

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

In the Matter of an Application by)
John A. Petersen for Site Design Review) ORDER NO. 56-2009
to Mine the the Tide Creek Site)

WHEREAS, on May 4, 2009, John A. Petersen (hereinafter referred to as the "Applicant") submitted Modified Application DR 02-01 for Site Design Review for the Tide Creek Surface Mining Site, an approximately 20 acre site located on Tide Creek Road in Deer Island, identified as portions of Tax Parcel Nos. 6236-000-00600, 6236-000-00900, 6236-000-01000, 6236-040-00100 and 6131-000-00300; and

WHEREAS, pursuant to Columbia County Zoning Ordinance Section 1614, the Board of County Commissions took original jurisdiction over the Applicant's Site Design Review Application (DR 02-01) submitted together with the associated Operating Permit Application (No. 05-0070) to consider them concurrently; and

WHEREAS, the Site Design Review Application was deemed complete by Columbia County on May 14, 2009; and

WHEREAS, prior to the Applicant submitting the Site Design Review Application, the Columbia County Planning Commission approved the Applicant's Conditional Use Permit Application on November 21, 2003, with 13 conditions, via Final Order CU 01-54, "In the Matter of the Application of Tide Creek Rock Products for a Conditional Use Permit to Mine Aggregate on a Site Zoned PF-76 and PA-38"; and

WHEREAS, the Surface Mining Permit Application (No. 05-0070) was approved with conditions by Final Order No. 57-2009 on August 26, 2008; and

WHEREAS, on August 5, 2009, the Board of County Commissioners held a consolidated hearing on the Operating Permit and Site Design Review Applications, heard testimony and received evidence into the record, and continued the hearing to August 19, 2009; and

WHEREAS, on August 19, 2009, the Board of County Commissioners held the continued hearing on the Operating Permit and Site Design Review Applications, heard additional testimony, received additional evidence into the record and deliberated on the matter; and

WHEREAS, during the hearings the Board of County Commissioners received and accepted evidence into the record of the decision, a list of which is attached hereto as Attachment 1 and incorporated herein by this reference; and

WHEREAS, after deliberations the Board of County Commissioners voted to tentatively approve Modified Design Review Application DR 02-01, with the sixteen recommended Conditions

of Approval contained in the Surface Mining Administrator's Staff Report dated March 28, 2005, with modifications to Condition 10 as proposed in the Board Communication from Land Development Service Director Todd Dugdale dated August 17, 2009, and to authorize the Land Development Services Director to grant an additional six (6) months for obtaining the deeded access easement, and directed Staff to prepare an appropriate Order;

NOW, THEREFORE, IT IS HEREBY ORDERED as follows:

- A. The Board of County Commissioners adopts the Findings of Fact and Conclusions of Law in the Staff Report to the Board of County Commissioners dated July 29, 2009, which is attached hereto as Attachment 2 and incorporated herein by this reference.
- B. The Board of County Commissioners adopts the Findings of Fact and Conclusions of Law in the Board Communication from Land Development Services Director Todd Dugdale dated August 17, 2009, which is attached hereto as Attachment 3 and incorporated herein by this reference.
- C. The Site Design Review Application for the Tide Creek Site, as proposed by the Applicant, is hereby APPROVED, subject to the following Conditions of Approval:
 1. All Conditions of Approval of CU 01-54 are hereby incorporated by reference, except the following conditions which the Applicant has already complied with: Condition Nos. 5, 12 and 13 related to posting the "No Thru Truck Traffic Sign", implementing a landscape screen plan, and submitting a Site Design Review application, respectively.
 2. All Conditions of Approval for Order No. 57-2009, "In the Matter of the Application by John A. Petersen for a Surface Mining Operating Permit for the Tide Creek Site", which was approved on August 26, 2009 and granting Surface Mining Permit No. 05-0070 to the Applicant, and the related Reclamation Plan, are hereby incorporated by reference.
 3. The Applicant shall follow the standard operating hours that allow activity from 7:00 A.M. to 6:00 P.M.
 4. All future signs on the subject property shall comply with the applicable standards of Section 1300 of the Columbia County Zoning Ordinance.
 5. All outdoor lighting shall be reviewed and approved by Land Development Services, with a copy of lighting specifications attached to this Site Design Review. All lighting shall be directed so that it does not shine onto Tide Creek Road or Highway 30 and reduce visibility of massing motorists.
 6. A Final Site Plan shall be submitted and approved prior to the issuance of any development permits on the subject properties. The Final Site Plan and provisions of this Site Design Review shall be attached to and become a part of the Surface Mining

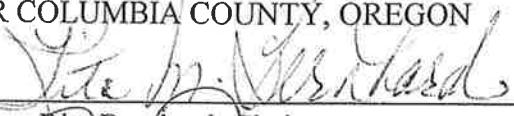
Operating Permit and the Reclamation Plan.

7. All existing and future development occurring on the site after July 1, 1984 and up to the present, as defined in Section 1102.3 of the County's Flood Hazard Overlay Zone, shall be identified, and floodplain development permits shall be obtained prior to further development activity on the subject properties.
8. The sign posted in the summer of 2009 on the west side of Old Columbia River Road Highway prohibiting trucks from utilizing the access to Highway 30 south of Tide Creek shall be maintained and kept clear from any visual obstruction.
9. The Surface Mining Operation, including all blasting, shall be required to operate in compliance with the applicable noise standards required by the Department of Environmental Quality or other State or Federal agencies.
10. The Applicant shall apply with ODOT for a revised deeded access easement under Highway 30 onto the Site, that reflects its intended new uses, within thirty (30) days of the date of this Order. Further, the Applicant shall obtain said revised deeded access and shall submit written documentation to Land Development Services confirming that the revisions to the deeded access to Highway 30 have been approved by ODOT within six (6) months of the date of this Order. This period for obtaining the revised deeded access easement from ODOT may be extended in writing for up to six (6) additional months by the Land Development Services Director.
11. The erosion control and monitoring measures identified in the PBS Environmental Site Drainage and Water Quality Report dated August 2003, which is in the record of this Application, shall be adhered to for all future mining activities.
12. No storm water shall be discharged to Tide Creek without first obtaining a 1200A Permit from the Division of State Lands.
13. The setbacks in the proposed mining area shall comply with the Operating Setbacks, Visual Impacts, Water Quality, Erosion Control, Parking and Access Standards identified in Articles VII and VIII of the Columbia County Surface Mining Ordinance.
14. Per Requirement "P" of the October 20, 2005 Reclamation Plan for the Tide Creek Site, upon final reclamation all mining related equipment and refuse will be removed from the subject properties. Any remaining structures shall be authorized and permitted for their intended uses according to the applicable provisions of the Columbia County Zoning Ordinance.
15. Prior to any removal, excavation and processing of aggregate materials on site, the Surface Mining Administrator shall approve the Site's Reclamation Plan.

16. All site development within the Site's delineated Significant Wetland Areas shall require full compliance with the PBS Environmental August 2003 Wetlands Enhancement and Restoration Plan, which is in the record for this Application.

Dated this 19th day of August, 2009.

BOARD OF COUNTY COMMISSIONERS
FOR COLUMBIA COUNTY, OREGON

By: 

Rita Bernhard, Chair

By: 

Anthony Hyde, Commissioner

Approved as to form

By: 

Office of County Counsel

By: 

Earl Fisher, Commissioner

Legal Counsel's File -EXHIBIT 1

- (1) Notice of Public Hearing (Publication)
- (2) Notice of Public Hearing (Property Owner Notice)
- (3) Affidavit of Publication
- (4) Affidavits of Mailing
- (5) Board Communication from Land Development Services Director Todd Dugdale dated July 29, 2009, with the following attachments:
 - (1) Design Review DR 02-01 Staff Report dated August 5, 2009
 - (2) Operating Permit #05-0070 Surface Mining Administrator's Report dated March 28, 2005 with attached Operating Permit Application and Reclamation Plan
 - (3) Modified DR 02-01 Application with attachments dated May 5, 2009
 - (4) Planning Commission Final Order CU 01-54
 - (5) PBS 2001 Monitoring, Wetlands Determination, Delineation, Drainage and Water Quality Plans dated August 1, 2003
 - (6) Letter from Bob Brinkman to Applicant dated September 17, 2008
 - (7) Letter from DSL to Columbia County dated February 25, 2009
 - (8) July 29, 2009 FEMA Map of Tide Creek's 100 Year Floodplain

Exhibit 2:

Board Communication from Land Development Services Director Todd Dugdale dated August 17, 2009, with attached Email from Surface Mining Administrator Bob Brinkmann

COLUMBIA COUNTY BOARD OF COMMISSIONERS

STAFF REPORT

July 29, 2009

Design Review/SM Operating Permit for Tide Creek Rock Products

HEARING DATE: August 5, 2009

FILE NUMBER: DR 02-01 (Modified) Site Design Review
#05-0070 New Surface Mining Operating Permit

**APPLICANT/
OWNER:** John A. Petersen
33625 Tide Creek Road
Deer Island, OR 97054

PROPERTY LOCATION: 33625 Tide Creek Road, Deer Island

TAX ACCT. NUMBER: Portions of 6236-000-00600, 6236-000-00900, 6236-000-01000,
6236-040-00100, and 6131-000-00300

ZONING: Primary Forest (PA-76), Forest-Agriculture (FA-19), and
Primary Agriculture (PA-38),

SIZE: Approximately 20 acres

REQUEST: Tide Creek Rock Products, Inc. has requested approval of design review(DR 02-01) for the subject site and has submitted a companion request for a new aggregate surface mining operating permit(#05-0070) for areas zoned PF-76, FA-19, and PA-38 located adjacent to the existing Tide Creek Limited Exempt Mining Area zoned for Surface Mining(SM).

