Office of the
CLARK COUNTY LAND USE HEARING EXAMINER

1300 Franklin Street
P.O. Box 9810
Vancouver WA 98668-9810
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NOTICE TO PARTIES OF RECORD

Project Name: **LIVINGSTON QUARRY**

Case Number: **CUP2009-00004; PSR2009-00014; CPZ2009-00024; HAB2009-00016; SEP2009-00028**

The attached decision of the Land Use Hearing Examiner will become final and conclusive unless a written appeal is filed with the Board of Clark County Commissioners, 6th floor, Public Service Center, 1300 Franklin Street, Vancouver, Washington, no later than 5:00 p.m. on, **September 2, 2009** 14 calendar days after written notice of the decision is mailed).

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

All other appeals must be written and contain the information required under CCC 40.510.030(H), and placed in the following preferred format:

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

The appeal fee is **$716**

The Board of Commissioners shall hear appeals of decisions based upon the written record before the examiners, the examiner's decision, and any written comments received in the office of the Board within the following submittal deadlines measured from the date of the filing of the appeal:

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

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

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

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

Mailed on: **August 19, 2009**

LIVINGSTON QUARRY
CUP2009-00004; PSR2009-00014; CPA2009-00024;
HAB2009-00016; SEP2009-00028
HEARING DATE: 6/25/09

PLANNER: Jan Bazala
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LIVINGSTON QUARRY
UP2009-00004; PSR2009-00014; CPA2009-00024;
HAB2009-00016; SEP2009-00028
HEARING DATE: 6/25/09

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BEFORE THE LAND USE HEARINGS EXAMINER
CLARK COUNTY, WASHINGTON

REGARDING THE APPLICATION FOR: (1) A ZONE CHANGE TO EXPAND THE SURFACE MINING OVERLY OVER THE SITE; (2) SITE PLAN APPROVAL TO EXPAND AN EXISTING QUARRY; AND, (3) CONDITIONAL USE APPROVAL TO OPERATE A CRUSHER ON THE ON 170 ACRES IN THE FR-40 & FR-80 ZONING DISTRICTS IN THE UNINCORPORATED CLARK COUNTY, WA.	)	**FINAL ORDER** **LIVINGSTON QUARRY** **CUP2009-00004; PSR2009-00014; CPZ2009-00024; HAB2009-00016; SEP2009-00028**

REZONING DENIED, CUP APPROVED WITH CONDITIONS

INTRODUCTION

The site is located at the north the end of NE 262nd Avenue, where NE Highland Meadows Drive begins and which is the sole access road to and from the quarry and where R-5 zoned residential homes are located adjacent to the proposed expanded mining overlay. The northwestern 60 acres of the site lies within the boundaries of Camp Bonneville. Although the parcels noted on the GIS application packet encompass approximately 360 acres, this application is limited to 170 acres on which the county has a lease to mine from the state Department of Natural Resources, the owner of the property.

Prior mining operations have occurred on portions of the site since prior to 1980. Logging has occurred on various portions of the site periodically within the last 10 years. Most of the site has existing slopes exceeding 15%. Several non-fish bearing streams run diagonally from northeast to southwest across the site. Two areas of "herbaceous balds", a state priority habitat, exist on the north and western portions of the site.

The expansion proposes to remove up to 300,000 tons of rock annually, of which approximately 70% is expected to be extracted and processed during the months of May through September. The life of the quarry is expected to be approximately 30 years, and to cover approximately 70 acres. Five phases are proposed; reclamation of one phase will be completed as the next phase begins. The last phase of mining will occur to within 900 feet of the south property boundary which abuts R-5 zoned properties.

The proposed hours of operation are 7:00 a.m. to 7:00 p.m. and during the construction season 70 round trips (140 trips) per day is requested, with occasional "short-term peaks" in trips of up to 280 trips per day during special road projects.

This application includes:

- A rezone request to expand the Surface Mining Overlay from 50 acres to include the entire 170 acre site. The Surface Mining overlay will allow mining (extracting) as a permitted use and rock crushing as a conditional use adjacent to R-5 zoning;

- a conditional use permit for the crusher;
- a site plan review for the mine and crusher; and,
- a habitat permit to remove an herbaceous bald.

The site is located immediately west of another rock quarry and crusher site operated by Tower Rock Products.[1] Except to the south which is zoned R-5 and has residential homes on 3 to 5 acre lots the site is surrounded by FR 80 and FR 40 zoned property, although there are residential homes east of the site that are impacted by the noise of the quarries' operation.

Location:	NE 262nd Avenue and NE Highland Meadows Drive; Parcel Number(s): 170393-000, 170398-000, 170395-000, and 170397-000 **Township:** 2N **Range:** 3E ¼ **of Section:** NW ¼ of Section 11, SW ¼ of Section 11, SE ¼ of Section 11.
Applicant:	Clark County Department of Public Works Quarry Manager: Carl Oman 4700 NE 78th Street Vancouver, WA 98665
Property Owner:	State of Washington
Zoning:	FR-40, FR-80
Comp Plan:	FR-1, FR-2
Applicable Laws:	Title 15 (Fire Prevention), Section 40.210.010 (Forest & Agriculture District), Section 40.250.020 (Surface Mining Overlay District), Section 40.260.120 (Mines, Quarries, and Gravel Pits), Section 40.350, (Transportation), Section 40.350.020 (Transportation Concurrency), Chapter 40.380 (Storm Water Drainage and Erosion Control), Section 40.440 (Habitat Conservation), Sections 40.500 and 40.510 (Procedures), Section 40.520.030 (Conditional Use Permits), Section 40.520.040 (Site Plan Review), Section 40.560.020 (Changes to Districts, Amendments, Alterations), Section 40.570 (SEPA), Section 40.570 (SEPA Archaeological), Section 40.610 (Impact Fees), Title 24 (Public Health), the Clark County Comprehensive Plan, RCW 78.44, and 332-18 WAC.
Vesting:	April 7, 2009.

[1] The Tower Rock site is also known as the "Livingston Mountain Quarry" (as opposed to the county's project name "Livingston Quarry"), which received recent approvals under PSR2002-00044, APL2003-00006 ***(Exhibit 29)***, CUP2007-00013 ***(Exhibit 30)*** and APL2008-00006 ***(Exhibit 31)***. A review of the conditions of PSR2002-00044 was completed under MZR2008-00079 ***(Exhibit 32)***.

HEARING AND RECORD

The Public Hearing on this matter was held on June 25, 2009 and the record was kept open for five weeks as follows: two weeks for the applicant to address issues raised at the hearing and to clarify the noise monitoring issues, two weeks for the staff and neighbors to respond and one week for the applicant to rebut; hence the record closed Friday, July 31, 2009 at 4:30 pm. Records of all testimony received are filed at the Clark County Department of Community Development.

Pre-Hearing Public Comments[2]:

E-mail April 29, 2009. Randall Kraut 27205 NE Bradford Road ***(Exhibit 11).*** Mr. Kraut is against the proposal, based on the additional traffic on 53rd/Bradford Road and he, as well almost all other neighborhood witnesses, considers 53rd Street a narrow, dangerous road.

See Transportation Concurrency Findings .

E-mail May 7, 2009. Mark Peebles 25911 NE Bradford Road ***(Exhibit 12).*** Mr. Peebles, as are several other witnesses, is concerned with the effects of truck traffic noise and air pollution on the neighborhood and wildlife, blasting effects on his sidewalks, and concerns about well water impacts. He hopes that the SEPA review will look after the best interests of the neighborhood.

The staff responds that there will be additional noise and pollution from the truck traffic from the proposal but justify those impacts based on need.[3] "Unfortunately, rock products needed for other development must be removed from its source and taken to where it's needed; it is not possible to evenly distribute rock sources throughout the county". Staff further argues that NE 53rd Street is classified as a minor rural collector; such a designation assumes 5,000 average daily vehicle trips. Current traffic on this road is estimated at approximately 2,300 trips.[4]

Additionally, blasting from both quarry operations will be monitored to ensure that even the closest residences are not subjected to levels of ground vibration that can damage structures. Stormwater will be re-infiltrated to maintain, to the extent practicable, local groundwater recharged. Wells closest to the project will be monitored. See Land Use Findings 10, 12, and 13, and Transportation Concurrency Findings.

E-mail May 31, 2009. Barbara Repman 26812 NE Highland Meadow Drive ***(Exhibit 26,see also 40,61 and Hearing Summary).*** Is concerned with noise, heavy truck traffic, and wants the county to use the same hours as Tower Rock.

See responses above, and Land Use Finding 11.

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[2] *Pre-Hearing Staff Responses, when available are in Italics.*

[3] Nothing in the record addresses need – it is simply presumed.

[4] Even the proposed maximum spike of 280 trips would increase the amount less than 13 percent although it will at least double heavy truck traffic already permitted on this road. As Mr. Inouye correctly points out in balancing "need" versus hardship or inconvenience, the former seems to prevail.(ex 55A)

E-mail June 8, 2009. Mark Jones 5717 NE 232nd Avenue ***(Exhibit 28, also 53)***. Mark and several other witnesses are concerned with:

- the cumulative traffic from the two quarries, and that the traffic studies did not address the effects on a broader range of intersections --*See Transportation Concurrency Findings.*

- there seems to be limited or no ability to enforce compression brake use, the county or state's ability to confirm properly muffled compression brakes, noise, truck weight, and other truck safety considerations --*The use of compression brakes is allowed, provided they are property muffled and maintained. Staff believes that prohibiting their use is problematic especially on a state route and staff promised to provide additional info at the hearing on this issue.*[5]

- trucks going off the road on the tight curves on SR 500[6] --A condition is proposed to evaluate and pave insufficient radius corners on SR 500 as needed. *See WSDOT finding and Condition A-9. Jeff Barsness' - Development Services Engineer for WSDOT SW Region comments (Ex 27)*

- Mr. Jones proposes that the county's quarry be used only for county projects to limit additional trips.

On June 22, 2009 Gretchen Alexander (Ex 38) wrote about her concerns:

1. The hours of operation should be kept the same as the Hearings Examiner required Tower Rock (the abutting Livingston Mountain Quarry). With Tower Rock's constant beeping during the daytime hours (along with the thumps and thuds of the rocks being dumped into unlined truck beds) the impact will double.

2. Trucks coming from the quarry do not always stop before entering Highland Meadows Drive. A school bus can't swerve out of the way as quickly as a car. With a possibility of more than 280 additional trips per day this could head off a possible accident.

3. The shared area into both quarries is either a dust storm or on a rainy day, a pig farmer's delight. The entire area needs to have a clean up program that works. (see SEPA conditions)

4. More people are entitled to know when blasting will occur. In previous blasts by Tower Rock, homes in areas nowhere near her neighborhood heard and felt blasts, but had no idea what was going on. She suggested mailing supplemented by notice in the Columbian. All neighbors that currently receive one from Tower Rock should be

[5] Didn't happen.

[6] Several witnesses mentioned this. At the hearing the Examiner observed that he once denied the application for the Yacolt Mountain Quarry (2002) based on impacts on neighbors and insufficient roads. The County commissioners overturned the denial based that rural roads are always inadequate and that they are used by trucks to extract various resources. See remarks of Steve Shulte. County's concurrency manager, at the hearing.

included. At 2,000 ft. away she is definitely affected by all phases of the current quarry.

On June 19, 2009 Nick and Wendy Keeline (Ex 39) wrote as residents of the Proebstel neighborhood that their home sits up above NE 53rd Street where the road curves up toward NE 262nd Avenue. Their concerns were:

- increased volume of trucks and truck noise due to truck operation and engine breaking coming from the combination of two quarries. The engine breaking and truck operation noise is audible for a total of 95 seconds before the truck passes their property and the engine breaking ceases. To limit the truck noise to 15 minutes per hour by their calculation that a maximum of 10 trucks should pass their home each hour, which works out to be a truck every 6 minutes.[7]

- Hours of operation should not differ from Livingston Mountain Quarry. The hours of 8 am to 5pm should be the maximum number of hours for truck hauling in a residential neighborhood. Tower Rock Products is able to get rock to their customers with this schedule and the County could do the same. The peak months of quarry operation will also be the months residents will be able to enjoy being outside.

On June 22, 2009 Barbara Repman wrote again (Ex 40) as owner of tax lot 170424-000 located at 26812 NE Highland Meadows Dr and approximately 1500 feet east of the proposed Livingston Quarry site, asking that this project should NOT be approved, because of zoning, noise, hours of operation, traffic, road adequacy, and blasting.

- Land Use Findings 1 and 2 discuss expanding the current Surface Mining Overlay District over the 170 acre site. The Surface Mining Overlay does not need to be expanded to 170 acres if only 70 acres are to be mined. The County Quarry is not currently active and should not be considered together with the adjacent Tower Rock Quarry site. They are two separate sites and should be treated as such. Therefore, policy 3.5.14 is not valid.

- There are not adequate public services for the requested zone change. Even with a road maintenance agreement in effect, there will be infrastructure problems including accelerated road degradation with two adjacent quarries.

- The problem of differentiating noise levels from two adjacent quarries has not been adequately addressed. Land Use Finding 10 discusses a plan for continuous noise monitoring with a monitor installed on my property as well as on other properties. This

[7] They also argue that per data collected by WSDOT for SR-500 and SR-503 shows that the percentage of average daily truck traffic is 6% and 6.8% respectively (please see attachments). Their road is a Minor Rural Collector and not a state route. The number of truck trips from both quarries operating at their peak will result in a volume of 280 trucks passing by their home each day. According to the staff report, NE 53rd Street has a current volume of 2300 vehicles. With the combined maximum number of trucks from the two quarries, the truck volume on their road will be TWICE (12%) of the average percentage of each of the two state routes.

plan is good, but does not make clear how to practicably distinguish which quarry might be "exceeding their own separate allowable noise levels" is yet to be determined.

- SEPA Condition 3 and Condition A-7.c & d require the County Quarry noise levels not to exceed 46-48 dBA at the south property line and 43 dBA at the east property line. There are no consequences defined for exceeding the limits. There are no time limits listed for checking the data. The data should be assessed at regular defined intervals i.e. weekly at initial startup, then monthly. If violations occur, the site should be shut down until revisions are made. If Clark County does not have a sound engineer on staff, who will interpret the data from the data from the monitors? How often will this be done if Clark County must pay for an outside consultant?

- According to the Daly-Standlee & Associates Noise Study dated January 13, 2009, there is also a concern with and "open acoustic window" between Livingston Quarry and Livingston Mountain Quarry (page 30). This "window" increases sound radiation to residences to the east. The noise mitigation measures outlined for this deficiency must be used. The DSA Noise Study Phase 2 through 5 Noise Mitigation (page 35) discusses excavating the rock wall between the two quarries down to an elevation of 1000 feet as if they are to be joined. The suggestion of waiting until Phase 3 and maintaining the crusher within 250 feet of the east high-wall must be enforced.

- The DSA Study (page 24/Table 7) lists mining equipment sound levels. The noisiest pieces of equipment are the rock drill and the crushing and screening plant. These noise sources must be highly mitigated and restricted to decrease impacts on receiving properties. The rock drill and crushing equipment are the sources of the most noise. Therefore, the Quarry hours of operation should not allow the use of this equipment on Saturdays or during early or late hours Monday through Friday.

- In Land Use Finding 11, Staff recommends hours of operation from 7AM to 6PM Monday through Friday and up to 25 Saturdays per year with mining and crushing hours limited to 8AM to 5PM. Since so many findings in this plan reference the neighboring Tower Rock Livingston Mountain Quarry, the hours should be the same. 8AM to 5PM Monday through Friday with 25 Saturdays. These hours have been upheld on appeal to the Hearings Examiner and Clark County Commissioners. Hours of Operation impact other quarry issues such as noise, truck trips, truck noise, and traffic safety. Truck traffic should be limited to daylight hours. The intersections and travel route are not lighted and have limited sight distances. Considerations have been made in the past to the neighborhood residents' quality of life. This land use should be no different.

- In assessing the traffic impacts of this application in the current economic climate, it has reduced construction projects and the needs of the community for rock resources. There is currently a lack of significant truck traffic along the haul route to be able to determine whether quarry traffic increases accidents or compromises neighborhood road safety. Traffic impact studies have been done and numbers analyzed, but the effects of 190 daily trips from the operating Livingston Mountain Quarry are unknown

at this time. Add in 140 daily trips (up to 280 at short-term peaks) from Livingston Quarry and the total of 330-470 daily trips is staggering.

- There can be no "staging" of trucks on NE Highland Meadows Dr or NE 262nd Ave. All Quarry traffic must be able to enter and leave the Quarry without blocking neighbors' access to their residences, mail boxes, school bus stops, garbage cans, etc. Condition A-6 (SEPA 1 and Land Use Finding 8) is imperative. It could be expanded to require paving of the entire area of NE Highland Meadows Dr. leading to the two quarry entrances in order to decrease traffic backups.

- Transportation Finding 2 references a speed study conducted by Tower Rock regarding sight distance. Traffic studies done by Greenlight Engineering (retained by neighbors of the Tower Rock Quarry – Ex 59) relating to impacts of the Livingston Mountain Quarry dispute the sight distance calculations and concluded that Clark County Code criteria is not met for the intersection of NE 262nd Ave and NE 53rd St. The Livingston Quarry Traffic Impact Study prepared by Lancaster Engineering (page 18) also lists concerns regarding sight distance at this intersection. Clearing of vegetation is important.

- Traffic traveling east or west on NE 53rd St encounters numerous driveways where, due to the topography of the land, drivers have limited sight distances. The speed limit on this road is 50 mph. Perhaps the speed limit should be decreased to allow drivers more time to react to vehicles entering or exiting the roadway.

- She supports a yearly maintenance payment (Transportation Concurrency Finding 6/ Condition A-11, B-8, D-11) to maintain NE 262nd Ave and NE 53rd St. as imperative in light of the "continual and increased truck traffic". These roads, in addition to SR 500, do not have adequate shoulders or lines. The center lines and side fog lines are worn off at the corners. All three of these roads are already showing signs of cracking and eroding road edges.

- WSDOT requests Clark County to evaluate the 90 degree corners on SR 500 (Condition A-9/ D-13). These corners must be maintained to allow the proper flow of traffic and decrease possible accidents from vehicles tracking off the roadway. This "tunneled" corridor is only 24 feet wide and has essentially no shoulders. This roadway is the only way in or out for the Quarry vehicles.

- She has given permission to Jan Bazala to use her property (tax lot 170424-000) to acquire seismograph readings from blasting. Neighborhood notices, pre-blast surveys, well inspections, and conditions outlined in Land Use Finding 12 & 13 must be met in their entirety. This monitoring system is needed to determine liability (Clark County or Tower Rock) in the event of property damage.

On June 23, 2009 Wendy Garrett on behalf of Proebstel Neighborhood Association made similar points (See Ex 41 and 42) referencing 8AM to 5PM hours of operation as being the same hrs as the quarry currently operating. Saturday operations (if allowed) should be limited

to loading and hauling rock only. There should be no rock crushing, drilling, blasting, or other "mining" operations in order to limit noise. Hours should be limited to 8AM to 5PM.

According to County Code, an increase of 5 decibels (dBA) over ambient noise levels may be considered significant. Neighbors want noise levels from the two quarries to be limited to no more than a 10 decibel increase above ambient with constant monitoring of the quarry site to maintain compliance with noise limits. Back-up alarms that utilize new "broadband" technology to minimize noise at the quarry should be used. Limit truck trips from the proposed maximum of 140 per day to decrease traffic (truck) noise. If *two* quarries operate concurrently, there could be *more than double* 140 trucks entering and leaving the area each day. Require brakes be properly maintained for both county and independent trucks.

Blasting may cause significant damage to foundations, wells, septic systems, and holding tanks. A monitoring system of local residences must be in place with specific parameters and periodic rechecks. If damage occurs, there needs to be a method to determine which quarry operation is responsible.

On June 25, 2009 Sharon McEneny (Ex 44) restated similar points about truck noise (every two minutes for 95 seconds), safety and hours of operation to match Tower Rock.

Finally also on June 25, 2009 Paul and Kim Gerlack (Ex 45) raises similar objections with greater emphasis on loss of value of his home dues to constant explosions and truck traffic and asks for a tax break as a 100% disabled marine. Wants hours of operation to be 9:30 to 3:30 and half days on Saturdays.

HEARING SUMMARY:

Jan Bazala, the lead County Planner on this application, introduced the site and highlighted key issues in the Staff Report. In doing so he testified that the County is requesting a zone change to expand the Surface Mining Overlay over the site and also requesting a site plan review and a conditional use permit to allow the operation of a crusher on this site. The applicant is Clark County Public Works. There is an herbaceous bald on site, which is slated for removal. The applicant has reached an agreement with WDFW to restore other balds[8] on the site to mitigate for this loss. A berm will be constructed that will shelter the mining operations from the surrounding residences. Tower Rock trucks will be sharing the County's driveway.

The staff report was issued June 10 along with the SEPA determination of non-significance. The SEPA appeal period expired yesterday without an appeal. Issues associated with this project include noise mitigation for the crusher and other mining operations, hours of operation, additional truck trips and the road maintenance agreement, which will provide funds for maintenance to 262nd Ave. and 53rd St. Ground vibrations from blasting will be monitored;

[8] Dave Howe, the habitat biologist for the County explained that balds are areas of shallow soil containing grasses and other plant life, frequented by wildlife. They are a form of designated priority habitat for the County.

there are also potential groundwater impacts, which cannot be absolutely determined at this time. Well monitoring will establish baseline conditions at local wells. Staff recommends approval, subject to the conditions of approval in the staff report.

The Examiner explained that with respect to the rezoning criteria, the heart of any rezone request is section 3a: substantial change of conditions. Staff recommends reliance on section 3b with an argument that appears to be that the property can't be used for anything else, other than what it already is (a former quarry)[9]. That's the nub of the staff argument – that there is really no other use for the property. The "adequate facilities" criterion really comes down to the road – are the roads adequate.

Mark Erickson, the manager for this project, demonstrated how some of the site plans explain how the proposed quarry will develop by describing the pace and direction at which mining of the quarry will proceed. A high wall will be constructed around the crusher and generator, near the site of the existing high wall. There is a need for an additional berm to reduce noise; in Phase 3, the applicant would extend the berm to the south, in front of the operation.

Three herbaceous balds were identified on the site; one of those balds will be removed, and the applicant proposes to mitigate the herbaceous bald to the west with the concurrence of WDFW for that plan. The riparian setbacks and stream features on the site were also a concern; that's why Phase 1 doesn't come down to the mapped limits for Phase 1. On the southeast side, another riparian zone was identified by County staff; as a result, Phase 5 was revised to avoid that riparian zone. The letter of concurrence from WDFW (Ex. 43) has been submitted into the record and the applicant is going to request that the record be kept open for some additional work on transportation concurrency and the noise requirements in the conditions of approval.

Public comments have focused on the adequacy of NE 53rd St., Highland Meadow Rd. and 262nd Ave. There have been concerns raised about water runoff, blasting impacts to foundations, truck traffic and hours of operation.

With respect to the staff report, on page 7, re-zoning criteria, although it's not in the staff report, the applicant did address the policies for mineral lands in the narrative for the zone use request.

