

Office of the
CLARK COUNTY LAND USE HEARING EXAMINER

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NOTICE TO PARTIES OF RECORD

PROJECT NAME: Livingston Mountain Quarry Appeal

CASE NUMBERS: APL2003-00006; PSR2002-00044; SEP2002-00068; HCG99-139

The attached decision of the Land Use Hearing Examiner will become final and conclusive unless a written appeal therefrom is filed with the Board of Clark County Commissioners, 6th floor, Public Service Center, 1300 Franklin Street, Vancouver, Washington, no later than 5:00 p.m. on, **November 26, 2003** (14 calendar days after written notice of the decision is mailed).

The Hearing Examiner's procedural SEPA decision is final and not appealable to the Board of County Commissioners.

All other appeals must be written and must contain the case number designated by the County and the name of the applicant; the name and signature of each petitioner for the appeal and a statement showing that each petitioner is entitled to file the appeal as an interested party in accordance with CCC 18.600.100A; the specific aspect(s) of the decision being appealed, the reasons why each aspect is in error as a matter of fact or law, and the evidence relied on to prove the error; accompanied by a fee of **\$263**. The fee shall be refunded if the appeal is withdrawn in writing by the petitioner at least 15 calendar days before the public meeting to consider the appeal.

The Board of Commissioners shall hear appeals of decisions on the record, including all materials received in evidence at any previous stage of the review, an audio or audio/visual tape of the prior hearing(s) or transcript of the hearing(s) certified as accurate and complete, the final order being appealed, and argument by the parties. No new evidence will be accepted.

The Board may either decide the appeal at the designated meeting or continue the matter to a limited hearing for receipt of oral argument. If so continued, the Board of Commissioners shall designate the parties or their representatives to present argument, and the permissible length thereof, in a manner calculated to afford a fair hearing of the issues specified by the Board of Commissioners. At the conclusion of its public meeting or limited hearing for receipt of oral legal argument, the Board of Commissioners may affirm, reverse, modify or remand an appealed decision.

Mailed on: **November 12, 2003**



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Project Number: APL2003-00006

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**BEFORE THE LAND USE HEARINGS EXAMINER
FOR CLARK COUNTY, WASHINGTON**

In the matter of an appeal of a Type II staff decision approving a site plan and a SEPA Mitigated Determination of Nonsignificance to mine within a 40-acre site in the FR-80 zone with a Surface Mining Overlay in unincorporated Clark County, Washington.

FINAL ORDER

Livingston Mountain Quarry Appeal
APL 2003-00006, PSR 2002-00044,
SEP 2002-00068 and HCG 99-139

I. Summary of the Order:

This Order is the decision of the Clark County Land Use Hearings Examiner denying the appeal and upholding the Director's approval of the site plan to mine within a 40-acre parcel, zoned FR-80, with a Surface Mining Overlay. Based on the record as it now stands, the conditions of the Director's original approval, as herein revised, the Examiner determines that there will be no probable significant adverse environmental impacts from this proposal and makes a threshold mitigated determination of Nonsignificance (MDNS) under SEPA.

II. Introduction to the Property and Application:

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Owners Alan & Mary Thayer
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Appellants Michael Niquette & Deborah Mrazek
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Appellants' Attorney Keith Hirokawa
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1111 Main Street, Suite 402
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Property Location: NE Highland Meadows Drive, TL 11, NE ¼ of Section 11,
Township 2 North, Range 3 East (parcel no. 170400-0000).

Applicable Laws Clark County Code (CCC) chapter 12.05A (transportation); chapter 12.40 (concurrency); chapter 13.29 (stormwater drainage and erosion control); chapter 13.36 (wetland protection); chapter 13.51 (habitat conservation);

chapter 13.60 (geologic hazard); chapter 15.12 (fire code); chapter 18.302 (agriculture and forest districts); chapter 18.329 (surface mining overlay); chapter 18.402A (site plan review); chapter 18.600 (procedures); chapter 20.06 (SEPA) and WAC chapter 197-11 (SEPA rules).

The subject site is generally located on NE Highland Meadows Drive at the north end of NE 262nd Avenue (Ex. 2). The property is mostly open, rocky, with steep slopes and little vegetation. Soils, where they exist, are relatively shallow and bedrock is exposed in many areas. A Department of Natural Resources (DNR) Type 5 stream bisects the property draining north to south and exits the site at the south central boundary. There are several small isolated wetlands scattered on the property. The site was recently logged and has no structures on it (Ex. 1). Logging roads pass through and around the site, and the parcel to the west is an inactive gravel mine owned by DNR and formerly operated by Clark County. Properties east and northeast are in Forest Zone Districts and have homes on large lots (Ex. 6).

The underlying application sought site plan approval for a surface mining operation on an approximately 40-acre site, zoned FR-80 with a surface mining overlay (S). The application proposes only the extraction of rock (approximately 4.5 million tons) and no on-site processing. Consequently, there will be no crushing, batching, washing or similar operations at this site. This also means that public sewer and water are not needed for the operation. Hours of operation are proposed to be 8:00 a.m. to 5:00 p.m. Monday through Friday with periodic operations on Saturdays. The applicant anticipates, and commits to, a maximum of 16 daily truck trips (16 round trips, 32 one-way segments). The proposed haul route begins with an easement over the DNR pit at the southwest corner of the subject site, connecting to NE Highland Meadows Road, on which trucks would proceed west and then south on 262nd Avenue to NE Bradford Road.

As originally proposed, the site would be mined in 10 phases (Ex. 6 & 7, Tab 23). The applicant subsequently clarified the setbacks, upon which the noise recommendations were made, all excavation, truck loading and rock drilling (Ex. 83, as corrected by Ex. 88). Also, the applicant amended, or at least clarified, the phasing plan to show that, given the setbacks, there will only be 8 phases on the site that will actually be mined (Ex. 130).

III. Local Process and the Record:

The applicant waived the preapplication conference (Exs. 8 & 9) and submitted a complete Type II site plan application on July 22, 2002. The application was deemed complete on July 30, 2002 (Ex. 11) which gave it a July 22, 2002 vesting date. The application consists of a complete set of drawings (Exs. 5 & 6) and reports (Ex. 7), including a geotechnical and soil analysis (Tab 10), preliminary stormwater design and stormwater and erosion control plans (Tabs 11, 12 & 24), traffic study (Tab 13), noise study (Tab 19), archaeology report (Tab 20), and mining and reclamation plans (Tabs 22 & 23). On August 13, 2002, staff published notice of the application, a Type II likely Determination of Nonsignificance (DNS) (Ex. 12), and a request for comments on the SEPA determination (Ex. 13). Notice of the application and an invitation to comment was mailed to surrounding property owners on August 16, 2002 (Exs. 13 & 14).

County staff from various departments reviewed the application, and public comments were received in response to notice of the proposal. The public comments raised substantive land use issues and objections to the proposed SEPA MDNS. The substance of the staff

reviews and public comments received before and after the issuance of the initial decision will be discussed in the next section. In response to the issues raised by public comments, staff placed the application on hold on October 7, 2002 and directed the applicant to address the following issues (Ex. 52):

- Truck traffic
- Water availability
- Forest Practices
- Health District
- Processing
- Noise
- Mineral rights

The applicant provided a consolidated response to each of the issues (Exs. 59, 61, 62, 66, 67 & 68). County staff provided in-put on those issues within their areas of expertise. See Ex. 55 (noise), Ex. 57 (groundwater), Ex. 58 (road surface analysis), Ex. 60 (road improvement fees), Ex. 64 (mining rights), Ex. 65 (traffic safety). During the same period, the appellants and others provided comments urging denial of the application and disputing the proposed SEPA MDNS on a variety of grounds. See Ex. 53 (wetlands), Ex. 63 (general objection), Ex. 69 (groundwater), Ex. 70 (mineral rights). Staff considered all comments received and issued a land use decision approving the site plan with approximately 41 conditions of approval, and the MDNS with 11 conditions (Ex. 72). Notice of the decision was sent to all those who submitted comments and owned property within the notice range (Ex. 73).

The appellants filed a timely appeal of the land use decision and MDNS raising 12 assignments of error (Ex. 74). Staff scheduled and duly noticed a May 1, 2003 hearing on the appeal (Exs. 75 & 76). Additional comments, legal memoranda, expert reports, staff reviews and other documents relating to the substantive land use and SEPA issues continued to pour in until the time of the hearing. Staff issued a consolidated response to the 12 appeal issues on April 15, 2003 and recommended that the Hearings Examiner uphold the Director's initial approval and MDNS.

At the commencement of the May 1st hearing, the Hearings Examiner explained the procedure and disclaimed any ex parte contacts, bias, or conflict of interest. No one objected to the proceeding, notice or procedure, raised any procedural objections or challenged the Examiner's ability to decide the matter impartially. The appellants raised in their appeal one challenge to the Examiner's jurisdiction to decide this application, and that issue is discussed below (appeal issue 4).

At the May 1st hearing, Josh Warner provided the staff report, overview of the project and a summary of the appeal issues. With him was Ken Burgstahler representing the County Engineer, and County Wetland Biologist Brent Davis. The appellants, represented by attorney Keith Hirokawa, presented testimony and elaborated upon the appeal issues set forth in the Notice of Appeal. Also appearing in support of the appeal were Linda Rectanus, Barbara Repman, Shane Latimer, who is a professional wetland biologist, Michael Karber and the appellants in their individual capacities. The issues raised by these witnesses are described in the next section.

Prior to the completion of the appellants' case in chief, the applicant's attorney, Brad Anderson, requested the opportunity to present one of his experts who could not return at a continued hearing. Al Duble, the acoustical engineer with substantial expertise on the noise

impacts of mining operations, testified about the project. At the conclusion of the hearing, the Examiner continued the hearing to June 10, 2003, which staff subsequently noticed (Exs. 109 & 110). On June 5, 2003, the applicant requested an indefinite extension to allow further discussion with the appellants that could lead to a resolution of the disputed issues (Ex. 114) which the Examiner granted (Ex. 115). Those discussions did not bear fruit or settle the appeal, and staff noticed the continuance hearing for October 2, 2003 (Exs. 116 & 117).

At the commencement of the October 2, 2003 continuance hearing, the Examiner reiterated the procedural rules and disclaimed any ex parte contacts, conflicts of interest or bias. No party raised any procedural objections. Staff provided an overview of the project and appeal issues and a status report on each issue (Ex. 123). The appellants' attorney, Keith Hirokawa, completed the appellants' case in chief, including testimony from Mark Underhill, the appellants' hydrogeologist, after which the appellants rested their case. The applicant's attorney, Brad Anderson, introduced Peter Keefer, the primary planner of the project, Jerry Wallace, the applicant's blasting contractor and consultant, and Tom Michalek, the project hydrogeologist, all of whom testified in their respective expert capacities. Alan Thayer, the property owner also testified. At the end of the hearing, County staff provided final summary response to the testimony presented by both sides, including testimony from Richard Gamble, Transportation Concurrency, and Richard Lowry, the County's Chief Prosecuting Attorney.

At the conclusion of the October 2nd hearing, the Examiner closed the public testimony and kept open the record for submission of the applicant's revised phasing plan (Ex. 130), comments on the phasing plan from the County Habitat Biologist (Ex. 131), the applicant's final summary argument (Ex. 132), the appellants response to those documents (Exs. 134 & 135) and a memo from the County Prosecuting Attorney reporting on a summary judgment motion in an unrelated case pertaining to a jurisdictional mineral rights argument similar to the one raised by appellants in this matter (Ex. 133). The record closed on October 15, 2003, and the parties consented to an extension of the final decision due date until November 7, 2003.

