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ORD PA 1238  
Date 1-29-07  
Exhibit No. 282

**HAND DELIVERED**

Lane County Board of Commissioners  
and Eugene City Council  
c/o Stephanie Schulz  
Lane County Land Management Division  
125 E. 8<sup>th</sup> Avenue  
Eugene, OR 97401

Re: PA 05-6151/Delta Sand and Gravel Company  
Our File No. 6334.30006

Dear Commissioners and Councilors:

This correspondence shall serve as the final argument of our client, Delta Sand and Gravel Company (hereinafter referred to as "Delta"), in the above-entitled proceeding.

Delta has demonstrated throughout this proceeding that approval of its application to add 72.31 acres of its property to the Goal 5 Significant Aggregate Site Inventory and to change the Metro Plan Map designation of that property from Agriculture to Sand and Gravel is consistent with applicable Oregon Statewide Planning Goals and administrative rules that implement those goals. Throughout these proceedings Delta has consistently demonstrated particularly that it has met all of the criteria of the Goal 5 Rule regarding expansion of aggregate mining sites.

While Delta has addressed all of the applicable criteria in this proceeding, the focus of public testimony has been on the issues of the significance of the subject site's aggregate resource, the potential land use conflicts resulting from Delta's mining of the subject site and the ability of Delta to minimize those conflicts under the Goal 5 Rule. This correspondence will also focus on those particular issues.

**1. Recent correspondence regarding complaints received by LRAPA.**

Opponents of Delta's application, in correspondence delivered to the elected officials after the public hearing, have centered their arguments against approval of the application on complaints

regarding dust received by the Lane Regional Air Pollution Authority (LRAPA) over the past seven years from nearby residents. The opponents' reliance on complaints, rather than enforcement actions taken by LRAPA against Delta in response to complaints, is not responsive to the Goal 5 Rule criteria. The fact remains that LRAPA has not issued any enforcement action or sanction against Delta regarding its operation of its crushing operation, its mining operation or its haul roads. While Delta has received one citation from LRAPA for a violation at a construction site (dust control) and one other citation for failure to cover a load on Delta Highway, it has not been found to be in violation of the LRAPA permit (or fined therefor) related to its operations, both mining and production, on its current facility site.

Opponents cite the January 2005 incident during which Delta was cited by LRAPA for failing to water Division Avenue during a period of extremely low temperatures as proof that Delta has not performed its requirements and responsibilities under its LRAPA fugitive air permit. The LRAPA Notice of Violation served on Delta for that incident is the only Notice of Violation received by Delta regarding its operations on or near the subject site. More importantly, Delta points out that it received a complete dismissal of that Notice of Violation and was not sanctioned or fined by LRAPA for that incident. Evidence of that dismissal is currently in the record of this proceeding.

Opponents cite the complaints as if they were proof of Delta's non-performance of its requirements and responsibilities under its LRAPA permit. Opponents state: "[T]hese complaints serve to further illustrate that Applicant's proven track record is not one of adherence to DEQ and LRAPA standard, but rather a track record of adverse dust impacts." No, they do not illustrate such a conclusion. First of all, opponents have not provided any evidence that the complaints were legitimately connected to Delta's operation. Secondly, Delta did not receive a single Notice of Violation from LRAPA regarding those complaints. The mere creation of a complaint is not proof that Delta has violated the conditions of its LRAPA permit. Opponents attempt to disconnect the complaint-to-sanction process by arguing that LRAPA is somehow too inefficient or incompetent to adequately protect the metropolitan area's air shed and that it cannot be trusted to regulate Delta's operations. The fact that LRAPA has cited and fined Delta over incidents at construction sites rebuts the opponents' theory that LRAPA turns a blind eye to Delta operations and allows Delta to operate in violation of its permit.

We continue to emphasize that Delta has not been sanctioned by LRAPA, by fines or other sanctions, for any of its operations on the subject site in the many decades that it has been located on the subject site. It has mined its resource, hauled its resource across the site and has produced aggregate material on the subject site without a single violation of its LRAPA permit. That is Delta's track record.

Delta's true track record of fulfilling all of its responsibilities under the LRAPA permit is what the elected officials should and can expect from Delta as it mines and processes aggregate material from the expansion site. Its performance over the last 40 years at its current site is proof of its commitment to fulfilling its responsibilities to its neighbors and the public.

OAR 660-023-0180(1)(g) provides the performance standard for minimization of potential conflicts. In defining minimization of conflicts, the rule states that for those types of conflicts addressed by local, state, or federal standards (such as the Department of Environmental Quality standards for noise and dust levels), to "minimize a conflict" means to ensure conformance to the applicable standard. Delta has demonstrated throughout these proceedings that its operations on the subject site have been in conformance with the DEQ standards as regulated by LRAPA in this community. Evidence in the record demonstrates that all operations on the expansion site must be brought under and included within the LRAPA permit that covers the existing operation and site. Delta's track record with its existing permit is a good indication to the elected officials that its mining of the expansion area will also be performed in conformance with that permit.

