH) study, the Board denies this contention because the NIOSH study examined noise exposure levels for mine workers, not residents near the mines. *See* letter from DSA dated July 7, 2014 (Exhibit TTTT). The Board is persuaded by the testimony of DSA, which stated that the sound levels addressed in the NIOSH study are for workers who are working on or in very close proximity to the mining equipment. *Id.* The Board finds that the DSA Noise Study demonstrates that the highest predicted mitigated sound level at a residence near the proposed mining operation is 47dBA, which is well below the NIOSH recommended exposure limit of 85dBA presented by Mr. Bish. The Board relies on the DSA Noise Study and finds that the noise levels for residents near the proposed mine are predicted to be well below the threshold for hearing damage.

#### **NOISE IMPACT ON WILDLIFE**

Although Ann Smith testified that noise levels from the site will adversely affect wildlife, the Board denies this contention because it is persuaded by the testimony of DSA that wildlife do not

alter their natural habitats in response to noise being generated at a mining site so long as there is no threat to their well-being. *See* letters from DSA dated July 7, 2014 and July 11, 2014 (Exhibit TTTTT). The Board relies on the long-standing professional experience of the acoustical engineers at DSA and on DSA's testimony that the Environmental Protection Agency (EPA) has studied effects of noise on wildlife and other animals and produced documents concluding that wildlife and other animals will often react to a new noise source when first introduced, but then, if there is no physical threat to their well-being and if the noise level is in the range predicted to radiate from the proposed mine, will acclimate to the noise and return to their normal patterns. *Id.*

Additionally, although Steven Lawwill testified that the noise generated from the proposed mine will stress his cattle herd, lower the quality of his beef, and potentially reduce his calf production, the Board denies this contention for the same reasons discussed above. The Board relies on the expert opinions and acoustical studies of DSA and finds that the noise generated from the proposed mine will not stress Mr. Lawwill's cattle in any meaningful way and will not require him to modify his farming practice.

Accordingly, the Board agrees with the substantial evidence presented by DSA regarding the effect of noise on wildlife and other animals and finds that the noise levels predicted to emanate from the proposed mine will not adversely affect wildlife and other animals.

#### VACANT LOT NOT INCLUDED IN NOISE STUDY

Although Gary Mackey requests that a noise study be conducted for his vacant lot within the Impact Area, the Board finds such additional study is not required nor necessary for three reasons. First, the Board relies on DSA's interpretation of the Goal 5 administrative rule and DEQ noise regulations and finds that the ambient noise impact assessment is to be addressed at existing dwelling units, not at unoccupied land. *See* letter from DSA dated July 7, 2014 (Exhibit TTTTT). Specifically, OAR 340-035-0035 states that the noise criteria must be met at "noise sensitive property." OAR 340-035-0015 defines "noise sensitive property," in part, as "real property normally used for sleeping." The Board finds that the use of the term "real property normally used for sleeping" indicates that a dwelling must be located on a parcel in order for there to be potential noise impact on a residence. Accordingly, the Board finds that an additional noise study of Mr. Mackey's property is not required because his property is vacant and unoccupied and, consequently, is exempt under the DEQ noise regulations based on the safe harbor rule of OAR 660-023-0180(1)(g) .

Second and in the alternative, the Board finds that the Goal 5 administrative rule and DEQ noise regulations do not require that noise levels be predicted at *every* residence around the site; rather, noise levels are to be predicted at representative locations around the site. *Id.* According to the DSA Noise Study, the residences selected in the study are representative locations around the site, which were chosen because they have the greatest potential for being impacted by mining related noise. *Id.*; Noise Study, p. 22 (Appendix F of Applications). The Board relies on the analysis in the Noise Study and finds that residences R3 and R4 are closer to the site and are along the general sound propagation path between the site and Mr. Mackey's vacant lot. *Id.* The Board finds that the noise levels at Mr. Mackey's vacant lot will be in compliance with DEQ

standards because the Noise Study demonstrates that the predicted mitigated noise levels at residences R3 and R4 are well below the noise standards for those locations. *Id.*

Third, although DLCD contends that OAR 660-023-0180(5)(b) requires that impacts be evaluated for dwellings allowed by a residential zone on an existing lot even if the lot is vacant, the Board denies this contention here. *See* letter from Amanda Punton at DLCD, dated November 26, 2013. The Board finds that OAR 660-023-0180(5)(b) defines “approved land uses” as dwellings allowed by a residential zone and other uses for which conditional or final approvals have been granted by the local government. The Board further finds that there is no evidence in the record demonstrating that Mr. Mackey’s lot has received any county permits, including an approved building permit, in order to develop his lot. Therefore, the Board finds that Mr. Mackey’s lot is not an “approved land use,” and the Applicant is not required to include it in any noise study.

### **OPERATING HOURS**

Although Elizabeth Corcoran contends that the operating hours should be reduced to reduce the duration of noise to which residents are exposed, the Board denies this contention because it misconstrues applicable law and the evidence in the record. The Board finds that with the mitigation measures recommended by DSA, the noise levels from the site will be in compliance with DEQ noise regulations, and that conditions of Project approval will ensure that such mitigation measures are implemented.

First, the Board finds that there is no criterion requiring mitigation to consist of reduction in operating hours and that no such mitigation is necessary. *See* letter from DSA dated July 7, 2014 (Exhibit TTTTT). The Board finds that the Noise Study demonstrates that with recommended mitigation measures (which do not consist of reduced operating hours), the noise levels from the site will comply with DEQ noise regulations.

Second, the predicted noise levels in the Noise Study are the worst-case noise levels that may occur during the life of the mine. *Id.* The mining-generated noise level at a residence will vary significantly over the life of the mine at the excavation area moves closer to and further from the receiver. *Id.* The Board relies on the testimony and analysis of DSA and finds that since the noise levels presented in the Noise Study are the worst-case scenario, the noise levels at any given residence around the site will be lower than those reported in the Noise Study for a significant portion of the life of the mine.

Accordingly, the Board finds that the noise mitigation measures recommended by DSA are sufficient, and that reducing the operating hours is not required nor necessary.

### **MEASURES TO MINIMIZE CONFLICT:**

The Board finds that reasonable and practicable measures will minimize the limited conflicts identified by DSA. Specifically, the Board finds that implementing the following mitigation measures on the site will ensure that noise levels at each of the residences would conform with DEQ standards:

- Berms – 12 foot high berm along a portion of the eastern property boundary, quiet screens or up-close barriers for the crushing and screening plant, and a noise control berm northeast of R13
- Haul truck noise mitigation (source mitigation or berms)
- Quiet screens or up-close barriers for the vibratory screens
- A partial enclosure or up-close barriers for the trommel screen
- Up-close barriers or source mitigation for the portable generator

As support for this conclusion, the Board relies upon DSA's conclusions in the noise study. See Sunny Valley Mine Noise Study (Appendix F to Applications). The Board has incorporated these reasonable and practicable mitigation measures into the conditions of approval for the Project as follows:

“12. There shall be no blasting on the site.

25. All mining and processing of mineral and/or aggregate resources shall comply with OAR noise emission standards. The mine operator shall comply with the noise study prepared by Daly Standlee and Associates, Inc. (DSA) dated August 2013 that attests that the circumstances of the site and/or proposed mitigation will bring the site into compliance. (RLDC §91.030.0)

26. The mine operator shall comply with the following noise mitigation measures proposed by DSA:

- a. Twelve-foot high berms shall be constructed along portions of the eastern property line as noise mitigation barriers.
- b. Fifteen-foot high berms shall be constructed northeast of receiver R13 as a noise mitigation barrier.
- c. Polyurethane or rubber screens or proximate berms or buffers shall be used to mitigate noise impacts associated with the operation of crushing and screening equipment when it is located in the processing (trommel) area and crusher operating area.
- d. Off-road equipment (excavators, front-end loaders, loading trucks, and bulldozers) used for internal site operations shall be fitted with broadband rather than traditional narrowband backup alarms.
- e. Mufflers shall be required for all on-site haul trucks.
- f. The genset shall be equipped with up close barriers or a muffler and inlet and outlet silencers.”

Because DSA has determined that these measures will ensure conformance with the applicable DEQ standard, the Board finds that these measures will, by definition, minimize noise conflicts from the mine for purposes of OAR 660-023-0180. Accordingly, the Board adopts them as conditions of approval for the Project.

#### **DUST:**

#### IDENTIFICATION OF CONFLICTS:

The Board makes the following findings as to the dust impacts of the Project:

- Topsoil/overburden removal, stockpiling, aggregate extraction, truck and equipment movement, aggregate processing and reclamation activities proposed at the site are potential sources of dust;
- The Project does not intend to conduct blasting for mining of aggregate, so particulate matter emissions from such activity will not occur at the site.

The Board finds that there could be potential dust conflicts associated with the Project absent appropriate conflict minimization measures. As support for this conclusion, the Board relies upon the analysis of potential dust impacts of the mine ("Air Quality Impact Report") prepared by the Applicant's air quality expert, James De Hoog, Ph.D. of Arctic Engineering, Ltd. ("Arctic"). See Appendix H of the Applications.

The Board finds that Dr. De Hoog's testimony is particularly compelling because it is based upon his experience and expertise in evaluating the air quality impacts of other, more intensive mining operations and his knowledge of DEQ's air quality standards set forth in OAR chapter 340 division 208. The Board finds that a reasonable person would rely upon Dr. De Hoog's testimony to reach the above conclusions regarding potential dust impacts associated with the Project.

Further, the Board finds that opponents' contentions to the contrary do not undermine Dr. De Hoog's testimony. The Board addresses each of the opponents' contentions below.

#### **IMPACTS OF FUGITIVE DUST ON AIR QUALITY**

Although opponents contend that fugitive dust from the site will adversely affect air quality and the environment in the Sunny Valley area, the Board denies this contention because the fugitive dust mitigation measures recommended by Arctic and adopted by the Applicant into its mining plan will reduce dust emissions to insignificant levels. See letter from Arctic, dated July 1, 2014 (Exhibit QQQQQ). The Board finds that Arctic appropriately took into account the impacts of fugitive dust on air quality and demonstrated that with recommended mitigation measures, fugitive dust will not cause detrimental air quality impacts beyond the site boundaries.

The Board is persuaded by the testimony of Arctic in its letter dated July 1, 2014 (Exhibit QQQQQ), and adopts such letter and incorporates it herein as findings. Specifically, the Board finds that the Applicant will undertake fugitive dust mitigation measures, including paving the

initial access road from Placer Road to the quarry scale house with asphaltic concrete cement, and aggressively watering the access road when weather conditions are present that generate dust from either on-site mobile equipment or transportation activities of finished aggregate to market.

*Id.* The Board also finds that the Applicant will develop and prepare an aggressive Air Quality Operations and Maintenance Plan ("O&M Plan") in coordination with Arctic and the Medford, Western Regional office of DEQ, which will include the following dust prevention measures:

- The use of water sprays or equivalent as needed to treat storage piles;
- Controlling vehicle speeds on unpaved roadways;
- Treating vehicular traffic areas (such as watering roads of affected areas of the site) under the Applicant's control;
- Operating all air contaminant-generating processes so that fugitive type dust associated with the operation will be adequately controlled at all times (such as by using water spray bars on aggregate crushers and screens);
- The planting of vegetation on topsoil stockpiles at the site;
- Prompt removal of "tracked-out" material from paved streets and roadways;
- Storing materials from contracted services in a covered container or other method equally effective in preventing the material from becoming airborne during storage and transfer.

*Id.*

The Board relies on the Air Quality Impact Report ( Appendix H to Applications) and the letter from Arctic dated July 1, 2014 (Exhibit QQQQQ) and finds that the dust mitigation measures listed above will reduce total particulate matter at the proposed mining operation by more than 95% and that dust from aggregate conveying/crushing operations and entrained road dust from trucking and hauling operations will be reduced to insignificant levels.

Accordingly, the Board finds that fugitive dust from the site will not adversely affect air quality and the environment in the Sunny Valley area.

#### **IMPACTS OF CRYSTALLINE SILICA DUST**

Although opponents contend that the Project will produce dust containing Crystalline Silica, which can be blown a far distance and cause lung disease and other disorders, the Board does not concur with this contention based on the evidence and findings provided immediately below. The Board concludes that with the dust mitigation measures undertaken by the Applicant, the Project will be in compliance with applicable Air Contaminant Discharge Permit standards and, accordingly, any potential dust conflicts will be minimized to insignificant levels. *See* Air Quality Impact Report, dated August 19, 2013 (Appendix H) and OAR 660-023-0180(1)(g). The Board is persuaded by testimony of Arctic that water sprays in accordance with applicable DEQ requirements will fully control particulate matter emissions from aggregate sizing and storing activities.

The project does not include drilling or blasting of the bedrock at the site; therefore, particulate matter, including Crystalline Silica dust, will not be created. *See* Air Quality Impact Report (Appendix H to Applications) and the letter from Arctic dated July 1, 2014 (Exhibit QQQQQ).



Accordingly, the Board finds that Crystalline Silica air emissions will not be present from such activities. The Applicant's project entails only aggregate sizing activities. *Id.* The Board relies on Dr. De Hoog's long-standing professional expertise as an Environmental Engineer with more than 15 years of air quality permitting, air quality source testing, and regulatory compliance experience with aggregate processing facilities, and is persuaded by Dr. De Hoog's testimony that aggregate sizing operations produce only a minimal amount of crushed aggregate, which is not readily airborne and limited to on-site workers. *Id.* The Board also relies on Dr. De Hoog's testimony that basic water spray systems without pressurization and chemical additives are effective at significantly reducing respirable silica. Finally, the Board finds that as an air quality protocol and safety measure going forward, the Applicant has agreed to test the aggregate resource in accordance with DEQ and Mine Safety and Health Administration (MSHA) requirements for silica composition, and will implement standards MSHA requirements for worker safety should an inordinate amount of silica be detected in the aggregate resource. *Id.*

Accordingly, the Board finds that the dust mitigation measures recommended by Arctic and undertaken by the Applicant are sufficient to ensure minimization of any potential dust conflicts, and that implementing such dust mitigation measures will reduce Crystalline Silica dust to insignificant levels.

#### **AIR QUALITY STANDARDS**

Although opponents contend that the Project fails to comply with air quality standards established by other agencies, such as the American Lung Association, the American Medical Association, Wisconsin Department of Health Services, Gravel Watch Ontario, the Centers for Disease Control, NIOSH, Cobra Building, Central Oregon Safety and Health Administration, and the United States Department of Labor, the Board denies this contention because the air quality standards that the Applicant is required to meet for the proposed mining operation are not established by any of the above agencies. *See* letter from Arctic dated July 18, 2014 (Exhibit HHHHHH). The Board finds that the relevant air quality standards that the Applicant is required to meet are established by the Oregon Department of Environmental Quality (DEQ) and not by any other organization or governmental agency.

#### **MEASURES TO MINIMIZE CONFLICTS:**

The Board further finds that these conflicts are minimized to a level that is not significant through compliance with the following reasonable and practicable measures, which the Board imposes as conditions of approval on the Project:

"12. There shall be no blasting on the site.

27. The mining operations shall comply with the most current air quality standards from Oregon Administrative Rules Chapter 340, Divisions 20, 21, and 28, for ambient air quality for a distance 500 feet in all directions from any public road or conflicting use located along the access road if the mining traffic is the primary cause of the road dust.  
(RLDC §91.030.B.2)

28. The main facility access road from Placer road to the scale house shall be paved to prevent the generation of dust.

29. The discharge of contaminants and dust caused from the mining and processing of mineral and/or aggregate resources shall comply with applicable DEQ ambient air quality and emission standards. The operator shall cease all mining and processing operation within one hour of the malfunction of any air pollution control equipment, and shall not resume operation until the malfunction has been corrected in compliance with applicable DEQ rules and standards. (RLDC §91. 030.1)

30. On site surfaces travelled by off-road or on-road sources shall be watered whenever significant visible dust emissions (opacity approaching 20%) are observed behind or beside a moving vehicle.

31. Water sprayers shall be used to control dust emissions from crushers and screens operating on site. ”

As support for this conclusion, the Board relies upon Dr. De Hoog’s testimony that implementing the above mitigation measures on the site would ensure that fugitive dust levels would conform with DEQ standards. See Air Quality Impact Report by Arctic Engineering, Ltd., dated August 19, 2013, at sections 5.0 and 8.0 (Appendix H of the Applications); see also letter from Artic, dated July 1, 2014 (Exhibit QQQQQ). The Board finds that, because Dr. De Hoog concluded that these measures would ensure conformance with DEQ standards, these measures will, under the safe harbor provision in OAR 660-023-0180(1)(g), by definition, minimize dust conflicts from the mine for purposes of OAR 660-023-0180. Although some opposition testimony expressed concerns about dust, the Board finds that it did not undermine the evidence presented by Dr. De Hoog.

Based upon the evidence cited above, the Board finds it necessary to impose the above six conditions on its approval of the Project to ensure conformance with applicable DEQ dust standards and to minimize dust conflicts associated with the Project.

#### **OTHER DISCHARGES:**

The Board finds that other potential discharges at the site include: (1) diesel engine emissions from onsite mobile equipment and vehicle travel; and (2) stormwater.

#### **Diesel Engine Emissions:**

#### **IDENTIFICATION OF CONFLICTS:**

The Board finds that there will be potential conflicts with allowed uses in the Impact Area resulting from the use of mining equipment and vehicles that generate diesel engine exhaust, which contains pollutants such as nitrogen oxides, carbon monoxide, and sulfur dioxide. As support for its conclusion, the Board relies upon the Air Quality Impact Report. See Appendix H of the Applications.

### MEASURES TO MINIMIZE CONFLICTS:

The Board further finds that these conflicts are minimized to a level that is not significant through compliance with the following reasonable and practicable measures, which the Board imposes as conditions of approval on the Project:

“32. The majority (51% or more in terms of total fleet horsepower) of diesel engines powering off-road equipment shall meet federal Tier 2 off-road engine standards or better. This requirement shall be met by using equipment with engines originally built to meet these standards or through retrofit to reduce emissions to these levels.

33. On site idle times for heavy-duty diesel truck engines shall be limited to no more than five minutes per truck trip.”

As support for this conclusion, the Board relies upon Dr. De Hoog’s testimony that implementing these measures would ensure that diesel emission levels would conform with DEQ and EPA standards. See Air Quality Impact Report by Arctic Engineering, Ltd., dated August 19, 2013, at Section 6.0.2 (Appendix H of the Applications) and letter from Arctic dated July 1, 2014 (Exhibit QQQQQ). The Board finds that, because Dr. De Hoog concluded that these measures would ensure conformance with applicable DEQ and EPA standards, these measures will, under the safe harbor provision in OAR 660-023-0180(1)(g), by definition, minimize diesel emission conflicts from the mine for purposes of OAR 660-023-0180. The Board finds that Dr. De Hoog’s testimony was un rebutted.

Based upon the evidence cited above, the Board finds it necessary to impose the above two conditions on its approval of the Project to ensure conformance with applicable DEQ and EPA air quality standards and to minimize conflicts resulting from diesel exhaust associated with the Project.

### Water:

#### IDENTIFICATION OF CONFLICTS:

The Board finds that there will be no potential conflicts with approved uses in the Impact Area due to water quality or quantity. As support for this conclusion, the Board relies upon three sources. First, as to stormwater, the Board relies upon testimony from the Project civil engineer, Westlake Consultants, Inc. (“Westlake”). See Sunny Valley Sand And Gravel Erosion and Sediment Control and Storm Water Narrative dated August, 2013 at Appendix J of the Applications. As explained in Westlake’s report, Applicant will develop and implement a stormwater control plan in accordance with the Best Management Practices for Reclaiming Surface Mines in Oregon, 1997 and DEQ 1200A standards. *Id.* The Applicant has obtained a 1200A permit, and it is current. *Id.* Further, Westlake explained that the Applicant has designed the Project such that there will be no offsite stormwater point discharge from the Property. *Id.* In short, the Board finds that there will be no stormwater flowing from the Property to offsite locations and that there will be no potential conflicts with approved uses in the Impact Area due to stormwater discharges.

Second, the Board relies upon the testimony of Project hydrogeologist Shannon & Wilson, Inc., which concludes that, although water quality and quantity conflicts could occur between the Project and nearby residential properties, absent minimization and mitigation measures, such conflicts will be minimized to a level no longer significant through the implementation of specific monitoring and, as necessary, binding mitigation measures. See Shannon & Wilson Sunny Valley Hydrogeology PAPA Report, dated August 2013 (Appendix B of Applications) and Groundwater Summary Discussion, dated June 18, 2014 (Exhibit H). One such mitigation measure is the preparation of a Spill Prevention Control and Countermeasure (SPCC) Plan to manage accidental spills and releases. The Board finds that compliance with the SPCC Plan, together with implementation of the stormwater management system, will prevent and mitigate impacts from spills and will ensure that the mechanical aspects of the mining operation (drilling, washing, crushing, hauling) will not be a possible groundwater contamination source. As support for this conclusion, the Board relies upon the expert opinion to this effect from Shannon & Wilson. See Hydrogeology PAPA Report dated August 2013 (Appendix B to Applications) and Groundwater Summary Discussion, dated June 18, 2014 (Exhibit H). The Board finds that this testimony is compelling in light of Shannon & Wilson's extensive experience and detailed analysis, which includes reviewing 68 wells within 3,600 feet of the Site and eleven months of precision groundwater elevation monitoring from onsite wells. *Id.*

Third, the Board finds that Applicant has demonstrated that all water necessary for the proposed operation has been appropriated to the Property and is legally available. First, the Board relies upon the fact that, as an industrial operation, the Project is an "exempt use" under state law and thus has a water right not to exceed 5,000 gallons per day. ORS 537.545. Further, the Board finds that, pursuant to this statute, no registration, certificate, or permit is required for such use of groundwater. *Id.* Second, for the reasons discussed in the letters from the Applicant's water rights attorney, Martha Pagel, dated May 27, 2014, June 23, 2014, and July 7, 2014 (Exhibit S with attachments; Exhibit P P P P P), which reasons are incorporated herein by reference as findings, the Board finds that water for the Project is available and will be appropriated from a source authorized by permit from OWRD. The primary source of water for the Project will be from reservoir storage of surface waters. See letter from Martha Pagel, dated June 23, 2014 (Exhibit S). The Applicant has applied for water rights to divert water from Grave Creek and surface run-off during the months of January, February and March each year, for storage in three small reservoirs. *Id.* OWRD records show water is, in fact, available for the reservoir applications that are intended to provide water for mining operations. (Ex. S, Attachment 1, p. 9, OWRD Water Availability Report.) The three applications are currently on administrative hold with OWRD, pending successful completion of the land use process before the County, and an Administrative Law Judge has concluded that there has been no forfeiture of water rights and no basis for cancellation of the applications. (Ex. S, p.7; Ex. S, Attachment 6) The Applicant also has an existing and valid water right for irrigation use on the Site, if needed. *Id.* The Board finds that this testimony was not sufficiently rebutted or challenged.

Furthermore, the Board relies upon testimony from the Project hydrogeologist that, the risk of conflicting use of groundwater between the Project and local wells is unlikely:

“Seepage from the streambed supplies a saturated zone that recharges any groundwater flow paths, such as to wells. Consequently, the saturated zone beneath Grave Creek is highly likely to recharge shallow aquifers tapped by nearby wells. In technical terms, such a condition is termed a ‘recharge boundary,’ where a ready supply of groundwater can meet the demand for groundwater drawn from wells.”

See Shannon & Wilson Groundwater Summary Discussion dated June 18, 2014 (Exhibit H). The Board finds that, as explained in its Hydrogeology PAPA Report and Groundwater Summary Discussion, Shannon & Wilson reached this conclusion after conducting a comprehensive analysis of all OWRD-registered well logs within and beyond the designated 1,500-foot impact area from the Property. Hydrogeology PAPA Report at Sections 4.2 and 4.3. Moreover, the Board finds that this testimony was not rebutted or challenged with specificity by any expert.

Additionally, the Board finds that the mine will not reduce the flow of Grave Creek downstream because water lost naturally from Grave Creek along the Site is restored to Grave Creek by seepage a short distance downstream of the Site and this groundwater path will remain the same during and after mining of the Site. See letter from Shannon & Wilson, dated June 18, 2014 (Exhibit VVVVV). Moreover, the Board imposes a condition of approval requiring on-site monitoring wells to monitor groundwater levels. Therefore, the Board finds that a reasonable person would rely upon the testimony from Westlake, the Applicant’s water rights attorney, Martha Pagel, and Shannon & Wilson to conclude that all water necessary for the proposed operation can be appropriated to the site and is legally available and that all water conflicts can be minimized to a level that is not significant.

#### MEASURES TO MINIMIZE CONFLICTS:

Because there are no identified conflicts associated with offsite stormwater discharges, the Board finds that it is not required to identify measures that would minimize such conflicts.

The Board further finds that conflicts with water quality and quantity are minimized to a level that is not significant through compliance with the following reasonable and practicable measures, which the Board imposes as conditions of approval on the Project:

“20. Water used in the mining or processing of mineral and/or aggregate resources shall be appropriated from a source authorized by permit from the Oregon Department of Water Resources. With the exception of onsite process water released to onsite settling ponds turbid water shall not be released into lakes, ponds or watercourses. (RLDC §91.030.0)

21. Additional monitoring wells and hydrogeologic testing, coupled with ongoing groundwater level monitoring, will establish baseline conditions and identify early groundwater level declines should they occur during mining operations. Pressure transducers with dedicated dataloggers shall be installed to automate monitoring of groundwater levels. Both shall be located and protected to allow long-term use without disruption by mining. The existing observation wells shall be replaced if and when they are decommissioned due to the progression of mining activity.

22. Monitoring data shall be reviewed and reported to DOGAMI at quarterly intervals for a minimum of 3 years and shall continue per DOGAMI requirements until mining activities are complete. This monitoring program shall document current conditions and identify any recommended mitigation measures that must be implemented to counter substantial loss of the water resource for the nearby residences.

23. Infiltration trenches shall be constructed around each mine cell. The water applied to the infiltration trench shall provide a positive hydrostatic head in the sand and gravel that reduces groundwater declines adjacent to the mine cells. Monitoring as well as observed seepage into the active site shall be utilized for development of final design and evaluation of mitigation measures as necessary. Should proactive infiltration fail or be deemed inappropriate, well improvements such as resetting pumps at deeper depths, well deepening, or changes in the mining operation shall be considered as alternative mitigation options to alleviate water quality or quantity impacts.

24. Prior to mine operation, a final Spill Prevention Control and Countermeasure (SPCC) Plan shall be developed for the facility substantially consistent with the sample document provided by the U.S. Environmental Agency.”

**OAR 660-023-0180 (5)(b) The local government shall determine existing or approved land uses within the impact area that will be adversely affected by proposed mining operations and shall specify the predicted conflicts. For purposes of this section, “approved land uses” are dwellings allowed by a residential zone on existing platted lots and other uses for which conditional or final approvals have been granted by the local government. For determination of conflicts from the proposed mining of a significant aggregate resource site, the local government shall limit its consideration to the following: . . .**

**(B) Potential conflicts to local roads used for access and egress to the mining site within one mile of the entrance to the mining site unless a greater distance is necessary in order to include the intersection with the nearest arterial identified in the local transportation plan. Conflicts shall be determined based on clear and objective standards regarding sight distances, road capacity, cross section elements, horizontal and vertical alignment, and similar items in the transportation plan and implementing ordinances. Such standards for trucks associated with the mining operation shall be equivalent to standards for other trucks of equivalent size, weight, and capacity that haul other materials;**

**IDENTIFICATION OF CONFLICTS:**

The Board makes the following findings as to each potential conflict to local roads used for access and egress to the mining site within one mile of the entrance to the mining site:

- **Sight Distance:** There are existing trees, shrubs, and roadside embankment slopes along portions of Placer Road that could affect vehicular flow. This could create a potential conflict to local roads absent appropriate minimization or mitigation measures.

- Road Capacity: The Placer Road at the Access Driveway, Sunny Valley at Placer Road and Leland Road at Lariat Drive intersections were evaluated by Sandow. These intersections are forecast to operate within acceptable performance standards established by Josephine County of a Level of Service (LOS) of LOS D or better. Actual analysis by Sandow indicate an LOS A for those intersections during the AM and PM peak hours in both 2013 and 2033, with the proposed mine operation. No road capacity improvements are required as a result of the proposed development.
- Cross Section Elements: The Haul Route has an average pavement width of 22-24 feet, paved shoulders of 0 - 2 feet, and gravel shoulders of 0 - 5 feet. The cross section elements meet minimum functional standards for existing roadways. No cross section improvements are required as a result of the proposed development.
- Horizontal and Vertical Alignment: Sandow evaluated the Haul Route to Interstate 5 for permanent height and side obstacles that would restrict truck traffic. There were no horizontal or vertical alignment issues that would restrict truck traffic. No horizontal or vertical alignment improvements are required as a result of the proposed development.
- Safety: Roadway safety is evaluated for an existing roadway based on how the roadway operates and how the roadway will be projected to operate in the future. There is no indication of locations along the Haul Route with geometric issues or a history of crashes that would be perpetuated by an increase in roadway traffic or an increase in truck traffic from the Project.

As support for these conclusions, the Board relies upon the testimony of the Applicant's traffic engineer, Sandow Engineering ("Sandow"), who completed an analysis of existing conditions, projected transportation impacts of the proposed mine, and compliance with applicable standards. See TIA, dated July 29, 2013, in Appendix G of the Applications at p. 28. In the TIA, Sandow reached each of the conclusions adopted by the Board as findings above. Based on Sandow's analysis, the Board finds that implementation of vegetation removal and earthen embankment modifications to minimize conflicts at the on-site driveway location, the intersection of Edgerton Lane / Placer Road and the intersection of Leland Road / Lariat Drive by the imposition of mandatory Condition No. 18, such conflict minimization is achieved and such conflicts are rendered no longer significant.

Further, the Board finds that opponents' contentions to the contrary do not undermine Sandow's testimony. The Board addresses each of the opponents' contentions below.

### **COVERED BRIDGE**

Although opponents contend that haul trucks generated by the Project will use the covered bridge at the intersection of Sunny Valley Loop and Placer Road, thereby increasing traffic, potentially damaging a bridge of historical significance and causing unsafe conditions, the Board does not concur with this contention because the covered bridge is not part of the Haul Route, is weight restricted, and its use by trucks will be prohibited by a condition of Project approval. The Board finds that the covered bridge will not be utilized by trucks generated by the Project.

The proposed Haul Route will not use the covered bridge. See Figure 2 of the TIA (Appendix G). The covered bridge is a narrow one lane bridge with a stated weight limit of 20 tons. See

letters from Sandow, dated June 23, 2014 and July 14, 2014 (Exhibits M and UUUUU). As a condition of Project approval, trucks will not be allowed to use the covered bridge. Condition No. 19. For these reasons, the Board finds that the covered bridge will not be subject to unsafe or damaging conditions due to trucks generated by the Project.

## ROADWAY MEASUREMENTS

Although opponents contend that the roadway measurements by Sandow are inaccurate and that the affected roadways do not meet County roadway standards, the Board denies these contentions because such measurements were taken in accordance with industry design standards. The Board finds that the Placer Road, Sunny Valley Loop, and Leland Road roadway measurements provided by Sandow are accurate and demonstrates that the roadways meet County roadway standards.

Placer Road has a four-inch (4") white stripe and two four-inch (4") yellow stripes separated by a four-inch (4") buffer space. *See* letters from Sandow, dated July 7, 2014 and July 14, 2014 (Exhibit UUUUU). The industry standard measurement for travel lane design purposes, and the standard adopted by Oregon, is to measure from the center of the buffer space of the double yellow stripe to the center of the white stripe. *Id.* Robert Kalin also measured the road, but performed his measurements from the inside edge of the yellow stripe to the inside edge of the white stripe. *Id.*; *see also* letter from Robert Kalin, dated June 23, 2014 (Exhibit JJ). The Board finds that Sandow accurately performed all roadway measurements in accordance with industry standards. Conversely, the Board finds that Mr. Kalin did not perform his roadway measurements in accordance with industry standards.

The industry standard for average roadway width according to the American Association of State Highway and Transportation Officials (AASHTO) is to measure in sections from the outside edge of the pavement to the outside edge of the pavement, which includes the addition of any paved shoulders, and then provide a weighted average over the length of the roadway. *See* letters from Sandow, dated July 7, 2014 and July 14, 2014 (Exhibit UUUUU). The Board finds that Sandow accurately provided average roadway width measurements in accordance with industry standards. Conversely, the Board finds that opponents did not perform average roadway width measurements in accordance with industry standards because they did not provide a weighted average. *See* letter from Robert Kalin, dated June 23, 2014 (Exhibit JJ).

Additionally, the Board finds that Sandow and opponents did not measure the exact same roadway locations, making it difficult to directly compare measurements. *See* letters from Sandow, dated July 7, 2014 and July 14, 2014 (Exhibit UUUUU). The Board also finds that inconsistent striping on Placer Road results in variable measurements. *Id.*

Furthermore, although opponents contend that Sandow's roadway measurements are inaccurate because she used a tape measure rather than a grade rod, the Board finds this distinction does not affect the credibility of Sandow's analysis. The Board is persuaded by Sandow's analysis and her long-standing expertise as a professional traffic engineer, and the Board finds that her roadway measurements are accurate. Additionally, the Board finds that there is no substantial evidence in the record to refute Sandow's roadway measurements or analysis.



Furthermore, although some shoulder widths along Placer Road do not meet roadway standards for new construction, the Board finds that County roadway standards for new construction are not applicable to existing roadways. *Id.* According to AASHTO, the fact that roadways do not meet new design standards does not mean that existing roads are unsafe. *Id.* The Board finds that crash history indicates that existing shoulder width is not the cause of crashed within the area, and the Board finds that all shoulder widths along Placer Road meet the minimum functional standards. *Id.*; see also TIA (Appendix G to Applications).

For the reasons stated above, the Board finds that all of Sandow's roadway measurements are accurate and that substantial evidence in the record demonstrates that Placer Road meets all applicable roadway standards.

### **TRUCK TURNING RADIUS**

Although opponents contend that gravel trucks cannot safely make turns onto Placer Road, Sunny Valley Loop, Leland Road, and Lariat Road, the Board denies these contentions because the Board is persuaded by the truck turning analysis performed by Sandow, which demonstrates that, based on industry standards for trucks, these turns can be made by trucks safely and legally. See letters from Sandow, dated June 23, 2014, July 7, 2014 and July 14, 2014 (Exhibit 15) and Exhibit UUUUU). The Board finds that gravel trucks can safely and legally make turns onto Placer Road, Sunny Valley Loop, and Leland Road.

The truck turning analysis by Sandow was created using a design software program that uses design controls outlined in the American Association of State Highway and Transportation Officials' (AASHTO's) manual, is based on industry standards for trucks, and is used by public agencies, such as ODOT, for determining truck paths on roadways and intersections. *Id.* The truck turning analysis shows that, based on industry standard driving path and turning radius controls, gravel trucks can make turns onto Placer Road, Sunny Valley Loop, and Leland Road safely and legally. *Id.* The Board relies on Sandow's truck turning analysis and finds that gravel trucks can make turns onto Placer Road, Sunny Valley Loop, and Leland Road safely and legally. Additionally, the Board finds that opponents' contentions to the contrary were not presented by an expert, were not supported by substantial evidence in the record, and did not reasonably call into question the conclusions reached by Sandow.

### **TURNS AT INTERSECTIONS**

Furthermore, although opponents contend that it is illegal for a truck to travel outside of the yellow lines when making a turn at an intersection, the Board denies this contention because such maneuver is allowed by law and expressly acknowledged in the 2014-2015 Oregon Commercial Drivers Manual. See letters from Sandow, dated July 7, 2014 and July 14, 2014 (Exhibit UUUUU). Driving over double yellow lines indicating a no passing zone or highway divider is prohibited, except when a driver makes a turn at an intersection. ORS 811.420 and ORS 811.430. The ODOT Highway Design Manual ("HDM") states that an intersection designed to "accommodate" a truck means that "some level of encroachment upon other lanes is necessary for a vehicle to make a particular movement." HDM, Section 8.3.8. It is standard

practice to design intersections to “accommodate” truck movements. See letters from Sandow, dated July 7, 2014 and July 14, 2014 (Exhibit UUUUU). Additionally, Section 2.7.6 of the 2014-2015 Oregon Commercial Drivers Manual provides recommendations for trucks making turns at intersections and provides:

“If you are driving a truck or bus that cannot make the right turn without swinging into another lane, turn wide as you complete the turn. . . . If you must cross into the oncoming lane to make a turn, watch out for vehicles coming toward you. . . .”

Therefore, the Board finds that it is not illegal for gravel trucks to cross the double yellow line when making a turn at an intersection.

### **MINE ENTRANCE**

Although opponents contend that the mitigation strategies to improve sight distance at the mine entrance are inadequate, the Board denies this contention because additional mitigation measures are not necessary nor feasible. The Board finds that the mitigation measures recommended by Sandow are reasonable and sufficient to achieve adequate sight distance at the mine entrance, and the Board adopts such mitigation measures as conditions of this approval.

There is adequate sight distance to the west, so there is no need for a deceleration lane or other additional mitigation measures. See letters from Sandow, dated July 7, 2014 and July 14, 2014 (Exhibit UUUUU); see also TIA (Appendix G of Applications). A deceleration lane is used to allow a truck to slow down in a separate lane away from the travel lane. *Id.* However, the Board finds that a deceleration lane is not necessary because there is adequate sight distance to allow a car traveling on Placer Road to stop for a truck slowing down and entering the mine entrance. *Id.*

An acceleration lane is used to allow a truck to enter the roadway and get up to speed before merging into the traffic lane. *Id.* Adding an acceleration lane would require widening the roadway to the west of the site. *Id.* However, there is not enough right-of-way to construct an acceleration lane meeting AASHTO recommendations for lane width, lane length, and length of taper because the properties fronting the roadway in this area are privately owned and not owned by the Applicant. *Id.* Since widening the roadway is not feasible, Sandow recommended mitigation strategies, including removing the vegetative visual obstruction and providing a warning system alerting motorists of a truck entering the roadway. *Id.* The Board finds that the mitigation measures recommended by Sandow are reasonable and sufficient to achieve adequate sight distance at the mine entrance, and the Board adopts such mitigation measures as conditions of this approval.

### **ROADWAY SAFETY**

Although opponents contend that roadway elements along Placer Road present an increased probability of traffic accidents due to truck traffic, the Board denies this contention because the history of crash data does not indicate a safety concern that would be perpetuated by an increase

in truck traffic. The Board finds that existing cross section elements of Placer Road, such as shoulder width, lane width, and the presence of a ditch, have not historically created safety concerns, and accordingly, the Board finds that there is no substantial evidence in the record demonstrating that a safety problem exists that will be perpetuated by increased truck traffic.

All reported crashes along Placer Road within the last six (6) years have been single vehicle crashes attributed to speeds too high for roadway conditions. See letters from Sandow, dated July 7, 2014 and July 14, 2014 (Exhibit UUUUU); see also TIA (Appendix G of Applications). With the added truck traffic, the total traffic volumes would be within the capacity that the roadway was designed for. *Id.* Based upon the study of traffic volumes and roadway geometry, there is no greater risk of a truck causing a traffic accident than any other road user. *Id.* Therefore, the Board finds that increased truck traffic on Placer Road will not create a safety problem.

### **TIA METHODOLOGY**

Although opponents challenge the methodology used in the TIA, the Board denies this contention because the TIA followed industry standard methodology. The Board finds that the methodologies used in the TIA are appropriate and produced accurate results.

Sandow conducted turning movement counts at the studied intersections consistent with ODOT and the Highway Capacity Manual's requirements for evaluating Level of Service at intersections. See letters from Sandow, dated July 7, 2014 and July 14, 2014 (Exhibit UUUUU); see also TIA (Appendix G of Applications). Sandow's counts were consistent with the data provided by Josephine County in its July 20, 2012 traffic count, and Sandow's counts were used to supplement such county data. *Id.* Traffic counts fluctuate on a daily basis and it is standard in the industry to see a 10% change in traffic counts on a daily basis at the same locations. *Id.* Additionally, a spot speed study was performed at the site entrance and utilized the traffic count data by Josephine County in 2012. *Id.* Sandow based the sight distance analysis on a 55 mph speed limit to provide a more conservative analysis parameter and ensure adequate sight distance measures. *Id.*

The Board relies on industry standard methodologies and the data provided by Josephine County in 2012 and finds that the methodologies used in the TIA are appropriate and produced accurate results.

### **SCHOOL BUS**

Although opponents contend that increased truck traffic will cause safety problems for school buses, the Board denies this contention because the Applicant will mitigate such potential conflict. Sandow recommended school bus mitigation measures based on her long-standing experience as a professional traffic engineer and on the recommendations set forth in the Manual of Traffic Control Devices adopted by Oregon. See letters from Sandow, dated July 7, 2014 and July 14, 2014 (Exhibit UUUUU). The Board finds that the school bus mitigation measures recommended by Sandow are reasonable and sufficient to mitigate this potential conflict, and the Board adopts such mitigation measures as conditions of this approval.

## OPPONENTS' ADDITIONAL CONTENTIONS

Further, although several opponents express concern about the Project generating increased traffic (particularly truck traffic) and safety hazards, the Board finds that this testimony was generalized and speculative in nature. It was not presented by an expert, and it did not reasonably call into question the conclusions reached by Sandow. Therefore, the Board finds that a reasonable person would rely upon Sandow's testimony to conclude that, subject to the above-referenced conditions, the Project will minimize all potential impacts to local roads used for access and egress to the mining site along the Haul Route. The Board finds that the proposed conditions recommended by Sandow are reasonable, practicable, and will minimize any traffic conflicts with local roads. Accordingly, the Board imposes these measures as conditions of approval on the Project.

### MEASURES TO MINIMIZE CONFLICTS:

The Board further finds that reasonable and practicable measures will minimize these conflicts. Specifically, Sandow concluded that implementing the following mitigation measures on the site would minimize these potential conflicts to local roads for purposes of OAR 660-023-0180:

- “15. The access or service road(s) to and from the extraction site to a public road shall meet the following standards:
- a. The most current air quality standards from Oregon Administrative Rules Chapter 340, Divisions 20, 21, and 28, for ambient air quality for a distance 500 feet in all directions from any public road or conflicting use located along the access road if the mining traffic is the primary cause of the road dust. (*RLDC §91.030.B.2*)
  - b. The applicable standards from Oregon Administrative Rules Chapter 340, Division 35, for vehicular noise control for a distance of 500 feet in all directions from any public road or conflicting use located along the access road. (*RLDC §91.030.B.1*)
  - c. The access point and approach shall be designed by a professional engineer, who shall assure adequate site distance and address road geometry.
  - d. The approach shall be constructed simultaneously with the proposed private bridge constructed across Grave Creek and shall not begin until the applicant has approval from all appropriate authorities, such as the Oregon Department of State Lands and the Army Corps of Engineers.
  - e. Applicant shall obtain an approved commercial road access permit from Public Works prior to the issuance of a development permit from Planning.

16. The applicant shall work with Three Rivers School District prior to each year to ascertain the safest school bus drop off and pick up locations. The applicant shall then provide permanent signage ahead of the selected school bus stops consistent with the requirements in the Manual of Traffic Control Devices which recommends that a "School Bus Stop Ahead" sign be placed ahead of any stop in which you cannot see 500 feet in advance. The applicant shall make every attempt to submit a letter of satisfaction from the Superintendent of Three Rivers School District to the Planning Director no later than the last working day in August each year.

17. Prior to initiation of truck hauling from the site, warning signage shall be placed on Placer Road near the approach to the mine site to warn others of trucks entering the roadway.

18. Trees and shrubs shall be cleared and the roadside shall be modified to provide sight distances at the mine access to Placer Road and at the intersections of Edgerton Lane / Placer Road and LeLand Road / Lariat Drive, as described in Section 7.0 of the submitted Sandow Traffic Report dated July 2013.

19. Gravel trucks shall not use the historic Grave Creek Bridge."

Based upon the evidence cited above, the Board finds it necessary to impose the above five conditions on its approval of the Project to ensure conformance with applicable site distance standards and to minimize conflicts resulting from site distance limitations associated with the Project roadway.

**OAR 660-023-0180 (5)(b) The local government shall determine existing or approved land uses within the impact area that will be adversely affected by proposed mining operations and shall specify the predicted conflicts. For purposes of this section, "approved land uses" are dwellings allowed by a residential zone on existing platted lots and other uses for which conditional or final approvals have been granted by the local government. For determination of conflicts from the proposed mining of a significant aggregate resource site, the local government shall limit its consideration to the following: . . .**

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

#### IDENTIFICATION OF CONFLICTS:

The purpose of this aspect of the analysis is to ensure that the proposed mining use does not maintain water impoundments that attract birds, which can cause safety conflicts for nearby airports. As specified in OAR chapter 660, division 013, and ORS 836.623, the Board is only permitted to regulate water impoundments when they are located within 10,000 feet of a runway outside of an approach corridor and within 40,000 feet of a runway within an approach corridor for an airport with an instrument approach ("Regulatory Zone"). The Site is not located within the Regulatory Zone of any public airports. Therefore, the Board finds that the proposed mining use will not cause any safety conflicts with any existing public airports.

#### MEASURES TO MINIMIZE CONFLICTS:

Because there are no identified safety conflicts with existing public airports, the Board finds that it is not required to identify measures that would minimize such conflicts.

OAR 660-023-0180 (5)(b) The local government shall determine existing or approved land uses within the impact area that will be adversely affected by proposed mining operations and shall specify the predicted conflicts. For purposes of this section, "approved land uses" are dwellings allowed by a residential zone on existing platted lots and other uses for which conditional or final approvals have been granted by the local government. For determination of conflicts from the proposed mining of a significant aggregate resource site, the local government shall limit its consideration to the following: . . .

(D) Conflicts with Goal 5 resources 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;

#### IDENTIFICATION OF CONFLICTS:

The Board makes the following findings as to the existence of conflicts with inventoried Goal 5 resources:

- Riparian Corridors: ODFW Class I and II stream mapping was adopted by the County to inventory Riparian Corridors. The Riparian Corridor that occurs along Grave Creek and the main stem of Shanks Creek are considered "Class I" streams, and unnamed intermittent drainages and smaller forks of Shanks Creek are considered "Class II" streams. There is a conflict with Grave Creek's Riparian Corridor in that there is a bridge proposed to cross Grave Creek for access to the site. The bridge abutments will be anchored within the Riparian Corridor, and a fill prism will be placed for the alignment of the access road.

In addition, there are two crossings planned across Shanks Creek for access to Mine Cells 6 and 7. The access is limited to minimal crossings for the excavation equipment to access the two cells, as the sand and gravel that is mined within those two cells will be transported via conveyor belt system across Shanks Creek. Mitigation of any impact to the Riparian Corridor will occur pursuant to the Applicant's Riparian Mitigation Plan as reflected in Appendix E to the Applications. Within the rest of the Project site, 50-foot setbacks from Grave and Shanks Creeks will be maintained. The mining would avoid any intrusion into inventoried riparian corridors because at least 50-foot setbacks will be maintained. The mining will not cause dewatering of these creeks, as water removed from the active mine cells will be pumped into infiltration trenches that surround the various mine cells. This water will infiltrate back into the adjacent sand and gravel and aquifer, decreasing the potential for dewatering the creeks.

- Federal Wild and Scenic Rivers: No conflicts because no inventoried resources within the area.

- Oregon Scenic Waterways: No conflicts because no inventoried resources within the area.
- Oregon Recreation Trails: No conflicts because no inventoried resources located within the Site or the Impact Area.
- Natural Areas: No conflicts because no inventoried Natural Areas within the Site or Impact Area.
- Wilderness Areas and Open Space: No conflicts because no inventoried Wilderness Areas and no inventoried Open Space either on the site or within the Impact Area.
- Scenic Views and Sites: No conflicts because no inventoried Scenic Views and Sites within the site or Impact Area.
- Wetlands: No conflicts, as wetlands are being avoided on site with the potential exception of a very limited ephemeral ditch located at the western site boundary, which would be impacted subject to any necessary state/federal authorizations.
- Wildlife Habitat: "Deer Winter Range" has been inventoried by the County both on site and within the Impact Area. Short- term impacts include temporary deterrence of daytime use due to activity on the site. Those impacts from disturbance would be short-term as deer are quick to habituate or adapt to routine activity. No long term adverse effects are anticipated.

As support for these conclusions, the Board relies upon the analysis of the scientists at Terra Science, Inc. ("TSI"), who conducted an analysis of potential conflicts between the Project and inventoried Goal 5 resources. See "Natural Resource Assessment for the Sunny Valley Sand & Gravel Project," by TSI dated August 2013 at Appendix D of the Applications ("TSI Goal 5 Report"). In that report, TSI reached each of the conclusions adopted by the Board as findings above. *Id.* The Board finds TSI's testimony to be particularly credible due to the site-specific nature of TSI's observations, TSI's knowledge of the Project, TSI's scientific training, and TSI's experience conducting natural resource assessments.

Although opponents contended that groundwater was an inventoried Goal 5 resource, the Board denies this contention because the Board finds that there is no evidence in the record demonstrating that groundwater is a Goal 5 resource inventoried by the County. Therefore, the Board finds that groundwater is not an inventoried Goal 5 resource for purposes of this analysis.

Further, the Board finds that opponents' contentions to the contrary do not undermine TSI's testimony. The Board adopts specific findings as to each of these contentions below.

#### **IMPACTS TO GRAVE AND SHANKS CREEKS**

Although opponents contend that development of the Project will constitute a significant conflict with the Grave and Shanks Creek riparian corridors and fishery resources, the Board denies this contention for three reasons. First, Applicant will place bridge footings or conveyance support structures outside and landward of the identified jurisdictional boundaries of Grave and Shanks Creek in order to span the creeks and avoid direct impacts to Grave and Shanks Creeks, their habitat, associated wildlife, and floodplains. See TSI Goal 5 report set forth at Appendix D; see also letter from TSI dated July 21, 2014 (Exhibit EEEEEEE). Second, Applicant will provide 50-foot buffers around Grave and Shanks Creeks, which exceed Oregon Department of Fish and

Wildlife's (ODFW's) requirements for inventoried Class I and II streams. *Id.*; see also letter from TSI, dated June 23, 2014 (Exhibit I).

Third, Applicant has modified its operational plans and diversion schedules by omitting one water reservoir from its plans and by scheduling to divert water from Grave Creek only during those dates specifically approved by Oregon Water Resources Department (OWRD). See letter from TSI, dated June 23, 2014 (Exhibit I). Furthermore, ODFW has determined that the proposed use of water for storage during the months of January, February and March will not result in a detrimental impact to fish. (Exhibit S, Attachment 1, p. 13-18.)

Lastly, the Applicant's mining plan includes collection of groundwater into detention/recharge ponds or infiltration swales, located between the mine cells and the riparian setback boundaries of Grave and Shanks Creeks, which are intended to recharge the groundwater zone within the Site. See "Natural Resource Assessment for the Sunny Valley Sand & Gravel Project," by TSI dated August 2013 at Appendix D of the Applications. Furthermore, water lost naturally from Grave Creek along the Site is restored to Grave Creek by seepage a short distance downstream of the Site, and this groundwater flow path will remain the same during and after mining. See letter from Shannon & Wilson, dated June 18, 2014 (Exhibit VVVVV). Therefore, the Board finds that dewatering of the mine will not significantly reduce stream flow of Grave or Shanks Creeks.