IV. Summary of the Appeal Issues:

In this section, the Examiner describes the 12 assignments of error raised in the appellants' appeal notice (Ex. 74), filed on March 11, 2003, as well as the applicant's response and the status of the record on each:

1. Historical accident rates and traffic safety – Appellants challenge Transportation Concurrency Finding 4 (Ex. 72, p 11) which concludes there is no "significant traffic or safety hazard [that] would be caused or materially aggravated by the proposed development" (Ex. 74, Issue 1). CCC 12.05A.230. Appellants assert that the historical accident data used by the applicant and by the County take into consideration only the number of reported accidents and not the circumstances under which these accidents occurred. Also appellants fault the County for failing to consider accidents not reflected in the state data bases. According to the appellants, had these other accident data been considered, the County may have concluded that the proposed haul route is not safe for truck travel.

Due to the small projected trip generation for the site, the County Concurrency Engineer concluded that a traffic safety study was not warranted or required (Ex. 7, Tab 13). County Transportation Engineers reported that none of the traffic accident data bases showed there to be an existing traffic safety hazard in the vicinity of the property, and that the projected trip generation (16 round trips per day) was not large enough to create a traffic safety hazard (Ex. 65). The appellants and others complained to the County that the applicant's traffic safety data

did not take into account all traffic accidents in the vicinity of the pit (Exs. 16, 17, 23, 25, 26, 27, 35, 77, 78, 79, 80).

Following submission of the appellant's appeal, County Transportation Engineering staff clarified the nature and source of accident data used to conclude that traffic safety impacts would be negligible (Ex. 86). County staff stated that there were four reported accidents during the years 1999-2001 on NE 53rd Street and NE 262nd Avenue near the site. There were no reported accidents that related to heavy truck traffic. County staff goes on to state that whenever it assesses traffic safety of road segments anywhere in the county, it relies upon the State of Washington Police Traffic Collision Reports as the data source. According to staff, this provides consistent, reliable, objective and factual information about accidents that is cross comparable with other road segments. Staff stated that other sources such as unreported accidents and 911 reports do not provide consistent, reliable, objective and factual information about accidents that can be used for comparisons throughout the county. A Traffic Engineer with the County also performed an exhaustive inventory and analysis of reported collisions from the State of Washington Police Traffic Collision Reports for NE 53rd Street and NE 262nd Avenue near the site (Ex. 118). From this data, the report confirms the earlier conclusion that there does not currently exist a traffic safety hazard, nor are the vehicle trips that will be generated by this mine sufficient to create a traffic safety hazard. Richard Gamble, a professional engineer with the County's Concurrency section, confirmed this analysis and its conclusions in oral testimony at the October 2, 2003 hearing.

2. Noise impacts – Appellants challenge Land Use Finding 4 (Ex. 72, pp 4-6) relating to state and county noise standards (Ex. 74, Issue 2). According to the appellants, the applicant and the County underestimate the noise impact likely from the proposed mining operation and overestimate ambient background noise levels. The applicable objective standard is the State Noise Control Act (WAC 173-60) and the County's SEPA guideline expressing a policy in favor of noise minimization and stating that "an increase of more than five decibels (dBA) over ambient noise levels at the receiving properties may be considered significant." CCC 20.50.025(3)(g).

Appellants assert that the noise from this mining operation would likely violate the applicable noise standards, particularly the +5 dBA SEPA policy. In support of this contention, the appellants provide a consultant's report (Ex. 32) that appears to concur with the applicant's noise study that noise standards will be met with one exception, *i.e.*, that the rock drill will not meet the applicable noise standards and that a variance will be required. The appellants also provided a report on noise and vibration that could possibly result from blasting (Ex. 33). This report is somewhat inconclusive, but recommends several precautions.

The applicants provided a substantial amount of expert testimony on the noise issue from their acoustical engineer Al Duple. See Exs. 7, Tab 19, 54, 55, 59E, 62, 66, 67, 68, 102 and oral testimony of Al Duple at the May 1, 2003 hearing. Mr. Duple, who is a registered professional engineer with a substantial amount of training and expertise in acoustical engineering and experience with noise impacts from rock quarries (Ex. 102), in his oral and written testimony explained the mitigation measures that will be employed to eliminate, reduce and redirect noise away from residences. At the close of the record, two issues appear to be particularly important. First, the appellants do not appear to maintain their contention that the applicable State Noise Control Act standards will be violated, only the +5 dBA county SEPA policy. Second, Mr. Duple expresses his belief that with the proposed setbacks (Ex. 68) truckbed lining, horizontal orientation of drilling rigs and mining progression from west to east, should be able to, but may not, meet the +5 dBA standard (see *a/so* Ex. 71). This issue is

further complicated by the applicant's final description of the phasing plan, in which it states that mining will occur generally from east to west – the opposite progression from what was stated at the October 2, 2003 hearing. The appellants noted with "disbelief" the inconsistency and objected (Ex. 135).

3. Line of sight screening – Appellants challenge another aspect of Land Use Finding 4 (Ex. 72, p 5) which states "there will not be line-of-site conditions to residential properties to the east" (Ex. 74, Issue 3). According to the appellants, evidence in the record shows that mining activities will be visible from their property. It is not clear from the appeal notice (Ex. 74) or the supporting memo (Ex. 97) that any particular legal standard is implicated by this statement. Appellants apparently argue that, because the mine site might be visible from their home, the environmental impacts analysis is defective.

At the time the record closed, the appellants had not identified any particular legal standard for visual impacts nor any specific prohibition against the proposed mine being visible from the appellants' home. The applicants assert that the appellants' home cannot be seen from the mine property and that the intervening slopes, distance of the appellants' home from the pit, trees and other vegetative screening should make it "highly unlikely" that the appellants will be able to see the mine operations (Ex. 125).

4. Mineral rights – Appellants challenge the County's and the Examiner's jurisdiction to hear this application (Ex. 74, Issue 4). According to appellants, the surface rights for the subject property have been separated from the mineral rights, and both are under different ownership. According to the appellants, the mineral rights are owned by the State of Washington Department of Natural Resources (DNR), and neither surface estate owners (the Thayers) nor the applicant (Byron Slack) have authority to apply for this mining operation without the DNR's signature on the application. By implication, appellants assert that the application is incomplete, that the County cannot accept or process this application without the DNR signature, and that the Examiner lacks jurisdiction to hear the appeal (Ex. 70). The apparent basis for appellants' jurisdictional challenge is the implicit requirement that a complete application for a mineral operation requires the signed consent of the owner of the mineral rights. See CCC §18.402A.030 (site plan submittal requirements).

The applicant challenges the appellants' standing to assert this issue, *i.e.*, injury to what appellants claim are DNR's mineral rights. At the October 2, 2003 hearing, the County's Chief Deputy Civil Attorney indicated that the same jurisdictional issue was raised in a then-pending Superior Court case, and that the judge would issue an oral ruling on a Motion for Summary judgment within a few days. The judge in the case concluded that the neighbors lacked standing to assert the claim that a prior mineral reservation in the chain of title precluded the applicant from making an "owner" application for a mineral use (Ex. 133). The applicant's also point out that according to the deed records, the DNR, at most, may retain title to the "oils, gases, coal, ore and minerals" under the subject property. According to the applicants, sand and gravel are not among the enumerated minerals to which the DNR holds title, a fact supported by the DNR's absence in this proceeding. The County Attorney further suggests that, regardless of how the issue is resolved, a quasi-judicial land use permit proceeding is not the proper forum to decide the mineral rights issue (Ex. 64). The appellants maintain otherwise (Ex. 134).

5. Wetlands and stream protection – Appellants challenge Critical Areas Findings 1 and 2 (Ex. 72, p 9) which conclude there are no jurisdictional wetlands on the property that are subject to regulation under the County's Wetland Ordinance, CCC chapter 13.36 (Ex. 74, Issue 5).

According to appellants, there are, or might be, jurisdictional wetlands that, in fact, meet the regulatory requirements of CCC chapter 13.36. On this basis, appellants assert that a full wetland delineation is required for the property and not just the multiple wetland surveys and preliminary determinations that have been completed to date.

The applicant acknowledged the presence of a DNR Type 5 stream and proposed 150-foot setbacks from the stream as required by CCC 13.51.050 (Ex. 6 & 7 Tab 23). The County Habitat Biologist reviewed the applicant's drainage plan (Ex. 7, Tabs 12 & 24) and supplemental stormwater drainage plans (Exs. 38 & 39) and concluded that the 150-foot setback was sufficient to meet the requirements of the County's Habitat Conservation Ordinance (CCC chapter 13.51).

The County's Wetland Biologist visited the site and issued a predetermination on August 25, 1999 that there were a few possible small isolated wetlands within the riparian zone of the stream and recommended a delineation to clarify the presence and possible extent of any jurisdictional wetlands (Ex. 46). Following the predetermination, the Board of County Commissioners amended the code to exempt wetlands within riparian areas from regulation under the Wetland Ordinance (CCC chapter 13.36). Pursuant to these code changes, compliance with the 150-foot riparian buffer was sufficient to protect any wetlands located within the riparian area (Ex. 51). The appellants and others submitted comments urging a full wetland delineation for the property (Exs. 23, 34, 35, 53 & 107). The only expert evidence in support of the appellants' position, testimony of Shane Latimer at the May 1, 2003 hearing and a letter from Jones & Stokes (Ex. 34), was not based on an on-site inspection of the property, and both were somewhat circumstantial and speculative.

The County Wetland Biologist responded to the appeal on April 9, 2003 by reevaluating the original predetermination (Ex. 82). The County's Biologist concluded there was no factual evidence to suggest that the original wetland predetermination was in error. There was no basis, in his opinion, for altering the analysis or conclusions in that predetermination. Following the May 1, 2003 hearing, the Wetland Biologist reinspected the entire site and performed a second wetland evaluation in light of the appellants' assertions (Ex. 112). In the revised wetland determination, the County Biologist concluded there were seven wetland areas and four non-wetland areas that evidence hydrology consistent with wetlands. All seven wetland areas appeared to be in areas that will be mined, *i.e.*, they are outside of the 150-foot riparian buffer, but none were large enough to be regulated, *i.e.*, they were exempt from regulation based on small size (Ex. 122). CCC 13.36.130. On this basis, the County Wetland Biologist did not recommend a delineation of the site. Appellants maintain that CCC 13.36.220 requires a wetland delineation whenever wetlands or wetland buffers are found on a parcel proposed for development (Ex. 119, pp 14-17).

6. Pre-blasting structural surveys – Appellants point to SEPA Condition 9 (Ex. 72, pp 16-17), imposing a pre-blasting structural survey for all near-by residents who request one, and ask for clarification (Ex. 74, Issue 6). Appellants want to know who will conduct the structural surveys and whether drinking water wells will be included in the surveys. Appellants urge that an independent expert, not associated with the applicant conduct the preblast surveys and that the surveys include the structural integrity of the residential drinking water wells in the vicinity. Appellants subsequently attempt to expand their blasting argument beyond what is plead in their Notice of Appeal by asserting that the applicant must demonstrate compliance with the Federal Safe Explosives Act (Ex. 119, pp 17-19). The applicant's blasting expert appeared at the October 2, 2003 hearing, and testified as to his qualifications, and provided his recommendations for pre-blasting surveys.

7. Hours of operation – Appellants point to Land Use Finding 8 (Ex. 72, p 7) relating to hours of operation, and ask for clarification (Ex. 74, Issue 7). In particular, appellants ask whether mining operations will be allowed on weekends and ask that weekend operation not be allowed. At the close of the record, the applicant's final word as to hours of operation (Ex. 132) was 8:00 a.m. to 5:00 p.m. on weekdays and approximately 25 Saturdays per year.

