

BOARD OF COMMISSIONERS

MINUTES OF THE BOARD SESSION – Regular Session

Wednesday, November 4, 2009
Marion County Courthouse Square

9:00 a.m. Board Session
Senator Hearing Room

PRESENT: Commissioner Patti Milne, Commissioner Janet Carlson, and Commissioner Sam Brentano were present. Also present were John Lattimer as chief administrative officer, Gloria Roy as legal counsel, and Kim Hulett as recorder.

PRESENTATION

SEDCOR 1st Quarter 2009 Report – Ray Burstedt, Nick Harville

Ray Burstedt said the recession is improving very slowly, but is not creating many jobs. He said the Oregon index pattern is consistent with an end to the recession during the second half of 2009, but activity remains too weak to support job growth and local unemployment remains high.

Mr. Burstedt said SEDCOR offices moved two weeks ago to the Chemeketa Center for Business and Industry where they have joined a consortium of resource partners. SEDCOR has had over eight new inquiries during the quarter. A 46-acre parcel in the Mill Creek Corporate Center is in the permitting process. The SANYO project is making excellent progress towards creating the 200 jobs they promised.

Nick Harville stated there is a demand for welders and metal fabricators in the area. Woodburn will have their first economic development meeting this month. Stayton and Sublimity had economic development meetings on Monday. Northwest Wind Industry Alliance with 500 plus members is working towards a supply chain for the Oregon wind industry. SEDCOR is continuing to work with Chemeketa on the talent transfer program. (Full report in Attachment A.)

PUBLIC COMMENT

None.

CONSENT

BOARD OF COMMISSIONERS
OLCC Application – Recommend Approval
United Market #110, Salem

for \$150,000 and the second is Travel Salem for \$35,000. Mr. Estes also requested the board approve John Lattimer as a signer on the contracts to expedite the process.

Commissioner Milne said SEDCOR plays a vital role in the community and Travel Salem attracts tourism and business.

Commissioner Carlson said she appreciated that the application format answers basic questions. Both applicants said they would report their progress to the commissioners quarterly. Commissioner Brentano emphasized Travel Salem represents the entire county.

MOTION: Commissioner Carlson moved approval of a resolution approving the distribution of video lottery receipts to promote economic development in Marion County to SEDCOR for \$150,000 and Travel Salem for \$35,000 and allow John Lattimer to sign the contracts to expedite the process. Seconded by Commissioner Brentano; motion carried. A voice vote was unanimous.

PUBLIC WORKS – PLANNING

2. Consider appeal of hearings officer's denial of conditional use, case #CU09-019, Falls, Clerk's File #5629. – Joe Fennimore

Joe Fennimore, planning, said this is an appeal of an application for a conditional use to establish a wind turbine facility as a utility on a 10.25-acre parcel in the exclusive farm use (EFU) zone, located at 14934 Silver Falls Highway SE, Sublimity. After holding a public hearing, the hearings officer denied the application due to the failure of the applicant to show compliance with all applicable criteria. Specifically, the hearings officer found that the applicant failed to show that the towers would not force a significant change in, or significantly increase the cost of accepted farm or forest practices on surrounding lands. This was based on evidence and testimony from area farmers and commercial pilots involved in field application of herbicides, fertilizers and harvesting of trees. The hearings officer also found that the applicant failed to prove compliance with the noise standards.

In addition to not satisfying the above criteria, the hearings officer found that the applicant failed to demonstrate that the facility would be located on NRCS (National Resource Conservation Service) Class III or worse soils as required by the code. The applicant submitted a soils report with the application attempting to show that the proposed development site was on Class III soils. However, the hearings officer indicated that the report was not specific enough and even if a sufficiently detailed report was submitted, a soils report of this type is not allowed under state law to be considered for this kind of application. Mr. Fennimore explained that these soil types are limited to only lot of record dwellings and non-farm dwellings. The hearings officer concluded that if the application is approved the facility must be located on the band of Class III soils on the eastern portion of the property.

Mr. Fennimore said that in the appeal the applicants state that the hearings officer erred by concluding that the possible future uses of the Tate Farm was relevant to the consideration of the effect of the proposal on accepted farm practices. They also state that the record was deficient regarding whether the turbines would be located on Class III soils.