APPLICATION COMPLETE: 05/14/09 **150 DAY DEADLINE:** 10/11/09

APPLICABLE REVIEW CRITERIA:

<u>Columbia County Zoning Ordinance</u>	<u>Page</u>
Section 1040 Surface Mining	4
Section 1044 Operating Standards	4
Section 1100 Flood Hazard Overlay	10
Section 1170 Riparian Corridors, Wetlands, Water Quality, & Fish & Wildlife Habitat Protection Overlay	11
Section 1182 Wetland Area Overlay	12
Section 1550 Site Design Review	13
Section 1560 Site Plan	14
Section 1562 Landscaping	17
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Columbia County Surface Mining Ordinance

Surface Mining Administrator's Report dated March 28, 2005 including : Attachment 1

Article V - Operating permits
Article VI Reclamation Plan
Article VII - Financial Security
Article VIII - Operating Requirements

BACKGROUND:

Surface mining operations began around 1950 for portions of the aggregate mine associated with Tide Creek Rock Products Incorporated's properties located West of Highway 30 and North of Tide Creek. Columbia County adopted the Comprehensive Plan in 1984 and designated Surface Mining as the appropriate zone for the applicant's property associated with tax lot 500 in the SW 1/4 of the NE 1/4 of Section 36 Township 6 North Range 2 West. Over the next 26 years until 2000, surface mining operations have gradually expanded further South and East into portions of the applicant's adjacent subject properties that are zoned for PF-76, FA-19, and PA-38, and are also outside of the approximate 10 acres of SM land (tax lot # 6236-000-00500) which the Board of Commissioners granted a Limited Exemption Certificate for in 2000, through Board Order 44-2000.

By approximately 1987, Tide Creek Rock Products had altered Tide Creek's stream channel by filling in and removing approximately 450 feet of Tide Creek and its adjacent wetlands in tax lot 300 located in Section 31, Township 6N Range 2 West (DSL Violation No. 1186). The 1994 air photo indicates the size of the mining related disturbance as approximately ten to eleven acres, with another six to seven acres outside of the original approved area zoned for surface mining. Specifically this DSL Violation determined the applicant had filled a portion of the property East of the highway (historically used as agricultural pasture land) and built a sediment pond where excess water from the gravel washing operation on the West side of the highway is pumped. These actions negatively impacted approximately .9 acres of wetland as indicated by PBS Environmental in the 1999 Wetland Delineation Report conducted for this area the applicant intended to mine in the future. This 1999 PBS Environmental Report titled Fish Evaluation of Tide Creek also found that Tide Creek is a fish bearing stream that includes cutthroat trout and coho salmon.

In 2000, as part of the Division of State Lands Violation, PBS Environmental provided Tide Creek Rock with an Enhancement and Restoration Plan to mitigate these previously identified detrimental impacts to Tide Creek. In 2001 and as part of the required mitigation, the Board of County Commissioners ordered the closure of the Tide Creek Rock pit and specifically ordered the applicant to cease and desist all mining operations inside and outside of the 10 acre Limited Exempt Area. As a condition of the May 2001 closure order, the applicant submitted a Conditional Use Permit (CU 01-54) and a preliminary site design review (DR 02-01) to expand the surface mining operation beyond the 10 acre SM zoned limited exempt area on lands that are zoned for PF-76, FA-19 or PA-38 and included in portions of 5 tax lots 6236-000-00600, 6236-000-00900, 6236-000-01000, 6236-040-00100, and 6131-000-00300. Because the applicant had yet to complete the associated Site Design Review at the time of the October 6, 2003 public hearing, the Planning Commission approved the Conditional Use Permit (CU 01-54) provided the applicant apply for and obtain (1) an operating permit to satisfy the requirements of the Columbia County Surface Mining Ordinance through Condition 1 of Final Order dated November 21, 2003 and (2) a Site Design Review Permit through Condition 13 of the same Final Order.

To fulfill Condition 1 of CU 01-54, on November 20, 2004 the applicant submitted an Application for a New Operating Permit File # 05-0070 and a Reclamation Plan dated October 20, 2004 encompassing the 20 acres of

adjacent resource-zoned land located outside of the 10 acres of the Limited Exempt Surface Mine. The subsequent Surface Mining Administrator's Report dated March 28, 2005 recommended approval for this mining permit and its Reclamation Plan with these 5 conditions:

1. Post a reclamation bond as specified in Section 7.1 (of the Surface Mining Administrator's Report)
2. Demarcate on the ground by staking or other means to properly delineate the permit boundary in the tax lots shown on the site plan map.
3. Not discharge storm water to Tide Creek without first obtaining a 1200A permit.
4. Maintain a 50' setback from Tide Creek for excavating and stockpile areas except where a 25' setback has been approved by DSL.
5. Place minimum 3' of soil over the pit floor, processing and stockpile areas after ripping and re-vegetate with native timber and grass species

The March 29, 2005 Surface Mining Administrator's Report for the Application for a New Surface Mining Operating Permit # 05-0070 and its Reclamation Plan fulfills Condition 1 of CU 01-54.

To fulfill Condition 13 of the Planning Commission's Final Order for CU 01-54, the applicant re-submitted this modified Side Design Review (DR 02-01) and accompanying documents to Land Development Services on May 14, 2009. This resubmitted application is the applicant's request to the Board of Commissioners that they approve the proposed expansion of Tide Creek Rock Products' existing aggregate surface mining operation and provide them with the required land use authority to mine in the adjacent areas zoned PF-76, FA-19, and PA-38 and located outside of their SM zoned Limited Exempt Areas along Tide Creek.

Accompanying the modified DR 02-01 was DSL's written confirmation (attached) verifying that as of February 25, 2009 their office has closed the Enforcement Order for File No. 1186. This letter stated that the current photos of the property indicate Tide Creek Rock Products has fulfilled the mitigation and obligations to enhance and restore these wetlands listed in Enforcement Order No. 1186. This mitigation plan included measures to expand, restore, enhance, and create the riparian and fish habitat of Tide Creek in the vicinity of the Tide Creek Rock Product's mining operations.

The primary access to Highway 30, to Old Columbia River Highway, is a private driveway under the Highway 30 bridge. The deed granting right-of-way crossing under Highway 30 needs to be upgraded for current uses. Interior access roads are all gravel and include an old wood bridge that crosses Tide Creek. Existing improvements on the subject property include a caretaker's mobile home, shop, mobile storage/office building, rock crusher, water impoundment, and water pump from Tide Creek. The applicant has stated that a caretaker's residence has been on the site since prior to a zoning ordinance being adopted. The County has no record of a sewage disposal system for this parcel; however, the County Sanitarian visited the site in 1999 to investigate a complaint and found no violation. Additionally, it was noted that the site contained many campers, cars, semi-trucks, an old mobile home and tons of other scrap iron and old industrial equipment.

The topography of the property ranges from 14-320 feet above mean sea level and could be generally described as the steep hillsides above Tide Creek. Vegetation on the subject property varies from pasture grass in the flat lowlands east of highway 30, to wetland plants and riparian forest near Tide Creek, to mixed forest in the upland hill sides above the stream west of Highway 30. According to the FEMA Flood Hazard Map (41009C0330C) all of the property East of the Highway is in the floodplain and on the West side of the highway the floodplain follows the stream. The National Wetlands Inventory, Deer Island Quad, indicates several wetlands on the subject property including all of Tide Creek and the two smaller streams that flow down the hill from the northwest corner.

The remainder of this report will research and make findings as to the degree to which modified Site Design Review

(DR 02-01) complies with the applicable Columbia County zoning provisions in order to expand Tide Creek Rock Products' surface mining operation onto approximately 20 acres of portions of the applicant's five adjacent subject properties that are zoned either PF-76, FA-19, or PA-38 and are located outside the applicant's existing 10 acres of a Limited Exempt Area that has been zoned for Surface Mining (SM) since 1984.

