

BEFORE THE BOARD OF COUNTY COMMISSIONERS

FOR COLUMBIA COUNTY, OREGON

In the Matter of an Appeal of the Application of )  
Northwest Aggregates for a Temporary Permit to ) FINAL ORDER NO. 83-2011  
Extend Operating Hours at the Bates Roth Surface )  
Mine for a Two Week Period of Time )

WHEREAS, on June 30, 2011, the applicant, NW Aggregates, applied for a permit to extend the operating hours at the Bates Roth Surface Mine by seven (7) hours per day for a period of two weeks. The applicant requested that its current operating hours of 7:00 a.m. to 6:00 p.m. be extended to the hours of 6:00 a.m. to 12:00 a.m.; and

WHEREAS, the approximately 304-acre parcel is zoned Surface Mining (SM) and is located on the west side of Honeyman Road, approximately one mile northeast of the City of Scappoose, Oregon (Tax Account Numbers 4132-000-00600, 4132-000-00700, 4132-000-00800, 4132-000-00801, 4132-000-00900, and 4133-000-00400); and

WHEREAS, the application was deemed complete on July 5, 2011; and

WHEREAS, on July 6, 2011, notice of the application, which is processed administratively unless it is referred to the Planning Commission, was sent to property owners within 1,000 feet; and

WHEREAS, on July 12, 2011, the County received a request to refer the application to the Planning Commission. After proper notice, the Columbia County Planning Commission held a public hearing on the application at its regularly scheduled meeting on September 12, 2011, heard testimony and received evidence into the record. The Planning Commission then closed the hearing to further testimony and evidence, deliberated on the matter and voted to approve the application with conditions; and

WHEREAS, a copy of the Planning Commission's Final Order was mailed to parties entitled to notice on September 21, 2011; and

WHEREAS, on September 26, 2011, Charles Beaston timely appealed the Planning Commission's decision to the Columbia County Board of Commissioners ("Board"); and

WHEREAS, a hearing was scheduled before the Board for November 23, 2011, and notice of the hearing was sent on November 2, 2011 to the applicants, nearby property owners, and those who participated in the proceeding; and

WHEREAS, on November 23, 2011, the applicant waived the 150-day deadline for final action required by ORS 215.427; and

WHEREAS, at its regularly scheduled meeting on November 23, 2011, the Board held a public hearing on the appeal, received testimony, and accepted all written evidence submitted into the record, a list of which is provided in Attachment 1, attached hereto and incorporated herein by this reference; and

WHEREAS, during the public hearing, the applicant requested that condition #1 of the staff recommendation be amended to allow the approval to be valid for one year from the date of the final order rather than six months. The applicant explained that due to the length of the appeal process, the window of opportunity for this year's operations had passed, and a one-year approval period would allow the applicant to apply the approval to next year's operations; and

WHEREAS, the Board then closed the public hearing, deliberated, and voted to tentatively approve the application subject to conditions.

NOW, THEREFORE, IT IS HEREBY ORDERED as follows:

- A. The Board of County Commissioners adopts the findings and conclusions in the Staff Report dated April 27, 2011, attached hereto as Attachment 2 and incorporated herein by this reference; and
- B. The Board of County Commissioners adopts the foregoing recitals as additional findings in support of its decision; and
- C. Based on the evidence in the record and the Board's findings and conclusions, the Board hereby approves NW Aggregates' application for a Temporary Permit (TP 11-07) to allow extended operating hours of 6:00 a.m. to 12:00 a.m. at the Bates Roth Surface Mine for a two week period, subject to the following conditions:
  1. The extension of operating hours shall be valid for one two-week period of time and shall take place within one year of the date of this final order.
  2. The applicant shall only be eligible for 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 of time. As such, the applicant shall not be eligible for another extension of operating hours until six months has passed from the date of the final order.
  3. Surface mining operations shall not begin before 6:00 a.m., nor extend beyond 12:00 a.m. (midnight).

4. The applicant shall notify Land Development Services of the start and completion dates of the extended operating hours.
5. The Commission may, at any time, require resumption of standard operating hours.
6. The applicant shall test for arsenic levels at the two well sites, previously tested for arsenic, near the end of the two week mining operation conducted under the extended hours. Test results shall be submitted to Land Development Services.

