

# TYPE III DEVELOPMENT REVIEW, STAFF REPORT & RECOMMENDATION

Form DS1301 Non-PLD

**Project Name:** LIVINGSTON QUARRY POST DECISION REVIEW

**Case Number:** PST2012-00017

**Location:** 26200 NE Highland Meadows Drive

**Request:** The applicant is requesting to allow limited mining to occur on the county's quarry site prior to the completion of the 12 month baseline well monitoring period required under condition A-14 of CUP2009-00004

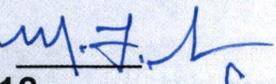
**Applicant:** Clark County Public Works

**Contact Person:** Linda Small  
(360) 397-6118 #4753  
Linda.small@clark.wa.gov

**Property Owner:** State of Washington

## RECOMMENDATION

Approve subject to Conditions of Approval

Land Use Review Manager's Initials: 

Date Issued: August 29, 2012

Gov S.E.

Public Hearing Date: September 13, 2012

### County Review Staff:

<u>Department/Division</u>	<u>Name</u>	<u>Phone</u> <u>Ext.</u>	<u>E-mail Address</u>
Land Use Review Manager:	Susan Ellinger	5122	susan.ellinger@clark.wa.gov
Land Use Review Planner:	Jan Bazala	4499	jan.bazala@clark.wa.gov

EXHIBIT #

13

**Comp Plan Designation/ Zoning:** FR-2;FR-1/ FR-40; FR-80

**Parcel Number(s):** 170393-000, 170398-000, 170395-000, 170397-000

**Applicable Laws:**

Clark County Code Sections 40.500.010 (Procedures); 40.510.030 (Type III Process); 40.520.030 (Conditional Use Permits); 40.520.060 (Post Decision Review); 40.570 (SEPA).

**Neighborhood Association/Contact:**

**Proebstel Neighborhood Association**

Wendy Garrett  
P.O Box 821471  
Vancouver, WA 98682  
253-9659  
E-mail: proebstelwendy@yahoo.com

**Vesting:**

An application is reviewed against the subdivision, zoning, transportation, stormwater and other land development codes in effect at the time a fully complete application for preliminary approval is submitted. If a pre-application conference is required, the application shall earlier contingently vest on the date the fully complete pre-application is filed. Contingent vesting requires that a fully complete application for substantially the same proposal is filed within 180 calendar days of the date the county issues its pre-application conference report.

No pre-application conference on this matter was required.

The fully complete application was submitted on July 24, 2012 and determined to be fully complete on July 25, 2012. Given these facts the application is vested on July 24, 2012.

There are no disputes regarding vesting.

**Time Limits:**

The application was determined to be fully complete on July 25, 2012 (see Exhibit No.4). Therefore, the County Code requirement for issuing a decision within 92 days lapses on October 25, 2012. The State requirement for issuing a decision within 120 calendar days, lapses on November 22, 2012.

**Public Notice:**

Notice of application and public hearing was mailed to the applicant, the Proebstel Neighborhood Association and property owners within a half mile of the site on July 31, 2012. One sign was posted on the subject property and two within the vicinity on August 24, 2012.

## **Public Comments:**

Randall and Carol Kraut; email August 6, 2012. Exhibit 5. Has concerns regarding rocks falling off of trucks and damage to the road surface.

**Staff response:** Such issues are outside the scope of this review. Such issues can be addressed through the county sheriff and Public Works staff (regarding the established road maintenance agreement).

Sharon McEneny; email August 13, 2012. Exhibit 6. Has concerns regarding the following:

- the well condition should not be changed;
- her well is not being monitored for depth requirements;
- test results were not given to well owners

Nick and Wendy Keeline; email August 14, 2012. Exhibit 7. The Keelines understood that their water levels would be measured, and were not aware that conditions can be changed.

**Staff response:** The post decision review process in 40.520.060 is available to revise existing conditions of approval (see Land Use Finding 1); however, an applicant assumes the same burden of proof to demonstrate compliance with the conditional use criteria as the original application.