REVIEW CRITERIA & FINDINGS:

COLUMBIA COUNTY ZONING ORDINANCE:

Section 1040 SURFACE MINING *[Amended by Ordinance 98-01, effective 6/29/98].*

SM

1041 Purpose:

- .1 To provide for development and utilization of deposits of aggregate and resource materials.
- .2 To provide for the protection and utilization of these resources in a manner which does not conflict with other land uses.
- .3 To assure economy in handling and transportation costs by locating removal, processing, and storage activities in as close proximity to the point of end use as feasible.

1042 Permitted Uses: The following uses shall be permitted subject to compliance with Section 1044 and all other applicable rules, standards, or statutes governing such uses, including the Columbia County Comprehensive Plan, the Surface Mining and Land Reclamation Ordinance, the Zoning Ordinance of Columbia County, and Oregon Department of Environmental Quality rules governing sewage disposal, air, and water quality:

- .1 Removal, excavation, and processing of aggregate materials.
- .2 Equipment and structures, except residences, which are necessary or accessory to the operation of an aggregate site.
- .3 Storage of heavy equipment necessary for operation.
- .4 Agricultural practices.
- .5 Aggregate stockpiling.
- .6 Sedimentation ponds when used in conjunction with aggregate removal operations.
- .7 The managing, growing, processing and harvesting of timber and forest products, including the operation of accessory equipment used in the manufacturing, growing, and harvesting of forest products, as permitted in ORS 215.283(2)(i).

Finding 1: All new surface mining operations in Columbia County must meet the operating standards found in CCZO, Section 1040 as well as all requirements of the Surface Mining Ordinance (SMO). The submitted application for this modified DR 02-01 and related CU 01-54 approved by the Planning Commission on November 21, 2003 identify the applicant intends to conduct permitted Surface Mining uses listed in Section CCZO Section 1042 above within approximately 20 acres in portions of the five subject properties that are zoned either PF-76, PA-38 or FA-19.

1044 Operating Standards: All mineral resource operations, either permitted or allowed by conditional use, shall

conform to the following standards:

- .1 The landowner and operator shall be jointly responsible for signing the application.
- .2 The operator and landowner must remain in compliance with, and be responsible for, all the requirements of affected agencies.
- .3 Lot or parcel size: The minimum parcel size for a permitted or conditional use shall be 2 acres.

Finding 2: John Petersen, operator and landowner, signed the application and will be required to remain in compliance with this ordinance and any conditions included with this site design review application, DR 02-01 and the related conditional use permit application, CU 01-54. The applicant has stated in the Application for a New Operating Permit # 05-0070 dated March 28, 2005 that approximately 20 acres are included in expansion area which is greater than the 2 acre minimum parcel size requirement. Staff find that this criteria is met.

- .4 **Operating Setbacks:** Each aggregate site within the district shall observe the following minimum setbacks:
 - A. No extraction or removal of aggregate is permitted within 50 feet of the right-of-way of public roads or easements of private roads.
 - B. No extraction or removal of aggregate is permitted within 50 feet of another property, nor within 200 feet of a residence or zoning district which allows a residence as a permitted use, without written consent of the property owner(s).
 - C. Processing equipment and batch plants shall not be operated within 50 feet of another property without written consent of the property owner(s). Processing equipment and batch plants shall not operate within 50 feet of a public road right-of-way.

Finding 3: The public roads in the area are U.S. Highway 30 and Tide Creek Road. There are no private roads. The applicant states in the submitted conditional use permit application that extraction and removal of aggregate will not occur within 50' of a public right-of-way. The mine area indicated in the proposal is nearly a half mile from these two roads. The applicant states that no extraction or removal of aggregate will occur within 50 feet of another property and that the landowner/operator owns all of the property within 200 feet of the permit boundary. Staff finds the permit boundary is not within 200' of a zone that allows a residence as a permitted use. The applicant indicates the location of a "crusher" on the submitted maps. The crusher would be considered processing equipment and would be subject to the 50' setback requirement. Staff finds the crusher would be greater than 50' away from another property and from a public road right-of-way. There is no information regarding batch plants or manufacturing and fabricating plants, therefore it is assumed that none are existing or proposed with this project.

- .5 **Operating Hours:** Operation shall not start before 7:00 a.m., nor continue after 6:00 p.m. daily, except as authorized by Subsection 1046. The Department may exempt isolated aggregate sites from the established operating hours. Notice of the proposed change in operating hours must be provided to all property owners within a 1,000 foot radius of the aggregate site and to owners of property adjacent to private aggregate site access road. If no request for a public hearing is made within ten calendar days of mailing said notice, the operating hours shall be changed as requested by the aggregate operator. The Commission may, at any time, require resumption of standard operating hours. If a request is made for a public hearing, adjustment of standard operating hours shall be determined by the County. The Department may approve one period of extended operation beyond the

7:00 a.m. to 6:00 p.m. operating hours once every six months, not to exceed a two week period.

Finding 4: Per the conditional use permit application, the applicant has requested to modify the standard hours of operation from 7:00 a.m. until 6:00 p.m. to 6:00 a.m. until 8:00 p.m. The applicant justifies the request because of the isolated location. Staff agrees that the site is an isolated site, but recommends that standard operating hours be implemented with this application and that a separate request to change the operating hours should be submitted individually after the use is approved. Staff makes this recommendation because the notice that was sent to neighbors was regarding the expansion of the surface mining operation and did not specifically state the hours of operation. The Board of Commissioners must decide if the standard operating hours should apply or if they should grant the modified hours of operation requested by the applicant.

.6 **Visual Impacts:** Existing trees and other natural vegetation adjacent to any public park, residential development, public road, or residential zoning district shall be preserved for a minimum width of 25 feet. Screening shall be provided at the boundary of the property on which the surface mining operation is located. If such trees and other vegetation are insufficient to provide a screen, such screening may be accomplished by one or more of the following:

- A. A sight-obscuring fence or wall;
- B. A landscaped berm or preservation of a natural slope;
- C. Use of native vegetation, or plants and trees with demonstrated ability to thrive under the anticipated conditions.

Finding 5: The subject property is not adjacent to a public park, residential development, or residential zone. The property is, however, adjacent to a public road, U.S. Highway 30 which is a major arterial with high traffic volumes. The applicant states in the submitted application that existing vegetation will be preserved for a minimum of 25-foot width. Because the sediment pond and fill area East of U.S. Highway 30 are in clear view from the highway and the Mitigation Plan prepared by PBS Environmental has designated all three types of vegetation plantings to be establish on both sides of the creek: upland forest, riparian forest and emergent wetland vegetation. Starting at the railroad tracks - upland forest, then emergent wetland closer to the creek, then riparian forest as the elevation climbs to the opposite top bank, then upland forest vegetation again. Upland tree types include bigleaf maple, red alder, black cotton wood, Douglas fir and Western Hemlock. These tree types, once established, should also provide some visual screening. Consequently, this re-vegetation plan provides two purposes protecting and enhancing Tide Creek and its associated wetlands and creating a visual screen or buffer between the Hwy. 30 and the sediment pond and fill area. The February 25, 2009 Division of State Lands' closing of Enforcement Order No. 1186, indicates that the additional vegetation plantings on both sides of Tide Creek (1) complies DSL's requirements and are consistent with the (DSL approved) Mitigation Plan conducted by PBS Environmental on the subject property.

1044.7 **Access:** The operation shall have access to a public road with two-way capacity. The County may impose weight/load restrictions and/or require the operator to post an adequate surety bond for road repairs. An on-site access or service road used for mining shall be dust-free at all points within 300 feet of a public road or residence off the property being mined.

Finding 6: The Tide Creek Rock operation has access to U.S. Highway 30 by way of Old Columbia River Highway. Both roads are public with two-way capacity. The County may impose weight/load restrictions and may require the operator to post a bond for road repairs. The operator will also be responsible for keeping the public road dust-free within 300 feet of the entrance. Additionally, Old Columbia River Highway connects with Highway 30

in two locations, one south of Tide Creek and one north of Tide Creek. The intersection south of Tide Creek is skewed at approximately 30 degrees while the intersection north of Tide Creek connects at a 90 degree angle. The Oregon Department of Transportation has requested the closing of the south intersection to trucks for reasons of safety. Staff agrees with this assessment and recommends that all truck traffic associated with the gravel operation use the intersection north of Tide Creek. With the modified DR 02-01 application, the applicant included a picture (Exhibit #7) of the sign posted on the West side of Old Columbia River Road Highway prohibiting truck traffic from utilizing the access to Highway 30 located South of Tide Creek.

ODOT has also indicated that the deeded access easement under U.S. Highway 30 into the site is for agricultural purposes only. If approved, the applicant should up-date the deeded access right-of-way for current uses. Staff encourages the applicant to update the deeded access to Highway 30 into the site in order to reflect the proposed surface mining activities.

- .8 **Noise:** Each aggregate site shall operate with the applicable noise standards required by the Department of Environmental Quality or other state or federal agencies.