Dated this 17<sup>th</sup> day of December, 2011.

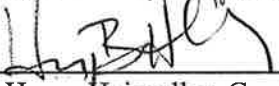
BOARD OF COUNTY COMMISSIONERS  
FOR COLUMBIA COUNTY, OREGON

Approved as to form

By:   
Office of County Counsel

By: Not present  
Anthony Hyde, Chair

By:   
Earl Fisher, Commissioner

By:   
Henry Heimuller, Commissioner

**EXHIBIT 1 – Legal Counsel’s File:**

1. Board Communication from Land Development Services Director Todd Dugdale, dated November 23, 2011, with the following attachments:
  - a. Board of County Commissioners Staff Report for TP 11-07, dated November 16, 2011;
  - b. Appeal of Planning Commission Decision, dated September 26, 2011;
  - c. Draft minutes of September 12, 2011 Planning Commission meeting; and
  - d. Application and maps
2. Board of Commissioners’ Staff Meeting Agenda, dated November 9, 2011
3. Board Communication from Todd Dugdale, dated November 9, 2011
4. Notice of Public Hearing (Property Owner Notice) dated November 2, 2011
5. Affidavit of Mailing dated November 2, 2011
6. Affidavit of Publication dated November 2, 2011 (Publication on November 9, 2011)
7. Letter from Todd Dugdale, dated September 30, 2011
8. Notice of Appeal, received September 26, 2011
9. Certificate of Mailing Final Order TP 11-07, dated September 21, 2011
10. Notice of Decision, Final Order TP 11-07, dated September 20, 2011
11. Planning Commission Final Order TP 11-07, dated September 19, 2011
12. Planning Commission Meeting Minutes (Draft), dated September 12, 2011
13. Planning Commission Staff Report (TP 11-07), dated September 12, 2011
14. Letter from Julie Jackstadt, dated September 12, 2011
15. Planning Commission Agenda, dated September 12, 2011
16. Comments from Scappoose-Spitzenburg CPAC, provided in Meeting Minutes, dated August 25, 2011
17. Certificate of Mailing, dated August 10, 2011
18. Notice of Planning Commission Public Hearing, dated August 10, 2011
19. Referral to Planning Commission from Charles Beaston, dated July 12, 2011
20. Letter from Glen Higgins to Bob Short, NW Aggregates, dated July 9, 2011
21. Certificate of Mailing, dated July 6, 2011
22. Administrative Notice, dated July 6, 2011
23. Deemed Complete Letter from Glen Higgins, dated July 5, 2011
24. Application, dated June 30, 2011
25. Letter from Bryan Wigginton, CalPortland, dated January 7, 2011, with attached Hydrogeologic Monitoring Report, prepared by Shannon and Wilson, Inc., dated January 3, 2011
26. Site Plan prepared by Shannon and Wilson, Inc., dated January 2011
27. Final Order No. 71-2008, dated August 27, 2008
28. Letter to Charles Beaston from Geoff Silverman, dated January 25, 2007 (received by Land Development Services November 14, 2011)

**EXHIBIT 2** - Waiver of 150-Day Rule, dated November 23, 2011

**EXHIBIT 3** - Printout from EPA website,

<http://water.epa.gov/lawsregs/rulesregs/sda/arsenic/index.cfm>, last updated October 7, 2011

**EXHIBIT 4** - Apex Lab Report, dated September 20, 2011

**COLUMBIA COUNTY BOARD OF COMMISSIONERS**

**STAFF REPORT**

November 16, 2011

Temporary Permit - Extension of Surface Mining Operating Hours

Appeal of Planning Commission Decision

**HEARING DATE:** November 23, 2011

**FILE NUMBER:** TP 11-07

**APPLICANT/OWNER:** Northwest Aggregates  
P.O. Box 1730  
Seattle, WA 98111

**PROPERTY LOCATION:** The site is located approximately one mile northeast of the City of Scappoose on the west side of Honeyman Road. The site is known as the Bates Roth Mine.

