

Office of the
CLARK COUNTY LAND USE HEARING EXAMINER

1408 Franklin Street
P.O. Box 9810
Vancouver WA 98668-9810
Phone (360) 397-2375



NOTICE TO PARTIES OF RECORD

PROJECT NAME: Yacolt Mountain Quarry

CASE NUMBERS: CPZ2002-00009; CUP2002-00003; PSR2002-00015;
SEP2002-00025; ARC2001-00050

The attached decision of the Land Use Hearing Examiner will become final and conclusive unless a written appeal therefrom is filed with the Board of Clark County Commissioners, 2nd Floor, Franklin Center Building, 1013 Franklin Street, Vancouver, Washington, no later than 5:00 p.m. on, **November 28, 2002** (14 calendar days after written notice of the decision is mailed).

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

All other appeals must be written and must contain the case number designated by the County and the name of the applicant; the name and signature of each petitioner for the appeal and a statement showing that each petitioner is entitled to file the appeal as an interested party in accordance with CCC 18.600.100A; the specific aspect(s) of the decision being appealed, the reasons why each aspect is in error as a matter of fact or law, and the evidence relied on to prove the error; accompanied by a fee of **\$239**. The fee shall be refunded if the appeal is withdrawn in writing by the petitioner at least 15 calendar days before the public meeting to consider the appeal.

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

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

Mailed on: **November 14, 2002**

CENTRAL FILES

Project Name: Yacolt Mtn Quarry
CPZ2002-00009;CUP2002-00003;
PSR2002-00015;SEP2002-00025;
ARC2001-00050

LOUISE RICHARDS(Original copy)
B O C C
** INTEROFFICE MAIL **

Planner:: Josh Warner

ROSIE HSIAO
INTEROFFICE

SUSAN RICE
OFFICE ASSISTANT

VANCOUVER/CLARK PARKS
INTEROFFICE MAIL

JANET
ASSESSOR'S OFFICE
INTEROFFICE MAIL

CARLA SOWDER,
SWWHD
INTEROFFICE MAIL

WA DEPT. OF TRANSPORTATION
ATTN: MARY LEGRY
P.O. BOX 1709
VANCOUVER WA 98668-1709

THE COLUMBIAN
KEN OLSEN
P.O. BOX 180
VANCOUVER WA 98666

FT VANCOUVER REGIONAL
LIBRARY
1007 EAST MILL PLAIN BLVD.
VANCOUVER WA 98663

STEVE SCHULTE
PUBLIC WORKS

MR. J. RICHARD FORESTER
813 ALDER ST, STE 310
PORTLAND OR 97205

MR LARRY EPSTEIN
1020 TAYLOR STREET, SUITE 730
PORTLAND OR 97205-2558

MR. DANIEL KEARNS
REEVE, KEARNS, PC
610 SW ALDER ST, STE 803
PORTLAND, OR 97205

CENTRAL FILES

RICHARD DRINKWATER

VANCOUVER SCHOOL DIST
ATTN: BILL DOENECKE
PO BOX 8937
VANCOUVER WA 98668-8937

DEVELOPMENT ENG (2)

DEV. INSPECTIONS

LINDA MOORHEAD
CODE ENFORCEMENT

Desiree Demonye
EMAIL COPY OF DECISION FOR
WEB PAGE

YACOLT MOUNTAIN QUARRY
CPZ2002-00009; CUP2002-00003;
PSR2002-00015; SEP2002-00025,
ARC2001-00050
HEARING DATE:6/20/02

MOSS & ASSOCIATES
JAMES KESSI
11805 NE 99TH ST STE 1350
VANCOUVER WA 98682

SCOTT LEVANEN
P.O. BOX 1656
BATTLE GROUND, WA 98604

L.L. LINDBERG
No address given

DAVE SHEPARD
PUBLIC WORKS

SHELLEY OYLEAR
PUBLIC WORKS

CTS ENGINEERS
ERIC GRAVES
3300 NW 211TH TERRACE
HILLSBORO, OR 97124

DEPT OF ECOLOGY
OPAL SMITHERMAN
P.O. BOX 47775
OLYMPIA, WA 98504

MOSS AND ASSOCIATES
LONNIE MOSS
11805 NE 99TH ST STE 1350
VANCOUVER WA 98682

WILLA STEWART
33716 NE KELLY ROAD
YACOLT, WA 98675

JOSH WARNER, PLANNER II
SUSAN RICE, OA II

DAVID LAMPE
PACIFIC ROCK PRODUCTS
8705 NE 117TH AVENUE
VANCOUVER, WA 98662

AL & LOIS MATSON & FAMILY
P.O. BOX 2996
BATTLE GROUND, WA 98604

H. Kenneth Brown
37212 NE Elliott Road
Yacolt, WA 98675

JOE BEGIN
DALY STANDLEE & ASSOCIATES
4900 SW GRIFFITH DR, STE 216
BEAVERTON, OR 97005

BRENT ROTSCHY
P.O. BOX 464
YACOLT, WA 98675

HELEN NORTHROP
19516 NE LUCIA FALLS ROAD
YACOLT, WA 98675

MICHELLE BLOOMQUIST
27904 NE 174TH AVENUE
BATTLE GROUND, WA 98604

DAVID ROGER
18114 NE 317TH STREET
YACOLT, WA 98675

MICHAEL ESTLOW
31606 NE SOUTHVIEW DRIVE
YACOLT, WA 98675

CECIL & MARIE ROSTSCHY
22525 NE GARNER ROAD
YACOLT WA 98675

SELLERS LAW OFFICE
JIM SELLERS
P.O. BOX 61535
VANCOUVER, WA 98666

JAMES A. STYRES JR.
18614 NE YACOLT MT. ROAD
YACOLT, WA 98675

WASHDOT
DEB WALLACE
P.O. BOX 1709
VANCOUVER, WA 98668

Dave Swendsen
32214 NE Railroad Avenue
Yacolt, WA 98675

NEWTON CONSULTANTS, INC
1201 SW 12TH AVENUE, STE 400
PORTLAND, OR 97205

DOUGLAS CARTER
P.O. BOX 607
BRUSH PRAIRIE, WA 98606

HOWARD STEIN
CTS
3300 NW 211th TERRACE
HILLSBORO, OR 97124

TODD KLEIN
32413 NE KELLY ROAD
YACOLT, WA 98675

IRA & RUTH BRANCH
31715 NE SOUTHVIEW DRIVE
YACOLT, WA 98675

 HOWARD & BONNIE JONES
31815 NE KELLY ROAD
YACOLT, WA 98675

GRANT MATTHEWS
17920 SILVAN ROAD
YACOLT, WA 98675

RONALD BAILY
20707 NE 374TH STREET
YACOLT, WA 98675

PAT & LEE ROBERTSON
34004 NE KELLY ROAD
YACOLT, WA 98675

GARY WITHERSPOON
31616 NE SYLYAN DRIVE
YACOLT, WA 98675

DAVID ROGERS
18114 NE 317TH STREET
YACOLT, WA 98675

Jessica Barnhardt
13515 NE 176th Circle
Battle Ground, WA 98604

DUTCH & WILLA SAVAGE
33716 NE KELLY ROAD
YACOLT, WA 98675

ROBER MILES
26300 NE 299TH STREET
YACOLT, WA 98675

MIKE BRACHE
25804 NE CC LONDON
YACOLT, WA 98675

EILEEN & TERRY GUTZ
22908 NE 354TH STREET
YACOLT, WA 98675

Darryl & Colleen Ige
22213 NE WH Garner Rd
Yacolt, WA 98675

SAM SMITH
39513 NE 21ST AVENUE
WOODLAND, WA 98674

FRED & NICKI SUCKOW
30402 NE BRICKIE CREEK DRIVE
YACOLT, WA 98675

ROBERT PARSONS
31604 NE KELLY ROAD
YACOLT, WA 98675

LAURA & RICK LANIER
31719 NE SOUTHVIEW DRIVE
YACOLT, WA 98675

SHIRLEY & DAVID KRAUSE
P.O. BOX 338
YACOLT, WA 98675

RICK MALINOWSKI
P.O. BOX 318
YACOLT, WA 98675

STANLEY SARKINEN
14803 NE 212TH AVENUE
BRUSH PRAIRIE, WA 98606

LINDA HATTERSHIDE
202017 NE YACOLT MOUNTAIN RD
YACOLT, WA 98675

GREG BRONSON
31702 NE KELLY ROAD
YACOLT, WA 98675

J.X.L. EXTERIORS INC
JAMES MATTILA
P.O. BOX 447
BATTLE GROUND, WA 98604

MRS. LYNN CULBERTSON
22902 NE WH GARNER ROAD
YACOLT, WA 98675

RUBEN SILVA
22806 NE WH GARNER ROAD
YACOLT, WA 98675

DAVID & SANDY STACKHOUSE
31306 NE SPRINGHILL ROAD
YACOLT, WA 98675

SOUTHWEST CLEAN AIR AGENCY
DAVID JOYNER
1308 NE 134TH STREET
VANNCOUVER, WA 98685

RICHARD DIETEL
P.O. BOX 487
YACOLT, WA 98675

ROBBIE SUGICH
17707 NE LUCIA FALLS ROAD
YACOLT, WA 98675

DAVID & NANCY MARTIN
16511 NE BEEBE ROAD
BATTLE GROUND, WA 98604

GUY SEITZ & GEORGIA CHEER
30313 NE COYOTE DRIVE
YACOLT, WA 98675

STEVE WHITE
30214 NE 171ST
YACOLT, WA 98675

Steve Schulte
Public Works

Gary Hatcher
No address given

North Clark Construction
W.R. Waldow
11600 NE 384th Street
Amboy, WA 98601

Herb & Judy Kennon
P.O. Box 177
Ridgefield, WA 98642

Bflatjann@aol.com
No address given

Mike Easley
18904 NE Gabriel Road
Yacolt, WA 98675

Gary & Carla Klein
P.O.Box 134
Heisson, WA 98622

John Swatosh
No address given
Johswa@colmoc.com

Dave Larwick
24004 NE Dole Valley Road
Yacolt, WA 98675

Vic & Linda Adamson
32506 NE Kelly Road
Yacolt, WA 98675

Orlin & Bonita Halverson
P.O. Box 152
Yacolt, WA 98675

George Wiebold Family
10715 NE 72nd Avenue
Vancouver, WA 98686

James Morris
7521 NE 219th Street
Battle Ground, WA 98604

James S. Wigen
23912 NE 209th Street
Battle Ground, WA 98604

Kathleen Williams
1603 SW 2nd Avenue
Battle Ground, Wa 98604

Harry Wiebold
6715 NE 109th Avenue
Vancouver, WA 98686

Steven Kangas
P.O. Box 508
Brush Prairie, WA 98606

US Post Office-Rhonda Boyle
Post Master
555 N. Amboy Ave
Yacolt. WA 98675-9998

Don Sasse
No address
Dons@tapaniunderground.com

Gary Hoopman
16413 NE Fargher Lake Hwy
Yacolt, WA 98675

Gary Scobell & James Pergande
31801 NE Kelly Road
Yacolt. WA 98675

Karvonen Sand & Gravel
21310 NE 87th Avenue
Battle Ground, WA 98604

Bill Smith
No Address

Jim Robertson
P.O. Box 157
Yacolt. WA 98675

E.D & Joan Earhart
34792 NE Kelly Road
Yacolt, WA 98675

American West
Arlen Homer
P.O. Box 730
Pasco, WA 99301

Kleinfelder, Inc
Mark Underhill
15050 SW Koll Parkway, STE L
Beaverton. OR 97006

Barbara Maehara
18018 NE Silvan Drive
Yacolt, WA 98675

Kleinfelder, Inc
Peter Stroud
15050 SW Koll Parkway, STE L
Beaverton, OR 97006

Leslie Brown & Claude Mallegol
23100 NE St Helen's View Road
Yacolt, WA 98675

Rycewicz & Chenoweth, LLP
Brian Chenoweth
601 SW Second Ave, STE 1940
Portland, OR 97204

Richard Drinkwater
Dev Services

Explosives Technical Services
JR "Dick" Daniel
12010 NW Lovejoy
Portland, OR 972291

SOUTHWEST CLEAN AIR AGENCY
PAUL MAIROSE
1308 NE 134TH STREET
VANNCOUVER, WA 98685

Yacolt Mountain NA
David Krause, Councilperson
PO Box 338
Yacolt, WA 98675

Webster Forester, LLC
3230 SW Gale Avenue
Portland, OR 97201

Ken Stitt
33817 NE 159th Avenue
Yacolt, WA 98675

Smith Family
20413 NE Yacolt Mountain Road
Yacolt, WA 98675

Richard & Candace Jones
19404 NE Yacolt Mountain Road
Yacolt, WA 98675

Thomas & Maria Cardona
20817 NE Yacolt Mountain Road
Yacolt, WA 98675

Linda & Vernon Coffman
19815 NE Yacolt Mountain Road
Yacolt, WA 98675

Resident
19404 NE Yacolt Mountain Road
Yacolt, WA 98675

Hayes Residence
19806 NE Yacolt Mountain Road
Yacolt, Wa 98675

Rich & Jolene Westbrook
19704 NE Yacolt Mountain Road
Yacolt, WA 98675

Clifford & Linda Logan
8100 NE 104th Circle
Vancouver, WA 98662

Marine Logan
19300 NE Yacolt Mountain Road
Yacolt, WA 98675

Ricky Frasier
16016 NE 41st Street
Vancouver, WA 98682

Morse Family
25406 NE Fern Drive
Amboy, WA 98601

Tommy Frasier
14515 NE 72nd Avenue
Vancouver, WA 98682

Earhart Family
34792 NE Kelly Road
Yacolt, WA 98675

Cynthia & Michael Back
22606 NE Garner Road
Yacolt, WA 98675

Vincent Hinman
6716 NE 64th Place
Vancouver, WA 98682

Eric Lee
2403 SW 7th Street
Battle Ground, WA 98604

Carolyn Goodman
32406 NE Kelly Road
Yacolt, WA 98675

David Simes
2024 NE 90th Avenue
Vancouver, WA 98664

Darrell Haynes
2024 NE 90th Avenue
Brush Prairie, WA 98606

Lynn & William Smith
20911 NE WH Garner Road
Yacolt, WA 98675

James VanOsdel
18808 NE Silvan Drive
Yacolt, WA 98675

Scott & Lisa Johns
405 E Farrer Street
Yacolt, WA 98675

Harvey & Loretta Watson
21801 NE Garner Road
Yacolt, WA 98675

Oldenburg Family
33510 NE Kelly Road
Yacolt, WA 98675

Linda Hurtesh
20717 NE Yacolt
Yacolt, WA 98675

Joe Hallstrom
P.O. Box 298
Yacolt, WA 98675

Clarice Burkhart
P.O. 2017
Battle Ground, WA 98604

Keith Hirokawa
1111 Main Street, ST 402
Vancouver, WA 98680

Phil & Jo Kelly
21400 NE 364th Street
Yacolt, WA 98675

Julia Berreth
21400 NE 373rd Street
Yacolt, WA 98685

Robert & Jenn Withee
36516 NE Lakeveiw Rd
Yacolt, WA 98675

William & Lisa Mills
P.O. Box 837
Battle Ground, WA 98604

Pat Marinier
32302 NE Kelly Road
Yacolt, WA 98675

Cal Ek
9101 NE 207th Circle
Battle Ground, WA 98604

Kathy J. Anderson
P.O. Box 886
Battle Ground, WA 98604

Nick Linardos
24801 NE Lucia Falls Road
Yacolt, WA 98675

John Matson
11430 NE Ward Road
Brush Prairie, WA 98606

Randy Christopher
30720 NE Kelly Road
Yacolt, WA 98675

James Colville
30619 NE Big Tree CR Road
Yacolt, WA 98675

Colleen Iye
22213 NE WH Garner Road
Yacolt, WA 98675

Don Filippo
28502 NE Kelly Road
Yacolt, WA 98675

Paul Pietrorazio
18508 NE Gavriel Rd
Yacolt, WA 98675

Blake Hersey
P.O. Box 45
Amboy, WA 98601

Ray Hallstrom
5604 NE 124th Street
Vancouver, WA 98666

Kurt Strauss
(no address given)

Randy & Sharon Dewey
19164 NE Lucia Falls Rd
Yacolt, WA 98675

Jay Vroman & Family
33604 NE 171st Court
Yacolt, WA 98675

Kathryn Hunt
29904 NE Kelly Road
Yacolt, WA 98675

Mr & Mrs Robert Craver
15611 NE 319th Street
Battle Ground, WA 98604

Jordan & Rachel
19521 NE Dawn Ln
Yacolt, WA 98675

Jim Lightner
36014 Beaverbrook Road
Yacolt, WA 98675

Dale & Dennis Drew
30404 NE 172nd Avenue
Yacolt, WA 98675

Heidi Thompson
35200 NE Amboy Ave
Yacolt, WA 98675

Rich Lowry
Prosecuting Attorneys Office

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

REGARDING THE APPLICATION FOR A)	FINAL ORDER
REZONE, CONDITIONAL USE AND SITE)	
PLAN APPROVAL TO COMMERCIALY)	YACOLT MOUNTAIN
QUARRY ROCK IN THE FR-80 ZONE)	QUARRY
DISTRICT IN THE UNINCORPORATED)	CPZ2002-00009; CUP2002-
CLARK COUNTY, WA.)	00003; PSR2002-00015;
		SEP2002-00025; ARC2001-
		00050

REZONE DENIED

INTRODUCTION

The proposed mine is located at the top of Yacolt Mountain, about 5 miles southwest of the town of Yacolt. The site is currently in timber production and has an active borrow pit used for forestry. The owner's residence is located on the site and is proposed to be removed or relocated as mining expands. The house has an existing well and septic system. There is a portion of habitat conservation zone (150-foot protection zone) from an off-site watercourse that does fall onto the property as well as some area that qualifies as priority habitat. A habitat permit has been applied for to protect and mitigate for the proposed impacts. The site is surrounded by resource/timber land that is zoned FR-40 and FR-80. There are approximately seven dwellings in the immediate vicinity (1/2 mile) of the proposal and many more houses along the county roads leading from the proposed site to the arterial highways.

The proposal is for a rezone creating a surface mining overlay, a conditional use permit, site plan and environmental reviews that will cover approximately 135 acres with up to 410 truck trips daily at peak production at the height of the construction season. The application for the conditional use is based on a request to operate crushing equipment in association with the extraction of mineral resource. There will be blasting associated with the proposed use.

Location: 30500 NE Mystic Drive; Southeast Quarter of Section 5, Township 4 North, Range 3 East of the Willamette Meridian; Northwest, Southwest and Southeast Quarter of Section 4, Township 4 North, Range 3 East of the Willamette Meridian; Parcel Number(s):230067000, 230068000, 230076000, 230080000, 230270000; Area: 135 acres

Applicant: Moss & Associates
Attn: James Kessi
11805 NE 99th Street, Suite 1350
Vancouver, WA 98682

Property Owners: Brent Rotschy, Cecil Rotschy, Marie Rotschy

Comp Plan: Forest (FR-1)

Zoning: Forest (FR-80)

Applicable Laws: Clark County Code Chapters 12.05A (Transportation), 12.40 (Concurrency), 13.29 (Storm Water Drainage and Erosion Control), 13.51 (Habitat Conservation), 13.60 (Geologic Hazard), 15.12 (Fire Code), 18.302 (Agriculture and Forest Districts), 18.402A (Site Plan Review), 18.404 (Conditional Uses), 18.503 (Rezone) 20.50 (SEPA), Clark County Comprehensive Plan.

HEARING AND RECORD

The first public hearing on this matter was held on June 20, 2002 and was continued by mutual agreement to August 22 (second hearing). After the first hearing, the Staff was given until July 19, 2002 to introduce additional evidence or comments, and the applicant was given until August 16 to respond in writing. No limitation was placed on additional comments from neighbors. At the end of the second hearing the following schedule was established:

1. Evidence and argument in response to the items introduced shortly before or at the August hearing could be filed until Friday, September 13, at 5pm;
2. Evidence and responses to the post hearing (September) comments, could be filed until Friday, October 4th at 5pm;
3. Applicant's final rebuttal was due by Friday, October 18th at 5pm.

The record was closed at 5pm on Friday, October 18th. A record of all testimony received is included herein as Exhibit A (Parties of Record), Exhibit B (Taped Proceedings), and Exhibit C (Written Testimony as referenced in the Exhibit list). These exhibits are filed at the Clark County Department of Community Development.

As explained at the first hearing the Examiner conducted an unaccompanied site visit prior to that hearing. The Examiner was unable to enter the site itself, but was able to observe north and south local roads destined to be used by the trucks and trailers coming to and from the Quarry, as well as surrounding topography. The Examiner disclosed an opinion that the site visit left him with the impression that pavement on NE Kelly Road appeared somewhat thin and already in need of some

resurfacing and that it would not take too many loaded trucks to rip it up.

At the second hearing the Examiner disclosed having conducted a second site visit accompanied by Josh Warner, the lead planner in this case. The Examiner explained that with Mr. Warner's assistance he was able to get into the site from Yacolt Mountain Road, apparently with the applicant's prior permission. He commented that as a result he had a better understanding of the relative height of the mining operations and the towering views of the surrounding areas that it offered. He reported that the altitude heightened his concern about how sound will travel from the site to any residences below the site. There was no immediate comment regarding this disclosure, however later testimony specifically addressed the noise issue.

While no public comments were received by the deadline to be included in the initial June 2002 Staff Report, there were numerous comments made at the hearings and after the hearings which are briefly summarized below. The record is replete with written and oral testimony from neighbors and near-neighbors predominantly opposed to the proposed Quarry operation based on the anticipated impacts of the mining operations themselves and the impacts caused by the transport of the aggregate on steep, curving and narrow secondary roads. Initially, five letters from interested parties were submitted by the property owner on May 13, 2002 (Exhibits 26 – 30). All of the letters submitted by the applicant give qualified or outright support for the proposal. The concerns presented in the opposition letters and at the hearing included, *inter alia*, impact on wells from water table damage from 5,000 gallons a day withdrawal, from any greater authorized and unauthorized withdrawal and from blasting. Of equal concern were road surface damage, truck noise and safety, hours of operation, dust, noise from crushing, blasting and trucks, quality of life, property values, safety of travelers, school buses, children, and stream contamination to name the most significant.

James Kessi, Moss Engineering, introduced the three applications necessary to permit the proposed Quarry operations: mining overlay rezone, site plan review and conditional use application for on-site crushing. He identified ground water and roads as significant issues. According to the applicant, the site is a high value aggregate site whose extraction will present minimal impacts to residential areas in the vicinity. There will be one main access road, and two emergency only exits which will come out on Yacolt Mountain road. The trees on the periphery will be retained as a buffer. As originally proposed general crushing will be allowed between 7am and 6pm. The mine will operate from 6am to 8pm in the requested zone (these proposed hours were modified later in response to public input). The extraction will begin on the south side and the crushing will take place at the lowest elevation. There are no residences immediately to the south where greatest sound and visual impacts would be. He also made the following points:

- In the beginning WSDOT was concerned about off-site intersection improvement (Exhibit 67), including a right turn lane on SR 503 and Gabriel Road. While the angles of the intersection will be improved, no turn lane is now considered necessary.
- Wet ponds and infiltration will handle all on site storm water, up to a 100 year event.

The Newton Consultants proposed monitoring static well water levels to establish a base measurement and then monitoring the wells on a quarterly basis to ensure integrity of the local wells. SWCA will license dust management.

- The impacts of this operation should be the same as out right permitted logging operation. Noise levels will meet WAC standards. As the Quarry becomes deeper, noise impacts will be minimized.
- A bond will be posted to ensure adequate funding for phase out and closing of the operation. The reclamation plan is to restore forestry use.
- Exhibit 61 outlines the owner's water usage proposal for the site, including water storage. The Quarry will work within the 5,000 gallons per day. It has to stay within those limits. Left over water and storm water will be used for dust control. The applicant has filed a SEPA appeal to allow the use of storm water as part of dust control. Should there not be enough water of in the event that 5,000 gallons a day would be insufficient to control dust, there are commercially available dust abatement products. Additionally, the owner can get water from Clark Public Utilities. There is a hydrant on Kelly Road. 2,000 gallons per day are calculated for spray usage. It is unlikely that water will be used to wash the aggregate after crushing, but the owner would like to preserve that option. There will be a 45,000 gallon reservoir, although not in the first phase of the plan. Water use estimates are based on manufacturer specification for the misting equipment.

Howard Stein, the applicant's traffic consultant testified that the initial trip assignments were very conservative and represented the worst case scenario rather than a typical trip generation scenario. Trips will peak in the summer months at full build out, which is likely to occur several years after the operation is commenced. The required intersection improvements at this point were sight distance related and could be addressed. WSDOT has reviewed the applicant's proposal.

James Kessi resumed his testimony indicating that exhibit 76 from the Department of Ecology (DOE) stated that any use over 5,000 gallons a day would require a water right permit from DOE. The applicant has agreed to additional concurrency conditions of approval from Public Works (Exhibit 74).

Lonnie Moss, principal of Moss Engineering addressed the issue of payment for surface rehabilitation. He reiterated the conservative nature of Mr. Stein's study in which the projected 410 ADT was only during the maximum production days after the site is fully developed. The traffic patterns in exhibit 68 indicated a trip distribution that dips in the winter months, the time of heaviest damage produced by loaded trucks, and peaks in the summer months, during construction season. As a result of this refined analysis the owner's surfacing liability was closer to \$78,000 rather than 1 million dollars originally suggested by the Staff. He also reiterated that it made sense to use the water needed for dust spraying as infiltration.

Josh Warner, the lead County Planner on this application, provided site visuals and a summary of

the Staff Report with its recommendation of denial. Water usage is addressed in Land Use findings 9-10/12. The applicant's initial water usage responses are exhibits 60 and 61. Exhibit 76 was a DOE letter indicating necessary water usage approval prior to final site plan. The county is not aware of any Clark County surface mines that use commercial chemicals for dust suppression because of the expense and therefore doubts the applicant's water usage estimates. Paving the 2 mile long access road would reduce the water needed for dust suppression and make the 5,000 gallons water limit much more realistic. The staff position [to this point] continues to be that the applicant has not established adequate water supply for dust suppression as well as other water requirements. Additionally the applicant has not met his burden of proof on hydrological impacts of the proposed operation.

Jim Sellers the applicant's attorney attempted a line of questioning which established that Mr. Warner was not a licensed engineer and that he came to the water conclusions through hearsay, by talking to the public works department. Mr. Warner testified to his planning experience and asserted that he had sufficient "common sense" to form an opinion on adequacy of the water supply based on information provided by the County engineers.

In rebuttal, Richard Drinkwater, a County engineer testified that Newton Consultant which provided applicants hydrology data and analysis is not a registered engineer in the State of Washington and is in fact a licensed geologist. His conclusion was that there was not nearly enough water for the use required. The wells on site have a static water level of 80 feet and have gone dry in the summer months. The tenuous reliability of the local wells was supported by testimony of many residents (see below).

Steve Schulte, County's Transportation engineer indicated based on Exhibit 83, that the applicant is willing to pay for the incremental cost of his operation's wear on the road. The impact numbers were drastically reduced because it takes 10 years to go to full Quarry production, and there is less production in the more damaging winter months. So while the final amounts have not as yet been agreed to, they were down to a significantly reduced range (eventually agreed to formula for road reimbursement is in the Exhibit 204). The road will be closed to trucks during freeze/thaw conditions. The high number of trips will be during the three summer months. Exhibit 83 describes the three off-site safety improvements required.

Public Testimony:

David Rodger testified about his concern for the public well system. Since they started to dynamite under their current forest permit he lost 30 feet of water in his well. The proposed access road parallels a creek, which is a fish stream. The water used for dust suppression and mining operations will flow into the stream and cause silting. Kelly Road has a steep grade and traffic on it is too fast already. This will create another hazard.

Todd Kline, who lives on the corner of Yacolt and Kelly, was concerned over speed control and break maintenance on trucks. As a foreman for truck shipping company, he knew about how much

effort went into break maintenance and was concern as to how rigorous this operator was going to be and whether there was a way to supervise independent truckers. He was also concerned of how much drilling and blasting there was going to be. The pavement needs to be rebuilt now, and it should be the obligation of the applicant to keep the pavement in good condition. Someone has already died in car accident near the site.

Willa Stewart on Kelly Road, directly west of the site, testified that you can hear trucks for a mile. There used to be a creek and a small pond in the vicinity, but they have gone dry. The area has been already stripped of trees and there will be no tree buffer for the noise. The existing trees on the site are young and do not form an adequate sound barrier. There is a water problem, and her well produced six gallons a minute. Operations from 6 o'clock am to 8 at night will disturb everyone.

Ira Branch (Ex. 173) testified that the water situation is very critical. He had to go down 400 feet to get 5 gallons a minute. Quarries are noisy and dusty and this one will be also. Ron Bailey testified that Kelly and Gabriel roads are narrow and curvy. The applicant has not addressed noise from trucks. Dutch Savage testified that noise will be awful. Asphalt can melt. He wondered how a fully loaded tandem was going to stop on these roads.

Barbara Maehara (Ex 143/205/214) expressed her concern about water levels and safety of children. These trucks will be going on these narrow curvy roads during school hour picks up. Truck has overturned on Kelly Rd. Kelly Rd is not suitable for industrial trucks. (See also Second Hearing -Public Testimony below)

Gary Witherspoon testified that these are a lot more people to the south than the applicant has indicated. The county and the State will have to constantly repair these roads. Blasting will push the aquifer water table down. There is already not much left to go further down. Damage done by blasting will totally damage the aquifer. The company will have to replace the water. How are they going to do that?

Gary Klein testified that there was not enough water (Ex 104). School buses and trucks don't mix on these roads. Rigs already park illegally. Mr. Klein as the most dedicated commentator in these proceedings also submitted these exhibits throughout the proceeding:

- Ex. 245 - Petition letter signed by about 30 people references US Code Title 30, Section 1201.¹ Exhibit 180 is the same petition with the same US Code reference signed by approximately 150

¹ "Many surface mining operations result in disturbances of surface areas that burden and adversely affect commerce and public welfare by destroying or diminishing the utility of land for commercial, industrial, residential, recreational, agricultural and forestry purposes, by causing erosion and landslides, by contributing to floods, by polluting the water, by destroying fish and wildlife habitats, by impairing natural beauty, by damaging the property of citizens, by creating hazards dangerous to life and property by degrading the quality of life in local communities, and by counteracting governmental programs and efforts to conserve soil, water and other natural resources."

people.

