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JoAnne McBride, Clerk, Clark Co.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLARK

Brent Rotschy,)	Case No. 03 2 01911 2
Petitioner/Plaintiff,)	
vs.)	
CLARK COUNTY, a Quasi-Municipal)	
Corporation of the State of Washington)	
Defendant.)	



NO YOCOLT MOUNTAIN QUARRY)	Case No. 03 2 01976 7
COMMITTEE, et al.,)	
Plaintiff,)	JUDGMENT ON LUPA PETITIONS
vs.)	FILED BY NO YACOLT MOUNTAIN
CLARK COUNTY, et al.,)	QUARRY, et al. AND BRENT
Defendant)	ROTSCHY

The record was certified for these LUPA appeals and argued to the Court by counsel on July 2, 2004 and July 22, 2004. After having considered the arguments of counsel and the record from below, the Court does hereby make this Final Order.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

JUDGMENT ON LUPA PETITIONS FILED BY NO YACOLT MOUNTAIN QUARRY, et al. AND BRENT ROTSCHY - page 1

SELLERS LAW OFFICE
James L. Sellers, Attorney at Law
PO Box 61535, 415 East 20th Plain Blvd
Vancouver, WA 98666 360.695.0464

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1. Resolution 2003-03-22 of the Board of County Commissioners of Clark County, Washington is hereby affirmed and sustained in its totality. The Court does hereby hold against the petitioners' challenges to the Board's Resolution and actions taken with respect thereto.

2. The County Commissioners' decision reversing the Hearing Examiner's denial of the land use permit and approval applications at issue in this case is hereby affirmed and sustained.

3. The alternative approval conditions relating to noise abatement and monitoring costs contained in the Hearing Examiner's Final Order are hereby affirmed and sustained.

DATED this _____ day of August 2004.

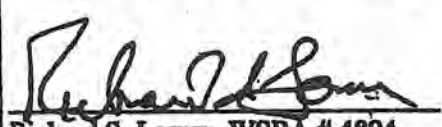
DIANE M. WOOLARD, JUDGE OF THE SUPERIOR COURT OF CLARK COUNTY, DEPARTMENT 8

Presented by:



James L. Sellers, WSBA # 4770
Counsel for Brent Rotschy

Receipt of true copy acknowledged, notice of presentment waived:



Richard S. Lowry, WSBA # 4894
Deputy Prosecuting Attorney



Keith Hirokawa, WSBA # 29339
Counsel for No Yacolt Mountain, et al

TO: Brent

626-0011

02-073.1

SUPERIOR COURT OF
THE STATE OF WASHINGTON FOR CLARK COUNTY
DEPARTMENT NO. 8
PO BOX 8000
VANCOUVER, WA 98666-8000



TELEPHONE (360) 397-2068
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DIANE M. WOOLARD
JUDGE

August 3, 2004

Richard Lowery
Deputy Prosecuting Attorney
P.O. Box 5000
Vancouver, WA 98666

James Sellers
Attorney at Law
P.O. Box 61535
Vancouver, WA 98666

Keith Hirokawa
Attorney at Law
1111 Main, Suite 402
Vancouver, WA 98660-2958

Re: No Yacolt Mountain Quarry v. Clark County
Case No. 03-2-01976-7

Counsel:

After having reviewed the materials and heard the arguments of counsel, I am affirming in total the Board of Commissions reversal of the decision of the hearing examiner denial of the rezone and affirming hearing examiner alternative approval conditions relating to noise abatement and monitoring costs.

The Board Resolution 2003-03-22 is affirmed.

Prevailing counsel will submit findings and conclusions based on the information and argument presented.

Sincerely,
Diane M Woolard

Diane M. Woolard
JUDGE

DMW:dr

COPY

APR 01 2003

NOTICE IS HEREBY GIVEN THAT ON March 25, 2003 the Board of Clark County Commissioners adopted the attached resolution in the matter of CPZ2002-00009; CUP2002-00003; PSR2002-00015; SEP2002-00025; and ARC2001-00050 - Yacolt Mountain Quarry. Pursuant to RCW 36.70C.040, any judicial action to set aside, enjoin, or otherwise review such final decision including a challenge under the State Environmental Policy Act, must be commenced in Clark County Superior Court within 21 days of such date of adoption. If such decision makes a definitive change in the property's land use designation, affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation.

Travis Richards Clerk of the Board

Dated and Mailed: March 28, 2003

- Distribution: Applicant
 Appellant
 Assessor
 Community Development
 Parties of Record
 Others requesting notice

RESOLUTION NO. 2003-03-22

A RESOLUTION relating to land use, regarding an appeal of the Hearings Examiner's decision denying an application for CPZ2002-00009; CUP2002-00003; PSR2002-00015; SEP2002-00025; ARC2001-00050 (Yacolt Mountain Quarry), a request for a zone change, a conditional use permit, site plan review and environmental review for a mining and rock crushing operation. The site is located at 30500 NE Mystic Drive; Southeast Quarter of Section 5, Township 4 North, Range 3 East of the Willamette Meridian; Northwest, Southwest and Southeast Quarter of Section 4, Township 4 North, Range 3 East of the Willamette Meridian.

WHEREAS, the Clark County Hearings Examiner received testimony about this application at public hearings on June 20 and August 22, 2002; and,

WHEREAS, the Examiner concluded that the rezone, conditional use permit and site plan should be denied; and,

WHEREAS, James Sellers has petitioned the Board of County Commissioners on behalf of the applicant to overturn the Hearings Examiner's denial of the request for granting of the rezones, conditional use permit and site plan on the grounds that the Examiner erred in his interpretation of the County regulation for a rezone and a conditional use permit; and,

WHEREAS, Keith Hirokawa has petitioned the Board of County Commissioners on behalf of the Yacolt Mountain Neighborhood Association to uphold the Hearings Examiner's denial of the request for granting of the rezones, conditional use permit and site plan, but that the Examiner erred in his interpretation of the County regulation for a rezone and a conditional use permit; and,

WHEREAS, the Board of County Commissioners has considered the appeal at a duly advertised public meeting; now, therefore,

1 BE IT ORDERED AND RESOLVED BY THE BOARD OF COUNTY
2 COMMISSIONERS OF CLARK COUNTY, STATE OF WASHINGTON, as follows:

3 Section 1. Jurisdiction. The Board has jurisdiction to consider the appeal of the applicant.
4 As an agent, the attorney for the applicant had authority to sign the applicant's appeal.

