

IN THE BOARD OF COMMISSIONERS OF THE STATE OF OREGON

FOR THE COUNTY OF YAMHILL

SITTING FOR THE TRANSACTION OF COUNTY BUSINESS

In the Matter of an Ordinance Amending the)
 Official Zoning Map from AF-10 (Agriculture/)
 Forestry Small Holding) to HI (Heavy Industrial)) **ORDINANCE 696**
 on a Portion of Tax Lot 3229-100; Applicant)
 Baker Rock Resources; Planning Docket Z-03-00;)
 and Declaring an Emergency.)

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON (the Board) stat for the transaction of county business on March 1, 2001, Commissioners Robert Johnstone, Thomas E. E. Bunn and Leslie Lewis being present.

WHEREAS, on October 2, 2000, Baker Rock Resources (the "applicant") submitted an application to the Department of Planning and Development, Planning Docket Z-03-00, requesting a change to the Official Zoning Map from AF-10 (Agriculture/Forestry Small Holding) to HI (Heavy Industrial) for Tax Lot 3229-100, an approximately 20-acre parcel adjacent to the City limits of the City of Newberg and within the Newberg Urban Growth Boundary; and

WHEREAS, on December 7, 2000, the Yamhill County Planning Commission held a duly noticed public hearing to consider the application and thereafter the five-member quorum present voted unanimously to approve rezoning a portion of Tax Lot 3229-100; and

WHEREAS, a request to leave the record open was made by a participant at the Planning Commission Hearing, and that request was denied as untimely. The Board reviewed the proceedings and adopted Board Order 00-912, establishing a process and schedule for Board review of the record and decision; and

WHEREAS, the Board held a duly noticed public hearing on January 25, 2001, at the Yamhill County Courthouse, to review the record of the Planning Commission hearing as well as additional evidence and written testimony received prior to and at the January 25th hearing; and

WHEREAS, prior to the close of the January 25, 2001 hearing a request was made to keep the record open for evidence and written testimony for an additional seven day period, and that request was granted by the Board; and

WHEREAS, on February 5, 2001, after closing the public hearing and deliberating, the Board voted unanimously to approve the requested zone change for a

B.O. #01-137
ORDINANCE 696

portion of Tax Lot 3229-100 as specified in this ordinance and directed staff to prepare necessary findings; and

WHEREAS, the findings and conclusions attached hereto as Exhibit "A" provide justification for approval of the amendment to the Official Zoning Map of Yamhill County specified in Exhibit "B" and imposition of a Limited Use Overlay, and that approval of this ordinance is in the best interests of the citizens of Yamhill County; Now therefore,

THE YAMHILL COUNTY BOARD OF COMMISSIONERS ORDAINS AS FOLLOWS:

Section 1. The Official Zoning Map of Yamhill County is hereby amended on the portion of Tax Lot 3229-100 specified in the attached Exhibit "B" and incorporated herein by this reference to reflect a zoning designation of "HI" (Heavy Industrial).

Section 2. The findings attached as Exhibit "A" and incorporated herein by this reference are hereby adopted in support of this ordinance.

Section 3. A Limited Use Overlay (LUO) is hereby applied to that portion of Tax Lot 3229-100 that is rezoned to "HI." Under the LUO, permitted uses shall be limited to those uses the applicant has described as being part of its proposal, which include the installation of asphalt and concrete batching facilities, the on-site processing and storage of finished products and materials necessary for the production of asphalt, and other uses similar to or incidental thereto. In addition, the approval of the LUO shall be subject to the following conditions:

1. An application for site design review shall be submitted to and approved by the county prior to development of the proposed use.
2. All necessary DEQ permits shall be obtained for the proposed use, as well as any other state or federal permits required for construction or operation of the use.
3. No cement production or rock crushing shall take place on Tax Lot 3229-100.
4. Sandoz Road access shall not be used for truck activities associated with heavy industrial uses on the property.
5. The only Heavy Industrial use that can be made of that portion of the site zoned HI within 160 feet of the southern boundary of the site is access to heavy industrial uses located within the remainder of the HI zoned area.

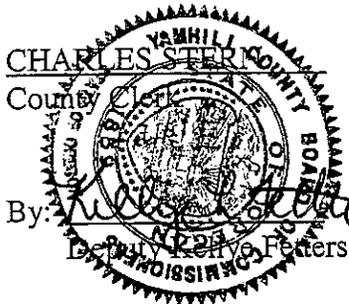
6. The only Heavy Industrial use that can be made of that portion of the site zoned HI within 160 feet of the eastern boundary of the site is emergency access to heavy industrial uses located within the remainder of the HI zoned area.

Section 4. This ordinance being necessary for the health, safety and welfare of the citizens of Yamhill County, and an emergency having been declared to exist, is effective upon passage.

DONE at McMinnville, Oregon, this 1st day of March, 2001.

ATTEST

YAMHILL COUNTY BOARD OF COMMISSIONERS



CHARLES STERRY
County Clerk

By: *[Signature]*
County Clerk

Robert Johnstone
Chairman ROBERT JOHNSTONE

Thomas E. E. Bunn
Commissioner THOMAS E. E. BUNN

FORM APPROVED BY:

Rick Sanai
RICK SANAI
Assistant County Counsel

Leslie Lewis
Commissioner LESLIE LEWIS

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EXHIBIT "A"
ORDINANCE 696
FINDINGS FOR APPROVAL
ZONE MAP CHANGE APPLICATION
BAKER ROCK RESOURCES
TAX LOT 3229-100
DOCKET NO. Z-03-00

Background Facts:

Applicant: Baker Rock Resources
21880 SW Farmington Road
Beaverton, Oregon 97007-5470

Phone: (503) 642-2631
Fax: (503) 642-2534

Tax lot: 3229-0100

Owner: Jeff Melcher, Karen Bales, Dennis K. Melcher, June Melcher LLC
8046 McKay Road, NE
St. Paul, Oregon 97137

Parcel Size: ± 19.68 acres

Parcel Location: 1409 Sandoz Road, near the NE corner of Wynooski and Sandoz Roads

Parcel Zoning: County zone designation: "Agriculture Forestry-10 Acres" (AF-10)

City of Newberg Comprehensive Plan Designation: "Industrial" (I).
The Newberg Comprehensive Plan Map designation applies to this application, pursuant to Yamhill County Ordinance 214.

Access: Access to the proposed facility will be provided by private easement and driveway along the eastern edge of the neighboring City of Newberg wastewater treatment plant, to Wynooski Road, a County designated truck route. The access easement will exceed 30 feet in width. In addition, the eastern property line fronts and has direct access to Sandoz Road for a distance of almost 800 feet. Sandoz Road is within the City of Newberg and is designated a Local Street in the Newberg Comprehensive Plan.

On-Site Land Use: Filbert Orchard.

Site Characteristics: The site is flat, and does not contain any inventoried natural resources, protected natural features or natural hazards. There are two mobile homes on

the northeast corner of the property that will be removed by the applicant. There are no floodplains, floodways or flood hazard areas, no areas of erosion, no steep slopes, no fish or wildlife habitat, and to the applicant's knowledge there are no soil limitations for building or septic.

Surrounding Planning, Zoning and Land Use: To the west of, and immediately adjacent to Tax Lot 3229-100 is the City of Newberg wastewater treatment plant, which is in the City of Newberg, plan designated for Industrial uses and zoned Heavy Industrial (M-3) by the City of Newberg.

The parcel immediately north of the subject parcel is under County jurisdiction, with an applicable plan designation of Industrial and an AF-10 zone designation. The eastern portion of the northern parcel is relatively flat, abuts Sandoz Road and contains a dwelling and a large grassy field. The western portion of the parcel slopes steeply into a swale/creek area, directly north of the City's wastewater treatment plant. North of this parcel is land within the City of Newberg including, on the western end, the Sportsman Air Park and, on the eastern end, land zoned Light Industrial (M-2) and containing an industrial park and other uses, including airport related uses.

To the east of the subject property is Sandoz Road, and across Sandoz there are four parcels within the City of Newberg, zoned Medium Density Residential (MDR). These properties are in a triangular wedge between Sandoz Road and Highway 219, and contain residential uses. The northernmost parcels are developed with two or three single family dwellings, and the southernmost parcel is developed with the Avalon manufactured home park.

To the south of the subject property and north of Wynooski Road are four parcels within the City of Newberg zoned Light Industrial. This area contains filbert orchards, an open grassy field and the Oregon Mattress Factory. Across Wynooski to the south are a solid waste transfer and recycling facility, undeveloped lands owned by SP Newsprint Corporation, and sludge ponds that are part of the industrial waste processing facilities operated by SP Newsprint in conjunction with the pulp mill located nearby, further to the west.

Water: Any water needed for heavy industrial uses on site would be provided by truck, well or through agreement with the City of Newberg. The proposed heavy industrial use does not require water service. Water needed for other planned uses on the site would be provided through agreement with the City of Newberg or would be installed following annexation to the City.

Sewage Disposal: Sewage Disposal is not required to conduct the heavy industrial uses proposed for the subject property. Prior to annexation to the City of Newberg, sewage disposal would be provided through agreement with the City of Newberg, on-site septic system, or by way of portable facilities.

Fire Protection: Newberg Rural Fire Protection District

Previous Actions: There are no previous land use applications or approvals regarding the subject parcel. As stated, Baker Rock applied for and obtained a zone change for nearby Tax Lot 3230-100 to Heavy Industrial. As part of that approval, the County determined that aggregate processing and an asphalt batch plant are similar to other heavy industrial uses, and are allowed uses in the heavy industrial zone. (Ordinance 650)

Type of Application:

The applicant, Baker Rock Resources, has sought a zone map change for Tax Lot 3229-100. The property is currently zoned "Agriculture Forestry 10-acre" (AF-10) and the applicant has requested that the property be zoned "Heavy Industrial" (HI). This decision rezones the northwest corner of the site to a distance 160 feet from the eastern and southern boundaries of Tax Lot 3229-100 to HI, as shown on Exhibit "B." Two additional areas are rezoned to HI by this decision: 1) an area extending 60 feet south of the northern property line in the eastern corner of the site, for emergency access to Sandoz Road; 2) an area in the southwest corner of the site for access. The remainder of the parcel will remain AF-10. Any conflicts between the site descriptions in these findings and Exhibit "B" should be resolved by reference to Exhibit "B."