- In Ex. 237 Mr. Klein points out that SEPA and other issues have been minimized but not mitigated.
- In Ex. 229 Mr. Klein points out that there are several other quarries in the area which are adequate to meet local demands, especially as the demand has fallen off recently.
- In Ex. 228 Mr. Klein states that static well levels were taken when the wells were installed. Current levels should be measured to show how much water levels have already fallen. No well reports for the south side of the Quarry have been provided. Interfering airplane noise has made the noise impact demonstration invalid. The whole water scenario is based on speculation in violation of GMA (Section 63). Finally no evidence has been introduced about the quality of the rock available on the site.
- In Ex. 227 Mr. Klein discusses potential for negative impacts on recharge areas, which are already declining as shown by declining water levels. Undisturbed forest is an ideal recharge mechanism. Dewatering would be a disaster. Finally he mentions the possibility of fuel contamination of the groundwater.
- In Ex. 223 with Carla Klein they object to the fact that 500 foot public notice parameters are just inadequate for a project with these kind broad area wide impacts. They assert that "Natural resource management dictates that the benefits of resource extraction activities be weighed against impacts on safety, quality of life and the environment" and then conclude that impacts of noise pollution, decreased property values, ground water depletion, water quality degradation, air pollution, habitat loss, visual intrusion, speculative economic advantage, increased fire hazard, vegetation kill off, absence of need for the Quarry (there are five others in the general area), impacts in roads, inferior land usage, blasting, insurance all mitigate against approving this Quarry.
- Mr. Klein introduces with cover memo of Ex. 177, peak traffic flow distribution on local roads (Ex. 178) and an accident report spreadsheet from January 1999 to May 2002, (Ex. 178, 179/168). He concludes from these that there more traffic accidents than indicated and that on many intersections truck trailers and double rigs will not be able to make turns without crossing the center lines. (Mr. Stein responds to Mr. Klein below)
- In Ex 117 Mr. Klein takes trucks to task for noise, smells and also asserts that County should be held liable for any resulting accidents from allowing these trucks on inadequate roads. He reminds us that it is our duty to protect the health, safety and welfare of the people of Clark County

Bonnie Jones testified how iced breaks already get her out of bed with their noise. Her father in law cannot tolerate noise and dust because of his age and health. Going to the mail box for him

will now be terrible. The road has already increased in traffic. She has trouble with water and the aquifer isn't there. It's not safe even for school buses on these roads because of curves. 6 AM is not acceptable. 8 am is early enough and 5 pm is late enough for trucks to stop. People have a right to live their lives.

Greg Bronson testified that there are few private timber holdings in the area, so that there is not continuing timber harvest. Once the site is harvested, it is usually over pretty fast. So to say that the impacts of a quarry are comparable to timber harvesting is just wrong. He also has concerns over water. Lucia Falls and Kelly Rd intersection will have to be improved considerably.

Robert Parsons agreed with all the concerns expressed. Everyone moved there to have some peace and quiet. No one now will be willing to pay the current value of land. The land should not be rezoned.

Eileen Gutz challenged the testimony that they will start out at a reduced level. She asked whether they are going to refuse production. She requested a detailed report on what is the operator's portion of the damage to the road. The road is damaged already. How will the road damage be calculated? School buses are running back and forth because of the many kids. What is budget for road maintenance? (See Ex. 248 also 244 with Darryl Gutz)

Fred Sukow works for a truck dealer and feels that these Quarry trucks are the worst maintained trucks and inherently unsafe. Lilli Hattershede testified that trucks make terrible noise. Blasting is a like a cannon in terms of noise impacts. The impacts of dust, water wells, road deterioration will devalue all of the properties in the vicinity.

David Krause (see also Ex. 239/84/64/50 also 249b) who bought his property from the applicant expressed skepticism about well monitoring proposed by the applicant. "According to experts on both sides, our well is the most likely to be affected." Are we expected to abandon our house, like the applicant proposes to do when our well goes dry? In reference to the proposed water level monitoring he asks how will it be done, by whom, how often and who will supervise it? What safety measures will be taken regarding storage of blasting materials? What emergency procedures will there be for blasting material accidents? In other pits they blast twice a week; how can these guys do it once a month? Chemical dust suppression will harm the aquifer, what studies have been done about that? What about truck emissions? He concludes his letter, "Until an independent, unbiased expert can absolutely prove the existing water supply will not be affected, in any adverse way, the Yacolt Mtn Quarry should be permanently denied."

Michael Bracke (see also Ex. 115) was concerned about water contamination. Contaminated aquifer can spread out for miles. He was skeptical about monitoring plans and wanted to know whether the Quarry well was going to be metered. Air quality concerns coming from 400 diesel trucks in the summer months also concerned him. Trucks on the access road will help contamination. He also opposes Clark County subsidy of the operation through road maintenance. Why destroy the quality of their lives?

Sam Smith owns seven lots adjacent to the Quarry site. He wanted to know what the mountain will look like when they're finished mining. His properties will be looking down on the Quarry. How will they be supported?

Second Hearing

Josh Warner commenced with his summary of the continued Staff Recommendation for denial. New exhibit 200 - from Clark Public Utilities (CPU) raises the issue of where would the water truck go to connect to a meter. It also notes that the applicant has not made a concrete proposal about the anticipated demand, size of meter etc. Water flow may be limited. There needs to be a water rights permit and much more information on ground water impacts and supply. Because there is not enough baseline information on groundwater and the aquifer, the staff continues to recommend denial. There cannot be magnesium-chloride used in dust suppression close to streams.

New exhibit 133 from DSA addresses, among other noise issues, noise from trucks. There is still an issue of whether continued logging changes the noise levels through reduced buffering. The Staff believes that blasting noise has been sufficiently addressed.

Mr. Drinkwater testified that we do not have enough baseline information on groundwater and that it would take a year to establish that information. The comments of County consultant Kleinfelder, Inc support that conclusion (Exhibit 144). Mr. Schulte testified that there was substantial agreement on fees for road damage caused by trucks (see also Ex. 204).

Applicant Response:

James Kessi renewed his presentation by re-asserting that the proposed operation and rezoning to allow it is desirable, with fewest impacts, and that it furthers public health and safety. Once a surface mine is built and aggregate removed, it is over because it is not a renewable resource. Transportation is 40% of the cost of mining and we have an aging infrastructure, we need new deposits to establish a long term supply of road surface. We need a dependable supply of driveway rock and because the County does not permit in stream or stream bank extraction this leaves uplands, because that is where the rock exists.

The surrounding parcels are not rural residential until approximately 1/2 mile to the east. (Ex. 154) Truck hauling will not be loud or visible. An advisory board will be set up including 4 neighbors living within 1/2 mile from Quarry to ensure minimum compliance with noise, blasting and groundwater. A modification will be discussed if this is not complied with (advisory group modified later). Blasting plan includes notification and will operate within business hours. He made the following additional points:

- Dust suppression- spray bars will be on the compressor and magnesium chloride will be used to control dust on road.
- As to the ground water, the baseline can be established before operations take place.

- Well water levels will be established prior to final site plan review. There will be regular monitoring. (Exhibit 134)
- Crushers will be kept below the rim of the Quarry to shield the view and the noise.
- Compression brakes will be prohibited on certain locations of the haul road. (Ex.173-62). But they will necessary on steep on-site portions of the haul road. There will be a 50/50 ratio of single to double rigs.
- Drivers for the Quarry will be given a school bus schedule, along with postal route schedules to increase their safety. The majority of the hauling will be done in the summer when there are no school busses.
- Water use will not to exceed 5000 gallons per day, which is no bigger than any residence is allowed.
- The nearest rural residential zoning is within ½ miles. All adjacent lots will be notified about blasting by registered mail.

Tom Michalek of Newton consultants testified about groundwater. The Quarry will impact some wells and because there is this potential, a monitoring plan is being proposed (Ex. 134). As indicated in the groundwater review contained in Exhibit 10, most of the wells are from a fragmented rock aquifer, a complex system; however, the proposed Quarry depth will not reach the same depth as the aquifer, so there is little chance of interference. On the topographic map-W8 (well) and S1 (spring) - indicate the only water sources in the mining area itself.

The applicant is not proposing draining the Quarry through pumping or through offsite discharge, therefore the amount of water in the aquifer will not change. The pathways of recharge water to the aquifer may change and because the aquifer is complex there remains a chance of change to local water systems, which is why water monitoring is recommended (Ex.-134/135). As indicated in exhibits 144 and 158, extra research work could be done; however, it is not necessary because it will be inconclusive and will not provide absolute results. Given the nature of the area no amount of additional study will be definitive. (Examiner's emphasis)

The stream on the map is lower on the mountain and on the site the elevation of the stream and the wells are different. The stream is significantly higher. The aquifer is a confined aquifer which means the water is under pressure. Site S-1 is a naturally developed spring, and there are other such in the area. There is no standard of when there is enough information so there is now way of knowing when or how the County will be satisfied with additional information; consequently, proceeding with monitored mining, as proposed, is the only certain way to ascertain impacts of this proposal on the groundwater.

We are proposing an escrow mitigation fund of \$100,000 as mitigation is defined in SEPA² to

² **WAC 197-11-768 Mitigation.** "Mitigation" means:

- (1) Avoiding the impact altogether by not taking a certain action or parts of an action;
- (2) Minimizing impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts;
- (3) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;

provide repair or replacement of the neighbors' wells. This mitigation proposal is modeled after the one County approved in the Lewisville. It is the obligation of the operator to not impact; if he does then he modifies his operations or modifies the wells. This Quarry is not proposing to remove a groundwater system. There is no evidence of removal of ground water through mining. We are limited to 5,000 gallons a day. In regards to baseline info, the Quarry will be developed slowly, not a lot happens quickly to affect water, changes occur slowly too.

Howard Stein the applicant's traffic consultant responded to Exhibit 177, Gary Klein's traffic counts, stating that the Quarry's trip generation is lower than theirs because the hauling will be primarily in the summer. Mr. Klein is correct in that these are rural roads that are not designed ideally, however, only 8 of the 34 accidents he cited were two car collisions, 75% of the accidents were single vehicle. The county needs to address better markers, center lines, and better signing, not the applicant. He then submitted exhibit 209 showing 319 trips a day as his worst case peak day, 10 years from now (no 10 year guarantee). A trip is projected every 4-6 minutes at peak and off peak-every 6-10 minutes. Trucks are 10% of the traffic on the road now and the peak will increase this by 10% in the am, 7% in the p.m.

Kerry Standlee, the applicant's acoustic expert testified next that the proposed mitigation¹ is sufficient even if the trees are removed from the haul road. The existing and the expanded berm will block the mining noise.

As for the truck noise, the trucks went to the Quarry from Kelly Rd. and *vice versa*. (Ex.-53) Most of the area is already logged, so there will be little affected by a tree cut and there are no trees to block Matilla and Watson properties. The area to the south will hear some noise after switchback two. Ex.172 pp.4- L25 is 42, with mitigation L25 is 39, the ambient noise is 32-33.

On the uphill trials the noise was close to ambient. Ex.-172 shows truck noise as if for 30 trips-15 each way. L-25 exceeded 25% of the time, it will intrude into neighbors' property, but this is one industrial zone into another. Because there is not a residence within 1100 ft property line, the dwellings themselves will not be affected.

This argument is based on Mr. Standlee's interpretation that WAC requires measurement of impact from an industrial source noise at the dwelling of a residential receiver and the regulated level cannot be exceeded more than 25% of the time.

WAC 173-60-040 Maximum permissible environmental noise levels.

(1) No person shall cause or permit noise to intrude into the property of another person which noise

(4) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action;

(5) Compensating for the impact by replacing, enhancing, or providing substitute resources or environments; and/or

(6) Monitoring the impact and taking appropriate corrective measures.

exceeds the maximum permissible noise levels set forth below in this section.

(2) (a) The noise limitations established are set forth in the following table after any applicable adjustments provided for herein are applied:

1	EDNA OF RECEIVING PROPERTY		
	Class A	Class B	Class C
CLASS A	55dBA	57dBA	60 dBA
CLASS B	57	60	65
CLASS C	60	65	70

(b) Between the hours of 10:00 p.m. and 7:00 a.m. the noise limitations of the foregoing table shall be reduced by 10 dBA for receiving property within Class A EDNAs.

(c) At any hour of the day or night the applicable noise limitations in (a) and (b) above may be exceeded for any receiving property by no more than:

- (i) 5 dBA for a total of 15 minutes in any one-hour period; or
- (ii) 10 dBA for a total of 5 minutes in any one-hour period; or
- (iii) 15 dBA for a total of 1.5 minutes in any one-hour period.

There is no impact until the noise gets into residence. Impacts occur only when the noise source is within direct line of sight of the receiver. [The applicant's final take on regulation of noise is Exhibit 278 - 10/18/2002 Memo from Mr. Sellers - and will be discussed in the Findings.]

The Quarry will be developed south to north so that as the elevation of the Quarry will continue to get lower, there will be no direct line of sight (and therefore sound) to any receiver except to the south, where there are no residences. The only noise sources are the rock drill and dozer for which mitigation has been provided. Blasting mitigation is addressed by delay time, number of holes, and distance. This meets the DEQ regulatory requirements in Oregon and there is no regulation in Washington.

James Kessi summed up the applicant's key arguments:

- Ex.-199-CPU response to water meter location on main line-if able to find site and filling station it would be possible, mainline could be extended if cost was no issue.
- Jake brakes are for safety, they are an alternate means of braking and they have to be used on these roads (Ex.-194,186).
- Groundwater (Ex. 174)-most likely impacted neighbors say that the applicants proposed monitoring is a reasonable solution and some have sign up to be monitored.

James Sellers the applicant's attorney discussed contents of letters to Warner/Goddard (ex.-188) regarding that there is no requirement that a significant change is needed for rezone and that this application does not constitute a request to spot zone.

CCC 18.503.60(3)⁴ requires showing of changed circumstance for rezone; however, according to

⁴ 18.503.060 Approval criteria.

Mr. Sellers, the application of this requirement as suggested by the opponents is void as contrary to general law. Rezone criteria #3 requiring necessary relationship between public health, safety and general welfare goals for this Quarry are reflected in the fact that the purpose of resource is to provide reserve minerals for public use that are not located in a flood plain or water courses.

A rezone is administrative, not legislative. The applicant does not have the burden of establishing compliance as staff has advocated. The government has burden of reasonableness in administrative acts. It is a false assertion that we cannot go ahead without water rights.

Parkridge v Seattle 89 Wn.2d 454, 573 P.2d 359 (1978)⁵ - notwithstanding, the property meets the comprehensive plan policies and that is enough. Per Ex. 206-pg.8 of 15 this rezone application clearly meets # 2 and #3 of criteria. The onsite pit has been opened in past three years and finding of a commercial supply is the new circumstance. Mr. Sellers final word on burden of proof is in Exhibit 263 (Sept 13 Memo) and the County's is in Mr. Lowry's sequel to Exhibit 176 is contained in October 3 Memo (Ex 269). Burden of proof is discussed below.

PUBLIC TESTIMONY

Keith Hirokawa attorney representing self-described Yacolt Mountain Neighborhood Association, testified at length, mostly raising questions about impacts of this "ever changing proposal;" and about applicant's commitment to mitigations, actual costs of road improvements, public impact, noise at property line, flow of water, site specific data, streams under hauling road, endangered species. concluding that the applicant cannot meet his burden of proof in good faith. According to Mr. Hirokawa, the neighborhood association completely supports the staff in their recommendation of denial. Based on the many unanswered questions about water table, water supply and other environmental impacts the County ought to withdraw its DNS (see Exhibit 146).

Zone changes may be approved only when all of the following are met:

- (1) Requested zone change is consistent with the comprehensive plan map designation.
- (2) The requested zone change is consistent with the plan policies and locational criteria and the purpose statement of the zoning district.
- (3) Except for industrial designation, conditions have substantially changed since the zone was applied to the property and that the rezone furthers public health, safety, morals or welfare.
- (4) There are adequate public facilities and services to serve the requested zone change. (Sec. 3 of Ord. 1995-12-16

In considering the evidence, we note that (1) there is no presumption of validity favoring the action of rezoning. (2) the proponents of the rezone have the burden of proof in demonstrating that conditions have substantially changed since the original zoning, or as in this case, the 1959 amendment thereto; and (3) the rezone must bear a substantial relationship to the public health, safety, morals or welfare. We, as did the trial court, find the evidence in this matter insufficient to support the rezone. Since the City did not carry the burden of demonstrating such a change in this neighborhood as would justify a rezone for the public health, safety, morals or general welfare, we affirm the holding below that the rezone was void.

Mr. Hirokawa asserts that the application does not meet the rezone criteria and the conditional use criteria (Ex 153, 196, and 249) and can not in good faith meet its burden of proof. Exhibit 196 defends the legal status of the neighborhood association and inserts numerous exhibits without any further elaboration or analysis or discussion of applicability or relevance. Attachment H is a review of the applicant's noise study by one Michael Feves, apparently a PhD in something undisclosed to the Examiner, from "Earth Dynamics." The letter anticipates noise impact in absence of mitigation, ". . . It is expected that sound in excess of WAC limits will intrude into neighboring properties unless appropriate mitigation is installed." Mr. Hirokawa made a point that noise impacts are measured at the property line not residence. He point out that while the applicant characterizes property detriment by decibels, the fact remains that people do not get used to noise, and it always affects the market, causing up to 100% reduction in property value. Noise is a significant impact, in stress and sleep loss.

The noise levels readings were not taken at property lines because zone "use" is not defined in the CCC, however if it is residential then per WAC 173.60.030.2 county can pass ordinance based on land use. From this apparent grant of legislative authority Mr. Hirokawa concluded that if there is a house on a parcel, then the use of the entire property is residential. Finally, he concluded that standard L-25 is not appropriate for a drill that runs for two weeks constantly- no person can allow noise to travel into another property regardless of zone type.

Exhibit 203 from Mr. Hirokawa is a Clark County pamphlet on Endangered Species Act, without further discussion of how that information might relate to this proposal. Ecology dept. 96433 publication states that repeated/long term use of magnesium chloride harms nearby vegetation. According to Mr. Hirokawa, the applicant has not discussed prolonged and repeated use of that chemical. (A number of residents expressed concern about magnesium chloride's impact on the well water supply.)

Returning to the oral presentation, Mr. Hirokawa argued that the roadway improvement plan fails constitutionally, because it amounts to public lending or extension of credit for private purposes. Mitigation SEPA standard assumes that the impact is known so that it can be mitigated; however, the applicant has not submitted any studies to see if mitigation will work, which is why MDNS needs to be withdrawn.

On the water issue Mr. Hirokawa asserted that there is no site specific-groundwater-stormwater connection-wells analysis. Will the activity cause the wells to "de-water"? The application provides "no guarantees" for a number of possible impacts, such as contamination or de-watering and as such does not meet the standard of proof for a rezone. "Basic baseline info is an element of application needed for approval." There is no way to evaluate detriment versus public welfare.

Clean Water Act comes into play because of the proposal's affects the surface water. There has been no Clean Water Act analysis. If the owner's well is going to be mined will he build a new well? Will he build replacement wells? It should be part of the proposal. Burden of proof on water is not met.

Yacolt Mountain is a landmark affecting all who have seen the mountain or remember the mountain. The elimination of this landmark through mining violates public welfare. There are also issues of slope stability-hazardous grade, reaction to blast. Rock structures will crack or change, causing possible landslide scenario impacting a steelhead stream. Pre-blast assessment of neighbors should be done. WAC 296-52-67010 requires that the blaster in charge is responsible for all aspects of explosives use and must use every reasonable safety precaution, including conducting a blast area survey.

On the issue of traffic safety, Mr. Hirokawa asserted a huge impact in the number of trucks 25-50% increase in trucks on particular roads with people being run off roads because pushed out by trucks. This violates subsection 3 of the county's rezone criteria. The proposed uses are not consistent with roadway type available to the Quarry. Together with water, inadequate roads indicated inadequate public facilities to approve rezone.

A rezone requires changing circumstances, which have not been established. A zoning change does not have a presumption of validity. This zoning application is in effect spot zoning. Mr. Hirokawa restated his demand for withdrawal of DNS pursuant to authority in WAS 197-11-340 citing *Moss v City of Bellingham*.⁶ Non transferability-monitoring should be a condition of approval.

Roy Webster (Webster Forests LLC) testified next (Ex. 213/162). He owns 90 acres of land 270 feet to the west of access road on Kelley. The property is managed for forestry purposes under a management plan. A tributary of the East Fork of the Lewis River runs through the middle of his property, and is buffered by large trees. The stream on his property originates on Yacolt Mountain. On 8/14 he submitted a letter, Exhibit 162, in which he asserted that condition F/E7 requiring that trees and brush must be removed on the west cannot be met because he is unwilling to sell or trim his property. He also asserted that Staff conclusion that forestry and surface mining are compatible is "patently ridiculous." "Mining causes loss of soil, loss of water flows, dust, pollution, blasting to bedrock and removal thereof, large property value losses to neighbors, displacement of wildlife and, probably most importantly, unnecessary destruction of the scenic values of the entire historic mountainside near a rapidly urbanizing area of Clark County."

Eileen Gutz (see also Ex. 244 and 248) asserted that citizens' voices should be heard. Yacolt Mountain Neighborhood Association (YMNA) residents are taking an active role to improve/protect. Magnitude of numbers speaking out says something. There was not proper community notification-posted. Most people learned of the application through a story in the

⁶ *Moss v. Bellingham*, 109 Wash.App. 6 (2001). Large-scale subdivision development did not per se have significant environmental impacts requiring an environmental impact statement (EIS), regardless of attempts to mitigate the impacts prior to permitting. In reviewing the environmental impacts of a project and making a threshold determination, a Growth Management Act (GMA) county/city may, at its option, determine that the requirements for environmental analysis, protection, and mitigation measures in the GMA county/city's development regulations and comprehensive plan adopted under RCW 36.70A and in other applicable local, state, or federal laws or rules, provide adequate analysis of and mitigation for some or all of the specific adverse environmental impacts of the project

Reflector. More people are impacted by this than those within 500 feet or 1/2 mile. The magnitude of harm and danger, physical and financial impacts the entire rural community, providing profit for a few at the expense of a large number of hardworking rural taxpayers. Scenic, quiet, rural life style is why we live here. We have a suitable roadway for our needs, but this Quarry would permanently scar this community. This road has curves, bends, slopes, blind spots, no shoulder, children, school-bus, bikes, scooters and trucks will stop only if they see them. Without a real shoulder this proposal imposes major unwarranted risk on this community. From January 1999 to May 2002 there were 42 accidents and 3 deaths on these roads that the Quarry is proposing to use. An elderly couple crossing to a mailbox across the street will face unwarranted risk. Trucks cross the center line all the time. The \$1.1 million road maintenance cost burden falls on citizens. Who will pay for the new road signs?

Wells in the area have already been deepened. Who will be able to know whether they take 5,000 gallons or 35000 gallons of water? Water will always continue to be a problem on this site. Dust control measures will also have water effects.

There are very few economic benefits here. This is a family business, no new jobs, noise, hours 6am-8pm. We came here for the chirp and the howl, not blasts, rattling, and Jake brake. Ambient noise level now is near silence. Exhaust from trucks will cause asthma, allergies, lung disease. This is prescription for disaster. As to the proposed advisory board proposal, it is only within 1/2 mile of mine, so how many will be related to the operator?

Exhibit 244 focuses on impacts on Brickie Creek which "has always supported cutthroat trout and steelhead" and on ground water. The Gutzes' report on the need to deepen their own well and assert that the well data provided is not current and not credible. They, like many others who did not receive individual notice under Clark County's notice provision, but who nevertheless feel directly impacted feel betrayed by absence of personal notice.

Daryl Hayes questioned why noise studies were taken only along haul road, when the operation of trucks will affect residents for miles. The advisory group is too small. Safety remains an issue.

William Mills a Kelly Road resident testified that the signs in neighborhood were his only notification. leaving him stunned and horrified. This is not why he moved here. Truck every 240 seconds is too often when trying to turn left out of a blind driveway.

John Matson (see also Ex. 247) favored the applicant because gravel improves the community. This gravel will be less expensive. Hauling is the major cost, as it costs \$100 to haul when the actual gravel costs \$10. Because of the location of this proposed Quarry, for the County roads it means less wear and tear on those roads. We need gravel regardless because of more jobs, common sense.

Vic Adamson, (Ex. 110/183/169) a long time Kelly Road resident, testified that all the roads were inadequate. He expressed concern about water usage, water table, environment, traffic, safety. He

understands the need for gravel, but not from the place being proposed. He knows of ten serious accidents on one corner of this heavily traveled road with 6% grade. East Fork of the Lewis River long-term plan says it is the jewel of Clark County, used as a park/educational tool. This proposal threatens a beautiful, safe, serene rural area with severe overuse of roads. While he understands the need for rock product, the location of the mine in these small winding roads negatively impacts hundreds of families.

Ray Holmstrom testified that as long as we grow, we need rock. Carl Eke testified that the applicant has shown a remarkable desire to meet requirements. Staff wants to dither; study, study, study- when is it enough? It is time to decide. Joel Holmstrom testified that the applicant should be able to rezone. He believes that you should do what you can with your land as long as the zoning is there.

George Wheeler also testified in favor. "It would be his pleasure to hire the loaders." Lisa Mills who lives on the steep part of the road testified that, log trucks already scream down road and the Quarry would only add more. She questioned who enforces truck safety with the kids on the road?

Barbara Maehara (Ex. 143, 205, 214) who lives 1.5 miles away testified again that she moved for peace and quiet, not an airport, mall, or industrial area, but a forest; people can't infringe on neighbors' property, damage their water, and affect their lives by impacting water quality and quantity, road safety, noise and natural environment. She again expressed concerned about her well water levels. According to the June 7, 2000 Reflector (page A-11) a Quarry caused sudden water loss in residential wells on 244th Street in Battle Ground. She also wrote about concern about impacts on wetlands, habitat, streams, storm water, traffic, safety, trucks. She also introduced four color pictures of Yacolt Mountain in order to emphasize its beauty.

Carolyn Goodman (Ex. 189) a Kelly Road resident testified that his grandfather bought the property. She is the third generation on parcel. They have worked hard and sacrificed to live in a place they are proud of; beauty, amazement, peace. Let's keep it that way. She too expresses concerns over trucks, noise from blasting, water contamination from diesel and magnesium chloride and adequacy of water supply. Linda Hattershide as she contemplated truck noise to come, offered. "Buy my property."

Other Written Record: There are 279 Exhibits in this case. Many key Exhibits have been already identified, others will be discussed in findings. The remaining letters and e-mails from neighbors focus are not different from the oral and written testimony summarized above or below. Almost all focus on inadequate roads, impact of trucks and the resulting safety and noise issues, see communications from Ken Stitt (Ex. 264), Kathy Anderson (Ex. 266). In addition many also discuss water, quality of life, rural habitat etc.

In addition to the exhibits already referenced there are also other letters in support of the proposed Quarry, such as from Karvonen Sand & Gravel (Ex. 124), Pacific Star Excavating (Ex. 114), the Wiebolds (George, Doris and Harry) with James Morris, James Wigen and Kathleen Williams (Ex,

113), and the Halversons (Ex. 111/112). Don Sasse also thinks that scarcity of rock is a problem (Ex. 120) as does Gary Hoopman (Ex. 122). Bob Brink (Ex. 215) president of Pomeroy Plowman Ranch Ltd. (667 acres) while hoping that impacts can be mitigated believes that there is need for a new gravel supply.

Kirk Lanier also invites me to drive along the impacted roads [I have done so twice] to appreciate how inadequate they are (Ex. 267). In Ex. 175 Mr. Lanier on behalf of himself and several neighbors whose comments are noted elsewhere in this decision expresses his concern about the amount of water that will be used. He recounts that his first well has dried up and that his second well was re-drilled from 260 feet to 460 feet but provides only 2 gallons a minute. His third well at 640 feet provides 4 gallons a minute. He does not believe that the applicant has a right to burden his neighbors with possible well de-watering. He then speaks up for peace and quiet.

Heidi Thompson (Ex. 265 and brief e-mails 231, 232) from Yacolt does a newspaper search to substantiate that the impacts of surface mining which the opposing residents are anticipating have in fact occurred time and time again in numerous operations, disrupting and degrading the lives of neighbors, impacting aquifers and wells). That, she believes makes credible the concerns of the residents around the mountain.

Darryl & Colleen Ige were alarmed about water impacts and impacts of Magnesium Chloride for dust suppression. Adequacy of the local roads for heavy trucks and related safety concerns were also discussed. Rob and Clarice Burkhart (Ex. 243) find it hard to believe that the County will go ahead without more information about the aquifer that will be impacted. Impact of trucks, and truck residue on the narrow roads, impacts on wildlife, rural lifestyle and loss of property values were also discussed.

Jessica Bernhardt (Ex. 242) asserted that Clark County will only lose by this proposal: they will lose views, peace and quiet, safety and money. H. Kenneth Brown (Ex. 241 and 249b) recounts his impression that when looking at the property on Mystic Drive in 1992 he was told of Rotschy's plan to start a gravel mine. Karen Millar reports similar disclosure in 1994 (Ex. 240 and 249b).

Terry Nyquist and David Garcia (Ex. 238/236) speaking from experience of living close to the North Clark Construction Quarry on Amboy Road assert that "The negative impact of this proposed enterprise on the entire community would be enormous and immeasurable, the benefits minimal, with only the owners and major stakeholders profiting." "Over the past decade the noise levels from the gravel crusher, loading equipment, and trucks have increased. Monday through Saturday during business hours and sometimes into the night, we hear the constant roar of grinding rock and heavy machinery. In addition, and perhaps been more worrisome in our experience when they blast the dynamite. With each blast, our house and property shake, windows rattle and the shocks have grown in intensity over the years. Moreover, the large trucks leaving the site area traffic hazard because of the location of the exit, their slow speed, and the carelessness of the drivers. These trucks transport mud and gravel unto the main road, which not only reduces tire traction on the blacktop, but flies up and pocks windshields and car bodies."

Jim Lightner (Ex. 233/224) from Beaver Brook Estates writes concerned about truck traffic on Gabriel roads and impacts on safety. Dale and Denise Drew (Ex. 230) object to impacts from noise, dust and clogged traffic flow. William and Lynn Smith (Ex. 225/125) discuss how dangerous these "mountain roads" are and that accidents are common where locals help locals get out from embankments and ditches without ever even reporting accidents. In July Bill Smith addressed noise and dust from trailer rigs.