8. Daily trip generation – Appellants point to Transportation Concurrency Findings 3 and 4 (Ex. 72, pp 10-11) and suggest that Staff's findings are internally inconsistent with regard to projected trip generation from the site (Ex. 74, Issue 8),. Appellants apparently seek clarification on this point. County Transportation Engineering Staff subsequently clarified that the quarry operation will contribute 16 new round trips per day, which equals 32 new one-way trips per day – a volume roughly equivalent to four single family homes (Ex. 86).

9. Residential drinking water well impacts – Appellants challenge Health District Findings 1 and 2 (Ex. 72, p 15) which conclude that the mining operation (including blasting) was highly unlikely to have any significant impact on the appellants' residential drinking water wells. This issue was simply plead in the original appeal notice (Ex. 74, Issue 9), but substantially expanded in the appellants' subsequent memo as six separate arguments (Ex. 97, pp 29-43, Issues 9-14). In support of their arguments on these issues, the appellants submitted a variety of testimony and evidence (Exs. 98, 111, 124 and testimony of Mark Underhill).

In their six arguments related to groundwater and well impacts, appellants collectively assert they have established residential drinking water wells on their property and vested water rights for that use. The applicant's hydrologist and geologist failed to state unequivocally in the application materials that the mining operation would have no significant impact on the quality or quantity of water from the appellants' wells. Because of this lack of a definitive credible statement on the subject, the appellants assert that a determination of nonsignificance is not legally possible. Appellants conclude with the assertion that approval of the mining proposal could have an adverse impact on the their wells, including the elimination of their water source, which appellants claim would amount to an uncompensated taking in violation of the Fifth Amendment to the Federal Constitution and Article I, Section 16 of the Washington Constitution.

The applicant submitted expert testimony and evidence on the design and likely impact of blasting at this site (Exs. 7, Tab 19, 101, and testimony of Jerry Wallace at the October 2, 2003 hearing). The record contains expert testimony and evidence on the geomorphology of the area, hydrology and likely impact of the mining operation on groundwater and the appellants' wells (Exs. 7, Tab 10, 87, 89, 99, 126, 127 and testimony from Tom Michalek at the October 2, 2003 hearing) and evidence from the Southwest Washington Health District (Exs. 57 & 93). Finally, the applicant offered to monitor the water quality and quantity of wells within 1000 feet of the site for three years (Ex. 87). The issue boils down to a dispute between experts, the uncertainties associated with blasting design and technique, the area's geology, distance between the mine site and the appellants' wells, and the particular sensitivity of the appellants' wells to geological disturbance.

10. Noise Setbacks – Appellants point to Land Use Finding 5 (Ex. 72, p 6) and ask for clarification as to what noise setbacks will be required on each side of the property (Ex. 74, Issue 10). The setbacks required in the Director's February 25, 2003 decision (Ex. 72, Table 2) were apparently based on the applicant's prior assessment of noise mitigation measures (Ex. 59E). During the appeal process, the applicant reevaluated the effectiveness of the mitigation measures and altered slightly the proposed setbacks (Ex. 83, as corrected by Ex. 88), in

conjunction with a clarification of the phasing plan for the progression of mining over the site (Ex. 130). However, there remains a dispute as to whether mining of the site will generally progress west-to-east or east-to-west (Ex. 135).

11. Scope of Review & Cumulative Impacts Analysis (SEPA) – Appellants allege that the County's environmental review for project impacts was artificially narrow and improper under SEPA (Ex. 74, Issue 11). Appellants assert that SEPA requires the County to consider all sources of data for actual and potential impacts. The argument appears to take two forms. First, appellants assert that, given such a broad range of data on impacts, the County should have performed a cumulative impacts analysis, specifically with regard to traffic, noise, groundwater and surface water impacts on the entire project. The basis for this argument appears to be a line of SEPA cases holding that a project cannot elude a comprehensive environmental review by artificially segmenting the project into discrete phases. Second, appellants assert that this development proposal should have been evaluated in conjunction with other developments in the area and cite the proposed Whiskers Timber Sale that apparently has not yet been approved or received a harvest permit. The implication of the appellants' argument is that truck traffic of the two projects combined would create a safety hazard.

With regard to the cumulative impacts analysis argument, the applicant responds that the SEPA analysis of this mining proposal is limited to the direct and indirect effects of this mining proposal, and no other developments (Ex. 95, pp 37-39). The Whiskers Timber Sale has not yet been approved and the applicant asserts its impacts cannot yet be evaluated. Staff responds (Ex. 91) that the Whiskers Timber Sale would be, at most 1.5 million board feet which would generate 428 lot truck trips over a 2-year harvest period. Staff calculates that, even if the timber sale were harvested in 8 weeks, working 5 days per week, there would be slightly more than one truck trip per hour during that period. As things stand, the trip generation rate is likely to be spread over a much longer period, thus resulting in an extremely low number of truck trips per hour. This low trip generation rate, combined with the projected 32 truck trips per day associated with the mine proposal, would still be a very low rate, which according to staff would not be significant.

12. Withdrawal of the MDNS (SEPA) – Appellants conclude that, because the application, as originally submitted, was so short on credible, specific factual data on impacts particularly with regard to traffic, noise, groundwater and surface water impacts, SEPA does not allow the issuance of a DNS. Appellants assert that the record did not support a DNS at the time it was issued and that the County must withdrawal that threshold determination. The applicant asserts that the Hearings Examiner lacks the authority under SEPA to withdrawal the DNS (Ex. 95. p 39). Staff reassessed the record and evidence about impacts prior to the May 1, 2003 hearing and concluded that a MDNS was still justified (Ex. 91). As explained below, SEPA requires the Hearings Examiner to hold a consolidated evidentiary hearing on the SEPA and substantive land use issues and make the threshold determination of significance or nonsignificance based on the whole record.

V. Discussion and Resolution of the Appeal Issues:

From the foregoing summary of the arguments and the record, the Examiner adopts the following findings of fact and conclusions of law with regard to the appeal issues, in addition to the findings and conclusions set forth in the Director's February 25, 2003 decision (Ex. 72):

A. Scope of Review and Standard of Review: Appellants appeal both the substantive approval of the mining site plan and the Mitigated Determination of Non-significance (MDNS). SEPA requires Clark County to provide the opportunity for a consolidated appeal proceeding before the Hearings Examiner to resolve both the land use and SEPA issues. Issues concerning both topics appear to be intertwined, and the appellants make little effort to distinguish the substantive land use arguments from the SEPA issues. In many cases, both arguments are the same. With regard to substantive land use criteria, this application can only be approved if the applicant demonstrates, with substantial evidence in the whole record, that all of the approval criteria are met, or can be met through conditions of approval. The substantive land use approval criteria, such as they are, are set forth in CCC chapter 18.329 (Surface Mining Combining District) and the site plan approval criteria in CCC 18.402A.040.

As a preliminary matter, CCC 18.600.100(B)(3) requires that the appeal notice specifically state the legal errors under appeal. This is a de novo proceeding, and accordingly, any relevant issue can be included in the appeal notice, but each one must be stated with sufficient specificity to allow a meaningful response. Issues asserted or argued during the appeal process that are not also specifically listed in the appeal notice are beyond the scope of the appeal and will not be addressed. To the extent that the appellants' May 1, 2003 memo asserts assignments of error not alleged in the March 11, 2003 appeal notice, the Examiner rejects those arguments. However, it appears that the new allegations of error in that memo are largely expansions of the earlier assignments; none include new topics not previously plead. Therefore the Examiner will address those issues in the context of the 12 assignments of error asserted in the Notice of Appeal.

1. **Substantive Land Use Issues:** As a starting point, the purpose of the Surface Mining Combining District (S) is to "ensure the continued use of rock, stone, gravel, sand, earth and minerals without disrupting or endangering adjacent land uses, while safeguarding life, property and the public welfare." CCC 18.329.010. Consistent with this purpose, CCC 18.329.020 lists mineral extraction as a use allowed outright in the Surface Mining Combining District. Only site plan approval is required to commence mining operations, and the only standards for site plan approval is the general requirement in CCC 18.402A.040, for compliance with applicable CCC chapters, and the requirement in CCC 18.329.030 (special standards or requirements) that certain issues be addressed. The code is unclear as to how most of these issues are to be resolved, and many of the issues raised by the appellants are not germane to the site plan evaluation issues set forth in CCC 18.329.030 or the general standards in CCC 18.402A.040.

In this de novo appeal proceeding, it is the Examiner's role to determine which code provisions are mandatory approval criteria, and whether the proposal meets those standards or can meet them through conditions of approval. In performing this duty, the Examiner accords no deference to staff's interpretation of the code or staff's view of the facts. In that regard, the appellants are correct. See Ex. 97, pp 43-45 (scope of review issue). In some respects, however, staff provide testimony and evidence in an expert capacity, and, as such, that testimony is deemed to be substantial evidence. For example, testimony from County engineers and the County Habitat Biologist, in areas of their respective expertise, is deemed to be substantial evidence. The Examiner specifically finds that the site plan submission requirements in CCC 18.402A.030 are not approval standards because they are not expressed as mandatory approval standards.

Staff and the applicant analyzed the appeal issues in written reports on April 15, 2003 and April 29, 2003 respectively (Exs. 91 and 95). Subsequently, on May 1, 2003, the

appellants' attorneys filed a memorandum in support of the appeal (Ex. 97), but in so doing, expanded upon the 12 assignments of error set forth in the original Appeal Notice (Ex. 74). In particular, the appellants' May 1, 2003 memo embellishes upon their argument that the proposed mining operation will affect their alleged ground water rights, and includes a claim for an unconstitutional taking (Exs. 97, pp 33-43). The May 1, 2003 memo also asserts as error the staff's artificially narrow scope of review of the environmental impacts (Ex. 97, pp 43-45).

2. SEPA Issues: Staff issued a MDNS on this proposal on February 25, 2003 which included 11 conditions that were incorporated into the site plan approval (Ex. 72). The premise of a mitigated determination of nonsignificance, is that there are no significant impacts from the project that cannot be mitigated through conditions of approval to the point of nonsignificance. In other words, all impacts of the proposal have been evaluated and, through conditions, have been mitigated to the point where the impacts are probably not significant. Most of the appellants allegations of error in this appeal relate to the SEPA MDNS, and assert that not enough information was known at the time the Director issued his decision (Ex. 72) to assess properly the impact, formulate effective mitigation measures, or to conclude that impacts had been (or well be) reduced to insignificance.

In this appeal, the Examiner reviews de novo the likely environmental impacts of the development, and, based upon the record compiled during the appeal proceeding, makes the threshold determination either that there are no probable significant adverse environmental impacts, *i.e.*, a DNS or MDNS, or that an environmental impact statement (EIS) is required. WAC 197-11-330(4). Denial of the proposal due to environmental impacts is not an option under SEPA at this stage of the process. Accordingly, the Examiner's threshold determination is based upon the record as it exists at the time it closed on October 17, 2003, not as it existed at the time the Director rendered his determination at the onset of the appeal.

The determination of whether a proposal will have probable significant adverse environmental impacts is inherently subjective and must take into account zoning and the land use setting. An impact that is significant in one setting may not be significant in another. In this case, the Hearings Examiner takes official notice of the rural setting, the underlying rural resource zoning (FR-80) and the Surface Mining Combining District overlay zone. The stated purpose of the County's FR-80 is:

"...to maintain and enhance resource based industries, encourage the conservation of productive forest lands and discourage incompatible uses consistent with the Forest I policies of the comprehensive plan."