Kerrie Standlee, the acoustical engineer for this project, explained that the residences to the south do not currently have a view of the floor of the mine, or of the high wall. The applicant didn't see a real problem for the residences to the south until "daylighting" occurs in the final phase of the mine development. More sound would then penetrate to the residences unless there was a berm there. The applicant tried to take advantage of the natural topography to the greatest extent possible. There is actually a greater problem with the residences to the east, because they're at a higher elevation and there is less of a sound barrier between them and the mine. The applicant has endeavored to be sure truck traffic stays within the County's 57 dBA standard. A letter was submitted to the records by the Keylines; they timed trucks coming down the hill and that was a pretty good effort, but what is missing is that the audibility of the truck and 57 dBA are two different things – audibility is not the criteria.

[9] 40.560.020,G 3 b. Better implements applicable comprehensive plan policies than the current map designation; or

The applicant had some other conditions to submit in writing, Condition A.7.c and A.7.d. If both operations are in compliance, as long as the noise level does not exceed 46 dBA for more than 15 minutes, an apparent violation will occur, but it will not in fact be a violation. It is not a violation because you would have to demonstrate that either one would be at 46 dBA alone. It's not a violation to have a level above 43 each. The regulations anticipate just one source. The regulations are "per source," not combined. (See Open record Exhibit 52)

Carl Oman, another applicant witness, addressed Staff Finding 11 on Page 12, covering hours of operation, the applicant originally applied for 7 AM to 7 PM. The applicant is willing to go with staff's recommendation for reduced hours, 7 AM to 6 PM for mining, and 8AM-5PM for crushing. The applicant would then be able to load rock from 5-7 PM. It's not a quiet activity, but it's not as loud as the crushing. Hours of operation are important because the applicant is limited by weather, to a certain number of suitable days for road maintenance. The applicant is asking for an additional hour, from 6-7 PM, for nightly maintenance.

Mr. Erickson then stated for the record that the applicant's noise study was comprehensive and very thoughtfully done. The applicant extensively modeled noise levels under the worst operating conditions and believes that the recommended controls will put the operation into the daytime standards of compliance. Some of the public comments received had to do with school buses picking up children prior to 8 AM; the applicant would like to point out that encounters between rock trucks and school buses are just as likely after 8 AM.

Examiner asked whether the peak hour, in terms of moving trucks to the construction site, would be prior to 7 AM.

Erickson agreed that there would be about a 10-minute window of overlap. On Page 14, finding 16 on Camp Bonneville, requests that the applicant document that the applicant has fulfilled the Camp Bonneville re-use plan. The applicant expects to be able to submit a letter to the record from WDOE that the area in question has been cleared of munitions. On page 15, finding 3, the mitigation for the bald removal, again, the applicant has a letter of concurrence from WDFW approving our proposed mitigation (Ex 43).

On habitat finding 4 on page 15, covering the setback on a stream feature near the mine – the applicant just wants to clarify that this refers to a single setback covering two separate functions.

Mike Ard, the applicant's senior transportation engineer who worked on the original TIS for this project, re-capped the findings of that study. The applicant looked at traffic during the full production portion of the year, the summer months. The applicant found that the nearby intersections would operate at Level of Service A or B, a very high level of service. The applicant also surveyed the accident history of the area; most of the accidents the applicant found were speed-related, single-vehicle crashes, not vehicle-on-vehicle crashes. The applicant also prepared a peak traffic impact analysis, given the possibility that a trip cap could be imposed during short-term peak traffic periods. The applicant looked at the potential traffic impacts of doubling traffic volumes during certain periods; again, the levels of service were A and B during AM and PM peak hours at the nearby intersections, with a maximum 11-second delay.

The applicant introduced three new documents to the record, in response to some of the comments received, one on roadway capacity (Ex 47) and two on sight distance (Ex 48 -49). The applicant found that the actual sight distance to the north was slightly lower than the required sight distance; the applicant believes that concern can be mitigated by clearing some vegetation. At the intersection of SR 500 and NE 53rd, the applicant found that sight distance is currently restricted to slightly less than intersection sight distance; again, the applicant recommends that some vegetation be cleared. To the north, there is a sharp corner, with very little opportunity to improve intersection sight distance. Stopping sight distance is available at that intersection. The third study submitted has to do with roadway capacity of the surrounding roads; the results of this capacity of analysis showed SR 500 at Level of Service B, at 9-10% of roadway capacity. The applicant analyzed several other intersections, including NE 262nd Ave. and Highland Meadows Drive, the intersection that was the focus of many neighbor comments. Currently that intersection is Level of Service A, operating at 2 percent of capacity. Under the worst-case, peak conditions, that intersection would still operate at Level of Service A, about 4 percent of capacity.

With respect to potential conflicts between trucks and children and/or school buses, the applicant looked at the times high school buses run in that vicinity; there is a window between 6:50 and 7:01 AM, just before the proposed start time. Elementary school buses operate into the 8 AM hour, so there is some potential for conflict there. There is also some truck traffic in that area that is not related to the quarry. There is no significant history of truck crashes in this vicinity.

Mr. Erickson resumed that with respect to runoff from the quarry, the applicant is proposing to manage stormwater using lined stormwater treatment basins. The applicant will capture, treat and infiltrate that stormwater. Also, with respect to fire inspection finding 5 on page 22, the applicant wanted to clarify that this is a one-time inspection and will not be required prior to each blast. With respect to transportation concurrency, the maintenance impact fee calculation assumed the applicant would be operating at maximum capacity 365 days a year, which is more than twice what the applicant calculate what will actually occur at the site. The applicant would like an opportunity to work with County Concurrency to submit additional information. He concluded that he would like the record open for two weeks.

Examiner explained that with two weeks for public and staff rebuttal, plus a week for applicant rebuttal, that puts close of record to 4:30 on July 31.

Mr. Bazala agreed to keep the record open and suggested more detail on what they have in mind in terms of noise monitoring.

Public Testimony

Linda Rectanus a neighbor from NE 269th Ave., directly east and north of the quarry boundary which is in the open acoustic window identified previously (See also Ex 60). There are 14 home sites to the east and north, with another development of 20 home sites planned to the east. This project is scheduled to last 30 years, certainly longer than she expects to live on this property. Their home is their biggest investment and they are very concerned about property value. They have seen a steady erosion since these mining projects went in. When the mining

was originally approved, an increase of 5 dBA over ambient was considered significant. Their only access in and out is by 262nd Ave. and Highland Meadows Drive – if an accident or obstruction occurs, they will have no other access. They're faced with losing more and more of their quality of life. Tower Rock will be up for review this fall, so what is decided will have an impact on their hours of operation.

Evenings and weekends are their only free time and now they're looking at noise and traffic problems on Saturdays as well. Their lives and health should be taken into consideration. During the previous hearing, the examiner limited Tower Rock's hours of operation out of consideration to the neighbors. She asked this examiner to impose a great deal of noise mitigation during the peak summer hours. Truck operations should be allowed only during daylight hours and that the high-pitched backup alarms are the most annoying. Any equipment operated at the quarry should be equipped with discriminating backup alarms. Finally, she asked that rock crushing be excluded from Saturday operations.

Kenneth Weihl, a neighbor from NE 64th St, just east of the pit, has a masonry house was built around 2000 there, grouted solid; the blasting that has gone on over the past year has started to deteriorate one of his main walls.[10] There have been some severe blasts – up to 18,000 pounds of powder and the wall is cracking. He has unsuccessfully sought redress from Tower Rock. There was no damage to that wall before the blasting began. He asked for further, detailed, seismographic testing around his house before approving this request.

Also, he has followed the trucks down the road, and they aren't really fitting on the road very well. The truck's differential was actually over the ditch. He showed some photos of this to the traffic engineers who did the study and they were not concerned – they told him me that was normal. Also, in the environmental review, they recognized Barb Retpman's home as one of the main concerns. The damage to his home known for 10 months isn't mentioned anywhere in the report.

Barbara Rider, a neighbor on NE 53rd Street, southeast of the quarry believes that she sees more traffic more than anyone else. She was very pleased to hear about some of the suggested compromises and improvements to this plan, but still had some concerns. The intersection of 53rd Street and SR 500 is a mess – one can't see to the left if making a left-hand turn, because the stop sign is 30 feet back from the intersection. There are a number of other traffic problems along 53rd Street – it's not wide enough for these big trucks, particularly near the S turn.

She was concerned about the traffic report done in August, which is the slowest time of year for traffic along 53rd – it's after the motocross, which brings 20,000 visitors to the area. There are also a lot of bike riders along 53rd – there is a lot of diverse traffic and there is no place for it to go. 53rd is rolling and curving; people drive it very fast, and if anything does happen, there's no place for people to go. She would like to see a wider S curve on some of the intersections to increase safety.

Michael Cummins, a neighbor from NE 53rd Street and co-vice president of the neighborhood association, spoke about a memorandum of understanding between the County, Maul Foster and Tower Rock to cover the division of blasting liability. He asked for a delay of approval of

[10] He introduced pictures and a house plan (Ex 50) to show the wall, which is anchored to the bedrock.

this application until the examiner had an opportunity to review that MOU, given the potential for a multi-plaintiff legal mess.

Kim McDougall, from NE 61st St. in Camas, drives that road and the traffic police are very clear that those big trucks cannot physically fit on the roads as they're currently configured. There are six critical corners involved and it is definitely not safe for average drivers. "My animals freak out when they blast; the second time they blasted, it literally buckled my knees as I stood outside my house."

Larry McNeese, a neighbor from NE 65th Street, referred to condition of approval A6, which refers to driveway paving at the pit site. The average speed there is probably less than 25 MPH. 53rd Street is listed at 24 feet wide with shoulders, but he doubted anyone could measure 24 feet of pavement there – it's closer to 20-21 feet. There is no shoulder and it goes at a 45-degree angle straight into the ditch.

Barbara Repman, who lives on NE Highland Meadows Drive, just to the east of the Tower Rock property, had written prior letters (Ex 26, 40). All neighbors are concerned because of these two quarries. It is very difficult to try to differentiate between the two quarries with respect to noise, traffic and other impacts. Those impacts will extend for years down the road. Take a hard look at the future. (See also her Ex 61)

With respect to noise, the proposal they heard about the sum of the two quarries' noise concerns her – the crux of their issue is that two quarries will be operating simultaneously but independently. She requested that the examiner set the hours of operation for the County quarry from 8 AM to 5 PM. Those are Tower Rock's hours; that should be good enough for the County as well. With respect to the well inspections, it was noted that only wells a thousand feet or less from the site will be inspected and there are very few wells or residences within that radius. The radius of inspections needs to be expanded.

Mark Peebles, a neighbor from NE Bradford Rd., on the corner of 53rd and 262nd was also concerned with the hours of operation. He didn't hear anything in the traffic report about the intersection of 262nd and Bradford Rd., with respect to sight distance problems. There is minimal sight distance for the car coming up the hill at that intersection. (See also Ex 12)

Sharon McEneny, a neighbor whose home is just off 53rd St. (See also Ex 44) complained about truck traffic, which they hear constantly in front of their homes. In past years it's been almost unbearable and the thought of adding 130 trucks to the current maximum is appalling – you can't even have a conversation outdoors right now. It takes 90 seconds for a truck to make its way down the hill and past the stop sign – multiply that by 260, and you get some idea of what concerns her. 8-5 is more than adequate, in terms of balancing quarry operation with quality of life in the neighborhood.

Steve Schulte, County's concurrency engineer, testified with respect to the road width concerns. There were a lot of good ideas tonight – pull-outs, turn radii etc. The County would certainly like to have those for their roadways, but the fact is that these intersections are currently meeting the required levels of service. From their perspective, the trucks are staying on the road, because they are not seeing an accident history that concerns them.

Mr. Bazala made a few comments: with respect to the lack of definition about traffic short-term peaks, it would be a good idea to add more specificity to that section of the staff report. With respect to the comment about discriminating backup alarms, that was written that way because, if a truck came from a company that didn't use discriminating alarms, they wouldn't be able to use the site. With respect to Mr. Weihl's testimony, his house is about 2,800 feet from the Tower Rock site. Based on his comments and the inspection they did, Tower Rock is required to monitor Mr. Weihl's property. The experts he has spoken to indicate that it is highly unlikely that the blasting is what is causing the problems Mr. Wheel is seeing.

In response to the Examiner's question, Mr. Schulte responded that the rural county road system is very similar to what they see in this particular area – that's just the way it is in the rural system. Drivers have learned to work with the fact that they sometimes lack the width they might like to see and they simply don't see the accident history you might expect in these areas. It can even be argued that the sharp curves actually slow speeds and create safer driving conditions.

Mr. Bazala continued that it would be a good idea to make weather monitoring an enforceable condition. Tower Rock sends him their data on a monthly basis.

Mr. Schulte indicated support for the applicant's request for a five-week open record period. Also, with respect to the stop sign location that was referenced earlier, that is an issue that has been studied at great length and they believe that location to be optimal, given the site constraints.

On applicant's rebuttal, Mr. Standlee responded to a question the hearings examiner asked earlier, that the quarries are not allowed to exceed the dBA limit for more than 15 minutes in an hour. Truck noise is a separate issue. With respect to the question of simultaneous operation of two separate quarry operations, they structured the study in such a way to produce the lowest possible limit – 43 dBA. He added that a 3 dBA increase is barely noticeable. What they propose currently will trigger a more detailed study, beyond the continuous monitoring Tower Rock is already conducting.

Mr. Oman testified that they looked at how to monitor both quarries and the cumulative noise. It was suggested that they shut down one operation, monitor, then shut down the other operation and monitor. That can make that part of the condition of approval. To address well monitoring and foundation inspections is obviously very important. Before they opened their last quarry operation, they did well and foundation inspections extensively. They will be doing the same thing here, even a lot farther away than a thousand feet from their property line, in an effort to head off any future problems or questions of liability. The only other thing had to do with who will be liable if blasting causes problems. By obtaining that baseline, if there is a claim, they would turn that over to County Risk Management and they will take care of that. It is a legitimate point – to decide, with Tower Rock, who is responsible for any damage that occurs? They have just begun those negotiations.

Mr. Erickson concluded that the applicant concurs with the hours of operation recommended by staff, 7 AM to 6 PM. As Carl said, they are willing to include additional neighbors in the well and foundation inspection. They will respond to additional comments received tonight during the open record period.

OPEN RECORD PERIOD

Ex 52 (7/10/09)The Applicant Maul, Foster and Alongi submitted:

1. Revised conditions of approval related to noise monitoring (in Memorandum)
As stated during the public hearing, the Applicant is proposing revised conditions of approval related to noise compliance and monitoring. The conditions of approval included in the staff report (see Exhibit 35) related to noise impacts attempt to address combined impacts resulting from simultaneous operations at the proposed quarry and the adjacent Tower Rock Products Livingston Mountain Quarry. However, these original conditions of approval would not allow both quarries to operate simultaneously because the overall noise level will exceed the established limit of 43 dBA along the east boundary of Tower Rock. More specifically, if each quarry operates at a 43 dBA, as allowed by the staff's recommended conditions, the noise level measured at the east receptors will be 46 dBA, not 43 dBA.

The Applicant believes that the Applicant's noise study is more protective than what is required to meet the County noise ordinance. The noise study could have measured background ambient noise levels while the Tower Rock quarry was operating, but instead chose to use an approach more protective of neighbors by measuring ambient levels without the adjacent quarry operating. The approach taken by the Applicant results in lower noise thresholds than would have otherwise resulted from the less protective approach.

As a result of this more protective approach, the Applicant recommends the following conditions that establish a means of monitoring and assessing noise levels from two independent, simultaneously operating quarries:

1. The County shall monitor noise levels at two locations along the south property line of the County's leased property to document noise levels radiating from the County quarry. The method and duration of the initial noise monitoring shall be established by a professional acoustical engineer. Noise levels along the south property line of the County's leased property shall be re-measured if there is a significant change in the number, type or location of mining and crushing related equipment used on site.
2. The hourly $_{L25}$ noise level radiating from the County quarry shall not exceed a limit of 10 dBA above the ambient noise levels at locations M1 and M2 of the DSA noise study report (which is currently 37 dBA at M1 for a noise limit of 47 dBA, and 38 dBA at M2 for a noise limit of 48 dBA).
3. In addition to monitoring at locations M1 and M2, noise levels at location M3 of the DSA noise study report will be documented as described in Condition 1 above if access is granted by the property owner. If measurements are allowed by the property owner, the hourly L25 noise level radiating to that property from the County quarry shall not be more than 10 dBA above the ambient level at the location (which is currently 36 dBA, for a noise limit of 46 dBA).
4. The County shall continuously monitor noise at one location along the east property boundary of the Tower Rock Products Livingston Mountain Quarry or at tax lot 170424-000 or at tax lot 170421-000.
5. To help in assessing the noise radiating from the County's quarry independently of that radiating from the Livingston Mountain Quarry when both quarries are

operating simultaneously, the worst-case noise levels at any noise receptor on the east side shall be no more than 3 dBA above the hourly $_{L25}$ noise limit specified for the receptor (the change in sound level when two sources operate simultaneously at the same level). Therefore, when both quarries are operating simultaneously, the hourly $_{L25}$ noise level at a receptor on the east side of the Livingston Mountain Quarry shall not exceed the existing ambient noise level by more than 13 dB, currently 33 dBA (for a noise limit of 46 dBA). If the hourly $_{L25}$ noise level radiating from the two quarries exceeds 46 dBA at any noise receptor on the east side of Livingston Mountain Quarry, the County will coordinate with Tower Rock Products to assess each operation individually to determine which quarry resulted in a noise limit exceedance.

6. When the County quarry is operating without operations at the Livingston Mountain Quarry, the hourly $_{L25}$ noise level along the east property boundary of the Livingston Mountain Quarry shall not exceed 10 dBA above the ambient level, currently 33 dBA (for a noise limit of 43 dBA).
7. As the neighborhood continues to grow and residence density increases, background ambient noise levels may increase over time. As a result, the County may, on an annual basis, raise the maximum noise level limit allowed at any residence based upon a demonstration that the ambient hourly $_{L25}$ noise levels have increased above those shown in Conditions 2, 3, 5 and 6. The ambient noise level means the hourly $_{L25}$ noise level measured at a receptor location without either the County quarry or the Tower Rock Products Livingston Mountain quarry in operation.
8. The County shall maintain a record of the days when operations are and are not occurring at the County quarry. The County shall also document the weather conditions present during the days of operations and any other events that may have an impact on noise levels recorded by their noise monitors when the quarry is operational.

2. Memorandum of Understanding between the Applicant and Tower Rock Products (see Attachment A) in which the quarries agree as follows:

- Each party will perform well and foundation inspections and assessments for area properties as required by its respective permits, and will maintain records of the inspections and assessments;
- The parties will create, maintain, and make available to the public upon request records of seismographic monitoring of blasting, including dates and times of blasting;
- Each party will notify the public of its contact information for complaints and dispute resolution;
- The parties will share with each other information regarding minimizing the risk of property damage from rock blasting; and
- This MOU is not a legally enforceable contract. It is not intended to create, and shall not be construed as creating any third party beneficiary. Rather, it documents the parties' understandings on cooperation to minimize the potential for well and foundation damage, and to address damage that might occur.

3. Letter report summarizing findings related to road adequacy (see Attachment B), including sight distances at SR-500/NE 53rd, NE 53rd/NE 262nd, and the site access off NE Highland Meadows Drive;

Sight distance at all area intersections is adequate for safety, and vegetation has been removed to limit interruptions to the flow of through traffic on the major street where possible. No further mitigation is recommended. This information was previously provided by Mr. Ard.

4. Exhibit showing roadway widths and curves for SR-500, NE 53rd, and NE 262nd

During the June 25, 2009 hearing, several local residents questioned the data and findings reported in the December, 2008 Livingston Quarry Traffic Impact Study, indicating that:

1) Area roads are frequently less than 24 feet wide,
2) Roadway widths are not adequate for trucks, and
3) Large side-dump trucks cannot safely negotiate curves in the area roadways without crossing the roadway centerline and intruding into the opposing travel lane.

In response to these concerns, a much more detailed analysis of the area roadways was undertaken and re-measured the pavement and shoulder widths at multiple locations on NE Highland Meadows Drive, NE 262nd Avenue, NE Bradford Road and NE 53rd Street, creating a roadway model based on the measured data. The dimensions and turning characteristics of the side-dump trucks that serve the existing Tower Rocks Quarry were simulated the travel of the side-dump trucks through the roadways using AutoTurn modeling software, with particular attention to any problems that may arise at curves and intersections.

The measured pavement widths on NE Highland Meadows Drive/NE 262nd Avenue varied from 22'6" to 24'9". Often the edge of the pavement was covered with dirt and vegetative debris, giving the impression of a slightly narrower roadway. The total roadway width varied between 25'0" and 26'0" including the gravel shoulders. (NE Highland Meadows Drive is narrower than the reported dimensions east of the Tower Rock quarry entrance, but was not analyzed since the side-dump trucks do not operate on this portion of the roadway.)

The measured pavement widths on NE 53rd Street/NE Bradford Road varied from 22'9" to 24'0". The total roadway width varied from 23'6" to 27'0" including the shoulders. The portion of the roadway in the vicinity of the reverse curves had a paved width of 23'10" and a total width of 27'0".

Side-dump trucks such as those used at the existing and proposed quarry sites have a trailer width of 8.5 feet and an overall length of 53.6 feet. Specific details of the tractor and trailer dimensions as well as steering articulation angles were entered into AutoTurn software to produce an accurate model of the driving capabilities of these vehicles. The simulated side-dump trucks were then driven along model paths created using aerial imaging to match the curve characteristics of the roads and the pavement and shoulder widths measured along the roadways.

5. **Exhibit showing turning path for trucks going to and coming from the quarry along SR-500, NE 53rd, and NE 262nd**

Based on the detailed analysis, the area roadways are currently operating with acceptable safety records and large side-dump trucks can safely negotiate the area roadways without crossing the roadway centerlines. Reports from drivers and the truck dispatcher at the existing Tower Rocks quarry indicate that drivers can maintain their lanes on the area roadways and have not reported safety concerns. The measured roadway widths exceed the minimum standards recommended by the Transportation Research Board. It is therefore found that the existing roadways provide adequate width for safe operation of the proposed quarry facility

6. **Terrain cross-sections for neighbors south, southeast, east, and northeast of the proposed quarry (see Attachment C)**

During the June 25, 2009 public hearing on the Clark County Livingston Quarry application, the Hearings Examiner inquired about the natural terrain between the mining area and residences to the south. MFA assumes that the hearing examiner wanted to know if there would be a natural visual and acoustical barrier located between the various residences and the proposed mining area. To assist in answering that question, seven cross-sections through the site were generated to provide a visual aid showing the terrain between the site and the nearest residences south, southeast, east, and northeast of the proposed quarry site. A plan drawing showing the location of each cross- section is also provided. The plan drawing and cross-sections are included in Attachment C.