Because Project equipment will span the jurisdictional boundaries of Grave and Shanks Creeks, and because the Applicant will provide 50-foot buffers around Grave and Shanks Creeks, the Board finds that conflicts with their riparian corridors will be adequately mitigated. Furthermore, based on the changes to the Project's operational plans and diversion schedules, and based on the mining plan, the Board finds that any conflicts with fishery resources or downstream systems are adequately mitigated. The Board also finds that although opponents reiterated their contention in later submittals, they did not offer any meaningful rebuttal of the points made by TSI. Therefore, the Board denies the opponents' contentions on this issue.

#### **NOISE IMPACTS TO WILDLIFE**

Although opponents contend that noise generated by the Project will create a significant conflict with wildlife, such as deer, the Board denies this contention because it is persuaded by the testimony of DSA that wildlife do not alter their natural habitats in response to noise being generated at a mining site so long as there is no threat to their well-being. See letters from DSA dated July 7, 2014 and July 11, 2014 (Exhibit TTTTT). The Board relies on the long-standing professional experience of the acoustical engineers at DSA and on DSA's testimony that the Environmental Protection Agency (EPA) has studied effects of noise on wildlife and other animals and produced documents concluding that wildlife and other animals will often react to a new noise source when first introduced, but then, if there is no physical threat to their well-being and if the noise level is in the range predicted to radiate from the proposed mine, will acclimate to the noise and return to their normal patterns. *Id.*

The Board finds this testimony compelling because it offers an expert prediction based upon case studies. Therefore, the Board denies the opponents' contentions on this issue.



## UNLAWFUL “TAKE” OF WILDLIFE

Although opponents contend that development of the Project will result in an unlawful “take” of Golden eagles and Northern Spotted Owls, the Board denies this contention for three reasons. First, the Board finds that OAR 635-044-0130(1)—which prohibits the “take” of any protected wildlife—is not an approval criterion applicable to the Applications because no provision of law (the “take” rule, the Goal 5 rule, statute, local code, or case law) states as much. Second, and likewise, the Board finds that the County lacks the authority to enforce “take” rules in this context because, again, no provision of law grants this authority.

Third, the Board finds that, even if the “take” rule applied, a reasonable person would not conclude, based upon the evidence in the whole record, that development of the Project would actually result in a “take.” Applicant will begin operations beyond the distance of the quarter (1/4) mile and half (1/2) mile protection areas for the Golden eagle sites. See Sunny Valley Sand and Gravel -- Aggregate Extraction/Mining Excavation Golden Eagle Risk Assessment prepared by Northwest Resource Solutions (“NRS”), dated July 3, 2014 (“Golden Eagle Report”) (Exhibit OOOOO); see also letter from NRS dated July 17, 2014 (Exhibit IIIII). It will take approximately 15 to 20 years before the proposed operations would enter the proximity of a quarter (1/4) mile of the existing eagle site. *Id.* Even if the existing nest is still present after 15 to 20 years, appropriate mitigation measures will be applied during the nesting seasonal restriction. *Id.* The Board finds that such mitigation measures are feasible because during the nesting seasonal restriction, the Applicant can conduct operations outside of the mitigation radius. Therefore, the Board finds that opponents have not undermined TSI’s testimony that the Project will not result in a “take” of any wildlife.

## ENDANGERED PLANT SPECIES

Although opponents contend that the Project poses a conflict with the endangered plant species Gentner’s fritillary (*Fritillaria gentneri*), the Board denies this contention for three reasons. First, the Board finds that this subsection is concerned with conflicts with Goal 5 inventoried resources, and the County has not designated Gentner’s fritillary as an inventoried resource. For this reason alone, the Board finds that there is no merit to the opponents’ contention.

The Board finds that, in conjunction with completing its Goal 5 resources analysis, TSI completed a comprehensive assessment of the Property for a variety of threatened and endangered species, including those listed by the County and state and federal agencies. See TSI Goal 5 report set forth at Appendix D; see also letter from TSI dated July 21, 2014 (Exhibit EEEEE). As reported by TSI, the County has not designated Gentner’s fritillary as an inventoried resource. *Id.* The Board finds the opponents’ statements suggesting the possibility that other species could be present to be speculative.

Second, the Board finds that review under the Endangered Species Act of 1973 (“ESA”) is triggered exclusively by a federal permit or funding decision, and that the ESA is not an applicable approval criterion subject to this Board’s review. See letter from Applicant’s attorney, Steve Pfeiffer, dated July 21, 2014 (Exhibit FFFFFF); see also letter from TSI dated July 21, 2014 (Exhibit EEEEE). Third, the Board finds that identified populations of Fritillary

were located in areas on the site that would not be disturbed for approximately ten years. See letter from TSI dated July 21, 2014 (Exhibit EEEEEEE). The Board also finds that TSI's recommended seasonal surveys three years prior to disturbing suitable habitat in order to identify potential sensitive species populations are reasonable and adequate to assure self-compliance with state and federal ESA regulations. *Id.*

## **GOLDEN EAGLES AND NORTHERN SPOTTED OWLS**

Although opponents contend that the Project poses a conflict with threatened or endangered Golden eagles and Northern Spotted Owls, the Board denies this contention for three reasons. First, the Board finds that this subsection is concerned with conflicts with Goal 5 inventoried resources, and the County has not designated Golden eagle or Northern Spotted Owl habitat or nests as inventoried Goal 5 resources. See letter from NRS dated July 17, 2014 (Exhibit IIIII). For this reason alone, the Board finds that there is no merit to the opponents' contention.

Second, the Board finds that review under the ESA is triggered exclusively by a federal permit or funding decision, and that the ESA is not an applicable approval criterion subject to this Board's review. See letter from Applicant's attorney, Steve Pfeiffer, dated July 21, 2014 (Exhibit FFFFFF); see also letter from NRS dated July 17, 2014 (Exhibit IIIII). Third, the Board finds that proposed operations will not enter the proximity of the quarter (1/4) mile protection area for Golden eagle sites until 15 to 20 years from the start of the mining operation. *Id.* The Board also finds that even if the Golden eagle nests are still in existence 15 to 20 years from now, NRS's recommended seasonal restriction is reasonable and adequate to assure self-compliance with state and federal ESA regulations. *Id.*

### MEASURES TO MINIMIZE CONFLICTS:

For County inventoried resources, federal wild and scenic rivers, Oregon scenic waterways, Oregon recreation trails, natural areas, wilderness areas, open space, scenic views and sites, and wetlands, no conflict exists. Therefore, the County can find that no measures are needed to minimize conflicts.

For the County inventoried riparian corridors pursuant to Section 66.150.D and wildlife habitat, the Board finds that conflicts can be minimized to a level that is not significant through compliance with the following measures:

"6. Mining and processing mineral and/or aggregate resources shall be set back from the top of bank of any stream in compliance with Article 72.040(B) (*Special Setback Requirements*). Existing native vegetation shall be maintained in the setback area. (RLDC §91.030.K).

34. No excavation or processing shall occur within the riparian corridor. All mining and processing activity shall be set back 50 feet from the ordinary high water mark of Grave and Shanks Creeks. (RLDC §72.040. B.1)

35. No mining activity shall occur within the 100 year flood hazard area of Grave and Shanks Creeks. The floodplain boundaries shall be flagged or fenced and avoided by all mining activity. (RLDC §91.030.L)
36. Construction of the access road to Placer Road shall occur above the ordinary high water mark of Grave Creek and shall comply with the standards contained in Article 69.1 -Flood Hazard Overlay of the RLDC. (RLDC §91.030.L)
37. The applicant shall not fill, excavate or otherwise disturb wetlands on the site until permits are obtained from the Department of State Lands (DSL) and the Army Corps of Engineers and implements any required pre-disturbance mitigation.
38. No mining activity- excavation or processing- shall occur within the boundaries of any on-site wetlands.
39. The applicant shall follow the mitigation measures contained in the Riparian Mitigation Plan prepared by Terra Science, Inc., dated August 2013, and the mitigation measures contained in the Golden Eagle Risk Assessment prepared by Northwest Resource Solutions, Inc., dated July 3, 2014.
40. The applicant shall install native trees and shrubs in accordance with the County screening regulations.
41. Access roads adjacent to the mining area boundaries shall be graveled with crushed rock with nominal sizing of at least one inch maximum dimension."

As support for this conclusion, the Board relies upon TSI's testimony and NRS's testimony that these measures will minimize the identified conflicts to a level that is not significant. See TSI Goal 5 Report set forth in Appendix D of the Applications and NRS's Golden Eagle Report (Exhibit OOOOO). Based upon the evidence cited above, the Board finds it necessary to impose the above conditions on its approval of the Project to minimize conflicts with identified Goal 5 resources. The Board finds that the Project operating plan, as conditioned, incorporates all such measures.

**OAR 660-023-0180 (5)(b) The local government shall determine existing or approved land uses within the impact area that will be adversely affected by proposed mining operations and shall specify the predicted conflicts. For purposes of this section, "approved land uses" are dwellings allowed by a residential zone on existing platted lots and other uses for which conditional or final approvals have been granted by the local government. For determination of conflicts from the proposed mining of a significant aggregate resource site, the local government shall limit its consideration to the following: . . .**

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

### IDENTIFICATION OF CONFLICTS:

The Board finds that the Project will not generate any significant conflicts with agricultural practices on surrounding lands. As support for this conclusion, the Board relies upon the results of Applicant's agricultural survey. See Table 1, Appendix M of the Applications. The Board finds that Applicant's survey identified 9 parcels with low-intensive, small-scale agricultural activities (limited to livestock grazing, greenhouses, and private gardens), within one mile of the Property. *Id.* None of these activities appeared to be for commercial purposes. *Id.* In short, the Board finds that only isolated, small-scale agricultural practices are occurring on surrounding lands.

Further, as explained above, the Board finds, based upon the testimony of various Project consultants, and subject to adoption and implementation of various minimization measures, there will be no significant conflicts between the Project and allowable uses, including farm uses, within the Impact Area.

The Board finds that, due to the limited nature and small scale of existing, non-commercial, agricultural practices, the relative lack of proximity to the mining operation, and the various measures that will minimize Project conflicts to a level that is insignificant, the Project will not force a significant change in or significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use. Therefore, there will be no conflicts between the Project and agricultural practices.

Although Edward Brett testified that he operates a nursery on his property within the Impact Area, and Joann Brett testified that she has an organic garden on her property within the Impact Area, the Board finds that such testimony was not supported by any specific evidence in sufficient detail to identify "accepted farm practices" that must be considered under ORS 215.296. See letters from the Bretts (Exhibit MM). Specifically, the Board finds that a nursery license does not constitute substantial evidence identifying "accepted farm practices." Furthermore, the Board finds that the Bretts did not contend that the Project would force a significant change in or significantly increase the cost of accepted farm or forest practices on their property. *Id.* Additionally, the Board finds that organic farming is not properly viewed as either a "farm use" or an "accepted farm practice." *Dierking v. Clackamas County*, 38 Or LUBA 106 (2000) (so holding). Moreover, although William and Elizabeth Corcoran testified that they have a business plan for a proposed winery on their property within the Impact Area and currently operate an agricultural business including a vineyard, fruit trees, berry field, vegetables, bee hives, timber and Christmas trees, the Board finds that such testimony was not supported by any specific evidence in sufficient detail to identify "accepted farm practices" under ORS 215.296. See letters from the Corcorans (Exhibits YYY, ZZZ and GGGG). In addition, the Board finds that the Corcorans did not contend that the Project would force a significant change in or significantly increase the cost of accepted farm or forest practices on their property. *Id.*

Therefore, the Board finds that a reasonable person would rely upon the agricultural survey and the testimony and evidence of various Project consultants, as described herein, to support the

conclusion that the Project will not generate any significant conflicts with agricultural practices on surrounding lands.

MEASURES TO MINIMIZE CONFLICTS:

Because there are no identified conflicts with agricultural practices, the Board finds that it is not required to identify measures that would minimize such conflicts.

**OAR 660-023-0180 (5)(b) The local government shall determine existing or approved land uses within the impact area that will be adversely affected by proposed mining operations and shall specify the predicted conflicts. For purposes of this section, "approved land uses" are dwellings allowed by a residential zone on existing platted lots and other uses for which conditional or final approvals have been granted by the local government. For determination of conflicts from the proposed mining of a significant aggregate resource site, the local government shall limit its consideration to the following: . . .**

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

The Board finds that there are no other conflicts for which consideration is necessary. The Board finds that the County has adopted Ordinance 2006-002, which incorporates OAR 660-023-0180 and DOGAMI requirements with minor language changes. Therefore, the Board finds that the County does not have any ordinances that supersede DOGAMI regulations pursuant to ORS 517.780.

**OAR 660-023-0180(5)(d) The local government shall determine any significant conflicts identified under the requirements of subsection (c) of this section that cannot be minimized. Based on these conflicts only, local governments 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.**

For the reasons explained in response to subsections (3) and (4) above, the proposed conditions of approval will minimize all identified conflicts. Therefore, the Board does not need to conduct an analysis of the ESEE consequences of the mine.

**OAR 660-023-0180 (5)(e) Where mining is allowed, the plan and implementing ordinances shall be amended to allow such mining. Any required measures to minimize conflicts,**

including special conditions and procedures regulating mining, shall be clear and objective. Additional land use review (e.g., site plan review) if required by the local government, shall not exceed the minimum review necessary to assure compliance with these requirements and shall not provide opportunities to deny mining for reasons unrelated to these requirements, or to attach additional approval requirements, except with regard to mining or processing activities:

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

(B) Not requested in the PAPA application; or

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

The Board finds that its approval of the Project complies with this subsection. First, the Board is rendering its final decision of approval by signing these Findings of Fact and Conclusions of Law to: (1) designate the Property as a significant Goal 5 mineral and aggregate resource in the County Comprehensive Plan text and map relating to the County's inventory of significant Goal 5 resources; and (2) apply the Mineral and Aggregate Resource Zone (MARZ) designation to the Property. Second, the Board finds that its conditions of approval are clear and objective. As support for this conclusion, the Board finds that the Staff Report included most of the final conditions, and no party contended that these conditions were not clear and objective. Third, the Board finds that its decision also approves the Site Plan for the Project, which is consistent with the approvals for the PAPA Application and the Comprehensive Plan Amendment and Zone Change Application. Further, the Board finds that there are no additional land use reviews required for the Project.

**OAR 660-023-0180 (5)(f) Where mining is allowed, the local government shall determine the post-mining use and provide for this use in the comprehensive plan and land use regulations. For significant aggregate sites on Class I, II and Unique farmland, local governments shall adopt plan and land use regulations to limit post-mining use to farm uses under ORS 215.203, uses listed in ORS 215.213(1) or 215.283(1), and fish and wildlife habitat uses, including wetland mitigation banking. Local governments shall coordinate with DOGAMI regarding the regulation and reclamation of mineral and aggregate sites, except where exempt under ORS 517.580.**

The Board finds that the Project is not located on Class I, II, or Unique farmland. See Appendix A of the Applications. Therefore, the Board is not required to limit post-mining uses to farm uses under ORS 215.203, uses listed in ORS 215.213(1) or ORS 215.283(1), or fish and wildlife habitat uses.

Further, the Board finds that the Applicant has proposed, and the Board determines, that post-mining uses of the Property are those allowed as of right and conditionally under a current map designation or such uses as may be allowed under future alternative designation, if allowed by law.

Finally, the Board finds that the Applicant has included a conceptual reclamation plan with the Applications. See Appendix L, Plate 4 of the Applications. The Applicant has testified that it has submitted this plan to DOGAMI for approval.

The Board finds that the Applications satisfy the requirements of this subsection.

**OAR 660-023-0180 (5)(g) Local governments shall allow a currently approved aggregate processing operation at an existing site to process material from a new or expansion site without requiring a reauthorization of the existing processing operation unless limits on such processing were established at the time it was approved by the local government.**

The Board finds that this section is not applicable because the Project is not a currently approved aggregate processing operation at an existing site.

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

The Board finds that this provision outlines the procedures for the County to follow if the County, in its discretion, intends to allow, limit, or prevent new conflicting uses within the Impact Area of the Project. In this case, neither the Applicant nor any other parties are requesting that the County engage in this discretionary determination at this time. Further, the Board finds that uses in the Impact Area would be subject to the requirements of the current RLDC and County Ordinance 2006-002 (Article 66.150 B. Impact Area Agreement, if applicable). Therefore, the Board declines to conduct an ESEE to allow, limit, or prevent new conflicting uses within the Impact Area of the Project.

**OAR 660-023-0180(8) In order to determine whether information in a PAPA submittal concerning an aggregate site is adequate, local government shall follow the requirements of this section rather than OAR 660-023-0030(3). An application for approval of an aggregate site following sections (4) and (6) of this rule shall be adequate if it provides sufficient information to determine whether the requirements in those sections are satisfied. An application for a PAPA concerning a significant aggregate site following sections (3) and (5) of this rule shall be adequate if it includes:**

**(a) Information regarding quantity, quality, and location sufficient to determine whether the standards and conditions in section (3) of this rule are satisfied;**

For the reasons set forth at pages 42-47 of the Applications narrative and Appendix A of the Applications, which reasons are incorporated herein by reference, the Board finds that the PAPA Application includes the information required by this subsection. Further, for the reasons set forth above in response to OAR 660-023-0180(3), the Board denies the contentions from

opponents that the Applicant provided incomplete information regarding quantity, quality, and location of the aggregate material in the deposit.

**(b) A conceptual site reclamation plan;**

The PAPA Application includes a conceptual reclamation plan at Appendix L, Plate 4 of the Applications. The Board finds that the PAPA Application includes the information required by this subsection.

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

For the reasons set forth at pages 56-57 of the Applications narrative and the TIA at Appendix G of the Applications, which reasons are incorporated herein by reference, the Board finds that the PAPA Application includes the information required by this subsection. Further, for the reasons set forth above in response to OAR 660-023-0180(5)(b)(B), the Board denies the contentions from opponents that the Applicant provided incomplete information regarding traffic impacts.

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

For the reasons set forth at page 48-63 of the Applications narrative, which reasons are incorporated herein by reference, the Board finds that the PAPA Application includes the information required by this subsection. As additional findings in response to this subsection, the Board incorporates by reference the findings and conditions set forth above in response to OAR 660-023-0180(5)(c), which explain the Applicant's proposals to minimize conflicts with existing uses within the Impact Area.

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

For the reasons set forth at pages 12-15 of the Applications narrative and the phasing and mining plan presented in Plates 3 and 4 in Appendix L of the Applications, which reasons are incorporated herein by reference, the Board finds that the Applications include the information required by this subsection.

**OAR 660-023-0180(9) Local governments shall amend the comprehensive plan and land use regulations to include procedures and requirements consistent with this rule for the consideration of PAPAs concerning aggregate resources. Until such local regulations are adopted, the procedures and requirements of this rule shall be directly applied to local government consideration of a PAPA concerning mining authorization, unless the local plan contains specific criteria regarding the consideration of a PAPA proposing to add a site to the list of significant aggregate sites, provided:**

**(a) Such regulations were acknowledged subsequent to 1989; and**



(b) Such regulations shall be amended to conform to the requirements of this rule at the next scheduled periodic review after September 1, 1996, except as provided under OAR 660-023-0250(7).

The Board finds that the County has amended its comprehensive plan and land use regulations under County Ordinance 2006-002 to adopt the procedures and requirements of OAR 660-023-0180, including specific criteria regarding the consideration of a PAPA concerning mining authorization. Thus, in accordance with this subsection, the Board finds that the County is required to directly apply both the substantive requirements and procedures of County Ordinance 2006-002 that are consistent with OAR 660-023-0180, and the requirements and procedures of OAR 660-023-0180, when evaluating a PAPA concerning mining authorization. *See also Morse Bros., Inc. v. Columbia County*, 37 Or LUBA 85 (1999), *aff'd* 165 Or App 512 (2000); *Eugene Sand & Gravel, Inc. v. Lane County*, 44 Or LUBA 50, 96 (2003), *aff'd* 189 Or App 21 (2003) ("The Goal 5 rule for aggregate establishes a comprehensive regulatory scheme that is intended to supersede local review standards for aggregate.")

The Board further finds that, in accordance with this subsection and the referenced case law, only the provisions of County Ordinance 2006-002 that are consistent with OAR 660-023-0180 and the provisions of OAR 660-023-0180, themselves, are applicable to the PAPA and Zone Change Applications.

The Board finds that, subject to these findings, the County has properly applied the relevant provisions of County Ordinance 2006-002 and OAR 660-023-0180 to the PAPA Application and the Comprehensive Plan Amendment and Zone Change Application.

### III. RLDC ARTICLE 66.1 - MINERAL & AGGREGATE RESOURCE ZONE (MARZ)

The Board finds that the PAPA Application and the Comprehensive Plan Amendment and Zone Change Application satisfy the applicable approval criteria set forth in the RLDC as follows:  
66.130 - Permitted Uses

**The following uses, with accessory uses, shall be permitted using Ministerial Review Procedures (Article 22), unless Site Plan Review is required (Article 42), in which case uses shall be permitted using Quasi-judicial Review Procedures (Article 22). Uses shall also meet the applicable development standards listed in Section 66.180. In all cases except farm uses, a Development Permit shall be required for final approval (Article 41). . . .**

**B. Mining and processing of mineral and aggregate resources subject to the conditions under which mining is permitted in the MARZ approval, or the Special Property Development Standards contained in Article 91.030 (*Special Property Development Standards for Aggregate Operations*).**

The Board finds that all of the Applicant's proposed uses (mining and processing and accessory uses) are permitted within the MARZ.

#### 66.150 - Placing Land Within the Mineral and Aggregate Resource Zone

Only lands that are determined to be a significant mineral and aggregate site (including on-site buffer areas in the control of the mine operator or owner), and which have been authorized for mining pursuant to OAR 660-023-0180 (*Mineral and Aggregate Resources*), shall be placed within the MARZ. . . . An application to designate lands within the MARZ shall meet the following requirements:

A. **Application Requirements.** An application to amend the comprehensive plan and zone maps shall be submitted with the required fees. The application content shall comply with Article 46.030 (*Plan Amendment Application Requirements*) and with OAR 660-023-0180 (*Post-Acknowledgment Plan Amendment Application Requirements*). The application shall demonstrate compliance with criteria contained in Article 46.040 (*Plan Amendment Review Criteria*) and OAR 660-023-0180 (*Definition of Significant Site; Impact Area Conflict Minimization/Resolution; Limitation of New Conflicting Uses*).

The County deemed the Applications complete on February 28, 2014. The Board finds that the content of the Applications complied with Article 46.030 and OAR 660-023-0180. Additionally, for the reasons explained above in response to the criteria of OAR 660-023-0180, which reasons are incorporated by reference herein, the Board finds that the Applicant has demonstrated compliance with OAR 660-023-0180. Further, the Board finds, for the reasons set forth below under the heading "Article 46.040 - Plan Amendment Review Criteria," which reasons are incorporated herein by reference, Applicant has demonstrated compliance with the criteria contained in Article 46.040.

#### Article 46.040 - Plan Amendment Review Criteria

A. **Amendments to a plan and zone map shall demonstrate compliance with all applicable statewide and county goals and policies.**

For the reasons explained above in Section I, "Statewide Planning Goals," which reasons are incorporated herein by reference, the Board finds that the Applications demonstrate compliance with all applicable statewide planning goals. Further, the Board finds that the Applications demonstrate compliance with all applicable county goals and policies as follows:

##### County Goals and Policies

**Goal 1 – To preserve and maintain agricultural lands and the rural character of Josephine County.**

The Board finds that the Site is in a rural location within the county. Most of the area is forested with scattered homes in a rural setting. See Appendix M of Applications. Most tax lots in the vicinity of the Site are zoned either Forest Commercial/Wood Lot Resource or Rural Residential – 5 acre minimum. *Id.* Accordingly, the Board finds that no land in the immediate vicinity of the Site is zoned Agricultural (Exclusive Farm/Farm Resource – EF/FR). Therefore, the Board finds that no agricultural lands will be impacted by the project

With regard to maintenance of the rural character of Josephine County, the Board finds that aggregate operations, approved and authorized under RLDC Article 66 (MARZ) and Goal 5, are allowed uses under the RLDC. Further, the Board notes that enactment of RLDC Article 66 through Ordinance No. 2006-002 on March 8, 2006 expressly included the County's basic policy to effectively address any conflict between aggregate operations and the quality of rural residential uses and other natural resources through the County's permitting process, which is consistent with the requirements of OAR 660-023-0180 and which honor and protect the County's rural environment. See Aggregate Resource Policy E, p. 4 of Ordinance No. 2006-002. Therefore, for the reasons explained herein in response to OAR 660-023-0180 and RLDC Article 66, the Board finds that since the Project meets the criteria of OAR 660-023-0180 and RLDC Article 66, the Project also meets this Goal.

**Goal 2 – To conserve and develop the forest lands of Josephine County.**

As presented in Goal 1, the land in the vicinity of the Site, as well as on the Site is primarily forested. The Board finds that the forest in the vicinity will not be impacted by the Project. Scattered trees exist on the eastern and southeastern portions of the site. See Appendix J, Existing Conditions - Site Map. Much of the Site's existing vegetation will be preserved, and no mining will take place on the steep mountainsides north of Grave Creek or south of Cell 6 in order to protect the forest for future uses. *Id.* at BMP & Operations Site Map; see also Plate 2 - Phasing and Mining Plan of Applications. Therefore, the Board finds that where there is timber on the Site's mountainsides, the land will be preserved for future forestry uses. Finally, the Board finds that mining and processing of aggregate resources is permitted on forest lands under OAR 660-006-0025(4)(g). Therefore, the Board finds that approval of the Applications will allow for appropriate development of forest lands in the County.

**Goal 3 – Provide land allocations to encourage a wide variety of safe and affordable housing.**

The Site is currently under FC/WR and RR-5 zoning. This zoning allows for minimum housing development. The Applications request a rezone to MARZ for mining purposes. The Board finds that the current and future zoning for this Site do not lend themselves to future housing developments. Therefore, the Board finds that this Goal is inapplicable.

**Goal 4 – Plan and develop facilities and services that are needed, and can be afforded, by the residents of the county.**

This Goal directs the County to provide for public facilities and services. Specifically, the Goal addresses encouragement for future public water supply systems, development of a transportation master plan, airport facilities, educational services as well as recreational opportunities on public lands. The Board finds that the proposed mine does not require planning and development for any additional facilities and services. See Applications narrative, p. 41. Therefore, the Board finds that the Applications are consistent with this Goal.

**Goal 5 – To diversify, expand and stabilize economic opportunities for the betterment of the county.**

This Goal encourages protection of land to provide for development of diversified commercial

and industrial bases. The Board finds that mining on this Site provides for long term employment for a skilled work force. *See* Applications narrative, p. 19. Additionally, the mining will generate products to improve the infrastructure (roads, bridges, water systems, etc.) and future housing (concrete, sand, gravels, and asphalt) needs of the County. *Id.* The Board finds that these Applications meet the criteria of this Goal.

**Goal 6 – Prevent loss of life and property due to natural and man-made hazards.**

The mining on the Site will stay above the 100 year floodplain, reducing any potential for flood issues on the Site. *See Appendix K* of Applications. Trees will be thinned and removed in places where mining will take place, reducing the potential for fire on the Site. *See* Applications narrative, p. 19. The reclamation plan includes a series of ponds and lakes that can be utilized for wildfire control, as well as prevention of loss of life if there is a fire in the valley. *See Appendix L* of Applications. The Applicant plans to make these water features available to appropriate fire fighters in case of fire emergencies. *Id.* No known landslides are mapped on the site, as the property is a broad valley with treed mountainsides to the north and south. *See* Applications narrative, p. 19. No mining activity will take place on the mountainsides, which in turn reduces the potential for any landsliding. *See* Plate 2 - Phasing and Mining Plan of Applications. The Board finds that by mining in the areas planned, no natural or man-made hazards are anticipated.

**Goal 7 – Preserve valuable limited resources, unique natural areas and historic features,**

**Policies 1.A through 1.E**

County Goal 7 states that “Josephine County is especially rich in natural and cultural resources that are important to the vitality of the local economy and the general livability of rural areas.” These resources include mineral and aggregate deposits, among others. “It is therefore the purpose of this goal to develop policies, supported by implementing land use regulations that will protect and enhance the county's natural and cultural resources in balance with individual property rights and competing land uses.” *Italicized* sections below are quoted from Ordinance 2006-002 regarding aggregate resources.

**Policy 1 - Aggregate Resource Policies**

*A. ADMINISTRATIVE RULE IMPLEMENTATION. The policies contained within this goal implement the requirements for the mining of significant mineral and aggregate sites as authorized by Oregon Administrative Rule (OAR), Chapter 660, Division 23, entitled, Procedures and Requirements for Complying with Statewide Goal 5, except as modified under Collaborative Problem Solving Authority as described in subsection C below.*

*B. BASE INFORMATION. This section describes the documentation upon which the policies were based.*

*C. COLLABORATIVE REGIONAL PROBLEM SOLVING AUTHORITY. The standards and procedures for an Impact Area Agreement described within these policies and implemented in the Rural Land Development Code (code) are derived from Collaborative Regional Problem Solving Authority pursuant to ORS 197.656.*

D. **DEFINITIONS.** *This section presents definitions for the county policies.*

E. **BASIC MINERAL AND AGGREGATE POLICY.** *This section acknowledges the importance of these resources to the economy of the county and the need to have a stable and adequate supply. It is also known that mining and hauling frequently involve significant impacts on nearby existing and future land uses and public facilities. These impacts may adversely affect the quality of rural residential uses and other natural resources. It is the basic policy of Josephine County to effectively address these conflicts during the permitting of new and expanded significant mineral and aggregate mining in ways that are consistent with the requirements of OAR 660-023-0180, and which also honor and protect the county's exceptional rural environment.*

To apply this policy, the Ordinance states a Site under consideration must meet Goal 5 requirements. Those sites that meet those requirements will be placed in a Mineral and Aggregate Resource Zone (MARZ). In addition, those sites must address Operating Standards (Article 91 of the RLDC) as well as attempt to secure an Impact Area Agreement (IAA) for the site.

The Goal cites the importance of special features (archaeological or historic sites) and limited resources (mineral deposits and sensitive wildlife habitat) and the fact that these may be endangered unless protected from the encroachment of incompatible land uses.

The Board finds that there are no archaeological or historic sites on the Site. See Appendix I of Applications. Additionally, the Board finds that there are significant mineral resources (sand and gravel) on the site. See Appendix A of Applications. Finally, the Board finds that although there is sensitive wildlife habitat on the Site, the impacts to such habitat will be minimized to a level that is insignificant through the implementation of mitigating measures. See Appendix D of Applications and the discussion in response to OAR 660-023-0180(5), above. Although there are Class 1 and 2 streams crossing the site, the Board finds that the vegetation associated with these streams will be protected through minimum 50 foot setbacks, in accordance with this Goal. See Appendix E of Applications. The Board finds that through this application process and Comprehensive Plan Amendment and Zone Change, the "limited resources" of sand and gravel are being protected from encroachment, and the impact area for this Site has been analyzed and will allow for protection to the mining Site. Therefore, the Board finds that these Applications meet this Goal and associated policies.

#### **Goal 8 – Pollution shall be controlled.**

This Goal requires the Board of County Commissioners to monitor and maintain acceptable standards to avoid air, water and noise pollution. The Board finds that these Applications present mitigation measures to protect these elements through a variety of Best Management Practices as well as requests for specific State and Federal permits/standards to protect against pollution. See Appendices B, F, H, and J of Applications. Technical studies associated with the site include Air Quality, Acoustical, Storm Water and Groundwater analyses to protect against pollution from the proposed mining. *Id.* The Board finds that these reports and the Applications meet this Goal.

**Goal 9 – Development and preservation of energy.**

This Goal encourages the reduction of energy use by residents of the County. Energy conservation in design of developments, use of alternative energy sources and better insulation are the policies presented. The Board finds that this goal is inapplicable to the mining and processing of aggregate resources.

**Goal 10 - To depict a land use pattern to guide future uses, to implement the desires of the county and to meet the requirements of the State of Oregon.**

**Policy 1.K**

- I. *MINERAL AND AGGREGATE RESOURCE ZONE (MARZ). Properties which have been designated significant mineral or aggregate resource sites, and which have been approved for mining in compliance with the requirements of Oregon Administrative Rule-660-023-0180, shall be placed in the Mineral and Aggregate Resource Zone (MARZ). Significant aggregate sites located within the Farm Zones that qualify for review using conditional use procedures shall not be placed in the MARZ.*

For the reasons explained above in response to the criteria of OAR 660-023-0180, which reasons are incorporated herein by reference, the Board finds that the Site should be designated a significant mineral and aggregate resource site and approved for mining. The Board finds that by rezoning the Site to MARZ, the site will be protected for mining, a long term land use within the area. Therefore, the Board finds that these Applications meet this Goal and policy.

**Goal 11 – The Comprehensive Plan shall be maintained, amended, and updated as necessary.**

This Goal provides the rules and procedures for maintaining, amending and updating the Comprehensive Plan. This application specifically meets the criteria for amending the Comprehensive Plan by inventorying the Site and amending the Comprehensive Plan. In accordance with Policy (2) of this Goal, the purpose of this plan amendment is to allow aggregate mining at the Site and protect the site for future mining use as well as from future sensitive uses that may impact the mining. A map showing the new protected Site is presented on Figure 2 of the Applications, in accordance with Policy (3) of this Goal. This application will be presented and reviewed by the Planning Commission and Board of County Commissioners in the public hearing process, as required by this Goal. Therefore, the Board finds that these Applications meet the criteria of this Goal.

**Goal 12 – Procedures shall be established for the planning and zoning of unincorporated communities as needed and desired by the rural residents of Josephine County.**

This Goal addresses the desire by rural residents to establish “unincorporated communities”. The Board finds that this Goal does not apply to the proposed mining Site, as there is no desire to create this type of community.

**B. Requests involving changes for lands from a resource designation to a non-resource designation shall either comply with statewide exception criteria contained in Oregon Revised Statutes 197.732, and as implemented in Oregon Administrative Rules, Chapter 660, Division 4, or demonstrate the land is non-resource pursuant to the criteria contained in Section 46.050 below.**

The present Applications involve a request for changes from Forest Commercial/Woodlot Resource (FC/WR) and Rural Residential - 5 acre (RR-5) zones to the Mineral and Aggregate Resources Zone (MARZ). The Board finds that since the MARZ is a resource designation and the proposed use is allowed under Goal 3, this criterion does not apply.

**C. Requests involving changes to the plan and/or zone maps shall demonstrate the land has adequate carrying capacity to support the densities and types of uses allowed by the proposed plan and zone designations. The adequacy of carrying capacity, at a minimum, shall be evaluated using the criteria listed below. The criteria are to be considered together to determine whether the geography of the land is suited to support the kind of development associated with the proposed designations. \* \* \***

**1. The proposed density and types of uses can be supported by the facility, service and other applicable development standards contained in this code or contained in other applicable federal, state and local rules and regulations governing such densities and types of uses;**

For the reasons explained in response to Article 91 (Special Property Development Standards for Aggregate Operations) below, which reasons are incorporated herein by reference, the Board finds that the proposed density and type of use can be supported by the applicable development standards specifically for mineral and aggregate operations contained in the code, and the proposed density and use meets all applicable property development standards. Additionally, for the reasons in Section I regarding Statewide Planning Goal 12, above, which reasons are incorporated herein by reference, the Board finds that the proposed density and type of use is supported by an adequate transportation system and the Applications will not significantly affect any existing or planned transportation facilities for purposes of the Transportation Planning Rule. Finally, for the reasons explained in Section II regarding OAR 660-023-0180, above, which reasons are incorporated herein by reference, the Board finds that the proposed use complies with all applicable standards contained in Statewide Planning Goal 5 and OAR 660-023-0180.

**2. Other physical characteristics of the land and surrounding area make the land suitable for the proposed density and types of uses, to include consideration of existing or potential hazards (flood, wildfire, erosion), the degree of slopes, the presence of wetlands, geologic formations, mineral deposits and any other similar natural or man-made conditions or circumstances;**

The topography on the Site consists of hillsides to the north, southwest and central eastern portion of the Site and a valley that trends east-west through the Site where actual mining will take place. Applications narrative, pp. 10-12. The proposed use would be situated on the Sunny Valley alluvial floor above the determined floodway and 100-year floodplain in a rural, unincorporated portion of the County. *Id.* The valley is characterized by a broad, convex alluvial

terrace that separates two westerly flowing drainages. *Id.* The Site is primarily undeveloped and contains one (1) small wetland area totaling approximately 0.03 acres, which has been delineated on the southwestern portion of the Site and will not be impacted by the proposed mining operation and a very limited ephemeral ditch, which may be impacted subject to applicable state/federal authorizations. *Id.* Historically, the Site has been used for agricultural purposes, including cattle grazing. Some logging has also occurred on the Site. Surrounding uses include undeveloped land and rural residences. *Id.* Previous exploratory drilling and trenching on the subject property in the 1930's and 1980 (Payne, 1980) indicated that the gravels were deep and the boulders large. *Id.*

Further, the Board finds that there are no identified or inventoried natural hazards in the general area of the Property. No known mapped landslides occur on the Site, and the mining plan addresses slope stability for cut-and-fill slopes. *See* Application, Appendix L.

For the reasons explained in response to the criteria in OAR 660-023-0180, above, which reasons are incorporated herein by reference, the Board finds that the aggregate resource found on the Site meets and exceeds the quality standards for base aggregate under OAR 660-023-0180, and the Site qualifies as a significant aggregate resource site under Goal 5. *See Appendix A* of Applications. Additionally, for the reasons cited and incorporated above, the Board finds that the Site contains at least 6.9 million tons of aggregate, far exceeding the quantity criteria of 500,000 tons required by OAR 660-023-0180. The Board finds that based on the subsurface work performed and presented in Appendix A, there is a significant aggregate resource on the Site.

Therefore, the Board finds that the physical characteristics of the land and surrounding area make the Site suitable for the proposed density and aggregate mining operation.

**3. The land in its natural state accommodates the proposed uses and densities, or special alterations or mitigation plans can make the land achieve the carrying capacity described under items [1] and [2] above;**

Little site preparation is required before mining begins on the Site. Applications narrative, pp. 12-15. Some trees will be removed as mining progresses across the Site. *Id.* Topsoil and overburden will be excavated to build noise mitigation barriers in the eastern portions of the Site. *Id.* Natural vegetation will remain along the Site lines to provide a visual screen. *Id.*

For the reasons above and those explained in response to conflict minimization under OAR 660-023-0180, above, which reasons are incorporated herein by reference, the Board finds that the land in its natural state and with the stated special alterations or mitigation plans can accommodate the proposed use and make the land achieve the required carrying capacity.

**4. Development pursuant to the proposed uses or densities will not significantly increase the risk from hazards to the residents of the development, the area or the general public.**

For the reasons explained in response to potential conflicts and conflicts minimization under OAR 660-023-0180, above, which reasons are incorporated herein by reference, the Board finds that the Applicant has evaluated the potential risk from hazards, such as noise, dust or other



discharges, and traffic, to the impact area. The Applicant has identified potential hazards/conflicts, analyzed the potential impact of such hazards/conflicts within the defined impact area, and proposed measures to mitigate such impacts where necessary. *Id.* With implementation of the proposed mitigation measures, which the Board has imposed as conditions of approval, the Board finds that the proposed development will not significantly increase the risk from hazards to the area or the general public.

**5. Features of the development will not result in future maintenance costs to the public for the infrastructure needed to serve the development and the area that are atypically higher than expenses for other developments in the same plan and zone designations (examples of infrastructure include streets, bridges, storm drain facilities, erosion and sediment control facilities, and other similar public infrastructure facilities); and**

Infrastructure such as bridges, storm drainage, erosion and sediment control, and water and septic services will be private on-site facilities, which will not result in future maintenance costs to the public. *See Applications narrative, pp. 31-32.* The bridge over Grave Creek will be a private bridge built on the Site serving only the owner, mining operator, employees, and invitees. *Id.* Storm drainage and erosion and sediment control will be handled on-site. *Id.* An exempt domestic well on site will be used for drinking water purposes, as well as for dust suppression, toilet and nursery needs. *Id.* Flush-type toilets will use non-potable water brought into the Site. *Id.* Waste will be stored in an underground holding tank to be pumped, as necessary. *Id.* No septic or leach field system is planned. Irrigation will continue utilizing the diversion point from Grave Creek in accordance with the irrigation water rights currently on the property. *Id.*

While additional electrical service is desired for the shop area, there is current electrical service to the Site already, and there are two easements on the Site for an electrical transmission line that traverses the Site. *Id.* Therefore, the Board finds that any future maintenance costs for electrical service or for use of the public roads surrounding the Site will not be atypically higher than expenses for other developments within the MARZ.

**6. Special circumstances exist at or near the site that justify increased risks, expensive or complex mitigation plans, or higher infrastructure costs to the public from the development. This criterion can be used to consider specific community needs that have arisen within the area since the existing zoning was implemented at the site. Examples of circumstances which might support the application of this criterion are . . . the location or discovery of unique natural resources . . . and any other circumstance that establishes a special need or benefit to the community that justifies increased risks and costs. This criterion shall not be used to modify the requirements of criterion [1] above.**

For the reasons explained in response to the criteria of OAR 660-023-0180, which reasons are incorporated herein by reference, the Board finds that the Site is rich in sand and gravel (aggregate) resources. The Board also finds that these resources provide the foundation for base rock, which, in turn, is an essential component for many needed public road improvements. Appendix A of Applications. The Board finds that the Site will provide aggregate for future private developments as well as public needs, and that designating the Site as a significant

resource and allowing the proposed use will serve the public interest and justifies any increased risks or costs associated with the development.

In summary, the Board finds that in considering the six (6) criteria discussed above together, the Site has adequate carrying capacity to support the density and type of use allowed by the proposed plan and zone designations.

**D. The density and types of uses authorized by the proposed plan and zoning designations are appropriate based on the requirements of subsection [1] or [2] below:**

**1. The change in designations at the location is consistent with the character of the surrounding area. Consistency shall be demonstrated by a detailed review of the relationship between the area covered by the proposed change in designations and the surrounding area, subject to the following rules. \* \* \* \***

**2. Demonstrate how the introduction of inconsistent density or uses into an area is justified. This demonstration may be based upon changes in the area resulting from rezonings, new residential, commercial, industrial or resource development, the introduction or improvement of public facilities and services, changes in demographics, changes in plan inventories, and other similar circumstances. The application shall show how the proposed change in designations, in the context of the foregoing circumstances, implements applicable state and/or county goals and policies. The more the change introduces inconsistent densities and uses into an area, the greater the burden on the applicant to justify the basis for the change.**

The surrounding area is designated WR, RR-5 and Serpentine (S). See Figures 1 and 2 and Plate 1 of Applications. The surrounding uses consist of undeveloped land and rural residences. Appendix M of Applications. The Woodlot Resource District provides classification for lands that have resource potential, but timber production is generally at a lower level than the primary forest zone because of soil limitations and smaller lot size. RLDC Article 65. The Serpentine District, which designates lands underlain by serpentinite or peridotite geologic units, provides a management classification that will permit treatment of such lands based on land capability. RLDC Article 67. The Rural Residential - 5 acre zone provides classification for rural residences. RLDC Article 61. Both the Woodlot Resource and Serpentine zoning designations constitute resource designations, which are consistent with the MARZ. The Board finds that the introduction of the proposed mineral and aggregate resource use into the area is justified for three (3) reasons. First, the Board finds that the Site is rich in high-quality sand and gravel (aggregate) resources, which provides the foundation for base rock, which, in turn, is an essential component for many needed public road improvements. Appendix A of Applications. The Site contains an abundance of aggregate resources that far exceed the quantity threshold under OAR 660-023-0180. *Id.* Secondly, the Board finds that there is a lack of permitted sand and gravel sites in Josephine County of any magnitude, and this Site will provide needed aggregate for future private developments as well as public needs. Applications narrative, p. 15. The Board further finds that designating the Site as a significant resource and allowing the proposed use will serve the public interest. *Id.* Finally, the Board finds that the Applicant will be subject to conditions of approval ensuring that Applicant will mitigate any off-site impacts associated with mine operations, including by incorporating screening and barriers, following best management

practices, limiting hours for mining activities, establishing voluntary setbacks, and by implementing a reclamation plan. Conditions of approval, Nos. 1-42. The Board finds that these mitigation measures will ensure that the development poses no more than an insignificant impact on surrounding existing or allowed uses within the impact area or to the public at large.

Finally, and most importantly, the Board finds that application of the MARZ designation, which allows aggregate mining and processing uses upon demonstration of significant aggregate resource, implements Statewide Planning Goal 5 and the Basic Mineral and Aggregate Policies adopted pursuant to Ordinance No, 2006-002. The record includes substantial evidence that the Site includes significant aggregate deposit which may be made available to meet the demand for aggregate resources in the County through application of the MARZ designation, as proposed.

For these reasons, the Board concludes that this criterion is met.

**E. Requests involving changes to the plan and/or zone maps within established exception areas shall demonstrate the change complies with the criteria contained in Oregon Administrative Rule 660-004-0018 governing plan and zone changes within exception areas.**

This criterion is inapplicable because the Applications do not involve changes to the plan and/or zone maps within established exception areas.

**66.150.C Failure to Obtain an Impact Area Agreement.**

**If the mine operator is unable to enter into an impact area agreement with any of the property owners within the impact area, documentation of the operator's efforts to reach such an agreement shall be submitted to the Planning Director with the application or within 30 days from the time when a completed application is accepted by the county.**

The Board finds that the Applicant was unable to enter into an Impact Area Agreement (IAA) with any property owners within the impact area. However, based on the Staff Report, which documents the conclusion that all applicable IAA requirements have been met, the Board finds that the Applicant complied with all applicable IAA requirements.

**66.150.D Significant Riparian Corridors.**

**Mining proposals considered under this Section shall demonstrate that all conflicts with acknowledged significant riparian corridors have been minimized or resolved by an ESEE analysis. In addition to the notice requirements otherwise required by Chapters 2 and 4 of this code, written notice shall be given to the Oregon Departments of Geology and Mineral Industries (DOGAMI), Division of State Lands (DSL), Environmental Quality (DEQ) and Fish and Wildlife (ODFW) for mining proposals that will impact acknowledged significant riparian corridor.**

For the reasons explained in response to OAR 660-023-0180(5) above, which reasons are incorporated by reference as findings herein, the Board finds that all conflicts with acknowledged significant riparian corridors have been minimized. Further, the Board finds that DOGAMI, DSL, DEQ, and ODFW received notice of the Applications on June 3, 2014.

## 66.170 - SITE RECLAMATION

This section requires a DOGAMI operating permit and approved reclamation plan, in accordance with ORS 517.750 through 517.900. The Board finds that the DOGAMI operating permit and reclamation plan was presented to the County and has been submitted to DOGAMI for review. Plates 2 and 4 and in Appendix L of the Applications. DOGAMI cannot issue its permit until the County land use action is complete. Therefore, the Board imposes a condition of approval requiring that the DOGAMI operating permit and approved reclamation plan be presented to the County prior to initiation of mining. The Board finds that with such condition, this section is met.

## 66.180 – GENERAL PROPERTY DEVELOPMENT STANDARDS

### A. Permit Review Requirements

The County requires specific permit requirements that are in conformance with Articles 20, 21, 22, 40, 41, 42, 44 and 45 as applicable to the Site application request. For the reasons explained below, the Board finds that the Applications will comply with Articles 20, 21, 22, 40, and 41. As explained below, the Board finds that Article 42 for Site Plan Review does not apply because Ordinance 2006-002 has imposed specific development standards for aggregate operations under Article 91. The Board further finds that Articles 44 and 45 are for Variances and Conditional Uses, respectively, and do not apply because the Applicant is not requested any variances or conditional uses. The Articles that do apply are addressed herein.

- **Articles 20 – 22:** *The purpose of this Chapter is to establish the procedures to be used in the review of various land use applications and the issuance or denial of land use permits in Josephine County. Articles 20 through 22 include the basic review provisions (20), pre-application review (21) and permit review procedures (22).*

The Board finds that the Applicant and the County have followed the correct procedures in review of these Applications.

- **Article 40:** *The purpose of this Article is to establish the basic procedures for the submission of applications for land use permits in Josephine County.*

The applications are requesting the following types of actions: a post-acknowledgement plan amendment to designate the Site as a significant mineral and aggregate resource, and a Comprehensive Plan map and text amendment and Zone Change to the MARZ. The Board finds that the procedures have been followed for these Applications, as outlined in Article 40.

The Board also finds that in accordance with Article 40, the Applicant requested to consolidate all land use actions into one review process per 40.030 D. The Board further finds that the Applicant followed all applicable procedures in submitting these Applications, and the County deemed the Applications complete on February 28, 2014.

- **Article 41:** *The purpose of this Article is to set out basic rules for the issuance, time limit, extension, expiration and revocation of land use permits.*

The Board finds that it is feasible for the Applicant and the County to comply with this Article.

- **Article 42:** *This Article addresses Site Plan Review.*

RLDC 91.020.A provides "All applications for the mining or processing of mineral and/or aggregate resources *in zones other than the Mineral and Aggregate Resource Zone (MARZ) and the Aggregate Resource Zone (AR)* shall be processed as Conditional Use Permits (Article 45), with a Site Plan Review (Article 42), and shall utilize Quasi-judicial Review Procedures as set forth in Review Procedures (Article 22)." (Emphasis added). The Board finds that since the Applicant is requesting that the Site be placed in the MARZ, Site Plan Review under Article 42 is not required.

As support for this finding, the Board relies on RLDC 91.030, which sets forth special property development standards specific to aggregate operations that function as site plan review. Moreover, the Board finds that pursuant to OAR 660-023-0180(9), while a local government may adopt procedures and requirements for the consideration of PAPAs concerning aggregate resources, such local procedures and requirements must be consistent with the aforementioned OAR. The Board finds that the criteria under Article 42 is generic, while the development standards under Article 91 are specific to aggregate sites. Any local procedures and requirements for aggregate sites must be consistent with the OAR. The Board finds that only the specific standards under Article 91 are consistent with the OAR; therefore, the Board finds that those are the site plan review standards adopted by the county for aggregate sites.

## **B. Property Development Standards**

1. **Article 81:** *The purpose of these standards is to ensure safe ingress and egress to and from properties; to minimize street congestion and traffic hazards, to protect the future operation of transportation facilities, to provide safe and convenient access to businesses, public services, and places of public assembly; and to make vehicular circulation more compatible with surrounding land uses.*

**Finding:** The Applicant submitted a TIA by Sandow (Appendix G of Applications), which presents an analysis of the site access from Placer Road to the Site and demonstrates that access to and from the Site will be safe and that street congestion and traffic hazards will be minimized. The TIA also presents mitigation measures for site distance concerns at intersections. Based on the TIA, the Board finds that the access road and all roads along the Haul Route can meet the development standards of Article 81. Additionally, Thornton Engineering, Inc., has prepared conceptual design drawings for the access road (Appendix K of Applications), and the Board finds that such designs demonstrate that the access road will comply with the development standards of Article 81.

