

## SUPPLEMENTAL MATERIAL

Eugene City Council Meeting February 21, 2007

**B. WORK SESSION:**  
**Delta Sand and Gravel Metro Plan Amendment**

Mayor Piercy asked if any councilors needed to declare *ex parte* contacts or conflicts of interest.

Mr. Clark indicated that prior to his being seated as a councilor he had reviewed the record and had attended the other hearings as a spectator. While he did not believe he had a conflict or a potential conflict of any kind, he was acquainted with one of the neighbors involved in the issue. He said he had spoken of the issue with his friend, but he did not believe anything of substance had transpired nor had he engaged in any further conversations with his friend since being seated on the council.

Mr. Zelenka noted that he had also familiarized himself with the record and attended the public hearing as he had also not been seated on the council when this was first initiated.

Ms. Taylor stated for the record that she had asked the Lane Regional Air Protection Agency (LRAPA) to send information about complaints that had been received and she had been present at LRAPA meetings at which area residents had complained regarding the activities of Delta Sand and Gravel.

Kurt Yeiter, Principal Planner for the Planning and Development Department (PDD), stated for the record that after Ms. Taylor's contacts had become known to staff the PDD had advertised it to all of the parties involved during the public review process and those parties were given an opportunity to respond. He believed it was no longer a conflict.

City Manager Taylor said Mr. Yeiter would review where the process was in time with the council. He noted the record had been closed and the County was in charge of the process.

Mr. Yeiter explained that this was the first opportunity for an elected body to deliberate the application from Delta Sand and Gravel for a Metro Plan amendment, zone change, and variances to allow an expansion of its existing operation. He noted it was located just outside of the Urban Growth Boundary (UGB) but just inside the Metro Plan boundary. This required that the amendment had to be approved or denied by both the City and the County. He said the zone change, the variance, and the opportunity to impose conditions rested with the County and this would be deliberated after the Lane County Board of Commissioners heard from the City Council. He reviewed the timeline for the process, noting that the last comments from Douglas DuPriest, attorney for the organized opposition, and Steve Cornacchia, attorney for Delta Sand and Gravel were included in the last packet the City Council had received. He related that during the public review period a series of questions from Ms. Bettman had been submitted, but the staff timeframe was short and staff had answered the questions it was able to respond to.

Mr. Yeiter stressed that the decision should be based upon the record. He said the City would provide general recommendations to the County, so that as much as the council could come to agreement regarding where the potential conflicts were and what the conflicts were that were not minimized or mitigated the council could then forward its input to the Board of Commissioners. He underscored that the process was well-regulated by state law. He cited the proposed gravel extraction versus housing as an example of a potential conflict. He said the councilors then needed to decide if the conflicts were minimized. He related that state law required that where there were existing regulations that dealt with impacts or conflicts

that those regulations would serve as the threshold for minimization and if the application and proposed use would meet those thresholds, they were by definition minimized.

Mr. Yeiter welcomed Kent Howe, Lane County Planning Director, and Stephanie Schulz, Project Manager for Lane County Public Works. He also noted that City Attorney Emily Jerome was present to provide legal counsel.

Mr. Zelenka asked Mr. Yeiter to review the Lane County Planning Commission's conflicts and the Eugene Planning Commission's conflicts that commissioners felt were not mitigated. Mr. Yeiter noted he had prepared a summary, Attachment E in the packet. He stated that both commissions felt the information was adequate, but the Eugene commission felt the site qualified as a significant aggregate resource and the County commission found that the sampling method was inadequate. He reported that both commissions found that potential conflicts having to do with dust, noise, groundwater, wetlands and sensitive habitat, and agriculture existed. He summarized the Eugene Planning Commission's findings which were that the impact that was not minimized was dust. He related that the County had found there would be no impact to traffic and this was not challenged through the planning commission process.

Ms. Bettman noted that the materials indicated that if the County and the City could not agree on the impacts and minimization efforts the issue would go to the Metropolitan Policy Committee (MPC) for dispute resolution. She considered this to be a "very undesirable" outcome of the process. She was uncertain how the MPC would address such an issue, given that the consortium included the City of Coburg, Lane Transit District (LTD), and the City of Springfield and those members had not been at the hearings nor had they reviewed all of the materials.