Finding 7: Staff finds that the operator removes aggregate from this site predominantly with heavy equipment. The applicant states that "the operation is within applicable Department of Environmental Quality noise standards and will continue to be so." No other information regarding noise was included with the submitted application. The 1996 Schlicker Report for Tide Creek Rock submitted with the conditional use permit in 2003 stated "Possible operations that would increase the noise level include blasting, excavation of the quarry, in-pit transportation of the aggregate, processing of the aggregate (including: washing, screening, and crushing), and off-site transportation of the aggregate." The applicant does not intend to use blasting for the current permit area. The applicant owns most of the surrounding property in the area and no negative comments have been received regarding noise. Therefore, staff finds the operation meets the applicable noise standards as long as blasting is not implemented. The operation will be required to continue meeting noise standards in the future.

- .9 **Water Quality:** All aggregate sites in the district shall be operated in a manner which will not create turbidity, cause siltation, deposit undesirable materials, or adversely affect water temperatures in any stream, drainage, or river. In addition, the operator shall not cause contamination of groundwater or change a stream channel unless the channel change has previously been approved by all applicable state and federal agencies. Provisions for settling ponds, diversion dikes, channels, and other structures may be required to protect these water resources.

Finding8: Staff finds that in past years the applicant, Tide Creek Rock, has impacted Tide Creek in a negative manner. The 2001 Monitoring Report prepared by PBS for the applicant indicates that some tasks associated with the north bank of the creek enhancement have been completed including but not limited to moving of the access road, installing berms with partial planting and grading to help protect exposed north slope erosion and suspended fines from entering the creek. These completed tasks significantly help control protection of water quality of Tide Creek. Some task items not completed include: plantings in graded area, cross drains, silt traps, moving the petroleum tank and machine shop. The applicant proposes a 25' setback from the north side of the creek. The minimum riparian area setback from a creek of this size is 50'. The Division of State Lands has entered a Consent Order with the applicant requiring restoration measures in lieu of the 50' protection zone setback, some of those measures are stated above. For water quality management, the applicant proposes a small berm to run the length of the stream to stop the sediment laden water from reaching the creek. The applicant believes that all of the excess surface water will "settle into the ground". In the applicant's Site Drainage and Water Quality Plan the applicant will implement a monitoring program to assure that DEQ standards regarding turbidity and water quality will be

adhered to. If there are instances where a storm water discharge adversely impacts the water quality, DEQ will require the facility to implement additional management practices, apply for individual permit, or take other appropriate action. The application has DEQ (WPCF) permit. DEQ issued a WPCF Permit # 10986 on December 13, 2002. This permit requires no discharge into the surface waters of the State. Any 25 year storm, rain event could require a change of DEQ permit to a NPDES 1200 permit and an engineered system to maintain that water on site with a treated outfall into the creek. Additionally, the September 17, 2008 letter to the applicant from Bob Brinkmann states that previous site inspections indicate storm water is confined to the quarry property or to the pit floor where it infiltrates into the subgrade without any offsite discharges. In conclusion, staff has concern over the proximity of Tide Creek to the mining activities and protection of water quality, but, the application has finally after many months, adequately addressed measures that would minimize negative impacts to the water resource. Therefore, because of the above findings, it is reasonable to conclude the submitted application meets this criterion.

.10 Archeological Sites:

- A. Prior to excavation - All sites proposed for excavation shall be inventoried for their archaeological significance in accordance with standards set by the State Archaeologist. If an area proposed for excavation is found to contain an archaeological site(s), the Planning Commission shall hold a public hearing, in accordance with Section 1603, to review testimony regarding the site(s) and establish measures to mitigate potential conflicts as necessary.

The State Archaeologist shall be notified of such public hearings.

- B. During Excavation - If an archaeological site(s) is found during excavation, all work which would impact the site shall halt immediately and the requirements outlined in Section 1044.10A shall be met.

Finding 9: The submitted conditional use permit application states that "The State Office of Historic Preservation knows of no prehistoric cultural resources or prehistoric settlement sites." Other than that statement, the applicant has not provided any evidence that the site does not contain any archaeologically significant resources. The conditionally permitted area has been disturbed in the past mining activities and this is not an area that has been identified as probably having archaeological significance. A letter from the State Office of Historic Preservation would be appropriate to confirm the applicant's statement. Staff finds the applicant has adequately addressed this criterion. If approved, if an archaeological site was found during excavation, all work would be required to stop.

- .11 Erosion: The erosion of surfaces affected by mining activities shall be controlled by plantings of ground cover and other modes which protect these surfaces.

Finding 10: The project area drains and accepts drainage from approximately 182+ acres all of which is in the Tide Creek immediate watershed. The submitted conditional use permit application mentions that contouring, berms and vegetation will be used to control erosion, however has not shown where these measures will be located. The applicant has provided a "Site Drainage and Water Quality" report by PBS Environmental dated August 2003. There are two main drainages on the site: one flows across rock and cascades down to the bottom area, then flows approximately 25 feet to a 48" culvert that flows into Tide Creek, keeping this drainage away from plant operations; the other drainage in the southwestern section of the site has been bermed with rock and flows overland into Tide Creek, avoiding the plant operations. Management of on-site water, crusher area and from the plant operations is channeled via a rock ditch, flows to a collection pond and pumped via a pipeline into the settlement pond located east of Highway 30. To control runoff in the remaining large, historic work area of the pit, a rock berm was constructed along this previous mine work area and the Tide Creek, 25' riparian area, in consultation with staff from DEQ, DSL and ODFW that met on site in April 2003. Since the construction of this berm, water quality in

Tide Creek has significantly improved, Staff believes that with the control measures of monitoring and the DEQ WPCF permit, any failure of this present system to adequately protect the water quality of Tide Creek can be discovered and controlled within a short period of time.

- .12 Slopes and Grading: Excavations, both above and below water level, shall be maintained in an operationally and environmentally safe condition by complying with standards established by the Oregon Safe Employment Act (ORS 654.001 to 654.295 and 654.991), the Oregon Safety and Health Act of 1970 (19 U.S.C. 651 et. seq.), the Department of Geology and Mineral Industries, and the regulations of other affected agencies.
- .13 Land Reclamation: A land owner or operator of an aggregate site shall, in advance of any excavation of aggregate materials, prepare and submit a site reclamation plan in accord with the requirements of the Surface Mining and Land Reclamation Ordinance. Reclamation must return the land to natural condition or return it to a state compatible with the livability, value, and appropriate development of the affected land and adjacent property. Reclamation shall begin within 12 months after mining activities cease on any segment of the area where mining has occurred and shall be completed within 3 years after mining activities cease. This does not apply to any land being used as plant site, stock pile, or work area for ongoing extracting mining operation.

Finding 11: Information regarding present conditions and current slopes has been provided in the David Reynolds contour and survey map dated March 24, 2003. Finding 3 of the attached March 28, 2005 Surface Mining Administrator's Report for new Operating Permit Number 05-0070 confirms the applicant's submitted Reclamation Plan for the subject properties include information regarding setbacks to protect adjacent property and the public from steep slopes and potential mining hazards, protection of natural drainages, water management plan, reclamation time schedule, slope stabilization, re-vegetation techniques, visual screening and the removal of all refuse. Consequently, one condition of final approval for this Site Design Review will require the applicant to comply with all conditions of approval for the March 28, 2005 Surface Mining Operating Permit No. 05-0070 and the related Reclamation Plan.

- 1045 Modification of Standards: The above standards may be modified by the Planning Commission after public hearing and notification to property owners within 1,000 feet of the subject property and to owners adjacent to private aggregate site access roads. A Site Design Review for a Conditional Use in this zone may be processed concurrently with the Conditional Use Permit with a single hearing and a single fee which will be the higher of the 2 permit fees.

Finding 12: If any of the above standards are to be modified, adjacent property owners shall be notified and given a chance to review the request at a public hearing.

- 1046 Emergency Exceptions: The Department may permit the immediate initiation of a temporary aggregate operation which ordinarily would require an approved Conditional Use Permit, if necessary in the event of a natural disaster and to prevent potentially serious damage to property or threat to human life. The Department may permit the initiation of such an aggregate operation only when affected state agencies have issued necessary permits and have attested to the urgency of the situation. The Department may adjust operation standards as contained in Section 1044 to ensure the protection of human life and property. An aggregate operation approved under this section shall cease once the threat to human life and property is no longer serious or imminent.

Finding 13: No emergency exceptions have been applied for.

Continuing with the Columbia County Zoning Ordinance:

Section 1100 FLOOD HAZARD OVERLAY

1101 Purpose: It is the purpose of this ordinance to promote the public health, safety, and general welfare, and to minimize public and private losses due to flood conditions in specific areas by provisions designed:

- .1 To protect human life and health;
- .2 To minimize expenditure of public money and costly flood control projects;
- .3 To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- .4 To minimize prolonged business interruptions;
- .5 To minimize damage to public facilities and utilities such as water and gas mains; electric, telephone and sewer lines, streets, and bridges located in areas of special flood hazard;
- .6 To help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard so as to minimize future flood blight areas;
- .7 To ensure that potential buyers are notified that property is in an area of special flood hazard; and,
- .8 To ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.