2. **Article 91: Standards for development of mineral and aggregate operations.** *The purpose of this Article is to provide clear and objective development standards and review procedures for approval and operation of mineral and aggregate mining and processing sites located in any zone where these uses are authorized.*

A. *A Development Permit shall be obtained before any mining and/or processing of mineral or aggregate resources occurs. The applicant shall also obtain all other permits required by this code and other licensing or permitting entities having jurisdiction over the operation. The continuance of additional permits and approvals in good standing shall be a condition for the continuance of the county's Development Permit. The performance of the standards contained in this Article shall also be conditions to the issuance and continuance of the Development Permit.*

**Finding:** Based on the testimony of the Applicant, the Board finds that the proposed mining and reclamation plans have been submitted to DOGAMI for its approval of an operating permit and of the reclamation plan. See Appendix L of Applications. Furthermore, for the reasons explained herein, the Board finds that it is feasible for the Applicant to obtain a Development Permit.

B. *An access or service road(s) to and from the extraction site to a public road shall meet the following standards:*

1. *Meet applicable standards from Oregon Administrative Rules Chapter 340 Division 35 for vehicular noise control for a distance of 500 feet in all directions from any public road or any conflicting use located along the access road.*

**Finding:** For the reasons explained in these Supplemental Findings in response to OAR 660-023-0180(5)(b)(A), which reasons are incorporated herein by reference, the Board finds that all roads from the extraction site to a public road will be constructed and maintained to ensure compliance with applicable state standards for noise control, subject to compliance with the following condition:

“15. The access or service road(s) to and from the extraction site to a public road shall meet the following standards: \* \* \*

b. The applicable standards from Oregon Administrative Rules Chapter 340, Division 35, for vehicular noise control for a distance of 500 feet in all directions from any public road or conflicting use located along the access road. (RLDC §91.030. B.1).”

2. *The most current air quality standards from Oregon Administrative Rules Chapter 340 Divisions 20, 21, and 28 for ambient air quality for a distance of 500 feet in all directions from any public road or any conflicting use located along the access road if the mining traffic is the primary cause of the*

*road dust. Where more than one mining operation uses the same road, all operators shall be proportionately responsible for the cost and management of dust abatement measures based on vehicle trips per day.*

**Finding:** For the reasons explained in these Supplemental Findings in response to OAR 660-023-0180(5)(b)(A), which reasons are incorporated herein by reference, the Board finds that all roads from the extraction site to a public road will be constructed and maintained to ensure compliance with applicable state standards for ambient air quality, subject to compliance with the following conditions:

“15. The access or service road(s) to and from the extraction site to a public road shall meet the following standards:

a. The most current air quality standards from Oregon Administrative Rules Chapter 340, Divisions 20, 21, and 28, for ambient air quality for a distance 500 feet in all directions from any public road or conflicting use located along the access road if the mining traffic is the primary cause of the road dust. (RLDC §91.030.B.2).”

*C. The extraction area shall be substantially screened from the view of existing conflicting uses, subject to the following specifications:*

1. *Mining and processing equipment, whether in use or in storage, shall be screened. Stockpiles of aggregate do not need to be screened and may themselves function as screening.*

2. *Screening may consist of natural vegetation and landscape features, or may be supplied by planting vegetation or placement of berms, fences or other similar development features. If vegetation is used as screening it shall be maintained alive.*

**Finding:** Applicant also submitted a landscape plan identifying existing vegetation and topographic features within the extraction area that will be preserved to provide adequate screening. See Appendix E to Applications. Additionally, in areas where existing vegetation and/or topographic features are not adequate to provide effective screening or cannot be preserved due to conflicts with mining activities, Applicant has proposed specific types and densities of plantings. *Id.* No one contended that the Project would not comply with this standard.

Based upon the testimony presented, the Board finds that the Site Plan Review Application complies with this standard, subject to compliance with the following condition:

“3. The extraction area shall be substantially screened from the view of existing conflicting uses, subject to the following specifications:

- a. Mining and processing equipment, whether in use or in storage, shall be screened. Stockpiles of aggregate do not need to be screened and may be used for screening.
- b. Screening may consist of natural vegetation and landscape features, or may be supplied by planting vegetation or placement of berms, fences or other similar development features including the proposed cyclone fence installed along excavations exceeding 3:1 slope and noise mitigation barriers. If vegetation is used as screening it shall be maintained alive.
- c. Earthen berms shall be stabilized with ground cover.
- d. Visual screening may not be required if the topography, growing conditions or other circumstances at the site make it impractical or otherwise unnecessary to shield the site from the view of conflicting uses. (RLDC §91.030.C).”

3. *Earthen berms shall be stabilized with ground cover.*

**Finding:** For the reasons explained in these Supplemental Findings in response to OAR 660-023-0180(5)(b)(A), which reasons are incorporated herein by reference, the Board finds that the Applicant has proposed landscaping of topsoil/overburden stockpiles to minimize air quality conflicts. The Board finds that the Site Plan Review Application complies with this standard, subject to compliance with Condition No. 3(c), described above.

4. *Visual screening may not be required if the topography, growing conditions or other circumstances at the site make it impractical or otherwise unnecessary to shield the site from the view of conflicting uses.*

**Finding:** As stated above, Applicant also submitted a landscape plan identifying existing vegetation and topographic features within the extraction area that will be preserved to provide adequate screening. See Appendix E to Applications. The Board finds that this standard is met.

D. *On-site parking shall be provided for all employees, customers and official visitors.*

**Finding:** As shown on the Site Plan, parking will be provided on site. See Appendix J, Site Development Map, Sheet 1 of 2. The Board finds that this standard is met.



*E. A safety fence must be constructed to protect the extraction site from vehicular or pedestrian intrusion whenever the site is within 200 feet from a public road or an off-site residence, or where the quarry is developed with hazardous vertical cuts. The safety fence may consist of orange vinyl fence material commonly used at construction sites.*

**Finding:** No safety fence is necessary, given the remoteness of the site, with the exception of a safety fence at the top of the processing/staging area. See Appendix L, DOGAMI Reclamation Plan Set, Plate 3. The Board finds that this criterion is met.

*F. All mining and processing of mineral and/or aggregate resources shall meet and maintain the permit requirements of the Oregon Departments of Geology and Mineral Industries (DOGAMI), Division of State Lands (DSL), and Environmental Quality (DEQ).*

**Finding:** For the reasons explained in these Supplemental Findings in response to OAR 660-023-0180(5)(b)(A), which reasons are incorporated herein by reference, the Project's mining and processing of mineral and/or aggregate resources will comply with applicable state air quality and emission standards and applicable state and federal water quality standards, subject to relevant conditions imposed in this decision. The Board finds that an application has been submitted to DOGAMI for the operating permit and approval of the reclamation plan. See Appendix L of Applications. The Board imposes Condition No. 14, which requires that all permits required by DOGAMI, DEQ, DSL, and OWRD, or any other required state or federal permits, shall be provided to the County Planning Director, and that all mining and processing of mineral and/or aggregate resources shall meet and maintain those permit requirements. Therefore, with this condition, the Board finds that the Site Plan Review Application satisfies this section.

*G. All mining and processing of mineral and/or aggregate resources shall comply with OAR noise emission standards. Compliance for the purpose of issuing a development permit can be demonstrated by a report from an acoustical engineer attesting that the circumstances of the site and/or proposed mitigation will bring the site into compliance.*

**Finding:** For the reasons explained in these Supplemental Findings in response to OAR 660-023-0180(5)(b)(A), which reasons are incorporated herein by reference, the Board finds that the Project will comply with all applicable noise emission standards. The Board finds that the acoustical report (Appendix F of Applications) demonstrates that the proposed Project meets OAR noise emission standards by following Best Management Practices (BMP's) and employing specifically designed berms for further protection. Therefore, the Board finds that the Site Plan Review Application satisfies this section.

*H. All mining and processing of mineral and/or aggregate resource sites shall meet the erosion control and site drainage standards contained in Article 83 (Erosion Control & Storm Drain Facilities) of this code, as well as any permit requirements imposed by DOGAMI, DSL, DEQ, or any other state or federal regulation.*

**Finding:** The Board finds that Sunny Valley Sand & Gravel Erosion and Sediment Control and Storm Water Narrative by Westlake Consultants, Inc. (Appendix J to Applications) shows that the Project will employ specific erosion control and site drainage designs and demonstrates that the project will meet the standards in RLDC Article 83. The Board also finds that the Site currently has a DEQ Storm water 1200A permit, which will continue to evolve as the Site is mined.

*1. The discharge of contaminants and dust caused from the mining and processing of mineral and/or aggregate resources shall comply with applicable DEQ ambient air quality and emission standards. The operator shall cease all mining and processing operation within one hour of the malfunction of any air pollution control equipment, and shall not resume operation until the malfunction has been corrected in compliance with applicable DEQ rules and standards.*

**Finding:** For the reasons explained in these Supplemental Findings in response to OAR 660-023-0180(5)(b)(A), which reasons are incorporated herein by reference, the Board finds that the Project's discharge of contaminants and dust caused from the mining and processing of mineral and/or aggregate resources will comply with applicable DEQ standards for ambient air quality, subject to compliance with the following conditions:

“27. The mining operations shall comply with the most current air quality standards from Oregon Administrative Rules Chapter 340, Divisions 20, 21, and 28, for ambient air quality for a distance 500 feet in all directions from any public road or conflicting use located along the access road if the mining traffic is the primary cause of the road dust. (RLDC §91.030.B.2)

28. The main facility access road from Placer road to the scale house shall be paved to prevent the generation of dust.

29. The discharge of contaminants and dust caused from the mining and processing of mineral and/or aggregate resources shall comply with applicable DEQ ambient air quality and emission standards. The operator shall cease all mining and processing operation within one hour of the malfunction of any air pollution control equipment, and shall not resume operation until the malfunction has been corrected in compliance with applicable DEQ rules and standards. (RLDC §91.030.1)

30. On site surfaces travelled by off-road or on-road sources shall be watered whenever significant visible dust emissions (opacity approaching 20%) are observed behind or beside a moving vehicle.

31. Water sprayers shall be used to control dust emissions from crushers and screens operating on site.

32. The majority (51% or more in terms of total fleet horsepower) of diesel engines powering off-road equipment shall meet federal Tier 2 off-road engine standards or better. This requirement shall be met by using equipment with engines originally built to meet these standards or through retrofit to reduce emissions to these levels.

33. On site idle times for heavy-duty diesel truck engines shall be limited to no more than five minutes per truck trip.”

*J. Excavation and stockpiling shall be set back from property lines so that the lack of lateral support and the angle of repose of the geologic deposit will not undermine or intrude onto adjoining lands. An additional setback may be required to allow the placement and maintenance of fencing.*

**Finding:** Based on testimony from the Applicant and Plate 3 and Appendix L of the Applications, the Board finds that the excavations and stockpiling are set well back from the property lines. Therefore, the Board finds that there is no concern that a lack of lateral support or angle of repose of the geologic deposit will undermine or intrude onto adjoining lands. Furthermore, the Board finds that the imposition of Condition No. 5, which requires that excavation and stockpiling shall be set back from property lines so that the lack of lateral support and the angle of repose of the geologic deposit will not undermine or intrude onto adjoining lands assures compliance with this standard.

*K. Mining and processing of mineral and/or aggregate resources shall be set back from the top of the bank of any stream in compliance with Article 72.040 (B) (Special Setback Requirements). Existing native vegetation shall be maintained in the setback area.*

**Finding:** Based on the Mining Plan (Plate 3 of Applications), the Board finds that the Project maintains a minimum setback of 50 feet from any creek, stream or ephemeral ditch on the Site. The Board finds that no development will take place within those setbacks and vegetation will not be disturbed, except as allowed by the site-specific mining program applicable to the Property. As explained in detail above, Applicant is proposing to span Grave and Shanks Creeks to avoid direct impact to the jurisdictional boundaries of those waters. See Appendix E of Applications. Additionally, Applicant has proposed 50-foot buffers from all Class I and II streams. The Board finds that these site-specific determinations control over the special setback standards set forth in this subsection.

*L. Mining and processing of mineral and/or aggregate resources within Flood Hazard Areas as defined in Section 11.030 (Terms Defined) shall comply with the standards contained in Article 69.1 (Flood Hazard Overlay) of this code.*

**Finding:** Based on the Flood Study prepared by Thornton Engineering, Inc. (Appendix K of Applications), the Board finds that this standard does not apply because there will be no mining or processing below the 100-year floodplain. The Board finds that since all

mining and processing will be located ABOVE the 100-year floodplain, this standard is inapplicable.

*M. The hours of operation for the mining and processing of mineral and/or aggregate resources shall occur between 8 am and 6 pm for conditional uses, and 7 am to 9 pm for MARZ. The days of operation shall be Monday through Saturday, excluding the following holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day. Maintenance of equipment may take place at any time.*

**Finding:** The Board finds that the Project satisfies this standard, subject to compliance with the following condition of approval:

"2. Mining (including but not limited to excavation and processing) is restricted to the hours of 7:00 AM to 5:00 PM Monday through Friday. No mining operations shall occur on Saturday or Sunday. No mining (including but not limited to excavation and processing), shall take place on Saturdays or any of the following legal holidays: New Year's Day, Memorial Day, the Fourth of July, Labor Day, Thanksgiving Day, and Christmas Day. Maintenance may take place Monday through Saturday, 7:00 AM to 9:00 PM."

*N. The hours for blasting at the extraction site shall be limited to 10 am to 3 pm for operations authorized as conditional uses, and 7 am to 6 pm for operations authorized within the MARZ. The permitted days shall be Monday through Friday, excluding the holidays listed in subparagraph M above.*

**Finding:** The Board finds that this standard is inapplicable because no blasting at the extraction site is proposed. Furthermore, the Board finds that the imposition of Condition No. 12, which prohibits blasting on the Site, assures compliance with this standard.

*O. Water used in the mining or processing of mineral and/or aggregate resources shall be appropriated from a source authorized by permit from the Oregon Department of Water Resources. With the exception of onsite process water released to onsite settling ponds, turbid water shall not be released into lakes, ponds or watercourses.*

**Finding:** For the reasons discussed in the letters from the Applicant's water rights attorney, Martha Pagel, dated May 27, 2014 and June 23, 2014 (Exhibit S and attachment), which reasons are incorporated herein by reference as findings, the Board finds that water for the Project will be appropriated from a source authorized by permit from OWRD. The primary source of water for the Project will be from reservoir storage of surface waters. See letter from Martha Pagel, dated June 23, 2014 (Exhibit S). The Applicant has applied for water rights to divert water from Grave Creek and surface runoff during the months of January, February and March each year, for storage in three small reservoirs. *Id.* The three applications are currently on administrative hold with OWRD, pending successful completion of the land use process before the County. *Id.* The Applicant also has an existing and valid water right for irrigation use on the Site, if

needed. *Id.* The Applicant has no plans to use groundwater, and the Applicant has applied for a limited license from OWRD to provide temporary authorization for constructing one of the reservoirs while it awaits completion of the County land use process and final processing of the water right applications. *Id.* The proposed temporary uses of the stored water would be for fire protection and irrigation, which uses are allowed under current land use designations. *Id.*

The Board finds Ms. Pagel's testimony and evidence compelling given her 8 years as Director of OWRD and her 14 years in private law practice with an emphasis on water rights and water law. *Id.* Therefore, the Board finds that it is feasible for the Applicant to obtain water rights for the Project and that water for the Project will be appropriated from a source authorized by permit from OWRD.

The Board further finds that Project surface water will be managed in a manner that meets all applicable state water quality standards and DOGAMI requirements. As support for this conclusion, the Board relies upon testimony from the Project civil engineer, Westlake Consultants, Inc., that the Project complies with stormwater management requirements of all applicable agencies, including DOGAMI (as to stormwater generated on-site) and OWRD (as to stormwater generated off-site). See Sunny Valley Sand & Gravel Erosion and Sediment Control and Storm Water Narrative at Appendix J of the Applications. Further, Westlake explained that Applicant has designed the Project such that there will be no offsite stormwater point discharge from the Project. *Id.*

The Board finds that the Project complies with this standard.

***P. Failure to perform or continue to perform any of the standards required by this Section shall render the development permit void and subject to any and all enforcement procedures contained in this code or as authorized by any other law, rule or civil authority.***

**Finding:** The Board finds that it is feasible for the Applicant to perform or continue to perform the standards required by this Section.

3. ***Article 91.040: Site Reclamation: No mining operation authorized pursuant to this Article shall commence without the operator furnishing to the Planning Director a copy of a DOGAMI operating permit and approved reclamation plan, or a certificate of exemption, issued pursuant to the requirements of ORS 517.750 through 517.900 (Reclamation of Mining Lands) and implementing administrative rules. The county shall defer to DOGAMI regarding all aspects of the reclamation plan and its administration. Reclaimed land uses for the site must be authorized by post-mining zoning.***

**Finding:** Based on the testimony of the Applicant, the Board finds that the Applicant has submitted to DOGAMI an application for an operating permit and approved reclamation plan. See DOGAMI Reclamation Plan Set prepared by

Kuper Consulting, LLC at Appendix L of Applications. Based upon this testimony and subject to imposing the following conditions of approval, the Board finds that the Project satisfies this standard:

“14. Prior to the issuance of a Development Permit, all permits required by DOGAMI, DEQ, DSL, WRD, or any other required state or federal permits shall be provided to the Josephine County Planning Department. (RLDC §91.030.F) All mining and processing of mineral and/or aggregate resources shall meet and maintain those permit requirements including the following:

a. The applicant shall not initiate mining and activities on the site without the operator furnishing to the Planning Director a copy of a DOGAMI operating permit and approved reclamation plan, or a certificate of exemption, issued pursuant to the requirements of ORS 517.750 through 517.900 (*Reclamation of Mining Lands*) and implementing administrative rules. The county shall defer to DOGAMI regarding all aspects of the reclamation plan and its administration. Reclaimed land uses for the site must be authorized by post mining zoning.”

4. **Article 69.2: Deer Overlay.** *The purpose of this overlay is to restrict development so that critical deer winter range habitat is protected.*

**Finding:** The Board finds that this Article refers to proposed residential development and restrictions based on housing density. The Board finds that since the Applicant is not proposing residential development, this Article does not apply.

5. **Article 83: Erosion and Sediment Control.** *The standards and criteria for erosion and sediment control provide for the design of projects so as to minimize the harmful effects of storm water runoff and the resultant inundation and erosion from projects, and to protect neighboring downstream and downslope properties from erosion and sediment impacts.*

**Finding:** The Board finds that this Article has been addressed in the Westlake Sunny Valley Sand & Gravel Erosion and Sediment Control and Storm Water Narrative at Appendix J of the Applications. Westlake has designed a storm water plan for the existing conditions and for geologic exploration on the Site for which the DEQ issued a Storm water 1200A permit in May 2013. Based on the testimony of the Applicant and the Mining Plan (Plate 3 of Applications), the Board finds that as the Site is mined, the storm water plan will evolve to current conditions at that time. The Board finds that Project process or storm water will not go offsite during mining. Based on the Flood Study by Thornton (Appendix K of Applications), the Board further finds that there will be no erosional impacts up or down stream of the access road and bridge area construction.

6. Article 69.1: Flood Hazard Overlay. *It is the purpose of this Overlay to minimize public and private losses due to flood conditions in specific areas...*

**Finding:** Based on the Flood Study by Thornton (Appendix K of Applications), the Board finds that mining will occur on the Site ABOVE the 100-year floodplain, and that the access road and bridge to be constructed over Grave Creek will include embankment fill within the floodplain, but not the floodway. The Board further finds that placement of this fill will not increase the water surface of the 100-year flood event more than one foot. Therefore, the Board finds that this Article is met.

7. Article 75: Parking. *The purpose of off-street parking is to establish and maintain areas for efficient and convenient parking for residential, civic, commercial, and industrial uses and to provide a safe means for discharging people and products from ground transportation.*

**Finding:** Based on Appendix J, Site Development Plate 1, the Board finds that off-street parking will be established for those who work and visit the mining site in the staging area in the southeastern portion of the Site.

8. Article 72: Height, setbacks and accessory structures.

#### **72.040 - SPECIAL SETBACK REQUIREMENTS**

*Special use and structure siting restrictions shall apply to development within the following protected areas:*

A. Significant Mineral & Aggregate Site Setback Area. *The following special setback rules apply to significant mineral and aggregate sites existing on the county's acknowledged inventories as of April 18, 2001, unless different measures are established pursuant [to] OAR 660-023-0180 or an Impact Area Agreement (IAA) that complies with the requirements of Article 66.150.B of this code. In applying significant aggregate resource site setbacks, the following rules shall apply:*

**Finding:** The Board finds that the Site is not a significant mineral and aggregate site existing on the County's acknowledged inventory as of April 18, 2001, and further finds that the Site is not subject to pending enforcement proceedings. Therefore, the Board finds that the special setback requirements of this subsection do not apply.

B. Stream Setbacks. *No structure, excluding fences, boat landings, docks, bridges, hydroelectric facilities, pumping, or water treatment facilities, shall be located closer than 50 feet to the banks of any Class 1 stream, or 25 feet to the banks of Class 2 water courses as defined by the Oregon State Department of Fish and Wildlife;*

- o *This setback area shall be maintained, to the greatest extent feasible, in stabilized vegetation;*

- *Streamside vegetation that provides shading of the surface waters shall be retained;*
- *Existing streamside vegetation shall be maintained to the greatest extent possible during construction and development.*

**Finding:** Based on the Mining Plan (Plate 3 of Applications), the Board finds that the Project maintains a minimum setback of 50 feet from any creek, stream or ephemeral ditch on the Site. The Board finds that no development will take place within those setbacks and vegetation will not be disturbed, except as allowed by the site-specific mining program applicable to the Property. As explained in detail above, Applicant is proposing to span Grave and Shanks Creeks with a bridge or conveyance system to avoid direct impact to the jurisdictional boundaries of those waters. See Appendix E of Applications. Additionally, Applicant has proposed 50-foot buffers from all Class I and II streams and water courses. The Board finds that since bridges and other conveyance systems are excluded from the stream setback requirements, the Project meets the standards set forth in this subsection.

9. **Article 85: Utilities.** This Article describes the criteria necessary to meet for the addition of utilities to the site.

**Finding:** The Board finds that there currently are electrical services to the Site. Applications narrative, p. 41. Based on the testimony of the Applicant, the Board also finds that the Applicant will be applying for additional electrical services for the shop area and that there is no evidence that additional electrical services will not be available. *Id.*

Flush type toilets will use non-potable water brought to the Site. *Id.* Waste will be stored in an underground holding tank to be pumped, as necessary. *Id.* No septic and leach field system is planned. Irrigation will continue utilizing the diversion point from Grave Creek in accordance with the irrigation water rights currently on the property. *Id.* Therefore, the Board finds that additional utilities to the Site are not necessary.

10. **Article 84: Water Standards.** *The purpose of this Article is to require prior testing and approval of development in order to reasonably assure an adequate and safe water supply for all citizens of Josephine County. A related purpose is to determine the availability, impact, and water quality for the users of ground water in Josephine County.*

*The criteria in Article 84. E. states Any change in the use of commercial or industrial zoned property, or a change in the use of any property to a commercial or industrial use, after the effective date of this code requiring more than 1600 gallons per day total, shall successfully complete a major or minor pump test, as determined by the Water Resources Director as a condition of site plan review and prior to the issuance of a Development Permit.*



**Finding:** The Board finds that the Project will maintain applicable state water quality standards and DOGAMI requirements pertaining to groundwater. As support for this conclusion, the Board relies upon the testimony of Project hydrogeologist Shannon & Wilson, Inc., which concludes that, although conflicts may occur between the Project and nearby residential properties, these conflicts can be minimized by implementing monitoring and mitigation measures. See Shannon & Wilson Sunny Valley Hydrogeology PAPA Report, dated August 2013 (Appendix B of Applications) and Groundwater Summary Discussion, dated June 18, 2014 (Exhibit H). The Board finds that this testimony is compelling in light of Shannon & Wilson's extensive experience and detailed analysis, which includes reviewing 68 wells within 3,600 feet of the Site and eleven months of precision groundwater elevation monitoring from onsite wells. *Id.* Accordingly, the Board finds that the measures identified by Shannon & Wilson will ensure that the Project complies with applicable state standards regarding water quality and DOGAMI requirements pertaining to water quantity. Therefore, the Board imposes these measures in the following conditions of approval:

“20. Water used in the mining or processing of mineral and/or aggregate resources shall be appropriated from a source authorized by permit from the Oregon Department of Water Resources. With the exception of onsite process water released to onsite settling ponds turbid water shall not be released into lakes, ponds or watercourses. (RLDC §91.030.0)

21. Additional monitoring wells and hydrogeologic testing, coupled with ongoing groundwater level monitoring, will establish baseline conditions and identify early groundwater level declines should they occur during mining operations. Pressure transducers with dedicated dataloggers shall be installed to automate monitoring of groundwater levels. Both shall be located and protected to allow long-term use without disruption by mining. The existing observation wells shall be replaced if and when they are decommissioned due to the progression of mining activity.

22. Monitoring data shall be reviewed and reported to DOGAMI at quarterly intervals for a minimum of 3 years and shall continue per DOGAMI requirements until mining activities are complete. This monitoring program shall document current conditions and identify any recommended mitigation measures that must be implemented to counter substantial loss of the water resource for the nearby residences.

23. Infiltration trenches shall be constructed around each mine cell. The water applied to the infiltration trench shall provide a positive hydrostatic head in the sand and gravel that reduces groundwater declines adjacent to the mine cells. Monitoring as well as observed seepage into the active site shall be utilized for development of final design and

evaluation of mitigation measures as necessary. Should proactive infiltration fail or be deemed inappropriate, well improvements such as resetting pumps at deeper depths, well deepening, or changes in the mining operation shall be considered as alternative mitigation options to alleviate water quality or quantity impacts.

24. Prior to mine operation, a final Spill Prevention Control and Countermeasure (SPCC) Plan shall be developed for the facility substantially consistent with the sample document provided by the U.S. Environmental Agency.”

Although opponents contend that potential contaminants from the Project may enter groundwater and potentially pollute offsite wells, the Board finds that Applicant has addressed this concern in two ways. First, as noted above, approval of the Applications is subject to Condition No. 24, which requires Applicant to prepare a Spill Prevention Control and Countermeasure (SPCC) Plan to manage accidental spills and releases. The Board finds, based upon the explanation set forth in the Hydrogeology PAPA Report dated August 2013 (Appendix B to Applications), that Applicant’s SPCC will, at minimum, include:

- Facility diagram;
- Site security measures;
- Descriptions of proper petroleum product transfer procedures and other activities that might result in a release;
- Descriptions of all appropriate Best Management Practices (BMPs), including those associated with the containment and other countermeasures that would prevent oil spills from reaching navigable waters;
- A Spill Contingency Plan specifically designed for the proposed Sunny Valley Sand & Gravel Project;
- Personnel training practices and schedule;
- Descriptions of record-keeping practices; and
- Management approval.

Further, the Board finds that compliance with the SPCC Plan, together with implementation of the stormwater management system, will prevent and mitigate impacts from spills and will ensure that the mechanical aspects of the mining operation (drilling, washing, crushing, hauling) will not be a possible groundwater contamination source. As support for this conclusion, the Board relies upon the expert opinion to this effect from Shannon & Wilson. See Hydrogeology PAPA Report dated August 2013 (Appendix B to Applications) and Groundwater Summary Discussion, dated June 18, 2014 (Exhibit H). The Board finds that no one rebutted or challenged this testimony with specificity.

Further, the Board finds, for the reasons set forth below under the heading “Availability of Water,” which reasons are incorporated herein by reference,

Applicant has demonstrated that all water necessary for the Project has been appropriated to the Property and is legally available.

Finally, as additional findings in support of its conclusion that the Site Plan Review Application satisfies this standard, the Board accepts, adopts, and incorporates by reference, the explanations set forth in Shannon & Wilson's submittals into the record dated June 18, 2014 and June 23, 2014 (Exhibit H); July 14, 2014 (Exhibit VVVVV); and July 21, 2014 (Exhibit DDDDDD).

#### AVAILABILITY OF WATER

The Board finds that Applicant has demonstrated that all water necessary for the proposed operation has been appropriated to the Property and is legally available. As support for this conclusion, the Board relies upon three sources. First, the Board relies upon the fact that, as an industrial operation, the Project is an "exempt use" under state law and thus has a water right not to exceed 5,000 gallons per day. ORS 537.545. Further, the Board finds that, pursuant to this statute, no registration, certificate, or permit is required for such use of groundwater. *Id.* Second, for the reasons discussed in the letters from the Applicant's water rights attorney, Martha Pagel, dated May 27, 2014, June 23, 2014, and July 7, 2014 (Exhibit S with attachments; Exhibit PTTTT), which reasons are incorporated herein by reference as findings, the Board finds that water for the Project is available and will be appropriated from a source authorized by permit from OWRD. The primary source of water for the Project will be from reservoir storage of surface waters. *See* letter from Martha Pagel, dated June 23, 2014 (Exhibit S). The Applicant has applied for water rights to divert water from Grave Creek and surface run-off during the months of January, February and March each year, for storage in three small reservoirs. *Id.* OWRD records show water is, in fact, available for the reservoir applications that are intended to provide water for mining operations. (Ex. S, Attachment 1, p. 9, OWRD Water Availability Report.) The three applications are currently on administrative hold with OWRD, pending successful completion of the land use process before the County. *Id.* The Applicant also has an existing and valid water right for irrigation use on the Site, if needed. *Id.* The Board finds that this testimony was not sufficiently rebutted or challenged.

Third, the Board relies upon testimony from the Project hydrogeologist that, the risk of conflicting use of groundwater between the Project and local wells is unlikely:

"Seepage from the streambed supplies a saturated zone that recharges any groundwater flow paths, such as to wells. Consequently, the saturated zone beneath Grave Creek is highly likely to recharge shallow aquifers tapped by nearby wells. In technical terms, such a condition is termed a 'recharge boundary,' where a ready supply of groundwater can meet the demand for

groundwater drawn from wells." See Shannon & Wilson Groundwater Summary Discussion dated June 18, 2014 (Exhibit H).

The Board finds that, as explained in its Hydrogeology PAPA Report and Groundwater Summary Discussion, Shannon & Wilson reached this conclusion after conducting a comprehensive analysis of all OWRD-registered well logs within and beyond the designated 1,500-foot impact area from the Property. Hydrogeology PAPA Report at Sections 4.2 and 4.3. Further, the Board finds that this testimony was not rebutted or challenged with specificity by any expert. Therefore, the Board finds that a reasonable person would rely upon the testimony from the Applicant's water rights attorney, Martha Pagel, and Shannon & Wilson to conclude that all water necessary for the proposed operation can be appropriated to the site and is legally available.

#### **Site-Specific Program to Achieve Goal 5 Adopted as part of the CCCP**

The Board finds that the PAPA Application and the Comprehensive Plan Amendment and Zone Change Application conform with the site-specific program to achieve Goal 5 adopted as part of the Comprehensive Plan because the Board has reviewed the Applications together and is issuing a single decision approving all of the Applications with a common set of conditions.

#### **OTHER ISSUES RAISED DURING THE LOCAL PROCEEDINGS**

##### **Impacts to Property Values**

Several area residents expressed concern that development of the Project would adversely affect their property values. However, the Board notes that OAR 660-023-0180(5)(b) limits the Board's consideration to specific conflicts, which do not include diminution of property values. Accordingly, the Board cannot make a decision to deny, condition, or otherwise consider the Project based upon potential impacts to property values. See *Buel-McIntire v. City of Yachats*, 63 Or LUBA 452 (2011) (error to deny application based upon factor that was not applicable approval criterion).

##### **Archeological or Cultural Sites**

Although several area residents expressed concern over the Project's potential conflicts with archaeological or cultural sites, the Board denies this contention. Under OAR 660-023-0180(5)(b)(D), the Board is only required to consider conflicts with Goal 5 resource sites that are on an acknowledged list of significant resources inventoried and identified in the County's Comprehensive Plan and that are located within the prescribed 1,500-foot impact area. The Board finds that there are no archeological or cultural Goal 5 mapped resource sites on the Site or within the impact area. See Cultural Resources Records Review by Heritage Research Associates, Inc., dated June 18, 2013 (Appendix I to Applications). Therefore, the Board finds that potential conflicts with archeological or cultural sites is inapplicable to this review.

## **DOGAMI Application**

Although opponents expressed concern that the Applicant's DOGAMI application may be incomplete, the Board denies this contention for two reasons. First, the DOGAMI application is not before this Board and the status of its completeness is not an applicable approval criterion. Accordingly, the Board cannot make a decision to deny or condition the Project based upon potential incompleteness of the DOGAMI application. See *Buel-McIntire v. City of Yachats*, 63 Or LUBA 452 (2011) (error to deny application based upon factor that was not applicable approval criterion). Second, the entire DOGAMI Operating Permit and Reclamation Plan Application is included in Appendix L to the Applications. Under RLDO 66.170, the County shall defer to DOGAMI regarding all aspects of the reclamation plan and its administration. Therefore, the Board does not concur with the opponents' contentions in this regard and finds the DOGAMI application inapplicable to this review.

## **Morrill Act**

Although several opponents argued that the Site cannot be designated as a significant mineral and aggregate site and placed in the MARZ because land grants under the Morrill act of 1862 expressly excluded mineral lands, the Board denies this contention. For the reasons explained in the letters from Applicant's attorney, Steve Pfeiffer, dated May 5, 2014 (Attachment E to Staff Report, dated June 23, 2014) and July 14, 2014 (Exhibit SSSSS), which reasons are adopted and incorporated by reference as findings herein, the Board finds that the designation of the site as non-mineral in character for purposes of public land grants has no bearing on, and does not prohibit, the County's ability to designate the Site as a significant mineral and aggregate resource site to be placed in the MARZ.

Further, although opponents also argued that Josephine County does not have jurisdiction to add the Site to the County's inventory of significant aggregate sites because the Site's subsurface mineral rights are subject to a federal mineral reservation, the Board denies this contention. For the reasons explained in the letter from Applicant's attorney, Steve Pfeiffer, dated May 5, 2014 (Attachment E to Staff Report, dated June 23, 2014), which reasons are adopted and incorporated by reference as findings herein, the Board finds as follows: 1) the County is authorized under its adopted Ordinance No. 2006-002 to maintain an inventory of significant mineral and aggregate sites by adding and deleting sites as needed; 2) the Applications are appropriately signed by persons having a valid and proprietary interest in the land; 3) substantial evidence in the form of the BLM General Land Office Records and the deeds vesting title of the Site demonstrate that the Site is not subject to any federal mineral reservation and that it is unnecessary for the Applicant to obtain a federal mining permit; 4) the opponents have not demonstrated that they have standing to challenge the original agricultural scrip patent; and 5) even if the Site were subject to a federal mineral reservation, such reservation does not cover the sand and gravel resource on the Site because sand and gravel are not valuable minerals for the purposes of certain land grants issued by the federal government. *BedRoc Ltd., LLC v. US*, 541 US 176 (2004).

In summary, the Board finds that the federal government did not select and transfer the Site under the provisions of the Morrill Act, knowing that it was mineral land, but reserving the

mineral rights. The Board further finds that the Morrill Act does not preclude nor prohibit the County from adding the Site to its inventory of significant mineral and aggregate sites.

### **FEMA Floodway Compliance**

Although opponents contend that FEMA's regulations are triggered due to development in the Grave Creek and Shanks Creek floodway, the Board denies this contention. The Board finds that substantial evidence in the record demonstrates that no permanent structures are proposed within the floodway of Grave Creek or Shanks Creek. See Thornton Engineering report *Flood Study - Grave Creek and Shanks Creek*, Aug. 5, 2013, Sheet 5 and *Revised Riparian Mitigation and Landscape Plan for SVSG*, dated Feb 14, 2014 Figure 4A (Appendix E to Applications). Additionally, the Applications narrative, Plate 2, shows the bridge crossing Grave Creek, and two areas for conveyors over Shanks Creek, which will span the floodplain of both creeks. Therefore, the Board finds that FEMA's floodway regulations are inapplicable.

### **IAA Procedural Requirements**

Although Gregg and Diane Getchell contend that the record is missing the necessary copies of certified mail receipts to all impact area property owners, the Board denies this contention for two reasons. First, the Staff Report documents the conclusion that all applicable IAA requirements have been met. Second, even if the Getchells did not receive the impact area agreement notices, they knew about the Applications and actively participated in the proceedings before the County. See letters from the Getchells at Exhibit WWW. The Getchells have failed to show that they have been prejudiced in any way by this inadvertent procedural oversight. See ORS 197.835(9)(a)(B). Therefore, the Board finds that Applicant committed no substantive procedural error.

### **Applicable Criteria**

Although opponents contend that the Applications fail to address and comply with RLDC 31.070(B), which requires preservation of the character of an area and conservation of property values, the Board denies this contention and finds that RLDC 31.070 is not an applicable approval criterion.

Pursuant to OAR 660-023-0180(9), while a local government may adopt procedures and requirements for the consideration of PAPAs concerning aggregate resources, such local procedures and requirements must be consistent with the aforementioned OAR. See *Morse Bros., Inc. v. Columbia County*, 37 Or LUBA 85 (1999), *aff'd* 165 Or App 512 (2000); *Eugene Sand & Gravel, Inc. v. Lane County*, 44 Or LUBA 50, 96 (2003), *aff'd* 189 Or App 21 (2003). Josephine County has adopted Ordinance No. 2006-002, which implements local procedures and requirements for placing land within the MARZ. Nowhere does Ordinance No. 2006-002 require compliance with RLDC 31.070 in placing land within the MARZ. Nor could it since RLDC 31.070 is a generic criterion that is not consistent with the OAR criteria and that is superseded by the more specific plan amendment review criteria set forth in RLDC Article 46.040 for review and approval of an aggregate PAPA.

For the reasons stated above, the Board finds that RLDC 31.070 is not an applicable approval criterion and is not required to be addressed nor complied with by the Applicant.

#### Letter from DLCD

Amanda Punton of DLCD submitted a letter, dated November 26, 2013, which addressed Goal 5 riparian resources, the applicability of the ESA, and platted lots in residential zones. The Board responds to each item as follows:

Although DLCD contends that the Goal 5 rule be applied when new uses could be conflicting uses with a particular significant Goal 5 resource site on an acknowledged resource list, the Board finds that while this contention is true, it is irrelevant to the subject Applications. The Board finds that the Applicant appropriately applied the Goal 5 rule under OAR 660-023-0180 to its PAPA based on OAR 660-023-0250(3)(a), which requires application of the Goal 5 rule when a PAPA creates or amends a resource list in order to protect a significant Goal 5 resource or to address specific requirements of Goal 5. The Board finds that since the Applications include a PAPA to add the Site to the County's inventory of significant mineral and aggregate resource sites, compliance with the Goal 5 rule is required. For the reasons explained above in response to OAR 660-023-0180, which reasons are incorporated by reference as findings herein, the Board finds that the Applicant appropriately applied and complies with the Goal 5 rule.

Additionally, although DLCD contends that the County should require additional measures to protect ESA listed fish and their habitat, the Board denies this contention for two reasons. First, the Board finds that review under the ESA is triggered exclusively by a federal permit or funding decision, and that the ESA is not an applicable approval criterion subject to this Board's review. *See* letter from Applicant's attorney, Steve Pfeiffer, dated July 21, 2014 (Exhibit FFFFFFFF); *see also* letter from TSI dated July 21, 2014 (Exhibit EEEEEEE). Second, for the reasons explained above in response to OAR 660-023-0180(5)(b) and specifically, in response to impacts to Grave and Shanks Creeks, which reasons are incorporated herein by reference as findings, the Board finds that the Project will not constitute a significant conflict with the Grave and Shanks Creeks fishery resources, and that ODFW has determined that the Applicant's proposed use of water from Grave Creek will not result in a detrimental impact to fish.

Lastly, although DLCD contends that OAR 660-023-0180(5)(b) requires that impacts be evaluated for dwellings allowed by a residential zone on an existing lot even if the lot is vacant, the Board denies this contention here. The Board finds that OAR 660-023-0180(5)(b) defines "approved land uses" as dwellings allowed by a residential zone and other uses for which conditional or final approvals have been granted by the local government. The Board further finds that there is no evidence in the record demonstrating that there is any vacant lot that has received any county permits, including an approved building permit, in order to develop the lot within the Impact Area. Therefore, the Board finds that there are no vacant lots that are "approved land uses," for which additional analysis is required.

### **Record Objections**

Although Project opponents contend that letters from Applicant's consultants, dated July 7, 2014, should not have been accepted into the record during the open record period ending July 14, 2014, the Board denies this contention. The Board finds that the open record period ending July 14, 2014 was for rebuttal testimony and evidence. The Board finds that the materials submitted by Applicant's consultants on July 14, 2014 (regardless of what they were dated) were appropriate rebuttal responses to earlier testimony and evidence and, therefore, the Board finds that they were properly included in the record of this proceeding.

### **Demand for Aggregate**

Although opponents contend that there are other aggregate mining operations in the county and that there is no demand for additional aggregate resources in the county, the Board does not concur with this contention as a reason to deny the Applications. The Board finds that the opponents have failed to relate this issue to any applicable approval criterion, and the Board finds that this issue is not applicable to any approval criterion. Therefore, the Board finds this issue irrelevant to a determination on the Applications.

### **Access**

Although opponents contend that access to the mine is restricted because the Applicant does not have an adequate easement to cross Joe Boyer's land to enter the Site, the Board denies this contention. The Board finds that there is substantial evidence in the record, including the Applicant's Phasing and Mining Plan (Plate 2 to Applications), which shows that the Applicant will access the mine through a new access road, which lies to the west of Mr. Boyer's property and does not cross Mr. Boyer's property. The Board finds that since the Applicant demonstrates adequate access to the Site without the need for an easement from Mr. Boyer, the opponent's contention has no merit.

### **Disaster Preparedness / Seismic Risk**

Although opponents contend that earthquake hazards or other natural disasters would lead to catastrophic consequences for the proposed mine, the Board denies this contention as a valid reason to deny the Applications for three reasons. First, the Board finds that this issue is not linked to any applicable approval criteria, and the Board further finds that opponents have failed to demonstrate that disaster preparedness or seismic risk is an applicable approval criterion. For this reason alone, the Board does not concur with this contention as a reason to deny the Applications. Second, the Board finds that there is no substantial evidence in the record demonstrating that the catastrophic consequences that the opponents warn against will indeed occur. Lastly, the Board relies on the testimony and evidence of Shannon & Wilson, Inc., which states that there is no technical basis to support the opponent's catastrophic predictions, and that design studies will address seismic hazards and appropriate mitigation for key infrastructure on the Site. *See* letter from Shannon & Wilson, dated July 7, 2014 (Exhibit VVVVV). For these reasons, the Board finds that the opponent's contention has no merit.



## **Pipeline and Transmission Towers**

Although opponents contend that the Williams Northwest LNG pipeline and the PacifiCorp transmission towers are threatened by slope instability due to the proposed mine, the Board denies this contention for two reasons. First, the Board relies upon the testimony of Applicant's expert consultant, Shannon & Wilson, Inc., who states that enlarged buffers between pits were incorporated into the current mine plan in consideration of pipeline and transmission tower stability. See Shannon & Wilson's letter, dated July 7, 2014 (Exhibit VVVVV). Furthermore, the Board finds that the Applicant has contacted and been working with Williams Northwest and PacifiCorp to develop designs that meet the standards for earthwork adjacent to the pipeline and transmission towers. See email communications between the Applicant's representative, Andreas Blech, Williams Northwest representative Jean Brady and PacifiCorp representative Scott Mease attached to Shannon & Wilson's letter, dated July 7, 2014 (Exhibit VVVVV). Second, the Board imposes a condition of approval prohibiting mining within 20 feet to the west and within 40 feet to the east of the pipeline and prohibiting mining within 20 feet from the transmission towers. See Condition No. 7. Based on the testimony from Shannon & Wilson, the evidence in the record, and with the imposition of Condition No. 7, the Board finds that mining will not create slope instability problems for the pipeline and transmission towers. Furthermore, the Board finds that there is no substantial evidence in the record demonstrating that mining outside of the stated buffer areas while working with the design standards of Williams Northwest and PacifiCorp will cause slope instability problems for the pipeline or transmission towers. Therefore, the Board does not concur with the opponent's contention as a reason to deny the Applications.

## **Access Road Stability**

Although opponents contend that the proposed access road to the Site is geotechnically unstable, the Board denies this contention for two reasons. The Board relies on the explanation of expert engineering geologists at Shannon & Wilson, Inc. in their Preliminary Geologic Hazards Report, dated September 9, 2013, and their letter, dated July 7, 2014 (Exhibit VVVVV), which explanation is adopted and incorporated by reference as findings herein. First, the Board finds that based on the Preliminary Geologic Hazards Report, dated September 9, 2013, the mapped roadway alignment is feasible and likely to be geotechnically stable. Second, the Board finds that there is no substantial evidence in the record demonstrating any deep-seated or large-scale instability or demonstrating any dormant or active landslides impacting Placer Road. *Id.* Therefore, the Board finds that substantial evidence in the record demonstrates that it is feasible and likely for the proposed access road to be designed in a manner that is geotechnically stable.

## **Liquefaction**

Although opponents contend that the debris flow deposit underlying the Site poses a liquefaction hazard, the Board denies this contention. The Board relies on the explanation of expert engineering geologists at Shannon & Wilson, Inc. in their letter, dated July 7, 2014 (Exhibit VVVVV), which explanation is adopted and incorporated by reference as findings herein. The Board finds that based on soil mechanics and the subsurface explorations performed by the Applicant's consultants, substantial evidence in the record demonstrates that seismic liquefaction

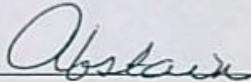
of the Site's debris flow deposit is unlikely. The Board relies on the testimony of engineering geologists Shannon & Wilson and finds that the mixed material comprising the Site is not susceptible to mass liquefaction, and that the slope on the Site is stable. For these reasons, the Board does not concur with opponent's contention as a reason to deny the Applications.

#### SUMMARY AND CONCLUSION

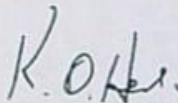
Based upon the cited and incorporated evidence and argument and the findings of fact and conclusions of law stated above, the Board finds that the Applications, as conditioned, satisfy all applicable approval criteria. Therefore, the Board approves the Applications, subject to the conditions set forth in the "Conditions of Approval," attached hereto as Attachment A, and by this reference incorporated herein.

Adopted this 8<sup>th</sup> day of October, 2014, by the Josephine County Board of Commissioners.

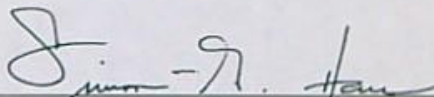
JOSEPHINE COUNTY  
BOARD OF COUNTY COMMISSIONERS



Cherryl Walker, Chair

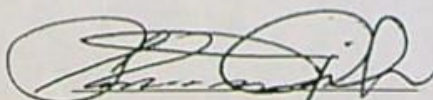


K.O. Heck, Vice-Chair



Simon G. Hare, Commissioner

Approved as to form:



Steve Rich, Legal Counsel

ATTACHMENT A  
"CONDITIONS OF APPROVAL"

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1. A development permit shall be obtained before any mining and/or processing of mineral or aggregate resources. The applicant shall also obtain all other permits required by this code and other licensing or permitting entities having jurisdiction over the operation. The continuance of additional permits and approvals in good standing shall be a condition for continuance of the county's development permit. The performance of the standards required by this Article shall also be necessary for the issuance and continuance of the development permit. *(RLDC §91.030.A)*

**General Operations Related Conditions**

2. Mining (including but not limited to excavation and processing) is restricted to the hours of 7:00 AM to 5:00 PM Monday through Friday. No mining operations shall occur on Saturday or Sunday. No mining (including but not limited to excavation and processing), shall take place on Saturdays or any of the following legal holidays: New Year's Day, Memorial Day, the Fourth of July, Labor Day, Thanksgiving Day, and Christmas Day. Maintenance may take place Monday through Saturday, 7:00 AM to 9:00 PM.
3. The extraction area shall be substantially screened from the view of existing conflicting uses, subject to the following specifications:
  - a. Mining and processing equipment, whether in use or in storage, shall be screened. Stockpiles of aggregate do not need to be screened and may be used for screening.
  - b. Screening may consist of natural vegetation and landscape features, or may be supplied by planting vegetation or placement of berms, fences or other similar development features including the proposed cyclone fence installed along excavations exceeding 3:1 slope and noise mitigation barriers. If vegetation is used as screening it shall be maintained alive.
  - c. Earthen berms shall be stabilized with ground cover.
  - d. Visual screening may not be required if the topography, growing conditions or other circumstances at the site make it impractical or otherwise unnecessary to shield the site from the view of conflicting uses. *(RLDC §91.030.C)*
4. On-site parking shall be provided for all employees, customers and official visitors. No on-street parking is allowed unless specifically permitted. *(RLDC §91.030.D)*
5. Excavation and stockpiling shall be set back from property lines so that the lack of lateral support and the angle of repose of the geologic deposit will not undermine or intrude onto

adjoining lands. An additional setback may be required to allow the placement and maintenance of fencing. (RLDC §91.030.J)

6. Mining and processing of mineral and/or aggregate resources shall be set back from the top of the bank of any stream in compliance with Article 72.040 (B) (*Special Setback Requirements*). Existing native vegetation shall be maintained in the setback area. (RLDC §91.030.K)
7. No mining shall occur within 20 feet to the west and 40 feet to the east of the Williams pipeline crossing the property or within 20 feet from the PPL electrical towers. All practical measures of safety relative to this operation should be explored and implemented to provide the highest level of safety.
8. There shall be no mining or processing activity within the flood hazard area. (RLDC §91.030.L)
9. All mining and processing of mineral and/or aggregate resource sites, access road construction, and bridge construction across Grave Creek shall meet the erosion control and site drainage standards contained in Article 83 (*Erosion Control & Storm Drain Facilities*) and per the Westlake Consultants storm water and erosion control plan, as well as any permit requirements imposed by DOGAMI, DSL, DEQ, or any other state or federal regulation.
10. Slope inclinations shall not exceed an average slope of 1:1 (horizontal to vertical) within the excavation during mining.
11. Extraction and processing activities shall be limited to those areas of the site labeled as appropriate for such activities and depicted on the site plan dated August 2013.
12. There shall be no blasting on the site.
13. The mining operator shall carry a comprehensive liability policy covering mining and incidental activities during the term of the operation and reclamation with an occurrence limit of at least \$1,000,000.
14. Prior to the issuance of a Development Permit, all permits required by DOGAMI, DEQ, DSL, WRD, or any other required state or federal permits shall be provided to the Josephine County Planning Department. (RLDC §91.030.F) All mining and processing of mineral and/or aggregate resources shall meet and maintain those permit requirements including the following:
  - a. The applicant shall not initiate mining and activities on the site without the operator furnishing to the Planning Director a copy of a DOGAMI operating permit and approved reclamation plan, or a certificate of exemption, issued pursuant to the requirements of ORS 517.750 through 517.900 (*Reclamation of Mining Lands*) and implementing administrative rules. The county shall defer to

DOGAMI regarding all aspects of the reclamation plan and its administration. Reclaimed land uses for the site must be authorized by post mining zoning.

