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NOV 25 2009

LATAH COUNTY

11-23-09

My name is Lisa King. I live at 1433 Flannigan Creek, directly across the road from Lisher's gravel pit, with my 6 children.

When he blasts with dynamite, it makes my house shake. You can not leave the windows open when they are crushing because the machine is too loud. Forget sleeping.

If this man wants to extend his business hours, no one will be able to live here.

Lisa King

LCZC Hrg: CUP653C
Applicant: Lisher
Exhibit #: 5
Date: 12/2/2009

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NOV 25 2009
LATAH COUNTY

Latah County Zoning Commission
Nov 24, 2009

Dear Members:

Is our conditional use permit system being abused? Can we really spend hundreds of man-hours and county tax dollars coming up with a long list of conditions that are at least in theory enforceable; only to revisit them every time an applicant has \$200 in his pocket? In the present case we have been back at least four times. Nothing has changed during that time, but the applicant isn't satisfied with the outcome of the original and subsequent hearings so he wants another hearing...must this continue until he gets his way?

There is no risk or downside to the applicant when he chooses to harass the community with his new hearing requests. There is a downside for the community members who must gather information and attend hearings for matters long ago decided. If there is no new material why is he allowed a re-hearing? If this is a loop-hole in the system please take steps to fix it. We expect our elected and appointed representatives to use common-sense in dealing with the whole community.

The concepts are simple. So far there has been no risk for the applicant. There is always the chance however slight people will get tired of the endless hearings going over the same ground, revisiting the same issues. The hope is sooner or later they will give up or the lineup of personalities on the commission will overlook the evidence and give him something in hopes of getting rid of him. At the very least current rules allow an applicant as much time to present their case as they want, everyone else is limited to 5 minutes. There is an inherent unfairness in this process; which gets completely unbalanced the more hearings the applicant wishes to initiate. In the present case, several of us miss the University of Idaho Christmas party to attend a hearing giving Lisher, still another opportunity to say he needs more, more, more with no evidence to back it up.

I am asking the members of this commission to consider taking action, which will result in a change in how the applicant views this process. Mr. Lisher wants some conditions changed, but instead of simply denying these changes (as the past several members have done during these hearings) add new conditions. These would not be frivolous new conditions, they would be based on solid community experience and expert testimony, much of which was overlooked in the original conditions set forth. There is nothing I have found that prevents adding new conditions especially when a 6 year permit is issued. The applicant is asking you to reconsider certain conditions, nothing prevents you from adding new ones, once the applicant opens the door to a hearing.

1. Hours of operation 8 am to 5 pm mon-fri. Listening to engines revving and the piercing tones of back up alarms at 7 am adversely impacts the families across the road from Lisher's gravel and crushing operation which he brought to our neighborhood long after we had been living here. There is a Potlatch school bus stopping caty-corner to the rock pit entrance at about 7:30 am. It increases the risk

LCZC Hrg: CUP653C
Applicant: Lisher
Exhibit #: 6
Date: 12/2/2009

for these children and those being transported to be at the location with the heavy trucks rolling in and out.

2. The Highway District recently painted double yellow lines from Viola to where Davis road turns to dirt. While this helps to distinguish the left from the right side of the road, it also created a no passing zone for the entire 7-mile distance. School buses make frequent stops to pick up and drop off the many children who live on this section of roadway. Historically, they have waited to allow the line of cars to pass in the longer straight sections where visibility allows. The double yellow line prevents passing maneuvers, which means heavy trucks hauling gravel will be part of the traffic stuck behind these buses. By delaying the hauling until 8 am, those small children waiting by bus stops along the road will experience less risk as well.
3. Require Lisher to create a recessed entrance into the property. As it stands, trucks entering the rock pit first thing in the morning, either park on Flannigan Creek Road or drivers exit their cabs with the engine running on Flannigan Creek Road to unlock the gate. (Both of these actions violate Idaho traffic code.) Some will pull up to the gate but have most of Flannigan Creek Road blocked due to their size. Recessing the entrance to a point where gravel trucks and trailers have room to completely get off the road will result in increase traffic safety and less risk to everyone. As it stands they violate the law everyday as they open for business.
4. Require Lisher to have a traffic engineer evaluate the line of sight for traffic approaching the current entrance to the industrial gravel work site. The North Latah Highway District has a 200 ft visibility requirement, which has not been enforced on this property. Traffic heading North toward Potlatch on Flannigan Creek Road are making a tight right hand curve and cresting a hill as they approach the entrance. In addition to the curve and crest, a private driveway across from the rock pit entrance creates a natural distraction with headlamps and vehicle movement. This is a very unsafe condition that has not been addressed by Lisher or the Highway district. If the commission is not satisfied with the Highway Districts efforts they can require an independent assessment of the site.
5. Lisher's attorney made a case to the county commissioners that limiting blasting to 30,000 tons was a reasonable way to reduce risk of adverse effects. Based upon the two blasts of 30 thousand tons, 60,000 tons of material was available to crush. Unfortunately, and adversely to my family a short time after the blasting our well stopped producing. Contrary to all the positive talk we heard in the hearings, the insurance company sent us a letter denying our claim before we even made one. Lisher denied responsibility. His blaster denied responsibility. We had to drill a new well out of our own pocket. The original conditions did not protect us. So instead of increasing from 30 thousand tons as Lisher wants to do, reduce his blasting to 20 thousand tons at a time. This will produce some level of protection for our water supply. Please remember these conditions are meant to protect us from being adversely effected beyond what could happen to us by operations allowed in an ag zone. Nothing else in the Ag-zone blasts like this.
6. Re-institute a \$50,000 performance bond which could also be used to fix things he refuses to take responsibility for like my well.

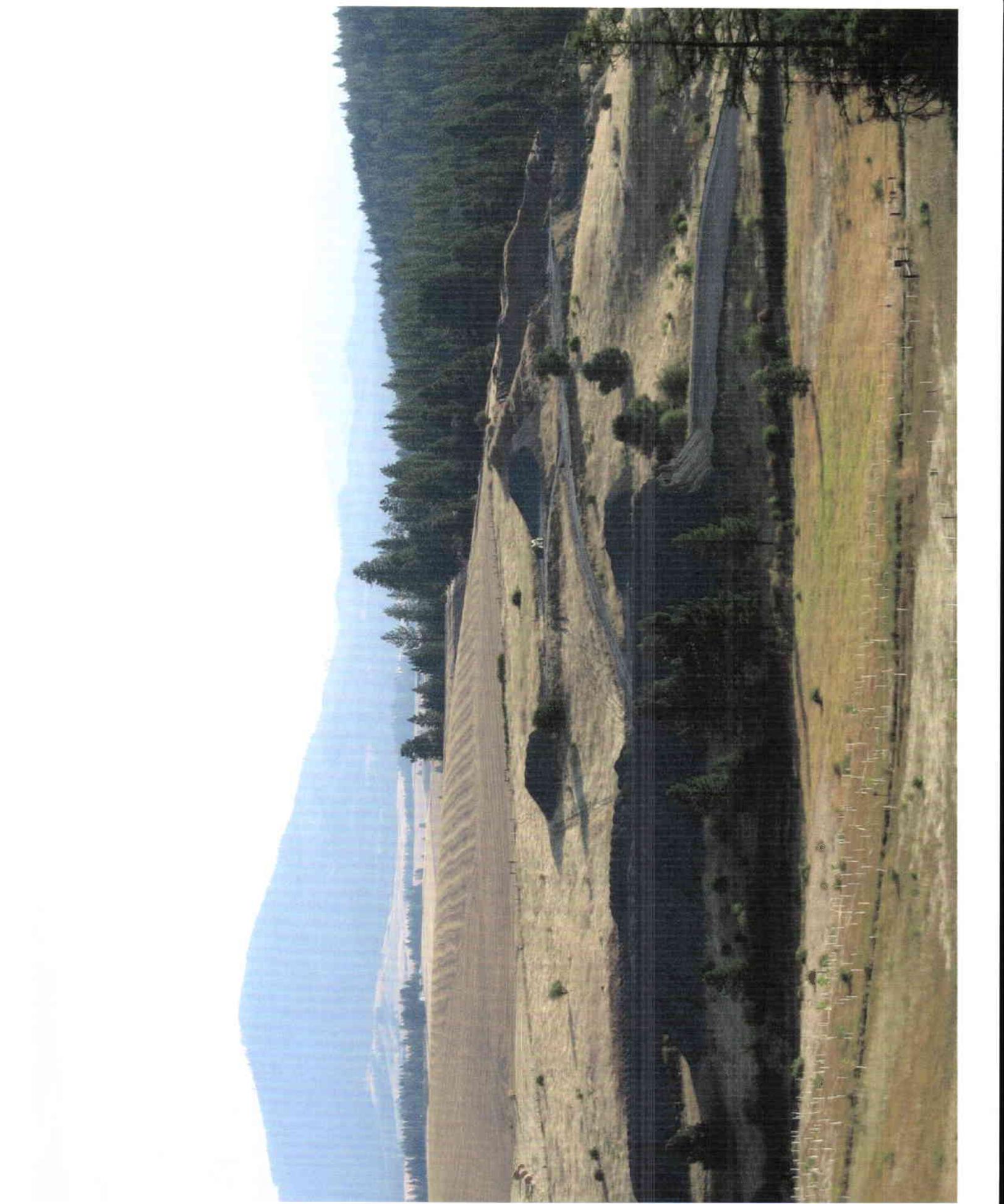
7. Lisher according to testimony he gave in previous hearings chose to crush 15,000 tons of gravel for his business. He could have crushed 30,000 tons but choose not to for undisclosed reasons. Based upon a visual inspection of the sight, it appears Lisher still has approximately half of his gravel left after over 5 years of operation. (see attached photo) Rough estimates indicate he still has enough gravel for another 5 years. Any arguments he makes about needing more gravel or more hours of operation fails to note the heavy saturation of small business gravel pits in and around the Potlatch area. The difference in these other rock pits is they are situated next to Highway 95 or Highway 6 both state highways engineered for heavy, high speed traffic. Lisher is competing with long established gravel operations as well as a re-opening of one just past Princeton. The client base for his operation is shared with truck operations in Viola, Potlatch, Princeton, and just over the hill from Lisher's crushing operation on McBride Road, Gary Anderson.
8. Lisher stated during previous hearings he had to go where the rock was. In truth, he went to a friend's place that had rock on it. A business plan would have identified a multitude of problems with the location, including limited access and egress, saturation of this service, and conflicts with existing residences and multiple uses of existing gravel roads by pedestrians, bicyclists, equines, and school children. Lisher does not have the capacity in his small business to come anywhere near the conditioned number of loads already allowed. There is no justification to raise them.
9. Condition his equipment to have quality mufflers both on the loader and dump trucks. The unnecessary noise pollution created by malfunction mufflers is a controllable problem consistent with industrial sites. In addition to the mufflers, condition the site and the section of Flannigan Creek Road 1 mile in each direction to be compression brake --no use zone---again due to unnecessary noise pollution adversely effecting near by residences. His equipment is excessively noisy and he won't fix them unless required to.

These are all viable conditions, which would reduce the adverse effects those of us who live around the gravel and crushing operation continue to experience. Perhaps just as important adding one or all of these conditions during the hearing will help insure Mr. Lisher understands this process is a two way street.

Respectfully and Thoughtfully presented,

Don Lazzarini
1395 Flannigan Creek Road
Viola, Idaho

Ground Zero for adversely experiencing blasting and crushing operations



To the Latah County Zoning Commission:

Lisher CUP Process

My understanding of the CUP process is as follows:

1. The CUP process has a very clear structure for holding hearings and making findings of fact and law:

a. Once those findings have been made both the applicant and those in opposition have a very limited time to appeal the decision.

b. The appeals process historically went to the County Commissioners who had a whole separate hearing where they made findings of fact and law.

c. The next step in the process could be for either party to appeal these decisions to the court system. This process requires the appellant to transcribe all tape recordings and to pay for all copies to be provided for the court. In the event an appeal was initiated within the courts; the County of Latah would pay an attorney to defend the findings of the County Commissioners.

1) If this was not done within a limited time period (30-60 days?) the right to appeal these issues was lost.

2. In the 2004 Lisher CUP, the appeals period passed without an appeal being filed.

a. As a result of not appealing both parties gave up their right to appeal the findings concerning the Rock Pit on Flannigan Creek Road.

3. At this point in the ordinance CUP process both the applicant and those opposed have been allowed fairly equal opportunities to present evidence and appeal decisions.

4. All parties in the Lisher CUP did not appeal the decision of the Latah Co. Commissioners and therefore gave up their right to appeal the issues contained in that CUP 653.

5. My observations are:

a. By allowing Lisher to put in a new CUP application covering the exact issues, findings and conditions covered by the original CUP's he is being given a 2nd and 3rd chance to appeal the findings of fact and law without having to use the actual and more expensive designated court appeal process.

b. Allowing new CUP's to cover existing CUP's creates two different appeals processes; one for Lisher and another for those who oppose him.

1) One system requires those who oppose Lisher to use the more complicated and expensive court system at which County attorney funds will be used to defend the findings of fact and law of the Commissioner's.

2) The second system has been interpreted by planning department staff to allow Lisher to pay \$200 and appeal the commissioner's decision with a completely new CUP hearing in front of the Zoning Board, constructively bypassing the court and the associated expenses. Expenses that must be paid by those forced to use the opposition system.

3) At these "new" CUP hearings Lisher has only brought up issues that fall directly under the original CUP and it's appeals process. How is he allowed to appeal these issues when he gave up those rights by not appealing in a timely manner? At these "new appeals" Lisher CUP hearings no effort is made by the county to defend the findings of fact and law as would have been done during a courtroom appeal.

4) The "new" CUP process is treated as if none of the 40 plus hours of public testimony and deliberation were ever conducted at all. The only information in the file is generally worded excerpts hand selected by planning department staff to justify their findings. In the court appeal system, all the testimony and records, must be reviewed to make a fair decision concerning the appeal.

5) The hand selected and non-specific references included in the findings of fact create a hearsay based record, that results in a much lower standard of review during a non-court appeal of that type, than is required for an appeal by citizens forced by this disparate process to use the court appeals.

6. My questions are:

a. Is it arbitrary and capricious for the planning department to provide two very different appeals processes based on if one is the applicant for the CUP and if one opposes the CUP?

b. Do the excessive costs and other legal expenses necessary to utilize the court system appeals process place an undue and unequal burden on those who oppose "CUP's" in Latah County in a process allowed by the planning department?

c. If Latah County provides legal support to uphold CUP findings of fact and law in the court system why are they not up-holding the findings in front of the zoning board.

d. Why are tax payer dollars being wasted on holding repeated and unnecessary appeals hearings on a CUP that has a 6 year contractual agreement enforceable by law?

e. Did Lisher accept the legal terms of the CUP by proceeding with his mining operation?

f. Did Lisher agree to abide by the conditions of the CUP by not appealing the original conditions of the CUP to the court during the period allotted?

g. By not appealing did he give up his right to appeal these specific issues?

h. In addition to providing a special appeals process only available to CUP applicants, Latah County Planning Department personnel have lowered the burden of evidence and review for the CUP applicant versus those who oppose the CUP and must provide full transcripts to the court.

i. Endorsing disparate appeals processes adversely impacts the community financially as well as its reliance on an unbiased planning and zoning process.

7. This continued disparate appellant process designed or allowed by the planning department of Latah County is arbitrary and because it has no reasonable or logical basis for giving more rights to appeal for one class of citizen over another it rises to the level of being capricious; to the detriment of all citizens of Latah County.

Don Lazzarini
Flannigan Creek Road
Viola, Idaho

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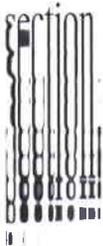
November 20, 2009

Latah County Zoning Commission:

Mr. Lisher won his request to have a rock pit on May 12, 2004. This conditional use permit is scheduled to expire this coming May, 2010. We thought we would be revisiting this issue prior to this May; however, we didn't realize Mr. Lisher could abuse the system, waste taxpayer dollars, and appeal his decision over and over during the past six years. This feels abusive! We shouldn't have to be here almost every year because Mr. Lisher isn't happy.

We believe this pit should have never been approved, but it was WITH conditions. The only thing that has made this pit somewhat bearable has been the conditions and the fact that we hope they were right when they said it would end in six years.

Changing any of the conditions for this rock pit would increase the pain for us and increases the hazards of this pit. The Latah Board of Commissioner's decision and conditions were based on a two-acre area with the fact that it would end in 6 years. If you change any of the conditions you unbalance the criteria of it adversely affecting our safety, property values and impact to our quality of life. Our loss of property value was discounted and deemed temporary because of the length of time the rock pit would be in operation, 6 years. This is why the "Conclusions of Law" reads "as conditioned" in every



Of course, we questioned the commissioners on Mr. Lisher's ability to continue with this pit once they let it start and they assured us that they would be able to stop it. Now the ability to do the right thing is in your hands.

We have had to live with the compromise the Board of Commissioner's came up. If we have had to live with it, why doesn't Mr. Lisher? He had a chance to appeal but he accepted the conditions and started his rock pit. He testified that he wanted a small business and he was given one. In fact, currently he still has a lot of his rock to sell.

All he had to do to start this pit was haul in a smashed up van & spray-paint it for signage, place it near the bottom of our driveway and he was in business. This is a pure profit business for him. This is not our rock pit, however, we use our time away from work to protect our animals and home during the times he decides to blast. We have been told in the past to pay to have our well tested. Subsequently, we have had to pay for a new well and were informed we needed to hire an attorney to fight the blasting insurance company. I would like to know what kind of A/F land use would affect us this way.

I am having great difficulty understanding the balance of Mr. Lisher having a business and my family's heart ache and money we had to spend because he decided to locate his business in a rural area near my home.