The applicant intends to place an asphalt batch plant on the northwest portion of the property, immediately adjacent to the sludge ponds and processing facilities of the City of Newberg wastewater treatment plant, following site design review. The applicant has also described plans to install equipment for the batching of redi-mix concrete. In that location, the proposed heavy industrial uses would not be adjacent to any residences or businesses, and would abut other decidedly heavy industrial uses. The remainder of the site would eventually be developed with light industrial uses, to provide long-term buffering of nearby residential uses from heavy industrial uses on the site. Schematic drawings were submitted in the proceedings leading to this decision identifying the approximate location of the proposed batch plant facilities on the subject property and depicting the kind of uses that are proposed for the southern and eastern portions of the subject property following annexation. Conditions are also being imposed as part of this approval, and the applicant has stipulated to imposition of a Limited Use Overlay. The applicant also intends to seek annexation of the site to the City of Newberg. The requested approval would allow development of heavy industrial uses on the site prior to annexation, which is a potentially lengthy process that includes voter approval.

By Ordinance No. 650 and (on remand) Ordinance No. 674, the County approved a zone change requested by Baker Rock that will allow, following site design review, development of an asphalt batch plant on Tax Lot 3230-100, which is a 20 acre parcel located immediately adjacent to the Willamette River, south of the City limits of Newberg and within the Newberg Urban Growth Boundary (UGB). The subject property is an alternative to the original site. Baker Rock has negotiated an agreement with the City of Newberg that would, among other things, preclude development of a batch plant on Tax Lot 3230-100.

Findings and Conclusions for Approval:

The applicant has demonstrated compliance with the applicable criteria of the Yamhill County Comprehensive Plan and Zoning Ordinance as detailed in these findings. The record of these proceedings provides the factual basis for approval. The Board has considered and weighed all evidence, arguments and testimony received by the Planning Commission and the Board in these proceedings as well as the findings and conclusions of Ordinances 650 and 674.

1. The request is to rezone all of Tax Lot 3229-100 from Agriculture Forestry 10-acre (AF-10) to Heavy Industrial (HI). The applicant has already requested and received (in conjunction with Tax Lot 3230-100) a County determination that aggregate processing and asphalt batching are similar to other heavy industrial uses, and are allowed uses in the heavy industrial zone. (YCZO 1206.04) These findings also justify imposition of conditions of approval and a Limited Use Overlay on the subject property.
2. For the requested zone change, the applicable review criteria are found in Yamhill County Zoning Ordinance (YCZO) § 1208.02, which reads as follows:

"1208.02 Review Criteria.

A quasi-judicial change to a zoning map may be authorized, pursuant to Subsection 1208.01, provided that the request satisfies all applicable requirements of this ordinance, and also provided that the applicant demonstrates compliance with the following criteria, except as provided in Subsection 1208.03:

- A. The proposed change is consistent with the goals, policies and any other applicable provisions of the Comprehensive Plan.*
- B. There is an existing, demonstrable need for the particular uses allowed by the requested zone, considering the importance of such uses to the citizenry or the economy of the area, the existing market demand which such uses will satisfy, and the availability and location of other lands so zoned and their suitability for the uses allowed by the zone.*
- C. The proposed change is appropriate considering the surrounding land uses, the density and pattern of development in the area, any changes which may have occurred in the vicinity to support the proposed amendment and the availability of utilities and services likely to be needed by the anticipated uses in the proposed district.*
- D. Other lands in the County already designated for the proposed uses are either unavailable or not as well-suited for the anticipated uses due to location, size or other factors.*
- E. The amendment is consistent with the current Oregon Administrative Rules for exceptions, if applicable."*

3. Limited Use Overlay Provisions

3.1 The purpose of the Limited Use Overlay District is stated in YCZO § 904.01, as follows:

“The purpose of the Limited Use Overlay District is to limit permitted use(s) and activities in a specific location to only those uses and activities which are justified and approved through Comprehensive Plan exceptions under ORS 197.732 or other authorized statutory or administrative rule procedure.”

3.2 YCZO § 904.02 states:

“The LU Overlay District shall apply to that specific area for which a reasons exception has been taken or other area as deemed appropriate to protect Goal 5 resources. The Limited Use Overlay District is intended to carry out the administrative rule requirement for exceptions pursuant to OAR 660-14-018 and ORS 197.732 and for Goal 5 resource protection pursuant to OAR 660-16-010.”

3.3 YCZO § 904.03 states:

A. When the Limited Use Overlay District is applied, the uses permitted in the underlying zone shall be limited to those specifically referenced in the ordinance adopting the Limited Use Overlay District.

B. The Limited Use Overlay District may be used to require conditional use approval for uses normally permitted outright.

C. Reasonable conditions may be imposed in the Limited Use Overlay District as are necessary to assure compliance with the provisions of the Comprehensive Plan and this ordinance.

D. Until the overlay has been removed or amended, the only permitted uses in an LU district shall be those specifically referenced in the adopting ordinance.”

4. Airport Overlay District. YCZO section 907 implements Federal Aviation Administration (FAA) requirements known as “Federal Aviation Regulations Part 77.” The purpose of the District and of the FAA regulations is to prevent conflicts between airport users and neighboring land uses. The Overlay consists of imaginary planes that extend through the airspace over and near the “primary surface,” which is an area that includes the Air Park runway and an area extending 200 feet beyond the runway at both ends. Two of the FAA’s imaginary planes exist to some degree over the subject parcel.

4.1 First, the “Horizontal Surface” exists over the entire site. YCZO 907.03(F) defines “Horizontal Surface” as:

“A horizontal plane 150 feet above the established airport elevation, the perimeter of which is constructed by swinging arcs of 5,000 feet from the center of each end of the primary surface of each visual or utility runway, and 10,000 feet from the center of each end of the primary surface of all other runways and connecting the adjacent arcs by lines tangent to those areas.”

No structures proposed for the subject property will exceed 80 feet in height, and there is therefore no possibility that uses proposed for the site will enter the Horizontal Surface.

4.2 Second, a “Transitional Zone” exists above the northwest corner of the site. (see overlay map). YCZO 907.03(I) defines “Transitional Zone” as:

“A surface extending upward at a slope of 7:1 beginning on each side of the primary surface, and from the sides of the approach zones, then extending upward to a height of 150 feet above the airport elevation.”

As stated, no structure is proposed for the site that would exceed 80 feet in height, and none of the structures proposed for the site will enter the Transitional Zone. Because no structures proposed for the site will enter any airspace regulated under the Airport Overlay District provisions, no standards or limitations imposed by YCZO section 907 are applicable to the applicant’s request. The applicant intends to file FAA form 7460-1, “Notice of Proposed Construction or Alteration,” prior to construction on the site. A condition of approval requires that the applicant comply fully with all FAA regulations applicable to the site.

5. **Applicable Plan Map Designation.** The Newberg Urban Area Growth Management Agreement, (“Management Agreement” or “Agreement”) dated July 2, 1979, was not renewed by the City of Newberg, and therefore is likely void. At the time of the Baker Rock application, a new Management Agreement had been adopted by the City but not by the County.

The subject property is outside of the Newberg City Limits, and within the Newberg Urban Growth Boundary (UGB). Under the terms of both the new and old Management Agreements, the Newberg Comprehensive Plan Map is the applicable Plan Map for the area within the Newberg UGB. Additionally, by Ordinance No. 214, the County adopted, as County Comprehensive Plan designations, the City of Newberg’s Plan Map designations for all areas of the County located within the City’s UGB. Under Ordinance No. 214, the subject property is designated “Industrial” on the Yamhill County Comprehensive Plan and plan map.

6. **Zoning Map Amendment Justification**

6.1 The applicant has requested a zone map change to allow installation of a permanent asphalt batching facility and related uses on tax lot 3229-100. The batching facilities would be located in the northwest portion of the subject property, immediately adjacent to the sludge ponds and other processing facilities of the City of Newberg’s wastewater treatment facility. Future plans are to develop the remainder of the subject

property for light industrial uses, and to request annexation of the entire parcel into the City of Newberg. The site is contiguous to lands within the City of Newberg.

6.2 YCZO § 1208.02(A) requires that the County find that: *“The proposed change is consistent with the goals, policies and any other applicable provisions of the Comprehensive Plan.”*

6.2.1 The Board has identified the goals and policies specified in this section as possibly applicable to this approval, but has not identified any comprehensive plan goals or policies that are approval criteria. The goals and policies discussed in these findings are aspirational and intended primarily to help to establish the context for decision making by the County. Findings made as part of Ordinance No. 650 and Ordinance No. 674 support the discussion in and conclusions of these findings.

6.2.2 The Goals and Policies of the Newberg Comprehensive Plan are not applicable to this application. No plan map amendments are being requested by the applicant, and the proposed industrial zoning and use of the subject parcel is consistent with the City’s designation of the land as “Industrial” in its comprehensive plan. Under the City’s comprehensive plan, designation of the subject parcel as “Heavy Industrial” is more appropriate than its current zoning. The City’s plan states that “Heavy industrial uses should be located in the area near Smurfit Newsprint, an existing pulp and paper mill.”¹ The subject property is located in close proximity to the Smurfit (now S-P Newsprint) mill, and adjacent to land zoned by the City of Newberg for heavy Industrial uses and containing the City’s sewage treatment plant.