In each section, the floor of the mine during each phase is shown and identified to help the Hearings Examiner identify the elevation where the crushing and screening equipment will be placed during each phase. The lowest direct line between each residence and the proposed quarry is also shown on each section. This direct line is equivalent to a line-of-sight except that the line does not consider existing vegetation, which in some cases, provides substantial additional screening. For example, the cross-section for the Repman residence indicates a line-of-sight from the residence will intersect a small portion of the existing quarry floor. This line-of-sight is actually obscured by existing vegetation, including vegetation on the Repman property parcel and vegetation on the Tower Rock quarry. This residence is also located more than 1,500 feet from the proposed quarry.

The cross-sections for the Martin residence also shows that the line-of-sight from the residence will intersect a portion of the existing quarry. Like the Repman residence, this residence is located about 2,000 feet from the quarry, and the line-of-sight is obscured by existing vegetation. The Martin section, and the Hettman sections, also indicate that periodic drilling activities may be visible on the upper portions of the Applicant's leased property parcel. Existing vegetation screening was not taken into account on these cross sections. These activities will be screened as recommended in the noise study prepared by DSA (see Exhibit 7).

Groundwater And Foundation Monitoring

During the public hearing, the Applicant raised the option of including additional neighbors in the groundwater well and foundation assessment beyond those already proposed in MFA's groundwater assessment letter report (see Exhibit 22). The Applicant clarifies in this

submittal that groundwater wells and foundations of additional nearby residences within 2,000 feet of the quarry will be included in the assessment, if requested by the owner of the property parcel. This distance is twice the distance required in the proposed Conditions of Approval. The decision whether or not to include neighbors beyond 2,000 feet will be made by the Applicant on a case-by-case basis.

Hours Of Operation

During the June 25, 2009 public hearing, neighbors of the proposed quarry asked the Hearings Examiner to limit the operating hours to the hours approved for the adjacent Tower Rock Products Livingston Mountain Quarry. One neighbor suggested that one reason the Hearings Examiner limited operating hours in the final order for the Livingston Mountain Quarry rock crusher permit application was out of consideration for the neighbors. When taken in proper context, the actual reasons the operating hours were limited were two fold. First, Tower Rock requested hours beginning at 6:00 AM, but failed to address the night-time noise limits in their noise study. Second, the Hearings Examiner found that Tower Rock failed to implement conditions stipulated in the original 2003 mining application approval, and in failing to do so, did not sufficiently demonstrate the efficacy of the conditions. As such, the Examiner found that the neighbors' fears of unacceptably loud noise could have been well founded because Tower Rock did not present sufficient evidence demonstrating otherwise.

The Applicant iterates that the noise study prepared for the proposed Livingston Quarry was comprehensive in reviewing each proposed phase of the mine and addressed the noise standards in effect for the requested hours of operation, which are the same as the hours included in the Conditions of Approval. The mitigation measures established in the noise study will enable the proposed mining and crushing activities to operate in compliance with the County's noise ordinance.

Maintenance Agreement

The Applicant also requests that Clark County Transportation Concurrency relook at the Agreement for Pavement Improvement Fees for the Livingston Quarry (Exhibit 36). Specifically, the Applicant believes the average daily loaded truck trip and tonnage calculations used to formulate the pavement wear cost in the agreement are not reflective of actual trips and tonnages that would be generated in the application is approved. The Applicant also requests Transportation Concurrency to consider allowing the ability for the agreement to be reviewed on an annual basis. A table summarizes the average daily loaded truck trips and tonnage the Applicant proposes be used initially in the agreement to calculate pavement wear costs.

EX 53 (July 11, 2009) Email from Mark Jones to Jan Bazala

Mr. Jones argues that the real test on adequacy of the roads and traffic conditions should go at least two miles in both directions from the intersection of SR500 and NE 53rd street. There are no precautions taken for the s-curves within the SR500 and NE 53rd street area and absolutely no precautions taken to allow law enforcement to take activity with suspected trucks of being ill maintained for Jake brake noise, weight and general well being of the truck and or driver as there is no place to pull one of these trucks over!

The trucks are traveling faster than the study would suggest (under 50 mph) especially heading east towards the quarry when they are empty. This is evidenced by the noise generated by illegal "Jake brakes" (on some trucks), while trying to slow down for the 90 degree curves. Also the study is skewed to the counties and tower rock products advantage. The boss followed the trucks and none crossed the line. Why not have an independent follow the trucks. Also it is very evident that the trucks are incapable of making the EB 90 degree curve at NE 232nd AV and NE 58th street as evidenced by the degradation of the shoulder of the road. This never had any wear in the 17+ years he has lived here and in less than one year it is terrible.

The noise from these trucks continues to ruin his standard of living and has basically made his home recording studio useless during business hours due to truck traffic and their use of Jake brakes penetrating the house so completely; therefore, he can only record at night making the prospective clients go elsewhere. He has no idea of what days they are running and what days they are not so he can't schedule anything, making his 1000's of dollars worth of equipment useless because of truck traffic and the degraded living conditions. The right thing for the state or county to do being they won't or can't put up signs would be to implement noise barriers along the s-curve area of SR-500 as he doubts the "Jake brake" is an issue for anyone other than the 5 to 10 homes in the area.[11]

The limited number of homes that the truck traffic directly affects could be addressed with relatively small investments. The truck traffic through the SR500 curves at NE 58th St and NE 232nd Ave and both on NE 54th St is more of a nuisance that the quarries themselves and absolutely no study or help has been provided or offered which in my opinion is just disrespectful of the tax paying people in this distinct area. He could see a defense if it were even a small problem prior to the quarry being put in but it wasn't. It is all directly related to quarry business and now the county wants to double it. "THIS JUST WRONG."

EX 54/56 (July 21/24, 2009) is an Agreement for Pavement Improvement Fees for the Livingston Mountain Quarry

The agreement outlined establishes a mechanism whereby the County Operated Livingston Mountain Quarry would provide compensation for the incremental pavement wear in the vicinity of the quarry resulting from the quarry traffic. The arrangement would result in the quarry providing an incremental share of the cost of the pavement wear. Fees collected are intended to be used to improve the pavement structure of NE 262nd Avenue, NE 53rd Street and NE Bradford Road.

[11]He also offered this comment: "We both know I am wasting my time however I would appreciate it if you would at least bring it up as a decent thing to do! We both know that the economy will change and the truck traffic from tower rock products is unbearable and the county will just be adding to it. Especially after what I was told by public works that they would lease or sell grave to maximize the potential of the mine which would mean even more volume of trucks that are private and underfunded for safety and sound violations. Again, with no way for public agencies to police for weight, noise and driver safety due to the free access to almost anywhere in the county from this location. There is absolutely no need to go through a scale or have your vehicle safety checked and no for county or state police to enforce any violations. "

EX 55A Tsuyoshi Inouye, a downhill neighbor, addresses water quality concerns.[12]

He demonstrates that during winter storms there is a lot of storm water that flows out of the County's Quarry and eventually into Matney Creek. The creek runs through their property next to their domestic community well. By a straight line from their community well to the County quarry, it is about 1/2 mile up the Livingston Mountain (more than 2000 ft). This community well is shared by three property owners. Currently there are 2 households using the well. The 3rd lot is not developed. The well is only 15 or 20 feet from the creek.

The County's previous mining operation created the large impervious surface in the present Quarry. It is the impervious surface that creates all the storm water runoff shown in the pictures. His concern is the contamination of their well water from the mining and rock crushing activities half mile up Livingston Mountain. The dust particles and pollutants settling on the quarry floor during the summer months will flow with the storm water during winter storms. The Tower Rock Quarry has no holding pond and the County indicates that there will be holding ponds when they reactivate their Quarry, but will the proposed holding ponds hold all the storm water shown in the pictures. The type of pollutants he lists are brake lining dust from the trucks and trailers going in and out of the Quarry, and the petroleum products that leak from trucks, trailers, and other equipment. Because 262nd avenue and 53rd street are so steep, you can hear the truck and trailer brakes squealing for great distances around Livingston Mountain. If the trucks and trailers use the older brake pads made of asbestos, there would be serious health issues. Whether the trucks and trailers use asbestos type bake pads or some other newer pads, the dust particles will settle on Quarry's impervious surface to be washed away down Matney Creek. The amount of braking required for loaded trucks and trailers coming down 262nd avenue and 53rd St. was evident at the July 25th Hearing when the people living on these streets complained about the unbearable loud braking squeals.

Dangers of braking pad dust: Ex 55B - Attachment 1 (Brake Dust) describes the dangers of brake pad dust. Even though asbestos is known as a hazardous compound, it is still being used in brake pads. **Ex 55C** Attachment 2 (Asbestos) is a news article from the U.S. Senate where on November 4, 2003 Patty Murray is requesting the EPA to not withdraw asbestos guidance to Mechanics. Brake shop tests in six states and the District of Columbia found dangerous levels of asbestos in 21 brake-repair shops with asbestos concentrations of 2.26 percent to 63.8 percent were found.

Causes of Storm water runoff: Ex 55D Attachment 3 (EPA Storm Water) is a bulletin from the EPA which states that the primary source of storm water runoff is impervious surfaces. The rock blasting, dozing, crushing, stockpiling, and transporting material in the two Quarries will

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[12] Mr. Inouye claims that he was prepared to show some rain storm water run-off pictures at the Tower Rock Quarry public hearing back in December of 2007 but was denied the opportunity to present his case by the Hearing's Officer. He now presents pictures taken during one rain storm in December of 2007. The pictures shown here pertain to the County's Quarry and the flow of water into Matney Creek. This Examiner notes that was a different hearing, before a different Examiner concerning different, but abutting quarry. Everyone was allowed to testify at the hearing concerning this quarry.

generate a tremendous amount of dust particles and contaminants that will eventually find its way down Matney Creek and the Lacamas watershed.

Request for water quality testing by the County:
He is requesting that the County perform a complete IOC water quality test before Quarry operations begin, to insure that water quality remains high for future years that the Quarry is in operation. A subsequent complete IOC water quality tests be performed on an annual basis at the County's expense. The water quality tests requested are complete IOC, NWTHP-Dx – Semi-Volatile Petroleum Products, and Coliform. It includes testing for beryllium, chromium, copper, arsenic, selenium, cadmium, barium, antimony, mercury, thallium lead, sodium cyanide, turbidity, fluoride, nitrite-n, nitrate-n.

Request for fairness in public projects:
In all community projects like the Livingston Quarry, it is the local neighborhood that is forced to suffer. [13] It would desirable to reduce the safety and health hazards and the noise level, If the pups and side dump trailers where not permitted in the two Quarries, it would reduce the number of complaints significantly. The trucks would not have to make wide turns as they go around the sharp corners on 262nd avenue, 53rd St. and SR 500. It would also reduce the amount of brake dust and brake squealing noises because there would not be any trailer wheels. If only regular dump trucks were allowed, the cost of the crushed rock coming out of the Quarries would go up but the cost would be shared by everyone in Clark County and the North East Portland areas. It would be a much fairer solution to the problems facing the Livingston Mountain neighborhood.

EX 57 Staff Response (7/23/09) to information and proposals included in Exhibit 52

Regarding proposed noise conditions:
The applicant has proposed several changes to the existing noise conditions in the SEPA conditions and Condition A7.

Applicant Proposed condition 1
Staff agrees with the applicant that continuous long term monitoring at the south property line may not be necessary; however, a 30 day continuous monitoring period should be required to give an adequate appraisal of how each crusher set up is meeting noise requirements.

Applicant Proposed condition 2
Staff concurs with the essence of this proposal and suggests that removing language stating maximum dBA's be removed in the conditions in favor of setting a maximum of 10 dBA over ambient noise levels. This makes sense as evidenced by much of the sound data already submitted by Tower Rock. Their data indicates that wind events cause ambient noise levels during non-working hours to exceed 43 dBA on a somewhat regular basis. Continuous monitoring helps establish what the real ambient noise levels are for a particular day, by providing readings prior to, and after, operations occur on a given day. Thus a noise level of

[13] Mr. Inouye asks whether there is a way to charge the outlying Clark County residents and North East Portland residents more for the crushed rock and funnel some of the revenue back to the local Livingston Mountain residents,.

47 dBA during working hours would not likely represent a noise violation if the ambient levels indicated prior to, and after operations are 45 dBA.

Applicant Proposed condition 3
Staff concurs that if access is not granted by the property owner for the M3 location that the county should not require monitoring at that location.

Applicant Proposed condition 4
This proposed change (as confirmed by Kerrie Standlee) would allow the county to use the existing monitoring station established by Tower Rock. While this may be a good use of resources, it does eliminate a benefit of having two independent stations that can confirm / compare each other's data.

Staff agrees in concept with Applicant's changes in Conditions 6 - 8. For condition 7 staff agrees in concept with this change. By changing to the "ambient plus 10 dBA" language, neighborhood increases in ambient noise will automatically be accommodated. For Condition 8 staff agrees with this additional condition, as it will provide additional background as to why ambient noise is higher at a given time. Staff therefore proposes the following changes and additions to the SEPA conditions 2 and 3, and condition A-7 of the staff report as follows:

A-7.c
Noise levels from the county's quarry operation shall not exceed 10 dBA over ambient noise levels near the south property line, as monitored at the locations shown as M1, M2, and M3 on Figure 8 in the DSA noise study, Exhibit 7. Monitoring at M3 shall not be required if the property owner does not consent. Monitoring shall be continuous for a period of 30 days after crushing and mining activities begin, and subsequently thereafter when there is a significant change in the number, type or location of mining and crushing-related equipment used on the site. If the 30 day monitoring results indicate that sound levels are more than 7 dBA over the ambient noise level, continuous monitoring shall continue until the next significant change of mining or crushing circumstances.

A-7.d
Noise levels from the county's quarry operation shall not exceed 10 dBA over ambient sound levels near the east property line of the Tower Rock site. When the county's quarry and the Tower Rock site are operating simultaneously, noise levels shall not exceed 13 dBA over ambient noise levels near the east property line. In addition to the existing Tower Rock monitor, a continuous noise monitor shall be installed either along the eastern property line of the Tower Rock site or on tax lot 170424-000. The final location of the monitor shall be approved by the county. *(it should be noted that Barbara Repman, owner of tax lot 170424-000 has volunteered to have a noise monitor placed on her property)*

A-7.d(1)
If the hourly L_{25} noise level from the two quarries exceeds 13 dBA over ambient noise levels at either continuous noise monitor along the Tower Rock east property line, the county will coordinate with Tower Rock to determine which quarry's operation is causing the noise level to be exceeded.

A-7.d(2)

The county shall maintain a record of the days when operations are, and are not occurring at the county's quarry. The county shall also document the weather conditions present during the days of operation and any other events that may have an impact on noise levels recorded by their noise monitors when the quarry is operating.

Staff offers no additional comment regarding terrain Cross-sections and regarding Groundwater, foundation monitoring, the MOU Between the county and Tower Rock, and regarding Road Adequacy Assessment.

Regarding Hours of Operation

Staff finds the applicant's assessment accurate, but does not recommend any change to staff's original recommendation.

Regarding the Road Maintenance Agreement

Concurrency has evaluated the requests of the applicant, which resulted in minor modifications of the Maintenance agreement. These edits have been discussed with the applicant and the applicant's consultant. As a result, a final road maintenance agreement (Exhibit 56) has been submitted.

EX 58 (07//22/09) - Keith and Barbara Gagnier live directly across from 262nd St. at 26119 NE Bradford Rd and are concerned with the continual screeching loud noise from the "brakes" of the trucks as they make a complete stop on 262nd and then proceed to make a right onto to Bradford Rd. To listen to this screeching noise continually everyday except Sunday for a number of years is unacceptable.

EX 59 Greenlight Engineering on behalf of Bob Weber conducted a review of the transportation related impacts of the proposed Livingston Mountain Quarry expansion in Clark County, Washington on Feb 1, 2008.(08/24/09)[14]

Greenlight completed an independent review of the traffic impact study and the associated memorandums, they visited the site to collect field measurements, and they conducted research on the approval criteria for the project. It is acknowledged that in this area of Clark County, there are 110 real roadway capacity deficiencies. The key issue with the proposed development is the safety of the roadways in the area and their ability to handle the safety impact that this development will have on the roadway system. Based upon the materials in the record, it is clear that there is insufficient evidence to approve this application based upon roadway adequacy and safety issues. There is evidence within the written record as well as evidence that we provide herein that should result in denial of this application based on traffic safety issues.

Executive Summary

The Clark County approval criteria are not met, and this application should be denied. Based upon the materials in the record, there is insufficient evidence to support a conclusion that the transportation system is adequate to serve the proposed development:

[14] The Examiner notes that this analysis covers the same roads as the current application, since they share the driveway to enter and exit the quarry.

- There is insufficient intersection sight distance at the intersection of 53rd Street/262nd Avenue
- It is unclear if there can be sufficient stopping sight distance at the intersection of 53rd Street/262nd Avenue even with improvements based on both Clark County and AASHTO standards
- The applicant's traffic engineer has incorrectly measured stopping sight distance
- The applicant's traffic engineer has provided no evidence to support the reduction of operating speed on 53rd Street to support their stopping sight distance calculation
- The trip generation of the site is not based upon any data and does not follow industry or Clark County standards
- The large trucks generated by the proposed development will likely cross the roadway centerlines or leave the paved surface of various roadway segments along the assumed haul route, creating a safety hazard
- There is insufficient intersection sight distance at the intersection of SR 500/53rd Street
- The need for a southbound left turn lane at SR 500/53rd Street was not evaluated
- WSDOT was not included regarding an evaluation of sight distance, the potential need for a southbound left turn lane at SR 500/53rd Street, or in the review of the safety of the proposed haul route
- The proposed development has a probable significant adverse impact on both the Clark County and WSDOT roadway systems
- The proposed development would create traffic safety hazards and would materially aggravate safety issues

Exhibit 60—Linda Rectanus (7/24/09)

Linda Rectanus's comment, echoing previous testimony, addresses intersection sight distance, trucks tracking outside of lanes, road capacity, the Applicant's recommended noise conditions, hours of operation, and the Applicant's memorandum of understanding (MOU) with Tower Rock Products.

Exhibit 61—Barbara Repman Comment(7/24/09)

As before, in her comment letter, Barbara Repman questions the Applicant's traffic capacity analysis, speed study, recommended noise conditions, and hours of operation.

EXHIBIT 62—APPLICANT'S REBUTTAL OF THE OPEN RECORD PERIOD COMMENTS (7/32/09)

Response to Exhibit 53-Mark Jones Public Comment

Mark Jones questions the applicability of the traffic study area as well as general road conditions (in particular, the 90-degree curves on SR-500) in this public comment submittal. See below memorandum prepared by Lancaster Engineering rebutting statements related to traffic, road conditions, and road capacity.

Response to Exhibits 54 and 56-Revised Maintenance Agreement

The Applicant has no further concerns with this revised agreement for pavement improvement fees.

Response to Exhibit 55a-Tsuyoshi Inouye Public Comment

This public comment prepared by Tsuyoshi Inouye addresses concerns related to stormwater runoff from impervious areas in the Applicant's proposed quarry under current site conditions. As summarized in the Applicant's preliminary stormwater design report (part of Exhibit 6) and shown in the proposed site plans (also part of Exhibit 6), stormwater runoff from active areas of the site will be conveyed to wet ponds and infiltration basins for treatment and infiltration to ground. The size of the ponds and infiltration basins will depend on the active-area acreage of the mine. The active areas of the mine will include the existing quarry floor shown in some of the photographs included in this public comment. Runoff from all active areas will be managed using this method.

The proposed stormwater plan was developed in conformance with Clark County's stormwater ordinance and the State of Washington National Pollutant Discharge Elimination System Sand and Gravel Stormwater Permit.

Mr. Inouye also requests that the Applicant annually monitor groundwater quality in his community well for inorganic chemistry parameters (beryllium, chromium, copper, arsenic, selenium, cadmium, barium, antimony, mercury, thallium, lead, sodium cyanide, turbidity, fluoride, nitrite-n, and nitrate-n) as well as organic constituents (northwest total petroleum diesel range organics [NWTPH-Dx], semivolatile organic compounds [SVOCs], and coliform). Many of the requested inorganic parameters are not reliable indicators of change in groundwater quality. The effects of a change in water quality will be manifested more in the balance of cations and anions in the water; therefore, the Applicant's list of recommended parameters (summarized in MFA's groundwater assessment, Exhibit 22) includes cations and anions that are more commonly evaluated in water quality studies. However, if requested by a resident local to the site, in addition to the parameters listed in the groundwater analysis report, the Applicant will include the following parameters in the baseline groundwater analysis:

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

As summarized in MFA's groundwater analysis, one water quality sample coupled with a series of groundwater elevation measurements is sufficient to establish background groundwater conditions. Annual assessment of groundwater quality is not a cost-effective means of addressing potential well impacts. Any impact on groundwater quality resulting from mining and crushing operations, although unlikely, will be readily apparent through a reduction in volume or a noticeable change in water quality. If these conditions become apparent, the Applicant will perform additional analysis to assess whether an impact has occurred.

Mr. Inouye also questions the Applicant's decision to place a limit on the distance from the

mine for a residence to be included in the pre-mining assessment of structures, foundations, and wells. As stated in the Applicant's open record submittal (Exhibit 52), residences located more than 2,000 feet from the quarry that request to be added to the groundwater and foundation monitoring program will be included at the discretion of the Applicant. In Mr. Inouye's case, the Applicant will include his community well in the monitoring program.

Response to Exhibit 57—County Planning Memo

In general, the Applicant agrees with the proposed changes and additions to the conditions of approval as prepared in this exhibit by Jan Bazala of Clark County Development

Services. For the sake of consistency, the Applicant does recommend the following revisions (shown in red) to two of these noise conditions:

A-7.c—The hourly L_{25} noise levels from the county's quarry operation shall not exceed 10 dBA over ambient noise levels near the south property line, as monitored at the locations shown as M1, M2, and M3 on Figure 8 in the DSA noise study, Exhibit 7. Monitoring at M3 shall not be required if the property owner does not consent. Monitoring shall be continuous for a period of 30 days after crushing and mining activities begin, and subsequently thereafter when there is a significant change in the number, type, or location of mining and crushing-related equipment used on the site. If the 30-day monitoring results indicate that the hourly $_{L25}$ sound levels are more than 7 dBA over the ambient noise level, continuous monitoring shall continue until the next significant change of mining or crushing circumstances.

A-7.d—The hourly L_{25} noise levels from the county's quarry operation shall not exceed 10 dBA over ambient sound levels near the east property line of the Tower Rock site. When the county's quarry and the Tower Rock site are operating simultaneously, the hourly $_{L25}$ noise levels shall not exceed 13 dBA over ambient noise levels near the east property line of the Tower Rock site. In addition to the existing Tower Rock monitor, a continuous noise monitor shall be installed either along the eastern property line of the Tower Rock site or on tax lot 170424-000. The final location of the monitor shall be approved by the county.

The Applicant has no further concerns or comments on this exhibit submitted by Mr. Bazala.

Response to Exhibit 58—Gagnier Public Comment

Keith and Barbara Gagnier summarize their concern about noise related to truck brakes as trucks slow down and stop at the intersection of NE 262nd Avenue and NE Bradford Road (or NE 53rd Street). The Clark County Department of Public Works does employ commercial compliance officers who are a part of the Clark County Sheriff's Department. The commercial compliance officers enforce compliance with local and state laws related to truck safety. If residents living along NE 262nd Avenue and NE 53rd Street witness repeated apparent violations, or believe a single truck is a repeat offender, they can contact the sheriff's department or Clark County Code Enforcement and request that these officers evaluate the problem.

