

Office of the
CLARK COUNTY LAND USE HEARING EXAMINER

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Form DS1333



NOTICE TO PARTIES OF RECORD

Project Name: LIVINGSTON MOUNTAIN QUARRY FIRST
ANNUAL CRUSHER/MINING OPERATION
REVIEW

Case Number: CUP2010-00005; PSR2010-00013; SEP2010-
00022

The attached decision of the Land Use Hearing Examiner is final unless a motion is filed for reconsideration or an appeal is filed with Superior Court.

Motion for Reconsideration:

Any party of record to the proceeding before the hearings examiner may file with the responsible official a motion for reconsideration of an examiner's decision within fourteen (14) calendar days of written notice of the decision. A party of record includes the applicant and those individuals who signed the sign-in sheet or presented oral testimony at the public hearing, and/or submitted written testimony prior to or at the Public Hearing on this matter.

The motion must be accompanied by the applicable fee and identify the specific authority within the Code or other applicable laws, and/or specific evidence, in support of reconsideration. A motion may be granted for any one of the following causes that materially affects their rights of the moving party:

- a. Procedural irregularity or error, clarification, or scrivener's error, for which not fee will be charged;
- b. Newly discovered evidence, which the moving party could not with reasonable diligence have timely discovered and produced for consideration by the examiners;
- c. The decision is not supported by substantial evidence in the record; or,
- d. The decision is contrary to law.

Any party of record may file a written response to the motion if filed within fourteen (14) calendar days of filing a motion for reconsideration.

The examiner will issue a decision on the motion for reconsideration within twenty-eight (28) calendar days of filing of a motion fro reconsideration.

Mailed on: August 10, 2010

LIVINGSTON MOUNTAIN QUARRY
CUP2010-00005; PSR2010-00013;
SEP2010-00022
Hearing Date: July 8, 2010

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LIVINGSTON MOUNTAIN QUARRY
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00022

Hearing Date: July 8, 2010

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

In the matter of a Type III annual review of the operating conditions and compliance for the rock crusher and mining operation approved by CUP2007-00013 on an 40-acre quarry site in the FR-80 zone with a Surface Mining Overlay in unincorporated Clark County, Washington.

FINAL ORDER

**Livingston Mountain Quarry
First Annual Review of
Rock Crusher & Mining Operations
CUP2010-00005, PSR2010-00013
& SEP2010-00022**

I. Summary of the Order:

This Order is the decision of the Clark County Land Use Hearings Examiner approving with a revised set of conditions the site plan for the Livingston Mountain Quarry (County file numbers CUP2010-00005, PSR2010-00013 & SEP2010-00022) in response to the operator's first annual review of conditions and compliance for the rock crusher and mining operation, originally approved by CUP2007-00013.

II. Introduction to the Property and Application:

Applicant & Owner Tower Rock Products
1904 SE 6th Place
Battle Ground, WA 98604

Contact..... Maul Foster & Alongi, Inc.
Attn: Mark Erickson
7223 NE Hazel Dell Ave., Suite B
Vancouver, WA 98665

Property Legal Description: Tax Lot 11 (parcel no. 170400-0000) located in, NE ¼ of Section 11, Township 2 North, Range 3 East of the Willamette Meridian.
Street address: 26500 NE Highland Meadows Drive.

Applicable Laws Clark County Code (CCC) 40.250.020 (Surface Mining Overlay), Section 40.260.120 (Special Uses & Standards), Section 40.350.020 (Transportation Concurrency), Chapter 40.385 (Storm Water Drainage and Erosion Control), Section 40.440 (Habitat Conservation), Sections 40.500 and 40.510 (Procedures), Section 40.520.030 (Conditional Use Permits), Section 40.520.040 (Site Plan Review) and Section 40.570 (SEPA).

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 immediately to the west is a gravel

mine 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 a crusher, batching, washing or similar processing operations. In accordance with CCC 40.250.020(B) and the Surface Mining Overlay, a conditional use permit (CUP) for rock crushing was issued for this site in 2008 with conditions, including one requiring this annual review (CUP2007-00013). The original quarry was approved to operate from 8:00 a.m. to 5:00 p.m. Monday through Friday with a maximum of 25 Saturday operations per year. The 2008 condition requiring this annual review also made clear that a Type III process would be used and that all conditions were eligible for modification, addition or deletion according to the basic conditional use permit approval standard in CCC 40.520.030(E). As part of this annual review process, the applicant seeks among other things to expand the operational hours, move the noise berm on the eastern boundary, reduce the setbacks and modify the phasing plan that was previously approved. County records indicate no complaints or enforcement proceedings; although, many of the neighbors testified in this proceeding that they experienced impact problems with the mining and crushing operation, but that they resolved those problems by working directly with the operator.

III. Local Process and the Record:

A preapplication conference was requested on November 4, 2009 and held December 10, 2009. The applicant submitted a complete Type III CUP application on April 19, 2010 (Exs. 5 & 6), which was deemed fully complete on May 10, 2010 (Ex. 7). From this sequence, the application was vested as of November 4, 2009. The application consists of a complete set of drawings (Ex. 5) and reports (Ex. 6), a summary of the conditions of approval imposed in the 2008 CUP (Ex. 6, tab 5), groundwater reports (Ex. 6, attachment A), a noise study report by Daly Standlee & Associates (Ex. 6, attachment B), home inspection reports (Ex. 6, attachment C), blasting monitoring reports (Ex. 6, attachment D), site plan drawings and a drainage basin analysis (Ex. 6, attachment E). Additionally, the applicant submitted a summary of significant dates of operation (Ex. 38), and photographs of the quarry and operations (Ex. 39).

Notice of the July 8, 2010 hearing was mailed to property owners within ½ mile feet of the site, the Proebstel Neighborhood Association and anyone else who requested notice of this annual review proceeding on May 20, 2010 (Exs. 8, 9, 14 & 15). Signs announcing the application and July 8th hearing were posted on and near the site on June 16, 2010. Staff published notice of the application, the July 8th Type III hearing, and a Mitigated Determination of Nonsignificance (MDNS) in the Columbian Newspaper on May 20, 2010 (Ex. 9).

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. 25, 29 & 54) who also submitted an independent acoustical report by JGL Acoustics (Ex. 53), Gretchen and Allan Alexander (Exs. 18, 19 & 19a), Linda Rectanus (Exs. 22 & 59), Bob Weber (Exs. 16, 20, 26, & 27), Danielle McFarlane (Ex. 10), Kris Thomas (Ex. 11), John Brewer (Ex. 12), Barbara Rider (Ex. 13), Sharon McEneny (Ex. 17), Norman and Patti Schroeder (Ex. 21), Wendy and Nick Keeline (Ex. 23), Mark Peebles (Ex. 24).

Department and agency comments on the operation were received from Washington Department of Natural Resources regarding the mine's reclamation plan (Exs. 30, 31 & 40), Washington Department of Labor and Industries regarding blasting issues (Ex. 32), Camas

School District regarding bus schedules and routes in the mine's vicinity (Ex. 37), Clark County engaged BRC Acoustics to provide an independent review and analysis on the applicant's noise study (Ex. 34). County staff also included copies of all prior permit decisions associated with the property (Exs. 41, 42, 43, 44, 45, 46, 47, 48, 49 & 51). Community Development staff issued a comprehensive report on June 23, 2010 hearing (Ex. 52) that summarized the mine and crusher operation and history of permitting at the site, summarized opponent comments received up to that point, and made specific recommendations as to additions, deletions and modifications to the site plan conditions.

At the commencement of the July 8, 2010 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, Jan Bazala, County planning staff on the project, provided a verbal summary of the permitting history of the site and mining operation, the staff report and the various agency, public and departmental comments in the record.