5 Section 2. Analysis. The Examiner's decision errs in the following particulars:

- 6 (1) Burden of proof: The applicant has the burden to demonstrate compliance with
7 applicable standards. However, such burden is affected by regulatory reform
8 legislation (RCW 36.70B.030 and .040) which requires that an application be first
9 tested for consistency with development regulations. The Final Decision of the
10 Examiner denying this application does not cite any code violation. Second,
11 regulatory reform legislation provides that if anticipated impacts are not addressed
12 by development regulation, the decision-maker is to consider consistency with
13 comprehensive plan policies. Here, plan policies limit mining to resource areas
14 (agriculture and forest zones) exclusive of floodplains. The Examiner failed to
15 adequately consider the generally substandard condition of roads within resource
16 areas. It is not apparent from the Examiner's decision how the roads serving the
17 subject proposal differ in any material way from other resource areas eligible for
18 mining. Finally, regulatory reform legislation permits impacts not covered in
19 either regulation or plan documents to be addressed under substantive SEPA
20 authority. Such authority, however, is also limited by RCW 43.21.060 which
21 requires, inter alia, that denial be premised upon a significant impact identified in
22 an EIS and that reasonable mitigation measures be insufficient. Here, an EIS was

1 not required (and no timely DNS appeal was filed); and the Examiner has failed to
2 sufficiently explain why the applicant's proposed mitigation measures are
3 inadequate.

4 (2) Change of circumstances. The Examiner correctly concluded that no change of
5 circumstances need be shown.

6 (3) Further public health, safety, morals or welfare. The Examiner misconstrued
7 CCC 18.503.060 (3) to require road conditions to improve. Such standard merely
8 reflects the general requirement that any police power enactment bear a substantial
9 relationship to a public purpose. Here, such relationship is demonstrated by
10 adherence to comprehensive plan policies relating to mining.

11 (4) Matrix. The Examiner erred in applying the Comprehensive Plan Matrix (Table
12 4.4) for the reasons set forth in Subsection 1), above.

13 (5) Traffic impacts. The proposal meets off-site traffic standards. The Examiner
14 erred in denying the proposal on the basis of traffic impacts, which have not been
15 shown to be more significant than in other areas where mining is allowed.

16 (6) Water usage. Substantial evidence supports the Examiner's conclusions that the
17 proposal can operate within the limits of its current water right. However, the
18 Examiner erred in prohibiting the applicant from using surface water for
19 operational purposes if such use is approved by the Washington State Department
20 of Ecology (DOE). No substantial evidence in the record supports such
21 prohibition.

1 (7) Groundwater. The Examiner erred in demanding a level of certainty as to
2 avoidance of ground water impacts to wells which is neither required by code,
3 called for by comprehensive plan policies, nor substantiated by environmental
4 analysis. Such error is underscored by the Examiner's failure to acknowledge the
5 applicant's voluntary agreement as a reasonable mitigation measure to provide
6 public water to properties with affected wells as a last resort.

7 (8) Noise. The EDNA classification of the adjacent property is industrial given its
8 predominant use and zoning. However, the county's aspirational standard in CCC
9 20.50.025(3)(g) that sources of noise otherwise exempt from WAC 173-60
10 effecting existing or proposed residential uses be mitigated to the standards of a
11 Class B source of noise (i.e. 57 dBA) applies; in the circumstances of the present
12 application, such standard should be measured at the property line rather than the
13 residence.

14 (9) Habitat ordinance. The Examiner properly applied the habitat ordinance. Issues
15 of water draw-down and application of dust inhibitors are not addressed by such
16 ordinance.

17 (10) Stormwater ordinance. The Examiner properly applied the stormwater ordinance.
18 Final design issues are not required to be addressed at this stage so long as
19 substantial evidence exists that compliance with code requirements is feasible.

20 (11) Unconstitutional gift. Anticipated county road work whose timing is in part
21 necessitated by impacts from this proposal does not constitute an unconstitutional

1 gift of public funds since provision of roads constitutes a fundamental county
2 purpose.

3 (12) Failure to withdraw MDNS. Under WAC 197.11.660 both the Examiner and the
4 Board lack authority to consider this issue.

5 (13) Groundwater study. Substantial evidence supports Condition SRPA 3.

6 (14) Liability for well impacts. The Examiner lacks jurisdiction to impose a
7 requirement that the operator be liable for a diminution in property value resulting
8 from impacts to wells, as provided for in Condition G3.

9 (15) Neighborhood advisory group. Substantial evidence supports the geographic
10 scope of the neighborhood advisory group provided for in Condition Q6.

11 (16) Cost recovery. Reasonable limits on recovery of county costs should be provided
12 if requested by the applicant.

13 (17) Pre-blast survey. The pre-blast survey required by Condition B11 should include
14 examination of the structural integrity of existing homes if inspection is permitted
15 by the owner.

16 **Section 3. Disposition.** Based upon the foregoing analysis the Hearings Examiner's
17 decision in the matter of CPZ2002-00009; CUP2002-00003; PSR2002-00015; SEP2002-00025;
18 ARC2001-00050 (Yacolt Mountain Quarry) denying a zone change, a conditional use permit, site
19 plan review and environmental review for a surface mining and rock crushing operation is
20 overturned, the applications approved, and the alternative Conditions of Approval as proposed by
21 the Examiner are hereby approved with the following changes:

1 (1) Conditions F/P1 and SEPA 1 shall be modified to read: "On-site surface
2 runoff shall be directed to collection areas for infiltration back into the ground or
3 used on-site as allowed under Department of Ecology water rights regulations.

4 Disturbed soils and overburden storage areas shall be replanted and/or reseeded
5 with vegetation."

6 (2) Condition G3 shall be modified to read: "If future monitoring indicates that
7 the Quarry activity has significantly or noticeably affected a neighboring property
8 water supply, the Quarry could choose from several mitigation options, including
9 but not limited to the following: deepening of a well, drilling a new well, altering
10 Quarry operations, or providing public water."

11 (3) Condition B11 shall be modified to read: "A program of pre-blasting
12 structural surveys shall be conducted by an independent third party for all
13 residents requesting one and providing access whose homes lie within the 1,500-
14 foot impact area. This survey shall be offered at no cost to the homeowners and
15 they will receive copies of the report and copies of any photographs taken. This
16 structural inspection for structural integrity will establish the home's pre-blasting
17 condition and, should there later be questions about the effect of blasting upon
18 their home, this report will have documented its condition prior to the start of
19 Quarrying operations. Information generated from the blast-monitoring program
20 shall be given to all residents requesting this data."