There are suitable places in this county for rock pits. I'm sorry that Mr. Lisher didn't choose a more suitable place for his business location. The rock pit he was hoping to be like last time he appealed shows that by its location. It is on a state maintained paved road in an industrial zone. It is where we suggested a rock pit should be. Mr. Lisher's rock pit is on a gravel winding country road with no shoulder where people are getting their mail, riding horses, walking, hunting, walking to and waiting for school buses, and planned to enjoy country life. You have to take into consideration that our area is different than someone living off of a noisy highway. Please keep in mind that all the other rock pits are off of noisy paved main highways and some have city water or shared well systems to where losing a well isn't even a concern.

We love living in the country and everything that comes with it. This did not include an industrial type business. The county approved this CUP to move into a rural area where they allowed families to build homes and be under the false comfort that they would be able to enjoy country life. We aren't trying to change what you would normally find in the country. We have always lived in the country. This ROCK PIT came to us!

I hope all of our time with the previous meetings was not meaningless. Many neighbors and complete strangers testified and showed up to many of the hearings to oppose the rock pit. Unfortunately, their voices didn't seem to have been heard and I am amazed at the few who are still willing to write and show up to these meetings almost 6 years later to still share their point of view. How many times do we have to repeat our story? Mr. Lisher is hoping to repeat and rehash information and material already discussed and ruled on. I hope that you will do the right thing and let this CUP expire.

This is NOT Mr. Lisher's property. He has the ability to choose a better place for his business adventures and you have the power to require it. Basalt seems plentiful in our area, and I think you have the ability to choose safe places for these rock pits.

I am asking you to uphold the previous decisions and keep the current conditions in place. I believe if this was happening in front of your home you would feel as passionate as we do to try and preserve our quality of life. My request is that Mr. Lisher's application be denied with no changes. I look forward to this conditional use permits expiration so that Mr. Lisher will stop abusing the system and us.

Respectfully submitted,

Carolyn Lazzarini
1395 Flannigan Creek Road
Viola, ID 83872

Attachments:

- Life across the street from a rock pit
- Review of testimony and exhibits
- Well loss & insurance response

REVIEW OF TESTIMONY & EXHIBITS

If you are going to go back and revisit this decision, I would encourage you to review the testimony and exhibits from the first hearings. I have attached copies of some of the exhibits that we happened to have copies of, if this is of help to you.

In the findings of fact, there were items that were submitted and for some reason were not included such as a letter from a property owner who was unable to get any assistance with his well that he lost from blasting? Also, another neighbor of a rock pit, Adrienne Gurtzen, who testified about his home that he bought for \$110,000 and took a loss of \$25,000 when he sold it. These exhibits and testimony were left out of the "Findings of Fact," but are not forgotten.

They did, however, mention the Latah County Assessor's testimony that compared our situation to a CUP that was near his home. He stated that it hadn't seemed to change or hurt anything (property values, safety, etc.) I wondered at the time, what rock pit does he live by? Later to find out that he was talking about an enclosed business CUP. Now I know why there weren't any problems with this CUP. Maybe that is why he hadn't seen any devaluation of properties situated near similar activities. You can't compare a blasting, noisy rock pit to an enclosed business. What other similar activities would take out your well or endanger your animals or home? THERE IS NO COMPARISON! It was testimony, such as this that was so frustrating. We were unable to respond back to this at the time, since we had to do some research.

Gravel trucks travel both ways on Flannigan Creek Road. Much debate and time was spent on discussing the road from the pit to Potlatch, but this is not the only road to consider. Gravel trucks, including Mr. Lisher's, travel from Viola and Potlatch to the pit.

I realize there were so many hours of testimony and exhibits, but the missing and incomplete findings are frustrating since they were dealing with our quality of life. Sometimes information was repeated wrong, and we did not have the opportunity to correct it. Mr. Lisher as the applicant had the last word at the hearings, which was not consistently factual and was often times insulting to us.

The concerns we had from the beginning are the same, except that we have lived through years of adverse effects.

Our road is still a winding narrow, country road that doesn't need more gravel trucks traveling on it. The savings that the highway district makes by buying Mr. Lisher's gravel does not out way the damage the trucks do to the road. The commissioner's were given the impression that our road would be well maintained because of the rock pit, but this is not always the case. Especially, the south end of Flannigan Creek Road. We accepted our road as is prior to the rock pit, but I think they thought this would be such an improvement to us that we would be happy. It has not worked out to be so. Your decision shouldn't be based on someone saving a few cents on the gravel because Mr. Lisher will sell it cheaper. We were told at the first hearings that this rock would only be

used in our immediate area, but I have followed way to many trucks out of our area with gravel.

The driveway into the rock pit is still not visible when rounding the corner. There is a raised hill which blocks any oncoming traffic and the entrance to the rock pit. This is not a safe situation for large trucks entering and leaving this pit. When we are turning into and out of our driveway, our view is blocked. Trucks have to park outside the gate in the road to unlock the gate to enter.

The Moscow school bus still turns around in the road at Matson and the Potlatch school bus still turns around in our driveway. We have small children walking the roads and waiting for school buses and there are still blind corners with no road shoulder. People still drive the middle of the road even though some of it is now striped. I guess that is typical for a country road. People just don't expect that much traffic and don't seem to drive on their side of the road when they round a curve, even with this new strip painted. We continually drive around corners to find not just other vehicles but gravel trucks in the middle of the road.

The structure of our mountains and valley holds the dust, smoke, fog, and sound. Unfortunately, nothing dissipates quickly. Sound travels like in an amphitheater. There is also a difference between constant and sporadic noise. The noise of the rock pit does not compare to any other related land use.

“THE BOARD FINDS THAT CONDITIONS OF APPROVAL ARE NECESSARY TO MAINTAIN CONSISTENCY WITH THE LATAH COUNTY COMPREHENSIVE PLAN AND TO PROTECT THE HEALTH AND SAFETY OF THE RESIDENTS OF LATAH COUNTY” (Findings of Fact #45)

Mr. Lisher's signage speaks for itself! Please don't allow him to continue to abuse us.



SERVING LATAH COUNTY SINCE 1947

201 E. 3RD ST.
P.O. BOX 9123
MOSCOW, ID 83843-1623
(208) 882-5531

February 9, 2004

RE: 1395 Flannigan Creek Road
Viola ID

Dear Don & Carolyn,

In regards to your question of whether or not an active rock crushing plant would affect the value of your property the answer, in my opinion, would be yes.

Yes, an active rock crushing plant located next to or near your property would have a negative impact on the value of your home.

Yes, buyers would discount the value of your home because an active rock crushing plant was located nearby.

Yes, buyers searching for rural home sites do not want to live next to an active rock crushing plant.

Yes, marketing time would be longer having a home located next to an active rock crushing plant.

The discount factor could be huge. Buyers may decide there is no discount big enough to live next to an active rock-crushing site.

I sincerely hope the county considers all sides before they make their decision on this very important issue. Should you have any other question please do not hesitate to call me at 882-5531.

Sincerely,

A handwritten signature in cursive script that reads "Angie McGurkin".

Angie McGurkin
Moscow Realty





McPherson & Wright Drilling Water Wells

2246 Burrell Ave • Lewiston ID 83501 • (208) 743-7295

February 18, 2004

To Latah County Commissioners:

This last October I drilled a well for Mike and Debby Alperin at 1295 Flannigan Creek Road. They recently informed me that a gravel pit with blasting involved was attempting to obtain a conditional use permit. They were questioning whether blasting could damage their well. Their house is within 3/4 of a mile of the site. It is my opinion that a blast of that proportion could potentially do damage to their well. I believe that the wells within 1 1/2 miles of the site should be tested prior to and after blasting.

Ted Wright (mea)

Ted Wright
McPherson & Wright Well Drilling
Owner/Operator

Signed with permission from Ted Wright. If you need an original signature, Ted would be happy to supply one at a later date.



Witt Well Drilling
Roger Witt, Owner
2091 South Grade Road
Juliaetta, Idaho 83535

September 4, 2005

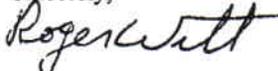
To Whom It May Concern,

Don Lazzarini has requested a short summary of my experiences with the effects of quarry blasting and the resulting decrease in well production that can occur.

I know of two wells that have been affected by blasting. One is located next to the Troy-Deary Gun Club and is owned by Greg Beplate. The Beplate well went from approximately 100 gallons per minute to 0 gallons per minute after the county shot a rock pit just north of his residence. The other is a Juliaetta city well that decreased by 35 gallons per minute after a vacant lot was being leveled with use of explosives.

I would suggest you contact geologist John Bush at the University of Idaho Hydrology Department or Dale Ralston, formally of the University of Idaho and who is presently in private practice and is also a geologist.

Sincerely,



Roger Witt

County Commissioners
Court House
Moscow, Idaho 83843

Stan Smith
Walker Road
Viola, Idaho 83872

February 8, 2004

Dear Commissioners:

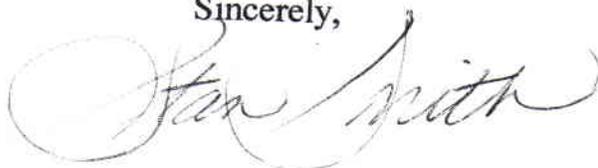
I oppose the request by George Lisher of Potlatch, Idaho for a conditional use permit to run a rock crushing operation on Flannigan Creek. I am against this request for the following reasons:

I do not believe that the process, especially the timeline that homeowners in the area have to respond, is fair. We first heard about this in the *Daily News* January 27, 2004. I understand that a hearing is to be held to rule on this request on February 11, 2004. When you are talking about a decision that might impact public health, safety, quality of life, and the environment along Flannigan Creek, for as much as six years, I think such a decision deserves more time for fact finding, deliberation and dialogue between all parties concerned. You may have the authority, the power to affect this change. But I implore you to exercise the wisdom not to create a set of "winners" and "losers" on the 11th. A hasty judgement may ultimately embroil the County in lengthy, expensive litigation that could be avoided by a more measured, thoughtful response on your part.

My second objection is that you are asking private citizens to protect themselves and their homes from this unwelcome invasion of dust, noise, traffic, etc. I think that is your job. You have the financial and political means to work with landowners to do a thorough objective review of all the facts. If you do not, you know full well that in preparation for a lawsuit property owners will find experts and attorneys to represent their legitimate interests. If this happens, all parties (Mr. Lisher, other property owners, and the County) will ultimately give up their power to solve this problem to the courts.

My final objection is more personal than the previous two. My wife and I wanted a different quality of life. We spent considerable time looking for a small acreage in Latah County. Our home on Walker Road has a breath taking view, beautiful Yellow pines and Fir Trees, wonderful unobstructed sunrises and sunsets, and a silence that brings us peace and serenity after our most stressful days in the classroom. We do not know the Lazzarinis but understand why they would feel frightened and upset about losing what is beautiful and precious to them. People like us who chose deliberately to live in the County pay additional premiums in time, labor, and expense to do so. Please honor that fact as you try to find an appropriate balance between the rights of one versus the rights of many.

Sincerely,

A handwritten signature in cursive script that reads "Stan Smith". The signature is written in dark ink and is positioned below the word "Sincerely,".

February 25, 2004

Board of County Commissioners
P.O. Box 8068
Moscow, ID 83843

**RE: George Lisher – Conditional Use Permit
Statement of Opposition**

Dear County Commissioners:

I am a property owner on and resident of Four Mile Road. I am also a registered Civil Engineer and a faculty member in the Department of Civil and Environmental Engineering at Washington State University. The purpose of this letter is to state opposition to the issuance of a conditional use permit requested by George Lisher for rock excavation, crushing, and processing on the basis of road damage and public safety. Rationale is provided below.

Road Damage

Four Mile Road is a chip seal type road that was constructed in a manner suited to residential traffic in a snow-impacted mountainous environment. It is anticipated that a substantial increase in heavy vehicular traffic (i.e., trucks with a weight in excess of 25,000 pounds) will result from the proposed gravel operations. A quantitative measure of damage that is likely to result from each trip can be obtained from *AASHTO Guide for Design of Pavement Structures*. Making use of standard engineering equations, it is expected that the observable physical damage associated with a gravel truck weighing upwards of 25,000 pounds is 161,000% greater than the damage resulting from automobile weighing 2,000 pounds. The increase in both vehicle weight and amount of heavy vehicular traffic would reduce the useful roadway service life to approximately six months. Given that it is not possible to reseal the road on a biannual basis due to the snow conditions characteristic of the winter months, a redesigned road would be required to accommodate the change in type of usage.

I request that prior to issuance of a use permit, the commissioners recognize that George Lisher has proposed a "for-profit" enterprise that makes use of public infrastructure (i.e., roadway system) and require appropriate mitigation to eliminate the impacts to local residents. Failure to require roadway mitigation prior to the issuance of the use permit risks the need to later raise local taxes via the North Latah County Highway District to accommodate redesign and/or increased maintenance frequency. An increase in taxes would amount to property owner subsidies of Mr. Lisher's commercial operation.



Safety

Residential mailboxes are located immediately adjacent to the road. As a consequence, residents are regularly within the roadway for mail collection activities. The need to deliver mail from a postal vehicle in the snow environment has necessarily resulted in minimal roadway shoulders or clear areas being present between the mailboxes and roadway.

The size and type of traffic associated with the gravel operations necessitates consideration of enhanced public safety. Although it is recognized that local road construction does not require minimum specification requirements, use of Federal-Aid Non-National Highway System (Non-NHS) specifications set forth by the Idaho Dept. of Transportation is an appropriate standard of care when assessing public safety. For the conditions applicable to this project (e.g., 200-400 ADT), a 12-ft lane width and 7-10 foot clear zone is appropriate.

The current road has variable width lanes averaging 10 ft with no shoulder or clear zone. In implementing the Non-NHS standards, the road would have to be widened by 18 to 24 ft, which is infeasible given the proximity of many homes to the current road. By definition, therefore, the local conditions are unsuited to the type of vehicular traffic characteristic of the gravel operations and the project should be rejected on this basis.

In summary, the local roadway is currently unsuited for the type of vehicular traffic that would result from the proposed gravel operations. Redesign to accommodate both vehicular needs and public safety does not appear feasible. Therefore, I ask that the request for issuance of a conditional use permit for the gravel operations be denied.

Please do not hesitate to call should you have questions or require assistance.

Sincerely,



Frank J. Loge, Ph.D., P.E.

HEATHER K. JORDAN

February 11, 2004

Latah County Commissioners

Dear Sir or Madam:

I am writing this letter in opposition of the CUP for a gravel mining operation on Flannigan Creek Road in Latah County. I am very sorry that I was not able to be with you today, because I have a unique perspective on what it is like to live across from a gravel pit.

My opposition stems from nearly 25 years of living across from a gravel pit. When we first moved into the area when I was a child in 1978, my parents chose a site next to a small family operated gravel pit, Cay's Rock Crushing. Over the years we watched in dismay as Cay's business grew and grew. Later the pit was sold to North Idaho Crushing. We watched as the little canyon was literally destroyed piece by piece.

What is it like to live next to a gravel pit that is governed by a CUP? This is a question I can answer better than anyone else at this hearing. It is noisy, even on the quiet days. If they are not hauling, drilling or crushing then they are fixing equipment, moving things around or keeping the pit open on weekends so private individuals can pick up gravel. There is constant dirt, not to mention diesel and gas fumes, which have recently been identified by the EPA as significant sources of pollution and cancer causing materials.

The applicant has suggested that he can provide gravel more cheaply to the community. I have seen no factual basis for this. The applicant himself has admitted he does not know who the subcontractors for the site will be. How can he be so sure that he can provide gravel more cheaply than the pits already in existence? In the absence of actual prices how can this be admitted as more than wishful thinking on his part? How does wishful thinking trump the zoning plan in existence?

The North Latah Highway District has stated that it would be great to have gravel in close proximity to projects. State law requires that NLH bid out gravel contracts. There is no evidence to support the idea that this particular pit, run by a novice operator, will be able to successfully secure low bid. Additionally a review of the gravel contracts awarded will reveal that proximity to the project does not necessarily result cheaper prices for gravel. NLH is bound to go with the low bidder, this is state law.

The county has a zoning plan in existence. It allows for industrial development in industrial zones? There are industrial zones in that part of the county. There is no evidence that these zones would not support a gravel pit. If the applicant wants to run a gravel pit, why not look for rock in an area that is currently zoned to support one? The answer lies in the idea that one citizen, the owner of the land proposed for a pit, ought to be able to make money at his neighbors expense. It isn't that one community minded individual has identified a need (gravel), written a business plan and prepared to provide a service to the community. It is that one individual would like to make money off his Ag/Forestry zoned land and this is easier than staying in the zoning and finding an Ag/Forestry use.

Further lets look at the number of inspections the county has conducted on gravel pits in the last several years. There have been none. The county has neither the money nor the personnel to conduct these inspections as it is required by its own regulation. That in itself is reason to deny the application for the CUP. The cost of the inspections places an undue burden on the county.



February 11, 2004

Lets look at enforcement of the conditions. Who is responsible for enforcement? When we used to call the county about violations, we were told WE had to come up with the evidence. No one from the county ever came. If you call the sheriff, they will tell you it is not a criminal matter, and who can blame them? Additionally although the county sets conditions, like no hauling or crushing after hours, we found that there are ways around this. For example, drilling was not considered crushing or hauling so it was allowed around the clock. Anything not specifically prohibited was allowed.

In closing let me say, I have lived next to a pit, you haven't. It is miserable and soul wrenching. The following are facts- there is no enforcement of the CUP by the county, the county has an obligation to promote industry in the industrial zoned areas and it has an obligation not to create a takings issue when issuing CUPS.