The applicant's representatives, Kevin Tapani, President of Tower Rock Products, LeAnne Bremer, attorney with Miller Nash, Mark Erikson, of Maul Foster & Alongi Engineering, and Kerry Standlee, of Daly Standlee & Associates Acoustical Engineers, appeared and described various aspects of the proposal and explained the applicant's compliance with the conditions of prior approvals and the justification for all modifications currently requested to those conditions. Speaking in opposition to the proposal were Jerry Lilly of JGL Acoustics (Ex. 53), who had been hired by Barbara Repman to review and critique the operator's proposal, Nick Bushlack and Barbara Repman. No one to the proceeding requested a continuance or that the record be kept open. Accordingly, at the conclusion of the July 8, 2010 hearing, the Examiner closed the record and took the matter under consideration.

IV. Discussion and Findings:

A. Preliminary Matters: Review of the mining operation and Approval Criteria for Condition Modifications: This is a review of the Tower Rock Products mining operation at the Livingston Mountain Quarry, including its crushing, hauling and other associated operations, to determine how the previously imposed conditions have worked to protect residents of the neighborhood from impacts of the mining operation and to determine if any additions, deletions or modifications to the previously imposed conditions are justified. As with the underlying proceeding (CUP2007-00013), the legal standard that controls the Examiner's evaluation in this annual review is the conditional use permit 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 this primary approval standard, and CCC 40.520.030(E)(1)

provides a long list of possible conditions that can be imposed to achieve the primary approval standard.

It is important to recognize that the site's underlying FR-80 zoning allows single-family dwellings and rock quarries as permitted uses; although, the crusher operation required a conditional use permit. See CCC 40.210.010, which provides the following explicit purpose statement:

"...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."

None of the public comments or opponents to this proposal seek to protect any of the resource-based uses for which the County Commissioners established the FR-80 zone. The Surface Mining Overlay designation makes explicit the County Commissioner's legislative decision to allow, promote and protect surface mining operations at this site from incompatible uses, which in this situation must be interpreted to include residential uses. See CCC 40.250.020, which provides in pertinent part:

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

While it is clear that the CUP approval criteria require the imposition of conditions to protect neighboring uses, such as residences, from significantly detrimental impacts, it is equally clear from the zoning of this site that surface mining is the primary use and objective. In that regulatory context, the applicant seeks certain modifications to the conditions previously imposed by CUP2007-0013 and other land use approvals, and the Examiner evaluates those requests in the context of the CUP approval standard in CCC 40.520.030(E)(2).

B. Impact Issues Implicated by the Operator's Request or 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 have raised arguments focused primarily on noise and vibration, hours of operation, traffic safety of large rock trucks and potential conflicts with school buses and local traffic, and water quality impacts to residential drinking water wells. Each of these issues raised by focused testimony and written comment is addressed in this section, and the Examiner adopts the following findings in response to each.

LAND USE:

Finding 1 - Proposed changes to sound mitigation requirements: The applicant submitted a sound study by DSA (Ex. 6, attachment B), upon which it bases its request to reduce the quarry's setbacks from what was required in FSR2006-00 048 and FSR2009-00001:

Existing and Proposed Setbacks		
Property Line	Current Setback	Proposed Setback
east	200 feet	100 feet
north	60 feet	30 feet
south	200 to 290 feet	30 to 150 feet
west	150 feet	zero if DNR approves

The DSA study concluded that if the existing noise mitigating conditions are kept in place, *i.e.*, the phasing plan and setbacks, then the mine and related operations will exceed the allowable sound limits of 43 and 46 dBA during future mining phases. However, if the applicant's revised mine phasing plan is followed the allowable noise limits can be maintained and the setbacks can be reduced, so long as a higher berm is constructed in the eastern portion of the site and other alternative noise mitigations are implemented. With regard to each, the applicant provides the following justification:

East setback: According to the operator, the east setback can be reduced from 200 feet to 100 feet in conjunction with the construction of a larger (22-foot tall) noise control berm within the reduced east setback. The DSA report indicates that the 22-foot berm will not be needed until the rock drill is within 400 feet of the east property line. This setback is the most critical because a significant number of the noise sensitive uses (the near-by residential neighbors) are located to the east.

North and west setbacks: According to the applicant, these setbacks can be reduced to the minimum allowed by the Department of Natural Resources in the mine's approved reclamation plan. The reduction should not cause significant detrimental impacts because there are no noise sensitive uses to the north or west. In fact, the County's quarry is to the west and there is a chance that both quarries could be operated in conjunction by the same operator, which would allow elimination of a west setback for the Livingston Mountain Quarry and the east setback for the County's quarry, *i.e.*, the virtual merger of the two quarries.

South setback: The applicant seeks a reduction of the south setback from 200-290 feet down to 30-150 feet and the construction of either a high wall or a sound berm to protect noise sensitive uses to the south. Again, mining and related operational activities on the south boundary are critical issues because there are noise sensitive uses to the south of the site (residential neighbors).

The County commissioned a peer review of the DSA sound study by BRC Acoustics & Technology Consulting (BRC) (Ex. 34), which generally concluded that the DSA methodology and assumptions in generating the predicted sound levels were appropriate and reliable. BRC comments include:

- the northeast monitoring station data may not be representative of the most affected residences during all phases of operation

- ambient noise levels should be re-visited at the north property lines of those residences that are located south of the site (there is an intervening state-owned property directly south of the Tower Rock site)
- predictions of sound levels be required for the required berm heights
- specific language should be provided for rock drill noise mitigation

Based on the BRC review (Ex. 34) of the DSA report (Ex. 6, attachment B) and staff's favorable recommendation (Ex. 52), the Examiner concludes that the setbacks can be reduced as the operator requests so long as the revised phasing plan is implemented and the two noise berms (along the east and south boundaries) are constructed as proposed. See Condition A-1. The Examiner finds that the JGL Acoustics review (Ex. 53) does not detract from the conclusions of these reports. At most the JGL Acoustics report recommends equivalent alternative approaches to achieving the required noise standards. While all three acoustical reports qualify as credible expert opinions, the Examiner finds that the DSA and BRC reports are most reliable and consistent with the land use objectives articulated by the Board of Commissioners for quarries in the FR-80 Zone and Surface Mining Overlay. Notwithstanding the credibility of the JGL Acoustics report, the Examiner concludes that the setback modifications in conjunction with the revised phasing plan and other mitigating measures, will achieve the fundamental approval standard in CCC 40.250.030(2)(E).

In general, staff concluded that permanent, constant noise monitoring has advantages in that it provides a continuous stream of sound data with and without quarry noise. Placement of the northeast monitor was previously suggested by DSA, when it was serving as a consultant to the county during the review of MZR2008-00079. According to DSA, the northeast monitoring position would receive the highest sound levels from the quarry. Data from the northeast monitoring station often shows ambient levels that are higher than the maximum ambient +1 dBA levels that were established during the original application. These are assumed to be wind noise. It would be improper for the county to require the operator achieve noise levels that are lower than ambient. In reviewing the noise data staff looked for obvious spikes and drops in sound levels between the opening and closing times of the operation, but could discern no such pattern. Given this anomaly, staff recommended verification of both the existing monitor's placement and the ambient levels closest to receiving properties. This is especially warranted since noise level readings were not taken at the Repman or Stiff residences when the crusher began operation as was required by CUP2007-00013. The Examiner agrees that verification of ambient and operational noise levels is warranted. See Condition A-4a. Additionally, based on staff's recommendation, the Examiner concludes that verification of ambient and operational noise levels is warranted for properties located south of the Tower Rock site. See Condition A-4b.