CCC 18.302.010.

Rock and gravel exploration are listed as outright allowed uses in the FR-80 zone. Single family residences are allowed outright only on lots of record. The Surface Mining Combining District overlay requires a site plan process for surface mining operations and has as its stated purpose:

"...to ensure the continued use of rock, stone, gravel, sand, earth and minerals without disrupting or endangering adjacent land uses, while safeguarding life, property and the public welfare."

CCC 18.329.010.

The appellants do not assert, nor is there any evidence, that they pre-date the FR-80 zoning or application of the Surface Mining Combining District overlay to the subject site. While single family homes are allowed uses, this is a mineral and timber zone not a residential zone. Consequently, there is a legal presumption that the appellants were on notice of the primary purpose of the zone in which they chose to reside, that they bought with knowledge of the zoning, and that the zoning established resource and mineral extraction as the primary purpose, not residential development. The Examiner finds it significant that the zoning prioritizes rock and gravel extraction, with the caveat that those activities not disrupt or endanger adjacent land uses. This standard is much less strict than would be required of a conditionally allowed use under CCC chapter 18.404,¹ or a use allowed by Planning Director approval under CCC chapter 18.403.² When evaluating the environmental impacts of the proposed mine, and determining whether its impacts are "significant," the Examiner will take into account this land use and zoning context of the mine site.

B. Resolution of the appeal issues: In the previous section, the Examiner framed the legal and factual disputes as they existed at the close of the record. In this section, he resolves each one. It is important to understand that the Examiner is required to apply the County's land use requirements as they are stated in the code and that he cannot be more restrictive than allowed by the code nor can he grant relieve not otherwise provided in the code. With regard to the substantive SEPA issues, many of the appellants' arguments were that the record simply did not contain enough (or sometimes any) evidence about the various impacts, and therefore, the record was not sufficient to sustain staff's MDNS. When the appeal was filed, that contention was justified with regard to some of the impact issues. Since then, however, the record has ballooned with factual information and evidence on each of the appeal issues. To the extent the record was not sufficient to sustain the MDNS before, it is now.

1. Historical accident rates and traffic safety – The Examiner finds that the issue raised under this assignment of error does not implicate any of the site plan mandatory approval standards in CCC 18.329.030 or 18.402A.040. Therefore, as plead, this is purely a SEPA issue.

Staff's focus on whether "a significant traffic or safety hazard would be caused or materially aggravated" by the trip generation attributable to this use pursuant to CCC 12.05A.230 is not entirely correct. This is the standard by which the County may deny a development due to off-site traffic safety deficiencies. It is not necessarily the standard for determining whether there will be a "probable significant adverse environmental impact" under SEPA. However, if the addition of the project vehicle trips created a new, or materially aggravated and existing, traffic safety hazard, that would likely amount to a significant adverse impact.

¹ CCC 18.404.060 requires, among other things, that the applicant demonstrate that:

"... the establishment, maintenance or operation of the use applied for will not, under the circumstances of the particular case, be significantly detrimental to the health, safety or general welfare of persons residing or working in the neighborhood of such proposed use or be detrimental or injurious to the property and improvements in the neighborhood or to the general welfare of the county."

² CCC 18.403.030 requires, among other things, that the applicant demonstrate that "the proposed use will have no substantial adverse effect on abutting property or the permitted use thereof."

It appears fairly uncontested that this use will generate 32 truck trips per day (16 trips in and 16 trips out). The question before the Examiner is whether this level of trip generation constitutes a "probable significant adverse environmental impact." The evaluation under SEPA requires consideration of the current safety status of the affected road segments and levels of service of affected intersections. This analysis requires a determination of whether the trips likely to be generated by the proposal significantly affect the safety and capacity of the local transportation system.

Accident history is only part of the analysis, and the appellants' focus on accidents not appearing on the Washington Police Traffic Collision Reports is somewhat misplaced. Even if one were to consider the unreported trips, there does not appear to be any serious argument that 32 truck trips per day would significantly impact the safety or capacity of the local transportation system. The County Transportation and Concurrency engineers did not identify any existing traffic safety hazard nor did they conclude that a new traffic safety hazard would be created (Exs. 86 & 118). There does not appear to be any credible argument that the local transportation system lacks adequate capacity to safely handle this small number of additional vehicle trips.

The only expert testimony on this subject is from the County transportation and concurrency engineers who unanimously concluded that 32 vehicle trips is not a significant number of vehicle trips in the context of the existing traffic and transportation system. This number of trips is simply too small to pose a significant impact on what are already underused roads and intersections. The County Transportation Engineer noted that this number of trips is equivalent to four new single family homes. From this expert testimony, the Examiner concludes that the traffic impacts from this proposed mine operation amount to an insignificant impact on the safety and capacity of the local transportation system. The only potentially significant impact mine traffic may have relates to structural and load-bearing aspects of the road system. The applicant's payment of \$41,000 for road improvements is sufficient to mitigate, and hopefully eliminate, this impact. The assignment of error is denied and no new conditions are warranted.

2. Noise impacts – Special standards applicable to mining operations require compliance with the maximum permissible noise limits under the Washington Noise Control Act in WAC chapter 173-60. CCC 18.329.030(E). Appellants initially assert that the record was not sufficient to demonstrate that this land use standard was, or could be met (basic feasibility). Since then, however, the applicant's acoustical engineer provided evidence, opinion and testimony that these standards could be met through conditions of approval (Exs. 7 Tab 19, 59E, 62, 67 & 68). The appellants have provided no comparably competent (expert), credible or specific evidence to rebut the conclusions in Mr. Duble's reports. Therefore, based on this evidence in the record, the Examiner finds that the noise standard referenced in CCC 18.329.030(E) is or will be met, *i.e.*, the State Noise Control Act.

What emerged as apparently the only contested noise issue at the close of the record is the County's SEPA noise policy which provides that:

"It is the county's policy to minimize noise impacts associated with land use changes, including those related to existing sources of noise. To this end, it is the policy of the county to require that new sources of noise be limited to the maximum environmental noise levels of WAC 173-60; even within these regulatory standards, an increase of more than five (5) decibels (dBA) over ambient noise levels at the receiving properties may be considered significant."

CCC 20.50.025(3)(g) (emphasis added).

Mr. Duble was equivocal as to whether this mining operation, even with setbacks and conditions of approval to deaden sound levels, could meet this +5 dBA over ambient policy under all circumstances (Ex. 68).

As a beginning point, this code provision does not represent a substantive noise standard, which would likely be preempted by the State Noise Control Act, but rather a SEPA policy to be used as guidance in evaluating the significance of noise impacts. The policy in CCC 20.50.025(3)(g) is expressed in permissive or aspirational terms and does not establish a legislative presumption that new development causing noise in excess of 5 dBA at the property line is significant. The Examiner agrees with the County Chief Deputy Civil Attorney (Ex. 85) that proper interpretation of this policy requires consideration of the land use and zoning context and the frequency and severity of the exceedances above +5 dBA policy. Exceedances of more than 5 dBA above ambient in an urban or purely residential setting could easily be considered a significant environmental impact as anticipated by CCC 20.50.025(3)(g). In this case, however, the land use and zoning context is rural with a resource zone and a surface mining overlay. An interpretation that gives mandatory effect to CCC 20.50.025(3)(g) would preclude virtually all of the resource extraction uses that the FR-80 and surface mining overlay zone are designed to protect and promote, and the Examiner declines to adopt such an interpretation here.

Home owners such as the appellants are presumed to be aware of the zoning, the uses allowed, and the primary focus of the zoning designations. Acknowledging this reality, the state Noise Control Act also allows higher noise levels in rural and resource areas. See e.g., WAC 173-60-030(1)(c) and WAC 173-60-030(2). In that context the Examiner concludes that occasional exceedances that are more than 5 dBA above ambient, especially from uses allowed outright, is not a significant adverse impact and does not trigger the need for an EIS or additional berming so as to eliminate all such exceedances. The record of this matter shows that exceedances of the +5 dBA policy should be infrequent and of extremely short duration. On this basis, the Examiner concludes that the noise mitigating conditions set forth below are adequate to ensure that noise impacts to the appellants' home will not be significant. This conclusion, also assumes that mining proceed from west-to-east (not east-to-west as stated in Ex. 130), in order to better deflect noise away from the appellants' home and to allow the lead high-wall to screen the open pit. With a condition to that effect (new Condition B-14), the Examiner concludes that noise likely from this operation does not, and will not, constitute a significant adverse environmental impact.

The Director also imposed setbacks on the mining operation (Ex. 72, table 2), based on the recommendations of the applicant's acoustical engineer (Ex. 59E) to ensure compliance with the noise limits (Condition A-3). The applicant subsequently reevaluated the effectiveness of the mitigating measures and changed slightly the proposed setbacks (Ex. 83 as corrected by Ex. 88), assuming a 6-foot berm along the common boundary with the appellants. In light of that change, the Examiner shall amend the Director's decision to require compliance with the new proposed setbacks (revised Condition A-3) and a 6-foot berm along the appellants' property line (revised Condition A-2). The effectiveness of these setbacks and all other mitigating measures required in the conditions of approval will be subject to an annual performance and impact review to take place at least one year after the commencement of operations (new Condition B-15). The purpose of the annual review is to determine if mitigation measures are effective and to allow the modification of conditions to bring about better impact control or to eliminate measures that are not needed.

3. Line of sight screening – The Examiner finds that the issue raised under this assignment of error does not implicate any of the site plan mandatory approval standards in CCC 18.329.030 or 18.402A.040. There is no recognized, or County-enforced, right to an uncluttered viewshed. Therefore, as plead, this is purely a SEPA issue, which requires a determination of whether the possible view of the proposed rock pit from the near-by residences constitutes a probable significant adverse environmental impact.

The analysis under this assignment is complicated by the uncertainty of just how visible the pit and mining operations will be from near-by homes, most notably the appellants'. While not entirely clear, it appears that the appellants' primary concern may not be the visual impact but, rather, the noise transmission of a mining operation that has a clear line of sight. See Ex. 97, pp 49-40. It is clear, however, that SEPA does not require the factual resolution of all potential impacts to a high degree of certainty. It is the nature of speculative impacts that the existence and degree of many impacts will not be known with certainty or precision. The noise impact, if any is adequately addressed under the preceding section, where the Examiner basically concludes that there are likely to be some noise impacts, but, based on the expert opinion and evidence of the applicant's acoustical engineer, those impacts will not be significant. The Examiner finds that conditions associated with noise, *i.e.*, B1 through B13, along with the annual compliance and impact review (new Condition B-15), are sufficient to ensure that any noise impacts on the appellants' home are mitigated to the point of insignificance, with the understanding that this is a resource zone.

With regard to purely visual impacts of the mining operation, the Examiner's determination of "significance" is, again, tempered by the land use and zoning context. Some limited views of an active rock pit may constitute a significant adverse impact in a purely residential zone within an urban area. However, limited views of an active rock pit in a rural resource zone that allows resource extraction, including sand and gravel mining as outright permitted uses, is much less significant. This is especially true for the appellants who live in a forest zone (FR-40) and who are presumed to be prepared for the visual impact of timber operations, including clear cuts. From the evidence in the record and the conditions of approval, it appears that the open area of the pit will be some 300 to 500 feet from the appellants' home, when the pit is at its closest point. The Examiner finds that at least some portion of the pit or mining operation, at times, may be visible and audible from the appellants' home. However, those views and noise impacts will be infrequent and of limited duration. Based on the evidence in the record and mitigating conditions of approval, the Examiner finds that those impacts will not be significantly adverse.