- b. The applicant shall obtain DEQ approval of a Spill Prevention Controls and Countermeasures Plan and shall comply with same.
- c. The applicant shall obtain all appropriate permits from Oregon Water Resources Department (OWRD) for the utilization of water for processing.

#### **Traffic Related Conditions**

- 15. The access or service road(s) to and from the extraction site to a public road shall meet the following standards:
  - a. The most current air quality standards from Oregon Administrative Rules Chapter 340, Divisions 20, 21, and 28, for ambient air quality for a distance 500 feet in all directions from any public road or conflicting use located along the access road if the mining traffic is the primary cause of the road dust. (*RLDC §91.030.B.2*).
  - b. The applicable standards from Oregon Administrative Rules Chapter 340, Division 35, for vehicular noise control for a distance of 500 feet in all directions from any public road or conflicting use located along the access road. (*RLDC §91.030. B.1*).
  - c. The access point and approach shall be designed by a professional engineer, who shall assure adequate site distance and address road geometry.
  - d. The approach shall be constructed simultaneously with the proposed private bridge constructed across Grave Creek and shall not begin until the applicant has approval from all appropriate authorities, such as the Oregon Department of State Lands and the Army Corps of Engineers.
  - e. Applicant shall obtain an approved commercial road access permit from Public Works prior to the issuance of a development permit from Planning.
- 16. The applicant shall work with Three Rivers School District prior to each school year to ascertain the safest school bus drop off and pick up locations. The applicant shall then provide permanent signage ahead of the selected school bus stops consistent with the requirements in the Manual of Traffic Control Devices which recommends that a "School Bus Stop Ahead" sign be placed ahead of any stop in which you cannot see 500 feet in advance. The applicant shall submit a letter to the Planning Director no later than the last working day in August each year confirming an agreement with the Three Rivers School District specifying times during which haul trucks will not operate between the Site and I-5 to allow for school buses. The applicant shall make every attempt to submit a letter of satisfaction from the Superintendent of Three Rivers School District to the Planning Director no later than the last working day in August each year.

17. Prior to initiation of truck hauling from the site, warning signage shall be placed on Placer Road near the approach to the mine site to warn others of trucks entering the roadway.
18. Trees and shrubs shall be cleared and the roadside shall be modified to provide sight distances at the mine access to Placer Road and at the intersections of Edgerton Lane / Placer Road and LeLand Road / Lariat Drive, as described in Section 7.0 of the submitted Sandow Traffic Report dated July 2013.
19. Gravel trucks shall not use the historic Grave Creek Bridge.

#### **Groundwater Related Conditions**

20. Water used in the mining or processing of mineral and/or aggregate resources shall be appropriated from a source authorized by permit from the Oregon Department of Water Resources. With the exception of onsite process water released to onsite settling ponds turbid water shall not be released into lakes, ponds or watercourses. (RLDC §91.030.0)
21. Additional monitoring wells and hydrogeologic testing, coupled with ongoing groundwater level monitoring, will establish baseline conditions and identify early groundwater level declines should they occur during mining operations. Pressure transducers with dedicated dataloggers shall be installed to automate monitoring of groundwater levels. Both shall be located and protected to allow long-term use without disruption by mining. The existing observation wells shall be replaced if and when they are decommissioned due to the progression of mining activity.
22. Monitoring data shall be reviewed and reported to DOGAMI at quarterly intervals for a minimum of 3 years and shall continue per DOGAMI requirements until mining activities are complete. This monitoring program shall document current conditions and identify any recommended mitigation measures that must be implemented to counter substantial loss of the water resource for the nearby residences.
23. Infiltration trenches shall be constructed around each mine cell. The water applied to the infiltration trench shall provide a positive hydrostatic head in the sand and gravel that reduces groundwater declines adjacent to the mine cells. Monitoring as well as observed seepage into the active site shall be utilized for development of final design and evaluation of mitigation measures as necessary. Should proactive infiltration fail or be deemed inappropriate, well improvements such as resetting pumps at deeper depths, well deepening, or changes in the mining operation shall be considered as alternative mitigation options to alleviate water quality or quantity impacts.
24. Prior to mine operation, a final Spill Prevention Control and Countermeasure (SPCC) Plan shall be developed for the facility substantially consistent with the sample document provided by the U.S. Environmental Agency.

### Acoustic Related Conditions

25. All mining and processing of mineral and/or aggregate resources shall comply with OAR noise emission standards. The mine operator shall comply with the noise study prepared by Daly Standlee and Associates, Inc. (DSA) dated August 2013 that attests that the circumstances of the site and/or proposed mitigation will bring the site into compliance. (RLDC §91.030.0)
26. The mine operator shall comply with the following noise mitigation measures proposed by DSA:
  - a. Twelve-foot high berms shall be constructed along portions of the eastern property line as noise mitigation barriers.
  - b. Fifteen-foot high berms shall be constructed northeast of receiver R13 as a noise mitigation barrier.
  - c. Polyurethane or rubber screens or proximate berms or buffers shall be used to mitigate noise impacts associated with the operation of crushing and screening equipment when it is located in the processing (trommel) area and crusher operating area.
  - d. Off-road equipment (excavators, front-end loaders, loading trucks, and bulldozers) used for internal site operations shall be fitted with broadband rather than traditional narrowband backup alarms.
  - e. Mufflers shall be required for all on-site haul trucks.
  - f. The genset shall be equipped with up close barriers or a muffler and inlet and outlet silencers.

### Air Quality Related Conditions

27. The mining operations shall comply with the most current air quality standards from Oregon Administrative Rules Chapter 340, Divisions 20, 21, and 28, for ambient air quality for a distance 500 feet in all directions from any public road or conflicting use located along the access road if the mining traffic is the primary cause of the road dust. (RLDC §91.030.B.2)
28. The main facility access road from Placer road to the scale house shall be paved to prevent the generation of dust.
29. The discharge of contaminants and dust caused from the mining and processing of mineral and/or aggregate resources shall comply with applicable DEQ ambient air quality and emission standards. The operator shall cease all mining and processing operation within one hour of the malfunction of any air pollution control equipment, and shall not

resume operation until the malfunction has been corrected in compliance with applicable DEQ rules and standards. (RLDC §91.030.1)

30. On site surfaces travelled by off-road or on-road sources shall be watered whenever significant visible dust emissions (opacity approaching 20%) are observed behind or beside a moving vehicle.
31. Water sprayers shall be used to control dust emissions from crushers and screens operating on site.
32. The majority (51% or more in terms of total fleet horsepower) of diesel engines powering off-road equipment shall meet federal Tier 2 off-road engine standards or better. This requirement shall be met by using equipment with engines originally built to meet these standards or through retrofit to reduce emissions to these levels.
33. On site idle times for heavy-duty diesel truck engines shall be limited to no more than five minutes per truck trip.

#### **Wetland/Riparian/Flood Related Conditions**

34. No excavation or processing shall occur within the riparian corridor. All mining and processing activity shall be set back 50 feet from the ordinary high water mark of Grave and Shanks Creeks. (RLDC §72.040. B.1)
35. No mining activity shall occur within the 100-year flood hazard area of Grave and Shanks Creeks. The floodplain boundaries shall be flagged or fenced and avoided by all mining activity. (RLDC §91.030.L)
36. Construction of the access road to Placer Road shall occur above the ordinary high water mark of Grave Creek and shall comply with the standards contained in Article 69.1 - Flood Hazard Overlay of the RLDC. (RLDC §91.030.L)
37. The applicant shall not fill, excavate or otherwise disturb wetlands on the site until permits are obtained from the Department of State Lands (DSL) and the Army Corps of Engineers and implements any required pre-disturbance mitigation.
38. No mining activity- excavation or processing- shall occur within the boundaries of any on-site wetlands.
39. The applicant shall follow the mitigation measures contained in the Riparian Mitigation Plan prepared by Terra Science, Inc., dated August 2013 and the mitigation measures contained in the Golden Eagle Risk Assessment prepared by Northwest Resource Solutions, Inc., dated July 3, 2014.
40. The applicant shall install native trees and shrubs in accordance with the County screening regulations.



41. Access roads adjacent to the mining area boundaries shall be graveled with crushed rock with nominal sizing of at least one inch maximum dimension.
42. Failure to perform or continue to perform any of the standards required by this Section shall render the development permit void and subject to any and all enforcement procedures contained in this code or as authorized by any other law, rule or civil authority. (RLDC §91.030.P)

## GREW Scott A \* WRD

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**From:** Langford, Shonee D. <SLangford@SCHWABE.com>  
**Sent:** Tuesday, March 27, 2018 2:12 PM  
**To:** GREW Scott A \* WRD  
**Cc:** Howard, Elizabeth E.  
**Subject:** Application S-88508 [TWOV-pdx.FID3133939]

Scott,

I represent the applicant in connection with the above-referenced application. Some commenters have asked the Department to review this application under the standard process rather than the expedited secondary process. The applicant would like to respond. Could you please let me know how soon the Department intends to address the request for standard review so we can be sure our response is considered?

Thank you,

Shonee

### **Schwabe Williamson & Wyatt**

**Shonee D. Langford**  
Of Counsel  
530 Center St. NE, Suite 730  
Salem, OR 97301  
Direct: 503-540-4261  
Mobile: 503-807-2082  
[slangford@schwabe.com](mailto:slangford@schwabe.com)

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E-2

Standard Application Completeness Checklist

Yes No

For use with Groundwater and Surface Water Applications Only
Minimum Requirements (OAR 690-310-0040)(ORS 537.400)
For use by WRD staff only

Application S-88508 County Josephine Priority Date 1/31/18

Township 34S Range SW Section 7,8

Amount 150 Af Use Mining WM Dist. # 14

Applicant Name Andraes Carol BLEch; Sunny Valley Sand & Gravel inc.

Receipt No. 125772 Caseworker Assigned: Barbe Kim Lisa Scott

Applicant/Organization Name and Mailing Address

Signature of all applicants (include title or authority of representative if applicant is an organization or corporation). \*Applicant's agent may NOT sign application.

Property ownership: Does the applicant own all the land for the proposed project? Y N

If No:

- The affected landowner's name(s) and mailing address(s) must be listed
A signed statement declaring the existence of either written authorization or an easement permitting access to land crossed by the proposed ditch canal or other work must be submitted.

For a SW Application: Source of water must be indicated.

If the source is stored water, is the stored water component filled out and does the applicant own the reservoir or include a non-expired agreement for stored water? (ORS 537.400)

NOTE: A surface water application cannot be filed at the same time as a Reservoir or Alt Reservoir if it will be for the use of the stored water under the PROPOSED Reservoir application, Exp. Secondary (E2)(ORS 537.147).

If for stored water not under contract, is the source authorized under a permit, certificate, or decree?

Permit or Certificate issued Y N Permit or Certificate # R-87930 15228 R-87932 15230

For a GW Application: Well Development Tables completed and/or a well log report included (if existing)

Proposed water use

- Amount of water from each source in GPM, CFS, or AF
Period of use indicated
If for supplemental irrigation, primary acreage or underlying permit or certificate number listed (Primary and Supplemental Irrigation counts as 2 uses)

Water Management Section (Estimates if the water system has not been designed)

Resource Protection Section (N/A for Groundwater)

Project schedule (If system is already completed, indicate "existing.")

- Supplemental data sheets enclosed (if needed)
  - Form M (Municipal or Quasi-Municipal)
  - Spring Description Sheet (if source is a spring)

A completed **Land-Use Form** or receipt signed and dated by the appropriate planning department officials. *Please be certain that the Land-Use form lists all lands involved and all uses proposed. Date of signature must be within the past 12 months.*

A **Legal Description** of all the properties involved where water is diverted, crossed, and used. The Legal description includes a metes and bounds or other government survey description. A copy of the deed, land sales contract or title insurance policy can provide this information, or applicant may submit a lot book report prepared by a title company. Copies of tax bills are not acceptable.

**TBD**  The proposed source **IS / IS NOT** (circle one) restricted or withdrawn from further appropriation. *NOTE: If it is withdrawn under ORS 538, return application and fees.*

The **map** must meet all the minimum requirements of OAR 690-310-0050.

- Township, Range, Section
- Location of main canals, ditches, pipelines or flumes (if POA/POD is outside of POU)
- Place of use, ¼-¼'s and tax lot clearly identified
- Even map scale not less than 4" = 1 mile (1" = 1320 ft.); examples: 1" = 100 ft., 1" = 200 ft.
- Location of *each* diversion point or well by reference to a recognized public land survey corner. Multiple wells shall be uniquely labeled, and identified on well logs, if existing.
- Reference corner on map
- North Directional Symbol
- Number of acres per ¼ ¼ if for irrigation, nursery, or agriculture

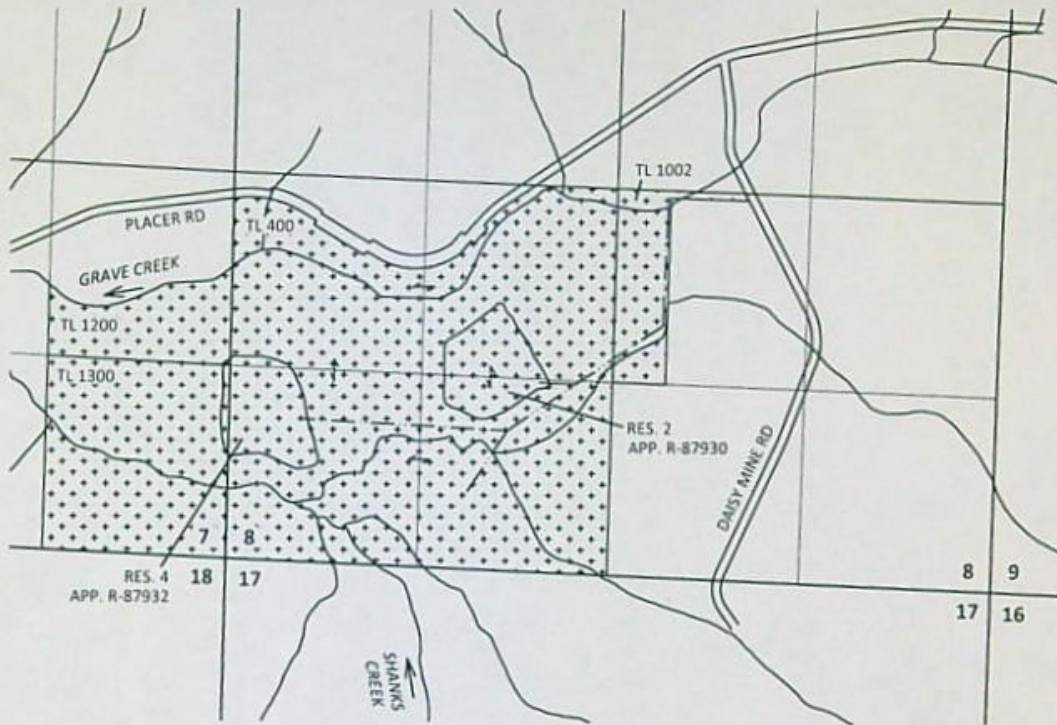
**Fees: Print out from Fee Calculator**

Total Fees	\$ _____
Fee Paid	\$ _____
Amount Due	\$ _____


Reviewed by: EG Date: 2/1/18

Sections 7 & 8, T34S, R5W, W.M.,  
Josephine County, Oregon

SURFACE-WATER APPLICATION MAP  
Andreas and Carole Blech  
Sunny Valley Sand and Gravel, Inc.



EXPLANATION

 PROPOSED MINING USE

NOTE: THE LOCATION OF THE POINT OF DIVERSION (POD) IN EACH RESERVOIR IS EXPECTED TO CHANGE AS MINING OCCURS, THEREFORE, WE ARE REQUESTING THE POD LOCATION FOR EACH RESERVOIR BE DESCRIBED AS BEING WITHIN THE RESERVOIR

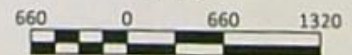
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SCALE



1 INCH = 1320 FEET

January 5, 2018

This map is not intended to provide legal dimensions or locations of property ownership lines

Figure 1

SKOOKUM

WATER ASSOCIATES INC

1626 VICTORIAN WAY  
EUGENE, OR 97401  
(503) 319-8926

5-88508



Lisa Brown  
WaterWatch of Oregon  
213 SW Ash St., STE 208  
Portland, OR 97204

March 14, 2018

Dwight French  
Oregon Water Resources Department  
725 Summer St. NE, STE A  
Salem, OR 97301

**RE: Sunny Valley Sand and Gravel, Inc. application S-88508 (expedited secondary)  
Sent Via: WRIS public comment submittal;<sup>1</sup> email ([dwight.w.french@oregon.gov](mailto:dwight.w.french@oregon.gov));  
and US Postal Mail**

Thank you for the opportunity to comment on application S-88508 in the name of Andreas and Carole Blech and Sunny Valley Sand and Gravel, Inc. for mining use adjacent to Grave Creek, a tributary to the Rogue River. Because the application raises a number of significant public interest issues, and because there are other problems with the application, it should be reviewed using the standard process pursuant to ORS 537.153 and the Oregon Water Resources Department (OWRD) should ultimately issue a Proposed Final Order for the application.

WaterWatch of Oregon (WaterWatch) submits the following specific comments:

1. The application proposes to use water from reservoir applications R-87930 and R-87932. OWRD issued final orders under ORS 537.409 for these reservoirs, but granted reconsideration of those orders and has yet to issue new orders on reconsideration. (In the Matter of the Petition for Reconsideration and Request for Stay of Enforcement of the Final Order on Application R-87930 and Permit R-15228, *WaterWatch of Oregon, Inc., Petitioner*, Order on Petition for Reconsideration and Request for Stay, Denying Stay and Granting Reconsideration (December 13, 2017)); (In the Matter of the Petition for Reconsideration and Request for Stay of Enforcement of the Final Order on Application R-87932 and Permit R-15230, *WaterWatch of Oregon, Inc., Petitioner*, Order on Petition for Reconsideration and Request for Stay, Denying Stay and Granting Reconsideration (December 13, 2017)).

OWRD should not issue a surface water permit to use water from reservoirs for which OWRD has yet to issue final orders on reconsideration, as required by rule. OAR 137-004-

<sup>1</sup> The WRIS comment submittal system appears to have a word limit, in addition to formatting problems, and thus this comment letter is also being emailed.

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0080(8) ("Following reconsideration, the agency shall enter a new order \* \* \*"). OWRD should return the application unless and until OWRD issues the required final orders for the reservoirs. Further, the fact that reconsideration was granted highlights that this application for water use is not appropriate for an expedited review process but need to be processed under the standard review process.

2. OWRD may not grant a permit for the proposed use because the applicant has not secured land use approval for the proposed mining. The land use decision approving applicant's mining was challenged at the Land Use Board of Appeals (LUBA). On October 15, 2015, LUBA issued a Final Opinion and Order remanding the land use decision to the county. *Rogue Advocates et al. v. Josephine County*, LUBA Nos. 2014-095/096. WaterWatch's understanding is that the remand process is ongoing. Therefore, applicant lacks land use approval for the land use associated with the surface water permit application S-88508 (mining).

Where land use approvals are pending but not obtained, OWRD may "place conditions on a permit or other approval to preclude use of water and any associated construction until the applicant obtains all required local land use approvals; or, withhold issuance of the water use permit or approval until the applicant obtains all required local land use approvals." OAR 690-005-0035(4)(c). However, that "approval is allowed only if the use meets requirements in paragraph (4)(b)(A) of this rule," (*id.*) which states that "[a]ll requirements of statutes and rules governing Commission and Department actions are met." (*Id.*). Here, those requirements of statutes and rules are not being met, including because OWRD is allowing Sunny Valley Sand and Gravel, Inc. to construct the source reservoirs of the proposed surface water permit prior to obtaining land use approvals. Other problems with meeting the statutory and rule requirements are described below and are detailed in WaterWatch of Oregon's Petition for Reconsideration and Request for Stay of Enforcement of the Final Order on Application R-87930 and Permit R-15228, and WaterWatch of Oregon's Petition for Reconsideration and Request for Stay of Enforcement of the Final Order on Application R-87932 and Permit R-15230, which are incorporated as if set forth fully herein.

Even if there were not problems with rule and statutory requirements, because land use approvals have not been obtained, even if OWRD chose to issue the permit it must be conditioned to "preclude use of water and any associated construction until the applicant obtains all required local land use approvals." OAR 690-005-0035(4)(c).

Finally, "the Department may consider withholding water use approvals upon request by a local or state agency, or the applicant, or as otherwise warranted to serve the Department's needs[.]" OAR 690-005-0035(4)(c). OWRD should withhold issuing this surface water permit until it issues orders on reconsideration for the reservoir permits and allows for resolution of any subsequent challenges to those orders. Issuing the surface water permit, which will likely entail investments by the applicant, prior to resolving issues pertaining to the reservoir permits will create unnecessary problems.

3. The proposed use would impair and detrimentally affect multiple specific public interests under ORS 537.170(8), as detailed below. In addition to the discussion below, WaterWatch incorporates its Petition for Reconsideration and Request for Stay of Enforcement of the Final

Order on Application R-87930 and Permit R-15228, and WaterWatch of Oregon's Petition for Reconsideration and Request for Stay of Enforcement of the Final Order on Application R-87932 and Permit R-15230 as if set forth fully herein.

- (a) Conserving the highest use of the water for all purposes, including irrigation, domestic use, municipal water supply, power development, public recreation, protection of commercial and game fishing and wildlife, fire protection, mining, industrial purposes, navigation, scenic attraction or any other beneficial use to which the water may be applied for which it may have a special value to the public.

Using water from Grave Creek, and likely also unlawfully captured groundwater (as documented by OWRD itself on the multiple attempts of Sunny Valley to secure reservoir permits at this location), to promote a major mining project adjacent to Grave Creek would certainly detrimentally affect and impair the highest uses of the waters involved. The proposed water use will result in major, deep pits being constructed along Grave Creek (see Attachment 1) which will capture groundwater that is unpermitted and would cause significant adverse impacts to Grave Creek (including injuring the instream water right) and to the downstream Wild and Scenic Rogue River. Both Grave Creek and the Rogue River are recognized gems in Oregon's river system that are known world-wide for their scenic attraction, outstanding recreational values and unparalleled fish and wildlife.<sup>2</sup> The proposed use fails to conserve the values of the waters involved in supporting these beneficial uses.

Additionally, the proposed use also does not conserve the waters for the numerous domestic uses that already exist nearby.

The application needs to go through the standard process to ensure that OWRD, other agencies, and the public—including affected domestic well owners, fishermen, and recreationists—can fully evaluate the proposed use in accordance with the standards set forth in the water code.

- (b) The maximum economic development of the waters involved.

Because the proposed use does not conserve the highest uses of the waters described in (a) above, the proposed use would also detrimentally affect and impair the maximum economic development of the waters involved. In the year 2018, it makes zero economic sense to permit use of water for aggregate mining along the banks of Grave Creek, tributary to the Wild and Scenic and internationally renowned Rogue River.

- (c) The control of the waters of this state for all beneficial purposes, including drainage, sanitation and flood control.

See comments in (a) and (b) above, which are incorporated as if set forth fully in this section.

---

<sup>2</sup> While the Rogue River is obviously known and treasured world-wide, Grave Creek is also well-known and treasured and is used as scenic entry to the Rogue River, as a Google search for it will demonstrate (it even has its own Wikipedia entry).



- (d) The amount of waters available for appropriation for beneficial use.

As detailed in WaterWatch's Petitions for Reconsideration and Request for Stay of Enforcement, and the OWRD analysis that is cited and incorporated by reference into those petitions, there is a high likelihood that the reservoirs will unlawfully capture groundwater at times when water is not available and would injure other water rights including the instream water right. By extension, the proposed surface use of the reservoir water will also unlawfully use groundwater.

- (e) The prevention of wasteful, uneconomic, impracticable or unreasonable use of the waters involved.

Use of this water for aggregate mining is wasteful, uneconomic and unreasonable for the reasons stated above and in WaterWatch's Petitions for Reconsideration and Request for Stay of Enforcement.

- (f) All vested and inchoate rights to the waters of this state or to the use of the waters of this state, and the means necessary to protect such rights.

Because the proposed use will likely injure instream water rights, the Wild and Scenic Rogue River and nearby domestic wells, this public interest factor will be impaired and detrimentally affected by the proposed use.

- (g) The state water resources policy formulated under ORS 536.295 to 536.350 and 537.505 to 537.534.

- i. The proposed use would impair and detrimentally affect the following purposes and policies specified in ORS 536.310:

- (1) Existing rights, established duties of water, and relative priorities concerning the use of the waters of this state and the laws governing the same are to be protected and preserved subject to the principle that all of the waters within this state belong to the public for use by the people for beneficial purposes without waste;

As explained above in Section 3, the proposed use will impair and detrimentally affect existing rights.

- (2) It is in the public interest that integration and coordination of uses of water and augmentation of existing supplies for all beneficial purposes be achieved for the maximum economic development thereof for the benefit of the state as a whole;

As explained above in Section 3, the proposed use of mining next to Grave Creek, tributary to the Rogue River, will not achieve maximum economic development of the water for the benefit of the state as a whole. To the contrary, the proposed use will have detrimentally economic effects.

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- (3) That adequate and safe supplies be preserved and protected for human consumption, while conserving maximum supplies for other beneficial uses;

The proposed use of water to facilitate large, deep mining pits adjacent to Grave Creek, in an area with numerous domestic wells, will not protect adequate and safe supplies for human consumption.

- (6) In considering the benefits to be derived from drainage, consideration shall also be given to possible harmful effects upon ground water supplies and protection of wildlife;

The proposed use will have harmful effects upon groundwater supplies and on wildlife. The application should go through the standard review process to ensure that these effects are adequately considered.

- (7) The maintenance of minimum perennial streamflows sufficient to support aquatic life, to minimize pollution and to maintain recreation values shall be fostered and encouraged if existing rights and priorities under existing laws will permit;

Because of the groundwater capture issues associated with the reservoirs and the mining pits, the instream flows sufficient to support aquatic life, minimize pollution and maintain recreation will be detrimentally affected and impaired.

- (8) Watershed development policies shall be favored, whenever possible, for the preservation of balanced multiple uses, and project construction and planning with those ends in view shall be encouraged;

The proposed use of water for mining along Grave Creek does not preserve multiple uses of the area and its waters.

- (12) When proposed uses of water are in mutually exclusive conflict or when available supplies of water are insufficient for all who desire to use them, preference shall be given to human consumption purposes over all other uses and for livestock consumption, over any other use, and thereafter other beneficial purposes in such order as may be in the public interest consistent with the principles of chapter 707, Oregon Laws 1955, under the existing circumstances;

The application should go through the standard review process to ensure that this factor is met and that the existing human consumption uses are protected.

- ii. The proposed use runs afoul of ORS 537.515 and ORS 537.525.

The proposed use of water for aggregate mining in pits along Grave Creek will result in excavation of unpermitted groundwater wells and groundwater reservoirs. ORS 537.515 contains the following relevant definitions:

(1) "Altering" a well means the deepening, recasing, perforating, reperforating, the installation of packers or seals and other material changes in the design of the well.

(2) "Constructing" a well includes boring, digging, drilling or excavating and installing casing or well screens.

(5) "Ground water" means any water, except capillary moisture, beneath the land surface or beneath the bed of any stream, lake, reservoir or other body of surface water within the boundaries of this state, whatever may be the geological formation or structure in which such water stands, flows, percolates or otherwise moves.

(6) "Ground water reservoir" means a designated body of standing or moving ground water having exterior boundaries which may be ascertained or reasonably inferred.

(7) "Pollution" of ground water means any impairment of the natural quality of such ground water, however caused, including impairment by salines, minerals, industrial wastes, domestic wastes or sewage, whether indrafted directly or through infiltration into the ground water supply.

(9) "Well" means any artificial opening or artificially altered natural opening, however made, by which ground water is sought or through which ground water flows under natural pressure or is artificially withdrawn. "Well" does not include a temporary hole drilled for the purpose of gathering geotechnical ground water quality or ground water level information, a natural spring or a hole drilled for the purpose of:

(a) Prospecting, exploration or production of oil or gas;

(b) Prospecting or exploration for geothermal resources, as defined in ORS 522.005;

(c) Production of geothermal resources, as defined in ORS 522.005, derived from a depth of greater than 2,000 feet; or

(d) Exploration for minerals as defined in ORS 517.750 and 517.910.

The proposed use of water for mining will facilitate and be directly entangled with excavation of several unpermitted wells and groundwater reservoirs, as those terms are defined in ORS 537.515. Therefore, the water use proposed under application S-88508 would violate ORS 537.535(1): "[n]o person or public agency shall use or attempt to use any ground water, construct or attempt to construct any well or other means of developing and securing ground water or operate or permit the operation of any well owned or controlled by such person or public agency except upon compliance with ORS 537.505 to 537.795 and 537.992 and any applicable order or rule adopted by the Water Resources Commission under ORS 537.505 to 537.795 and 537.992." The proposed use would also violate ORS 537.535(2), which specifies that "[e]xcept for those uses exempted under ORS 537.545, the use of ground water for any purpose, without a permit issued under ORS 537.625 or registration under ORS 537.605, is an unlawful appropriation of ground water."

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Further, because of the groundwater capture associated with the proposed water use, OWRD must fully consider the requirements of ORS 537.525 to ensure the preservation of the public welfare, safety and health.

4. If a surface water permit is ultimately issued, it must be strictly conditioned to only allow water that is lawfully stored to be used. Because of the high likelihood (approaching certainty) that the reservoirs will ultimately unlawfully capture and store groundwater, any secondary surface water permit must be strictly conditioned to *only* allow use of surface water that is lawfully diverted from Grave Creek (only at times when water is available) and not any groundwater that is unlawfully captured.

Such a limit should specify the lawful source of water to be used and include a strict limit to surface water use in accordance with the lawful storage amounts. It should further require strict measurement and reporting conditions to ensure that the condition is met at all times.

Further if a surface water permit is issued, it should be conditioned to immediately prohibit any surface water use from the reservoirs and to be cancelled if any of the following occurs:

- a) The reservoirs capture any groundwater;
- b) The reservoirs (which WaterWatch understands are ultimately to be excavated below the groundwater table and used as mining pits) are excavated below the highest level at which groundwater is ever encountered.
- c) The applicant diverts water from the reservoirs that has been illegally stored;
- d) The applicant uses surface water exceeding the amount allowed to be lawfully stored.
- e) Other permit compliance problems occur regarding the reservoir permits.

Thank you for considering these comments. There are undoubtedly significant public interest issues, and other problems, raised by this application and thus it is not appropriate for review under the expedited process and needs to be moved to the standard review process. We look forward to fully engaging on the review of this application and on any order that is issued.

Sincerely,

/s/ Lisa A. Brown

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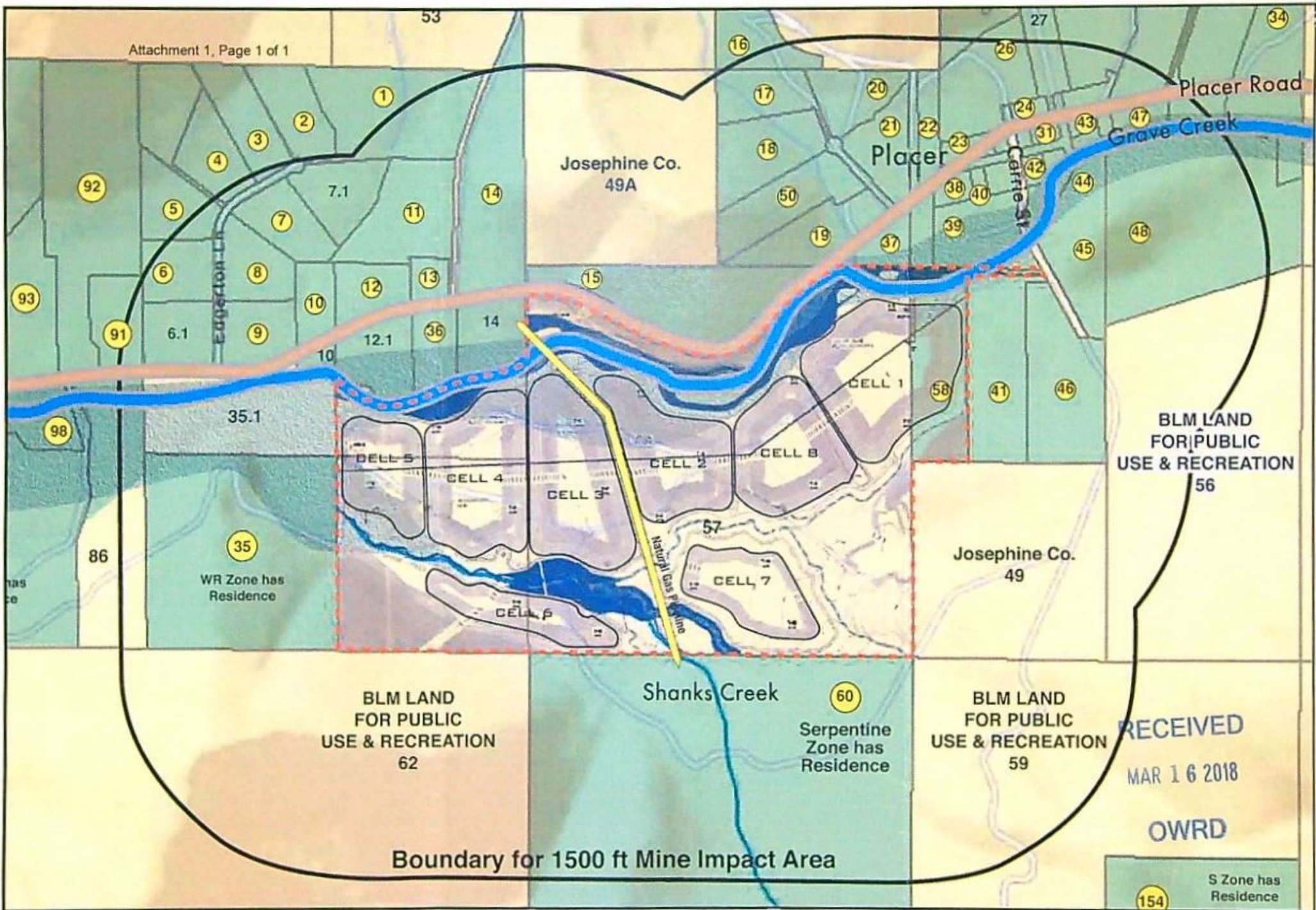
Lisa A. Brown  
Staff Attorney  
O: 503.295.4039 x4  
[lisa@waterwatch.org](mailto:lisa@waterwatch.org)

cc: Scott Grew (by email only to [scott.a.grew@oregon.gov](mailto:scott.a.grew@oregon.gov))

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PO Box 962, Grants Pass, OR 97528

March 15, 2018

Scott A. Grew  
Oregon Water Resources Department  
725 Summer St. NE, STE A  
Salem, OR 97301

RE: Sunny Valley Sand and Gravel, Inc. application S-88508

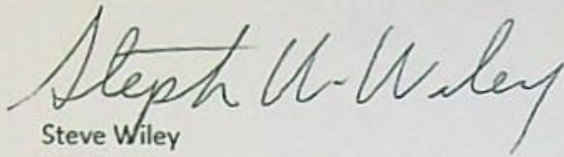
The Middle Rogue Steelheaders support the Friends of County Living, WaterWatch of Oregon and others who are in opposition to the approval of a land use permit for the use of stored water for mining sand and gravel along Grave Creek in Sunny Valley. We urge that OWRD deny the request.

We are opposed to the project because of the potential for adverse environmental impact on Grave Creek. Grave Creek provides spawning, rearing, and migration habitat for federally threatened Coho salmon, and for state listed sensitive summer steelhead. Grave Creek also ranks as a stream in the highest need of flow restoration.

The proposed water use will result in multiple, deep pits being excavated along Grave Creek which we believe will capture groundwater, particularly in low flow periods, which could potentially reduce or completely eliminate surface flow, and/or reduce the flow which will in turn result in warming the water, causing significant adverse impacts to the reproductive requirements of the salmon and steelhead. The lack of sufficient flow not only poses a risk to the fishery in the area of the mining project, but it could also prevent passage of fish to many miles of good habitat upstream. The proposed use of Grave Creek water for mining fails to conserve the values of the waters for protection of salmon and steelhead.

The Middle Rogue Steelheaders represent approximately 175 resident fishermen of Josephine and Jackson County. Our mission is to conserve, protect, and restore cold water fisheries and their watersheds in Southwest Oregon. We operate as a non-profit, non-political, and non-

sectarian organization for charitable, educational, and scientific purposes while supporting sports fishing. Over the past many years, the Middle Rogue Steelheaders have contributed hundreds of thousands of dollars and thousands of hours of volunteer labor to restore the fisheries habitat in the Middle Rogue Basin.

A handwritten signature in cursive script that reads "Steve Wiley". The signature is written in dark ink and is positioned above the printed name.

Steve Wiley

President

Middle Rogue Steelheaders

**GREW Scott A \* WRD**

---

**From:** Doyle Nelson <dwnelson15@gmail.com>  
**Sent:** Thursday, March 15, 2018 5:13 PM  
**To:** GREW Scott A \* WRD  
**Subject:** Fwd: Letters to OWRS  
**Attachments:** OWRS-Jessica.pdf; Scott-OWRS.pdf

Re: S-88508

I apologize for sending a file you couldn't open. Try the Scott-OWRS.pdf file above.

Doyle Nelson  
[541-226-9339](tel:541-226-9339)

----- Forwarded message -----

**From:** **Stephen Wiley** <[wileyfam2171@aol.com](mailto:wileyfam2171@aol.com)>  
**Date:** Thu, Mar 15, 2018 at 1:24 PM  
**Subject:** Letters to OWRS  
**To:** [dwnelson15@gmail.com](mailto:dwnelson15@gmail.com)

Attached



Glenn D. Standridge  
1800 & 1990 Placer Road  
Sunny Valley, OR 97497  
15 March 2018

Oregon Water Resource Department  
Jessica Joye  
jessica.l.joye@oregon.gov

Re: Grave Creek water use

Dear Ms. Joye:

My wife, Marilyn Standridge, and myself, Glenn D. Standridge, wish to express our concerns about the water use application #S-88508 and the water transfer application # T-12837.

We live along Grave Creek and have two water wells that will be affected by this large amount of water if it is allowed to be removed from Grave Creek.

One of our wells at 1800 Placer is at a production of only 2 gallons per minute and a 1,000 below ground storage is marginal at best. Any lowering of the ground water will be detrimental.

Statements were made by the applicant that no Grave Creek water would be used in the mining process. These statements were made at hearings held by the Josephine County Commissioners regarding the county permit for mining and a zoning change needed to mine in a R-5 zone.

The mining plan presented to the county indicated that sufficient rainwater would be collected to wash the rock mined on this site.

Grave Creek flows are extremely low in July, August and September thus removing large amounts of water will affect all downstream users. Grave Creek is used by many people for both domestic use and irrigation. Game and livestock also depend on sufficient flow in the summer for the water.

Again, I state that at county meetings the water use applicant and his experts stated that no water from Grave Creek would be used in operation of the mining.

I also have grave concerns about the concentration of silica, mercury and chrysotile as it will become more concentrated as it is washed from the rock and placed back into holding ponds.

Oregon Water Resource Department

15 March 2018

Page 2

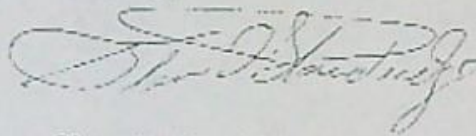
This material in the holding ponds will migrate into the gravel and eventually back into the ground water and/or Grave Creek.

The long term contamination will be felt on the Rogue River and perhaps all the way to the Pacific Ocean!

For these reasons we ask that the water use applications be denied.

Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script, appearing to read "Glenn D. Standridge".

Glenn D. Standridge

**GREW Scott A \* WRD**

---

**From:** glenn standridge <glennatwork2003@yahoo.com>  
**Sent:** Thursday, March 15, 2018 1:48 PM  
**To:** JOYE Jessica L \* WRD; GREW Scott A \* WRD  
**Subject:** Public Comment Grave Creek S-85508 & T-12837  
**Attachments:** Standridge Public comment Grave Creek water use.pdf

Water Resource Department  
ATTN: Jessica Joye and Scott Grew

Attached letter referencing applications S-88508 and T- 12837

Thank you,

Glenn D. Standridge  
1800 & 1990 Placer Road  
Sunny Valley, OR 97497  
Phone: 707-333-3200 or 541-479-3603

# Vajra Ma

1241 Shanks Creek Rd  
Sunny Valley, Oregon 97497

**RE: SVSG Applications S-88508 and T-12837**

Jessica L. Joye ([jessica.l.joye@oregon.gov](mailto:jessica.l.joye@oregon.gov))  
Scott A Grew ([scott.a.grew@oregon.gov](mailto:scott.a.grew@oregon.gov))  
Dwight W French ([dwight.w.french@oregon.gov](mailto:dwight.w.french@oregon.gov))

March 15, 2018

***The following are my comments to the above water rights applications by Sunny Valley Sand & Gravel***

I strongly believe that any further depletion of the Sunny Valley water flows will cause devastating and irreparable harm to the people of Sunny Valley and downstream, their lives and their lifestyle, as well as the ecology dependent on Grave Creek, its waters and the quality of its waters such as temperatures, sediment, and mineral content.

First, the problems inherent in the entirety of the related previous water rights applications have never been resolved. This means that the issues of

- Serpentine sediment polluting Grave Creek
- Aquifer separation between groundwater and Grave Creek not having been established
- Stream flows already very low and wells drying up
- Snow pack levels are hovering around 50%

are as much of an elephant in the room as they always were.

I am not up to date on the ODFW stream flow measurements, but I have heard nothing about the quantities for healthy salmon spawning have been sufficiently restored. Grave Creek is already classified as a Class I stream in need of protection. It is a salmon spawning stream and cannot sustain any more compromise. The mining requirements for water asked for in SVSG's transfer application are far greater and year-round as opposed to the current irrigation WR which is seasonal and less demanding. On top of that Blech demands to maintain the 1919 irrigation WR priority and apply it to his mining demands. A transfer from irrigation to mining use will cause irreparable damage to already endangered Grave Creek.

As some people said in the course of this more than ten year push ([starting with Jack Smith and Douglas Dick](#)) to mining the lands now owned by Blech/SVSG: *You can't eat rocks*. This is significant because the intended water use will destroy much of the growing downstream agriculture. This may at first look like a county issue, but the OWRD's jurisdiction over water rights puts the agency in charge of a large factor of the picture. The economic damage caused

to the county by short-sighted political influence peddling will by far outstrip the promises made by Mr. Blech and his friends or attorneys.

An example for predictable damage to the entirety of Sunny Valley was presented at the JOCO BCC hearings for SVSG Application. Certified Geo-Engineer James Rodine stated and explained how mining and its water use requirements on this land will most likely drain the aquifer. If this happens, hundreds of residents will lose their wells and water supply. There is no undoing this damage.

To address the apparent look-away policy: Since no one – other than by airplane – has a visual of Mr. Blech's operations and he has in the past refused access for monitoring, we rely on the sound of heavy equipment to detect when and how long and approximately where SVSG is operating, but we cannot determine legality, extent, or impact of the operations. During the past winter, we ~~witnessed~~ witnessed weeks upon weeks of heavy dozer work. What was he doing? We don't know. The fact that there has been no oversight allows SVSG to create facts. Was he already digging the ponds he claims to have permits for but doesn't? (Because they are *pending* approval of land use, which is still tied up in the current LUBA appeal) And even if LUBA approves, such an approval is likely subject to further legal challenges and stay orders. In short, Mr Blech has violated rules and regulations before, he can be expected to do so again.

Most of the above is by way of background information. I don't have to repeat the stats, such as the 70 million gallons taken from Grave Creek per year. Others will address the legalities and technicalities.

What I wish to convey is that the agency should not maintain an irresponsibly isolated view of these new applications. This is the case especially since the Applicant has a history of going door-to-door, so to speak, telling one agency that the other agency would approve if, and attempt to generate the sense of a larger momentum for approval of his entire operation than exists. It's a little like a child playing parents against one another.

May I ask you to, please, consider the irreparable consequences of your decisions. To use a forestry metaphor: You can't unfell a tree. Mr. Blech can hire all the lawyers and consultants money can buy. We cannot.

We depend for the future of Sunny Valley on the discretion you have – and you do have it – to make the decisions you know are right.

Thank you very much

Rev. Vajra Ma  
(Vajra@Shakti-Moon.com)

## GREW Scott A \* WRD

---

**From:** vajra ma <vajrama@greatgoddess.org>  
**Sent:** Thursday, March 15, 2018 4:16 PM  
**To:** JOYE Jessica L \* WRD; GREW Scott A \* WRD; FRENCH Dwight W \* WRD  
**Subject:** Comments by Vajra Ma re SVSG Applications S-88508 and T-12837  
**Attachments:** Comments by Vajra Ma re SVSG Applications S-88508 and T-12837.pdf

Dear All,

please find enclosed my comments concerning the referenced applications.

Thank you very much for your attention, and please confirm receipt for the record.

Vajra Ma

# Vajra Ma

1241 Shanks Creek Rd  
Sunny Valley, Oregon 97497

**RE: SVSG Applications S-88508 and T-12837**

Jessica L. Joye ([jessica.l.joye@oregon.gov](mailto:jessica.l.joye@oregon.gov))  
Scott A Grew ([scott.a.grew@oregon.gov](mailto:scott.a.grew@oregon.gov))  
Dwight W French ([dwight.w.french@oregon.gov](mailto:dwight.w.french@oregon.gov))

March 15, 2018

***The following are my comments to the above water rights applications by Sunny Valley Sand & Gravel***

I strongly believe that any further depletion of the Sunny Valley water flows will cause devastating and irreparable harm to the people of Sunny Valley and downstream, their lives and their lifestyle, as well as the ecology dependent on Grave Creek, its waters and the quality of its waters such as temperatures, sediment, and mineral content.

First, the problems inherent in the entirety of the related previous water rights applications have never been resolved. This means that the issues of

- Serpentine sediment polluting Grave Creek
- Aquifer separation between groundwater and Grave Creek not having been established
- Stream flows already very low and wells drying up
- Snow pack levels are hovering around 50%

are as much of an elephant in the room as they always were.

I am not up to date on the ODFW stream flow measurements, but I have heard nothing about the quantities for healthy salmon spawning have been sufficiently restored. Grave Creek is already classified as a Class I stream in need of protection. It is a salmon spawning stream and cannot sustain any more compromise. The mining requirements for water asked for in SVSG's transfer application are far greater and year-round as opposed to the current irrigation WR which is seasonal and less demanding. On top of that Blech demands to maintain the 1919 irrigation WR priority and apply it to his mining demands. A transfer from irrigation to mining use will cause irreparable damage to already endangered Grave Creek.

As some people said in the course of this more than ten year push (starting with Jack Smith and Douglas Dick) to mining the lands now owned by Blech/SVSG: *You can't eat rocks*. This is significant because the intended water use will destroy much of the growing downstream agriculture. This may at first look like a county issue, but the OWRD's jurisdiction over water rights puts the agency in charge of a large factor of the picture. The economic damage caused

to the county by short-sighted political influence peddling will by far outstrip the promises made by Mr. Blech and his friends or attorneys.

An example for predictable damage to the entirety of Sunny Valley was presented at the JOCO BCC hearings for SVSG Application. Certified Geo-Engineer James Rodine stated and explained how mining and its water use requirements on this land will most likely drain the aquifer. If this happens, hundreds of residents will lose their wells and water supply. There is no undoing this damage.

To address the apparent look-away policy: Since no one – other than by airplane – has a visual of Mr. Blech's operations and he has in the past refused access for monitoring, we rely on the sound of heavy equipment to detect when and how long and approximately where SVSG is operating, but we cannot determine legality, extent, or impact of the operations. During the past winter, we witnessed weeks upon weeks of heavy dozer work. What was he doing? We don't know. The fact that there has been no oversight allows SVSG to create facts. Was he already digging the ponds he claims to have permits for but doesn't? (Because they are *pending* approval of land use, which is still tied up in the current LUBA appeal) And even if LUBA approves, such an approval is likely subject to further legal challenges and stay orders. In short, Mr Blech has violated rules and regulations before, he can be expected to do so again.

Most of the above is by way of background information. I don't have to repeat the stats, such as the 70 million gallons taken from Grave Creek per year. Others will address the legalities and technicalities.

What I wish to convey is that the agency should not maintain an irresponsibly isolated view of these new applications. This is the case especially since the Applicant has a history of going door-to-door, so to speak, telling one agency that the other agency would approve if, and attempt to generate the sense of a larger momentum for approval of his entire operation than exists. It's a little like a child playing parents against one another.

May I ask you to, please, consider the irreparable consequences of your decisions. To use a forestry metaphor: You can't unfell a tree. Mr. Blech can hire all the lawyers and consultants money can buy. We cannot.

We depend for the future of Sunny Valley on the discretion you have – and you do have it – to make the decisions you know are right.

Thank you very much

Rev. Vajra Ma  
(Vajra@Shakti-Moon.com)



**GREW Scott A \* WRD**

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**From:** vajra ma <vajrama@greatgoddess.org>  
**Sent:** Thursday, March 15, 2018 5:46 PM  
**To:** JOYE Jessica L \* WRD; GREW Scott A \* WRD; FRENCH Dwight W \* WRD  
**Subject:** Please us this one--Comments by Vajra Ma re SVSG Applications S-88508 and T-12837  
**Attachments:** Comments - Vajra Ma re SVSG Applications S-88508 and T-12837.pdf

Please use this one--(the previous one had some "track changes" in it, but no changes in content)--thank you

Dear All,

please find enclosed my comments concerning the referenced applications.

Thank you very much for your attention, and please confirm receipt for the record.

Vajra Ma

Oregon Water Resources Department

S-88508 & T-12837

Hello,

My name is Jane Martin, I have been a resident of Sunny Valley for over 30 years living on Grave Creek. I do not want to see the Salmon being eliminated from extra water being withdrawn from their habitat.

These applications must not be allowed for fear of lack of water to resident's wells and irrigation rights from Grave Creek.

There simply is not enough water to withdraw without severely impacting the life styles of residents in Sunny Valley and causing further lack of water.

*Jane M. Martin*

Jane Martin

3378 Placer Rd.

Sunny Valley, OR.

March 15 , 2018

**GREW Scott A \* WRD**

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**From:** Diane Getchell <daniegirl@hughes.net>  
**Sent:** Thursday, March 15, 2018 4:03 PM  
**To:** GREW Scott A \* WRD  
**Subject:** Public Comment for S-88508  
**Attachments:** scan0019.pdf

Dear Mr. Grew,

Please include the letter below for Public Comment for application S-88508.

Thank you,

Jane Martin  
3378 Placer Road  
Sunny Valley, OR. 97497

March 15, 2018

Water Resources Department

Salem, Oregon

Applications:

New Reservoir Water use app: S-88508  
Irrigation Water Right Transfer app T-12837

As a resident of Sunny Valley, Oregon, I am very concerned about the negative effects the above mentioned applications will have on our community. Having grown up in Sunny Valley I have seen the creeks become smaller and smaller every summer and even through the last few winters.