In the event that the county's quarry site begins operation beside the Tower Rock operation, prior DSA studies anticipate that cumulative noise from the two operations will likely exceed the ambient plus 10 dBA levels established for Tower Rock. This scenario was addressed by condition D-4d of the county's application (CUP2009-00004) to allow ambient +13 dBA at the east side of Tower Rock's site. The applicant proposes using the same condition for the Tower Rock site. Staff concurs, with limitations, and so too does the Examiner. According to staff, it is possible that Tower Rock may in the future operate the county's quarry. If that occurs, the Examiner finds that Tower Rock should be able to control its own operations to keep noise under the limits imposed for its existing quarry. Staff recommends that if this occurs, the idea in D-4 condition from CUP2009-00004 be amended to preclude Tower Rock from using the +13 dBA increase if it operates both sites. See Condition A-4c.

As part of this annual review, the applicant requests the deletion of the following conditions, arguing that the DSA noise study shows that neither condition has any effect on noise limits at the noise receptors:

- 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 diesel electric generators used to operate equipment shall be fully enclosed to minimize noise output.

Staff requested additional clarification as to whether these conditions have zero or just limited effect. Based on the ambiguous response it received, staff recommended maintaining these conditions; however it's possible that additional information from the sound consultants may support the deletion of these conditions. As things stand, however, the Examiner finds that it is premature to delete them. See Conditions A-4e & A-4f. The applicant did not request the deletion or change to the condition requiring discriminating backup alarms, so that condition shall be maintained. See Condition A-4g.

Regarding the applicant's failure to monitor noise at the eastern residences (Repman or Stiff) when crushing began, staff worked with DSA during the review of MZR2008-00079 (the first review of conditions of PSR2002-00044) to establish the location of the northeast monitor station as the most highly impacted area. At the time, staff focused on a review of PSR2002-00044, which permitted the mine only, not the crusher, and fulfillment of the conditions from PSR2002-00044. The two residential monitoring stations shall be installed as a condition of this annual review. See Condition A-4a.

Some public comments question the reliability and objectivity of the DSA data, report and conclusions because DSA has been involved in prior applications in the area, including work as a consultant for the County during its first review of the quarry operation under MZR2008-00079 and then assisting the County expand its quarry operation. The Examiner rejects these challenges because there are few acoustical consultants available to work in this area; DSA is qualified and thoroughly familiar with this site. Since the applicant's main request to reduce established sound setbacks is dependent on noise studies, staff found it prudent to have DSA's work for this application to be reviewed by an outside acoustical engineering firm, BRC Acoustics.

As a final noise related issue, Condition B-4 of MZR2008-00079 allows new ambient noise levels to be established through a Type I review. This note should also be placed on the final site plan for this site. The applicant shall pay for an independent review of any report or data used to support any new proposed ambient levels. See Condition A-4d.

Land Use Finding 2 - Removal of west setback requirement/merging with county's quarry and timing of expansion request: The applicant proposes to mine to the west property line, assuming that the DNR finds this acceptable (Exs. 30 & 31). This assumes that the county site to the west will also be mined, possibly by the same operator, and that both operations in both mines can be coordinated with a zero setback on the common boundary, *i.e.*, that essentially the two quarries can be merged. The applicant asserts this would increase efficiency, reduce wasted rock and facilitate the reclamation of both sites. The applicant expresses a preference for this happening sooner, rather than later, since the mine's east high wall is still relatively close. To facilitate this plan, the applicant requests a reduction of

the other setbacks as part of an overall review. Staff reports that it is not known when the county's quarry will resume operation. County staff indicates no objection to Tower Rock excavating to the west property line assuming that the finished vertical slope meets Mine Safety and Health Administration (MSHA) requirements, and so long as DNR approves the plan. See Condition A-4i.

Land Use Finding 3 – Phasing: Among other things the DSA sound study recommended a revised phasing plan. Staff contacted Scott Morrison at the State Department of Ecology, who oversees Tower Rock's Sand and Gravel permit which deals with on-site stormwater (Ex. 28), and the DNR regarding the changes to the phasing. Neither agency objected to the proposal. Given the overall objective of not exceeding certain noise standards, the Examiner finds that the revised phasing plan is acceptable (allowed) so long as those levels are not exceeded. Also, the applicant shall produce a revised reclamation plan that reflects the new phasing plan. See Condition A-1.

Land Use Finding 4 - Hours of Operation: The existing hours of operation are 8:00 a.m. to 5:00 p.m. Monday through Friday and up to 25 Saturdays per year. The operational hours of 8 to 5 hours were established in PSR2002-00044, and amended in APL2003-00006 to include Saturdays. These hours were left unchanged in CUP2007-00013 and upheld in APL2008-00006 and are also the same operational hours the examiner approved for the county's permit (CUP2009-00004), with the caveat that "operational hours may be reviewed one year after start of operations in coordination with Tower Rock taking under consideration cumulative impacts of operational and truck noise." As part of this annual review, the applicant requests hours for rock drilling, blasting, excavation, truck loading, and maintenance activities of 7:00 a.m. to 7:00 p.m. Monday through Friday, with those same activities, except blasting, on up to 25 Saturdays per year. The applicant requested operational hours for the crusher of 8:00 a.m. to 5:00 p.m. Monday through Friday and up to 25 Saturdays per year.

The Examiner received testimony and written objections questioning whether a 7:00 a.m. start-up might conflict with and endanger school-aged children waiting for the morning school bus along the haul route. The Camas school bus schedule (Ex. 37) indicates that the high school buses pick up students on the section of Bradford Road between NE 262nd Avenue, and SR 500 to the west, including a run up NE 262nd Avenue, between 6:51 a.m. and 7:06 a.m. Elementary buses run this same route between the 8:08 a.m. and 8:22 a.m.

Staff reviewed the request and recommended that hours of operation for rock drilling, blasting, truck loading, and maintenance be limited to 7:30 a.m. to 6:00 p.m., Monday through Friday, and up to 25 Saturdays per year. Exceptions to the 7:30 a.m. to 6:00 p.m. hours will be allowed only for activities preparatory to blasting that are necessary to blast that day. Staff recommends those activities be allowed to begin at 6:00 a.m. Drilling or blasting are not regarded as preparatory to blasting and shall not begin until 7:30 a.m. No preparatory blasting activities that exceed ambient +5 dBA at property lines shall be allowed. Clean-up activities after blasting shall be limited to those not involving heavy equipment limiting mining and crushing hours from 8-5. See Condition A-4j.

These hours are very similar to what staff recommended for Tower Rock in CUP2007-00013 and for the county in CUP2009-0004, *i.e.*, 7:00 a.m. to 6:00 p.m.; the 7:30 a.m. starting time (instead of 7:00) in this case is recommended to minimize potential truck-bus traffic conflicts and hazards to school children waiting for school buses. Some public comments expressed concern with earlier and later operating hours during the winter months, which would allow

rock trucks to be on the road during darkness. This could happen, especially during the afternoon, however it seems that the quantity of traffic would be considerably less during the winter months when construction activities are low.

Land Use Finding 5 – Location of crusher and elevation of quarry floor: The crusher's location is not in compliance with Condition H-3 of CUP2007-00013 (the actual location was diagrammed in Exhibit 51 of this report). The applicant's reasons for this are articulated on pp 5 and 6 of the narrative (Ex. 6) and p 6 of the DSA noise study. The applicant's main assertion is that the current location of the crusher provides better noise reduction than the approved plan. The elevation of the existing quarry floor (between 1,020 and 1,040 feet above sea level) is lower than the 1,060 foot level approved in prior applications. The plan shows a transition up to 1,060 feet for part of phase 2 and all of phases 3-8. During prior approvals staff apparently discussed the possibility of allowing a 1,000 foot floor elevation for the quarry since this was the level approved by the WDNR on the reclamation plan. However, staff reports that it had concerns about approving a 1,000-foot elevation quarry floor due to the possible impacts to the ephemeral stream on the site. The applicant asserts that the majority of the existing quarry floor (which is lower than 1,060 feet) is within drainage basin A, which does not contribute to the ephemeral stream (Ex. 6, Attachment E, sheet 3 of 3). Habitat staff reviewed the plans and determined that the lower floor elevation in this area is unlikely to affect water sources for the ephemeral stream, so long as all other conditions are followed. Prior stormwater reports from Newton and Associates note that stormwater from the mining phases located within the drainage basin of the ephemeral stream will be routed to recharge/augment the stream's flow. Changing the quarry floor elevation is acceptable, but stormwater from drainage basins B and C of the stream will need to be routed into the stream's watershed. See Conditions A-4k & A-5.

