

Office of the
CLARK COUNTY LAND USE HEARING EXAMINER

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NOTICE TO PARTIES OF RECORD
PROJECT NAME: LIVINGSTON MOUNTAIN QUARRY
CASE NUMBERS: CUP2007-00013; PSR2007-00045; SEP2007-00124

The attached decision of the Land Use Hearing Examiner will become final and conclusive unless a written appeal 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, **April 1, 2008**, (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 contain the information required under CCC 40.510.030(H), and placed in the following preferred format:

1. Project Name
2. Case Number
3. Name and signature of each petitioner: The name and signature of each petitioner and a statement showing that each petitioner is entitled to file the appeal under Section 40.510.030(H)(1). If multiple parties file a single petition for review, the petition shall designate one (1) party as the contact representative for all contact with the responsible official.
4. Introduction:
Provide a brief history of the case. This should include a chronology of dates of related applications, cases numbers, and a description of the proposal as it relates to the decision being appealed
5. Standard of Review:
Describe what standard of review (i.e., board's discretion to reverse the examiner's decision) you believe applies to board's review of the alleged errors (e.g., substantial evidence for challenges to findings of fact; de novo review for code interpretation; or, clearly erroneous for issues involving application of code requirements to particular facts).
6. Alleged Errors/Response to Alleged Errors:
Identify 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 (i.e., reference the relevant exhibits and passages, court cases, etc.).

The appeal fee is **\$266**

The Board of Commissioners shall hear appeals of decisions based upon the written record before the examiners, the examiner's decision, and any written comments

received in the office of the Board within the following submittal deadlines measured from the date of the filing of the appeal:

- Fourteen (14) calendar days for the appellant's initial comments;
- Twenty-eight (28) calendar days for all responding comments; and,
- Thirty-five (35) calendar days for appellant reply comments, which are limited to the issues raised in the respondent's comments.

Written comments shall be limited to arguments asserting error in or support of the examiner decision based upon the evidence presented to the examiner.

Unless otherwise determined by the Board for a specific appeal, the Board shall consider appeals once a month, on a reoccurring day of each month. The day of the month on which appeals are considered shall be consistent from month to month as determined by Board.

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 continued, the Board of Commissioners shall designate the parties or their representatives to present argument, and 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: **March 18, 2008**

LIVINGSTON MOUNTAIN QUARRY
CUP2007-00013; PSR2007-00045;
SEP2007-00124

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Project Number:
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CENTRAL FILES

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DEVELOPMENT ENG (2)

LINDA MOORHEAD
CODE ENFORCEMENT

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

In the matter of a Type III application for a conditional use permit and revised site plan to establish and operate a rock crusher at an existing 40-acre rock quarry site in the FR-80 zone with a Surface Mining Overlay in unincorporated Clark County, Washington.

FINAL ORDER

**Livingston Mountain Quarry
Rock Crusher
CUP2007-00013, PSR2007-00045
& SEP2007-00124**

I. Summary of the Order:

This Order is the decision of the Clark County Land Use Hearings Examiner approving a conditional use permit and revised site plan to establish and operate a rock crusher at an existing and approved 40-acre quarry (Livingston Mountain Quarry), zoned FR-80, with a Surface Mining Overlay.

II. Introduction to the Property and Application:

Applicant Tower Rock Products
P.O. Box 2230
Battle Ground, WA 98604

Contact Olson Engineering, Inc.
Attn: Mike Odren
1111 Broadway
Vancouver, WA 98660

Owners Alan & Mary Thayer
2204 SE 149th Avenue
Vancouver, WA 98684

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) Title 15 (Fire Prevention), §40.210.010 (Forest & Agriculture District), §40.250.020 (Surface Mining Overlay), ch. 40.350 (Transportation), §40.350.020 (Transportation Concurrency), ch. 40.380 (Storm Water Drainage and Erosion Control), §40.420.010 (Flood Hazard Area), ch. 40.430 (Geologic Hazard Areas), ch. 40.440 (Habitat Conservation), ch. 40.450 (Wetland Protection Ordinance), ch. 40.460 (Shoreline Overlay District), chs. 40.500 and 40.510 (Procedures), §40.520.030 (Conditional Use Permits), §40.520.040 (Site Plan Review), ch. 40.570 (SEPA), ch. 40.570 (SEPA Archaeological), Title 24 (Public Health), Clark County Comprehensive Plan, 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. 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 has been logged and has no structures on it. Logging roads pass through and around the site. 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.

This property received site plan approval in 2003 for a surface mine (APL2003-0006, PSR2002-00044), but that approval did not include the crushing operation that is requested here. In fact, the 2003 site plan approval did not include batching, washing or similar processing operations. Rock crushing at this site, with a Surface Mining Overlay, requires a conditional use permit (CUP). CCC 40.250.020(B). The applicant proposes to crush an average of 1,500 tons of rock per day and to process and haul off-site 250,000 tons of rock per year. All of the rock to be processed (crushed) will originate from this pit, and none will be imported from elsewhere for processing. The original quarry was approved to operate from 8:00 a.m. to 5:00 p.m. Monday through Friday with as many as (maximum) 25 Saturday operations per year. This application proposes to expand hours of operation to 6 a.m. to 8 p.m., Monday through Friday, with the same number of Saturday operations. The applicant indicates it will not begin crushing before 7:00 a.m., and will not begin mining until 8:00 a.m., but wants to use the extra time beginning at 6:00 a.m. for equipment maintenance and truck loading. The applicant predicted a possible 5 dBA increase in noise above the predicted mining noise attributable to the crusher. The application anticipates that "[c]ertain mitigation measures may be required."

The original mining operation was approved at a maximum of 32 additional daily vehicle trips (ADTs), which equates to 16 trucks in and 16 loaded trucks out of the site per day. The applicant seeks to increase this truck volume to 190 ADTs with the addition of the crushing operation. The proposed haul route has not changed and 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. According to the applicant, nothing about the mining operation or previously approved site plan will change except the specific changes related to the rock crusher. The site will still be mined in 10 phases.

III. Local Process and the Record:

A preapplication conference was requested on June 15, 2007 and held July 12, 2007 (Ex. 6, tab 2). The applicant submitted a complete Type III CUP application on September 5, 2007 (Exs. 5 & 6), which was deemed fully complete on September 19, 2007 (Ex. 8). From this sequence, the application was vested as of June 15, 2007. The application consists of a complete set of drawings (Ex. 5) and reports (Ex. 6), a soil analysis (Ex. 6, tab 8), preliminary stormwater design and stormwater and erosion control plans (Ex. 6, tab 9), a traffic study (Ex. 6, tab 10), a SEPA checklist (Ex. 6, tab 11), water and sewer provider letters (Ex. 6, tab 12), a health department review letter (Ex. 6, tab 13), with the following included as appendices to the primary application document: noise study, archaeological predetermination, DOE sand and gravel general permit, surface mining reclamation permit and road condition information. Prior to and at the December 6, 2007 hearing, the applicant provided multiple written responses to comments and issues raised by agencies and neighbor opponents (Exs. 17, 18, 19, 23, 24, 25,

34, 36) along with a slightly revised site plan (Ex. 26) with an explanation by the applicant's chief engineer (Ex. 27).

Notice of the December 6, 2007 hearing was mailed to property owners within 500 feet of the site and the Proebstel Neighborhood Association on October 3, 2007 (Exs. 9 & 10). Staff published notice of the application, the Type III hearing and a likely Determination of Nonsignificance (DNS) in the Columbian Newspaper on November 9, 2007 (Ex. 22).

The County's notice of the CUP generated a substantial amount of interest by surrounding residents and state agencies. During the course of the proceeding, the County received written comments from the following neighbors, all in opposition to this proposal: Barbara Repman (Exs. 12, 39, 40, 56 & 62), Gretchen and Allan Alexander (Exs. 11, 44 & 55), Linda and Howard Rectanus (Exs. 13 & 54), Marty Alexander (Ex. 14), Tsuyoshi Inouye (Exs. 30 & 41), Terri Piteck (Ex. 57), Alan Thayer (Ex. 45), Bob Weber (Exs. 16, 20, 42, 48, 65 & 72), plus a petition raising multiple issues signed by 20 people (Ex. 33).

The County's Department of Community Development received comments from the following state and County agencies commenting on various aspects of the proposal, some of which are properly characterized as SEPA comments, *i.e.*, Washington Department of Ecology (Ex. 15), Public Works comments on pavement wear and related payments (Exs. 28 & 29), reports and comments from Daly, Standlee & Associates, Sound Engineers on contract to Clark County (Exs. 35, 63), Transportation Concurrency (Ex. 38, 43, 61), Camas School District comments related to school bus stops and student safety (Ex. 53), and a memo from the County Prosecutor's Office on the preemptive effect of RCW 70.107.060(3) on the County's ability to impose more or different noise standards than allowed by state law (Ex. 60).

Community Development staff issued a comprehensive report prior to the December 6, 2007 hearing (Ex. 32) that summarized the application as it existed at that time, all neighbor and other opponent comments and all agency comments. The staff report presented a favorable (do approve) recommendation with suggested conditions. Following that, as the record grew, Community Development staff reviewed post-hearing submissions by opponents, agency commentors and the applicant and revised its recommendation (Exs. 64 & 69).

At the commencement of the December 6, 2007 hearing, the Examiner explained the procedure and disclaimed any ex parte contacts, bias, or conflict of interest. There was no prior contact between the Examiner and the applicant or any party in this proceeding related to this or any related development. No one objected to the County's notice or procedure. No one raised any procedural objections or challenged the Examiner's ability to decide the matter impartially, or otherwise challenged the Examiner's jurisdiction. At the hearing, Jose Alvarez, County planning staff on the project, Ken Burgstahler, engineering staff, and Steve Schulte, Transportation Concurrency Engineer, provided verbal summaries of the project, the staff report and the various agency and departmental comments in the record and responded to the applicant's comprehensive rebuttal submitted the day before the hearing (Ex. 36).

The applicant's representatives, LeAnne Bremer, attorney with Miller Nash, Peter Tuck, of Olsen Engineering, and Judith Gray, of Kittelson & Associates, appeared and described various aspects of the proposal and explained the applicant's final submission (Ex. 36), which responded to comments from governmental agencies and the neighbors. Speaking in opposition to the proposal were Larry Butcher, Barbara Repman (Exs. 12, 39, 40, 56 & 62), Tsuyoshi Inouye (Exs. 30 & 41), Bob Weber (Exs. 16, 20, 42, 48, 65 & 72), Gretchen Alexander (Exs. 11, 44 & 55), Linda Rectanus (Exs. 13 & 54), Terri Piteck (Ex. 57), David Stiff, Bruce

Barnes and Don Wastler. In light of the new material submitted at and just prior to the hearing, the applicant requested that the record be left open. At the conclusion of the hearing, the hearings officer ordered the following open-record schedule:

January 4 Any additional material by the applicant
January 18 Staff and the public comment on all application materials
January 25 Applicant's final rebuttal (argument only)

The Examiner modified this schedule several times at the request of the applicant or opponents to allow review of and rebuttal to all new evidence (Exs. 50, 59 & 67), which resulted in several extensions. Ultimately, the Examiner received the following substantive post-hearing submissions:

Applicant Exs. 47, 66, 68, 70 & 73
Opponents Exs. 45, 54, 55, 56, 57, 62, 65 & 72
Staff reviews..... Exs. 60, 61, 63, 64 & 69

The record closed on February 29, 2008 with the submission of the applicant's final closing argument (Ex. 73).

IV. Discussion and Findings:

A. Preliminary Matters: Zoning and the CUP Approval Criterion: Approval of a conditional use permit is governed by a single general and somewhat subjective approval standard in CCC 40.520.030(E)(2), which provides that:

In order to grant any conditional use, the hearing examiner must find 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.

The code also provides the Hearings Examiner broad authority to condition a proposed use in order to achieve compliance with the primary approval standard. The following are just examples of the nature and extent of some permissible conditions that can be imposed:

In permitting a conditional use the hearing examiner may impose, in addition to regulations and standards expressly specified in this title, other conditions found necessary to protect the best interests of the surrounding property or neighborhood, or the county as a whole. These conditions may include but are not limited to requirements:

- a. Increasing the required lot size or setback dimensions;*
- b. Increasing street widths;*
- c. Controlling the location and number of vehicular access points to the property;*
- d. Increasing the number of off-street parking or loading spaces required;*
- e. Limiting the number of signs;*
- f. Limiting the lot coverage or height of buildings because of obstructions to view and reduction of light and air to adjacent property;*

- g. *Limiting or prohibiting openings in sides of buildings or structures or requiring screening and landscaping where necessary to reduce noise and glare and maintain the property in a character in keeping with the surrounding area; and*
- h. *Establishing requirements under which any future enlargement or alteration of the use shall be reviewed by the county and new conditions imposed.*

CCC 40.520.030(E)(1).