The county sent out letters to 92 property owners within 2,000 feet of the overlay and Mr. Inoyoue's community well. Fifty-three owners originally indicated an interest in having water quality samples taken. Thirteen properties were identified for monthly depth to groundwater measurements as described in the Maul Foster Alongi letter dated May 26, 2009 per Condition A-14 (the May 26 letter is included in Tab 5 of the application). The depth to groundwater monitoring was initiated in April 2012 and continues to be implemented by PBS Engineering and Environmental, Results of the initial well assessment results are available in their draft "Groundwater Monitoring Report," dated July 9, 2012. (See Tab 2 of the application)

## **Project Overview**

The "Livingston Mountain" area is home to two quarry sites. Clark County's quarry site (for which this application for post decision review has been submitted) is known as the "Livingston Quarry"; the 40 acre site immediately to the east is known as the "Livingston MOUNTAIN Quarry", or the Tower Rock site.

The county's quarry is on land for which the county has a lease from the DNR. The county's site has been intermittently mined since the 1947. The Tower Rock site is owned by Tower Rock Products Inc., and Tower Rock has been operating the Tower Rock site since 2007.

In 2009, the county applied for a rezone, conditional use permit and site plan review to expand the existing quarry on their leased site. The rezone to expand the existing Surface Mining Overlay was denied; however, the conditional use permit (CUP) and site plan review to mine rock and operate a crusher within the existing surface mining overlay was approved with conditions. Condition A-14 of CUP2009-00004 requires 12

months of groundwater monitoring for certain wells to establish the baseline conditions of the wells before operations begin.

The stated intent of Condition A-14 was to establish a baseline before mining commenced on the site. Tower was allowed to move their crusher and stockpile material on the existing quarry floor of the county's site before monitoring began, provided that mining was not allowed until the 12 months of monitoring was completed.

In 2011 Tower Rock subcontracted out the operation to Storedahl and Sons.

The quarry operator wants to expand the pit on the Tower Rock site onto the county's site prior to completion of 12 months of monitoring. It's been found that the quality of rock along the boundary of the two sites is good, and being able to merge the two sites will make operations more efficient.

It should be noted that if this post decision review is approved, a minimum of 6 months of data will be accumulated by the time the mining can actually start, and depending on how fast material is extracted, it's unlikely that the full 200 foot area will be mined before the 12 month monitoring period is completed.

Comprehensive Plan, Zoning and Current Land Use

Compass	Comp Plan	Zoning	Current Land Use
Site	FR-1, FR-2	FR-80, FR-40	Old quarry site used for crusher set up and gravel stockpiles
North	FR-1	FR-80	Camp Bonneville
East	FR-1	FR-80	Tower Rock quarry
South	R-5	R-5	Single family residences on large lots
West	FR-1, FR-2	FR-80, FR-40	Forested state lands

**Staff Analysis**

Staff's analysis also reflects review of agency and public comments received during the comment period, and knowledge gained through a site visit.

**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 proposal not discussed below comply with the applicable code requirements.

**LAND USE:**

Finding 1 Post Decision Review eligibility

Under 40.520.060 conditions of approval can be changed prior to certain final threshold processes, such as the filing of a recorded plat for a land division, or the issuance of a certificate of occupancy for a site plan. The proposed change is to a condition of a conditional use permit, which has no such final threshold which would prohibit its applicability.

### Finding 2 Original Decision

The application for post decision does not affect any other condition of the original approval. Except as explicitly modified within this post decision review, applicable findings and conditions included in CUP2009-00004 remain in effect. (**See Condition A-1**)

### Finding 3 Groundwater Condition A-14

CUP2009-00004 required the following condition regarding well monitoring:

#### **A-14 Groundwater-**

A water well baseline assessment program will be implemented for wells recommended for testing in the MFA groundwater assessment exhibit. Anyone within 2000 feet of the overlay area or Mr. Inoyoue's community well may request an assessment. The baseline assessment will be initiated at least one year prior to operations beginning at the county's quarry. Baseline assessment will include collecting one pre-mining water quality sample from each well and monitoring of water levels in the wells. Applicant will include the following parameters in the baseline groundwater analysis:

- NWTPH-Dx and a scan for SVOCs
- Beryllium, chromium, copper, selenium, cadmium, barium, antimony, mercury, thallium, lead, sodium cyanide, and nitrite-n

Water levels will be measured monthly for the first twelve months for the first year, and quarterly thereafter until the county's mine begins operating, or for up to two years, whichever is less. Measurements and quality samples shall be conducted according to the procedures noted on page 6 of the MFA groundwater assessment, Exhibit 22. Additional assessment will occur after operations begin if a nearby well experiences a significant change in conditions. These records shall be maintained by the Public Works department, and available at the public's request.