Land Use Finding 6 – Blasting impacts: Blast monitoring data was sent to Mason Reiter at the state Department of Labor and Industries – the state agency that responds to blasting complaints from blasting. Mr. Reiter confirmed that the blast data results are all within allowable state standards (Ex. 32). Condition B-11a of MZR2008-00079 required monitoring for air blast using a C-weighted scale. The one March 1, 2010 test result for 6300 262nd Avenue (Todd Larson residence), which clearly was measured using a C-weighted scale, exceeded the state standard of 105 dBC by 3 dBC. Three other reports - May 27, 2009 and March 1, 2010 for the McFarland residence (27400 NE 64th St.) and May 27, 2009 for the Piteck residence (26811 NE 64th St) - appear to have used the wrong scale or method of measuring air blast, and staff was unable to evaluate whether those reports complied with the standard. The operator shall either provide documentation of how these measurements comply with the state standard of 105 dBC, or provide measurements in the dBC format. See Condition A-3. According to the applicant, the operator is working with the blasting contractor to address air blast violations.

During the first review of the mining operation (MZR2008-00079), Ken Wiehl and Danny and Danielle McFarland complained about blasting vibrations. Monitoring was required for two subsequent blasts at these residences (which are outside the required monitoring distance) and found to be within allowable limits. As a result, monitoring for those locations is no longer required. See Condition B-11 of MZR2008-00079. Site plan notes from prior decisions relating to blasting noise and limitations shall be placed on the new site plan. See Conditions A-4l, A-4m & A-4n:

Land Use Finding 7 -- Ground water and well monitoring: Condition A-19 of APL2003-00006 (Ex. 43) required a groundwater monitoring program for 3 years. This baseline data

is to be referenced in the event a near-by home owner claims their water well is affected by mining operations and seeks to pursue a civil claim against the operator. According to staff, it appears that fall (expected low water level) data were not collected in 2008. Barb Repman requested well monitoring for the life of the quarry, and staff did not have a recommendation on this request. The Examiner regards the groundwater monitoring requirement as a means of gathering baseline (pre-operational) water quality conditions and was never intended as a substitute for homeowner monitoring of their own well water quality. In the event that Ms. Repman or any other near-by homeowner finds or believes their well water quality is impacted by mine operations, they can refer to this base-line data to establish pre-operational groundwater quality.

Well level and turbidity reports were submitted with the application. According to the application materials, the first blast (July 31, 2007) occurred prior to the first well tests (September 21, 2007). Turbidity exceeded the EPA standard of 1.0 NTU at the Repman residence (26812 NE Highland Meadows Dr.) on one of three dates tested, while another well at the Rock residence (26815 NE Highland Meadows Dr.) exceeded the standard on all three dates, although, the last test showed less turbidity than the prior results. One well log entry for October of 2009 at 7303 NE 269th Avenue indicates a "seasonal well;" other entries for the site indicated water levels between 173 and 180 feet. From discussions with Clark County Public Health staff (Joe Ellingson) it does not appear that any conclusions can be drawn from these limited groundwater quality data. There can be several reasons for water turbidity. Staff reports it is unaware of prior well tests that predate blasting on the site that could provide a pre-blasting baseline. Tower Rock reports that it is not aware of any complaints regarding drinking water wells. Condition A-20 from PSR2002-00044 shall be included on the final site plan for this operation. See Conditions A-4o & A-4p.

Land Use Finding 8 – Complaints to county staff: Staff reports no code compliance cases opened by county staff since the crusher began operation. Several neighbors commented that any problems they have had with the crushing and mining operation were reported directly to the operator and not to the County, but there have still been complaints. Staff also report they received several comments during the review of the county's operation that were based on the existing Tower Rock operation. The Examiner finds that it is preferable for the neighbors to contact the operator directly and, as much as possible, resolve any complaints without involving county enforcement. However, county enforcement is available with staff and a process for resolving any intractable problems or complaints that the operator fails to address. The Examiner will continue to rely on county enforcement cases as an indicator that the operator is failing in its efforts to work with its residential neighbors. If direct communication with the operator fails resolve any perceived problems neighbors should contact county code enforcement (call 360.397.2375 x 4184).

Land Use Finding 9 – Final Site Plan notes from prior approvals: In addition to site plan notes specifically referenced in the foregoing findings, the Examiner also requires several notes from prior approvals to be placed on the new final site plan. See Conditions A-4h, A-4q & A-4r.

Land Use Finding 10 – Subsequent annual reviews and over-all conclusion: As part of this annual review, the applicant requests that the next (and any subsequent) annual review be subject to a Type II process, or that the second and third Type III reviews be initiated one year from the final decision. Several public comments note that, given the limited amount of activity on the site, the full potential impacts have not been manifest and are not yet evident. Staff observed that, unless activity increases substantially in the next year, this concern will

remain. It appears that, as the mine operation progresses eastward, impacts to residences on that side will increase. After evaluating all of the public comments, staff's evaluation and recommendation and the applicant's request, including its request for a revised phasing plan, the Examiner finds that it would be most useful for the next comprehensive review of mining and crushing operational impacts to be at the conclusion of Phase 4, and that a Type III public process should be used. The next comprehensive review shall replace the two remaining annual reviews required by Condition H-2 of CUP2007-00013 and shall have the same scope, procedure and purpose as stated in Condition H-2. See Condition A-4s. At conclusion of the second comprehensive review, the County may require a third review according to the same procedure and process if warranted by the results of the second comprehensive review. Based on the foregoing findings, the Examiner finds that the CUP criteria are met, or can be met through the imposition of the above-referenced conditions.

HABITAT:

See Land Use Finding 5.

TRANSPORTATION CONCURRENCY:

Finding 1: Changes to the road maintenance agreement between the county and tower rock may be required based on an evaluation of quantity of material being removed or the expected life span of the quarry. In the event that a pavement wear agreement addendum is found to not be warranted, the applicant shall obtain an affirmative approval from Clark County Public Works that no further changes are needed. See Condition A-2.

STORMWATER:

Finding 1: The review of on-site stormwater is under the jurisdiction of the Department of Ecology through issuance of a Sand and Gravel Permit (Ex. 28). Staff reports that DOE requires the applicant to update its stormwater pollution prevention, monitoring, and spill prevention plans for each phase. These plans shall be kept on site and made available to DOE and county staff.

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 Mitigated Determination of Nonsignificance (MDNS) 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.