Response to Exhibit 59—Bob Weber Traffic Report Profile

This exhibit submitted by Bob Weber appears to have been prepared in response to the Kittleson & Associates, Inc. traffic impact study prepared for the Tower Rock Products Livingston Mountain Quarry. The issues raised in this exhibit that are applicable to this project have already been addressed in the traffic impact study and related addendums prepared by Lancaster Engineering and MFA on behalf of the Applicant (Exhibits 6, 15, 23, 47, 48, and 49). For discussion of this exhibit, see attached memorandum prepared by Lancaster Engineering.

Response to Exhibit 60—Linda Rectanus Public Comment

Linda Rectanus's public comment letter addresses intersection sight distance, trucks tracking outside of lanes, road capacity, the Applicant's recommended noise conditions, hours of operation, and the Applicant's memorandum of understanding (MOU) with Tower Rock Products. The Applicant's rebuttal of the sight distance, vehicle tracking, and road capacity is addressed in the attached memorandum from Lancaster Engineering. Rebuttal related to

comments on the noise conditions, hours of operations, and the MOU is presented in the following paragraphs.

Noise conditions

Ms. Rectanus takes issue with the fact that the recommended noise conditions allow for consideration of ambient noise levels that may increase over time as development of the surrounding area continues. She asserts that ambient background levels will not rise because almost all of the surrounding property has already been developed, when, in fact, there are parcels in the vicinity of the quarry that are 10 acres or larger and thus are suitable for further development. In addition, Mr. Inouye states in his public comment that he has one lot that is still undeveloped.

Ms. Rectanus also recommends that the language in the original conditions limiting measured noise levels to 10 dBA over the *existing* ambient noise levels remain in the noise conditions. However, ambient noise levels may rise over time, and if the noise limits are based on existing ambient levels documented in the noise study prepared by Daly Standlee & Associates, Inc., exceedances of the limits will occur if the ambient level increases over time. Any increase in the background ambient noise level will contribute to the hourly L_{25} noise level measured by the continuous noise monitors. This means that, as ambient noise levels increase, the noise levels from the proposed quarry must decrease to prevent the measured noise level from exceeding the noise limits. The Applicant supports the noise conditions presented in the Development Services open record response, as discussed above in the section for Exhibit 57, because these conditions allow the Applicant to assess ambient levels over time.

Consideration of changes in the ambient noise level over time would not be necessary had the Applicant taken a less restrictive and less protective approach. Ambient noise with respect to the Applicant's proposal includes *all* noise generated off site, including noise generated by Tower Rock. If the Applicant had included noise from Tower Rock in the background noise measurements, the resulting noise limits could have been 53 dBA or higher (10 dBA over the 43dBA background including noise from the Tower Rock site). The Applicant selected a more conservative approach in consideration of the local residents and neighborhood livability.

Hours of Operation

In regard to her comments on the hours of operation, the Applicant reiterates that the noise study was comprehensive and the recommended noise mitigation measures will allow the quarry to operate within the criteria contained in the county's noise ordinance.

Memorandum of Understanding

Ms. Rectanus questions the efficacy of the MOU between the Applicant and Tower Rock Products. The Hearing Examiner's decision must be based on the Applicant's proposal meeting the criteria of the zone change and conditional use permits, not on the operations or actions of Tower Rock Products.

Response to Exhibit 61—Barbara Repman Public Comment

In her public comment letter, Barbara Repman questions the Applicant's traffic capacity analysis, speed study, recommended noise conditions, and hours of operation. Rebuttal of the comments related to the traffic capacity analysis and speed study is summarized in the

attached memorandum prepared by Lancaster Engineering. Rebuttal of the comments on the noise conditions and the hours of operation is summarized in the following paragraphs.

Noise conditions

In regard to the first of the Applicant's recommended noise conditions, Ms. Repman wants more clarification of what constitutes a "significant change." Jan Bazala, in his open record response (Exhibit 57), defines a "significant change" as a change in the number, type, or location of mining and crushing-related equipment used on the site (see the suggested revision to condition A-7.c in the exhibit). For example, if the Applicant were to bring another front-end loader to the site to haul blasted or crushed rock, this would constitute a "significant change." Another example of a "significant change" would be moving the rock crusher and screens to a new location within the mine.

Ms. Repman is concerned that the recommended noise conditions are simply a means of revising the noise limits upward. She states that "the Applicant realizes that the noise conditions are difficult to meet if both quarries operate simultaneously." The Applicant agrees that the original noise conditions would be problematic even if the recommended noise mitigation measures were employed with both quarries operating at the same time. However, her request to limit both quarries to *a total noise limit of* 43 dBA, while appearing reasonable on the surface, is fatally-flawed; reason being that any noise generated by operations at the Applicant's site will add to the total measured noise levels.

Tower Rock Products is currently permitted to operate the adjacent Livingston Mountain Quarry at a maximum hourly $_{L25}$ noise level of 43 dBA (which is an increase of 10 dBA over previously measured ambient noise levels at the site). All activities undertaken on the Tower Rock site that do not exceed this noise limit are permitted.

The problem arises when the Tower Rock quarry operates at the same time as the Applicant's quarry. If the Tower Rock site is operating at its allowed maximum noise level, any audible noise generated at the Applicant's site will increase the measured noise level above the requested limit of 43 dBA, resulting in a violation. In fact, if the Applicant were to simultaneously operate at the same level, the measured cumulative noise level would be 13 dBA over ambient noise levels. This increase is simply due to the cumulative nature of noise, not because of increased or unmitigated operations at one or both quarries. The apparent problem is directly and solely attributable to the cumulative properties of noise.

There are only two ways to prevent violations of a total 43 dBA noise limit when both quarries are operating:

1) Impose a lower limit on the existing Tower Rock site in order to allow some noise generation on the Applicant's site; or

2) Restrict the Applicant from generating any audible noise during the hours of operation at the Tower Rock site.

Since new restrictions cannot be imposed on the Tower Rock site as part of the Applicant's proposal, the first alternative is not a viable option and because both quarries must operate during the same restricted hours of operation, the second alternative is also not feasible. Ms. Rectanus's proposal to limit the total cumulative noise levels to the existing noise limit for Tower Rock of 43 dBA is not practical.

When both quarries are operating at the same time at levels 10 dBA above ambient noise levels,

the combined or cumulative noise levels measured along the east property line of the Tower Rock site can be mathematically calculated. This cumulative noise level is the noise limit that - the Applicant is proposing for this application during periods when both quarries are operating simultaneously.

Applying an hourly L_{25} noise limit of 10 dBA over ambient noise levels is only appropriate for either quarry in the absence of noise generated by the other quarry. Please refer to the discussion of noise limits and the effects of increased ambient noise levels in the section on Exhibit 60.

Hours of operation

With regard to the hours of operation, Ms. Repman concedes that the Applicant's argument for operating hours between 7:00 a.m. and 7:00 p.m. (as described in the staff report) is based on a sound approach. However, she then states that limiting the hours is a more conservative approach because there are too many unknown factors related to simultaneous operations of both quarries. Although the Applicant does not know what additional factors may arise in this situation, cumulative traffic and noise impacts from both quarries have been addressed. For example, the traffic study included truck trips from Tower Rock in the background traffic counts. In addition, the revised noise conditions summarized in county staff's open record response address the cumulative noise impacts resulting from both quarries operating simultaneously.

Michael Ard PE with Lancaster Engineering wrote a memorandum for the applicant (Part of Ex 62) in response to the letters provided by Barbara Repman (July 23, 2009) and Linda Rectanus (July 24, 2009), together with some brief discussion of the letter report prepared by Greenlight Engineering for the adjacent Livingston Mountain Quarry (February 1, 2008).

In response to the concerns raised in the letter submitted by Linda Rectanus:

1) The intersection of NE 262n^{d} Avenue at NE 53r^{d} Street was discussed in detail in the traffic impact study prepared for the Livingston Mountain Quarry (Tower Rock) as well as in the letter prepared by Greenlight Engineering. This intersection was not discussed in detail in our reports since appropriate mitigation has already been provided at this location. Sight distance to the east has been improved by clearing of vegetation, and is currently 555 feet. Sight distance to the west is limited to 352 feet by a crest vertical curve. The available sight distance is adequate for safety in each direction. Notably, since the driver's eye in a truck is much higher than in a passenger car, the crest curve provides less obstruction and sight distance for trucks is better than for other vehicular traffic at this location. An advance warning sign indicating the presence of the NE 262nd Avenue intersection has been installed on the westbound approach to the intersection. An advance warning sign could also be installed on the eastbound approach, although a sign warning of trucks entering the roadway is not needed. With the exception of consideration of an eastbound intersection warning sign, no further mitigations are recommended at this location.

2) The truck turning templates provided by the applicant in the open record submittal (Exhibit 52) show that it is possible for trucks to safely travel the roadway under existing conditions. The fact that there have been no incidences of truck collisions even with two-way truck traffic travelling on this road is strong evidence to support

the model analysis. Trucks can cross the roadway centerline since there is no physical barrier or center median on these roadways; however it is not necessary for trucks to cross the centerline to travel along the roadways, and medians or barriers are not appropriate or necessary treatments for these roads.

3) Regarding the statement that truck travel needs to be restricted to daylight hours due to lack of lighting along the roadways and at intersections, there is no reason to impose such a restriction. Rural roadways are typically only illuminated by vehicle headlights. Roadways and intersections without illumination are common and do not present a significant safety hazard for any vehicle class.

4) The operational analysis cites both the daily and peak hour traffic volumes. These volumes were developed knowing that the site would not operate 24 hours per day. The analysis provided was correct, and the roadways and intersections are not approaching capacity even under peak traffic conditions.

5) Regarding the proposal to limit peak traffic volumes to one week per year, the traffic analysis demonstrates that the area roadway can safely support the peak traffic volumes regardless of the duration of the peak. The one week interval was cited based on historical demand data in order to give a reasonable estimate of the frequency and duration of peak operation demands. Any limitation on duration of peak production would not be supported by the data or by the analysis.

In response to the concerns raised in the letter submitted by Barbara Repman

1) Ms. Repman is correct in her assertion that the projected peak traffic demand from the proposed quarry is 280 vehicles rather than 240. She is also correct in asserting that this is a 147% increase rather than a 126% increase. However this correction does not change any of the study findings. It should be noted that the operational and safety analyses provided were based on peak hour volumes rather than the daily traffic volumes. The peak hour volumes were reported and analyzed correctly. Ms. Repman errs in saying that the increase may be as much as 247 percent, since this figure would include already-approved traffic volumes from the Livingston Mountain Quarry (Tower Rock) site. Accounting for potential increases in traffic volumes from that site would raise the background traffic levels, resulting in a lower percent increase for the proposed Livingston Quarry. Regardless of how the traffic volumes are numerically represented, there remains ample capacity on the area roadways.

2) Regarding staging or stopping of trucks on NE Highland Meadows Drive, truck traffic can simultaneously enter and exit from the subject site. Vehicles exiting from the site are required to yield to through traffic traveling on NE Highland Meadows Drive and do not obstruct traffic on the roadway. Entering vehicles need only briefly yield to the very low volumes of southbound through traffic. It is not readily apparent why trucks from the adjacent quarry might park on NE Highland Meadows Drive. The applicant is not responsible for or associated with these vehicles. The access driveway serving the proposed quarry will have sufficient length to allow queuing of multiple vehicles within the site.

3) Ms. Repman correctly noted that the analysis of NE 53r^{d} Street cites level terrain. The portion of NE 53rd experiencing the highest traffic volumes is the western end, which is level. Analysis of the rolling terrain portion of the roadway in the vicinity of NE 262n^{d} Avenue reveals that this portion of the roadway will operate at 10 percent of

capacity. The overall roadway was analyzed based on the portion on level terrain since that section had the higher volume-to-capacity ratio. The analysis provided in the road capacity exhibits is correct. Worksheets detailing analysis results for both the level terrain on NE 53rd Street and the rolling terrain on NE Bradford Road are attached to this memorandum.

4) Based on the traffic volumes projected at the site access on NE Highland Meadows Drive, disruptions to the flow of traffic on NE Highland Meadow Drive will not be frequent, nor will they be hazardous. Since traffic entering the roadway from a driveway is required to yield to through traffic, installation of a stop sign would have no appreciable affect on safety or operation at this location. A stop sign is therefore not recommended. The letter from Greenlight Engineering, dated February 1, 2008, was written prior to the traffic impact study Lancaster prepared for the Livingston Quarry, and prior to all supplemental analysis that has been conducted for the proposed development. It also predates the sight distance and roadway improvements constructed as conditions of approval for the Livingston Mountain Quarry (Tower Rock) site. Most of the discussion contained in the letter is not applicable to the current roadway and intersection configurations. The discussions of trip generation are not applicable to the proposed Livingston Quarry development. The remaining concerns raised in the letter (such as off-tracking of trucks traveling along the haul route) have already been addressed in previous analysis.

5) All significant concerns regarding traffic operations and safety for the proposed Livingston Quarry have been addressed in detail in the numerous documents we have prepared. The conditions of approval proposed by County staff will allow the proposed development to meet or exceed the transportation standards established by Clark County. No further mitigation is recommended.

FINDINGS

OVERVIEW

The applicant's 170 acre proposal already has a 50 acre surface mining overlay, which it shares with Tower Rock, but seeks to expand this overlay by another 120 acres. Prior mining in the existing 50 acre surface mining overlay was discontinued sometime in the 1980's.

There are really two overriding considerations that have guided this Examiner in addressing the issues in this case. While the neighbors did not address the issue of rezoning, focusing instead on the impacts, as the land use finding 2 will show, the examiner finds the staff's and applicant's approach to the rezoning to be deficient which has resulted in the denial of the rezoning request. Rezoning, in this case expanding the surface mining overlay, is a change from a previous policy adopted by the Board of Commissioners. That initial decision selected a size of the current overlay for a reason or reasons, but those reasons are not in the record. So we have no idea why the Commissioners chose to limit the overall in the first instance. The fact that there is more aggregate on the mountain was always known. If the presence of aggregate was sufficient to warrant a rezone, there is likely a great deal more of

aggregate on the mountain. The aggregate supply on the mountain might be able to support several more quarries. There is no justification given by the staff or the applicant from exceeding the original limits of the overlay. The need for additional gravel is simply assumed. Normally, this might be a legislative decision for the Board, but the staff refers to a policy, stated in an email from Planning Director Marty Snell by which the choice was made to handle this rezone as a Type III process by the examiner and not as the Type IV process. No analysis of the choice of process is provided, it is mere conclusion in this record.

The impacts on the residents who had previously been allowed to locate there by the County is recounted as regrettable, but somebody must suffer for the greater good and this is where the gravel is. This leads to the second consideration. The staff uses an appellate decision, again without any analysis, to argue that cumulative impacts of locating a new crusher/drilling quarry abutting an existing crusher/drilling quarry notwithstanding, each quarry's impacts must be evaluated separately and independently in terms of criteria, even though the cumulative impacts, that are not at all speculative and are known.

The applicant concedes this point partially on the issue operational noise (crushing, drilling, loading) by agreeing to establish the ambient noise levels without the other quarry operating. The ambient noise levels cannot be exceeded by a specific measurement of noise – 10 dBAs. But the ambient noise levels themselves are to be reviewed every year or so, so they are cumulative, prospective and unrelated to his project. The cumulative rise in the ambient noise, will increase the totally of noise exposure, should it occur. Just as we count cumulative trip impacts to determine concurrency, cumulative noise and other impacts that are predictable and surely will affect neighbors and need to be accounted for. No argument has been raised that a County operation whose impacts may measurably devalue some of the properties amounts to some form of inverse condemnation and requires compensation.

The impacts, however, are different for different neighbors. The east neighbors are likely to be most affected by the crushing and drilling and other operations. The southern neighbors, who are more buffered, are most bothered by the noise from at least doubling of heavy trucks with trailers and loaders, careening down a single, steep, narrow and curving roads before reaching a state highway. The cumulative impacts might be manageable within the parameters of the permitted standards, if there is greater coordination between the operators than originally envisaged by the applicant. That cooperation in terms of an expanded memorandum of understanding between the parties is how the issue is addressed in this decision and which results in the approval of the conditional use. The findings below will deal with these impacts issue by issue.

Zoning and the CUP Approval Criterion:

Approval of a zone change or a rezone necessary to expand the overlay is governed by 40.560.020.G.

G. Approval Criteria.

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. *The zone change either:*
   a. *Responds to a substantial change in conditions applicable to the area within which the subject property lies;*
   b. *Better implements applicable comprehensive plan policies than the current map designation; or*
   c. *Corrects an obvious mapping error.*
4. *There are adequate public facilities and services to serve the requested zone change.*

Approval of a conditional use permit is governed by a single general and somewhat subjective approval standard in CCC 40.520.030(E)(2), which provides that:

> *In order to grant any conditional use, the hearing examiner must find that the establishment, maintenance or operation of the use applied for will not, under the circumstances of the particular case, be significantly detrimental to the health, safety or general welfare of persons residing or working in the neighborhood of such proposed use or be detrimental or injurious to the property and improvements in the neighborhood or to the general welfare of the county.*

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

> *In permitting a conditional use the hearing examiner may impose, in addition to regulations and standards expressly specified in this title, other conditions found necessary to protect the best interests of the surrounding property or neighborhood, or the county as a whole. These conditions may include but are not limited to requirements:*
>
> a. *Increasing the required lot size or setback dimensions;*
> b. *Increasing street widths;*
> c. *Controlling the location and number of vehicular access points to the property;*
> d. *Increasing the number of off-street parking or loading spaces required;*
> e. *Limiting the number of signs;*
> f. *Limiting the lot coverage or height of buildings because of obstructions to view and reduction of light and air to adjacent property;*
> g. *Limiting or prohibiting openings in sides of buildings or structures or requiring screening and landscaping where necessary to reduce noise and glare and maintain the property in a character in keeping with the surrounding area; and*
> h. *Establishing requirements under which any future enlargement or alteration of the use shall be reviewed by the county and new conditions imposed.*

CCC 40.520.030(E)(1).

Uses listed as being conditionally allowed are deemed to be consistent with the underlying zoning, much the way that out-right allowed uses are consistent with the zoning. However, listed conditional uses are also assumed to have potential impacts that are difficult to predict in advance and which warrant mitigating conditions on a case-by-case basis. Mining is allowed outright and rock crushing is conditionally allowed where, as here, the surface mining overlay designation has been applied or is being sought. CCC 40.250.020(B). The Examiner finds that rock crushing at least can be made, consistent with the FR-80/40S zoning and the uses allowed in that zone, but there are direct impacts from the crushing operation that require mitigation to lessen those impacts on surrounding properties and the neighborhood. In particular, crushing and operating noise, dust, truck traffic and truck noise of trucks, oversized trucks, trucks with trailers and side loaders that make their way up and down the relatively narrow access road and related impacts are discussed in the sections that follows, along with appropriate mitigation for these impacts to achieve compliance with the basic CUP approval criterion. The Examiner is persuaded by the neighbors that the frequency and duration of the audibility of the trucks is seriously disruptive of their life styles and may cumulatively with other quarry operations exceed the standards for noise duration, if not coordinated. The evidence has been produced that the County is willing to undertake some form of continuous repair of the road damage and unrebutted noise expert testimony that the noise can be controlled within the levels the County and the State allow to be lived with. The Examiner agrees that noise can be controlled within standards, but with some coordination of truck frequency, because standards can be exceed for 15 minutes of an hour. Annoyance to the neighbors can be alleviated with better breaks and perhaps some speed control, but there is not enough clear evidence of how much or what standards are at issue.

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

> *The purpose of the Forest 80 district is to maintain and enhance resource-based industries, encourage the conservation of productive forest lands and discourage incompatible uses consistent with the Forest I policies of the comprehensive plan. The Forest 80 district applies to lands which have been designated as Forest Tier 1 on the comprehensive plan. Nothing in this chapter shall be construed in a manner inconsistent with the Washington Forest Practices Act.*
>
> *Forest 40 District. The purpose of the Forest 40 district is to encourage the conservation of lands which have the physical characteristics that are capable of management for the long-term production of commercially significant forest products and other natural resources, such as minerals.*

CCC 40.210.010(A)(1).

Throughout all opponent testimony described possible negative impacts on non-resource residential uses, and some of that discussion was focused on impacts of the current quarry operation, which because of the economy is not operating at its peak potential. While these residents comprise the neighborhood to be evaluated under CCC 40.520.030(E)(2), which is zoned R-5, they are not among the uses for which the Board of Commissioners established the Forest Districts.

The rural residential districts are intended to provide lands for residential living in the rural area. Natural resource activities such as farming and forestry are allowed and encouraged in conjunction with the residential uses in the area. These areas are subject to normal and accepted forestry and farming practices.

Aside from the legal question of whether the applicant has met his burden of proof to expand the overlay, in as much as the applicant seeks to add rock crushing to the a prior mining operation which is otherwise allowed, the Examiner's review is limited strictly to impacts attributable to the crusher and not impacts that are uniquely attributable to the mining operation. The applicant now also seeks approval for hours of operation which exceed those which were granted to the abutting quarry and sustained on the appeal to the County Commissioners. The applicant also seeks to establish the maximum number of additional daily vehicle trips, not just an increase in ADTs, but fully loaded rock trucks, and to seek and allowance for 100% exception to those limits, for unlimited "spike" periods, which are to be dictated solely by the demand for gravel. In a similar vein, the crusher (as will all the related noises) will be a new noise source on the site after almost 30 years. Consequently, try as we might to evaluate impacts that are solely related to the crushing operation, and not the mining operation, that is not entirely possible because of the significant overlap of impacts between the two integrated operations.

Impact Issues Raised by the Opponents:

Only issues and approval criteria raised in the course of the application, during the hearing or before the close of the record are discussed in this section. All approval criteria not raised by staff, the applicant or a party to the proceeding have been waived as contested issues, and no argument with regard to these issues can be raised in any subsequent appeal. The Examiner finds those criteria to be met, even though they are not specifically addressed in these findings. CCC 40.520.030(E)(2) does not limit the range of potential impacts that could be significantly detrimental to the health, safety or general welfare of people residing or working in the neighborhood or be detrimental or injurious to the property and improvements in the neighborhood or to the general welfare of the county. In that light, the range of relevant impacts is large, and the opponents repeatedly raised several that they claim warrant denial or serious limitation of this permit. While the Examiner does not agree that these issues warrant denial, they certainly merit a response and in many instances conditions of approval. In addition to rezoning those issues are, noise mitigation for the crusher and other mining operations, cumulative impacts of two adjacent quarries, hours of operation, additional truck trips and the road maintenance agreement, which will provide funds for maintenance to 262nd Ave. and 53rd St, and an agreement between the two quarries to limit or control some impacts and fairly and expeditiously determine the responsibility for any violations, especially of the noise standards, blasting impacts on groundwater and wells. In resolving these issues the Examiner adopts the following findings:

LAND USE:

Land Use Finding 1: Zoning

The property is zoned FR-40 and FR-80. In order to mine or process rock in any zone, a Surface Mining Overlay is required. The fifty acres of the 170 acre site that abut the south and west property lines of the Tower Rock site already has the required overlay; however, as proposed, the full proposed quarry expansion will require the expansion of the overlay. The staff concedes that the status of the overlay as a zoning district, as opposed to a Comprehensive Plan designation is somewhat ambiguous.