6.2.3 Yamhill County Comprehensive Planning Goal § 1.H.1 states that the County will strive:

“To concentrate industries of similar types, service needs, and performance characteristics within designated areas of each of the existing urban centers; to encourage adequate land for new industrial development within urban growth boundaries; to encourage the relocation of existing industries from undesirable locations in order to eliminate land use conflicts; to attract new industries in accordance with the need to achieve a more balanced local property tax and employment base, while maintaining a high standard of environmental quality; and to protect the stability and functional aspect of industrial areas by protecting them from incompatible uses.”

The proposed use promotes this goal. It is an industrial use that will be located in an area that has long been plan designated for industrial use by the City of Newberg and Yamhill County, and is within an urban growth boundary near other heavy industrial uses. The facility is of recent design, meets or can be conditioned to meet all applicable environmental requirements, and will be required by the Oregon Department of Environmental Quality (DEQ) to continue meeting those requirements. Because the site is designed to receive aggregate by existing road transportation networks that are suitable

¹ City of Newberg, “Comprehensive Plan Text Ordinance 1967 (7/2/79) (Last amended 11/4/96) p. 49.

for transport of aggregate and finished products (including a state highway and designated Truck Route), conforming the zoning of the site to its plan designation will help to maintain the functionality and stability of the area for industrial uses.

6.2.4 Yamhill County Comprehensive Plan Policy § 1.H.1.a. states:

“Heavy industrial uses with seasonal or high nuisance characteristics will be encouraged to locate or relocate only in or immediately adjacent to urban areas where all required services are available, well removed and shielded from existing or projected residential development; and conversely, that prime heavy industrial sites will be identified and protected from encroachment of other urban uses pending acquisition and development.”

6.2.4.1 An asphalt batching facility and related uses are heavy industrial uses. During normal business hours the site will produce truck noise and other sounds that are consistent with other common industrial operations. Particulates and gasses at the facility will be controlled by a bag house or bag houses and other pollution control equipment. Proper design and operation of the site will ensure compliance with all DEQ permits. The proposed use has lower nuisance characteristics than many heavy industrial uses, including the neighboring sewage treatment plant and SP Newsprint’s industrial sludge processing ponds. The facility would be located immediately adjacent to an urban area, where all required services, such as water, electricity and roads are available or can be made available to the extent they are required for operation of the facility.

Heavy Industrial uses on the site would be “well removed and shielded” from nearby residential uses by the existing filbert orchard, future light industrial uses, and a proposed landscaped berm along Sandoz Road. The applicant’s plans indicate that the batch plant and related uses will likely be located more than 400 feet from residences in the Avalon neighborhood and approximately 300 feet from a single-family residence on Sandoz Road.

The City’s long-range plans for expansion of the sewage treatment facility include the possibility of building “mirror image” ponds onto Tax Lot 3229-100. In that case, batch plant and related uses could be shifted toward Sandoz Road residences. It appears, however, that sewage treatment facility expansion will be focused toward the southern portion of the property, well removed and shielded from the Avalon and other residential uses. Even with “mirror” sewage treatment plant expansion, a significant area will remain for operation of a batch plant and related uses in the northwest corner of the site, allowing adequate buffering between those uses and Sandoz Road residences.

The Board finds that mitigation techniques are feasible to properly shield the proposed uses from residential uses, and are likely to be implemented considering County and future City site-design review requirements and the City of Newberg’s involvement in the project. Buffering by distance, setbacks, existing filbert orchards and future light-industrial uses will be further enhanced by berms, vegetation and other screening that can

be required through site design review. The City's treatment facility expansion plans are long-term, and annexation of the site prior to that expansion is likely. (see draft Newberg/Baker Rock Agreement containing consent to annex and Wyooski Easement Agreement.) The applicant has stated a willingness, through site design review and an agreement with the City of Newberg, to provide the maximum buffer possible while accommodating planned uses and the City of Newberg's desire for potential expansion of the sewage treatment plant. Granting the flexibility requested by the City and the applicant will allow heavy industrial utilization of the site prior to annexation in conformance with comprehensive plan and zoning code buffering requirements. Granting that flexibility will also accommodate appropriate future planning and use of the site.

As stated, the proposed use would be in an area that has long been plan designated and used for industrial uses. Site design review, setbacks, and development of less intensive light industrial uses will ensure that the facility will be separated from nearby residential uses and shielded from them to a level sufficient to prevent conflicts. The site is in or adjacent to an urban area, in close proximity to the City's other heavy industrial sites, and is considered a prime heavy industrial site. The Newberg City Council unanimously adopted a resolution in support of the applicant's proposal and City officials testified in favor of the application.

6.2.4.2 Streets in the area are adequate for truck traffic anticipated to be generated by the proposed use of the site. Wyooski Road was designed and built to accommodate industrial truck traffic. Locating the access road for heavy industrial uses in the southeast corner of the site (to Wyooski) ensures that truck traffic related to the operation of the use will be well shielded and removed from residential uses.

6.2.4.3 The site is relatively flat, non-erosive and well-drained. To the extent additional storm drainage facilities or drainage design is necessary to accommodate the proposed use, it is feasible to provide such facilities or design on site, and to require on or off-site facility installation through site design review.

6.2.4.4 The County has previously interpreted Comprehensive Plan Policy § 1.H.1.a to encourage siting of heavy industrial uses in areas where all services that are needed for the proposed use are available. (see also YCZO 703.01) All services the applicant requires for its proposed facilities are currently available to the site, and no additional services will be required. If an urban level of services is required for other uses proposed for the site, the applicant will obtain those services through agreement with the City of Newberg, or more likely through annexation.

6.2.5 Yamhill County Comprehensive Plan Policy § 1.H.1.b. states:

"To the greatest extent possible, industrial areas will be located within urban growth boundaries. Those industrial areas located outside urban growth boundaries will be compatible with the industrial development goal and will be located where they can be adequately served by necessary major utility lines, including

electric power substations, and transmission lines, trunk sewer lines, trunk water lines, and where appropriate, trunk gas lines.”

The proposal promotes this policy because it would occur within the Newberg Urban Growth Boundary. The site is almost completely surrounded by lands that are within the City of Newberg and that currently receive or could receive an urban level of services from the City of Newberg and private utilities.

6.2.6 Yamhill County Comprehensive Plan Policy § 1.H.1.e. states:

“Industrial uses will be located so that adequate buffer space is provided between incompatible land uses.”

6.2.6.1 In the vicinity of the subject property are other heavy industrial uses including a sewage treatment plant, a pulp mill, the mill’s treatment ponds, and a solid waste transfer and recycling facility. Other vicinity uses include a mattress factory, undeveloped properties, and residential uses along and across Sandoz Road.

6.2.6.2 Residential uses are generally not considered to be compatible with heavy industrial uses, and vice versa. Adequate buffering will be provided by the 160-foot area along Sandoz Road zoned predominantly AF-10. Buffering for activities on the site of the proposed facility will be provided as specified in finding 6.2.4 and will be adequate to meet this policy as well. Adequate buffering between traffic impacts from the proposed facility and Sandoz Road residences is provided by locating access for heavy industrial uses in the southwest corner of the site, to Wynooski Road. A condition of approval prohibits use of Sandoz Road for truck activities associated with the heavy industrial operation. (Note: Even if truck access were provided from the northeast corner of the site, trucks could enter Highway 219 without having to pass by the Avalon neighborhood.) Existing buffering, stringent state and federal pollution control requirements that would apply to operation of the proposed facility, and additional buffering that could be required through site design review, all contribute to the adequacy of buffering in compliance with this policy.

6.2.7 Yamhill County Comprehensive Plan Policy § 1.H.(g) states:

“Agricultural, forestry and mineral resource-oriented industry will be accommodated in areas close to the resources utilized, provided that such industrial uses are compatible with any nearby urban development, city water supply and sewerage are not required, and waste discharges constitute no threat to the environment.”

Production of asphalt and other aggregate products is a “mineral resource-oriented industry.” The applicant intends to obtain materials by truck. Truck access to the facility will be through the City of Newberg’s sewage treatment facility property, onto Wynooski Road, which is a designated truck route. Materials will enter and exit the site by way of Wynooski Road and Highway 219, which are both suitable for truck traffic. (The feasibility of this approach has been demonstrated by submittal to the record of an access easement executed by the City of Newberg.) The applicant owns and operates a sand and gravel extraction site on the Willamette at river mile 65 in St. Paul, and intends to ship

aggregate to the subject property by truck from its St. Paul facility. The applicant does not currently need city water or sewer service, but will install such facilities through agreement with the City of Newberg or following future annexation of the property to the City of Newberg. No sewage will be discharged off site or into groundwater under the site, runoff will be managed on or off-site under DEQ permit, and air discharges will fully comply with all state and federal requirements and will not constitute a threat to the environment. The applicant has demonstrated compatibility of the proposal with nearby urban development as described throughout these findings, and has demonstrated consistency with Plan Policy § 1.H.(g).

6.2.8 Yamhill County Comprehensive Plan Policy § V.A.1.b. states:

“Yamhill County will, in making land use decisions relative to industrial or other uses likely to pose a threat to air quality, consider proximity of the proposed use to residential areas and meteorological factors such as seasonal prevailing wind direction and velocity.”

This plan policy was discussed in City of Newberg v. Yamhill County, ___ Or LUBA ___, (LUBA No. 98-141, 7/29/99). Subsequently, the County adopted Ordinance No. 674, which includes a detailed analysis and interpretation of policy V.A.1.b. The County hereby confirms as part of this proceeding its extensive interpretation of policy V.A.1.b. adopted as part of Ordinance No. 674. The information provided in these findings is directly responsive to policy V.A.1.b. as previously interpreted by the County.