Commissioner Carlson said she understood the applicant's claim of evidence in the record of class III soils, but there are two areas identified in the hearings officer's report that require more information to meet their burden of proof. She referenced page 11, number 13, where the hearings officer states the applicant has not met their burden of proving that the proposed power-generating facility will not force a significant change in, or significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.

Commissioner Carlson then referenced page 13, where it states that applicants have not proven that it is feasible to place the proposed towers on the Class III soils and still meet the noise mitigating setback condition. She said she didn't see these particular issues addressed in the appeal letter. She asked if the hearings officer's concerns were broader than the future use of that particular farm.

Mr. Fennimore said he felt the concerns were broader than that particular farm. The hearings officer identified the surrounding area of notified property owners within 750 feet of the subject property. Commissioner Carlson said that ordinarily she would be in favor of something that promotes renewable energy, but she is concerned with the issues raised in the hearings officer's report.

Commissioner Brentano said there would be more questions if the board accepted the appeal and held another public hearing. Describing the machines as small does not provide enough detail. He said there is a lot of uncertainty regarding where the turbines would be located and the soils report provided by the applicants is insufficient by state law. There are questions on noise and farming practices. Commissioner Brentano asked about the possibility of gathering the information within two weeks. Mr. Fennimore said that because the state only allows the type of soils report submitted for a lot-of-record dwelling or a non-farm dwelling, he could not estimate the timeframe. He said there are class III soils on the eastern side of the property, closer to adjoining property, which may disqualify it for other reasons such as noise mitigation.

Commissioner Milne said that it sounds as if moving the location of the turbines to acceptable soils could create different problems and indicated more information is required.

The commissioners discussed the idea of reapplication in order to present a more complete plan. Commissioner Brentano reiterated that if they hold another hearing and it is not set up to answer the right questions, it will waste time and will not address moving the location of the turbines. Another concern was they might reapply with different information. Commissioner Milne asked what process the applicants would follow if they sat down with staff to modify their proposal. Mr. Fennimore said they would need to file a new application after they have all the information. Commissioner Brentano asked what the fee was. Mr. Fennimore said \$1,250. Jo Stonecipher said that new applications and new studies require starting over.

MOTION: Commissioner Brentano moved approval of the hearings officer's denial of the conditional use, case CU09-019, Falls, Clerk's File #5629, to allow the applicants to reapply and if the conditional use application is resubmitted within six months of the effective date of the order, the application fee will be reduced by 50 percent. Seconded by Commissioner Carlson; motion carried. A voice vote was unanimous.

3. Consider remanding application back to the planning director for conditional use, case #CU08-46, Levy, Clerk's File #5611. – Joe Fennimore

Joe Fennimore, planning, explained that this item is a remand from the Land Use Board of Appeals (LUBA). He explained that on October 23, 2009, LUBA remanded the case back to Marion County based on a request by the applicants and Marion County. The conditional use application had been denied due to an ongoing violation on the subject property. Based on the resolution of the violation, the applicants and Marion County agreed to the remand of the conditional use. The board has the option to remand the case back to the hearings officer, to the planning director, or to assume jurisdiction in a scheduled public hearing. Staff recommends that the board remand the case back to the planning director. The commissioners agreed that would be the smoothest, cleanest, quickest and fairest route to take.

MOTION: Commissioner Carlson moved to remand the application back to the planning director for a conditional use case #CU08-46, Levy, Clerk's File #5611. Seconded by Commissioner Brentano; motion carried. A voice vote was unanimous.

PUBLIC HEARING
9:30 a.m.

PUBLIC WORKS - PLANNING

A. Public hearing to consider comprehensive plan amendment floodplain/greenway development permit, Windsor Rock Products, Inc. case #CP/FP/GW 09-3, Clerk's File #5627. – David Epling

David Epling, planning, said this is an application from Windsor Rock Products, Inc. for a comprehensive plan amendment to add a site to the Marion County Comprehensive Plan (MCCP) list of significant mineral and aggregate sites, and for floodplain and greenway development permits for property within the 100-year floodplain and greenway of the Willamette River. He said the extraction area includes a 247-acre portion of the 651-acre subject property located in an Exclusive Farm Use (EFU) zone at 8425 Windsor Island Road, Keizer. He said they held a hearing on this application on May 13, 2009, and the applicant presented information required by Oregon Administrative Rules (OAR) and the Marion County Zoning Ordinance (MCZO). The hearings officer then left the record open until June 3, 2009, to allow the applicant to present additional information. On September 18, 2009, finding the application compliant with all applicable criteria, the hearings officer issued a recommendation to grant the application subject to meeting conditions listed in the report.