There is no extra water available for anyone to take out, especially for any projects of this scale.

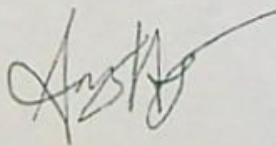
The use of groundwater will not suffice as many residents have had their wells run dry over the last few summers just using for residential purposes.

I feel that this will only bring negative consequences to our creeks, wells, environment, wildlife of Sunny Valley and beyond.

I hope that you will strongly consider the effects this would have on the residents of Sunny Valley as well as the environment and deny these applications.

Grave Creek is important to the health of Rogue River.

Thank you for your time and consideration.



Angela Henry

Sunny Valley Resident

PO 455, Wolf Creek, OR. 97497

**GREW Scott A \* WRD**

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**From:** Diane Getchell <daniegirl@hughes.net>  
**Sent:** Thursday, March 15, 2018 4:00 PM  
**To:** GREW Scott A \* WRD  
**Subject:** Public Comment for S-88508  
**Attachments:** scan0020.pdf

Dear Mr. Grew,

Please include the letter below for Public Comment for application S-88508.

Thank you,

Angela Henry  
P.O. Box 455  
Wolf Creek, OR 97497  
Wolf Creek, OR. 97497

March 14, 2018

Oregon Water Resources Department

Scott Grew/ Jessica Joye

Regarding applications: T-12837 & S-88508

Hello,

In response to the above applications there is great concern for the water that these applications would consume. I am a resident of Sunny Valley and have witnessed the creeks reaching drastically low levels and irrigation restrictions have been set in place for the last several years.

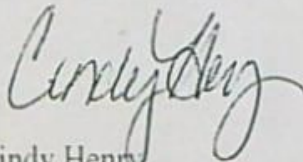
Residents of Sunny Valley need water for their wells and to sustain their quality of life.

The fish in Grave Creek and tributaries that feed the famous Wild Rogue River need water.

To allow these applications it is my opinion, would prove to be detrimental to the public, residents and wildlife.

These applications will hopefully be denied with your careful considerations of all who would be impacted.

Thank you for your attention to this matter.



Cindy Henry

PO Box 455

Wolf Creek, OR. 97497

## GREW Scott A \* WRD

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**From:** Diane Getchell <daniegirl@hughes.net>  
**Sent:** Thursday, March 15, 2018 3:58 PM  
**To:** GREW Scott A \* WRD  
**Subject:** Public Comment for S-88508  
**Attachments:** scan0021.pdf

Dear Mr. Grew,

Please include the letter below for Public Comment for application S-88508.

Thank you,

Cindy Henry  
P.O. Box 455  
Wolf Creek, OR. 97497

Gregg Getchell  
Diane Getchell  
3370 Placer Rd.  
Sunny Valley, OR 97497

March 12, 2018

Re: OWRD New Reservoir Water Use S-88508

[scott.a.grew@oregon.gov](mailto:scott.a.grew@oregon.gov)

We are residents that reside in the defined "impact area" of a proposed gold mine in Sunny Valley Oregon. We are writing to request this application be denied.

OWRD has guidelines and concerns when addressing any and all water use in the state. One of these is to consider the highest use of water for any and all purposes. In addition the department is charged with the prevention of the wasteful, uneconomic impracticable or unreasonable use of the water in the state of Oregon. Another important provision is water must be for a beneficial purpose without waste. We expect that in this situation these guidelines will be respected.

The proposed use of water to operate large, deep mining pits adjacent to Grave Creek, in an area with numerous domestic wells, will not protect adequate and safe water supplies for human consumption. The possibility of domestic and agricultural well contamination or complete loss of existing wells due to the negative influence on the aquifers that currently exist, outweighs the allowance of an immense amount of water to be given to one person for personal economic gain. This permit clearly does not allow for a balance between existing residents, protected spawning Salmon, and area wildlife and this project. The state thought this creek was so important to spawning Coho Salmon that a fish ladder was installed just down from the SVS&G property.

OWRD has acknowledged Grave Creek is over allocated and currently does not meet in stream water rights. When available supplies of water are insufficient there should be extra effort in applying any permit approval consideration. For this reason we are requesting this

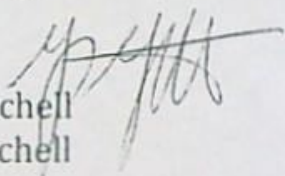


application go through the Standard Review process to ensure that these effects are all adequately considered New Reservoir Water Use S-88508

Illegal and legal marijuana grow sites have become another threat to the water supply in Sunny Valley. Their numbers have drastically increased since the mining application was originally filed. Each year more growers have set up operation. Just based on observation one has to conclude this is another significant impact on the water situation here. Not to mention some legal growers are not abiding by the water usage regulations related to their properties. Some registered domestic water wells are being used for agricultural. Many residents are aware of water stolen by random pipes and pumps found along Grave Creek. In addition the amount of water wasted by evaporation in the proposed reservoirs alone adds to the amount of water loss.

We ask this permit be denied.

Respectfully,

  
Gregg Getchell  
Diane Getchell

*Diane L Getchell*

**GREW Scott A \* WRD**

---

**From:** Diane Getchell <daniegirl@hughes.net>  
**Sent:** Thursday, March 15, 2018 3:30 PM  
**To:** GREW Scott A \* WRD  
**Subject:** Public Comment for S-88508  
**Attachments:** scan0022.pdf

Dear Mr. Grew,

Please include the attached documents for Public Comment for application S-88508

Thank you,

Gregg Getchell  
Diane Getchell

3370 Placer Rd.  
Sunny Valley, OR 97497

Gregg Getchell  
Diane Getchell  
3370 Placer Rd.  
Sunny Valley, OR 97497

March 12, 2018

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[scott.a.grew@oregon.gov](mailto:scott.a.grew@oregon.gov)

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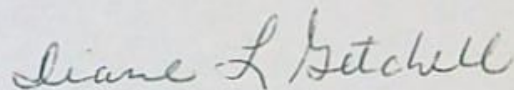
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We ask this permit be denied.

Respectfully,

Gregg Getchell  
Diane Getchell



**GREW Scott A \* WRD**

---

**From:** Diane Getchell <daniegirl@hughes.net>  
**Sent:** Thursday, March 15, 2018 3:30 PM  
**To:** GREW Scott A \* WRD  
**Subject:** Public Comment for S-88508  
**Attachments:** scan0022.pdf

Dear Mr. Grew,

Please include the attached documents for Public Comment for application S-88508

Thank you,

Gregg Getchell  
Diane Getchell

3370 Placer Rd.  
Sunny Valley, OR 97497

the Joe Boyer family  
154 Daisy Mine Rd.  
Sunny Valley, Or. 97497  
(541)787-7541

March 14, 2018

We are **again** joining with all our neighbors along Grave Creek in Sunny Valley and Placer to **strongly protest** two applications for Grave Creek water (Final Order # S-88508 & # T-12837) of Sunny Valley Sand and Gravel (SVSG) mining operation and request you deny their outrageous water usage because of the destructive impact on our well, home, family, community and environment.

The geographic location of the pit mines, truck route and homes are extremely important to understand: The northern area of Josephine County (Hugo, Or.) to the southern part of Douglas County (Canyonville) is an extremely mountainous section known as "Canyon Country" because of the deep canyons providing water to the Rogue River to the west. (The famous canyon to the north feeds the Umpqua River) The canyons feeding the Rogue are in the "Grants Pass District State Forest" and their headwaters are Wolf Creek and Coyote Creek which flow into Grave Creek and into the Rogue. There are 5 old towns in these canyons and valleys which are inter linked with water, schools, roads, their economy and people.

The Grave Creek Canyon is very steep and deep and contains a couple of large meadows at the 1400ft and 1200ft elevations collectively known as Sunny Valley, but they are really Fort Leland (Grave Creek Ranch/old Leland) and Placer on upper Grave Creek. These are two of the oldest, still-occupied, communities in Southern Oregon. In fact, Grave Creek derives its name from the grave of the first pioneer, on the first wagon train, to enter Oregon on the Applegate Trail, in 1846. That famous "First Pioneer Cemetery" is jeopardized by SVSG's gravel truck route next to the Grave Creek Covered Bridge.

The Indian villages went back >1200 years or >70 generations along "Leaf Creek" as the Takelma (Rogue) Indians called it. The Indians believe the waters of the Rogue to be sacred and Leaf Creek (now Grave Creek) to be part of their sacred spiritual land. Indian burial grounds still exist in the Placer area and I believe this is their "Happy Hunting Ground". The Grave Creek band of Indians were targeted for genocide by "the Exterminators" in the 1850s for their gold bearing creek land. The town of Golden, on Coyote Creek was obliterated by mining operations and the town of Placer was eventually saved from hydraulic ruin in the 1930s. This is all relevant because we are seeing a repeat of history in massive mining operations being arrogantly aggressive toward the local population, their rights, their history, and especially their water, which sustains their lives.

The pit mining project (originally Havillah Corp) has been underway and in litigation since 2011, to the best of my knowledge. It has always been about mining in Grave Creek water, not agriculture. Sunny Valley Sand and Gravel took it over after Havillah couldn't get water or zoning. In an unprecedented move the Josephine County Commissioners overruled the popular opinion of the residents and County population to amend the Comprehensive Plan and "Spot Zone" this piece of property for one wealthy speculator. The project has proceeded in spite of serious concerns while in "LUBA Limbo."

These Applications should be denied and considered fraudulent and abusive for the following reasons:

#### 1) The Reservoirs

The Pit Mining has already begun with the so-called reservoirs being Gravel Pit No. 1 on the East side of their property. (bait and switch) They never intended to raise cattle or plant anything. The water has been intended for mining all along. (it is in their Plan) Also, SVSG is extending their perimeters by clearing trees and paths for roads and entrances not in their plan and not permitted. This encroachment on me and other neighbors is separate from water but shows their contempt for any rules or authority. They seek approval after the fact unless caught in time.

#### 2) Our Well Water and Irrigation System

SVSG's project plan claims their massive operation will affect only one well in their impact area. Not true. They base that upon wells registered after 1970 only. There are numerous homes and wells within the area that were established in the 1890s to the 1960s. My well is very much within the 1500ft Impact Area. This is the historic town of Placer, Oregon (originally called Tom East). Most of these wells were hand-dug to 15 feet because that is where the aquifer is. My well and water rights date back to 1898 when Lew Browning built his large cabin on this spot right on Grave Creek. I have approximately 1500 ft of waterfront property and an established underground irrigation/sprinkler system which has been severely restricted due to water shortages and draught for the last 3+ years. Why are they allowed this water and nobody else?

The proposed reservoirs and other pits are in our aquifer, which is only 15 ft below the surface, and extends to, or into, Shanks Creek wetlands. (which should be considered as their "other sources of water")

Water depletion and Rock Crusher vibrations will collapse the aquifers and cause well failures along with foundation and structural damage to the older homes surrounding the mines. Mine especially and the old Schoolhouse right across the creek. (rock foundations) SVSG is very well aware of these facts and has never attempted to address or mitigate any of it. They, and the County, chose to ignore this completely proceeded as if we don't exist. Their focus is always away from real issues and they will ruin the water for everyone.

#### Our Location

I live adjacent to, and 1000 ft. upstream from, the SVSG mining operation where Daisy Mine Rd. crosses the creek at the 1400 ft elevation. I have 12.3 acres and only one 15 ft deep well for drinking water which will be above the top of the water level. I've been here for almost 12 years and the house and well have been here over 60 years with no problems, until now. I have experienced ground settling and foundation cracks in the last few years that are threatening my home and pump house. Since I am right on the creek and at the top of the same underground aquifer as the mining operation, I believe the explosions I've heard and the water drain has impacted the underground water structure.

I invested over 48 years in the Aerospace industry and spent 15 years looking for this beautiful home. Water was the primary criteria in selecting the property and I love it here. I plan on leaving this to my 4 children so they can enjoy it, preserve it, and pass it on in the same manner. I believe this is the greatest gift I can ever give them. They all love it here also. But - If SVSG uses millions of gallons of water per week my property will be out of water quickly and we will lose my family's heritage. That is an absurd amount of water! Our well will be drained long before they would notice a drop in the water level. SVSG has shown little respect for any considerations of legal, historical, cultural, economical or environmental concerns as it impacts our neighborhood. It is as if they are trying to devalue the properties around them on purpose.

Old Leland (Sunny Valley) is 3 1/2 miles down Grave Creek from the valley of Placer. Jimmy Twogood established the Grave Creek Ranch (old Leland) in 1851. There was an Englishman, prospector named Tom East digging in the hill just above the Shanks Creek wetlands (now SVSG property). He was the only white man who could venture into that valley because of the Indians. The area was named for him and was changed to Placer by a Postmaster in the 1880s to accommodate a town for the Browning family who owned most of the land.

Beautiful weather conditions and ample food supply, while having a defensive position and escape route, were essential to the security and survival of the Takelma Indians, the pioneers, and the current residents. Making Placer a perfect location. The pocket meadow where the pit diggers are trying to dig is in the center of the Takelma's summer homeland, hunting grounds, burial grounds and spiritual lands. Water is in very short supply during many summers and the Indians would move to a higher location for meat, fish, fowl and water. Current residents can't do that. The valley of Placer is at the 1400ft. elevation, which puts it right above the fog line and below the 1500ft. snow line. There are direct trails to the East, South, West and North from this point which made it a center for communications and travel for the Indians, not us. Because land was their wealth, the most prominent of the Takelma lived on this land. Their spirits reside here and only a small handful of this civilization still exists but current families have been here for at least nine generations and counting. It is my wonderful family home.

#### Conclusion

The area known as Sunny Valley is actually a long canyon about 1/2 to 1 mile wide with a few meadows at various elevations along Grave Creek. It has its own Mini-climate which is better than Grants Pass or other larger valleys in the region. (hence the name, Sunny Valley) The ground is made of large rocks all the way down to Hellgate and our creek water source is spring fed, not snow or lakes. The water supply is seasonal and precarious. Collapsing aquifers will be a liability for them and the valley ecostructure. Settling ponds can not replenish underground water up hill. They would lose more to evaporation than is feasible for replenishment.

The enterprise of converting our beautiful Sunny Valley and Grave Creek setting to massive gravel pits will endanger habitat and destroy our family's lives. The amount of water to be drained from our valley floor and the blasting of rocks has already had an impact on the underground aquifers and rock structure along Grave Creek. Land settlement is creating structural and environmental hazards already.

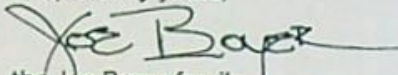
By draining millions of gallons of water a week and creating a noisy, dusty/muddy mess they will contaminate and destroy our watershed and ground water. Our property value in this valley will attract druggies and low-life. Josephine County is already having major financial problems and the repercussions of this water theft will only add to that with lower property taxes and fire danger.

Josephine County has already "Spot Zoned" this property against the will of all the residents and people of the county who have been denied the right to vote on it. The appeals process has been made a joke against Democracy and an abuse of power by people who are also speculators and have a track record of ethics violations. The process will escalate and intensify with impunity.

The water of Grave Creek and Shanks Creek will be contaminated with silica from serpentine rocks (approx. 9%) and mercury, arsenic and other pollutants from old tailings being brought in from old mining sites in the area. (not mentioned in their 40 year plan) Silica dust and diesel fumes from their estimated average of 150 -180 gravel truck trips a day will choke the air and water of Grave Creek which runs along side of their route on Placer Road. The elk population is already being shot and destroyed by local miners/hunters in order to mitigate that problem. The drainage of aquifers will undermine the 50 year old, high-pressure, 8 inch, Natural Gas line that is buried 3 feet underground and runs through the middle of, and between, the 70 ft deep pits. Explosions similar to the ones in California and Washington will be the biggest disaster in Oregon when it happens. This Gas line is a National Security issue as it severs transportation on I-5 in Southern Oregon. There is not enough water in any creek to put out that fire. and we will be trapped if we survive.

I have painted a bleak and sobering picture of our very realistic situation, but it is also very true. I implore you to deny these applications, revoke SVSG's permits and end this insanity that we have been living with for too many years. Let us live in peace with clean water, clear air and safety for our families.

Respectfully yours,

  
the Joe Boyer family.



**GREW Scott A \* WRD**

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**From:** Friends of Country Living <friendsofcountryliving@gmail.com>  
**Sent:** Thursday, March 15, 2018 2:15 PM  
**To:** GREW Scott A \* WRD; JOYE Jessica L \* WRD  
**Subject:** PUBLIC COMMENT SUBMISSION  
**Attachments:** Joe Boyer Public Comment.pdf

We have been asked to submit the attached Public Comments pertaining to application(s):

S-88508  
T-12837

This concerned resident does not have access to a computer or fax machine and was unable to send via USPS due today's deadline.

Thank you,

Friends of Country Living  
541 671-0021

William M. Corcoran II & Elizabeth A. Corcoran  
2001 Placer Road  
Sunny Valley, OR 97497  
Mailing: 1051 NE 6th St. C100  
Grants Pass, OR 97526

November 12, 2017

Mr. Tom Byler, Director  
Oregon Water Resources Department  
725 Summer St., NE Suite A  
Salem, OR 97301

To Whom It May Concern:

This letter is to inform you that we oppose the reservoir permits #R-15228 and #R-15230 granted to Sunny Valley Sand and Gravel, Inc. for the removal of water from Grave Creek for storage to use in processing aggregate for a mining operation.

We live directly downstream from this project and both Grave and Shanks Creek flow through our adjacent properties.

- My Water Rights on Grave Creek are Senior Rights dated 1874 (see attached) Recorded Volume 13, Page 16535.
- My Water Rights on Shanks Creek are dated 1/17/1966 (see attached) Volume 31, Page 39777.

Over the years the Water Master has restricted the water removal from Grave Creek due to low flow many times limiting my agricultural/farming use. This demonstrates that even with my senior water rights I have already been impacted.

There are real water volume issues on Grave Creek that must be seriously considered before allowing a commercial operation upstream of a person with senior water rights. It is contradictory to approve a commercial operation, which will appropriate additional creek and ground water.

We have owned our property since 1979 and observed these creeks over the years. It is just in this past few years that we have noticed a diminished supply of water volume and lack of water flow in Grave Creek and Shanks Creek. *wholly through - S V S G land flow*

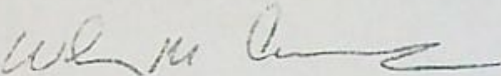
Grave Creek and Shanks Creek are less than a quarter mile apart in the pinch point of this valley. Shanks Creek contributes to Graves Creek less than a mile from Sunny Valley Sand and Gravel, Inc. site. The interference and disruption that we suspect permittee has placed on Shanks Creek and its feeding tributaries has already impacted the flow dramatically. In the latter part of June 2017 we abruptly had zero water flow on Shanks Creek. Three weeks later the flow resumed suddenly on July 15, 2017 as a raging, muddy, water flow. We and the downstream neighbor have noticed this restriction in the normal water flow and in the past year the <sup>low</sup> water flow has greatly diminished the fish population. Any additional removal of water from Grave Creek will impact the dwindling Coho salmon and steelhead population. The SVS&G site is at the upper most part of Sunny Valley and will have an impact all the way to the Rouge River.

Based on the amount of rain fall in October 2017, Shanks Creek should have started flowing in early to mid October 2017. It was dry without a drop of flow until November 10, 2017 and immediately started with a very heavy flow and a lot of mud in the water, just a day later the creek slowed down and cleared up.

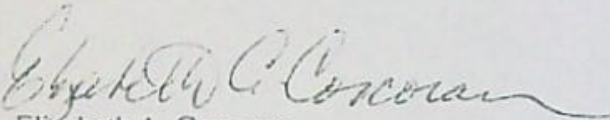
Sunny Valley Sand & Gravel, Inc. is projected to operate for 40 years. The mining application explains the massive need of water to remove the over 30% clay from the material. The amount of water this operation will require is staggering. It is also the digging of eight pits to bedrock that will interrupt and combine ground and surface waters all the way to the Rogue River that concerns us.

The reservoir permits you have issued to SVS&G rely on everyone following rules, regulations and conditions. We request your reconsideration and reversal of these permits.

Respectfully,



William M. Corcoran II



Elizabeth A. Corcoran

STATE OF OREGON

COUNTY OF JOSEPHINE

CERTIFICATE OF WATER RIGHT

**This Is to Certify,** That Samuel Pettengill, of Grave, State of Oregon, and C. H. Bean of Placer, State of Oregon, has a right to the use of the waters of Grave Creek, a tributary of Rogue River for the purpose of irrigation of 8 acres

and that said right has been confirmed by decree of the Circuit Court of the State of Oregon for Jackson County, and the said decree entered of record at Salem, in the Order Record of the STATE ENGINEER, in Volume 4, at page 1; that the priority of the right thereby confirmed dates from 1874;

that the amount of water to which such right is entitled, for the purposes aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed 0.16 cubic foot per second.

A description of the lands irrigated under such right, and to which the water is appurtenant (or, if for other purposes, the place where such water is put to beneficial use), is as follows:

4 acres in NE $\frac{1}{4}$  SW $\frac{1}{4}$   
 4 acres in NW $\frac{1}{4}$  SW $\frac{1}{4}$   
 Section 7,  
 T. 34 S., R. 5 W., W. 4.

And said right shall be subject to all other conditions and limitations contained in said decree. The right to the use of the water for the purposes aforesaid is restricted to the lands or place of use herein described.

WITNESS the signature of the State Engineer, affixed

this 30 day of September, 1949.

CHAS. E. STRICKLIN

State Engineer

Recorded in State Record of Water Right Certificates, Volume 13, page 16536

STATE OF OREGON

COUNTY OF JOSEPHINE

CERTIFICATE OF WATER RIGHT

This Is to Certify, That JOHN E. WHEELER

97478

of 151 Daisy Mine Road, Sunny Valley, State of Oregon, has made proof to the satisfaction of the STATE ENGINEER of Oregon, of a right to the use of the waters of Shanks Creek

a tributary of Graves Creek for the purpose of irrigation of 4.7 acres

under Permit No. 31284 of the State Engineer, and that said right to the use of said waters has been perfected in accordance with the laws of Oregon; that the priority of the right hereby confirmed dates from January 17, 1966

that the amount of water to which such right is entitled and hereby confirmed, for the purposes aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed 0.06 cubic foot per second

or its equivalent in case of rotation, measured at the point of diversion from the stream. The point of diversion is located in the NW 1/4 SE 1/4, SW 1/4 SE 1/4, Section 7, T. 34 S., R. 5 W., W. H., 580 feet West and 100 feet North, 1220 feet West and 130 feet South, both from NE Corner, SW 1/4 SE 1/4, Section 7.

The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to one-eightieth of one cubic foot per second per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 1/4 acre feet per acre for each acre irrigated during the irrigation season of each year,

and shall conform to such reasonable rotation systems as may be ordered by the proper state officer. A description of the place of use under the right hereby confirmed, and to which such right is appurtenant, is as follows:

- 0.3 acre NW 1/4 SE 1/4
  - 4.3 acres SW 1/4 SE 1/4
  - 0.1 acre SE 1/4 SE 1/4
- Section 7  
T. 34 S., R. 5 W., W. H.

The right to the use of the water for the purposes aforesaid is restricted to the lands or place of use herein described.

WITNESS the signature of the State Engineer, affixed

this date. January 30, 1974

Chris L. Wheeler  
State Engineer

BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF OREGON  
FOR THE  
OREGON WATER RESOURCES DEPARTMENT

IN THE MATTER OF THE OF THE )  
PROPOSED CANCELLATION OF THE )  
WATER RIGHT EVIDENCED BY )  
WATER RIGHT CERTIFICATE 3943 )  
FOR USE OF WATER FROM GRAVE )  
CREEK FOR IRRIGATION OF 65 )  
ACRES, JOSEPHINE COUNTY, )  
OREGON. )

OAH No. WR-15-007  
Agency Case No.: PC 06-14

AFFIDAVIT  
of  
Mary Afton Butterfield

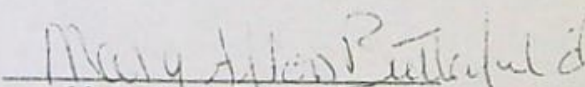
I, the undersigned Mary Afton Butterfield, hereby declare under penalty of perjury under the laws of the State of Oregon:

I owned the subject property, 34 05 08 400 & 34 05 07 1300 from 12-31-85 to 07-08-08

During the time I owned the subject property, we did not irrigate the land, and there was no irrigation equipment or infrastructure for irrigation installed or used. I also was not aware of pumps or ditches or sprinklers present on this land, and I did not plow or engage in other agricultural work like grow crops or raise animals.

I never authorized anyone to irrigate my land or engage in any agricultural activity on my land during the time I owned it, and no one ever asked me.

This 29 of March 2016

  
Mary Afton Butterfield  
214 Brookside Drive  
San Anselmo, CA 94960

**CALIFORNIA JURAT WITH AFFIANT STATEMENT**

**GOVERNMENT CODE § 8202**

- See Attached Document (Notary to cross out lines 1-6 below)
- See Statement Below (Lines 1-6 to be completed only by document signer[s], *not* Notary)

\_\_\_\_\_  
*Signature of Document Signer No. 1*

\_\_\_\_\_  
*Signature of Document Signer No. 2 (if any)*

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
 County of Marin

Subscribed and sworn to (or affirmed) before me  
 on this 29<sup>th</sup> day of March, 2016,  
 by Date Month Year  
 (1) MARY AFTON BUTTERFIELD  
 (and (2) \_\_\_\_\_),  
*Name(s) of Signer(s)*



proved to me on the basis of satisfactory evidence  
 to be the person(s) who appeared before me.

Signature \_\_\_\_\_  
*Signature of Notary Public*

Seal  
 Place Notary Seal Above

**OPTIONAL**

*Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.*

**Description of Attached Document**

Title or Type of Document: AFFIDAVIT OF MARY AFTON BUTTERFIELD Document Date: 3/29/16  
 Number of Pages: 2 Signer(s) Other Than Named Above: \_\_\_\_\_

BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF OREGON  
FOR THE  
OREGON WATER RESOURCES DEPARTMENT

IN THE MATTER OF THE OF THE )  
PROPOSED CANCELLATION OF THE )  
WATER RIGHT EVIDENCED BY )  
WATER RIGHT CERTIFICATE 3943 )  
FOR USE OF WATER FROM GRAVE )  
CREEK FOR IRRIGATION OF 65 )  
ACRES, JOSEPHINE COUNTY, )  
OREGON. )

OAH No. WR-15-007  
Agency Case No.: PC 06-14

AFFIDAVIT  
by  
DOUGLAS DICK

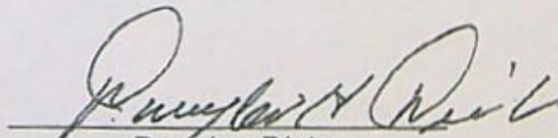
I, the undersigned **Douglas Dick**, hereby declare under penalty of perjury under the laws of the State of Oregon:

I Douglas Dick, owned the property (tax lot 400-34-5 sec.8, Sunny Valley OR), from July 29, 2008 to October 2010.

There was no irrigation equipment or infrastructure for irrigation present when I purchased it. There were no pumps and no irrigation ditches. There were no crops planted, and there was no livestock grazing at the time I purchased the property, nor were there any crops or livestock during the time I owned the property.

I never irrigated the property nor did I observe any evidence of it having been irrigated or planted or of any other beneficial agricultural use before I purchased it.

This March 27, 2016

  
\_\_\_\_\_  
Douglas Dick  
P. O. Box 898 Oakridge, OR 97463  
(541)782-3179



SUBSCRIBED AND SWORN to before me this 7 day of March 2016



*Rustie L Ackland*

NOTARY

March 11, 2018

William M Corcoran  
Elizabeth A Corcoran  
2001 Placer Rd  
Sunny Valley, OR 97497

Mailing Address:  
1051 NE 6<sup>th</sup> Street #C100  
Grants Pass, OR 97526

Scott Grew  
[scott.a.grew@oregon.gov](mailto:scott.a.grew@oregon.gov)

Re: Sunny Valley Sand and Gravel, Inc. application S-88508

We oppose this Application for S-88508 for the following reasons:

We have Senior Water Rights on Grave Creek that are dated from 1874, Volume 13 Page 16536. (See attached) Our property is located adjacent and west, and directly down stream from the property submitting this water right application, for water use change.

We rely heavily on the water of this valley. This water threat will cause us to lose our well and render our property useless. Our 80-acre farm and residence includes livestock, crops, orchards, and seed collection and distribution, for the purpose of Southern Oregon plant preservation. In addition over the years, our property is a venue for our family reunions and weddings along with a vacation destination for our children and grandchildren. SVS&G is located at the east end at the very top, of Sunny Valley, which puts them in a unique position to effect, not only me personally, but all water right holders all the way to the Rouge River and beyond. Grave Creek enters the Rogue River where the permitted Wild and Scenic section of the Rogue River begins. This designation protects a world-renowned recreation and fishing area.

We have owned our property since 1979, and have observed Grave and Shanks Creeks over the years. It has just been in the past few years, since Mr. Andreas Blech has purchased the property, we have noticed a diminished supply of water volume, lack of clarity, and lack of flow not only in Grave Creek but Shanks Creek as well. We believe that Shanks Creek has been dammed (see attached letter dated November 12, 2017).

The water right that this business application references, has not been exercised for more than 50 years (see two attached Affidavits, Butterfield and Douglas Dick). Ms. Butterfield inherited this property from her parents (McNeil) who owned it from

the early 1950's, who also did not irrigate. This application, based on its scope, will change the availability of water for other residents who have also been relying on the aquifer and Grave Creek for years.

All water storage in Oregon and related decisions should be used for the benefit of the public, not for a Gold Mining company's profits. This neighboring property owner has stated to me personally he intends to mine for gold. Grave Creek, as a water resource, has been struggling for many years due to over allocation and drought conditions. We, along with the people of Sunny Valley, should not be put in a hostage situation over the basic public need of water.

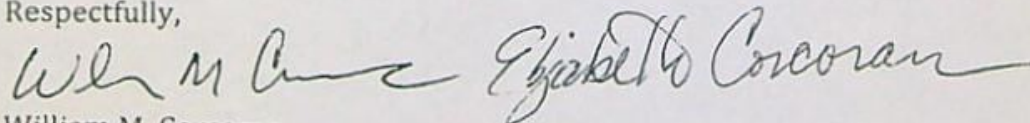
We are a party to the remand process involving SVS&G that is currently before LUBA. This applicant lacks the land use approval for the land use associated with the surface water permit application S-88508 (mining). Based on OAR 690-005-0035 (4)(c), if OWRD chooses to issue a permit it must be conditioned to "preclude use of water and any associated construction until the applicant obtains all required local land use approvals". Based on this information we expect all rules to be followed.

The point where Grave Creek enters the Rogue River is where the Wild and Scenic Rogue River "permitted section" begins. This is a world-renowned recreation and fishing area. This river section is so special that you need a permit to use it. Our local Class 1 Grave Creek contributes to and is an integral part of. Any threat to Grave Creek is not just contained here in this small valley.

These excessive water permits are contrary to the OWRD's role regarding protection of existing water rights by preventing excessive groundwater decline or contamination, maintaining aquifer stability and preservation while making decisions based on the most beneficial use of water and in the highest public interest.

Based on the reasons above we ask that this application be denied. In addition, we request a Standard Review of this application.

Respectfully,



William M. Corcoran  
Elizabeth A. Corcoran

**GREW Scott A \* WRD**

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**From:** wmcocoran@reagan.com  
**Sent:** Thursday, March 15, 2018 2:06 PM  
**To:** GREW Scott A \* WRD  
**Subject:** Public Comment for S-88508  
**Attachments:** scan0016.pdf; scan0017.pdf

Dear Mr. Grew,

Please include the attached documents for public comment for application S-88508.

Thank You,

Michael & Elizabeth Corcoran

March 13, 2018

Steven A. Lawwill, Bachelor of Science in Computer Science  
171 Edgerton Lane  
Wolf Creek, Oregon 97497  
Phone (541) 671-0021

RE: S88508 and T12837

ORS 537.170 (8c) compels OWRD to prevent wasteful and unreasonable use of water.

Sunny Valley Sand & Gravel (SVS&G) has submitted water applications (S88508 & T12837) for surface water use that challenges justification under ORS 537.170 (8c). Historic water evaporation data, from this area, using empirical scientific standards establishes the evaporation waste this water use presents. The table below is from the Regional Climate Center (RCC) and shows rates of evaporation under standardized test conditions. The RCC delivers climate services at national, regional and state levels working with NOAA partners in the National Climatic Data Center, National Weather Service, the American Association of State Climatologists, and NOAA Research Institutes.

### Western Regional Climate Center Evaporation Data for Oregon

		MONTHLY AVERAGE PAN EVAPORATION (INCHES)												
	PERIOD OF RECORD	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	YEAR
ASTOR EXPERIMENT STN	1948-1973	0.56	0.96	1.47	2.21	3.75	3.95	4.65	4.10	2.95	1.65	0.87	0.70	27.82
BEND 7 NE	1991-2005	0.00	0.00	0.00	4.25	6.14	6.69	8.66	7.91	5.42	0.00	0.00	0.00	39.07
CORVALLIS STATE UNIV	1889-2005	0.00	0.00	1.79	2.96	4.59	5.86	7.70	7.07	5.06	2.33	0.96	0.00	38.32
COTTAGE GROVE DAM	1943-2005	0.00	1.27	2.16	3.07	4.56	5.60	7.73	6.70	4.47	2.06	0.82	0.00	38.46
DETROIT DAM	1954-2005	0.19	1.16	1.69	2.51	4.38	5.90	7.68	6.64	4.24	2.05	0.88	0.46	37.78
DORENA DAM	1948-2005	0.00	1.01	1.94	2.95	4.98	6.11	8.19	7.15	4.66	2.01	0.00	0.00	39.00
FERN RIDGE DAM	1943-2005	0.39	0.79	1.92	3.17	5.03	6.21	8.12	7.09	4.76	2.21	0.67	0.34	40.70
HERMISTON 2 S	1928-1997	0.00	0.00	3.44	5.43	7.91	9.67	11.32	9.66	6.32	3.97	0.00	0.00	57.72
HOOD RIVER EXP STN	1928-2005	0.00	0.00	0.00	0.00	6.45	6.80	8.81	7.04	3.32	3.09	0.00	0.00	35.51
KLAMATH FALLS AGR STN	1949-2004	0.70	1.31	2.81	4.73	7.21	8.79	10.24	9.41	6.30	4.37	0.00	0.67	56.54
LOOKOUT POINT DAM	1955-2005	0.00	1.76	2.29	3.10	4.67	5.77	7.69	6.89	4.45	1.96	1.01	0.00	39.59
MADRAS 1 NNW	1952-2005	0.00	0.00	0.00	4.72	7.12	8.66	10.23	9.17	6.21	3.16	1.70	0.00	50.97
MALHEUR BRANCH EXP STN	1943-2005	0.00	0.00	0.00	5.68	7.71	8.94	11.06	9.57	6.17	3.14	0.72	0.00	52.99
VOLTAGE 2 NW	1959-2005	0.00	0.00	0.00	4.37	6.22	7.67	9.58	8.52	5.86	3.19	0.00	0.00	45.41
MEDFORD EXP STN	1937-2003	0.53	1.02	2.26	3.56	5.29	6.54	8.24	6.78	4.05	1.81	0.76	0.44	41.28

RCC suggests using a .7 to .8 multiplier to adjust test conditions to a naturally occurring pond or lake.

RCC evaporation data - <https://wrcc.dri.edu/htmlfiles/westevap.final.html>

These water use applications, by extension, will lead to SVS&G capturing unpermitted groundwater in eight deep pit excavations. This result is unavoidable and poses a serious threat to groundwater flowing in Sunny Valley aquifers and the subterranean water associated with Grave Creek. According to SVS&G plans, sump pumps will remove the captured groundwater by pumping it into infiltration swales along Grave Creek, exposing it to added contamination and evaporation. Their plans acknowledge that digging along the creek, SVS&G will encounter groundwater in sufficient quantities to require removal. Digging in groundwater is unavoidable and actually part of their plan.

Sunny Valley Sand & Gravel's site plan has eight excavation pits totaling 108.9 acres (19.7, 14.6, 16.4, 15.9, 8.7, 6.6, 13.6 and 13.4 acres). Each excavation pit will be reclaimed as a water filled pond.

SVS&G (area of eight excavation pits)	108.9 acres x 43,560 sq. ft. = 4,743,684 sq. ft.
Evaporation (using Medford, OR data)	Convert inches to feet, 41.28 / 12 = 3.44 ft.
Evaporation (using .7 factor per RCC)	4,743,684 sq. ft. x 3.44 ft. x .7 = 11,422,790 cu. ft.
Yearly Water Evaporation (from pits)	11,422,790 cu. ft. x 7.48052 = 85.448 million gallons

Please require a complete "standard review" when considering these water use applications.

# Sunny Valley Sand & Gravel Site Map ( submitted by Steve Lawwill )

## Attachment Regarding Application S88508 & T12837



- TERMS OF OPERATION:**  
 MINING AND PROCESSING: MON-FRI: 7:00AM TO 5:00PM  
 EQUIPMENT MAINTENANCE AND REPAIR: MON-SAT 7:00AM TO 8:00PM  
 DAYS OF OPERATION SHALL BE MONDAY THROUGH SATURDAY EXCLUDING THE FOLLOWING LEGAL HOLIDAYS: NEW YEAR'S DAY, MEMORIAL DAY, JULY 4TH LABOR DAY, THANKSGIVING DAY, AND CHRISTMAS DAY. MAINTENANCE OF EQUIPMENT MAY TAKE PLACE AT ANY TIME.
- NOTES:**
1. THE OPERATIONAL LIFE OF THE LAKE IS APPROXIMATELY 20-40 YEARS.
  2. PLAN SHOWS CONSTRUCTION OF CELL PILES. THESE FEATURES TO BE CONSTRUCTED IN PHASES AS BY EXCAVATION PROGRESSES. TEMPORARY FEATURES MAY BE CONSTRUCTED.
  3. EXCAVATION SETBACK DISTANCES:  
 3.1. SELF FROM ANY PROPERTY LINE  
 3.2. SELF FROM CREEK BANK (DOWN)  
 3.3. OUTSIDE OF FLOODWAY AND FLOODPLAIN BOUNDARY
  4. THE ANTICIPATED CELL FLOOR ELEVATION IS AT -80' BELOW SURFACE GRADE.
  5. STRIPPED OVERBURN AND TOPSOIL MAY BE TEMPORARILY STOCKPILED IN UNDERWATER AREAS AND EAST AND WEST SETBACK AREAS. TOPSOIL/UNDERBURN GENERATED FROM EXCAVATION MAY BE USED FOR REVEGETATION OF SLOPES. TEMPORARILY STOCKPILED WILL CHANGE IN LOCATION IN MINING AREA PERIODICALLY DEPENDING ON OPERATIONS. TEMPORARILY STOCKPILES TO BE PLACED OUTSIDE OF JURISDICTIONAL WETLANDS/ WATERS.
  6. FLOPPING DUST WILL BE CONTROLLED BY A WATER TRUCK AS NEEDED ON THE SITE. REEDES AND WATER TRUCK BARS ON THE PROCESSING EQUIPMENT.
  7. AS THE INDIVIDUAL CELLS ARE EXCAVATED INTO THE GROUNDWATER, THE TURBID WATER FROM THE EXCAVATION DISTURBANCE WILL BE DIRECTED TO A PORTION OF THE CELL COLLECTED IN A SAND PANS/PILE AND DISCHARGED INTO AN EXISTING SUB-DRAINAGE CANAL OR POND. WHEN THE MINING EXCAVATION AREA, ADJACENT TO THE CELL BEING EXCAVATED, THESE ADVANCED POND MAY MOVE AROUND AS THE INDIVIDUAL CELLS ARE BEING EXCAVATED. A PRE-EXISTING EXCAVATED CELL WITHIN THE MINING AREA, MAY ALSO BE USED FOR DISCHARGE OF THE TURBID WATER.
  8. AS THE INDIVIDUAL CELLS ARE DEEPEMED INTO THE GROUNDWATER, A PERIMETER SEPARATING SYSTEM WILL BE ESTABLISHED TO DIRECT THE CLEAR GROUNDWATER FROM THE CELL SLOPES TO A PORTION OF THE PERIMETER OF THE CELL. WHEN THE WATER WILL BE COLLECTED IN A CLEAR WATER SAND PANS/PILE AND DISCHARGED INTO THE EXISTING SUB-DRAINAGE CANAL OR POND. TURBID WATER GENERATED DURING THE CELL EXTRACTION ACTIVITIES, ON THE INTERIOR OF THE CELL, WILL BE DIRECTED INTO A SEPARATE INFILTRATION POND/CELL AS NEEDED.
  9. ALL ACTIVITIES SHALL COMPLY WITH THE JOSEPHINE COUNTY CONDITIONS OF APPROVAL FOR SUNNY VALLEY SAND AND GRAVEL.
  10. STORAGE AND EROSION CONTROL TO BE CONDUCTED IN ACCORDANCE WITH SUGGEST BEST MANAGEMENT PRACTICES FOR RECLAIMING SURFACE WATERS IN OREGON.
  11. MODIFICATIONS TO THE STORAGE FACILITIES SHALL BE MADE TO BRING STORAGE QUALITY INTO COMPLIANCE SHOULD IT NOT MEET THE PERMIT REQUIREMENTS, INCLUDING EXISTING REGULATIONS 1200-A-17-0145.
  12. STORAGE FROM UNDISTURBED AREAS TO BE DIRECTED AROUND THE MINING AREA BY THE USE OF BERM, SHALES AND DITCHES AS APPROPRIATE FOR FIELD CONDITIONS. PER REFERENCE 1 BELOW.
  13. FINAL PERIMETER SLOPE INCULCATIONS AND CONSOLIDATIONS TO BE EVALUATED BY A CERTIFIED ENGINEERING GEOLOGIST ONCE SLOPE MATERIALS ARE EXPOSED IN THE EXCAVATIONS.
  14. AS MINING PROGRESSES ACROSS THE SITE, VEGETATION WILL BE HARVESTED AND REMOVED. THE TOPSOIL AND OVERBURN WILL BE STRIPPED AND STOCKPILED FOR USE IN REVEGETATION.
  15. THE APPLICANT SHALL PLACE OR OTHERWISE MARK THE MINING PERMIT BOUNDARY BEFORE PROCEEDING EXCAVATION.
  16. CONSTRUCT TEMPORARY ROADS AT LEAST 3 FEET ABOVE EXISTING GRADE.
  17. ALL UTILITY EXISTENCE LOCATIONS AND WIDTHS TO BE CONFIRMED (TYPED) IN THE FIELD IN COORDINATION WITH THE UTILITY COMPANIES PRIOR TO MINING. EXISTING UNDERGROUND GAS LINE TO BE FIELD LOCATED BY PINGING BY THE UTILITY COMPANY PRIOR TO EXCAVATION FIELD WITHIN THE MINING DRAINAGE.
  18. APPROXIMATE GRADING FOR WETLANDS STORAGE SHOWN FOR CELL #1 ACTUAL GRADING FOR CELL #1 MAY EXTEND TO PERMITS EXISTING ROAD.

**REFERENCES**

1. SOGAM BEST MANAGEMENT PRACTICES FOR RECLAIMING SURFACE WATERS IN OREGON, 1997
2. AS BUILT: LATH ENGINEERING, L.P. "VERTICAL AIR DRAFT WATERS AND RELATED FLOODING REPORT" NO. 1703
3. MICHAEL BAKER CORP. "WETLAND REVISION REPORT" WETLAND REVISION REPORT, SUNNY VALLEY SAND & GRAVEL EXCAVATION PROJECT, PLASTER POINT, JOSEPHINE COUNTY, OREGON, APR. 2013
4. SOGAMIZED: 1200-A-17-0145
5. SOGAM EXCAVATION PERMIT #17-0145
6. FLOODPLAIN MAPS: NORTHINGTON ENGINEERING, INC. "FLOODPLAIN MAPS WITH A DAMMED CREEK, SUNNY VALLEY SAND & GRAVEL" AUG. 2013
7. GEODESIST: SHAWHAN AND WELSH INC. "SUNNY VALLEY WETLAND REVISION REPORT, SUNNY VALLEY SAND & GRAVEL" AUG. 2013
8. SOGAM: SUNNY VALLEY SAND & GRAVEL, INC. "SUNNY VALLEY SAND & GRAVEL" AUG. 2013
9. GEOTECHNICAL REPORT: KUPER CONSULTING LLC. "GEOTECHNICAL EVALUATION AND SLOPE FAILURE DETERMINATION, SUNNY VALLEY SAND & GRAVEL, PROPERTY, JOSEPHINE COUNTY, OREGON" MAR. 2013
10. GEOTECHNICAL REPORT: WETLAND CONSULTANTS, INC. "SUNNY VALLEY SAND AND GRAVEL, OPTION ONE, WETLAND Delineation and STOCK WATER NARRATIVE" AUG. 2013
11. CLAYTON HARRISON (ENGINEERING), LTD. "WETLAND REPORT, SUNNY VALLEY SAND & GRAVEL" JULY 2013
12. MICHAEL BAKER CORP. "WETLAND REVISION REPORT" JULY 2013 AND "WETLAND REVISION REPORT" AUGUST 2013 AND "WETLAND REVISION REPORT" SEPTEMBER 2013 AND "WETLAND REVISION REPORT" OCTOBER 2013 AND "WETLAND REVISION REPORT" NOVEMBER 2013 AND "WETLAND REVISION REPORT" DECEMBER 2013
13. SOGAMIZED: 1200-A-17-0145
14. SOGAMIZED: 1200-A-17-0145
15. SOGAMIZED: 1200-A-17-0145
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**LEGEND**

- DOGAM PERMIT # 17-0145 BOUNDARY
- DOGAM EXCAVATION BOUNDARY
- 50' PROPERTY SETBACK
- EXISTING 5' MAJOR CONTOUR
- EXISTING 25' MINOR CONTOUR
- CELL PHASE LINE
- DIRECTION OF MINING OPERATIONS
- APPROX. LOCATION OF WILLIAMS-HW PIPELINE (50' WIDE EASEMENT)
- PP&L POWER POLE AND EASEMENT
- REPAIR TRACK PORTION OF SITE BETWEEN 50' DISTRICT LINES FROM DNR BASED ON T20 REPORT
- TEMPORARY 15' WIDE ROAD
- 100 YR BASE FLOOD BOUNDARY\*\*
- FLOODWAY BOUNDARY\*\*
- EXISTING STRUCTURE
- EXISTING GRAVEL ROAD
- EXISTING PAVED ROAD
- EXISTING FENCE
- GRAVE'S CREEK (PER WETLAND CONSULTANT)
- APPROXIMATE LOCATION OF SONIC BORING
- APPROXIMATE LOCATION OF EXPLORATORY TRENCHES

**AREA TABLE**

CELL #	APPROX. AREA
1A	9.2
1B	10.4
2A	7.2
2B	6.3
3A	6.0
3B	10.4
4A	6.7
4B	9.2
5	9.2
6	6.6
7	13.8
8A	9.7
8B	9.7
9	104.0

**DATUMS AND DATA SOURCES:**

**USGS:**  
 HORIZONTAL DATUM: NAD 83(01)  
 VERTICAL DATUM: NAVD 83  
 PROJECTION: LAURENT CONFORMAL CONIC  
 COORDINATE SYSTEM: STATE PLANE, OREGON SOUTH  
 5401-343-8077

**WARRANTY:**  
 3N (Carters Mapping Group)  
 CONTACT: RICH SLOTTETT  
 541-343-8077

**AERIAL PHOTO:**  
 BERGAM PHOTOGRAPHIC SERVICES  
 CONTACT: BRUCE BERGAM  
 503-238-4000

**GROUND SURVEY:**  
 JOSEPHINE LAND SURVEYING  
 CONTACT: JOHN JOHNSON  
 541-478-0500

**TITLE PLAN MAPPING:**  
 JOSEPHINE COUNTY GIS ONLINE MAPPING SHAPE FILES  
[www.jcassessor.com/online/mapping/shapes/](http://www.jcassessor.com/online/mapping/shapes/)

PROPOSED TOTAL APPROXIMATE EXCAVATION AREA (131.9 ACRES) IS DEFINED BY THE OUTSIDE EDGE OF THE PERIMETER ACCESS ROADS OUTSIDE THE MINING AREAS AND 100-YEAR FLOODPLAIN BOUNDARY.

**WESTLAKE CONSULTANTS**  
 PROFESSIONAL ENGINEERING & SURVEYING  
 1000 N. W. 10th St., Suite 100, Astoria, OR 97103  
 (503) 325-1111

**SUNNY VALLEY SAND AND GRAVEL**  
 DOGAM # 17-0145  
 JOSEPHINE COUNTY, OREGON  
 MINING PLAN, PHASING AND  
 CONCEPTUAL STORM WATER

**PLATE 2**

**PERMITEE/OPERATOR**  
**SUNNY VALLEY SAND AND GRAVEL INC.**  
 1807 WILLIAMS HIGHWAY #250  
 CRANTS OR 97527  
 CONTACT: MR. ANDREAS BLECH  
 (541) 224-2544

**ENGINEERING GEOLOGIST**  
**KUPER CONSULTING LLC**  
 ENGINEERING GEOLOGY CONSULTANTS  
 3575 RUNNING DEER DRIVE  
 HELIX, MT. BLM 97102  
 (503) 538-9722

**DATE** AUG 2013  
**JOB NO** 2371-00

**GREW Scott A \* WRD**

---

**From:** Steve & Debbe Lawwill <triplepeakacres@gmail.com>  
**Sent:** Thursday, March 15, 2018 1:41 PM  
**To:** GREW Scott A \* WRD  
**Subject:** Public Comment #S-88508  
**Attachments:** Public Comment Steve Lawwill on S88508 and T12837.pdf

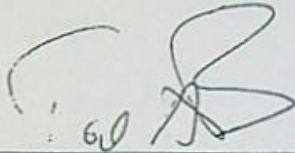
Public Comment attached for application #S-88508





1           The record is settled as of the date of this order. The petition for review  
2 is due 21 days, and the response brief due 42 days, from the date of this order.  
3 The Board's final opinion and order is due 77 days from the date of this order.

4           Dated this 6th day of March, 2018.

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9           \_\_\_\_\_  
10          Tod A. Bassham  
            Board Member

## Certificate of Mailing

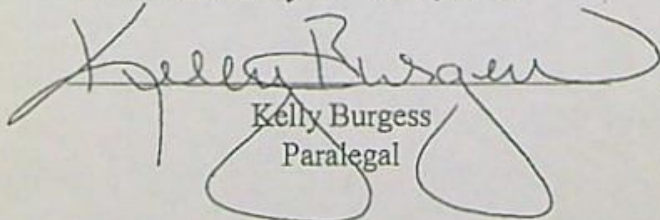
I hereby certify that I served the foregoing Order for LUBA No. 2016-127 on March 6, 2018, by mailing to said parties or their attorney a true copy thereof contained in a sealed envelope with postage prepaid addressed to said parties or their attorney as follows:

Logan Leichtman  
Emerge Law Group  
805 SW Broadway, Suite 2400  
Portland, OR 97205

M. Wally Hicks  
Josephine County Counsel  
500 NW 6th Street  
Grants Pass, OR 97526

Sean T. Malone  
Attorney at Law  
259 E. 5th Avenue, Suite 200-C  
Eugene, OR 97401

Dated this 6th day of March, 2018.