**(Editor's note: the referenced letter, aka Exhibit 22, is included in Tab 5 of the application.)**

The applicant has proposed the condition be amended as follows: (*note: text proposed to be removed is indicated with a **bold-strikeout**. Text proposed to be added is shown as **bold, double underlined***)

A water well baseline assessment program will be implemented for wells recommended for testing in the MFA groundwater assessment exhibit. Anyone within 2000 feet of the overlay area or Mr. Inoyoue's community well may request an assessment. The water quality baseline assessment will be initiated **at least one year** prior to operations beginning at the county's quarry. Baseline assessment will include collecting one pre-mining water quality sample from each well, and monitoring of water levels in the wells. Applicant will include the following parameters in the baseline groundwater analysis:

- NWTPH-Dx and a scan for SVOCs

- Beryllium, chromium, copper, selenium, cadmium, barium, antimony, mercury, thallium, lead, sodium cyanide, and nitrite-n

Water levels will be measured monthly for the first twelve months for the first year, and thereafter until the county's mine begins operating, or for up to two years, whichever is less **with the exception of mining within the 200 foot boundary between Livingston Quarry on DNR property and the active Livingston Mountain Quarry per Maul Foster Alongi letter dated 6/15/12. Mining may proceed in this zone after water quality samples have been obtained, to allow the mine operator to safely remove the ridge which constitutes a shared boundary between the adjacent quarries.** Measurements and quality samples shall be conducted according to the procedures noted on page 6 of the MFA groundwater assessment, Exhibit 22. Additional assessment will occur after operations begin if a nearby well experiences a significant change in conditions. These records shall be maintained by the Public Works department, and available at the public's request.

#### Groundwater monitoring background

Tower Rock has been mining their site since 2007, and under the conditions of approval of their own site plan review permit (PSR2002-00044) they were required to perform well monitoring for wells to the east of their site. That monitoring took place between 2007 and 2010. See Exhibit 9 ("well logs table") for a compilation of the 2007-2010 well log info.

MFA purports that those wells have not been affected by the mining activities on the Tower Rock site, so it's unlikely that expanding the mine westward onto the county's site (no more than 200 feet onto the county's site) before the 12 month period is over will affect the baseline levels of the 7 wells that are being monitored for depth.

The county's condition A-14 required a wider circle of well monitoring, and encompasses wells to the south of the site that were not required to be monitored under the Tower Rock permit.

Condition A-14 requires that a water well baseline assessment program will be implemented for wells recommended for testing in the MFA groundwater assessment exhibit, or for anyone requesting an assessment with 2,000 feet of the overlay or Mr. Inoyoue's community well. Forty-two water quality samples were taken, and currently 7 out of 13 wells are set up for monthly monitoring, as, according to the applicant and PBS (the consultant doing the monitoring), property owners declined to participate, wells were inaccessible, or construction of the other wells made it risky or impractical to do so. Following the late May 2012 monitoring, the final list of Baseline Wells was established with seven properties retained for the monthly water level measurements. The depths and elevations of the wells are provided in the table below. These 7 wells allow for an evaluation of aquifers ranging from approximately 1,335 feet to 100 feet above mean sea level (amsl).