Mr. Epling said Marion County Public Works Engineering Division revised condition #4 on October 27, 2009, stipulating Windsor Rock Products be responsible for removing their debris from county roads.

John Rasmussen, Marion County planning, then spoke to the commissioners. He added that the revision to condition #4 pertains to the establishment of a truck washing area onsite and cleaning

debris from the haul out. It simply retracts the area for debris cleaning back from both the north and south legs to the intersection of Wheatland and Ravena and on the south end to Windsor Island and Lockhaven.

Commissioner Milne asked if Windsor Rock Products intends to comply. Mr. Rasmussen replied that they have agreed to comply and it is not a disputed issue.

TESTIMONY

Support:

Paul Hribernick, legal counsel for Windsor Rock Products, requested the commissioners review Oregon Revised Statute (ORS) 197.763, the raise it or waive it statute. He believed it was required for each public hearing. Jo Stonecipher said she did not have the statute before her. Commissioner Milne requested copies of the statute for the board.

Commissioner Milne adjourned the meeting at 9:50 a.m. to allow legal counsel to obtain and distribute copies of the statute.

Commissioner Milne reconvened the meeting at 9:56 a.m.

Gloria Roy, assistant legal counsel for Marion County, interpreted ORS 197.763(5) for the commissioners. She referred to the statute as a technicality. The applicable criteria include Marion County Rural Zone Code, Chapter 136, Chapter 120.400, Chapter 178 and Chapter 179; MCCP, OAR 660-023 and ORS 215.298. She said any of the testimony, the arguments, or the evidence needs direction towards these criteria or other criteria in the plan or land use regulations, which the person believes applies to this decision. Any failure to raise an issue accompanied by statements or evidence sufficient to afford the decision maker, the board of commissioners, and the parties an opportunity to respond to the issues precludes appeal to the board based on that issue. She said those are the particular statements that the applicant had requested be made part of this record.

Commissioner Milne asked if it was correct, using non technical language, that testimony must address these chapters in the MCZO, the MCCP and OARs. Ms. Roy said that was correct and confirmed those criteria were satisfied in the notice of the application as well as listed in the recommendation from the hearings officer.

Mr. Hribernick then introduced Bill McCall, president and general manager of Windsor Rock Products, Inc. Mr. Hribernick said that following Mr. McCall's testimony he would like to go through the eight criteria for the Goal 5 decision, as he did with the hearings officer before she approved the application.

Mr. McCall stated that it was a long standing, locally owned, family business with a history of community involvement with contributions to many civic and charitable projects. He said they are a quality operation supplying high aggregate products for building roads and for construction of residential, commercial and industrial projects. He said Windsor Rock Products has programs

in place to address neighborhood concerns including a Good Neighbor Agreement for all truck drivers entering their facility.

Mr. McCall said he was here today to explain their application to the commissioners and to request their approval of an expansion site to provide additional reserves for continuation of their business. He said they felt Windsor Rock Products would be able to extract the materials from the area in question without harming the character of the neighboring land or damaging the environment and wildlife. He said as they described in their application, they are working with the Oregon Department of Fish and Wildlife (ODFW) and the Department of Geology and Mineral Industries (DOGAMI) to plan reclamation for the site, for fish and wildlife habitat and for small portions of farm ground.

Mr. McCall said this is an expansion of an existing resource, not an intensification of their existing site. He stated the expansion site would serve as future reserves for their ongoing operations. He said there would be no new trucks added to the county road system. Gravel from the expansion site will travel on a private road maintained and constructed by Windsor Rock Products to meet safety standards. He said there would be no processing, crushing, asphalt or concrete batch plants on the expansion site. He said they are not asking for any restrictions on any property related to the Goal 5 impact area. He said they have worked hard to address all the issues in the beginning and their employees realize their responsibility to their neighbors and the entire community.