Uses listed as being conditionally allowed are deemed to be consistent with the underlying zoning, much the way that out-right allowed uses are consistent with the zoning. However, listed conditional uses are also assumed to have potential impacts that are difficult to predict in advance and which warrant mitigating conditions on a case-by-case basis. Mining is allowed outright, and rock crushing is conditionally allowed where, as here, the surface mining overlay designation has been applied. CCC 40.250.020(B). The Examiner finds that rock crushing is, or at least can be made, consistent with the FR-80(S) zoning and the uses allowed in that zone, but there are impacts from the crushing operation that require mitigation to lessen those impacts on surrounding properties and the neighborhood. In particular, noise, dust, truck traffic and related impacts are discussed in the section that follows, along with appropriate mitigation for these impacts to achieve compliance with the basic CUP approval criterion.

This permit request also must be evaluated in the context of the underlying resource zoning. The Board of Commissioners has made the legislative determination that the FR-80 zone is intended for the following uses and purposes:

The purpose of the Forest 80 district 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. The Forest 80 district applies to lands which have been designated as Forest Tier 1 on the comprehensive plan. Nothing in this chapter shall be construed in a manner inconsistent with the Washington Forest Practices Act.

CCC 40.210.010(A)(1).

Throughout this proceeding the Examiner heard no testimony from any opponent asserting that the proposed crushing operation would have negative impacts on any of the resource uses for which this zone was established. Instead, all opponent testimony described possible negative impacts on non-resource residential uses, and much of that was focused on impacts of the current quarry operation, which does not involve a crusher. While these residents comprise the neighborhood to be evaluated under CCC 40.520.030(E)(2), they are not among the uses for which the Board of Commissioners established this zone.

It is also important to note that the current application seeks only approval to add rock crushing to the already approved mining operation. As such, the Examiner's review is limited strictly to impacts attributable to the crusher and not impacts that are uniquely attributable to the mining operation. That could and should be a relatively straight forward exercise, except for the applicant's request to modify certain aspects and conditions of its previously approved site plan to accommodate the crushing operation. See the 2003 Type II site plan approval (APL2003-00006 & PSR2002-00044) and the approved site plan for the quarry (Ex. 46). These changes to the prior approval are limited to an adjustment of the hours of operation and an increase in the maximum number of additional daily vehicle trips, not just an increase in ADTs, but fully loaded rock trucks. In a similar vein, the crusher will be a new noise source on the site, in terms

of both the crushing operation and truck loading. Truck loading and truck traffic were already part of the underlying mining operation. Consequently, try as we might to evaluate impacts that are solely related to the crushing operation, and not the mining operation, that is not entirely possible because of the significant overlap of impacts between the two integrated operations.

Some impact issues addressed by conditions attached to the site plan in the 2003 decision are necessarily affected by this proposal, e.g., noise, hours of operation, truck trips, etc. For this reason, this decision necessarily amends the mining site plan approval and conditions imposed on this property by the Examiner's 2003 decision. As discussed below, the annual review required by the site plan approval shall include a review of all operations on the site, including the crusher operation and compliance with all conditions imposed by the site plan approval and this CUP.

B. Impact Issues Raised by the Opponents: Only issues and approval criteria raised in the course of the application, during the hearing or before the close of the record are discussed in this section. All approval criteria not raised by staff, the applicant or a party to the proceeding have been waived as contested issues, and no argument with regard to these issues can be raised in any subsequent appeal. The Examiner finds those criteria to be met, even though they are not specifically addressed in these findings. CCC 40.520.030(E)(2) does not limit the range of potential impacts that could be significantly detrimental to the health, safety or general welfare of people residing or working in the neighborhood or be detrimental or injurious to the property and improvements in the neighborhood or to the general welfare of the county. In that light, the range of relevant impacts is large, and the opponents repeatedly raised several that they claim warrant denial of this permit. While the Examiner does not agree that these issues warrant denial, they certainly merit a response and in many instances conditions of approval.

1. Trip generation and traffic safety: The most contentious issues in this matter involved the significant (500%) increase in rock truck traffic requested over what was allowed by the 2003 site plan. This equates to an increase from a maximum of 32 ADT (16 trucks in and 16 loaded trucks out) to 190 ADT (95 trucks in and 95 loaded trucks out). This presents impacts on the condition and structural integrity of the pavement, as well as sight distance and turning movement problems. The conditions required to mitigate for these impacts are also imposed as SEPA mitigation. Even though the County previously issued a DNS on this project, the applicant significantly increased the proposed number of loaded truck trips late in the process. As explained below, the traffic volume now requested is a significant increase over current traffic levels, and the request involves loaded rock trucks, sometimes with trailers. The type and volume of traffic now proposed presents significant traffic safety hazards that do not currently exist, and which warrant mitigation.

a. Trip Generation (190 ADT): The applicant originally sought to increase the truck traffic volume up to a maximum of 160 ADT, which includes existing and proposed new trips (Ex. 6, tab 10). That request appears to have been amended upwards on January 4, 2008 (Ex. 47), where the applicant claims that the request had been made and substantiated at the December 6th hearing in the applicant's hearing memorandum (Exs. 36 & 47). However, the Kittelson report attached to the applicant's hearing memo (Ex. 36, attachment B) reiterates the 160 ADT maximum not 190 ADT, and there does not appear to be any other Kittelson report addressing the 190 ADT maximum figure. The opponents' engineer (Ex. 72) also noted the lack of documentation to support 190 ADT, but concluded that the 190 ADT likely would meet concurrency at all affected intersections. Nonetheless, staff later reported that it

had reviewed and concurred with the applicant's documentation substantiating a truck volume increase to 190 ADT (Exs. 61 & 64).

While the Examiner cannot locate the supporting technical information, e.g., a Kittelson report, staff appears to have seen it and is satisfied that a maximum of 190 ADT meets concurrency requirements so long as the turning movement mitigation for the NE 53rd Street and SR 500 intersection is constructed first. Based on staff's review and positive recommendation, the Examiner concludes that the 190 ADT, as a not-to-exceed daily maximum, maintains an acceptable LOS and thus concurrency at all affected intersections.

- b. NE 53rd Street/SR 500 intersection: Staff identified a safety deficiency associated with the west-bound right turning movement at the intersection of NE 53rd Street and SR 500 (Ex. 61). The appropriate mitigation appears to be the construction of a turning lane. Staff recommends that no new ADTs be allowed by this CUP until that mitigation is constructed. The applicant has acknowledged the deficiency and has agreed to the mitigation and timing (Ex. 73), i.e., completion of the mitigation prior to increase of trip generation above the 32 ADT approved in the 2003 site plan decision. The opponents maintain that no heavy truck traffic be allowed to use the intersection of NE 53rd Street and SR 500 until the mitigation is completed (Ex. 72).

As a preliminary matter, this quarry is already approved to generate 32 ADT per the 2003 site plan approval. The current CUP application proposes to increase that to 190 ADT, and the question is whether that level of trip generation should be allowed under the CUP and other approval standards. The turning movement deficiency at the intersection of NE 53rd Street and SR 500 presents a significant traffic safety hazard that this proposal stands to materially exacerbate. This traffic safety hazard is a sufficient ground for denying this proposal pursuant to CCC 40.350.030(B)(6) unless mitigated. The applicant has proposed to mitigate this significant traffic safety hazard by constructing the turning lane at the NE 53rd Street/SR 500 intersection and that it will not increase the trip generation above 32 ADT until this improvement is constructed (Ex. 73). Staff has determined that this mitigation measure will be adequate (Exs. 61, 64 & 69). Based on the applicant's commitment, the Examiner finds that this traffic safety hazard is adequately mitigated. See Conditions A-2, A-5 & G-5.

- c. NE 53rd Street/NE 262nd Avenue intersection: The applicant identified the intersection of NE 53rd Street and NE 262nd Avenue as having deficient stopping sight distance due to vegetation that obstructs a driver's view (Ex. 47, attachment D). Staff concurred that the problem existed and proposed a condition that the applicant remove the vegetation, which happens to be on property that is not under the applicant's control (Ex. 64). The opponents submitted a report (Ex. 72) from a suitably qualified transportation engineer confirming the previously identified safety deficiencies, i.e., inadequate sight distance at the intersection of NE 53rd Street and NE 262nd Avenue. The opponents traffic engineer states that the stopping sight distance deficiency is a significant traffic hazard that must be mitigated in order to approve this permit (Ex. 72). The applicant is working with the property owner, but objects to a mandatory requirement to remove the sight-obscuring vegetation because it would essentially hold the applicant hostage to the desires of the owner of the property where the vegetation is located (Ex. 73).

Based on the expert testimony of the County's engineering staff, the Examiner finds that the stopping sight distance deficiency at the intersection of NE 53rd Street and NE 262nd Avenue presents a significant traffic safety hazard that this proposal will materially exacerbate by increasing by approximately 500% the daily volume of fully loaded rock trucks. This traffic

safety hazard is a sufficient basis for denial pursuant to CCC 40.350.030(B)(6) unless mitigated. The applicant has proposed to mitigate this significant traffic safety hazard by attempting to remove the sight obstructing vegetation at the NE 53rd Street and NE 262nd Avenue intersection. Staff has determined that this mitigation measures will be adequate (Exs. 61, 64 & 69).

A stopping sight distance deficiency does not always constitute as a significant traffic safety hazard. However, in this case, the applicant proposes a 500% increase in fully loaded heavy truck traffic (increasing out-bound trips from 16 trucks per day to 95 trucks per day). While this may be an existing traffic safety hazard, the Examiner finds that it only becomes "significant" within the meaning of CCC 40.350.030(B)(6) with a 500% increase in the volume of fully loaded rock trucks. Consequently, absent the mitigation suggested by staff and tentatively agreed to by the applicant, this permit would be denied. See Condition A-10.

- d. Structural integrity of affected pavement segments: From a wear and maintenance perspective, the pavement of much of the haul route is inadequate. The pavement is either old and deteriorated or simply was not constructed to withstand the load and wear of a fully loaded rock truck, or both. The 2003 mining site plan was approved with a condition that the applicant pay the County \$40,000 to finance County repaving and similar repairs and improvements to the roads, most notably a 2-mile segment of NE 262nd Avenue. In its hearing memorandum (Ex. 36, pp 6-7), the applicant took the position that the \$40,000 payment was required only if it wanted to exceed the 32 ADT maximum imposed by the 2003 site plan approval. At the hearing, staff disagreed, stating that the \$40,000 was a condition of allowing the mine and its allowed (maximum) 32 ADT. If the applicant now wants a greater daily truck volume, it will have to pay more toward the repair and maintenance of the roads directly affected by the increase in heavy truck traffic (Ex. 32, pp 13-14). Staff has since refined its recommendation to require the applicant to pay a total of \$197,400 to pay for repairs and maintenance needed on NE 262nd Avenue and NE 53rd Street to serve an increased volume of extremely heavy (loaded) rock trucks (Ex. 61, pp 5-6 & Ex. 64, p 2). The applicant apparently revised its view and now agrees with staff, but asks that the \$10,000 it previously paid (toward the \$40,000) be credited against this new amount (Ex. 36, p 7).

It was clear from the testimony of the County's Concurrency Engineer at the December 6th hearing that wear, tear and deteriorating pavement due to heavy rock trucks is a traffic safety issue. To the extent that the surrounding road system is or will become deficient in this regard, it is only deficient for handling the particular type of traffic generated by this applicant, *i.e.*, heavy fully loaded rock trucks. Absent this particular type, volume and weight of traffic, the road system would be adequate to handle the traffic generated by the area residents. Consequently, the documented road deterioration (wear and tear) is uniquely attributable to this site and use, and significant repair and maintenance is required to serve this use. The approximately 500% increase in heavy truck traffic (16 full trucks per day increased to 95 full trucks per day) warrants a significant and expensive level of mitigation by this applicant. Absent such mitigation, the Examiner finds that the deteriorated roads constitute a significant traffic safety hazard that will be created or significantly exacerbated by this use and justifies denial pursuant to CCC 40.350.030(B)(6) unless mitigated. See Conditions A-3 & G-4.