**TAX ACCT. NUMBERS:** 4132-000-00600, 4132-000-00700, 4132-000-00800, 4132-000-00801, 4132-000-00900, and 4133-000-00400; The extension of operating hours pertains primarily to mining activities that will occur on tax lot # 4133-000-00400.

**ZONING:** Surface Mining (SM)

**SIZE:** ± 303.91 acres

**REQUEST:** To extend the operating hours for surface mining activities at the Bates Roth Mine in accordance with Section 1044.5 of the Columbia County Zoning Ordinance. The applicant requests approval to extend the operating hours from 6:00 a.m. to midnight (12:00 a.m.) for a two week period of time.

**APPLICATION COMPLETE:** 7/5/11

**120 DAY DEADLINE:** 12/2/11

**APPLICABLE REVIEW CRITERIA:**

**Pages**

**Columbia County Zoning Ordinance**  
Section 1044.5

5 - 7

## **BACKGROUND:**

The applicant, Northwest Aggregates, represented by Bob Short, requests approval for the temporary extension of operating hours at the Bates Roth Surface Mine. The Bates Roth Surface Mine is located approximately one mile northeast of the City of Scappoose on Honeyman Road and consists of approximately 303.91 acres of Surface Mining (SM) zoned lands. The site was approved for surface mining activities through a site design review process (DR 08-04) on August 20, 2008. The Staff Report for DR 08-04, dated August 13, 2008, estimated the subject property to contain  $\pm$  80 million cubic yards of sand and gravel. Northwest Aggregates uses this site specifically for the extraction of raw aggregate and not for the processing of said aggregate. For processing, raw aggregate material is transported from the site via a conveyor belt to the Santosh Processing Facility west of the site (see attached map). Depending on market demand, Northwest Aggregates conservatively estimates (as stated in the design review staff report) that the Bates Roth Mine will be productive for approximately 28 years.

Surface mining operations in Columbia County are subject to standards set forth in Section 1040 of the County's Zoning Ordinance. One such standard, and the subject of this report, pertains to surface mining operating hours. CCZO Section 1044.5 limits the hours of surface mining operations to between 7:00 a.m. and 6:00 p.m., but allows the extension of operating hours beyond the 7:00 a.m. to 6:00 p.m. restriction once every six months for a (maximum) two week period of time. As stated in 1044.5: "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 roads. 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..." As stated by the applicant:

"Northwest Aggregates respectfully requests to extend the operating hours at the Bates Roth mine site near Scappoose, Oregon for a two-week period beginning the day after final approval of the attached application. The extended operating hours would be from 6:00 a.m. until midnight. Currently, in addition to our normal demand, CalPortland has contracted to supply aggregate to two large jobs in the Portland metropolitan area: the new Fab building at Intel in Hillsboro, and the runway at Portland International Airport. The bottleneck in high-volume aggregate production is the actual excavation of the material from the ground. We feel that a two-week opportunity to run two shifts at the mine site will give us adequate opportunity to stockpile enough raw material to meet the temporarily extraordinary demand. The extended hours at the mine site will not result in changing the operating hours at the Santosh processing plant (a limited exempt site), which is already running two shifts."

The Bates Roth Mine is located in an area characterized by surface mining operations, large-scale agriculture, and low density residential use. Properties north, east and south of the site are zoned Primary Agriculture (PA-80); properties west of the site are zoned Surface Mining (SM); and there is a small pocket of Rural Residential (RR-5) zoned property southeast of the site. Northwest Aggregates owns the properties south and west of the Bates Roth Surface Mine. As such, it is not anticipated that the extended operating hours will have a significant impact on surrounding properties in the area. The applicant describes the impacts as follows:

"Extracting aggregate does not generate a great amount of noise. The dragline we use for the actual excavation is electrically operated. We do expect to run front-end loaders and conveyors from time to time during the extended hours, but there will be no truck traffic entering or leaving the mine site. We anticipate that this will not impact any of the neighbors at all. Although there are properties

within 1,000 feet of the Bates Roth boundaries, where the mining is actually occurring is well more than 3,000 feet from the nearest occupied residence.”