Paul Hribernick, legal counsel for Windsor Rock Products, 805 SW Broadway #1900, Portland, OR, explained his credentials, which included helping draft OAR 660-023, litigating approximately 30 mineral and aggregate sites in 15 Oregon jurisdictions. He said he is the author and editor of the Oregon Law Institute's Chapter on noise compliance. He stated Mr. McCall is the DOGAMI's 2005 Operator of the Year, Division of State Lands 2003 Lessee of the Year, and recipient of Oregon Concrete and Aggregate Producer's Association 1999 Good Neighbor Award. It is Mr. Hribernick's opinion that Windsor Rock Products has the best sand and gravel operation in Oregon. He then utilized a map to illustrate the project in detail. He reiterated that under OAR 660-023 Goal 5 rules, there are eight steps required. He offered and the board accepted Exhibit D, entitled The 8 [sic] Main Steps in Reviewing a Proposed Plan Amendment for an Aggregate Mining Site under the Goal 5 Rule. Mr. Hribernick proceeded to take each of the eight steps and summarize how Windsor Rock Products had met each requirement.

The first step is *Determine Significance*. Mr. Hribernick stated the material at the site is an extremely high-quality resource. The estimate of quantity of rock on this site is 34 million tons and the Goal 5 rule requires 2 million. The actual extracted amount will be less due to 3:1 sloping required by DOGAMI. Mr. Hribernick said the soils are class II on the map, but there is gravel on much of the surface. Stakeholders require they dig deeper in counties with good soil to take the maximum amount of resource. He said Marion County requires 60 feet on average of a sand and gravel layer and the site's average is 68 feet. Mr. Hribernick said the hearings officer and staff concur that this is a significant site.

The second step is to *Adopt an Impact Area*. Mr. Hribernick indicated on the map where the acoustical engineers determined the compliance area for the Department of Environmental Quality (DEQ) regulations if every piece of their equipment was running at the same time. The hearings officer requires 1500 feet, which extends the impact area even farther than DEQ requirements.

The third step is to *Identify Conflicts*. Mr. Hribernick said the proposal minimizes potential conflicts of noise and dust. He explained state noise standards and the acoustical engineers' response. He said their equipment would be mining excavation cells one at a time to allow the cells to act as a buffer against noise radiation; they will run from 7:00 a.m. to 6:00 p.m. only. No batching or blasting activities and no rock crusher will be on the site. Dust minimization by extraction under grade and moisture, paving rollouts, regular housekeeping, gravelling internal access roads, water trucks, stormwater management will occur through a vegetative buffer filtering process. Mr. Hribernick said there would be a slight amount of drawdown of stormwater, but farmers to the west are not concerned. He said their trucks would not travel the Marion County road matrix. He discussed Goal 12 of the traffic analysis.

The fourth step is to *Minimize Conflicts*. Mr. Hribernick said Clear Lake and Claggett Creek are on an old county sensitive-rivers-and-streams map, but are not inventoried Goal 5 resources. There will be 100-foot setbacks for preservation of wetland and wildlife. He said they would be working in connection with reclaimed ponds as part of habitat enhancement. He said no excavation or processing activities would occur in the greenway. He stated the mining will not affect the quality of ground water and the small downdraft to the west, which the farmers tell them is not significant and will not affect their accepted farming practices nor raise their costs. Extraction causes turbidity but the buffer area will filter it out. He said there would be no surface changes that would affect the floodplain. Mr. Hribernick submitted a letter from a hydrogeomorphologist for the record (Exhibit G) regarding scouring and floods.

The fifth step is to *Evaluate economic, social, environmental, and energy (ESEE) consequences*. Mr. Hribernick stated the hearings officer concludes they do not need an interim ESEE plan because of their proposed methods of minimizing various areas of potential conflict.

The sixth step is to *Decide Whether to Allow Mining*. Mr. Hribernick said the Goal 5 Rule states if the site is significant and with the minimization of conflicts, approve mining. He said staff reached the conclusion to allow mining under Step 6 of the Goal 5 process and requests the board to do similarly.

The seventh step is to *Evaluate ESEE Consequences of New Uses*. Mr. Hribernick said the hearings officer did a good job of doing an ESEE analysis and by concluding the project ultimately conserves energy.

The eighth step is to *Amend the Plan*. Mr. Hribernick gave a summary of why the board should approve the comprehensive plan amendment floodplain/greenway development

permit for Windsor Rock Products. He mentioned they had a concern about tort liability if they had to remove gravel on roads that many operators are working on. The Public Works Department agreed and made changes to the condition.