4. Stormwater and process water: This is one issue where the crushing operation presents no additional or different impacts than the mining operation approved by the 2003 site plan. The original site plan proposed massive disturbance over virtually all of the property,

including the places where the crusher is now proposed to be located. Storm and surface water management was an important issue addressed in the site plan proposal. Staff determined that the mining proposal was subject to the County's stormwater and erosion control requirements, and the applicant was required to obtain a stormwater permit. The applicant then obtained a stormwater permit from the Department of Natural Resources. During the preliminary stages of this CUP proposal, the applicant took the position that the prior site plan approval covered all of the stormwater issues and that the crushing operation, which would occupy a footprint smaller than 5,000 sf, did not create any new or different stormwater issues. Initially, County Engineering staff disagreed and attempted to impose new stormwater requirements in addition to those imposed through the site plan approval. After a meeting with the County Prosecutor, however, the County agreed with the applicant's position based on the following factors:

- The quarry is currently operating under Department of Natural Resources Permit # 70-013041, which covers the mining operation and all related onsite operations.
- Prior to the approval of the final site plan for the rock mining operation (FSR2006-00048), Olson Engineering met with Mark Damon of county staff. Mr. Damon approved the material submitted for the quarry site plan. Brent Davis and Dave Howe approved the wetland and habitat aspects, respectively, of the site plan for the quarry.
- Stormwater for the quarry operation is being addressed on the entire site pursuant to the site plan approval for the mining operation; therefore, this review should only address the rock crusher and its operation.
- The approved mining operations create a gravel surface within the active mining area that is impervious under the Clark County Code. As the new phases of the quarry are opened up and old phases are reclaimed, the crusher will always be moved to an existing graveled area within the mining operation. At no time will an area be cleared and prepared with an impervious surface for the sole purpose of locating the crusher.
- The crusher footprint is less than 5,000 sf, which is too small an area to trigger independently the application of the Stormwater Ordinance.

The Examiner finds that the applicant's compliance with the DNR permit requirements will also cover any stormwater issues related to the crusher location, and on that basis the County's stormwater requirements are, or will be, met.

5. Hours of operation: The 2003 site plan approval included the following condition related to hours of operation:

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.

The applicant now seeks to expand those hours through this conditional use permit to allow operation from 6 a.m. to 8 p.m. Monday through Friday and 6 a.m. to 8 p.m. for 25 Saturdays per year. While not entirely clear from the application narrative (Ex. 6, tab 4) or subsequent clarification (Ex. 47, attachment B), it appears the operations before 8 a.m. and after 5 p.m. will be limited to truck loading of crushed rock (possibly hauling off site too),

equipment maintenance and repair, and to start-up the crusher equipment anytime between 7:30 and 7:45 each morning. The opponents objected to the expanded hours and the disturbance the increased duration of noise, commotion and related impacted would cause to them. Staff expressed a willingness to recommend a smaller expansion of the hours of operation (Exs. 64 & 69), but not as much as the applicant requested. Both the applicant and staff point out that the County's Surface Mining Overlay District regulations limit mining activities to the hours between 6 a.m. and 8 p.m. CCC 40.250.020(D)(6). The applicant suggests (Ex. 68) that the County may lack the authority to limit hours more strictly than this code standard allows.

This is a CUP proceeding, not a request to mine under the Surface Mining Overlay regulations. The underlying 2003 site plan for mining allows any/all mining operations between the hours of 8 a.m. and 5 p.m., and that decision was not appealed. The current proceeding is governed by the CUP requirements in CCC chapter 40.520, which provide the Examiner more and different authority to impose conditions than was the case for the original site plan. In that light, it is difficult to see how an expansion of operation hours meets the more stringent CUP approval standard in CCC 40.520.030(E)(2). Moreover, the expansion of hours requested by the applicant implicates the nighttime noise standards in WAC 173-60 that are not addressed by the applicant's noise study. The operations specifically requested for the expanded hours, most notably truck loading, present the possibility of significant noise impacts given the drum-like effect of dropping rock into an unlined truck bed. While the 2003 site plan approval required the applicant to line the truck beds to reduce noise (Condition B-4 of the 2003 approval), it appears that the applicant did not comply with that condition. Therefore, the efficacy of truckbed lining and the noise impact on the neighbors is not known. As such, the neighbors' fear of unacceptably loud noise associated with truck loading may, in fact, be well-founded. The applicant certainly has not provided sufficient compelling evidence to convince the Examiner that the standard could be met.

Given these factors, the Examiner cannot find that the expanded hours requested by the applicant will not be significantly detrimental to the general welfare of those residing in the neighborhood. This is especially so given the operations that would be conducted during the expanded hours (loading trucks, possibly with unlined beds) and the nighttime noise standard that was not addressed. The current record does not support the conclusion that CCC 40.520.030(E)(2) is met, and for that reason, the hours of operation for the CUP shall be limited to 8 a.m. to 5 p.m. and any request to expand hours for other mine-related operations, *i.e.*, to amend Condition B-8 of the 2003 site plan approval, is denied. It may be possible, however, for the applicant to demonstrate compliance with the CUP standard once it begins operation. If so, it should endeavor to do so at its up-coming annual review or through a post-decision review.

6. Noise impacts: The second significant impact from this, and any other surface mine, is noise. By way of objective, quantitative standards, WAC 173-60-040 sets state standards that preempt local governments from promulgating their own noise standards. RCW 70.107.060(3). The County has also adopted a SEPA policy pursuant to which any increase of more than five dBA over ambient noise levels may be considered a significant environmental impact. CCC 40.570.080(C)(3)(g). Most of the opponents live within sound of this quarry and are acutely concerned about the noise that will be generated by the proposed crusher, screen and loading operations. The details of the various arguments surrounding this issue are discussed below in Land Use Finding 7. In short, the Examiner finds that the appropriate noise standard is 10 dBA above current ambient or the applicable limit in WAC 173-60-040, whichever is less. Moreover, it is appropriate that there be a monitoring program to ensure compliance and to provide a

baseline data set should the applicant seek in the future to change the conditions and mitigation related to noise. See Conditions A-12, H-5, H-6, H-7, H-8 & H-9.

C. Other Development Requirements: The following issues relate to this proposal's compliance with a variety of substantive criteria applicable to any development within the County. These issues were raised primarily in the various agency comments and are all discussed in the staff report (Ex. 32) and subsequent up-dates (Exs. 60, 61, 63, 64 & 69). The Examiner adopts the following findings with regard to each:

LAND USE:

Finding 1 (Prior Site Plan Approval) – Previous approval conditions for the mining operation found in PSR2002-00044 and the additional conditions of approval imposed by the Hearings Examiner's Final Order in APL2003-00006 are hereby adopted by this reference and incorporated herein except as specifically amended in this decision.

Finding 2 (Zoning) – The property is zoned FR-80 with a Surface Mining Overlay. The proposal to crush rock on the site is a conditional use in the zoning district overlay. CCC40.250.020(B)(2)(d).

Finding 3 (Site Area) – The site area is required to be at least 20 acres if extraction is combined with either asphalt mixing, concrete batching, clay bulking or rock crushing. This 40-acre site meets this requirement.

Finding 4 (Hours of Operation) – CCC 40.250.020(D)(6) allows mining operations between 6:00 A.M. and 8:00 P.M. The mining operation under PSR2002-00044 and APL2003-00006 was approved to operate between 8:00 a.m. and 5:00 p.m. Monday through Friday and up to 25 Saturdays per year between 8:00 a.m. and 5:00 p.m. The hours were limited as a concession to neighborhood concerns of noise impacts. As explained previously, no information was submitted that would warrant a change to these hours of operation, especially in light of the more stringent CUP criterion that requires consideration of negative impacts to the neighborhood

Finding 5 (Compliance with previous approval and annual reviews) – Per the Hearings examiner's final order of APL2003-00006; PSR2002-00044 (Condition B-15) the applicant was required to submit to an annual review following the first 12 months of operation. The purpose of the review was to be an evaluation of the effectiveness of the conditions of approval mitigating noise impacts. A final site plan for the mining operation was approved on April 17, 2007 (Ex. 46). The operation of the quarry began in May 2007. There is an open code enforcement case alleging violations of the approval conditions including:

- Failure to line trucks (80 durometer, ¾ inch thick polyurethane sheeting)
- Engaging in loading and drilling activities simultaneously
- Violation of trip load parameter (32 average daily trips)
- Violation of hours of operation
- Failure to install straw barrier (attenuate noise impacts)

Failure to comply with the conditions of approval for the mining operation is not sufficient justification to deny a CUP application to operate a rock crusher on the site. The applicant suggested that the annual review of the mine operation include a review of the rock crusher operation. This makes sense, but it appears that the applicant has not had its first annual mine operation review. If the annual mine review occurs soon, it will not capture much

operational history of the crusher. Therefore, the applicant may begin crusher operation as soon as all conditions required prior to operation are met. The Examiner urges the applicant to move forward with the first annual review of the mining operation as soon as possible, and that review shall include a review of the crushing and all aspects of the mining operation. Due to the importance of compliance with all operational conditions, the total mining operation shall undergo an annual review for at least the first three years of operation. These Type III proceedings will be focused on condition compliance and a determination of the effectiveness of the operational conditions of approval. These annual reviews will also provide an opportunity for the applicant, the County or the public to obtain changes to the conditions of approval, *i.e.*, additions, deletions or modifications. The standard for changing conditions imposed on the crusher operation shall remain CCC 40.520.030(E). Additional annual reviews beyond the third year may be required if warranted. See Conditions H-1 & H-2.

Finding 6 (site access) – There is an existing 60-foot access easement from the site to NE Highland Meadows Drive. The width of the paved drive is approximately 16 feet. Due to the proposed increase in traffic volumes (to 190 vehicles per day) and the potential back-up onto NE Highlands Drive, the access road shall be widened to at least 24 feet to allow for two-way truck traffic from NE Highland Meadows Drive to the site. See Condition A-6.

Finding 7 (noise) – CCC 40.250.020(D)(5) establishes the maximum noise levels allowed to be generated by surface mining activities. The applicant submitted an initial noise study (Ex. 6) and multiple supplemental noise materials (Exs. 34, 47). The County engaged its own acoustical engineer consultant to review the applicant's materials for compliance with the County's noise standards, to recommend mitigation conditions of approval and generally advise the County (Exs. 35 & 63). The noise level limits are set in accordance with state law, WAC chapter 173-60. CCC 40.570.080(C)(3)(g) articulates, among others, the following County SEPA policy for noise:

Noise. 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 Chapter 173-60 WAC; 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. It is further the county's policy to encourage that sources of noise otherwise exempt from Chapter 173-60 WAC that may affect existing or proposed residential uses (e.g., traffic, discharge of firearms, utility installations, etc.) be mitigated to the standards thereof as a Class B source of noise (i.e., fifty-seven (57) dBA), and to require noise studies where necessary to assure that proposals address these policies.

The applicant objected to the application of this SEPA policy and argued that the County was preempted by RCW 70.107.060(3) from applying this standard, which appears to exceed the noise standards prescribed by state law.¹ The County Prosecutor's Office

¹ RCW 70.107.060(3) provides that:

Standards and other control measures adopted by the department [of Ecology] under this chapter shall be exclusive except as hereinafter provided. A local government may impose limits or control sources differing from those adopted or controlled by the department upon a finding that such requirements are necessitated by special conditions.

responded with a memo explaining that RCW 70.107.050(3) did not have the preemptive effect assumed by the applicant (Ex. 60), especially in a SEPA context. According to the Prosecutor, RCW 70.107.060(3) does not diminish the County's substantive SEPA authority to evaluate impacts, determine significance and require mitigation. The applicant also argued that the County could not impose this limitation on noise generation under its substantive SEPA authority because the County had already published a threshold DNS on the project (Ex. 22) and did not propose any SEPA conditions related to noise.

With regard to the applicant's preemption argument, the Examiner concludes that RCW chapter 70.107, and RCW 70.107.060(3) in particular, was intended to prevent (preempt) local governments from adopting noise control schemes that prescribed different noise levels than state law, *i.e.*, WAC chapter 173-60. The County has not done that. The above-quoted SEPA policy acknowledges the substantive noise standards established by state law as the numeric standards that must be met. However, it also adds that an increase above preexisting ambient noise levels of 5 dBA is a change in noise that may be considered significant for purposes of substantive SEPA authority. To be clear, the County has not adopted a set of noise regulations or an objective or absolute noise standard different than state law – something that is explicitly preempted by RCW 70.107.060(3). From this, the Examiner concludes that the County has substantive SEPA authority to determine that new noise source that will increase noise levels by at least 5 dBA is significant and to require mitigation.