Evidence adduced during the public proceeding shows that a significant noise impact from this crushing and mining operation is likely, which warrants mitigating conditions to keep these impacts to the level of non-significance. The operator shall comply with all applicable requirements of Clark County Code, state and federal laws plus the following mitigating conditions, which shall be placed as notes on the final site plan (these notes are largely incorporated into land use Condition A-4 of this decision, gaps in consecutive numbering reflect land use conditions that are required for compliance with CCC 40.250.030 but not needed for SEPA compliance):

- a. With the permission of the property owners, the operator shall take sound readings at the Barb Repman residence on TL 170424000 and Stiff residence on TL 170421-000 over a period of at least 48 continuous hours (to include two full days of maximum operational levels of activity at the quarry) to compare to the readings from the existing northeast monitoring station. If the readings at either residence show higher noise levels from quarry operation than those at the northeast monitoring station, the operator shall relocate the northeast monitor to the most impacted site, if the property owner allows. See Land Use Finding 1.
- b. Continuous sound monitoring equipment shall be installed that is remotely accessible at location R 8 as indicated in the DSA study, if allowed by the property owner. The sound monitoring equipment and installation, and the review and approval of the placement and functions of the sound monitoring equipment, shall be paid for by the applicant. Monitoring results shall be made available to the County upon request. Alternatively, the operator shall take sound readings at R 8 for a 48-hour period (or a longer period as necessary to include two full days of maximum operational levels of activity at the quarry) on a quarterly basis and when the crusher is moved to a new location. If the property owner's permission is not given for this location, monitoring shall be done on the next most impacted property that provides permission. See Land Use Finding 1.
- c. Noise levels from all mining and crushing operations shall not exceed 10 dBA above the hourly L_{25} noise ambient noise levels (currently 33 dBA along the east and 36 dBA along the south) at the applicable noise-sensitive receptors. If noise monitoring shows that this standard is not met, all mining and rock crushing operations shall cease until additional mitigation measures are implemented that achieve this maximum noise standard. If the County's quarry begins operation and Tower Rock Products is not the operator, Tower Rock Products operations in the Livingston Mountain Quarry shall not exceed (be louder than) 13 dBA above the hourly L_{25} noise limit specified for the receptor (the change in sound level when two sources operate simultaneously at the same level). Therefore, when both quarries are operating simultaneously with different operators, the hourly L_{25} noise level at a receptor on the east or south side of the Tower Rock quarry shall not exceed the existing ambient noise level by more than 13 dBA, currently 33 dBA (for a maximum noise limit of 46 dBA). If the hourly L_{25} noise level radiating from the two quarries exceeds 46 dBA at any noise receptor on the east or south side of the Tower Rock quarry, Tower Rock shall coordinate with the county to assess each operation individually to determine which quarry operations resulted in a noise limit exceedance. In the event the same entity operates both quarries, the levels of noise at the east and south closest receptors shall not exceed (be louder than) ambient levels +10 dBA. See Land Use Finding 1.
- d. If future sound monitoring establishes a different (higher or lower) ambient sound levels as agreed to by the county's sound consultant these levels may be changed through a Type I process. The applicant shall pay for an independent review if it proposes a new (lower) ambient level in addition to the Type I review fee. See Land Use Finding 1.
- e. A residential quality muffler and an acoustical louver shall be installed over the existing radiator air opening of the excavator(s) used on site. See Land Use Finding 1.
- f. Any diesel electric generators used to operate equipment shall be fully enclosed to minimize noise output. See Land Use Finding 1.

- g. Discriminating backup alarms or alarms that adjust to background noise levels shall be used on equipment used for mining. See Land Use Finding 1.
- h. Any use of a Caterpillar D8 dozer or equivalent shall meet the maximum noise limits of 43 dBA at the east property line and 46 dBA at the south property line, except for removal of overburden and constructing the berm. See Land Use Finding 1.
- j. Hours of operation for rock drilling, blasting, truck loading, and maintenance shall be from 7:30 a.m. to 6:00 p.m., Monday through Friday and up to 25 Saturdays per year (except no blasting on Saturdays). Exceptions to the 7:30 a.m. to 6:00 p.m. hours will be allowed only for preparatory blasting activities necessary to blast that day, which may begin at 6:00 a.m. Drilling or blasting shall not be allowed as a preparatory blasting activity. No preparatory blasting activities that exceed ambient +5 dBA at property lines shall be allowed. Clean-up activities after blasting shall be limited to those not involving heavy equipment. Crushing shall be limited to 8:00 a.m. to 5:00 p.m. Monday through Friday and up to 25 Saturdays per year. See Land Use Finding 4.
- k. Stormwater from drainage basins B and C of the stream will need to be routed into the stream's watershed. See Land Use Finding 5.
- l. The developer shall use a program using registered or certified mailings with return receipt to inform people living within 2,500-foot of the mine boundary with information regarding blasting parameters and proposed blasting schedules. All individuals residing within 1,500 feet of the mine and those between 1,500 to 2,500 feet that request notice shall also be contacted by phone or receive mailed notice 72 hours prior to blasting. Mailings and 72-hour notice shall also be sent to the residences on TLs 170683-000 and 170679-005. The operator shall maintain a list of these residents to be contacted prior to any blasting. See Land Use Finding 6.
- m. A blast-monitoring program to physically measure levels of ground movement and sound shall be used for all blasts. Information generated from the blast-monitoring program shall be given to all residents requesting this data. See Land Use Finding 6.
- n. Up to two blast monitoring stations shall monitor for air blast using the C-weighted (dBC), slow response, sound pressure level; the level shall not exceed the state standard of 105 dBC at any monitored location. The county's sound consultant shall approve the location of the C-weighted monitoring equipment. See Land Use Finding 6.
- o. The groundwater monitoring program required under APL2003-00006 shall be continued as required according to the terms of the program. See Land Use Finding 7.
- p. The operator of the surface mine shall modify or replace groundwater wells that are shown to be adversely affected by the proposed surface mining activity. A note shall be placed on the final site plan to this effect. See Land Use Finding 7.
- q. No permanent structures shall be erected on site. Lighting, other than low level security lighting around the crusher, front gate, or office trailer is not allowed except during work hours. See Land Use Finding 9.
- s. The next (second) comprehensive review of mining and crushing operational impacts shall be at the conclusion of Phase 4, and this review shall replace the two remaining reviews that

were required by Condition H-2 of CUP2007-00013. The second comprehensive review shall follow a Type III public process, and the mine owner/operator shall pay the applicable Type III review fees. The process shall include notice to the operator, owner, near-by property owners and anyone who specifically requests notice. The record of the 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 all applicable conditions and requirements, including those imposed by this first annual review decision. Conditions related to impacts may be modified, added or deleted as evidence warrants. The standard for changing conditions imposed on this operation shall remain those associated with conditional use permits in CCC 40.520.030(E). At conclusion of the second comprehensive review, the County may require a third review according to the same procedure and process if warranted by the results of the second comprehensive review. See Land Use Finding 10.

t. No more than 190 heavy vehicle trips per day (95 loaded truck trips per day) are allowed.

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 "operator") 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 and 2008 conditional use permit (CUP2007-00013) conditions shall apply and be binding on this permit except as specifically modified by this annual review decision. Those conditions, plus the following conditions of permit approval shall be interpreted and implemented consistently with the foregoing findings.