4. Mineral rights – Appellants' argument on this issue assumes that the property owner's signature is a mandatory requirement for processing a land use application and that, absent the owner's signature, the County lacks authority to process the application. There is no basis in the Clark County Code for this assumption. A complete site plan application requires the applicant's signature and the owner's name and mailing address. CCC 18.402A.030(A)&(H). While these are listed application requirements, neither is listed as a mandatory criterion for site plan approval. See CCC 18.402A.040. The appellants do not cite to any statutory authority for the proposition that the owner's signature is required for a complete land use application or for permit approval. Even if the owner's signature were required for a complete application, which it is not, failure to supply the signature would, at most, be a procedural error. To prevail on a procedural error, the appellants must demonstrate harm to their substantial right to a full and fair hearing. Even if the appellants had alleged harm to their substantial rights, it is difficult to see how the omission would actually prejudice their rights.

Finally, there is no basis for asserting that the lack of the owner's signature constitutes a jurisdictional defect sufficient to deprive the Examiner of review authority.

The Examiner concludes that the appellants lack standing to raise this issue. The only party entitled to raise the objection is one that can show entitlement to the mineral rights. A party cannot assert harm to the rights of another. Even assuming that appellants are correct that the right to extract sand and gravel has been severed from the surface estate, only the DNR could assert a legally cognizable harm to its protected property right. The appellants do not assert any property right in or under this property, and they lack standing to assert harm to DNR's alleged property rights.

Finally, it is not clear that the mineral reservation at issue here covers sand, gravel or rocks. The deed in question, which appellants assert retained to DNR the mineral rights, simply reserves title to the "oils, gases, coal, ore and minerals." Because there are sufficient alternative grounds upon which to reject this assignment, the Examiner declines to decide whether sand, gravel and rocks are retained under this deed reservation. The Examiner concludes that this issue does not implicate any of the mandatory criteria for site plan approval, and does not allege or demonstrate a probable significant adverse environmental impact. No conditions of approval are warranted.

5. Wetlands and stream protection – At the time of the first hearing (May 1, 2003) there was a substantial question as to whether the original wetland predetermination (Ex. 46) was still valid. The County's Wetland Biologist had only reevaluated the original predetermination report, and had not visited the site since 1999. The appellants' wetland evidence, while indirect and circumstantial, nonetheless raised a serious question as to whether there were more or larger wetlands on the site.

Following the first hearing, the County's Biologist revisited the site and conducted a new wetland evaluation (Ex. 112). That report was comprehensive and based on a credible evaluation of on-site observations. As such, the Examiner places great weight on the County Biologist's conclusions. Mr. Latimer's criticisms (Ex. 107) are not sufficient to detract from the credibility or reliability of the analysis or conclusions. According to the second evaluation report (Ex. 112), the Examiner concludes that the only wetlands on the site are exempt from regulation due to their small size, *i.e.*, Category 4 wetlands under 10,000 sf. CCC 13.36.130(1). Appellants, at the October 2, 2003 hearing, asserted that despite the fact that the wetlands appear to be exempt from regulation, a full delineation is nonetheless required by CCC 13.36.220 which provides that:

"In conjunction with the submittal of a triggering application, the director shall determine the probable existence of a wetland on the parcel involved in the triggering application. If wetlands or wetland buffers are found to exist on a parcel, a wetland delineation is required."

This assignment points up a conflict in CCC chapter 13.36, *viz.*, CCC 13.36.220 requires a delineation whenever wetlands are found on the property, and CCC 13.36.130 exempts an application from the entire CCC chapter 13.36 when, among other things, the wetlands found on the property are below regulated size. It is significant that the second wetland evaluation (Ex. 112) confirms the size, location and number of wetlands found in the original predetermination (Ex. 46), and all are significantly smaller than the 10,000 sf threshold. According to CCC 13.36.130, the property is exempt from all provisions of CCC chapter 13.36, including CCC 13.36.220. This is the only way to harmonize these two otherwise conflicting code provisions.

According to this interpretation of CCC chapter 13.36, the Examiner concludes that the requirements of CCC chapter 13.36 do not apply and a delineation is not warranted.

6. Pre-blasting structural surveys – In this assignment, the appellants request clarification as to who would be conducting pre-blasting structural surveys, what the inspector's qualifications will be, and whether those inspections will include water wells. Based on the testimony of the applicant's blasting expert, the Examiner concludes that it would be acceptable, in fact preferable, that the person doing the blasting also be the person doing the pre-blasting structural inspections. Therefore, the inspector shall be suitably qualified in the areas of structural inspections and blasting, and should be the applicant's blasting contractor. This assignment of error does not raise any land use or SEPA issue. However, Condition A-19 will be modified to include a twice annual assessment of water quality and quantity in all wells within 1000 feet of the site for a period of three years (Ex. 87).

7. Hours of operation – Appellants again seek clarification as to hours and days of operation. The only limitation on hours of operation is CCC 18.329.030(F) which sets as a default 6:00 a.m. to 8:00 p.m., with no limitation on days of operation. These hours, however, can be altered by the Director. The applicant stated his intention to operate 8:00 a.m. to 5:00 p.m. Monday through Friday, with mining operations on approximately 25 Saturdays during the year. Since this is within the limits allowed by CCC 18.329.030(F), it complies with the only relevant land use standard.

With regard to SEPA and potentially significant adverse environmental impacts, the appellants do not raise any particular objection to hours of operation, except with regard to the Saturday operations. The Examiner finds that Saturday operations do not present a significant adverse environmental impact. In support of this conclusion, the Examiner incorporates by reference herein his findings and conclusions stated elsewhere under the substantive impact issues. Those discussions do not assume any particular day of the week, but that the appellants will be home or otherwise on their property, including Saturdays. Because those impacts, as mitigated by conditions of approval, do not present significant adverse environmental impacts, neither do hours of operation that include Saturdays. Because the applicant has volunteered it, operations shall be limited to a maximum of 25 Saturdays during the year, and Condition B-8 will be modified to that effect.

8. Daily trip generation – Appellants seek clarification as to the estimated number of daily truck trips from the proposed use. The record indicates, as confirmed by County concurrency staff, that the use will generate 32 truck trips per day (16 in and 16 out). This assignment of error does not raise any land use or SEPA issue, nor does it warrant any particular conditions of approval.

9. Residential drinking water well impacts – Appellants assert that the mining operation will have probable adverse impacts on their drinking water wells which warrant an EIS, or at least preclude a DNS. Prior to the appeal, the record was somewhat ambiguous about the geology, hydrology, blasting design and possible effects of the mining operation on the appellants' drinking water wells. Since the appeal, however, the applicant has submitted a substantial amount of information on all of these topics. The Examiner accepts, as credible expert evidence, all testimony and documents from the applicant's blasting expert, Jerry Wallace (testimony from the October 2, 2003 hearing), and the applicant's hydrogeologist, Tom Michalek (Exs. 7, Tab 10, 87, 89, 99, 126, 127 and testimony from the October 2, 2003 hearing). The appellants' hydrogeologist, Mark Underhill, also has expert status, but Mr. Underhill's experience with rock quarries (only the Yacolt Mountain Quarry) is far less extensive

than Mr. Michalek's (10 years of experience with 20-25 mine sites). Therefore, when it comes to predicting possible impacts of blasting and similar mining operations on residential wells located several hundred feet away based on the interpretation of geology data, the Examiner views Mr. Michalek's testimony as being more credible and persuasive.

Based on the evidence and testimony provided by the applicant's blasting expert and hydrogeologist, the Examiner concludes that the record is sufficiently complete to draw conclusions about the potential impacts of the proposed mining operation on the appellants' drinking water wells. In particular, the hydrogeologist evidence demonstrates that the most likely sources of water supplying the appellants' wells are deeper than the lower levels of the mine pit. Moreover, it is highly unlikely that these wells draw water from as far away as where mining will occur. Mr. Michalek testified that he is reasonably certain that there is a very low likelihood that this quarry will affect the neighbors' wells. Mr. Wallace testified, based on his approximately 23 years of experience in the blasting business (11 years as a blasting contractor), that there was no reason why blasting for this mine could not be done in a safe manner and that there was no chance of structural damage to the appellants' wells. Mr. Wallace testified that he was certain that blasting at this mine will do no damage to the neighbors' wells.

From this substantial evidence, the Examiner concludes that there is a low, or no, probability of significant adverse impact of this proposal on the appellants' wells. The Examiner's equivocation stems from the fact that uncertainty on this issue cannot be reduced to zero. However, SEPA does not require absolute certainty about impacts. WAC 197-11-080. SEPA allows an agency to proceed in the face of a small amount of uncertainty when, among other things, the means of obtaining information relevant to the adverse impacts is speculative or not known. WAC 197-11-080(3)(b). The applicant has gone to great lengths to obtain information about the site's geology through bore holes, and it appears that more bore holes will not resolve the uncertainties. The applicant's experts have expressed their views of the likelihood that adverse impacts will occur, and the Examiner finds those expert opinions to be credible and persuasive.

The worst case scenario, if the applicant's expert's predictions turn out to be wrong, is the loss or diminution of water in the appellants' wells. However, the applicant's experts expressed strong opinions, based on extensive experience and relevant data about this site, that the mining operation would not have any adverse impact on the appellants' wells. The only way to determine if the applicant's experts are correct in their estimation of the situation and the likelihood of impacts is to proceed with the mining operation and evaluate the impacts, if any. That is the purpose and importance of the well monitoring condition (revised Condition A-19). On this basis, the Examiner concludes that this mining operation presents a low or no likelihood of probable significant adverse impacts on the appellants' wells. The modification to Condition A-19, however, should provide a means of monitoring near-by residential well quantity and quality.

With regard to the ancillary water well issues the appellants assert in their supplemental memo (Ex. 97), those issues are moot in light of the Examiner's resolution of the primary issue. The Examiner has concluded that, based on evidence in the record, there should not be any significant adverse impacts on the appellants' wells. This decision, and the County's site plan approval, however, are not guarantees that no impacts will occur. To the extent that the production of appellants' water wells change over time, that may give rise to a civil claim against the applicant. To the extent there is any validity to appellants' water rights claim and related arguments, those claims will have to await some sort of actual harm and an adjudication in

Superior Court. Nothing about the Examiner's decision in this case, however, can give rise to a Constitutional claim of an uncompensated taking against Clark County because this decision does not authorize the applicants to affect the appellants' water wells in any significant way.

10. Noise Setbacks – Appellants seek clarification as to the setbacks that will apply to this mining operation. The applicant had previously proposed setbacks that would meet the noise requirements (Ex. 59E) and which was the basis for Table 2 in the initial decision (Ex. 72). Since then, however, the applicant has reevaluated the noise mitigation measures and has modified the proposed setbacks (Ex. 83 as corrected by Ex. 88). With this decision, the Examiner requires compliance with the modified setbacks (revised Condition A-3) and a 6-foot berm along the common boundary with the appellants' property (revised Condition A-2). These setbacks were apparently the basis for the applicant's analysis for noise and other impacts and will be subject to the annual review required by this decision (new Condition B-15).

11. Scope of Review & Cumulative Impacts Analysis – While not entirely clear, appellants appear to assert two separate errors under this assignment: (1) that the applicant improperly segmented the project, and thereby eluded a full and comprehensive environmental review and possibly the requirement that he compile an EIS and (2) that, in combination with other actual or likely projects in the area, the applicant should be required to provide an analysis of the cumulative environmental impacts. The second prong of this assignment appears to implicate timber sales planned in the area such as the Whiskers Timber Sale.