1102 Definitions:

1102.1 "AREA OF SPECIAL FLOOD OVERLAY" means the land in the flood plain within a community subject to a one percent or greater chance of flooding in any given year. Designation on maps always includes the letters A or V.

1102.3 "DEVELOPMENT" means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations located within the area of special flood hazard.

Finding14: According to the FEMA Flood Hazard Map (41009C0330C) all of the property East of Highway 30 is in the floodplain and on the West side of Highway 30 the floodplain follows the stream. Activities the applicant has already conducted in these areas are included in the 2001 Monitoring Report prepared by PBS. These activities include some tasks associated with the north bank of the creek enhancement have been completed including but not limited to moving of the access road , installing berms with partial planting and grading to help protect exposed north slope erosion and suspended fines from entering the creek. These completed tasks significantly help control and minimize the flood hazards for potential surface mining on portions of the five subject properties on both sides of Tide Creek. Additional tasks to reduce flood hazards staff recommends the applicant undertake prior to future site development include plantings in graded areas, cross drains, silt traps, as well as moving the exiting petroleum tank and machine shop from these flood hazard areas on the West side of Highway 30. Additionally, in the conditional use permit, the applicant proposes a 25' setback from the north side of the creek. The minimum riparian area setback from a creek of this size is 50'. The Division of State Lands has entered a Consent Order with the applicant requiring restoration measures in lieu of the 50' protection zone setback, some of those measures are stated above,

Staff finds the subject property does contain structures including but not limited to a fence, roads, equipment, a mobile office, onsite sewage disposal, and a shop building that appear to be constructed within the site's designated flood hazard overlay zone shown on attached the July 29, 2009 Map of Tide Creek's 100 Year Floodplain. Because Land Development Services has not issued any permits for these structures, one condition of approval for this Site Design Review will require the applicant to do so. Specifically, all existing and future development occurring on the site after July 1, 1984 and up to the present and as defined in Section 1102.3 of the County's Flood hazard Overlay Zone, will need to be identified and floodplain development permits shall be obtained prior to any further development activity on the subject properties.

Continuing with the Columbia County Zoning Ordinance:

Section 1170 RIPARIAN CORRIDORS, WETLANDS, WATER QUALITY, AND FISH AND WILDLIFE HABITAT PROTECTION OVERLAY

1170 Purpose.

- A. The purpose of this Section is to protect and restore water bodies and their associated riparian corridors, thereby protecting and restoring the hydrological, ecological and land conservation function these areas provide. Specifically, this Section is intended to protect habitat for fish and other aquatic life, protect habitat for wildlife, protect water quality for human uses and for aquatic life, control erosion and limit sedimentation, prevent property damage during floods and storms, protect native plant species, and conserve the scenic and recreational values of riparian areas.
- B. This Section meets the above purpose by prohibiting structures and other development from riparian areas around fish-bearing lakes, rivers, streams and associated wetlands, and by prohibiting vegetation removal and/or other vegetative alterations in riparian corridors. In cases of hardship, the Section provides a procedure to reduce the riparian corridor boundary. Alteration of the riparian corridor boundary in such cases shall be offset by appropriate restoration or mitigation, as stipulated in this Section.
- C. For the purposes of this Section, "development" includes buildings and/or structures which require a building permit under the State of Oregon Uniform Building Code, as amended, or any alteration in the riparian corridor by grading, placement of fill material, construction of an impervious surface, including paved or gravel parking areas or paths, and any land clearing activity such as removal of trees or other vegetation.
- E. The provisions of this riparian protection overlay zone do not exempt persons or property from state or federal laws that regulate protected lands, water, wetland or habitat areas. In addition to the restrictions and requirements of this Section, all proposed development activities within any wetland area may be subject to applicable state and federal agency standards, permits and approval. The applicant shall be responsible for contacting the appropriate state or federal agencies to determine whether all applicable development requirements have been met.

Finding 15 The primary water feature adjoining the permit boundary is Tide Creek which is a large fish bearing stream that contains endangered species such as coho salmon, steelhead and cutthroat trout. Also within the permit boundary are two tributaries to Tide Creek. The minimum riparian setback for Tide Creek is 50' landward of the ordinary high water line. The minimum riparian setback for the two tributaries is 25' landward of the ordinary high water line. Additionally, according to the National Wetlands Inventory the stream channels are considered riverine wetlands and there are two smaller palustrine wetlands west of the highway. The two smaller palustrine wetlands

and the two tributaries appear to have been impacted by previous mining activities. One of the maps submitted with the application indicates a 25' setback from the north side of Tide Creek. Staff finds that a 25' setback from Tide Creek is not consistent with the above criteria; however, DSL has conceded that a 25' buffer is sufficient if the applicant restores the Tide Creek bed and immediate banks according to the PBS Enhancement and Restoration Plan. Some measures still need to be completed according to the PBS 2001 Monitoring Report. The submitted application materials of August 2003 provide copies of studies and reports and Consent Order from state agency which provide a reasonable mechanism of assurance that restoration measures will be accomplished and any future violations to water quality or riparian degradation can be avoided or responded to in a timely fashion. Given this, staff concludes this application is consistent with the above criteria regarding riparian areas and protection of water quality, streambank stabilization, and fish and wildlife habitat.

Continuing with the Columbia County Zoning Ordinance:

Section 1182 WETLAND AREA OVERLAY

WA

[Amended by Ordinance No. 2003 - 5, effective December 15, 2003].

- 1182 **Purpose:** The purpose of this zone is to protect significant wetlands, marshes, and swamps within the identified Wetland Areas as shown on the State Wetland Inventory and Local Wetland Inventories, from filling, drainage, or other alteration which would destroy or reduce their biological value. The Wetland Area Overlay does not apply to land legally used for commercial forestry operations or standard farm practices, both of which are exempt from these wetland area corridor standards. The use of land for commercial forestry is regulated by the Oregon Department of Forestry. The use of land for standard farm practices is regulated by the Oregon Department of Agriculture, with riparian area and water quality issues governed by ORS 568.210 to ORS 568.805.
- 1183 **Definition:** A significant wetland is an area that is inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions. In case of dispute over whether an area is of biological value and should be considered a significant wetland, the County shall obtain the recommendation of the Oregon Department of Fish and Wildlife, the Columbia County Soil and Water Conservation District, and the Division of State Lands.
- 1184 **Permitted Uses:** Uses and development activities permitted outright or conditionally in the underlying zone shall be permitted in the Wetland Area Overlay Zone if they will not result in filling, drainage, removal of vegetation, or other alteration which would destroy or degrade a significant wetland as defined in Section 1182. Minor drainage improvements necessary to ensure effective drainage on surrounding agricultural lands under Oregon Department of Agriculture wetland rules shall be allowed where such an action has been fully coordinated with the Oregon Department of Fish and Wildlife, the Columbia County Soil and Water Conservation District, and the Division of State Lands. Existing drainage ditches may be cleared to original specifications without County review.

Finding 16 The National Wetlands Inventory indicates there are wetlands areas within the permit boundary on both the East and West sides of the Highway. The applicant has submitted a Wetland Delineation Report conducted by PBS Environmental for the property in August 2003. The submitted application includes information regarding the location of wetlands on both sides of Hwy. 30 and discusses how they will be mitigated and protected in the future. A Consent Order with the State DSL is in effect, and restoration and mitigation measures have been identified by the applicant. Staff recommends authorizing limited expansion of surface mining land use approval if plans will be implemented for how the site will operate within the confines of this wetland criteria and that the potential impacts to the wetland resources will be minimized.

Continuing with the Columbia County Zoning Ordinance:

Section 1550 SITE DESIGN REVIEW

The Site Design Review process shall apply to all new development, redevelopment, expansion, or improvement of all community, governmental, institutional, commercial, industrial and multi-family residential (4 or more units) uses in the County.

1551 Types of Site Design Review:

A. Type 1: Projects, developments and building expansions which meet any of the following criteria:

1. are less than 5,000 sq.ft., and are less than 10% of the square footage of an existing structure.
2. Increase the number of dwelling units in a multi-family project.
3. Increase the height of an existing building.

B. Type 2: Projects, developments and building expansions which meet any of the following criteria:

1. have an area of 5,000 sq.ft. or more, or are 10% or more of the square footage of an existing structure.
2. Change the category of use (e.g., commercial to industrial, etc.).
3. New off-site advertising signs or billboards.
4. Any project meeting any of the Type 2 criteria shall be deemed a Type 2 Design Review application.

.2 Design Review Process: The Planning Director shall review and decide all Type 1 Site Design Review applications. The Planning Commission shall review all Type 2 Design Review applications. Applications shall be processed in accordance with Sections 1600 and 1700 of this ordinance.

.5 Submittal documents: The following documents, when applicable, are required for a Site Design Review. The scope of the drawings and documents to be included will be determined at the pre-application conference by the Pre-application Conference Committee, and a Site Design Review Submittal Checklist will be given to the applicant, documenting which items are deemed not applicable or not necessary to determine compliance with County and State standards, with a short explanation given for each item so determined.