6.2.8.1 There are three basic types of air contaminant discharge permits that are issued by DEQ: “minimal,” “regular,” and “Title V.” Facilities that will emit major quantities of pollutants (like the SP Newsprint Mill) operate under a Title V “major source” Air Contaminant Discharge Permit (ACDP). Very small facilities may under certain circumstances obtain a “minimal” permit, if the facility will emit less than five tons of particulates per year, and less than ten tons per year of any gaseous substance. All other facilities, including facilities of the type proposed for the subject parcel, are subject to a “regular” ACDP. The applicant intends to move an existing facility from a location on Farmington Road, which currently operates under a regular ACDP. Odor is a pollutant that is currently regulated by DEQ, and DEQ requires that the applicant control odor emissions at the Farmington Road facility.

6.2.8.2 Air quality impacts (including odor) from the applicant’s proposed facility would be minimal, and would at no time reach levels that would be considered a significant health risk or nuisance, or would upset the quiet enjoyment of nearby residences. To support this position, the applicant previously submitted letters from six neighbors of the proposed facility at its current location on Farmington Road, and a map showing the location of the residences in relation to the facility. As stated, the applicant is proposing to move the Farmington Road facility to Tax Lot 3229-100. The letters are summarized as follows:

- A letter from John and Luann Court, dated October 5, 1999, states that they have been neighbors of Baker Rock for over 15 years, and have never

experienced a problem with Baker Rock. The letter also states: "We have never detected any offensive odors being emitted from the Asphalt Plant." The Courts are located east-southeast of the facility at its current location.

- A letter from Eshraghi Nursery, dated October 14, 1999. The letter states, in relevant part: "We have been on this location since 1990. * * * I have never experienced any type of odor coming from the asphalt plant which is located directly behind both our growing area and retail store." The Eshraghi Nursery is located to the southwest of the facility at its current location.

- A letter from Ron and Lucille Wold, dated October 15, 1999. The letter states, in relevant part, "We have lived as neighbors of Baker Rock Co. on its eastern side for 12 years. In that time we have not been aware of any condition that bothered us. There has been no odor of offensive emissions from an asphalt plant established there, we are not even aware of when that was done. Occasionally we will notice a plume of white steam so we know only by that that it is in operation."

- A letter from Tualatin Hills Park & Recreation District, Jenkins Estate Center Supervisor, dated September 28, 1999, which states, in relevant part, "For many years we have been neighbors with Baker Rock and have a positive relationship with them. Never have we had a complaint from a client or staff regarding any odor from the Baker Rock Facility." The Jenkins Estate is located northeast of the facility at its current location.

- A letter from Cooper Mountain Kennel, dated October 1, 1999, which states, in relevant part: "There has never been an odor from the Baker plant * * *" The Cooper Mountain Kennel is located due north of the facility at its current location.

- A letter from Victor Pinkerton, dated October 17, 1999, which states that he has been a neighbor on Baker Rock's southern boundary for 19 years. The letter also states that "no problem exists" with the asphalt plant, and that "Odor, which may occur 2 times a year in the early morning calm, is nothing more than you would experience driving by a road being paved and for about the same length of time. It is not objectional or even worth considering for that matter."

6.2.8.3 Letters from neighbors of the facility at its current location support the applicant's claim that its facility will not generate excessive odors, and is not likely to create nuisance air quality conditions for surrounding uses at its proposed location. (Notably, the letters also support information submitted by the applicant regarding temperature inversions and wind direction and velocity in the Willamette Valley. Of the letters submitted, the only person to ever smell asphalt smelled it in an "early morning calm," no more than twice per year, along the southern boundary of the property.)

6.2.8.4 Most industrial uses have nuisance characteristics or pose health risks, but the nuisance characteristics and health risks of the proposed facility

are not significant, and are not likely to have a significant impact on nearby residences. The letters also describe the applicant as a conscientious neighbor, responsive to community needs. This aspect of the letters supports the applicant's claim that the proposed facility will be well run, minimizing the risk of incidents which may cause episodes of unacceptable air quality. In considering this information in proceedings to rezone Tax Lot 3230-100, the County previously found that this information, in conjunction with other information received, supported a conclusion that the proposed facility is unlikely to pose a threat to air quality, or to create health risks or nuisance conditions for residential areas in proximity to the proposed use or elsewhere. That conclusion has not been altered by any additional information submitted to the record regarding the new proposed plant location.

6.2.8.5 Production from the plant will vary from hour to hour, day to day, and season to season. Most paving occurs during the summer, and although the plant will operate year round, the bulk of production will occur during the period of June, July, August and September, when weather is most conducive to construction projects.

6.2.8.6 Additional Meteorological Information

6.2.8.6.1 In proceedings to adopt Ordinance No. 674, the applicant submitted a letter from a meteorological consultant, Dr. Fred W. Decker, describing the seasonal prevailing wind direction and velocity in the vicinity of its proposed facility. (attached) Dr. Decker also submitted information documenting his expertise in the areas of meteorology, climatology, physics, astronomy and education, and the County previously found that Dr. Decker is an expert in the field of meteorology.

6.2.8.6.2 Dr. Decker's letter states, in relevant part:

"You have asked that I provide data and analysis regarding meteorological factors such as seasonal prevailing wind direction and velocity at a site south of Newberg, OR, along the Willamette River. The site has been identified to me as Tax Lot 3230-100 and is a 20 acre parcel. I understand that the proposal is to place an asphalt batch plant on the northern end of the property along 14th Street near Waterfront Street.

"Pertinent wind speed and direction data are included in the following data sets:

"Summer and winter wind roses for Newberg, Feb. '95 through Sept. '96.

"Daily weather summary data for Newberg for the year ending 30 Sept. 1999.

"Tabulated wind rose data for the most recent year at Aurora, OR, and at Salem, OR.

"Long-term wind roses for Portland and Salem airport stations.

"I have examined the foregoing wind data sets and considered them in the context of relevant seasonal weather patterns dominating the Willamette Valley. This examination led to the following summary statement of conclusions as to the seasonal prevailing winds at the Newberg site identified above for the asphalt batch plant.

"During winter (Jan., Feb., Mar.) the prevailing wind blows from south at an estimated average speed of 8 mph. The speed at night (8 pm to 8 am) decreases on the average. The most frequent calm occurs in January about 35% of the time at night. The least frequent calm occurs during days (8 am to 8 pm) in February only 7% of the time.

"In spring (Apr., May, June) the prevailing wind blows from the west-southwest at estimated average speed of 7 mph. Calm occurs most often in April at night (31%) and least often in May during days (14%).

"In summer (July, Aug., Sept.) the prevailing wind blows from north at an estimated average speed of 5 mph. Calm occurs most often at night in September (54%) and least often in September days (25%).

"In fall (Oct., Nov., Dec.) the prevailing wind blows from south at estimated average speed of 6 mph. Calm occurs most often in October at night (30%) and least often in November during days (10%).

"The foregoing prevailing winds result from the dominance of storms approaching from the west beginning in October and continuing into spring interspersed with fair weather patterns increasing in May and June. In summer the dominant fair weather pattern prevails with weaker average wind speeds but with dominant daytime vertical convection currents rising from the warmer surface regions. This continues into October on the average until arrival of the fall storms. Each approaching storm from the west has south winds ahead of it for a longer time than the westerlies behind it, and this results in the prevalence of the south wind. The major fair weather pattern has a "ridge" of high pressure offshore to the west and north winds over the land. When this persists in summer or occurs at any time, northerly winds blow in the Willamette Valley."

6.2.8.6.3 The meteorological information submitted by the applicant in proceedings to adopt Ordinance No. 674 supports this application, because meteorological factors such as seasonal prevailing wind direction and velocity do not vary significantly between two Tax Lots (3230-100 and 3229-100) that are located in

the same general vicinity. Indeed, some of the data used to support Dr. Decker's conclusions was obtained from instruments located at the Newberg wastewater treatment facility located immediately adjacent to the proposed facility site. Highest plant output is expected during June, July, August and September. Dr. Decker's data establishes that winds in the vicinity blow toward urban uses in June, at a average speed of seven mph, and away from nearby residential areas, toward the south, during July, August and September, at an estimated average speed of five mph. At no time during periods of highest plant output do prevailing winds blow from the site toward the Avalon manufactured housing neighborhood. Proximate uses south of the subject property are industrial. Dog Ridge Road, which is located southwest of the subject property and contains low-density residential uses, is not in close proximity to the proposed facility. Prevailing winds and summer convection currents would tend to mitigate or prevent potential air quality impacts from the proposed facility on residential areas in proximity to the site. Prevailing winds from the west-southwest during April, May and June would also tend to direct any emissions from the plant toward lower density urban uses, and also appear likely to mitigate potential air pollution impacts from the proposed facility. At other times of the year, prevailing winds are from the south, at 6-8 mph. DEQ is responsible for regulating air quality impacts, and the County has previously stated that it does not intend to regulate such impacts through policy V.A.1.b.

6.2.8.6.4 Information in the record of adoption of Ordinance No. 674 also addressed issues related to temperature inversions, and is repeated here with regard to policy V.A.1.b. In the earlier proceeding it was noted that Dr. Decker stated that temperature inversions usually occur at night, in winter, and not usually in the summer. All-day inversions are most likely to occur only in the winter. Dr. Decker also stated that such inversions usually disappear in the morning, because the ground heats the cooler air near the ground and it rises, mixing with the already warmer air above.

6.2.8.6.5 Dr. Decker was quoted as having stated:

"Stagnation and trapping of emissions in surface air occurs with an inversion in which the surface and the air next to it is actually cooler than the air aloft. This inverts the ordinary situation with wind movement and the air temperature progressively cooler at higher levels.

* * *

"The stagnation occurs mostly in the late fall and early winter, March and October being the transition months of decreasing occurrence and increasing occurrence, respectively.

* * *

"Whereas the winter occasions of inversion can last through periods of more than one full day, the inversions that develop during the night in late spring, summer, and early fall get destroyed

by the solar heating of the surface so that they survive only briefly after dawn.