I am available at any time should you have questions

Email- hayfields@moscow.com

Home phone: 882-2173

Work phone 885-6796

Sincerely,


Heather K. Jordan

LIFE ACROSS THE STREET FROM A ROCK PIT

BLASTING

24 hours is the official notification time required which is not enough time to ask for days off from work due to blasting. What if notification is mailed when we are away on business or vacation? Every time you are out of town you have to wonder if there will be any blasting when you are gone.

It is one thing to have someone feeding your animals, but to ask them to move them and watch them during blasting is another. Planning any family function can be impossible. Are we inviting them to a wedding, family reunion or really to a blasting or loud crushing operation? We can't plan for the future.

We missed two days of work for the last blasting. They didn't blast the first day so the blasting ran over into the second day. We are the ones that need to take off work to be home when he blasts, and we have no control over when blasting or when crushing takes place.

Anyone who would stand with me in our living room as our house shakes, our windows rattle and our animals run for their lives, would know that there is no question what damage this can do to our home, well and animals. However, we are the ones that pay for any damage to our well or property.

LOSS OF OUR WELL (year)

Our worst fears happened and our well went dry after blasting. It felt like were camping in our own home. We hauled water, showering in town, water hand-poured in toilets and clothes being washed at the laundromat in Moscow as we waited and prayed for our water to "come back;" as well as going to work every day. We checked our water lines for leaks and ruled out other problems. We waited with the hope that like other wells there was the possibility of it recovering, but it did not. We knew that we were alone with this problem, considering all the hearings and information we had collected. We had to use a home equity loan to pay for a new well and we prayed that we would hit water. We had to wait for the driller and the weather to cooperate for the drilling to begin. Since other drillings on our property prior to us and in our neighbor hood have come up dry, it was a real concern that we would even hit water.

We did hit water and were so thankful for a new well. We are so thankful, but also afraid of losing it with future blasting.

CRUSHING

After the blasting comes the crushing. The crushing lasted for months! It isn't a consistent noise so you can never get use to it. It is a loud crushing noise with even louder bangs every once in awhile, which makes it impossible to get used to or tolerate. The constant running of the diesel truck going back and forth and the beeping of their truck and loader add to the horrible noise. You can't sleep through it! With the house

closed up tight and our windows closed you can hear the crushing just like you were standing at the bottom of our hill.

The two-week estimate of crushing time that was testified to at our first hearings was way off. The crushing went on for months, not weeks. I realize that Mr. Lisher would be happy to crush into the late hours to get it done faster; however, he would not be the one awake and unable to sleep.

After the crushing is done, we are rewarded to just be woken up with the constant beeping and the noise of the loaders and trucks.

Then we wait to be notified of another meeting, which makes my stomach drop. I spend my free time writing and gathering paperwork and praying that someone will just realize that this is not fair to the people in this neighborhood.

WELL LOSS AND INSURANCE LETTERS

The following is the process we went through when we lost our well. We understood from testimony that we would have to hire an attorney to fight for reimbursement. Since this process is costly and we were borrowing against our home, we only pursued drilling for a new well. We didn't hear about an insurance claim form until one of the hearings after we reported our loss. We were asked to file a claim and we were happy to do so. We didn't know that there was a claim form process. At the next hearing we provided the following information along with our well receipts. This is my story of asking for a claim form:

- Michele Fuson offered to get the blasters name for us at the hearing.
- We received a letter from Amanda (Planning & Building Department) with the seismographic monitoring contact information.
- I called Amanda to get the blasters name and was given it.
- I called the blaster and talked with his wife about filing a claim. She said we would need a well report prior to blasting and after blasting. We had a long discussion about it, where I told her that we had receipts but not a well report. She said she would have Mike call me.
- Everett Drader from Mountain Inspection Services called me back instead, to inform me what the readings were and to tell me that it didn't cause any damage to my well. I asked him how he could be so positive that it didn't hurt our well, and he said, "not to be flip, but you can't prove that it hurt your well." I agreed and asked what the process was to file a claim. He finally told me, I should contact my homeowner's insurance agent. (Everett is paid by the blaster)
- I knew our homeowner's insurance agent wasn't the person to contact, but I called him just to get some help and follow this thing through. He recommended I call an attorney and he told me that I shouldn't deal with the blaster, but should ask for their agent or insurance contact information. I would need to file a claim with their insurance agency (Finally an answer!) and should demand an answer in writing. He once again suggested that an attorney would probably be needed.
- I called the blaster back and talked with his wife again. I requested their agent's name and insurance contact information. She asked if I had talked with Everett, the seismographic monitoring company, and I told her yes. She said she would fax me the information. She also has our mailing address, but we did not receive any paperwork of any kind.

After the hearing, we received the attached letter from the insurance company. They never contacted us to fill out a claim form or to gather any information, receipts or pictures. My husband, Don, did respond back with a letter, also attached, hoping to get them to at least consider our situation, but we never heard back from them. Even our threat of hiring an attorney, did nothing.

I'm not sure why this process was so hard or even if there is a claim form for the insurance company. The insurance company obviously didn't want to talk with us.

All our documentation can't tell us exactly what happened in the ground resulting in our loss of water, it is only speculation. The only thing different the past ten years was the blasting done and those were 30,000 ton blasts designed to reduce damage to surrounding property. This was something we addressed in the first hearings. How do you prove that your well went dry from blasting? We did request that Mr. Lisher pay for our well to be tested since it was located closer to the blasting; however, that request was denied.

Please remember you hold the safety of our home and our quality of life in your hands.



SCOTTSDALE INSURANCE COMPANY®

October 4, 2005

Carolyn Lazzarini
1395 Flannigan creek Road
Viola, ID 83872

Re: Claim no.: 992779-105
Insured: High Mountain Construction, Inc.
Date of loss: October 1, 2004
Claimant: Carolyn Lazzarini

Dear Ms. Lazzarini:

This letter will acknowledge receipt of your Claim regarding the above referenced loss. As we understand the situation, your well went dry and you were forced to drill another well.

Our policy of insurance provides that we will pay all sums which the insured is legally obligated to pay. From our investigation of the circumstances surrounding this loss, we find that there was no activity on the part of our insured which resulted in your loss. Our insured's seismographs show that the work the insured completed relating to the rock quarry did not shake or damage your well. Additionally, I understand your physical area has experienced a severe drought. This loss was not the result of the negligence of our insured. Consequently, we must deny any claim you may present.

Should you have any information that is contrary to that expressed above, or if you have any questions, comments, or objections, please contact the undersigned at 1-800-423-7675, extension 2683.

Very truly yours,

Cynthia D. Hoekstra
Sr. Claim Representative

cc: Agent No.: 46706

Aleshia Seubert
1-208-875-1512

Claims Division

P.O. Box 4120

Scottsdale, AZ 85261-4120

8877 N. Gainey Center Dr.

Scottsdale, AZ 85258

(480) 365-4000

FAX 480-483-6752

1-800-423-7675



A Nationwide Company

Scottsdale Insurance Company
Claims Division
P.O. Box 4120
Scottsdale, AZ 85261-4120

Attention: Claims Division Cynthia D. Hoekstra

October 13, 2005

Dear Cynthia:

May I thank you for the first opportunity I have had to inform you of the circumstances leading up to the loss of our well. I will admit to being surprised you have conducted an "investigation" into the circumstances without speaking to us directly. I am a retired criminal investigator for a district attorney's office who knows what it takes to conduct an investigation. Your letter dated October 4, 2005 does not represent a professional effort toward determining if in fact the activity of your insured resulted in our loss, but instead reflects initial denial of liability as a claim's divisions M.O. (modus operandi). Such blatant denial does not reflect ethical business practice, but instead corporate greed.

The initial question that must be asked is, "Did your insured conduct any activity which MAY have resulted in our loss?" I would expect you to make a substantial effort toward determining that fact and documenting all information gathered accurately with an eye toward detail. Any failure to conduct your inquiry at that level reflects bias and or incompetence either of which negatively impacts your credibility in an Idaho courtroom.

First and foremost you have received our complaint second hand and not from us directly. There is no excuse for relying on hearsay especially if the only source is your insured. Secondly, in the October 4, 2005 letter under date of loss you list October 1, 2004. The actual blasting did not occur until October 5, 2004. If you failed to get the blasting date correct I question the quality of your investigation. I personally requested a claim packet from your company on today's date from an employee named Chris. He claims you have no such packets or paperwork. How are those of us adversely affected by your insured supposed to give you all the information you need to make a determination?

You state in your letter of October 4, 2005, "our insured's seismographs show that the work the insured completed relating to the rock quarry did not shake or damage your well". A seismograph does not measure "damage" to a well so I find your statement and conclusions misleading, self-serving and inaccurate. Since no blasting was conducted on October 1 there was no damage or shaking occurring that date. However, based on direct conversation I had with the individual monitoring the seismograph at the well there were two readings conducted at our well site on the date October 5, 2004. The shock wave created by your insured blasting was in fact measured by the seismograph operator. If the term you use in your letter of October 4, 2005 "did not shake" is true, then you need to find a term that accurately depicts the shock wave that was measured at the surface by the seismograph. You will further need to overcome the video tape I took of the blasting conducted on October 5, 2004 which depicts not only the two separate blasts, but the

shaking registered by the camera positioned on my front porch approximately 800 yards from the blast center. The well itself is approximately 400 yards from the blast site.

I would appreciate further information on the "severe drought" that you understand is impacting our area. I would anticipate a hydrologist with specific knowledge of my well, including depth, output and geologic structure and the micro-climate source of the water for that well would be better positioned to make such a technical determination, than an insurance claims representative in Scottsdale, AZ. It is interesting the new well struck water at 165 feet producing over 15 gpm. This is definitely out of our level of expertise.

Additionally, the rock pit operator testified during a public hearing that your insured told him that "marginal wells always go dry after blasting". This information has been tape recorded and saved for two purposes. If the blaster knew this information he should have requested and conducted testing on my well to document depth, flow and recovery. On the other hand he should accept responsibility for the effect his blasting had on my well due to his lack of due diligence. Both the well driller and well technicians working on our property are familiar with the history, geology and impact of blasting on well output and are willing to testify to same.

Finally, I quote your letter of October 4, 2005 "This loss was not the result of the negligence of our insured. Consequently, we must deny any claim you may present." I am curious what your position is concerning the "Strict Liability", guiding blasting in the State of Idaho. Your attempts to lead me to believe "negligence is the standard" in this case when it is not; is reprehensible and worthy of punitive civil damages. Since most of your letter of October 4, 2005 is inaccurate and opinion based I find your conclusion you "must" deny any claim I present both premature and biased. I expect basic fairness.

THE BOTTOM LINE

The cost to your company for the new well I was forced to drill because the existing well stopped producing 8 days after your insured twice blasted is approximately \$8,000.00. If I am forced to retain an attorney under a strict liability case I believe your costs will include my attorney fees which will likely triple your costs, of course only if I prevail. One of the first pieces of evidence will be your letter of October 4, 2005. A letter I am certain I can prove to a local Idaho jury is both self-serving and inaccurate. On the other hand, I am willing to provide a detailed account of expenses associated with the new well which should limit your exposure while making me substantially whole. Such a request is not unreasonable.

Very truly disappointed in your efforts,

Don Lazzarini
1395 Flannigan Creek Road
Viola, Idaho 83872

RECEIVED

NOV 25 2009

LATAH COUNTY

This letter is in response to the request of George Lisher to modify CUP 653.

My name is Kevin Koehn and I live with my family at 1389 Flannigan across from the rock pit. We are opposed to the modification request because:

1. The noise from crushing, blasting, other machinery operating, sounds like it is in our backyard; invading our private and peaceful rural setting.
2. Increased truck traffic on Flannigan cr road that is not built for lots of heavy loads.
3. Safety hazards of truck traffic on Flannigan.
4. Decreased values of our property.
5. The crushed rock from the last time was very dirty.
6. The conditions that Lisher wants deleted are unreasonable for a respectable community.
7. If this request is granted, where will Lisher stop? He will continue to expand.

Thank you for considering these concerns.

Thank You,
The Koehn family

LCZC Hrg: CUP653C
Applicant: Lisher
Exhibit #: 8
Date: 12/2/2009

**GEORGE LISHER
CONDITIONAL USE PERMIT APPLICATION #653C
STAFF REPORT**

SUMMARY OF APPLICATION:

A request by George Lisher to modify CUP #653 to:

- A. Increase hours of operation to 6:00 AM to 6:00 PM.
- B. Delete condition 6. This states, "No more than 75,000 tons of rock shall be blasted, crushed or removed from the site."
- C. Delete condition 7. This states, "No more than 60 loads or 870 tons, whichever is greater, shall be hauled from the site during any week, excepting during any state of emergency duly declared by the appropriate jurisdiction, wherein the use or removal of the rock is necessary to protect life and property. The applicant shall maintain records of loads and tonnages in order to allow County staff to verify compliance with this condition.

Mr. Lisher's rock pit is located approximately three miles south of the City of Potlatch and adjacent to Flannigan Creek Road, in Section 23, Township 41 North, Range 5 West, B.M., in Latah County, and is currently referenced as Assessor's Parcel Number RP41N05W230023A.

Site Characteristics:

Size of Parcel:	280 acres
Soils at Site of Proposed Operations:	Farber-Minaloosa association, very steep; Klickson silt loams, 25 – 35% slopes; Taney silt loams, 7 – 25% slopes; (Latah County Soil Survey Sheet #14)
Floodplain:	Zone "C" (FIRM Panel #0135B & #0145B – No Map for #0145B)

Land Use and Regulations:

Comprehensive Plan Designation:	Rural
Existing Zoning:	Agriculture/Forest (A/F)
Existing Uses:	Grazing, Natural Mineral Resource Extraction
Neighboring Zoning:	Agriculture/Forest (A/F)
Neighboring Uses:	Grazing, Timber, Agriculture

Infrastructure/Services:

Water:	N/A
Sewer:	N/A
Access:	Flannigan Creek Road, North Latah County Highway District
Schools:	Potlatch School District
Fire Protection:	Potlatch Rural Fire District
Law Enforcement:	Latah County Sheriff

EXHIBITS:

- Exhibit #1.** Staff Report
- Exhibit #1A.** Criteria Worksheet
- Exhibit #1B.** Vicinity and Comprehensive Plan Land Use Map
- Exhibit #1C.** Zoning Map
- Exhibit #1D.** Adjacent Owners and Aerial Photograph Map
- Exhibit #1E.** CUP 653B Findings of Fact and Conclusions of Law (Zoning Commission)
- Exhibit #1F.** CUP 653A Findings of Fact and Conclusions of Law (Board of County Commissioners)
- Exhibit #1G.** CUP 653A Findings of Fact and Conclusions of Law (Zoning Commission)
- Exhibit #1H.** CUP 653 Findings of Fact and Conclusions of Law (Board of County Commissioners)
- Exhibit #1I.** List of Latah County Rockpit CUPs
- Exhibit #2.** Application Form (Submitted by Applicant)
- Exhibit #2A.** Applicant's Narrative (Submitted by Applicant)
- Exhibit #2B.** Site Plan Map (Submitted by Applicant)

- Exhibit #2C. Site Plan Map on Aerial Photo (Submitted by Applicant)
- Exhibit #2D. Topographic Map (Submitted by Applicant)
- Exhibit #2E. Cross Section Map (Submitted by Applicant)
- Exhibit #3. Staff Introduction for Latah County Zoning Commission hearing for CUP653C on Wednesday, December 2, 2009.
- Exhibit #4. Letter to Latah County Planning and Building Department from Rep. Tom Trail received November 25, 2009

NOTE: Exhibits not included in the staff packet are available for review in the Planning Office, and will be entered into the record during the public hearing.

APPLICABLE STATUTE, ORDINANCE, AND COMPREHENSIVE PLAN SECTIONS:

Local Planning Act: Idaho Code 67-6511, Zoning Ordinance.

Latah County Land Use Ordinance:

- Section 3.01 Agriculture/Forest Zone (A/F)
- Section 4.03 Mineral Resource Development
- Article 7 Conditional Use Permits

Latah County Comprehensive Plan

Exhibits that came in after the packets were sent to ZC members:

- #5. Letter to Planning & Building from Lisa King received Nov 25, 2009
- #6. Letter to Planning & Building from Don Lazzarini received Nov 25, 2009.
- #7. Letter to Planning & Building from Carolyn Lazzarini received Nov 25, 2009.
- #8. Letter to Planning & Building from Kevin Kocher received Nov 25, 2009.

CRITERIA WORKSHEET

Note: This criteria worksheet does not represent staff analysis of information provided by the applicant supporters, or opponents; however, staff has identified policies which may be applicable to this particular request. Information submitted to the Planning Department prior to the mailing of the staff packet has been organized herein in relation to the applicable criteria for approval or denial. This worksheet is intended only to help identify if all relevant criteria have been addressed with supporting factual information and to provide a juxtaposition of any conflicting testimony that has been presented.

Type of request:

Conditional Use Permit

Description of application:

A request by George Lisher to modify CUP #653 to increase hours of operation, and delete conditions 6, and 7. Mr. Lisher's rock pit is located approximately three miles south of the City of Potlatch and adjacent to Flannigan Creek Road, in Section 23, Township 41 North, Range 5 West, B.M., in Latah County, and is currently referenced as Assessor's Parcel Number RP41N05W230023A.

Facts of application and the information submitted

1) Section 7.01 requires that specific uses within a particular zone require special consideration prior to being permitted in that zone (Section 3.01, Latah County Land Use Ordinance)

The Latah County Land Use Ordinance, under section 3.01.02(7), lists mineral resource developments subject to Section 4.03 as a conditionally permitted use in the Agriculture/Forest (A/F) Zone.

2) Section 7.01.01 requires that an application for a conditional use be made by the owner of the affected property.

The site is owned by Walser Ranch, Incorporated. Terry Walser signed the application on behalf of Walser Ranch, Inc. George Lisher, the applicant, signed and submitted the application on November 4, 2009.