What staff labels as the county's policy, appears to be contained in an email from Marty Snell (Long Range Planning)[15] that establishment of new Surface Mining Overlays where none existed should be through the comprehensive plan amendment (Type IV) process; expansions of existing overlays can be accomplished through a Type III process. For the reasons discussed below and in absence of any analysis to this conclusion about the choice of process the Examiner is not entirely convinced, but accepting this quasi-judicial responsibility to change or expand County Commissioners prior decision limiting the size of the overlay to what it now is, requires a basis other than the desire to do so. That burden has not been met as shown in the next finding. Also as alluded in the overview, the policy has no limits. For example what if there were 500 acres of gravel or more.

Under the Surface Mining Overlay District provisions of 40.250.020(B), mining is a permitted use, subject to Type II site plan review. Processing rock, however (i.e. crushing), is a conditional use, which requires a Type III process.

Land Use Finding 2: Rezoning Criteria

40.560.020.G. includes the approval criteria for zone changes. Zone changes may be approved only when all of the following are met:

1. The requested zone change is consistent with the comprehensive plan map designation.

The comprehensive plan designations for the site are Forest Resource 1 and Forest Resource 2, which is consistent with the site's FR-80 and FR-40 zoning of the site. The Surface Mining Overlay District may be combined with any other zoning district; therefore this criterion is satisfied.

2. The requested zone change is consistent with the plan policies and locational criteria and the purpose statement of the zoning district.

While expanding the existing overlay will increase supply of rock, nothing in the record indicates that the supply of aggregate rock in Clark County is at risk. There is nothing in the record to suggest that the Commissioners did not know about the presence of aggregate outside the immediate boundaries of the existing overlay. In fact there is a good possibility that

[15] "Gents - I just got off the phone with Chris Horne and I have concluded that the proposal to expand the existing surface mining overlay for Livingston Mt. quarry can proceed as a Type 3 rezone application. Caveats to the Type 3 application include submitting concurrent CUP and SPR applications and, importantly, a requirement that you hold a neighborhood meeting 45 +/- days ahead of the hearings examiner hearing. I'll defer to staff to address this when you come in for a pre-app. Related to this is clearly the need to clean-up the comp plan and code language...."(File labeled 07-Narrative)

there is aggregate beyond the 120 acres of the proposed expansion. It is possible that there is room enough for several more mining operations based on supply alone – that issue is not addressed, but statement of the need alone is not a basis for expansion of the overlay. While the site and most of the adjacent land uses are resource-oriented, and conditions of approval should safeguard the public welfare, there will be unavoidable impacts. Of those impacts cumulative truck noise exacerbated by one access road seems to affect the greatest number of neighboring residences. It would appear that crushing noise and blasting may be mitigated within the limits permitted by the law, except that there are cumulative impacts with each new operations. The staff even argued that each operation becomes part of ambient noise level that can be exceed by 10dBAs; thus potential for exponential noise expansion could be great, if not otherwise conditioned.

Surface mining is a natural resource-based industry. Once reclamation is completed, the land will return to forest production.

While expansion of the surface mining overlay is consistent with the purposes of FR 40/80 district, it uses its necessary access through an R-5 district and impacts abutting residences. The fact is that as Clark County gets more and more populated, it will be harder and harder to locate such heavy duty operations without impacting "innocent bystanders". Every quarry permit process in recent years is a testament to this. The second rezone criterion is satisfied because it takes into account only the zoning district of the site itself and not other impacted districts.

3. The zone change either:

a. Responds to a substantial change in conditions applicable to the area within which the subject property lies;

b. Better implements applicable comprehensive plan policies than the current map designation; or

c. Corrects an obvious mapping error.

The applicant responds to sub 3(a), noting that this expansion will encompass the county's leased area, but provides no narrative even remotely addressing changing conditions.[16] That the existing overlay area may become exhausted in the future is not a currently present changed condition that would differ from any other proposed use. There are a lot of future contingencies thus stated that would permit any desired activity – we may run of housing at some point, shopping, industrial land etc. Without even getting into the meaning of "substantial", prospective exhaustion of the covered resource is too speculative and too contingent on random factors, such as state of economy, other mining operations etc. and has not been established by any evidence in the record. Eventually, supply of every resource becomes exhausted, even residential land within an area. Besides the requirement for a change in conditions is phrased in the present tense, which means the change has to have taken place already.

[16] The staff invents a future conditional changing condition which the applicant did not state:"The existing overlay site will eventually be exhausted and expansion of the overlay into the remaining leased area is necessary to expand to meet future (changing) needs."

Additionally the word "area" is not defined in the code, but the word site is. So an area has to be more than a site. For the purpose of quasi-judicial rezoning, not necessarily legislative, the area within which the property lies has always been construed to have a meaning such as vicinity or neighborhood or zoning district. For example, a site might not have been zoned higher density residential because there was no sewer service available, but when the sewer lines have reached the area, the site can be served and thus rezoned. Neither the applicant nor the staff identified any area conditions that have changed from the time that the original overlay was imposed.

Staff tries to help the applicant by trying to qualify the rezoning under sub 3(b), the expansion "better implements the comprehensive plan policies", since under the comprehensive plan's mineral lands policy 3.5.7,[17] land should not be used for other uses until the resource is commercially depleted and policy 3.5.14 recommends that mining should continue on existing active sites.[18] Notwithstanding that the site was inactive for almost 30 years, the record is silent as to why the overlay was never extended to the rest of the identified existing resource or how much of the resource there actually is in the vicinity, how many mining operations can potentially exploit the available resources on Livingston Mountain.

In other words, under criterion 3a, the question is what has changed since the County applied the overlay to the more limited area – based on this record, we don't know. It could have been that the road conditions or presence if residential dwellings prevented the County from approving a larger overlay – we just don't know. Under criterion 3b what balancing did the County conduct among various policies to originally limit the mining overlay to the current area. Based on this record we just don't know. Finally, no mapping error has been alleged, so it could not have been an oversight. In short, no basis has been proposed for expanding on the County's original decision which implemented the comprehensive plan policies. Before improving on Commissioner's work in expanding a zoning designation, the Examiner would like to know why the original decision was made and what has changed necessitating the revision of that designation.

It is clear that the Comprehensive Plan policies clearly cover the existing overlay, thus the conditional use can proceed on that basis for the 50 acres now available.

Perhaps the overlay expansion can be considered during periodic legislative zoning updates or when the current overlay is exhausted or closer to exhaustion or when if there is a change of conditions in the area such as provisions of roads more designed to handle this heavy industrial use.

4. There are adequate public facilities and services to serve the requested zone change. The applicant states that water and sewer facilities will not be necessary, as bottled water and portable restroom facilities will be provided. The applicant acknowledges that additional heavy trucks will accelerate wear and tear on local roads, and anticipates the need for a road maintenance agreement, which is now a condition of approval.

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[17] 3.5.7 Land shall not be used for any activity other than surface mining or uses compatible with mining until the gravel or mineral resource is commercially depleted, reasons for not mining the site are clearly demonstrated, or the site has been reclaimed.

[18] 3.5.14 The county shall allow continued mining at existing active sites.

In Tower Rock (Livingston Mountain Quarry – Ex 30. page 6)) the Examiner notes that conditional use approved last year increased the quarry truck usage by 500%. This proposed expansion and conditional use will more than double that bet on the only access road by 147%, plus production short-term peaks. There is significant dispute between the neighbors and the applicant and staff as to whether the roads are adequate for this many heavy trucks, often with trailers, pups and side loaders.

The neighborhood testimony is based on personal observations, including riding behind the trucks, which reportedly have some difficulty staying within their lanes. The applicant's consultant talked to the Tower Rock drivers and dispatchers and ran a computer simulation and concluded that everything is fine, there have been no accidents so far, prior to the proposed expansion of the use (Ex 52 and 62).

No reason is provided for the consultants failing to make their own actual observations, as the neighbors did, which would be the best evidence for how the roads are being used. The County's concurrency engineer offers that is just the way rural roads are, and they are used and destroyed by trucks all the time and everyone adjusts and is careful. NE 262nd Avenue is to be a single access road for two quarries, which immediately upon leaving the FF zone and the overlay, goes through R-5 zoning area, and from there the trucks can go east or west, but mostly west where the market is. There is a maintenance agreement which addresses the upkeep of the pavement of NE 262nd it does not address the impacts related to the conditional use (the noise of breaking, or accelerating).

Nevertheless, the applicant's consultant and Staff, in their professional evaluation conclude that these rural roads are adequate because the various safety factors, sight and stopping distances, can be raised to their legal requirements by clearing of vegetation etc (See Transportation and Concurrency findings). The Maintenance Agreement (Ex. 56) will provide funding, they say, for the upkeep of the main access road. While the road situation is not satisfactory, it apparently is adequate.

Land Use Finding 3: Conditional Use

According to the applicant, the multiple permits (such as state stormwater, air quality, erosion control) required for the crusher and proposed mitigations related to noise will address project related impacts. The applicant notes that resource related land uses abut the site on the north, east, and west sides of the site. The Examiner notes that existing just approved Tower Rock has a cumulative impact on the abutting and other residential uses and that some of the noise impacts, which would have violated noise standards by themselves, but may be allowed, to a very limited extent, when they do so cumulatively – see noise finding 10 below.

Land Use Finding 4: Surface Mining Overlay Site Area (40.250.020.D)

The site area must be at least 20 acres, with a minimum 60 foot width if extraction is combined with either asphalt mixing, concrete batching, clay bulking or rock crushing. The proposed expanded site easily meets these requirements, as does the existing overlay area on the site, which at 50 acres exceeds the minimum requirement by 250%.

Land Use Finding 5: Fencing (40.250.020.D)

The site shall be fenced according to the Department of Natural Resources' standards. *(See*

ConditionsA-7.b and D-1)

Land Use Finding 6: Setbacks (40.250.020.D)
The tops and toes of cut and fill slopes shall be set back from property boundaries according to the Department of Natural Resources' standards for safety of the adjacent properties, and to prevent damage resulting from water runoff or erosion of slopes. ***(See Condition D-2)***

Land Use Finding 7: Erosion Control, Drainage, and Benching (40.250.020.D)
Erosion control and drainage issues will be addressed through the county's stormwater review and the Department of Ecology's Sand and Gravel Permit to monitor process water from gravel washing operations well. ***(See Conditions A-5 and A-12 and Stormwater Finding 2)***

Forty foot wide benches are shown on most of the preliminary site plan profiles; the vertical faces to be approximately 20 feet in height. No portion of the bench/slope ratio will exceed a 1:1 slope, which should result in meeting future DNR reclamation requirements. Per 40.250.020.D.9, benches shall not be more than 40 vertical feet apart, and swales or ditches on benches shall have a maximum gradient of five percent (5%). ***(See condition D-3)***

Land Use Finding 8: Access Roads Maintenance (40.250.020.D)
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. The application proposes an 18 foot wide gravel driveway from the site to NE Highland Meadows Drive.

Planning staff is rightly concerned that an 18 foot wide gravel driveway will not be wide enough for two-way truck traffic. This could cause a backup on NE 262nd Avenue if entering trucks need to wait for trucks exiting the driveway. A gravel driveway will produce dust that may reduce visibility between county quarry traffic and Tower Rock traffic and other traffic on NE Highlands Drive and NE 262nd Avenue. Therefore, as a SEPA mitigation, the driveway shall be paved and maintained to a width of 24 feet. ***(See SEPA Condition 1 and Condition A-6)***

Land Use Finding 9: 40.250.020.H Land restoration
Under Section 40.250.020.H, a land restoration plan is required. Under RCW 78.44 a mining reclamation plan must be approved by the state DNR. Prior to final site plan approval, the applicant must submit an approved reclamation plan from the Washington DNR which incorporates the county provisions of 40.250.020.H. A separate narrative or plans as necessary shall accompany the DNR reclamation plan, referencing how the provisions of 40.250.020.H are met through the DNR reclamation plan. ***(See Condition A-4)***

Land Use Finding 10: Noise
CCC40.250.020(D)(5) establishes the maximum permissible noise levels in accordance with the provisions of the Washington Administrative Code (WAC) 173-60; however CCC20.50.025(1)(g) (the Clark County SEPA policies for noise) states that:

> "new sources of noise (are to) 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 Chapter 173-60 WAC that may affect existing or proposed residential uses (e.g., traffic, discharge of firearms, utility installations, etc.) be mitigated to the standards thereof as a Class B source of noise (i.e., fifty-seven (57) dBA), and to require noise studies where necessary to assure that proposals address these policies."

Under the Tower Rock crusher approval (CUP2007-00013), the examiner considered ten (10) decibels over ambient noise levels to the adjacent residences as being significant in this area. He found that the appropriate noise standard is 10 dBA above current ambient or the applicable limit in WAC 173-60-040, which ever is less.(Ex 30 p10) In Tower Rock the Examiner concluded that "In determining what is a significantly detrimental impact under CCC 40.520.030(E)(2), the Examiner must take into consideration the underlying resource zone and the extractive purposes for which that zone was established. In that light, the 5 dBA increase threshold in CCC 40.570.080(C)(3)(g) might be appropriate in an urban or residential zone, but is too restrictive in the FR-80 zone with a Surface Mine overlay. Instead, a threshold increase of 10 dBA above current ambient is more appropriate when tied to the state standards in WAC 173-60-040. From this, the Examiner finds that the appropriate noise standard is the applicable limit in WAC 173-60-040 **or** an increase of up to 10 dBA above current ambient, which ever is less." Based on ambient noise levels presented under the Tower Rock applications PSR2002-00044 and MZR2008-00079, the county established a maximum allowable sound level of 43dBA at Tower Rock's east property line, and 46 dBA at their south property line. In this case the applicant and the staff, have agreed that the noise level should be allowed to rise to 10 dBAs above the ambient noise level, and to 13 dBAs when both quarries are above 10 dBA's simultaneously, i.e. crushing or drilling at the same time. These noise levels are measured using the statistical sound level limit of L_{25}, which means that sound cannot exceed the allowable limit more than 15 minutes per hour. All references to dBA in this decision assume the hourly L_{25} measurement. However, unlike Tower Rock, which sets the standard based an a currently fixed ambient rate, here the applicant proposes and the staff agrees, that a cumulative increase in the ambient levels, reviewed annually, can raise the total decibel level.

The issue of the 15 minute per hour works with two quarries that work independently, or when the maximum of permitted trucks trips is concentrated in one hour, was not responded to – except that as to trucks, the statement was that audible does not mean in violation of the standard[19]. As several neighbors suggested, this may allow exceedance at some locations for up to 30 minutes an hour. If the purpose of the regulation is to protect the listener, then this would be a per se violation. If the argument is that the purpose of the regulation is to control each source, regardless of cumulative impact on the neighbors, then the purpose of protecting general public may be defeated. Similarly, the ability to raise the over-all dBA levels may have a similarly negative impact on those exposed to them.

A noise study completed by Daly-Standlee and Associates (DSA) were submitted with the application materials ***(Exhibit 7).*** DSA served as the county's noise consultant in reviewing sound studies prepared by Alfred Duble for the Tower Rock site. DSA has also testified at the

[19] This was in response to several observations that you can hear each truck for a minute and a half as it travels down or up the hill.

hearing and submitted changes to the conditions of approval to which the staff has agreed with some additional modifications.***(Exhibits 52, 57 and 62)***

DSA performed ambient noise level monitoring (without any Tower Rock quarry activity) at three sites between the proposed quarry and the residential properties to the south and southeast of the site (see figure 8 of Exhibit 7). Table 6 on page 22 of the noise study lists the ambient levels near the south property line between 36 and 38 dBA. By comparison, Duble found ambient noise at 36 dBA on the south side of the Tower Rock site. DSA assumes the same 33 dBA ambient noise level at the east side of the Tower Rock site as was established by Duble under the Tower Rock reviews.

In order to maintain consistency in measuring allowable SEPA noise levels, staff recommended that ambient plus 10 dBA also be the maximum allowable noise level for this project. Since the choice of 10 dBA allowable exceedance was not contested, the maximum allowable noise should be between 46 and 48 dBA at the county's south monitoring locations.

The standard for what happens when both operations are at 10 dBAs above ambient levels was contested, because if the two sources are at 10 dBA over simultaneously, the cumulative effect will be 13 dBA over, according to Standlee. On top of that the ambient noise level is to be revisited annually to see whether the noise threshold can be raised; however, the parties concede that the initial ambient noise level for each operation will be arrived at without the other quarry operating.

Table 10 on page 37 of the noise study indicates that the most likely affected residences to the east and south will all be under the maximum allowable dBA levels if the mitigation measures in the study are followed. Mitigation measures include:

- Equipment noise controls, such as plastic instead of wire crusher screens
- Fabricated barriers to screen crusher
- Locating the crusher close to a high wall of the quarry
- Overburden berms
- Rock drill barriers
- Generator enclosure

The noise study allows flexibility in how a particular mining plan achieves noise compliance; not all options will necessarily be required. Prior to the set up of the crusher, the operator shall submit a letter from an acoustical engineer stating the combination of proposed mitigations should be sufficient to meet SEPA noise levels. ***(See Condition B-4)***

To ensure compliance with these maximum allowable noise levels, continuous noise monitoring should be installed at the locations noted M1, M2 and M3 as shown in figure 8 of Exhibit 7. Once operations begin, actual readings should be recorded to establish whether three stations are necessary, or whether one or two can representatively capture actual noise levels occurring at the residences to the south. ***(See SEPA Condition 2 and Condition A-7.c)***

As already alluded to, once the county's quarry and the Tower Rock site are both operating simultaneously that cumulative noise levels may exceed each quarry's allowable noise levels ***(See Exhibit 24)***. Once county operations begin, testing will be required to distinguish, to the

extent practicable, between Tower Rock's and the county's contribution to noise to ensure that each operation is not exceeding their own separate allowable noise levels. A continuous noise monitor shall be installed along the east property line of Tower Rock's site or at tax lot 170424-000 (the Barbara Repman residence) assuming the owner allows access. ***(See SEPA Condition 3 and Condition A-7.d)***

There also is a proposed MOU between the two quarries that as proposed is not legally enforceable (Ex 52, att A), but it does not attempt to deal with cumulative noise impacts or the mechanism for resolving noise issues, such as the one described. A condition of approval will correct that omission.

Staff concluded that based on a 2002 Washington Court of Appeals case, *Boehm v. City of Vancouver* analysis of cumulative impacts is not required under SEPA unless there is some evidence that the project will facilitate future action that will result in additional impacts or the project is dependent on subsequent proposed development. However, the ruling in that case is mere *dicta* and even as such it does not state an absolute prohibition against weighing cumulative impacts based on an existing source of noise, as is done in measuring traffic impacts when existing traffic is always taken into account and added to the projected traffic counts. The Court's rationale was that unless there is a tie to a future project, prospective impacts are speculative. Here the noise impacts are not speculative, but measurable and both noise producing projects are based on a limited, area specific, single surface mining overlay; moreover, the testimony of the County's consultant projects the idea of absolutely predictability as to what level of noise will be produced, unlike the Fred Meyer case in *Boehm*. So whether this application will facilitate additional quarries is unknown, the logic for expanding the surface mining overlay relies on the existence of a neighboring quarry and the presence of an inactive quarry on this site. It is undeniable that there will be cumulative impacts in terms of noise of the operations, the noise of the trucks and truck traffic impacts on the quality of life of the neighbors. Both abutting mines will share an access road.

The County, having chosen to approve Tower Rock next to its own, albeit then inactive quarry, can not evade the responsibility for its deliberate choice of co-locating. As a practical consequence, the County's quarry should not be able to bootstrap itself to an ambient noise level created by its noisy neighbor and it does not do so.

However, in terms of the 15 minutes versus 30 minute exceedance, the County may in some circumstances have to lower their noise output or it can be made to coordinate the activities in order to avoid the cumulative exceedance of the L_{25} standard. The applicant proposes that when the two quarries operate simultaneously they will produce 46 dBA instead of 43dBA. This would be lower than what the Staff's original analysis would have allowed, but still exceed the individual standard by 3 dBAs. It is the experts opinion that cumulative exceedance, from 43 dBA to 46 dBA is unavoidable when 2 adjoining quarries are working at the same time.

Mr. Standlee testified that the 3dBA increase is not really that noticeable, the L_{25} level varying from 43dBA to 46dBA might in effect become L_{50} because each quarry can produce noise levels of 43dBA for 15 minutes out of the hour, which will become 46 dBA when they are doing so simultaneously. To achieve L_{25} at the monitoring stations as is being proposed, will require coordination between the quarries. The weight of the testimony, unless the parties

agree to coordinate the hours of their crusher or comparable noise sources, is that when they both operate during the same hour they might perforce have to do simultaneously. It is not clear from the record which result would be more grating on the neighbors or what the practicalities of the operations might dictate. For those reasons while the Examiner will defer to Mr. Standlee (Ex 52 and 62) and the Staff open record response (Ex 57), a condition of approval will require that the MOU address noise control coordination to ensure that L_{25} is what the neighbors are exposed to.

Discriminating "white noise" type backup alarms have been shown to be both safe and effective. Such backup alarms shall be required on all equipment under the control of the operator. ***(See SEPA Condition 4 and Condition A-7.e)*** However, the applicant did not wish to exclude non-County trucks that are not so equipped, nor for that matter ban any outside trucks with illegal or noisy breaks. The suggestions was that it was up to the residents to identify such trucks and report them.

According to WAC Chapter 173-60, noise from traffic on off-site roads is exempt from the noise standards; however, the county's SEPA policy encourages otherwise-exempt noise levels to meet a maximum limit of 57 dBA to residential properties (14 dBAs higher than the crusher). The noise study predicts that cumulative noise from the truck operation and compression brake use combined should not exceed 55 dBA for more than 15 minutes per hour to adjacent residential properties at least 50 feet away from the haul route. Again, to achieve cumulative L_{25} may require coordination between the operators, especially if the quarries are working at capacity and almost certainly if the County is spiking or doubling its production, which it has reserved a right to do, doubling its ADT. A condition of approval shall so require.