Mr. Hribernick requested the opportunity to rebut opposition testimony.

Commissioner Carlson asked for more comment regarding a proposed requirement for a reclamation plan submission prior to aggregate extraction. Mr. Hribernick referenced a letter from Paul Masee about the Morse Brothers/Knife River location on Wheatland Road and their promise to return their extraction area and processing site (88 acres in total) to farm use with class II soil. Mr. Hribernick said none of the topsoil on the site is going to be wasted, but certain areas have no topsoil in the eastern-southeaster portion. He stated they would not be able to reclaim the entire site. They will not extract from 40 acres. He said they would reclaim what they can, but do not have the material for full reclamation, which ultimately is not practical.

Commissioner Brentano asked for clarification of how much farmland Windsor Rock Products foresees reclaiming. Mr. Hribernick said the landowner has an old pit that will undergo reclamation to farmland, which consists of 15-17 acres. He said it is difficult to predict how much topsoil will be available. Commissioner Brentano asked for an estimate of how long they would operate and when the reclamation may be completed. Mr. McCall said it was a 40-45-year resource. He said at present market rate it will probably start in 5-10 years. Mr. McCall added that mining cells would be reclaimed, revegetated and resloped as the project continues. He said they are not affecting 40 acres contained in the periphery and roadways and these acres are available for farming reclamation. In addition, there are potentially 15 more acres located offsite.

Mr. Hribernick submitted Exhibit F (photos and certification) for the record.

TESTIMONY (continued)

Neutral:

Roz Shirack, testifying for the League of Women Voters of Marion and Polk Counties. Ms. Shirack testified that the League requests that the commissioners require the applicants to reclaim the site to productive farmland. She said the League does not oppose the application, but has concerns about the reclamation plan. She said the League recognizes the value of both the aggregate industry and the agricultural industry to the county and state. Ms. Shirack said they are concerned about the up to 400 acres of farmland Willamette Valley loses each year to aggregate mining. She said another 195 acres of class II soils would be lost to Marion County's farmland base from this application. In order to find a balance between protecting farmland under Goal 3 and to providing aggregate sites under Goal 5, the League asks the commissioners to require the reclamation plan. She said the League wants the good farmland returned to the county's agricultural land base as well as its economic base. Ms. Shirack said the state level of the League has submitted written testimony focusing on the reclamation issue (Exhibit A). She stated the reclamation plan only talks about creating a lake for wildlife habitat. Ms. Shirack

stated the League would like to see the full 247 and certainly, the 195 acres of class II soils reclaimed to farmland. Whatever the commissioners decide should be part of the written record.

Sid Friedman, testifying for 1000 Friends of Oregon. Mr. Friedman testified that the subject site is productive farmland surrounded by commercial farms. He said the long-term conflicts and increased cost to the agricultural industry do not come from the aggregate mine itself. It comes from the cumulative effect of conversion of farmland to aggregate mining for a one-time, final harvest. He said 1000 Friends of Oregon do not oppose the application with modifications to the reclamation plan. He said the reclamation plan submitted does not show any reclamation of the mining site to farmland or the trucking of the topsoil to the other site, which is on the property but not part of the application. There is no evidence in the record regarding why all, some, or none of the mining site can be reclaimed to farmland. He said the reclamation plan submitted shows no reclamation to farmland and that is what will be binding after approval of the application, unless they amend the reclamation plan. Mr. Friedman said to put the burden of proof on the applicant to demonstrate why they cannot reclaim the site or can only reclaim portions of the site and show what sites they can reclaim.

Bruce Chapin, 9965 Wheatland Road N, Keizer, testified he has farmed successfully for 36 years in Mission Bottom raising filberts, sweet cherries and pie cherries. He said he is the third generation to farm in this area north of Keizer and owns property immediately to the east and north of the proposed aggregate site. Mr. Chapin said that from 2004 through 2007 he represented the Oregon Farm Bureau Federation (OFBF) in the governor's aggregate and agriculture consensus process. He said he is not opposed to the mining of the site with reclamation to comparable farmland. He said he was concerned about effects to surrounding farmland and businesses from the loss of good farm soils. There are four aggregate companies in Mission Bottom consuming approximately 30 acres of farmland a year.