A Final Site Plan Requirements and Operations Conditions Review & Approval Authority: Development Engineering

Prior to implementing changes from prior land use approvals, a Final Site Plan shall be submitted for review and approval, consistent with the approved preliminary plan and the following conditions of approval:

A-1 The following setbacks for the mine and related operations are allowed so long as the operator's revised phasing plan and all proposed noise mitigation (e.g., noise berms along east and south boundaries) are fully implemented:

Existing and Proposed Setbacks		
Property Line	Current Setback	Proposed Setback
east	200 feet	100 feet
north	60 feet	30 feet
south	200 to 290 feet	30 to 150 feet
west	150 feet	zero if DNR approves

- a. Prior to final site plan approval, the operator shall submit a revised reclamation plan to the Washington Department of Natural Resources that is consistent with the revised site plan and phasing plan.
 - b. The operator shall construct a 22-foot high berm within the 100-foot east setback to ensure that noise levels radiating from the mine and all associated operations do not exceed the maximum allowed noise levels. The berm shall be constructed within a 2-week period and before any rock drilling within 400 feet of the east boundary.
- A-2** Changes to the road maintenance agreement between the county and tower rock may be required by the County prior to final site plan approval based on an evaluation of the quantity of material being removed or the expected life span of the quarry. In the event that a pavement wear agreement addendum is not warranted, the operator will need to obtain Clark County Public Works approval that no further changes are needed. See Transportation Concurrency Finding.
- A-3** The operator shall either provide documentation of how alternate scales of measuring air blast comply with the state standard of 105 dBC, or provide measurements in the dBC reporting format. See Land Use Finding 6.
- A-4 Final Site Plan Notes:** The following notes shall be placed on the final site plan.
- a. With the permission of the property owners, the operator shall take sound readings at the Barb Repman residence on TL 170424000 and Stiff residence on TL 170421-000 over a period of at least 48 continuous hours (to include two full days of maximum operational levels of activity at the quarry) to compare to the readings from the existing northeast monitoring station. If the readings at either residence show higher noise levels from quarry operation than those at the northeast monitoring station, the operator shall relocate the northeast monitor to the most impacted site, if the property owner allows. See Land Use Finding 1.
 - b. Continuous sound monitoring equipment shall be installed that is remotely accessible at location R 8 as indicated in the DSA study, if allowed by the property owner. The sound monitoring equipment and installation, and the review and approval of the placement and functions of the sound monitoring equipment, shall be paid for by the operator. Monitoring results shall be made available to the County upon request. Alternatively, the operator shall take sound readings at R 8 for a 48-hour period (or a longer period as necessary to include two full days of maximum operational levels of activity at the quarry) on a quarterly basis and when the crusher is moved to a new location. If the property owner's permission is not given for this location, monitoring shall be done on the next most impacted property that provides permission. See Land Use Finding 1.
 - c. Noise levels from all mining and crushing operations shall not exceed 10 dBA above the hourly L₂₅ noise ambient noise levels (currently 33 dBA along the east and 36 dBA along the south) at the applicable noise-sensitive receptors. If noise monitoring shows that this standard is not met, all mining and rock crushing operations shall cease until additional mitigation measures are implemented that achieve this maximum noise standard. If the County's quarry begins operation and Tower Rock Products is not the operator, Tower Rock Products operations in the Livingston Mountain Quarry shall not exceed (be louder than) 13 dBA above the hourly L₂₅ noise limit specified for the receptor (the change in sound level when two sources operate simultaneously at the same level). Therefore,

when both quarries are operating simultaneously with different operators, the hourly L₂₅ noise level at a receptor on the east or south side of the Tower Rock quarry shall not exceed the existing ambient noise level by more than 13 dBA, currently 33 dBA (for a maximum noise limit of 46 dBA). If the hourly L₂₅ noise level radiating from the two quarries exceeds 46 dBA at any noise receptor on the east or south side of the Tower Rock quarry, Tower Rock shall coordinate with the county to assess each operation individually to determine which quarry operations resulted in a noise limit exceedance. In the event the same entity operates both quarries, the levels of noise at the east and south closest receptors shall not exceed (be louder than) ambient levels +10 dBA. See Land Use Finding 1.

- d. If future sound monitoring establishes a different (higher or lower) ambient sound levels as agreed to by the county's sound consultant these levels may be changed through a Type I process. The operator shall pay for an independent review if it proposes a new (lower) ambient level in addition to the Type I review fee. See Land Use Finding 1.
- e. A residential quality muffler and an acoustical louver shall be installed over the existing radiator air opening of the excavator(s) used on site. See Land Use Finding 1.
- f. Any diesel electric generators used to operate equipment shall be fully enclosed to minimize noise output. See Land Use Finding 1.
- g. Discriminating backup alarms or alarms that adjust to background noise levels shall be used on equipment used for mining. See Land Use Finding 1.
- h. Any use of a Caterpillar D8 dozer or equivalent shall meet the maximum noise limits of 43 dBA at the east property line and 46 dBA at the south property line, except for removal of overburden and constructing the berm. See Land Use Finding 1.
- i. No minimum excavation setback is required to the west property line, provided that the finished vertical slope meets Mine Safety and Health Administration (MSHA) and WDNR requirements. See Land Use Finding 2.
- j. Hours of operation for rock drilling, blasting, truck loading, and maintenance shall be from 7:30 a.m. to 6:00 p.m., Monday through Friday and up to 25 Saturdays per year (except no blasting on Saturdays). Exceptions to the 7:30 a.m. to 6:00 p.m. hours will be allowed only for preparatory blasting activities necessary to blast that day, which may begin at 6:00 a.m. Drilling or blasting shall not be allowed as a preparatory blasting activity. No preparatory blasting activities that exceed ambient +5 dBA at property lines shall be allowed. Clean-up activities after blasting shall be limited to those not involving heavy equipment. Crushing shall be limited to 8:00 a.m. to 5:00 p.m. Monday through Friday and up to 25 Saturdays per year. See Land Use Finding 4.
- k. Stormwater from drainage basins B and C of the stream shall be routed into the stream's watershed. See Land Use Finding 5.
- l. The developer shall use a program using registered or certified mailings with return receipt to inform people living within 2,500-foot of the mine boundary with information regarding blasting parameters and proposed blasting schedules. All individuals residing within 1,500 feet of the mine and those between 1,500 to 2,500 feet that request notice shall also be contacted by phone or receive mailed notice 72 hours prior to blasting.

Mailings and 72-hour notice shall also be sent to the residences on T Ls 170683-000 and 170679-005. The operator shall maintain a list of these residents to be contacted prior to any blasting. See Land Use Finding 6.

- m. The developer shall use a blast-monitoring program to physically measure levels of ground movement and sound for all blasts. Information generated from the blast-monitoring program shall be given to all residents requesting this data. See Land Use Finding 6.
- n. Up to two blast monitoring stations shall monitor for air blast using the C-weighted (dBC), slow response, sound pressure level; the level shall not exceed the state standard of 105 dBC at any monitored location. The county's sound consultant shall approve the location of the C-weighted monitoring equipment. See Land Use Finding 6.
- o. The groundwater monitoring program required under APL2003-00006 shall be continued as required according to the terms of the program. See Land Use Finding 7.
- p. The operator shall modify or replace groundwater wells that are shown to be adversely affected by the proposed surface mining activity. A note shall be placed on the final site plan to this effect. See Land Use Finding 7.
- q. No permanent structures shall be erected on site. Except for low level security lighting around the crusher, front gate, or office trailer, lighting is not allowed except during work hours. See Land Use Finding 9.
- r. The storage of all flammable/combustible liquid storage tanks on site requires a permit from the Clark County Fire Marshal's Office. See Land Use Finding 9.
- s. The next (second) comprehensive review of mining and crushing operational impacts shall be at the conclusion of Phase 4, and this review shall replace the two remaining reviews that were required by Condition H-2 of CUP2007-00013. The second comprehensive review shall follow a Type III public process, and the mine owner/operator shall pay the applicable Type III review fees. The process shall include notice to the operator, owner, near-by property owners and anyone who specifically requests notice. The record of the 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 all applicable conditions and requirements, including those imposed by this first annual review decision. Conditions related to impacts may be modified, added or deleted as evidence warrants. The standard for changing conditions imposed on this operation shall remain those associated with conditional use permits in CCC 40.520.030(E). At conclusion of the second comprehensive review, the County may require a third review according to the same procedure and process if warranted by the results of the second comprehensive review. See Land Use Finding 10.
- t. No more than 190 heavy vehicle trips per day (95 loaded truck trips per day) are allowed.