- A. History.
- B. Project narrative.
- C. Existing site plan.
- D. Proposed site plan.
- E. Grading plan.
- F. Drainage plan.
- G. Wetland mitigation plan.
- H. Landscaping plan.
- I. Architectural plans.
- J. Sign drawings.

- K. Access, parking and circulation plan.
- L. Impact assessment.
- M. Site Design Review Submittal Checklist.

1560 Existing Site Plan: The degree of detail in the existing site plan shall be appropriate to the scale of the proposal, or to special site features requiring careful design. An existing site plan shall include the following, unless it is determined by the Planning Director that the information is not applicable or is not necessary to determine compliance with County and State standards, and a short explanation will be given for each item so determined:

- A. A vicinity map showing location of the property in relation to adjacent properties, roads, pedestrianways and bikeways, and utility access. Site features, manmade or natural, which cross property boundaries are to be shown.
- B. A site description map at a suitable scale (i.e. 1"=100'; 1"=50'; or 1"=20') showing parcel boundaries and gross area, including the following elements, when applicable:
 - 1. Contour lines at the following minimum intervals:
 - a. 2 foot intervals for slopes 0-20%;
 - b. 5 or 10 foot intervals for slopes exceeding 20%;
 - c. Identification of areas exceeding 35% slope.
 - 2. In special areas, a detailed slope analysis may be required. Sources for slope analysis include maps located at the U.S. Natural Resources Conservation Service office.
 - 3. Potential natural hazard areas, including potential flood or high ground water, landslide, erosion, and drainage ways. An engineering geologic study may be required.
 - 4. Wetland areas, springs, wildlife habitat areas, wooded areas, and surface features such as mounds and large rock outcroppings.
 - 5. Streams and stream corridors.
 - 6. Location, species and size of existing trees proposed to be removed.
 - 7. Significant noise sources.
 - 8. Existing structures, improvements, utilities, easements and other development.
 - 9. Adjacent property structures and/or uses.

Finding 17 Expanding the existing Rock Creek Rock Products surface mining operations into the five subject properties zoned for PF-76, PA-38 or FA-19 meets the criteria for a Type 2 Design Review. The Planning Commission approved the applicant's related Conditional Use Permit (CU 01-54) on November 21, 2003 provided the applicant submit a Site Design Review and a Surface Mining Permit for the proposed expansion of the surface mine. The applicant's May 14, 2009 submittal to Land Development Services of Modified DR 02-01 satisfying condition 13 of CU 01-54. All materials submitted in regards to the existing site plan for processing of a Type 2 Site Design Review application are adequate. The attached March 28, 2005 Surface Mining Administrator's Report recommending the conditional approval of the applicant's New Operating Permit and Reclamation Plan for the five

subject resource-zoned properties (# 05-0070) likewise satisfies Condition 1 of CU 01-54.

Continuing with the Columbia County Zoning Ordinance:

1561 Proposed Site Plan: A complete application for design review shall be submitted, including the following plans, which may be combined, as appropriate, onto one or more drawings, unless it is determined by the Planning Director that the information is not applicable or is not necessary to determine compliance with County and State standards, and a short explanation will be given for each item so determined:

A. Site Plan: The site plan shall be drawn at a suitable scale (i.e. 1"=100', 1"=50', or 1"=20') and shall include the following:

1. The applicant's entire property and the surrounding area to a distance sufficient to determine the relationships between the applicant's property and proposed development and adjacent properties and developments.
2. Boundary lines and dimensions of the property and all proposed property lines. Future buildings in phased development shall be indicated.
3. Identification information, including names and addresses of project designers.
4. Natural features which will be utilized in the site plan.
5. Location, dimensions and names of all existing or platted roads or other public ways, easements, and railroad rights-of-way on or adjacent to the property, city limits, section lines and corners, and monuments.
6. Location and dimensions of all existing structures, improvements, or utilities to remain, and structures to be removed, all drawn to scale.
7. Historic structures, as designated in the Comprehensive Plan.
8. Approximate location and size of storm water retention or detention facilities and storm drains.
9. Location and exterior dimensions of all proposed structures and impervious surfaces.
10. Location and dimension of parking and loading areas. pedestrian and bicycle circulation, and related access ways. Individual parking spaces shall be shown.
11. Orientation of structures, showing entrances and exits.
12. All exterior lighting, showing type, height, wattage, and hours of use.
13. Drainage, including possible adverse effects on adjacent lands.
14. Service areas for waste disposal and recycling.
15. Noise sources, with estimated hours of operation and decibel levels at the property boundaries.

16. A landscaping plan which includes, if applicable:
 - a. Location and height of fences, buffers, and screening;
 - b. Location of terraces, decks, shelters, play areas, and common open spaces;
 - c. Location, type, size, and species of existing and proposed shrubs and trees; and
 - d. A narrative which addresses soil conditions and erosion control measures.
- B. Grading Plans: A preliminary grading plan indicating where and to what extent grading will take place, including general contour lines, slope ratios, slope stabilization proposals, and natural resource protection proposals.
- C. Architectural Drawings:
 1. Building elevations and sections;
 2. Building materials (color and type);
 3. Floor plan.
- D. Signs: (see also Zoning Ordinance Section 1300)
 1. Freestanding sign:
 - a. Location of sign on site plan;
 - b. Elevation of sign (indicate size, total height, height between bottom of sign and ground, color, materials, and means of illumination).
 2. On-Building Sign:
 - a. Building elevation with location of sign (indicate size, color, materials and means of illumination);
 - b. Plot plan showing location of signs on building in relation to adjoining property.

Finding 18: Because the submitted application states the precise times for expanding the existing surface mine into these specific 20 acre area is uncertain and no site development is proposed at this time, all materials submitted with regards to the proposed site plan for the applicant's modified DR 02-01 application are adequate.

1562 Landscaping: Buffering, Screening and Fencing:

- A. General Provisions:
 1. Existing plant materials on a site shall be protected to prevent erosion. Existing trees and shrubs may be used to meet landscaping requirements if no cutting or filling takes place within the dripline of the trees or shrubs.
 2. All wooded areas, significant clumps or groves of trees, and specimen conifers, oaks or other large deciduous trees, shall be preserved or replaced by new

plantings of similar size or character.

B. Buffering Requirements:

1. Buffering and/or screening are required to reduce the impacts on adjacent uses which are of a different type. When different uses are separated by a right of way, buffering, but not screening, may be required.
2. A buffer consists of an area within a required setback adjacent to a property line, having a width of up to 10 feet, except where the Planning Commission requires a greater width, and a length equal to the length of the property line adjacent to the abutting use or uses.
3. Buffer areas shall be limited to utilities, screening, pedestrian and bicycle paths, and landscaping. No buildings, roads, or parking areas shall be allowed in a buffer area.
4. The minimum improvements within a buffer area shall include:
 - a. One row of trees, or groupings of trees equivalent to one row of trees. At the time of planting, these trees shall not be less than 10 feet high for deciduous trees and 5 feet high for evergreen trees, measured from the ground to the top of the tree after planting. Spacing of trees at maturity shall be sufficient to provide a year-round buffer.
 - b. In addition, at least one 5-gallon shrub shall be planted for each 100 square feet of required buffer area.
 - c. The remaining area shall be planted in grass or ground cover, or spread with bark mulch or other appropriate ground cover (e.g. round rock). Pedestrian and bicycle paths are permitted in buffer areas.

- E. Re-vegetation: Where natural vegetation or topsoil has been removed in areas not occupied by structures or landscaping, such areas shall be replanted to prevent erosion.

Finding 19: As discussed previously for Finding 5, the approximate 20 acre subject properties are not adjacent to a public park, residential development, or residential zone. The property is, however, adjacent to U.S. Highway 30 which is a major arterial with high traffic volumes. The applicant states in the submitted application that existing vegetation will be preserved for a minimum of 25-foot width. Because the sediment pond and fill area East of U.S. Highway 30 are in clear view from the highway and the Mitigation Plan prepared by PBS Environmental has designated all three types of vegetation plantings to be establish on both sides of the creek: upland forest, riparian forest and emergent wetland vegetation. Starting at the railroad tracks - upland forest, then emergent wetland closer to the creek, then riparian forest as the elevation climbs to the opposite top bank, then upland forest vegetation again. Upland tree types include bigleaf maple, red alder, black cotton wood, Douglas fir and Western Hemlock. These tree types, once established, should also provide some visual screening of the potential surface mining operations from vehicular traffic on Highway 30. Consequently, this re-vegetation plan provides two purposes protecting and enhancing Tide Creek and its associated wetlands and creating a visual screen or buffer between the Hwy. 30 and the sediment pond and fill area.