Mr. Chapin stated Windsor Rock Products alone is consuming 15 acres a year yet is smaller than the biggest miner in Mission Bottom. He said the written testimony he submitted provides justification for reclamation to farmland (see attached Exhibit H). He referenced ORS 215.296 evaluation of conflicts with agriculture, which is contained within the Goal 5 process, satisfying OAR 660-023. Mr. Chapin said the costs evaluated stem from all IRS-accepted, farm-deductible, business expenses meeting the ORS 215.296 standard. He guided the commissioners through the highlights of his written testimony. Mr. Friedman implored the board to look at the bigger picture. He said the land would not return to farmland because of a deed restriction prohibiting conservation to farmland or any other use.

Commissioner Brentano asked if Mr. Friedman devalued reclamation as fish and wildlife ground. Mr. Friedman said he considers that a wasteland, because Mission Bottom has an adequate supply of water habitat.

TESTIMONY (continued)

Opposed:

Kathleen Carl, 407 21st Street NE, Salem, said she wants to make it clear that she is only speaking in opposition to the reclamation. She deplors the idea of converting 250 acres of

primarily class II farmland to aggregate mining. She said the board has the authority to require reclamation to farming, which the plan does not detail.

Dan Goffin, re-elected president of Marion County Farm Bureau, 10956 Waldo Hills Drive, Aumsville, said the bureau is taking a strong position opposing the application before the board, because the Farm Bureau does not like farmland taken out of production. However, if it happens, the board must require reclamation. He said there is no need for additional water habitat in the Mission Bottom area. He sees it presently as goose habitat, which is good for a few, but there are too many geese. He has geese on his grass fields from changes to the land pushing the geese further out. He said he would have to take measures to protect his fields. Mr. Goffin brought up cause and effect. He said diminishing farmland affects their support network and ability to find resources to purchase needed equipment and costs increase. He said farmland is never growing, it is diminishing every year. Marion County is the number one agricultural producer in the state. He said the cost and benefit of agriculture does not put many infrastructure requirements on the county. Mr. Friedman asked if they wanted their great-grandchildren to buy their food from China or Argentina, which at the present rate is where it is heading.

Mark Reed, a professor of geological sciences at University of Oregon specializing in mineral resource geology, 719 East Beacon Drive, Eugene (see attachment Exhibit I) testified he has 35 years of experience in the study of mineral resources including three years as a full-time geologist for the Anaconda Company in Butte, Montana, sampling tens of thousands of feet of drilling. Mr. Reed said the Marion County commissioners should deny the proposal from Windsor Rock Products to expand into the additional EFU farmland, because Windsor has failed to demonstrate that the deposit is legally significant under the applicable Goal 5 rules. This is a legal definition matter regarding whether the applicants demonstrate that the rock is of sufficient quality and thickness to be of sufficient value to balance or to offset the taking of class I and II farm soils. Mr. Reed said Cooper Consulting, in failing to test representative samples of the rock, in failing to provide the requisite adequate information to determine the quality of the rock and in failing to demonstrate that the requisite 60 feet of gravel is present fail to prove that the deposit is significant. Mr. Reed feels it is time for Oregon to catch up with the rest of the country and recognize that destruction of our best farmland to obtain gravel is unnecessary for meeting our needs for aggregate for roads and other construction.

Mr. Reed said Oregon has an abundant alternative in basalt (lava) quarries. He said Oregon roads and construction would have the rock they need even if no mining of gravel takes place. The jobs would be available in a quarry instead of the gravel pit. He said this solution preserves the farmland to feed our grandchildren. He said that there was incorrect sampling of rocks taken by Windsor Rock Products' consultants and the samples do not conform to the standards of American Society for Testing Materials (ASTM), Army Corps of Engineers (ACE), and the American Society of Highway Engineers (ASHE). Mr. Reed elaborated on these points. Chiefly, the Cooper sampling only took 13 percent of their drilling and they missed 30 percent of the total thickness. He said they did not sample 30 feet out of the bottom 57 feet. Mr. Reed said he has supplied a specific independent third-party description of what constitutes a representative sample. The applicants have not. Mr. Reed said the applicants say they can rely on their own professional judgment.