“An activity which releases heat to the air causes that air to rise buoyantly in convection currents going upward into the air above the inversion. Thus, a heat-releasing process like the batch asphalt plant actually propels air around it upward when the wind is calm at the surface. The pattern of air movement then resembles the smoke movement from a fire, the visible smoke rising some distance before getting carried laterally to the upper air currents. This beneficial convection upward occurs in all inversions but the very deepest and most extreme, those having the greatest temperature difference between surface chill and upper air warmth.”

6.2.8.6.6 Also during proceedings to adopt Ordinance No. 674, the County determined, regarding temperature inversions in the south Newberg area, that such inversions do occur, and when occurring, may exacerbate air pollution impacts. The fact that such inversions are most likely to occur at night, in winter, decreases the potential impact from this meteorological phenomenon, considering that the proposed facility is not likely to be operated at night, and will operate at higher capacity during the drier summer months, when the incidence of the phenomenon decreases. The fact that the facility will produce heat also tends to mitigate the impact of a temperature inversion on operation of the facility, by causing pollutants (which would consist mostly of gasses, not particulates) to rise above the inversion.

The applicant has demonstrated that the proposed change is consistent with the goals, policies and applicable provisions of the Comprehensive Plan.

6.3 YCZO § 1208.02(B) requires that the County find that:

“There is an existing, demonstrable need for the particular uses allowed by the requested zone, considering the importance of such uses to the citizenry or the economy of the area, the existing market demand which such uses will satisfy, and the availability and location of other lands so zoned and their suitability for the uses allowed by the zone.”

6.3.1 In addressing this standard, the Board considers the Newberg area, including the urban and urbanizable land within the Newberg Urban Growth Boundary, to be the relevant area for analysis. This approach is reasonable, considering that: 1) the use is an urban, heavy industrial use; 2) the use will be located within the Newberg UGB, in an area that has been plan designated “Industrial” by the City of Newberg based on the City’s perceived present and future need for industrial zoned land; and 3) the applicant has stated that its primary market for products from its proposed facility will be the area within the Newberg UGB (although it will also be able to serve rural Yamhill County and other nearby cities).

6.3.2 There is an existing, demonstrable need for heavy industry in the Newberg area.² Heavy industry provides jobs, and is an important component of a diversified economy. Yamhill County is largely rural, and industrial areas outside of urban growth boundaries in the County are exceedingly scarce. Land within urban growth boundaries is the appropriate place for industrial uses. Within the City of Newberg, the applicant has been able to identify only two parcels zoned for heavy industrial uses. One is part of the SP Newsprint Mill, and the other is the City's wastewater treatment plant. Neither is available--both are part of developed and fully operational facilities. The City finds the applicant's testimony on this issue to be credible and should be given weight considering the support of the City of Newberg of the application and the fact that no party to these proceedings identified any alternative, available, suitable sites.

6.3.3 There are no undeveloped sites zoned for heavy industrial uses outside of the Newberg UGB in close proximity to the UGB boundary, except for Tax Lot 3230-100. As stated, the intent of the application is to provide an alternative to development of Tax Lot 3230-100 for the proposed use, in response to objections raised by the City of Newberg, and the City's preference that the facility not be located on Tax Lot 3230-100. The applicant intends to take all necessary steps, in conformance with an agreement with the City of Newberg, to render Tax Lot 3230-100 unavailable for development of an asphalt batch plant or other Heavy Industrial uses, in order to increase the likelihood that in the future a portion of Tax Lot 3230-100 (below the escarpment) can be developed for recreational uses or other uses considered more appropriate to the site by the Newberg community. The agreement negotiated between the applicant and the City of Newberg would allow the applicant to maintain its current barge facility as the only use of an "industrial" character to take place on the lower portion of Tax Lot 3230-100, and uses of a light industrial character (ex: construction equipment area and offices or similar uses) on the upper escarpment. If the applicant's zone change request had been denied, the applicant's agreement with the City of Newberg would be void, and the applicant could then develop Tax Lot 3230-100 for batch plant uses, which would increase the impacts on the neighborhood along the truck route between the proposed site and Tax Lot 3230-100.

6.3.4 Other than as discussed in 6.3.3 above, within the Newberg UGB there is only one site zoned heavy industrial by the county that is not currently developed. That site is a collection tax lots containing at most 4-5 acres of developable land, next to the SP Newsprint wastewater treatment facility, and across Wynooski Road from the subject property. It is not on the market, and is reportedly being retained by SP Newsprint Company as a reserve for future wastewater treatment uses. It is not "available" for the proposed use. At any rate, the existence of one alternative site zoned for heavy industrial uses cannot be deemed to satisfy an existing need or market demand for heavy industrial land--it gives the applicant and others wishing to develop heavy industrial uses only one choice. The SP Newsprint site is also not as well-suited for the

² The uses allowed by the requested zone are listed in YCZO § 703.02 and quoted above in the "Applicable Review Criteria" section of these findings.

anticipated use (and other heavy industrial uses) because developable portions of the property exist only in a narrow band, limiting the ability to install appropriate buffers.

6.3.5 In its comprehensive plan, the City of Newberg has identified a need for industrially zoned land. Table IV-9³ to the city's Comprehensive Plan Text shows that the need for industrial land in the City of Newberg is rising from 490 acres needed in 1990, to 730 acres needed in the year 2000, and 1,087 acres in the year 2010. Table IV-1 of the plan shows that the city has justified the need for the amount of land it has plan designated "Industrial" within its urban growth boundary.⁴ The City's plan demonstrates that there is an existing, demonstrable need for industrially zoned land within the Newberg UGB, considering market demand, the location of other industrially zoned lands, and the suitability of available lands.

6.3.6 There is a need for asphalt in the Newberg area. Asphalt is used for new roads, road repairs and reconstruction, driveways, parking areas and other uses, and is important to the citizenry. The applicant has estimated that there is a market for approximately 48,000 tons of asphalt yearly in the Newberg area. There are also significant markets for asphalt and concrete in other nearby Yamhill County cities and in rural Yamhill County, and all of these markets are expanding as the population of Newberg and Yamhill County grows. Between 1990 and 1997, Yamhill County grew by 13,649 people, to its current population of 79,200, a growth rate of 20.8%. During the same period, Newberg grew at a rate of 28.1%, to its current population of 16,765. Due to its close proximity to the Portland metropolitan area, Newberg can be expected to receive continued spillover from the Portland area as a result of high regional growth coupled with a tight Metro urban growth boundary.

6.3.7 Aggregate, the main ingredient in asphalt and concrete, is exceedingly heavy and its cost rises the farther it must be transported. It costs approximately \$2.15 per hour, per ton to truck asphalt, which causes the cost of asphalt to rise significantly as the distance to the source increases. Due to a small number of local facilities, there is little competition in Yamhill County and Newberg area asphalt markets, which has resulted in significantly higher asphalt prices. This problem will be exacerbated as demand for paving products rises, without an increase in the number of local competitive suppliers.

The applicant has demonstrated compliance with YCZO § 1208.02(B).

6.4 YCZO § 1208.02(C) requires that the County find that:

"The proposed change is appropriate considering the surrounding land uses, the density and pattern of development in the area, any changes which may have occurred in the vicinity to support the proposed amendment and the availability of utilities and services likely to be needed by the anticipated uses in the proposed district."

³ City of Newberg, "Comprehensive Plan Text Ordinance 1967 (7/2/79) (Last amended 11/4/96) p. 51.

⁴ *Id.*, p. 39.

6.4.1 For purposes of this analysis, the "area" is the area designated "Industrial" in the Newberg Comprehensive Plan and residential areas to the east of the subject property that abut the designated "Industrial" area.

6.4.2 The pattern and density of land uses surrounding the site, and the distance and buffering between the site and residential areas to the east, has been described elsewhere in this application. The density of housing in the Avalon manufactured home park is high. However, the "pattern of development in the area" is predominantly heavy industrial, considering: 1) the presence of the SP Newsprint mill, which is the largest heavy industrial use anywhere in Yamhill County; 2) the presence of a sewage treatment plant and mattress factory immediately adjacent to the site; and 3) the close proximity of the site to existing sludge ponds and sludge processing facilities in conjunction with the SP Newsprint Mill.

6.4.3 As stated, the only residential uses in the area are several single family dwellings and mobile homes along Sandoz Road, and the Avalon manufactured home park east of Sandoz Road. The proposed use will be buffered from these uses as described elsewhere in these findings. No known changes have occurred in the vicinity to support or detract from the appropriateness of the requested zone change. The vicinity of the proposed use is, for the most part, plan-designated by the City of Newberg for industrial uses, and remains appropriate for those uses.

6.4.4 The proposed change is also appropriate to the extent that approval of this application may lead to the proposed plant not being developed on Tax Lot 3230-100, adjacent to Roger's Landing Marine Park. This change in the applicant's development plans means that no truck traffic related to the proposed facility will be required to pass through any residential neighborhoods in or near the City of Newberg.

6.4.5 The requested change is also appropriate because the property is plan designated for industrial uses by the City of Newberg, and lands in the City of Newberg border the property to the east, south and west, and exist in close proximity to the northern property boundary. The City of Newberg supports the requested zone change.

6.4.6 The route of the trucks to and from the site will be Highway 219 to Wynooski Road.

6.4.6.1. This route passes through, and next to, industrial uses and undeveloped properties zoned for industrial uses. One dwelling, located on the northeast corner of Wynooski and Sandoz, is also being utilized at least in part as a cabinet shop. Trucks currently use the Wynooski truck route to access the solid waste transfer station, pulp mill and mattress factory along Wynooski. The applicant, and the applicant's predecessor, also used this route to transport aggregate to and from its processing operations on Tax Lot 3230-100 since 1973.