**2. The expansion area contains a significant aggregate resource.**

Delta has demonstrated in these proceedings that the subject expansion site has a significant deposit of aggregate resource. Delta's initial evidence was provided by EGR & Associates, Inc. (EGR), and consisted of EGR's sampling of material at several locations on the expansion site and the subsequent lab testing. EGR published the results of its evaluation in the report titled "Evaluation of Aggregate Resources: Delta Sand and Gravel Expansion Area" which is dated June 2005. In that report, EGR determined that coarse aggregate samples obtained during field exploration of the expansion area meet ODOT base rock specifications. The report contains laboratory data demonstrating that the coarse aggregate (gravel) fraction present at the expansion site meets the base rock specifications required by ODOT and Goal 5. Similarly, the report demonstrates that all of the coarse aggregate samples meet the ODOT soundness requirements for Portland Cement Concrete. Furthermore, EGR concluded that the estimated volume of aggregate available within the proposed expansion area is 9,082,260 tons. Accordingly, Delta has demonstrated that the proposed expansion area satisfies the criteria set out in OAR 660-023-0180(3)(a).

Opponents, primarily through the testimony of Mr. Reed, have argued that EGR's methodology and conclusions are flawed and should not be accepted by the elected officials as evidence of a significant deposit. Notwithstanding the obvious conclusion that the expansion area is an extension of an existing significant deposit that has been mined by Delta for over 40 years, in response to Mr. Reed's criticism Delta enlisted the review of the Oregon Department of Transportation (ODOT) and the Oregon Department of Geology and Mineral Industries (DOGAMI). Using the core borings of EGR, ODOT took its own samples and had those samples evaluated. ODOT concluded that the samples were representative of aggregate deposits on site and that the deposit met ODOT specifications. Based upon ODOT's sampling and conclusions, DOGAMI issued the same conclusion. Opponents now argue that the ODOT sampling and conclusions are somehow tainted because it used the core borings produced and analyzed by Delta and EGR. Evidence was produced at the public hearing, in the form of a printout of the cores that displayed where within the cores both EGR and ODOT took their samples. It is evident from that printout that ODOT independently obtained its own samples from the cores and independently analyzed its samples. The printout demonstrates that ODOT

sampled from various levels of the cores as the opponents have argued must be done. The opponents argument has been modified and reduced to its objection that ODOT used the cores obtained by Delta and EGR. That argument is not substantial evidence that refutes or rebuts the expertise and analysis of both EGR and ODOT.

The testimony of ODOT and DOGAMI regarding the significance of the deposit is included in the record of this proceeding. The two state agencies that are charged with regulating the aggregate industry and its products associated with transportation facilities have confirmed EGR's conclusions that the expansion area contains a significant aggregate deposit. DOGAMI went so far as to state that EGR's estimation of the total amount of the deposit was understated by over 50%. That body of evidence is more than sufficient to demonstrate that the deposit is significant as required by the Goal 5 Rule and the elected officials can and should rely upon that evidence in finding that a significant aggregate deposit exists on the subject expansion site.

### **3. Delta has demonstrated that potential dust impacts can be minimized.**

We have addressed the significant portion of this issue earlier in this correspondence. Opponents have argued other points regarding Delta's demonstration that it can minimize potential dust impacts.

Opponents have argued that dust from truck traffic on local streets will increase if Delta is permitted to mine the expansion site. Delta has demonstrated that approval of use of additional resource will not create any additional traffic. The LRAPA permit continues to have a production level cap that will not change by the mere addition of additional resource sites. Delta's production of aggregate material will not increase due to the availability of the resource in the expansion area—it will merely be extended into the future with the addition of the resource into Delta's inventory of total material.

Opponents argue that the mining operation will produce what they claim is excessive dust. Delta has demonstrated in testimony and in a dramatic visual demonstration on DVD at the public hearing that it does not produce significant dust while mining. The vast majority of dust produced by Delta emanates from its rock crushing operation. That operation is regulated and limited by LRAPA and, again, Delta has not been found to be in violation of its LRAPA permit in the operation of its rock crushing. Opponents argue that the proposed aquaclude will somehow remove all underground moisture in the expansion area soil, that the existing "wet mining" will cease and that dust will then be produced by mining. EGR has proposed a clay soil barrier that will reduce the amount of groundwater moving into the pit during excavation. EGR has never stated that the aquaclude will prevent all groundwater from moving through the soil or will remove all of the moisture that naturally exists underground. In addition, the opponents seem to argue that the waterfalls that they witnessed in the DVD contain the only moisture in the soil being mined. Common sense should prevail on that argument. Opponents have provided no expert testimony to support their argument that the aquaclude will remove all moisture from the soil and cause excessive amount of dust to be produced during mining.

