

**TYPE I
DEVELOPMENT REVIEW
STAFF REPORT & DECISION**

Form DS1100



**Project Name/
Case Number:
Request:**

**LIVINGSTON ROCK QUARRY
PST2011-00008**

Change conditions of approval regarding the timing and payment method for road maintenance for trips associated with the quarry.

DECISION

Approved Subject to Conditions

Staff Initials: J.B. Date Issued: 5-2-2011

Conditions of Approval

1. Except as explicitly modified within this post decision review decision, the applicable findings and conditions included in the original decision rendered by the Hearings Examiner for the Livingston Quarry under CUP2009-00004, PSR2009-00014, CPZ2009-00024; HAB2009-00016; and SEP2009-00028 on August 19, 2009 shall remain in effect.
2. Condition B-8 of the original decision shall be eliminated, and replaced with the following operational condition:

The applicant shall transfer, from the Livingston Quarry account a base price of \$0.027 per ton to the Clark County Pavement Preservation Fund. Tonnage reports are to be submitted to Clark County Public Works on a quarterly basis for any material mined or removed from the Clark County Livingston Quarry and/or material removed from the Livingston Mountain Quarry (CUP2007-00013; PSR2007-00045, and CUP2010-0005) through the Clark County Livingston Quarry site access. The information provided by the applicant and approved by the County will be the basis of the yearly pavement wear maintenance fee. This condition does not change the responsibilities and obligations of the Livingston Mountain Quarry Pavement Wear Agreement dated July 28, 2008.
3. Condition D-11 of the original decision shall be eliminated and replaced with the following operational condition:

Subsequent annual payment noted in Condition 2 of this decision (PSR2011-00008) shall be adjusted from the \$0.027 baseline amount –

based on the Seattle Engineering News Record (ENR) – Construction Cost Index (CCI) for the remainder of the anticipated 30-year life of the quarry. The recalculated amount shall be transferred to the Clark County Pavement Preservation Fund by December 31 of each year.

Project Analysis

Location: NE 262 nd Avenue and NE Highland Meadows Drive	Property Owner: State of Washington
Applicant: Clark County Department of Public Works 1300 Franklin St. Vancouver, WA 98666	Contact Person: Linda Small (360) 397-6118 Ext. 4753 Linda.small@clark.wa.gov
Zoning: FR-40, FR-80	Comp Plan Designation: FR-1, FR-2

County Review Staff:

	<u>Name</u>	<u>Phone Extension</u>	<u>E-mail Address</u>
Planner:	Jan Bazala	4499	jan.bazala@clark.wa.gov
Agreements Program Coordinator	Tahanni Essig	5790	tahanni.essig@clark.wa.gov
Engineer: (Trans. Concurrency)	David Jardin	4354	david.jardin@clark.wa.gov
Community Development Director:	Marty Snell	4101	marty.snell@clark.wa.gov
Engineering Supervisor: (Trans. Concurrency)	Steve Schulte, PE	4017	steve.schulte@clark.wa.gov

Applicable Laws:

Clark County Code: Section 40.210.010 (Forest & Agriculture District), Section 40.260 (Special Uses & Standards), Section 40.350, (Transportation), Section 40.350.020 (Transportation Concurrency), and Section 40.520.060 (Post Decision Reviews)

Time Limits:

The application was determined to be fully complete on April 27, 2011. Therefore, the County Code requirement for issuing a decision within 21 days lapses on May 18, 2011.

Public Notice:

Type I applications do not required public notice in accordance with CCC 40.510.010.

Project Overview

The site is located at the north the end of NE 262nd Avenue, where NE Highland Meadows Drive begins. Prior mining operations have occurred on portions of the site since prior to 1980. The county has a lease to mine from the state Department of Natural Resources, the owner of the property.

In 2009, the county applied for: (1) a rezone to expand the Surface Mining Overlay from 50 acres to include the entire 170 acre site (CPZ2009-00024); (2) site plan review to mine the site (PSR2009-00014); and, (3) operation of a crusher (CUP2009-00004).