Additionally, through the site design review process, conditions were attached to the approval of surface mining operations on the subject site to minimize impacts to surrounding properties of different uses. One such condition of the site design review required buffers between the mine site and properties north, east and west of the property. As stated in the design review staff report, said buffers are effective in reducing aesthetic impacts, capturing fugitive dust particles, buffering noise, and shielding light from mining equipment. Approval of the design review analyzed the proposal’s consistency with Section 1040 of the Zoning Ordinance and found the proposed surface mine to be in compliance with all applicable criteria.

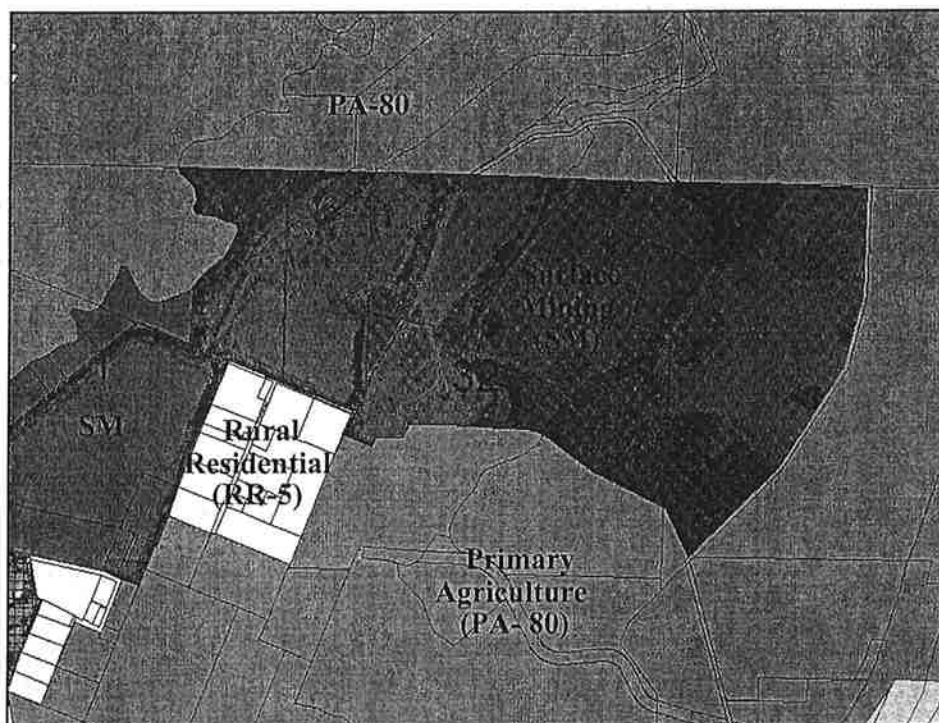
As stated above, Section 1044.5 of the Columbia County Zoning Ordinance allows applications for the temporary extension of surface mining operating hours to be processed administratively, unless a request is made for a public hearing. Notification of this land use application was sent to surrounding property owners within 1,000 feet of the subject property on July 6, 2011. On July 12, 2011, a request was submitted to Land Development Services to refer the application to the Planning Commission. Notice of the hearing was then sent to the Scappoose-Spitzenberg CPAC, affected agencies, and surrounding property owners on August 10, 2011. A public hearing was held by the Planning Commission on September 12, 2011. The Planning Commission heard testimony from the applicant and those opposed to the application. Specific information regarding opposition to this land use proposal can be found in the draft meeting minutes from the September 12<sup>th</sup> Planning Commission meeting, but in summary, relates to concerns about noise, groundwater contamination, and a property line/easement dispute. Draft Planning Commission meeting minutes are included as an attachment to this report. The Planning Commission considered testimonies and written materials including the Staff Report, and made a decision to approve the two-week extension of surface mining operating hours with six conditions - the first five were recommended by Staff and the sixth condition was added by the Planning Commission (see Conditions). On September 26, 2011, an appeal of the Planning Commission’s decisions was submitted to the County. The appeal is scheduled to be heard by the Board of County Commissioners on November 23, 2011. Notice of this public hearing was mailed to surrounding property owners on November 2, 2011 and was published in the *The Spotlight* on November 9, 2011.