The question of whether the rock crushing operation, as new noise source, is a "significant" change under the County's SEPA policy is largely academic, however, in light of the County's broad discretion and authority to condition this use under CCC 40.520.030(E)(1). Moreover, to meet the CUP standard that the new use will not be "significantly detrimental to the health, safety or general welfare" of people residing in the neighborhood, the applicant may have to limit noise impacts to levels below those established in WAC 173-60-040. CCC 40.520.030(E)(2). In that sense, the Examiner is required to make a subjective determination as to how much noise is too much, and what mitigation measures are required to limit noise to levels that will not be significantly detrimental to the health, safety or general welfare" of people residing in the neighborhood. Toward this end, the County's noise consultant provided a review and critique (Ex. 63) of the applicant's noise reports (Exs. 6, 34 & 47) and recommended the following additional mitigation measures:

- A rock crushing and screening plant will be allowed on the Livingston Mountain Quarry site at the quarry floor elevation of 1060 feet above sea level, only in the area identified as the Area Approved for Crushing and Screening in Figure 1 attached to Exhibit 63.
- A 15 foot high berm must be constructed along the east side of that portion of the approved mining area defined in the final site plan (FSR 2006-00048 – LDC Design Group drawing sheet 4 of 6, Mining Plan, Livingston Mountain Quarry, Clark County, Washington, dated 11/02/06, Revision 04/05/07) which lies directly east of the approved crushing and screening area (see Figure 1 attached to Exhibit 63). The berm shall be constructed within the 40 feet of land immediately east of the east mining boundary.

Noise limiting requirements of local government which differ from those adopted or controlled by the department shall be invalid unless first approved by the department.

- The crushing/screening operations shall follow behind the mining operations that occur within the approved equipment area shown in Figure 1 attached to Exhibit 63 such that the crushing and screening equipment is always placed no more than 175 feet from the base of the east high wall formed by mining operations in that area.

According to the County's' noise consultant, these conditions, when added to all of the mitigation measures proposed by the applicant and included in the proposal, should limit noise increases to no more than 10 dBA above current ambient levels as measured at neighboring residential property lines. Staff accepted these mitigation measures and recommended them as Conditions H-3, A-12 and H-4 respectively (Ex. 64). The applicant objected to the 1,060 foot level as the maximum depth of mining activity because the mine's reclamation permit covers excavations as deep as the 1,000 foot level above mean sea level (Ex. 68). The reclamation plans are in the record (Ex. 70) as is a comment from the Department of Natural Resources indicating that the mine may not have authority to go as deep as the 1,000 foot level, even though the reclamation permit covers excavations that deep (Ex. 71). It appears that the site plans submitted in 2002 and approved in the 2003 site plan decision show bottom contours at the 1,060 foot level. The applicant's sound engineer then proposed the following additional conditions:

- The loading of trucks shall only be done with an excavator.
- A residential quality muffler and an acoustical louver shall be installed over the existing radiator air opening of the excavator(s) used on site.
- Any use of diesel electric generators on site to operate the equipment shall use full enclosures to minimize noise output.

Staff accepted these mitigation measures and recommended them as Conditions H-5, H-6 and H-7 respectively (Ex. 64). The applicant generally agreed with staff's approach, but asked for the option of using different mitigation measures in the future that also could meet the objective noise standards and proposed two conditions (H-9 & H-10) to accomplish this goal (Ex. 68). Staff generally accepted the applicant's proposal for flexibility on noise mitigation, but recommended further refinement of the conditions (Ex. 69). In staff's view, a periodic noise monitoring program was a good way to ensure that conditions of approval were met but suggested the following elements be included in any such program:

- The county and the applicant choose an independent consultant to take noise measurements and submit the results to both the county and applicant.
- The applicant shall pay for the cost of all monitoring, reporting and noise analysis.
- The applicable noise standards are the maximum permissible environmental noise levels set forth in WAC 173-60-040 or ambient + 9 dBA, which ever is less.
- If the results from the noise monitoring indicate standards in Condition H-9 are not met, then all mining and rock crushing operations shall cease until additional mitigation measures are implemented that do achieve the standards.

The applicant's sound engineer requested a modification to proposed Condition H-5, which required that all truck loading be done with an excavator. Mr. Duple suggested that loading by any sort of machine was acceptable with the "right size bucket" (Ex. 68, attachment A). Staff was in general agreement with this suggestion so long as the bucket size was clarified (Ex. 69).

As a preliminary matter, the applicant suggests that the approved site plan elevations, which show mining down to the 1,060 foot level, were in error and that the county can "clarify," *i.e.*, change, the maximum mine depth to the 1,000 foot level through this CUP process (Exs. 68 & 73). The Examiner disagrees with that view of the scope of his authority in this CUP proceeding. It does not appear that the present CUP application includes a request to also amend the underlying site plan to increase the depth of the mine from the 1,060 foot level down to the 1,000 foot level. To the extent that the applicant now seeks to amend the 2003 site plan approval in that way, that request was not made as part of this application, nor did the county's notice advise the public that maximum mine depth was at issue. As such, the maximum operational depth of this mine is the 1,060 foot elevation, and staff's and the public's evaluation of the impacts from the proposed crusher are predicated on the assumption that the maximum depth of the mine will extend down to the 1,060 foot level. There are other ways the applicant can amend that portion of the site plan, but this proceeding currently is not one of them.

The following noise standards have been implicated in this matter:

- The applicable objective and quantitative noise standards set forth in WAC 173-60-040;
- The subjective "not significantly detrimental to the welfare of people residing in the area" standard in CCC 40.520.030(E)(2); and/or
- The SEPA policy in CCC 40.570.080(C)(3)(g) that raises the presumption that a new source that increases noise more than 5 dBA above current ambient is a significant impact that needs to be mitigated.

The applicant (Ex. 73) and staff (Exs. 61, 64 & 69) generally appear to agree that the applicable noise standards are those in WAC 173-60-040 but no more than a 10 dBA increase over current (pre-crusher) ambient noise levels. Quite clearly, the subjective CUP standard cannot require noise levels that are quieter than current ambient. The County's SEPA policy simply raises the presumption that a new noise source 5 dBA or greater than ambient might be significant. While this is a resource zone and presumed to be suitable and available for a host of resources uses – many of which produce loud noises – the sky is not the limit with regard to noise, especially in light of the many rural residents surrounding the mine site who have participated in this proceeding.

In determining what is a significantly detrimental impact under CCC 40.520.030(E)(2), the Examiner must take into consideration the underlying resource zone and the extractive purposes for which that zone was established. In that light, the 5 dBA increase threshold in CCC 40.570.080(C)(3)(g) might be appropriate in an urban or residential zone, but is too restrictive in the FR-80 zone with a Surface Mine overlay. Instead, a threshold increase of 10 dBA above current ambient is more appropriate when tied to the state standards in WAC 173-60-040. From this, the Examiner finds that the appropriate noise standard is the applicable limit in WAC 173-60-040 or an increase of up to 10 dBA above current ambient, which ever is less. Moreover, it is appropriate that there be a monitoring program to ensure compliance, the generation of baseline data that includes current ambient (without mining or crushing operations) and noise data under operational conditions. These measurements shall be taken at the subject site's east and south property lines and at the existing houses east of the site. See Condition H-9. This information will be important should the applicant seek in the future to change the conditions or mitigation related to noise. See Condition H-2.

ARCHAEOLOGY:

The Archaeological Review Coordinator made a site visit on July 20, 2007 and conducted a pedestrian survey of the area using meandering transects to determine whether or not additional archaeological work would be necessary prior to the installation of the crusher (Ex. 6). No archaeological materials were discovered. Therefore, additional archaeological investigation at the Livingston Mountain Quarry site is not warranted. The archaeological predetermination conducted in 1999 (ARC99-018) by Archaeological Services of Clark County had a negative finding and recommended no further work. The Examiner concurs with the recommendations of the 1999 predetermination, and no further archaeological investigation is required.

HABITAT:

A riparian Habitat Conservation Zone (HCZ) is located on the subject parcel. The riparian designation is associated with a tributary of Matney Creek and is a Department of Natural Resources (DNR) type Ns (non-fish bearing, seasonal) watercourse in this area. According to the Habitat Conservation Ordinance, a DNR type Ns watercourse requires a 75-foot riparian HCZ. CCC 40.440.010(C)(a). The HCZ extends outward from the ordinary high water mark 75 feet, or to the edge of the existing 100-year floodplain, whichever is greater. However, according to the Preliminary Site Plan Review for Livingston Mountain Quarry (PSR2002-00044) approved on February 25, 2003, the applicant is vested with a 150-foot Riparian HCZ. Also, according to the original Preliminary Site Plan Review for Livingston Mountain Quarry (PSR2002-00044) and the associated SEPA Determination of Non-Significance, the applicant is required to maintain the 150-foot Riparian HCZ for protection of the drainage-contributing basin of this type Ns stream. The applicant surveyed the type Ns stream and associated 150-foot Riparian HCZ on the site plan and installed orange construction fencing along nearly the entire perimeter of the Riparian HCZ in the field. The only section of the 150-foot Riparian HCZ that does not have orange construction fencing is along the southwest portion where a road bisects the Riparian HCZ for approximately 86 feet. On this basis, staff concluded that the proposed site plan adequately protects the 150-foot Riparian HCZ and that it conforms to the original Preliminary Site Plan approval and the County's Habitat Conservation Ordinance. Based on these measures and staff's favorable recommendation, the Examiner concludes that the County's HCZ requirements are met.

TRANSPORTATION:

Finding 1 (Circulation Plan) – The purpose of a circulation plan is to ensure adequate cross circulation in a manner that allows subsequent developments to meet these standards and to provide a mechanism for integrating various streets into an efficient and safe transportation network. The evidence submitted with this application shows that no additional cross circulation roads are feasible within or near this development that could reasonably accomplish this purpose.

Finding 2 (Roads) – This site accesses NE Highland Meadows Drive. This road meets the offsite roadway width requirements of CCC 40.350.030(B)(6)(b)(1) & (2). However, the applicant should be aware that, per CCC 40.350.030(B)(6)(a), this development may be denied where off-site road conditions are inadequate to provide a minimum level of service as specified in the Concurrency Ordinance (CCC 40.350.020) or a significant traffic or safety hazard would be caused or materially aggravated by the proposed development. The developer may voluntarily agree to mitigate such direct impacts under RCW 82.02.020.

Finding 3 (Access) – There is an existing 60-foot access easement from the site to NE Highland Meadows Drive. The width of the paved drive is approximately 16 feet. Due to the

proposed increase in traffic volumes (to 190 vehicles per day) and the potential back-up onto NE Highlands Drive, the access road shall be widened to at least 24 feet to allow two-way truck traffic from NE Highland Meadows Drive to the site. This is also a SEPA mitigation measure. See Condition A-6.

Finding 4 (Sight Distance) – This site is to access NE Highland Meadows Drive. Since this road does not have a posted speed limit, the speed limit is statutory at 50 MPH, per CCC 40.350.030(B)(8) and RCW 46.61.415. Table 40.350.030-11 of the Transportation Standards requires a sight distance of 500 feet in both directions. This sight distance is unavailable on NE Highlands Meadows Drive at the access point, but the issue was previously resolved by a Road Modification (EVR2006-00125).

The applicant's consultant, Kittelson & Associates, however, noted a stopping sight distance deficiency for east-bound traffic on NE 53rd Street approaching NE 262nd Avenue (Ex. 47, attachment D). This report identified brush and foliage growing along the roadside as the cause of the sight distance deficiency and recommended removal of the brush in order to achieve County sight distance standards. The applicant indicates that it is in negotiation with the owner of the land where the brush is growing, but that it has not yet consummated an agreement for removing the brush (Ex. 73). The applicant objects to any condition that requires the removal of the brush because it places it somewhat at the mercy of the abutting property owner. The applicant claims that the County cannot force it in this way to remedy an existing transportation deficiency. As with many of the other transportation deficiencies that have been documented in this proposal, this one becomes a significant traffic safety hazard when loaded rock trucks are involved. In other words, an existing and minor sight distance deficiency becomes a significant traffic safety hazard when there is a chance of an accident with loaded rock trucks, especially given the volume of trucks now requested. Thus, absent the mitigation that staff has identified to remedy this significant traffic safety hazard, this permit would be denied pursuant to CCC 40.350.030(B)(6). For that reason, the Examiner imposes a condition that the applicant remedy the sight distance deficiency or obtain a Road Modification through a post-decision review process. See Condition A-10.

TRANSPORTATION CONCURRENCY:

Finding 1.(Trip Generation) – The applicant is proposing to add rock crushing to the current quarry operations. The applicant's traffic study has performed manual traffic counts at the intersection of NE 262nd Avenue/NE Bradford Road. These counts showed that the am peak hour occurred from 7:10 a.m. – 8:10 a.m. and the pm peak hour occurred from 4:45 p.m. – 5:45 p.m. Also, the Livingston Mountain Quarry was not in operation at that time; therefore, no vehicles were turning into or out of the driveway during the counts. The applicant provided the following trip generation estimates, which included both existing and proposed operations:

Scenario	Average Daily Traffic (ADT)	AM Peak Hour (8:00 - 9:00)			PM Peak Hour (3:00 - 4:00)		
		Total	In	Out	Total	In	Out
Minimum	36	6	3	3	6	3	3
Average	106	14	7	7	14	7	7
Maximum	160	20	10	10	20	10	10

The traffic study indicates that these are total combined trip estimates for all mine operations combined, which includes quarry operation trips of 32 ADT (16 trucks in and 16 trucks out), plus the increase in trips attributable to the crusher. The applicant's study also indicates that the maximum trip generation estimate was used for this impact analysis to represent the

“worst-case scenario.” This maximum trip generation estimate assumed that all ADT were heavy vehicles.