3) Section 7.01.02 requires:

1. A conditional use permit may be granted if the Zoning Commission finds that the proposed use conforms to each of the following criteria:

- A. The use is not detrimental to the health and safety of those in the surrounding area and will not otherwise adversely affect permitted uses or the enjoyment of such uses in that zone to any greater extent that a permitted use in that zone;
- B. The use will not require facilities or services with excessive costs to the public;
- C. The use is consistent with the goals and policies of the Latah County Comprehensive Plan.

2. **If the Zoning Commission finds that a proposed use is essential to the public health, safety, or welfare, such use may be permitted even if the use is not found to meet the criteria listed above.**
3. **The Zoning Commission shall have the authority to set an expiration date for any conditional use permit so long as the reasons for such are included in their finding of fact and conclusions of law.**

4) *Section 4.03.03 New Mineral Resource Developments states the following:*

Any mineral development which is not registered as an existing development or does not qualify to be registered as an existing development, not exempt as per Section 4.03.04 of this ordinance, or does not have an existing conditional use permit, shall be considered a new development. Prior to operation, all new developments must obtain a conditional use permit under the provisions of Section 7.01 of this ordinance. In addition the Zoning Commission shall, as a minimum, place the requirements of Section 4.03.02 upon any newly permitted mineral development, unless making specific findings supporting the omission or alteration of the requirements of Section 4.03.02. Mineral resource developments which have been granted a valid conditional use permit prior to one year after adoption of this ordinance shall be considered permitted and shall observe all conditions previously established. New mineral resource developments shall be exempt from the provisions of Section 7.01.07 of this ordinance. The following are requirements for operation of all new mineral resource developments:

1. Activity associated with a mineral resource development shall be at least 1,000 feet from any home existing at the time of application for conditional use permit, unless a lesser distance is approved by the Zoning Commission. A lesser distance shall not be approved unless the applicant submits a signed notarized form, approved by the Planning Department, from all owners of record of any residential building within 1000 feet of the development consenting to the location of the mineral resource development. Each form shall be recorded in the Latah County Recorder's Office by the Planning Department. Approval of a distance less than 1000 feet shall be within the discretion of the Zoning Commission, even if all owners of residential buildings within 1000 feet approve of the location of the development.
2. The operator of a mineral resource development must provide at least a 75 foot undisturbed or natural buffer on the perimeter of mineral resource development operations. The buffer and the area of mineral resource development operations shall be maintained so that they are continuously free of all noxious weeds as determined by the Latah County Noxious Weed Control Superintendent. Frontage on a public road does not require a buffer. Activities associated with a mineral resource development shall not be allowed within the 75 foot buffer area. Location and specifications for access road(s) shall be determined by the Zoning Commission.
3. To protect aquatic and terrestrial habitat and other biological resources, all mineral resource developments and mineral resource development operations shall be set back at

least 75 feet from perennial streams and 30 feet from any intermittent streams shown on USGS 7.5 minute maps; except for stream crossings that are regulated by a state or federal regulatory system and those activities permitted under the Idaho Placer and Dredge Mining Protection Act from the Idaho Department of Lands, a Stream Channel Alteration Permit from the Idaho Department of Water Resources, a Dredge and Fill Permit from the U.S. Army Corps of Engineers, a Development Permit from the Latah County Planning Department, and / or a National Pollution Discharge Elimination System permit from the U.S. Environmental Protection Agency. Applicable permit documentation shall be provided to the Zoning Administrator prior to onset of mineral resource development.

4. The applicant shall prepare and submit the following plans with the application for a conditional use permit:

A. Dust abatement plan to include mineral resource development operations and all access roads.

B. A plan for coordination with County response units for hazardous materials transport and use and emergency spill response.

C. A plan for procedures and protocols for spill containment and storage of oil, fuels, and/or chemicals; and documentation of compliance with the state and federal laws or documentation of exemption from requirements.

D. A plan for fire suppression and response, including an inventory of tools stored on-site to implement planned suppression and response.

5. The applicant may be required to post a bond with the Latah County Planning Department to assure full compliance with the proposed plans and provisions of this section. The amount of the bond shall be determined by the Latah County Zoning Commission.

5) Section 4.03.02 requires the following

1. Hours of operation are limited to 9 AM to 6 PM daily. An operator may vary from this requirement by applying for a conditional use permit under the provisions of Section 7.01 of this ordinance.

2. Written verification of compliance with the Idaho Surface Mining Act, including filing of any reclamation plan required by the Idaho Surface Mining Act.

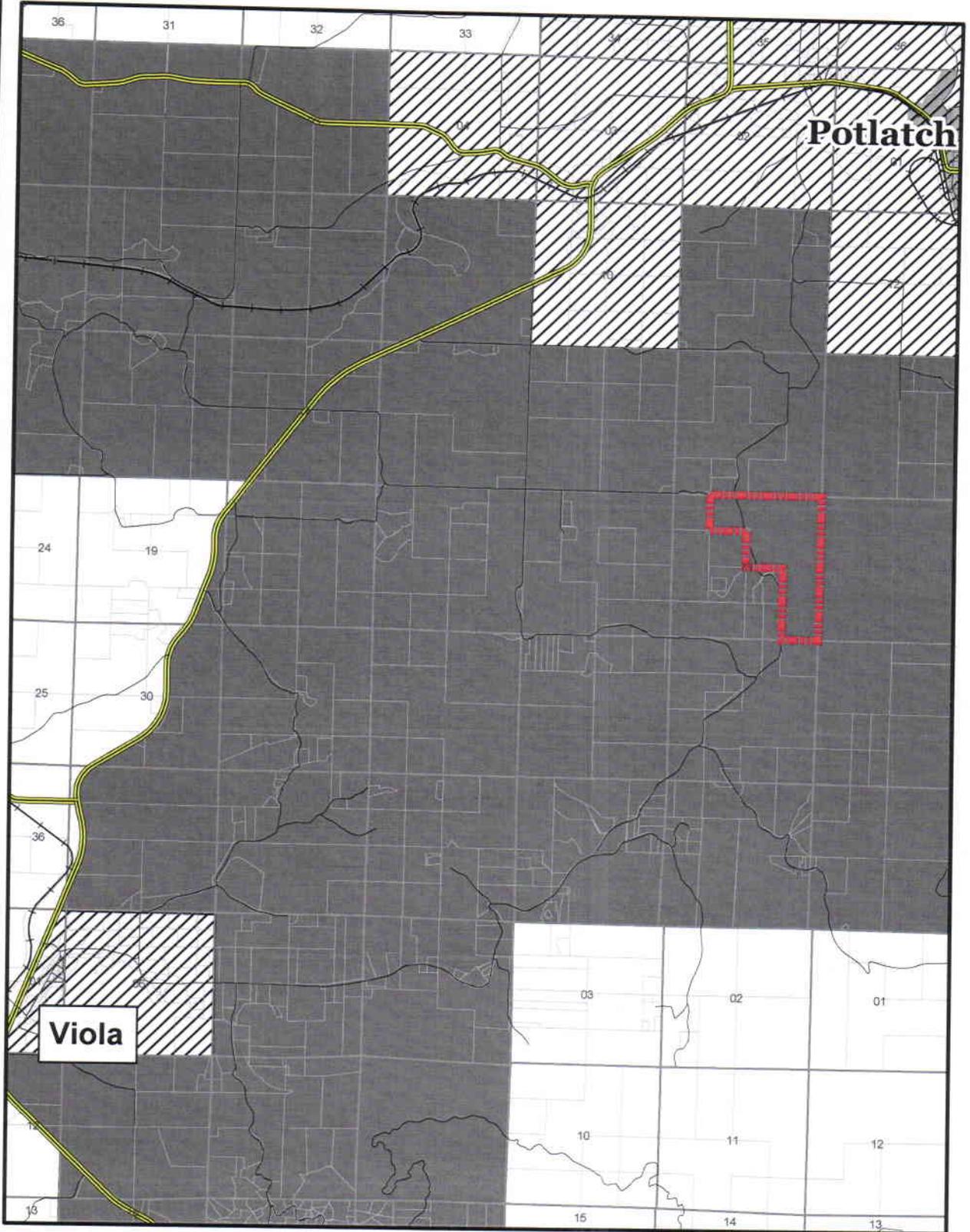
3. The excavation site, any overburden and stockpiles, and a 50 foot buffer strip surrounding these areas shall be maintained so that they are continuously free of all noxious weeds as determined by the Latah County Noxious Weed Control Superintendent.

4. The operator shall provide, by certified mail, written notification to all residences within one mile of any blasting. The notification shall be distributed and in the possession of the occupants of these residences at least 72 hours prior to any blasting. The notification shall give the date and time of the planned blast.
5. Blasting shall be restricted to the hours of 9:30 AM to 4:30 PM, Monday through Friday. No blasting shall occur on Saturdays, Sundays, or the following holidays: January 1, Memorial Day, Labor Day, Thanksgiving Day, and December 25.
6. An owner or operator may request, and the Director may grant, an exception to provide for additional hours of operation for a mineral resource development when additional hours of operation are needed to alleviate a public emergency. Public emergencies include the following:
 - A. Damage to public roads or structures that require immediate repair.
 - B. Road construction or repair that is scheduled during nighttime hours to reduce traffic conflicts.
7. Signs, upon approval of the signs by the Planning Department, warning of truck entrances shall be posted within one-quarter ($\frac{1}{4}$) mile of the site's entrance onto a public road.
8. The mineral resource development shall be marked by warning signs posted 200 feet from mine operations.
9. A plan to retain storm water runoff within the mineral resource development boundaries.

Additional information

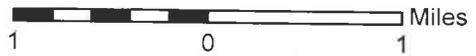
In 2007 Mr. Lisher requested several modifications to his existing rock crushing and excavation operation (CUP 653). This request (CUP 653B) was denied by the Latah County Zoning Commission with the exception of approving the request to delete condition #4 related to the recovery of cultural resources by the Coeur d'Alene Tribe. Mr. Lisher has submitted a similar request which is the subject of the current proposal.

CUP#653 C Vicinity and Comprehensive Plan Land Use Map



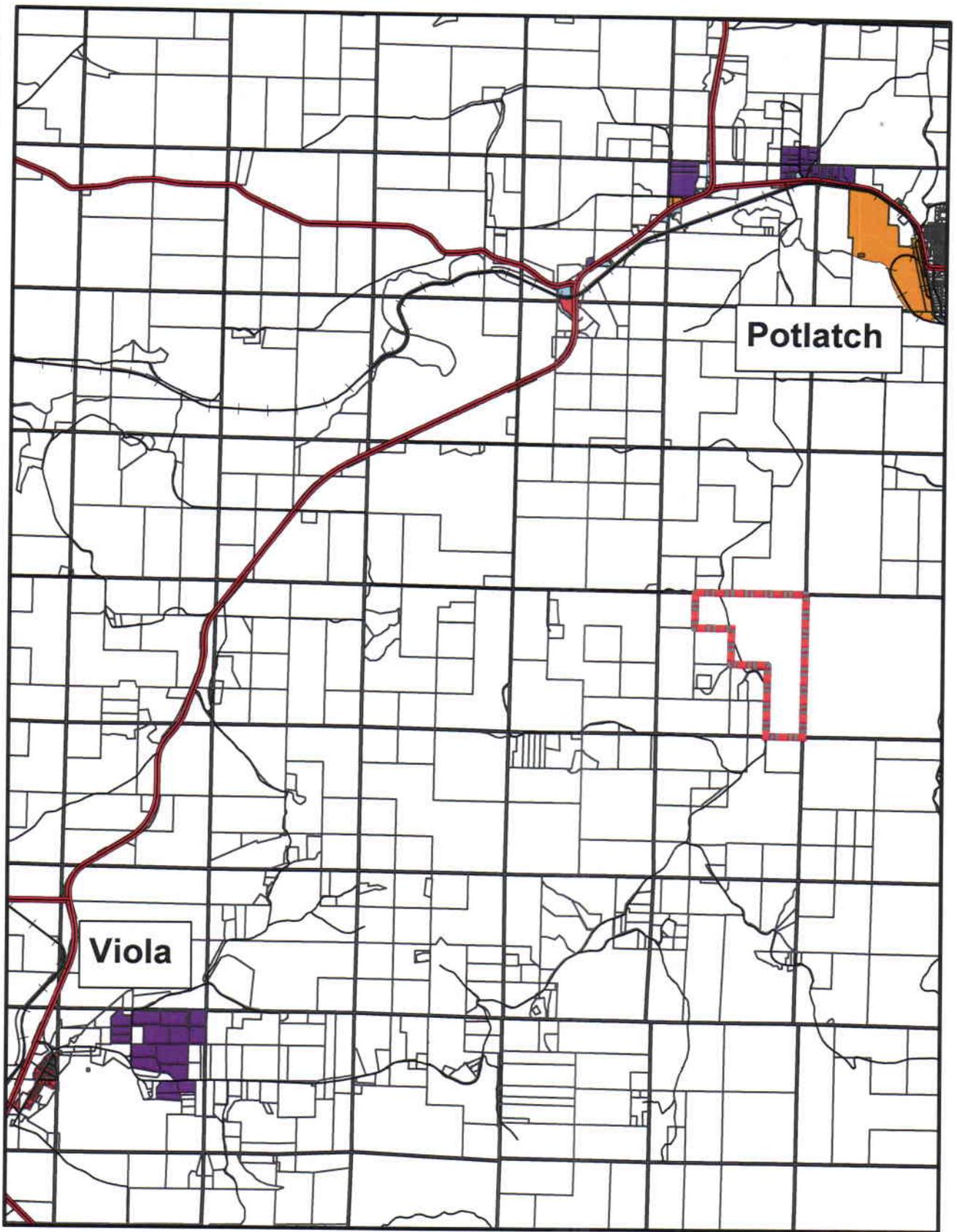
Legend

-  Subject CUP Property
-  Parcels
-  Productive
-  Rural
-  Residential, Commercial Industrial
-  Incorporated Places



LCZC Hrg: CUP653C
 Applicant: Lisher
 Exhibit #: 1B
 Date: 12/2/2009

CUP # 799 Zoning Map



Legend

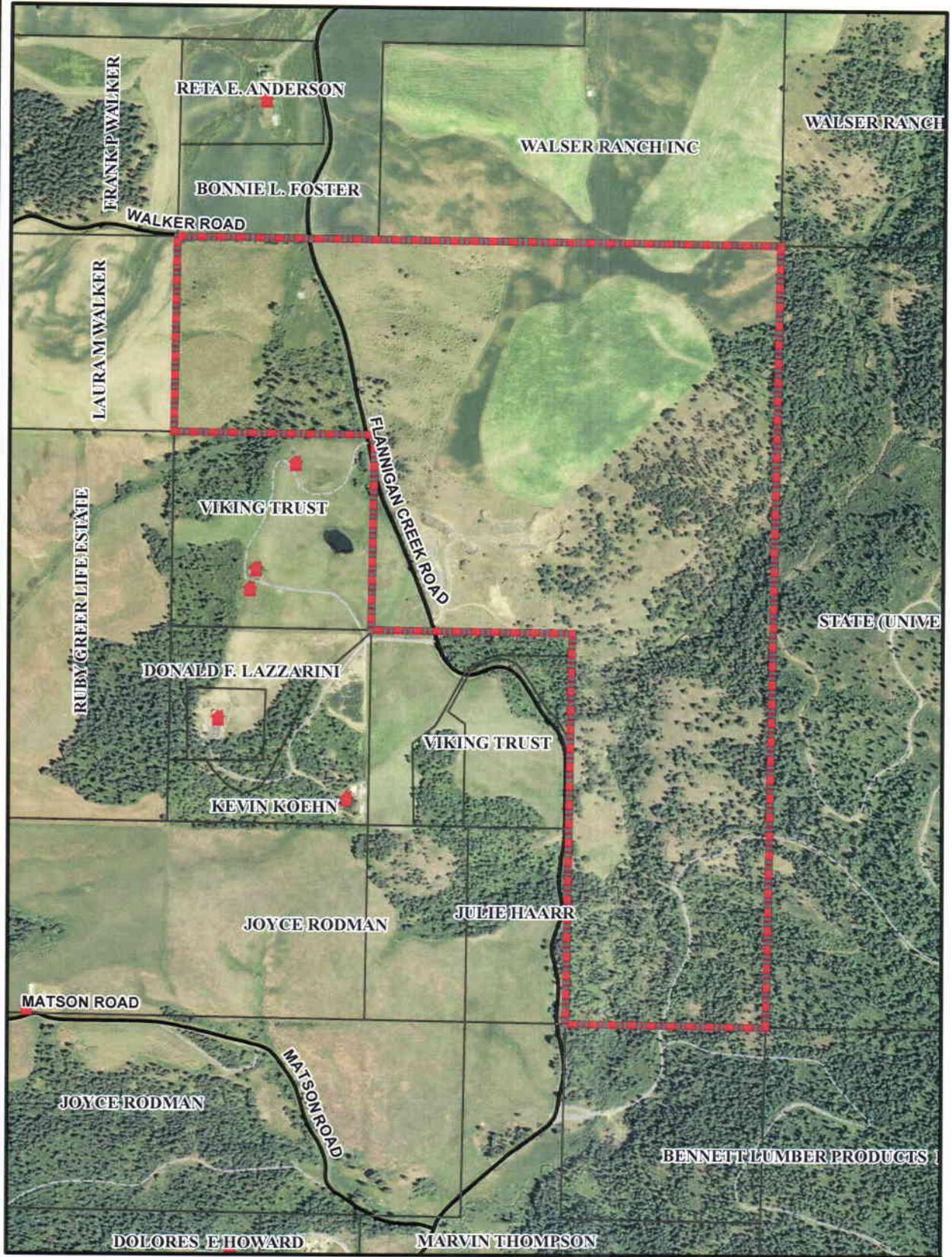
- | | |
|--|--|
|  Subject CUP Parcel | Zoning Districts |
|  Parcels |  Agriculture / Forest |
| |  Commercial |
| |  Industrial |
| |  Rural Residential |
| |  Suburban Residential |



LCZC Hrg: CUP653C
 Applicant: Lisher
 Exhibit #: 1C
 Date: 12/2/2009

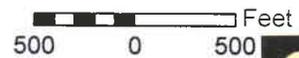


CUP #653 C Adjacent Property Owners



Legend

-  Subject CUP parcel
-  Location of Structures
-  Parcels



LCZC Hrg: CUP653C
 Applicant: Lisher
 Exhibit #: _____ 1D
 Date: 12/2/2009

**BEFORE THE ZONING COMMISSION
COUNTY OF LATAH, STATE OF IDAHO**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

FINDINGS OF FACT AND CONCLUSIONS OF LAW REGARDING A PETITION FOR AN AMENDMENT TO CONDITIONAL USE PERMIT 653 (CUP 653) BY GEORGE LISHER TO EXPAND HIS ROCK CRUSHING AND EXCAVATION SITE TO FIVE ACRES, TO INCREASE HOURS OF OPERATION, DELETE PORTIONS OF CONDITIONS TWO (2) AND FIVE (5), AND DELETE CONDITIONS FOUR (4), SIX (6), SEVEN (7), AND THIRTEEN (13). THE EXISTING EXCAVATION SITE IS LOCATED APPROXIMATELY THREE MILES SOUTH OF POTLATCH AND ADJACENT TO FLANNIGAN CREEK ROAD IN SECTION 23, TOWNSHIP 41 NORTH, RANGE 5 WEST, B.M., IN LATAH COUNTY. THE PROPERTY IS CURRENTLY REFERENCED AS ASSESSOR'S PARCEL NUMBER RP41N05W230023A.