Jordan and Rachel, Ex. 222, live within sight of Yacolt Mountain oppose the Quarry based on their original investment expectation of peace and quiet being destroyed. Mr. and Mrs. Robert Carver (Ex. 216/221) believe the proposal is a nightmare because of the noise and truck traffic on these roads. Robert Sugich (Ex. 96/217) worries about noise and safety of trucks on these rural roads. He is also skeptical that anyone will actually police these permits and enforce any of the other mitigation conditions.

Realtor Lee Ann Johnson (Ex. 218) is opposed because of what the Quarry will do the property values in the area. Ray Terwilliger (Ex. 219) a Lucia Falls Road homeowner, believes that commercial activity on Lucia Falls Rd between Yacolt and SR 503 is bad planning because of trucks and impacts on property values. Jeannie Dietel (Ex. 220) is worried about the low water table (see also Richard Dietel – Ex. 94). Kathryn Hunt (Ex. 202) frustrated already about the impacts of Lewisville Quarry is concerned about impacts, gravel, debris, noise, safety, delay of gravel trucks on local roads. Vicki Cline (Ex. 201) from Dept. of Ecology asserts that any surface water diversion for a beneficial use is required to obtain a water right prior to use.

Jay Roman & Family (Ex. 195) write about many negative aspects the Quarry would bring including unreasonable traffic, especially truck traffic on the narrow rural roads, unfair financial aspects not only for road maintenance but also diminished value of the investment in his home from impacts of trucks, blasting, noise and the reduction in the quality of life. Sharon Dewey (Ex. 187) attaches three letters from her family and Leeds Judson households on Lucia Falls Roads concerned about excessive truck noise, blasting, school bus safety dust, water table and quality of life. Kurt Strauss (Ex. 184) is worried about truck noise, hours of operations for blasting, crushing and heavy machinery, damage to roads, road maintenance paid for by taxpayers.

Scott and Lisa Johns (Ex. 182) write that they purchased 20.24 acres for a family retreat with a long term goal of building their dream home but now are faced with prospect of noise, loss of water table, relocation of wildlife, loss of downstream fish habitat, decrease of property value and increased dump truck traffic. Ira Branch (Ex. 173) writes about the barely adequate current well water supply and his concern that the project not go forth without proof that the water supply will not be depleted. Traffic, noise from the Quarry and general disruption of peace and solitude also leave him concerned and opposed.

Rebecca Silva (Ex. 167) forwards a letter to Commissioner Pridemore in which he appeals for the protection of local roads and road safety. There are other sources of inexpensive rock, so let's preserve the agri-forest zoning (See also Ruben Silva – Ex. 81).

Judy Kennon (Ex. 160) who has 17 acres on Kelly Road writes that there are safety and noise issues from heavy duty trucks coming down the hill. She does not believe that it is reasonable to destroy the quality of life for the many for the benefit of the few. Herbert Kennon (Ex. 96/159) writes about SEPA concerns related to the impacts of haul trucks, including significant noise pollution on these rural country roads. He cites WAC 173-60 for the proposition that an increase in 5 decibels over ambient noise levels is significant. He further states that the final 2 miles of Kelly Road before it enters Lucia Falls Rd. is downhill and heavy trucks constantly use exhaust breaks. This last two miles is in a canyon so that noise truck reverberates and is amplified. One truck every four minutes will violate County noise abatement policy which relies on the WAC standard.

He asks for a ban on exhaust breaks south on Kelly Rd. For traffic safety he is asking for posting and enforcing 40 mph speed limit on Kelly, Gabriel and WH Garner Roads. He also asks for an agreement of who will pay what to maintain these roads and for an improved turning radius on Kelly and Lucia Falls intersection so require the trucks to stay within their center lines. On water supply, he believes that any agreement that would require legal action to require the applicant to restore water or replace wells would be a hallow offer. An impartial third party should provide speedy resolution of these disputes. Finally he asserts that the SEPA process is flawed because it focused only on-site environmental impacts and did not considered area wide impacts. The 500 foot notice perimeter is inadequate for a project that has broader impacts. No wonder there were no SEPA comments prior to the August hearing. SEPA MDNS determination should be reopened to consider broad impacts of this proposal and a fill EIS is required to study truck traffic, water requirements and sources, blasting, noise and reclamation.

Leslie Brown and Claude Mallegol (Ex. 145) oppose the Quarry because the existing road system cannot support it. The truck trips will create unsafe conditions for pedestrians, horses and bicycles. There are no shoulders. There should be no rezone without infrastructure update.

Gary Scobell and James Pergande (Ex. 123). Kelly Road residents are concerned with impacts on well water, as their existing well is 565 feet deep and yields only three gallons per minute. The previous 1984 well was a 505 foot well and had to be abandoned. Finally Kelly Road is inadequate for large heavy semis.

Rhonda Boyle (Ex. 118) a Yacolt Postmaster is concerned over safety of the rural route because all of the roads from Yacolt Mountain are narrow two lane roads without shoulders where carrier vehicles may have to stop on hilly winding roads and blind curves to make deliveries. She has the same concern with school buses. She asks that the safety of school children and post workers be considered before making any kind of a decision.

Lynn Culbertson's (Ex. 121) letter to Commissioner Morris expresses concern over steep local roads and elevation where it snows more frequently. The Quarry starts at 1700 feet elevation. With her husband who is a professional truck driver and her own opinion as a former Courier they feel that allowing gravel haul trucks on these roads is a serious judgment error. She is also concerned with the destruction of the beauty of the area and preservation of well water (see also Ex. 80).

Finally, as already noted in various testimonies, I will note again that many respondents who lived outside the 500 foot notice area, strongly objected to being excluded from personal notice and learning of the project only through an article in the Reflector.

Mr. Hirokawa on behalf of Yacolt Mountain Neighborhood Association (YMNA) submits a letter memorandum (Ex.249) making the following key points:

- A. The Quarry is a major project which creates a serious imposition on the surrounding neighborhood creating a high burden on the applicant to show that he satisfies the relevant standards.
- B. The Applicant's attempt to shift the burden of proof is wrong as a matter of law (see pages 5 - 7 for case law discussion. On this point he takes issue with Newton's Michalek testimony that additional groundwater study recommended by Kleinfelder should not be undertaken because it will be inconclusive is an admission that the applicant's burden of proof on groundwater cannot be met. He concludes from those cases that the burden of proof in a rezone is on the applicant to demonstrate compliance with the approval criteria.
- C. The applicant has not provided detailed information required by CCC 18.329.050 (see pages 4-5 of the exhibit).
- D. Noise. Noise levels are regulated by the Noise Control Act (Chapter 70.107 RCW) and contained in WAC 173-60. WAC 173-6-040 is cited for the proposition that "no person shall cause or permit noise to intrude into the property of another person." CCC 20.50.025 states that the Clark County policy is "to minimize noise impacts associated with land use changes, including those related to existing source of noise", and in subsection (3)(g) thereof that "an increase of more than five (5) decibels (dBA) over the ambient noise levels at the receiving properties may be considered significant." Applicant discusses mitigation measures because the proposal would otherwise exceed the standards.
 - 1. EDNA for residentially used properties in Clark County is residential in absence of specific ordinance or resolution prescribing a different approach.
 - 2. Under WAC 173-60-040 noise levels take effect at the property lines.
 - 3. Applicant's mitigation is in bad faith because it offers no mitigation for the dozer and provides no specific berm location. On the dozer mitigation Mr. Standlee relies on possible new technology (Ex 16, p5)
 - 4. Statistical sound levels are not appropriate for a quarry operation because most activities are constant throughout the day. L-25 criteria which permits exceedance 25% is inappropriate for a constant source of noise.
 - 5. Truck noise must be mitigated. Mr. Hirokawa offers advertisement for Donaldson Silent Partners as inexpensive technology that muffles Jake Brake noise.
- E. Water issues remain unresolved because the applicant seeks to avoid his burden of proof to provide groundwater analysis before project approval. Future monitoring plan is no substitute for meeting burden of proof. There is no proof of applicant's intent to comply

- with NPDES. Impacted water wells have been omitted from the applicant's well water review. No effort has been made to quantify groundwater contamination. People's signing unto the monitoring program is not a waiver of their rights to uninterrupted water supply, but may well be a practical adjustment to what may turn out to be their only alternative.
- F. Dust abatement plans are uncertain and speculative. There is uncertainty how much water will be needed, where it will come from and the use of chemical alternatives. No Health District approval or review has been sought.
 - G. Endangered Species Act analysis has been omitted, under Section 9 of that Act.
 - H. Traffic safety analysis by the applicant has not addressed projections by Mr. Weaver (Ex. 196) projecting doubling of the accident rates due to 25% to 50% increase in truck traffic on roads that all ill equipped to handle them.
 - I. Blasting analysis is insufficient to establish what kind of damage there will be from blasting and fails to follow Best Management Practices put out by Washington DNR, specifically pre-blast area surveys.
 - J. Property value reduction is real and likely but has not been addressed by the applicant.
 - K. Aesthetic issues have been ignored.
 - L. Rezone criteria has not been met. Mr. Hirokawa restates his prior arguments, including that this rezone constitutes unlawful spot zoning, because it a zoning for private gain designed to favor or benefit a particular individual or group and not the welfare of the community as a whole.
 - M. County cannot waive the requirement of changed circumstances necessary to permit a rezone. There's no authority in the County Code to permit such a waiver by staff.
 - N. The applicant is asking the Examiner to change policy on road standards and burden of proof.
 - O. The roadway improvement agreement (Ex. 204) violates the Washington Constitution by requiring the County to act as a financial conduit for private enterprise (Washington Constitution, Article VIII, section 7) - see pages 26-28 of Ex. 249.
 - P. MDNS should be withdrawn pursuant to WAC 19711-340. Mr. Hirokawa cites *Moss v City of Bellingham* 109 Wash.App 6. 31 P.3d 703 (2001) for the proposition that the examiner has authority to cure defects in SEPA compliance. This MDNS was issues in the absence of reasonably sufficient information on water quality and quantity, noise and traffic safety among others. Many of the YMNA issues recited above have not been addressed. Finally, the application has undergone significant changes to deal with some of the unaddressed issues.

NOTE: Most of these issues are addressed in the findings below. Even if specific arguments are not always addressed, the substance – noise, dust, blasting, traffic safety, groundwater and surface water are addressed and conditioned. Failure to address a specific item means that the Examiner found it without further merit, either because the argument lacked evidence or legal authority.

FINDINGS

Overview: The salient features of any rock Quarry operation which do not endear them to many neighbors are noise, dust, heavy trucks and aesthetics. Noise comes in three forms blasting, operational equipment and haul trucks. These concerns are exceptionally well documented above. The impact of heavy trucks is noise on site, noise on the roads, dust and safety. Dust also comes from the operation of the equipment and trucks on site. Aesthetics involve appearance of the operation in the landscape in which it is located.

These predictable and inescapable impacts are not necessarily exclusive. There clearly can be other environmental impacts, such as impacts on ground water, or streams, habitat etc. The paramount issue is the applicant's ability to mitigate these impacts emanating from his chosen location such that his neighbors can enjoy the kind of life that their zoning designation allows them to expect. Related to this is an issue of legitimate expectation arising from being permitted to establish dwellings in the checkered zoning environment on narrow rural roads.

Because of the size of this site, 135 acres, and the relative isolation of the proposed mining center, some of the impacts listed can be mitigated. The critical issues in this case are noise impacts exacerbated by the elevated locus of the heart of the mining operations towering above an area and disbursing sounds downward. The impacts of trucks on site and even more critically on the narrow, steep and curvy local roads which have to be traversed frequently by double rigs in order to get the product out are a major concern. Finally, and also critically the documented uncertainty about the impacts of this operation on neighboring well water.

The applicant has made a very diligent effort to address these issues to the point of standing accused by Mr. Hirokawa of continually changing his application. I don't think the applicant needs to be penalized for trying his best to be responsive to some very technically difficult issues. Faced with those difficult issues the applicant has confronted each issue raised and has addressed them in a very responsible manner. That effort notwithstanding the Examiner believes that at least two key issues: groundwater/well risks and the nature of local roads have not been sufficiently mitigated. The noise situation is more perplexing. While there inevitably will be noise impacts, just as the neighbors suspect, it would appear that with some effort they can be mitigated to a level that the State and the County find tolerable for their residents. On blasting, a pre-blasting area survey can better serve to analyze whether the applicant's promise of no substantial impacts is accurate.

The applicant makes reference to other surface mining cases in Clark County to point out certain practices as being allowed in other mining operations. The burden on the applicant is different in this case than in those other cases referenced by the applicant because this case imposes a new zoning overlay on an area and on residents that until this application had no reason to believe that such an intrusive operation as a surface quarry would be located in their midst. Yacolt Mountain area residents are being asked to bear the burden of the impacts of this operation that also provides a product for which there is a public demand. My first conclusion is that this will not be a zero sum game - some people's quality of life, or property values will be diminished. The issue is whether

the laws of Clark County and Washington either authorizes or requires such a result.

The first conclusion flows from the regulatory system adopted by Clark County which is designed to extract resources that have not been previously specifically identified or zoned for legislatively. An inherent problem in imposing a mining overlay zone only after the resource is discovered is that prior to such an official discovery people make investment and lifestyle choices that do not anticipate the disruption that comes from having a mine as a neighbor. The neighbors overwhelming opposition therefore should not be a surprise, as the area is clearly populated.

The applicant and his supporters make an argument that given the limited supply of rock within an economically efficient transportation distance, and given the exclusion of riparian areas from surface mining, if this forest use zone site cannot be mined, then there is no safe place to extract rock from in Clark County. That may or may not be a correct conclusion; however, that does not mean that all forest zoned land is presumed suitable, otherwise we would not have a rezoning process. By permitting an interspersing of forest and residential uses within a network of narrow, curvy and hilly roads the County may have in effect spoiled the nest for surface mining in this location.

As mentioned above, the applicant sites two Clark County cases to point out that mining operation have been allowed in more populated areas. *CTS Frost Property Surface Mining Project* APL2000-0026 approved mining on a 40 acre site in an Urban Holding - 20 zoning district that already had a Surface Mining Combing District Overlay(CCC 18.329) in an area south of NE1st Street and North of NE11th Street between NE 162nd and NE 192nd Avenues. The operation was also limited to excavation of 2.5 million cubic yards of aggregate material and abutted at least one major arterial. Similarly *Tebo Sand & Gravel Surface Mining Expansion* PSR 2000-00068 was an expansion of an existing operation in a Surface Mining Combining District. All that is very different from the situation here where claiming a discovery of a commercial amount of aggregate, the applicant is asking to superimpose a surface mining overlay where none now exists, and which is news to those who will be impacted.⁷ These factors essentially distinguish this application from prior Clark County cases relied on by the applicant.

The legal principle that one should not use one's property in a manner that would harm another's use of his property is an ancient one. In other words do no harm, our basic nuisance concept. The US Supreme Court since *Mugler v Kansas* 123 US 623 (1887) has establish that there is no property right in a nuisance. Whatever property rights one may have in a regulated environment, making a nuisance is not one of them. Zoning and development codes are to this day the guardians of that basic rule, and I will apply them with that assumption in mind.

Like everything involving real estate, location is the key determinant. This application has a

⁷ There is testimony in the record that the applicant knew of commercial grade and quantity of the aggregate sometime between 1992-4 if not sooner. There is no evidence that this information was available to the County Commissioners or the Planning Commission when the Comprehensive Plan was adopted.

definite location from which flow certain benefits and certain obstacles. So the rules have to be applied to a location, preventing any harm not expressly authorized to be imposed by law or regulations.

Burden of Proof:

As Mr. Lowry points out in his October 3, 2002 Memo, attorneys for both the applicant and opponents address the significance of the state Supreme Court holding in *State ex rel. Wen., etc., v. Wenatchee*, 50 Wn.2d 378, 383 (1957), in which the court observes "that the ultimate burden of proof relative to alleged arbitrary and capricious zoning action rests upon zoning authorities and not upon a property owner who is seeking a permit." There is nothing in that decision that would suggest the basic burden of proof onus in proposing a zone change or in deed any land use permit is not on the applicant, *e.g., Parkridge v. City of Seattle*, 89 Wn.2d 454, 461 (1978).

The applicant has to demonstrate by reasonable and substantial evidence that the application meets the approval criteria. Mr. Lowry's view is that the "ultimate" burden referred to by the court requires the County to explain how it arrived at the land use decision in a manner which comports with the governing law and is factually supported. Such burden precludes the County from basing decisions on grounds which are entirely speculative or arbitrary and capricious. So while the applicant has the burden of going forward and establishing that he meets the requisite criteria, the County has to have some rationale basis for denying or approving the application. The rule in *Parkridge v Seattle, Supra*, established the following general rules applicable to rezone applications:

1. There is no presumption of validity favoring the action of rezoning;
2. The proponents have the burden of proof in demonstrating that conditions have substantially changed since the original zoning; . . .
3. The rezone must bear substantial relationship to the public health, safety and morals.

The Examiner believes that only rule 2 is in serious contention. Traditionally changed circumstances are required even when the application is consistent with the comprehensive plan. The rule is based on the following logic. Since the legislative body that adopted the comprehensive plan and the zoning designation (map) could have made them consistent, there must have been a policy reason why it did not. The reason that the comprehensive plan and the zone may be different when a plan is adopted is usually because some vital service such as road, water, sewer etc is missing which would enable the property to develop according to the comprehensive plan. When the missing service is provided or made available then the property can be rezoned in a manner consistent with the comprehensive plan. The provision of the missing service or the change in the key criteria such as contiguity to other development is the changed circumstance that allows the plan to be implemented.

The situation in this case is different from that traditional analysis. Here the County's comprehensive plan clearly contemplates that the changed circumstance would be identification of

a resource, such as aggregate, whose specific existence on this site was not known or contemplated by the decision makers at the time the comprehensive plan was adopted or amended. By previous memo Exhibit 176, Mr. Lowry advises that because the County's Comprehensive Plan specifically contemplates future designation of mineral resource lands through rezone proceedings to apply the County's Surface Mining Combining District in resource areas utilizing criteria contained in the Plan, no other change in circumstances need be shown. Mr. Lowry cites *Save Our Rural Environment v. Snohomish County* 99 Wn.2 363 (1983) for the proposition that changed circumstances are not required where the rezone implemented and adopted comprehensive plan policy.⁸ Mr. Lowry also advises that "if the examiner should conclude that a showing of changed circumstances is nonetheless required by County Code, case law holds that *Parkridge* does not require a 'strong' showing of change [and that the] rule is flexible and allows for consideration of each case on its own facts." *Bassani v. County Commissioners*, 70 Wn.App. 389, 394 (1993) (*citations committed*) (Ex 176, page2).

As already stated the purpose of the applicable surface mining overlay rezone policy, difficult as it may be to implement when superimposing an overlay on area with existing residences in close proximity, is to process rezoning application for mining overlays when the resources are identified. So the burden of proof for changed circumstances here is to identify commercially viable amount of aggregate.

Staff Report:

The Hearing Examiner adopts as his own and incorporates by reference the findings and conclusions contained in the June 5, 2002 Staff Report and Recommendation (Exhibit # 55) as amended and supplemented on August 14, 2002 (Exhibit 158) and October 4, 2002 (Exhibit 272), except to the extent modified, supplemented or reversed herein.

The Examiner notes that Staff had been explicitly recommending denial in Exhibits 55 and 158, but that in its final list of recommendations (Ex 272) issued in response to the applicant's penultimate effort to address the issues that Staff raised previously, it appears that the Staff is neither recommending approval nor recommending denial. This has not escaped attention of Mr. Kessi who in his concluding Memo (Ex. 279) argues that by their failure to make a recent recommendation the Staff has changed its recommendation from denial to approval with conditions. Regardless, the key issues and the key concerns raised by the Staff and the neighbors will be identified and findings and conclusions made by the Examiner with or without Staff recommendation.

⁸ Further *Tugwell v Kittas County*, 90 Wn. APP.1, 8 (1997) (*footnote 6*) is cited by Mr. Lowry for the proposition it is not necessary that the rezone implement a recently adopted comprehensive plan.

LAND USE:
Rezone

The request for a rezone in this case is not to change the underlying zoning of the property, but to apply an overlay to the existing forest zoning. The proposed overlay would allow surface mining, and other associated activities on the property, as allowed by Clark County Code (CCC) 18.329. In order for the rezone to be granted, the applicant must demonstrate that the approval criteria for a rezone are met as required in CCC 18.503.060(1) – (4). The criteria and the evidence presented by the applicant are outlined and analyzed in the findings below.

Rezone criterion 1: *The zone change is consistent with the comprehensive plan map designation. (CCC 18.503.060 (1)).*

Finding 1 – The comprehensive plan designation for the property that is being proposed for the addition of the surface mining overlay is Tier 1 Forest (FR-1). The comprehensive plan states for Tier 1 Forest Lands that:

This designation is applied to those lands which are capable of long-term management for the production of forest products and other natural resources, such as minerals. This designation recognizes that other land uses and activities which do not conflict with long-term forest management are necessary and/or appropriate on forest lands.

The intent of this section is to allow mining and associated activities in the FR-1 comprehensive plan designation. The mining will not permanently disrupt the forestry on site because the reclamation of the site is back to a forestry use. Therefore, the requested zone change is consistent with the comprehensive plan map designation.

Rezone criterion 2: *The requested zone change is consistent with the plan policies and locational criteria and the purpose statement of the zoning district. (CCC 18.503.060 (2)).*

Finding 2 – Table 4.4 in the Comprehensive Plan (page 4-8) is a matrix for assessing the feasibility of designating and protecting mineral resource lands. The criteria are evaluated by the applicant in Ex. 22, dated May 7, 2002. Staff has evaluated the criteria and highlighted or inserted *** in the box where this application falls in the matrix as determined from the application materials and other exhibits. Based on the record in this case and extensive public testimony, the Examiner disagrees with some of the Staff findings and the conclusion that the proposed rezone would fall somewhere between “protection desirable” and “protection highly desirable”. The Examiner finds that this location really fits between “not suitable” and “consider for protection.” The Examiner’s matrix is produced below.

Location is the Achilles heel of this effort. Given the size of the site, the application would be consistent with Staff matrix conclusions if it was located on a major arterial or state highway or even perhaps on a relatively short, wide, shouldered road very near such a highway. The site’s

other drawback, admitted by all parties, is that given the nature of the underlying ground and how it relates to the aquifer which feeds water to the houses in the vicinity no one can predict the impact of the mining on the aquifer and the well water supply until they begin the mining operations. The applicant is willing to assign the risk of what may turn out to be irremediable water loss to the homeowners. This is a locationally based limitation which may not be replicated on another site. The combination of location separated from major transportation corridors by narrow, curving, hilly roads with residential housing along those roads and inability of the applicant's consultant to provide aquifer certainty in this location militate against staff conclusions of "desirability" under the application of Table 4.4 locational matrix.

A criterion on the access to market in Table 4.4 has not been proven by the applicant. There are five other quarries in the area - Lewisville, Amboy and North Clark were specifically referred to in the testimony. Contrary to the Staff this site is nowhere near an interstate. The gravel use area within 10 miles has not been established, because there does not seem anything in the record that actually indicates where the market for this gravel is. Although there are fast growing areas within 10 miles, there are at least five other quarries to serve them. I find no evidentiary basis for discerning where most of the applicant's market would be or whether it is even in Clark County.

Compatibility with nearby areas category of Table 4.4 is belied by the record of opposition to this application. Residential dwellings above and below the site and all along the secondary roads that will be used by heavy trucks lead me to the finding of unsuitable. Webster defines "appreciable" as large enough to be recognized and measured, and the residential development which will face either mining operation or truck transport noise and safety impact is appreciable. This category is not suitable.

The noise and blasting categories in the Table 4.4 do not address the existing situation with this application as documented in this record. As discussed in the WAC discussion below some of the on-site noise can be mitigated by berming and eventual lowering of the operations into the pit. There is not enough data on blasting, since there has been no pre-blasting surveys done to know whether noise level in adjacent dwellings would exceed standards. The assessment table speaks to adjacent "development" for noise, and "existing subdivision" for blasting, whereas what we have here is adjacent home-sites. For those reasons I believe the proper selection is "Consider for Protection" for both of these key categories.

Impact of truck traffic categories on Table 4.4 are also inapposite to the residential concerns documented in this record. Staff selected "protection desirable" category relating to alternative truck traffic. It is true that truck traffic can be diverted from Yacolt Mountain Road, where there are homesites directly unto Kelly Road by an on-site road; however, once on Kelly, the heavy trucks can go either north or south and in either case pass residential dwellings and the owners of those dwellings did not think the site was suitable. What makes this category unsuitable is the need to traverse miles of narrow, steep and curvy local roads to get the aggregate to market where the impact of 30 trucks an hour will be significant. The table highlights below indicate Examiner's location choices based on the above discussion.

Comprehensive Plan Table 4.4 Matrix for Assessing Mineral Resources

	NOT SUITABLE	CONSIDER FOR PROTECTION	PROTECTION DESIRABLE	PROTECTION HIGHLY DESIRABLE	PROTECTION CRITICAL
Quality of Deposit	LOW GRADE DEPOSIT.	VARIABLE BUT LOCATED NEAR USE AREA OR PROCESSING PLANT.	DEPOSIT MADE ECONOMICAL TO MINE BY UPGRADING MATERIAL.	GRADE MEETS THE REQUIREMENTS FOR ROAD CONSTRUCTION OR CAN BE UPGRADED.	CONCRETE QUALITY.
Size of Deposit	SMALL DEPOSIT.	SMALL DEPOSIT (LESS THAN 2,000 TONS).	MEDIUM-SIZE DEPOSIT.	LARGE DEPOSIT (7.5 MILLION TONS).	VERY LARGE DEPOSIT (10 MILLION TONS).
Access Distance from Market	MORE THAN 20 MILES FROM USE AREA.	DISTANCE FROM USE AREA IS MINIMIZED DUE TO ACCESS TO INTERSTATE.	LESS THAN 10 MILES FROM THE USE AREA; ALTERNATIVE ACCESS ROUTE AVAILABLE.	LARGE DEPOSIT PRESENTLY BEYOND ECONOMICAL HAULING DISTANCE TO PRESENT USE AREAS. NEAR HIGHWAYS: ACCESS CAN BE PROVIDED.	WITHIN 5 MILES OF USES AREA. ADJACENT TO HIGHWAY WITH ACCESS FOR TRUCKS.
Compatible with Nearby Areas	ADJACENT LAND USE PRESENTLY INCOMPATIBLE WITH MINING (APPRECIABLE RESIDENTIAL DEVELOPMENT WITHIN RANGE OF EXCESSIVE NOISE, DUST, BLASTING, VIBRATIONS, ETC.).	SCATTERED DEVELOPMENT WITHIN OUTER RANGE OF IMPACTS OF MINING; OWNERS MAY NOT OBJECT TO MINING.	ADJACENT LAND SUITABLE FOR DEVELOPMENT AND WITHIN COMMUTING DISTANCE OF USE AREA.	IMMINENT INCOMPATIBLE DEVELOPMENT ON ADJACENT LANDS.	NO INCOMPATIBLE LAND USES EXISTING OR LIKELY IN THE FORESEEABLE FUTURE (ADJACENT LAND IN NATIONAL FOREST, OPERATOR'S OWNERSHIP, AGRICULTURAL LAND USE.)
Impact of Noise	NOISE LEVEL IN ADJACENT PRESENTLY DEVELOPED AREAS WOULD CLEARLY EXCEED STANDARDS IF MINING OCCURRED.	***	NOISE LEVEL IN ADJACENT UNDEVELOPED AREAS WOULD EXCEED STANDARDS FOR LIKELY USE, BUT USE OF THESE AREAS CAN BE EASILY DELAYED OR ECONOMICAL MITIGATION CAN BE PROVIDED BY BARRIERS.		NOISE AT ADJACENT RESIDENTIAL AREAS LESS THAN 50 DB(A) DUE TO DISTANCE OR TOPOGRAPHICAL BARRIER, BERM CAN BE CONSTRUCTED EASILY.
Impact of Blasting	TOO CLOSE TO EXISTING SUBDIVISION.	***			BLASTING NOT REQUIRED; PERMANENT OPEN SPACE BETWEEN QUARRY AND OTHER USES; TOPOGRAPHIC

	NOT SUITABLE	CONSIDER FOR PROTECTION	PROTECTION DESIRABLE	PROTECTION HIGHLY DESIRABLE	PROTECTION CRITICAL
					BARRIER BETWEEN QUARRY AND OTHER LAND USES; ONLY OCCASIONAL LIGHT BLASTING; BLASTING COMPATIBLE WITH ADJACENT USES.
Impact of Truck Traffic	ONLY ACCESS IS LOCAL ROAD THROUGH RESIDENTIAL AREA.	SLIGHTLY LONGER ALTERNATIVE ROUTE EXISTS.	ALTERNATIVE TRUCK ROUTE CAN BE BUILT AT REASONABLE EXPENSE; ALTERNATIVE TRANSPORTATION (CONVEYOR, ETC., CAN BE SUED PAST RESIDENTIAL STREETS).		ADJACENT TO FREEWAY WITH ACCESS TO SITE.
Visual Impact	MINING WOULD DESTROY OR CREATE.	MINING ACTIVITY CANNOT BE SCREENED AND WOULD PERMANENTLY ALTER LANDSCAPE.	SOME ACTIVITY VISIBLE FROM RESIDENTIAL AREAS, BUT NO PERMANENT DETERIORATION OF LANDSCAPE.	MINING ACTIVITY CAN BE EASILY SCREENED BY BERMS AND/OR VEGETATION.	ACTIVITY SCREENED BY TOPOGRAPHY OR VEGETATION, OR APPRECIABLY REDUCED BY DISTANCE.
Wetlands Impact	HIGH QUALITY WETLANDS THROUGHOUT THE SITE.	HIGH QUALITY WETLANDS ONLY ON A PORTION OF SITE AND CAN BE AVOIDED.	LOWER QUALITY WETLANDS ON SITE AND CAN BE MITIGATED.	WETLANDS CAN BE AVOIDED ON SIT.	NO OR MINIMAL WETLANDS ON SITE AND OF LOW QUALITY.
Slopes	SITE LOCATED IN ACTIVE UNSTABLE SLOPE AREA.	POTENTIAL OR HISTORICAL UNSTABLE SLOPES.	UNSTABLE SLOPES ON SITE CAN BE AVOIDED.	MINIMAL SLOPES THROUGHOUT THE SITE.	LEVEL GRADE MINING SITE WITH MINIMAL SLOPES.
Bio-logical Impact	RARE AND ENDANGERED PLANTS OR ANIMALS ON-SITE.	SITE INCLUDES PRIME WLDLIFE HABITAT THAT WOULD BE PERMANENTLY REMOVED BY MINING.	SPECIES OF SPECIAL CONCERN LOCATED ON SITE.	MINOR OR TEMPORARY LOSS OF WLDLIFE HABITAT.	NO SIGNIFICANT BIOLOGICAL RESOURCES; REHABILITATION OF SITE WOULD REPLACE OR CREATE HABITAT.
Impact of Flooding	MINING WOULD CAUSE EROSION OF ADJACENT PROPERTY; COULD BE PREVENTED ONLY AT GREAT EXPENSE.		MINING WOULD CREATE EROSION HAZARD FOR ROADS, BRIDGES, AND UTILITY LINES; HOWEVER, THESE STRUCTURES COULD BE STRENGTHENED AT REASONABLE COSTS.	***	MINING WOULD CREATE FLOOD CONTROL CHANNEL AND WOULD NOT DAMAGE ADJACENT LAND.