6.4.6.2 The applicant has current authority to use tax lot 3230-100 for transporting, storing and crushing aggregate. In 1993, at the height of its rock crushing operations, the applicant hauled 283,000 tons of rock from the site. That is an average of 22 full and empty trucks per hour, compared with 2 inbound and 2 outbound

truck trips in a peak hour anticipated for operation of the proposed batch plant. Compared to potential impacts of siting the facility on Tax Lot 3230-100, use of the subject property instead of Tax Lot 3230-100 will greatly diminish impacts to the existing truck route and the neighborhood through which it passes.

6.4.6.3 The County is the Road Authority for the access route to the proposed facility. The County Public Works Director has indicated that Wyooski Road has been widened and improved to handle trucks.

6.4.6.4 The applicant's Traffic Impact Review, performed by Lancaster Engineering and dated August 18, 2000, indicates that the truck route providing access to the site is adequate for the proposed use, and will retain an adequate level of service considering the applicant's anticipated use. The report concludes that the applicant's proposed use will not significantly affect the capacity of local intersections or unduly impact existing roads.

6.4.6.5 To the extent access road impacts are attributable to the applicant's proposed use, the applicant can be required to contribute to road repairs or improvements through the County's site design review.

6.4.6.6 The applicant's proposed use is consistent with the overall heavy industrial character of the area. The applicant's proposal will not cause an inappropriate increase in street damage or traffic impacts on vicinity streets from the situation that presently occurs or is likely to occur.

6.4.7 The proposed change is appropriate considering the availability of utilities and services likely to be needed by the anticipated uses in the proposed district. When an applicant has provided sufficient detail regarding its anticipated long-term use of the property subject to a zone change application, the County has interpreted YCZO § 1208.02(C) as requiring the County to consider only the applicant's proposed use as the "anticipated use." In this instance, the applicant has described the use it intends to make of the subject parcel in sufficient detail, and has stated that all utilities and services that it is likely to need for its anticipated use are available at the site, or can be made available through agreement with, or annexation to the City of Newberg. Those services, including, but not limited to, sewer, water, electricity and other energy sources, fire and police protection, schools, street lighting and all other services and utilities, exist to the level they are likely to be needed by the applicant for its anticipated uses.

6.4.8 The proposed change is also appropriate considering the availability of utilities and services likely to be needed by heavy industrial uses in the proposed district. This criterion does *not* require that the site have services available for all conceivable heavy industrial uses, especially if a limited use overlay is applied to the site. As stated, all public utilities and services that would be necessary for heavy industrial uses generally are available at the site or can be made available, and are currently adequate for heavy industrial uses generally. The site is within the Newberg Urban Growth Boundary, and arrangements could conceivably be made to obtain sewer service from the City. It is also conceivable that appropriate sewage treatment facilities could be constructed on-site to accommodate a specific heavy industrial use other than the use

proposed by the applicant. No use could be made without all necessary permits, which might limit the types of heavy industrial uses that could be made on the property prior to annexation. The fact that not all heavy industrial uses could ultimately be permitted at the site does not make the zone change inappropriate.

6.4.9 In addition to the above information, the "anticipated uses" specified in YCZO § 1208.02(C) will consist solely of the applicant's proposed uses because the County is imposing a Limited Use Overlay on the subject parcel under YCZO § 904, limiting uses allowed outright on the property (prior to annexation) to the uses that have been proposed by the applicant.

6.5 YCZO § 1208.02(D) requires that the County find that:

"Other lands in the County already designated for the proposed uses are either unavailable or not as well-suited for the anticipated uses due to location, size or other factors."

6.5.1 This standard requires that the County consider other lands in the County that are already designated for the proposed uses, and determine whether they are as well-suited for the anticipated uses considering location, size or other factors. Information referenced in this Exhibit "A" addressing YCZO § 1208.02(A) and (B) is relevant in addressing this standard. That information establishes that: 1) it is important for the applicant to locate the proposed use in the Newberg area; 2) the use is an industrial use that is intended to serve primarily the Newberg market; 3) industrial uses serving predominantly the Newberg market are most appropriately located on land plan designated industrial, within the Newberg UGB; 4) there are no other heavy industrial lands within or near the Newberg UGB that are available for the proposed use, other than Tax Lot 3230-100; 5) For public policy reasons asserted by the City of Newberg, Tax Lot 3230-100 should be rendered "unavailable" for the proposed use through agreement with the City of Newberg and steps taken in conformance with that agreement; and 6) even if it were "available," the only identified existing site other than Tax Lot 3230-100 is not as well-suited for the proposed use due to configuration of the site.

6.5.2 For the following reasons, Tax Lot 3230-100 is not as well-suited for the proposed use. Originally, it was believed by the applicant that aggregate materials could be barged to Tax Lot 3230-100 from the applicant's St. Paul facility and other Willamette River aggregate sites. However, environmental restrictions related to salmon protection, including new rules adopted by the National Marine Fisheries Service pursuant to the Endangered Species Act, suggest that existing impediments to barging activities in the Willamette River may not be corrected in the near future. Currently, it appears that trucking aggregate to and from the proposed facility is more likely to occur than barging. The subject property (which was not available at the time of the previous application) has better truck access than Tax Lot 3230-100. Trucks accessing Tax Lot 3230-100 needed to pass through a residential neighborhood and by a City of Newberg park. Trucks accessing the subject property would utilize a road that is fully developed to serve industrial uses, which does not pass through or by any pure residential uses, but

only manufacturing and heavy industrial uses, including a solid waste transfer station, mattress factory and sewage treatment facility. The City of Newberg (by resolution of the City Council, adopted by unanimous vote) has also outlined its position that Tax Lot 3230-100 is more suitable for uses other than Heavy Industrial or batch plant uses. The City has urged development of the subject property, and has asserted that Tax Lot 3230-100 should be utilized for less intensive uses, possibly including recreational or open space uses.

6.5.3 Portable batch plants are allowed uses in MR-1 zones and, as stated, are allowed conditionally in MR-2 zones. MR zones are resource extraction sites, and are usually found in rural areas. These sites are not "designated for" or available for a permanent batch plant. As the Board previously found when it adopted Ordinance 650, a portable batch plant is temporary in nature, is not equivalent to a permanent batch plant, and is not adequate for the applicant's purposes. In support of this conclusion, the applicant has stated that a portable batch plant cannot adequately respond to market conditions, and would not allow the applicant to offer the level of competition most likely to cause reductions in the price of asphalt in the Newberg area. A permanent operation allows for certainty of operations, certainty that is not available with a temporary facility. With a permanent facility, the company can more appropriately anticipate changing market requirements and more effectively respond to bidding timelines. The economics of batching operations and the ability of the applicant to invest in site improvements both increase markedly if the applicant is allowed to be a permanent participant in local markets.

6.5.4 MR zoned sites are also less suitable for the production of asphalt than a site that is located within the UGB of the area containing the primary market for the products of the facility, on property plan-designated industrial. Batching asphalt is an urban, industrial use that is most appropriately located in an urban industrial area. (*see also*, YCCP Goal 1.H.1, 1.H.1.a, and 1.H.1.b, asserting that industrial uses should be located within Urban Growth Boundaries.)

6.5.5 There is a perception that asphalt and grape production are incompatible industries. Batch plants in MR zones in rural areas are therefore more likely to be prohibited or objectionable as being too close to an established, sizable vineyard. The predominance of vineyards in Yamhill County, and the perception that asphalt production and grape production are incompatible, makes temporary or permanent batch plants in conjunction with mineral resource extraction sites less suitable than a site within a UGB that is plan-designated for industrial uses.

6.5.6 In hearings to consider Baker Rock's application, Larry and Patti Renne submitted testimony to the effect that they own a 28-acre quarry near the Sandoz Road site that is zoned MR-1 and is for sale. The Renne's have stated that, following an initial meeting, Baker Rock showed no interest in purchasing the Renne's quarry for development of a batch plant. The applicant's representative testified that the Renne property is located on a very narrow, winding road away from a major arterial connection and is very close to an established vineyard. The Sandoz Road property will have zoning that allows permanent batching activities, access to an improved County truck route that

already serves other heavy industrial uses, and will be located near a state highway and within the primary market area for sale of products from the facility. For these reasons and reasons stated in the preceding findings, the Board finds that the Renne property is not designated for or available for development of a permanent batch plant and is less suitable than the subject property for development of a permanent or portable batch plant.

The applicant has demonstrated compliance with YCZO § 1208.02(D)

6.6 YCZO § 1208.02(E) requires that the County find that:

“The amendment is consistent with the current Oregon Administrative Rules for exceptions, if applicable.”

The rules cited in this section apply to exceptions to statewide planning goals, and the applicant does not need and has not requested such an exception. The rules are therefore not applicable. The site is already plan designated for the proposed uses by the City of Newberg, a designation that was adopted by Yamhill County through Ordinance 214. Both the City of Newberg Comprehensive Plan and the Yamhill County Comprehensive Plan are acknowledged by LCDC as being consistent with the Statewide Planning Goals. No plan amendment has been requested or is necessary in order to approve the requested zone map amendment. This section is inapplicable.

7. **Similar Use Determination** Batching, mineral and aggregate processing and stockpiling are not specifically listed as permitted or conditional uses in the HI district, but may be allowed as a “similar use” under YCZO §§ 703.04 and 1206. The County has previously, as part of the rezoning of Tax Lot 3230-100, (Ordinance 650) determined that aggregate processing and asphalt batching are uses similar to other Heavy Industrial uses. (see also, YCZO 1206.04: “Unlisted uses which the decision-making body has determined to be similar to the permitted uses in the underlying zoning district shall no longer require a similar use permit and shall be considered as permitted uses in the applicable zoning district.”)