A-5 Quarry Floor Elevation: The final elevation of the quarry floor for Phase 3 through Phase 8 shall be 1,060 feet amsl. The final quarry floor elevation in Phase 1 and Phase 2 shall gradually transition from the existing quarry floor elevation of 1,020 feet up to 1,060 feet along the boundaries of Phase 3 and Phase 4.

A-6 Operator to pay County's costs: The operator shall pay in full the County's costs as specified in the *Community Development Services Program Fee Agreement for Mining Applications* incurred in this annual review within 60 days of issuance of this Order. Failure to fully pay the County's cost bill within 60 days shall invalidate the operator's site plan approval until this condition is satisfied.

Date of Decision: July 10, 2010.

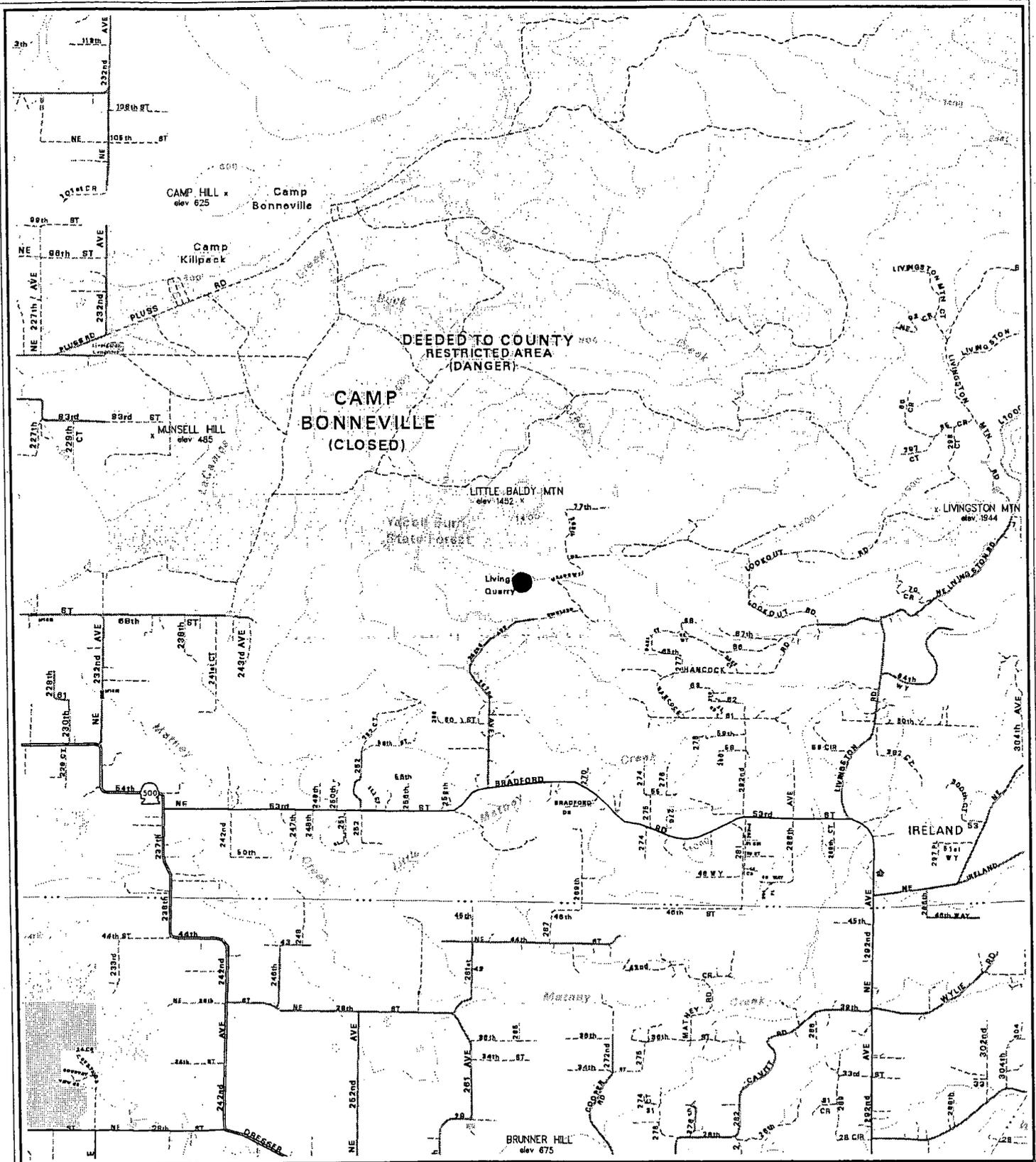
By: 

Daniel Kearns,
Land Use Hearings Examiner

NOTE: Only the Decision and Conditions of approval, if any, are binding on the applicant, owner or subsequent developer of the subject property as a result of this Order. Other parts of the final order are explanatory, illustrative or descriptive. There may be requirements of local, state or federal law or requirements which reflect the intent of the applicant, county staff, or the Hearings Examiner, but they are not binding on the applicant as a result of this final order unless included as a condition of approval.

Notice of Appeal Rights

This is the County's final decision on this application. Anyone with standing may appeal any aspect of the Hearings Examiner's decision, except the SEPA determination, to Clark County Superior Court pursuant to the Washington Land Use Petition Act, RCW chapter 36.70C.



File # CUP2010-00005, SN 170400000
 Location: T2N R3E SEC 11
 Conditional Use Application