Mr. Yeiter responded that both the City and the County code indicated that the decisions in order to become effective must be the same but the codes did not define 'same.' He said legal counsel for both entities extrapolated from the codes that the two should be unified in whether the amendment was approved or denied, but the findings could be different. He explained that staff recommended a straw vote at this time because it would allow the City and the County to "go back and forth." He conveyed staff's desire for as much detail as possible.

Ms. Jerome clarified the staff recommendation. She said one of the ways the County proposed that certain impacts be minimized was through the imposition of conditions that only the County could impose. She averred that she would not want to see the council take specific action until the council had specific assurances or could see that the County was heading in a direction that would accommodate the minimization conditions the councilors desired to be imposed. She believed the **PA05-6151: Delta Sand & Gravel Deliberation Votes – Metro Plan Amendment and Rezone** worksheet County staff had prepared presented the issues in a reasonable logical order. She wanted, to the extent the councilors could provide real direction, to ensure that whatever decision the council made was most defensible and addressed all of the criteria and rules. She indicated her preference to gain direction from council, to work with staff, and then draft a decision for the council to review in order to make sure it reflected the council's direction.

In response to a question from Mayor Piercy, Mr. Yeiter indicated that if the council was unable to come to a conclusion on an issue, staff would take that as questions to bring before the county.

Ms. Bettman declared that she had a "major problem" with Lane County's decision to waive the requirement for a Traffic Impact Analysis (TIA).

Ms. Solomon expressed hope that the council would not make this issue “unnecessarily excruciating” for anyone involved. She felt the information that had been provided was thorough and the councilors had been allowed adequate time to digest the information. She wanted to have a thoughtful and deliberative discussion that would move toward resolution in a timely fashion.

Mr. Yeiter stated that *Step 1* on the worksheet asked if the Post-Acknowledgement Plan Amendment (PAPA) information was adequate.

Ms. Bettman reiterated her feeling that a TIA was necessary in terms of information needed for a decision to be made. She disagreed with the assumption that the actual production would not increase. She believed there could be impacts to local transportation infrastructure. She also thought an Economic, Social, Environmental, and Energy (ESEE) assessment should be conducted. She averred that the sampling had been performed in a way that mixed aggregates so that even though the quantity was established, the quantity of the standard that was to be fulfilled was inadequate because of this mixing. She doubted whether the resource was significant.

Mayor Piercy noted that the Eugene Planning Commission had unanimously agreed that the PAPA was adequate and that the Lane County Planning Commission had voted 4:2 that the PAPA was adequate.

In response to a question from Mr. Zelenka, Mr. Yeiter stated that the planning commissions had found there to be enough information upon which to base a decision. He said even if the majority found there was adequate information, the issues could be raised under each topic.

Mr. Clark surmised that the commissions had ascertained there was sufficient information without the TIA. He asked what the legal standard was for adequacy of information.

Ms. Jerome explained that the OAR listed five factors for adequacy. She cited an attachment to the staff report from the date of the hearing and noted that it had listed the OAR criteria. She stated that the planning commission, based on county staff recommendations, found that there was enough information in current plans about that area and this had been deemed sufficient.

Mayor Piercy called for a straw vote.

Straw vote: the information in the PAPA was deemed adequate by a 5:3 vote; Ms. Ortiz, Ms. Bettman, and Ms. Taylor voting no.

Mr. Yeiter explained that *Step 2* on the worksheet referred to the quality and quantity of the aggregate resource. He recalled the substantial testimony from the geologist regarding whether the site qualified as a substantial resource and as a Goal 5 resource.

Mayor Piercy noted that the Eugene Planning Commission had indicated by a 3:2 vote that it considered the site to contain significant material and the Lane County Planning Commission had indicated their feeling that the site was an inadequate resource by a 4:2 vote.

Ms. Bettman asserted that the significance of the resource was important because it would be used to justify and rationalize the loss of the “grade 1 farmland” and to determine if the expansion of the gravel operation was “worth” the noise and dust to the agricultural and residential uses that were around the property. She did not think the resource was significant enough to justify or rationalize the impacts.

Mr. Yeiter pointed out that the elected bodies had received more information in that regard than the first hearings of the planning commissions had.

Mr. Poling asked how much of the area contained the "grade one" soil. Ms. Schulz responded that the area primarily featured Class 2 quality soils.