The applicant apparently provided to staff further information to evaluate an increase in trip generation and the impacts of those trips, along the identified main haul route. This additional evaluation appears to have been the result of a request by the applicant to increase the maximum ADT volume from 160 to 190 ADT. Staff reviewed that new information and determined that the request for additional trip volume (to a maximum of 190 ADT) from the site still complied with the County's Concurrency Ordinance and safety standards (Ex. 61). However, the turning movement deficiency that the applicant identified at the intersection of NE 53rd Street and SR 500 shall be mitigated by the applicant's construction of a turn lane before vehicle trips at this site can exceed the 32 ADT that are currently allowed. In other words, the total traffic volume generated by the site shall not exceed 32 ADT (16 loaded trucks per day) until the applicant completes construction of the turning lane mitigation at the intersection of NE 53rd Street and SR 500, at which point, total traffic volume may be as much as a maximum of 190 ADT (95 loaded trucks per day). See Conditions A-5 & G-5. The Examiner agrees with this recommendation.

Finding 2 (Site Access) - Traffic conditions are usually expressed using a scale that quantifies the ability of a facility to meet the needs and expectations of the driver. This scale is graded from A to F and is referred to as level-of-service (LOS). A driver who experiences a LOS A condition would expect little delay. A driver who experiences an LOS E condition would expect significant delay, but the traffic facility would be just within its capacity to serve the needs of the driver. A driver who experiences an LOS F condition would expect significant delay with traffic demand exceeding the capacity of the facility with the result being growing queues of traffic.

Level of service (LOS) standards are not applicable to access points that are not regionally significant; however, the LOS analysis provides information on the potential congestion and safety problems that may occur at these locations. The applicant's traffic study analyzed the following site access location and street intersection:

- Livingston Mountain Quarry access onto NE Highland Meadows Drive
- NE 262nd Avenue/NE Bradford Road.

The applicant's study shows that the site access for Livingston Mountain Quarry will operate with minimum delays at an estimated LOS A over the 3-year build-out period. The study also shows that the stop controlled intersection of NE 262nd Avenue/NE Bradford Road will operate at an estimated LOS A over the 3-year build-out period. The applicant's traffic study shows that the LOS was evaluated at peak hour traffic conditions in existing and build-out scenarios, meeting the requirements as outlined in CCC 40.350.020(G)(1)(d) & (f). Based on staff's favorable review (Exs. 32 & 61), the Examiner concurs with the traffic study's findings on this issue.

Finding 3 (Concurrency Compliance) – The applicant submitted a traffic study for this proposal in accordance with CCC 40.350.020(D). The proposed development is required to meet the standards established in CCC 41.350.020(G) for corridors and intersections of regional significance. The applicant's traffic study indicates that operating levels during peak hours result in a LOS better than the minimum allowable LOS E, which meets the level of service requirements in CCC 40.350.020(G)(1)(d). Although this County requirement is met, the unsignalized, stop controlled intersection of NE 262nd Avenue/NE Bradford Road is not identified as a regionally significant intersection and is excluded from this County requirement.

Finding 4 (Safety, Turn Lane Warrants) - Where applicable, a traffic study shall address turn lane warrant analysis, accident analysis and any other issues associated with highway safety. Mitigation for off-site safety deficiencies may only be a condition of approval on development in accordance with CCC 40.350.030(B)(6), which provides that "nothing in this section shall be construed to preclude denial of a proposed development where off-site road conditions are inadequate to provide a minimum level of service as specified in Section 40.350.020 or a significant traffic or safety hazard would be caused or materially aggravated by the proposed development; provided, that the applicant may voluntarily agree to mitigate such direct impacts in accordance with the provisions of RCW 82.02.020."

Turn lane warrants are evaluated at unsignalized intersections to determine if a separate left or right turn lane is needed on the uncontrolled roadway. The applicant's traffic study reviewed the site access for turn lane warrants and found that with the low traffic volumes, turn lanes would not be warranted at the studied intersections. County staff agreed with the traffic study findings, and on that basis so too does the Examiner.

Finding 5 (Safety, Historical Accident Situation) – The applicant's traffic study shows there is no accident history reported for the study intersections. County staff verified the accident history and concurred with the traffic study findings, and for that reason recommended no further analysis for safety mitigation. The Examiner agrees with that conclusion.

Finding 6 (Safety, Roadway Speeds) – County staff reviewed the accident history along the Livingston Mountain Quarry main haul route, (NE 53rd Street/NE Bradford Road and NE 262nd Avenue/NE Highland Drive), to determine if mitigation for excessive rock truck speeds is justified. The accident history along the main haul corridor shows the accidents to be single vehicle accidents, rear end and side/angle type collisions.

Based on staff's review it appears that these accidents were due to inattentive drivers, which cannot be mitigated with speed management improvements. For example, along the NE 53rd Street/NE Bradford Road corridor, there were 19 accidents reported in the 6 years between January 2001 and March 2007. Of these accidents, 9 were due to drivers overcorrecting vehicle steer and ending up in the ditch and 4 were side/angle collisions, where drivers were performing illegal passing maneuvers, crossing over into the oncoming traffic lane, or running stop signs. Two accidents were due to drivers avoiding animals in the roadway; 3 were rear end collisions due to drivers backing up in the travel lane, and one collision was due to driver distraction reaching for a drink. Review of the NE 262nd Avenue corridor revealed only one reported accident. This accident was in the intersection of NE 262nd Avenue/NE Bradford Road and was due to a driver overcorrecting a vehicle steer.

Review of accident history along the NE 53rd Street/NE Bradford Road and NE 262nd Avenue/NE Highland Drive corridors over the last 6 years did not show any indication of heavy truck vehicle speed related issues. Furthermore, the accident history did not show any involvement of heavy truck vehicles. Staff concluded there was no basis or nexus upon which to require mitigation for possible speeding because of quarry related operations. The Examiner agrees that a sufficient evidentiary basis and thus nexus is lacking and therefore no additional mitigation for excessive truck speed is required.

Finding 7 (Safety, Road Adequacy) - The Livingston Mountain Quarry was previously reviewed by the County under PSR2002-00044 and approved February 25, 2003. The site plan decision approved the quarry to operate and generate a maximum of 32 ADT (a maximum of 16 loaded truck trips out each day). The applicant is now proposing to expand the quarry

operations, and has requested approval to generate up to 190 ADT under the "maximum" scenario. This would be an approximately 500% increase in trip generation, which would materially aggravate roadway wear. The applicant submitted a Preliminary Flexible Pavement Evaluation, prepared by Columbia West Engineering, Inc. dated August 31, 2007, which included the extraction of asphalt core samples from NE 53rd Street and NE 262nd Avenue and revealed the following results:

Asphalt Coring Location	Field Data	
	Measured Asphalt thickness, inches.	Measured Aggregate Base thickness, inches.
NE 53 rd Street	7.5	4
NE 262 nd Avenue	3.5	4

This evaluation concluded that the existing pavement section is adequate today, but the continual and increased heavy truck traffic will significantly and rapidly reduce the anticipated life of the pavement structure. This evaluation also stated that maintenance and repair should be a part of the planned mitigation for serviceability requirements. Structural overlays could be considered as a long-term mitigation plan to maintain or increase serviceability. County Operations Staff performed an analysis based on the proposed additional "loaded" truck traffic and identified the need for a structural overlay on NE 262nd Avenue and NE 53rd Street. County Staff concurred with the applicant's conclusions on this issue, and so too does the Examiner.

To mitigate for the pavement wear on NE 262nd Avenue and NE 53rd Street, the applicant should volunteer a yearly maintenance payment based on the tonnage hauled from the quarry. The first year increment of the maintenance cost shall be paid as a lump sum of \$65,400 to Clark County Public Works prior to starting the crusher operation. Subsequent payments of \$26,400 per year shall be paid to Clark County Public Works by December 31st of each year for five years. The initial lump sum payment plus the five subsequent payments shall equal a total of \$197,400. See Conditions A-3 & G-4. The quarry production shall not exceed a maximum of 95 loaded truck trips per day (34,675 loaded truck trips per year). The applicant shall enter into the Agreement for Pavement Improvements prior to the start of the proposed crusher operation. Upon entering into the Agreement for Pavement Improvements, all previously approved or accepted agreements from PRS2002-00044 related to road improvements shall terminate.

The applicant requested a credit of \$10,000 against the \$197,400 total that is required to mitigate the impacts this use will have on the condition of the primary haul route, as the amount previously paid for road mitigation under the 2003 site plan approval. The 2003 decision required the applicant to pay \$40,000 as the amount needed to compensate the County for road maintenance and repair to NE 262nd Avenue and NE 53rd Street (the main haul route) necessitated by the mine traffic. Since the issuance of the staff report for the site plan application in 2002, County Operations staff has performed the needed maintenance and repair work to NE 262nd Avenue in 2003 and to NE 53rd Street in 2004 as part of the County's Pavement Overlay Program as anticipated in the earlier staff report. Because the \$10,000 was paid to offset pavement degradation that already occurred in 2007, staff recommends denying the applicant's request for a \$10,000 credit. The Examiner finds that the applicant is not entitled to credit for the amount already spent. The record amply supports the conclusion that the fully loaded rock trucks this use will generate will have a devastating effect on the pavement integrity and longevity. The County cannot subsidize a single industry or road user

such as this one, but must require new development to pay the cost of public services and facilities needed to serve new development. As such, the applicant shall pay \$197,400 for road maintenance and repair with no credit for the \$10,000 previously paid.

Finding 8 (Safety, Signs) - The applicant's traffic study identified the need for a side road warning sign near the intersection of NE 53rd Street/NE Bradford Road/NE 262nd Avenue, and staff concurred with that conclusion. Moreover, the 500% increase in truck traffic that will result from this permit may create the need for additional warning and/or advisory signs necessary along the main haul routes for safety purposes. Therefore, the applicant shall submit a signing and striping plan for County review and approval. This plan shall include all necessary signs along the main haul route on NE Highland Meadows Drive, NE 262nd Avenue, NE Bradford Road and NE 53rd Street. See Transportation Concurrency Condition A-4.

Finding 9 (Safety, Turning Movements) - The applicant submitted a traffic study that analyzed intersections of regional significance within a one mile radius of the site. Staff determined that this analysis demonstrated concurrency compliance. However, the one-mile radius study area for concurrency did not apply to safety analysis. Staff identified a safety deficiency at the intersection of NE 53rd Street/SR 500, and preliminary evaluations showed that the area for westbound right-turn truck turning movements might be deficient. According to staff, the turning movement deficiency plus the sight distance deficiencies for south-bound traffic on SR 500 created a need for further safety analysis and mitigation by the applicant. Based on staff's recommendation, the applicant shall analyze this intersection for safety in all turning movements, *i.e.* if the truck and trailer turning movements cannot be accomplished without using the SR 500 southbound lane, the applicant shall submit an intersection design for mitigation. This design shall show that the truck and trailer turning movements can be accomplished without turning into the oncoming SR 500 southbound traffic. This intersection safety analysis should analyze and identify all other problem movements and design mitigation for all deficient movements in this intersection. This design shall be submitted for review and approval. See Conditions A-2, A-5 & G-5.

The applicant has since indicated that negotiations with owners of property around the deficient intersections for additional right-of-way are in progress. The applicant also indicates that additional right-of-way is necessary to construct the required turning movement mitigation at the intersection of NE 53rd Street and SR 500. Until the applicant has constructed the turning movement mitigation required at this intersection, the current quarry operation and the proposed rock crushing operation will be limited to a maximum of 32 ADT (16 loaded trucks per day). See Conditions A-2, A-5 & G-5.

STORMWATER:

Finding 1 (Applicability) – The County's Stormwater and Erosion Control Ordinance CCC chapter 40.380 applies to development or redevelopment activities that:

- Result in 5,000 sf or more of new impervious area within the rural area
- Result in 2,000 sf or more of new impervious area within the urban area
- The addition or replacement of more than 1,000 sf of impervious surface for any of the development activities or redevelopment listed in CCC 40.380.040(B)(7)(a) and 40.380.040(B)(7)(b), building areas excluded
- The platting of single-family residential subdivisions in an urban area
- If redevelopment results in 5,000 sf or more of replaced impervious surface, then the provisions of CCC 40.380.040(B)(3) apply.
- Drainage projects

- All land disturbing activities except those exempt under CCC 40.380.030(A). Staff initially took the view that the ordinance was triggered because the proposal would create 5,000 sf or more of new impervious surface in the rural area. However, the crushing equipment does not meet the definition of "impervious surfaces" under CCC 40.100.070, and the footprint for the equipment is only 4,836 sf, which is less than the triggering threshold.