The rezone application was denied, but the conditional use permit and site plan to operate a crusher on the 50 acres with the existing Surface Mining Overlay was approved, pending final site plan review.

The site is located immediately west of another rock quarry and crusher site operated by Tower Rock Products. The Tower Rock site is also known as the "Livingston Mountain Quarry" (as opposed to the county's project name "Livingston Quarry"), which received approvals under PSR2002-00044 and CUP2007-00013 among others.

Tower Rock is in negotiations to sublease the county's 50 acre site, with the intent of re-locating their crusher and stockpiling material from the Tower Rock site. On certain occasions, Tower Rock may wish to exceed their approved 190 trips per day for their site, and use a portion of the county's approved 70 trips. Since the rock will be coming only from the Tower Rock site at this time, certain road maintenance agreement conditions are proposed to be changed.

No mining of the county's site is proposed at this time.

Staff Analysis

Staff has reviewed the proposal for compliance with applicable code criteria and standards in order to determine whether all potential impacts will be mitigated by the requirements of the code.

Major Issues:

Only the major issues, errors in the development proposal, and/or justification for any conditions of approval are discussed below. Staff finds that all other aspects of this proposed development comply with the applicable code requirements, and, therefore, are not discussed below.

Finding 1: Concurrency Finding 6 of PSR2009-00014

Conditions of approval of the county's CUP and site plan review were included to address the additional wear to the county's road system from heavily loaded trucks. These conditions are as follows:

- A-11 Final Transportation Plan/Off Site (Concurrency)** - *The applicant shall enter into an agreement with Clark County Transportation regarding a yearly maintenance cost transfer based on a structural overlay requirements for the identified primary haul route, NE 262nd Avenue and NE 53rd Street consistent with Exhibit 56.*
- B-8** *(Prior to commencement of operations) The applicant shall transfer, from the Livingston Quarry account, a lump sum of \$19,318 to the Clark County Pavement Preservation Fund prior to starting operations.*
- D-11** *(Operational conditions) Subsequent annual payments noted in Condition B-8 shall be adjusted from the \$19,318 baseline amount -based on the Seattle Engineering News Record (ENR) - Construction Cost Index (CCI) for the remainder of the anticipated 30-year life of the quarry. The recalculated amount shall then be transferred to the Clark County Pavement Preservation Fund by December 31 of each year. (See Transportation Concurrency Finding 6)*

These conditions were drafted primarily with the idea that rock would begin to be mined from the county's site, and that a substantial payment (\$19,318) for the impacts to the road system from the "county's rock" should be obtained before operations begin. However, because Tower Rock will be primarily moving rock from the Tower Rock site, their approved road impact payment agreement will accommodate the wear and tear to the county's roads. However, if Tower Rock wishes to exceed their designated 190 trips (effectively use some of the county's trips), then the amount of wear anticipated under the Tower Rock agreement will be exceeded, and wear and tear from the county's site will need to be accommodated. Since the amount of anticipated wear and tear from the county's trips is expected to be relatively small, the initial substantial payment requirement in Condition B-8 will be disproportionately large. What is wanted is a means to require payments based on the actual tonnage, to be paid on a quarterly basis, instead of in an initial lump sum.

Therefore, the applicant proposes to remove condition B-8, and replace it with the following condition, to be considered a "D" or "operational" condition in the context of the original approval:

The applicant shall transfer, from the Livingston Quarry account a base price of \$0.027 per ton to the Clark County Pavement Preservation Fund. Tonnage reports are to be submitted to Clark County Public Works on a quarterly basis for any material mined or removed from the Clark County Livingston Quarry and/or material removed from the Livingston Mountain Quarry (CUP2007-00013; PSR2007-00045, and CUP2010-0005) through the Clark County Livingston Quarry site access. The information provided by the applicant and approved by the County will be the basis of the yearly pavement wear maintenance fee. This condition does not change the responsibilities and obligations of the Livingston Mountain Quarry Pavement Wear Agreement dated July 28, 2008.