Land Use Finding 11: Hours of Operation:

The original applicant for the Tower Rock site plan review (PSR2002-00044) proposed (and received approval for) hours of operation from 8:00 A.M. and 5:00 P.M. Monday through Friday and up to 25 Saturdays per year between 8:00 A.M. and 5:00 P.M.. After Tower Rock began operations under those hours, they requested to expand those hours when they applied for a conditional use permit under CUP2007-00013. They proposed to allow truck trips and maintenance associated with the crusher between 6 AM to 8 P.M.. Staff recommended hours of 7 A.M. to 8 A.M. and 5 PAM to 6 P.M. for truck loading and maintenance, with mining and crushing operations to remain at 8-5 ***(see "hours of operation" section, Exhibit 33)***. Ultimately, the examiner determined that the application did not meet the burden of proof to warrant a change in hours. Lack of proof included:

- the fact that their noise study did not address the WAC nighttime noise levels in effect prior to 7 A.M.;
- that some conditions of approval to address noise from the approved site plan for the quarry were not being followed; and,
- the conditional use crusher review was requested to be kept separate from the mining-only site plan approval.[20]

[20] Tower Rock appealed the hours of operation to the Board of County Commissioners under APL2008-00006. The Board upheld the examiner's decision 2 to 1 that the record did not support the change of hours. ***(See Issue 1 of Exhibit 31)***

It should also be noted that neighborhood residents are against any expansion of hours because if would affect their quality of life.

The county operation originally proposed hours of operation from 7:00 A.M. to 7:00 P.M. An e-mail from Carl Oman of Public Works explains that the need for the 7:00 A.M. start-up is needed to allow trucks to arrive at job sites early enough to meet the demands of standard 7:00 AM construction start up hours ***(See Exhibit 25)***. The 7:00 starting time does not trigger state nighttime noise standards which end at 7:00 A.M.

CCC40.250.020(D)(6) allows mining operations between 6:00 A.M. and 8:00 P.M., *unless otherwise approved by the responsible official*. In response to past and neighborhood concerns regarding noise and truck traffic, staff recommends that hours of operation be set at 7:00 to 6:00 P.M., Monday through Friday, and up to 25 Saturdays per year, limiting mining and crushing hours from 8-5. These hours are consistent with staff's recommendation under CUP2007-00013.

The Examiner is also persuaded that operating hours should match the Tower Rock's for the many reasons that the neighbors testified to. This would be 8 AM to 5 PM. Saturday hours for the 25 Saturdays a year should be the same, with no crushing or blasting on Saturdays. The suggested 5:00 P.M. closing time allows residents additional quiet time in the evenings. If the two quarries request a later modification of the operating hours, they should be required to show a degree of coordination that would address any cumulative impacts. ***(See SEPA Condition 5 and Conditions A-7.f and D-5)***

<u>Land Use Finding 12: Blasting</u>
Blasting will be required as part of the mining operation. Ground vibrations caused by blasting are regulated by WAC296-52-67065; the maximum allowable ground vibrations are assumed to protect nearby structures from damage. The closest residences to this mining site are located approximately 900 feet to the south.

A blast-monitoring program to physically measure levels of ground movement and sound shall be utilized for all blasts. To ensure that ground vibrations are within allowable levels, two seismographs shall be placed south of the site, and two shall be placed east of the site.

The south seismographs shall be at the two residences closest to the blasting site; provided, that if permission from the owner or resident cannot be obtained, the seismographs shall be located on the county's site, between the two closest residences and the blast site. Two additional monitors shall be placed either at two separate locations along the east property line of the Tower Rock site, tax lot 170400-000, or at the residences located on tax lots 170424-000 (Repman) or 170421-000 (Stiff), as permission is allowed. Information generated from the blast-monitoring program shall be given to all residents requesting this data. ***[See SEPA Condition 7 and Condition A-7.g.(3)]***

A program utilizing registered or certified mail with return receipt shall be implemented to inform people living within 2,500-foot of the 50 acre site boundary with information regarding blasting parameters and proposed blasting schedules. Individuals residing within 1,500-feet of the active phase limits of the quarry operation shall also be contacted 72 hours prior to

blasting. As discussed at the hearing, there is no reason to deny notification to any other neighbors that request to be put on the list. There were also suggestion for publishing notices in the newspaper to allow wider distribution, but the Examiner is not persuaded that this would work better than an actual notice. ***[See SEPA Condition 8 and Condition A-7.g.(2)]***

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 2,000-foot radius from active phase limits of the quarry operation. This survey shall be offered by the operator at no cost to the homeowners and they shall 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 decision will document conditions prior to the start of quarrying operations. Once blasting has taken place on the site the radius may be enlarged, as reviewed and approved by Clark County, based on likely impact from blasting. The MOU between the two quarries should discuss how conflicts over who may have caused any damage are going to be resolved. ***(See SEPA Condition 6 and Condition B-7)***

Land Use Finding 13: Groundwater

Maul, Foster and Alongi submitted a groundwater assessment based on well log information ***(Exhibit 22)***. The assessment finds that significant impacts to neighboring wells is unlikely due to most wells' depth and distance from the site, and the fact that stormwater will be infiltrated back into the site via "shot rock" pits. A baseline monitoring program is now proposed for those residences within 2,000 feet of the site, although at the hearing and in response to Mr. Inouye (Ex 55) well monitoring shall be extended to neighbors further removed, if there is a possibility for mine related well contamination or damage and Mr. Inouye's community well will be included. The intent of the baseline program is to evaluate the groundwater conditions of nearby wells before the county begins mining. In response to Mr. Inouye's concerns the applicant's list of recommended groundwater testing parameters (originally summarized in MFA's groundwater assessment, Exhibit 22) includes cations and anions that are more commonly evaluated in water quality studies. However, if requested by a resident local to the site, in addition to the parameters listed in the groundwater analysis report, the Applicant will include the following parameters in the baseline groundwater analysis:

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

As summarized in MFA's groundwater analysis, one water quality sample coupled with a series of groundwater elevation measurements is sufficient to establish background groundwater conditions. Annual assessment of groundwater quality is not a cost-effective means of addressing potential well impacts. Any impact on groundwater quality resulting from mining and crushing operations, although unlikely, will be readily apparent through a reduction in volume or a noticeable change in water quality. If these conditions become apparent, the Applicant will perform additional analysis to assess whether an impact has occurred.

The baseline assessment should be initiated at least one year prior to operations beginning at

the county's quarry. Baseline assessment will include collecting one pre-mining water quality sample from each well and monitoring of water levels in the wells. Water levels will be measured monthly for the first twelve months for the first year, and quarterly thereafter until the county's mine begins operating, or for up to two years, whichever is less. Measurements and quality samples shall be conducted according to the procedures noted on page 6 of the MFA groundwater assessment as augmented by these findings, Exhibit 22. Additional assessment will occur after operations begin if a nearby well experiences a significant change in conditions. Measurements and quality samples shall be conducted according to the procedures noted on page 6 of the MFA groundwater assessment, Exhibit 22. ***(See SEPA Condition 9 and Condition A-14)***

In the event that the quarry's operations are determined to be significantly affecting a monitored well, the applicant (i.e. county) shall, at its option, modify or replace the well. Again a MOU between the quarries will need to address how any conflict as to which quarry did what damage will be resolved. ***(See SEPA Condition 10 and Condition D-7)***

Land Use Finding 14: Air quality

The crusher will require a permit from the Southwest Clean Air Agency to control dust from the crushing operations. Dust control for roads will also need to meet SWCAA requirements. ***(See Conditions B-9 and D8)***

Land Use Finding 15: Phasing

This application proposed five operational phases over a 30 year lifespan. Five phases are unlikely to be necessary without the expansion of the surface mining overlay beyond its current 50 acres. Section 40.500.010 regulates phasing of developments such as subdivisions and commercial/industrial site plans. Operational quarry phasing plans are generally not discreet, in that each phase tends to "melt" into the next. All "phases" will be governed by the same conditions on blasting, noise, road impacts, etc.. Therefore, one final site plan should be sufficient over the life of the quarry, and extensions of any phases will not be required.

Land Use Finding 16: Camp Bonneville considerations

The north sixty acres of the 170 acre site are within the old Camp Bonneville army site. The site is proposed to be transferred to the county under a *Prospective Purchaser's Consent Decree,* to be used primarily for recreational and wildlife uses. If the overlay is expanded on appeal, the proposed mining activity will require a modification the *Camp Bonneville Re-use Plan,* which is primarily under the oversight of the state Department of Ecology. ***(See Condition A-1)***

Land Use Finding 17: Surface Water

The applicant revised the boundaries of the overall mine layout to avoid a 75-foot riparian HCZ of an additional Type Ns stream. Beyond the purview of the Title 40.440, but applicable to the SEPA review, is the maintenance of the existing stream flow within this seasonal creek. The applicant is proposing a 75-foot drainage-contributing basin in conjunction with the required 75-foot setback for Title 40.440, in order to maintain stream hydrology.

As identified in the applicant's drainage analysis of the additional Ns stream ***(Exhibit 16)***, a reduction in stream flow will occur during the later phases of mining, as the stream becomes more perched. Staff concurs with the applicant that given the flashy, highly seasonal flow

regime in the current stream channel, reductions in flow will not cause significant stream degradation. Furthermore, the applicant's study indicated all stormwater will be infiltrated and available for recharge of the lower sections of the sub-basin. All infiltrated stormwater capable of entering the creek is proposed for stormwater treatment. Notwithstanding Mr. Inouye's concerns in Exhibit 55, Based on the applicant's analysis in the drainage study, there is no basis to find that no significant adverse environmental impacts will occur to the stream. Similarly, this finding may be unnecessary for the existing 50 acre overlay, but necessary if the expansion is approved on appeal.

Conclusion (Land Use):
The applicant has not met it's burden of proof on the proposed rezone; however, the preliminary plan, albeit reduced by absence of rezoning and subject to conditions identified below, meets, or can meet, the land use requirements of the Clark County Code if the cumulative noise impacts are coordinated between the quarries.

ARCHAEOLOGY:
Finding 1: Archaeological pre-determination
An archaeological pre-determination was performed by Archaeological Services of Clark County and submitted to DAHP for their review. DAHP concurred with the findings that no further work is necessary in the areas affected by the proposed five phases. In the event that the quarry is ever expanded beyond the proposed five phases, additional study will be required. The standard condition regarding inadvertent discovery of resources will be required to be placed on the final site plan. ***[See Condition A-8.a(1)]***

Conclusion (Archaeology):
The proposed preliminary plan, subject to conditions identified above, meets the archaeology requirements of the Clark County Code.

HABITAT:
Habitat Finding 1: Riparian habitat
There are several riparian Habitat Conservation Zone's (HCZ's) on the subject parcel. The riparian designations are associated with several tributaries of Matney Creek that flow through the property. Some of the streams qualify as Department of Natural Resources (DNR) type Np (non-fish bearing, perennial), whereas two others are DNR type Ns (non-fish bearing, seasonal) watercourses in this area. According to the Habitat Conservation Ordinance (Title 40.440.010), a DNR type Np watercourse requires a 100' riparian HCZ, whereas a DNR type Ns requires a 75' riparian HCZ. The applicant is proposing to avoid mining or development within the riparian HCZ's on the site. ***(See Conditions A-7.a and A-8.a(2, 3,& 4), A-8.b&c, and A-15.a)***

Habitat Finding 2: Other priority habitat
The applicant has also mapped three "herbaceous balds" on the property. Balds are a Washington Department of Fish and Wildlife (WDF&W) designated Priority Habitat under the new Priority Habitats and Species list (August, 2008). Balds are described as areas of rocky, shallow soils containing low-growing grass/forb communities. They are commonly weather exposed or burn scarred areas in this part of the state. Balds provide important habitat for a variety of wildlife, including several state threatened or endangered species.

Habitat Finding 3: Mitigation for bald removal

The applicant proposes to mine one of the three balds on the property. The habitat quality of this bald is low since it is heavily dominated by invasive species and crowded by adjacent forest. The applicant worked with WDF&W to develop an acceptable plan that complies with Title 40.440 (see Exhibit 6). As mitigation, the applicant plans to enhance another existing bald on the property by selectively thinning or girdling trees that are crowding the bald. This will provide important snag habitat for wildlife as well as preserve or enhance the grassland community within the bald. ***(See Condition A-2)***

Conclusion (Habitat):

The proposed application can comply with the Habitat Conservation Ordinance, subject to the conditions of approval.

BUILDING SAFETY:

According to the applicant, no permanent structures are proposed. Temporary structures such as office trailers do not require building permits. Permanent structures, if proposed in the future, may require site plan review and building permits. ***(See Condition E-2)***

WSDOT:

The submitted Traffic Impact Study prepared by Lancaster Engineering states that there will be 140 daily truck trips generated by the quarry. These additional truck trips will have an impact on the condition of the asphalt surface in several locations.

On SR 500 there are five small radius 90 degree corners, three to the north and two to the south of the intersection of SR 500 and NE 53rd Street. Staff and the neighbor's concern is that as loaded trucks with trailers go around these tight corners, the trailers will track to the inside of the corner and run off the asphalt surface. This off-tracking of the trailers will cause the edge of the asphalt to unravel and crumble. WSDOT requests that the County evaluate the condition of the asphalt in these locations and determine the need to place additional asphalt to prevent the deterioration of the roadway surface. ***(See Conditions A-9 and D-13)***

TRANSPORTATION:

Transportation Finding 1: Intersection Design

The intersecting angle made by the access road and NE 262nd Avenue is less than the 60 degrees. CCC 40.350.030 (B)(5)(a) identifies minimum intersection angles. Intersection angles less than 60 degrees can impede site distance for vehicles leaving the site. ***(See Condition A-10.a).***

CCC 40.350.030 (B)(5)(c) requires rural driveways to be paved from the edge of the public road to the right-of-way or to twenty feet from the edge, whichever is greater. ***(See Condition A-10.b).***

Transportation Finding 2: Sight Distance

Sight distances at SR-500/NE 53rd, NE 53rd/NE 262nd, and the site access off NE Highland Meadows Drive; At the proposed site access location on NE Highland Meadows Drive, sight distance was measured to be in excess of 600 feet to the southwest and 370 feet to the northeast following the clearing of vegetation. Based on the measured speeds on the

roadway, intersection sight distance is now adequate in both directions.

Sight distance was also re-measured at the intersection of SR 500 and NE 53rd Street following clearing of additional vegetation to the south of the intersection. The available intersection sight distance was measured to be 570 feet to the south. Since this measurement exceeds the intersection sight distance criteria, no hazards or delays to through traffic would be expected for the northbound intersection approach. Sight distance to the north remains limited by a horizontal curve. As detailed in Lancaster's June 23, 2009 letter (Ex 48), sight distance to the north is adequate for safety, although through vehicles traveling southbound may occasionally need to slow down to avoid traffic entering the roadway from NE 53rd Street. These occasional delays will only occur when a westbound vehicle on NE 53rd Street turns left onto SR 500 at the same time as a southbound vehicle traveling on SR 500 rounds the corner.

Vegetation will need to be removed up to a height of eight feet to attain the minimum allowable sight distance. ***(See Condition A-10.c).*** For southbound traffic, the available sight distance is expected to be sufficient for traffic speeds near the intersection. The applicant will provide a speed study to confirm this assumption. ***(See Condition A-10.d).***

Sight distance at all area intersections is adequate for safety, and vegetation has been removed to limit interruptions to the flow of through traffic on the major street where possible. No further mitigation is recommended.

The applicant's narrative identifies the intersection sight distance for southbound traffic on NE 262nd Avenue is limited due to vegetation near the intersection. Results of a speed study conducted by Tower Rock indicate that the sight distance is adequate for the measured speed of traffic approaching.

Conclusion (Transportation):
In further reliance on the comments of Michael Ard PE in his attachment to Exhibit 62, the proposed preliminary plan, subject to conditions identified above, meets the transportation requirements of the Clark County Code.

TRANSPORTATION CONCURRENCY:

Consideration should be given to understanding the meaning of terms used prior to reviewing the following data. Therefore, the definitions provided by the *Institute of Transportation Engineers (ITE) 7th Edition Trip Generation Users Guide* are as follows:

Average Daily Trip:* The average 24-hour total of all vehicle trips counted to and from the proposed development site Monday through Friday.

*Average Trip Rate for the Peak Hour of the Adjacent Street Traffic**:* The one-hour weighted average vehicle trip generation rate from the proposed development site between 7 a.m. and 9 a.m. or between 4 p.m. and 6 p.m., when the combination of its generated traffic and the traffic on the adjacent street is the highest.

*Trip***:* A single or one-direction vehicle movement with either the origin or the destination

(exiting or entering) inside the proposed development.

*Average Daily Trips were estimated by the applicant's traffic study based on historical daily trip values obtained from other County operated quarry facilities.
**Average Trip Rates for the Peak Hour were estimated by the applicant's traffic study based on historical daily trip values obtained from other County operated quarry facilities.
***Types of vehicles used for estimating a trip are all passenger vehicles, single dump truck four axle, dump truck/pup seven axle, dump truck/pup eight axle, belly dumps eight axle, and side dumps.

Transportation Concurrency Finding 1: Trip Generation
Existing:
The applicant's traffic study has performed manual traffic counts at the intersection of NE 262nd Avenue/NE 53rd Street/NE Bradford Road. These counts showed that the am peak hour occurred from 7:00 – 8:00am and the pm peak hour occurred from 5:00 – 6:00pm. The applicant's study has indicated that the traffic counts were performed in August 2008.

Proposed:
The applicant is proposing a quarry and rock crushing operation immediately adjacent to the previously approved Livingston Mountain Quarry facility. The applicant provided the following trip generation estimates (See Table 1). The applicant also included a short-term peak trip generation that was derived from historic peak traffic levels from existing County operated quarry operations (See Table 2).

These trip generation estimates include both employee trips and quarry truck operations:

Table 1 – Projected Average Operation Levels

Scenario	Average Daily Traffic (ADT)	AM Peak Hour			PM Peak Hour		
		Total	In	Out	Total	In	Out
Trucks	120	7	3	4	7	3	4
Employees	20	5	5	0	5	0	5
Total Trips	140	12	8	4	12	3	9

Table 2 – Projected Short-Term Peak Operation Levels

Scenario	Average Daily Traffic (ADT)	AM Peak Hour			PM Peak Hour		
		Total	In	Out	Total	In	Out
Total Trips	280	24	16	8	24	6	18

The applicant's study also indicates that the short-term peak operation trip generation estimate was used for this impact analysis to represent the 'worst-case scenario' during full site operation.

The applicant's study indicates that historic short-term peak duration is over a 10-day period. This 10-day period occurred when two major construction projects required material simultaneously. The study does not address the impacts on noise levels or traffic should both quarries peak at the same time.

Given that the two quarries may have different "short-term peaks" and these are limited in frequency of occurrence, the MOU should address coordination issues for resolving any conflicts

that result from standard exceedance. Based on these projected operational levels, quarry production should not exceed an average of 70-loaded truck trips/day during normal operations. Short-term peak production periods should not exceed a maximum of 140-loaded truck trips/day for periods longer than 10 consecutive days. ***(See Condition A-7.h and D-10)***

Transportation Concurrency Finding 2: Site Access
Level of service (LOS) standards[21] are not applicable to accesses that are not regionally significant; however, the LOS analysis provides information on the potential congestion and safety problems that may occur at these locations.

The applicant's traffic study analyzed the intersection of NE 262nd Avenue/NE Bradford Road. The submitted study shows that this intersection will operate with minimum delays at an estimated LOS A at build-out of the development.

The submitted traffic study shows that the LOS was evaluated at peak hour traffic conditions in existing and build-out scenarios, meeting the requirements as outlined in Clark County Code Section 40.350.020 (G) Level of Service standards. County Staff concurs with the traffic study findings.

Transportation Concurrency Finding 3: Concurrency Compliance
The applicant submitted a traffic study for this proposal in accordance with CCC 40.350.020(D). The proposed development is required to meet the standards established in CCC 41.350.020(G) for corridors and intersections of regional significance.

The intersection of SR 500/NE 53rd Street is under the primary jurisdiction of the Washington State Department of Transportation (WSDOT) with the County having a secondary jurisdiction; because of this, the County's Concurrency Code has been applied to this intersection. The submitted traffic study has analyzed this unsignalized intersection, which yielded a LOS B or better at the development build-out.

The submitted traffic study shows that the LOS was evaluated at peak hour traffic conditions in existing and build-out scenarios and meets the requirements as outlined in Clark County Code Section 40.350.020 (G)(1)(b) & (f). County Staff concurs with the traffic study findings.

The County has forwarded the development information to WSDOT for comments, findings and/or conditions of approval.

SAFETY:

Where applicable, a traffic study shall address the following safety issues:
- turn lane warrant analysis,

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

- accident analysis, and
- any other issues associated with highway safety.

Mitigation for off-site safety deficiencies may only be a condition of approval on development in accordance with CCC 40.350.030(B)(6) The code states that "nothing in this section shall be construed to preclude denial of a proposed development where off-site road conditions are inadequate to provide a minimum level of service as specified in Section 40.350.020 or a *significant* traffic or safety hazard *would be caused or materially aggravated* by the proposed development; provided, that the applicant may voluntarily agree to mitigate such direct impacts in accordance with the provisions of RCW 82.02.020."

Transportation Concurrency Finding 4: Turn Lane Warrants
Turn lane warrants are evaluated at unsignalized intersections to determine if a separate left or right turn lane is needed on the uncontrolled roadway.

The applicant's traffic study reviewed the study intersections for turn lane warrants and found that with the low traffic volumes, turn lanes would not be warranted at the studied intersections. County staff agrees with the traffic study findings.

Transportation Concurrency Finding 5: Historical Accident Situation
The applicant's traffic study shows that there is no accident history reported for the study intersections. In its hearing record the applicant did state that whatever accidents there were, were speed related and did not involve collisions. On the other hand neither the Tower Rock operation nor this one has operated at approved capacity, which will increase Tower Rock truck volume by 500% and Livingstone Quarry will match that increase by 147% (including the Tower Rock), all in the light of convincing testimony that the roads do not fully support the turning movements of oversize trucks or trucks with trailers. So while based on past performance which the County staff has verified, no further analysis for safety mitigation is required, additional safety modification may be required should the quarries ask for extension of their operating hours and there is a more current record including all of the additional trucks and their pups. See also Finding 6 below.

Transportation Concurrency Finding 6: Road Adequacy
A Preliminary Flexible Pavement Evaluation, prepared by Columbia West Engineering, Inc. dated August 31, 2007 was submitted as a part of the previous Tower Rock Livingston Mountain Quarry development (PSR2007-00045). This evaluation included the extraction of asphalt core samples from NE 53rd Street and NE 262nd Avenue. The existing pavement sections were shown as follows:

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

This evaluation concluded that the existing pavement section is adequate today, although NE

262nd Avenue asphalt is pretty thin for all the extra trucks. The continual and increased truck traffic loading will reduce the anticipated life of the pavement structure. This evaluation also stated that maintenance and repair should be a part of the planned mitigation for serviceability requirements. Also, structural overlays could be considered as a long-term mitigation plan to maintain or increase serviceability. County Operations Staff has performed an analysis based on the proposed additional "loaded" truck traffic and identified the need for a structural overlay on NE 262nd Avenue and NE 53rd Street.

In order to mitigate for the unique pavement wear on NE 262nd Avenue and NE 53rd Street, the applicant has volunteered a yearly maintenance payment. This payment could be accomplished with an internal fund transfer within the County's Department of Public Works. This maintenance cost transfer should be based on the incremental increase of loaded vehicles compared to the Tower Rock Livingston Mountain Quarry. The incremental increase should also consider the calculated structural overlay depth and associated costs identified in the previously approved Tower Rock Livingston Mountain Quarry PSR2007-00045 decision.