Mr. Reed continued to contrast the rock sampling provided by the applicant with standard industry sampling techniques by using a visual aid in the form of a map (see attachment Exhibit I). He pointed on the illustrated map where the high-quality rock and low-quality rock meet. He said the higher quality rock is in the top layer along the Willamette River. The lower quality rock is underneath the higher quality rock, but it rises to the surface where Mr. Reed indicated. Standards for approval require a minimum thickness of 60 feet of usable rock and Windsor Rock Products has not demonstrated that they meet the standard requirement. Mr. Reed stated they failed to indicate in their data where the two types of rock meet. He said the United States Geological Survey and the Oregon Department of Geology and Mineral Industries fully recognize and universally map this data.

Mr. Reed said that although Windsor Rock Products claims to have 68 feet of thickness, they did not compute those 68 feet with the correct mathematics. They applied an arithmetic average rather than a weighted average, which is the wrong approach. Mr. Reed said he had attached to his written testimony a problem on weighted averages he gives the students in his class on resource studies, computing the thickness of a gravel deposit. Cooper Consultants' claim of 68 feet has no real scientific basis. He said he came before the board because he believes in the rules of law and he can contribute to the sound application of science to interpretation and execution of laws. He said that Windsor Rock failed in their science. The Willamette Valley has a very limited amount of class I and II soil. He said a soil map would illustrate that. It is foolish to destroy good farmland especially when a better alternative exists immediately at hand in the form of basalt quarries.

Commissioner Brentano said the way the application was presented to the Board of Commissioners, Windsor Rock Products needed to find two million tons available to be significant. They said in their letter there was 32 million tons and they said in their testimony today that it is 34 million. He asked, "Isn't there at least two million tons there?" Mr. Reed said there were three fundamental criteria. The first is they have to have at least two million tons and they have met that. The second is it has to be 60-feet thick and they have not satisfied this criterion. The third is it must meet certain ODOT quality base rock standards and that part has not been satisfied. The rock samples chosen cannot be the result of picking and choosing.

Commissioner Brentano asked if the rock is not of quality in the final analysis, will mining not occur or it will not be bought or does it matter? Mr. Reed said it does matter because the gravel company can make all the money they want on the top 25 to 40 feet, which is concrete quality rock and processing can provide salable rock. The law requires the thickness to be good quality in order to balance the quality of the farmland against the value of the rock beneath the land. Mr. Reed said processing itself is not part of the Goal 5 evaluation process.

Shawn Cleave, government relations specialist with the Marion County Farm Bureau (MCFB), 3415 Commercial St. S.E., Salem, testified that the MCFB has concerns with any permanent conversion of Oregon's high value farmland to another use. He said he recognizes that where populations are centralized, elected officials must balance the needs of their constituencies (see attachment Exhibit J, Appendix A). He said that MCFB has no way of analyzing the data on current mines approved for 60-foot-depth goals and they have ample evidence that these goals are not being met because of issues arising through DEQ reports or the cessation of mining at

that depth because of dewatering issues. He said the 40 acres plus another 15 acres discussed today would be immediately available for farmland reclamation and equals about 25 percent, which is half of what the Knife River area is currently working towards. He said that was probably a good starting point, but definitely the basement level from the Farm Bureau's perspective. He said that with expansion of aggregate mining, reclaiming farmland with overburden from prior mining is an option. From a rolling perspective, there is ample material to do that.

Sam Sweeney, 1070 Ferry Street, Dayton, said that of the loss of farmland depleting a valuable resource for agriculture in Marion and Yamhill counties. He said that over a five to seven year period at River Mile 62 to roughly 74, Yamhill County has lost around 590 acres to insidious erosion of agricultural base that should concern all citizens. Class II soils are very valuable and have old water rights. These soils can produce nearly anything from grass seed to high value nursery crops. He said he did not think the aggregate business created more jobs than agriculture. He is supportive of reclamation by covenant under the auspices of Marion County Soil and Water Conservation District in cooperation with the Marion County Extension Office, as they have the expertise and the knowledge to insure Windsor Rock Products performs the reclamation to farmland correctly.

Philip Bocking, 7621 2nd Avenue N., Keizer, testified that he wanted to raise the quality of life issue and that the noise will affect several thousand people that live west of Wheatland Road. He said that Willamette Lutheran Home is near the subject area and those residents are unaware of the impending changes to their environment and quality of life, because public notices have not included the Wheatland Road area.