Finding 3 – Comprehensive Plan Policy 4.3.5: *Encourage the multiple economic use of forest land for a variety of natural resource and activities particularly suited for and compatible with forest lands.* The proposed rezone, if mining is implemented, will contribute to a more diverse economic use of the forest land. The mining is compatible with the forestry use and reclamation is proposed to turn the land into a commercial forestry operation once the mineral resources are extracted. It is only the presence of residential dwellings interspersed with forest land that interferes with the achievement of this policy.

Finding 4 – Comprehensive Plan Policy 4.5.3: *In identifying and designating commercial mineral lands, the following factors should be taken into consideration: geological, environmental and economic factors; existing and surrounding land uses; parcel size; and public service levels that are conducive to long-term production of mineral resources.* Table 4.4 above addresses many of these issues. However, the public transportation infrastructure that serves this site is not currently adequate. Originally, Staff recommended denial based on estimated cost of maintenance of these roads. During the course of this proceeding the County and the applicant reached an agreement on road maintenance (see Ex 204 and 226). In Exhibit 226 staff concluded that the additional traffic will not materially cause a significant traffic or safety hazard. There is no explanation or evidence cited by County Staff for the conclusion as to why given the number of additional double rigs traveling on these narrow, curvy and steep roads the safety of these roads will not decrease. No one has suggested that safety will be furthered, but that is Criterion 3. See Transportation discussions below.

Finding 5 – Comprehensive Plan Policy 4.5.18: *Some level of processing should be associated with mineral extraction.* The applicant is proposing to crush rock on site in conjunction with extraction, thus meeting the policy.

Finding 6 – Comprehensive Plan Policy 4.5.19: *Future sites designated with a surface mining overlay shall be assessed on a case by case basis, based on the commercial or industrial value of the resource, and the relative quality and quantity of the resource as well as the following conditions:*

1. *the resource should be of a quality that allows it to be used for construction materials or meet applicable quality specifications for the intended use(s);*
2. *the resource should be of a quantity sufficient to economically justify development based upon the characteristics of the aggregate, life of the resource site, cost of extraction, accessibility, opportunity, type of transportation and the location of high demand areas; and,*
3. *designation of these mineral resource lands should follow the "Criteria for Designating Mineral Resources," as outlined in the Designation Criteria component of the Rural and Natural Resource Element.*

The applicant has submitted testing results (Exhibit 43), which indicate that the resource is of a quality that meets certain specifications, thus meeting the first assessment criteria. The applicant has also stated that they estimate the available resource to be more 10 million tons (Exhibit 22), which meets the quantity portion of the second criterion. However, staff finds that the other criteria are not directly addressed by the application materials.

Staff recommends that the examiner find this rezone criterion is adequately met. I find that the three weaknesses of this application, relating to the locational criteria policy mitigates against an affirmative finding. The site is too far from a major road, the impacts of blasting are still speculative and the impacts on the aquifer too uncertain. This rezone criterion is only partially met which forms part of the basis for denial.

Rezone criterion 3: *Except for industrial designation, conditions have substantially changed since the zone was applied to the property and that the rezone furthers public health, safety, morals or welfare. (CCC 18.503.060 (3)). (Emphasis provided)*

Finding 7 – Staff suggests to the Examiner that the first part of this criterion (“conditions have substantially change since the zone was applied...”) does not apply to this specific rezone application because it is only asking for an ‘overlay’ to the existing zoning of the property. The underlying zone is not changing. The comprehensive plan already contemplates the possibility of the overlay and is simply implementing specific provisions from the comprehensive plan. This does not preclude the application from meeting the other criteria in CCC 18.503.060 in order to receive the surface mining overlay. Legal interpretation of changed circumstances is discussed above under Burden of Proof.

The applicant has only submitted a statement saying that it was not known that the rock resource existed previously. It is unclear how this conclusion is drawn because there is an existing borrow pit on the site that is used for forest practice uses and there was written and oral testimony to the effect that the applicant knew about the deposit sometime between 1992-94. (Exhibit 10, tab 3, page 34 and Ex. 249b, see also testimony of David Krause, Kenneth Brown, above). While the staff originally maintained that the only way this statement can stand is if the borrow pit was commenced recently, the Examiner believes that this being a Comprehensive Plan issue, the question really is when did the County Commissioners know that there was aggregate on this site. If the Commissioners knew there was aggregate on this site when they adopted the current Comprehensive Plan and related zoning, then I would agree that there should be a showing of what has changed since the time when the Commissioners chose not to put a surface mining overlay on this territory. That is because there would be a presumption that the site was not included in a surface mining overlay district for a policy or factual reason, and thus the only basis to change that policy of non-inclusion in the surface mining overlay district would be to show a change in circumstances. But since there is no evidence in the record indicating that the Commissioners knew there was aggregate on this site when the last plan was adopted, the changed circumstance is documentation of the resource.

That being the case I agree with the Staff and Mr. Lowry (Ex .176/269), that under Washington case law a change of circumstances need not be shown to approve a rezone which is necessary to implement comprehensive plan policies which anticipate a request for a surface mining overlay rezone when the resource is identified and the applicant expresses readiness to extract it. Because the County's Comprehensive Plan contemplates future designation of mineral resource lands through rezone proceedings to apply the County's Surface Mining Combining District in resource areas utilizing criteria contained in the Plan, I concluded that no other change in circumstances need be shown. (See discussion on the Burden of Proof above). For the same reason I disagree that a quasi-judicial application to implement comprehensive plan's mining policy is spot zoning, notwithstanding that the applicant is trying to rezone the spot where the aggregate is found. That simply is the most efficient way to implement the County's policy.

Finding 8 – The applicant discusses the second part of criterion 3 on page 34 of the narrative. (Exhibit 10, Tab 3). The resource that would be extracted from the proposed mine has been demonstrated to meet certain specifications for construction that would provide a valuable resource to the county and have a benefit to its welfare. However, through the review and hearing process several other safety and public welfare concerns have been raised. One original concern was at an off-site curve on NE Kelly Rd. (Transportation Concurrency Finding #7). Another concern was the intersection of SR-503 and Gabriel Rd. Those issues are reviewed in detail under rezone criterion 4 (Land Use Findings #12 - 14) and in the Transportation Concurrency section, below. Since that time numerous interveners in these proceedings have raised the issue of the safety and adequacy of these narrow, winding and steep roads for the increased heavy truck traffic and its interaction with school buses, children, the elderly, mail trucks and other cars. Similarly, safety and public welfare issues have been raised with the protection of the aquifer/ground water and other noise impacts emanating from the operation including blasting.

Shelley Oylear from the County Transportation Concurrency Staff confesses in Exhibit 156 that the Staff is unable to demonstrate that an increase in truck traffic from the proposed Quarry would materially cause or aggravate accident rates in the area: "The geometry, signing, speed limits, and pavement marking along the roadways are consistent with other rural roadways and are adequate. Concerns were also raised about truck and bus interactions along haul routes. There have been no reported accidents involving buses or students and trucks. Preliminary traffic count data indicate that bus traffic is less than 2% of existing traffic on these rural roads."

Mr. Stein (CTS Engineers, Inc) the applicant's traffic consultant responds to the residents' concerns in Exhibit 209. He proposes to reduce hauling hours from May to October to 7 am - 6pm, and in November to April to 7am - 5pm and Saturdays 7 am-4pm with no hauling on Sundays and legal holidays. Mr. Stein allows for 18 days of extended hauling hours per year by adding 6pm to 8pm. According to Mr. Stein's calculations this reduces the daily total truck traffic at peak buildout to 319 trips per day, while still complying with the County proposed mitigations required when the trips were higher.

The problem with historically derived data is that applicant's heavy trucks will change the future

circumstances and the interveners' concern about these issues are not unreasonable given the nature of heavy trucks moving efficiently down these narrow, twisty and climbing unshouldered roads. Transportation Concurrency finding 5 addresses historical accident data. I note the testimony of residents citing their own experiences including accidents that do not appear in Mr. Stein's data, perhaps because they are unreported. The opponents have also introduced testimony of David Weaver, PE (Ex. 196) who states that these roads are not adequate to safely ferry the aggregate out of the proposed mine. The remaining truck issue related to public welfare criteria is noise, and that will be discussed below.

Since there is no proof that safety on these roads will be furthered by a substantial increase in heavy truck traffic, the policy and legal question is whether the weight of the public welfare argument is tilted favorably by the fact that the record has established that the cargo is valuable and if not absolutely needed immediately, will be needed to supply Clark County in the near future. Stated somewhat differently the issue is whether the public welfare argument for new sources of aggregate is trumped by the failure to further safety issue/location criteria. I conclude that this Quarry is a desirable objective in the wrong location because in this instance it cannot be served by adequate roads. Safety will not be furthered by putting more heavy trucks on these roads.

Finding 9 – Water Usage: Many people and staff have expressed concerns about the quantity of water use on the site. Water will be needed for multiple uses during the operation of the mine including dust suppression spray bars on the crushing equipment, water sprinkler systems for the buildings, dust suppression with a water truck along the almost two mile long haul route to Kelly Road and potential rock washing. The application states that the applicant may drill a well for rock washing if it is needed or desired. (Exhibit 10, Tab 3, Page 14). The environmental checklist (Exhibit 10, Tab 7, and Page 6) states that a well may be drilled or the existing well at the residence on site may be used for water needs. The environmental checklist also states that washing operation would primarily utilize recycled surface water.

Staff initially found that the applicant had not sufficiently addressed this issue in the application materials. There are no specific numbers provided that indicate the daily usage threshold of 5,000 gallons for use of groundwater without a water right will not be surpassed. In fact, it seems likely that the applicant will need more than 5,000 gallons a day. The sprinkler bar for the crushing equipment will be used whenever the crushing equipment is in operation, which is assumed to most of the proposed operating day. The amount of water used in the water truck to suppress dust is not addressed in the application. It is very likely that the truck would use more than 5,000 gallons per day. The proposed 45,000 gallon tank to supply water for sprinkler systems for on-site buildings, as required by the Fire Marshal, will have to be filled. See the Fire Marshal requirements below. Additionally, if any rock washing takes place, a large volume of water will be used. It is unclear whether or not washing will be needed.

The application states that if the owner decides to wash rock, between 50 and 250 gallons per minute (gpm) would be used with 75 percent being recycled (See Exhibit 10, tab 3, page 14). Assuming 125 gpm usage with 75 percent recycling, a washing operation would use about 1,875

gallon per hour. Thus the washing would use over 5,000 gallons in under three hours. The application states that washing could be in use up to 50 percent of working day (now modified to 7:00 am – 6:00 pm, 11 hours or 13 hours in the extended summer days).

The application also states that surface water may be used for some of the above mentioned uses. However, this is problematic for two reasons:

- 1) most of the dust suppression need will be during the dry summer months when surface water on this particular site will not likely be available (there is currently no surface water on the site and stormwater might be the only surface water available, which is generally problematic in the summer); and,
- 2) the review of groundwater conditions submitted with the application recommends infiltration of stormwater to help mitigate any potential impacts to the natural hydrology of the area. Therefore, use of surface water for any of the required uses is not feasible, recommended or allowed (See Land Use Finding #10).

There is substantial probative evidence that the operation of the Quarry could operate using under 5,000 gallons per day and this issue has not been adequately addressed in the application materials. If water is not available or water rights are not able to be obtained, the mine might not be able to function.

The applicant has sought to address water concerns in a number of ways. Richard Drinkwater, PE County's Development Engineer in Exhibit 270 (October 3, 2002) and Josh Warner in County's concluding memorandum summarize the progress on the water issue.

Water Usage & Dust Abatement Plan – Subsequent submittals by the applicant (Exhibits 253 – 256 & 258), present options for addressing the water usage issues.

One new option presented by the applicant for providing water to the site is the use of an installed water meter on a Clark Public Utilities (CPU) waterline in the vicinity of the Quarry. This would utilize a water truck to ferry water back to the Quarry. A preliminary letter of authorization has been submitted by Lonnie Moss, the applicant's consultant, to allow a meter to be placed on his property that is relatively near the mine site (See Exhibit 255).

A second new option presented by the applicant is to extend a CPU water line to the mining site. A letter saying water is available from CPU was submitted (See Exhibit 256). Also, letters from two property owners were also submitted stating that they would be willing to allow an easement across their property for the proposed water line (Exhibits 253 & 254).

The staff suggests that these options are feasible. However, much more information and analysis is necessary for the proposals to go forward. For example, no site plan for the Moss property has been submitted to demonstrate where the meter would be placed and a designated area for a water truck to park. For the water line extension, no environmental review has been done to permit the

extension of the line. Future permitting would likely be required for either of these options.

The applicant has also proposed using a magnesium chloride product for dust suppression on the haul road and in the Quarry area. Use of this product is proposed to dramatically reduce the amount of water necessary for Quarry operations. This option will require application of the material at least once annually and possibly more times, as needed. If the project is approved, as a condition of approval, the operator shall be required to submit receipts for application of the magnesium chloride, or equivalent to the Southwest Clean Air Agency (SWCAA) to show that the application has taken place. Also see new water conditions in Development Engineering's most recent memo (Exhibit 270)⁹. Opponents argue that the impact of using magnesium-chloride on the site, including contamination of aquifer and East Fork tributaries has not been addressed. Partly the issue is under SWCAA jurisdiction and partly in the Stormwater section below steps are proposed to keep the chemicals which are applied during the dry months from any creeks.

In the applicant's final communiqué, a letter of October 18, 2002 (Ex 279) Mr. Kessi observes on page 5 that "it is not the County's role to restrict how the Quarry legally obtains water for the site. Nor is it the County's role to restrict activities like rock washing to occur only with public water if in fact other legally obtained water may be available. The Quarry shall simply demonstrate compliance with DOE water regulations just like any of the neighbors and other Quarry operations would be required and to satisfy the County, provide additional water withdrawal records."

Because of all the concerns surrounding water usage related to the Quarrying operations, staff recommends that SWCAA approval be obtained prior to final site plan to assist making any necessary changes to the plans prior to finalizing the plans. To ensure that any air emission problems (dust) are handled in an expeditious manner, staff recommends that a condition of approval be imposed that requires that all mining and selling of rock from the Quarry cease immediately if the SWCAA issues any notice of violation or infraction of WAC 173-400-040 until the infraction is adequately corrected. Additionally, as indicated in footnote 9 staff finds that the operator of the Quarry should be required to install a meter at any wells on the site to measure daily water usage. Records shall be submitted to the County on a monthly basis.

The applicant has adequately demonstrated that the proposed mining and crushing, with the use of magnesium chloride and 5,000 gpd of water of site water and supplemental water from CPU, could

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1. Prior to operation of the mine, the applicant shall install a meter at any and all wells onsite.
 2. The applicant shall log daily water usage, and monthly provide the county copies of these logs.
 3. If water usage exceeds 5,000 gallons per day, the applicant shall immediately cease mining operations, and within one month obtain appropriate permits and implement one of the following options to obtain additional water:
 - A. The applicant shall construct a water line from Yacolt Reservoir to the site; or
 - B. The applicant shall install a permanent water meter and a parking spot for a water truck at the Lonnie Moss property at 28320 NE 172nd Avenue. Water shall then be trucked from this meter to the Quarry.

operate within regulatory parameters. Any additional needs for water such as washing or not using magnesium chloride for dust abatement would require additional water. The Examiner believes that if sufficient water can be legally obtained for the site then the applicant can use that water for any permitted activities in a most efficient to him way. It would appear that with conditions of approval applicant's operation can be limited to those uses for which he has a demonstrable water supply.

Finding 10 –Groundwater and Well Monitoring Plan / SEPA: The applicant submitted a "Review of Groundwater Conditions" by Newton Consultants, Inc., with the application materials. (Exhibit 10, Tab 5). The results of that report indicate that two wells could be potentially affected by the mining operations. One of the wells is the on-site well at the existing residence. The second well is about 1,500 feet east of the proposed excavation and lower in elevation. The report concludes "that a large disturbed surface area could potentially intercept aquifer recharge water (precipitation) that lands on the surface, if this water is redirected and discharged further down slope." (Exhibit 10, Tab 5. Page 3).

The applicant has submitted new information in two exhibits (259 & 260) related to groundwater and monitoring since the second public hearing. Keith Hirokawa, representative for several neighbors, also submitted new information about this issue (Exhibit 249, pg. 11). It is clear from the public testimony that significantly more than two water sources may be impacted (see also Ex. 142). Staff and Mr. Hirokawa agree that the Examiner must make a finding regarding the potential impacts of this proposal to the groundwater in the area. The examiner has received conflicting expert testimony regarding the issue of potential groundwater impacts.

Development Engineering staff has reviewed the new exhibits, including the newly proposed monitoring plan. Their comments are included as Exhibit 270. Staff and the applicant believe that there is no way to measure the impacts on groundwater until the operations commence. Mr. Drinkwater believes the proposed plan which first establishes a base for the wells likely to be impacted, if at all, could then through monitoring determine how much impact the operation is producing. According to the proponents the monitoring plan will address the groundwater impacts when they occur.

The Examiner believes that given the level of concern from the neighbors, substantiated by a number of reports of wells running dry and the need for ever deeper wells, this proposal seeks to allocate the ground water risk to the innocent bystanders who happen to rely on the same aquifer. The potential risk of depriving adjacent users of water and therefore effective use of their homes is too great an impact to speculate on. Mr. Michalek from Newton testified against the suggestions of Mr. Underhill from Kleinfelder in the August 9, 2002 letter (Ex 144) on the basis that no amount of further study would bring certainty¹⁰. The only certainty will come from actual mining and

¹⁰ Newton concludes that although such investigations would indeed provide more information than currently exists, they would not be conclusive. . . . Newton feels that, since impacts to nearby wells cannot be guaranteed by any amount of study and since true impacts will be known some years into the future, that a reasonable course of action is to monitor groundwater and be prepared to mitigate the affected wells should it become necessary. (page 2, Ex 164)

monitoring. That suggests to me that this site is unsuitable for surface mining operation because of the agreed upon uncertainty about ground water impacts.

Based upon our review, it is our professional opinion that information provided appears inadequate to sufficiently characterize the effect withdrawal of groundwater (dewatering and development activities) at the proposed Quarry will have on the surface/groundwater system. (Ex. 144, page 2)

I find that if indeed as Kleinfelder and Newton agree that the fractured rock aquifer in the Yacolt Mountain area is hydrologically complex and if in addition de-watering for mining operations may impact adjacent users (wells or springs) or rivers and streams and that the proposed depth of mining may impact or breach a confining layer¹¹ of the aquifer then this proposal may not be approved.

The recommendation of the report and subsequent Staff documents cited above (Ex. 270 and 272) is that a monitoring program be established at the on-site well and several surrounding wells to monitor static water levels. One such program is recommended by the applicant and his consultant. In addition, it is recommended that the spring flow at the mapped location be monitored. The recommendations will help to minimize any impact this project might have on the groundwater levels in the area. (See SEPA mitigation measure #G1). In addition, the applicant has proposed that on-site surface runoff will be directed to collection areas for infiltration back into the ground. Disturbed soils and overburden storage areas are also proposed to be replanted and/or reseeded with vegetation (Exhibit 10, Tab 3, and Page 17). (SEPA Mitigation Measures 1 & 2 and Condition F/P1). In addition to monitoring, 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. (SEPA mitigation measure 2A and Condition F/P2).

The applicant proposes the following conditions should I find the monitoring plan sufficient, which I do not because of uncertainty described:

Groundwater Conditions: Groundwater Conditions:

G1 The Quarry shall implement a detailed groundwater-monitoring program prior to beginning operations. A detailed implementation schedule shall be submitted to and approved by Clark County prior to Final Site Plan approval. Groundwater monitoring will be conducted according to the detailed monitoring plan provided in the Newton letter, *Revised Groundwater Monitoring Plan*, dated September 12, 2002 (Exhibit 134, as amended by Exhibit 259 and Exhibit 260) or the most current version thereof. Regular, periodic water-level measurements in wells near the Quarry will be recorded to allow for the detection of changes to the local groundwater system resulting from mining, other human causes or natural variation.

¹¹ See Exhibit 235 - Kleinfelder.

- G2 A supplemental hydrogeologic evaluation shall be conducted if, during the course of mining, any significant changes in groundwater elevations attributable to the Quarry occur that effect neighboring wells.
- G3 If monitoring indicates at some time in the future that Quarry activity has indeed significantly affected a neighboring property water supply, the Quarry could choose from several mitigations including but not limited to the following:
- Deepening of a well.
 - Drilling a new well.
 - Altering Quarry operations
 - Providing public water
 - The Quarry has agreed to the proposed mitigation terms as outlined in Ex.174.
- G4 Any impacts related to accidental fuel spills shall be mitigated through implementation of a Spill Prevention and Emergency Cleanup Plan. Spill containment and cleanup kits shall be available on site for use in the event of a spill.
- G5 The Quarry shall comply with the mitigation procedures as outlined in Exhibit #164, , as amended by Exhibit 259 and Exhibit 260) the Newton Consultants' August 16, 2002 letter, or the most current version thereof, which further details the practical aspects of mitigating neighbor water supplies.

Kleinfelder suggests through Mark Underhill (Ex 235) that according to the Washington Department of Natural Resources (DNR) Division of Geology and Earth Resources (DGER) criteria, the proposed mine is considered to be located in a hydrologically sensitive are. According to the August 9, 2002 letter (Ex 144, page 2):

Some of the complexities of the surface water/groundwater system that are not fully understood include: geometry of the fractures through which groundwater is transported and stored in the andesitic, basaltic, and dioritic rock bodies; the potential for commingled groundwater-bearing zones of the many documented nearby wells; and the water balance between storm water recharge of the surface water and the groundwater system including seeps, springs, and headwaters of two unnamed tributaries of the East Fork of the Lewis River. Information obtained by the applicant's consultant is only based on a literature review, has thus far been qualitative in nature, and is not sufficient to quantitatively evaluate the extent to which mining activities will temporarily or permanently alter the surface water/groundwater system. (emphasis provided)

I conclude that on the issue of groundwater the applicant has not met his burden of proof to show that he will do no harm in terms of safety, health and public welfare of his neighbors. Applicant

objects to taking steps necessary to do so outlined by Kleinfelder in exhibits 235 and 144, because they are too expensive and would produce results that are too uncertain. That may well be true, but it does not mitigate the fact that for this site the applicant is asking the Examiner to play Russian roulette with groundwater supply. This I am declining to do. I find that a criterion 3 has not been met also because of groundwater uncertainty.

Finding 11 – Noise is evaluated below in Land Use Finding #18. Aesthetics are evaluated below in Land Use Finding #24. The record therein indicates that with conditions of approval the applicant should be able to demonstrate that relevant noise criteria can be met.

Conclusion: This rezone criterion has not been satisfied because the impacts from the trucks on the local road system do not further safety or welfare of the local residents and the applicant has not met his burden of proof that he can operate the mine as proposed without doing permanent damage to the aquifer. Potential de-watering does not further health or public welfare. The applicant has not yet met his burden of proof on having adequate water supply to run his operation in a safe manner, but there is enough evidence in the record to find that with conditions of approval provided he could do so prior to final site plan approval.

Rezone criterion 4: *There are adequate public facilities and services to serve the requested zone change. (CCC 18.503.060 (4)).*

Finding 12 – The applicant addresses this criterion on pages 33 – 34 of the narrative. (Exhibit 10, Tab 3). Staff concurs that certain public facilities are adequate to serve the requested zone change including fire protection and other basic utilities. Staff started out with serious concerns about the county transportation infrastructure that the proposed development plans to utilize. The Quarry is located in a remote and relatively isolated location (Exhibit 10, Tab 3, and Page 35) and could have a significant impact on the surrounding rural roads if approved. Original cost estimates to provide the needed initial overlay to maintain the roads structural integrity as a result of this project were listed in Table 1 of the Staff Report and totaled \$1.1 million. (These cost estimates are one-time costs for a 15-year overlay, the mine may operate for much longer than that time). If the overlays are not done, Public Works' staff indicates that the roads will deteriorate rapidly from the burden of the heavy truck trips from the proposal. (Also see Transportation Concurrency analysis below).

Because staff did not want to make the policy decision of who should bear the burden of this impact, a work session with the Board of County Commissioners was set up on short notice for May 22, 2002, and the applicant was informed of this meeting. The Board directed staff to find a compromise between the public/tax payer bearing all of the burden of the new truck trips on the rural roads and the applicant paying the full cost of the impact on the roads. It is reported by the Staff that the Board wanted to balance the value of the rock resource to the community and the burden of the direct impacts.

Staff originally recommended that the Examiner deny this rezone and associated applications because it does not meet rezone approval criterion #4 as submitted. Subsequently, however, the

Staff has apparently worked with the applicant to arrive at a revised understanding of the wear and tear on the roads and the relative obligation of all parties which is reflected in the "Arrangement for Pavement Improvement Fees for Yacolt Mountain Quarry." (Ex 204) The agreement is based on the tonnage hauled and time of the year and the fees are dedicated to pavement structure of Kelly and Gabriel Roads. The Examiner has no basis for determining sufficiency or lack thereof of this agreement. Road maintenance is the County responsibility and the County has made a policy decision and a technical decision that apparently satisfies their perceived financial interest in being compensated for some portion of the required work. The basis for the new agreement is explained by Steve Schulte in Exhibit 226 (9/4/2002).

While structural adequacy of the road system has apparently been agreed to the County's satisfaction, the safety adequacy of the street facilities remains in doubt and a cursory review of the public testimony indicates that it is hotly contested. Most critically Mr. Schulte concludes that the increased truck traffic "will not materially cause a significant traffic or safety hazard." Shelley Oylear reaches the same conclusion in Exhibit 156, quoted above.

Normally on the issue of safety the Examiner defers to the Engineers, especially when the applicant and the County engineers are in an agreement. Often in these circumstances neighborhood fears may be exaggerated. In this case there is an intervening opinion of the neighbor's Engineer (Ex. 196) who agrees with the residents. The Examiner gives added weight to the neighbors concern about adequacy of these roads because he respects their daily experiences with these roads. The Examiner agrees with the neighbors that these additional trucks will not make the roads safer and for this criterion agrees that these roads were not designed to safely carry these additional loads.

Opponents raise the issue that some portion of the County investment enabling this mining operations through right-of-way maintenance constitutes an unconstitutional gift. I do not purport to understand that argument. Road maintenance is one the fundamental functions of local government. Road maintenance per force enables a myriad of private as well as public activities to benefit. It would appear to be a governmental policy choice to figure out which activities need to contribute what share to that effort and it appears to me to be more of financial impact choice than a land use decision. For my purpose I only conclude that with the financial contribution agreed to the roads will be maintained to a standard the County is willing to accept.

I find that for criterion 4, safety and noise impacts on properties and residential land uses along Gabriel and Kelly Rd caused by a significant increase of heavy trucks and double rigs (trucks and trailers) on narrow, curvy climbing roads militate against my unqualified finding for the applicant on this criteria.

Finding 13 – In further evaluating rezone criterion #4, the intent of the surface mining overlay zone is to "ensure the continued use of rock, stone, gravel, sand, earth and minerals without disrupting or endangering adjacent land uses, while safeguarding life, property and the public welfare." (CCC 18.329.010).

The examiner denies this rezone and associated applications because they do not and cannot meet rezone approval criterion #4 because of the nature of the local roads over which the aggregate has to be removed and the impact on the residential households which have been allowed to build along these roads because of noise and safety that will be produced by heavy trucks. However, as shown in the finding below and transportation and concurrency findings, the applicant is specifically addressing road safety mitigation identified by Staff.

Finding 14 – Turnout lane at SR-503 & Gabriel Road: A public facility that is not reviewed above is part of the state road infrastructure at SR-503 & Gabriel Road. The Washington State Department of Transportation (WSDOT) has reviewed this application and submitted comments. (Ex. 38 & 46). WSDOT has concerns related to the site distance at the subject intersection and northbound truck traffic turning off of SR-503 onto Gabriel Road. The site distance required by WSDOT standards is 860. County staff has also evaluated this situation and concurs with WSDOT's memo's conclusions as reviewed in Transportation Concurrency Finding #8, below.

Staff finds that the sight distance shall be shown to be present (Condition F/P3) and that the northbound right turn lane shall also be provide by the applicant as detailed in Exhibits 38 & 46 of this case. The applicant working with WSDOT has reached an agreement with WSDOT to improve this intersection consistent with Exhibits 67 & 74. (See SEPA mitigation measure #3 and Conditions F/P3/P4 reflect these points)

Surface Mining Overlay & Site Plan Review

While the Examiner has not found that the applicant has adequately demonstrated that the request for a surface mining overlay should be or can be granted, the basis of those findings is based on the Examiner's interpretation of how the County rezone standards are to be applied. The appeal review body may prefer a different interpretation. Therefore we proceed to the next step to review the specific proposal that has been submitted for approval. The applicant has requested review for a mining operation that includes the crushing of rock, which requires site plan approval as well as a conditional use permit. The surface mining overlay district requirements are in CCC 18.329. The requirements for site plan review and conditional use permits are in chapters CCC 18.402A & CCC 18.404, respectively.

Finding 15 – Reclamation Permit: The applicant is required by state law to have a Reclamation Plan approved by the Washington Department of Natural Resources (DNR), prior to commencement of mining operations (RCW 78.44.081) (Condition F/P5).