(4) The applicant shall be entitled to have a cap placed on the county cost recovery requirements of Condition Q9 and the last sentence of Condition N9, through an applicant-initiated post decision review.

No cost

ADOPTED this 25 day of March, 2003.

Attest:

BOARD OF COUNTY COMMISSIONERS FOR CLARK COUNTY, WASHINGTON

Louise Richards
Clerk to the Board

By Craig Fridemore, Chair

Approved as to Form Only
ARTHUR D. CURTIS
Prosecuting Attorney

By Betty Sue Morris, Commissioner

By Richard S. Lowry
Chief Deputy Prosecuting Attorney

By Judie Stanton, Commissioner

and at intervals thereafter determined by the Neighbor Advisory Group. If the Quarry is not in compliance, Quarry operations shall be immediately modified, or further mitigation measures implemented, to bring it into compliance. Details shall be worked out prior to final site plan approval.

- Q8 All neighbors within 1 mile of the Quarry boundary, the Neighbor Advisory Group, Clark County, and the DNR, shall be provided with a copy of the regular monitoring results and any follow-up compliance monitoring showing how the Quarry is performing and an invitation to respond with concerns.

CONCLUSIONS

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

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

DECISION

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

Dated this _____ day of November, 2002

U

J. Richard Forester
Hearing Examiner

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

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

The appeal shall be filed with the Board of County Commissioners, 1013 Franklin Street, Vancouver, Washington, 98668, within fourteen (14) calendar days from the date the notice of final land use decision is mailed to parties of record.

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

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

APPENDED Conditions of Approval

Conditions Unique to this Development

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

Planning:

F/P1 On-site surface runoff shall be directed to collection areas for infiltration back into the ground. Disturbed soils and overburden storage areas shall be replanted and/or reseeded with vegetation. A note to this affect shall be placed on the final site plan. (See Land Use Finding #10).

F/P2 The operator of the surface mine shall modify or replace groundwater wells that are shown to be adversely affected by the proposed surface mining activity. A note shall be placed on the final site plan to this affect. (See Land Use Finding #10).

F/P3 Sight distance of 860 feet shall be demonstrated at the intersection of SR-503 and Gabriel Road.

F/P4 The intersection of SR-503 and Gabriel Road shall be improved per agreement with WSDOT as outlined in Exhibits 67 & 74. (See Land Use Finding #14/Concurrency Finding 8).

F/P5 The applicant must submit an approved reclamation plan from the Washington Department of Natural Resources for the proposed site. (See Land Use Finding # 15 & #17).

F/P6 The mitigation measures in Section 8 of the noise study, Noise Mitigation Measures, Exhibits 10 and 72 shall be adhered to in order to comply with the Clark County noise standards. A note to this affect shall be placed on the final site plan. Mitigation in exhibits 133 and 172 is provided in Conditions N. Where conflicting Conditions N shall supercede prior measures (See Land Use Finding #18).

F/P7 Access to the Quarry shall only be allowed via the existing Longview Fibre haul road that connects the Quarry to Kelly Road. A note to this affect shall be placed on the final site plan. (See Land Use Finding #22/Transportation Finding 3).

F/P8 An adequate plan for minimizing dust on haul roads and mud being tracked onto public roadways shall be included in the erosion control plan that is required for this application. (See Land Use Finding #22)

F/P9 Any notes on the site plan shall indicate a 50-foot setback. (See Land Use Finding #24).

Critical Areas:

F/C1 The applicant shall implement the Priority Species and Habitat Assessment for Yacolt

see revised resolution
P 6 of resolution

Mountain Quarry mitigation plan (Exhibit # 12), submitted by Environmental Technology Consultants, and dated March 21, 2002, except as amended herein. (See Critical Areas Finding #3 and Conditions F/C2 -10).

- F/C2** Tree planting shall occur between December 1 and March 31 in order to ensure optimum seedling survival. Any deviation from this planting window will need to be approved by the county Habitat Biologist. (See Critical Areas Finding #3).
- F/C3** If damage from rodents or deer becomes a problem, the applicant shall protect planted seedlings from rodent/deer depredation through the use of screening and/or repellants. (See Critical Areas Finding #3).
- F/C4** If non-native vegetative regrowth becomes a problem, the applicant shall remove said vegetation as needed to ensure plant survival. (See Critical Areas Finding #3).
- F/C5** Non-native vegetation shall be removed mechanically (i.e. weed whacker, brushhog, mower) or by hand (i.e. scythe, machete) in order to minimize soil movement and alteration. Care must be taken so as not to remove any significant aggregations of native vegetation (i.e. stem diameter greater than 2"). (See Critical Areas Finding #3).
- F/C6** Weed material and vegetative debris shall be left on the ground after cutting, in order to hinder regrowth and prevent soil erosion. (See Critical Areas Finding #3).
- F/C7** No grading (cuts or fills) shall be conducted within the dripline of all trees slated for protection within the 150-foot riparian HCZ. (See Critical Areas Finding #3).
- F/C8** Appropriate demarcation and signage of the protected habitat boundaries shall be in place prior to initiating any groundbreaking activity. (See Critical Areas Finding #3).
- F/C9** The riparian HCZ and proposed mitigation area shall be permanently labeled in such a manner as to sufficiently identify and protect its functionality or as directed by the County Biologist. (See Critical Areas Finding #3).
- F/C10** Locations of signage surrounding the riparian HCZ shall be clearly identified on the Final Engineering Construction plans set. (See Critical Areas Finding #3).
- F/C11** A note shall be included on the face of the plat which states "no native tree or shrub vegetation shall be removed from within the 150-foot riparian HCZ," prior to Final Site Plan approval. (See Critical Areas Finding #3).
- F/C12** The applicant shall enter the 150-foot riparian HCZ into a Habitat Conservation Covenant prior to Final Site Plan approval. (See Critical Areas Finding #3).
- F/C13** This activity is subject to CCC 13.60, Geologic Hazard Areas Regulations. (See Critical Areas Finding #4).
- F/C14** The applicant shall submit a final geotechnical report. This report shall be prepared, stamped and signed by a geotechnical engineer or geologist who meets the requirements

defined in CCC 13.60.110, and shall comply with the requirements of CCC 13.60.230(4). The recommendations of this study shall be followed in the development, mining and reclamation of the site. (See Critical Areas Finding #5).