Contrary to the appellants' apparent assertion, the record does not indicate that the applicant has phased this project or otherwise segmented the project to elude a comprehensive environmental review. The applicant's "project" is well defined in the application (Ex. 7), and there is no indication of segmentation or phasing that is not part of this environmental review. Consequently, there is no basis for granting relief under the first prong of this assignment.

With regard to the second prong, it is true that SEPA requires a comprehensive review of the "project." WAC 197-11-060. SEPA also requires, under certain circumstances, a comprehensive single review of phased projects. WAC 197-11-060(5). SEPA does not, however, require an environmental review that includes consideration of other unrelated projects. There is no basis in Washington law for appellants' assertion that an environmental review of this surface mining project must include consideration or review of other unrelated projects, such as the Whiskers Timber Sale. Appellants conflate SEPA's requirement that the environmental review include all direct and indirect impacts that are reasonable foreseeable with their desire for the County to include an evaluation of other unrelated projects that are reasonable foreseeable. There is no such requirement in SEPA or any other applicable law, and the Examiner declines to create one in this case. The assignment is denied.

12. Withdrawal of the MDNS – Appellants request by way of a remedy to the preceding 11 substantive assignments of error, that the County withdraw the MDNS for this project. For the reasons and findings articulated in response to each of the substantive assignments, the Examiner denies the request. With this decision, the Examiner affirms and reissues the MDNS with modified conditions.

IV. Conclusion and Decision:

Based on the foregoing findings of fact and conclusions of law, the Examiner denies the appeal and affirms the Director's approval of the applicant's site plan (Ex. 72), subject to the findings in the Director's original decision, staff's appeal report (Ex. 91), the conditions of the Director's

original decision, except as specifically revised or augmented by this decision and the following conditions:

Revised Conditions: The following conditions from the original Director's decision (Ex. 72) are revised and shall be interpreted in a manner consistent with the foregoing findings:

- A-2 The applicant shall construct a 10-foot high berm along the south property line and a 6-foot high berm along the common boundary with the appellants' property as needed for noise attenuation.
- A-3 The following setbacks shown in the applicant's revised site setbacks (Ex. 83 as corrected by Ex. 88) shall be incorporated into the final site plan:

Required Setbacks

Boundary	Excavation Setbacks (feet)	Truck Loading Setbacks (feet)	Rock Drill Setbacks (feet)
East	200	400	230
West	150	300	165
South	200 – 290	350 – 383	195 – 275
North	60	333	60

The effectiveness of these setbacks shall be evaluated through the annual review provided in Condition B-15, and if it can be demonstrated that lesser setbacks are adequate, or greater setbacks are necessary, to achieve the required maximum noise levels, then the setbacks shall be adjusted as appropriate.

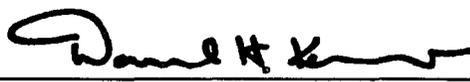
- A-19 The applicant shall provide a groundwater monitoring program (Ex. 87) for all residential water wells within 1000 feet of the site for 3 years. The program shall include a twice-annual sample from each well (once at the high water table level and once at the low water table level). Depth from surface to static water level will be measured and a sample will be collected and sent to a qualified laboratory for water quality testing.
- B-8 The hours of operation of the quarry shall be limited to 8:00 A.M. to 5:00 P.M. Monday through Friday. The applicant may operate the quarry up to 25 Saturdays per year 8:00 A.M. to 5:00 P.M.

New Conditions: The Examiner imposes the following conditions in addition to those imposed by the Director in his original decision (Ex. 72). These conditions shall be interpreted in a manner consistent with the foregoing findings by the Examiner:

- B-14 Mining operations shall be performed according to the applicant's phasing plan (Ex. 130) except that the progression of mining shall proceed west to east and south to north.
- B-15 The mining operation approved by this decision shall be subject to a review following the first 12 months of actual operation. The annual review shall be initiated by the applicant or operator of the mine within 3 months following completion of the first year of mining. The review shall be performed as a Type II procedure, and the mine operator/applicant shall pay the applicable Type II review application fee. The process shall include notice to the operator, owner, near-by property owners and anyone who specifically requests notice. The record of the review proceeding shall include any complaints received by

the County regarding impacts from the mine operation, any home inspection reports performed pursuant to Condition B-10, well reports performed pursuant to Condition A-19, and any other evidence relevant to off-site impacts of the mining operation. The purpose of the review shall, among other things, be an evaluation of the effectiveness of the conditions of approval mitigating noise impacts. Conditions pertaining to noise may be modified, eliminated or augmented depending upon how effective they are in achieving the required performance standards and minimizing or eliminating significant adverse environmental impacts. The review decision shall also determine if subsequent annual reviews are necessary.

Date of Decision: November, 12th, 2003.

By: 
Daniel Kearns,
Land Use Hearings Examiner

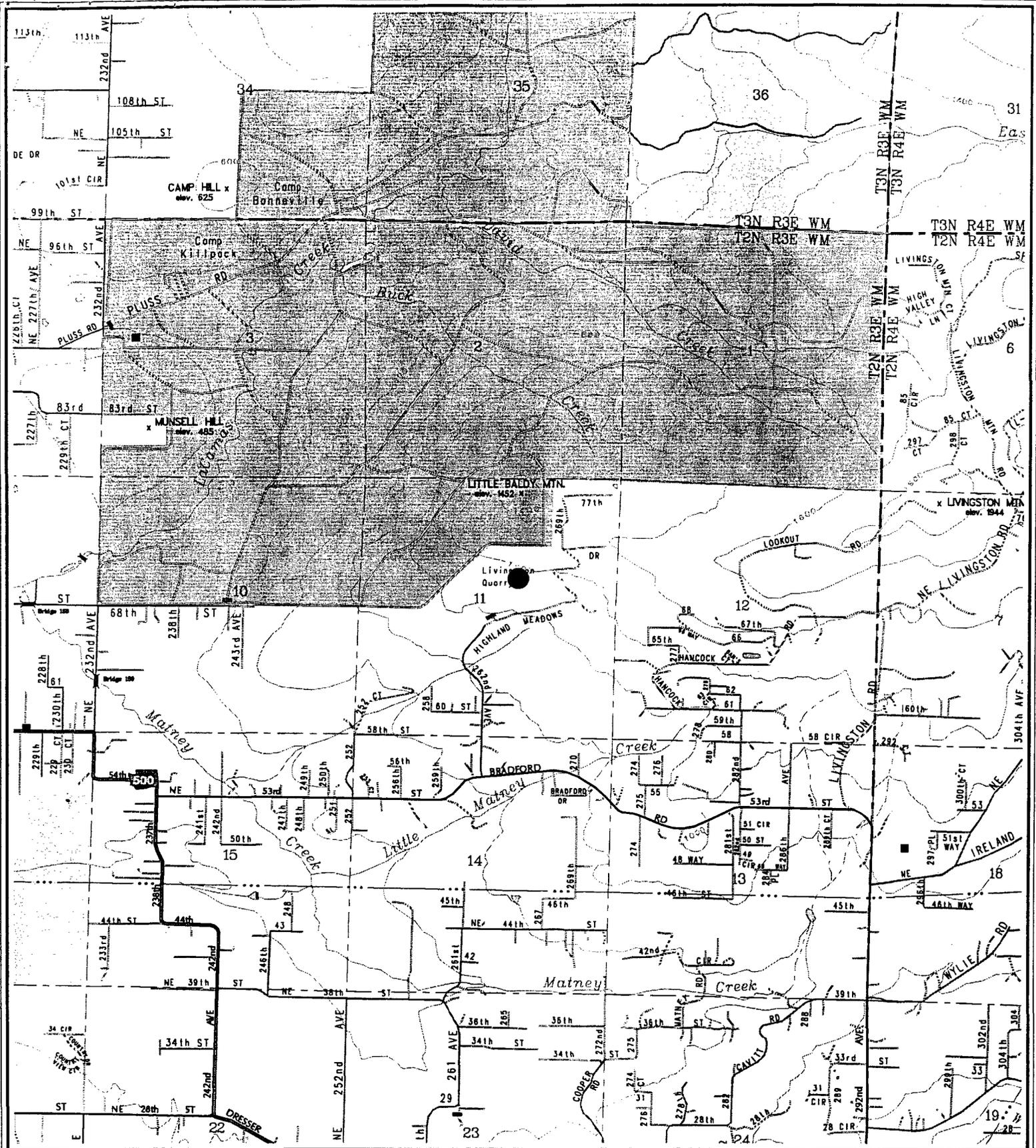
Notice of Appeal Rights

An appeal of any aspect of the Hearings Examiner's decision may be appealed to the Board of County Commissioners only by a party of record. A party of record includes the applicant and those individuals who signed the sign-in sheet, presented oral testimony at the public hearing, or submitted written testimony prior to or at the public hearing on this matter.

Any appeal of the final land use decisions shall be filed with the Board of County Commissioners, 1300 Franklin Street, Vancouver, Washington, 98668 within 14 calendar days from the date the notice of final land use decision is mailed to parties of record.

Any appeal of the final land use decisions shall be in writing and contain the following:

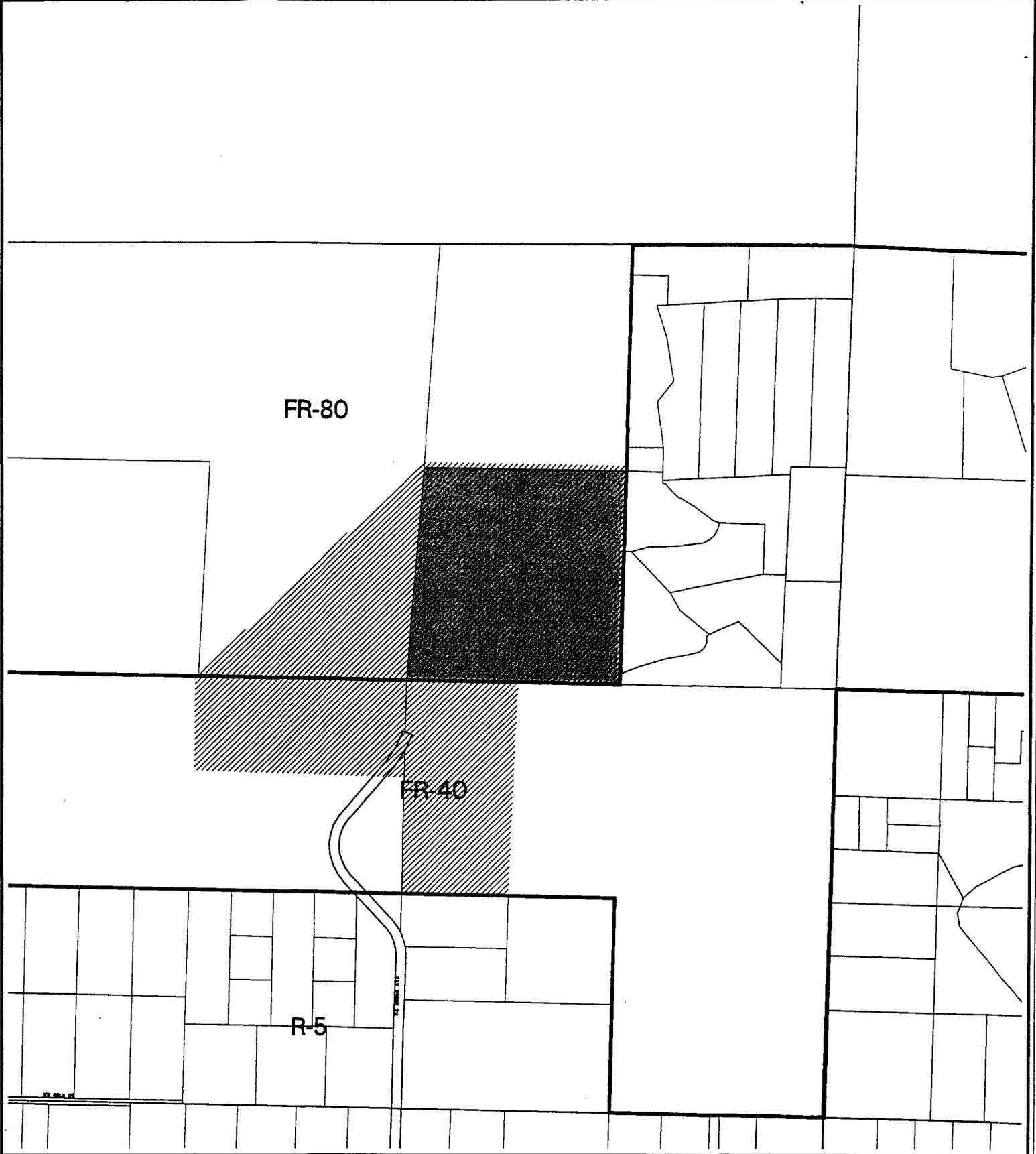
1. The case number designated by the County and the name of the applicant;
2. The name and signature of each person or group (petitioners) and a statement showing that each petitioner is entitled to file an appeal as described under Section 18.600.100(A) of the Clark County Code. If multiple parties file a single petition for review, the petition shall designate one party as the contact representative with the Development Services Manager. All contact with the Development Services Manager regarding the petition, including notice, shall be with this contact person;
3. The specific aspect(s) of the decision and/or SEPA issue being appealed, the reasons why each aspect is in error as a matter of fact or law, and the evidence relied on to prove the error;
4. If the petitioner wants to introduce new evidence in support of the appeal, the written appeal must also explain why such evidence should be considered, based on the criteria in subsection 18.600.100(D)(2); and
5. A check in the amount of \$239 (made payable to the Clark County Board of County Commissioners).