  
Kelly Burgess  
Paralegal

\_\_\_\_\_  
Kristi Seyfried  
Executive Support Specialist

**GREW Scott A \* WRD**

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**From:** Steve Rouse <kuf99fa@icloud.com>  
**Sent:** Thursday, March 15, 2018 1:41 PM  
**To:** GREW Scott A \* WRD  
**Cc:** FRENCH Dwight W \* WRD  
**Subject:** Addendum to Comments S-88508  
**Attachments:** LUBA Order re scheduling.pdf

Scott and Dwight,

Please add the attached Addendum from the Land Use Board of Appeals (LUBA) for our Rogue Advocates comments just submitted via email for S-88508.

Steve Rouse  
Rogue Advocates Board President



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Rogue Valley through responsible land use.*

Rogue Advocates

P.O. Box 443

Williams, Oregon 97544

541-821-1374

Re: Application S-88508

Dear Oregon Water Resources Department,

March 15, 2018

Rogue Advocates, a 501(c)(3) non-profit is dedicated to the sustainable use of resource zoned lands in Jackson and Josephine Counties. On behalf of our members and Board we appreciate the opportunity to submit the following comments. The expedited review requested is inappropriate for this water use application due to the complexity of the interface between the mine use and surface/groundwater resources. If the mine use of water is allowed the overall mining development will appropriate water that is fully allocated, injuring senior water rights in conflict with rules of the Water Resources Commission. We request the WRD standard review be applied to this application.

The water use requested will be drawn from storage reservoirs that are still pending reconsideration by WRD with no new final order. While storage reservoir applications R-87930 and R-87932 are under reconsideration it would be premature and inappropriate to issue water use permits from these same reservoirs that have no valid final approval per OAR 137-004-0080(8).

Rogue Advocates has participated in multiple local land use hearings for this mine proposal and is a party in the ongoing appeal at LUBA (LUBA 2016-127) of Josephine County's preliminary land use approval to authorize the mining development by Sunny Valley Sand and Gravel (SVSG). This proposed mining development and associated water diversion, water appropriation, water storage and water use has been the subject of multiple applications reviewed by WRD. The proposed use of water by the mining development would impair and detrimentally affect multiple specific public interests under ORS 537.170(8) as detailed below. During the land use hearings County Commissioners consistently deferred detailed review of water resources to the review process established by WRD that is tasked to prevent detrimental impacts to the public interest.

Each of these WRD applications for the mine use proposed have thus far been shown to be fundamentally flawed and pose significant detrimental impacts to groundwater, surface water and fisheries resources, in violation of the applicable fisheries and public interest standards found in ORS 537.409. This application requests the use of stored water for the mining development use, but the applicant has failed to demonstrate

Jimmy Macleod Steve Rouse Maud Powell **BOARD & STAFF** Melissa Matthewson Mike Walker Warren Troy



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that the storage reservoirs or much larger deep mine pits will not appropriate groundwater year round. WRD has determined in reviewing previous applications for this site that the groundwater is hydraulically connected to Grave and Shanks creek. These creek surface waters are over appropriated and not available for additional use year round.

This review of the use of water for mining must consider the overall detrimental effect on the interconnected surface and groundwater resource in this reach of Grave and Shank creeks per ORS 537.170(8)(d). This proposed expansive mine development along a mile of the floodplain boundary with Grave and Shank creek will alter the flow of groundwater, appropriate groundwater, likely dewater surface flows during summer and fall, and adversely impact the recharge of the groundwater resource limiting currently available groundwater for existing wells and springs. The proposed use is contrary to the public interest in ORS 537.170(8)(a) to conserve the highest use of water for all purposes.

In previous applications LL-1434 and G-17580 WRD has denied the requested use due to the close proximity of excavations to Grave and Shanks Creek. WRD found the storage reservoirs and deep pits are hydraulically connected to and have the Potential for Substantial Interference with Grave and Shanks creeks surface waters. The proposed mining development's inevitable year round appropriation of groundwater from a fully allocated resource, if permitted by WRD, will injure senior instream water rights, the downstream State Scenic Waterway (Rogue River), domestic wells, and is detrimental to the public interest to protect these resources contrary to ORS 537.153(2).

## Specific Grounds for Denial of Water for Mine Use

### 1) Land Use Approval Not Final

Rogue Advocates is actively participating in the LUBA appeal of Josephine County's preliminary land use approval of the SVSG mine development application. We are currently entering the initial briefing phase for LUBA #2016-127, prior to oral arguments, review and Decision. (See Addendum LUBA Order) The ongoing LUBA appeal is based on the County's decision and findings at the remand hearing; this was the second hearing by the County Commissioners necessitated by Rogue Advocates successful LUBA appeal #2014-095/096 of the initial County hearing.

During these local hearings two WRD employees attended but the Commissioners did not provide the opportunity for them to present oral testimony; Kathy Smith, Josephine County Watermaster (retired) and Ivan Gall, Field Services Administrator. The Commissioners deferred detailed review of water resource issues to the expertise of WRD through this permitting and review process.



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Within this current WRD application we find the Land Use Information Form apparently received from Josephine County dated 1/24/18 has misrepresented the land use status. On that form the box "land-use approval obtained" was checked instead of the accurate "land-use approval being pursued" box.

The instructions in bold on that form clearly state, **"If approvals have been obtained but all appeal periods have not ended, check "Being Pursued"**. The applicant has not demonstrated that the land use associated with this water use is in compliance with statewide land use goals and and the acknowledged land use plan. There is no final land use approval pending the LUBA appeal process that is ongoing.

OAR 690-005-025(1) (making OWRD's Division 5 Rule "Compliance With Statewide Planning Goals, Compatibility With Comprehensive Plans, and Coordination On Land Use Matters" applicable to alternate reservoirs and the use of those waters, which are issued under OAR 690-340); OAR 690-0030-0035.

The issuance of the requested water use permit would also be in violation of OAR 690-005-0035(4)(c) that requires local land use approvals. It would also seem to be a violation of this statute for WRD to continue to allow the ongoing construction of the storage reservoirs without final land use approvals. At a minimum WRD should condition any permit to "preclude use of water and any associated construction until the applicant obtains all required local land use approvals" OAR 690-005-0035(4)(c).

## **2) The mine development will appropriate groundwater which WRD has found has the Potential for Substantial Interference with surface water at times when that surface water is unavailable, violating ORS 537.170(8)(d)**

The proposed mine development reservoirs and multiple deep mined pits would appropriate the same groundwater as the excavation pits proposed in applications G-17580 and LL-1434—both of which were denied by WRD due to findings of Potential for Substantial Interference (PSI) between the groundwater and surface waters where surface water is fully allocated. The current mine development and excavation pits proposed are the same excavations presented in those applications.

Both storage reservoir #2 and storage reservoir #4 are coincident with all or part of "excavation pit #2" and "excavation pit #4" as referenced in the previously denied WRD applications. WRD issued a Final Order to Deny LL-1434 upon reconsideration on January 14, 2013. WRD issued a Final Order on G-17580 stating that the application had been withdrawn on May 23, 2014. WRD found that the Potential for Substantial Interference violates OAR 690-009.



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The application materials submitted with G-17580 (and available in WRIS) claimed that the excavation work would result in groundwater recharge and that "[s]ump wells created as a result of Surface Mining activities will gather this groundwater . . .". The series of WRD applications for this mine use indicate the storage basins and deep excavated pits will not be lined, so groundwater will be drawn in. The applicant's own notes on WRD Form R associated with G-17580 states that "excavations will fill with water" from groundwater.

The WRD Watermaster for this area (District 14) wrote a letter to Josephine County Planning dated May 13, 2014 stating in part;

"If approved, these applications would interface with groundwater. Tim Wallin, Manager for OWRD Water Rights Program has stated that, " All the applications seem to suffer from the same difficulty, namely that according to their own geologist's report, the excavations will intersect GW (groundwater) that is hydraulically-connected to Grave Creek, from which water is not available. It seems unlikely that we could approve *any* water-use authorization that would involve intersection of the GW (groundwater) table."

The proximity of groundwater, that will inevitably be appropriated by the mine development reservoirs and excavation pits, to the surface waters of Grave and Shanks Creeks will create an indisputable Potential for Substantial Interference between groundwater and surface water. This PSI would allow the appropriation of surface water year round when surface waters are already over appropriated in conflict with the public interest (ORS 537.170(8)(d), limiting the amounts of water available for existing rights of appropriation for beneficial use. The resulting unlawful appropriation will deplete surface water in Grave and Shank Creeks and injure senior water rights. Due to the shallow groundwater table in this area and the proximity of excavations to surface waters, it is impractical if not impossible to prevent the accumulation of groundwater in the reservoirs and excavated mine pits.

The proposed mitigation to limit this groundwater appropriation into the excavations, discussed in item 4) below, was rejected as circular reasoning by WRD in the initial denial of application G-17580.

### **3) The Mine Use will be detrimental to the public interest due to adverse impacts on existing fishery resources (ORS 537.409)**

ODFW has determined that appropriation of surface water from Grave Creek January through March can be allowed as long as certain minimum flow levels are maintained. However, in their reviews of the storage reservoirs in applications R-87932 and R-87930, ODFW states the proposed mine use would pose significant detrimental impacts to the existing fishery resource because "any diversion or appropriation of water for storage during the period April through December poses a significant detrimental impact to existing fishery

Jimmy Macleod Steve Rouse Maud Powell **BOARD & STAFF** Melissa Matthewson Mike Walker Warren Troy



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resources." (Amendment to App. R-87932 (12/13/2013; App. R-87930 (9/12/13).

The applicant has failed to present any viable evidence or mitigating solution to prevent groundwater from infiltrating into the storage reservoirs or excavated mine pits year round. The reservoirs and excavated mine pits will appropriate groundwater that WRD has determined has the Potential for Substantial Interference with the approximate surface waters of Grave and Shank Creeks. As ODFW has stated the appropriation of water outside the Jan. 1 to March 31 period will adversely impact the fishery resource and is detrimental to the public interest per ORS 537.409.

#### **4) The Mine Use will be detrimental to the Groundwater Resource ORS 537.170(8)(a)**

The applicant has attempted to suggest mitigation for the appropriation of groundwater into the excavations and reservoirs. In application G-17580, and the more detailed land use application, the applicant proposes to install a sump well in each of 11 excavations that would pump water from the pits into infiltration trenches surrounding each pit. The stated intent is to create a positive head pressure to prevent or stabilize groundwater appropriation. WRD rejected the idea as circular reasoning; the pumping and use of appropriated groundwater to limit the same appropriation of groundwater. WRD initially denied this application and it was eventually withdrawn.

This groundwater mitigation proposal to pump groundwater from the pits into infiltration trenches, that WRD rejected as "circular reasoning", is exactly the same mitigation required by Josephine County Commissioners as Condition 23 in their Findings:

"Condition 23) Infiltration trenches shall be constructed around each mine cell. The water applied to the infiltration trench shall provide a positive hydrostatic head in the sand and gravel that reduces groundwater declines adjacent to the mine cells. Monitoring as well as observed seepage into the active site shall be utilized for development of final design and evaluation of mitigation measures as necessary. Should proactive infiltration fail or be deemed inappropriate, well improvements such as resetting pumps at deeper depths, well deepening, or changes in the mining operation shall be considered as alternative mitigation options to alleviate water quality or quantity impacts." (Sunny Valley Sand and Gravel Findings of Fact, Conclusions of Law, & Decision. LUBA 2016-127 Record Item #8, pg. 70)

"Should the proactive infiltration fail" per Condition 23 or be disallowed by WRD as "inappropriate", the applicant presents no viable alternative to prevent the appropriation of groundwater into the excavations. This Condition, written by the applicant's own attorney, implies adjacent wells will be compromised and well deepening "shall be considered" but not required. Beyond that no specific effective solutions have been offered by the applicant as required in Condition 23 "as alternative mitigation options to alleviate water quality or quantity impacts".

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Evaporative loss from the appropriated groundwater in the mine excavations is another detrimental impact to the groundwater resource. During the County land use hearing, testimony presented by Malcolm Drake and Gary Mackey addressed significant evaporative loss from the multiple excavated pits. A summary of the evaporation calculations concluded that over 1,000,000 gallons of appropriated groundwater in the exposed excavation pits would be lost to evaporation annually, continuously, forever. That volume of water exceeds the calculated total average annual use of all domestic wells by residents within 3600' of the mine site.

We understand Mr. Drake and Mr. Mackey will be submitting their own comments to WRD with further specific information. WRD likely has their own methodology to calculate evaporative loss from the proposed mine use as well. In any case, the applicant has failed to present any viable mitigation to offset this huge evaporative loss of appropriated groundwater.

We understand several adjacent landowners within the impact area will also be submitting comments to WRD establishing their sincere concerns that the proposed mine use will have detrimental impacts on groundwater and their already limited output from domestic wells. The WRD policy on groundwater management states:

"The groundwaters of the State of Oregon belong to the public. The reasonable control, protection, and use of groundwater is governed by the state on behalf of the public...Interference between groundwater uses and competing groundwater and surface water uses shall be prevented and/or controlled to protect the water resource and existing rights..."

We understand WRD is mandated to uphold this groundwater management policy to protect the public's interest and existing groundwater rights. The unlawful appropriation of groundwater into the deep excavated pits will limit the recharge of groundwater. The requested water use for mining clearly is in conflict with existing rights, the public interest and protection of the groundwater resource in conflict with the WRD public mandate.

OAR 690-410-0010(1). Issuing these permits will result in the interference of groundwater use and existing surface water (and other groundwater) use.

## **5) The Mine Use will be detrimental to Grave and Shank Creeks ORS 537.170(8)(d)**

Grave Creek provides spawning, rearing, and migration habitat for federally threatened Coho salmon, and state sensitive summer steelhead and Pacific Lamprey and also ranks as a stream in the highest need of flow restoration. Certificate 72697 is WRD's in stream water right on Grave Creek for the purpose of anadromous and resident fish rearing, in the amount of 135 cfs between December 1 through March 31. The year round capture of groundwater in the reservoirs and excavation pits will injure this instream right. The requested water use for mining must be denied.

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In recent years persistent low flows and warming of surface stream waters confirm the documented need by the Oregon Department of Environmental Quality for flow restoration of Grave Creek. If the mine use is approved the development will significantly deplete already low flows. The applicant's geologists Shannon and Wilson characterize this reach of Grave Creek at the mine site a "losing stream". The creek flows through lag deposits lacking the energy to incise a deep channel. The result is some surface waters flow beneath the surface and are "lost" to groundwater.

The huge volume of appropriated groundwater in the excavation pits and reservoirs will draw significant flows down and away from Grave Creek surface flows. The proposed average excavated pit depth of 65' is 40' below the average grade of Graves Creek adjacent to the pits. Water flows downhill, and much of the Grave Creek flow that supports fishery resources is already subterranean. If the water use for mining is approved it is likely fish passage along Grave creek will be adversely impacted most of the year.

The Potential for Substantial Interference between the surface waters of Grave and Shank Creeks and the appropriation of groundwater in the multiple excavations will have a detrimental impact on both surface and groundwater resources. Both these creeks are tributaries to the Rogue River Scenic Waterway directly downstream. The detrimental impacts to the creeks will also be detrimental to the Rogue River, both in quantity and quality of the resource.

Thank you for your careful consideration of the issues presented in our comments. When evaluating the proposed mine development use as a whole the excavations will appropriate groundwater year round. WRD has concluded while reviewing previous applications the Potential for Substantial Interference exists between groundwater and the surface waters of Grave and Shank creek. The applicant has not presented any viable mitigation to prevent the appropriation of these intertwined resources. The application is fundamentally flawed as approval of the water use will allow the unintended appropriation of surface waters during the nine months they are fully allocated as already determined by WRD. The proposed use would impair and detrimentally affect multiple public interests under ORS 537.170(8). Rogue Advocates requests this application be denied for the reasons set forth, or at a minimum be considered through the standard review process.

Steve Rouse

Rogue Advocates Board President

Jimmy Macleod Steve Rouse Maud Powell **BOARD & STAFF** Elissa Matthewson Mike Walker Warren Troy



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RogueAdvocates.org • 541.846.1083 • P.O. Box 443 Williams, OR 97544

## GREW Scott A \* WRD

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**From:** Steve Rouse <kuf99fa@icloud.com>  
**Sent:** Thursday, March 15, 2018 1:36 PM  
**To:** GREW Scott A \* WRD  
**Cc:** FRENCH Dwight W \* WRD  
**Subject:** Comments for S-88508  
**Attachments:** RA Letterhead.docx

Dear Dwight and Scott,

Please accept the attached comments for application S-88508 in the name of Andreas and Carole Blech and Sunny Valley Sand and Gravel. Thank you for your consideration,

Steve Rouse  
Rogue Advocates Board President

Debra Lawwill  
171 Edgerton Ln  
Sunny Valley, OR 97497  
(541) 671-0021

**Subject: Application(s) S-88508, T-12837**

Dear Oregon Water Resources Department:

The proposed use will impair and detrimentally affect a number of specific public interests under ORS 537.170(8). I will be specifically addressing:

"That adequate and safe supplies be preserved and protected for human consumption, while conserving maximum supplies for other beneficial uses:"

Permitting the use of Grave Creek waters for mining will open Pandora's Box. Although the aggregate supply may appear to be a valuable resource for our state, its processing will bring more woes than benefits.

The geological report from the applicant's geologist Kuper Consulting, LLC indicates that ultramafic serpentine deposits were found in both the trench and boring samples taken in the area of proposed excavation. Serpentine in this area has been tested and found to contain moderately high levels of chrysotile asbestos. (report attached). Engineering Geologist James D. Rodine, PHD submitted the following statement during the Josephine County Land Use hearings:

"The SVS&G site has exposed serpentine on the east side of the property. The serpentine slopes westward and is covered over at various depths principally by material washed down from the east, debris flow material from a large landslide located upstream, and local soil erosion. Testing of a serpentine sample adjacent and east of SVS&G's mining area show 4.5% asbestos, greatly exceeding the 1% threshold defined in Oregon OSHA 1910.1001 Asbestos, 437-002-0368 Deterioration, (2) (b).

Since the serpentine extends under, and to the west, of the surficial exposures, and is downhill, some serpentine has been transported across the site. This transport of serpentine can be located on aerial photographs, by color, where sparse vegetation is noted (serpentine is harmful to many plants). On the northern side of the site vegetation is more abundant, indicating less serpentine. LIDAR images indicates the more vegetated area is also within at least 2 flood plains. Therefore, it is likely the flood plains are the result of flooding and debris flow activity, are relatively of recent origin, and therefore should not be used nor mined."

The sediment load produced to surface water most likely will contaminate the water supply of the valley even with the installation of silt fences or sediment basins. Asbestos fibers do not dissolve, are smaller than other contaminants, and remain

suspended in water. This basin waste will need to be removed periodically and subsequently stockpiled. These now concentrated asbestos fibers will not attach or dissolve subsequently becoming the first to be eroded into ground and surface waters. The cyclic use of these reservoir waters will concentrate this contaminate exponentially. Not only are humans at risk, but wildlife and the already Federally Endangered Coho Salmon. (report attached).

Left alone and undisturbed in its natural state, serpentine deposits pose only minimal and unavoidable risk. But once disturbed, especially to this degree, the Box is opened.

For this and many other reasons brought to your attention, these applications for use of surface waters for mining, should be denied. If further input and review is required for your determination, please apply your standard review process pursuant to ORS 537.153.

Sincerely,

Debra Lawwill



**ASBESTOS TEM LABORATORIES, INC.**

**CARB Method 435  
Polarized Light Microscopy  
Analytical Report**

Laboratory Job # 96-02077

630 Bancroft Way  
Berkeley, CA 94710  
(510) 704-8930  
FAX (510) 704-8429



ASBESTOS TEM LABORATORIES, INC

CA DPH ELAP  
Lab No. 1866

NVLAP<sup>®</sup>  
NVLAP Lab Code 101891-0  
Berkeley, CA

Sep/21/2016

James Rodine  
James D. Rodine PHD  
294 Edgerton  
Wolf Creek, OR 97497

RE: LABORATORY JOB # 96-02077  
Polarized light microscopy analytical results for 1 bulk sample(s).  
Job Site:  
Job No.: East of SUS & G

Enclosed please find the bulk material analytical results for one or more samples submitted for asbestos analysis. The analyses were performed in accordance with the California Air Resources Board (ARB) Method 435 for the determination of asbestos in serpentine aggregate samples.

Prior to analysis, samples are logged-in and all data pertinent to the sample recorded. The samples are checked for damage or disruption of any chain-of-custody seals. A unique laboratory ID number is assigned to each sample. A hard copy log-in sheet containing all pertinent information concerning the sample is generated. This and all other relevant paper work are kept with the sample throughout the analytical procedures to assure proper analysis.

Sample preparation follows a standard CARB 435 prep method. The entire sample is dried at 135-150 C and then crushed to ~3/8" gravel size using a Bico Chipmunk crusher. If the submitted sample is >1 pint, the sample was split using a 1/2" riffle splitter following ASTM Method C-702-98 to obtain a 1 pint aliquot. The entire 1 pint aliquot, or entire original sample, is then pulverized in a Bico Braun disc pulverizer calibrated to produce a nominal 200 mesh final product. If necessary, additional homogenization steps are undertaken using a 3/8" riffle splitter. Small aliquots are collected from throughout the pulverized material to create three separate microscope slide mounts containing the appropriate refractive index oil. The prepared slides are placed under a polarizing light microscope where standard mineralogical techniques are used to analyze the various materials present, including asbestos. If asbestos is identified and of less than 10% concentration by visual area estimate then an additional five sample mounts are prepared. Quantification of asbestos concentration is obtained using the standard CAL ARB Method 435 point count protocol. For samples observed to contain visible asbestos of less than 10% concentration, a point counting technique is used with 50 points counted on each of eight sample mounts for a total of 400 points. The data is then compiled into standard report format and subjected to a thorough quality assurance check before the information is released to the client.

While the CARB 435 method has much to commend it, there are a number of situations where it fails to provide sufficient accuracy to make a definitive determination of the presence/absence of asbestos and/or an accurate count of the asbestos concentration present in a given sample. These problems include, but are not limited to, 1) statistical uncertainty with samples containing <1% asbestos when too few particles are counted, 2) definitive identification and discrimination between various fibrous amphibole minerals such as tremolite/actinolite/hornblende and the "Libby amphiboles" such as tremolite/winchite/richterite/arfvedsonite, and 3) small asbestiform fibers which are near or below the resolution limit of the PLM microscope such as those found in various California coast range serpentine bodies. In these cases, further analysis by transmission electron microscopy is recommended to obtain a more accurate result.

Sincerely Yours,

Lab Manager  
ASBESTOS TEM LABORATORIES, INC.

--- These results relate only to the samples tested and must not be reproduced, except in full, without the approval of the laboratory. ---

630 BANCROFT WAY • BERKELEY, CA 94710 • PH. (510) 704-8930 • FAX (510) 704-8429

With Branch Offices Located At: 1350 FREEPORT BLVD. UNIT 104, SPARKS, NV 89431



# POLARIZED LIGHT MICROSCOPY CARB 435 ANALYTICAL REPORT

Page: 1 of

Contact: James Rodine	Samples Submitted: 1	Report No. 344352
Address: James D. Rodine PHD 294 Edgerton Wolf Creek, OR 97497	Samples Analyzed: 1	Date Submitted: Sep-16-16
	Job Site / No. East of SUS & G	Date Reported: Sep-21-16

SAMPLE ID	POINTS COUNTED	ASBESTOS %	TYPE	LOCATION / DESCRIPTION
1	17	4.25%	Chrysotile	Grab Sample
Lab ID # 96-02077-001	400 - Total Points			
Lab ID #	- Total Points			
Lab ID #	- Total Points			
Lab ID #	- Total Points			
Lab ID #	- Total Points			
Lab ID #	- Total Points			
Lab ID #	- Total Points			
Lab ID #	- Total Points			
Lab ID #	- Total Points			
Lab ID #	- Total Points			
Lab ID #	- Total Points			
Lab ID #	- Total Points			

QC Reviewer *R. M. Bailey*

Analyst *Jo Ann Hester*



# Effects of chrysotile asbestos on coho salmon and green sunfish: Evidence of behavioral and pathological stress

Scott E. Belanger<sup>\*†</sup> Karl Schurr<sup>\*</sup> Delmas J. Allen<sup>‡</sup> A. F. Gohara<sup>‡</sup>

[https://doi.org/10.1016/S0013-9351\(86\)80009-3](https://doi.org/10.1016/S0013-9351(86)80009-3) Get rights and content

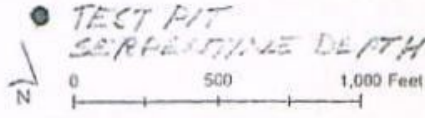
The effects of chrysotile asbestos on larval coho salmon (*Oncorhynchus kisutch*) and juvenile green sunfish (*Lepomis cyanellus*) were investigated at levels approximating those reported in the Great Lakes basin ( $10^6$  fibers/liter). Behavioral stress effects, such as loss of rheotactic position and balance, were observed in salmon exposed at  $3.0 \times 10^6$  fibers/liter and in sunfish exposed at 1.5 and  $3.0 \times 10^6$  fibers/liter. Coho larvae at  $1.5 \times 10^6$  fibers/liter were significantly more susceptible to an anesthetic stress test, becoming ataxic and losing equilibrium faster than control cohorts ( $P < 0.001$ ). Two of 106 larvae exposed at  $3.0 \times 10^6$  fibers/liter developed tumorous swellings and three additional fish developed coelomic distentions. Cytological examination of ventral epidermal tissue revealed cellular histolysis, and evidence by transmission electron microscopy confirmed the presence of asbestos in the salmon larvae. Distortion of the lateral line region in asbestos-treated coho salmon was linked to behavioral and orientational aberrations. Differential mortality was not observed between control and treated groups of either test species.



X SAMPLE LOCATION

- Stream
- Grave Creek
- ▭ Blech Property
- ▭ Corcoran Property
- 25ft Contour Interval

Data Source:  
 NAIP 2014 Oregon Imagery  
 Josephine County Online Parcels  
 (representative parcel lines,  
 parcels not surveyed)  
 Sunny Valley Existing Surface Topo.dwg  
 NHD Streams



--- FLOOD PLAIN

● TEST PIT  
 SERPENTINE DEPTH  
 HIGH PRESSURE  
 GAS LINE  
 HIGH TENSION  
 POWER LINE

..... FLOOD PLAIN BOUNDARY



BLECH027

**GREW Scott A \* WRD**

---

**From:** Steve & Debbe Lawwill <triplepeakacres@gmail.com>  
**Sent:** Thursday, March 15, 2018 1:36 PM  
**To:** GREW Scott A \* WRD  
**Subject:** PUBLIC COMMENT FOR S-88508  
**Attachments:** OWRD DLL Public comment 031518.pdf; 7. TEM Labs Asbestos Analysis 10-21-16.pdf; Serpentine in test holes Jim Rodine Geologist.pdf; Coho Salmon & Asbestos in Water.pdf

Dear  
Scott

Attached please find a Public Comment submission for S-88508.

Thank you.

Debra Lawwill

Attachments:  
Debra Lawwill Public Comment Letter  
TEM Labs Asbestos Analysis  
Serpentine in test holes J.Rodine PHD  
Coho Salmon & Asbestos in Water

WOLFGANG E.  
NEBMAIER

"Shakti Moon"  
P.O.Box 317, Wolf Creek  
Oregon 97497

RE: SVSG Applications S-88508 and T-12837

Jessica L. Joye ([jessica.l.joye@oregon.gov](mailto:jessica.l.joye@oregon.gov))  
Scott A Grew ([scott.a.grew@oregon.gov](mailto:scott.a.grew@oregon.gov))  
Dwight W French ([dwight.w.french@oregon.gov](mailto:dwight.w.french@oregon.gov))

March 14, 2018

Dear Dwight, Scott, and Ms Joye,

please allow me to comment for the record on the above applications.

***Pictures are Evidence of Pictures***

A picture of a pump is evidence of the fact that a picture of a pump was taken. It says nothing about when or where the picture was taken. And it says nothing about if the equipment was used and when and for what purpose. Tellingly, there is no evidence of the beneficial use, such as crops. There are no bags of the much-touted barley, no evidence of cattle roaming among the mining equipment. In other words, the alleged use for the past five years is nothing but well staged fiction. And you would be hard pressed to pretend you don't know.

***Omitted Change of Duration Threatens Year-Long Depletion***

In earlier evidence, Applicant states that most irrigation took place in the early spring. Not only is such an application of water unable to sustain any of the claimed crops, but it has been well established as not meeting the beneficial use requirement. ("Beneficial use includes a component of continuity of use and requires more than a token application of water". *Hale v. Hoskins*, 184 Or App 36, 42 (2002) (beneficial use includes an element of continuity of use.)

This is not the only reason Applicant's transfer application is a Trojan Horse as it seeks disproportionately more than a mere transfer, but an undue expansion of all parameters and an abuse of the priority date of the water right in question. If granted the transfer, SVS&G would ruthlessly pump the creek dry all year long and claim priority before most anyone else's needs. He has a seamless track record of utter disregard for anything and anyone but his own advantage and the cronies that promise to support him in his pursuit.

***Inherited Unmet Conditions***

The shadows of Administrative Hold and "Agency Discretion" don't "bleach" away unmet conditions. The previous pond applications had been "parked" by way of administrative hold for the express purpose of waiting for the land use

application to be approved. This has not happened. The land use is still pending a decision by the Oregon Land Use Board of Appeals. Afterwards, the application returns to Josephine County for a decision. And that decision, once more, may be subject to appeals or other legal challenges. This means that the permits granted are subject to conditions which have not been met and may never be met. Any disposition on these previous or any new reservoir applications therefore is plain and simple premature and arguably counter to established agency policy.

In fact, any action by the OWRD that allows the Applicant to commence work – which he refuses to subject to monitoring – may cause actionable irreparable harm to the people, the unique serpentine landscape, the aquifer as a whole and the downstream water users affected by that prematurely permitted action. This includes actions by the Department that will lead to predictable – but unmonitored – violations of water law. “He said he wouldn’t do that” . . . really? Consequently, the application check list is inaccurate, marking the land use form as properly supplied. As indicated above, it cannot be.

### ***Shell Game of Multiple Ponds and Multiple Sources***

No you see it – now you don’t. An additional problem lies in the proposed commingling of different water sources in a manner that does not allow for distinction. If water from Grave Creek is introduced into the proposed mining operation it will undoubtedly end up together with water from the proposed reservoirs. This will absolutely invalidate the treatment and groundwater replenishing means included as a critical ingredient in the mining proposal. In other words, Applicant proposes not only to rob Peter to pay Paul, but to rob Paul so Peter wouldn’t notice that he was being robbed because you could keep pointing at poor Paul while robbing Peter and getting away with both heists.

### ***More Omissions – in Plain Sight***

A brief investigation of a few apparently innocuous lines from the “Attachment 1” page preceding the “Evidence of Use” page reveals some significant problems of the application. Let me emphasize the critical passages:

The purpose of this proposed transfer is to **change** the point of diversion, place of use and **character of use** for Certificate 3943. The changes relate to development of a new aggregate mining operation on lands that have been irrigated under the water right.

Certificate 3943 authorizes diversion of water from Grave Creek for irrigation of 65 acres. Under the transfer application, the point of diversion, place of use and **character of use will be modified**. The applicant will divert water from Grave Creek at a new point of diversion and will use water for mining purposes (on the entire property) and for irrigation of one acre (in a new location).

What is proposed here as a benign “**character of use will be modified**” has fundamental consequences. The “modification” consists of a radical year-round depletion as compared to a seasonal use as commensurate with the alleged agricultural use – even if that never happened. As a matter of fact, such a transfer will, in effect, bypass any and all conditions placed upon any reservoir

applications. Mr. Blech can always claim the water which he wouldn't blink an eye to draw away from the aquifer supplying the rest of Sunny Valley had in reality come from his former "irrigation" right. It would become an utter impossibility to protect anyone else's water supply. Reservoirs supplied by two water sources that cannot be distinguished. Even a permit on this application will enable "the spectre of Sunny Valley" to go ahead and drain the life out from the rest of the valley. No more worrying about victims of his dust and his trucks because no one will have enough water to live there anymore. A shell game.

Moving right along to the next paragraph:

Reservoir storage will provide additional water for mining uses. **Reservoir permits were recently issued for two reservoirs** on the site, to be filled during the storage season (Application R-87930/Permit R-15228 and Application R-87932/ Permit R-15230).

This is a lie by omission. While the R-979 . . . applications were "permitted" the permits continued to be conditioned (see also administrative hold reasoning) upon the land use approval that doesn't exist. (see above) and whose attainment is not at all a sure bet. To base any further action on permits that aren't really in force since the underlying conditions aren't met is . . . the same old same old that started with Mr. Blech's predecessor and later partner, the late Jack Smith.

Do you see what I'm saying? The agency cannot claim to have any number of hands none of which know what the other hands are doing.

### ***Two Wrongs Do Not Make A Right***

Concerning the new pond application, without going into too much detail, Applicant SVS&G is continuing its traditional game of trying to sell multiple almost permits for at least two completed ones and a few blind eyes turned toward its ill fated operation. This must not succeed. Mr. Blech does not deserve a consolation prize.

And finally, ORSs and OARs and case law and politics aside, anyone who has observed recent stream flow in Grave Creek, even today, March 14/15, right after some heavy rains, knows that the reality of the ongoing water shortage cannot be . . . let me put it differently: You cannot claim making an ethical decision by pawning your responsibility off onto some other agency, for them - with insufficient staffing - to monitor or enforce the doings of the ultra-millionaire Blech. The bottom line is that this is not an issue of dotted I-s and crossed T-s but of lives.

Thank you for you open mind and heart.

Wolfgang Nebmaier  
(wolfgang@nebmaier.de)



**GREW Scott A \* WRD**

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**From:** wolfgang@nebmaier.de  
**Sent:** Thursday, March 15, 2018 2:20 PM  
**To:** JOYE Jessica L \* WRD; GREW Scott A \* WRD; FRENCH Dwight W \* WRD  
**Cc:** Lisa Brown  
**Subject:** Timely Comments RE: SVSG Applications S-88508 and T-12837  
**Attachments:** Wolfgang\_Nebmaier\_Comments\_S88508\_and\_T12837.pdf

Jessica L. Joye <[jessica.l.joye@oregon.gov](mailto:jessica.l.joye@oregon.gov)>  
Scott A Grew <[scott.a.grew@oregon.gov](mailto:scott.a.grew@oregon.gov)>  
Dwight W French <[dwight.w.french@oregon.gov](mailto:dwight.w.french@oregon.gov)>

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Dear Dwight, Scott, and Ms Joye,

attached, please find, for your attention, a searchable PDF of my comments about the above water rights applications.

Thank you very much for your attention.

Wolfgang Nebmaier

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--  
Wolfgang Nebmaier [wolfgang@shakti-moon.com](mailto:wolfgang@shakti-moon.com)



*Protecting clean water and native fish in the waters of the Rogue.*

Dwight French  
Oregon Water Resources Department  
725 Summer Street NE, Suite A  
Salem, OR 97301

March 15, 2018

**RE: Application # S-88508 Sunny Valley Sand and Gravel, Inc. for Expedited Secondary Application under HB 2178 in February 13, 2018 Public Notice of Water Use Requests**

Dear Mr. French:

Thank you for the opportunity to provide public comment on the expedited secondary application to use exclusively stored water filed under HB 2178 for Application # S-88508 Sunny Valley Sand and Gravel, Inc. Rogue Riverkeeper is a non-profit organization based in Jackson County that works to protect and restore clean water and fish in the waters of the Rogue River. On behalf of our more than 3,500 members and supporters, we urge the Oregon Water Resources Department (OWRD) to not issue a permit for the proposed use, to move the application to the standard process, and review the application pursuant to ORS 537.153 due to the ongoing review of related water permits for the associated mining development by Sunny Valley Sand and Gravel, Inc. (SVSG) along this mile of floodplain boundary with Grave Creek, the potential for the proposed activity to impair and detrimentally impact public interests, the and the lack of land use approval for the proposed use.

**OWRD should not issue the permit and should move the application to the standard process pursuant to ORS 537.153 because:**

- 1. The proposed activity is associated with ongoing efforts to permit a large-scale aggregate mining operation adjacent to Grave Creek where final orders for reconsideration have not yet been issued.**

The application proposes to use water from two reservoirs that would divert water from Grave Creek, a tributary to the Rogue River, for processing aggregate and dust control. Critically, the proposed activity is part of ongoing efforts for mining development along a mile of floodplain boundary with Grave Creek that has been the subject of multiple applications reviewed by the Oregon Water Resources Department (OWRD). The application (S-88508) proposes to use water from reservoir applications R-87930 and R-87932. Under ORS 537.409, OWRD issued final orders for these reservoirs, but then

granted reconsideration of those orders and has not yet issued new orders on reconsideration.<sup>1</sup> OWRD should not issue a surface water permit under this application to use water from reservoirs where no final orders on reconsideration have been issued, as required by rule (OAR 137-004-0080(8)).

Additionally, proposed Reservoirs #2 and #4 in the application are coincident with all or part of the well/sump/excavation pit sites proposed in applications G-17580 and LL-1434 for a large-scale mining operation on the site adjacent to Grave Creek. OWRD denied both applications G-17580 and LL-1434 due to findings of potential for substantial interference (PSI) between groundwater and surface waters where water is not available. The proposed mining development and associated water diversion, appropriation, storage, and use will alter the flow of groundwater, appropriate groundwater, potentially dewater surface flows during the summer and fall, and adversely impact groundwater recharge. OWRD should review the application (S-88508) comprehensively through the standard process under ORS 537.153 in the context of permitting this large-scale mining operation and the overall impacts on both surface and groundwater resources in this reach of Grave and Shanks Creeks.

**2. The proposed activity will likely impair and detrimentally impact public interests under ORS 537.170(8).**

We urge OWRD not to issue the surface water permit, move the application to the standard process, and to review the application pursuant to ORS 537.153 due to the potential for the proposed activity to impair and detrimentally impact multiple public interests under ORS 537.170(8). Constructing large, deep pits along the floodplain of Grave Creek will likely unlawfully capture groundwater, as documented by OWRD's finding of potential substantial interference. This will not only injure the in-stream water right for Grave Creek, but will also impair and detrimentally impact the downstream Wild and Scenic Rogue River.<sup>2</sup> The proposed activity will likely impair and detrimentally impact the following public interests under ORS 537.170(8):

- a. ***Conserving the highest use of the water:*** "Conserving the highest use of the water for all purposes, including irrigation, domestic use, municipal water supply, power development, public recreation, protection of commercial and game fishing and wildlife, fire protection, mining, industrial purposes, navigation, scenic attraction or any other beneficial use to which the water may be applied for which it may have a special value to the public." (ORS 537.170(8)(a)).

The proposed activity will likely impair and detrimentally impact public interests under ORS 537.170(8)(a) to conserve the highest use of the water for all purposes

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<sup>1</sup> In the Matter of the Petition for Reconsideration and Request for Stay of Enforcement of the Final Order on Application R-87930 and Permit R-15228, *WaterWatch of Oregon, Inc., Petitioner*, Order on Petition for Reconsideration and Request for Stay, Denying Stay and Granting Reconsideration (December 13, 2017)

<sup>2</sup> Under Certificate 72697, OWRD has an in-stream water right on Grave Creek for anadromous and resident fish rearing between December 1 and March 31 for 135 cfs.

including but not limited to protection of commercial and game fishing and wildlife, domestic use, public recreation, and scenic attraction.

Grave Creek supports spawning, rearing, and migration habitat for federally threatened Coho salmon, state sensitive summer steelhead, and Pacific lamprey. Under the 2014 Final Recovery Plan for threatened Southern Oregon/Northern California Coast Coho, NOAA Fisheries identifies Grave Creek as an area of high intrinsic potential (IP) habitat for the Middle Rogue-Applegate sub-basin.<sup>3</sup> Under Certificate 72697, OWRD has an in-stream water right on Grave Creek for anadromous and resident fish rearing between December 1 and March 31 for 135 cfs. The proposed activity is associated with the well/sump/excavation pit sites proposed in applications G-17580 and LL-1434 for a large-scale mining operation on the site adjacent to Grave Creek. In 2012, OWRD found for both applications LL-1434 and G-17580 that groundwater would be appropriated by the proposed wells/sumps/excavation pits and would have the potential for substantial interference with Grave Creek, Shanks Creek, and an unnamed tributary. In its review, ODFW found that the proposed projects would pose a significant detrimental impact to existing fisheries.

The proposed use does not conserve the water for multiple domestic uses that exist near the site, including but not limited to domestic wells.

Additionally, the proposed use would not only impact Grave Creek and Shanks Creek, but also the downstream Wild and Scenic Rogue River. Public recreation and scenic attraction are two vital public interests that would be impacted by the proposed use.

- b. *Maximum economic development of the waters*: “The maximum economic development of the waters involved.” (ORS 537.170(8)(b)).

The proposed activity would impair and detrimentally impact the highest use of the water, as discussed above, and would therefore also impact the maximum economic development of the waters. According to a 2008 economic analysis, river-based recreation on the Wild and Scenic Rogue River accounts for approximately \$30 million in total economic output for the region.<sup>4</sup> Between 2001 and 2006 in Josephine County, employment in the leisure and hospitality industry increased by 20%. In comparison, overall employment over this period increased

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<sup>3</sup> National Marine Fisheries Service. 2014. Final Recovery Plan for the Southern Oregon/Northern California Coast Evolutionarily Significant Unit of Coho Salmon (*Oncorhynchus kisutch*). National Marine Fisheries Service. Arcata, CA. P. 31-4.

<sup>4</sup> Regional Economic Impacts of Recreation on the Wild and Scenic Rogue River. EcoNorthwest. January 2009. Available online < [https://www.oregonwild.org/sites/default/files/pdf-files/Rogue\\_Economic\\_Impact\\_Report.pdf](https://www.oregonwild.org/sites/default/files/pdf-files/Rogue_Economic_Impact_Report.pdf) >.

in the county by 15%.<sup>5</sup> The proposed activity, which would likely impair Grave Creek and the downstream Wild and Scenic Rogue River, has the potential to impair the maximum economic development of the waters as well.

- c. ***Control of the waters of the state for all beneficial purposes:*** “The control of the waters of this state for all beneficial purposes, including drainage, sanitation and flood control.” (ORS 537.170(8)(c)).

The proposed activity would likely impair and detrimentally impact the control of the waters of the state for all beneficial purposes, as discussed in sub-sections (a) and (b) above.

- d. ***Waters available for appropriation for beneficial use:*** “The amount of waters available for appropriation for beneficial use.” (ORS 537.170(8)(d)).

As documented by OWRD, the proposed reservoirs (R-87930 and R-87932) would likely unlawfully appropriate groundwater when it is not available and harm other water rights. As one example, under Certificate 72697, OWRD has an in-stream water right on Grave Creek for anadromous and resident fish rearing between December 1 and March 31 for 135 cfs. Associated activity proposed under this application (S-88505), would by extension also likely result in the unlawful use of groundwater. OWRD should further assess these impacts through the standard process under ORS 537.153 rather than through the expedited secondary application process.

- e. ***Prevention of wasteful, uneconomic, impracticable, or unreasonable use:*** “The prevention of wasteful, uneconomic, impracticable or unreasonable use of the waters involved.” (ORS 537.170(8)(e)).

The proposed use is wasteful, uneconomic, and unreasonable as discussed in sub-sections (a) through (d) above. The proposed activity, particularly in the context of the larger mining development proposed along Grave Creek, would likely impair habitat for threatened fish, domestic uses of water near the site, and economic benefits from recreation and tourism. OWRD should utilize the standard process under ORS 537.153 to fully assess these impacts.

- f. ***All vested and inchoate rights to the waters of the state:*** “All vested and inchoate rights to the waters of this state or to the use of the waters of this state, and the means necessary to protect such rights.” (ORS 537.170(8)(f)).

As discussed in sub-sections (a) and (d) above, the proposed use would likely unlawfully appropriate groundwater and impair existing water rights, including an in-stream water right on Grave Creek for anadromous and resident fish rearing.

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<sup>5</sup> Regional Economic Impacts of Recreation on the Wild and Scenic Rogue River. EcoNorthwest. January 2009. Available online < [https://www.oregonwild.org/sites/default/files/pdf-files/Rogue\\_Economic\\_Impact\\_Report.pdf](https://www.oregonwild.org/sites/default/files/pdf-files/Rogue_Economic_Impact_Report.pdf) >.

- g. *State water resources policy*: “The state water resources policy formulated under ORS 536.295 to 536.350 and 537.505 to 537.534.” (ORS 537.170(8)(g)).

The proposed activity would likely impair or detrimentally impact the public interests defined under state water resources policy, including but not limited to protecting and preserving existing water rights (ORS 536.310(1)); the integration and coordination of uses of water for all beneficial purposes to be achieved for the maximum economic development for the benefit of the state (ORS 536.310(2)); the preservation and protection of adequate and safe supplies for human consumption, while conserving maximum supplies for other beneficial uses (ORS 536.310(3)); the consideration of possible harmful effects on groundwater supplies and protection of wildlife in considering benefits from drainage (ORS 536.310(6)); the maintenance of minimum perennial streamflows sufficient to support aquatic life, minimize pollution, and maintain recreation values (ORS 536.310(7)); favoring watershed development policies that preserve balanced multiple uses (ORS 536.310(8)); and preference given to human consumption purposes over all other uses and for livestock consumption when proposed uses of water are in mutually exclusive conflict (ORS 536.310(12)).

In summary, the proposed activity would likely unlawfully appropriate groundwater and impact habitat for threatened fish; impair existing water rights; harm domestic uses; and detrimentally impact recreation, tourism, and other economic benefits in conflict with existing state water resources policy. OWRD should not issue the permit and move the application into the standard process under ORS 537.153 to fully assess these impacts.

### **3. The applicant has not secured land use approval for the proposed mining.**

Currently, the applicant lacks land use approval for the land use associated with the surface water permit application (S-88508). In October 2015, the Land Use Board of Appeals (LUBA) issued a Final Opinion and Order that remanded the land use decision regarding approval of the applicant’s proposed mining land use back to the county.<sup>6</sup> Without land use approval, OWRD may issue the permit if it is conditioned to “preclude use of water and any associated construction until the applicant obtains all required local land use approvals.” OAR 690-005-0035(4)(c). Further, OWRD should not issue this surface water permit (S-88505) until it issues orders on reconsideration for the reservoir permits (R-87930 and R-87932). Under OAR 690-005-0035(4)(c), “the Department may consider withholding water use approvals upon request by a local or state agency, or the applicant, or as otherwise warranted to serve the Department’s needs[.]” OWRD should not issue this surface water permit under the expedited secondary application process and instead move the application to the standard process under ORS 537.153 pending the issue of final orders for reconsideration.

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<sup>6</sup> *Rogue Advocates et al. v. Josephine County*, LUBA Nos. 2014-095/096.

**OWRD should not issue a permit for the proposed use and should move the application to the standard process to review under ORS 537.153.**

In conclusion, the proposed activity will likely impair and detrimentally impact public interests under ORS 537.170(8) including, but not limited to conserving the highest use of the water for all purposes, existing water rights, preventing wasteful and unreasonable use of water, economic development of waters, and alignment with state water resources policy. OWRD should not issue a permit for the proposed use and should instead move the application to the standard process to review the application pursuant to ORS 537.153 due to the ongoing review of related water permits for the associated mining development by Sunny Valley Sand and Gravel, Inc. (SVSG) along this mile of floodplain boundary with Grave Creek, the potential for the proposed activity to impair and detrimentally impact public interests, the and the lack of land use approval for the proposed use.

Thank you for your consideration of these comments.

Sincerely,

Stacey Detwiler  
Conservation Director  
Rogue Riverkeeper

## GREW Scott A \* WRD

---

**From:** Stacey Detwiler <stacey@rogueriverkeeper.org>  
**Sent:** Wednesday, March 14, 2018 4:22 PM  
**To:** FRENCH Dwight W \* WRD; GREW Scott A \* WRD  
**Subject:** Rogue Riverkeeper Comments on S-88508 Sunny Valley Sand and Gravel, Inc.  
**Attachments:** Rogue Riverkeeper Comments Sunny Valley Mining S 88505 3.14.18.pdf

Hi Scott and Dwight,

Please see the attached public comments from Rogue Riverkeeper on S-88508 Sunny Valley Sand and Gravel, Inc. for Expedited Secondary Application under HB 2178 in February 13, 2018 Public Notice of Water Use Requests.

Thanks,

Stacey

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Stacey Detwiler  
Conservation Director  
Rogue Riverkeeper  
stacey@rogueriverkeeper.org | (541) 488-9831  
<http://rogueriverkeeper.org>







Lisa Brown  
WaterWatch of Oregon  
213 SW Ash St., STE 208  
Portland, OR 97204

March 14, 2018

Dwight French  
Oregon Water Resources Department  
725 Summer St. NE, STE A  
Salem, OR 97301

**RE: Sunny Valley Sand and Gravel, Inc. application S-88508 (expedited secondary)  
Sent Via: WRIS public comment submittal;<sup>1</sup> email ([dwight.w.french@oregon.gov](mailto:dwight.w.french@oregon.gov));  
and US Postal Mail**

Thank you for the opportunity to comment on application S-88508 in the name of Andreas and Carole Blech and Sunny Valley Sand and Gravel, Inc. for mining use adjacent to Grave Creek, a tributary to the Rogue River. Because the application raises a number of significant public interest issues, and because there are other problems with the application, it should be reviewed using the standard process pursuant to ORS 537.153 and the Oregon Water Resources Department (OWRD) should ultimately issue a Proposed Final Order for the application.

WaterWatch of Oregon (WaterWatch) submits the following specific comments:

1. The application proposes to use water from reservoir applications R-87930 and R-87932. OWRD issued final orders under ORS 537.409 for these reservoirs, but granted reconsideration of those orders and has yet to issue new orders on reconsideration. (In the Matter of the Petition for Reconsideration and Request for Stay of Enforcement of the Final Order on Application R-87930 and Permit R-15228, *WaterWatch of Oregon, Inc., Petitioner*, Order on Petition for Reconsideration and Request for Stay, Denying Stay and Granting Reconsideration (December 13, 2017)); (In the Matter of the Petition for Reconsideration and Request for Stay of Enforcement of the Final Order on Application R-87932 and Permit R-15230, *WaterWatch of Oregon, Inc., Petitioner*, Order on Petition for Reconsideration and Request for Stay, Denying Stay and Granting Reconsideration (December 13, 2017)).

OWRD should not issue a surface water permit to use water from reservoirs for which OWRD has yet to issue final orders on reconsideration, as required by rule. OAR 137-004-

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<sup>1</sup> The WRIS comment submittal system appears to have a word limit, in addition to formatting problems, and thus this comment letter is also being emailed.