8. County Justification for Determination that City’s “Industrial” Plan Designation Allows County Zone Designation of “Heavy Industrial” without a Plan Map Amendment

8.1 The City of Newberg “Industrial” plan map designation is the appropriate plan designation for heavy industrial uses.

8.2 The text of the Newberg Plan, page 45, states , under “Plan Classifications,” as follows:

“For the purpose of evaluating and eventually implementing the proposed Comprehensive Plan, descriptions of land use classifications are essential. Explanations of the map designations are as follows:

* * *

9. *Industrial Use Areas (IND)* The objective of this designation is to provide land for a variety of light industrial, heavy industrial and industrial park areas.

Heavy industrial uses should be located in the area near Smurfit Newsprint, an existing pulp and paper mill. Other designated areas should be developed to light industrial or industrial park type uses. (emphasis added)

8.3 The Smurfit Mill (now known as the SP Newsprint Mill) is near the subject parcel, in a plan designated "Industrial" (IND) area. The subject parcel is "located in the area near Smurfit Newsprint."

8.4 There is nothing in the Newberg Comprehensive Plan or zoning ordinances indicating that the City's Industrial Zone is not the appropriate zone for Heavy Industrial Uses, or that some other zone *is* the appropriate zone. The plan indicates that Heavy Industrial uses are appropriate in areas plan designated "Industrial" and that such uses should be located in the area near SP Newsprint, where the subject parcel is located.

8.5 The City's "M-3 Heavy Industrial District" is described in the City of Newberg Development Code as follows:

"10.40.392 The M-3 Heavy Industrial District is intended to create, preserve and enhance areas containing manufacturing or related establishments which are potentially incompatible with most other establishments, and is typically appropriate to areas which are most distant from residential areas, and which have extensive rail or shipping facilities. The M-3 district is intended to be consistent with the "industrial" designation of the Comprehensive Plan." (emphasis added).

8.5.1 Elsewhere in this narrative, the applicant has established that the proposed use will be adequately buffered from residential areas, and has easy access to roads designed for truck traffic.

8.5.2 As in the rezoning of Tax Lot 3230-100, the County finds that its Heavy Industrial district is substantially similar to and consistent with the City's M-3 zone, and is also consistent with the "Industrial" designation of the City's comprehensive plan.

8.6 Section 10.40.394 of the City of Newberg's Development Code describes the "Permitted Buildings and Uses" in the M-3 zone to include the following:

"Industrial and commercial buildings and uses. All manufacturing, warehousing, wholesaling, compounding, assembling, processing, storing, researching, treating or testing or any combination thereof of items, materials, goods, or natural mineral resources is permitted.

In addition, all industrial and commercial uses not listed elsewhere in the Code, and those uses listed in 10.40.384 are permitted.” (emphasis added)

8.7 As in the rezone of Tax Lot 3230-100, the County finds that the uses allowed in the City’s M-3 zoning district are substantially similar to uses allowed in the County’s Heavy Industrial zoning district.

8.8 As in the rezone of Tax Lot 3230-100, the County finds that the current Newberg Plan Map designation for the subject parcel accommodates the county’s “Heavy Industrial” designation, as well as the use for the subject property proposed by the applicant.

8.9 As determined by the County in the rezone of Tax Lot 3230-100 and upheld by LUBA in City of Newberg v. Yamhill County, __ Or LUBA __ (LUBA No. 98-141, 1998) the Newberg Comprehensive Plan Goals and Policies do not apply to this application.

9. Imposition of Limited Use Overlay

9.1 The applicant has specified that it intends to use the northwest portion of Tax Lot 3229-100 for an asphalt batch plant and related uses, and has provided the County with an explanation of the proposed use that is adequate to make findings of compliance with all applicable criteria. Site plans submitted by the applicant also show the location of redi-mix concrete batching equipment. Until the site is annexed to the City of Newberg, the applicant intends to retain the existing filbert orchard on the remainder of the parcel. Following agreement with, or annexation to the City of Newberg allowing installation of an urban level of utility services, it is the applicant’s intent to develop the remainder of the property for light industrial uses. To dispel any concerns that the site might be used for Heavy Industrial uses that may have a greater impact on the surrounding area than the uses proposed by the applicant, the applicant has stipulated to imposition of a Limited Use Overlay Zone on the subject property, under YCZO § 904. Imposition of the Limited Use Overlay Zone as specified herein, improves the compatibility of the proposed change with surrounding land uses and the overall appropriateness of the change, in conformance with YCZO § 1208.02 and applicable provisions of the Yamhill County Plan.

9.2 The purpose of the Limited Use Overlay District is stated in YCZO § 904.01, as follows:

“The purpose of the Limited Use Overlay District is to limit permitted use(s) and activities in a specific location to only those uses and activities which are justified and approved through Comprehensive Plan exceptions under ORS 197.732 or other authorized statutory or administrative rule procedure.”

It is appropriate in this instance to limit the permitted uses and activities on the subject property to only those uses and activities which the applicant has justified as meeting applicable criteria.

9.3 YCZO § 904.02 states as follows:

“The LU Overlay District shall apply to that specific area for which a reasons exception has been taken or other area as deemed appropriate to protect Goal 5 resources. The Limited Use Overlay District is intended to carry out the administrative rule requirement for exceptions pursuant to OAR 660-14-018 and ORS 197.732 and for Goal 5 resource protection pursuant to OAR 660-16-010.”

The LU Overlay is more restrictive than the underlying zone. It is appropriate in this instance to apply the LU Overlay because the applicant has requested that the overlay be imposed, and to protect Goal 5 resources existing in the vicinity of the proposed site.

9.4 The uses permitted in the Heavy Industrial zone are listed in YCZO § 703.02 as follows:

- A. Grain elevators, feed mills and seed cleaning plants;*
- B. Manufacture of forest products, including sawmills, planing mills, plywood and particle board plants and pulp and paper mills;*
- C. Auto wrecking yards;*
- D. Animal slaughtering, meat-packing and rendering plants;*
- E. Facilities for the processing or production of oil, natural gas, geothermal resources or other hydrocarbons;*
- F. Manufacture of clay products, brick, tile and cement and including mining of materials used in production;*
- G. Outdoor storage of raw materials or finished products associated with any permitted use;*
- H. Temporary structures as may be required during construction of an authorized permanent structure. Such temporary structure shall be removed upon final inspection of the permanent structure by the Building Inspector;*
- I. Community or municipal water supply system;*
- J. Community or municipal sewer system; and*
- K. Signs, pursuant to the sign provisions set forth in Section 1006.*
- L. Dwelling for caretaker or watchman in conjunction with permitted use. If a dwelling is a mobile home it shall, in addition to the requirements of this section, also be subject to the mobile home standards set forth in Section 1002.”*

9.5 YCZO § 904.03 states:

A. When the Limited Use Overlay District is applied, the uses permitted in the underlying zone shall be limited to those specifically referenced in the ordinance adopting the Limited Use Overlay District.

B. The Limited Use Overlay District may be used to require conditional use approval for uses normally permitted outright.

C. Reasonable conditions may be imposed in the Limited Use Overlay District as are necessary to assure compliance with the provisions of the Comprehensive Plan and this ordinance.

D. Until the overlay has been removed or amended, the only permitted uses in an LU district shall be those specifically referenced in the adopting ordinance.”

In conformance with YCZO § 904.03 and the request of the applicant, the County is applying a Limited Use Overlay to a portion of Tax Lot 3229-100, as part of the County's rezone of the same portion of the property to Heavy Industrial. Under the Limited Use Overlay, permitted uses would be limited to those uses the applicant has described as being part of its proposal, which include the installation of an asphalt batch plant and redi-mix concrete batching equipment, the on-site processing and storage of finished products and materials necessary for the production of asphalt, and other uses incidental thereto.

The applicant has met the requirements for imposition of a Limited Use Overlay.

10. Findings Regarding Certain Testimony Received

10.1 The Board finds, as to the testimony and evidence submitted by the applicant that forms the basis of these findings, that the applicant and its representatives were credible and persuasive. Other participants provided useful information, some if it submitted to show that applicable standards were not met or to rebut claims made by the applicant. In weighing the evidence and testimony received, the Board finds that the information relied on in these findings is more credible and persuasive than testimony or evidence submitted in opposition. The Board carefully considered and weighed all evidence and testimony received, even if specific reference to that testimony or evidence is not made in these findings.

10.2 Testimony From Pat Haight

10.2.1 Ms. Haight has several concerns regarding the sufficiency of Baker Rock's application. The Board finds that the application was complete prior to the time hearings were held, applicable notice procedures were followed, and that the applicant submitted all information through the hearing process necessary to determine the nature of the project and to allow a decision.

10.2.2 Ms. Haight also claimed that a batch plant is not needed or important, and that there is other land in the County that is available and as suitable as the

subject property for development of a batch plant. The Board finds that the applicant's information, included in its application narrative, is more persuasive on this point. The "need" standard has been satisfied by the applicant, and the applicant has demonstrated that there are no available sites for a permanent batch plant that are as well suited as the subject property.

10.2.3 Ms. Haight suggests that the residents of the Avalon neighborhood have been ignored in these proceedings. The Board finds that the City of Newberg and Baker Rock have taken steps to ensure that the proposed use will be buffered from the Avalon neighborhood by less intensive uses, and by a berm and landscaping to be developed along Sandoz Road at the time of development of the eastern portion of the site. Additionally, the agreement and easement to Wynooski ensure that truck traffic will be kept off of Sandoz Road. The plant has not been a nuisance to its neighbors on Farmington Road, will be operated in conformance with all required local, state and federal permits, and will not be a nuisance at its new location abutting the City's sewage treatment plant.

10.2.4 With regard to Ms. Haight's comments regarding the Limited Use Overlay request: Baker Rock has requested imposition of a Limited Use Overlay, and has justified its request. All notices relevant to these proceedings listed YCZO 904, relating to Limited Use Overlays, as relevant to the application. Please also see findings in support of County Ordinance 650, which imposed a Limited Use Overlay on Tax Lot 3230-100 at the request of Baker Rock. In that proceeding, the request was made at hearings before the Board, after full consultation with the Office of County Counsel. (*See also Sanders v. Yamhill County*, 34 Or LUBA ___, 1992-3 (1998) in which LUBA upheld County imposition of a Limited Use Overlay at the time of hearing.)