WHEREAS, George Lisher made application for a conditional use permit on March 19th, 2007; and

WHEREAS, a duly noticed public hearing was held on Wednesday May 2nd, 2007 before the Zoning Commission to take testimony and consider the conditional use permit application; and

THE LATAH COUNTY ZONING COMMISSION, STATE OF IDAHO, AFTER DUE DELIBERATION AND CONSIDERATION, HEREBY MAKES THE FOLLOWING:

I. FINDINGS OF FACT

1. The Latah County Zoning Commission considered the request pursuant to the Latah County Comprehensive Plan, Latah County Land Use Ordinance, the Local Land Use Planning Act, and other applicable local and state regulations.
2. The existing excavation site is located approximately three miles south of the city of Potlatch and adjacent to Flannigan Creek Road, in Section 23, Township 41 North, Range 5 West, B.M., in Latah County, Idaho.
3. This site is owned by Walser Ranch, Incorporated. Terry Walser signed the application on behalf of Walser Ranch, Inc. George Lisher, the applicant, signed and submitted the application on March 19th, 2007.
4. The subject property is zoned Agriculture/Forestry.
5. The existing uses of the property are grazing and natural mineral resource extraction.

6. The subject property is designated "Rural" on the Comprehensive Plan Land Use Map. The Comprehensive Plan states, "This area should be protected from conversion to more concentrated residential, commercial, or industrial development; however, sites within this area may be suitable for consideration for further low-density residential development."
7. The parcel is located in an area designated "Zone C" on panels #0135B and #0145B of the Flood Insurance Rating Map (FIRM) for Latah County provided by the Federal Emergency Management Agency (FEMA).
8. The surrounding properties are currently zoned Agriculture/Forestry (A/F).
9. The surrounding property uses are agriculture, grazing, timber, and residential.
10. In accordance with the Latah County Land Use Ordinance §3.01.02(7), mineral resource development, subject to Section 4.03, is a conditionally permitted use in the Agriculture/Forest (A/F) Zone.
11. The applicant proposes to expand his rock excavation and crushing site from two to five acres.
12. The applicant proposes to increase hours of operation, requesting that crushing and blasting be allowed Monday through Saturday from 6:00 a.m. to 11:59 p.m. and general operations be allowed seven days a week from 6:00 a.m. to 9:00 p.m.
13. The applicant proposes to delete the portion of Condition Two (2) from the Board of Latah County Commissioners (BOCC) Findings of Fact, Conclusions of Law, and Decision for Conditional Use Permit 653 that limits the hours and days of blasting, crushing, loading, hauling, maintenance, and ancillary operations.
14. The applicant proposes to delete the portion of Condition Five (5) from the Board of Latah County Commissioners (BOCC) Findings of Fact, Conclusions of Law, and Decision for Conditional Use Permit 653 that places a limit of 30,000 tons per blast.
15. The applicant proposes to delete Condition Four (4) from the Board of Latah County Commissioners (BOCC) Findings of Fact, Conclusions of Law, and Decision for Conditional Use Permit 653. This states, "The applicant shall provide the Coeur d'Alene Tribe with a written monthly schedule of excavation and blasting, and shall allow a Tribal representative to be present during excavation. If cultural resources are identified by the Tribal representative at the site, the applicant shall cease operations in order to allow the cultural resources to be recovered from the excavation site without undue delay, up to a maximum of forty-eight hours. This condition is intended only to allow recovery of any culturally resources from the immediate excavation site, not to authorize the tribe to remove the items from the property nor to assign ownership of any cultural resources found."

16. The applicant proposes to delete Condition Six (6) from the Board of Latah County Commissioners (BOCC) Findings of Fact, Conclusions of Law, and Decision for Conditional Use Permit 653. This states, "No more than 75,000 tons of rock shall be blasted, crushed or removed from the site."
17. The applicant proposes to delete Condition Seven (7) from the Board of Latah County Commissioners (BOCC) Findings of Fact, Conclusions of Law, and Decision for Conditional Use Permit 653. This states, "No more than 60 loads or 870 tons, whichever is greater, shall be hauled from the site during any week, excepting during any state of emergency duly declared by the appropriate jurisdiction, wherein the use or removal of the rock is necessary to protect life and property. The applicant shall maintain records of loads and tonnages in order to allow County staff to verify compliance with this condition."
18. The applicant proposes to delete Condition Thirteen (13) from the Board of Latah County Commissioners (BOCC) Findings of Fact, Conclusions of Law, and Decision for Conditional Use Permit 653. This states, "The conditional use permit shall expire six years from the date of issuance, at which time the implementation of the reclamation plan shall begin."
19. According to Condition Six (6) of CUP 653, "No more than 75,000 tons of rock shall be blasted, crushed, or removed from the site." The applicant testified that 60,000 tons of rock have been blasted and crushed to-date.
20. The applicant testified that he has contacted the Coeur d'Alene Tribe, as stated in condition 4 of CUP #653. However, the tribe has only visited the site once to monitor his operation. The applicant stated the tribe told him that they are not interested in the rock pit area on the hilltop, only the area near Flannigan Creek, as this is the area most likely to have cultural remains.
21. A representative of the North Latah Highway District (NLDH) presented evidence that the current hours of operation and the limitation on the amount of rock removed from the site are restrictive to the needs of the County. He also testified that high-quality crushed rock in northern Latah County would be beneficial to public service providers within the Potlatch area.
22. The applicant testified that he would like to extend his hours of operation in order to accommodate crushing companies who prefer to work double shifts to maximize production of crushed rock that can be done per contract.
23. There was testimony that the conditions were set forth in Conditional Use Permit 653 (CUP 653) to protect the health and safety of the public.
24. Testimony was given that the current conditions set on CUP 635 are effective at making the gravel operation have less impact on the neighboring properties.

25. Neighboring property owners testified that an increase in operations would lead to increased traffic, and subsequently an increase in major accidents on Flannigan Creek Road, however the applicant submitted an accident report, generated from the Latah County Sheriffs office showing only five accidents of Flannigan Creek road since March 2004.
26. Neighbors testified that an increase in operations will lead to a substantial increase in road traffic, and possibly endangering the pedestrians and cyclists who utilize the road.
27. Testimony was presented that allowing operations to continue indefinitely would result in a significant reduction in residential property values in the area.
28. There was testimony from an adjacent property owner that their well failure was likely related to blasting at the rock excavation site. They have filed a claim with their insurance company, however that claim has been denied.
29. The applicant offered rebuttal that he hired a professional who conducted seismographic vibrating monitoring at a neighboring well site during one occasion of blasting, and that the reading did not show evidence of damage to said well.
30. The applicant testified that there have been no material changes of conditions since the initial hearings for the Conditional Use Permit 653 (CUP653).
31. The Commission discussed that the conditions imposed by CUP 653 were reasonable and, in large measure, addressed legitimate concerns raised during the hearings by surrounding property owners.

Based on the above findings of fact, the Zoning Commission enters the following:

BASED UPON THE FOREGOING FINDINGS, THE ZONING COMMISSION OF LATAH COUNTY HEREBY MAKES THE FOLLOWING:

II. CONCLUSIONS OF LAW

1. The Zoning Commission has reviewed the application and concludes that the use, as conditioned under CUP #653 with the deletion of condition #4, is not detrimental to the health or safety of those in the surrounding area and will not adversely affect permitted uses or the enjoyment of such uses in that zone to any greater extent than a permitted use in that zone.
2. The Zoning Commission has reviewed the application and concludes that the use, as conditioned under CUP #653 with the deletion of condition #4 will not require facilities or services with excessive costs to the public.

3. The Zoning Commission has reviewed the application as it relates to the Latah County Comprehensive Plan. Taken as a whole and as conditioned under CUP #653, and with the deletion of condition #4, the Zoning Commission concludes that the use is consistent with goals and policies of the Comprehensive Plan.

III. DECISION

Based on the above Findings of Fact and Conclusions of Law, the Zoning Commission approves the following amendment to George Lisher's Conditional Use Permit (CUP #653):

1. Delete condition 4 which states, "The applicant shall provide the Coeur d'Alene Tribe with a written monthly schedule of excavation and blasting, and shall allow a Tribal representative to be present during excavation. If cultural resources are identified by the Tribal representative at the site, the applicant shall cease operations in order to allow the cultural resources to be recovered from the excavation site without undue delay, up to a maximum of forty-eight hours. This condition is intended only to allow recovery of any culturally resources from the immediate excavation site, not to authorize the tribe to remove the items from the property nor to assign ownership of any cultural resources found."

PASSED BY THE ZONING COMMISSION OF LATAH COUNTY THIS 6 DAY OF June, 2007.


Wayne Sprouse, Chairman
Zoning Commission

NOTICE OF EFFECTIVE DATE AND NOTICE OF RIGHT TO APPEAL

An appeal period of fifteen (15) days shall begin upon the day of the mailing, or if hand delivery the day of delivery, of the Zoning Commission's or Land Use Board of Appeals' signed findings of fact and conclusions of law. The applicant or other affected person must specify the issues on appeal and shall submit the written appeal to the Planning Department within the time period described above. The written appeal must specify which findings or conclusions the appellant finds to be in error and explain the appellant's reasons for determining that the findings and conclusions are in error. Any affected person may submit a written response to the appeal within 15 days of the filing of a conforming written notice of appeal. If approved, no conditional use permit shall become effective nor shall any buildings or installation permit be issued until the fifteen (15) day appeal period has elapsed or until the Board has made a decision upon appeal.

NOTICE OF RIGHT TO REQUEST REGULATORY TAKINGS ANALYSIS

The owner of the property that is the subject of this decision may make a written request to the Latah County Planning and Building Department for a Regulatory Takings Analysis within twenty-eight (28) days from the date of this decision as provided by Chapter 80, Title 67, Idaho Code.

**BEFORE THE BOARD OF COMMISSIONERS
COUNTY OF LATAH, STATE OF IDAHO**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

FINDINGS OF FACT AND CONCLUSIONS OF LAW REGARDING A PETITION FOR AN AMENDMENT TO CONDITIONAL USE PERMIT 653 (CUP 653A) BY GEORGE LISHER TO EXPAND HIS ROCK CRUSHING AND EXCAVATION SITE TO FIVE ACRES, TO INCREASE HOURS OF OPERATION, DELETE PORTIONS OF CONDITIONS TWO (2) AND FIVE (5), AND DELETE CONDITIONS FOUR (4), SIX (6), SEVEN (7), AND THIRTEEN (13). THE EXISTING EXCAVATION SITE IS LOCATED APPROXIMATELY THREE MILES SOUTH OF POTLATCH AND ADJACENT TO FLANNIGAN CREEK ROAD IN SECTION 23, TOWNSHIP 41 NORTH, RANGE 5 WEST, B.M., IN LATAH COUNTY. THE PROPERTY IS CURRENTLY REFERENCED AS ASSESSOR'S PARCEL NUMBER RP41N05W230023A.

WHEREAS, George Lisher made application for a conditional use permit on June 7th, 2005; and

WHEREAS, this matter came before the Latah County Zoning Commission for public hearing on Wednesday, July 6th, 2005, and said hearing was continued on Wednesday, July 27th, 2005; and

WHEREAS, the Zoning Commission forwarded a recommendation to the Board of Commissioners to deny the requested amendments; and

WHEREAS, this matter came before the Board of Latah County Commissioners for public hearing on Wednesday, August 31st, 2005, and said hearing was continued on Monday, September 26th, 2005; and

WHEREAS, after reviewing the conditional use permit application and the entire record, and finding good cause therefore:

THE BOARD OF LATAH COUNTY COMMISSIONERS, STATE OF IDAHO, HEREBY MAKES THE FOLLOWING FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION:

I. FINDINGS OF FACT

1. The applicant is requesting to amend an existing conditional use permit, CUP 653A.
2. The existing excavation site is located approximately three miles south of the city of Potlatch and adjacent to Flannigan Creek Road, in Section 23, Township 41 North, Range 5 West, B.M., in Latah County, Idaho.

3. This site is owned by Walser Ranch, Incorporated. Terry Walser signed the application on behalf of Walser Ranch, Inc. George Lisher, the applicant and operator of the site, signed and submitted the application on June 7th, 2005.
4. The subject property is zoned Agriculture/Forestry.
5. The existing uses of the property are grazing, natural mineral resource extraction, and timber.
6. The subject property is designated "Rural" on the Comprehensive Plan Land Use Map. The Comprehensive Plan states, "This area should be protected from conversion to more concentrated residential, commercial, or industrial development; however, sites within this area may be suitable for consideration for further low-density residential development."
7. The parcel is located in an area designated "Zone C" on panels #0135B and #0145B of the Flood Insurance Rating Map (FIRM) for Latah County provided by the Federal Emergency Management Agency (FEMA).
8. The surrounding properties are currently zoned Agriculture/Forestry (A/F).
9. The surrounding property uses are agriculture, grazing, residential, and timber.
10. In accordance with the Latah County Zoning Ordinance §3.03(F), natural mineral resources development is a conditionally permitted use in the Agriculture/Forestry (A/F) zone.
11. The applicant is requesting to expand his rock excavation and crushing site from two to five acres.
12. The applicant is requesting to increase hours of operation, requesting that crushing and blasting be allowed Monday through Saturday from 6:00 a.m. to 11:59 p.m. and general operations be allowed seven days a week from 6:00 a.m. to 9:00 p.m.
13. The applicant is requesting to delete the portion of Condition Two (2) from the Board of Latah County Commissioners (BOCC) Findings of Fact, Conclusions of Law, and Decision for Conditional Use Permit 653 that limits the hours and days of blasting, crushing, loading, hauling, maintenance, and ancillary operations.
14. The applicant is requesting to delete the portion of Condition Five (5) from the Board of Latah County Commissioners (BOCC) Findings of Fact, Conclusions of Law, and Decision for Conditional Use Permit 653 that places a limit of 30,000 tons per blast.
15. The applicant is requesting to delete Condition Four (4) from the Board of Latah County Commissioners (BOCC) Findings of Fact, Conclusions of Law, and Decision for Conditional Use Permit 653. This states, "The applicant shall provide the Coeur d'Alene Tribe with a written monthly schedule of excavation and blasting, and shall allow a Tribal representative to be present during excavation. If cultural resources are identified by the Tribal representative at the site, the applicant shall cease operations in order to allow the cultural resources to be

recovered from the excavation site without undue delay, up to a maximum of forty-eight hours. This condition is intended only to allow recovery of any cultural resources from the immediate excavation site, not to authorize the tribe to remove the items from the property nor to assign ownership of any cultural resources found.”

16. The applicant is requesting to delete Condition Six (6) from the Board of Latah County Commissioners (BOCC) Findings of Fact, Conclusions of Law, and Decision for Conditional Use Permit 653. This states, “No more than 75,000 tons of rock shall be blasted, crushed or removed from the site.”
17. The applicant is requesting to delete Condition Seven (7) from the Board of Latah County Commissioners (BOCC) Findings of Fact, Conclusions of Law, and Decision for Conditional Use Permit 653. This states, “No more than 60 loads or 870 tons, whichever is greater, shall be hauled from the site during any week, excepting during any state of emergency duly declared by the appropriate jurisdiction, wherein the use or removal of the rock is necessary to protect life and property. The applicant shall maintain records of loads and tonnages in order to allow County staff to verify compliance with this condition.”
18. The applicant is requesting to delete Condition Thirteen (13) from the Board of Latah County Commissioners (BOCC) Findings of Fact, Conclusions of Law, and Decision for Conditional Use Permit 653. This states, “The conditional use permit shall expire six years from the date of issuance, at which time the implementation of the reclamation plan shall begin.”
19. The applicant testified that the conditions requested, as stated in his application for conditional use permit, were ultimately halved by the Board of Latah County Commissioners.
20. The applicant testified that his operation has lost a significant amount of money, as crushers, contractors, and haulers have taken their business elsewhere due to the limitations placed on Conditional Use Permit 653.
21. According to Condition Six (6) of CUP 653, “No more than 75,000 tons of rock shall be blasted, crushed, or removed from the site.” The applicant testified that 60,000 tons of rock have been blasted and crushed to-date.
22. The applicant testified that, after having a representative from the Coeur d'Alene Tribe visit the site, the Tribe has no interest in the being present during blasting and excavation.
23. The applicant testified that other conditionally permitted natural mineral resource excavation sites within Latah County have nominal restrictions on hours of operations; excavation acreage; tonnages blasted, crushed, and removed; surface water management; reclamation on site; and the expiration date of said conditional use permit.
24. There was testimony that excavation and crushing on site occurs only several weeks out of the year.
25. There was testimony that truck traffic is likely safer than car traffic on Flannigan Creek Road,

as large-load truckers tend to be in constant contact with one another over citizens-band units (CB radios).