Rebuttal:

Paul Hribernick, legal counsel for the applicants, said that since there has been additional information submitted today that they have not been able to review, he requests seven days to review the submissions and respond, if necessary. He had a sense that the arguments brought up today against the application are for the most part recycled from the previous hearing in front of the hearings officer. He said the Green and White site in Corvallis is extremely shallow possessing quantities of overburden to support reclamation. He said that the Windsor Rock Products site is not the same and has extremely deep, high quality gravels and minimal topsoil for reclamation. He said Windsor is also different from the Morse Brothers at Knife River who have 25-35 feet. He said Windsor Rock Products has no way of reclaiming the farmland unless they bring construction materials into the site, which he said the DEQ would not allow because it will have water ill. He said they would reclaim as much as they can. He agrees with Bruce Chapin that the deed restriction for fish and wildlife could prohibit reclamation to farmland.

Mr. Hribernick rebutted the cumulative effect and critical mass arguments. He encourages the commissioners to read the hearings officer's approach. He said the question before the board is do we meet the standards? Laws against mining in class II soils do not exist. The philosophical argument is valid, but does not address legal requirements. He would like the commissioners to read the letter from Doug Zielinski, whom, Mr. Hribernick says, wrote that it is not the amount of land; it is the strength of the individual farm unit. If Mr. Zielinski can lease a portion of his

less productive land to a gravel company he feels that strengthens his farm unit and the farm economy.

Mr. Hribernick said that several people have told the commissioners they have the authority on the reclamation plan. He said DOGAMI has the statutory authority to do the reclamation plan. The board may make recommendations, but DOGAMI has the last determination.

Mr. Hribernick requested the commissioners read his June 3, 2009, rebuttal to Mr. Reed's arguments. He said Mr. Reed's arguments have been highly discredited. He said Mr. Reed is not a registered professional geologist or a certified engineering geologist. The reports have engineering seals attesting to appropriate regulatory discretion. Mr. Hribernick said he spoke with Jim Hines, Army Corps of Engineers concrete specialist, who said there is no corps of engineers' standard for pit-run rock. It is for basalt, quarry-run rock. Mr. Hribernick said he spoke with Glenn Waite of ASTM concerning the ASTM standard, who felt Mr. Reed's argument was "ludicrous," as there is no requirement that an entire column of rock be drawn and sampled at every level. He said to rely on the judgment of the geologist in the preparation of these reports.

Mr. Hribernick addressed Mr. Bocking's quality of life concerns. He said the DEQ has determined Windsor Rock Products has met their standards to protect human health and habitation. He said homes within the 1500-foot noise-impact area have been sent notices.

Mr. Hribernick requested an additional seven days for submitting written rebuttal for inclusion in the record. Jo Stonecipher questioned if the board was getting close to the time limit. Mr. Hribernick said he would be happy to work with the county in extending it. He requested closure of the public hearing, but asked the commissioners to leave the record open for his written rebuttal material.

Commissioner Milne said she was comfortable with granting more time for understanding and comprehension's sake and for reaching an ultimate decision.

Ms. Roy read to the commissioners that the statutory requirement says local government shall allow the applicant at least 7 days, after the record is closed to all other parties, to submit final written arguments in support of the application. Final submittals shall be considered part of the record, but not include any new evidence.

Staff had no additional remarks.

MOTION: Commissioner Brentano moved to close the public hearing and close the record to all other parties other than written rebuttal testimony by the applicants only, to be received by November 18, 2009, and deliberations would be held on November 25, 2009. Seconded by Commissioner Carlson; motion carried. A voice vote was unanimous.

Commissioner Milne then read the calendar.

Commissioner Milne adjourned the meeting at 12:00 p.m.

Attachments: SEDCOR 1st Quarter Report

ABOVE MINUTES APPROVED

CHAIR

COMMISSIONER

COMMISSIONER

If you require interpreter assistance, an assistive listening device, large print material or other accommodations, call 503-588-5212 at least 48 hours in advance of the meeting. TTY 503-588-5168.

Si necesita servicios de interprete, equipo auditivo, material copiado en letra grande, o culaquier otra acomodacion, por favor llame al 503-588-5212 por lo menos 48 horas con anticipacion a la reunion. TTY 503-588-5168 Marion County is on the Internet at: www.co.marion.or.us