The first increment of the maintenance cost should be transferred from the Livingston Quarry account as a lump sum of $19,318 to the Clark County Pavement Preservation Fund prior to starting operations. Subsequent annual payments shall be adjusted as provided in the internal MOU contained in Ex 56. ***(See Conditions A-11, B-8 and D-11).***

This volunteered yearly maintenance payment transfer would be over and above the required mitigations as established for the Tower Rock Livingston Mountain Quarry PSR2007-00045.

Transportation Concurrency Finding 7: Sight Distance
Sight distance issues are addressed by Transportation Engineering; therefore, this issue will not be addressed here.

Conclusion (Transportation Concurrency):
Based upon the development site characteristics, the proposed transportation plan, the requirements of the County's transportation concurrency ordinance, and the findings above, the proposed preliminary transportation plan meets the requirements of the county transportation concurrency ordinance CCC40.350.020.

STORMWATER:

Stormwater Finding 1: Applicability
Stormwater and Erosion Control Ordinance CCC 40.380 apply to land disturbing activities, except those exempted in Section CCC 40.380.030(A).

The project will disturb land not exempted in Section CCC 40.380.030(A). Therefore, this development shall comply with the Stormwater and Erosion Control Ordinance, CCC 40.380.

The erosion control ordinance is intended to minimize the potential for erosion and a plan is required for all projects meeting the applicability criteria listed in CCC 40.380,050. This project is subject to the erosion control ordinance.

Stormwater Finding 2: Stormwater Proposal

The proposed mine development will comply with Clark County's Stormwater Ordinance, adopted July 28, 2000. Wet ponds and infiltration basins are proposed for quantity and control of stormwater runoff from active-quarry areas. The County code requires runoff from the water quality design storm (70% of the 2-year, 24-hour design storm) be treated prior to discharge, and that infiltration facilities accommodate and dispose of runoff generated during the 100-year, 24-hour design storm event.

Infiltration testing was not conducted because of the nature of the infiltration basins. Clark County staff concurred that infiltration testing can be conducted at the time the infiltration basins are constructed, with the caveat that an engineer must redesign the infiltration basins if the test rate is less than 60 inches per hour. ***(See Conditions B-1 and D-12)***

The State of Washington Department of Ecology's National Pollution Discharge Elimination System (NPDES) Sand and Gravel General Permit requires stormwater conveyance systems be sized to accommodate the 10-year, 24-hour storm. In accordance with CCC 40.380.040 (C)(4)(c)(2), the 25-year, 24-hour design storm was used for sizing on-site stormwater conveyance systems. Pipes or other closed conveyance system elements will be sized to accommodate flows generated from all storms up to the 100-year, 24-hour design event.

The stormwater facility is proposed as a private system and maintained by the property owner. ***(See Condition A-15.b).***

The project shall not materially increase or concentrate stormwater runoff onto an adjacent property. ***(See Condition A-12.a).***

Conclusion (Stormwater):
Based upon the development site characteristics, the proposed stormwater plan, the requirements of the County's stormwater ordinance, and findings above, the proposed preliminary stormwater plan is feasible subject to conditions. Therefore, the requirements of the preliminary plan review criteria are satisfied.

FIRE PROTECTION:
Fire Protection Finding 1: Fire Marshal review
This application was reviewed by Tom Scott in the Fire Marshal's Office.[22]

Fire Protection Finding 2: Building construction
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 Condition E-2)***.

Fire Protection Finding 3: Blasting permit
A Blasting Permit, issued by the Fire Marshal, is required prior to blasting operations begin.

[22] Tom can be reached at (360) 397-2375 x4095 or 3323. Information can be faxed to Tom at (360) 759-6063. Where there are difficulties in meeting these conditions or if additional information is required, contact Tom in the Fire Marshal's office immediately.

(See Condition B-5)

Fire Protection Finding 4: Explosives storage
Explosives shall not be stored overnight on site. ***(See Condition B-5)***

Fire Protection Finding 5: Site inspection
The site shall be inspected by the Fire Marshal's Office prior to blasting. ***(See Condition B-6)***

Fire Protection Finding 6: Blast monitoring and reporting
Seismic monitoring shall be conducted in the blast area; all monitoring reports shall be forwarded to the Fire Marshal's Office. ***(See Condition D-6.c)***

Conclusion (Fire Protection):
The proposed preliminary plan, subject to conditions identified above, meets the fire protection requirements of the Clark County Code.

WATER & SEWER SERVICE:

Finding 1: Water and sanitary facilities
The application does not propose water or sewer facilities. Portable restroom facilities will be provided. Bottled drinking water is proposed, and water for crusher operations and dust control will be trucked in from off-site.

Conclusion (Water & Sewer Service):
The proposed preliminary plan, subject to conditions identified above, meets the water and sewer service requirements of the Clark County Code.

IMPACT FEES:
Finding 1: Traffic Impact Fees
The proposed development will have an impact on traffic in the area, and is subject to Traffic Impact Fees (TIF) in accordance with CCC 40.610 & 40.620. The site is located within the Rural II TIF Sub-area with a fee rate of $72 per new trip for a total of $8,687. These fees must be paid prior to final site plan approval. ***(See Condition A-17)***

SEPA

Determination: Mitigated Determination of Non-Significance (MDNS). Clark County, as lead agency for review of this proposal, has determined that this proposal, as mitigated, will 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. This information is available to the public on request. There was be no additional comment period for this determination beyond the date noted below and the determination was not appealed.

SEPA CONDITIONS

The county finds that certain aspects of the project could have significant impacts if not adequately mitigated. The following conditions, modified during the hearing process, are required in order for the county to find that the project has mitigated for potential adverse environmental impacts:

1. The driveway shall be paved to at least 24 feet wide for a distance of at least 300 feet from 262nd Avenue to allow for two way truck traffic from NE Highland Meadows Drive to the site and to minimize dust. ***(See Land Use Finding 8)***
2. The hourly L_{25} noise level radiating from the County quarry operating by itself shall not exceed a limit of 10 dBA over ambient noise levels near the south property line, as monitored at the locations shown as M1, M2, and M3 on Figure 8 in the DSA noise study, (which is currently 37 dBA at M1 for a noise limit of 47 dBA, and 38 dBA at M2 for a noise limit of 48 dBA) Exhibit 7. Monitoring at M3 shall not be required if the property owner does not consent. Monitoring shall be continuous for a period of 30 days after crushing and mining activities begin, and subsequently thereafter when there is a significant change in the number, type or location of mining and crushing-related equipment used on the site. If the 30 day monitoring results indicate that sound levels are more than 7 dBA over the ambient noise level, continuous monitoring shall continue until the next significant change of mining or crushing circumstances. ***(See Land Use Finding 10 and Ex 56)***
3. NONE
4. The County shall continuously monitor noise at one location along the east property boundary of the Tower Rock Products Livingston Mountain Quarry and at tax lot 170424-000 or at tax lot 170421-000.
5. To help in assessing the noise radiating from the County's quarry independently of that radiating from the Livingston Mountain Quarry when both quarries are operating simultaneously, the worst-case noise levels at any noise receptor on the east side shall be no more than 3 dBA above the hourly L_{25} noise limit specified for the receptor (the change in sound level when two sources operate simultaneously at the same level). Therefore, when both quarries are operating simultaneously, the hourly L_{25} noise level at a receptor on the east side of the Livingston Mountain Quarry shall not exceed the existing ambient noise level by more than 13 dB, currently 33 dBA (for a noise limit of 46 dBA). If the hourly L_{25} noise level radiating from the two quarries exceeds 46 dBA at any noise receptor on the east side of Livingston Mountain Quarry, the County will coordinate with Tower Rock Products to assess each operation individually to determine which quarry resulted in a noise limit exceedance.
6. When the County quarry is operating without operations at the Livingston Mountain Quarry, the hourly L_{25} noise level along the east property boundary of the Livingston Mountain Quarry shall not exceed 10 dBA above the ambient level, currently 33 dBA (for a noise limit of 43 dBA).
7. As the neighborhood continues to grow and residence density increases, background ambient noise levels may increase over time. As a result, the County may, on an annual basis, raise the maximum noise level limit allowed at any residence based upon a demonstration that the ambient hourly L_{25} noise levels have increased authorized above. The ambient noise level means the hourly L_{25} noise level measured at

a receptor location without either the County quarry or the Tower Rock Products Livingston Mountain quarry in operation.

8. The County shall maintain a record of the days when operations are and are not occurring at the County quarry. The County shall also document the weather conditions present during the days of operations and any other events that may have an impact on noise levels recorded by their noise monitors when the quarry is operational.
9. Discriminating backup alarms shall be used on all equipment under control of the operator and after two years of operation shall be required on all equipment using backup alarms, without exception. ***(See Land Use Finding 10)***
10. Overall hours of operation are 8:00 A.M. to 5:00 P.M., Monday through Fridays, and up to 25 Saturdays per year. Extraction and crushing activities shall be limited to weekdays. The operational hours maybe reviewed one year after start of operations in coordination with Tower Rock taking under consideration cumulative impacts of operational and truck noise. ***(See Land Use Finding 11)***
11. 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 2,000-foot radius from active phase limits of the quarry operation. This survey shall be offered by the operator at no cost to those homeowners, and they shall 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 document conditions prior to the start of quarrying operations. ***(See Land Use Finding 12)***
12. Seismographs shall be placed at the two residences closest to the blasting area south of the site; provided, that if permission from the owner or resident cannot be obtained, the seismographs shall be located on the county's site, between the two closest residences and the blast site. Two additional monitors shall be placed either at two separate locations along the northeast and southeast property corners of the Tower Rock site, tax lot 170400-000, or at the residences located on tax lots 170424-000 (Repman) or 170421-000 (Stiff), as permission is allowed. Information generated from the blast-monitoring program shall be given to all residents requesting this data. ***(See Land Use Finding 12)***
13. A program utilizing registered or certified mail with return receipt shall be implemented to inform people living within 2,500-foot of the 50 acre site boundary with information regarding blasting parameters and proposed blasting schedules. Individuals residing within 1,500-feet of the active phase limits of the quarry operation shall also be contacted 72 hours prior to blasting. ***(See Land Use Finding 12)***
14. Well monitoring for properties within 2,000 feet of the perimeter of the 50 acre site shall be done twice a year during the anticipated high and low water table months as is practicable prior to obtaining final site plan review approval. Measurements and quality samples shall be conducted according to the procedures noted on page 6 of the MFA groundwater assessment, Exhibit 22. Monitoring shall continue on a yearly basis for a total of three yearly cycles. ***(See Land Use Finding 13)***
15. The county shall modify or replace those monitored wells determined to be significantly affected by the county's quarry operations. ***(See Land Use Finding 13)***

DECISION

Based upon the proposed plan (identified as Exhibits 6 and 19), and the findings and conclusions stated above, the Hearings Examiner **DENIES** the request to rezone and **APPROVES** the conditional use request for the existing 50 acres surface mining overlay area, subject to the understanding that the applicant is required to adhere to all applicable codes and laws, and is subject to the following conditions of approval:

Conditions of Approval

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

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

A-1 The applicant/operator shall provide documentation that the project can comply with any conditions required by the state Department of Ecology pursuant to the *Prospective Purchaser's Consent Decree and Camp Bonneville Re-use Plan.* A copy of any conditions shall be provided. ***(See Land Use Finding 16)***

A-2 If required, the applicant shall implement the habitat mitigation plan prepared by Maul, Foster, Alongi and dated February 9, 2009, except as amended herein. Any revisions to the proposed mitigation plan may be subject to additional habitat review. ***(See Habitat Findings 1 and 3)***

A-3 No part of the overall slope will exceed a ratio of 1:1. Benches shall not be more than 40 vertical feet apart, and swales or ditches on benches shall have a maximum gradient of five percent (5%). ***(See Land Use Finding 7)***

A-4 An approved reclamation plan from the Department of Natural Resources shall be submitted. A separate narrative or plans as necessary shall accompany the DNR reclamation plan, referencing how the provisions of 40.250.020.H are met through the DNR reclamation plan. ***(See Land Use Finding 9)***

A-5 The applicant shall provide evidence that the applicant has complied with applicable Department of Ecology stormwater and process water discharge requirements. ***(See Land Use Finding 7)***

A-6 The driveway shall be paved to at least 24 feet wide for a distance of at least 300 feet from 262nd Avenue to allow for two way truck traffic from NE Highland Meadows Drive to the site and to minimize dust. The driveway shall be maintained in good repair. ***(See SEPA condition 1 and Land Use Finding 8)***

A-7 The following notes shall be placed on the face of the final site plan:

a. "No clearing or development for purposes of mining shall occur within the habitat preservation areas as delineated in Exhibit 14." ***(See Habitat Finding 1)***

b. "Fencing and setbacks are required by the Department of Natural Resources shall be maintained at all times." ***(See Land Use Finding 5)***

c. "The hourly L_{25} noise levels from the county's quarry operation shall not exceed 10 dBA over ambient noise levels near the south property line, as monitored at the locations shown as M1, M2, and M3 on Figure 8 in the DSA noise study, Exhibit 7. Monitoring at M3 shall not be required if the property owner does not consent. Monitoring shall be continuous for a period of 30 days after crushing and mining activities begin, and subsequently thereafter when there is a significant change in the number, type or location of mining and crushing-related equipment used on the site. If the 30 day monitoring results indicate that the hourly L_{25}sound levels are more than 7 dBA over the ambient noise level, continuous monitoring shall continue until the next significant change of mining or crushing circumstances. ***(See Land Use Finding 10)"***

d. "The hourly L_{25} noise levels from the county's quarry operation shall not exceed 10 dBA over ambient sound levels near the east property line of the Tower Rock site. When the county's quarry and the Tower Rock site are operating simultaneously, the hourly L_{25} noise levels shall not exceed 13 dBA over ambient noise levels near the east property line of the Tower Rock site. In addition to the existing Tower Rock monitor, a continuous noise monitor shall be installed either along the eastern property line of the Tower Rock site or on tax lot 170424-000. The final location of the monitor shall be approved by the county. ***(See Land Use Finding 10)***

(1) If the hourly L_{25} noise level from the two quarries exceeds 13 dBA over ambient noise levels at either continuous noise monitor along the Tower Rock east property line, the county will coordinate with Tower Rock to determine which quarry's operation is causing the noise level to be exceeded as provided in the MOU.

(2) The county shall maintain a public record of the days when operations are, and are not occurring at the county's quarry. The county shall also document the weather conditions present during the days of operation and any other events that may have an impact on noise levels recorded by their noise monitors when the quarry is operating."

e. "Discriminating backup alarms shall be used on all equipment under control of the operator, except that after two years of operation they shall be required on all equipment using backup alarms, without exception." ***(See Land Use Finding 10)***

f. "Overall hours of operation are 8:00 A.M. to 5:00 P.M., Monday through Fridays, and up to 25 Saturdays per year, except that there shall be no crushing or drilling on Saturdays. Any future request to modify such hours shall be coordinated with Tower Rock operation to address cumulative impacts of operational and truck noise." ***(See Land Use Finding 11)***

g. "**Blasting-**

(1) 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 2,000-foot radius from active phase limits of the quarry operation. This survey shall be offered by the operator at no cost to the homeowners and they shall 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 inspection report will document conditions prior to the start of quarrying operations.

(2) A program utilizing registered or certified mail with return receipt shall be implemented to inform people living within 2,500-foot of the 170 acre site boundary with information regarding blasting parameters and proposed blasting schedules. Individuals residing within 1,500-feet of the active phase limits of the quarry operation shall also be contacted 72 hours prior to blasting.

(3) Seismographs shall be placed at the two residences closest to the blasting area south of the site; provided, that if permission from the owner or resident cannot be obtained, the seismographs shall be located on the county's site, between the two closest residences and the blast site. Two additional monitors shall be placed either at two separate locations along the northeast and southeast property corners of the Tower Rock site, tax lot 170400-000, or at the residences located on tax lots 170424-000 (Repman) or 170421-000 (Stiff), as permission is allowed. Information generated from the blast-monitoring program shall be given to all residents requesting this data." ***(See Land Use Finding 12)***

h. "Quarry production shall not exceed an average of 70-loaded truck trips/day during normal operations. Short-term peak production periods shall not exceed a maximum of 140-loaded truck trips/day for periods longer than 10 consecutive days and coordinated with Tower Rock per MOU to prevent or manage overlapping peaks." ***(See Transportation Concurrency Finding 1)***

A-8 **Final Construction Plan** – The applicant shall submit and obtain County approval of a final construction plan in conformance to CCC 40.350 and the following conditions of approval:

a. The following notes shall be placed on the face of the final construction plans as follows:

(1) "If any cultural resources and/or human remains are discovered in the course of undertaking the development activity, the Office of Archaeology and Historic Preservation in Olympia and Clark County Community Development shall be notified. Failure to comply with these State requirements may constitute a Class C Felony, subject to

imprisonment and/or fines." ***(See Archaeology Finding 1)***

(2) "Prior to any groundbreaking activities for each phase, the applicant shall place habitat signage along the habitat preservation boundaries that will be adjacent to the project boundaries." ***(See Habitat Findings 1 and 4)***

(3) "No clearing or development for purposes of mining shall occur within the habitat preservation areas as delineated in Exhibit 19." ***(See Habitat Finding 4)***

(4) "Habitat signs shall read "habitat conservation area-- please leave in a natural state." ***(See Habitat Finding 1)***

b. The locations of habitat signage shall be clearly shown on the Engineering Construction Plans set. ***(See Habitat Finding 1)***

c. All proposed habitat mitigation shall be shown on the Engineering Construction Plans set. ***(See Habitat Finding 1)***

A-9 The county shall evaluate the condition of the asphalt in the five small radius 90 degree corners, three to the north and two to the south of the intersection of SR 500 and NE 53rd Street, and determine the need to place additional asphalt to prevent the deterioration of the roadway surface. If deemed necessary, the county shall pave the additional paved area. ***(See WSDOT Finding)***

A-10 **Final Transportation Plan/On-Site** - The applicant shall submit and obtain County approval of a final transportation design in conformance to CCC 40.350 and the following conditions of approval:

a. T he access from the site onto NE 262nd Avenue shall be realigned such that the angle of intersection is greater than 60 degrees (less than 120 degrees). ***(See Transportation Finding 1).***

b. The access shall be paved from NE 262nd Avenue's edge of pavement to the property line or for 20 feet, whichever is greatest. SEPA condition 1 and Condition A-6 may impose a greater length and width of pavement. ***(See Transportation Finding 1, Land Use Finding 8, and SEPA condition 1)***

c. Vegetation shall be cleared to maintain minimum sight distance at the intersection with 53rd Street for northbound traffic on SR 500. ***(See Transportation Finding 2)***

d. The applicant shall provide a speed study at time of final review confirming that adequate sight distance exists at the intersection of 53rd and SR 500 for southbound traffic on SR500 ***(See Transportation Finding 2).***

A-11 **Final Transportation Plan/Off Site (Concurrency)** - The applicant shall enter into an agreement with Clark County Transportation regarding a yearly maintenance cost transfer based on a structural overlay requirements for the identified primary haul route, NE

262nd Avenue and NE 53rd Street consistent with Exhibit 56. ***(See Transportation Concurrency Finding 6)***

A-12 **Final Stormwater Plan** - The applicant shall submit and obtain County approval of a final stormwater plan designed in conformance to CCC 40.380 and the following conditions of approval:

a. The project shall not materially increase or concentrate stormwater runoff onto an adjacent property. ***(See Stormwater Finding 2)***

A-13 **Erosion Control Plan** - The applicant shall submit and obtain County approval of a final erosion control plan designed in accordance with CCC 40.380.

A-14 **Groundwater-**

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

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

Water levels will be measured monthly for the first twelve months for the first year, and quarterly thereafter until the county's mine begins operating, or for up to two years, whichever is less. Measurements and quality samples shall be conducted according to the procedures noted on page 6 of the MFA groundwater assessment, Exhibit 22. Additional assessment will occur after operations begin if a nearby well experiences a significant change in conditions. These records shall be maintained by the Public Works department, and available at the public's request. ***(See Land Use Finding 13)***

A-15 **Other Documents Required** – The following documents shall be submitted with the Final Construction Plan:

a. The applicant shall record a Habitat Conservation Covenant with the Auditor's Office for all remaining habitat areas on the site. ***(See Habitat Finding 1)***

b. Developer's Covenant: - A "Developer Covenant to Clark County" shall be submitted for recording that specifies the following Responsibility for Stormwater Facility Maintenance: For stormwater facilities for which the county will not provide long-term maintenance, the developer shall make arrangements with the existing or future (as appropriate) occupants or owners of the subject property for assumption of maintenance to the county's

Stormwater Facilities Maintenance Manual as adopted by Chapter 13.26A. The responsible official prior to county approval of the final stormwater plan shall approve such arrangements. The county may inspect privately maintained facilities for compliance with the requirements of this chapter. An access easement to the private facilities for the purpose of inspection shall be granted to the county. If the parties responsible for long-term maintenance fail to maintain their facilities to acceptable standards, the county shall issue a written notice specifying required actions to be taken in order to bring the facilities into compliance. If these actions are not performed in a timely manner, the county shall take enforcement action and recover from parties responsible for the maintenance in accordance with Section 32.04.060. ***(See Stormwater Finding 2)***

A-16 **Excavation and Grading** - Excavation / grading shall be performed in compliance with CCC Chapter 14.07.

A-17 Transportation Impact Fees of $8,687 shall be paid prior to final site plan approval. ***(See Impact Fees Finding 1)***

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

Prior to quarrying or crushing operations, the following conditions shall be met:

B-1 **Infiltration testing** - Infiltration testing for the infiltration basins shall be tested, and shall attain at least 60 inches per hour. ***(See Stormwater Finding 2)***

B-2 **Erosion Control** - Prior to ground disturbance, erosion/sediment controls shall be in place. Sediment control facilities shall be installed that will prevent any silt from entering infiltration systems. Sediment controls shall be in place during construction and until all disturbed areas are stabilized and any erosion potential no longer exists.

B-3 **Erosion Control** - Erosion control facilities shall **not** be removed without County approval.