26. Testimony was presented that the current hours of operation, specifically not extending to Saturdays, are restrictive to the needs of the private consumer, as weekends are when the general population works on home improvement projects.
27. Neighboring property owners testified that the conditions imposed by CUP 653 were reasonable and, in large measure, effective at making the gravel operation have less impact on the neighboring properties.
28. Neighbors testified that the conditions were set forth in Conditional Use Permit 653 (CUP 653) to protect the health and safety of the public.
29. Neighboring property owners testified that allowing operations to continue indefinitely would result in a significant reduction in residential property values in the area.
30. Neighbors testified that an increase in operations will generate a significant increase in noise pollution.
31. Neighboring property owners testified that an increase in operations will lead to a substantial increase in road traffic, thus endangering the pedestrians, cyclists, horseback riders, and motorists who utilize the road.
32. Neighbors testified that an increase in operations could increase the occurrence of traffic accidents on Flannigan Creek Road.
33. Neighboring property owners testified that Mr. Lisher is not maximizing the uses and conditions set forth in Conditional Use Permit 653 as it stands.
34. Neighbors testified that there are several other excavation, crushing, and stockpiling operations within Latah County that can meet any additional public or private need for crushed rock.
35. There was discussion that Mr. Lisher's rock pit is situated in a very different location than the other mineral excavation sites within the county, i.e. different zoning designations and site characteristics, lending the need for the stricter regulations.
36. There was discussion that the conditions imposed by CUP 653 were effective at making the gravel operation have less impact on the neighboring properties.
37. There was discussion that, in hindsight, the strict regulations may be more of a hindrance to Mr. Lisher and his business than anticipated by the County.
38. There was discussion that the need for the County to haul rock from other excavation sites that are further away [due to the CUP 653 limitations on loads of rock that can be hauled from Mr. Lisher's site] seems counterintuitive.

39. The Board of Latah County Commissioners considered the request pursuant to the Latah County Comprehensive Plan, Latah County Zoning Ordinance, the Local Land Use Planning Act, and other applicable local and state regulations.

BASED ON THE ABOVE FINDINGS OF FACT, THE BOARD OF LATAH COUNTY COMMISSIONERS ENTERS THE FOLLOWING:

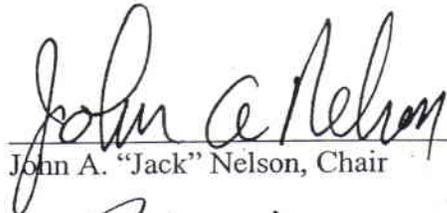
II. CONCLUSIONS OF LAW

1. As required by §13.10.04.A.1 of the Latah County Zoning Ordinance, the Board of Latah County Commissioners has reviewed the proposed amendments to CUP 653 as they relate to the Latah County Comprehensive Plan. Taken as a whole, the Board of Latah County Commissioners concludes that these amendments are not consistent with goals and policies of the Latah County Comprehensive Plan.
2. As required by §13.10.04.A.2 of the Latah County Zoning Ordinance, the Board of Latah County Commissioners has reviewed the proposed amendments to CUP 653 and the uses they permit and determined that these amendments would be detrimental to the health or safety of those in the surrounding area or region.
3. As required by §13.10.04.A.3 of the Latah County Zoning Ordinance, the Board of Latah County Commissioners has reviewed the proposed amendments to CUP 653 and determined that the proposal will adversely affect surrounding properties to any greater extent than would a permitted use in the zoning district.
4. As required by §13.10.04.A.4 of the Latah County Zoning Ordinance, the Board of Latah County Commissioners has reviewed the proposed amendments to CUP 653 and determined that these amendments will not require facilities or services with excessive costs to the public.

III. DECISION

Based on the above Findings of Fact and Conclusions of Law, the Board of Latah County Commissioners denies the application by George Lisher for an amendment to Conditional Use Permit 653.

PASSED BY THE BOARD OF LATAH COUNTY COMMISSIONERS THIS 24 DAY OF October, 2005.



John A. "Jack" Nelson, Chair



Paul J. Kimpell, Commissioner



Tom S. Stroschein, Commissioner

ATTEST:

DATE:

10-24-05



Clerk / Deputy Clerk

NOTICE OF EFFECTIVE DATE AND NOTICE OF RIGHT TO APPEAL

This decision is effective on the date passed and signed by the Latah County Board of Commissioners. This is a final action. An affected person aggrieved by this decision may within twenty-eight (28) days after the effective date seek judicial review as provided by Chapter 52, Title 67, Idaho Code.

NOTICE OF RIGHT TO REQUEST REGULATORY TAKINGS ANALYSIS

The owner of the property that is the subject of this decision may make a written request to the Latah County Planning and Building Department for a Regulatory Takings Analysis within twenty-eight (28) days from the date of this decision as provided by Chapter 80, Title 67, Idaho Code.

**BEFORE THE ZONING COMMISSION
COUNTY OF LATAH, STATE OF IDAHO**

FINDINGS OF FACT AND CONCLUSIONS OF LAW

FINDINGS OF FACT AND CONCLUSIONS OF LAW REGARDING A PETITION FOR AN AMENDMENT TO CONDITIONAL USE PERMIT 653 (CUP 653A) BY GEORGE LISHER TO EXPAND HIS ROCK CRUSHING AND EXCAVATION SITE TO FIVE ACRES, TO INCREASE HOURS OF OPERATION, DELETE PORTIONS OF CONDITIONS TWO (2) AND FIVE (5), AND DELETE CONDITIONS FOUR (4), SIX (6), SEVEN (7), AND THIRTEEN (13). THE EXISTING EXCAVATION SITE IS LOCATED APPROXIMATELY THREE MILES SOUTH OF POTLATCH AND ADJACENT TO FLANNIGAN CREEK ROAD IN SECTION 23, TOWNSHIP 41 NORTH, RANGE 5 WEST, B.M., IN LATAH COUNTY. THE PROPERTY IS CURRENTLY REFERENCED AS ASSESSOR'S PARCEL NUMBER RP41N05W230023A.

WHEREAS, George Lisher made application for a conditional use permit on June 7th, 2005; and

WHEREAS, this matter came before the Latah County Zoning Commission for public hearing on Wednesday, July 6th, 2005.

WHEREAS, this matter came before the Latah County Zoning Commission for deliberation and decision on Wednesday, July 27th, 2005.

THE LATAH COUNTY ZONING COMMISSION, STATE OF IDAHO, AFTER DUE DELIBERATION AND CONSIDERATION, HEREBY MAKES THE FOLLOWING FINDINGS OF FACT:

I. FINDINGS OF FACT

1. The existing excavation site is located approximately three miles south of the city of Potlatch and adjacent to Flannigan Creek Road, in Section 23, Township 41 North, Range 5 West, B.M., in Latah County, Idaho.
2. This site is owned by Walser Ranch, Incorporated. Terry Walser signed the application on behalf of Walser Ranch, Inc. George Lisher, the applicant, signed and submitted the application on June 7th, 2005.
3. The subject property is zoned Agriculture/Forestry.
4. The existing uses of the property are grazing and natural mineral resource extraction.

5. The subject property is designated "Rural" on the Comprehensive Plan Land Use Map. The Comprehensive Plan states, "This area should be protected from conversion to more concentrated residential, commercial, or industrial development; however, sites within this area may be suitable for consideration for further low-density residential development."
6. The parcel is located in an area designated "Zone C" on panels #0135B and #0145B of the Flood Insurance Rating Map (FIRM) for Latah County provided by the Federal Emergency Management Agency (FEMA).
7. The surrounding properties are currently zoned Agriculture/Forestry (A/F).
8. The surrounding property uses are agriculture, grazing, timber, and residential.
9. In accordance with the Latah County Zoning Ordinance §3.03(F), natural mineral resources development is a conditionally permitted use in the Agriculture/Forestry (A/F) Zone.
10. The applicant proposes to expand his rock excavation and crushing site from two to five acres.
12. The applicant proposes to increase hours of operation, requesting that crushing and blasting be allowed Monday through Saturday from 6:00 a.m. to 11:59 p.m. and general operations be allowed seven days a week from 6:00 a.m. to 9:00 p.m.
13. The applicant proposes to delete the portion of Condition Two (2) from the Board of Latah County Commissioners (BOCC) Findings of Fact, Conclusions of Law, and Decision for Conditional Use Permit 653 that limits the hours and days of blasting, crushing, loading, hauling, maintenance, and ancillary operations.
14. The applicant proposes to delete the portion of Condition Five (5) from the Board of Latah County Commissioners (BOCC) Findings of Fact, Conclusions of Law, and Decision for Conditional Use Permit 653 that places a limit of 30,000 tons per blast.
15. The applicant proposes to delete Condition Four (4) from the Board of Latah County Commissioners (BOCC) Findings of Fact, Conclusions of Law, and Decision for Conditional Use Permit 653. This states, "The applicant shall provide the Coeur d'Alene Tribe with a written monthly schedule of excavation and blasting, and shall allow a Tribal representative to be present during excavation. If cultural resources are identified by the Tribal representative at the site, the applicant shall cease operations in order to allow the cultural resources to be recovered from the excavation site without undue delay, up to a maximum of forty-eight hours. This condition is intended only to allow recovery of any culturally resources from the immediate excavation site, not to authorize the tribe to remove the items from the property nor to assign ownership of any cultural resources found."

16. The applicant proposes to delete Condition Six (6) from the Board of Latah County Commissioners (BOCC) Findings of Fact, Conclusions of Law, and Decision for Conditional Use Permit 653. This states, "No more than 75,000 tons of rock shall be blasted, crushed or removed from the site."
17. The applicant proposes to delete Condition Seven (7) from the Board of Latah County Commissioners (BOCC) Findings of Fact, Conclusions of Law, and Decision for Conditional Use Permit 653. This states, "No more than 60 loads or 870 tons, whichever is greater, shall be hauled from the site during any week, excepting during any state of emergency duly declared by the appropriate jurisdiction, wherein the use or removal of the rock is necessary to protect life and property. The applicant shall maintain records of loads and tonnages in order to allow County staff to verify compliance with this condition."
18. The applicant proposes to delete Condition Thirteen (13) from the Board of Latah County Commissioners (BOCC) Findings of Fact, Conclusions of Law, and Decision for Conditional Use Permit 653. This states, "The conditional use permit shall expire six years from the date of issuance, at which time the implementation of the reclamation plan shall begin."
19. According to Condition Six (6) of CUP 653, "No more than 75,000 tons of rock shall be blasted, crushed, or removed from the site." The applicant testified that 60,000 tons of rock have been blasted and crushed to-date.
20. The applicant testified that, after having a representative from the Coeur d'Alene Tribe visit the site, the Tribe has no interest in the being present during blasting and excavation.
21. A representative of the North Latah Highway District (NLDH) presented evidence that the current hours of operation and the limitation on the amount of rock removed from the site are restrictive to the needs of the County. He also testified that high-quality crushed rock in northern Latah County would be beneficial to public service providers within the Potlatch area.
22. Testimony was presented that the current hours of operation, specifically not extending to Saturdays, are restrictive to the needs of the private consumer, as weekends are when the general population works on home improvement projects.
23. There was testimony that the conditions were set forth in Conditional Use Permit 653 (CUP 653) to protect the health and safety of the public.
24. Testimony was given that the current conditions set on CUP 635 are effective at making the gravel operation have less impact on the neighboring properties.
25. Neighboring property owners testified that an increase in operations would lead to increased traffic, and subsequently an increase in major accidents on Flannigan Creek Road, which is unpaved and varies in width from 18 to 25 feet.

26. Neighbors testified that an increase in operations will lead to a substantial increase in road traffic, and possibly endangering the pedestrians, cyclists, and horseback riders who utilize the road.
27. Testimony was presented that allowing operations to continue indefinitely would result in a significant reduction in residential property values in the area.
28. There was testimony from an adjacent property owner that their well failure was likely related to blasting at the rock excavation site. However, they have not filed a claim against the blasting company or Mr. Lisher.
29. The applicant testified that he hired a professional who conducted seismographic vibrating monitoring at a neighboring well site during one occasion of blasting, and that the reading did not show evidence of damage to said well.
30. The applicant testified that there have been no material changes of conditions since the initial hearings for the Conditional Use Permit 653 (CUP653).
31. The Commission found that the conditions imposed by CUP 653 were reasonable and, in large measure, addressed legitimate concerns raised during the hearings by surrounding property owners.
32. The Latah County Zoning Commission considered the request pursuant to the Latah County Comprehensive Plan, Latah County Zoning Ordinance, the Local Land Use Planning Act, and other applicable local and state regulations.

Based on the above Findings of Fact, the Latah County Zoning Commission enters the following:

II. CONCLUSIONS OF LAW

1. As required by §13.10.04.A.1 of the Latah County Zoning Ordinance, the Zoning Commission has reviewed the proposed amendments as they relate to the Latah County Comprehensive Plan. Taken as a whole, the Zoning Commission concludes that these amendments are not consistent with goals and policies of the Latah County Comprehensive Plan.
2. As required by §13.10.04.A.2 of the Latah County Zoning Ordinance, the Zoning Commission has reviewed the proposed amendments and the uses they permit and determined that these amendments would be detrimental to the health or safety of those in the surrounding area or region.
3. As required by §13.10.04.A.3 of the Latah County Zoning Ordinance, the Zoning Commission has reviewed the proposed amendments and determined that the proposal

will adversely affect surrounding properties to any greater extent than would a permitted use in the zoning district.

4. As required by §13.10.04.A.4 of the Latah County Zoning Ordinance, the Zoning Commission has reviewed the proposed amendments and determined that these amendments will not require facilities or services with excessive costs to the public.

III. DECISION

Based on the above Findings of Fact and Conclusions of Law, the Latah County Zoning Commission forwards a unanimous recommendation of denial to the Board of Latah County Commissioners of the application by George Lisher for an amendment to Conditional Use Permit 653.

PASSED BY THE ZONING COMMISSION OF LATAH COUNTY THIS 5 DAY OF
August, 2005.


Wayne Sprouse, Vice Chair
Zoning Commission

LATAH COUNTY BOARD OF COMMISSIONERS

RE: Conditional Use Permit for rock excavation, crushing and processing operation
 Applicant: George L. Lisher
 File No. CUP-653

)
) *Acting*
)
)
)
)

FINDINGS OF FACT
CONCLUSIONS OF LAW
AND DECISION

Chair: _____
 Clerk: _____
 Attest: *K. Ricketts, Deputy* 7-27-05
 Copy: _____

Agenda Item Approve Deny
 For Discussion

This matter came before the Board of Commissioners for public hearing on February 11, 2004, with a recommendation from the Latah County Zoning Commission. After review of the conditional use permit application and the entire record, and finding good cause therefore, the Board of Commissioners hereby makes the following findings of fact, conclusions of law, and decision:

In reviewing we found all issues in compliance except the holiday activity which was resolved

I. **FINDINGS OF FACT**

1. The application requests a conditional use permit for a rock excavation/crushing/processing/stockpiling operation with ancillary uses on a portion of 280 acres of land, with the actual site to be excavated limited to two acres. Natural mineral resources development is a conditionally permitted use in the Agriculture/Forestry (A/F) Zone. The site is on property in the A/F Zone.
2. The site is located three miles south of the City of Potlatch, adjacent to, and east of, Flannigan Creek Road, in Section 23, Township 41 North, Range 5 West, Boise Meridian, Latah County, Idaho.
3. The site is currently referenced as County Assessor's tax parcel number RP41N05W230023A.
4. The applicant for the proposal is George L. Lisher. The property is owned by Walser Ranch, Inc. Mr. Lisher and Terry Walser (on behalf of Walser Ranch) signed the completed application.
5. The Zoning Commission conducted a public hearing on the proposal on December 17, 2003. The requirements for notice of public hearing were met.
6. On January 16, 2004, the Chair of the Latah County Zoning Commission signed the Findings, Conclusions and Decision adopted by the Commission relating to the application, and recommended approval with a number of conditions.
7. The Board of Commissioners conducted a public hearing on the proposal on February 11, 2004. The requirements for notice of public hearing were met.