● Subject Property Location



Clark County, Oregon





File # CUP2010-00005, SN 170400000

Location: T2N R3E SEC 11

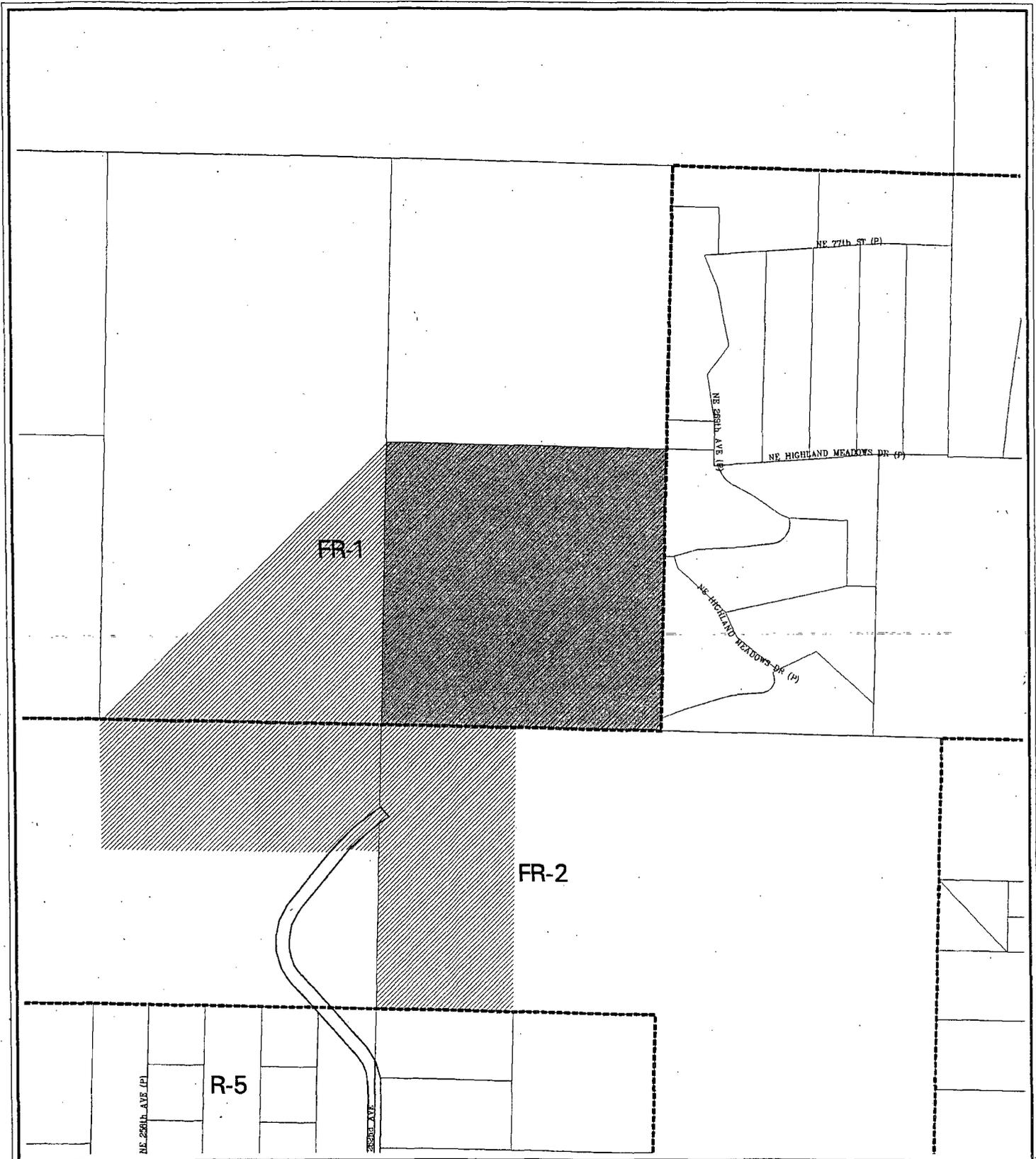
Conditional Use Application



Order 2007-010 Product 1_108



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



File # CUP2010-00005, SN 170400000
 Location: T2N R3E SEC 11
 Conditional Use Application

-  Subject Property
-  Comp. Plan Boundary
-  Mining
-  Industrial Reserve
-  Open Space/Density Transfer
-  Columbia River Gorge N.S.A.



Order 48074-010-000001_1_108





HEARING EXAMINER EXHIBITS

Project Name: LIVINGSTON MOUNTAIN QUARRY FIRST ANNUAL CRUSHER/MINING OPERATION REVIEW

Case Number: CUP2010-00005; PSR2010-00013; SEP2010-00022

Hearing Date: 7/8/2010

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	4/19/10	Applicant: Tower Rock Products	Proposed Development Plans
6	4/19/10	Applicant: Tower Rock Products	1 – COVER SHEET 2 – TABLE OF CONTENTS 3 – REVISED FINAL PREAPPLICATION CONFERENCE REPORT 4 – ANNUAL REVIEW APPLICATION LETTER NARRATIVE 5 – TABLE 1 – SUMMARY OF CONDITIONS OF APPROVAL ATTACHMENT A – GROUNDWATER REPORTS 6A – SEPTEMBER 2007 WELL TESTS 7A – APRIL 2008 WELL TESTS 8A – JANUARY 2009 WELL TESTS 9A – OCTOBER 2009 WELL TESTS ATTACHEMENT B – DALY STANDLEE & ASSOCIATES, INC. NOISE STUDY REPORT 10B – NOISE STUDY REPORT ATTACHMENT C – HOME INSPECTION REPORTS 11C – HOME INSPECTION REPORTS ATTACHMENT D – BLAST MONITORING REPORTS 12D – 2007 BLAST MONITORING REPORTS 13D – 2008 BLAST MONITORING REPORTS 14D – 2009 BLAST MONITORING REPORTS 15D – 2010 BLAST MONITORING REPORTS ATTACHMENT E – SITE PLAN EXHIBITS

			16E – SITE PLAN 17E – SITE PLAN SECTIONS 18E – DRAINAGE BASIN ANALYSIS
7	5/10/10	CC Development Services	Fully Complete Determination
8	5/20/10	CC Development Services	Affidavit of Sending Type III Public Notice
9	5/20/10	CC Development Services	Notice of Type III Development Review Application, Optional SEPA & Public Hearing
10	5/23/10	Danielle McFarlane	Public comment
11	5/24/10	Kris Thomas	Public comment
12	5/24/10	John Brewer	Public comment
13	5/26/10	Barbara Rider	Public comment
14	6/2/10	CC Development Services	Additional notice to prior parties of record that were not included in ½ mile radius
15	6/2/10	CC Development Services	Affidavit of Sending additional Type III Public Notice
16	5/28/10	Bob Weber	Public comment
17	6/1/10	Sharon McEneny	Public comment
18	6/3/10	Allan Alexander	Public comment
19	6/3/10	Gretchen Alexander	Public comment
19a	6/3/10	Gretchen Alexander	Photo of truck in road
20	6/3/10	Bob Weber	Public comment
21	6/4/10	Norman and Patti Schroeder	Public comment
22	6/4/10	Linda Rectanus	Public comment
23	6/4/10	Wendy and Nick Keeline	Public comment
24	6/4/10	Mark Peebles	Public comment
25	6/4/10	Barb Repman	Public comment
26	6/4/10	Bob Weber	Public comment
27	6/4/10	Bob Weber	Copies of approved FSR2006-00048
28	6/4/10	Department of Ecology	SEPA comments (sand and gravel permit coverage)
29	6/7/10	Barb Repman	Public comment - letter
30	6/9/10	Washington DNR	Rian Skov email regarding reclamation plan
31	6/9/10	Washington DNR	Rian Skov email regarding merging of 2 quarries

32	6/10/10	Washington Labor and Industries	Mason Reiter email regarding blasting results
33	6/15/10	CC Development Services	Notice of publication of hearing
34	6/15/10	BRC Acoustics	Review of Daly Standlee noise study
35	6/16/10	Applicant: Tower Rock Products	Applicant's sign posting affidavit
36	6/16/10		County's sign posting affidavit
37	6/16/10	Camas School District	Fax of bus schedule for area
38	6/17/10	Applicant: Tower Rock Products	Dates of operation
39	6/17/10	Applicant: Tower Rock Products	Photo of existing quarry prior to operations
40	6/21/10	Washington DNR	Rian Skov follow up email regarding reclamation plan with merged sites
41	6/21/10	CC Development Services	Preliminary conceptual mining and reclamation plan --Newton , September 2001
42	6/21/10	CC Development Services	PSR2002-00044
43	6/21/10	CC Development Services	APL2003-00006
44	6/22/10	CC Development Services	FSR2006-00048
45	6/22/10	CC Development Services	CUP2007-00013, PSR2007-00045
46	6/22/10	CC Development Services	APL2008-00006
47	6/22/10	CC Development Services	MZR2008-00079
48	6/22/10	CC Development Services	FSR2009-00001
49	6/22/10	CC Development Services	CUP2009-00004, PSR2009-00014, CPZ2009-00024
50	6/22/10	CC Development Services	Memo to SEPA agencies for MDNS
51	6/23/10	CC Development Services	Approved crusher location under CUP2007-00013
52	6/23/10	CC Development Services	Staff report recommendation and SEPA determination
53	7/6/10	Barb Repman	JGL sound study opinion
54	7/7/10	Barb Repman	Comment letter in response to staff recommendation

55	7/8/10	CC Development Services	Addendum to staff report
56	7/8/10	CC Development Services – Jan Bazala, Planner	PowerPoint Presentation
57	7/8/10	CC Development Services – Jan Bazala, Planner	Second addendum to staff report
58	7/8/10	Jerry Lilly, JGL Acoustics, Inc	Hearing Presentation
59	7/8/10	Linda Rectanus	Comment Letter
60	7/8/10	DSA, Kerrie Standlee	Memo
61	7/8/10	Applicant: Tower Rock Products	Working Schedule

Copies of these exhibits can be viewed at:

Department of Community Development / Planning Division
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