While the pad for the crusher could qualify as an "impervious surface" under CCC 40.100.070, the area still appears to be smaller than the threshold 5,000 sf. Moreover, it appears that, regardless of the surface area of the crusher pad, it is all within the mine site covered by Department of Natural Resources Permit # 70-013041, which covers the mining operation and all related onsite operations. For all of these reasons, the Examiner concludes that the crusher operation either is not independently subject to the stormwater regulations, and even if it is, this operation already complies with these requirements by virtue of its having obtained a state permit.

FIRE PROTECTION:

Finding 1 (Fire Marshal Review) – This application was reviewed by the Fire Marshal's Office, which provided general comments on the proposal. The applicant shall comply with or otherwise fulfill the conditions suggested by the Fire Marshal's Office.

Finding 2 (Storage tanks) – LPG and combustible liquid storage tanks on this site may require permits and approval from the Fire Marshal. See condition G-3.

WATER & SEWER SERVICE:

Finding 1 - There is no public water or sanitary sewer on site or proposed, and no wells are proposed. Water will be delivered on site for operational and potable uses.

IMPACT FEES:

Finding 1 (Traffic Impact Fees) – The proposed development will have an impact on traffic in the area, and is subject to Traffic Impact Fees (TIF) in accordance with CCC chapters 40.610 & 40.620. The site is located within the Rural II TIF Sub-area with a fee rate of \$72 per new trip. These fees shall be paid prior to final site plan approval. See Condition A-9.

SEPA DETERMINATION

Based on the application materials and agency comments, staff determined that there were no probable significant adverse environmental impacts associated with this proposal that could not be avoided or mitigated through the conditions of approval listed below. Accordingly, the County, as the lead agency, determined that an environmental impact statement was not needed. The County issued and published its Determination of Nonsignificance for this project on October 17, 2007. No appeals and one timely comment were received by the October 31, 2007 deadline (Ex. 15) from the Washington Department of Ecology, which does not warrant a separate response.

Through the course evidence adduced during the public proceeding, it appears that a significant noise impact from this proposed crushing operation is likely, which warrants mitigating conditions. Moreover, the applicant now requests a significantly increased number of additional vehicle trips per day, up to 190 ADT associated with the crushing operation, which equates to 95 truck trips in and 95 loaded truck trips out of the site each day. These impacts could rise to the level of significance unless mitigated as follows:

Noise Mitigation: The applicant shall construct a 15-foot high berm along the east side of that portion of the approved mining area defined in the final site plan (FSR 2006-00048 – LDC Design Group drawing sheet 4 of 6, Mining Plan, Livingston Mountain Quarry, Clark County, Washington, dated 11/02/06, Revision 04/05/07) which lies directly east of the approved crushing and screening area (see Figure 1 attached to Exhibit 63). The berm shall be constructed within the 40 feet of land immediately east of the east mining boundary.

Traffic Safety:

1) The applicant shall analyze the intersection of NE 53rd Street and SR 500 for safety in all turning movements. If turning movements are found to be deficient in any respect, the applicant shall submit an intersection design that includes improvements for all deficient movements. This design shall show that the truck and trailer turning movements can be accomplished without turning into the oncoming SR 500 and/or NE 53rd Street traffic. This design shall be submitted to the County and Washington Department of Transportation for review and approval. The applicant shall construct the turning movement mitigation required at the intersection of NE 53rd Street and SR 500 as identified in the mitigating design. These turning movement mitigations shall be constructed prior to the trip generation of the development increasing above 32 ADT (16 loaded trucks per day) to the requested maximum of 190 ADT (95 loaded trucks per day). Until the turning movement mitigation at the intersection of NE 53rd and SR 500 is constructed and accepted by the State and County, the current quarry operation and crusher operation shall be limited to a maximum total of 32 ADT (16 loaded trucks per day).

2) The applicant shall widen and pave the access road from NE Highland Meadows Drive to the site a minimum of 24 feet to allow for two-way truck traffic ingress and egress.

With the imposition of these conditions, the Examiner hereby concludes that the impact of this project is not significant and issues a final Mitigated Determination of Nonsignificance (MDNS).

V. Decision and Conditions:

Based on the foregoing findings and except as conditioned below, this application is approved in general conformance with the applicant's preliminary plans (Ex. 5) and the related plans, reports and proposal (Ex. 6), as subsequently amended during the hearing process. The approval is granted subject to the requirements that the applicant, owner or subsequent operator (the "applicant") shall comply with all applicable code provisions, laws and standards, all conditions of the 2003 site plan approval for a surface mine (APL2003-0006 & PSR2002-00044), which are incorporated herein and made a part hereof by this reference, and the following additional conditions of this permit approval. The 2003 Site Plan conditions shall apply and be binding on this permit except as specifically modified by this permit. Those conditions, plus the following conditions of permit approval shall be interpreted and implemented consistently with the foregoing findings.

**A Final Construction/Site Plan Review
Review & Approval Authority: Development Engineering**

Prior to construction, a Final Construction/Site Plan shall be submitted for review and approved, consistent with the approved preliminary plan and the following conditions of approval:

A-1 Final Site Plan – The applicant shall submit and obtain County approval of a final site plan in conformance with CCC chapter 40.350 plus the following additional requirement:

- a. Archaeology - A note shall be placed on the face of the final site plan stating that: "If any cultural resources and/or human remains are discovered in the course of undertaking the development activity, the Office of Archaeology and Historic Preservation in Olympia and Clark County Community Development shall be notified. Failure to comply with these State requirements may constitute a Class C Felony, subject to imprisonment and/or fines."
- A-2 Final Transportation Plan/Off Site (Concurrency)** – The applicant shall place a note on the final site plan that 190 daily heavy vehicle trips (95 loaded truck trips per day) shall not be exceeded by the quarry operation and crusher operation combined. The note shall also state that, until the turning movement mitigation at the intersection of NE 53rd Street and SR 500 is constructed and accepted by the State and County, the total trip generation from the mine and crusher operation shall not exceed a total of 32 daily heavy vehicle trips (16 loaded truck trips per day).
- A-3 Final Transportation Plan/Off Site (Concurrency)** – The applicant shall voluntarily enter into an Agreement for Pavement Improvements with Clark County regarding a yearly road maintenance payment based on the structural overlay cost for a 15-year road life design for the identified primary haul route, *i.e.*, NE 262nd Avenue and NE 53rd Street. The applicant shall enter into the Agreement for Pavement Improvements prior to the start of the proposed crusher operation. Upon entering into the Agreement for Pavement Improvements, all previously approved or accepted agreements from PSR2002-00044 shall terminate and be replaced by the new Agreement.
- A-4 Final Transportation Plan/Off Site (Concurrency)** – The applicant shall submit a signing and striping plan for review and approval. This plan shall include all necessary signage along the main haul route on NE Highland Meadows Drive, NE 262nd Avenue, NE Bradford Road and NE 53rd Street. The applicant shall obtain a Work Order with Clark County to reimburse the County for the signing and striping changes needed at this intersection.
- A-5 Final Transportation Plan/Off Site (Concurrency)** – The applicant shall analyze the intersection of NE 53rd Street and SR 500 for safety in all turning movements. If turning movements are found to be deficient in any respect, the applicant shall submit an intersection design that includes improvements for all deficient movements. This design shall show that the truck and trailer turning movements can be accomplished without turning into the oncoming SR 500 and/or NE 53rd Street traffic. This design shall be submitted to the County and Washington Department of Transportation for review and approval.
- A-6 Final Transportation Plan/On-Site** - The applicant shall submit and obtain County approval of a final transportation design in conformance with CCC chapter 40.350 and the following additional requirement:
- a. The applicant shall widen and pave the access road from NE Highland Meadows Drive to the site a minimum of 24 feet to allow for two-way truck traffic ingress and egress.
- A-7 Transportation: Traffic Control Plan:** Prior to issuance of any building or grading permits for the development site, the applicant shall obtain written approval from Clark County Department of Public Works of the applicant's Traffic Control Plan (TCP). The TCP shall govern all work within or impacting the public transportation system.

- A-8 Erosion Control Plan** - The applicant shall submit and obtain County approval of a final erosion control plan designed in accordance with CCC chapter 40.380.
- A-9 Impact Fees** – Prior to issuance of final site plan approval, the applicant shall pay Traffic Impact fees to the Clark County Building Department in the amount of \$7,833.60.
- A-10 Sight Distance** – The applicant shall remove (or obtain the removal of) the brush along NE 53rd Street that currently obstructs sight distance for vehicles traveling east-bound along NE 53rd Street and prevents achieving the minimum sight distance of 298 feet.
- A-11 Warning Signs** – For vehicles traveling east-bound on NE 53rd Street approaching NE 262nd Avenue, the applicant shall install a W2-2L “Side Road” warning sign plus a supplemental Advance Street Name (W16-8) plaque identifying NE 262nd Avenue and a Distance Ahead (W16-2) plaque.
- A-12 Noise** – The applicant shall construct a 15-foot high berm along the east side of that portion of the approved mining area defined in the final site plan (FSR 2006-00048 – LDC Design Group drawing sheet 4 of 6, Mining Plan, Livingston Mountain Quarry, Clark County, Washington, dated 11/02/06, Revision 04/05/07) which lies directly east of the approved crushing and screening area (see Figure 1 attached to Exhibit 63). The berm shall be constructed within the 40 feet of land immediately east of the east mining boundary.

**B Prior to Construction of Development
Review & Approval Authority: Development Inspection**

Prior to construction, the following conditions shall be met:

- B-1 Pre-Construction Conference** - Prior to construction or issuance of any grading or building permits, a pre-construction conference shall be held with the County.
- B-2 Erosion Control** - Prior to construction, erosion/sediment controls shall be in place. Sediment-control-facilities shall be installed that will prevent any silt from entering infiltration systems. Sediment controls shall be in place during construction and until all disturbed areas are stabilized and any erosion potential no longer exists.
- B-3 Erosion Control** - Erosion control facilities shall not be removed without County approval.

**G Development Review Timelines & Advisory Information
Review & Approval Authority: None - Advisory to Applicant**

- G-1 Site Plans and Other Land Use Approvals** - Within 5 years of this preliminary plan approval, the applicant shall submit a Fully Complete application for a final site plan. Otherwise, the preliminary site plan approval shall automatically expire and be null and void.
- G-2 Department of Ecology Permit for Construction Stormwater** - A permit from the Department of Ecology (DOE) is required if:

- The construction project disturbs one or more acres of land through clearing, grading, excavating, or stockpiling of fill material; and
- There is a possibility that stormwater could run off the development site during construction and into surface waters or conveyance systems leading to surface waters of the state.

The cumulative acreage of the entire project, whether in a single or in multiple phases, will count toward the one acre threshold. This applies even if the applicant is responsible for only a small portion (less than one acre) of the larger project planned over time. The applicant shall Contact the DOE for further information.

- G-3 Fire Protection** – LPG and combustible liquid storage tanks may require permits and approval from the Fire Marshall. If necessary, they must be obtained prior to use or operation.
- G-4 Transportation Concurrency** – The applicant shall pay a lump sum of \$65,400 to Clark County Public Works prior to starting the crusher operation as an initial payment on the Agreement for Pavement Improvements required in Condition A-3. Subsequent payments of \$26,400 shall be paid to Clark County Public Works by December 31st of each year for the next five years. The first lump sum payment and the five subsequent annual payments shall equal \$197,400. The quarry production shall not exceed a maximum of 95 loaded truck trips per day (190 total truck trips per day, and 34,675 loaded truck trips per year). The applicant shall enter into the Agreement for Pavement Improvements prior to the start of the proposed crusher operation. Upon entering into the Agreement for Pavement Improvements, all previously approved or accepted agreements from PSR2002-00044 shall terminate and be replaced by the new Agreement.
- G-5 Transportation Concurrency** – The applicant shall construct the turning movement mitigation required at the intersection of NE 53rd Street and SR 500 as identified in the mitigating design. These turning movement mitigations shall be constructed prior to the trip generation of the development increasing above 32 ADT (16 loaded trucks per day) to the requested maximum of 190 ADT (95 loaded trucks per day). Until the turning movement mitigation at the intersection of NE 53rd and SR 500 is constructed and accepted by the State and County, the current quarry operation and crusher operation shall be limited to a maximum total of 32 ADT (16 loaded trucks per day).