Engineering:

- F/E1** The primary access to this site shall be via an existing private road owned by Longview Fibre. This road intersects Yacolt Mountain Road approximately 1400 feet westerly of the east intersection with NE Kelly Road. Emergency access routes will be via an existing private road intersecting NE Yacolt Mountain Road approximately one-half mile easterly of the east intersection with NE Kelly Road, and via NE Mystic Drive. These emergency accesses shall have gates installed that are approved by the Fire Marshal. (See Transportation Finding #3)
- F/E2** The applicant shall provide evidence to the county that they have permission from James Mattila, the owner of a portion of the road, that they have permission to use this road for these purposes. (See Transportation Finding #4)
- F/E3** The applicant shall provide a private road maintenance agreement with James Mattila as required in CCC 12.05A.770 (7). This agreement must include the owners/operators of the Yacolt Mountain Quarry among those responsible for the maintenance of this road. (See Transportation Finding #5)
- F/E4** The following note shall be placed on face of the final site plan: "Clark County has no responsibility to improve or maintain the private roads contained within or private roads providing access to the property described in this plat. Any private access street shall remain a private street unless it is upgraded to public street standards at the expense of the developer or adjoining lot owners to include hard surface paving and is accepted by the County for public ownership and maintenance". (See Transportation Finding #6)
- F/E5** The private access road must be a minimum of 20 feet wide. Any widening of this road is subject to the Stormwater Ordinance CCC 13.29. (See Transportation Finding #7)
- F/E6** The private access road shall be paved back 25 feet from the nearest edge of the traveled lane of NE Yacolt Mountain Road. The corner pavement radius shall be a minimum of 25 feet. (See Transportation Finding #8)
- F/E7** The trees and brush located along the south side on NE Yacolt Mountain Road west of the intersection with the private access road shall be removed in order to obtain at least 500 feet of sight distance along NE Yacolt Mountain Road, as measured in accordance with CCC 12.05A.250(2). (See Transportation Finding #9)
- F/E8** This application is subject to the Stormwater and Erosion Control Ordinance CCC 13.29. (See Stormwater and Erosion Control Finding #1)
- F/E9** A final stormwater control plan and final technical information report (T.I.R.) shall be submitted for approval in compliance with Section 13.29.530. This report shall study such areas as shops, offices, parking, equipment service areas, crusher and processing areas, which are subject to CCC 13.29. In addition to refining and confirming the

preliminary stormwater design report, the final plan and report shall also include (but not be limited to) the following:

- Water quality treatment facilities shall provide treatment of 70% of the 2-year recurrence 24-hour storm event
- Oil/water separators for the areas containing shops and equipment storage and maintenance areas
- Provide an infiltration report that is signed and stamped by an individual licensed in the State of Washington
- Comply with the conditions listed in CCC 13.29.305(H) (2). (See Stormwater and Erosion Control Finding #3)

F/E10 The stormwater facilities shall be privately owned in compliance with CCC 13.29.340(A), and maintained per the county's Stormwater Facilities Maintenance Manual, as adopted by Chapter 13.26A. Adequate access must be provided to the facilities to perform maintenance. (See Stormwater and Erosion Control Finding #3)

F/E11 An erosion control plan for the development shall be submitted in compliance with Section 13.29.540. The erosion control plan shall be submitted and approved prior to any construction. Failure to comply with the approved erosion control plan can result in a stop-work order, citation, or other code enforcement actions. (See Stormwater and Erosion Control Finding No. 4)

F/E12 This activity shall be supervised by an individual who has successfully completed formal training in erosion and sediment control during construction by a recognized organization acceptable to the director, per CCC 13.29.430. (See Stormwater and Erosion Control Finding No. 4)

Fire Protection:

F/F1 Gates which restrict required fire apparatus access shall conform to the Clark county gate Code Ordinance (CCC 15.12). A note shall be placed on the final plat to this effect. (See Fire Protection Finding #6).

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

Health District:

F/H1 Verification of a septic permit is required.

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

Fire Protection:

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

SEPA Mitigation Conditions

- 1.** On-site surface runoff shall be directed to collection areas for infiltration back into the ground. Disturbed soils and overburden storage areas shall be replanted and/or reseeded with vegetation. (See Land Use Finding #10).
- 2.** The operator of the surface mine shall modify or replace groundwater wells that are shown to be adversely affected by the proposed surface mining activity. (See Land Use Finding #10).
- 3.** Prior to implementing Groundwater Conditions (G) additional study shall be conducted and submitted as proposed by Kleinfelder Exhibits 144 and 235.

Additional Conditions Unique to this Development

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

Blasting Conditions:

- B1** A site specific final detailed blasting plan by Explosive Technical Services substantially similar to Exhibit 151 (the Blasting Plan), or other qualified firm, for the Yacolt Mountain Quarry will be submitted to the Fire Marshal for approval prior to any blasting activity on the site.)
- B2** Blasting will be conducted on business weekday hours from 9:00am to 5:00pm and not on weekends or legal holidays. Blast days will be as much as possible scheduled on consistent days of the week (for example on Mondays or Thursdays).
- B3** A program utilizing registered mailings shall be initiated affording people living within

the 2,500-foot impact area boundary information regarding blasting parameters and proposed blasting schedules. Individuals residing within 1,500-feet of blasts shall also be contacted the day prior to the blast. A list of these residents wishing to be contacted prior to commencement of any blasting shall be kept on site.

B4 The licensed and bonded blasting contractor will store explosives only at approved offsite facilities. On the designated blasting day, an explosive delivery vehicle will make the delivery, stand by during the explosive loading, and return all unused explosive materials to the supplier's magazine on the same day. The explosive delivery vehicle shall be in good running condition, properly placarded, equipped with required safety equipment, and operated in full compliance with all state and federal regulations.

B5 Blasts shall be designed for proper hole spacing and burden, proper powder factor, proper delay timing and sequencing, and minimum number of holes.

B6 Upon commencement, blasting operations shall comply with the current approved blasting plan for the Quarry. [The plan will be kept current and available for review by regulators and neighbors.] *Blasting plan* *★*

B7 The blasting plan's basic design and primary thrust shall be focused on safety and on generating an absolute minimum effect on surrounding residences and infrastructures. A high value shall be placed on keeping blasting-generated vibratory ground movement, air overpressure, and fly rock significantly below current regulatory standards as promulgated by the following; US Dept. of the Interior, Bureau of Mines Report of Investigations, RI's 8507 and 8485 and Bureau of Mines Information Circular, IC 8925.

B8 Experienced and responsible Blasters-in-Charge shall be employed and utilized to obtain a safe and effective blasting program.

B9 Following a blast, a "Blast Report Form" shall be filled out by the Blaster-in-Charge. This report shall be maintained on file by the operator and made available for inspection *< —* by agency personnel as well as interested neighbors.