A DNR SM-6 Form is required for completion of the reclamation application with DNR. Staff states that it will sign the SM-6 only after issuance of all necessary approvals and expiration of the appeal period when no appeal has been filed.

Finding 16 – Site Area: *When the activity includes both extraction, along with any of one of the uses listed in Section 18.329.020(B)(1) – (B)(4), the total site area shall be a minimum of twenty*

(20) acres. (CCC 18.329.060(A)). (Activity 18.329.020(B) (4) is rock crushing). The area for the proposed mine is approximately 135 acres. The proposed development meets this requirement.

Finding 17 – Fencing & Setbacks: *The periphery of all sites within the gross site area being actively mined or reclaimed shall be fenced according to the State Department of Natural Resources' standards. (CCC 18.329.060(C)). The tops and toes of cut and fill slopes shall be set back from property boundaries according to the State Department of Natural Resources' standards for safety of the adjacent properties, and to prevent damage resulting from water runoff or erosion of slopes. (CCC 18.329.060(D)).* These standards will be reviewed for compliance during Final Site Plan evaluation when the approved reclamation plan is submitted (Condition F/P5).

Finding 18 – Noise Levels: *Maximum permissible noise levels shall be according to the provisions of the Washington Administrative Code (WAC) 173-60. (CCC 18.329.060(E)).* In addition to this standard, CCC 20.50.025(1) (g) sets out the SEPA policies for noise that need to be followed. The policy states that:

g) Noise. It is the county's policy to minimize noise impacts associated with land use changes, including those related to existing sources of noise. To this end, it is the policy of the county to require that new sources of noise be limited to the maximum environmental noise levels of WAC 173-60; even within these regulatory standards, an increase of more than five (5) decibels (dBA) over ambient noise levels at the receiving properties may be considered significant. It is further the county's policy to encourage that sources of noise otherwise exempt from WAC 173-60 that may affect existing or proposed residential uses (e.g., traffic, discharge of firearms, utility installations, etc.) be mitigated to the standards thereof as a Class B source of noise (i.e., fifty-seven (57) dBA), and to require noise studies where necessary to assure that proposals address these policies. Additional noise policies are contained within the following code provisions:

The applicants have submitted a noise study conducted by Daly-Standlee & Associates to demonstrate compliance with noise standards. (Exhibit 10, Tab 12). Exhibit 16 provides clarification on the study and an addendum to the study was also submitted on May 14, 2002. (Exhibits 31 & 32). In the second round the noise discussion the applicants submitted Exhibit 133 (Mr. Standlee- DSA Engineering). One point made was that "predicting noise levels, while not absolute in its representation of the levels expected in all environmental conditions becomes a conservative estimate of the loudest noise that might be experienced within the Quarry." Staff concluded that with appropriate mitigation the WAC 173-60 and the Clark County SEPA policy can be met. Mitigation measures are presented on pages 21 – 23 of the noise study and revised Table 7.

As a mitigation measure imposed through SEPA, staff recommends that the mitigation measures in Section 8 of the noise study, *Noise Mitigation Measures* shall be adhered to in order to comply with the Clark County noise standards. (See SEPA mitigation measure #4 and Condition F/P6). Any

alternatives that need to be decided between in the proposed mitigation measures shall be submitted to the county for review and approval prior to final site plan. This includes the specific height of berms or barriers, the location of the rock crusher in Cells 1 & 2 and that location of berms that will be used to mitigate for stripping of overburden. This also addresses Mr. Hirokawa's issue of berms location.

Table 7 from Exhibit 31 indicates the height of the berm or barrier that is required to mitigate noise from the two types of drills that might be used during operations.

The noise study questions whether or not properties to the north of the Quarry require protection for "significant" noise impacts radiating from the Quarry. (Exhibit 10, Tab 12, Page 26). The question is raised because some of the residents are related to the operator of the Quarry. Staff recommends that these properties be protected as would any other property. Because this is a long-term proposal there is a likely chance that different owners may occupy some of the existing houses and they deserve the same protections as anyone else.

The applicant's responses to the concerns about noise begin with Exhibit 133. The memo attempts to explain the accuracy of computer noise modeling and give an explanation of the accuracy of computer noise modeling and lays out a noise monitoring plan first conclusion is that:

"During the initial stages of the development of the Quarry, we do not expect to see any of the residences being able to even hear the noise from the Quarry operations except when the rock drill is working at an elevation that puts the equipment in direct line of sight of a residence. Therefore, it would make sense to specify compliance measurement at some time when rock drilling was occurring at the Quarry. . .

After the initial compliance check of the Quarry noise has been conducted, it would be reasonable to conduct compliance measurements at a time when there was a significant change in the conditions at the Quarry that might cause the change in the amount of noise radiating from the Quarry." (Ex 133, p 3)

Noise Monitoring Plan – Exhibit 133 outlines a noise monitoring plan that could help ensure compliance with appropriate noise standards¹². Staff finds that the monitoring plan proposed would be useful, but needs more definition as to specific times when monitoring would take place and who is to do the monitoring. (See Ex 158, p5 and 272, p 3) The noise consultant would most appropriately construct the plan and have the county and an independent noise consultant review the plan before it is finalized. It would be most appropriate for the third party, independent noise

¹² The examiner may wish to impose a condition that requires the operations to not exceed the levels that are presented in the noise studies presented by the applicant. This would ensure that noise levels not exceed those that were analyzed, for SEPA and other applications, and determined to be at an appropriate level for the specific area, if the application is approved. The measurements should be measured at the property lines of appropriate parcels.

consultant to then implement the monitoring plan. This would entail the county choosing a consultant to review and implement the monitoring plan and the mine operator paying for the consultant. The Applicant agrees to this requirement.

Truck Noise – This issue is addressed in Exhibits 133 & 172. The first exhibit states that truck noise is regulated by WAC 173-62 and that trucks not complying with these standards will not be allowed onto the site. This policy that would be implemented by refusing to load trucks with unmuffled or poorly muffled engine compression brakes (Jake Brakes). This should be added as a condition of approval, if the project is subsequently approved. It is unclear to me whether muffled brakes represent the same mitigation as would Donaldson Silent Partner (Ex. 249A) raised by Mr. Hirokawa, so I am unable to find whether Jake Brakes can be silenced or muffled further.

Many of the concerns that Staff raised in the previous memo to the examiner (Exhibit 158) regarding truck noise are addressed in Exhibit 172 from Kerrie Standlee. The concern about the number of truck trips is also addressed in Exhibit 186 from Moss & Associates. They respond that the maximum number of truck trips will be 30 per hour which was rounded up from the 29 peak hour trips for the purposes of the noise study. The original requested 400 trips per day have been reduced as limited by the hours of operations detailed in Exhibit 209 from CTS Engineering. Because this is what the noise study is based on, staff recommends that this be a condition of approval.

The applicant has proposed mitigation to help reduce the impact of truck noise from the Quarry operation (See Exhibit 133, pgs. 4-5 & Exhibit 257, pg. 5, N5 – N7, or 277 p 10 N5-10). Staff believes that these mitigation measures appear to keep the truck noise below any regulatory thresholds (Ex. 272, page 3). The applicant proposes these mitigations: 1) using the vehicle brake system instead of engine compression breaks between the Quarry and the first switchback (highest elevation) in between Cecil Rotschy property and James Matilla property; 2) extend the berm approximately 50 feet uphill from the cut now present between second and third switchback on the haul road. and 3) prohibit engine compression brake on the haul road west of the haul road bridge and 4) refuse to load truck with unmuffled or poorly muffled breaks.

The applicant is agreeing to this because while “the noise radiating from trucks is not regulated by either the County or WAC 173-60. . . . based on findings from the truck noise study, it appears that mitigation of truck noise, especially during the peak truck hours conditions, would be beneficial to the residences. . . . much of the truck noise above the ambient is generated by the engine compression brake when the truck is located at various points along the road traveling down the mountain.”

The applicant does state that mitigation of noise is not mandatory under WAC 173-60 or any county regulation. I find that CCC 20.40.025(3)(g) encourages that sources of noise otherwise exempt from WAC 173-60 that may affect existing residential uses (e.g. traffic) be mitigated thereof as a Class B source of noise (i.e. 57 dBA). I find this County policy requires the applicant to meet standards more rigid than WAC 173-62.

Applicant responds to these issues in Memos 171 and 172 in which he argues that even if the noise threshold standard of 57dBA is applied to the trucks and use of muffled compression breaks coming out of the Quarry, the noise levels for trucks are still below the allowable 57dB threshold, thus rendering the issue moot. The applicant also argues against Staff suggestion of banning engine compression breaks, by stating that they are necessary for safety purposes and liability purposes (see page 14 of Exhibit 258) " For those reasons, banning engine compression brakes on the Longview fiber "haul" Road is not a practical solution. However, the applicant is willing to post signs for the benefit of truck drivers asking them to limit their noise as much as possible on the haul road and to post addition "No un-muffled compression brake signs on the haul road, on Kelly Road and Gabriel Road is required by the County"

Mr. Kessi's concession in Exhibit 258 notwithstanding there is a related legal argument about which noise standard to apply and whether the standard has to be met at the property line or at the residential dwelling. In his October 3, 2002 Memorandum, Mr. Lowry argues that in determining the permissible decibel levels at receiving properties and in determining the scope of the exemption in WAC 173-60-050(4)(l) for off-public-highway vehicle operation, it is necessary to determine the appropriate "environmental designation for noise abatement" ("EDNA") for affected properties. "Opponents contend that comprehensive plan and zoning is irrelevant to this determination because the County has not adopted an ordinance so designating EDNAs, pursuant to WAC 173-60-030(2). While not dispositive, in my opinion, land use designations remain relevant in applying the designation criteria set forth in WAC 173-60-030(1), which require "present, future and historical usage, as well as usage of adjacent and other lands in the vicinity" to be taken into account. Zoning consideration is clearly relevant in determining "future" land uses. In the absence of a local ordinance, zoning designation, thus, continue to be an appropriate factor for consideration.

CCC 20.50.025(3) (g) sets forth certain County "SEPA Policies" relating to noise. They are not regulatory in nature. Instead, such policies were adopted pursuant to RCW 43.21C.060, which deals with substantive application of SEPA in conditioning or denying a proposal. The statute requires, in part, that SEPA-based conditions or denial "be based upon policies identified by the appropriate governmental authority and incorporated into regulations, plans, or codes which are formally designated by the agency (or appropriate legislative body, in the case of local government) as possible bases for the exercise of authority pursuant to this chapter." Thus, the function of CCC 20.50.025(3) (g) is to guide the exercise of impact-based substantive SEPA authority. The statute additionally requires that any mitigation measures imposed pursuant to such authority "shall be reasonable and capable of being accomplished."

The applicant's attorney contends that such policy violates state preemption to the extent that it "encourage[s]" noise sources, which are exempt under the state regulation, be mitigated to 57 dBA if it affects existing or proposed residential uses. The state preemption is reflected in WAC 173-60-110(2), which requires DOE approval of local ordinances "impos[ing] noise control requirements differing from those adopted by the department." Two replies are appropriate. First, regulation by the County of noise sources exempt under state regulation would not appear to fall within the ambit

of the preemption. Second, nothing in the preemption suggests, and no reported case holds, that the County's substantive SEPA authority is so limited when addressing impacts from proposed uses.

In exhibit 278 Mr. Sellers reiterates his argument for truck noise exemption. While trucks may be exempt under certain regulations, rezoning is a discretionary action based on the ability to meet the required criteria. Accepting Mr. Lowry's apparent opinion that Class C EDNA designation is appropriate for land adjacent to the Quarry, because notwithstanding residences contained on these parcels, they are zoned FR-40 and FR-80 which are not residential designations (See Ex 276 p 2, a report of Mr. Standlee's conversation with Mr. Lowry) Mr. Standlee states therein that:

The noise regulations could be met with the proposed mitigation measures. And as stated in Exhibit 262, the noise regulations could be met at the property lines of the receiving properties even if those properties with residences were considered to be Class A EDNA properties instead of Class C EDNA properties suggested by the County's Counsel, Mr. Lowry. . . In conclusion, the issue of compliance with the appropriate noise regulations limits remains adequately addressed by the noise study when the noise levels are considered at the boundary of the properties around the Quarry or at the individual residences on properties around the Quarry."

Notwithstanding Mr. Standlee's conclusion that the applicant can meet EDNA A and C standards at the property line, Mr. Sellers enters the arena one more time to argue in Exhibit 278 that under CCC 20.60.060 noise which affects residential uses be regulated at the home, and not at the property line as required by WAC 173-60. Mr. Seller's argument is that "use" is different from "property" and that the County in adopting "use" instead of "property" meant to be more restrictive in its suggested protection than WAC. According to Mr. Sellers, as commonly understood, on a large non-residentially zoned parcel, residential use refers to residence only. While I agree that a forest or agricultural zoned parcel, with or without a home, represents forest or agricultural land use, the argument however from Mr. Lowry seems to be that since DOE has not approved a different standard, the WAC property line standard should govern.

Therefore the 57dBA standard should be measured at the property line for truck and any other equipment used in the Quarry. I note that this is a site plan finding. I still find under rezoning criterion 3 that given steep, narrow, curvy roads the noise from accelerating and decelerating trucks using their Jake Brakes will not further health or welfare of residential dwellers along these roads.

BLASTING

The applicant has submitted a blasting plan and proposed a number of conditions related to blasting in Exhibit 257. In addition to the conditions of approval proposed by the applicant, staff suggests that the examiner also require pre-blasting surveys for residences within a radius determined by a blast engineer. This is also requested by YMNA through Mr. Hirokawa. This will protect both the property owners and the Quarry operator. Also, the blast contractor should do monitoring with vibration-monitoring equipment. However, it is recommended by the Department of Natural

Resources (DNR)¹³ that the placement of the equipment and the reading of the results be done by a qualified independent third party (See Exhibit 271). This should be a condition of approval for this Quarry operation.

Finding 19 – Per Exhibit 258 Hours of Operation, the applicant's responds to the neighborhood concerns by modifying **hours of operation**. The proposal is to reduce hauling hours from the Quarry.

New hauling hours are proposed to be Monday through Friday 7am to 6pm May through October; 7am to 5pm Monday through Friday November to April; Saturdays 7am to 4pm and no hauling on Sundays and Legal Holidays. The applicant reserves extended hauling hours for 18 days per year for up to two hours between 6pm to 8pm. This is supported by berming the quarry and portion of the haul road and truck mitigation measures already discussed. This assumes a noise threshold standard of 57dBA for trucks and muffled compression breaks at the property line of impacted neighbors.

Finding 20 – Erosion Control and Drainage: All disturbed areas, including faces of cuts and fill slopes, shall be prepared and maintained to control erosion. This control may consist of planting sufficient in amount or type to stabilize the slope (as approved by the planning director). H. Drainage. Provisions shall be made to:

1. Prevent any surface water or seepage from damaging the cut face of any excavations or the sloping face of a hill. 2. Prevent sediment from leaving the site in a manner which violates RCW 90.48.080 and WAC 173-201-100. (CCC 18.329.060(G) & (H)). These issues are reviewed below in the stormwater and erosion control sections.

The applicant will need a National Pollution Discharge Elimination System (NPDES) general permit issued by the Washington State Department of Ecology. The County does not have direct jurisdiction over this permit.

Finding 21 – Benching: Benches shall be backsloped, and shall be established at not more than forty (40) foot vertical intervals, to control surface drainage and debris. (CCC 18.329.060(I)). This issue will be review by DNR during review of the reclamation plan. (Condition F/P3).

Finding 22 – Access Roads Maintenance & Restrictions: Access roads to mining and Quarrying sites shall be maintained and located to the satisfaction of the director of public works, to minimize problems of dust, mud and traffic circulation. (CCC 18.329.060(J)). The applicant addresses this criterion on page 12 of the narrative (Exhibit 10, Tab 3). Access to the Quarry is proposed to be only via the Longview Fibre gravel haul road that is generally west of the proposed Quarry and connects to Kelly Road. Only emergency vehicle access shall be allowed via any other route. No truck traffic shall use alternatives. This will reduce concerns related to heavy truck traffic on other

¹³ See Norman, David, et al. December 1997, Best Management Practices for Reclaiming Surface Mines in Washington and Oregon, Open File Report 96-2, Washington State Department of Natural Resources

routes. (Condition F/P7).

To minimize issues of dust on the haul road the applicant has stated that a water truck will be used. (Exhibit 10, Tab7, Page 4). This shall be incorporated in the erosion control plan that is submitted for the site. A plan to prevent any mud on public roadways shall also be included in the erosion control plan. These will need to be reviewed and approved by the county prior to final site plan. (Condition F/P8).

As already discussed under water issues for rezone criteria (Finding 9). Prior to the recent submittals by the applicant (Exhibits 253 – 256 & 258), staff did not find that there was enough information in the application materials to demonstrate that the Quarry had sufficient water/water rights to adequately operate the Quarry, as proposed. At issue was enough water for dust suppression.

As discussed above, the applicant presented two options, one involving CPU water shipped from Lonnie Moss's property (See Exhibit 255). A second new option presented by the applicant is to extend a CPU water line to the mining site. A letter saying water is available from CPU was submitted (See Exhibit 256). Also, letters from two property owners were also submitted stating that they would be willing to allow an easement across their property for the proposed water line (Exhibits 253 & 254).

Staff asked for more information and analysis for these proposals to go forward. The applicant has also proposed using a magnesium chloride product for dust suppression on the haul road and in the Quarry area. Use of this product is proposed to dramatically reduce the amount of water necessary for Quarry operations. This option will require application of the material at least once annually and possibly more times, as needed. As a condition of approval, the operator shall be required to submit receipts for application of the magnesium chloride, or equivalent to the Southwest Clean Air Agency (SWCAA) to show that the application has taken place. Also see conditions in Development Engineering's most recent memo (Exhibit 270) including paving at least 60 feet in both directions from any stream crossing on the existing gravel haul road.

Because of all the concerns surrounding water usage related to the Quarrying operations, staff would recommend that SWCAA approval be obtained prior to final site plan to assist making any necessary changes to the plans prior to finalizing the plans. To ensure that any air emission problems (dust) are handled in an expeditious manner, staff recommends that a condition of approval be imposed that requires that all mining and selling of rock from the Quarry cease immediately if the SWCAA issues any notice of violation or infraction of WAC 173-400-040 until the infraction is adequately corrected. Additionally, staff finds that the operator of the Quarry should be required to install a meter at any wells on the site to measure daily water usage. Records shall be submitted to the County on a monthly basis.

This issue is also discussed below in the Transportation Findings.

Finding 23 – Air Quality: The operator of the Quarry will be required to obtain appropriate permits from the Southwest Clean Air Agency (SWCAA).

Finding 24 – Aesthetics: The applicant responds to this issue on page 18 of the narrative (Exhibit 10, Tab 3) as well as in photographic renderings (Exhibit 6). While there will be a short-term impact to the aesthetics of the area, the long-term use of the land in forestry will likely decrease the visual impacts of changing the topography on the top of the “mountain”. The site is proposed to be reclaimed with tree plantings that will relatively likely obscure any negative aesthetic impact from the mining activity in a short time period. The renderings demonstrate that only small portions of the mine will actually be visible from nearby public viewing areas. It is unclear to the Examiner that there is legal authority beyond reclamation to address aesthetics in a forestry zone. Visual buffering is appropriate in residential zones.

Finding 25 – Building setbacks: The minimum setback in the Forest District (FR-80) is 50 feet. Sheet 2 of the proposed site plan (Exhibit 5) indicates a 30 foot setback. These notes should be changed to adhere to the required 50 foot setback. (Condition F/P9).

Finding 26 – **Conditional Use Permit:** In order to grant any conditional use, the hearings 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. (CCC 18.404.060).

Not much has been said about the Conditional Use request. The CUP request relates only to the crushing operations which will be in the bottom of the pit. Conditions unique to crushing that apply to the operations of the Quarry as a whole, including removing the crushed materials, noise of the equipment and trucks and water for any washing of the crushed rock are covered in other parts of the decision. If all the water conditions and noise conditions are met there would be no reason why the crushing conditional use could not be granted. While it appears to be an integral part of the Quarry and cannot really be separated, should the criteria for rezoning be otherwise met, the conditional use criteria that addresses the same health, safety and public welfare requirements, could also be met with the conditions provided.

CRITICAL AREAS:

Finding 1 – Archaeological Predetermination: Approximately 10 acres of the 135 acre project area were determined to be within the 21% or greater archaeological probability zone. These 10 acres were identified in three different areas, labeled Areas “A”, “B” and “C” (see attached map in Exhibit 10, Tab 13). The site was logged and a large portion of the land cleared in the recent past. Several dirt two-track roads meander throughout the project area. The existing driveway/Quarry access road is graveled and well maintained.

Finding 2 – Archaeological Predetermination: Area “A” is located east of the existing Quarry and is nearly level ground. The area is wooded with medium sized Douglas fir mixed with alder and big leaf maple. Area “A” was walked over using meandering transects designed to cover 100% of the higher probability ground. Ground surface visibility was limited to sparse vegetation under trees and in the two-track road. Overall, the surface visibility varied from near 0% in the wooded area to nearly 100% in the road.

Area “B” is located in the northwest portion of the large 135 acre site. Access to the higher probability area was through thick brush. Area “B” is very steep ground (+/- 40%). There is little to no likelihood that the archaeological resources would be located on such steep ground. A brief walkover of the area was conducted and no shovel probes were deemed necessary.

Area “C” is located in the northeastern portion of the site near the existing residence. Area “C” was walked over using meandering transects. Ground surface visibility was good to excellent in most of the area due to past heavy equipment activities. No Shovel Test Probes were excavated in this area due to good surface visibility.

In Area “A” ground visibility was limited to the two-track road and a few exposures under trees. Surface visibility was approximately 2-3%. In Area “B” the ground surface visibility was near 0% due to thick brush and grasses. In Area “C” ground surface visibility was relatively good due to past ground disturbing activities, estimated to be near 70%. No archaeological items were found either during the walkover survey phase or the subsurface testing phase of the archaeological predetermination. No further archaeological work is recommended at this time.

Finding 3 – Habitat: A riparian Habitat Conservation Zone (HCZ) is present on one of the subject parcels (230068). The riparian designation is associated with a tributary of the East Fork Lewis River and is a Department of Natural Resources (DNR) type 4 watercourse in this area. According to the Habitat Conservation Ordinance (HCO), a DNR type 4 watercourse requires a 150-foot riparian Habitat Conservation Zone (HCZ). The HCZ extends outward from the ordinary high water mark 150 feet, or to the edge of the existing 100-year floodplain, whichever is greater. The applicant is proposing to avoid mining or development within the 150-foot riparian HCZ.

In addition, portions of the active mining area qualify as Priority Habitat under the Washington Department of Fish and Wildlife (WDF&W) Priority Habitats and Species list. These areas contain concentrations of snags and/or downed logs, which are important wildlife habitat. However, the applicant is proposing mitigation of these impacts (Exhibit 12) by recreating off-site snag habitat and planting a riparian HCZ. This proposed mitigation is in compliance with CCC Chapter 13.51 (Habitat Conservation Ordinance) provided the conditions provided in Exhibit 12 are implemented. (Conditions F/C1 – F/C12).

Finding 4 – Geological Hazard: Much of this site is mapped with steep slopes, and severe erosion hazard areas. Therefore, according to CCC 13.60.020(1), this activity is subject to CCC 13.60, Geologic Hazard Areas Regulations. (Condition F/C13).

Finding 5 – Geologic Hazard: The applicant shall submit a final geotechnical report. This report shall be prepared, stamped and signed by a geotechnical engineer or geologist who meets the requirements defined in CCC 13.60.110, and shall comply with the requirements of CCC 13.60.230(4). The recommendations of this study shall be followed in the development, mining and reclamation of the site. (Condition F/C14).

TRANSPORTATION CONCURRENCY:

ISSUE 1: CONCURRENCY

In accordance with CCC 12.41 Transportation Concurrency, a traffic study is required for proposed developments to assess impacts upon designated transportation corridors and/or intersections of regional significance. The proposed development shall maintain the level of service (LOS) standards established in CCC 12.41.080 for corridors and intersections of regional significance.

Finding 1 – Site Access: LOS standards are not applicable to site accesses that are not regionally significant; however, the LOS analysis provides information on the potential congestion and safety problems that may occur at the site access. In this situation, the applicant's traffic study reports an acceptable LOS.

Finding 2 – Operating LOS: The proposed development was subject to concurrency analysis for intersections of regional significance. The study reports acceptable operating levels for the following County intersections.

- SR503/NE Kelly Road
- SR503/NE Gabriel Road
- NE Lucia Falls Road/NE Kelly Road
- NE Lucia Fall Road/NE 172nd Avenue
- NE Kelly Road/NE Gabriel Road
- NE Kelly Road/NE Garner Road

The proposed development complies with the Concurrency code section CCC 12.41.

ISSUE 2: SAFETY

Where applicable, a traffic study shall address the following safety issues:

- traffic signal warrant analysis,
- turn lane warrant analysis,
- accident analysis, and
- any other issues associated with roadway safety.

Mitigation for off-site safety deficiencies may only be a condition of approval on development in

accordance with CCC 12.05A.230. This code section states that “nothing in this chapter shall be construed to preclude denial of a proposed development where off-site road conditions are inadequate to provide a minimum level of service as specified in Chapter 12.41 CCC or a significant traffic or safety hazard would be caused or materially aggravated by the proposed development: provided that the developer may voluntarily agree to mitigate such direct impacts in accordance with the provisions of RCW 82.02.020.”

Finding 3 – Traffic Signal Warrants: The unsignalized intersections analyzed in the applicant’s traffic study do not meet signal warrants.

Finding 4 - Turn Lane Warrants: The turn movements at the subject county intersections were examined and found to not meet warrants. However, an intersection with state jurisdictions does meet warrants. See Finding 8 below for other intersections of concern.

Finding 5 – Historical Accident Situation: Kelly Road and Lucia Falls Road Intersection. The intersection of NE Kelly Road and NE Lucia Falls Road has an historical accident rate greater than 1.0 accidents per million entering vehicles (AMEV); therefore, further analysis was required. The applicant’s traffic study showed that there have been two accidents in the years from 1998-2000. An additional accident was reported in 2001 at the subject intersection. The existing traffic volume at this intersection is low at, 185 PM peak hour vehicles. Staff has examined the accident data and determined that there are no particular improvements at the intersection that would conclusively reduce the accident rate. However, the applicant should be required to demonstrate the truck turning movements at the intersection will not track into opposing traffic or require tracking off the roadway. (Condition T 6)

This intersection was subject to a number of public comments to the effect that turning trucks had inconsistent success with staying on their side of the center line. The applicant has submitted additional information related to traffic safety (Ex 138/139/209). County concurrency staff was unable to conclude, after reviewing additional data, that the truck traffic from the Quarry will materially cause or aggravate accident rates (Ex 156). They offer no further discussion or make other findings to justify their conclusions.

The applicant has also addressed aspects of truck safety in exhibit 126. On page 16 of that Exhibit the applicant has stated that he will require all independently owned trucks to have a WSDOT “safety inspection sticker.” Condition T3 requires all trucks to have such a current sticker. The applicant has also acknowledged concern over interaction of school busses and trucks. He argues that the truck drivers who are on the roads for a living are more aware of bus traffic and safety considerations than average drivers. Condition T2 specifies that each August the Quarry shall provide flyers to divers leaving the weigh shack that includes school bus and postal carrier routes and times for the area.

The public is convinced that additional trucks will increase hazards on what they perceive to be a hazardous road environment. Nothing in the record suggest that the trucks on these roads will

further public welfare or safety. The applicant and the County Staff discount these Quarry truck impacts as insignificant. The people who live on these roads, based on their experience with conditions thereon, think that up to 400 trucks a day on these roads is downright scary. The opponents have produced an engineer, David Weaver PE (Ex 196) from far away Salem Oregon, who appears to be unlicensed in Washington and who has not affixed his engineering stamp to his letter. Said engineer did not appear at the hearing and was not subject to cross-examination. He writes that in 36 years with ODOT and 12 years as a consultant, including prior experience as a consultant for Clark County he has conducted a brief review of the affected 50 year old roadways in this area.

He does not find the roads adequate for the proposed road traffic. He reports *inter alia* that:

- Kelly Road alone has 6 crashes reported including 2 fatalities in a 40 month period. Assuming AADT of 390 he calculates doubling of crash statistics. He concludes that 2 fatalities on Kelly Rd in a 4 year period as being grossly excessive to any comparable roadway.
- Kelly Road slopes 16% in some areas with exposed culvert drop-offs over 1 foot deep, without benefit of edge striping, indicating existing hazardous conditions.
- Kelly Road also exhibits areas of marginal roadway traction and increased truck traffic will only exacerbate this condition.
- Kelly Road has many fixed objects located close to the roadway, making avoiding maneuvers hazardous.
- Some structures and roads in this area are so narrow that shoulder stripes cannot be placed on them for motorist guidance. This is exacerbated by inclement weather.
- Existing truck traffic on Kelly indicates 10% heavy traffic, so the proposed Quarry would increase this to 25% to 50% depending on destinations, thus substantially altering roadway characteristics.
- The Rock Creek Bridge is only 22 feet between curbs and with the existing striping has 9 foot travel lanes, thus making vehicular intrusion into coming lanes likely.
- Also, as the neighbors have also testified, not all crashes have been listed.

Even with the improvements and conditions provided, I do not believe that adequacy of local roads necessary to ferry aggregate to market can be completely mitigated. The applicant's mitigation will help the situation, but the location of the proposed Quarry on secondary roads, which are narrow, curvy and hilly and which will put heavy diesel trucks that will be constantly breaking past residential dwellings, school bus stops, mail carriers etc cannot be completely mitigated.

Finding 6 – Historical Accident Situation: Other Subject Intersections. The remaining intersections do not have historical accident rates greater than 1.0 accidents per million entering vehicles (AMEV).

The neighbors dispute this data and contend that many accidents go unreported.