0080(8) ("Following reconsideration, the agency shall enter a new order \* \* \*"). OWRD should return the application unless and until OWRD issues the required final orders for the reservoirs. Further, the fact that reconsideration was granted highlights that this application for water use is not appropriate for an expedited review process but need to be processed under the standard review process.

2. OWRD may not grant a permit for the proposed use because the applicant has not secured land use approval for the proposed mining. The land use decision approving applicant's mining was challenged at the Land Use Board of Appeals (LUBA). On October 15, 2015, LUBA issued a Final Opinion and Order remanding the land use decision to the county. *Rogue Advocates et al. v. Josephine County*, LUBA Nos. 2014-095/096. WaterWatch's understanding is that the remand process is ongoing. Therefore, applicant lacks land use approval for the land use associated with the surface water permit application S-88508 (mining).

Where land use approvals are pending but not obtained, OWRD may "place conditions on a permit or other approval to preclude use of water and any associated construction until the applicant obtains all required local land use approvals; or, withhold issuance of the water use permit or approval until the applicant obtains all required local land use approvals." OAR 690-005-0035(4)(c). However, that "approval is allowed only if the use meets requirements in paragraph (4)(b)(A) of this rule," (*id.*) which states that "[a]ll requirements of statutes and rules governing Commission and Department actions are met." (*Id.*). Here, those requirements of statutes and rules are not being met, including because OWRD is allowing Sunny Valley Sand and Gravel, Inc. to construct the source reservoirs of the proposed surface water permit prior to obtaining land use approvals. Other problems with meeting the statutory and rule requirements are described below and are detailed in WaterWatch of Oregon's Petition for Reconsideration and Request for Stay of Enforcement of the Final Order on Application R-87930 and Permit R-15228, and WaterWatch of Oregon's Petition for Reconsideration and Request for Stay of Enforcement of the Final Order on Application R-87932 and Permit R-15230, which are incorporated as if set forth fully herein.

Even if there were not problems with rule and statutory requirements, because land use approvals have not been obtained, even if OWRD chose to issue the permit it must be conditioned to "preclude use of water and any associated construction until the applicant obtains all required local land use approvals." OAR 690-005-0035(4)(c).

Finally, "the Department may consider withholding water use approvals upon request by a local or state agency, or the applicant, or as otherwise warranted to serve the Department's needs[.]" OAR 690-005-0035(4)(c). OWRD should withhold issuing this surface water permit until it issues orders on reconsideration for the reservoir permits and allows for resolution of any subsequent challenges to those orders. Issuing the surface water permit, which will likely entail investments by the applicant, prior to resolving issues pertaining to the reservoir permits will create unnecessary problems.

3. The proposed use would impair and detrimentally affect multiple specific public interests under ORS 537.170(8), as detailed below. In addition to the discussion below, WaterWatch incorporates its Petition for Reconsideration and Request for Stay of Enforcement of the Final

Order on Application R-87930 and Permit R-15228, and WaterWatch of Oregon's Petition for Reconsideration and Request for Stay of Enforcement of the Final Order on Application R-87932 and Permit R-15230 as if set forth fully herein.

- (a) Conserving the highest use of the water for all purposes, including irrigation, domestic use, municipal water supply, power development, public recreation, protection of commercial and game fishing and wildlife, fire protection, mining, industrial purposes, navigation, scenic attraction or any other beneficial use to which the water may be applied for which it may have a special value to the public.

Using water from Grave Creek, and likely also unlawfully captured groundwater (as documented by OWRD itself on the multiple attempts of Sunny Valley to secure reservoir permits at this location), to promote a major mining project adjacent to Grave Creek would certainly detrimentally affect and impair the highest uses of the waters involved. The proposed water use will result in major, deep pits being constructed along Grave Creek (see Attachment 1) which will capture groundwater that is unpermitted and would cause significant adverse impacts to Grave Creek (including injuring the instream water right) and to the downstream Wild and Scenic Rogue River. Both Grave Creek and the Rogue River are recognized gems in Oregon's river system that are known world-wide for their scenic attraction, outstanding recreational values and unparalleled fish and wildlife.<sup>2</sup> The proposed use fails to conserve the values of the waters involved in supporting these beneficial uses.

Additionally, the proposed use also does not conserve the waters for the numerous domestic uses that already exist nearby.

The application needs to go through the standard process to ensure that OWRD, other agencies, and the public—including affected domestic well owners, fishermen, and recreationists—can fully evaluate the proposed use in accordance with the standards set forth in the water code.

- (b) The maximum economic development of the waters involved.

Because the proposed use does not conserve the highest uses of the waters described in (a) above, the proposed use would also detrimentally affect and impair the maximum economic development of the waters involved. In the year 2018, it makes zero economic sense to permit use of water for aggregate mining along the banks of Grave Creek, tributary to the Wild and Scenic and internationally renowned Rogue River.

- (c) The control of the waters of this state for all beneficial purposes, including drainage, sanitation and flood control.

See comments in (a) and (b) above, which are incorporated as if set forth fully in this section.

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<sup>2</sup> While the Rogue River is obviously known and treasured world-wide, Grave Creek is also well-known and treasured and is used as scenic entry to the Rogue River, as a Google search for it will demonstrate (it even has its own Wikipedia entry).

- (d) The amount of waters available for appropriation for beneficial use.

As detailed in WaterWatch's Petitions for Reconsideration and Request for Stay of Enforcement, and the OWRD analysis that is cited and incorporated by reference into those petitions, there is a high likelihood that the reservoirs will unlawfully capture groundwater at times when water is not available and would injure other water rights including the instream water right. By extension, the proposed surface use of the reservoir water will also unlawfully use groundwater.

- (e) The prevention of wasteful, uneconomic, impracticable or unreasonable use of the waters involved.

Use of this water for aggregate mining is wasteful, uneconomic and unreasonable for the reasons stated above and in WaterWatch's Petitions for Reconsideration and Request for Stay of Enforcement.

- (f) All vested and inchoate rights to the waters of this state or to the use of the waters of this state, and the means necessary to protect such rights.

Because the proposed use will likely injure instream water rights, the Wild and Scenic Rogue River and nearby domestic wells, this public interest factor will be impaired and detrimentally affected by the proposed use.

- (g) The state water resources policy formulated under ORS 536.295 to 536.350 and 537.505 to 537.534.

- i. The proposed use would impair and detrimentally affect the following purposes and policies specified in ORS 536.310:

- (1) Existing rights, established duties of water, and relative priorities concerning the use of the waters of this state and the laws governing the same are to be protected and preserved subject to the principle that all of the waters within this state belong to the public for use by the people for beneficial purposes without waste;

As explained above in Section 3, the proposed use will impair and detrimentally affect existing rights.

- (2) It is in the public interest that integration and coordination of uses of water and augmentation of existing supplies for all beneficial purposes be achieved for the maximum economic development thereof for the benefit of the state as a whole;

As explained above in Section 3, the proposed use of mining next to Grave Creek, tributary to the Rogue River, will not achieve maximum economic development of the water for the benefit of the state as a whole. To the contrary, the proposed use will have detrimentally economic effects.

- (3) That adequate and safe supplies be preserved and protected for human consumption, while conserving maximum supplies for other beneficial uses;

The proposed use of water to facilitate large, deep mining pits adjacent to Grave Creek, in an area with numerous domestic wells, will not protect adequate and safe supplies for human consumption.

- (6) In considering the benefits to be derived from drainage, consideration shall also be given to possible harmful effects upon ground water supplies and protection of wildlife;

The proposed use will have harmful effects upon groundwater supplies and on wildlife. The application should go through the standard review process to ensure that these effects are adequately considered.

- (7) The maintenance of minimum perennial streamflows sufficient to support aquatic life, to minimize pollution and to maintain recreation values shall be fostered and encouraged if existing rights and priorities under existing laws will permit;

Because of the groundwater capture issues associated with the reservoirs and the mining pits, the instream flows sufficient to support aquatic life, minimize pollution and maintain recreation will be detrimentally affected and impaired.

- (8) Watershed development policies shall be favored, whenever possible, for the preservation of balanced multiple uses, and project construction and planning with those ends in view shall be encouraged;

The proposed use of water for mining along Grave Creek does not preserve multiple uses of the area and its waters.

- (12) When proposed uses of water are in mutually exclusive conflict or when available supplies of water are insufficient for all who desire to use them, preference shall be given to human consumption purposes over all other uses and for livestock consumption, over any other use, and thereafter other beneficial purposes in such order as may be in the public interest consistent with the principles of chapter 707, Oregon Laws 1955, under the existing circumstances;

The application should go through the standard review process to ensure that this factor is met and that the existing human consumption uses are protected.

- ii. The proposed use runs afoul of ORS 537.515 and ORS 537.525.

The proposed use of water for aggregate mining in pits along Grave Creek will result in excavation of unpermitted groundwater wells and groundwater reservoirs. ORS 537.515 contains the following relevant definitions:

(1) "Altering" a well means the deepening, recasing, perforating, reperforating, the installation of packers or seals and other material changes in the design of the well.

(2) "Constructing" a well includes boring, digging, drilling or excavating and installing casing or well screens.

(5) "Ground water" means any water, except capillary moisture, beneath the land surface or beneath the bed of any stream, lake, reservoir or other body of surface water within the boundaries of this state, whatever may be the geological formation or structure in which such water stands, flows, percolates or otherwise moves.

(6) "Ground water reservoir" means a designated body of standing or moving ground water having exterior boundaries which may be ascertained or reasonably inferred.

(7) "Pollution" of ground water means any impairment of the natural quality of such ground water, however caused, including impairment by salines, minerals, industrial wastes, domestic wastes or sewage, whether indrafted directly or through infiltration into the ground water supply.

(9) "Well" means any artificial opening or artificially altered natural opening, however made, by which ground water is sought or through which ground water flows under natural pressure or is artificially withdrawn. "Well" does not include a temporary hole drilled for the purpose of gathering geotechnical ground water quality or ground water level information, a natural spring or a hole drilled for the purpose of:

- (a) Prospecting, exploration or production of oil or gas;
- (b) Prospecting or exploration for geothermal resources, as defined in ORS 522.005;
- (c) Production of geothermal resources, as defined in ORS 522.005, derived from a depth of greater than 2,000 feet; or
- (d) Exploration for minerals as defined in ORS 517.750 and 517.910.

The proposed use of water for mining will facilitate and be directly entangled with excavation of several unpermitted wells and groundwater reservoirs, as those terms are defined in ORS 537.515. Therefore, the water use proposed under application S-88508 would violate ORS 537.535(1): "[n]o person or public agency shall use or attempt to use any ground water, construct or attempt to construct any well or other means of developing and securing ground water or operate or permit the operation of any well owned or controlled by such person or public agency except upon compliance with ORS 537.505 to 537.795 and 537.992 and any applicable order or rule adopted by the Water Resources Commission under ORS 537.505 to 537.795 and 537.992." The proposed use would also violate ORS 537.535(2), which specifies that "[e]xcept for those uses exempted under ORS 537.545, the use of ground water for any purpose, without a permit issued under ORS 537.625 or registration under ORS 537.605, is an unlawful appropriation of ground water."

Further, because of the groundwater capture associated with the proposed water use, OWRD must fully consider the requirements of ORS 537.525 to ensure the preservation of the public welfare, safety and health.

4. If a surface water permit is ultimately issued, it must be strictly conditioned to only allow water that is lawfully stored to be used. Because of the high likelihood (approaching certainty) that the reservoirs will ultimately unlawfully capture and store groundwater, any secondary surface water permit must be strictly conditioned to *only* allow use of surface water that is lawfully diverted from Grave Creek (only at times when water is available) and not any groundwater that is unlawfully captured.

Such a limit should specify the lawful source of water to be used and include a strict limit to surface water use in accordance with the lawful storage amounts. It should further require strict measurement and reporting conditions to ensure that the condition is met at all times.

Further if a surface water permit is issued, it should be conditioned to immediately prohibit any surface water use from the reservoirs and to be cancelled if any of the following occurs:

- a) The reservoirs capture any groundwater;
- b) The reservoirs (which WaterWatch understands are ultimately to be excavated below the groundwater table and used as mining pits) are excavated below the highest level at which groundwater is ever encountered.
- c) The applicant diverts water from the reservoirs that has been illegally stored;
- d) The applicant uses surface water exceeding the amount allowed to be lawfully stored.
- e) Other permit compliance problems occur regarding the reservoir permits.

Thank you for considering these comments. There are undoubtedly significant public interest issues, and other problems, raised by this application and thus it is not appropriate for review under the expedited process and needs to be moved to the standard review process. We look forward to fully engaging on the review of this application and on any order that is issued.

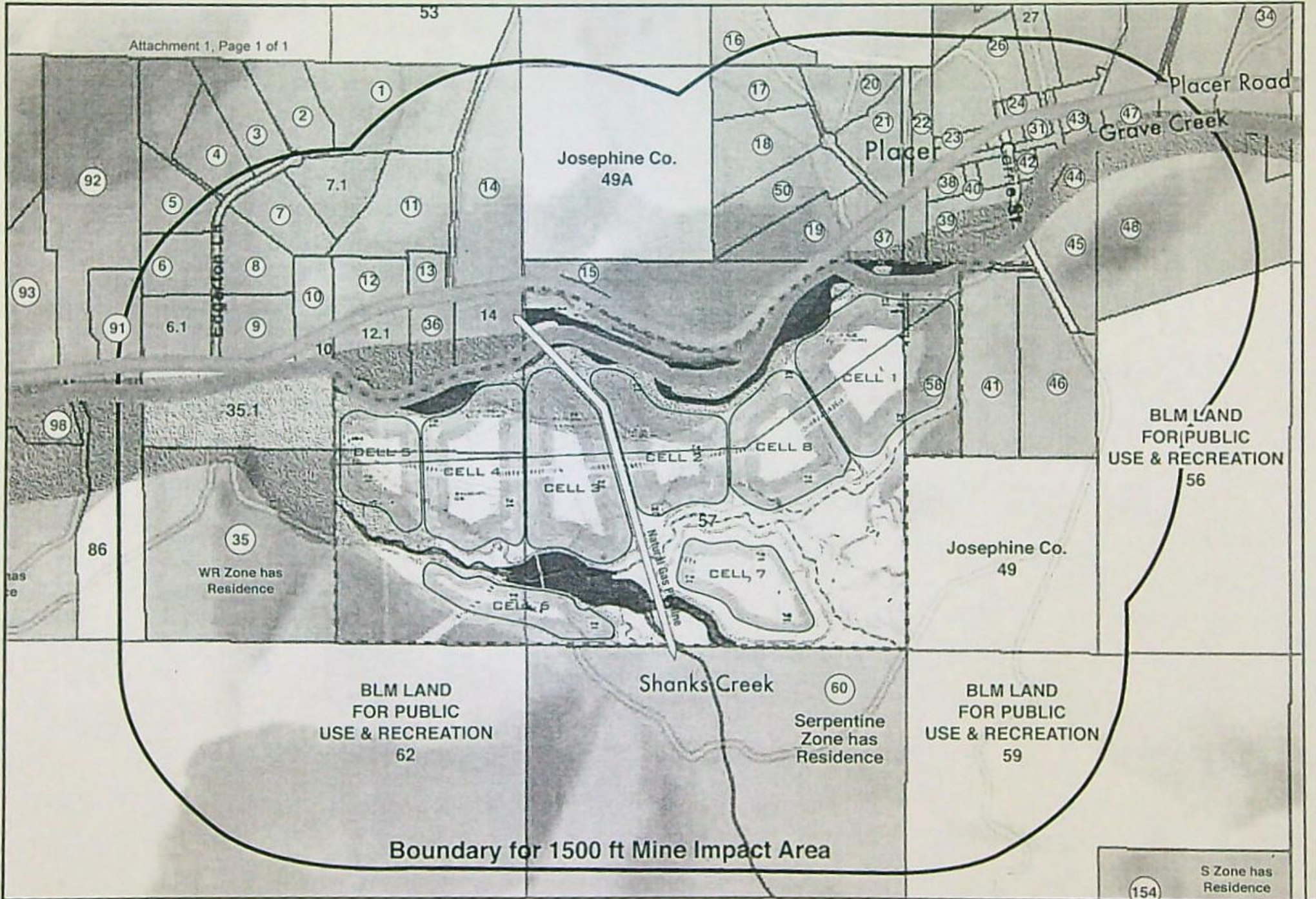
Sincerely,

/s/ Lisa A. Brown

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Lisa A. Brown  
Staff Attorney  
O: 503.295.4039 x4  
[lisa@waterwatch.org](mailto:lisa@waterwatch.org)

cc: Scott Grew (by email only to [scott.a.grew@oregon.gov](mailto:scott.a.grew@oregon.gov))





Dear OPWR,

I live on Grove Creek, right across from Mr Blech's proposed mining operation. We depend on Grove Creek to supply our hand dug well and to irrigate our landscaping. The past several years the creek flow has been so low that our well has been on the verge of failure and we run out of water for irrigation. Any use of the creek water will cause our well to fail and our landscaping to die. This summer will be even worse due to the drought.

There are also salmon + steelhead that spawn in the creek. Any more water usage will cause the eggs and smolts to die. There has been work on the riparian area at this creek to try to protect the creek and cool the water. Mr Blech has cut down bushes and trees in the riparian area. This will jeopardize the fish habitat. I'm sure he doesn't have permission to do this.

The washing of rock in their mining operation will pollute our water table and the creek. I don't feel that Mr Blech has the

right to put his interests  
over the rest of the community and  
the wildlife. He already has a  
large pipe in the creek. If  
he turns it on he will cause  
severe damage to the creek  
flow & water quality. The community  
needs this water source for  
our wells and irrigation.  
There just isn't enough water  
available for a mining operation!

Sincerely  
David Miller  
125 Carrie st  
Sunny Valley, OR  
97497  
541 761-5029

3-9-18

To whom it may concern,

We purchased thirty six acres in  
Sonny Valley fourteen years ago.  
we built our home and we are  
senior citizens. Never in a million  
years would we think that one  
man could ruin our homes and  
property value by putting in a  
gravel pit and gold mining.

If this permits are given we  
will loose our water!! we had  
one well go dry due to this man  
blasting rocks that changed our  
fishers.

I'm very concerned for the fate  
of Graves Creek. For the last few  
years the creek has almost gone dry  
and yes, salmon are in the creek as  
well.

We love our place and quiet. I  
can't understand for the life of me  
how one person can change our  
whole valley w/ noise, dust, water  
in a rural residential area.

New Reservoir water app

S- 98508

Irrigation water right-transfer app

T- 12837

Thank you in advance,

D. L. Kelapp  
158 Daisy Mine Rd  
Sonny Valley, OR 97497  
541-450-5257

3/12/2018  
Dave M. Graves II  
786 Placer Rd.  
Sunny Valley, OR 97497  
(541) 474-0297  
Email: gravesdesigns@hotmail.com  
To: OWRD

Re: New Freshwater Reservoirs application S-88508 by SVS&G

Water is our most essential life sustaining resource. Realizing this I moved my family from a drought stricken region of the southwest United States nearly sixteen years ago in a search of "greener pastures." We retired in this peaceful fertile valley far removed from the parched environment where this drought was evidenced by the dramatic reduction of volume in the nation's largest reservoirs.

Now, we are experiencing natural and man induced events that result in a similar reduction to this most valuable finite resource. Local area precipitation accumulation records obtained during the past three decades should reflect what any local resident can testify; that Grave Creek seasonal flow rates/volumes and rainfall amounts have substantially decreased. Ground water well levels, replenished by annual precipitation or past glacial melt retention, have measurably decreased due in a large part from inadequate rainfall capture in combination with the excessive burden from additional local agriculture and increased population. In addition, many residents water service originates directly from creek wells. These variables are of 'Grave' concern to this valleys inhabitant's well-being. People's lives are at risk to satisfy the profits of an apathetic corporation...

In addition to the negative influence on residents' livelihood the BLM watershed analysis reveals that Grave Creek supports anadromous fish with ground water support during non-peak flows. However, the intended capture of water into ponds only serve to overheat the water resulting in excessive bacterial/algae growth from decreased dissolved oxygen below life sustaining levels. An identical example is the 2002 Klamath River mass killing of migrating salmon. Furthermore, lower water flow increases sedimentation which decreases aquatic food sources yielding a poor environment for anadromous fisheries.

The Sunny Valley residents will realize absolutely no positives associated with the introduction of this intrusive activity. A sizable percentage of residents are senior and/or disabled who are unable to relocate to escape the inconveniences that this situation imposes. The good of the many should outweigh the interest of the few.

Respectfully,  
David Graves

STEVE KLAPP  
158 DAISY MINE RD.  
SUNNY VALLEY OR.  
97497

541-450 5258

THIS CONCERNS NEW RESERVOIR  
WATER APPLICATION S-88508 AND  
IRRIGATION WATER RIGHT TRANSFER  
APPLICATION T-12837

MY WIFE AND I BOUGHT OUR PROPERTY IN 2004. IT WAS RAWLAND AND WE HAD TO DRILL A WELL. THE FIRST TRY CAME UP DRY. THE SECOND TRY GAVE US ONE GALLON A MINUTE. WE PUT IN A STORAGE TANK SO WE COULD BUILD A HOUSE. AT THE VERY END OF 2016 THAT WELL WENT DRY, SO I HAULED WATER MYSELF FOR MONTHS SO WE COULD SUSTAIN OUR HOUSEHOLD. WE FINALLY SAVED ENOUGH MONEY TO DRILL ANOTHER WELL. THE FIRST TRY WAS A DRY WELL. THE SECOND TRY GAVE US TWO GALLONS A MINUTE. THIS WAS VERY EXPENSIVE AND A REAL HARDSHIP.

THE REASON I AM TELLING YOU THIS IS THAT OUR PROPERTY IS ABOUT 1,000 FEET EAST OF MR. BLECH'S PROPOSED GRAVEL PIT. WE ARE ONE OF DOZENS OF HOUSEHOLDS SURROUNDING THIS PROPOSED GRAVEL PIT, SOME OF WHICH ARE JUST ON THE OTHER SIDE OF MR. BLECH'S FENCE.

WE ARE ALL VERY FEARFUL OF OUR WELLS GOING DRY IF MR BLECH STARTS TAMPERING WITH AND MANIPULATING GRAVE CREEK (SUCKING OUT WATER) AND DIGGING DOWN INTO OUR WATER TABLE AND AQUIFER,



WHAT HAS ALL OF US PUZZLED IS IF HE IS NOT SUPPOSED TO SCRAPE DOWN INTO THE EARTH FOR HIS WASH PONDS, HOW CAN IT BE ACCEPTABLE TO DIG DOWN FROM 80 TO 100 FEET IF IS GIVEN A MINING PERMIT. THIS WILL WITHOUT QUESTION AFFECT THE ENDANGERED GRAVE CREEK, THE WATER TABLE AND THE AQUIFER TO DOZENS AND DOZENS OF HOUSEHOLDS. PLEASE REMEMBER, HOUSEHOLDS NEED WATER TO SURVIVE.

ANOTHER HUGE CONCERN IS THE MIGRATION AND SPAWNING OF THE FISH IN GRAVE CREEK WHICH IS AN ENDANGERED CREEK TO BEGIN WITH. WHEN MR. BLECH'S DIRTY WAS WATER IS RELEASED, IT WILL MAKE ITS WAY BACK INTO ENDANGERED GRAVE CREEK. HIS PROPOSED DIGGING WILL ONLY BE YARDS FROM THE CREEK. THIS WILL HAVE A CATASTOPHIC AFFECT ON THE CREEK. TEMPERATURE OF THE WATER WILL RISE AND SEDIMENT WILL BLANKET THE BOTTOM OF GRAVE CREEK.

I KNOW OUR WELL IS ALREADY ON THE RAZORS EDGE AND COULD GO DRY AT ANY MOMENT IF THERE IS ANY MANIPULATION OF THE AQUIFER BY MR. BLECH.

MANY OF MY NEIGHBORS HAD WELLS DRILLED LAST YEAR AT THE SAME TIME WE DID. SOME OF THEIR ATTEMPTS CAME UP DRY TOO. THERE ARE ALSO MANY HAND DUG WELLS ALONG THE CREEK. SOME OF THESE FOLKS ARE OF LIMITED MEANS AND COULD NOT AFFORD THE GREAT EXPENSE OF DRILLING A WELL.

SINCE MR. BLECH'S PROPOSED GRAVEL PIT IS SUCH AN ALIEN PROPOSAL TO OUR SMALL VALLEY, THERE WERE COUNTY COMMISSIONER MEETINGS. EVERY TIME THE CONCERNED CITIZENS OF SUNNY VALLEY BROUGHT UP THE ISSUE OF WELLS GOING DRY, WHICH WOULD MAKE ALL OF OUR PROPERTIES WORTHLESS, THE COMMISSIONERS IGNORED OUR CONCERNS AND WOULD MOVE ON TO THE NEXT ITEM.

CURRENTLY MR. BLECH IS CONSTRUCTING HIS HOLDING PONDS THAT HE WILL USE TO WASH DIRT TO GET HIS GRAVEL. HE TOLD THE JACO WATER MASTER THAT HE ONLY SCRAPED A FEW FEET DOWN SO AS NOT TO AFFECT THE WATER TABLE.

THE WHOLE IDEA OF PUTTING THIS PROPOSED GRAVEL PIT SMACK IN THE MIDDLE OF DOZENS AND DOZENS OF HOUSEHOLDS IS CRAZY TO BEGIN WITH.

MY WIFE AND I ARE ASKING YOU TO PLEASE CONSIDER ALL THE RAMIFICATIONS THAT THIS WILL HAVE ON DOZENS OF HOUSEHOLDS THAT ARE SURROUNDING MR. BLECH'S PROPERTY. WE WILL ALL BE NEGATIVELY AFFECTED IF HE STARTS MANIPULATING GRAVE CREEK, THE WATER TABLE AND THE AQUIFER.

THANK YOU —

STEVE AND DEBBIE KLAPP  
158 DAISY MINE RD.  
SUNNY VALLEY, OR.

**GREW Scott A \* WRD**

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**From:** Friends of Country Living <friendsofcountryliving@gmail.com>  
**Sent:** Wednesday, March 14, 2018 3:08 PM  
**To:** GREW Scott A \* WRD  
**Subject:** Public Comment Letters for S-88508  
**Attachments:** Steve Klapp.pdf; Debbie Klapp.pdf; David Miller.pdf; David Graves.pdf

Dear Mr. Grew:

Attached please find Public Comment letters from residents who do not have access to email or fax machines. They were unable to personally mail their comments via USPS due to time constraints.

Thank you for accepting these comments,

Friends of Country Living

Friends of Country Living  
P. O. Box 1483  
Grants Pass, OR 97528

March 14, 2018

Friends of Country Living  
P. O. Box 1483  
Grants Pass, OR 97528

March 13, 2018

Friends of Country Living, a 501(c)(3) non-profit public charity group, is dedicated to the improvement, protection, and support of all aspects of rural country living along with the preservation of the unique characteristics of these communities. For the reasons brought forth, we are requesting that the standard review process ORS 537.153 be applied to application #S88508 and #T12837.

In commenting on this issue, Friends of Country Living is representing the general public to address reasons why the proposed use will impair or be detrimental to the public interest. Thank you for this opportunity.

The Josephine County Commissioners were very concerned about the threat to domestic wells that this project would impose. They were assured by staff testimony that they need not be concerned as ODWR would be responsible for protecting residential domestic water wells. Attached you will find a map detailing the numerous domestic wells in the vicinity of the proposed aggregate mine. Several of these wells along Grave Creek are hand dug shallow unregistered wells (dug by settlers), that were not taken into consideration by applicant's hydrologists. We urge you to carefully consider this responsibility.

**ORS 537.170(8c)**

**The prevention of wasteful, uneconomic, impracticable or unreasonable use of the water involved.**

Having enough domestic and agricultural water from natural aquifers or over allocated Grave Creek water rights is a constant concern to many of the residents in Sunny Valley. Many live on very low producing wells (one gpm or less), and others possess senior irrigation rights that are frequently restricted. Neighbors in this valley share their water when wells run dry, rely on heavy compost to raise crops, haul buckets of water to save riparian vegetation when creek flows are insufficient for pumping, rescue protected salmon fry trapped in pools formed by low creek water conditions, and most are respectful of the limited amount of water available for other uses.

This application and transfer application permitting a mining company to store and use over 215 acre feet (S88508 150 ac/ft, and T-12837 65 ac/ft) of surface water is wasteful (excessive evaporation), uneconomic (removing high percentages of clay & asbestos dust mitigation), impracticable (feasibility of effective reservoir linings) and unreasonable (diminishes senior

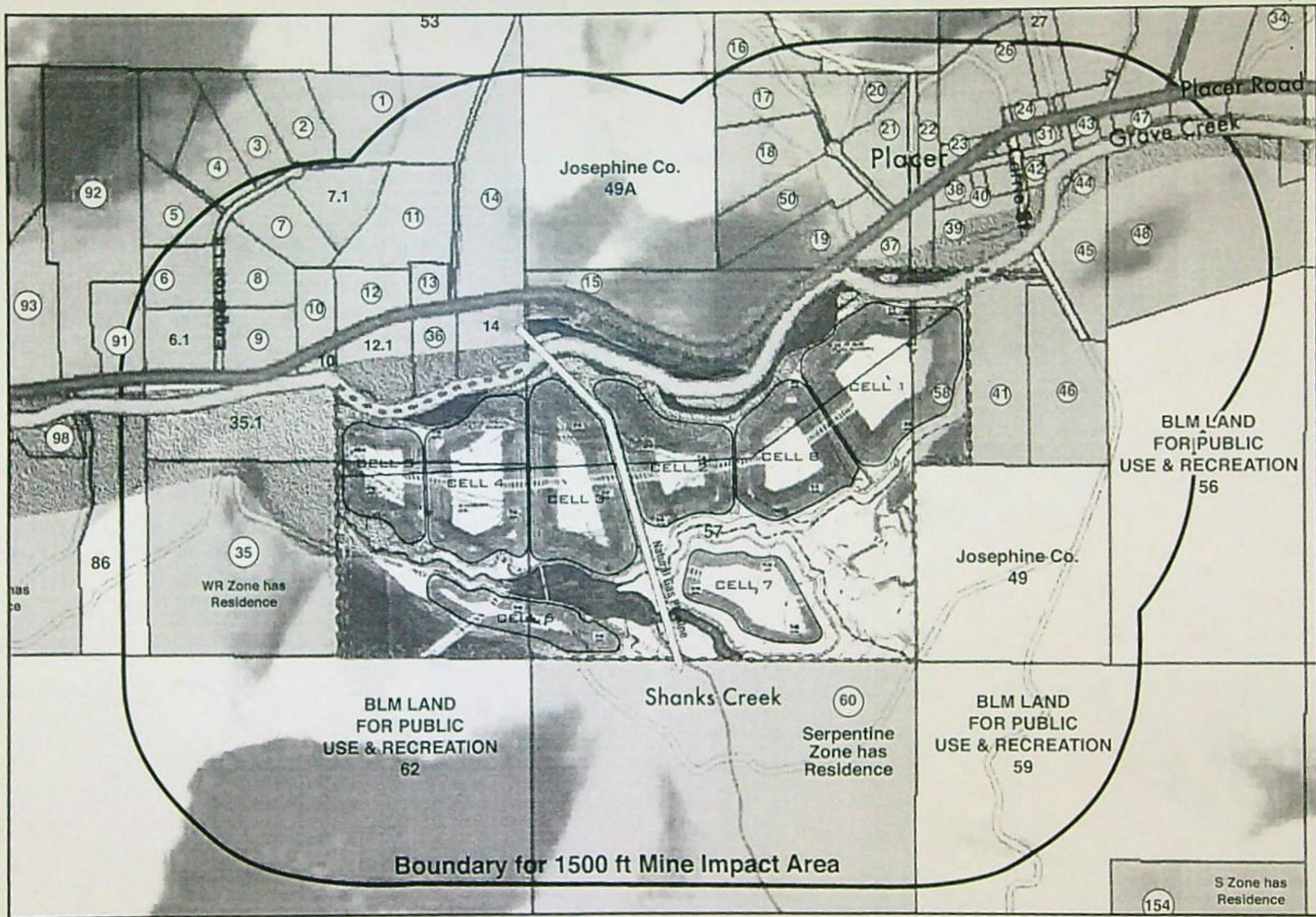
agricultural rights and threatens domestic wells).

What is the significance of OWRD's prevention of capturing groundwater in shallow reservoirs (permitted under R15228 & S15230 and currently under reconsideration), but approving mining use leading to or empowering the applicant with a means to dig 80 feet deep into creek side groundwater?

For these reasons you must deny these applications. In addition, we respectfully request you require a Standard Review ORS 537.153 to consider additional testimony.

Sincerely,

Board of Directors  
Friends of Country Living  
(541) 671-0021  
[www.friendsofcountryliving.com](http://www.friendsofcountryliving.com)



**GREW Scott A \* WRD**

---

**From:** Friends of Country Living <friendsofcountryliving@gmail.com>  
**Sent:** Wednesday, March 14, 2018 9:32 AM  
**To:** GREW Scott A \* WRD  
**Subject:** S-88508 Public Comment  
**Attachments:** FCL letter to ODWRD concerning surface water use app S88508.rtf; SVSG Pits LR.pdf

Dear Mr. Grew:

Please include the attached documents in the Public Comment file for S-88508

Thank you,

Debra Lawwill, Director/Secretary  
Friends of Country Living  
541 671-0021



3/12/2018

Dave M. Graves II  
786 Placer Rd.  
Sunny Valley, OR 97497  
(541) 474-0297  
Email: gravesdesigns@hotmail.com

To: OWRD

Re: New Freshwater Reservoirs application S-88508 by SVS&G

Water is our most essential life sustaining resource. Realizing this I moved my family from a drought stricken region of the southwest United States nearly sixteen years ago in a search of "greener pastures." We retired in this peaceful fertile valley far removed from the parched environment where this drought was evidenced by the dramatic reduction of volume in the nation's largest reservoirs.

Now, we are experiencing natural and man induced events that result in a similar reduction to this most valuable finite resource. Local area precipitation accumulation records obtained during the past three decades should reflect what any local resident can testify; that Grave Creek seasonal flow rates/volumes and rainfall amounts have substantially decreased. Ground water well levels, replenished by annual precipitation or past glacial melt retention, have measurably decreased due in a large part from inadequate rainfall capture in combination with the excessive burden from additional local agriculture and increased population. In addition, many residents water service originates directly from creek wells. These variables are of 'Grave' concern to this valleys inhabitant's well-being. People's lives are at risk to satisfy the profits of an apathetic corporation...

In addition to the negative influence on residents' livelihood the BLM watershed analysis reveals that Grave Creek supports anadromous fish with ground water support during non-peak flows. However, the intended capture of water into ponds only serve to overheat the water resulting in excessive bacterial/algae growth from decreased dissolved oxygen below life sustaining levels. An identical example is the 2002 Klamath River mass killing of migrating salmon. Furthermore, lower water flow increases sedimentation which decreases aquatic food sources yielding a poor environment for anadromous fisheries.

The Sunny Valley residents will realize absolutely no positives associated with the introduction of this intrusive activity. A sizable percentage of residents are senior and/or disabled who are unable to relocate to escape the inconveniences that this situation imposes. The good of the many should outweigh the interest of the few.

Respectfully,  
David Graves

**GREW Scott A \* WRD**

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**From:** dave graves <gravesdesigns@hotmail.com>  
**Sent:** Wednesday, March 14, 2018 7:48 AM  
**To:** GREW Scott A \* WRD  
**Subject:** app; S-88508  
**Attachments:** OWRD.docx

**GREW Scott A \* WRD**

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**From:** Ann Smith <backyardwildlife1@gmail.com>  
**Sent:** Wednesday, March 14, 2018 4:06 AM  
**To:** GREW Scott A \* WRD  
**Subject:** S-88508

For many years I lived 2000 feet from Sunny Valley Sand & Gravel and know how precious water is to Sunny Valley residents and wildlife. SVS&G is asking that their water right from Grave Creek be transferred to a mining use. Potential disruption of ground water will effect neighboring wells and existing water rights being used for agriculture. Please deny their request.

Ann Smith  
495 SE Tawney St  
Dallas, OR 97338  
503 420-4052

## GREW Scott A \* WRD

---

**From:** Carol Ahlf <horsescj@gmail.com>  
**Sent:** Tuesday, March 13, 2018 11:17 AM  
**To:** GREW Scott A \* WRD  
**Subject:** Sunny Valley Sand and Gravel mining application

Concern over Sunny Valley's water supply—

SVS&G plans to mine for gravel near Placer Rd. on Grave Creek. The valley's aquifer passes through the mining site and is only 10 feet below the surface. SVS&G plans to dig seventy feet down for their mining pits. This would affect the wells on some nearby properties, many of which have already gone dry since they started developing the site. Fish spawning and habitat downstream from the mine would be affected by the change in water temperature and contamination from rock processing. Asbestos has been found on the subject's property, which the owner of SVS&G says he would wash out. This takes a great deal of water, plus once dried, would contaminate the valley. Also, we live less than a mile away and are concerned about losing our water because we have a very low production well (1.5 gal./min), which is our only source of water for home, garden and livestock.

Thank you for listening to my concerns.

Carol Ahlf  
1776 Placer Rd.  
Sunny Valley, OR 97497  
541-956-2013

## GREW Scott A \* WRD

---

**From:** John Ahlf <john.ahlf@gmail.com>  
**Sent:** Tuesday, March 13, 2018 11:15 AM  
**To:** GREW Scott A \* WRD  
**Subject:** Sunny Valley Sand and Gravel

Concerning the SVSG mine application in Sunny Valley, OR

I am concerned for my 1.5 gallon per minute well because we live about a mile down stream from the mining site, close to Grave Creek. There are also many other low production wells in the area which would be affected by the mining. The mine owner stated he will dig several pits some 70 feet into the ground. The water table is 10 feet from the surface per the owner's own hydrologist.

They were denied permission in 2013 to dig due to insufficient water. They also received a riparian violation for destruction to the bank of Grave Creek, an important spawning creek. They also received a suspension order for working without a permit. They were caught and shutdown for using water they were not permitted to use. ( Don't remember the year but should be in the records.)

Grave Creek is a spawning creek, which means there could be a problem of water temperature for spawning fish. Keeping water in a pond would raise the water temperature too high for the fish to spawn, and there will be several ponds on the mining site.

I am also very concerned because there is asbestos on the mining site which will pose a danger to wild life, fish and the surrounding community. The mine owner claims he will use water to keep the dust down. I have worked on sites smaller to this as a heavy equipment operator and know he will have to use a lot of water to do so. What happens to the contaminated water when it dries up? It will end up contaminating the stream, air and community.

Grave Creek is already in danger of losing water, due to the many growers along the banks. By adding this mine it will surely be a threat to the water volume, water quality and the water security of Sunny Valley.

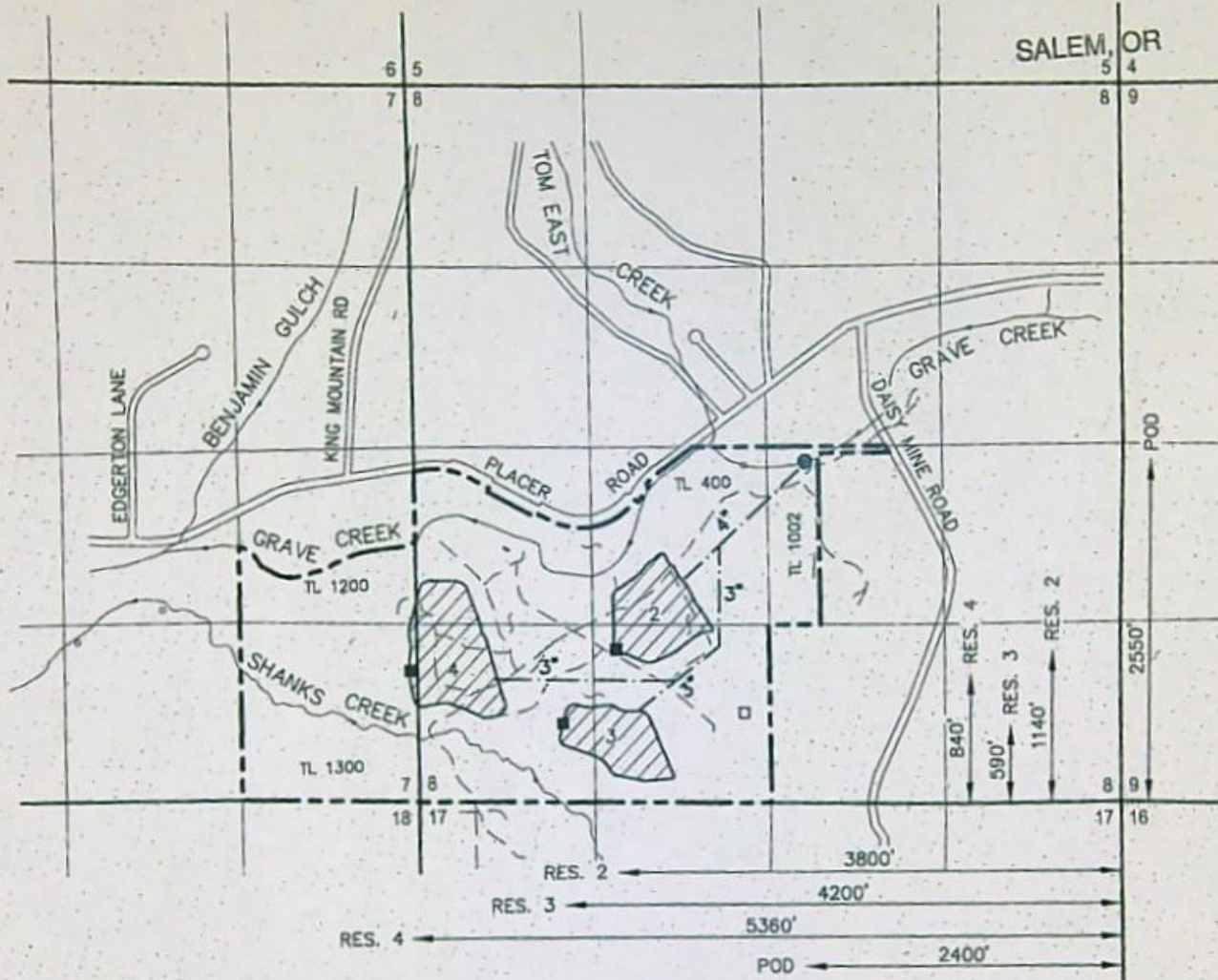
John Ahlf  
1776 Placer Road  
Sunny Valley  
OR 97497  
541-956-2013

SECTIONS 7 & 8, T34S, R5W, W.M.  
JOSEPHINE COUNTY


RECEIVED BY OWRD

DEC 16 2013

SALEM, OR



EXPLANATION

- POINT OF DIVERSION (POD)
- DAM OR CENTER OF RESERVOIR
-  PROPOSED RESERVOIR AND NUMBER
- SECTION LINE
- - - PROPERTY LINE
- CREEK OR INTERMITTENT STREAM
- == PAVED ROAD
- - - UNPAVED ROAD
- - - PROPOSED PIPELINE AND SIZE

NOTE:

RESERVOIRS WILL BE LOCATED OFF CHANNEL.

OCTOBER 23, 2013

THIS MAP IS NOT INTENDED TO PROVIDE  
LEGAL DIMENSIONS OR LOCATIONS OF  
PROPERTY OWNERSHIP LINES

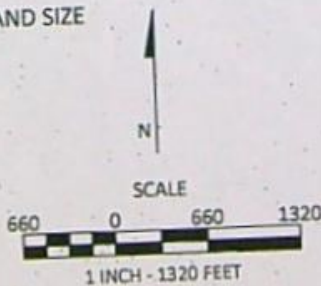
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JAN 31 2018

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**SKOOKUM**  
WATER ASSOCIATES INC

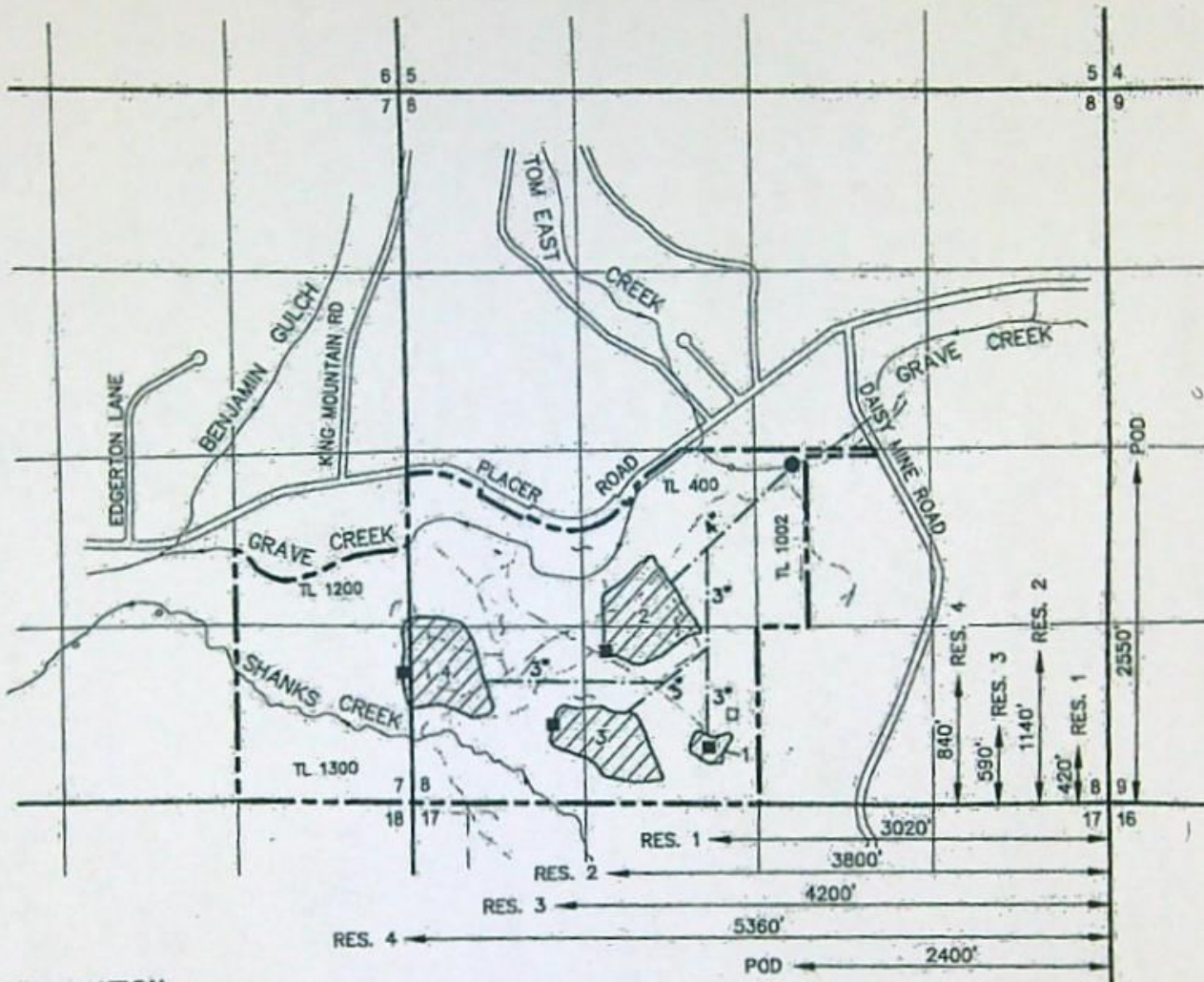
P.O. BOX 80174  
PORTLAND, OR 97280  
(503) 319-8926




Sunny Valley Sand and Gravel Inc.  
Reservoir Application Map  
Westlake Consultants, Inc.

S-88508

SECTIONS 7 & 8, T34S, R5W, W.M.  
JOSEPHINE COUNTY



**EXPLANATION**

- POINT OF DIVERSION (POD)
- DAM OR CENTER OF RESERVOIR
-  PROPOSED RESERVOIR AND NUMBER
- SECTION LINE
- - - PROPERTY LINE
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- - - PROPOSED PIPELINE AND SIZE

**NOTE:**

RESERVOIRS WILL BE LOCATED OFF CHANNEL.

**RECEIVED**

SEP 12 2013

AUGUST 7, 2013

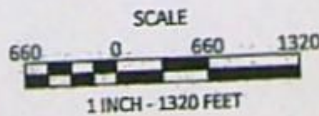
WATER RESOURCES DEPT  
SALEM, OREGON

THIS MAP IS NOT INTENDED TO PROVIDE  
LEGAL DIMENSIONS OR LOCATIONS OF  
PROPERTY OWNERSHIP LINES

**SKOOKUM**

WATER ASSOCIATES INC

P.O. BOX 80174  
PORTLAND, OR 97280  
(503) 319-8926



Sunny Valley Sand and Gravel Inc.  
Reservoir Application Map  
Westlake Consultants, Inc.

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**OWRD**

R-87930

80588-5

# Application for a Permit to Use Surface Water



Oregon Water Resources Department  
725 Summer Street NE, Suite A  
Salem, Oregon 97301-1266  
(503) 986-0900  
www.wrd.state.or.us

## Water-Use Permit Application Processing

### 1. Completeness Determination

The Department evaluates whether the application and accompanying map contain all of the information required under OAR 690-310-0040 and OAR 690-310-0050 ([www.oregon.gov/owrd/law.oar](http://www.oregon.gov/owrd/law.oar)). The Department also determines whether the proposed use is prohibited by statute. If the Department determines that the application is incomplete, all fees have not been paid, or the use is prohibited by statute, the application and all fees submitted are returned to the applicant.

### 2. Initial Review

The Department reviews the application to determine whether water is available during the period requested, whether the proposed use is restricted or limited by rule or statute, and whether other issues may preclude approval of or restrict the proposed use. An Initial Review (IR) containing preliminary determinations is mailed to the applicant. The applicant has 14 days from the mailing date to withdraw the application from further processing and receive a refund of all fees paid minus \$260. The applicant may put the application on hold for up to 180 days and may request additional time if necessary.

### 3. Public Notice

Within 7 days of the mailing of the initial review, the Department gives public notice of the application in the weekly notice published by the Department at [www.oregon.gov/owrd](http://www.oregon.gov/owrd). The public comment period is 30 days from publication in the weekly notice.

### 4. Proposed Final Order Issued

The Department reviews any comments received, including comments from other state agencies related to the protection of sensitive, threatened or endangered fish species. Within 60 days of completion of the IR, the Department issues a Proposed Final Order (PFO) explaining the proposed decision to deny or approve the application. A PFO proposing approval of an application will include a draft permit, and may request additional information or outstanding fees required prior to permit issuance.

### 5. Public Notice

Within 7 days of issuing the PFO, the Department gives public notice in the weekly notice. Notice includes information about the application and the PFO. Protest must be received by the Department within 45 days after publication of the PFO in the weekly notice. Anyone may file a protest. The protest filing fee is \$410.00 for the applicant and \$810.00 for non-applicants. Protests are filed on approximately 10% of Proposed Final Orders. If a protest is filed the Department will attempt to settle the protest but will schedule a contested case hearing if necessary.