Mr. Poling asked if the samplings had been conducted according to the criteria for such a process. Mr. Howe replied that the American Association of State Highway and Transportation Officials (AASHTO) American Society for Testing and Materials (ASTM) handbook had guided the determination of the quantity and quality of the aggregate materials. He underscored that this was the journal/textbook for conducting such samplings.

Mr. Poling said in looking at this as a civil action in which a determination would be based on the preponderance of evidence that would be 50 percent plus one, given that three samples were taken even inclusion of the one sample that had been conducted by someone that was not recognized as an expert there were two samples that indicated the resources were adequate.

Mr. Clark asked what weight testimony from someone who was not considered an expert should be given. Ms. Jerome replied that it was up to the elected officials to make a decision that a reasonable person would make.

Mayor Piercy called for a straw vote on the determination of whether the resource site was significant.

Straw vote: the vote on whether the resource site was significant was a tie, 4:4; Mr. Poling, Mr. Pryor, Ms. Solomon, and Mr. Clark voting yes and Mr. Zelenka, Ms. Ortiz, Ms. Taylor, and Ms. Bettman voting no. Mayor Piercy voted no and the vote failed.

Mr. Yeiter noted that *Step 3*, which sought to determine if identified conflicts from mining could be minimized to acceptable levels of no significant impact, was split into seven areas of potential conflict: traffic, groundwater, wetlands and sensitive habitat, flooding, agricultural practices, dust, and noise. He suggested the council address the impacts individually. Regarding traffic, he pointed out that a TIA could be required at a future point as the area experienced increased development and the gravel operation potentially experienced an increase in production.

Mr. Pryor observed that it was questionable as to whether the application would affect traffic intensity. He surmised that the application sought to extend the lifetime of the mining application and not necessarily to increase production. He believed the potential traffic impacts could be dealt with at a later point. He reiterated that as it related to this application, market conditions were not a factor.

Ms. Bettman felt the council was relying on the applicant's assertion that traffic was not a factor. She opined that this was not good government. She said with every development there was an assumption that it would impact traffic. She felt that otherwise the City of Eugene would end up "holding the bill" for whatever kinds of upgrades or improvements that would need to occur because of the traffic impact. She averred that a TIA was just a part of conducting due diligence.

Mr. Clark said while Ms. Bettman referred to this item as the council was relying on information from the applicant, he would be relying on the unanimous consent of both planning commissions to guide his decision.

Mr. Yeiter noted that there were three questions under *Traffic* and the City could find a conflict due to traffic but it could also find such a conflict could be minimized through the imposition of conditions.

In response to a question from Mr. Clark, Mr. Yeiter affirmed that the planning commissions had not challenged the County's assertion that a TIA was not needed because of the consistency of production.

Mr. Zelenka surmised that this was because production would not be increased at this time. He pointed out that unless there was a conditional use that would dictate that production would stay at that level, it could change. He said if the gravel operation decided to double production there would be a concurrent doubling of traffic. He did not see how they could make this assumption without making a conditional use provision.

Ms. Jerome stated that the first step would be to determine the impact area, which could not be more than 1,500 feet from the proposed expansion area boundary unless there were circumstances that warranted the consideration of a larger area. She noted that both planning commissions had found 1,500 feet to be the appropriate area.

Mr. Zelenka indicated he would vote that this was a conflict because there was no indication that a conditional use was being considered and no TIA to indicate otherwise.

Mr. Clark ascertained from Ms. Jerome that the council was to determine whether there was a current conflict as opposed to a conflict over a period of time. He related that he had some concern regarding the future of the company. He said if the current owners sold the business there would be no way to know how the future owners would choose to operate the business at this point. He did not know if the council could make this decision based on this potential.

Ms. Jerome commented that this pointed to the importance of making conditions. She did not think the council could make a final decision without knowing where the County was going with respect to those decisions.

Mr. Yeiter pointed out that aside from the county mining permits, production levels were also regulated by LRAPA and other agencies.

Ms. Bettman, seconded by Ms. Taylor, moved to extend the meeting by five minutes. The motion failed, 6:2; Ms. Bettman and Ms. Taylor voting in favor.

Mayor Piercy adjourned the meeting at 1:31 p.m.

Respectfully submitted,

Dennis M. Taylor  
City Manager

(Recorded by Ruth Atcherson)