The applicant provides the following rationale for the proposed change:

Annual production will be limited by the local road capacity, which will cap trips from this Quarry described in the earlier approval at 70 Load Truck Trip per day with a maximum peak periods of 140 loaded truck trips for a limited time period. The annual base lump sum of \$19,318 is calculated based on the cost of the structural overlay and the tonnage removed from the site.

The request is to prorate the cost to a per ton basis, rather than a lump sum. The payment will be made on actual tonnage removed from the site, and when the quarry reaches full operation, the fee will equate to the lump sum previously described.

Since actual figures must be supplied to the County based on actual operations, the change from a B Condition – "Prior to Commencement" no longer applies, therefore a D Condition is more applicable as an "Operational Condition".

The applicant also proposes a change in the existing Condition D-11 to be consistent with the proposed change to B-8 as follows:

D-11 Subsequent annual payment noted in Condition _____ shall be adjusted from the \$0.027 baseline amount – based on the Seattle Engineering News Record (ENR) – Construction Cost Index (CCI) for the remainder of the anticipated 30-year life of the quarry. The recalculated amount shall be transferred to the Clark County Pavement Preservation Fund by December 31 of each year.

The change in Condition B-8 will require Condition D-11 to be modified to reflect change in rate structure.

Staff finds that the intent of the original conditions will be met with the two revised conditions (*See Conditions 2 and 3*)

Finding 2: Original Decision Conditions

Except as explicitly modified within this post decision review decision, applicable findings and conditions included in the original decision rendered by the Hearings Examiner for (See Condition 1).

Finding 3 Typing criteria

CCC40.520.060.E.4 contains the criteria for classifying post decision reviews as follows:

4. An application for post-decision review of a Type II-A decision that was subjected to public hearing or a Type III decision shall be subject to a Type I review process if the responsible official finds that the requested change in the decision:

- a. Reduces the potential adverse impact of the development authorized by the decision;

Staff finds that by not requiring a large initial withdrawal of public funds before the development begins the adverse impact is reduced.

- b. Is consistent with applicable law or variations permitted by law, including a permit to which the development is subject; and

Staff finds that the proposed change is consistent with applicable laws and the intent of the original decision.

- c. Does not involve an issue of broad public interest, based on the record of the decision.

No public comments were received regarding the road pavement agreement process.

In summary, staff finds that the proposed changes qualify for a Type I process.

Note: The Community Development Director reserves the right to provide additional comment and findings of fact regarding this decision, if appealed.

Decision Appeal Process:

An **appeal** of any aspect of this decision may be appealed to the County Hearing Examiner only by a party of record. A "Party of Record" includes the applicant and those individuals who submitted written testimony to the Community Development Director within the designated comment period.

The appeal shall be filed with the Department of Community Development, Permit Services Center, 1300 Franklin Street, Vancouver, Washington, 98660, within fourteen (14) calendar days from the date the notice of final land use decision is mailed to parties of record. This decision was mailed on May 2, 2011. Therefore any appeal must be received in this office by May 16, 2011.

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

- Case number designated by the County;

- Name of the applicant;
- Name of each petitioner;
- Signature of each petitioner or his or her duly authorized representative;
- A statement showing the following:
 - That each petitioner is entitled to file the appeal as an interested party in accordance with CCC 40.510.030(H);
 - The specific aspect(s) of the decision being appealed;
 - The reasons why each aspect is in error as a matter of fact or law;
 - The evidence relied on to prove the error; and,
- The appeal fee of **\$1,580** (Planning = \$1,166 + Engineering = \$414).

Attachments:

- None

A copy of the approved preliminary plan and Clark County Code are available for review at:

**Public Service Center
Department of Community Development
1300 Franklin Street
P.O. Box 9810
Vancouver, WA. 98666-9810
Phone: (360) 397-2375; Fax: (360) 397-2011**

A copy of the Clark County Code is also available on our Web Page at:
Web Page at: <http://www.clark.wa.gov>