B10 A blast-monitoring program to physically measure levels of ground movement and sound shall be utilized for all blasts.

B11 A program of pre-blasting structural surveys shall be conducted by an independent third party for all residents requesting one whose homes lie within the 1,500-foot impact area. This survey shall be offered at no cost to the homeowners and they will receive copies of the report and copies of any photographs taken. This structural inspection will establish the homes pre-blasting condition and, should there later be questions about the effect of blasting upon their home, this report will have documented its condition prior to the start of Quarrying operations. Information generated from the blast-monitoring program shall be given to all residents requesting this data. *See revised (resolution pg 6)*

B12 Explosive manufacturers' product literature or technical information sheets and Material Safety Data Sheets (MSDS) covering all explosive products to be utilized on this project shall be made available to neighbors or regulators upon request.

- B13** All blasts shall be monitored using up to two Instantel Blastmate II ds 477 blast monitors or equivalent. The locations for the placement of the monitor shall be designated by the blasting consultant and the seismograph record results made available for inspection by agency personnel as well as interested neighbors.
- B14** Unauthorized personnel shall not be permitted on the active shot loading area during shot loading procedures with the exception of regulatory personnel connected with the project.
- B15** At the time of the blast, the blast area shall be cleared of personnel for a radius of 500-feet from the shot location with the exception of the blaster who, if closer than 500-feet, must be appropriately protected from fly rock. Access to the blast area shall be restricted during blasting.
- B16** Industry standard blasting signals shall precede the blast and an all clear signal shall follow.
- B17** The blast shall be supervised by the Blaster-in-Charge who has the responsibility and authority to control public access to the area during blasting operations. The Blaster-in-Charge shall have the authority and responsibility to stop blasting operations at any time he/she feels an unsafe condition exists.
- B18** As soon as practical after any blast, the Blaster-in-Charge shall inspect the blast site for potential unsafe conditions.
- B19** A shot log generated, and signed by the Blaster-in-Charge, detailing shot parameters as well as weather conditions and shot outcomes shall be generated for each shot. These shall be made available to the County or DNR upon request as well as any interested neighbor residing within the impact area.
- B20** The Quarry blasting will be regulated by state and federal regulations and, according to industry standard, published references regarding explosives used in mining. These include, but are not limited to, the following: On the federal level, rock Quarrying is regulated by the Mine Safety and Health Administration (MSHA). On the state level, the use of explosives in Quarrying comes under The Department of Labors and Industries, WISHA Services Division. In Clark County, the county Fire Marshal regulates explosive storage and use under the Uniform Fire Code, Sect. 78.

Dust Conditions:

- D1** An air quality permit for dust and emission control measures for all stationary crushing equipment and Quarry shall be obtained from the Southwest Washington Clean Air Authority (SWCAA) prior to Final Site Plan approval. All operations shall meet Clark County and SWCAA standards as required by the State of Washington as outlined in Exhibit #82, a letter from SWCAA commenting on the application.
- D2** Dust suppression spray bars capable of wet suppression shall be utilized for dust control in the rock crusher and processing equipment.

- D3 Water, dust palliatives such as "Dus-Top" or other approved dust control measures shall be used alone or in combination as necessary to control dust on haul roads.
- D4 The Quarry operators shall adjust Quarry operations as necessary to comply with DOE and SWCAA threshold limits.
- D5 It shall be noted in the Final Site Plan that a speed limit of 25 miles per hour shall be posted on the private Longview Fibre haul road and roads maintained in the Quarry.
- D6 It shall be noted in the Final Site Plan that prior to beginning operations, the Quarry will pave at least 60 feet from each end of any stream crossing on the existing gravel haul road to eliminate the need to provide dust control near the creeks, as discussed in Exhibit #166. The pavement shall be maintained to typical pavement standards and repaved as necessary by the Quarry.
- D7 It shall be noted in the Final Site Plan that in order to limit potential impacts from the inert part of Dus-Top solution, the total solution composition will meet or exceed the same restrictions for vendors as required by the Colorado Department of Transportation (CDOT)
- D8 A note shall be placed on the site plan stating: The operator shall be required to submit receipts for application of the magnesium chloride, or equivalent to the Southwest Clean Air Agency to show that the application has taken place.
- D9 A note shall be placed on the face of the site plan which states: If the Southwest Clean Air Agency issues any notice of violation or infraction of WAC 173-400-040, the source or activity causing the violation shall cease immediately until the infraction is adequately corrected. (e.g. if crushing is causing a dust violation, then all crushing operations will cease until corrected)

Groundwater Conditions:

- G1 Prior to the Final Site Plan Approval the Quarry shall implement a detailed groundwater-monitoring program prior to beginning operations based on the studies required in SEPA Condition #3. A detailed implementation schedule shall be submitted to and approved by Clark County. Groundwater monitoring will be conducted according to the detailed monitoring plan provided in the Newton Letter Revised Groundwater Monitoring Plan, dated September 12, 2002 (Ex 134 as amended by Ex 259 and 260) or the most current version thereof or as updated based on SEPA Condition #3 review. Regular periodic water-level measurements in wells near the Quarry will be recorded to allow for the detection of changes to the local groundwater system resulting from mining, other human causes or natural variation.
- G2 If during the course of mining, any significant changes in the groundwater elevations attributable to the Quarry occur that effect neighboring wells, a supplemental hydrogeologic evaluation shall be conducted.
- G3 If future monitoring indicates that the Quarry activity has significantly or noticeably affected a neighboring property water supply, the Quarry could choose from several

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mitigation options, including but not limited to the following:

- Deepening of a well
 - Drilling a new well
 - Altering Quarry operations
 - Providing public water
 - If none of the four prior options fail to restore status quo of the water flow before the impact, the Quarry operator shall be liable for the difference in the value of the property with or without the same flow of water.
- G4 Any impacts related to accidental fuel spills shall be mitigated through the implementation of a Spill Prevention and emergency Cleanup Plan. Spill containment and cleanup kits shall be available on site for use in the event of a spill.
- G5 The Quarry shall comply with the mitigation procedures as outlined in Exhibit #164, as amended in Exhibits 259 and 260 or the most current version thereof, which further details the practical aspects of mitigating neighborhood water supplies.