B-4 Prior to the set up of the crusher, the operator shall submit a letter from an acoustical engineer stating the combination of proposed mitigations should be sufficient to meet SEPA noise levels. ***(See Land Use Finding 10)***

B-5 A Blasting Permit, issued by the Fire Marshal, is required prior to blasting operations begin. ***(See Fire Protection Finding 3)***

B-6 The site shall be inspected by the Fire Marshal's Office prior to blasting. ***(See Fire Protection Finding 5)***

B-7 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 2,000-foot radius from active phase limits of the quarry operation. This survey shall be offered by

the operator at no cost to the homeowners and they shall 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 structural inspection will document conditions prior to the start of quarrying operations. Once blasting has taken place on the site the radius may be enlarged, as reviewed and approved by Clark County, if homes are found to be affected by the blasting. ***(See Land Use Finding 12)***

B-8 The applicant shall transfer, from the Livingston Quarry account, a lump sum of $19,318 to the Clark County Pavement Preservation Fund prior to starting operations. ***(See Transportation Concurrency Finding 6)***

B-9 The crusher will require a permit from the Southwest Clean Air Agency to control dust from the crushing operations. Dust control for roads will also need to meet SWCAA requirements. ***(See Land Use Finding 14)***

C	**Provisional Acceptance of Development** **Review & Approval Authority: Development Inspection**

Prior to provisional acceptance of development improvements, construction shall be completed consistent with the approved final construction/site plan and the following conditions of approval:

C-1 None

D	**Operational conditions** **Review & Approval Authority: Various departments**

The following conditions shall be met on an ongoing basis:

D-1 The periphery of all sites within the gross site area being actively mined or reclaimed shall be fenced according to the Department of Natural Resources' standards. ***(See Land Use Finding 5)***

D-2 The tops and toes of cut and fill slopes shall be set back from property boundaries according to the Department of Natural Resources' standards for safety of the adjacent properties, and to prevent damage resulting from water runoff or erosion of slopes. ***(See Land Use Finding 6)***

D-3 The bench/slope ratio shall not exceed 1:1, and meet the requirements of Section 40.250.020. ***(See Land Use Finding 7)***

D-4 Noise

a. The hourly L_{25} noise level radiating from the County quarry operating by itself shall not exceed a limit of 10 dBA over ambient noise levels near the south property line, as monitored at the locations shown as M1, M2, and M3 on Figure 8 in the DSA noise study, (which is currently 37 dBA at M1 for a noise limit of 47 dBA, and 38 dBA at M2 for a noise limit of 48 dBA)

Exhibit 7. Monitoring at M3 shall not be required if the property owner does not consent. Monitoring shall be continuous for a period of 30 days after crushing and mining activities begin, and subsequently thereafter when there is a significant change in the number, type or location of mining and crushing-related equipment used on the site. If the 30 day monitoring results indicate that sound levels are more than 7 dBA over the ambient noise level, continuous monitoring shall continue until the next significant change of mining or crushing circumstances. ***(See Land Use Finding 10 and Ex 56)***

b. NONE

c. The County shall continuously monitor noise at one location along the east property boundary of the Tower Rock Products Livingston Mountain Quarry and at tax lot 170424-000 or at tax lot 170421-000.

d. To help in assessing the noise radiating from the County's quarry independently of that radiating from the Livingston Mountain Quarry when both quarries are operating simultaneously, the worst-case noise levels at any noise receptor on the east side shall be no more than 3 dBA above the hourly L_{25} noise limit specified for the receptor (the change in sound level when two sources operate simultaneously at the same level). Therefore, when both quarries are operating simultaneously, the hourly L_{25} noise level at a receptor on the east side of the Livingston Mountain Quarry shall not exceed the existing ambient noise level by more than 13 dB, currently 33 dBA (for a noise limit of 46 dBA). If the hourly L_{25} noise level radiating from the two quarries exceeds 46 dBA at any noise receptor on the east side of Livingston Mountain Quarry, the County will coordinate with Tower Rock Products to assess each operation individually to determine which quarry resulted in a noise limit exceedance.

e. When the County quarry is operating without operations at the Livingston Mountain Quarry, the hourly L_{25} noise level along the east property boundary of the Livingston Mountain Quarry shall not exceed 10 dBA above the ambient level, currently 33 dBA (for a noise limit of 43 dBA).

f. As the neighborhood continues to grow and residence density increases, background ambient noise levels may increase over time. As a result, the County may, on an annual basis, raise the maximum noise level limit allowed at any residence based upon a demonstration that the ambient hourly L_{25} noise levels have increased authorized above. The ambient noise level means the hourly L_{25} noise level measured at a receptor location without either the County quarry or the Tower Rock Products Livingston Mountain quarry in operation.

g. The County shall maintain a record of the days when operations are and are not occurring at the County quarry. The County shall also document the weather conditions present during the days of operations and any other events that may have an impact on noise levels recorded by their noise monitors when the quarry is operational.

h. Discriminating backup alarms shall be used on all equipment under control of the operator and after two years of operation shall be required on all equipment using back up alarms, without exception. ***(See Land Use Finding 10)***

D-5 Overall hours of operation are 8:00 A.M. to 5:00 P.M., Monday through Fridays, and up to 25 Saturdays per year. Extraction and crushing activities shall be limited to weekdays. The operational hours maybe reviewed one year after start of operations in coordination with Tower Rock taking under consideration cumulative impacts of operational and truck noise. ***(See Land Use Finding 11)***

D-6 **Blasting-**

(a) Once blasting has taken place on the site the radius of the pre-blast structural surveys in **Condition A-6.g(1)** may be enlarged, as reviewed and approved by Clark County, if homes are found to be affected by the blasting.

(b) Seismographs shall be placed at the two residences closest to the blasting area south of the site; provided, that if permission from the owner or resident cannot be obtained, the seismographs shall be located on the county's site, between the two closest residences and the blast site. Two additional monitors shall be placed either at two separate locations along the northeast and southeast property corners of the Tower Rock site, tax lot 170400-000, or at the residences located on tax lots 170424-000 (Repman) or 170421-000 (Stiff), as permission is allowed. Information generated from the blast-monitoring program shall be given to all residents requesting this data. ***(See Land Use Finding 12)***

(c) Blast monitoring results shall be sent to the Fire Marshal's office. ***(See Fire Protection Finding 6)***

(d) Explosives shall not be stored overnight on site. ***(See Fire Protection Finding 4)***

D-7 The county shall modify or replace those monitored wells determined to be significantly affected by the county's quarry operations. ***(See Land Use Finding 13)***

D-8 The operation and crusher shall comply with the requirements of the Southwest Clean Air Agency. ***(See Land Use Finding 14)***

D-9 Quarry production shall not exceed an average of 70-loaded truck trips/day during normal operations. Short-term peak production periods shall not exceed a maximum of 140-loaded truck trips/day for periods longer than 10 consecutive days.

D-10 Quarry operations shall notify Clark County Transportation in writing within 5 days of each occurrence of short-term peak production periods and the anticipated duration. ***(See Transportation Concurrency Finding 1)***

D-11 Subsequent annual payments noted in Condition B-8 shall be adjusted from the $19,318 baseline amount -based on the Seattle Engineering News Record (ENR) - Construction Cost Index (CCI) for the remainder of the anticipated 30-year life of the quarry. The recalculated amount shall then be transferred to the Clark County Pavement Preservation Fund by December 31 of each year. ***(See Transportation Concurrency Finding 6)***

D-12 **Infiltration testing** - As infiltration basins are relocated, infiltration testing for the infiltration basins shall be tested, and shall attain at least 60 inches per hour. ***(See Stormwater Finding 2)***

D-13 The condition of the asphalt noted in the WSDOT Finding shall be evaluated as needed by the county to help ensure that damage to the corners caused by the county's contribution of truck traffic is minimized.

D-14 Prior to the start of operations the applicant shall file with Planning Department a memorandum of understanding (MOU) with Tower Rock as follows:

- Each party will perform well and foundation inspections and assessments for area properties as required by its respective permits, and will maintain records of the inspections and assessments;
- The parties will create, maintain, and make available to the public upon request records of seismographic monitoring of blasting, including dates and times of blasting;
- Each party will notify the public of its contact information for complaints and dispute resolution;
- The parties will share with each other information regarding minimizing the risk of property damage from rock blasting;
- The parties shall agree on and publish an expedited process, which may include arbitration or mediation, to resolve any disagreement between the parties as to the responsibility for any damage to the neighbor's property or violation of the noise standards.
- The parties will coordinated any activities, especially short-term peak activities, so as not to jointly exceed any applicable L_{25} for both operational (crushing and drilling) and truck noise.
- The parties agree to coordinate any future request for an increase in operating hours.
- This MOU is not a legally enforceable contract <u>except for the purposes of the County's enforcement of the conditional use conditions.</u> It is not intended to create, and shall not be construed as creating any third party beneficiary, bur will give third party standing to ask the county to enforce its terms through the conditional use enforcement process. It documents the parties' understandings on cooperation to minimize the potential for well and foundation damage, and to address damage that might occur.

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

E-1 **Commencement of operations** - Within 5 years of site plan approval, quarrying operations at the site shall commence.

E-2 **Building and Fire Safety**

Building, Fire, Life, and Safety requirements must be addressed through specific approvals and permits. This decision may reference general and specific items related to structures and fire, life, and safety conditions, but they are only for reference in regards to land use conditions. It is the responsibility of the owner, agent, tenant, or applicant to insure that Building Safety and Fire Marshal requirements are in compliance or brought into compliance. Land use decisions do not waive any building or fire code requirements.

F	Post Development Requirements Review & Approval Authority: As specified below

H-1 Reclamation of the site shall meet DNR standards.

Dated this 19th day of August, 2009

J. Richard Forester
Hearing Examiner

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

Appeals:
Only a party of record may appeal an appeal of any aspect of the Hearing Examiner's decision, except the SEPA determination, to the Board of County Commissioners. 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, 1300 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:

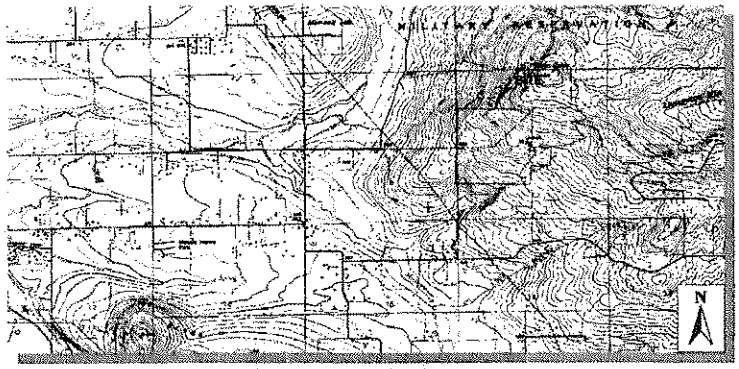
1. The case number designated by the County and the name of the applicant;
2. The name and signature of each person or group (petitioners) and a statement showing that each petitioner is entitled to file an appeal as described under Section 40.510.030 (H) of the Clark County Code. If multiple parties file a single petition for review, the petition shall designate one party as the contact representative with the Development Services Manager.
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 40.510.030(H)(3)(b);

5. A check in the amount of $716.00 (made payable to the Clark County Board of County Commissioners).

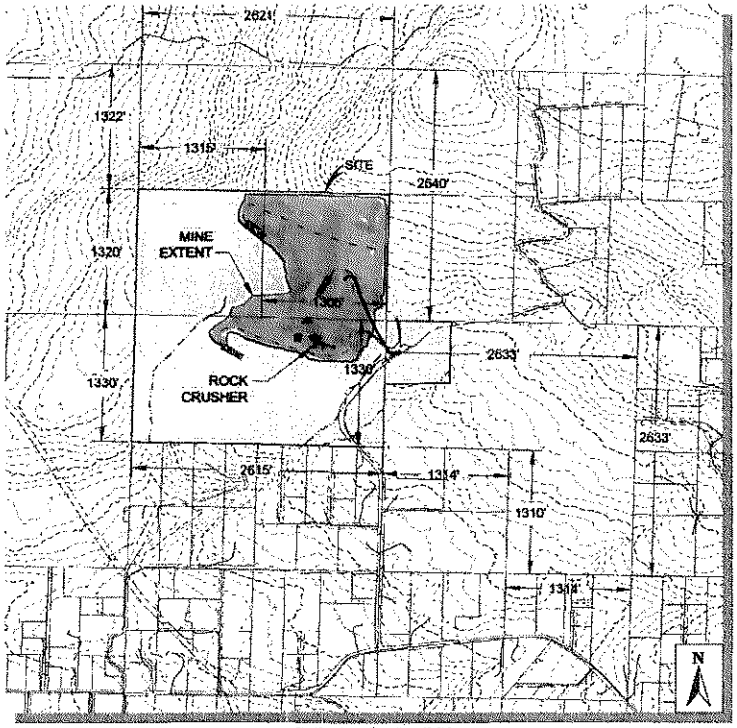
LIVINGSTON QUARRY
PRELIMINARY SITE PLAN

PREPARED FOR:
CLARK COUNTY DEPARTMENT OF PUBLIC WORKS

PREPARED BY:
MAUL FOSTER & ALONGI, INC.



Vicinity Topographic Map: Approximate Scale 1"=2000'



Site Map: Approximate Scale 1"=600'

LEGEND

- SITE BOUNDARY
- LOT LINE
- RECLAMATION SETBACK
- EXISTING ROAD CENTERLINE
- EXISTING ROAD RIGHT-OF-WAY
- EXISTING ROAD EDGE OF PAVEMENT
- EXISTING ROAD PAVEMENT
- EXISTING EDGE OF ACCESS ROAD
- EXISTING VEGETATION
- EXISTING FENCE LINE
- EXISTING MAJOR CONTOUR
- EXISTING MINOR CONTOUR
- PROPOSED MAJOR CONTOUR
- PROPOSED MINOR CONTOUR
- SLOPE INDICATOR
- PROPOSED STORMWATER CONVEYANCE DITCH
- EXISTING STREAM
- STREAM SETBACK
- SURFACE MINING OVERLAY DISTRICT
- EXISTING GROUND PROFILE
- FINISH GRADE PROFILE
- HERBACEOUS BALD HABITAT AREA
- HERBACEOUS BALD HABITAT MITIGATION BOUNDARY
- STEEP-SLOPE AREAS (>40%)
- EXISTING WETLAND AREAS

ABBREVIATIONS

AC	ACRES	RD	ROAD
CF	CUBIC FEET	SE	SOUTHEAST
CY	CUBIC YARDS	SL	SLOPE
EL	ELEVATION	SW	SOUTHWEST
EXTG.	EXISTING	TYP.	TYPICAL
GIS	GEOSPATIAL INFORMATION SYSTEM	WA	WASHINGTON
HWY	HIGHWAY		
MFA	MAUL FOSTER & ALONGI, INC.		
MIN.	MINIMUM		
MAX.	MAXIMUM		
NTS	NOT TO SCALE		

DRAWING INDEX

C0.0 COVER SHEET
C1.0 EXISTING CONDITIONS
C2.1 PHASE 1 SITE PLAN
C2.2 PHASE 2 SITE PLAN
C2.3 PHASE 3 SITE PLAN
C2.4 PHASE 4 SITE PLAN
C2.5 PHASE 5 SITE PLAN
C3.0 STORMWATER FACILITY PLAN
C4.0 EROSION CONTROL PLAN

SITE INFORMATION

PARCEL NUMBERS: 170393-000, 170396-000, 170395-000, 170397-000
QUARTER SECTIONS: NW1/4, SW1/4, AND SE1/4 OF SEC. 11, T2N, R3E, W.M.
ZONING: FR-40, FR-80
SITE AREA: 170 ACRES

OWNER

STATE OF WASHINGTON SCHOOL LANDS
MANAGED BY THE DEPARTMENT OF NATURAL RESOURCES

APPLICANT

CARL OMAN
CLARK COUNTY DEPARTMENT OF PUBLIC WORKS
4700 NE 78TH STREET
VANCOUVER, WA 98665

TEL. (360) 397-8118 x 1606
FAX. (360) 759-5983
carl.oman@clark.wa.gov

CONTACT

MARK ERICKSON
MAUL FOSTER ALONGI, INC.
7223 NE HAZEL DELL AVE., SUITE B
VANCOUVER, WA 98665

TEL: (360) 694-2691
FAX: (360) 906-1958
mericksonmaulfoster.com

IMPACT FEES

IMPACT FEE WILL BE $72 PER VEHICLE TRIP.
IMPACT FEES ARE DUE AT TIME OF ISSUANCE OF BUILDING PERMITS AND ARE NOT A LIEN PLACED AGAINST THE PROPERTY AT THE TIME OF FINAL APPROVAL.

LIVINGSTON QUARRY VOLUME SUMMARY TABLE

PHASE	VOLUME (CY)
1	2,543,164
2	1,409,822
3	734,009
4	586,937
5	1,847,828
TOTAL	7,121,759

Note: Bar is one inch on original drawing. If not one inch on this sheet, adjust scale accordingly.

MAUL FOSTER ALONGI
7223 NE Hazel Dell Avenue Suite B
Vancouver, WA 98665
360.694.2691 (p) 360.906.1958 (f)
www.maulfoster.com

PRELIMINARY

COVER AND INDEX SHEET
LIVINGSTON QUARRY
CLARK COUNTY DEPARTMENT OF PUBLIC WORKS
CLARK COUNTY, WASHINGTON

Rev	Date	Comments	Drwn	Chkd
2	4/7/2009	Revised SIN Map	JMF	MSE
1	4/7/2009	Fully Complete Submittal	JMF	MSE

C0.0

HEARING EXAMINER EXHIBITS

APPLICATION: LIVINGSTON QUARRY

CASE NUMBERS: CUP2009-00004; PSR2009-00014; CPZ2009-00024; HAB2009-00016; SEP2009-00028

Hearing Date: June 25, 2009

EXHIBIT NO.	DATE	SUBMITTED BY	DESCRIPTION
1		CC Development Services	Aerial Map
2		CC Development Services	Vicinity Map
3		CC Development Services	Zoning Map
4		CC Development Services	Comprehensive Plan Map
5	3/19/09	Applicant, Maul Foster & Alongi, Inc.	Cover and Index Sheet, Existing Conditions, Phase Plans; Stormwater Facility Plan, Erosion Control Plan
6	3/19/09	Applicant, Maul Foster & Alongi, Inc.	Application Submittal Package (Cover Sheet and Table of Contents, Application Forms, Application fee, Pre-application Conference Report, GIS Packet, Site Plan Review Narrative, Conditional use Permit Narrative, Legal Lot Determination Information, Approved Preliminary Plats Abutting the Site, Proposed Development Plan, Soil Analysis Report, Preliminary Stormwater Design Report, Proposed Stormwater Plan, Project Engineer Statement of Completeness and Feasibility, Phasing Plan, Traffic Study, SEPA, Sewer Utility Reviews Letter, Water Utility Reviews Letter, Health Dept Project Review Evaluation Letter, Covenants or Restrictions, Associated Applications, Habitat Permit Mitigation Plan, Drainage Study, Receipt Confirmation of Archaeological Predetermination Report)
7	3/19/09	Applicant, Maul Foster & Alongi, Inc.	Noise Study of the Livingston Quarry Conditional Use Application
8	4/9/09	CC Development Services	Fully Complete Determination
9	4/23/09	CC Development Services	Affidavit of Mailing Public Notice
10	4/23/09	CC Development Services	Notice of Type III Development Review Application and Public Hearing
11	4/29/09	Randall Kraut	Comment Letter

EXHIBIT NO.	DATE	SUBMITTED BY	DESCRIPTION
12	5/8/09	Mark Peebles	Comment Letter
13	5/12/09	Applicant, Maul Foster & Alongi, Inc.	Description of Gravel Washing Process
14	5/20/09	CC Development Services	Notice of Public Hearing for June 25, 2009
15	5/22/09	Applicant, Maul Foster & Alongi, Inc.	Traffic Addendum Re: Peak Impact
16	5/22/09	Applicant, Maul Foster & Alongi, Inc.	Drainage Analysis of Stream Feature at Livingston Quarry
17	5/22/09	Applicant, Maul Foster & Alongi, Inc.	Revised Conditional Use Permit Narrative
18	5/22/09	Applicant, Maul Foster & Alongi, Inc.	Revised Zone Change Narrative
19	5/26/09	Applicant, Maul Foster & Alongi, Inc.	Revised phase 5 plan
20	5/26/09	Applicant, Maul Foster & Alongi, Inc.	DAHP Approval Letter
21	5/26/09	Applicant, Maul Foster & Alongi, Inc.	Affidavit of Posting Land Use Sign
22	5/27/09	Applicant, Maul Foster & Alongi, Inc.	Groundwater Assessment
23	5/27/09	Applicant, Maul Foster & Alongi, Inc.	Additional Analysis (Revised)
24	5/27/09	Applicant, Maul Foster & Alongi, Inc.	DSA Cumulative Noise Estimation for Tower Rock and County Quarry
25	5/28/09	Applicant, Carl Oman	Need for 7:00 am hours
26	5/31/09	Barbara Repman	Public Comment e-mail
27	6/2/09	WSDOT	Project comments for SR 500
28	6/7/09	Mark Jones	Public Comment e-mail
29	6/9/09	CC Development Services	APL2003-00006 decision
30	6/9/09	CC Development Services	CUP2007-00013 decision
31	6/9/09	CC Development Services	APL2008-00006
32	6/9/09	CC Development Services	MZR2008-00079
33	6/9/09	CC Development Services	CUP 2007-00013 Hours of operation memo

EXHIBIT NO.	DATE	SUBMITTED BY	DESCRIPTION
34	6/10/09	CC Development Services	Affidavit of Posting Public Notice
35	6/10/09	CC Development Services	Staff Report & Recommendation
36	6/10/09	CC Development Services	Pavement Improvement agreement and Calculation of Pavement Wear-Exhibits A and B of Transportation Concurrency Findings
37	6/11/09	Southwest Clean Air Agency	Quarry comments
38	6/22/09	Gretchen Alexander	Comment Letter e-mail
39	6/22/09	Wendy Keeline	Comment Letter
40	6/22/09	Barbara Repman	Public Comment e-mail
41	6/22/09	Wendy Garrett	Public Comment e-mail
42	6/23/09	Prem & Indu Sood	Public Comment e-mail
43	5/22/09	Washington Department of Fish and Wildlife	Letter regarding mitigation plan
44	6/25/09	Sharon McEneny	Public Comment email
45	6/25/09	Paul & Kim Gerlack	Public Comment
46	6/25/09	CC Development Services	Pictures of Power Point Presentation
47	6/25/09	Applicant: Lancaster Engineering	Capacity Analysis of Area Roadways
48	6/25/09	Applicant: Lancaster Engineering	Speed Study @ SR500/NE 53rd Drive
49	6/25/09	Applicant: Lancaster Engineering	Speed Study @Site Access
50	6/25/09	Ken Weihl	Pictures of Cracks in Concrete
51	7/8/09	Gretchen Alexander, DAHP	Request to be a party of record
52	7/10/09	Applicant, Maul Foster & Alongi, Inc.	Open record submittal regarding noise conditions and MOU
53	7/11/09	Mark Jones	Public Comment
54	7/17/09	CC Public Works Concurrency – David Jardin	Revised Pavement Improvement Agreement
55 A, B C D	7/21/09	Tsuyoshi Inouye	**a)** Water Quality Concerns - **b)**Brake Dust **c)** Murray to EPA: Don't Withdraw Asbestos Guidance for Mechanics - **d)** Source Water Protection Practices Bulletin

EXHIBIT NO.	DATE	SUBMITTED BY	DESCRIPTION
56	7/21/09	CC Public Works – David Jardin	Final Revised Pavement Improvement Agreement
57	7/23/09	CC Development Services – Jan Bazala	Planners response to Applicants open record submittal
58	7/23/09	Keith and Barbara Gagnier	Public Comment
59	7/24/09	Bob Weber	Traffic Report Profile
60	7/24/09	Linda Rectanus	Public Comment
61	7/24/09	Barbara Repman	Public Comment
62	7/31/09	Byron Jolma, on behalf of CC Public Works	Rebuttal of Public Comments

Copies of these exhibits can be viewed at:

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