10.2.5 Regarding the applicability to Baker Rock's application of the Oregon Administrative Rules for exceptions: This issue is addressed in section 9 of these findings, above.

10.2.6 Regarding Baker Rock's statement on the application form that the presence of a septic system on the subject property is unknown: There are two mobile homes presently located on the site that will be removed by Baker Rock. Those homes may be serviced by a septic system. However, there is no standard for approval that hinges on whether a septic system is now present on the property.

10.2.7 Regarding fish and wildlife habitat: Ms. Haight is probably correct in pointing out that wildlife, especially birds, squirrels and other species mentioned, may use the subject property, just as they use many urban and suburban environments as habitat. The application form does not require a full inventory of all animals potentially living on, or that visit the subject property, but is a reference to wildlife habitat inventoried in the Comprehensive Plan as significant by Yamhill County. There is no inventoried, significant wildlife habitat on the subject property, which is a long-established filbert orchard.

10.2.8 There are also no steep slopes on the property. The application is correct on this point.

10.2.9 With regard to signatures on the application: In accordance with the instructions on the application, Baker Rock provided notarized signatures of all of the owners of the property. The application was submitted on behalf of Baker Rock by Jim Records. Since neither Baker Rock nor Jim Records currently hold title to the subject property, it was not necessary for Mr. Record's signature to be notarized.

10.3 Written Testimony From Larry and Patti Renne. This testimony is addressed elsewhere in these findings.

10.4 Testimony From Karen Jenks

10.4.1 Ms. Jenks asserts that there may be another site in the Newberg area designated for the proposed use that is available and as well-suited as the subject property. After weighing the evidence submitted, the Board finds more persuasive testimony from the applicant regarding the availability of other properties that could accommodate this heavy industrial use. Ms. Jenks does not identify any specific property that is available and suitable, and to our knowledge there is no such property. The applicant's efforts to find other suitable properties were closely coordinated with the Newberg Planning Department, which was also unable to identify any other available sites in the Newberg area that could accommodate the proposed use. Information submitted by the applicant is sufficient to demonstrate compliance with YCZO 1208.02(B) and (D).

10.4.2 Ms. Jenks asserts that the Avalon neighborhood will not be adequately buffered from the plant. The likely impacts from the facility were intensely scrutinized in the proceedings to rezone Tax Lot 3230-100, including the remand hearings. The air pollution information submitted by Ms. Jenks is helpful to the Board in its efforts to properly address Comprehensive Plan policies and zoning ordinance requirements. The information also helps to demonstrate why, in findings in support of Ordinance 474, the County indicated that it did not intend to assume the business of regulating pollutants that are already regulated by DEQ. The emission factors and other information submitted by Ms. Jenks are only some of the analytical tools used by DEQ to issue permits and to monitor air quality impacts. Yamhill County does not have the necessary expertise to supplement or supplant DEQ's regulatory responsibilities. The applicant has also submitted testimonials from neighbors of the facility at its present location which indicate that the plant is a good neighbor, is well managed and is not a nuisance.

10.5 Testimony of Rosella Heuer.

10.5.1 Ms. Heuer testified that Tax Lot 3230-100 is available for the proposed use, and for that reason the YCZO 1208.02(D) cannot be met. As indicated and

explained elsewhere in these findings, Tax Lot 3230-100 is not as well-suited for the anticipated use due to location and other factors.

10.5.2 Ms. Heuer objects that the applicant is proposing to operate a cement plant. The applicant stated that it had no intention of operating a cement plant, but would like, at some point, to operate redi-mix concrete batching equipment on the property. A condition of the Limited Use Overlay is that no cement production or rock crushing can occur on the site.

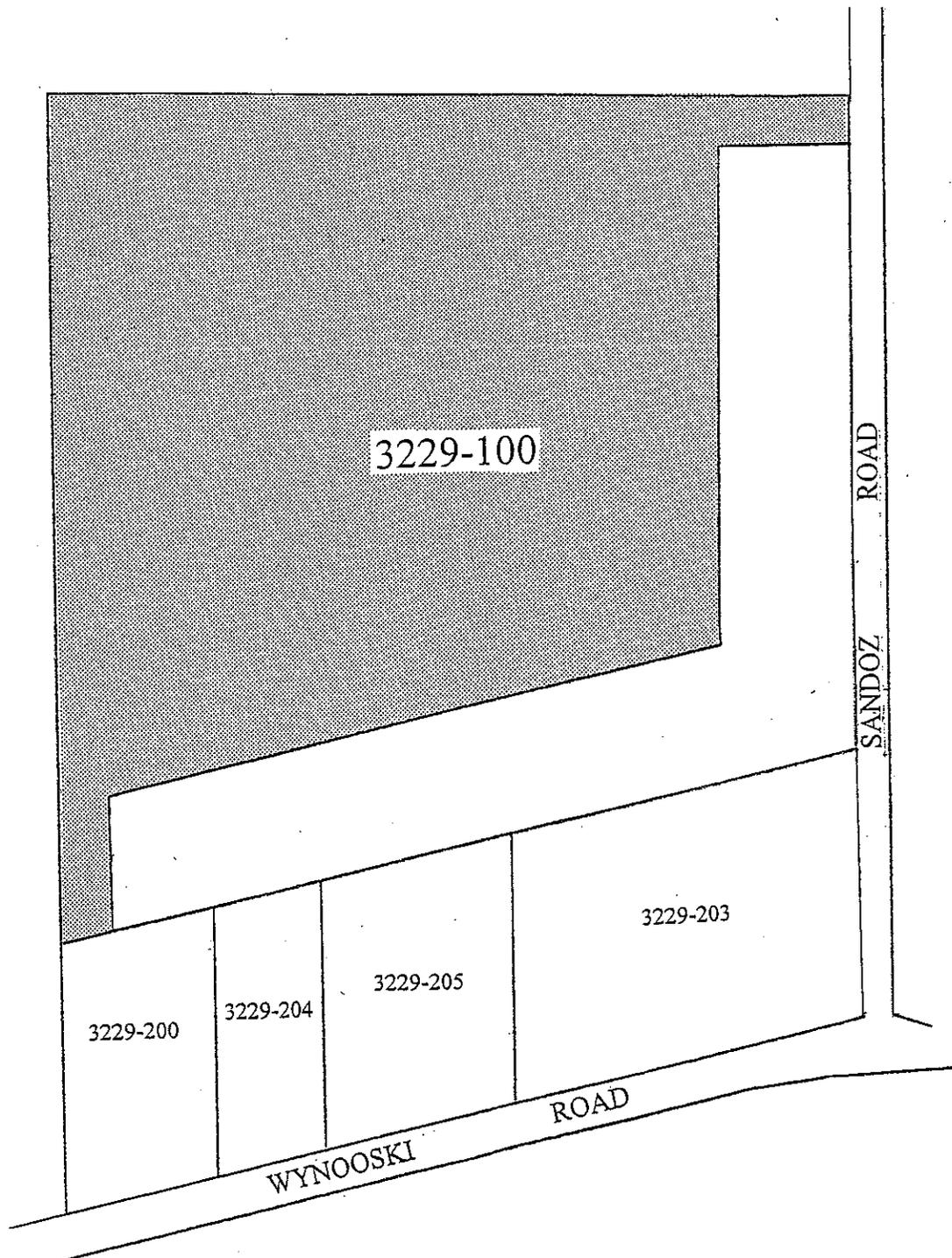
10.5.3 Ms. Heuer objects generally to the potential impacts of the proposed development on her home in Avalon Park. The Board has attempted, through these findings, to explain the basis of its decision that the applicant has satisfied all approval standards related to its requested zone change. The area is plan designated for industrial use, and all reasonable steps are being, or will be, taken by the County, the City of Newberg and the applicant, to ensure that residential uses on Sandoz Road are properly buffered from the proposed use, and that all other potential impacts from the project are mitigated or controlled.

10.6 Pauline Ogden testified that Baker Rock intends to mine a gravel bar in the Willamette that is contaminated, and to stockpile the gravel on Tax Lot 3229-100, and that contaminated dust will pollute Newberg's air. The applicant's representative testified before the planning commission that it will not be mining gravel bar 65. Dust and other potential emissions from the site will be regulated by DEQ, and are not likely to affect Ms. Ogden or her husband, who live three blocks from the waterfront and "a mile or less from the Wynooski site."

10.7 Jim Morrison testified regarding the lack of an agreement between the county and the City, annexation timelines and other matters. The Board finds that the applicant has coordinated closely with the City of Newberg and has complied with all applicable county standards. Appropriate coordination between the applicant and the City of Newberg is demonstrated by the City's resolution in support of the application, the testimony of City officials, and agreements negotiated between the City and the applicant.

10.8 Mike Boyes and Pat Haight testified that the intersection of Hwy 219 and Wynooski Road is dangerous, and that SP Newsprint will soon be increasing its use of the intersection. The Board finds that the applicant's traffic study and other information demonstrates that the Hwy 219 and Wynooski Road intersection is adequate for the proposed use. The applicant has demonstrated compliance with all applicable requirements.

EXHIBIT "B" MAP FOR ORDINANCE NO. 696
ZONE CHANGE
ADOPTED BY THE YAMHILL COUNTY BOARD OF COMMISSIONERS
MARCH 1, 2001
TO CHANGE OFFICIAL ZONING MAP FROM
AF-10 AGRICULTURE/FORESTRY SMALL HOLDING
TO
HI - HEAVY INDUSTRIAL DISTRICT



CHANGE APPLIES TO THE SHADED PORTION OF TAX LOT 3229-100 DESCRIBED ABOVE
APPROXIMATE SCALE - 1 INCH = 200 FEET