CUP 653

BOCC Findings, Conclusions and Dec

LCZC Hrg: CUP653C
 Applicant: Lisher
 Exhibit #: 1H
 Date: 12/2/2009

8. Attendance at the hearing was significantly greater than at the hearing before the Zoning Commission. The time provided was insufficient to receive testimony from all those who wished to testify; consequently, after nearly five hours of testimony from those in attendance, the Board announced that the hearing would be continued to the following week during a special meeting of the Board of Commissioners on February 18, 2004.
9. To better familiarize themselves with the site, members of the Board of Commissioners visited the site on February 17, 2004 during a regular meeting of the Board. The Board of Commissioners announced to those in attendance at the hearing of February 11 the scheduling of the site visit and the visit was placed on the Board's agenda. No new written or oral testimony was received, nor did the Board discuss the proposal, during the site visit.
10. Due to an unforeseen scheduling conflict, the special meeting was cancelled, and a hearing was subsequently ordered to be held on February 25, 2004. Notice of the change was sent to the applicant, the property owner, owners of lands within 300 feet of the external boundary, as well as those who legibly signed the roster with a complete mailing address.
11. The continued hearing on February 25, 2004 lasted for six hours. This provided sufficient time to conclude testimony from those opposed to the application, as well as general testimony. Due to the late hour however, the Board of Commissioners announced to those in attendance that the hearing would be continued to a special meeting on March 11, 2004 to allow rebuttal from the applicant, and allow all interested parties an opportunity to rebut new testimony. In addition to this announcement, those notified of the first continuation, as well as those who legibly signed the roster for the meeting on February 25, 2004 with a complete mailing address, were notified of this continuation.
12. The Board required that written testimony received after the continued hearing of February 25, 2004 be limited to rebuttal of written testimony and be received by the Latah County Planning and Building Department by 4:59 p.m., March 3, 2004. This requirement was announced to those at the hearing on February 25, 2004 and included in the noticed described in the previous finding.
13. The public hearing on the application concluded on March 11, 2004 with rebuttal from the applicant, as well as rebuttal of new testimony from all interested parties.
14. During the course of the public hearing, beginning February 11, 2004 and concluding March 11, 2004, 116 exhibits were accepted for consideration and entered into the record of the proceedings. An additional ten exhibits submitted to the Board of Commissioners were not considered, as the Board determined they were irrelevant or did not meet the criteria set forth at the February 25, 2004 meeting.
15. The Board deliberated on the application on March 24, and April 5, 2004. At the April 5 deliberation session, the Board found sound and legal cause to reopen the public hearing in that they had insufficient information on the applicant's site plan, marketing and operation plan, an updated reclamation plan, a surface water management plan, and information on bonding costs and the appropriateness of the same. The Board required that any written

testimony in regard to these matters must be received by April 23, 2004. The reopened hearing was scheduled for April 28, 2004. All parties heretofore noticed, including all those who gave testimony, were noticed of the reopened hearing. Said notice stated the purposes of the reopened hearing as listed above.

16. At the reopened hearing the Board considered relevant written testimony that was received by April 23, 2004, as well as oral testimony from the applicant and other interested parties presented during the hearing. Testimony presented and considered was related to the aforementioned five items. A total of six additional exhibits were received. The hearing was closed and deliberations continued immediately thereafter and concluded that night.
17. The Board of Commissioners considered the request pursuant to the Latah County Comprehensive Plan, Latah County Zoning Ordinance, the Idaho Local Land Use Planning Act, related case law and other applicable development regulations.
18. The record includes the documents in the proposal file at the time of the public hearing, the record of the proceedings, and the written recommendation of the Zoning Commission, as well as exhibits offered at the hearings, and the items taken notice of by the Board of Commissioners.
19. The property varies in topography and vegetation. Flannigan Creek enters the property at the southern boundary, approximately one-half mile southeast of the proposed excavation site, flows northerly through the property, then veers to the northeast, exiting the property about one-quarter mile due east of the site. The site is slightly more than 1000 feet away, and 140 feet higher in elevation, than the nearest segment of the Creek. The area surrounding the Creek is mostly treed, while there are few trees in the area immediately surrounding the proposed excavation site. There are moderately steep slopes on the property. The proposed excavation site is approximately 60 to 80 feet higher in elevation, and 800 feet northeast of, Flannigan Creek Road.
20. There is an existing rock excavation pit on the property directly south of the proposed pit. The rock in this pit is composed of decomposing granite. Historically, most of the rock from that site has been removed by the use of methods less intensive than blasting, and is consequently considered "rip-rock." Testimony from several long-term residents of the area stated that blasting has occurred at the site. During the site visit, the Board observed surface water adjacent to this pit flowing towards Flannigan Creek. Other existing uses on the site include grazing and agriculture.
21. Surrounding uses include agriculture, timber, and grazing. There are four residences more than one-quarter mile, but less than one-half mile, from the site. These dwelling units gain access to Flannigan Creek Road approximately 120 feet south of the existing access to the proposed site. A number of other residences exist along Flannigan Creek Road, Walker Road and Four Mile Road; primary roads to the site from the state-maintained highways.
22. The conditional use permit application was submitted on November 7, 2003. The application includes three copies of a topographical map showing the location of the

proposed excavation site and existing road access. The application includes plans for blasting, excavating and crushing rock on-site. The proposed excavation site will be less than two acres and will be fenced and gated. Stock-piling of crushed rock would occur adjacent to Flannigan Creek Road, south of the excavation site. The applicant initially sought to operate an asphalt hot plant from time to time on the site; however, the Zoning Commission recommended that such an operation not be allowed and consequently, the applicant stated before the Board that he would be amenable to the prohibition of the asphalt hot plant from the operations.

23. Drilling and blasting would be accomplished through contracts with a licensed drilling company. The applicant stated that he intends to contract with a company that is insured up to five million dollars. The applicant proposed to excavate 150,000 tons of rock from the site. The applicant intends to concentrate most of the blasting excavation and crushing in the first year of operations, completing most work in two to three months. The applicant stated that as many as 20 to 30 truckloads of crushed rock would be hauled off the site during operation days. Operations are expected to continue for approximately six years. Under the proposal, additional blasting and crushing may occur three to four years from the inception of operations. Overburden will be stockpiled for use in site reclamation. The applicant has submitted a reclamation plan to the Idaho Department of Lands (IDL), and is waiting for final approval on the plan.
24. The completed reclamation plan was included in the proceedings of this application as Exhibits Nos. 40 and 117, with the latter being a revised version of the former. The revised version (117) included a site plan showing the approximate locations of the various components of the operation. Stockpiling would occur downhill towards the road from the excavation site. The updated submittal also includes plans for a pond to prevent sediment and surface water from the site from entering into Flannigan Creek.
25. The applicant included several proposed conditions as part of his application, including limiting operation hours to six days a week from 7:00 a.m. to 5:00 p.m.; written notification of blasting within 24 hours prior to blasting to be given to property owners or occupants of residences on parcel Nos. RP41N05W234233A and RP41N05W234820A; compliance with applicable local, state, and federal laws, rules, and regulations; and limiting blasts to 30,000 tons per blast and confining all fly-rock to the subject property.
26. The North Latah Highway District (NLHD) is a quasi-municipal jurisdiction that maintains local roads in the greater portion of Latah County, including Flannigan Creek Road. Responsibilities of NLHD including paving, graveling, snow-plowing and granting access to county roads in the District's boundaries. Exhibit Nos. 2G, 52 and 67 include testimony and information from NLHD expressing interest in an additional source of gravel and calculating the reduction in hauling distance that could result in obtaining rock from the applicant. During the March 11, 2004 portion of the hearing, a representative of NLHD testified that the figures presented were merely speculative, as no contract had been entered into with the applicant. Moreover, NLHD urged the Board to consider the application independent of any prospect of a future contract between NLHD and the applicant.

27. There was considerable testimony in opposition to the proposed operation. Many of those in opposition raised issues over the adequacy of Flannigan Creek Road for the increased truck traffic. Flannigan Creek Road is unpaved several miles in either direction from the subject property. Civil engineers testified that the impact caused by loaded trucks on unpaved and paved surfaces far exceeds the impact of an equal number of automobiles traveling on the same surfaces (see Exhibits Nos. 68 and 41). The average width of Flannigan Creek Road is 24 feet. There were a number of concerns raised regarding the adequacy of the road width in relation to traffic conflicts involving trucks traveling to and from the operation, and school buses, pedestrians, passenger vehicles, and other large trucks such as logging trucks.
28. In both the hearing before the Zoning Commission and the hearings before the Board, neighboring property owners expressed concern that the operation of the pit would result in a significant reduction in residential property values in the vicinity. There were a number of written statements by realtors familiar with rural properties in Latah County expressing their professional opinion that rock quarries and crushing operations reduce values of nearby residential properties due to increased noise, dust and traffic.
29. The Latah County Assessor testified before the Board on the impact rock pits and similar activities have on appraisals in Latah County. Appraisals conducted for the purposes of tax assessment are reactive, in that they reflect market changes and values after their occurrence. The Assessor has not, in his professional judgment, seen any devaluation of properties situated near similar activities.
30. A consultation report dated March 8, 2004 prepared by a certified general real estate appraiser was entered into the record (see Exhibit No. 105). The appraiser considered the impact the operation would have on neighboring property owners. In his professional opinion, "no discernable difference can presently be found for listing or sales of property near rock pits versus property near other permitted uses in the AF zone (*sic*). This leads to a conclusion that the value impact on property near a rock pit is similar to the impact on property near other permitted uses in the AF zone."
31. There was lengthy discussion related to elevated noise levels generated by crushing and blasting operations. Crushing and excavation operations require heavy machinery that is unarguably noisy. However, actual noise levels vary in part according to the distance from their sources. Large trucks can cause similar or even greater noise levels at similar distances (see Exhibit Nos. 58 and 84) as will be found between the proposed operation and neighboring residences.
32. There was also testimony concerning the possible impact blasting has on wells adjacent to rock pits. Testimony from the applicant indicated the driller/blaster would likely be responsible for wells destroyed or damaged by blasts. Written testimony from a neighbor of a rock quarry in Washington State informed the Board that when his well was damaged by a blast at the rock quarry, the company performing the work brought in a well driller shortly thereafter to repair the damaged well (See Exhibit No. 54).

33. The applicant acknowledged that the existing access to the site does not meet standards for sight distances. The applicant has met with NLHD officials who have tentatively determined that moving the access point approximately 20 feet south of the current access point will improve sight distances to the site and bring the access into compliance with sight distance requirements of NLHD.
34. Issues raised by neighbors regarding the safety of school children boarding buses are a legitimate concern, primarily with regards to blasting on the site. Limiting blasting to hours when school children would not normally be present on the road would help mitigate potential hazards.
35. Testimony conflicted as to whether there are any known unique, scenic or natural amenities in the vicinity requiring protection. The Board does not agree with testimony stating that the view of the subject property in its current state or special acoustics in the vicinity are somehow unique to an extent to require special protection.
36. Written testimony submitted by representatives of the Coeur d'Alene Tribe expressed concerns of the impacts of the operations on the aboriginal territory of the Tribe (see Exhibits Nos. 18 and 48). There is a possibility of Native American artifacts in the area (see also Exhibit No. 64). The Tribe proposed a number of conditions, including a request that it be notified on a regular basis of excavation and blasting and be permitted to be present during such activities in case Tribal cultural resources are found, and subsequently be allowed to remove the items from the site.
37. Opponents expressed a number of other concerns. These concerns included the potential for groundwater pollution; the loss of wildlife wintering range; the impacts to riparian habitat on Flannigan Creek; the lack of posted speed limits on Flannigan Creek Road; the effect blasting may have on domesticated animals; the economic feasibility of the proposed operations; the impact that radioactive elements found in rock types that are common to the area may cause on human health in the region; the suitability of the rock on the site for application on roads; the effect hauling will have on non-vehicular uses of the road including walking and horseback riding; the potential for aggravated dust problems along the unpaved portions of the county roads in the area with related concerns for respiratory health; and inadequate enforcement capabilities of the Planning and Building Department. The Board finds that these concerns are either 1) relevant to the proposal and are adequately addressed by the adopted conditions, so as to bring the operations into compliance with the criteria provided by the Latah County Zoning Ordinance for approving conditional use permits; 2) relevant, but are impacts and concerns which are common to uses permitted in the A/F Zone; or 3) irrelevant or not substantiated by fact; or a combination of the above.
38. The Economic Development element of the Latah County Comprehensive Plan establishes several goals that are relevant to the application. The proposed land use is appropriate to local and regional needs and brings about a greater economic diversification. The required reclamation plan will ensure that the site can be restored so that the land is suitable for other beneficial uses in the future.

39. The proposed excavation site is not in a floodplain and does not compromise wetlands in the area. Protecting Flannigan Creek from possible sedimentation from the operations by implementing a surface water management plan will ensure that the proposed use furthers the goals of the Natural Resource Element of the Comprehensive Plan.
40. The Transportation Element of the Comprehensive Plan promotes an "efficient and safe transportation system in Latah County." Existing uses in the area such as logging and farming, as well maintenance of the county roads, require trucks that have similar impacts to county roads and adjoining properties as trucks hauling loads from the excavation site. The Board finds that truck traffic along Flannigan Creek Road will increase during operating hours, but limiting the number of loads that can be hauled from the site, and limiting the number of tons that may excavated, will prevent an undue traffic burden on the road and limit potential traffic conflicts. The increased truck traffic will not significantly disrupt traffic flow.
41. The Community Design, Population and Housing elements of the Latah County Comprehensive Plan are only marginally applicable to the subject application. These elements relate to residential and commercial uses. The proposal does not substantially interfere with proposed residential developments in the county more than a permitted use in the A/F Zone.
42. The Special Areas, Hazardous Area, and Recreation elements of the Latah County Comprehensive Plan promote the protection of areas of significant hazardous, recreational, historical, or environmental uniqueness. With the possible exception of Native American artifacts, the site does not contain any areas of significant hazardous, recreational, historical, or environmental uniqueness. The possibility of Native American artifacts being present can be addressed by allowing a Coeur d'Alene Tribal representative to be present to observe excavations and notifying the Tribe of blasting schedules.
43. The Comprehensive Plan Land Use Map designates this area as being suitable for rural land uses. The Plan remarks that this area should be protected from more concentrated residential, commercial or industrial development.
44. The Agriculture/Forestry Zone allows a number of natural-resource based uses and buildings, including farming, logging, the construction and operation of grain elevators, seed warehouses, feedlots, and small sawmills. Public buildings such as schools and fire stations are also allowed in the A/F Zone. Some of these allowed uses generate impacts similar to those created by natural mineral resources excavation, including noise, dust and increased traffic.
45. The Board finds that conditions of approval are necessary to maintain consistency with the Latah County Comprehensive Plan and to protect the health and safety of the residents of Latah County. Furthermore, the conditions herein adopted exhibit a reasonable relationship to the goals and elements of the Comprehensive Plan and the Latah County Zoning Ordinance.

46. The Latah County Zoning Ordinance requires applicants requesting a conditional use permit subject to Section 11.04 of the Ordinance post a bond to assure full compliance with the proposed plans and the Ordinance, unless the Board finds that the posting of a bond would not be in the public interest or contrary to law. The satisfactory completion of reclamation activities are assured by an annual fee paid by the permit holder to the Idaho Department of Lands. Assurance of compliance with the conditions of approval can be met by enforcement measures. The Board finds that the posting of the bond would not be in the public interest nor is necessary to assure compliance with the conditions of approval.
47. The Board finds that an additional source of high-quality crushed rock in northern Latah County will be beneficial to public service providers and private consumers.

Based on the above findings of fact and the entire record, the Board enters the following:

II. CONCLUSIONS OF LAW

1. The proposed operations, as conditioned, are consistent with the provisions of Section 11.04 of the Latah County Zoning Ordinance.
2. The proposed operations, as conditioned, are consistent with the goals and policies of the Latah County Comprehensive Plan.
3. The proposed operations, as conditioned, are not detrimental to the health or safety of those in the surrounding area or region.
4. The proposed operations, as conditioned, will not adversely affect surrounding properties to any greater extent than would a permitted use in the Agriculture/Forestry Zone.
5. The proposed operations, as conditioned, will not require facilities or services with excessive costs to the public.

III. DECISION

Based on the above Findings of Fact and Conclusions of Law, the Latah County Board of Commissioners approves the subject application for a conditional use permit, to maintain a rock excavation/crushing/processing/stockpiling operation with ancillary uses, with the explicit exclusion of asphalt hot plants, in the Agriculture/Forestry Zone, subject to the conditions of approval stated below.

- ✓ 1. All operations on the site shall comply with all local, state and federal laws, rules and regulations.

2. Operating hours. Blasting, crushing, loading, hauling, maintenance, and ancillary operations shall be limited to Monday through Friday of any given week, from 7:00 a.m. to 5:00 p.m. Operations shall not occur on federally-recognized holidays. The gate to the facility shall be closed and locked at all other times.
3. Notice of blasting. Written notification, at least 24 hours prior to blasting, shall be given to owners or occupants of residences within one mile of the site.
4. The applicant shall provide the Coeur d'Alene Tribe with a written monthly schedule of excavation and blasting, and shall allow a Tribal representative to be present during excavation. If cultural resources are identified by the Tribal representative at the site, the applicant shall cease operations in order to allow the cultural resources to be recovered from the excavation site without undue delay, up to a maximum of forty-eight hours. This condition is intended only to allow recovery of any cultural resources from the immediate excavation site, not to authorize the tribe to remove the items from the property nor to assign ownership of any cultural resources found.
5. Blasts shall be limited to 30,000 tons per blast and all fly-rock shall be confined to the subject property.
6. No more than 75,000 tons of rock shall be blasted, crushed or removed from the site.
7. No more than 60 loads or 870 tons, whichever is greater, shall be hauled from the site during any week, excepting during any state of emergency duly declared by the appropriate jurisdiction, wherein the use or removal of the rock is necessary to protect life and property. The applicant shall maintain records of loads and tonnages in order to allow County staff to verify compliance with this condition.
8. Blasting shall not occur between 7:00 a.m. to 9:30 a.m. or 2:30 p.m. to 4:00 p.m. on days that local school districts are in session. Reasonable measures shall be made to protect vehicular and pedestrian traffic on Flannigan Creek Road which should include warning signs, or similar advisory notice, along said road during blasting.
9. Operations shall not begin until a surface water management plan is designed by a professional engineer registered in the State of Idaho, and subsequently constructed under the direction of said engineer. In addition, said plan, as well as verification by the engineer that implementation has occurred accordingly, must be received and approved by the Latah County Planning & Building Department before operations begin.
10. Operations shall not begin until a reclamation plan is approved by the Idaho Department of Lands and notification of such approval is received by the Latah County Planning & Building Department.
11. The current ingress/egress point onto Flannigan Creek Road shall be moved so that sight distances from both directions on said road adequately meet minimum sight distance standards of 200 feet. The ingress/egress point must also be approved by the North Latah

Highway District, and notification of such approval must be received by the Latah County Planning and Building Department before operations begin.