Noise Conditions:

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

- N7 It shall be noted on the Final Site Plan that the use of engine compression brakes (Jake Brakes) shall be prohibited on the haul road west of the private Longview Fibre Road bridge.
- N8 The Quarry shall comply with the mitigation procedures as in Exhibit 172, the Daly Standlee & Assoc. Noise Consultants August 16, 2002 letter or the most current version thereof. The mitigation measures proposed in the studies shall ensure compliance with condition N1 or any additional WAC standards at the appropriate property boundaries.
- N9 The applicant will pay for a qualified noise consultant to finalize a noise monitoring plan as noted in Condition N8 and submit it to the County review prior to final site plan approval. The applicant will then pay a qualified noise consultant approved by the County to conduct the noise monitoring and submit the results, conclusion, and any additional recommended mitigation to the County for review. The applicant will not be responsible for County review costs. (Ex. 272)
- N10 No more than 30 truck trips (one way) per hour shall be allowed in and out of the mine in accordance with the truck noise study (Exhibit 172).

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Additional Mitigation/Operations and Neighborhood Relations:

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

operations, effectiveness of mitigation measures, monitoring results and provide an open channel of communication for the residents of the area, and provide possible solutions to any problems. The Yacolt Mountain Neighborhood Association will provide two representatives on the Neighbor Advisory Group that lives within 2.0 mile of the Quarry boundary. The three of the five neighbor members shall be selected at-large from residents that live within 1.5 mile of the Quarry boundary or own property along Kelly Road. The Quarry shall be represented by one or two managers with the authority to make operational decisions for the Quarry that will allow changes to be made if necessary. The Neighbor Advisory Group shall meet a minimum of once each year for the first 5-years, and at a minimum of once every 2-years thereafter of Quarry operation or at intervals thereafter determined by the Neighbor Advisory Group. The Neighbor Advisory Group may agree to meet more regularly if additional meetings are needed. Further details of the Neighbor Advisory Group and the compliance monitoring details shall be worked out prior to final site plan approval.

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

Traffic and Transportation Conditions:

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

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Yacolt Mountain Quarry (CPZ2002-0009)

existing Longview Fibre Road site access point at Kelly Road.

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

Water Rights and Quarry Water Usage Conditions:

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

Standard Conditions

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

LAND USE

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

ENGINEERING

Pre-Construction Conference:

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

Erosion Control:

Handwritten notes:
to be added to new plans
of 11/14/02

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

Excavation and Grading:

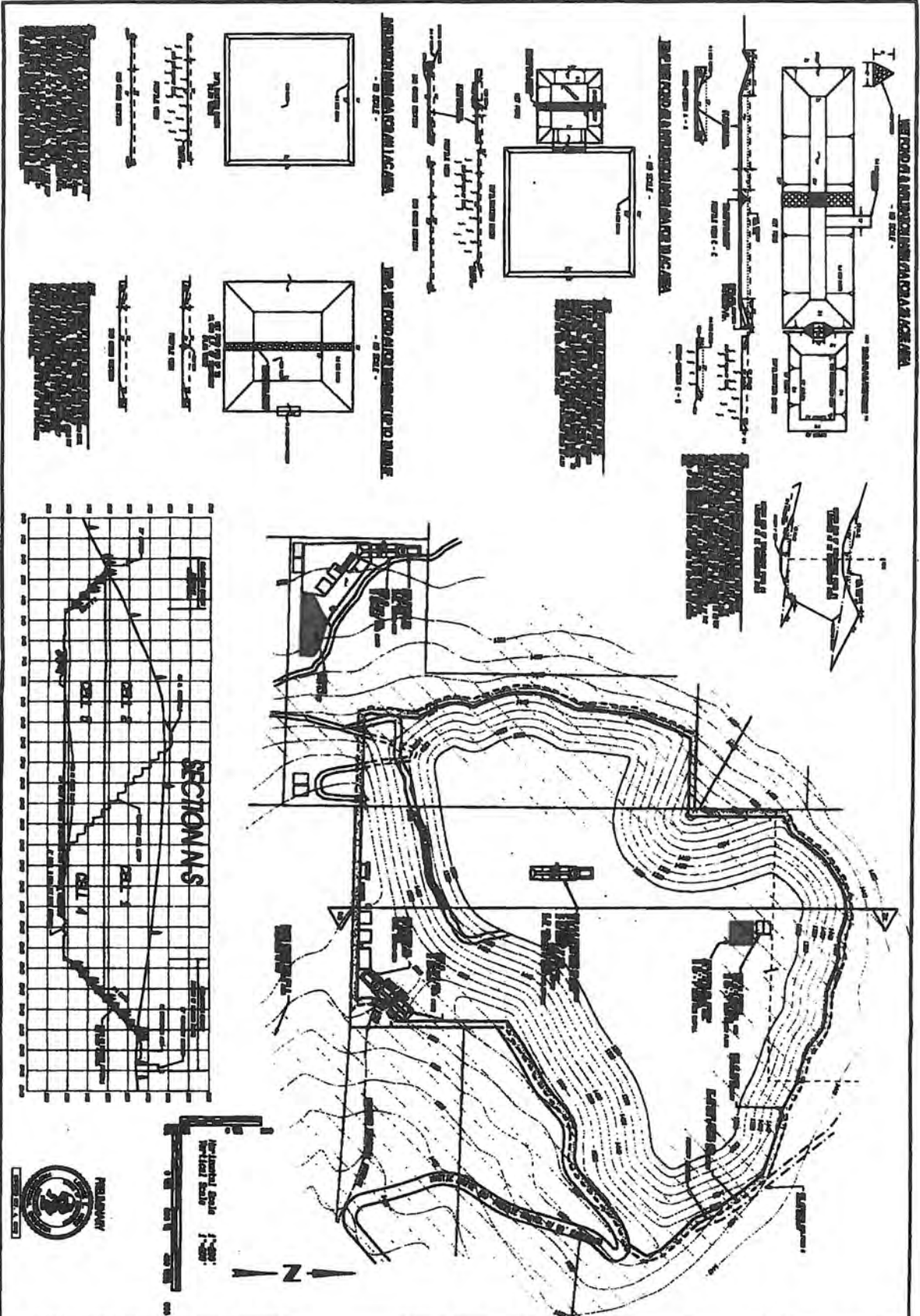
- S-8 Excavation/grading shall be performed in compliance with Appendix Chapter 33 of the Uniform Building Code (UBC).
- S-9 Site excavation/grading shall be accomplished, and drainage facilities shall be provided, in order to ensure that building foundations and footing elevations can comply with CCC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

Stormwater:

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

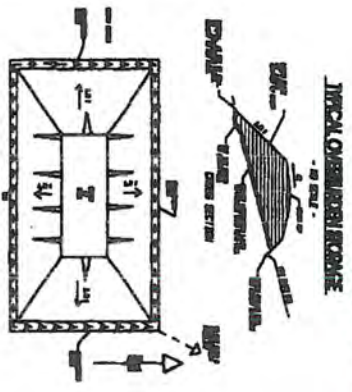
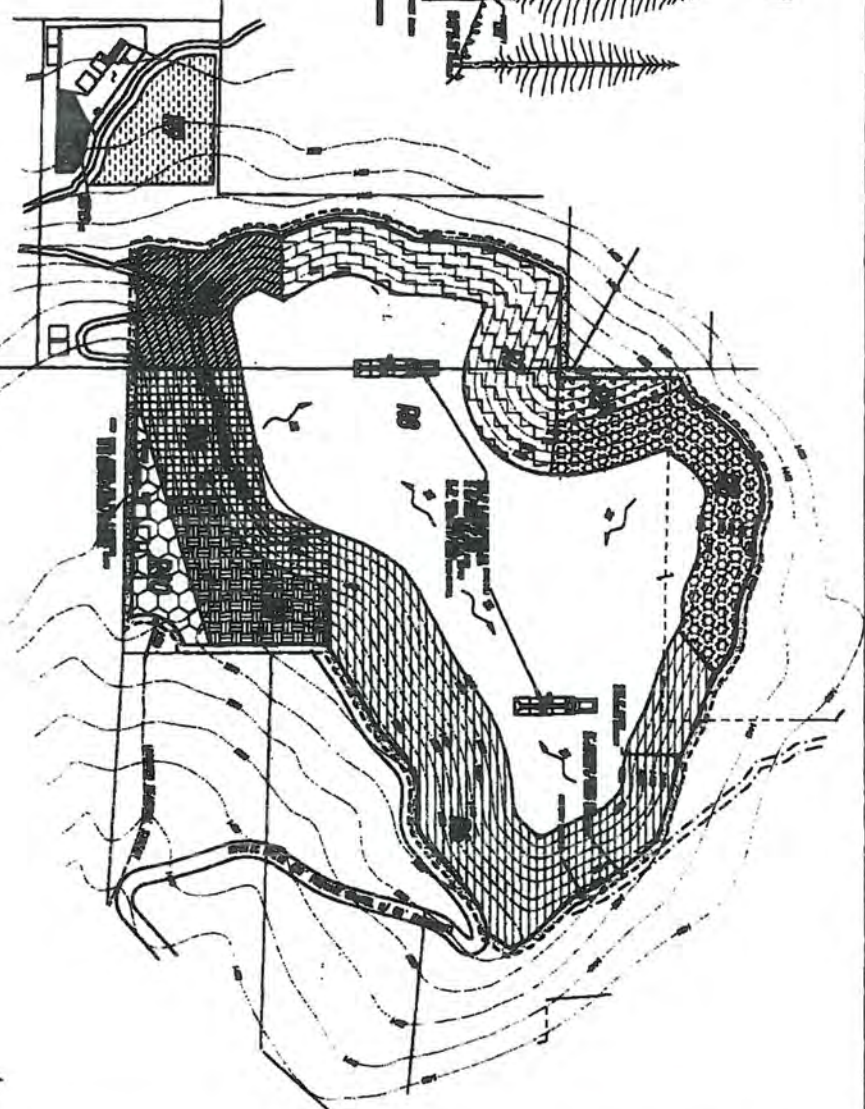
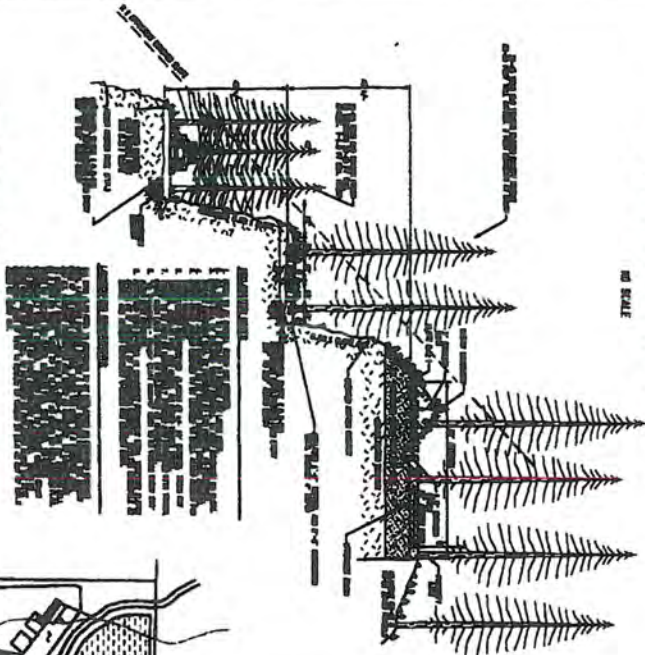
Transportation:

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



<p>WOOD & ASSOCIATES, INC. 15000 W. 50TH STREET, SUITE 1300 WOODBRIDGE, VA 22190 TEL: 703-595-0000 FAX: 703-595-0000</p>	<p>DATE: 04/01/2000 TIME: 06:59 PM DRAWN BY: J. WOOD CHECKED BY: J. WOOD</p>	<p>VACOLT MOUNTAIN QUARRY GRADING, EROSION, & SITE PLAN</p>	<p>CHECK: JOHN WOOD JOHN WOOD VACOLT, VA 22190 TEL: 703-595-0000 Fax: 703-595-0000</p>
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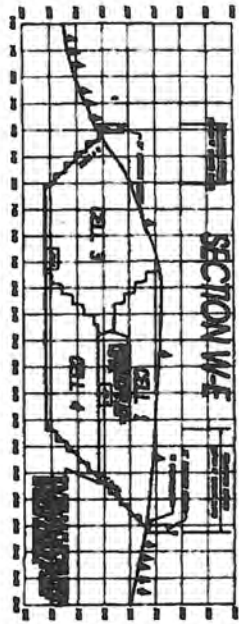
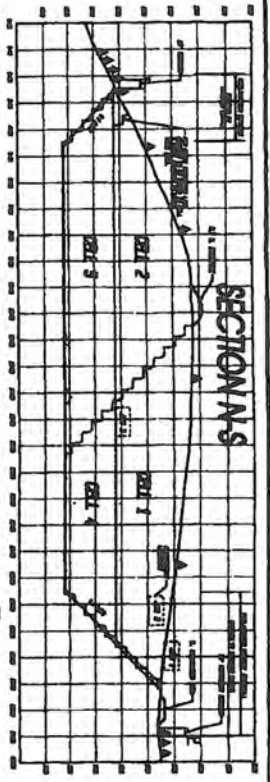
TYPICAL QUARRY BENCH RECLAMATION & LANDSCAPING PLAN