### 6. Final Order Issued

If no protests are filed, the Department can issue a Final Order within 60 days of the close of the period for receiving protest. If the application is approved, a permit is issued. The permit specifies the details of the authorized use and any terms, limitations or conditions that the Department deems appropriate.

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# Minimum Requirements Checklist

Minimum Requirements (OAR 690-310-0040, OAR 690-310-0050 & ORS 537.140)

## Include this checklist with the application

Check that each of the following items is included. The application will be returned if all required items are not included. If you have questions, please call the Water Rights Customer Service Group at (503) 986-0900.

- SECTION 1: applicant information and signature
- SECTION 2: property ownership
- SECTION 3: source of water requested
- SECTION 4: water use
- SECTION 5: water management
- SECTION 6: resource protection
- SECTION 7: project schedule
- SECTION 8: within a district
- SECTION 9: remarks

### Attachments:

- 
- Land Use Information Form with approval and signature of local planning department(*must be an original*) or signed receipt.
  - Provide the legal description of: (1) the property from which the water is to be diverted, (2) any property crossed by the proposed ditch, canal or other work, and (3) any property on which the water is to be used as depicted on the map.
  - Fees - Amount enclosed: \$ 1896.00  
See the Department's Fee Schedule at [www.oregon.gov/owrd](http://www.oregon.gov/owrd) or call (503) 986-0900.

### Provide a map and check that each of the following items is included:

- 
- Permanent quality and drawn in ink
  - Even map scale not less than 4" = 1 mile (example: 1" = 400 ft, 1" = 1320 ft, etc.)
  - North Directional Symbol
  - Township, Range, Section, Quarter/Quarter, Tax Lots
  - Reference corner on map
  - Location of each well, and/or dam if applicable, by reference to a recognized public land survey corner (distances north/south and east/west)
  - Indicate the area of use by Quarter/Quarter and tax lot clearly identified
  - Number of acres per Quarter/Quarter and hatching to indicate area of use if for primary irrigation, supplemental irrigation, or nursery
  - Location of main canals, ditches, pipelines or flumes (if well is outside of the area of use)
  - Other:

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# Application for a Permit to Use Surface Water



Oregon Water Resources Department  
725 Summer Street NE, Suite A  
Salem Oregon 97301-1266  
(503) 986-0900  
www.wrd.state.or.us

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## SECTION 1: APPLICANT INFORMATION AND SIGNATURE

### Applicant Information

NAME ANDREAS AND CAROLE BLECH; SUNNY VALLEY SAND AND GRAVEL, INC.			PHONE (HM)
PHONE (WK) (541) 244-2644	CELL		FAX
ADDRESS 1867 WILLIAMS HIGHWAY, #260			
CITY GRANTS PASS	STATE OR	ZIP 97527	E-MAIL * ANDREAS@BLECH.US

### Organization Information

NAME NA		PHONE	FAX
ADDRESS			CELL
CITY	STATE	ZIP	E-MAIL *

### Agent Information – The agent is authorized to represent the applicant in all matters relating to this application.

AGENT / BUSINESS NAME SHONEE LANGFORD AND ELIZABETH HOWARD/ SCHWABE, WILLIAMSON & WYATT		PHONE (503) 540-4261 (503) 796-2093	FAX (503) 796-2900
ADDRESS 530 CENTER STREET, STE 730			CELL (503) 807-2082 (503) 312-8765
CITY SALEM	STATE OR	ZIP 97301	E-MAIL * SLANGFORD@SCHWABE.COM; EHOWARD@SCHWABE.COM

Note: Attach multiple copies as needed

\* By providing an e-mail address, consent is given to receive all correspondence from the department electronically. (Paper copies of the final order documents will also be mailed.)

### By my signature below I confirm that I understand:

- I am asking to use water specifically as described in this application.
- Evaluation of this application will be based on information provided in the application packet.
- I cannot legally use water until the Water Resources Department issues a permit to me.
- The Department encourages all applicants to wait for a permit to be issued before beginning construction of a proposed diversion. Acceptance of this application does not guarantee a permit will be issued.
- If I begin construction prior to the issuance of a permit, I assume all risks associated with my actions.
- If I get a permit, I must not waste water.
- If development of the water use is not according to the terms of the permit, the permit can be cancelled.
- The water use must be compatible with local comprehensive land use plans.
- Even if the Department issues a permit, I may have to stop using water to allow senior water right holders to get water to which they are entitled.
- I have not provided my social security number in any of the materials submitted to the Department.

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I (we) affirm that the information contained in this application is true and accurate.

  
Applicant Signature  
  
Applicant Signature

Andreas Blech, Landowner and  
President of Sunny Valley Sand and Gravel, Inc. 1-16-18  
Print Name and title if applicable Date  
Carole Blech, Landowner 1-16-18  
Print Name and title if applicable Date

Revised 7/1/2017

App. No. S-88508

For Department Use  
Permit No. \_\_\_\_\_

Date \_\_\_\_\_

**SECTION 2: PROPERTY OWNERSHIP**

Please indicate if you own all the lands associated with the project from which the water is to be diverted, conveyed, and used.

Yes

There are no encumbrances.

This land is encumbered by easements, rights of way, roads or other encumbrances. COPIES OF EASEMENTS ATTACHED (See p. 2 of Deed # 2010-013083)

No

I have a recorded easement or written authorization permitting access.

I do not currently have written authorization or easement permitting access.

Written authorization or an easement is not necessary, because the only affected lands I do not own are state-owned submersible lands, and this application is for irrigation and/or domestic use only (ORS 274.040).

Water is to be diverted, conveyed, and/or used only on federal lands.

List the names and mailing addresses of all affected landowners (*attach additional sheets if necessary*).

N/A. Applicants own all land affected by this application.

*You must provide the legal description of: 1. The property from which the water is to be diverted, 2. Any property crossed by the proposed ditch, canal or other work, and 3 Any property on which the water is to be used as depicted on the map. COPIES OF DEEDS ATTACHED*

**SECTION 3: SOURCE OF WATER**

**A. Proposed Source of Water**

Provide the commonly used name of the water body from which water will be diverted, and the name of the stream or lake it flows into. If unnamed, say so:

Source 1: Reservoir 2 constructed under Application R-87930 Tributary to: Rogue River

Source 2: Reservoir 4 constructed under Application R-87932 Tributary to: Rogue River

If any source listed above is stored water that is authorized under a water right permit, certificate, or decree, attach a copy of the document or list the document number (for decrees, list the volume, page and/or decree name).

COPIES OF RESERVOIR PERMITS ATTACHED

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**B. Applications to Use Stored Water**

Do you, or will you, own the reservoir(s) described in item 3A above?

Yes.

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No. (Please enclose a copy of your written notification to the operator of the reservoir of your intent to file this application, which you should have already mailed or delivered to the operator.)

If all sources listed in item 3A are stored water, the Department will review your application using the expedited process provided in ORS 537.147, unless you check the box below. Please see the instruction booklet for more information.

By checking this box, you are requesting that the Department process your application under the standard process outlined in ORS 537.150 and 537.153, rather than the expedited process provided by ORS 537.147. To file an application under the standard process, you must enclose the following:

- A copy of a signed non-expired contract or other agreement with the owner of the reservoir (if not you) to impound the volume of water you propose to use in this application.
- A copy of your written agreement with the party (if any) delivering the water from the reservoir to you.

**SECTION 4: WATER USE**

Provide the amount of water you propose to use from each source, for each use, in cubic feet-per-second (cfs) or gallons-per-minute (gpm). If the proposed use is from storage, provide the amount in acre-feet (af):  
(1 cfs equals 448.8 gpm. 1 acre-foot equals 325,851 gallons or 43,560 cubic feet)

SOURCE	USE	PERIOD OF USE	AMOUNT
Reservoir 2	Mining	Year-Round	70.0 <input type="checkbox"/> cfs <input type="checkbox"/> gpm <input checked="" type="checkbox"/> af
Reservoir 4	Mining	Year-Round	80.0 <input type="checkbox"/> cfs <input type="checkbox"/> gpm <input checked="" type="checkbox"/> af

**For irrigation use only:**

Please indicate the number of primary and supplemental acres to be irrigated.

Primary: N/A Acres                      Supplemental: N/A Acre

If supplemental Acres is listed, provide the Permit or Certificate number of the underlying primary water right(s):

\_\_\_\_\_

Indicate the maximum total number of acre-feet you expect to use in an irrigation season: \_\_\_\_\_

- If the use is **municipal or quasi-municipal**, attach **Form M**
- If the use is **domestic**, indicate the number of households: N/A
- If the use is **mining**, describe what is being mined and the method(s) of extraction:

Aggregate will be wet mined using equipment typically associated with mining activities.

**SECTION 5: WATER MANAGEMENT**

**A. Diversion and Conveyance**

What equipment will you use to pump water from your source?

Pump (give horsepower and type): To Be Determined

Other means (describe): \_\_\_\_\_

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Provide a description of the proposed means of diversion, construction, and operation of the diversion works and conveyance of water.

Stored water will be diverted from the reservoirs with portable pumps and will be distributed via hoses or pipelines. Each reservoir will have a portable pump that can be moved around the reservoir as mining progresses throughout the site.

#### B. Application Method

What equipment and method of application will be used? (e.g., drip, wheel line, high-pressure sprinkler)

Water will be used for processing aggregate and for dust control. Sprinklers and nozzles on the processing equipment and water trucks will be used.

#### C. Conservation

Please describe why the amount of water requested is needed and measures you propose to: prevent waste; measure the amount of water diverted; prevent damage to public uses of affected surface waters.

Water is needed for processing aggregate and controlling dust. The processing water will be recirculated to the reservoirs, a common practice at aggregate mines that promotes efficient use of the water supply. Mining will not occur near surface water because of required setbacks. The water diverted from Grave Creek to fill each reservoir each storage season will be metered.

### SECTION 6: RESOURCE PROTECTION

In granting permission to use water from a stream or lake, the state encourages, and in some instances requires, careful control of activities that may affect the waterway or streamside area. See instruction guide for a list of possible permit requirements from other agencies. Please indicate any of the practices you plan to undertake to protect water resources.

- Diversion will be screened to prevent uptake of fish and other aquatic life.  
Describe planned actions: The diversion will be from a newly constructed off-channel reservoir that will not be stocked with fish. The water stored in the reservoir is authorized to be used for multiple purposes.
- Excavation or clearing of banks will be kept to a minimum to protect riparian or streamside areas.  
Describe planned actions: This will be a newly constructed reservoir, located off-channel. Stream banks in the area will not be cleared.
- Operating equipment in a water body will be managed and timed to prevent damage to aquatic life.  
Describe: The newly constructed reservoirs will be located off-channel and will not contain aquatic species.
- Water quality will be protected by preventing erosion and run-off of waste or chemical products.  
Describe: The reservoirs will be located off-channel and there are no nearby streams.

### SECTION 7: PROJECT SCHEDULE

Date construction will begin: Upon approval of the application

Date construction will be completed: December 2022

Date beneficial water use will begin: Within 1 year of approval of the application.

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**SECTION 8: WITHIN A DISTRICT**

Check here if the point of diversion or place of use are located within or served by an irrigation or other water district.

Irrigation District Name NA	Address	
City	State	Zip

**SECTION 9: REMARKS**

Use this space to clarify any information you have provided in the application.

The location of the point of diversion (POD) in each reservoir is expected to change as mining occurs. We are requesting the POD location for each reservoir be listed as being within the reservoir. As indicated on the application map, Reservoir 2 is being constructed in the NE SW and SE SW of Section 8. Reservoir 4 is being constructed in the NE SE and SE SE of Section 7 and the NW SW and SW SW of Section 8. Sections 7 and 8 are both located in T34S, R5W, WM.

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JAN 31 2018

OWRD

# Land Use Information Form



Oregon Water Resources Department  
725 Summer Street NE, Suite A  
Salem, Oregon 97301-1266  
(503) 986-0900  
www.wrd.state.or.us

SULF

## NOTE TO APPLICANTS

In order for your application to be processed by the Water Resources Department (WRD), this Land Use Information Form must be completed by a local government planning official in the jurisdiction(s) where your water right will be used and developed. The planning official may choose to complete the form while you wait, or return the receipt stub to you. Applications received by WRD without the Land Use Form or the receipt stub will be returned to you. Please be aware that your application will not be approved without land use approval.

**This form is NOT required if:**

- 1) Water is to be diverted, conveyed, and/or used only on federal lands; **OR**
- 2) The application is for a water right transfer, allocation of conserved water, exchange, permit amendment, or ground water registration modification, and all of the following apply:
  - a) The existing and proposed water use is located entirely within lands zoned for exclusive farm-use or within an irrigation district;
  - b) The application involves a change in place of use only;
  - c) The change does not involve the placement or modification of structures, including but not limited to water diversion, impoundment, distribution facilities, water wells and well houses; and
  - d) The application involves irrigation water uses only.

## NOTE TO LOCAL GOVERNMENTS

The person presenting the attached Land Use Information Form is applying for or modifying a water right. The Water Resources Department (WRD) requires its applicants to obtain land-use information to be sure the water rights do not result in land uses that are incompatible with your comprehensive plan. Please complete the form or detach the receipt stub and return it to the applicant for inclusion in their water right application. You will receive notice once the applicant formally submits his or her request to the WRD. The notice will give more information about WRD's water rights process and provide additional comment opportunities. You will have 30 days from the date of the notice to complete the land-use form and return it to the WRD. If no land-use information is received from you within that 30-day period, the WRD may presume the land use associated with the proposed water right is compatible with your comprehensive plan. Your attention to this request for information is greatly appreciated by the Water Resources Department. If you have any questions concerning this form, please contact the WRD's Customer Service Group at 503-986-0801.

RECEIVED

JAN 31 2018

RECEIVED

JAN 08 2018

OWRD

JO CO - PLANNING

# Land Use Information Form



Oregon Water Resources Department  
 725 Summer Street NE, Suite A  
 Salem, Oregon 97301-1266  
 (503) 986-0900  
 www.wrd.state.or.us

*SURF.*

Applicant: Andreas and Carole Blech; Sunny Valley Sand and Gravel, Inc.  
First Last

Mailing Address: 1867 Williams Highway, #260

Grants Pass OR 97257 Daytime Phone: (541) 244-2651  
City State Zip

## A. Land and Location

Please include the following information for all tax lots where water will be diverted (taken from its source), conveyed (transported), and/or used or developed. Applicants for municipal use, or irrigation uses within irrigation districts may substitute existing and proposed service-area boundaries for the tax-lot information requested below.

Township	Range	Section	¼ ¼	Tax Lot #	Plan Designation (e.g., Rural Residential/RR-5)	Water to be:			Proposed Land Use:
See	Attached	List				<input type="checkbox"/> Diverted	<input type="checkbox"/> Conveyed	<input type="checkbox"/> Used	
						<input type="checkbox"/> Diverted	<input type="checkbox"/> Conveyed	<input type="checkbox"/> Used	
						<input type="checkbox"/> Diverted	<input type="checkbox"/> Conveyed	<input type="checkbox"/> Used	
						<input type="checkbox"/> Diverted	<input type="checkbox"/> Conveyed	<input type="checkbox"/> Used	

List all counties and cities where water is proposed to be diverted, conveyed, and/or used or developed:

Josephine County **RECEIVED**  
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## B. Description of Proposed Use

Type of application to be filed with the Water Resources Department:

- Permit to Use or Store Water   
  Water Right Transfer   
  Permit Amendment or Ground Water Registration Modification  
 Limited Water Use License   
  Allocation of Conserved Water   
  Exchange of Water

Source of water:  Reservoir/Pond   
 Ground Water   
 Surface Water (name) \_\_\_\_\_

Estimated quantity of water needed: 150 \_\_\_\_\_  
 cubic feet per second   
 gallons per minute   
 acre-feet

Intended use of water:  Irrigation   
 Commercial   
 Industrial   
 Domestic for \_\_\_\_\_ household(s)  
 Municipal   
 Quasi-Municipal   
 Instream   
 Other Mining

Briefly describe:

This application proposes use of stored water from two reservoirs authorized by the Oregon Water Resources Department. Josephine County has approved applications to allow development of an aggregate mining and processing operation at the site.

**Note to applicant:** If the Land Use Information Form cannot be completed while you wait, please have a local government representative sign the receipt at the bottom of the next page and include it with the application filed with the Water Resources Department.

See bottom of Page 3. →



# For Local Government Use Only

The following section must be completed by a planning official from each county and city listed unless the project will be located entirely within the city limits. In that case, only the city planning agency must complete this form. This deals only with the local land-use plan. Do not include approval for activities such as building or grading permits.

### Please check the appropriate box below and provide the requested information

Land uses to be served by the proposed water uses (including proposed construction) are allowed outright or are not regulated by your comprehensive plan. Cite applicable ordinance section(s): \_\_\_\_\_

Land uses to be served by the proposed water uses (including proposed construction) involve discretionary land-use approvals as listed in the table below. (Please attach documentation of applicable land-use approvals which have already been obtained. Record of Action/land-use decision and accompanying findings are sufficient.) **If approvals have been obtained but all appeal periods have not ended, check "Being pursued."**

Type of Land-Use Approval Needed (e.g., plan amendments, rezones, conditional-use permits, etc.)	Cite Most Significant, Applicable Plan Policies & Ordinance Section References	Land-Use Approval:	
See findings dated 12/7/16	Josephine County RLDC Sec. 66.150	<input checked="" type="checkbox"/> Obtained <input type="checkbox"/> Denied	<input type="checkbox"/> Being Pursued <input type="checkbox"/> Not Being Pursued
		<input type="checkbox"/> Obtained <input type="checkbox"/> Denied	<input type="checkbox"/> Being Pursued <input type="checkbox"/> Not Being Pursued
		<input type="checkbox"/> Obtained <input type="checkbox"/> Denied	<input type="checkbox"/> Being Pursued <input type="checkbox"/> Not Being Pursued
		<input type="checkbox"/> Obtained <input type="checkbox"/> Denied	<input type="checkbox"/> Being Pursued <input type="checkbox"/> Not Being Pursued
		<input type="checkbox"/> Obtained <input type="checkbox"/> Denied	<input type="checkbox"/> Being Pursued <input type="checkbox"/> Not Being Pursued

Local governments are invited to express special land-use concerns or make recommendations to the Water Resources Department regarding this proposed use of water below, or on a separate sheet.

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Name: Jeff Payer Title: Planner II  
 Signature: [Signature] Phone: 541-474-5420 Date: 1/16/18  
 Government Entity: Josephine County Community Development

**Note to local government representative:** Please complete this form or sign the receipt below and return it to the applicant. If you sign the receipt, you will have 30 days from the Water Resources Department's notice date to return the completed Land Use Information Form or WRD may presume the land use associated with the proposed use of water is compatible with local comprehensive plans.

### Receipt for Request for Land Use Information

Applicant name: \_\_\_\_\_  
 City or County: \_\_\_\_\_ Staff contact: \_\_\_\_\_  
 Signature: \_\_\_\_\_ Phone: \_\_\_\_\_ Date: \_\_\_\_\_

ATTACHMENT TO:

Oregon Water Resources Department  
**Land Use Information Form**

Applicant Name: Andreas and Carole Blech & Sunny Valley Sand & Gravel, Inc

**A. Land and Location**

Please include the following information for all tax lots where water will be diverted (taken from its source), conveyed (transported), or used. Applicants for municipal use, or irrigation uses within irrigation districts may substitute existing and proposed service-area boundaries for the tax-lot information requested below.

Township	Range	Section	¼ ¼	Tax Lot #	Plan designation	Water to be:	Proposed Land Use:
34 S	5 W	7	NE SE	1200		Diverted Conveyed Used	Mining
34 S	5 W	7	SE SE	1300		Diverted Conveyed Used	Mining
34 S	5 W	8	NE SW	400		Diverted Conveyed Used	Mining
34 S	5 W	8	NW SW	400		Diverted Conveyed Used	Mining
34 S	5 W	8	SE SW	400		Diverted Conveyed Used	Mining
34 S	5 W	8	NW SE	1002		Diverted Conveyed Used	Mining

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P-88508

JOSEPHINE COUNTY OFFICIAL RECORDS  
ART HARVEY, COUNTY CLERK 2010-013083  
DED-WRD 10/12/2010 10:31 AM  
Cnt=1 Pgs=3 Stn=3 TMORRIS \$15.00 \$11.00 \$15.00 \$8.00 \$5.00 Total:\$54.00



I, Art Harvey, County Clerk, certify that the within document was received and duly recorded in the official records of Josephine County.

3  
Ga 1632465 (89)

After Recording Return to:  
**Andreas Blech and Carole Blech**  
1867 Williams Hwy., #270  
Grants Pass, OR 97527

Until a change is requested,  
all tax statements shall be  
sent to the following address:  
**Andreas Blech and Carole Blech**  
1867 Williams Hwy., #270  
Grants Pass, OR 97527

5A.

**WARRANTY DEED**

**DOUG AND JACK'S MINE, LLC**, an Oregon Limited Liability Company, Grantor, conveys and warrants to **ANDREAS BLECH and CAROLE BLECH, husband and wife as tenants by the entirety**, Grantees, all of it's right, title and interest in and to the following described real property located at 153 Daisy Mine Road, Wolf Creek, Oregon 97497, more particularly described as follows:

The Southeast Quarter of the Southeast Quarter of Section 7, and the Southwest Quarter of Section 8, all in Township 34, Range 5 West of the Willamette Meridian, Josephine County, Oregon, EXCEPTING THEREFROM and portion lying Northerly of the Southerly right-of-way line of Placer Road. TOGETHER WITH: An Easement appurtenant to the herein described property for ingress and egress including the terms and provisions thereof, as set forth in instrument recorded in Document No. Volume 324, Page 572, Josephine County Deed Records of Josephine County, Oregon

Tax Parcel Number R300831 and R300826

The true and actual consideration for this transfer is the sum of Six hundred thousand Dollars (\$600,000.00)

Subject to:

1. Rights of the public and of governmental bodies in and to that portion of the premises herein described lying within the limits of streets, roads and highways.

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5-88500

- 2. Easement for electric transmission and distribution lines of one or more wires, and all necessary or desirable appurtenances, including telephone and telegraph wires, towers poles, props, guys, and other supports; and related matters.

Recording information: Volume 153, Page 466, and Volume 165, Page 569, Josephine County Deed Records.

Grantee: California Oregon Power Company  
Affects: Not Specific

- 3. Easement for electric transmission and distribution of one or more wires and all necessary pr desirable appurtenances, including telephone and telegraph wires towers, poles, props, guys and other supports; and related matters.

Recording Information: Volume 214, Page 467, Josephine County Deed Records

Grantee: California Oregon Power Company  
Affects: Not Specific

- 4. Easement, including the terms and provisions contained therein:

Recording Information: Volume 229, Page 399, Josephine County Deed Records

For: Gas Pipeline

- 5. Easement, including terms and provisions contained therein:

Recording Information: Volume 324, Page 1721, Josephine County Deed Records

For: Permanent easement for roadway purposes (Affects TL 400)

- 6. Easement, including terms and provisions contained therein:

Recording Information: Volume 326, Page 1318, Josephine County Deed Records

For: Well and Pipeline (Affects TL400)

- 7. Easement, including terms and provisions contained therein:

Recording Information: 2002-007430 and re-recorded as 2002-008736 Official Records of Josephine County, Oregon.

For: A permanent easement for roadway purposes

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(3)

The true and actual consideration for this transfer is the sum of Six hundred thousand

~~Dollars (\$600,000.00)~~

Dated this 6<sup>th</sup> day of October, 2010.

NOTE: THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930.

THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS WHICH IN FARM OR FOREST ZONES MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND WHICH LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930 IN ALL ZONES. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND EXISTENCE OF FIRE PROTECTION FOR STRUCTURES.

DOUG AND JACK'S MINE, LLC, an Oregon limited liability company

By: [Signature]

Jack H. Smith, Managing Member, Trustee of the Smith Family Trust dated July 28, 2008 as Managing Member

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STATE OF OREGON )  
 ) ss.  
COUNTY OF JACKSON )

This instrument was acknowledged before me on October 6, 2010 by Jack H. Smith as \*\*  
~~Managing Member of Doug and Jack's Mine, LLC.~~

Barbara J. Feinstein  
Notary Public for Oregon

\*\* Trustee of the Smith Family Trust dated July 28, 2008 as  
Managing Member of Doug and Jack's Mine, LLC.



3 - Warranty Deed

5-88508



After recording return to:  
Blech LLC  
1867 Williams Highway #270  
Grants Pass, OR 97527

Until a change is requested all tax  
statements shall be sent to the  
following address:  
Blech LLC  
1867 Williams Highway #270  
Grants Pass, OR 97527

File No.: 7151-1802391 (KAF)  
Date: December 02, 2011

THIS SPACE RESERVED FOR RECORDER'S USE

JOSEPHINE COUNTY OFFICIAL RECORDS  
ART HARVEY, COUNTY CLERK **2014-002304**  
DED-WRD 03/14/2014 01:52 PM  
Cnt=1 Pgs=2 Stn=2 SDICKINS  
\$10.00 \$11.00 \$10.00 \$20.00 \$5.00 **\$56.00**

I, Art Harvey, County Clerk, certify that the within document  
was received and duly recorded in the official records of  
Josephine County.

56-

### STATUTORY WARRANTY DEED

**Jack W. Gray and Jackie L. Gray**, Grantor, conveys and warrants to **Blech LLC, an Oregon Limited Liability Company**, Grantee, the following described real property free of liens and encumbrances, except as specifically set forth herein:

**LEGAL DESCRIPTION:** Real property in the County of Josephine, State of Oregon, described as follows:

Beginning at the Southwest corner of the Northwest Quarter of the Southeast Quarter of Section 8, Township 34 South, Range 5 West of the Willamette Meridian, Josephine County, Oregon; thence East along the South line of said Northwest Quarter of the Southeast Quarter, 390 feet; thence North 00°31' West, parallel with the West line of said Northwest Quarter of the Southeast Quarter, 1280.6 feet to a point 50 feet South of the North line of said Northwest Quarter of the Southeast Quarter; thence East, parallel with said North line, 520 feet, more or less, to the Westerly right of way line of Carrie Street (Placer Road); thence Northwesterly along said right of way line, 55 feet, more or less, to the North line of said Northwest Quarter of the Southeast Quarter; thence West along said North line, 890 feet, more or less, to the Northwest corner of said Northwest Quarter of the Southeast Quarter; thence South along the West line thereof, 1330.6 feet to the point of beginning.

**NOTE:** This legal description was created prior to January 1, 2008.

**Subject to:**

1. Covenants, conditions, restrictions and/or easements, if any, affecting title, which may appear in the public record, including those shown on any recorded plat or survey.

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The true consideration for this conveyance is **\$225,000.00**. (Here comply with requirements of ORS 93.030)

JAN 31 2018

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P-88508





After recording return to:  
Andeas Blech and Carole Blech  
1867 Williams Highway #270  
Grants Pass, OR 97527

Until a change is requested all tax statements  
shall be sent to the following address:  
Andeas Blech and Carole Blech  
1867 Williams Highway #270  
Grants Pass, OR 97527

File No.: 7151-1703832 (JA)  
Date: April 12, 2011

JOSEPHINE COUNTY OFFICIAL RECORDS  
ART HARVEY, COUNTY CLERK 2011-004561  
DED-WRD  
Cnt=1 Pgs=2 Stn=2 RHENKELS 04/14/2011 02:11 PM  
\$10.00 \$11.00 \$15.00 \$8.00 \$5.00 Total:\$49.00



I, Art Harvey, County Clerk, certify that the within document  
was received and duly recorded in the official records of  
Josephine County.

49

### STATUTORY WARRANTY DEED

**Forrest Gaunt**, Grantor, conveys and warrants to **Andeas Blech and Carole Blech, husband and wife as tenants by the entirety**, Grantee, the following described real property free of liens and encumbrances, except as specifically set forth herein:

**LEGAL DESCRIPTION:** Real property in the County of Josephine, State of Oregon, described as follows:

**ALL THAT PORTION OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 7, TOWNSHIP 34 SOUTH, RANGE 5 WEST OF THE WILLAMETTE MERIDIAN, JOSEPHINE COUNTY, OREGON, LYING SOUTH OF THE CENTERLINE OF GRAVE CREEK, TOGETHER WITH AN EASEMENT FOR ROAD PURPOSES, AS SET FORTH IN VOLUME 231, PAGE 393, JOSEPHINE COUNTY DEED RECORDS.**

**NOTE:** This legal description was created prior to January 1, 2008.

**Subject to:**

1. Covenants, conditions, restrictions and/or easements, if any, affecting title, which may appear in the public record, including those shown on any recorded plat or survey.

The true consideration for this conveyance is **\$250,000.00**. (Here comply with requirements of ORS 93.030)

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S-8888





STATE OF OREGON

COUNTY OF JOSEPHINE

PERMIT TO STORE PUBLIC WATERS

THIS PERMIT IS HEREBY ISSUED TO:

ANDREAS BLECH; SUNNY VALLEY SAND AND GRAVEL INC.  
1867 WILLIAMS HWY SUITE 260  
GRANTS PASS OR 97527

The specific limits and conditions of the use are listed below.

APPLICATION FILE NUMBER: R-87930

SOURCE OF WATER: GRAVE CREEK, TRIBUTARY TO ROGUE RIVER

STORAGE FACILITY: RESERVOIR #2

MAXIMUM VOLUME: 70.0 ACRE-FEET

DATE OF PRIORITY: SEPTEMBER 12, 2013

WATER MAY BE APPROPRIATED AS FOLLOWS: JANUARY 1 THROUGH MARCH 31

USE: MULTIPLE PURPOSE

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**Dam Location/Authorized Point of Diversion:**

Loc	Twp	Rng	Mer	Sec	Q-Q	Measured Distances
Dam	34 S	5 W	WM	8	SE SW	1140 FEET NORTH AND 3800 FEET WEST FROM SE CORNER, SECTION 8
POD	34 S	5 W	WM	8	NW SE	2550 FEET NORTH AND 2400 FEET WEST FROM SE CORNER, SECTION 8

**The Area To Be Submerged:**

Twp	Rng	Mer	Sec	Q-Q
34 S	5 W	WM	8	NE SW
34 S	5 W	WM	8	SE SW

Measurement Devices, and Recording/Reporting of Annual Water Use Conditions:

- A. Before water use may begin under this permit, the permittee shall install a totalizing flow meter at each point of diversion. The permittee shall maintain the device in good working order.
- B. The permittee shall allow the watermaster access to the device; provided however, where any device is located within a private structure, the watermaster shall request access upon reasonable notice.
- C. The Director may require the permittee to keep and maintain a record of the volume of water diverted, and may require the permittee to report water-use on a periodic schedule as established by the Director. In addition, the Director may require the permittee to report general water-use information, the periods of water use and the place and nature of use of water under the permit.
- D. The Director may provide an opportunity for the permittee to submit alternative measuring and reporting procedures for review and approval.

5-88508

Reservoir shall be constructed to have a minimum bottom elevation above the water table seasonal high.

The storage of water allowed herein is subject to the installation and maintenance of an outlet pipe (with a minimum diameter of 8" for any in-channel reservoir). This requirement may be waived if the Department determines other means have been provided to evacuate water when necessary.

The permittee shall pass all live flow outside the storage season described above.

The Director may require the user to measure inflow and outflow, above and below the reservoir respectively, to ensure that live flow is not impeded outside the storage season. Measurement devices and their implementation must be acceptable to the Director, and the Director may require that data be recorded on a specified periodic basis and reported to the Department annually or more frequently.

The permittee shall not construct, operate or maintain any dam or artificial obstruction to fish passage in the channel of the subject stream without providing a fishway to ensure adequate upstream and downstream passage for fish, unless the permittee has requested and been granted a fish passage waiver by the Oregon Fish and Wildlife Commission. The permittee is hereby directed to contact an Oregon Department of Fish and Wildlife Fish Passage Coordinator, before beginning construction of any in-channel obstruction.

If the riparian area is disturbed in the process of developing a point of diversion, the permittee shall be responsible for restoration and enhancement of such riparian area in accordance with ODFW's Fish and Wildlife Habitat Mitigation Policy OAR 635-415. For purposes of mitigation, the ODFW Fish and Wildlife Habitat Mitigation Goals and Standards, OAR 635-415, shall be followed.

The use may be restricted if the quality of the source stream or downstream waters decrease to the point that those waters no longer meet existing state or federal water quality standards due to reduced flows.

The permittee shall install, maintain, and operate fish screening and by-pass devices consistent with current Oregon Department of Fish and Wildlife (ODFW) standards. Fish screening is to prevent fish from entering the proposed diversion while by-pass devices provide adequate upstream and downstream passage for fish. The required screen and by-pass devices are to be in place and functional, and approved in writing by ODFW prior to diversion of any water. The permittee may submit evidence in writing that ODFW has determined screens and/or by-pass devices are not necessary.

This permit allows an annual appropriation (not to exceed the specified volume). This permit does not provide for the appropriation of water for out-of-reservoir uses, the maintenance of the water level or maintaining a suitable freshwater condition. If any water is to be used for out-of-reservoir purposes, a secondary water right is required. If any additional live flow is to be appropriated to maintain either the water level or a suitable freshwater condition, an additional water right is required.

Diversion of water under this permit is contingent on designated scenic waterway flows being met downstream. The user is required to monitor streamflow at Rogue River near Agness, OR, gage 14372300, and discontinue diversion when the flows specified below are unmet at the gage. At the discretion of the Director, the location and nature of streamflow monitoring required to protect scenic waterway flows is subject to change. In addition, the watermaster may regulate diversion under this right if it is determined by the Department that the flows listed below are unmet at the gage.

Rogue Scenic Waterway	
Month	Minimum Flow (cfs)
January	3500
February	3500
March	3500

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STANDARD CONDITIONS

1. Failure to comply with any of the provisions of this permit may result in action including, but not limited to, restrictions on the use, civil penalties, or cancellation of the permit.
2. This permit is for the beneficial use of water without waste. The water user is advised that new regulations may require the use of best practical technologies or conservation practices to achieve this end.
3. By law, the land use associated with this water use must be in compliance with statewide land-use goals and any local acknowledged land-use plan.
4. The use of water allowed herein may be made only at times when sufficient water is available to satisfy all prior rights, including prior rights for maintaining instream flows.
5. If the riparian area is disturbed in the process of developing a point of diversion, the permittee shall be responsible for restoration and enhancement of such riparian area in accordance with ODFW's Fish and Wildlife Habitat Mitigation Policy OAR 635-415. For purposes of mitigation, the ODFW Fish and Wildlife Habitat Mitigation Goals and Standards, OAR Chapter 635, Division 415, shall be followed.
6. The use may be restricted if the quality of downstream waters decreases to the point that those waters no longer meet existing state or federal water quality standards due to reduced flows.
7. If the volume of the completed reservoir is 9.2 acre feet or more and a dam is used to impound the water, the height of the dam shall be less than 10.0 feet.
8. Construction of the water system shall begin within five years of the date of permit issuance. The deadline to begin construction may not be extended. This permit is subject to cancellation proceedings if the begin construction deadline is missed.
9. The permitted volume of water shall be stored within five years of the date of permit issuance. If additional time is needed, the permittee may submit an application for extension of time, which may be approved based upon the merit of the application.
10. Within one year after storage of water, the permittee shall submit a claim of beneficial use to the Oregon Water Resources Department.
11. The claim of beneficial use shall be prepared by a Certified Water Right Examiner in conformance with the requirements of OAR 690-014 if an associated secondary permit exists for the use of stored water under this permit, or if the reservoir capacity is equal to or greater than 9.2 acre-feet.
12. If no secondary permit exists and the reservoir capacity is less than 9.2 acre-feet of water, the claim of beneficial use need not be prepared by a Certified Water Right Examiner. The information submitted to the Oregon Water Resources Department shall include:
  - a. the dimensions of the reservoir;
  - b. the maximum capacity of the reservoir in acre-feet; and
  - c. a map identifying the location of the reservoir prepared in compliance with Water Resource Department standards.

Issued Sept. 14, 2017

*Timothy Watlin*  
 for E. Timothy Watlin, Water Rights Program Manager  
 for Thomas M. Byler, Director

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 JAN 31 2018  
 OWRD

5-88508

STATE OF OREGON  
 COUNTY OF JOSEPHINE  
 PERMIT TO STORE PUBLIC WATERS

THIS PERMIT IS HEREBY ISSUED TO:

ANDREAS BLECH; SUNNY VALLEY SAND AND GRAVEL INC.  
 1867 WILLIAMS HWY SUITE 260  
 GRANTS PASS OR 97527

The specific limits and conditions of the use are listed below.

APPLICATION FILE NUMBER: R-87932

SOURCE OF WATER: GRAVE CREEK, TRIBUTARY TO ROGUE RIVER

STORAGE FACILITY: RESERVOIR #4

MAXIMUM VOLUME: 80.0 ACRE-FEET

DATE OF PRIORITY: SEPTEMBER 12, 2013

WATER MAY BE APPROPRIATED AS FOLLOWS: JANUARY 1 THROUGH MARCH 31

USE: MULTIPLE PURPOSE

**Dam Location/Authorized Point of Diversion:**

Loc	Twp	Rng	Mer	Sec	Q-Q	Measured Distances
Dam	34 S	5 W	WM	7	SE SE	840 FEET NORTH AND 5360 FEET WEST FROM SE CORNER, SECTION 8
POD	34 S	5 W	WM	8	NW SE	2550 FEET NORTH AND 2400 FEET WEST FROM SE CORNER, SECTION 8

**The Area To Be Submerged:**

Twp	Rng	Mer	Sec	Q-Q
34 S	5 W	WM	7	NE SE
34 S	5 W	WM	7	SE SE
34 S	5 W	WM	8	NW SW
34 S	5 W	WM	8	SW SW

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JAN 31 2018

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Measurement Devices, and Recording/Reporting of Annual Water Use Conditions:

- A. Before water use may begin under this permit, the permittee shall install a totalizing flow meter at each point of diversion. The permittee shall maintain the device in good working order.
- B. The permittee shall allow the watermaster access to the device; provided however, where any device is located within a private structure, the watermaster shall request access upon reasonable notice.

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- C. The Director may require the permittee to keep and maintain a record of the volume of water diverted, and may require the permittee to report water-use on a periodic schedule as established by the Director. In addition, the Director may require the permittee to report general water-use information, the periods of water use and the place and nature of use of water under the permit.
- D. The Director may provide an opportunity for the permittee to submit alternative measuring and reporting procedures for review and approval.

Reservoir shall be constructed to have a minimum bottom elevation above the water table seasonal high.

The storage of water allowed herein is subject to the installation and maintenance of an outlet pipe (with a minimum diameter of 8" for any in-channel reservoir). This requirement may be waived if the Department determines other means have been provided to evacuate water when necessary.

The permittee shall pass all live flow outside the storage season described above.

The Director may require the user to measure inflow and outflow, above and below the reservoir respectively, to ensure that live flow is not impeded outside the storage season. Measurement devices and their implementation must be acceptable to the Director, and the Director may require that data be recorded on a specified periodic basis and reported to the Department annually or more frequently.

The permittee shall not construct, operate or maintain any dam or artificial obstruction to fish passage in the channel of the subject stream without providing a fishway to ensure adequate upstream and downstream passage for fish, unless the permittee has requested and been granted a fish passage waiver by the Oregon Fish and Wildlife Commission. The permittee is hereby directed to contact an Oregon Department of Fish and Wildlife Fish Passage Coordinator, before beginning construction of any in-channel obstruction.

If the riparian area is disturbed in the process of developing a point of diversion, the permittee shall be responsible for restoration and enhancement of such riparian area in accordance with ODFW's Fish and Wildlife Habitat Mitigation Policy OAR 635-415. For purposes of mitigation, the ODFW Fish and Wildlife Habitat Mitigation Goals and Standards, OAR 635-415, shall be followed.

The use may be restricted if the quality of the source stream or downstream waters decrease to the point that those waters no longer meet existing state or federal water quality standards due to reduced flows.

The permittee shall install, maintain, and operate fish screening and by-pass devices consistent with current Oregon Department of Fish and Wildlife (ODFW) standards. Fish screening is to prevent fish from entering the proposed diversion while by-pass devices provide adequate upstream and downstream passage for fish. The required screen and by-pass devices are to be in place and functional, and approved in writing by ODFW prior to diversion of any water. The permittee may submit evidence in writing that ODFW has determined screens and/or by-pass devices are not necessary.

This permit allows an annual appropriation (not to exceed the specified volume). This permit does not provide for the appropriation of water for out-of-reservoir uses, the maintenance of the water level or maintaining a suitable freshwater condition. If any water is to be used for out-of-reservoir purposes, a secondary water right is required. If any additional live flow is to be appropriated to maintain either the water level or a suitable freshwater condition, an additional water right is required.

Diversion of water under this permit is contingent on designated scenic waterway flows being met downstream. The user is required to monitor streamflow at Rogue River near Agness, OR, gage 14372300, and discontinue diversion when the flows specified below are unmet at the gage. At the discretion of the Director, the location and nature of streamflow monitoring required to protect scenic waterway flows is subject to change. In addition, the watermaster may regulate diversion under this right if it is determined by the Department that the flows listed below are unmet at the gage.

Rogue Scenic Waterway	
Month	Minimum Flow (cfs)
January	3500
February	3500
March	3500

### STANDARD CONDITIONS

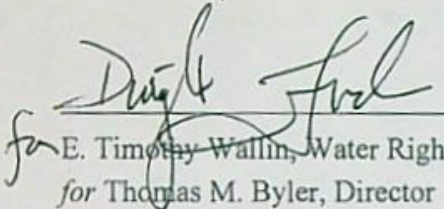
1. Failure to comply with any of the provisions of this permit may result in action including, but not limited to, restrictions on the use, civil penalties, or cancellation of the permit.
2. This permit is for the beneficial use of water without waste. The water user is advised that new regulations may require the use of best practical technologies or conservation practices to achieve this end.
3. By law, the land use associated with this water use must be in compliance with statewide land-use goals and any local acknowledged land-use plan.
4. The use of water allowed herein may be made only at times when sufficient water is available to satisfy all prior rights, including prior rights for maintaining instream flows.
5. If the riparian area is disturbed in the process of developing a point of diversion, the permittee shall be responsible for restoration and enhancement of such riparian area in accordance with ODFW's Fish and Wildlife Habitat Mitigation Policy OAR 635-415. For purposes of mitigation, the ODFW Fish and Wildlife Habitat Mitigation Goals and Standards, OAR Chapter 635, Division 415, shall be followed.
6. The use may be restricted if the quality of downstream waters decreases to the point that those waters no longer meet existing state or federal water quality standards due to reduced flows.
7. If the volume of the completed reservoir is 9.2 acre feet or more and a dam is used to impound the water, the height of the dam shall be less than 10.0 feet.
8. Construction of the water system shall begin within five years of the date of permit issuance. The deadline to begin construction may not be extended. This permit is subject to cancellation proceedings if the begin construction deadline is missed.
9. The permitted volume of water shall be stored within five years of the date of permit issuance. If additional time is needed, the permittee may submit an application for extension of time, which may be approved based upon the merit of the application.
10. Within one year after storage of water, the permittee shall submit a claim of beneficial use to the Oregon Water Resources Department.

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JAN 31 2018

11. The claim of beneficial use shall be prepared by a Certified Water Right Examiner in conformance with the requirements of OAR 690-014 if an associated secondary permit exists for the use of stored water under this permit, or if the reservoir capacity is equal to or greater than 9.2 acre-feet.
12. If no secondary permit exists and the reservoir capacity is less than 9.2 acre-feet of water, the claim of beneficial use need not be prepared by a Certified Water Right Examiner. The information submitted to the Oregon Water Resources Department shall include:
  - a. the dimensions of the reservoir;
  - b. the maximum capacity of the reservoir in acre-feet; and
  - c. a map identifying the location of the reservoir prepared in compliance with Water Resource Department standards.

Issued Sept 14 2017

  
for E. Timothy Wallin, Water Rights Program Manager  
for Thomas M. Byler, Director

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OWRD



Date \_\_\_\_\_

(For staff use only)



Oregon Water Resources Department  
725 Summer Street NE, Suite A  
Salem, Oregon 97301-1266  
(503) 986-0900  
www.wrd.state.or.us

**WE ARE RETURNING YOUR APPLICATION FOR THE FOLLOWING REASON(S):**

- SECTION 1: \_\_\_\_\_
- SECTION 2: \_\_\_\_\_
- SECTION 3: \_\_\_\_\_
- SECTION 4: \_\_\_\_\_
- SECTION 5: \_\_\_\_\_
- SECTION 6: \_\_\_\_\_
- SECTION 7: \_\_\_\_\_
- SECTION 8: \_\_\_\_\_
- SECTION 9: \_\_\_\_\_
- Land Use Information Form \_\_\_\_\_
- Provide the legal description of: (1) the property from which the water is to be diverted, (2) any property crossed by the proposed ditch, canal or other work, and (3) any property on which the water is to be used as depicted on the map.
- Fees \_\_\_\_\_

**MAP**

- Permanent quality and drawn in ink
- Even map scale not less than 4" = 1 mile (example: 1" = 400 ft, 1" = 1320 ft, etc.)
- North Directional Symbol
- Township, Range, Section, Quarter/Quarter, Tax Lots
- Reference corner on map
- Location of each well, and/or dam if applicable, by reference to a recognized public land survey corner (distances north/south and east/west)
- Indicate the area of use by Quarter/Quarter and tax lot clearly identified
- Number of acres per Quarter/Quarter and hatching to indicate area of use if for primary irrigation, supplemental irrigation, or nursery
- Location of main canals, ditches, pipelines, or flumes (if well is outside of the area of use)
- Other \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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**JAN 31 2018**

**OWRD**

January 29, 2018

**Shonee D. Langford**  
T: 503-540-4261  
slangford@schwabe.com

Oregon Water Resources Department  
725 Summer Street NE, Suite A  
Salem, OR 97301-1271

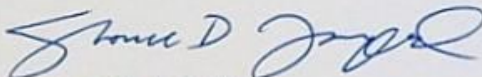
RE: Application for a Permit to Use Surface Water (Stored Water Only)

To Whom it May Concern:

Enclosed for filing on behalf of Andreas and Carole Blech and Sunny Valley Sand and Gravel, Inc. is an Application for a Permit to Use Surface Water (Stored Water Only) together with supporting documentation. Also enclosed is a check in the amount of \$1,896.00 to cover the application fee. Elizabeth Howard and I will serve as the applicant's agents.

Please let me know if you have questions or need additional information.

Best regards,



Shonee D. Langford

SDL:kdo  
Enclosure

cc: Steven R. Bruce RG CWRE (via email; w/encl.)  
Client (via email; w/encl.)

PDX\123805\182220\SDL\22285043.1

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**JAN 31 2018**

**OWRD**

5-88508



Oregon Water Resources Department  
Permit to Appropriate Only Stored Water - Expedited Secondary

- [Main](#)
- [Help](#)
- [Return](#)
- [Contact Us](#)

Today's Date: Thursday, February 1, 2018

Base Application Fee.		\$520.00
Acre feet of Stored Water to be diverted.	150	\$856.00
Permit Recording Fee. ***		\$520.00
*** the Permit Recording Fee is not required when the application is submitted but, must be paid before a permit will be issued. It is fully refundable if a permit is not issued. If the recording fee is not paid prior to issuance of the Final Order, permit issuance will be delayed.	<a href="#">Recalculate</a>	
Estimated cost of Permit Application		\$1,896.00

OWRD Fee Schedule

Fee Calculator Version: B20170117

5-88508

**Easy Peel® Address Labels**  
Bend along line to expose Pop-up Edge®

S-88508

Sunny Valley Sand and Gravel, Inc.  
Andreas and Carole Blech  
1867 Williams Hwy, #260  
Grants Pass, OR 97527

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**Étiquettes d'adresse Easy Peel®**  
Repliez à la hachure afin de révéler le rebord Pop-up®

**STATE OF OREGON  
WATER RESOURCES DEPARTMENT**

725 Summer St. N.E. Ste. A  
SALEM, OR 97301-4172  
(503) 986-0900 / (503) 986-0904 (fax)

RECEIPT # **125792**

INVOICE # \_\_\_\_\_

RECEIVED FROM: Sunny Valley Sand & Gravel Inc.  
BY: \_\_\_\_\_

APPLICATION	5-88508
PERMIT	
TRANSFER	

CASH:  CHECK # 90510 OTHER: (IDENTIFY)

TOTAL REC'D \$ 1,896.00

**1083 TREASURY 4170 WRD MISC CASH ACCT**

0407 COPIES \$ \_\_\_\_\_  
OTHER: (IDENTIFY) \$ \_\_\_\_\_

0243 I/S Lease \_\_\_\_\_ 0244 Muni Water Mgmt. Plan \_\_\_\_\_ 0245 Cons. Water \_\_\_\_\_

**4270 WRD OPERATING ACCT**

MISCELLANEOUS 4611

0407 COPY & TAPE FEES \$ \_\_\_\_\_  
0410 RESEARCH FEES \$ \_\_\_\_\_  
0408 MISC REVENUE: (IDENTIFY) \_\_\_\_\_ \$ \_\_\_\_\_  
TC162 DEPOSIT LIAB. (IDENTIFY) \_\_\_\_\_ \$ \_\_\_\_\_  
0240 EXTENSION OF TIME \$ \_\_\_\_\_

WATER RIGHTS:

0201 SURFACE WATER	EXAM FEE \$ <u>1,376.00</u>	0202 RECORD FEE \$ <u>520.00</u>
0203 GROUND WATER	\$ _____	0204 \$ _____
0205 TRANSFER	\$ _____	

WELL CONSTRUCTION

0218 WELL DRILL CONSTRUCTOR	EXAM FEE \$ _____	0219 LICENSE FEE \$ _____
LANDOWNER'S PERMIT		0220 \$ _____

OTHER (IDENTIFY) \_\_\_\_\_

**0536 TREASURY 0437 WELL CONST. START FEE**

0211 WELL CONST START FEE \$ \_\_\_\_\_ CARD # \_\_\_\_\_  
0210 MONITORING WELLS \$ \_\_\_\_\_ CARD # \_\_\_\_\_

OTHER (IDENTIFY) \_\_\_\_\_

**0607 TREASURY 0467 HYDRO ACTIVITY LIC NUMBER**

0233 POWER LICENSE FEE (FW/WRD) \$ \_\_\_\_\_  
0231 HYDRO LICENSE FEE (FW/WRD) \$ \_\_\_\_\_  
HYDRO APPLICATION \$ \_\_\_\_\_

**TREASURY OTHER / RDX**

FUND \_\_\_\_\_ TITLE \_\_\_\_\_

OBJ. CODE \_\_\_\_\_ VENDOR # \_\_\_\_\_

DESCRIPTION \_\_\_\_\_ \$ \_\_\_\_\_

RECEIPT: **125792**

DATED: 1/31/18 BY: [Signature]

SUNNY VALLEY SAND & GRAVEL INC.

9510

Oregon Water Resources Dept.  
01/16/18

Bill #

01/16/18

1,896.00

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JAN 31 2018

OWRD

Evergreen Bank

1,896.00