PBS ID #	Information from Driller's Log		Well Head Elevation*	Well Bottom Elevation
	Well Depth	Perforated Interval		
	feet bgs		feet amsl	
LQAB01	220	200-220	833	613
LQAB05	150	N/A	694	544
LQAB06	135	115-135	819	684
LQAB07	120	40-120	505	385
LQAB12	124	25-57	1344	1220
LQAB13	55	52-55	1109	1054
LQAB14	458	N/A	558	100

feet bgs: feet below ground surface

feet amsl: feet above mean sea level

\* obtained from entering the wellhead latitude and longitude measurements into Google Earth

### Peer review of proposal

Land Use Review staff submitted the application to the private consulting firm Kennedy Jenks of Portland, Oregon to provide an additional opinion on whether allowing limited additional mining before the 12 month period is complete will have an effect on the baseline of the wells. Kennedy / Jenks concluded that "the proposed minor expansion of the LMQ along the boundary with the LQ will not have a significant impact on well water quality or depth to water table in the wells monitored as part of the Condition A-14 groundwater assessment." (See Exhibit 12)

Staff therefore recommends approval of the proposed revision of Condition A-14 per the applicant's request, subject to limiting the mining to the area within 200 feet of the common boundary with the Livingston Mountain Quarry. (**See Condition A-2**)

### Land Use Finding 4 Depth of excavation

The Tower Rock site is approved to be excavated from 1,020 feet asl, at the southern reaches of the pit, and transitions up to 1060 feet asl.

The base level of the county site is currently at 980 feet asl. It's expected that the existing floors of the Tower Rock site will transition over onto the county's site at those same relative elevations, but a transition down to 980 feet on the county's site can be allowed.

### **Conclusion (Land Use):**

Staff concludes that the proposed preliminary plan, subject to conditions identified above, meets the land use requirements of the Clark County Code.

**Staff Contact Person:** Jan Bazala, (360) 397-2375, ext. 4499.

**Responsible Official:** Martin Snell

**Public Service Center  
Community Development Department  
1300 Franklin Street  
P.O. Box 9810**

## RECOMMENDATION

Based upon the proposed plan (identified as Exhibit 1), and the findings and conclusions stated above, staff recommends the Hearings Examiner **APPROVE** this request, subject to the understanding that the applicant is required to adhere to all applicable codes and laws, and is subject to the following conditions of approval:

## Conditions of Approval

- A-1 Original Decision:** Except as explicitly modified within this post decision review, applicable findings and conditions included in CUP2009-00004 remain in effect.
- A-2** Mining shall be limited to 200 feet of the common boundary with the Livingston Mountain Quarry until April 9, 2013. After that time, mining can commence outside the 200 foot limit, subject to submittal of a new phasing plan, and subject further to the limits of the existing surface mining overlay.

**Note:** Any additional information submitted by the applicant within fourteen (14) calendar days prior to or after issuance of this report, may not be considered due to time constraints. In order for such additional information to be considered, the applicant may be required to request a "hearing extension" or "open record" and shall pay the associated fee.

## HEARING EXAMINER DECISION AND APPEAL PROCESS

This report to the Hearing Examiner is a recommendation from the Development Services Division of Clark County, Washington.

The Examiner may adopt, modify or reject this recommendation. The Examiner will render a decision within 14 calendar days of closing the public hearing. The County will mail a copy of the decision to the applicant and neighborhood association within 7 days of receipt from the Hearing Examiner. All parties of record will receive a notice of the final decision within 7 days of receipt from the Hearing Examiner.

### **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 for reconsideration.

**Appeal Rights:**

Any party of record to the proceeding before the hearings examiner may appeal any aspect of the Hearing Examiner's decision to the Superior Court.