Aerial Photographs - PC Maps (2009)





## Zoning Map - PC Maps (2011)



### **REVIEW CRITERIA & FINDINGS:**

#### **Columbia County Zoning Ordinance (Section 1044.5):**

##### **Section 1040 SURFACE MINING SM**

1044 Operating Standards: All mineral resource operations, either permitted or allowed by conditional use, shall conform to the following standards:

- .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 of 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 1:** Upon request by Northwest Aggregates that the operating hours of the Bates Roth Surface Mine be extended from 6:00 a.m. to 12:00 a.m. for a two week period of time, Columbia County sent notice of said request to all property owners within 1,000 feet of the aggregate site and its access road. Notice was mailed on July 6, 2011. On July 12, 2011, a request was submitted to Land Development Services from Charles Beaston, residing at 54330 Freeman Road, southwest of the subject property, to refer the application to the Planning Commission. The original request for a public hearing was based on the

following testimony:

“I have damaged hearing, so I cannot in truth complain about having a problem with this request in its simple form, and that is to make noise a little longer each day. The noise doesn’t bother me. My concern is the extra hours of operating the removal of solid materials, which accelerates the displacement of groundwater to fill this void. This movement will cause a wider spread of the arsenic that was found years before in this ground water. And at the same time have direct effect on the levels of arsenic that would be found in this new ground water under Freeman Road. You can’t have one without the other...” (See attached letter)

Notice of the (requested) Public Hearing was sent to surrounding property owners within 1,000 feet of the Bates Roth Surface Mine and access road on August 10, 2011 and was published in the *Spotlight*, the *Chronicle* and the *Daily News* on August 24, 2011. The application was heard by the Planning Commission on September 12, 2011. Following testimony from the applicant and those opposed to the application, the Planning Commission approved the two week extension of operating hours subject to six Conditions of Approval. The Planning Commission added Condition # 6 to Staff’s recommended Conditions of Approval to help address water quality concerns. Condition # 6 states the following: “The applicant shall test for arsenic levels at the two well sites, previously tested for arsenic, near the end of the two week mining operation conducted under extended hours. Test results shall be submitted to Land Development Services.” Staff finds that the procedures outlined in CCZO Section 1044.5, for the extension of surface mining operating hours, were met.

**Finding 2:** The Final Order, approving TP 11-07, was signed by the Planning Commission Chairman on September 19, 2011. On September 26, 2011, Charles Beaston submitted an appeal of the Planning Commission’s decision to the County. The appeal is based on concern that an increase in the hours of mining operations may directly increase levels of arsenic in the groundwater supply of the area. The applicant also addresses concerns about the County’s public notification process and a civil property line/easement dispute. As discussed in the background section and in Finding 1 of this report, the public notification process for this application has been met.

The issue of groundwater contamination was addressed by the applicant at the Planning Commission hearing on September 12, 2011. Comments from Northwest Aggregates are covered thoroughly in the Planning Commission draft meeting minutes attached to this report, but in sum, indicated that arsenic and other metals were naturally occurring in the groundwater of the area and that the extension of operating hours would not increase existing levels of said arsenic. Prior to the Planning Commission meeting, the applicant drilled two wells on site. According to the applicant, a well drilled to a depth of 100 feet had arsenic levels of less than two parts per billion, and a well drilled to a depth of 30 feet had arsenic levels of 5.8 parts per billion. These levels are lower than the standards set by the Environmental Protection Agency (EPA) for safe levels of arsenic in drinking water, which are established at 10 parts per billion. David Earl King, a registered State of Oregon Geologist, employed as a hydro geologist with Shannon and Wilson, provided a scientific explanation as to why the removal of solid material (rock) from the site would not result in an increase of arsenic levels in the groundwater.

Additionally, Section 1044.9 of the Columbia County Zoning Ordinance requires “all aggregate sites in the district to 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.”

A Condition of Final Approval of DR 08-04 addresses groundwater monitoring, provided in part, as follows:

Condition # 24 - The Applicant shall provide and implement a ground water monitoring program, approved by Oregon Water Resources and/or State Department of Environmental Quality, and/or any other state or federal agency that asserts jurisdiction over the monitoring plan. The monitoring program shall measure the level of ground water and/or surface water in and around the mine site, and document comparable water levels during flood events. The monitoring program shall also monitor water quality in and around the mine site. Area wells within the 1500 ft. conflict area shall be monitored, subject to the owners consent to such monitoring. The monitoring program will provide for regular reporting to the Scappoose Drainage Improvement Company (SDIC), or its successor drainage district, the County and the applicable state and/or federal agencies...