Opponents argue that Delta has not conducted an air dispersion model similar to that conducted by Eugene Sand & Gravel Company in its application to locate a new mining and processing site north of Eugene. This application is not similar to that of Eugene Sand & Gravel Co. Delta is not attempting to establish a dust-producing facility as Eugene Sand & Gravel attempted. It is merely asking to expand its current mining site with its current dust-producing and dust-minimizing operations. In its permitting of the Delta operation, LRAPA has already factored in the dust-producing considerations that the opponents claim must be accomplished in this proceeding. Nonetheless, in consideration of the potential dust created by the haul roads (and considering that mining does not create a significant amount of dust and that the crusher is operated and limited in production by the LRAPA permit), Delta requested that LRAPA conduct an air dispersion model for its haul roads. LRAPA published its "Delta Sand & Gravel Haul Road Analysis" on November 1, 2006, and a copy of that publication is included in the record of this proceeding. In that analysis, LRAPA stated: "The modeled impacts from each haul road, added to ambient monitored concentrations, is below the PM10 national ambient air quality standard." LRAPA's analysis took into account myriad factors, including haul road length and width, truck tire size, number of trips, etc., to reach its conclusion.

Opponents continue to offer the testimony of Dr. Stephen Kimberley, regarding the negative health effects of "rock dust." Delta continues to point out that Dr. Kimberley has not visited the site and has not testified that Delta's mining operation will create the kind of "rock dust" that he has testified about. He has merely provided testimony on the effects of "rock dust." He has provided no evidence that Delta actually produces his type of "rock dust" while performing mining operations at its current facility. Based upon Dr. Kimberley's own testimony, the "rock dust" that he discusses is the type of dust that occurs during the crushing of rock and rock material. If Delta produces any of the type of "rock dust" that Dr. Kimberley discusses, it produces that dust at the rock crusher. The rock crusher, and the dust it creates, is regulated and limited by the LRAPA permit and its production cap. Delta has continually maintained that the rock crusher will not be moved or relocated as a result of approval of this application. Delta has continually testified that its rock crushing operation will not change as a result of its obtaining additional resource to mine. Furthermore, Delta has testified and visually demonstrated that it does not create significant levels of any kind of dust during its mining operation.

Delta's potential production of dust primarily occurs at the rock crusher and on its internal haul roads. Delta's operation of both the crusher and its haul roads are regulated by LRAPA under its current permit. That permit requires a production cap on the crusher and requires that the haul roads be continually watered. Delta's adherence to those requirements permits it to operate its crusher and to haul aggregate material on its internal roads. Delta has met those requirements for decades and opponents have provided no evidence that Delta cannot continue to meet those requirements as applied by LRAPA to the expansion area.

**4. Delta has demonstrated that potential noise impacts can be minimized.**

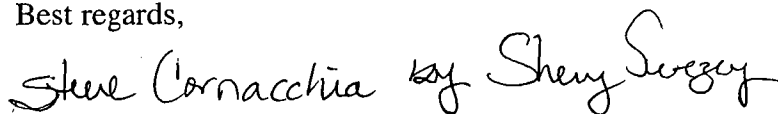
Delta's noise consultant, Daly-Standlee, concluded that, with appropriate noise mitigation measures, noise generated by future mining operations in the proposed expansion area will comply with the most demanding interpretation of the DEQ Noise Regulations for Industry and Commerce at all residential properties around the proposed expansion area. Again, if Delta can demonstrate that it meets the regulatory standards of the responsible agency, then it has demonstrated that it can minimize the potential impact.

Opponents have enlisted the services of Arthur Noxon to criticize the Daly-Standlee reports, both the original report filed with the application and subsequent reports and responses of Daly-Standlee thereafter (including the most recent analysis of minimizing impacts from the excavation portion of the aquaculture construction). Daly-Standlee has provided several responses and rebuttals of Mr. Noxon's criticisms which demonstrate Mr. Noxon's mistaken facts and assumptions. Furthermore, Daly-Standlee has provided both authority and reasoning for each of its assumptions and conclusions. A close reading of Mr. Noxon's reports and of Daly-Standlee's defense of its own work renders a reasonable conclusion that Mr. Noxon has failed to refute the conclusions of Daly-Standlee. Accordingly, the elected officials have more than sufficient evidence, expert and otherwise, to conclude that Delta can minimize the potential noise impacts associated with mining of the expansion area. We remind both elected bodies that the Eugene Planning Commission also found that Delta had demonstrated that it can minimize the potential noise impacts.

**Conclusion.**

Delta has provided substantial evidence to demonstrate that it has a significant aggregate deposit and that it can minimize all potential impacts with neighboring land uses. Delta has continually provided to the record of this proceeding its responses and rebuttals of opponent arguments and criticism of Delta's evidence. Throughout the proceeding Delta has demonstrated that it has historically performed all of its obligations and requirements, without violation, of its LRAPA permit to mine and process aggregate material on its existing site. Delta's evidence is substantial and reasonable and supports a finding that Delta has demonstrated that approval of this application is consistent with the Goal 5 Rule.

Best regards,

A handwritten signature in black ink that reads "Steve Cornacchia" followed by a stylized signature that appears to be "by Sherry Swezey".

STEVE CORNACCHIA

PSC:ss

cc: George Staples