1563 Standards for Approval:

The Planning Commission or Director shall make a finding with respect to each of the following criteria when approving, approving with conditions, or denying an application:

- A. Flood Hazard Areas: See CCZO §1100, Flood Hazard Overlay Zone. All development in Flood Hazard Areas must comply with State and Federal Guidelines.
- B. Wetlands and Riparian Areas: Alteration of wetlands and riparian areas shall be in compliance with State and Federal laws.
- C. Natural Areas and Features: To the greatest practical extent possible, natural areas and features of the site shall be preserved.
- D. Historic and Cultural sites and structures: All historic and culturally significant sites and structures identified in the 1984 Comprehensive Plan, or identified for inclusion in the County Periodic Review, shall be protected if they still exist.
- E. Lighting: All outdoor lights shall be shielded so as to not shine directly on adjacent properties and roads.
- F. Energy Conservation: Buildings should be oriented to take advantage of natural energy saving elements such as the sun, landscaping and land forms.
- G. Transportation Facilities: Off-site auto and pedestrian facilities may be required by the Planning Commission, Planning Director or Public Works Director consistent with the Columbia County Road Standards and the Columbia County Transportation Systems Plan.

Finding 20: This report has already addressed issues and concerns for all seven of these criteria and staff has made separate Findings for Criteria D, E, F, & G in Findings 1 - 11 related to the Surface Mining Ordinance and in Finding 20, for Criterion A in Finding 14, and for Criterion B in Findings 15. Staff finds these criteria have been satisfied.

1564 Final Site Plan Approval: If the Planning Director or Planning Commission approves a preliminary site plan, the applicant shall finalize all the site drawings and submit them to the Director for review. If the Director finds the final site plan conforms with the preliminary site plan, as approved by the Director or Planning Commission, the Director shall give approval to the final site plan. Minor differences between the preliminary site plan and the final site plan may be approved by the Director. These plans shall be attached to the building permit application and shall become a part of that permit.

Finding 21: The applicant shall take into consideration the discussion and findings of this staff report for revision of proposed site plans in order to create a final site plan conforming with applicable code. A final site plan shall be submitted and approved by the director prior to the issuance of any building permits for new construction.

Continuing with the Columbia County Zoning Ordinance:

1612 Special Hearings: The Board of County Commissioners, in its discretion, may order any quasi-judicial land use application or type of quasi-judicial land use application to be heard at a Special Hearing in lieu of a hearing before the Planning Commission or the Board of County Commissioners.

Discussion: Due to the specific characteristics of this proposal and the fact that the applicant submitted in October 2004 the application for a New Surface Mining Operating Permit and Reclamation Plan per Condition 1 of the Planning Commission's Final Order for CU 01-54, Land Development Services Director requested the

Board to take original jurisdiction over the necessary review and approval of the modified Site Design Review (DR 02-01) per Condition 13 of CU 01-54. This will expedite the process for the applicant and allows the Board to review hear both applications at the same time.

Continuing with the Columbia County Zoning Ordinance:

1608 **Contents of Notice:** Notice of a quasi-judicial hearing shall contain the following information:

- .1 The date, time, and place of the hearing;
- .2 A description of the subject property, reasonably calculated to give notice as to the actual location, including but not limited to the tax account number assigned to the lot or parcel by the Columbia County Tax Assessor;
- .3 Nature of the proposed action;
- .4 Interested parties may appear and be heard;
- .5 Hearing to be held according to the procedures established in the Zoning Ordinance.

Finding 22: A hearing notice was published in the St. Helens Chronicle newspaper on July 22, 2009 more than 10 days prior to the Board of Commissioners Public Hearing on August 5, 2009. Notice to and request for Information & Referral was mailed to adjacent property owners, St. Helens - Columbia City CPAC, Columbia County Soil & Water Conservation District, Scappoose Bay Watershed Council, Columbia River Fire & Rescue, Oregon Department of Transportation, Oregon Department of Fish & Wildlife, Oregon Division of State Lands, the Columbia County Surface Advisory Committee, U.S. Fish & Wildlife, DOGAMI, Natural Resources Conservation Service, Columbia County Sanitarian, Columbia County Roadmaster, and Columbia County Building Official on July 15, 2009. This criteria has been satisfied.

Continuing with the Conditions Imposed by the Planning Commission under Conditional Use CU 01-54:

Discussion: As discussed previously in this report, and based on the findings in the September 26, 2003 Staff Report for CU 01-54, the Planning Commission approved on November 21, 2003 the applicant's request to expand an existing surface mining operation by approximately 20 acres onto the adjacent portions of five subject properties zoned for PF-76, PA038 and PA-38 subject to 13 separate conditions listed in the November 21, 2003 Final Order for CU 01-54. Condition 1 specifically required the applicant to obtain a Surface Mining Operating Permit and Reclamation Plan from the Columbia County Surface Mining Administrator and Condition 13 required the applicant to re-submit a Site Design Review DR 02-01 simultaneously with the Surface Mining Operating Permit.

Finding 23: On October 21, 2004 the applicant submitted applications (attached) for an Surface Mining Operating Permit and Reclamation Plan for the proposed expansion into the adjacent approximate 20 acres of PF-76, PA-38 and FA-19 zoned land to Land Development Services. In a consequent Report dated March 28, 2005, the Columbia County Surface Mining Administrator recommended approval of both submitted plans with five (5) conditions consistent with the applicable provisions of Articles V through VIII of the Columbia County Surface Mining Ordinance, satisfying Condition 1 of CU -1-54.

Finding 24: Staff finds the applicant has satisfied Condition 13 for CU 01-54 by requesting the Board of

Commissioners to simultaneously review (1) the attached Surface Mining Operating Permit and Reclamation Plan dated October 20, 2004 approved by the Surface Mining Administrator on March 28, 2005 with (2) the modified DR 02-01 dated May 14, 2005. If the Board of Commissioners approves both of these submitted applications, the applicant will receive land use authority to expand the existing SM zoned Limited Exempt area onto the approximate 20 acre portions of the five subject properties zoned PF-76, PA-38 or FA-19.

COMMENTS:

St. Helens - Columbia City CPAC: No comments have been received as of the date of this report
Columbia River Fire & Rescue: No comments have been received as of the date of this report
County Roadmaster: No comments have been received as of the date of this report
County Building Official: No comments have been received as of the date of this report
County Sanitarian: No comments have been received as of the date of this report
Scappoose Bay Watershed Council: No comments have been received as of the date of this report
Columbia County Soil & Water Conservation District: No comments have been received as of the date of this report
Natural Resources Conservation Service: No comments have been received as of the date of this report
Columbia County Surface Mining Advisory Committee: No comments have been received for re-submitted DR 02-01 as of the date of this report but Bob Brinkmann's letter to the applicant received by LDS on September 17, 2008 confirmed that storm water is confined to the quarry property or the pit floor where it infiltrates into subgrade without any offsite discharges.
Oregon Department of Fish & Wildlife: No comments have been received as of the date of this report
Oregon Department of Transportation: No comments have been received as of the date of this report
DOGAMI: No comments have been received as of the date of this report
Department of State Lands: Replied on February 25, 2009 that their office has closed Enforcement File No. 1186 for the subject property.

STAFF CONCLUSIONS & RECOMMENDATION:

Based upon research, analysis and findings concerning the five subject PF-76, PA-38, and FA-19 zoned properties conducted for CU 01-54, approved by the Planning Commission in 2005, the subsequent Surface Mining Administrator's March 28, 2005 Report for a New Operating Permit # 05-0070 and Reclamation Plan in Attachment 1, and the modified DR 02-01 submitted to LDS on May 14, 2009, staff recommends **Approval** of this request from Rock Creek Products to expand an existing aggregate surface mining operation and to receive land use authority to mine in those adjacent areas zoned PF-76, FA-19, and PA-38 located outside of the Limited Exempt Areas zoned for Surface Mining, subject to the following conditions:

Conditions of Approval:

1. All conditions of approval of CU 01-54 are hereby incorporated by reference, except the following Conditions which the applicant has already complied with: Conditions No. 5, 12, and 13 related to posting the "No Thru Truck Traffic Sign", implementing a landscape screen plan, and submitting a Site Design Review application respectively.
2. All conditions of approval for the March 28, 2005 Surface Mining Operating Permit No. 05-0070 and the

related Reclamation Plan are hereby incorporated by reference.