Finding 7 – Kelly Road at West Yacolt Mountain Road Intersection. The curve along NE Kelly

Road at the west intersection with NE Yacolt Mountain Road is of concern to the County. See Photo Exhibits 51, 52 & 53. This curve in the roadway was the site of two accidents from 1999-2001. The northbound lane is of inadequate width for large trucks. The inside shoulder is limited and is currently experiencing some off tracking as evidenced in Photo Exhibit 52. Trucks from the proposed Quarry would be unable to negotiate the turn without tracking into the opposite lane or tracking off the roadway on the southeast corner. According to the applicant's traffic study, the proposed development would send 82 vehicles per day each direction along this roadway. Staff finds that the proposed development would cause a safety problem at the subject intersection. The applicant should be required to improve the shoulder and the roadway cross-section to accommodate the turning radius for Quarry trucks with trailer "pups". (Condition T 7)

Finding 8 – WSDOT Safety Comments: The County has notified Washington State Department of Transportation and forwarded a traffic study for review and comment. The responses are contained in Exhibits 38 & 46. The WSDOT has requested the applicant install a northbound right turn lane along SR 503 at NE Gabriel Road. Staff has reviewed the material and initially agreed that the additional heavy truck traffic will cause/aggravate a safety situation at the subject intersection and the applicant should be required to mitigate. (See Land Use Finding # 14). The applicant has discussed the configuration of the required improvement with WSDOT as detailed in exhibits 67 & 74 and condition F/P4 requires the applicant to satisfy WSDOT at that intersection.

Conclusion: Safety

The proposed development can comply with the code section CCC 12.05A.230 if the applicant:

1. Volunteers improvements on NE Kelly Road at the west intersection with NE Yacolt Mountain Road.
2. Demonstrates adequate turning radii are available at the intersections of NE Kelly Road/NE Lucia Falls Road.
3. Volunteers the installation of a northbound right turn lane along SR 503 at Gabriel Road according to WSDOT standards.

Note: This is different from rezone criteria 3 which require the applicant to further safety. This criteria focuses on maintaining a safety threshold. The presence of additional trucks on these roads will increase a number of accidents, even if that increase is found not be material or even if the accident "rate" remains the same. Rate is the number of accidents per number of trips. Based on the record, these improvements are the limits of what can be mitigated. Even if we were to conclude that the applicant will not further harm safety through his myriad of mitigation measures, we know that sheer daily number of heavy trucks on these type roads will not further safety.

ISSUE 3: Rezone & Condition Use Permit Criteria

Under code section 18.503.060(4), "zone changes may be approved only when.....there are adequate public facilities and services to serve the requested zone change." Also, 18.404.060(A)

requires among other things the in order to grant a conditional use permit that the proposed use will not be "detrimental or injurious to the property and improvements in the neighborhood or to the general welfare of the county." Where deficiencies exist, it may be possible for the applicant to voluntarily agree to make improvements, acceptable to the County, to comply with the criteria.

Finding 9 – Road Adequacy: The proposed development may generate up to 400 average daily trips (ADT) at full extended operation. County Public Works operations staff has reviewed the structural adequacy of the pavement sections for the main haul routes as noted in the traffic study. Wear on roadway increases with the weight of a vehicle. The wear impact of a loaded gravel truck with trailer "pup" equates to the wear by 3,000 standard vehicles according to American Association of State Highway and Transportation Officials (AASHTO). The pavement analysis indicates that haul route roadways would need to be structurally improved to handle the additional heavy truck traffic. Pursuant to direction from the County Commissioners the applicant has reached an agreement with the County Staff for a formula to reimburse the County for his proportional share of truck wear and tear in these roads. Condition T8 requires the applicant to comply with the "arrangement for Pavement Improvement Fees for the Yacolt Mountain Quarry" as stated in Exhibit 204. As previously discussed, this agreement appears to satisfy the County's financial interest in the cost of maintaining Gabriel and Kelly Roads. In Exhibit 156, the County has further indicated that a new improved chip seal mixture used for repaving should address the issue of "tearing" or "bleeding" of the pavement surface during hot weather.

TRANSPORTATION:

Finding 1 – Since frontage improvements will not be required for this development, a circulation plan will not be required per CCC 12.05A.110 (1).

Finding 2 – Roads: The various offsite roads that provide access to this site meet the width requirements spelled out in CCC 12.05A.230 (2) (a) & (b). However, per CCC 18.503.060(4), a zone change cannot be approved unless there are adequate public facilities and services to serve the requested zone change. As already discussed the County Engineer and County Commissioners have determined the adequacy of the public roads in this area. The Examiner agrees with the residents that additional road traffic will reduce safety on these roads because of their hilly, curvy, narrow and unshouldered, unmarked nature.

Finding 3 – Access: NE Kelly Road/NE Yacolt Mountain Road is classified as a Rural Minor Collector at this location. The applicant proposes to access this road via an existing private road owned by Longview Fibre. This road intersects Yacolt Mountain Road approximately 1,400 feet westerly of the east intersection with NE Kelly Road. This is to be the primary access route. Emergency access routes will be via an existing private road intersecting NE Yacolt Mountain Road approximately one-half mile easterly of the east intersection with NE Kelly Road, and via NE Mystic Drive. These emergency accesses shall have gates installed that are approved by the Fire Marshal. (Condition F/E1).

Finding 4 – The private access road passes through property owned by Longview Fibre and James Mattila per Clark County GIS. A joint easement agreement between Longview Fibre and the applicant was submitted with the application package (Auditor's File No. 3116579). The applicant shall provide evidence to the county that they have permission from James Mattila to use this road for these purposes. (Condition F/E4).

Finding 5 – A joint maintenance agreement between Longview Fibre and the applicant was submitted with the application package (Auditor's File No. 3116579). A portion of this road passes through property owned by James Mattila, per Clark County GIS. The applicant shall provide a private road maintenance agreement with James Mattila, as required in CCC 12.05A.770 (7). This agreement must include the owners/operators of the Yacolt Mountain Quarry among those responsible for the maintenance of this road. (Condition F/E3).

Finding 6 – CCC 12.05A.270(3) requires the following note be placed on face of the final site plan: "Clark County has no responsibility to improve or maintain the private roads contained within or private roads providing access to the property described in this plat. Any private access street shall remain a private street unless it is upgraded to public street standards at the expense of the developer or adjoining lot owners to include hard surface paving and is accepted by the County for public ownership and maintenance". (Condition F/E 4).

Finding 7 – The private access road must be a minimum of 20 feet wide, to meet the requirements of Table 12.05A.120-4 of the Transportation Standards. The applicant's site plan indicates that this road already meets this standard. Any widening of this road is subject to the stormwater ordinance CCC 13.29. (Condition F/E 5).

Finding 8 – The private access road shall be paved back 25 feet from the nearest edge of the traveled lane of NE Kelly/Yacolt Mountain Road, in accordance with CCC 12.05A.240(3). The corner pavement radius shall be a minimum of 25 feet, in accordance with Table 12.05A.120-4. (Condition F/E 6). It should be noted that for dust control purposes the Quarry will also pave at least 60 feet from each end of any stream crossing on the existing haul road as discussed in Exhibit 166. This pavement shall be maintained to typical pavement standards and repaved as necessary by the Quarry. This shall be noted on the Final Site Plan. Nothing herein shall prevent the applicant from paving the remainder or some additional portion of the haul road in order to either reduce dust or conserve water or save on the cost of dust suppressants. These dust related paving provisions are covered in condition D6.

Finding 9 – NE Kelly/Yacolt Mountain Road does not have a posted speed limit in this area. Therefore, the posted speed limit is a statutory 50 MPH, per CCC 12.05A.250, and RCW 46.91.415. The required sight distance is 500 feet, per Table 12.05A.250-2. The applicant states on the site plan, the traffic study and the narrative that this sight distance requirement has been satisfied on NE Kelly/Yacolt Mountain Road at the intersection of the private access road. However, a staff field visit revealed brush and trees to the west of this intersection that blocks the

line of site, when viewed from a point 15 feet from the edge of the vehicle travel lane, as required by CCC 12.05A.250(2). Therefore, these trees and brush must be removed. (Proposed Condition F/E7)

There was testimony from adjoining property owner as to whether or not he would give permission to allow the necessary clearing. In exhibit 261 Mr. Kessi points out that Mike Quinn of Clark County Public Works has measured the sight distance. Quinn's 9/12/2002 e-mail is attached indicating that he has measured the sight distance and that it meets the minimum standards. Also attached is an exhibit indicating that ROW along Kelly Road appears to be 30 feet of half width on the south side, allowing brush removal in the ROW without private approval. Condition F/E7 shall be revised per Richard Drinkwater's October 3, 2002 Memo (Ex 270) and will require maintenance of 500 feet sight distance during the Quarry operation.

STORMWATER AND EROSION CONTROL:

Finding 1 – Applicability: The vesting date for this application is August 14, 2001. Stormwater and Erosion Control Ordinance CCC 13.29, adopted July 28, 2000 applies to each of the following development or redevelopment activities that:

- 1 Results in 5,000 square feet or more of new impervious area within the rural area
- 2 Results in 2,000 square feet or more of new impervious area within the urban area
- 3 The addition or replacement of more than 1,000 square feet of impervious surface for any of the development activities or redevelopment listed in Section 13.29.305 (F) (1) and (2).
- 4 The platting of single-family residential subdivisions in an urban area
- 5 If redevelopment results in 5,000 square feet or more of replaced impervious surface, then the provisions of Section 13.29.305 (C) apply.

Drainage projects

All land disturbing activities except those exempted in Section 13.29.210.

Finding 1 - The applicant proposes a land disturbing activity. Therefore, this application is subject to the Stormwater and Erosion Control Ordinance CCC 13.29. (Condition F/E8).

Finding 2 – **Stormwater Proposal:** Surface water from the crushing, processing and long-term haul roads within the Quarry and maintenance areas will be collected, treated for water quality, and then infiltrated. At the Quarry low points, permanent 2-cell wet ponds will catch, settle out and treat surface water and storm runoff from impervious traffic bearing road surfaces prior to infiltration. Sediment collected in the wet ponds will be removed by mechanical means when the level of sediment in the pond reaches a certain height on a monitoring pole. Sediment removed from the pond will be used in the reclamation of the benches. The 2-cell ponds will be sized to treat 70% of the volume of a 6-month storm event. Since infiltration is proposed and all of the stormwater will be retained onsite, the ponds were not sized for detention, only for a permanent

pool for water quality treatment. The 10, 25 and 100-year storm events will flow through the pond and the exit weir into the infiltration facility. After treatment, the wet ponds will flow to permanent infiltration "pans" in the Quarry floor sized to infiltrate the 100-year storm event. The fractured floor infiltration areas will be created by drilling and controlled blasting.

Surface water from areas not requiring treatment will directly flow via overland surface flow, or in shallow ditches to low points to the Quarry floor. At these low collection points, the water will be infiltrated in one of four infiltration facilities sized to capture and infiltrate the 100-year storm event for up to a 25-acre area.

Cell 1 stormwater will be collected in surface ditches and directed to Stormwater Facility #1, located in the southwest corner for treatment and infiltration. At some point, the Cell 1 floor will need to be lower than Stormwater Facility #1. At this point, the water collected in the low point will be pumped up to Stormwater Facility #1 for infiltration. Other options for infiltration include providing a series of smaller temporary local infiltration facilities designed to infiltrate local areas.

As the Quarry progresses and deepens in other cells, several of these facilities in various temporary locations may be in use at the same times. The final reclaimed site will have at least four infiltration facilities, each engineered with the capacity to infiltrate the 100-year storm for a 25-acre area.

Finding 3 - Site Conditions and Stormwater Issues: Stormwater control in the mining work areas are subject to the Department of Natural Resources standards.

Water quality treatment shall be provided for facilities such as shops, offices, parking, equipment servicing area, crusher and processing areas, and are subject to CCC 13.29. The applicant proposes to provide water quality facilities designed to treat 70% of the 6-month event. However, CCC 13.29.305 requires treatment of 70% of the 2-year recurrence interval 24-hour storm event.

The applicant proposes four 60 foot by 60 foot maintenance shops, with outside equipment storage (bone yards). This use requires oil/water separators per CCC 13.29.305(G) (1) (a) & (h). These areas shall be paved to collect stormwater, and shall be provided with API or CPS-type oil/water separators.

The applicant has provided an infiltration report that was not signed and stamped by a professional licensed in the State of Washington. The applicant shall submit an infiltration report that was prepared, stamped, and signed by an individual licensed to practice in the State of Washington.

Using stormwater from the site has also been proposed as an option for water supply needs for dust suppression. However, it is unclear how this would be implemented. There is nothing in

the site plan indicating how and where the stormwater will be retained. No detention facilities have been planned and infiltration has been proposed for stormwater proposal.

The use of stormwater is also part of the SEPA discussion. It should be noted that the applicant submitted a timely appeal of SEPA mitigation measure #2. (See Exhibit 72). The appealed condition as written in the staff report states:

On-site surface runoff shall be directed to collection areas for infiltration back into the ground. Disturbed soils and overburden storage areas shall be replanted and/or reseeded with vegetation.

This condition was taken directly from the applicant's original submittal information (Exhibit 10, Tab 5, Newton Consultants, pg. 3). The applicant has since submitted information indicating that the amount of water to be used will be inconsequential (Exhibit 60). However, there are important qualifications in the analysis that should be reviewed. One of the assumptions is that the stormwater would not be transported away from the Quarry. It is not clear that this is the case. The applicant has suggested that water could be used for such uses as crusher dust suppression, rock washing and access road dust suppression. It seems that all of these uses could potentially remove the water from the site and not allow for complete infiltration. Therefore, the assumption seems inappropriate. Additionally, the beneficial use of surface water, including stormwater, requires a valid water right (See Exhibit 201). The applicant has not demonstrated that a water right from the Department of Ecology exists. Adjusting SEPA condition #2 is not appropriate.

Infiltration is proposed for stormwater disposal. This site shall comply with the conditions listed in CCC 13.29.305(H) (2). The final stormwater plan and final technical information report (T.I.R.) shall address the issues listed above. (Condition F/E9).

The stormwater facilities shall be privately owned in compliance with CCC 13.29.340(A), and maintained per the county's Stormwater Facilities Maintenance Manual, as adopted by Chapter 13.26A. Adequate access must be provided to the facilities to perform maintenance. (Condition F/E10).

Finding 4 - Erosion Control: An erosion control plan for the development shall be submitted in compliance with Section 13.29.540. The erosion control plan shall be submitted and approved prior to any construction. Failure to comply with the approved erosion control plan can result in a stop-work order, citation, or other code enforcement actions. (Conditions F/E11 and S-4).

Effective January 1, 2001, all development activities performed by licensed contractors shall be supervised by an individual who shall have successfully completed formal training in erosion and sediment control during construction by a recognized organization acceptable to the director, per CCC 13.29.430. Residential homeowners constructing their own development activity are exempt. (Condition F/E12).

Finding 5 – Conclusion: Based upon the development site characteristics, the proposed stormwater plan and the requirements of the County's stormwater ordinance, the proposed preliminary stormwater plan, subject to the conditions listed below, is, or can be made feasible. Therefore, the requirements of the preliminary plan review criteria are satisfied.

FIRE PROTECTION:

Finding 1 – Building construction occurring subsequent to this application shall be in accordance with the provisions of the county's building and fire codes. Additional specific requirements may be made at the time of building construction as a result of the permit review and approval process. (Condition B/F1).

Finding 2 – Fire flow and fire protection shall be provided as described in the fire protection requirements section of the site phasing plan submitted with CUP2002-00003 and PSR2002-00015 (Exhibit 5, Sheet 2). Separate review and permits required from the Clark County Fire Marshal's office for each automatic fire sprinkler system and fire alarm system. (Condition B/F2).

Finding 3 – Fire apparatus access is required for this application. The roadways and maneuvering areas as indicated in the application adequately provide required fire apparatus access. Fire apparatus access roads with an unobstructed width of not less than 20 feet, an unobstructed vertical clearance of not less than 13.5 feet, with an all weather driving surface and capable of supporting the imposed loads of fire apparatus is provided.

Finding 4 – An automatic fire sprinkler is required at the time of construction for buildings subject to this application. Such systems require separate reviews, permits and approvals issued by the fire marshal's office. (Condition B/F3).

Finding 5 – An approved fire alarm system is required at the time of construction for buildings subject to this application. Such systems require separate reviews, permits and approvals issued by the fire marshal's office. (Condition B/F4).

Finding 6 – Gates which restrict required fire apparatus access shall conform to the Clark county gate Code Ordinance (CCC 15.12). (Condition F/F1).

Finding 7 – Above Ground fuel storage tank and dispensing shall require separate review and permit from Clark County Fire Marshal's office. (Condition F/F2).

HEALTH DISTRICT:

Finding 1 – In the Southwest Washington Health District's Development Review Evaluation of

this proposal (Exhibit 10, Tab 9) no existing septic system was observed on this property. The Quarry use proposed for this site would most reasonably be served by a portable toilet with waterless hand cleansing during the times of operation. (Condition F/H1).

Finding 2 – If the use on site is regular enough to require drinking water to be provided, bottled water from an approved source would be adequate.

Finding 3 – There is a concern of the potential of Quarry operations affecting yield and water quality in neighboring wells. The map with the Development Review (Exhibit 10, Tab 9) shows that few if any wells would conceivably be affected by the development, however, the field inspector for the Health District thinks that there may be as many as five (5) wells on the east slope of the mountain which do not show on this map. The Health District recommendation is that the applicant work with the Washington State Department of Ecology on the issue of potential impacts on neighboring wells.

The applicant has submitted new information in two exhibits (259 & 260) related to groundwater and monitoring since the second public hearing. Keith Hirokawa, representative for several neighbors, also submitted new information about this issue (Exhibit 249, pg. 11). Staff concurs with Mr. Hirokawa that the examiner must make a finding regarding the potential impacts of this proposal to the groundwater in the area. The examiner has received conflicting expert testimony regarding the issue of potential groundwater impacts. The applicant has submitted a monitoring plan for ground water as discussed in Finding 10 under Rezone Criteria #3. Kleinfelder testimony (Ex 144/235) suggests that additional information is needed because the proposed mine is located in a hydrologically sensitive area underlain by complex hydrology wherein mining may impact or breach a confining layer.

On page 2 of Ex 144 Mark Underhill (Kleinfelder) asserts that:

... It is our professional opinion that the information provided appears inadequate to sufficiently characterize the effect withdrawal of groundwater (dewatering and development activities) at the proposed Quarry will have on the surface water/groundwater system. Some of the complexities of the surface water/groundwater system that are not fully understood include: the geometry of the fractures through which groundwater is transported and stored in the adesitic, basaltic, and dioritic rock bodies; the potential for commingled groundwater-bearing zones of the many documented nearby wells; and the water balance between storm water recharge of the surface water and the groundwater system including seeps, springs, and headwaters of the two unnamed tributaries of the East Fork Lewis River.

On August 9, 2002 Mr. Drinkwater opines in Exhibit 148 that he concurs with Kleinfelder's report entirely.

In Exhibit 235 Kleinfelder responds to the Newton Consultants assertion that data proposed beyond the proposed water level monitoring in the surrounding wells would be subject to interpretation and therefore not beneficial in aiding the Examiner in making the decision. Kleinfelder believes that "implementation of groundwater-monitoring plan for a surface water/groundwater assessment after a mining operation has been approved, in our opinion, does not meet the standard of care considering today's regulatory environment." (Emphasis provided)

The Kleinfelder memo then outlines what they believe Division of Geology and Earth Resources (DGER) would require from a mine of this type:

1. Identification, review, and submittal of adjacent well logs as shown on suitable maps.
2. Inventory of adjacent water rights and water use.
3. Measure static water levels in adjacent wells and survey in well head locations.
4. Determination of current potentiometric surface.
5. Drilling data and completion from one to numerous observation wells. Definition and/or delineation of presence/absence of confining beds(s).
6. A groundwater monitoring program during mining.
7. Development of an area groundwater budget and protection of mining impacts thereon.

While the applicant addresses some of these items in their monitoring plan, Kleinfelder insists that all of the information identified in Exhibit 144 is needed to evaluate groundwater impacts.

As discussed in the Rezone Criteria 3 Findings above, neither Newton for the applicant nor Staff believes that ground water impacts can really be measured until the operations commence, but Staff is satisfied in Exhibit 270 to identify those impacts, regardless of consequences, through a monitoring plan after the operations commence. Therefore, Mr. Drinkwater suggests that Examiner craft various suggestions and recommendations into conditions of approval.

As suggested in the earlier rezone criteria discussion, the Examiner is not willing to pass the ground water/aquifer risks of this operation to innocent by-standers on a chance that any possible now not quantified impacts will not prove permanent and irremediable. There are two ways to proceed as a consequence of this conclusion. One is to approve the application subject to a study and findings and independent evaluation suggested in the Kleinfelder Exhibit 144 or to deny the application because the applicant has not met his burden of proof under Criteria 3. Since the applicant states that he will not be able to meet that burden of proof under this location because of nature of the complex hydrology, I can only conclude that the site is too uncertain, and therefore locationally inappropriate to approve a Quarry operation. Since I will be providing conditions of approval to the Board, per Board's request that the Examiners provide hypothetical conditions of approval in the even that the Board should wish to overturn an Examiner decision on appeal, my condition of approval will require information required in Exhibits 144 and a monitoring plan to cover any residual uncertainty.

Development Engineering staff has reviewed the new exhibits, including the newly proposed

monitoring plan. Their comments are included as Exhibit 270.

SEPA DETERMINATION

As lead agency under the State Environmental Policy Act (SEPA) Rules [Chapter 197-11, Washington Administrative Code (WAC)], Clark County must determine if there are possible significant adverse environmental impacts associated with this proposal. The options include the following:

Mitigated Determination of Non-Significance (MDNS). Clark County, as lead agency for review of this proposal, has determined that this proposal, with the below described mitigation, does not have a probable significant adverse impact on the environment. An Environmental Impact Statement (EIS) is not required under RCW 43.21C.030 (2) (e). This decision was made after review of a completed environmental checklist and other information on file with the County.

Mr. Hirokawa in exhibits 146/ 249 having apparently missed the appeal deadline is arguing that withdrawal of MDNS is appropriate pursuant to WAC 197-11-340(3)(a).¹⁴ Mr. Lowry and Mr. Sellers have opined that the Examiner has no authority to withdraw MDNS. Mr. Hirokawa cites *Moss v City of Bellingham*, 109 Wash. App 6, 31 P3d 703 (2001) for the proposition that a hearing examiner has the authority to cure defects in SEPA compliance. Using the County's Staff Report Mr. Hirokawa argues that MDNS was issued in the absence of reasonably sufficient information on water quality and quantity, noise and traffic safety, among others.

The County as SEPA authority may or may not have the authority to withdraw its MDNS. The County has identified informational and other issues in a number of areas, but has conditioned approval in such a manner that would require provision of the information and address the outstanding issues.

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- (3)(a) The lead agency shall withdraw a DNS if:
- (i) There are substantial changes to a proposal so that the proposal is likely to have significant adverse environmental impacts;
 - (ii) There is significant new information indicating, or on, a proposal's probable significant adverse environmental impacts; or
 - (iii) The DNS was procured by misrepresentation or lack of material disclosure; if such DNS resulted from the actions of an applicant, any subsequent environmental checklist on the proposal shall be prepared directly by the lead agency or its consultant at the expense of the applicant.
- (b) Subsection (3)(a)(ii) shall not apply when a nonexempt license has been issued on a private project.
- (c) If the lead agency withdraws a DNS, the agency shall make a new threshold determination and notify other agencies with jurisdiction of the withdrawal and new threshold determination. If a DS is issued, each agency with jurisdiction shall commence action to suspend, modify, or revoke any approvals until the necessary environmental review has occurred (see also WAC 197-11-070).

The key outstanding issue relates to the uncertainty over groundwater/aquifer impacts. Everyone admits uncertainty, but draws different conclusions. The applicant and perhaps Staff are saying we can find out if we destroy the aquifer by going ahead with the mining operation and monitoring for its destruction or damage which may be irreparable. If the damage is not too severe, we may be able to repair the wells by deepening or dig new wells for those affected. If the wells go permanently dry as a result, it is not clear what if anything is being proposed, although one assumes that is what courts are for.

I think it is appropriate to require that if a well is rendered useless for domestic or other purpose and cannot be replaced or fixed, the damaged party should receive as compensation the difference in value of his or her property with reduced water or without water. The applicant and the staff believe further analysis would be pointless because the complexity of the area is such that the data is inconclusive. The Examiner finds that inability to provide conclusive data is a reason for denial, although the appellate body could disagree with the Examiner's conclusions about proper distribution of risk or require further study.

If on the other hand this application should be approved on appeal, groundwater study recommended by Kleinfelder should be completed and reviewed before any conditions G are implemented, to ensure the best possible basis for establishing a monitoring plan. The data which needs to be included in such a review is found in exhibits 144 and 235. Examiner's SEPA condition should read:

- Prior to implementing Groundwater Conditions (G) additional study shall be conducted and submitted as proposed by Kleinfelder Exhibits 144 and 235.

The second issue that cannot be mitigated is the location of the proposed Quarry on secondary roads, which are narrow, curvy and hilly and which will put heavy diesel trucks that will be constantly breaking past residential dwellings, school bus stops, mail carriers etc. The applicant and the County Staff discount these impacts as insignificant. The people who live on these roads, based on their experience with conditions thereon, think that up to 400 trucks a day during extended operations on these roads is downright scary. The opponent's engineer, David Weaver PE (Ex 196), discussed in transportation finding 5, finds these roads inherently unsafe. Based on his testimony and that of many residents, as well as my own double site visit, I agree, but make my findings under rezone and transportation criteria.

Finally, as discussed already in Finding 3 of the Stormwater Section, the applicant has filed a timely appeal of the SEPA mitigation section (Exhibit 72). In his comments on the status of the appeal in Exhibit 258, page 3 Mr. Kessi stated that the County originally interpreted the statement "on-site runoff shall be directed to collection areas for infiltration back into the ground" to literally mean every drop of water. The applicant only intended to mean that stormwater would not be discharged to surface waters. This was not intended to preclude possible use in Quarry operations. Before any surface water is used for operations, a water right

will be obtained from the Department of Ecology. Because the applicant has not demonstrated that a water right from the Department of Ecology exists. Adjusting SEPA condition #2 is not appropriate. SEPA appeal is denied.

The following mitigation measures are required by Staff with this SEPA review:

1. (See Land Use Finding #10). Conditions G1-G5
2. On-site surface runoff shall be directed to collection areas for infiltration back into the ground. Disturbed soils and overburden storage areas shall be replanted and/or reseeded with vegetation. (See Land Use Finding #10).
- 2A. 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. (See Land Use Finding #10).
3. A northbound right turn lane at the intersection of SR-503 and Gabriel Road shall be provided by the applicant as detailed in Exhibits 38 & 46 of this case. The applicant is currently working with WSDOT on an agreement and this mitigation/condition can be modified by an official agreement between WSDOT and the applicant. (See Land Use Finding #14 - Condition F/P4)
4. The mitigation measures in Section 8 of the noise study, Noise Mitigation Measures, shall be adhered to in order to comply with the Clark County noise standards. (See Land Use Finding #18 see also Conditions 8 based on Exhibit 133 mitigation).

Additional mitigation measures have been identified throughout this decision and are reflected in the Conditions of approval Q. During the hearing the Examiner suggested that one of the problems with a situation this complex when it comes to noise, dust, trucks and aquifer/groundwater impacts is that effectiveness of mitigation measures cannot really be predicted with absolute certainty in advance. Once the operation is on the ground it may turn out that various measures will work just as predicted, or they could not work as predicted or new impacts that were not anticipated could arise. If the proposal were to go forward the best way to provide reasonable relationship with the neighbors and provide a process to check on the effectiveness of various measures would be to ensure regular communications between the operator and the neighbors. The applicant picked up on that suggestion and proposed an Advisory Group to meet on a regular basis. The neighbors suggested broader representation and representation for the Yacolt Mountain Neighborhood Association. The applicant revised his proposal. Based on testimony the examiner has revised to expand advisory group because the impacts of great concern to the public relating to the adequacy of the local roads and impacts of trucks involved more than just an area within ½ mile of the Quarry. Using exhibit 142 to determine that 1.5 miles is a probable heavy impact area, the pool from which the advisory committee should come is expanded. Some of the regular review tasks are described in conditions Q7-Q8. These conditions shall read as follows:

- Q6** The Quarry shall establish a five member Neighbor Advisory Group to review Quarry operations, effectiveness of mitigation measures, monitoring results and provide an open channel of communication for the residents of the area, and provide possible solutions to any problems. The Yacolt Mountain Neighborhood Association will provide two representatives on the Neighbor Advisory Group that lives within 2.0 mile of the Quarry boundary. The three of the five neighbor members shall be selected at-large from residents that live within 1.5 mile of the Quarry boundary or own property along Kelly Road. The Quarry shall be represented by one or two managers with the authority to make operational decisions for the Quarry that will allow changes to be made if necessary. The Neighbor Advisory Group shall meet a minimum of once each year for the first 5-years, and at a minimum of once every 2-years thereafter of Quarry operation or at intervals thereafter determined by the Neighbor Advisory Group. The Neighbor Advisory Group may agree to meet more regularly if additional meetings are needed. Further details of the Neighbor Advisory Group and the compliance monitoring details shall be worked out prior to final site plan approval.
- Q7** The Quarry shall perform compliance monitoring of Quarry noise levels, the groundwater monitoring program, and the blasting program in years 2, 4, and 6 and at intervals thereafter determined by the Neighbor Advisory Group. If the Quarry is not in compliance, Quarry operations shall be immediately modified, or further mitigation measures implemented, to bring it into compliance. Details shall be worked out prior to final site plan approval.
- Q8** All neighbors within 1 mile of the Quarry boundary, the Neighbor Advisory Group, Clark County, and the DNR, shall be provided with a copy of the regular monitoring results and any follow-up compliance monitoring showing how the Quarry is performing and an invitation to respond with concerns.

CONCLUSIONS

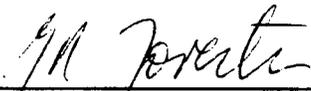
As discussed before, it would appear that the applicant is prepared to mitigate many of the impacts that naturally arise from a surface mining operations. The applicant's consultant has stated that noise from the site can be regulated to the level of 57 dBA as measured at the adjacent property lines. It would appear that the applicant should be able to control dust either by judicious use of their existing water rights allotment, transporting water from a CPU meter, or using dust-top of some other alternative. Some critical road safety issues are also being addressed through staff required conditions.

This denial is based most critically on rezone criterion 3 findings that the applicant has not met his burden of proof to show prior to obtaining operating approval that groundwater impacts can be mitigated. The site is too geologically/hydrologically complex to provide certainty through additional study that irreparable harm can be mitigated. Potential of leaving some homeowners without water cannot be said to further public health or welfare. The applicant also cannot show also that his additional trucks on these secondary roads will "further" safety or that these very same trucks and their related noise will further or contribute to the public health or welfare of residents adjoining these secondary roads. For the same reason under criterion 4 the nature of these road – hilly, winding, steep and unmarked make them inadequate for the purpose of safely transporting of aggregate. Also for related reasons the locational rezone criterion 2 (locational matrix and comprehensive plan policies) is only partially met, which is also a basis for denial.