H Post Development and Operational Requirements

- H-1** Placement of the crusher on site shall be allowed as soon as all conditions required for crusher operation are met first. At that point, the crusher will become part of the overall mining operation that will be subject to annual reviews. This modifies Condition B-15 from the Hearings Examiner's Final Order APL2003-00006. See Land Use Finding 5.
- H-2** The rock crushing operation approved by this decision shall become part of the larger mining operation, which shall be subject to an annual review following at least each of the first three years of operation of the mine. The annual reviews shall be initiated by the applicant or operator of the mine within 3 months following the mine's first, second and third anniversary of operation. The reviews shall be performed as a Type III procedure, and the mine operator/applicant shall pay the applicable Type III review application fee. The process shall included notice to the operator, owner, near-by property owners and anyone who specifically requests notice. The record of each

annual review shall include any complaints received by the County regarding impacts from any aspect of the mine operation, any home inspection reports, water well reports, noise measurements, and any other relevant evidence related to 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 imposed by PSR 2002-00044, APL20003-00006 and this permit (CUP2007-00013). Conditions related to impacts may be modified, added or deleted as the evidence warrants. The standard for changing conditions imposed on the crusher operation shall remain CCC 40.520.030(E). Additional annual reviews beyond the third year may be required if warranted. See Finding Land Use Finding 5.

- H-3** A rock crushing and screening plant will be allowed on the Livingston Mountain Quarry site at the quarry floor elevation of 1060 feet above sea level, only in the area identified as the Area Approved for Crushing and Screening in Figure 1 attached to Exhibit 63.
- H-4** The crushing/screening operations shall follow behind the mining operations that occur within the approved equipment area shown in Figure 1 attached to Exhibit 63 such that the crushing and screening equipment is always placed no more than 175 feet from the base of the east high wall formed by mining operations in that area.
- H-5** The loading of trucks shall only be done with an excavator. This condition may be modified at an annual review if noise data demonstrates that an alternative method of loading achieves the required noise limits.
- H-6** A residential quality muffler and an acoustical louver shall be installed over the existing radiator air opening of the excavator(s) used on site.
- H-7** Any diesel electric generators used to operate equipment shall be fully enclosed to minimize noise output.
- H-8** The applicant may seek to modify conditions of this permit and/or the site plan at an annual review. To modify conditions related to noise, the applicant must perform a noise monitoring program and submit an acoustical analysis of the resulting data to Clark County for its review identifying different noise mitigation and demonstrating that the standards in Condition H-9 can be met. Sound measurements shall be taken by a suitably qualified independent consultant acceptable to both the applicant and the County, and all data shall be submitted to both the applicant and the County. The applicant shall pay for the cost of all monitoring, reporting and noise analysis. If the results from the noise monitoring indicate that the standard in Condition H-9 is not met, then all mining and rock crushing operations shall cease until additional mitigation measures are implemented that do achieve this standard.
- H-9** Once the crusher is placed on site, the applicant shall take daily readings for the first week of regular operation and then readings on a quarterly basis thereafter and when the crusher is moved to a new location. These readings shall measure noise levels at the east and south property lines and at the two current residences east of the site, if the property owners allow access. Based on the readings, before the applicant begins or resumes crushing operations, the applicant shall implement any mitigation measures necessary to achieve noise levels that do not exceed the applicable limit in WAC 173-60-040 or an increase of up to 10 dBA above current ambient (without crushing), which

ever is less. These measurements shall be taken at the subject site's east and south property lines and at the existing houses east of the site.

Date of Decision: March, 18, 2008.

By: 

Daniel Kearns,
Land Use Hearings Examiner

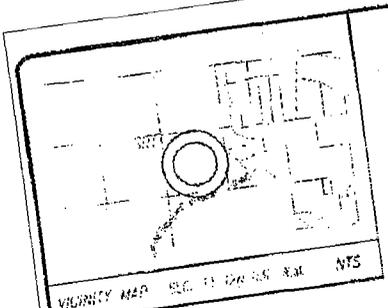
Notice of Appeal Rights

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).



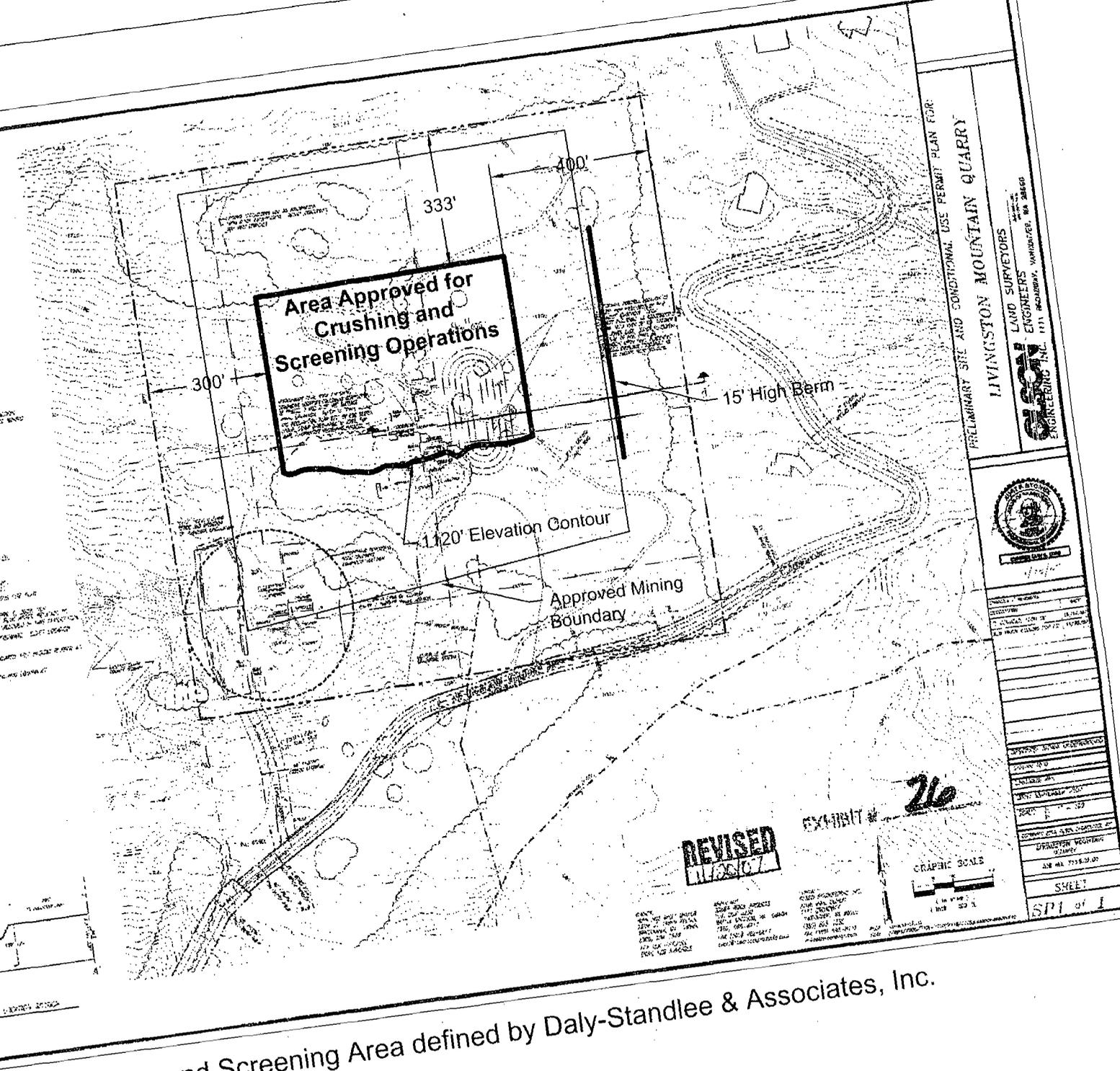
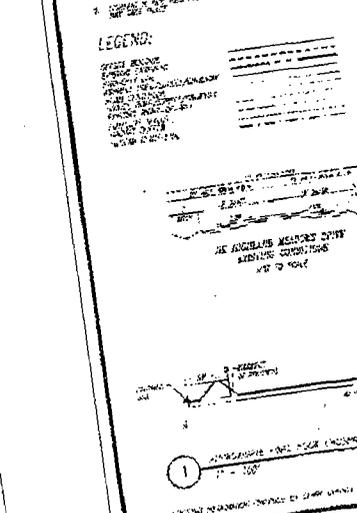
LEGEND

APPROVED MINING BOUNDARY
 APPROVED CRUSHING AND SCREENING AREA
 15' HIGH BERM
 1120' ELEVATION CONTOUR

NOTES

1. THE AREA APPROVED FOR CRUSHING AND SCREENING OPERATIONS IS SHOWN BY A THICK DASHED LINE. THIS AREA IS SUBJECT TO THE FOLLOWING CONDITIONS:

- ALL OPERATIONS SHALL BE CONDUCTED IN ACCORDANCE WITH THE PERMITS AND REGULATIONS OF THE STATE OF MICHIGAN.
- ALL OPERATIONS SHALL BE CONDUCTED IN ACCORDANCE WITH THE PERMITS AND REGULATIONS OF THE FEDERAL BUREAU OF INVESTIGATION.
- ALL OPERATIONS SHALL BE CONDUCTED IN ACCORDANCE WITH THE PERMITS AND REGULATIONS OF THE UNITED STATES DEPARTMENT OF THE INTERIOR.
- ALL OPERATIONS SHALL BE CONDUCTED IN ACCORDANCE WITH THE PERMITS AND REGULATIONS OF THE UNITED STATES DEPARTMENT OF AGRICULTURE.
- ALL OPERATIONS SHALL BE CONDUCTED IN ACCORDANCE WITH THE PERMITS AND REGULATIONS OF THE UNITED STATES DEPARTMENT OF COMMERCE.
- ALL OPERATIONS SHALL BE CONDUCTED IN ACCORDANCE WITH THE PERMITS AND REGULATIONS OF THE UNITED STATES DEPARTMENT OF JUSTICE.
- ALL OPERATIONS SHALL BE CONDUCTED IN ACCORDANCE WITH THE PERMITS AND REGULATIONS OF THE UNITED STATES DEPARTMENT OF LABOR.
- ALL OPERATIONS SHALL BE CONDUCTED IN ACCORDANCE WITH THE PERMITS AND REGULATIONS OF THE UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES.
- ALL OPERATIONS SHALL BE CONDUCTED IN ACCORDANCE WITH THE PERMITS AND REGULATIONS OF THE UNITED STATES DEPARTMENT OF ENERGY.
- ALL OPERATIONS SHALL BE CONDUCTED IN ACCORDANCE WITH THE PERMITS AND REGULATIONS OF THE UNITED STATES DEPARTMENT OF TRANSPORTATION.
- ALL OPERATIONS SHALL BE CONDUCTED IN ACCORDANCE WITH THE PERMITS AND REGULATIONS OF THE UNITED STATES DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES.
- ALL OPERATIONS SHALL BE CONDUCTED IN ACCORDANCE WITH THE PERMITS AND REGULATIONS OF THE UNITED STATES DEPARTMENT OF EDUCATION.
- ALL OPERATIONS SHALL BE CONDUCTED IN ACCORDANCE WITH THE PERMITS AND REGULATIONS OF THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.
- ALL OPERATIONS SHALL BE CONDUCTED IN ACCORDANCE WITH THE PERMITS AND REGULATIONS OF THE UNITED STATES DEPARTMENT OF AGRICULTURE AND FORESTRY.
- ALL OPERATIONS SHALL BE CONDUCTED IN ACCORDANCE WITH THE PERMITS AND REGULATIONS OF THE UNITED STATES DEPARTMENT OF DEFENSE.
- ALL OPERATIONS SHALL BE CONDUCTED IN ACCORDANCE WITH THE PERMITS AND REGULATIONS OF THE UNITED STATES DEPARTMENT OF JUSTICE.
- ALL OPERATIONS SHALL BE CONDUCTED IN ACCORDANCE WITH THE PERMITS AND REGULATIONS OF THE UNITED STATES DEPARTMENT OF LABOR.
- ALL OPERATIONS SHALL BE CONDUCTED IN ACCORDANCE WITH THE PERMITS AND REGULATIONS OF THE UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES.
- ALL OPERATIONS SHALL BE CONDUCTED IN ACCORDANCE WITH THE PERMITS AND REGULATIONS OF THE UNITED STATES DEPARTMENT OF ENERGY.
- ALL OPERATIONS SHALL BE CONDUCTED IN ACCORDANCE WITH THE PERMITS AND REGULATIONS OF THE UNITED STATES DEPARTMENT OF TRANSPORTATION.
- ALL OPERATIONS SHALL BE CONDUCTED IN ACCORDANCE WITH THE PERMITS AND REGULATIONS OF THE UNITED STATES DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES.
- ALL OPERATIONS SHALL BE CONDUCTED IN ACCORDANCE WITH THE PERMITS AND REGULATIONS OF THE UNITED STATES DEPARTMENT OF EDUCATION.
- ALL OPERATIONS SHALL BE CONDUCTED IN ACCORDANCE WITH THE PERMITS AND REGULATIONS OF THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.
- ALL OPERATIONS SHALL BE CONDUCTED IN ACCORDANCE WITH THE PERMITS AND REGULATIONS OF THE UNITED STATES DEPARTMENT OF AGRICULTURE AND FORESTRY.
- ALL OPERATIONS SHALL BE CONDUCTED IN ACCORDANCE WITH THE PERMITS AND REGULATIONS OF THE UNITED STATES DEPARTMENT OF DEFENSE.