3. The operator shall follow the standard operating hours that allow activity from 7 am to 6 pm.
4. All future signs on the subject property shall comply with the applicable standards of Section 1300 of the Zoning Ordinance.
5. All outdoor lighting shall be reviewed and approved by Land Development Services with a copy of lighting specifications attached to this site design review. All lighting shall be directed so that it does not shine onto Tide Creek Road or Highway 30 and reduce visibility of passing motorists.
6. A Final Site Plan shall be submitted and approved prior to the issuance of any development permits on the subject properties. The final site plan and provisions of this site design review shall be attached to and become part of the Surface Mining Operating Permit and the Reclamation Plan.
7. All existing and future development occurring on the site after July 1, 1984 and up to the present, as defined in Section 1102.3 of the County's Flood hazard Overlay Zone, shall be identified and floodplain development permits shall be obtained prior to any further development activity on the subject properties.
8. The sign posted in the summer of 2009 on the West side of Old Columbia River Road Highway prohibiting trucks from utilizing the access to Highway 30 South of Tide Creek shall be maintained and kept clear from any visual obstruction.
9. The surface mining operation, including all blasting, shall be required to operate in compliance with the applicable noise standards required by the Department of Environmental Quality or other state or federal agencies.
10. The applicant shall obtain a revised deeded access easement under Highway 30 into the site that reflects its intended new uses. Prior to issuance of additional development permits on the subject properties, the applicant shall submit written documentation to LDS confirming the revisions to the deeded access to Highway 30 have been approved by ODOT.
11. The erosion control and monitoring measures identified in the PBS Environmental's Site Drainage and Water Quality report dated August 2003 shall be adhered to for all future mining activities.
12. No storm water shall be discharged to Tide Creek without first obtaining a 100A Permit from the Division of State Lands.
13. The setbacks in the proposed mining area shall comply with the Operating Setbacks, Visual Impacts, Water Quality, Erosion Control, Parking, and Access standards identified in Articles VII and VIII of the Surface Mining Ordinance
14. Per Requirement 'P' of the October 20, 2005 Reclamation Plan upon final reclamation all mining related equipment and refuse will be removed from the subject properties. Any remaining structures shall be authorized and permitted for their intended uses according to the applicable provisions of the County Zoning Ordinance.
15. Prior to any removal, excavation and processing of aggregate materials on site, the Surface Mining

Administrator shall approve the site's Reclamation Plan.

16. All site development within the sites delineated significant wetland areas shall require full compliance with the PBS Environmental's August 2003 Wetlands Enhancement and Restoration Plan.

Attachments

1. March 28, 2005 Surface Mining Administrator's Report for a New Operating Permit # 05-0070, Operating Permit Application & Reclamation Plan dated October 20, 2004
2. Modified DR 02-01 Application & Maps of Proposed Operation
3. Final Order CU 01-54
4. PBS's 2003 Wetlands Delineation, Monitoring Report/Restoration and Drainage and Water Quality Plans
5. Letter of September 17, 2008 from Bob Brinkmann to the applicant
6. Letter of February 25, 2009 from DSL RE: Closure of Enforcement Order # 1186 and Intent to Assess Civil Penalty, DSL Enforcement File # 1186 dated October 9, 2003
7. July 29, 2009 FEMA Map of Tide Creek's 100 Year Floodplain

cc: DOGAMI
County Counsel
David B. Williamson, 230 Columbia Boulevard, P.O. Box 656, St. Helens, OR 97051

BOARD COMMUNICATION

FROM THE LAND DEVELOPMENT SERVICES DEPARTMENT
MEETING DATE: August 19, 2009

TO: BOARD OF COUNTY COMMISSIONERS

FROM: Todd Dugdale, Director of Land Development Services

SUBJECT: DELIBERATIONS
Tidecreek Rock Surface Mining Site
DR02-01 (Modified) Site Design Review
#05-0070 Surface Mining Operating Permit
Tide Creek Road, Deer Island
Tax Parcel Nos: Portions of 6236-000-00600, 6236-000-00900,
6236-000-01000, 6236-000100, 6131-000-00300

DATE: August 17, 2009

SUMMARY:

The Board of Commissioners held a public hearing on the subject request on August 5, 2009 and carried the matter over until this date for deliberations. At the August 5, 2009 hearing the applicant requested that three conditions recommended by Staff, two on the Operating Permit and one on the Design Review application be modified. Staff has reviewed the changes recommended by the applicant and recommends the following modified conditions of approval:

DESIGN REVIEW RECOMMENDED CONDITIONS (Staff Report Dated July 25, 2009)

Condition #10

Original Staff Language:

The applicant shall obtain a revised deeded access easement under Highway 30 into the site that reflects its intended new uses. Prior to issuance of additional development permits on the subject properties, the applicant shall submit written documentation to LDS confirming the revisions to the deeded access to Highway 30 have been approved by ODOT.

Discussion:

The applicant requested that adequate time be provided to obtain the revised deeded access from ODOT. Staff suggested that the applicant be required to file an application to ODOT by a date certain and be given six months to obtain the revised access from ODOT.

Recommended Revised Staff Condition

The applicant shall apply for a revised deeded access easement under Highway 30 into the site that reflects its intended new uses within 30 days of Design Review approval by the County. Further, the applicant shall obtain said revised deeded access and shall submit written documentation to LDS confirming that the revisions to the deeded access to Highway 30 have been approved by ODOT within 6 months of County Design Review approval.

OPERATING PERMIT RECOMMENDED CONDITIONS
(Staff Report Dated March 28, 2005)

Condition #1

Original Finding:

Finding 4: Currently there is no bond for the site. However posting a reclamation bond in the amount of \$50,500 (based on the approximate 12-acres disturbed in the permit area) with the county is required prior to issuance of the mining permit. The bond may be adjusted accordingly as future development/reclamation of the quarry proceeds

Original Recommended Staff Condition #1::

Post a reclamation bond as specified in Section 7.1 of the Columbia County Surface Mining Ordinance.

Discussion:

The applicant requested that the reclamation bond be reduced to 10% of the recommended amount citing the reliability and environmental consciousness of the applicant.

Surface Mining Administrator's response(Attachment1):

The views and sentiments of the applicant are appreciated, however the Surface Mining Ordinance has no allowance for bond reduction based on the rationale provided. It should be noted that since the recommendation for approval by the Surface Mining Advisory Committee in '05, mining has been allowed to continue at the site and a reclamation bond has yet to be submitted. Although the bond amount required in the Surface Mining Administrator's Report should be provided and will likely be the same under DOGAMI's requirements, an option utilized by many small miners in other counties of the state is an irrevocable letter of credit from the applicant's bank which avoids having to obtain a bond from a performance bonding company.

Section 7.1 of the Surface Mining Ordinance provides for a bond or security deposit in the form of either cash, cashier's check or certified check equal to the estimated cost of reclamation.

Recommended Revised Staff Condition #1:

Post a reclamation bond, cash, cashier's check or certified check equal to the estimated cost of reclamation as specified in Section 7.1 of the Columbia County Surface Mining Ordinance.

Condition #5

Original Recommended Staff Condition #5::

Place a minimum of 3-feet of soil over the pit floor, processing and stockpile areas after ripping and revegetate with native timber and grass species.

Discussion:

The applicant requested that the amount of soil be flexible based on what is needed to establish the grass and tree vegetation in the reclamation plan.

Surface Mining Administrator's response(Attachment1):

To address the thickness of soil placement for revegetation of the site the condition will be modified to state: After ripping, place a minimum of 1-ft of soil in areas of the site to be re-vegetated with native grasses and up to 3-ft in areas for revegetation with native timber species". Although this modification allows for flexibility in soil placement the applicant should be aware that final approval of reclaimed areas is based upon the survival rate of the native species planted and that permit closure is not allowed until the required success rate is met.

Recommended Revised Staff Condition #5:

After ripping, place a minimum of 1-ft of soil in areas of the site to be re-vegetated with native grasses and up to 3-ft in areas for re-vegetation with native timber species".

ATTACHMENTS:

1. Surface Mining Administrator's Recommendations Concerning Revised Conditions of Approval for the Operating Permit

RECOMMENDATION:

Staff recommends revisions to the recommended condition of approval #10 contained in the July 29, 2009 Staff Report for DR 02-01(Modified) and conditions #1 and #5 in the March 28, 2005 Surface Mining Administrator's Report for Operating Permit #05-0070 as stated above.

From: Todd Dugdale
To:
Subject: Fwd: Re: Tidecreek Operating Permit

>>> "Robert D. Brinkmann" <Robert.D.Brinkmann@mlrr.oregongeology.com> 8/12/2009 6:40 PM >>>
Todd, My response to the two conditions is as follows:

Condition #1 Bond - The views and sentiments of the applicant are appreciated, however the Surface Mining Ordinance has no allowance for bond reduction based on the rationale provided. It should be noted that since the recommendation for approval by the Surface Mining Advisory Committee in '05, mining has been allowed to continue at the site and a reclamation bond has yet to be submitted. Although the bond amount required in the Surface Mining Administrator's Report should be provided and will likely be the same under DOGAMI's requirements an option utilized by many small miners in other counties of the state is an irrevocable letter of credit from the applicant's bank which avoids having to obtain a bond from a performance bonding company.

Condition #5 - To address the thickness of soil placement for revegetation of the site the condition will be modified to state: "After ripping, place a minimum of 1-ft of soil in areas of the site to be revegetated with native grasses and up to 3-ft in areas for revegetation with native timber species". Although this modification allows for flexibility in soil placement the applicant should be aware that final approval of reclaimed areas is based upon the survival rate of the native species planted and that permit closure is not allowed until the required success rate is met.