DECISION

Based upon the proposed plan (identified as Exhibit 5), and the findings and conclusions stated above, the Hearings Examiner **DENIES** this request for the reasons stated in the staff report above. Conditions of approval which are appended are for the convenience of the Board in case they should choose to reverse this decision.

Dated this ____ day of November, 2002



J. Richard Forester
Hearing Examiner

NOTE: Only the decision and the condition of approval are binding on the applicant as a result of this order. Other parts of the final order are explanatory, illustrative and/or descriptive. They may be requirements of local, state, or federal law, or requirements which reflect the intent of the applicant, the county staff, or the Examiner, but they are not binding on the applicant as a result of the final order unless included as a condition.

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

The appeal shall be filed with the Board of County Commissioners, 1013 Franklin Street,

Vancouver, Washington, 98668, within fourteen (14) calendar days from the date the notice of final land use decision is mailed to parties of record.

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

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

APPENDED Conditions of Approval

Conditions Unique to this Development

Conditions that must be met prior to Final Site Plan approval:

Planning:

- F/P1** On-site surface runoff shall be directed to collection areas for infiltration back into the ground. Disturbed soils and overburden storage areas shall be replanted and/or reseeded with vegetation. A note to this affect shall be placed on the final site plan. (See Land Use Finding #10).
- F/P2** 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 affect. (See Land Use Finding #10).
- F/P3** Sight distance of 860 feet shall be demonstrated at the intersection of SR-503 and Gabriel Road.
- F/P4** The intersection of SR-503 and Gabriel Road shall be improved per agreement with WSDOT as outlined in Exhibits 67 & 74. (See Land Use Finding #14/Concurrency Finding 8).
- F/P5** The applicant must submit an approved reclamation plan from the Washington Department of Natural Resources for the proposed site. (See Land Use Finding # 15 & #17).
- F/P6** The mitigation measures in Section 8 of the noise study, Noise Mitigation Measures, Exhibits 10 and 72 shall be adhered to in order to comply with the Clark County noise standards. A note to this affect shall be placed on the final site plan. Mitigation in exhibits 133 and 172 is provided in Conditions N. Where conflicting Conditions N shall supersede prior measures (See Land Use Finding #18).
- F/P7** Access to the Quarry shall only be allowed via the existing Longview Fibre haul road that connects the Quarry to Kelly Road. A note to this affect shall be placed on the final site plan. (See Land Use Finding #22/Transportation Finding 3).
- F/P8** An adequate plan for minimizing dust on haul roads and mud being tracked onto public roadways shall be included in the erosion control plan that is required for this application. (See Land Use Finding #22)
- F/P9** Any notes on the site plan shall indicate a 50-foot setback. (See Land Use Finding #24).

Critical Areas:

- F/C1** The applicant shall implement the Priority Species and Habitat Assessment for Yacolt Mountain Quarry mitigation plan (Exhibit # 12), submitted by Environmental Technology Consultants, and dated March 21, 2002, except as amended herein. (See Critical Areas Finding #3 and Conditions F/C2 -10).
- F/C2** Tree planting shall occur between December 1 and March 31 in order to ensure optimum seedling survival. Any deviation from this planting window will need to be approved by the county Habitat Biologist. (See Critical Areas Finding #3).
- F/C3** If damage from rodents or deer becomes a problem, the applicant shall protect planted seedlings from rodent/deer depredation through the use of screening and/or repellants. (See Critical Areas Finding #3).
- F/C4** If non-native vegetative regrowth becomes a problem, the applicant shall remove said vegetation as needed to ensure plant survival. (See Critical Areas Finding #3).
- F/C5** Non-native vegetation shall be removed mechanically (i.e. weed whacker, brushhog, mower) or by hand (i.e. scythe, machete) in order to minimize soil movement and alteration. Care must be taken so as not to remove any significant aggregations of native vegetation (i.e. stem diameter greater than 2"). (See Critical Areas Finding #3).
- F/C6** Weed material and vegetative debris shall be left on the ground after cutting, in order to hinder regrowth and prevent soil erosion. (See Critical Areas Finding #3).
- F/C7** No grading (cuts or fills) shall be conducted within the dripline of all trees slated for protection within the 150-foot riparian HCZ. (See Critical Areas Finding #3).
- F/C8** Appropriate demarcation and signage of the protected habitat boundaries shall be in place prior to initiating any groundbreaking activity. (See Critical Areas Finding #3).
- F/C9** The riparian HCZ and proposed mitigation area shall be permanently labeled in such a manner as to sufficiently identify and protect its functionality or as directed by the County Biologist. (See Critical Areas Finding #3).
- F/C10** Locations of signage surrounding the riparian HCZ shall be clearly identified on the Final Engineering Construction plans set. (See Critical Areas Finding #3).
- F/C11** A note shall be included on the face of the plat which states "no native tree or shrub vegetation shall be removed from within the 150-foot riparian HCZ," prior to Final Site Plan approval. (See Critical Areas Finding #3).

F/C12 The applicant shall enter the 150-foot riparian HCZ into a Habitat Conservation Covenant prior to Final Site Plan approval. (See Critical Areas Finding #3).

F/C13 This activity is subject to CCC 13.60, Geologic Hazard Areas Regulations. (See Critical Areas Finding #4).

F/C14 The applicant shall submit a final geotechnical report. This report shall be prepared, stamped and signed by a geotechnical engineer or geologist who meets the requirements defined in CCC 13.60.110, and shall comply with the requirements of CCC 13.60.230(4). The recommendations of this study shall be followed in the development, mining and reclamation of the site. (See Critical Areas Finding #5).

Engineering:

F/E1 The primary access to this site shall be via an existing private road owned by Longview Fibre. This road intersects Yacolt Mountain Road approximately 1400 feet westerly of the east intersection with NE Kelly Road. Emergency access routes will be via an existing private road intersecting NE Yacolt Mountain Road approximately one-half mile easterly of the east intersection with NE Kelly Road, and via NE Mystic Drive. These emergency accesses shall have gates installed that are approved by the Fire Marshal. (See Transportation Finding #3)

F/E2 The applicant shall provide evidence to the county that they have permission from James Mattila, the owner of a portion of the road, that they have permission to use this road for these purposes. (See Transportation Finding #4)

F/E3 The applicant shall provide a private road maintenance agreement with James Mattila as required in CCC 12.05A.770 (7). This agreement must include the owners/operators of the Yacolt Mountain Quarry among those responsible for the maintenance of this road. (See Transportation Finding #5)

F/E4 The following note shall be placed on face of the final site plan: "Clark County has no responsibility to improve or maintain the private roads contained within or private roads providing access to the property described in this plat. Any private access street shall remain a private street unless it is upgraded to public street standards at the expense of the developer or adjoining lot owners to include hard surface paving and is accepted by the County for public ownership and maintenance". (See Transportation Finding #6)

F/E5 The private access road must be a minimum of 20 feet wide. Any widening of this road is subject to the Stormwater Ordinance CCC 13.29. (See Transportation Finding #7)

F/E6 The private access road shall be paved back 25 feet from the nearest edge of the traveled lane of NE Yacolt Mountain Road. The corner pavement radius shall be a minimum of 25 feet. (See Transportation Finding #8)

- F/E7** The trees and brush located along the south side on NE Yacolt Mountain Road west of the intersection with the private access road shall be removed in order to obtain at least 500 feet of sight distance along NE Yacolt Mountain Road, as measured in accordance with CCC 12.05A.250(2). (See Transportation Finding #9)
- F/E8** This application is subject to the Stormwater and Erosion Control Ordinance CCC 13.29. (See Stormwater and Erosion Control Finding #1)
- F/E9** A final stormwater control plan and final technical information report (T.I.R.) shall be submitted for approval in compliance with Section 13.29.530. This report shall study such areas as shops, offices, parking, equipment service areas, crusher and processing areas, which are subject to CCC 13.29. In addition to refining and confirming the preliminary stormwater design report, the final plan and report shall also include (but not be limited to) the following:
- Water quality treatment facilities shall provide treatment of 70% of the 2-year recurrence 24-hour storm event
 - Oil/water separators for the areas containing shops and equipment storage and maintenance areas
 - Provide an infiltration report that is signed and stamped by an individual licensed in the State of Washington
 - Comply with the conditions listed in CCC 13.29.305(H) (2). (See Stormwater and Erosion Control Finding #3)
- F/E10** The stormwater facilities shall be privately owned in compliance with CCC 13.29.340(A), and maintained per the county's Stormwater Facilities Maintenance Manual, as adopted by Chapter 13.26A. Adequate access must be provided to the facilities to perform maintenance. (See Stormwater and Erosion Control Finding #3)
- F/E11** An erosion control plan for the development shall be submitted in compliance with Section 13.29.540. The erosion control plan shall be submitted and approved prior to any construction. Failure to comply with the approved erosion control plan can result in a stop-work order, citation, or other code enforcement actions. (See Stormwater and Erosion Control Finding No. 4)
- F/E12** This activity shall be supervised by an individual who has successfully completed formal training in erosion and sediment control during construction by a recognized organization acceptable to the director, per CCC 13.29.430. (See Stormwater and Erosion Control Finding No. 4)

Fire Protection:

- F/F1** Gates which restrict required fire apparatus access shall conform to the Clark county gate Code Ordinance (CCC 15.12). A note shall be placed on the final plat to this effect. (See Fire Protection Finding #6).
- F/F2** Above Ground fuel storage tank and dispensing shall require separate review and permit from Clark County Fire Marshal's office. (See Fire Protection Finding #7).

Health District:

- F/H1** Verification of a septic permit is required.

Conditions that must be met prior to issuance of Building Permits:

Fire Protection:

- B/F1** Building construction occurring subsequent to this application shall be in accordance with the provisions of the county's building and fire codes. Additional specific requirements may be made at the time of building construction as a result of the permit review and approval process. (See Fire Protection Finding #1).
- B/F2** Fire flow and fire protection shall be provided as described in the fire protection requirements section of the site phasing plan submitted with CUP2002-00003 and PSR2002-00015 (Exhibit 5, Sheet 2). Separate review and permits required from the Clark County Fire Marshal's office for each automatic fire sprinkler system and fire alarm system. (See Fire Protection Finding #2).
- B/F3** An automatic fire sprinkler is required at the time of construction for buildings subject to this application. (See Fire Protection Finding #4).
- B/F4** An approved fire alarm system is required at the time of construction for buildings subject to this application. (See Fire Protection Finding #5).

SEPA Mitigation Conditions

1. On-site surface runoff shall be directed to collection areas for infiltration back into the ground. Disturbed soils and overburden storage areas shall be replanted and/or reseeded with vegetation. (See Land Use Finding #10).
2. 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. (See Land Use Finding #10).
3. Prior to implementing Groundwater Conditions (G) additional study shall be conducted

and submitted as proposed by Kleinfelder Exhibits 144 and 235.

Additional Conditions Unique to this Development

Conditions that must be met prior to Final Site Plan approval or as noted:

Blasting Conditions:

- B1** A site specific final detailed blasting plan by Explosive Technical Services substantially similar to Exhibit 151 (the Blasting Plan), or other qualified firm, for the Yacolt Mountain Quarry will be submitted to the Fire Marshal for approval prior to any blasting activity on the site.)
- B2** Blasting will be conducted on business weekday hours from 9:00am to 5:00pm and not on weekends or legal holidays. Blast days will be as much as possible scheduled on consistent days of the week (for example on Mondays or Thursdays).
- B3** A program utilizing registered mailings shall be initiated affording people living within the 2,500-foot impact area boundary information regarding blasting parameters and proposed blasting schedules. Individuals residing within 1,500-feet of blasts shall also be contacted the day prior to the blast. A list of these residents wishing to be contacted prior to commencement of any blasting shall be kept on site.
- B4** The licensed and bonded blasting contractor will store explosives only at approved offsite facilities. On the designated blasting day, an explosive delivery vehicle will make the delivery, stand by during the explosive loading, and return all unused explosive materials to the supplier's magazine on the same day. The explosive delivery vehicle shall be in good running condition, properly placarded, equipped with required safety equipment, and operated in full compliance with all state and federal regulations.
- B5** Blasts shall be designed for proper hole spacing and burden, proper powder factor, proper delay timing and sequencing, and minimum number of holes.
- B6** Upon commencement, blasting operations shall comply with the current approved blasting plan for the Quarry. The plan will be kept current and available for review by regulators and neighbors.
- B7** The blasting plan's basic design and primary thrust shall be focused on safety and on generating an absolute minimum effect on surrounding residences and infrastructures. A high value shall be placed on keeping blasting-generated vibratory ground movement, air overpressure, and fly rock significantly below current regulatory standards as promulgated by the following: US Dept. of the Interior, Bureau of Mines Report of

Investigations, RI's 8507 and 8485 and Bureau of Mines Information Circular, IC 8925.

- B8** Experienced and responsible Blasters-in-Charge shall be employed and utilized to obtain a safe and effective blasting program.
- B9** Following a blast, a "Blast Report Form" shall be filled out by the Blaster-in-Charge. This report shall be maintained on file by the operator and made available for inspection by agency personnel as well as interested neighbors.
- B10** A blast-monitoring program to physically measure levels of ground movement and sound shall be utilized for all blasts.
- B11** A program of **pre-blasting structural surveys shall be conducted** by an independent third party for all residents requesting one whose homes lie within the 1,500-foot impact area. This survey shall be offered at no cost to the homeowners and they will receive copies of the report and copies of any photographs taken. This structural inspection will establish the homes pre-blasting condition and, should there later be questions about the effect of blasting upon their home, this report will have documented its condition prior to the start of Quarrying operations. Information generated from the blast-monitoring program shall be given to all residents requesting this data.
- B12** Explosive manufacturers' product literature or technical information sheets and Material Safety Data Sheets (MSDS) covering all explosive products to be utilized on this project shall be made available to neighbors or regulators upon request.
- B13** All blasts shall be monitored using up to two Instantel Blastmate II ds 477 blast monitors or equivalent. The locations for the placement of the monitor shall be designated by the blasting consultant and the seismograph record results made available for inspection by agency personnel as well as interested neighbors.
- B14** Unauthorized personnel shall not be permitted on the active shot loading area during shot loading procedures with the exception of regulatory personnel connected with the project.
- B15** At the time of the blast, the blast area shall be cleared of personnel for a radius of 500-feet from the shot location with the exception of the blaster who, if closer than 500-feet, must be appropriately protected from fly rock. Access to the blast area shall be restricted during blasting.
- B16** Industry standard blasting signals shall precede the blast and an all clear signal shall follow.
- B17** The blast shall be supervised by the Blaster-in-Charge who has the responsibility and authority to control public access to the area during blasting operations. The Blaster-in-Charge shall have the authority and responsibility to stop blasting operations at any time he/she feels an unsafe condition exists.

- B18** As soon as practical after any blast, the Blaster-in-Charge shall inspect the blast site for potential unsafe conditions.
- B19** A shot log generated, and signed by the Blaster-in-Charge, detailing shot parameters as well as weather conditions and shot outcomes shall be generated for each shot. These shall be made available to the County or DNR upon request as well as any interested neighbor residing within the impact area.
- B20** The Quarry blasting will be regulated by state and federal regulations and, according to industry standard, published references regarding explosives used in mining. These include, but are not limited to, the following: On the federal level, rock Quarrying is regulated by the Mine Safety and Health Administration (MSHA). On the state level, the use of explosives in Quarrying comes under The Department of Labors and Industries, WISHA Services Division. In Clark County, the county Fire Marshal regulates explosive storage and use under the Uniform Fire Code, Sect. 78.

Dust Conditions:

- D1** An air quality permit for dust and emission control measures for all stationary crushing equipment and Quarry shall be obtained from the Southwest Washington Clean Air Authority (SWCAA) prior to Final Site Plan approval. All operations shall meet Clark County and SWCAA standards as required by the State of Washington as outlined in Exhibit #82, a letter from SWCAA commenting on the application.
- D2** Dust suppression spray bars capable of wet suppression shall be utilized for dust control in the rock crusher and processing equipment.
- D3** Water, dust palliatives such as "Dus-Top" or other approved dust control measures shall be used alone or in combination as necessary to control dust on haul roads.
- D4** The Quarry operators shall adjust Quarry operations as necessary to comply with DOE and SWCAA threshold limits.
- D5** It shall be noted in the Final Site Plan that a speed limit of 25 miles per hour shall be posted on the private Longview Fibre haul road and roads maintained in the Quarry.
- D6** It shall be noted in the Final Site Plan that prior to beginning operations, the Quarry will pave at least 60 feet from each end of any stream crossing on the existing gravel haul road to eliminate the need to provide dust control near the creeks, as discussed in Exhibit #166. The pavement shall be maintained to typical pavement standards and repaved as necessary by the Quarry.
- D7** It shall be noted in the Final Site Plan that in order to limit potential impacts from the inert part of Dus-Top solution, the total solution composition will meet or exceed the same restrictions for vendors as required by the Colorado Department of Transportation

(CDOT)

- D8** A note shall be placed on the site plan stating: The operator shall be required to submit receipts for application of the magnesium chloride, or equivalent to the Southwest Clean Air Agency to show that the application has taken place.
- D9** A note shall be placed on the face of the site plan which states: If the Southwest Clean Air Agency issues any notice of violation or infraction of WAC 173-400-040, the source or activity causing the violation shall cease immediately until the infraction is adequately corrected. (e.g. if crushing is causing a dust violation, then all crushing operations will cease until corrected)

Groundwater Conditions:

- G1** Prior to the Final Site Plan Approval the Quarry shall implement a detailed groundwater-monitoring program prior to beginning operations based on the studies required in SEPA Condition #3. A detailed implementation schedule shall be submitted to and approved by Clark County. Groundwater monitoring will be conducted according to the detailed monitoring plan provided in the Newton Letter *Revised Groundwater Monitoring Plan*, dated September 12, 2002 (Ex 134 as amended by Ex 259 and 260) or the most current version thereof or as updated based on SEPA Condition #3 review. Regular periodic water-level measurements in wells near the Quarry will be recorded to allow for the detection of changes to the local groundwater system resulting from mining, other human causes or natural variation.
- G2** If during the course of mining, any significant changes in the groundwater elevations attributable to the Quarry occur that effect neighboring wells, a supplemental hydrogeologic evaluation shall be conducted.
- G3** If future monitoring indicates that the Quarry activity has significantly or noticeably affected a neighboring property water supply, the Quarry could choose from several mitigation options, including but not limited to the following:
- Deepening of a well
 - Drilling a new well
 - Altering Quarry operations
 - Providing public water
 - If none of the four prior options fail to restore status quo of the water flow before the impact, the Quarry operator shall be liable for the difference in the value of the property with or without the same flow of water.
- G4** Any impacts related to accidental fuel spills shall be mitigated through the implementation of a Spill Prevention and emergency Cleanup Plan. Spill containment and cleanup kits shall be available on site for use in the event of a spill.

- G5** The Quarry shall comply with the mitigation procedures as outlined in Exhibit #164, as amended in Exhibits 259 and 260 or the most current version thereof, which further details the practical aspects of mitigating neighborhood water supplies.

Noise Conditions:

- N1** Sound generation compliance and effects with mitigation shall be within County and State noise standards (WAC 173-60) not to exceed 57dB at the property line.
- N2** To mitigate potential noise impacts, berms, noise screens, or other necessary measures shall be constructed prior to Quarry operations. After initial operations lower the operating floor area, the crushing equipment shall be kept at elevations lower than the Quarry rim, or behind berms, throughout the life of the Quarry.
- N3** The initial berm or wall heights shall be calculated to provide adequate barrier mitigation for Quarry noise based on predicted noise modeling levels from the Quarry operations as stated in the noise study (Exhibit 10, Tab 12 as emended by Exhibit 16) and shall be adjusted as necessary to achieve compliance with condition N1.
- N4** It shall be noted on the Final Site Plan that all trucks entering the Quarry shall comply with WAC 173-62 (truck noise regulations), or they shall not be allowed on the site.
- N5** It shall be noted on the Final Site Plan that trucks shall use the vehicle wheel brake system instead of engine compression (Jake brake) during the time the vehicles are traveling from the Quarry to the east "upper" switchback #1 on the haul road and from the time the trucks leave Cecil Rotschy north property line of Parcel #230270 and enter the James Matilla south property line (Parcel #230300). For switchback cross reference compared to Exhibit 172, DSA Figure 1; DSA south switchback #1 is the same as the east upper switchback #1; DSA north switchback is the same as north mid switchback #2 and DSA south switchback #2 is the same as the west lower switchback #3)
- N6** The existing cut-bank on the west side of the haul road shall be extended with a berm approximately 50-feet uphill from the cut now present between the west lower switchback #3 and middle north switchback #2 on the haul road.
- N7** It shall be noted on the Final Site Plan that the use of engine compression brakes (Jakes Brakes) shall be prohibited on the haul road west of the private Longview Fibre Road bridge.
- N8** The Quarry shall comply with the mitigation procedures as in Exhibit 172, the Daly Standlee & Assoc. Noise Consultants August 16, 2002 letter or the most current version thereof. The mitigation measures proposed in the studies shall ensure compliance with condition N1 or any additional WAC standards at the appropriate property boundaries.

- N9** The applicant will pay for a qualified noise consultant to finalize a noise monitoring plan as noted in Condition N8 and submit it to the County review prior to final site plan approval. The applicant will then pay a qualified noise consultant approved by the County to conduct the noise monitoring and submit the results, conclusion, and any additional recommended mitigation to the County for review. The applicant will not be responsible for County review costs. (Ex. 272)
- N10** No more than 30 truck trips (one way) per hour shall be allowed in and out of the mine in accordance with the truck noise study (Exhibit 172).

Additional Mitigation/Operations and Neighborhood Relations:

- Q1** It shall be noted on the Final Site Plan that truck hauling from the Quarry shall be limited to the following hours:
- | | | |
|--|-----------------------|------------------|
| <u>May to October</u> hauling hours | Monday through Friday | 7:00am to 6:00pm |
| <u>November to April</u> hauling hours | Monday through Friday | 7:00am to 5:00pm |
| <u>Year Round</u> | Saturdays | 7:00am to 4:00pm |
| <u>Sundays and Legal Holidays</u> | No hauling | |
- Extended hauling hours shall be limited to 18 working days per year between 6:00 and 8:00 pm.
- Q2** Hours of operations for equipment maintenance, onsite activities, and other internal operations shall fall between 6am and 8pm as allowed in CCC 18.329.030(F)
- Q3** "No Trespassing" signs shall be posted prior to Quarry operation, at regular intervals on site accesses as well as the rim of the active Quarry area.
- Q4** A barrier, berm, or other method as approved by DNR shall be located around the active site perimeter at the start of Quarry.
- Q5** The Quarry management shall be available for neighbors to voice or discuss any concerns and suggestions regarding Quarry operations. Neighbors can call the Quarry at 686-3072 to set up a one-on-one personal tour and discussion session.
- Q6** The Quarry shall establish a five member Neighbor Advisory Group to review Quarry operations, effectiveness of mitigation measures, monitoring results and provide an open channel of communication for the residents of the area, and provide possible solutions to any problems. The Yacolt Mountain Neighborhood Association will provide two representatives on the Neighbor Advisory Group that lives within 2.0 mile of the Quarry boundary. The three of the five neighbor members shall be selected at-large from

residents that live within 1.5 mile of the Quarry boundary or own property along Kelly Road. The Quarry shall be represented by one or two managers with the authority to make operational decisions for the Quarry that will allow changes to be made if necessary. The Neighbor Advisory Group shall meet a minimum of once each year for the first 5-years, and at a minimum of once every 2-years thereafter of Quarry operation or at intervals thereafter determined by the Neighbor Advisory Group. The Neighbor Advisory Group may agree to meet more regularly if additional meetings are needed. Further details of the Neighbor Advisory Group and the compliance monitoring details shall be worked out prior to final site plan approval.

- Q7** The Quarry shall perform compliance monitoring of Quarry noise levels, the groundwater monitoring program, and the blasting program in years 2, 4, and 6 and at intervals thereafter determined by the Neighbor Advisory Group. If the Quarry is not in compliance, Quarry operations shall be immediately modified, or further mitigation measures implemented, to bring it into compliance. Details shall be worked out prior to final site plan approval.
- Q8** All neighbors within 1 mile of the Quarry boundary, the Neighbor Advisory Group, Clark County, and the DNR, shall be provided with a copy of the regular monitoring results and any follow-up compliance monitoring showing how the Quarry is performing and an invitation to respond with concerns.
- Q9** All review of monitoring reports required to be submitted for review to the county will be reviews on a cost-recovery basis with expenses to be paid by the Quarry operator.

Traffic and Transportation Conditions:

- T1** The Quarry shall provide all off-site mitigations based on the more conservative 400 ADT number found in the original traffic study.
- T2** Each August, the Quarry shall give flyers with every weigh stub and to each driver leaving the Quarry from the weigh shack. One flyer shall include a schedule of all school bus route information and times for the area. A second flyer shall include a schedule of all postal carrier route information and times for the area.
- T3** The Quarry shall only load trucks that display current year DOT required safety inspection stickers.
- T4** The Quarry shall install a minimum of four "No Un-muffled Compression Brake" signs on both Kelly and Gabriel roads at locations determined by the County.
- T5** The Quarry shall provide sight distance in compliance with County regulations at the

existing Longview Fibre Road site access point at Kelly Road.

- T6** The applicant shall submit documentation that demonstrates there is an adequate turning radius for westbound to northbound movement and southbound to westbound movement at NE Kelly Road/NE Lucia Falls Road prior to final site plan approval. (See Transportation Concurrency Finding #5/ Exhibit 74)
- T7** The applicant shall submit plans prior to final site plan approval and construct improvements prior to beginning operations that provide safe and adequate turning radii according to County standards on NE Kelly Road at the west intersection with NE Yacolt Mountain Road or as modified by the Director of Public Works. (See Transportation Concurrency Finding #7/Exhibit 74)
- T8** The applicant agrees to comply with the "Arrangement for Pavement Improvement Fees for the Yacolt Mountain Quarry" as stated in Exhibit #204.
- T9** On-site roads are for access and mining operations only and not classified as private roads

Water Rights and Quarry Water Usage Conditions:

- W1** The Quarry shall limit groundwater withdrawals to the threshold as allowed under RCW90.44.050 (5000 gpd) (Department of Ecology, Exhibit #76).
- W2** The Quarry shall install a meter on each well used by the Quarry to measure daily groundwater withdrawals. Monthly Records shall be submitted to the County.
- W3** No rock washing shall be allowed on-site unless the Quarry provides documentation to the Department of Ecology demonstrating that adequate water is available to the site.

Standard Conditions

This development proposal shall conform to all applicable sections of the Clark County Code. The following conditions shall also apply:

LAND USE

- S/P2** Site Plans and other land use approvals - Within 5 years of preliminary plan approval, a Fully Complete application for a building permit or County approval to commence operations shall be submitted. Due to the long term operation of the Quarry, the proposed independent phase site plan as in Exhibit 10, Tab 4 may need to be modified in the future by obtaining BOCC approval of a developers agreement in accordance with CCC 18.600.105.(c)

ENGINEERING

Pre-Construction Conference:

- S-3 Prior to construction or issuance of any grading or building permits, a pre-construction conference shall be held with the County.

Erosion Control:

- S-4 Prior to construction, the applicant shall submit and obtain County approval of a final erosion control plan designed in accordance with CCC 13.29.
- S-6 Prior to construction, erosion/sediment controls shall be in place. Sediment control facilities shall be installed that will prevent any silt from entering infiltration systems. Sediment controls shall be in place during construction and until all disturbed areas are stabilized and any erosion potential no longer exists.
- S-7 Erosion control facilities shall not be removed without County approval.

Excavation and Grading:

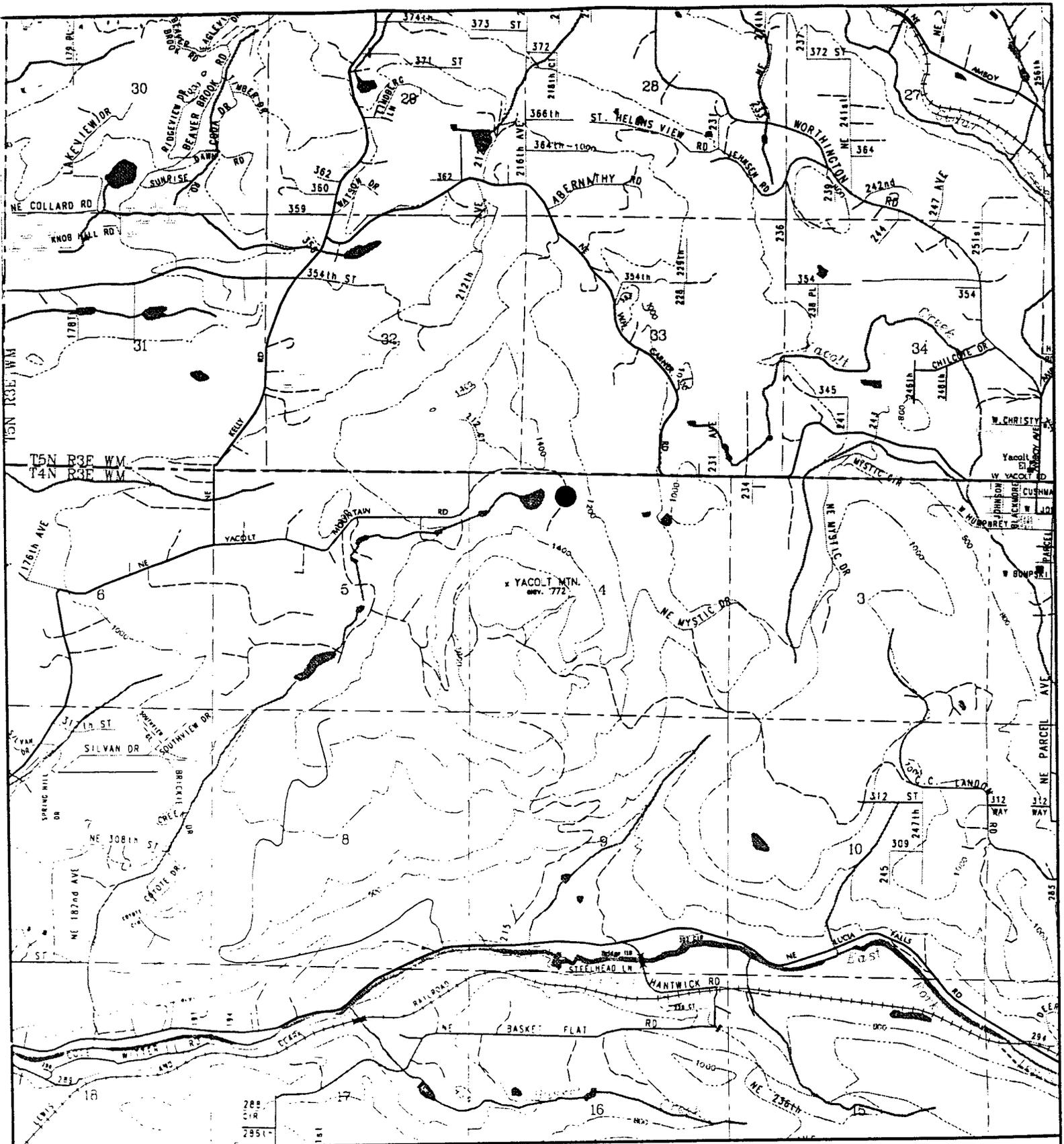
- S-8 Excavation/grading shall be performed in compliance with Appendix Chapter 33 of the Uniform Building Code (UBC).
- S-9 Site excavation/grading shall be accomplished, and drainage facilities shall be provided, in order to ensure that building foundations and footing elevations can comply with CCC 14.04.252.