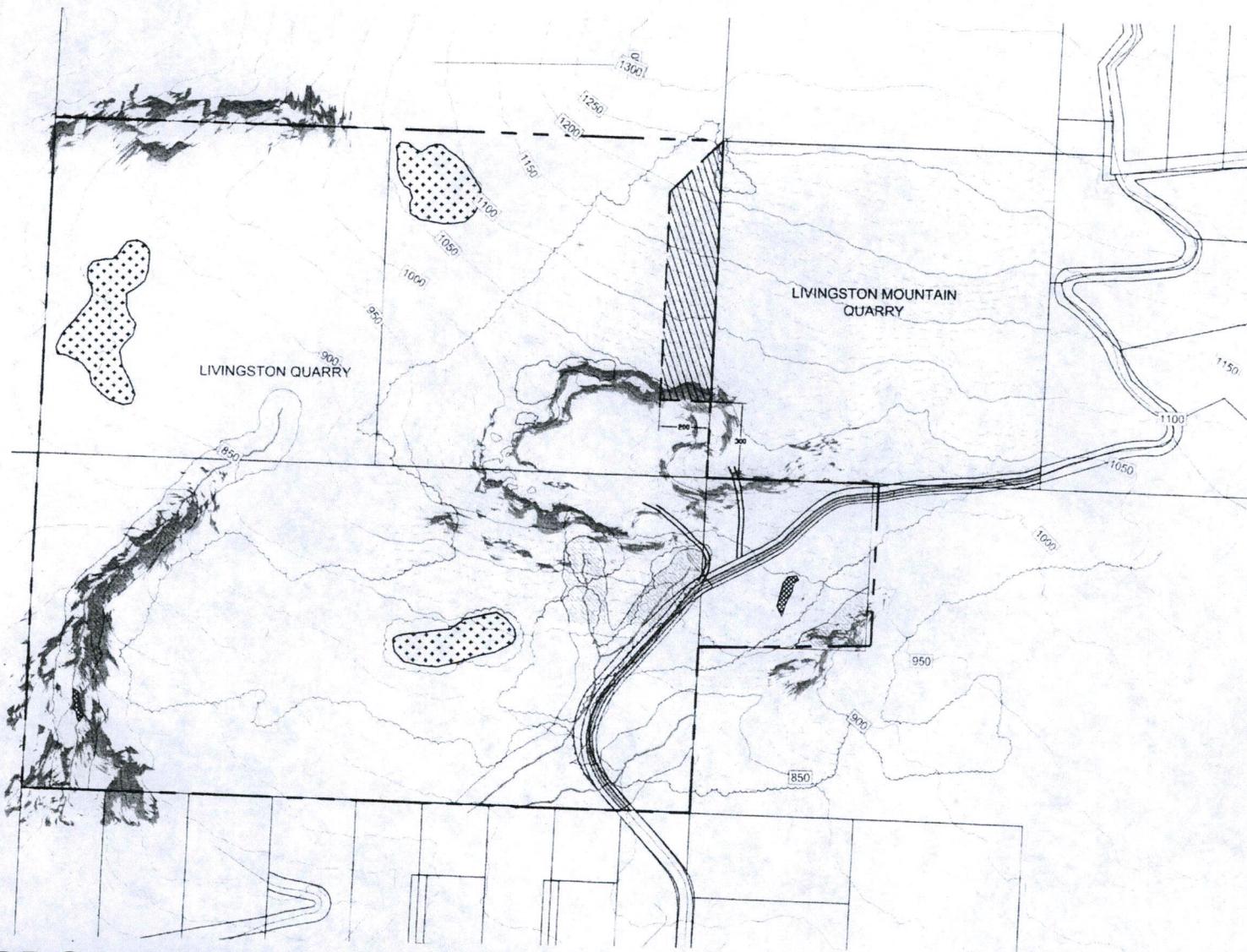
**Attachments:**

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

**Public Service Center  
Community Development Department  
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>



**PROPOSED MINING AREA**  
LIVINGSTON QUARRY

**AFFIDAVIT OF MAILING  
NOTICE/DECISION**

(Form DS1654, Revised 5/18/12)



**Project Name: LIVINGSTON ROCK QUARRY**

**Case No: PST2012-00017**

**AFFIDAVIT OF MAILING**

I, **Sonja R. Wisner**, do hereby certify that on **Wednesday, August 29, 2012**, I deposited in the Community Development mail bin for courier to the United States Post Office at Vancouver, Washington, separate envelopes that contained a true and correct copy of the notice/decision for the above-referenced project. Each envelope was addressed to the Party of Record for this application. Copies were also emailed to those parties who provided correct email addresses.

**Signature:** \_\_\_\_\_

**Date: Wednesday, August 29, 2012**

**EXHIBIT #:** 14