Conditions of approval are being met by the applicant for the Bates Roth Surface Mine and shall continue to be met during the temporary two week extension of operating hours. The US Army Corps of Engineers has approved a monitoring program for the Bates Roth Mining Site to evaluate the impacts to local ground water levels created by mining activities. Shannon & Wilson Geotechnical and Environmental Consultants report that the groundwater level fluctuations on the Bates Roth Site have remained consistent since the onset of mining. The applicant has submitted the results of the monitoring program for the 2009-2010 water year, a copy of "2009-2010 Hydrogeologic Report - Bates Roth Site. There is no evidence in the record to show that the criterion of Section 1044.9 (Water Quality) is not being met.

**COMMENTS:**

**Scappoose CPAC:** Recommend Denial of the application (5 members recommend denial, 1 member recommends approval, one member abstained from voting)

**Charles Beaston (Property Owner - 54330 Freeman Road, Scappoose, OR 97056):** See attached letter dated July 12, 2011, Draft Planning Commission meeting minutes dated September 12, 2011, and Appeal dated September 26, 2011

**Craig Ellis (Property Owner - 52619 NW Eastview Drive, Scappoose, OR 97056):** See attached letter dated June 29, 2011

**Julie Jackstadt (Property Owner - 54260 Freeman Road, Scappoose, OR 97056):** See attached letter dated June 29, 2011 and Draft Planning Commission meeting minutes dated September 12, 2011. Mrs. Jackstadt's testimony and Northwest Aggregate's rebuttal to this testimony are summarized as follows:

Mrs. Jackstadt has concerns about noise that may be generated by the extension of operating hours for surface mining activities. Scott Nicholson, the Director of Aggregate Operations for Northwest Aggregates, responded to this concern. He explained to the opponents and the Planning Commission that noise being generated from mining activities was not from extraction of the aggregate, but from the processing of the aggregate at the Santosh Processing Facility. The Santosh Processing Facility is located adjacent to the subject property and is a limited exempt site, which does not have a restriction on operating hours. Nevertheless, the applicant stated that the hours of operations at the Santosh Processing Facility would not change as a result of the proposed extension of hours for mining. The applicant did acknowledge that there were some issues at the site creating more noise than necessary and that previous conversations with Mrs. Jackstadt had resulted in those issues being resolved.

**Public Testimony from September 12, 2011 Planning Commission:** See attached draft minutes

No other comments have been received from notified property owners or agencies as of the date of this staff report (November 16, 2011).

**CONCLUSION, RECOMMENDED DECISION & CONDITIONS:**

**Planning Commission Recommendation:**

Based on the facts, findings and comments herein, the Planning Commission recommends **APPROVAL** of this Temporary Permit (TP 11-07) to allow for the temporary (two week) extension of surface mining operating hours, from 6:00 a.m. to 12:00 a.m., at the Bates Roth Surface Mine subject to the following conditions:

1. The extension of operating hours shall be valid for one two week period of time and shall take place within six months of the date of the final order.
2. The applicant shall only be eligible for 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 of time. As such, the applicant shall not be eligible for another extension of operating hours until six months has passed from the date of the final order.
3. Surface mining operations shall not begin before 6:00 a.m., nor extend beyond 12:00 a.m. (midnight).
4. The applicant shall notify Land Development Services of the start and completion dates of the extended operating hours.
5. The Commission may, at any time, require resumption of standard operating hours.
6. The applicant shall test for arsenic levels at the two well sites, previously tested for arsenic, near the end of the two week mining operation conducted under the extended hours. Test results shall be submitted to Land Development Services.

**Attachments:**

Application  
Referral to the Planning Commission by Charles Beaston dated July 12, 2011  
Scappoose CPAC recommendation  
September 12, 2011 Draft Planning Commission Meeting Minutes  
Planning Commission Final Order dated September 19, 2011  
Appeal of Planning Commission Decision dated September 26, 2011