RECLAMATION PLAN

SYMBOL	DESCRIPTION	AREA (SQ. FT.)	PERCENT
[Symbol]	ROCK	1,150,000	15.0%
[Symbol]	GRAVEL	1,150,000	15.0%
[Symbol]	SAND	1,150,000	15.0%
[Symbol]	CLAY	1,150,000	15.0%
[Symbol]	TOPSOIL	1,150,000	15.0%
[Symbol]	SEED	1,150,000	15.0%
[Symbol]	FERTILIZER	1,150,000	15.0%
[Symbol]	MULCH	1,150,000	15.0%
[Symbol]	NATIVE VEGETATION	1,150,000	15.0%
[Symbol]	ROCK	1,150,000	15.0%
[Symbol]	GRAVEL	1,150,000	15.0%
[Symbol]	SAND	1,150,000	15.0%
[Symbol]	CLAY	1,150,000	15.0%
[Symbol]	TOPSOIL	1,150,000	15.0%
[Symbol]	SEED	1,150,000	15.0%
[Symbol]	FERTILIZER	1,150,000	15.0%
[Symbol]	MULCH	1,150,000	15.0%
[Symbol]	NATIVE VEGETATION	1,150,000	15.0%

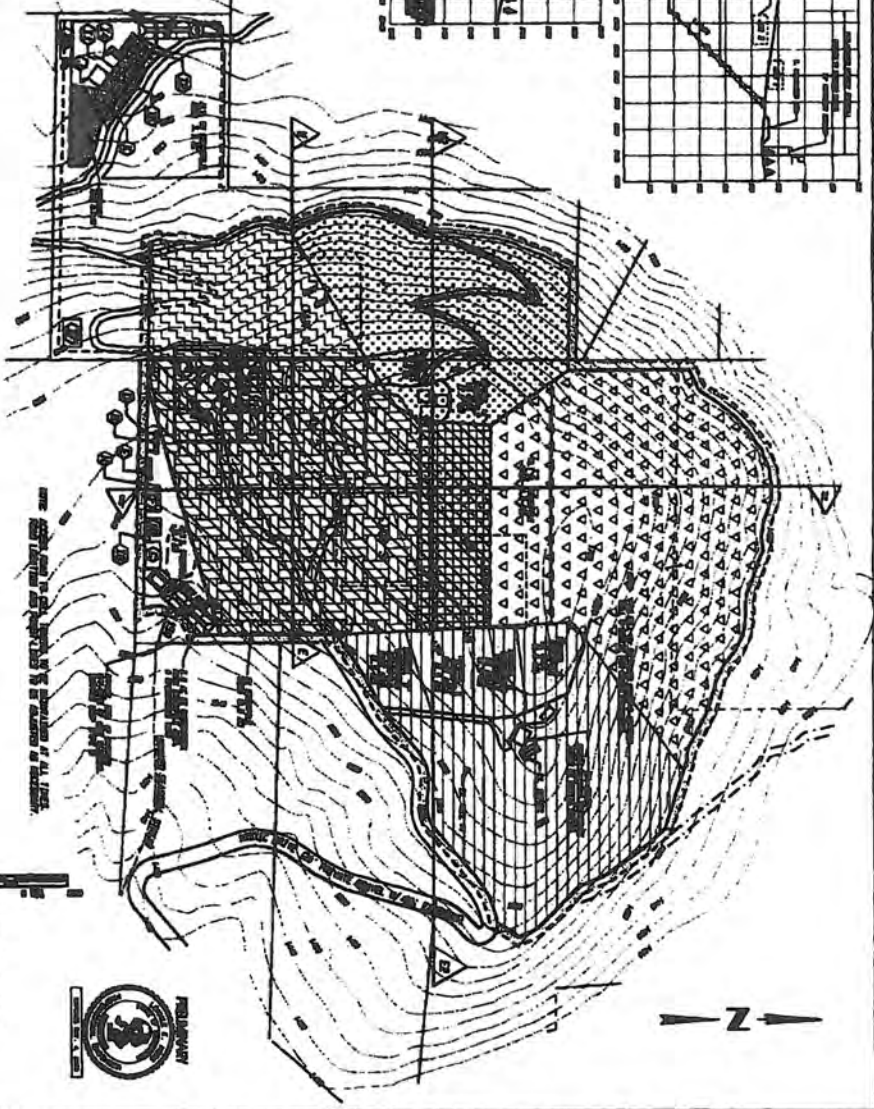
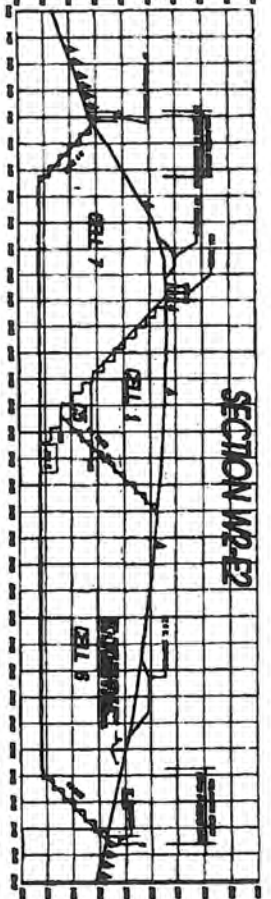




SITE PHASING PLAN

THE CONSTRUCTION SEQUENCE

NO.	DESCRIPTION	PHASE	START DATE	END DATE
1	CONSTRUCTION OF CELL 1	1	1/1/00	12/31/00
2	CONSTRUCTION OF CELL 2	2	1/1/01	12/31/01
3	CONSTRUCTION OF CELL 3	3	1/1/02	12/31/02
4	CONSTRUCTION OF CELL 4	4	1/1/03	12/31/03



QUARRY MINING PLAN

CELL NO.	AREA (AC)	DEPTH (FT)	EST. PRODUCTION (CY)	EST. LIFE (YRS)
1	1.0	10	100,000	10
2	1.0	10	100,000	10
3	1.0	10	100,000	10
4	1.0	10	100,000	10

DESCRIPTION

CELL 1: CONSTRUCTION OF CELL 1, AND 2 LOCATION OTHERS.

CELL 2: CONSTRUCTION OF CELL 2, AND 3 LOCATION OTHERS.

CELL 3: CONSTRUCTION OF CELL 3, AND 4 LOCATION OTHERS.

CELL 4: CONSTRUCTION OF CELL 4, AND 5 LOCATION OTHERS.