Stormwater:

- S-10 Prior to construction, the applicant shall submit and obtain County approval of a final stormwater plan designed in conformance to CCC 13.29.

Transportation:

- S-11 Prior to construction, the applicant shall submit and obtain County approval of a final transportation plan designed in conformance to CCC 12.05A.

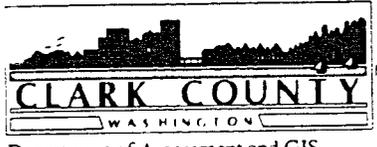


Scale 1:31680

General Location

Serial No.: 230063-000, 230067-000, 230068-000, 230076-000, ...
 Owner: ROTSCHY DREW G and HEATHER L
 Address: 21203 NE YACOLT MT
 C/S/Z: YACOLT, WA 98675

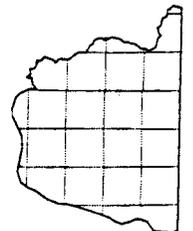
● Subject Property Location



Department of Assessment and GIS

Plotted: October 30, 2001

Developer's GIS Packet: Page 1 of 16



Information shown on this map was collected from several sources. Clark County accepts no responsibility for any inaccuracies that may be present.

HEARING EXAMINER EXHIBITS

APPLICATION: Yacolt Mountain Quarry

HEARING DATE: June 20, 2002

EXHIBIT NO.	DATE	SUBMITTED BY	DESCRIPTION
1		CC Development Services	Aerial map
2		CC Development Services	Vicinity map
3		CC Development Services	Zoning map
4		CC Development Services	Comp. Plan Map
5		Applicant Moss & Associates James Kessi	Site Plan Map
6		Applicant Moss & Associates James Kessi	Site Graphics
7		Applicant -James Kessi	Aerial Photos 11 x 17 Photos
8		CC Development Services	Pre-Application Conference
9		Applicant- James Kessi	Archaeological Predetermination Survey Report
10	2/15/02	Applicant- James Kessi	Application Binder: Application Form; Application Fee; Pre-Application Report, GIS Packet; Narrative; Proposed Site Plan, Architectural Plans ; Crusher Layout; Proposed Phasing Plan; Soils Infiltration test, Geologic Review ;Groundwater Review; Preliminary Stormwater Plans & Report; Engineer Statement of Feasibility; SEPA Checklist; Sewer Purveyor Letter; Water Purveyor Letter, FMO Letter; SWWHD Evaluation; Covenants, Restrictions & Easements; Noise Study; Archaeological Predetermination; Forest Practices Permit; Legal Lot Determination
11	2/15/02	Applicant - CTS Engineering	Traffic Study
12	2/15/02	Applicant – Environmental Technology Consultants	Priority Species & Habitat Assessment
13	3/5/02	CC Development Services – Josh Warner	Email to Sharon Sollars re: Noise Study

EXHIBIT NO.	DATE	SUBMITTED BY	DESCRIPTION
14	3/5/02	CC Development Services- David Howe	Email to Sharon Sollars re: FC Review
15	3/7/02	CC Development Services	Not Fully Complete Determination
16	4/1/02	Applicant – DSA	Noise Study Response to County Questions
17	4/2/02	Applicant – James Kessi	Site Plan Code Application and Procedure Request
18	4/9/02	CC Development Services- Sharon Sollars	Email to Josh Warner re: Noise Study
19	4/19/02	CC Development Services-	Development Review Fully Complete Determination
20	4/24/02	CC Development Services-	Notice of Type III Development Review Application and Public Hearing
21	4/24/02	CC Development Services-	Affidavit of Mailing Public Notice
22	5/7/02	Applicant – James Kessi	Letter to Josh Warner re: Comp Plan Matrix Evaluation
23	5/7/02	CC Development Services- Ken Burgstahler	Email to David Shepard re: overlays required on CC Roads
24	5/8/02	CC Development Engineering- Ken Burgstahler	Email to Pete Capell re: The Proposed Project
25	5/9/02	CC Development Engineering- Ken Burgstahler	Email to Bud Cave and Steve Shulte re: Proposed Project
26	5/13/02	J.X.L. Exteriors Inc	Comment Letter
27	5/13/02	Scott Levanen	Comment Letter
28	5/13/02	Al & Lois Matson & Family	Comment Letter
29	5/13/02	James A. Styres, Jr.	Comment Letter
30	5/13/02	Lars Lindberg	Comment Letter
31	5/14/02	Applicant – DSA Engineers	Letter to Applicant re: Noise Study Update includes tables
32	5/14/02	Applicant – DSA – Joe Begin	Email to Josh Warner re: Addendum to Yacolt Mtn Noise Study
33	5/14/02	CC Development Services- David Howe	Email to Josh Warner re: Habitat Conservation Zone/Ordinance

EXHIBIT NO.	DATE	SUBMITTED BY	DESCRIPTION
34	5/17/02	CC Fire Marshal Office- Curtis Eavenson	Comments
35	5/22/02	CC Development Engineering- Ken Burgstahler	Email to Josh Warner re: overlay requirements
36	5/23/02	Applicant – James Kessi	Email to Josh Warner re: Hearing Date
37	5/23/02	CC Development Services – Josh Warner	Email to James Kessi re: Proposed Haul Routes
38	5/28/02	WASHDOT –Deb Wallace	Comments re: The Traffic Analysis
39	5/28/02	CC Public Works – Dave Shepard	1993 AASHTO Pavement Design – DARWin Pavement Design & Analysis System
40	5/28/02	CC Development Services – Josh Warner	Fax to James Kessi re: DARWin Pavement Design & Analysis
41	5/28/02	CC Public Works – Dave Shepard	Email to Josh Warner re: Hauling Permits
42	5/28/02	CC Development Engineering- Ken Burgstahler	Email to Josh Warner re: Revision letter regarding sight distance and deceleration lane
43	5/30/02	Carlson Testing – Scott Jordan	Abrasion and Degradation Testing
44	5/30/02	Applicant – James Kessi	Fax re: Parcels Replacement
45	5/30/02	CC Public Works	Grays Harbor County- Haul Permitting Process
46	5/31/02	WASHDOT-Deb Wallace	Comments regarding the Proposed Project
47	5/31/02	CC Development Services- Josh Warner	Fax to Applicant re: WASHDOT Comments
48	5/17/02	CC Development Services	Notice of Public Hearing to Columbian- Published 5/22/02
49	5/31/02	CC Development Services	DNS Notice to Columbian – Published 6/5/02
50	6/4/02	David & Shirley Krause	Request to be Party of Record
51	6/4/02	CC Development Services – Josh Warner	Photo #1 Photo at west intersection of Kelly Road and Yacolt Mountain Road

EXHIBIT NO.	DATE	SUBMITTED BY	DESCRIPTION
52	6/4/02	CC Development Services – Josh Warner	Photo #2 -Photo at west intersection of Kelly Road and Yacolt Mountain Road
53	6/4/02	CC Development Services – Josh Warner	Photo #3 -Photo at west intersection of Kelly Road and Yacolt Mountain Road
54	6/5/02	CC Development Services	Affidavit of Posting
55	6/5/02	CC Development Services	Staff Report written my Josh Warner
56	6/6/02	CC Public Works – Dave Shepard	Email to Josh Warner re: Truck Information
57	6/7/02	CC Public Works – Shelley Oylear	Email to Josh Warner regarding the Summary of items discussed at the meeting held 6/4/02
58	6/12/02	CC Development Services	Affidavit of Posting Public Notice – Additional Posting
59	6/17/02	Applicant – James Kessi	Email to Josh Warner re: SR 503/Gabriel Road Improvements
60	6/17/02	Applicant – Brent Rotschy	Fax to Josh Warner re: Comments regarding Surface Water for Dust Control
61	6/17/02	Applicant – Brent Rotschy	Fax to Josh Warner re: Land Use finding '9' of the Staff Report
62	6/17/02	Applicant- James Kessi	Estimated Annual Yacolt Quarry Production for County Pavement Maintenance Program
63	6/18/02	Applicant – Eric Graves	Email re; SR 503 / Gabriel Road Improvements
64	6/18/02	David & Shirley Krause	Comment Letter
65	6/18/02	CC Public Works – David Shepard	Email to Josh re: Traffic Impact
66	6/18/02	Applicant – James Kessi	Letter to Josh Warner re: Information, Clarification and Suggested Revisions to the Staff Report
67	6/18/02	Applicant – Eric Graves	Conceptual Sketch of the Intersection Improvements
68	6/19/02	Applicant – James Kessi	Fax to SWWHD and County regarding Revised Pavement Improvements
69	6/19/02	CC P.Works – David Shepard	Email to Josh re: Proposal from Applicant

EXHIBIT NO.	DATE	SUBMITTED BY	DESCRIPTION
70	6/19/02	Dana Welch, Gary Hatcher & Logan Dillard	Email to Josh re: Proposed Project
71	6/19/02	Applicant – James Kessi	Letter to Josh Warner re: Traffic Study
72	6/19/02	Applicant – James Kessi	Appeal of the SEPA
73	6/20/02	Helen Northrup	Comment Letter
74	6/19/02	Shelley Oylear	Memo to Josh Warner re: Transportation Concurrency
75	6/18/02	Douglas Carter	Comment Letter
76	6/19/02	Dept of Ecology – Opal Smitherman	Comments re: SEPA Determination
77	6/20/02	Applicant – James Kessi	Revised Pavement Improvement agreement
78	6/20/02	Michelle Bloomquist	Comment Letter
79	6/20/02	CC Public Works- Dave Shepard	Traffic Impact Table
80	6/20/02	Lynn Culbertson	Comment Letter
81	6/20/02	Ruben Silva	Comment Letter
82	6/20/02	Patricia L. Robertson	Comment Letter
83	6/20/02	CC Public Works – Steve Schulte	Memo to Josh Warner
84	6/20/02	David & Shirley Krause	Comment Letter dated 6/17/02
85	-----	NO EXHIBIT #85	NO EXHIBIT # 85
86	6/20/02	Applicant – CTS	Memo to James Kessi from CTS
87	6/20/02	Applicant – James Kessi	Water Usage Memo
88	6/20/02	Applicant – James Kessi	Packet of Water Usage Information
89	6/20/02	Applicant – Jim Sellers	Letter to the Hearing Examiner dated 6/20
90	6/20/02	North Clark Construction	Letter to Josh Warner
90 A	6/20/02	CC Community Development	Notice of Continued Hearing
91	6/20/02	CC Community Development	Affidavit of Mailing Notice

EXHIBIT NO.	DATE	SUBMITTED BY	DESCRIPTION
92	6/25/02	Southwest Clean Air Agency	Letter from David Joyner to Josh Warner re:
93	6/26/02	David & Sandy Stackhouse	Comment Letter
94	6/26/02	Richard Dietel	Comment Letter
94 A	6/26/02	Herb Kennon	Comment Letter
95	6/27/02	Jann	Comment Letter
96	6/27/02	Robbie Sugich	Comment Letter
97	6/27/02	CC Development Services	Email to Richard Forester from Josh Warner then response from Forester to Warner
98	6/27/02	CC Development Services	Email between Warner and Forester re: site visit
99	6/27/02	David & Nancy Martin	Comment Letter
100	6/28/02	Applicant – James Kessi	Email to Josh Warner re: Conversation with DOE and Water Rights and Water Availability Issues
101	7/1/02	Guy Sitez & Georgia Cheer	Comment Letter
102	7/1/02	Steve White	Comment Letter
103	7/2/02	Mike Easley	Comment Letter
104	7/2/02	Gary Klein	Comment Letter
105	7/2/02	Jann Leeuwenburg	Comment Letter
106	7/9/02	Applicant	Neighbors Map and Summary Table
107	7/9/02	John Swatosh	Comment Letter
108	7/9/02	Dave Larwick	Comment Letter
109	7/9/02	John Swatosh	Second Comment Letter
110	7/15/02	Vic & Linda Adamson	Comment Letter
111	7/15/02	Ray Hallstrom	Comment Letter
112	7/16/02	Orlin Halverson	Comment Letter
113	7/17/02	Wiebold's; Morris; Wigen & Williams	Petition Letter
114	7/17/02	Pacific Star Excavating	Comment Letter

EXHIBIT NO.	DATE	SUBMITTED BY	DESCRIPTION
115	7/18/02	Mike Bracke	Comment Letter
116	7/19/02	Applicant - James Kessi	Email to Josh Warner re: CPUD Hydrant Meter
117	7/19/02	Gary Klein	Comment Letter
118	7/24/02	US Postal Service: Post Master -Rhonda Boyle	Comment Letter re: Safety of Rural Route
119	7/24/02	CC Development Services - Josh Warner	Email to Richard Forester re: Unmuffled Compression Air Brakes
120	7/24/02	Don Sasse	Comment Letter
121	7/24/02	Lynn Culbertson	Comment Letter
122	7/24/02	Gary Hoopman	Comment Letter
123	7/25/02	Gary Scobell & James Pergande	Comment Letter
124	7/26/02	Agnes Karvaneu Jharaa	Comment Letter
124 A	7/02	CC Development Services - Josh Warner	Partial list of Outstanding issues Identified for Continued Hearing
125	7/29/02	Bill Smith	Comment Letter
126	7/29/02	Applicant - James Kessi	Explanations and Responses to Questions Regarding the Proposed Project
127	7/31/02	CC Development Services- Josh Warner	Email to James Kessi regarding submittal deadline for reports
128	7/31/02	Applicant - James Kessi	Email to Josh in response to Exhibit # 127
129	7/31/02	Jim Robertson	Comment Letter
130	7/31/02	E. D. Earhart & Joan Earhart	Comment Letter
131	8/1/02	Applicant - James Kessi	Letter & Transmittal to Josh re: Submittals for noise testing and analysis on the site
132	8/1/02	Applicant - America West	(Dated 6/27/02) Dust Abatement Product Line Estimate and MSDS
133	8/1/02	Applicant - DSA	(Dated 7/31/02) Memo to Rotschy re: Noise Issues
134	8/1/02	Applicant - Newton Consultants	(Dated 7/24/02) Groundwater Monitoring Plan

EXHIBIT NO.	DATE	SUBMITTED BY	DESCRIPTION
135	8/1/02	Applicant – Newton Consultants	(Dated 7/31/02) Additional Information Relating to Groundwater Conditions & Potential Impacts
136	8/1/02	Applicant- Dust Solutions	Dust Suppression Literature & Specs
137	8/1/02	Applicant- James Kessi	Idaho Transportation Depts- Facts about Magnesium Chloride
138	7/31/02	Applicant – CTS Engineering	(Dated 7/25/02) Update of Accident Data
139	7/31/02	Applicant – CTS Engineering	(Dated 7/26/02) Review of Available Truck Data
140	8/1/02	Mark Underhill- Kleinfelder , Inc	Email to Josh re: request for Additional Groundwater Information being sent
141	8/2/02	Applicant – James Kessi	Summary of Neighborhood Information
142	8/2/02	Applicant – James Kessi	Yacolt Mountain Quarry – Neighborhood Map
143	8/2/02	Barbara Maehara	Comment Letter
144	8/7/02	Kleinfelder, Inc.	Review of Submitted Groundwater Information
145	8/7/02	Leslie Brown & Claude Mallegol	Comment Letter
146	8/7/02	Rycewicz & Chenoweth, LLP	Demand for Withdrawal of DNS
147	8/8/02	Applicant – James Kessi	Example images of Hydraulic Rock Drills With Dust Collectors
148	8/9/02	CC Development Engineering – Richard Drinkwater	Memorandum re: the Kleinfelder, Inc. Comments
149	8/9/02	Southwest Clean Air Agency	Letter regarding Air Quality
150	8/9/02	Applicant – James Kessi	Email re: A Video Clip of a production blast
151	8/9/02	Explosives Technical Services	Letter re: The Blasting Plan
152	8/12/02	Applicant – Lonnie Moss	Letter in Response to Exhibit # 146 –
153	8/12/02	Rycewicz & Chenoweth, LLP	Letter from Attorneys Office Representing the Yacolt Mountain Neighborhood Association
154	8/12/02	Applicant – James Kessi	Draft Additional Proposed Conditions of Approval to Mitigate for the Yacolt Mountain Quarry Impacts

EXHIBIT NO.	DATE	SUBMITTED BY	DESCRIPTION
155	8/13/02	Southwest Clean Air Agency	Email re: Rockcrush Requirements
156	8/14/02	CC Public Works – Shelley Oylear	Memorandum re: Pavement Maintenance & Traffic Safety
157	8/14/02	CC Dev Engineering – Richard Drinkwater	Memorandum re: Exhibit # 126 – Explanations and Responses to Questions Regarding Yacolt Mountain Quarry Impacts
158	8/14/02	CC Development Services – Josh Warner	Memorandum re: Yacolt Mountain Quarry Outstanding Issues
159	8/14/02	Herbert Kennon	Comment Letter
160	8/14/02	Judy Kennon	Comment Letter
161	8/14/02	Applicant- Colorado Dept of Transportation	Studies of Environmental Effects of Magnesium Chloride Deicer in Colorado
162	8/16/02	Webster Forests Inc	Comment Letter
163	8/19/02	Applicant – James Kessi	Letter re: Submittal of Additional Noise, Groundwater and Quarry Information
164	8/19/02	Applicant – Newton Consultants	Comments on Kleinfelder Letter (Exhibit # 144) and Mitigation Plan Description
165	8/14/02	Applicant – Newton Consultants	Draft Yacolt Mountain Cross Section Map
166	8/15/02	CC Development Engineering – Richard Drinkwater	Memorandum re: “Dus Top” for use in Dust Control
167	8/16/02	Rebecca Silva	Comment Letter
168	8/16/02	Gary Klein	Comment Letter
169	8/17/02	Vic & Linda Adamson	Comment Letter
170	8/19/02	Applicant – DSA -Joe Begin	Email re: Attachments for Noise Issues
171	8/19/02	Applicant – DSA – Joe Begin	Noise Issues Raised by Rycewicz & Chenoweth, LLP
172	8/19/02	Applicant – DSA – Joe Begin	Yacolt Mtn Quarry Issues
173	8/20/02	Ira Branch	Comment Letter
174	8/20/02	Applicant – James Kessi	Yacolt Mtn Quarry Plan for Mitigating Impacted Neighbor Wells
175	8/20/02	Kirk & Laura Lanier	Comment Letter

EXHIBIT NO.	DATE	SUBMITTED BY	DESCRIPTION
176	8/20/02	CC Prosecuting Attorneys Office – Rich Lowry	Memorandum to Josh Warner re: Chenoweth Letter (Exhibit # 146)
177	8/21/02	Neighbor- No Name Given	Letter regarding submittals Ex 178, 179, & 180
178	8/21/02	Neighbor- No Name Given	Peak Traffic Flow on Roads that will be used by Gravel Trucks
179	8/21/02	Neighbor- No Name Given	Accidents on Kelly Rd, W.H. Garner Rd & Gabriel Road
180	8/21/02	Neighbor- No Name Given	Petition re: Proposed Project
181	8/21/02	Applicant – James Kessi	Email with Resumes' of Consultants attached
182	8/21/02	Scott & Lisa Johns	Comment Letter
183	8/21/02	Vic Adamson	Comment Letter
184	8/21/02	Kurt Strauss	Comment Letter
185	8/21/02	Applicant – James Kessi	Visual Image of Final Quarry After Mining
186	8/21/02	Applicant – James Kessi	Response to Josh Warners 8/12/02 Memo (Exhibit #158)
187	8/21/02	Sharon Dewey	Four Comment Letters
188	8/21/02	Applicant – Jim Sellers	Letter in Response to the 8/9/02 Letter from Rycewicz & Chenoweth (Exhibit # 146)
189	8/21/02	Carolyn & William Goodman	Comment Letter
190	8/21/02	Applicant - David Keck	See Exhibit #185
191	8/21/02	Applicant - David Keck	Visual Image of Existing Quarry
192	8/21/02	CC Fire Marshal Office – Curtis Eavenson	Comments re: Water Protection Tank
193	8/21/02	Applicant – James Kessi	Email between Public Works and =7James Kessi re: proposed housekeeping changes
194	8/22/02	Applicant – James Kessi	Jacobs Frequently Asked Questions reo: Noise of Big Trucks Using Engine Brakes
195	8/22/02	Jay Vroman & Family	Comment Letter
196	8/22/02	Mark Erikson's Office- Keith Hirokawa	Letter regarding Proposed Project

EXHIBIT NO.	DATE	SUBMITTED BY	DESCRIPTION
197	8/22/02	Applicant - Tom Michalek	Final Version of the Cross Section (Exhibit #165)
198	8/22/02	Barbara Maehara	Pictures for Exhibit # 143
199	8/22/02	Clark Public Utilities –Russ Knutson, PE	Water Availability for Proposed Quarry
200	8/22/02	Clark Public Utilities – Russ Knutson, PE	Email to Josh Warner re: Flow Rate and Quantity of Water
201	8/22/01	Department of Ecology – Vicki Cline	Email to Josh Warner re: Storm Water Collection
202	8/22/02	Kathryn Hunt	Email to Josh Warner re: The Proposed Project
203	8/22/02	Keith Hirokowa	CC Endangered Species Act Information
204	8/22/02	Public Works- Steve Schulte	Pavement Improvement Fees for Yacolt Mountain Quarry
205	8/22/02	Barbara Maehara	Comment Letter
206	8/22/02	Applicant- James Kessi	Yacolt Mountain Quarry # 2 Testimony
207	8/22/02	Applicant – Newton Consultants	Yacolt Mountain Groundwater Mitigation
208	8/22/02	Applicant – Newton Consultants	Hydro-geologic Cross Section
209	8/22/02	Applicant – CTS Engineers	Additional Information on Truck Traffic Generated by the Yacolt Quarry
210	8/22/02	Applicant – James Kessi	CPM2002-00008 – Erikson Farm/MacDonald Living Trust
211	8/22/02	Applicant – James Sellers	REZ 96-010-1121 Alberta Frey Estate
212	8/22/02	Applicant – James Sellers	Duckworth v. Bonney Lake, 91 Wn.2d 19 (1978)
213	8/22/02	Webster Forests, LLC	Testimny of Roy Webster
214	8/23/02	Barbara Maehara	Email re: Testimony at hearing on 8/22/02
215	8/27/02	Bob Brink	Email re: Proposed Project
216	8/27/02	Robert Craver	Email re: Proposed Project
217	8/28/02	Robert Sugich	Email re: Proposed Project

EXHIBIT NO.	DATE	SUBMITTED BY	DESCRIPTION
218	8/28/02	Lee Ann Johnson	Email re: Proposed Project
219	8/29/02	Ray Terwilliger	Email re: Proposed Project
220	8/30/02	Jeannie Dietel	Email re: Proposed Project
221	8/30/02	Mr. & Mrs. Robert Craver	Email re: Proposed Project
222	9/2/02	Jordan & Rachel	Email re: Proposed Project
223	9/3/02	Gary & Carla Klein	Comment Letter
224	9/3/02	Jim Lightner	Email re: Proposed Project
225	9/4/02	William & Lynn Smith	Comment Letter
226	9/4/02	Clark County Public Works – Steve Schulte	Staff's Responses to Questions asked at Land Use Hearings
227	9/4/02	Gary Klein	Comments Letter re: Water Flow
228	9/4/02	Gary Klein	Comment Letter re: Studies
229	9/5/02	Gary Klein	Comment Letter re: Protecting Natural Resources
230	9/6/02	Dale & Dennis Drew	Comment Letter
231	9/8/02	Heidi Thompson	Email re: Proposed Project
232	9/8/02	Heidi Thompson	Email re: Proposed Project
233	9/9/02	Jim Lightner	Second Email same as Exhibit # 224
234	9/9/02	SWWHD – Reuel Emery, CPG	Email to Josh re: Potential Water affects
235	9/9/02	Kleinfelder – Peter Stroud	Additional Comments re: Assessment of Impacts to Surface Water/Groundwater and Relevant Standards of Professional Practice
236	9/10/02	Terry Nyquist & David Garcia	Comment Letter
237	9/9/02	Gary Klein	Recap Letter
238	9/10/02	Terry Nyquist & David Garcia	Comment Letter
239	9/13/02	David & Shirley Krause	Comment Letter
240	9/13/02	Karel Miller	Comment Letter
241	9/13/02	H. Kenneth Brown	Comment Letter
242	9/13/02	Jessica Bernhardt	Comment Letter

EXHIBIT NO.	DATE	SUBMITTED BY	DESCRIPTION
243	9/13/02	Rob & Clarice Burkhart	Comment Letter
244	9/13/02	Dennis & Eileen Gutz	Comment Letter
245	9/13/02	Gary Klein	Petition Letter
246	9/13/02	Darryl & Colleen Ige	Comment Letter
247	9/13/02	John Matson	Comment Letter
248	9/13/02	Eileen Gutz	Testimony Read at 8/22/02 Hearing
249	9/13/02	Mark Erikson's Office- Keith Hirokawa	Letter submitted on behalf of the Yacolt Mountain Neighborhood Association
250	9/12/02	Applicant - James Kessi	Email to Josh Warner re: Dept of Ecology Listing of water rights (The spreadsheets were sent via email to Hearings Examiner, Drinkwater, Shulte & Lowry on 9/16/02)
251	9/13/02	Applicant - James Kessi	Letter re: Submittals of Additional Noise, Groundwater and Quarry Information
252	9/13/02	Applicant - James Kessi	Clark County Aggregate Resource Requirements -(April 1993) Part of Exhibit #210
253	9/13/02	Applicant - James Kessi	Letter from Brent Rotschy to Joe Hallstrom re: Easement for Water Line (dated 9/8/02)
254	9/13/02	Applicant - James Kessi	Letter from Brent Rotschy to Page Rotschy re: Easement for Water Line (dated 9/9/02)
255	9/13/02	Applicant - James Kessi	Letter From Lonnie Moss to Brent Rotschy re: Permanent Water meter and Parking Space for Water truck on Mr. Moss' Property on 172 nd Ave (Dated 9/9/02)
256	9/13/02	Applicant - James Kessi	Letter from Clark Public Utilities to Mr. Rotschy re: Water Availability at the Yacolt Reservoir or at 28320 NE 172 nd Ave (Dated 9/11/02)
257	9/13/02	Applicant - James Kessi	Revised Proposed Conditions of Approval to Mitigate impacts (Dated 9/12/02)
258	9/13/02	Applicant - James Kessi	Response to the 8/22/02 Hearing and Outstanding Issues
259	9/13/02	Applicant - James Kessi	Revised Groundwater Monitoring Plan from Newton Consultants

EXHIBIT NO.	DATE	SUBMITTED BY	DESCRIPTION
260	9/13/02	Applicant – James Kessi	Supplemental Groundwater Information from Newton Consultants
261	9/13/02	Applicant – James Kessi	Memo to Richard Drinkwater re: Sight Distance Issues
262	9/13/02	Applicant – James Kessi	Memo to Richard Forester from DSA Engineers re: Comments Regarding Noise
263	9/13/02	Applicant – James Kessi	Letter from James Sellers re: First Post Hearing Written Comments from Applicants Attorney
264	9/13/02	Ken Stitt	Comment Letter
265	9/13/02	Heidi Thompson	Comment Letter
266	9/13/02	Kathy J. Anderson	Comment Letter
267	9/13/02	Kirk Lanier	Comment Letter
268	9/12/02	Applicant – James Kessi	Email to between Mike Quinn – Public Works and James re: Site Distance
269	10/3/02	CC Prosecuting Attorney – Rich Lowry	Memorandum re: Outstanding Legal Issues
270	10/3/02	CC Dev Engineering- Richard Drinkwater	Re: Outstanding Engineering Issues
271	10/4/02	CC Dev Services – Josh Warner	DNR Best Management Practices for Reclaiming Surface Mines by Norman, Davis et, al Revised Edition - December 1997
272	10/4/02	CC Dev Services – Josh Warner	Memorandum to the Hearings Examiner summarizing Staff's Review of submittals since the 8/22/02 Public Hearing
273	10/18/02	Applicant – James Kessi	Letter to Kimball Stordahl from IT Corporation dated 7/24/00 re: Updated Summary of Clark County Mining Information
274	10/18/02	Applicant – James Kessi	Clark County Appeal Staff Report APL2000-00026 Frost Properties -Dated 1/3/01 (Michael Uduk – Planner)
275	10/18/02	Applicant – James Kessi	Clark County Type II Development & Environmental Review Staff Report – Dated 3/27/01 (Josh Warner – Planner)

EXHIBIT NO.	DATE	SUBMITTED BY	DESCRIPTION
276	10/18/02	Applicant – James Kessi	DSA Engineer Memo to Hearings Examiner with Response to Comments Submitted about Noise On or After 9/13/02 – Dated 10/11/02
277	10/18/02	Applicant – James Kessi	Final Revised Summarized Conditions of Approval – Dated 10/16/02
278	10/18/02	Applicant – Jim Sellers	Letter to Hearings Examiner re: Noise Standards
279	10/18/02	Applicant – James Kessi	Letter in Response to the October 4, 2002 Memo (Exhibit 272)