REVISED
11/20/07

EXHIBIT # **216**

GRAPHIC SCALE
1" = 100'

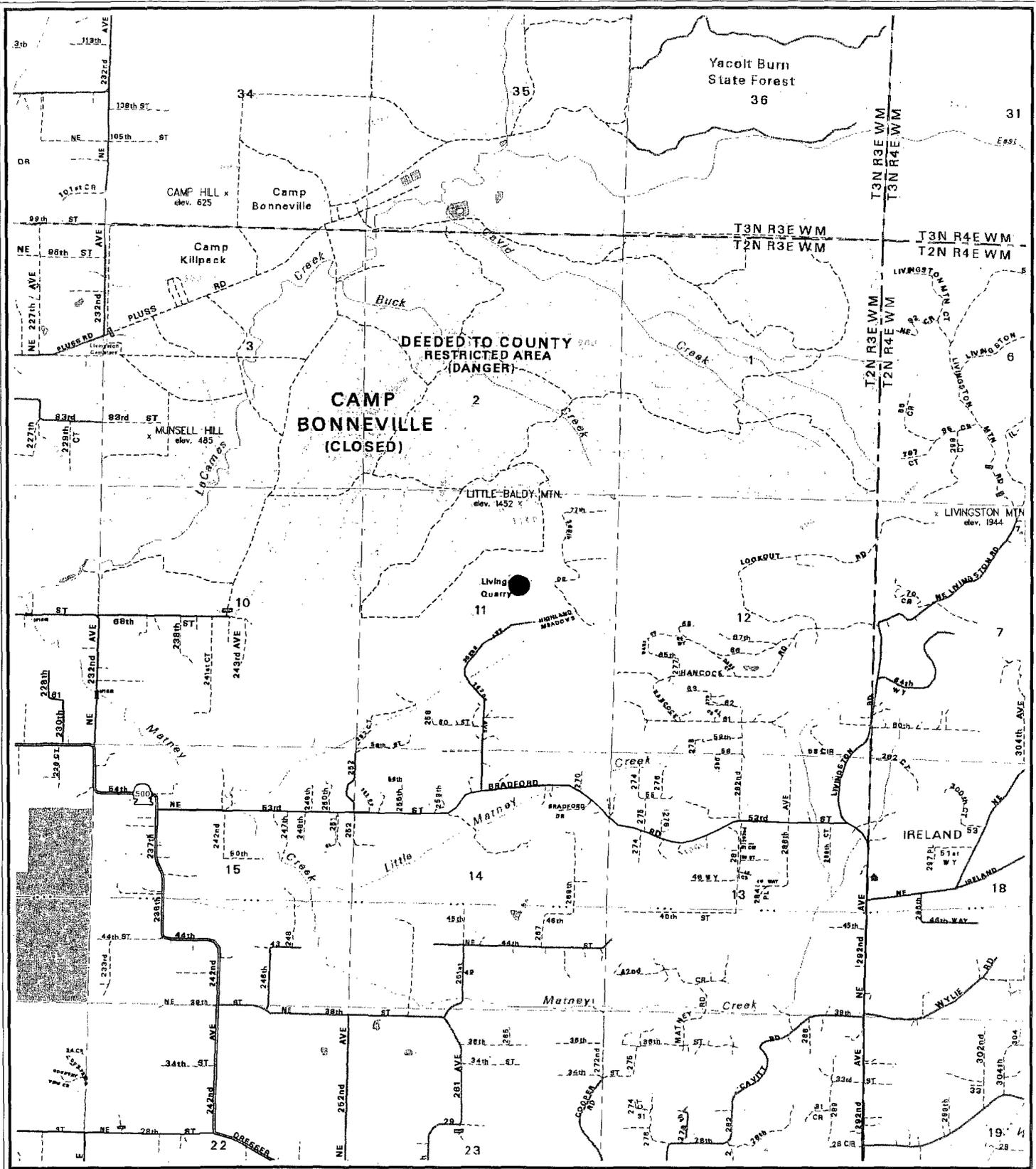
PRELIMINARY SITE AND CONDITIONAL USE PERMIT PLAN FOR:
LIVINGSTON MOUNTAIN QUARRY

LAND SURVEYORS
DALY STANDLEE & ASSOCIATES, INC.
 ENGINEERS
 1111 INDUSTRIAL, WASHINGTON, WA 98608



DATE	11/20/07
BY	[Signature]
CHECKED BY	[Signature]
SCALE	1" = 100'
PROJECT NO.	216
SHEET NO.	1 of 1
TITLE	APPROVED CRUSHING AND SCREENING AREA

Figure 1: Approved Crushing and Screening Area defined by Daly-Standlee & Associates, Inc.
 2/1/08



File # PSR2007-00045, SN 170400000

Location: T2N R3E SEC 11

Preliminary Site Plan Review

● Subject Property Location



Order Survey CRIST 11/06/01 1_108





HEARING EXAMINER EXHIBITS

APPLICATION: LIVINGSTON MOUNTAIN QUARRY
CASE NUMBERS: CUP2007-00013; PSR2007-00045; SEP2007-00124
Hearing Date: December 6, 2007

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	Comprehensive Plan Map
5	9/5/07	Contact - Olson Engineering, Inc.	Full-Size Maps/Plans: Preliminary Site Plan, Existing Conditions, Tax Lot Plan, Phasing Plan, Mining Plan, Reclamation Plan, and Cross Sections
6	9/5/07	Contact - Olson Engineering, Inc.	Application Submittal Package: Application Form, Pre-Application Conference Report, GIS Packet, Narrative, Legal Lot Determination, Reduced-Size Plans (Preliminary Site Plan & Existing Conditions), Traffic Study, SEPA Checklist, Covenants & Restrictions, Noise Study, Archaeological Predetermination, Dept. of Ecology Sand & Gravel Permit, Staff Report from previous Site Plan Approval, Hearing Examiner's Decision from Appeal on previous Site Plan, Surface Mining Reclamation Permit, and Road Condition Information
7	9/14/07	CC Public Works	Fully Complete Determination Request Response
8	9/19/07	CC Development Services	Fully Complete Determination
9	10/3/07	CC Development Services	Affidavit of Mailing Public Notice
10	10/3/07	CC Development Services	Notice of Type III Application
11	10/15/07	Allan & Gretchen Alexander	Comment Letter
12	10/16/07	Barbara Repman	Comment Letter
13	10/17/07	Linda Rectanus	Comment Letter
14	10/17/07	Marty Alexander	Comment Letter
15	10/17/07	Department of Ecology	Faxed SEPA Comments

EXHIBIT NO.	DATE	SUBMITTED BY	DESCRIPTION
16	10/17/07	Bob Weber	Comment Letter
17	10/31/07	Contact – Michael Odren, Olson Engineering, Inc.	Response to Comment Letters
18	10/31/07	Judith Gray – Kittelson & Associates, Inc.	Response to Comment Letters
19	10/31/07	Albert G. Duble, P.E. – Albert G. Duble, P.E., Inc.	Response to Comment Letters
20	11/7/07	Bob Weber – Proebstel NA	Comments re: Proposed Project
21	11/6/07	Applicant: Olson Engineering	Affidavit of Posting – Land Use Sign
22	11/6/07	CC Development Services	Notice of Public Hearing- Published 11/6/07
23	11/14/07	Applicant: Olson Engineering	Expanded DOE Comments – Dated 6/29/07
24	11/16/07	Applicant: Olson Engineering	Albert G. Duble, P.E., Inc. – Acoustical Engineering Qualificaitons+
25	11/16/07	Applicant: Olson Engineering	Letter re: Exemption from Requirements of Storm & Erosion Control Ordinance
26	11/20/07	Applicant: Olson Engineering	REVISED Preliminary Site & Conditional Use Map
27	11/20/07	Applicant: Olson Engineering	Letter re: The Revised Site Plan
28	11/21/07	CC Public Works- David Jardin	Calculation of Pavement Wear Payments
29	11/21/07	CC Public Works- David Jardin	Agreement for Pavement Improvement Fees
30	11/10/07	Tsuyoshi Inoyue	Comment Letter
31	11/20/07	CC Development Services	Affidavit of Posting
32	11/21/07	CC Development Services	Staff Report written by Jose Alvarez
33	11/27/07	Petition Letter	Letter re: Proposed Project
34	11/30/07	Applicant: Olson Engineering	Albert G. Duble, P.E., Inc. Addendum to Noise Report
35	12/5/07	Applicant: DSA	Memo re: Noise Study
36	12/5/07	Applicant: LeAnne Bremer	Memorandum re: The Staff Report and Public Comments
37	12/6/07	CC Dev Services	Power Point Presentation
38	12/6/07	CC Development Services	Memo to the Hearing Examiner from Jose Alvarez

EXHIBIT NO.	DATE	SUBMITTED BY	DESCRIPTION
39	12/6/07	Barbara Repman	Phone log/Email Log
40	12/6/07	Barbara Repman	Testimony
41	12/6/07	Tsuyoshi Inouye	Testimony
42	12/6/07	Bob Weber	Testimony
43	12/6/07	CC Public Works – Steve Schulte	Copy of Documents from Pre-App 99-004
44	12/6/07	Gretchan Alexander	Fact Sheet and Pictures
45	12/8/07	Alan Thayer	Ltr. to HE D. Kearns
46	4/17/07	CC Engineering Services	Final Site Plan Approval
47	1/4/08	Miller Nash, LeAnne Bremer	Ltr. Responding to Issues from the Land Use Hearing
48	1/9/08	Bob Weber	POR Requesting Extension for Response to Applicants Response dtd 1/4/08
49	1/10/08	Miller Nash, LeAnne Bremer	Memo fr. L. Bremer Objecting to Extension
50	1/11/08	Hearing Examiner, Daniel Kearns	Ltr. to B. Weber granting 1-wk Extension
51	1/10/08	CC Development Services	E-mail delivery of Exh. 48; Forward to D. Kearns, HE; D. Kearns, HE request forwarded to L. Bremer; L. Bremer response; Response to L. Bremer from B. Weber ; Attachment of Exh. 50
52	1/10/08	CC Development Services	E-mail request for Exhibit Number
53	1/16/08	Bryan McGeachy, Director of Operations, Camas School District	Public Comment
54	1/17/08	Linda & Howard Rectanus	Public Comment
55	1/23/08	Gretchen & Allan Alexander	Public Comment
56	1/23/08	Barbara Repman	Public Comment
57	1/24/08	Teri Piteck	Public Comment
58	1/25/08	Miller Nash LLP, L. Bremer, P.C.	E-mail re: additional 2 day extension
59	1/25/08	Daniel Kearns, Hearing Exam.	Response to request to reopen record
60	1/17/08	CC Deputy Prosecuting Atty., E. Bronson Potter, Sr.	Memo to J. Alvarez re: CC SEPA Policy Addressing Noise

61	1/24/08	CC Development Engineering	Type II Development & Environmental Review Staff Report & Recommendation (Concurrency Review) written by David Jardin
62	1/29/08	Barbara Repman	Public Comment
63	2/1/08	Kerrie Standlee	Memo to J. Alvarez re: Noise Mitigation and Conditions
64	2/1/08	CC Development Services	Memo to Hearings Examiner from Jose Alvarez
65	2/1/08	Bob Weber	Public Comment
66	2/7/08	Miller Nash, LLP, L. Bremer, P.C.	Applicant Response to open record comments
67	2/7/08	Daniel Kearns, Hearing Examiner	Applicant's second request to reopen record
68	2/11/08	Miller Nash, LLP, L. Bremer, P.C.	Applicant response to comments of CC and public before 2/1/08
69	2/22/08	CC Development Services	Memo to Hearings Examiner from Jose Alvarez re: Submittals Filed by Applicant on 2/11/08 (Exhibit #68)
70	2/22/08	Applicant: Olson Engineering	Final Mining & Reclamation Plan Set
71	2/21/08	Dept. of Natural Resources, Matt Brookshier	E-mail re: Revised Reclamation Permit
72	2/22/08	Bob Weber	Response to Applicant's Rebuttal (Exhibit #68)

Copies of these exhibits can be viewed at:

Department of Community Development / Planning Division
1300 Franklin Street
Vancouver, WA 98666-9810