File # APL2003-00006 (Livingston Mountain Rockpit)
 Location: T2N R3E SEC 11
 Request: Appeal

● Subject Property Location





File # APL2003-00006 (Livingston Mountain Rockpit)

Location: T2N R3E SEC 11

Request: Appeal

-  Subject Property
-  Zoning Boundary
-  Mining Combining District
-  Contingent Zoning
-  Urban Holding-10
-  Urban Holding-20



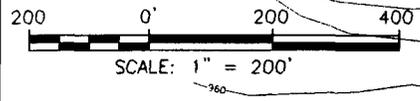
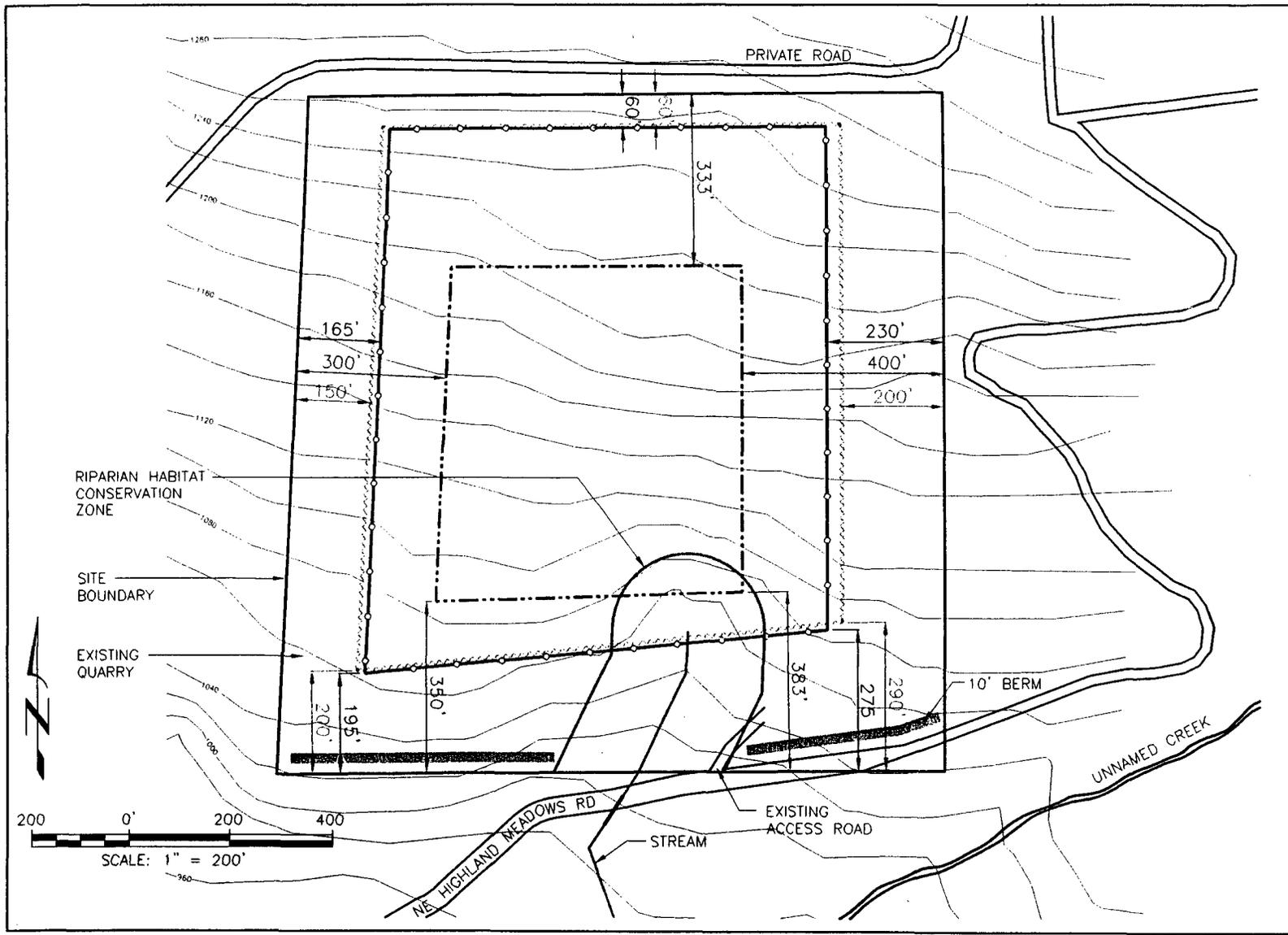
LEGEND

- Excavation & Loading Area Setback
- Rock Drill Area Setback
- Excavation Area Setback

**Livingston Mountain Quarry
 Clark County, Washington**

Site Setbacks

Project #	400.01	
Drawn By	MAG	
Reviewed By	PK	Figure
Date	April 2003	1
Scale	1" = 200'	



HEARING EXAMINER EXHIBITS



APPLICATION: Livingston Mountain

CASE NUMBER: APL2003-00006; PL2003-00006

EXHIBIT NO.	DATE	SUBMITTED BY	DESCRIPTION
1		CC Development Services	Aerial map
2		CC Development Services	Vicinity map
3		CC Development Services	Zoning map
4		CC Development Services	Comp. Plan Map
5		Applicant – Newton Consultants	Full Size Site Plan Map
6		Applicant – Newton Consultants	Reduced Site Plan Map
7	5/29/02	Applicant – Byron Slack	Application Binder: Application Form; Application Fee; Pre-Application Report; GIS Packet; Narrative; Legal Lot; Preliminary Plan; Proposed Site Plan; Soil Analysis; Storm Water Design; Storm Water & Erosion Control; Traffic Study; State Environmental Review; Sewer Review Report; Water Purveyor Report; SWWHD Report; Covenants & Restrictions; Noise Study; Archaeological Report; Right of Way from DNR; DNR Reclamation Plan; Mining & Reclamation; Storm Water Plan
8	5/31/02	CC Development Services	Pre-Application Conference Waiver Request Decision- Applied 9/14/02
8A	5/31/02	CC Development Services	Pre-Application Conference Waiver Decision
9	6/18/02	CC Development Services	Development Review Not Fully Complete Determination
10	7/17/02	CC Development Services	Second Development Review Not Fully Complete Determination
11	7/30/02	CC Development Services	Development Review Fully Complete Determination

EXHIBIT NO.	DATE	SUBMITTED BY	DESCRIPTION
12	8/13/02	CC Development Services	Newspaper Notice Type II Likely Determination of Nonsignificance- Publication Date 8/16/02
13	8/16/02	CC Development Services	Request for Comments on SEPA Determination
14	8/16/02	CC Development Services	Notice of Development Review
15	8/16/02	CC Development Services	Affidavit of Mailing of Public Notice
16	8/23/02	Allan Alexander	Comment Letter
17	8/23/02	Barbara Repman	Comment Letter
18	8/27/02	Barbara Repman	Comment Letter
19	8/26/02	Warren & Becky Schippers	Comment Letter
20	8/29/02	Patricia & Tom Cody	Comment Letter
21	8/30/02	Mark Murawski	Comment Letter
22	8/30/02	Mark Erikson's Office – Keith Hirokawa	Neighborhood Petition from 14 petitioners
23	8/30/02	Mark Erikson's Office – Keith Hirokawa	Letter regarding Proposed Project – SEPA Review in Particular
24	8/30/02	Mark Erikson's Office – Keith Hirokawa	Pictures
25	8/30/02	Carol McKie	Comment Letter
26	8/30/02	Charles McKie	Comment Letter
27	8/31/02	Dan Rock	Comment Letter
28	9/3/02	Department of Ecology – Opal Smitherman	Comments re: SEPA Determination of Non-Significance
29	9/5/02	Janine G. Davis	Comment Letter
30	9/5/02	Mark A. Erikson – Keith Hirokawa	Letter re: Environmental Review
31	9/5/02	Mark A. Erikson – Keith Hirokawa	Letter from Kleinfelder re: Potential Surface Water & Groundwater Issues (Dated 8/30/02)

EXHIBIT NO.	DATE	SUBMITTED BY	DESCRIPTION
32	9/5/02	Mark A. Erikson – Keith Hirokawa	Letter from Greenbush Group re: Noise Study
33	9/5/02	Mark A. Erikson – Keith Hirokawa	Letter from Earth Dynamics re: Blast Vibration Analysis (Dated 9/4/02)
34	9/13/02	Jones & Stokes	Cursory Evaluation of Proposed Site
35	9/13/02	Mark A. Erikson – Keith Hirokawa	Letter re: Supplemental SEPA Comments
36	9/13/02	Mark A. Erikson – Keith Hirokawa	Neighborhood Petition (12 Neighbors)
37	9/23/02	Applicant – Byron Slack	Response regarding Public Comments
38	9/23/02	Applicant – Newton Consultants	Supplement to Preliminary Stormwater Plan
39	9/25/02	Applicant – Newton Consultants	Letter re: Memorandum to Clark County Post Mining Drainage Patterns
40	9/25/02	Applicant – Byron Slack	Letter re: Water Spray Truck on Site
41	9/27/02	Alan J. Thayer, Sr.	Comment Letter
42	9/27/02	Debbie Mrazek	Comment Letter
43	9/30/02	CC Development Services – Habitat Biologist	Comments from David Howe re: Proposed Project
44	9/30/02	Mark A. Erikson – Keith Hirokawa	Letter re: Request to be a Party of Record
45	9/30/02	Mark A. Erikson – Keith Hirokawa	Supplemental Comments re: Proposed Project
46	8/27/99	CC Development Services – Wetland Biologist-Brent Davis	Livingston Mountain Wetland Pre-Determination Letter
47	6/14/00	Applicant – Byron Slack	Letter to Public Works re: Traffic Count
48	6/20/00	Department of Ecology – Carey Grunenfelder	Letter re: Sand & Gravel Permit No. WAG-50-1419
49	10/3/02	CC Development Engineering – Ken Burgstahler	Engineering Review
50	10/5/02	Barbara Repman	Comment Letter

EXHIBIT NO.	DATE	SUBMITTED BY	DESCRIPTION
51	10/7/02	CC Development Services – Wetland Biologist – Brent Davis	Wetland Biologist Findings
52	10/7/02	CC Development Services – Josh Warner	Letter to Byron Slack placing project on hold and a list of outstanding issues
53	0/14/02	Mark Erikson's Office – Keith Hirokawa	Letter to Josh re: Wetland Predetermination
54	10/10/02	Applicant : Al Duble	Email to Josh Warner re: Aerial Photos, Noise Levels
55	10/10/02	CC Development Services	Response to Exhibit # 54 from Josh Warner
56	11/21/02	CC Development Services – Josh Warner	Email between Byron Slack and Josh Warner re: Clarification of Issues that need to be adequately addressed
57	12/12/02	SWWHD – Reuel Emery	Email to Josh re: Groundwater Package
58	10/23/02	Public Works – Dave Shepard	Road Surface Analysis
59	11/19/02	Applicant – Byron Slack	Packet with Materials containing Outstanding Issues from Exhibit # 52
59 A	11/19/02	Applicant – Byron Slack	Columbia Rock & Aggregate Letter re: Dust Control and Water – Dated 11/11/02
59 B	11/19/02	Applicant – Byron Slack	SEPA Checklist prepared by Alan J. Thayer Dated 5/25/95
59 C	11/19/02	Applicant – Byron Slack	Pre-Application Site Plan Review – Dated 1/9/99
59 D	11/19/02	Applicant – Byron Slack	American San Can- Documents re: Portable Restrooms - Dated 7/15/00
59 E	11/19/02	Applicant – Byron Slack	Letter to Byron Slack from Albert Duble re: Noise Impact Study Addendum – Dated 11/15/02
59 F	11/19/02	Applicant – Byron Slack	Letter to Byron Slack from Jack Chapman – Weyerhaeuser Tax Dept re: Mineral Reservation – Dated 10/10/02
59 G	11/19/02	Applicant – Byron Slack	Reclamation Stories – Dated 10/10/02

EXHIBIT NO.	DATE	SUBMITTED BY	DESCRIPTION
59 H	11/19/02	Applicant – Byron Slack	Newspaper Article re: Hwy 14–Dated 10/10/02
60	11/26/02	Public Works – Shelley Oylear	Document re: Pavement Improvement Fees
61	11/27/02	Applicant – Byron Slack	Email to Josh re: Pavement Improvement Fees
62	12/23/02	Applicant – Albert Duble	Letter re: Addendum to Noise letter Dated 11/20/02
63	12/30/02	Warren & Becky Schippers	Comment Letter
64	1/23/03	CC Prosecuting Attorneys Office – Rich Lowry	Email to Josh Warner re: Mining Rights
65	2/3/03	CC Public Works – Shelley Oylear	Project Comments
66	11/4/02	Applicant - Al Duble	Email to Josh Re: Measurements & Noise Predictions
67	2/6/03	Applicant - Al Duble	Letter to Josh re: Exhibit # 59E & Exhibit #62
68	2/18/03	Applicant - Al Duble	Letter to Josh re: Draft Staff Report
69	2/18/03	Mark Erikson's Office – Keith Hirokawa	Letter to Josh re: Groundwater
70	2/18/03	Mark Erikson's Office – Keith Hirokawa	Letter to Josh re: Mining Rights
71	2/18/03	Applicant-Peter Keefe	Letter re: Draft Staff Report
72	2/25/03	CC Community Development	Staff Report written by Josh Warner
73	2/25/03	CC Community Development	Affidavit of Mailing Decision
74	3/11/03	Appellant - Erikson & Hirokawa	Notice of Appeal
75	3/20/03	CC Community Development	Affidavit of Mailing Public Notice
76	3/20/03	CC Community Development	Notice of Appeal and Public Hearing
77	3/17/03	Appellant – Erikson & Hirokawa	911 Call Information
78	4/4/03	Appellant – Erikson & Hirokawa	Photograph #1 of Accident--

EXHIBIT NO.	DATE	SUBMITTED BY	DESCRIPTION
79	4/4/03	Appellant – Erikson & Hirokawa	Photograph #2 of Accident
80	4/4/03	Appellant – Erikson & Hirokawa	Photograph #3 of Accident
81	4/7/03	Appellant – Erikson & Hirokawa	Email to Josh re: Exhibit #79 (electronic gate)
82	4/9/03	CC Development Services – Wetland Biologist	Wetland Review written by Brent Davis
83	4/9/03	Applicant – David Brown & Associates	Maps of Various Operating Setbacks & Cross Section of the Site
84	4/03	CC Development Services	WAC 173-60
85	4/03	CC Prosecuting Attorneys Office – Rich Lowry	Memo Written 10/3/02 Regarding Yacolt Mountain Quarry
86	4/10/03	CC Public Works – Shelley Oylear	Memo to Josh Warner re: Corrections & Clarifications
87	4/14/03	Applicant David Brown & Associates – Peter Keefe	Letter in response to Notice of Appeal
88	4/14/03	Applicant – David Brown & Associates	REVISED Maps of Various Operating Setbacks & Cross Section of the Site
89	4/14/03	Applicant – Byron Slack	Supplemental Hydro geologic Information
90	4/15/03	CC Dev Engineering – Ken Burgstahler	Memo to Josh re: Exhibits #87 and #89
91	4/15/03	CC Development Services	Staff Report written by Josh Warner
92	4/17/03	Schwabe, Williamson & Wyatt, P.C. ~ Bradley Anderson	Letter to Josh re: Representation of Applicant
93	4/18/03	SWWHD – Reuel Emery	Email re: Health District Review of Project
94	4/29/03	Applicant – Bradley Andersen	Applicant Byron Slack's Motion for a Site Visit
95	4/29/03	Applicant – Bradley Andersen	Applicant Byron Slack's Memorandum in Response to Appellants' Appeal
96	4/30/03	Hearing Examiner – Daniel Kearns	Order for Motion for Pre-hearing Site Visit
97	5/1/03	Appellant – Erikson & Hirokawa	Appellants' Opening Memorandum in Support of Notice of Appeal

EXHIBIT NO.	DATE	SUBMITTED BY	DESCRIPTION
98	5/1/03	Appellant – Erikson & Hirokawa	Declarations for: Lynn Bartholomew, Walter Wright, Elaine Abledinger, Shawn Axten, Supplemental for Brief CV From David Weaver, PE and Kleinfelder Groundwater Document sent to Josh Warner
99	5/1/03	Applicant – LDC	Letter to Applicant Byron Slack re: Response to Exhibit #31
100	5/1/03	Becky A. Schippers	Comment Letter
101	5/1/03	Applicant – Brad Anderson	Explosives & Blasting Technique
102	5/1/03	Applicant – Brad Anderson	Professional Qualifications Summary for Albert G. Duble
103	5/1/03	Applicant – Brad Anderson	Aerial Photo of Site
104	5/1/03	Linda Rectanus	Testimony & Camas School Bus Schedule
105	5/1/03	Barbara Repman	Testimony & Pictures of Home
106	5/1/03	Appellant - Deborah Mrazek	18 Photos of Site
107	5/1/03	Appellant – Shane Latimer	Letter to Josh Warner re: Wetland Issues
108	5/1/03	Appellant – Keith Hirokawa	Harrison v. Stevens County, <i>Wash. App.</i> _61 P.3d 1202 (2003) and Saddle Mountain Minerals, LLC v. Joshi, _ <i>Wash. App.</i> _, 2003 <i>Wash. App</i> LEXIS 445.
109	5/8/03	CC Development Services	Notice of Continuance- Continued to 6/10/03
110	5/8/03	CC Development Services	Affidavit of Mailing Public Notice for Continuance
111	5/15/03	Appellant – Keith Hirokawa	Letter re: References sited in Oral Argument: Zigan Sand and Gravel, Inc. v. Cache La Poudre Water Users Association, 758 P.2d 175 (Colo. 1988); Three Bells Ranch Associates v. Cache La Poudre Water Users Association, 758 P.2d 164 (Colo. 1988) Washington Attorney General, 1984 Op. Gen. Wash. No 19 (August 10, 1984)
112	5/21/03	CC Development Services – Wetland Biologist – Brent Davis	Re-evaluation of the Wetland Pre-determination (WPD99025)
113	5/21/03	Appellant – Keith Hirokawa	Declarations of Howard Rectanus & Deborah Mrazek relating to traffic & accident information

EXHIBIT NO.	DATE	SUBMITTED BY	DESCRIPTION
114	6/5/03	Applicant – Bradley Andersen	Appellant's Motion for Continuance to a date uncertain
115	6/5/03	CC Development Services	Notice of Continuance of Public Hearing to a Date Uncertain
116	8/18/03	CC Development Services	Notice of Appeal and Public Hearing Continuance
117	8/18/03	CC Development Services	Affidavit of Mailing of Public Notice
118	6/5/03	CC Public Works – Robert Klug, PE	Traffic Impact Review
119	9/26/03	Appellant – Keith Hirokawa	Appellant's Supplemental Memorandum
120	9/22/03	CC Development Services	Email from Hearing Examiners re: Yacolt Mtn Quarry; Final Order for CPZ2002-00009 and Resolution No. 2003-03-22
121	10/1/03	CC Development Services	ORDINANCE NO 2002-07-01
122	10/1/03	CC Development Services	Email from Brent Davis to Josh Warner re: response to Mr. Hirokawa's latest comments
123	10/1/03	CC Development Services – Josh Warner	Memorandum to the Hearings Examiner regarding outstanding issues
124	10/1/03	Appellant – Keith Hirokawa	Appellants' Supplemental Affidavit of Michael Niquette
125	10/2/03	Applicant – Bradley Andersen	Applicant Byron Slack 's reply to appellants' supplemental memorandum
126	10/2/03	Applicant – Bradley Andersen	Response to 9/30/03 Kleinfelder Letter which was included in Exhibit # 124
127	10/2/03	Applicant – Bradley Andersen	Well Location Maps
128	10/2/03	Applicant – Bradley Andersen	DNR Requirements – Additional Information for Hydrologically Sensitive Areas as Specified on SM-8A
129	10/2/03	Applicant – Peter Keefe	Overhead Presentation: Aerial Photograph, Site Photograph, Cross Section Diagram, Mining Setbacks, Phasing Plan and Plan View & Isometric View
130	10/10/03	Applicant – David Brown & Associates – Peter Keefe	Revised Phasing Plan
131	10/10/03	CC Development Services – David Howe	Habitat Biologists response to Exhibit # 130

EXHIBIT NO.	DATE	SUBMITTED BY	DESCRIPTION
132	10/10/03	Applicant – Bradley Andersen	Letter to the Hearing Examiner regarding Issues brought up at the hearing
133	10/14/03	CC Prosecuting Attorney's Office – Rich Lowry	Memo regarding summary judgment from Judge Poyfair – Case Nos. 03-2-01911-2 and 03-2-01976-6
134	10/15/03	Appellant – Keith Hirokawa	Letter to the Hearings Examiner regarding Exhibit # 133
135	10/16/03	Appellant – Keith Hirokawa	Letter in response to the Phasing Plan (Exhibit # 130) and response to Exhibit #132

Copies of these exhibits can be viewed at:

Department of Community Development / Planning Division
1408 Franklin Street
Vancouver, WA 98666-9810