12. The excavation site shall be limited to two acres and shall be fenced, posted and gated as required by Section 11.04 of the Latah County Zoning Ordinance.
13. This conditional use permit shall expire six years from the date of issuance, at which time the implementation of the reclamation plan shall begin.
14. The Board of County Commissioners shall conduct a review of this conditional use permit approximately one year from the date of issuance to determine whether the conditions of approval are met.

PASSED BY THE LATAH COUNTY BOARD OF COMMISSIONERS THIS 12th DAY OF

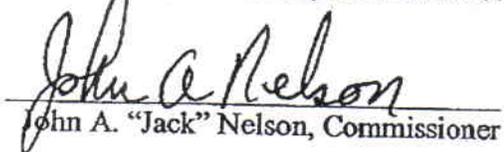
May, 2004.



Paul J. Kimmell, Chair



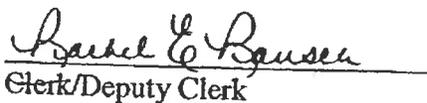
Tom S. Stroschein, Commissioner



John A. "Jack" Nelson, Commissioner

ATTEST:

DATE:



Rachel E. Bause
Clerk/Deputy Clerk

5-12-04

NOTICE OF EFFECTIVE DATE AND NOTICE OF RIGHT TO APPEAL

This conditional use permit is effective on the date passed and signed by the Latah County Board of Commissioners. This is a final action. An affected person aggrieved by this decision may within twenty-eight (28) days after the effective date seek judicial review as provided by chapter 52, title 67, Idaho Code.

NOTICE OF RIGHT TO REQUEST REGULATORY TAKINGS ANALYSIS

The owner of the property that is the subject of this decision may make a written request to the Latah County Planning and Building Department for a Regulatory Takings Analysis within twenty-eight days from the date of this decision as provided by chapter 80, title 67, Idaho Code.

LATAH COUNTY ROCKPIT CUPS

4/27/2007

CUP #	Applicant	Year	Hours of Operation	Blasting Hours	Dates of Operation	Limits on Blasting	Limits on Amount to Haul	Other
148	Western Crushing (Jack Brown)	1980	7 am -6 pm	not specified	Monday - Saturday	time period limited to first 3 months of CUP	-----	-notify neighbors w/in 1/4 mile of blasting -posting of adequate signage
228	Nels N. Cox N.A. Degerstrom, Inc.	1984	not specified	not specified	not specified	-----	-----	
281	Carl Carbon Jr.	1986	7 am-6 pm Extended hours of operation granted by BOCC to 6 am-9 pm for 15 working days between 5/29/86 - 6/30/86	not specified	not specified	-----	-----	-limited to 12-acres -Expiration in 5 years -notice of blasting to neighbors
314	Martin Haarr	1986	7 am - 5 pm	not specified	Monday - Friday	-----	-----	-post signage -dust abatement -neighbor notification prior to blasting
314A	Martin Haarr	1992	7 am - 5 pm	not specified	Monday - Friday	-----	-----	-sufficient dust abatement -Compliance w/DEQ air quality standards -Notification to City of Troy and residents in area 3 days prior to blasting -review in 2009
488	North Idaho Crushing	1994	Crushing, loading and hauling: 6 am-10 pm Jan1-Mar31 7 am-8 pm Apr 1-Oct31 6 am-10 pm Nov 1-Dec31	Not specified	six days per week	Shall not occur w/in 600 ft of tanks containing ag chem	-----	-compliance w/local, state, fed, rules and regulations -dust abatement to be employed while crusher is in operation -lighting to be directed away from residents to maximum extent possible -written notification 24 hrs prior to blasting to be given to adjacent prop owners and those within 300 ft
488A	North Idaho Crushing	2001	Drilling, blasting, crushing loading, hauling 6 am-9pm loading and hauling 7 am-5 pm	blasting 6 am-9 pm	Monday - Friday Saturday	limited to 75,000 tons per blast	Maximum of 200,000 tons per year	-compliance w/local, state, fed, rules and regulations -dust abatement to be employed while crusher is in operation -lighting to be directed away from residents to maximum extent possible -written notification 3 days prior to blasting to be given to landowners within 1/2 mile radius 300 ft

LCZC Hrg: CUP653C
 Applicant: Lisher
 Exhibit #: 11
 Date: 12/2/2009

LATAH COUNTY ROCKPIT CUPS

4/27/2007

556	Donald Eichner	1997	not specified	not specified	not specified	-----	-----	<ul style="list-style-type: none"> -Compliance w/federal, state county and local statutes -notification of Kendrick School District 2 days prior to crushing/hauling operations
653	George Lisher	2004	7 am- 5 pm	Blasting shall not occur between 7 am-9:30 am and 2:30pm-4 pm on days school in session	Monday - Friday Not on Federally recognized holidays	No more than 30,000 tons per blast	No more than 60 loads or 870 tons whichever is greater shall be hauled from site during any week	<ul style="list-style-type: none"> -No more than 75,000 tons shall be blasted, crushed, removed from site -excavation site limited to 2-acres -permit expires in 6 years
658	Scarsella Brothers, Inc.	2004	not specified	not specified	not specified	-----	-----	<ul style="list-style-type: none"> -compliance w/local, state, fed, rules and regulations -future excavation limited to add'l 10-acres
663	North Latah Hwy District	2004	5 am- 9 pm	5 am - 9 pm	not specified	-----	-----	<ul style="list-style-type: none"> -compliance w/local, state, fed, rules and regulations -dust abatement to be employed while crusher is in operation -lighting to be directed away from residents to maximum extent possible -written notification 48 hrs prior to blasting to be given to adjacent prop owners and those within 300 ft -site to be gated and locked while not in use -permit to expire in 10 years
673	Del Cone	2005	6 am- 9pm	6 am- 11:59 pm Monday-Saturday	Monday-Sunday	-----	-----	<ul style="list-style-type: none"> -All property owners w/in one mile of pit notified 24 hours prior to blasting -lighting directed away from adj. properties and Hwy 6 to eliminate glare



Application for Conditional Use Permit

Instructions

Please complete the application and required attachments. For certain uses, additional information may be necessary. Incomplete applications or applications without all required attachments will not be accepted. A public hearing will be scheduled only after Staff has determined the application is technically complete.

Please submit to: **Latah County Department of Planning & Building**
Latah County Courthouse 522 S Adams, Room 205, P.O. Box 8068, Moscow, ID 83843 (208) 883-7220

1. Applicant Information			
a. Applicant Name George Lisher	b. Home Phone 875-1466	c. Work Phone	
d. Mailing Address 1090 Lisher Court Off	e. City Potlatch	f. State	g. Zip code 83855
h. Property Owner (if different than applicant) Wabser Ranch Inc	i. Home Phone	j. Work Phone	
k. Mailing Address 1221 Flannigan Crk	l. City Potlatch	m. State ID	n. Zip code

2. General Site Information			
a. Assessor's Parcel Number(s) RP41WASW230023A		b. Parcel Address (if applicable)	
c. Acreage of Existing Parcel 270	d. Zoning A16	e. Comprehensive Plan Designation Rural	f. Floodplain designation(s) C
g. FEMA Panel # 0135-045		h. Is the parcel within an Area of City Impact? <input type="checkbox"/> Yes. <input checked="" type="checkbox"/> No.	
i. Impact City		j. Road Used to Access Site Flannigan Creek	

Note: Sites within an area of city impact may require additional notification time prior to public hearings or a hearing before the other jurisdiction.

i. Existing Uses Ag & Rockpit		
3. Service Provider Information (please attach additional information if requested)		
a. Fire District Potlatch	b. Road District North Latah HD	c. School District Potlatch
d. Source of Potable Water (i.e. water district or private well) na	e. Sewage Disposal (i.e. sewer district or private septic system) na	

4. Adjacent Properties Information	
a. Zoning of Adjacent Properties Ag / forest	b. Existing Uses of Adjacent Properties Grazing - Timber - Ag

5. Permit Information
a. Proposed Use Ammend Cup 653 to crush more Rock

b. What provision of the Latah County Zoning Ordinance allows the proposed use to be considered for a Conditional Use Permit in the Zoning District in which the property is located?

Note: If the proposed use is not specifically listed, please contact the Department prior to submittal to determine if the use is similar to those that are specifically listed as conditionally permitted uses. The Department may require additional information in order to make a determination.

6. Authorization	
The applicant does hereby certify that all of the above statements and information in any attachments transmitted herewith are true, and further acknowledges that approval of this application may be revoked if it is found that any such statements are false.	
a. Signature of Applicant George Lisher	b. Date 11-1-09
c. Signature of Property Owner (if different than applicant) Wabser Ranch, Inc. Tony Wabser	d. Date 11-1-09

7. Attachments	
All attachments should be reproducible in black and white at 8 1/2" x 11"	
<input checked="" type="checkbox"/> Fee: (\$200.00) Make checks payable to Latah County.	
<input checked="" type="checkbox"/> Completed Narrative Worksheet: See instructions on the Conditional Use Permit Narrative Worksheet.	
<input checked="" type="checkbox"/> Site Plan: The site plan should include a north arrow, location of roads and rights-of-way, existing buildings, improvements and features; the location and dimensions of proposed facilities, improvements and operations; as well as any other details necessary for the Zoning Commission to make a decision.	
<input checked="" type="checkbox"/> Vicinity Map: The map should show the site location in relation to neighboring communities and natural features.	
<input checked="" type="checkbox"/> Assessor's Plat Map: Include a copy of that portion of the map that shows the subject parcel and adjoining parcels.	
<input checked="" type="checkbox"/> Other Attachments: Required by staff / Zoning Commission for certain proposed uses.	

Office Use Only			
Date Received 11-4-09	Amount 200-	Receipt No. 371815	By AS
CUP # 653C	Date Determined Technically Complete 11-4-09		By AS
Hearing Date 12-2-09			

LCZC Hrg: CUP653C
Applicant: Lisher
Exhibit #: 2
Date: 12/2/2009



Conditional Use Permit Narrative Worksheet

Application Information

Applicant's Name

George Lisher

Phone Number

875-1466

Purpose: To assist the Zoning Commission in making an informed decision regarding the applicant pursuant to the requirements of the Latah County Land Use Ordinance.

Instructions: Please respond to each section of this form. If you need more space, you may attach additional sheets to the worksheet.

Description of Proposal

Describe your proposal in detail. Include all aspects of your proposal.

Crush more Rock Aprox 200,000 tons

Current Reclamation Plan on file At Dept of Lands

need to Chang operating hours 6 to 6

Chang Current Restriction - 60 ~~ton~~ per week

Existing Uses of Property

Please describe what uses, structures and features currently occupy the property.

Current Rock pit - Grazing - Ag - forest

Consistency Requirements

Please respond to each of the three criteria listed in Section 7.01.02 of the Latah County Land Use Ordinance by explaining how your proposal meets each criteria. If the provided space is insufficient, please attach your responses to this packet.

A. The use is not detrimental to the health or safety of those in the surrounding area and will not otherwise adversely affect permitted uses or the enjoyment of such uses in that zone to any greater extent than a permitted use in that zone.

Current Cup 653

B. The use will not require facilities or services with excessive costs to the public.

no

g. Transportation Element

Connects to Glennon Ck Rd

h. Natural Resource Element

Rock pit

i. Special Areas Element

NA

j. Hazardous Areas Element

fenced area

k. Recreation Element

Hunting

l. Land Use Element

Ag - forest

m. Property Rights Element

need to be equal to other properties

C. The use is not in conflict with the goals and policies of the Comprehensive Plan.

Current Cap 653

In addition to your response above, please explain your proposal's consistency with the proceeding elements of the Comprehensive Plan. If a certain element is not applicable to your proposal, please explain why. Please refer to the Latah County Comprehensive Plan for specific goals and policies of the particular elements.

a. Community Design Element

b. Population Element

Rural Low Density

c. Housing Element

~~Current~~ ~~Cap~~ nearest Dwelling 1/2 mile Away

d. Economic Development Element

GIVES ME A JOB

e. Public Services, Facilities, and Utilities Element

County Benefited by lowering transportation costs

f. School Facilities and Student Transportation Element

Current School Bus turnaround 140 feet to the south

CONDITIONAL USE PERMIT NARRATIVE WORKSHEET

Name – George Lisher
208-875-1466

Description of Proposal

The applicant proposes to blast, excavate, and crush basalt rock from the site described in the Application for Conditional Use Permit and shown on the site plan map, for sale to both private and public businesses or entities, including the North Latah County Highway District. The applicant anticipates that purchasers of crushed rock may at times want to operate asphalt hot plants on the site and applicant seeks approval for crushing and asphalt hot plant operations and activities incidental to such operations. Drilling and blasting will be accomplished through contracts with a licensed blasting company. Crushing will be performed on site and rock will be stockpiled on site until sold and removed by the purchaser. Applicant intends to conduct operations for a period of at least six years and estimates excavation of approximately 150,000 tons of rock. The size of the area to be excavated is expected to be two acres or less. Much of the rock to be excavated has no overburden. Applicant intends to stockpile all overburden for use in reclamation. Reclamation will be completed as required by the Latah County zoning ordinance. Applicant will submit a reclamation plan for state approval upon receiving the conditional use permit. The excavated area will be fenced as required by the zoning ordinance and access will be controlled by locked gates.

Existing Uses of Property

grazing, natural mineral resources

Consistency Requirements

1. The use does not significantly affect any of the objectives of the comprehensive plan. While the site is identified as having productive soils, the soils mapping is in error. The site to be excavated has little to no topsoil and is therefore unsuitable for agriculture. It is marginal timber land at best for the same reasons. The use will help achieve a solid broad-based and sustainable economic foundation because it makes use of land otherwise unsuited to any economic activity except grazing. The use will require no public services other than public road access and therefore does not offend the objective of clustering commercial uses in and around areas with adequate public services. The rural character of Latah County will not be significantly affected and there are no known unique cultural, scenic or natural amenities in the vicinity requiring protection. Lastly, the proposed use is consistent with the objective of ensuring that land use policies do not unconstitutionally violate private property rights.

- a. **Community Design Element** – The community design element is only marginally relevant. The proposed use is best located in rural areas

LCZC Hrg: CUP653C
Applicant: Lisher
Exhibit #: 2A
Date: 12/2/2009

because of its potential adverse effects on residential uses. There are no residential developments in the vicinity and the nearest single family residences are approximately one-half mile from the site.

- b. **Population Element** – This element is not applicable as the proposed use involves no residential development.
- c. **Housing Element** – This element is not applicable because the proposed use involves no residential construction.
- d. **Economic Development Element** – The proposed use is consistent with and furthers the goals and policies of the economic development element. It should be considered a supporting activity for forestry because of the need for gravel on existing and newly constructed forest roads. It is a land use appropriate to local economic needs because it generates economic activity from the use of a basic resource. The North Latah County Highway District commissioners have indicated that they are very receptive to a rock source being opened at the site “since it would be of great benefit to the North Latah County Highway District, and to Latah County in general.” (See attached letter). The use furthers the goal of encouraging economic diversification consistent with other goals and policies of the comprehensive plan, and development of the site can be controlled so as to be compatible with the natural environment and existing land uses. The site’s location in a sparsely populated rural area minimizes potential impacts of excavation and processing operations on existing residences and the requirements of the zoning ordinance for reclamation and restoration help ensure that when operations are completed, other beneficial uses will not be precluded. The conditions proposed by the applicant will further ensure protection of existing residences.
- e. **Public Services, Facilities, and Utilities Element** – This element is inapplicable because the proposed use requires no additional public facilities or services.
- f. **School Facilities and Student Transportation Element** - This element is inapplicable because the proposed use involves no new residential development having potential impact on school facilities or student transportation.
- g. **Transportation Element** - This element is only marginally affected by the proposed use. Trucks will be entering and leaving the site during hours of operation. Flannigan Creek Road is not heavily traveled and there are no apparent significant impacts of traffic associated with the proposed use.

- h. **Natural Resource Element** - The site is approximately one-quarter mile from Flannigan Creek. It is not in a floodplain and no wetlands will be affected. The area directly to the east of the site is sparsely timbered. There are no other areas of natural significance in the vicinity. The use will generate dust during hours of operation in dry weather and if asphalt hot plants are operated, smoke will be produced. As the prevailing winds are from the west, it is expected that the dust and smoke will move to the east away from the nearest residences which are approximately one-half mile west of the site. Activities on the site will not affect ground water. There is no known critical wildlife habitat in the vicinity.
- i. **Special Areas Element** - This element is inapplicable because there are no special areas in the proximity of the site.
- j. **Hazardous Areas Element** - This element is inapplicable because no hazardous areas, such as floodplains or unstable slopes, are affected.
- k. **Recreation Element** - This element is inapplicable because it neither proposes nor affects recreational uses.
- l. **Land Use Element** - The proposed site is designated as rural by the comprehensive plan. Its soils are less productive. The proposed use is consistent with the objective of protecting the area from conversion to more concentrated residential, commercial or industrial development because this is a single isolated development with minimum impact on existing residential or other uses in the vicinity.
- m. **Property Rights Element** - This element is inapplicable except to the extent that approval of the use would permit the landowner, through the applicant, to make economic use of its private property.
2. The use is not detrimental to the health and safety of those in the surrounding area or region. The impact of the proposed use will be confined to the site. Blasting will be controlled and no flyrock is expected to leave the site. The closest potential impact of flyrock would be to traffic on Flannigan Creek Road, approximately one-quarter mile from the site. It is unlikely that flyrock would reach the road. The closest residents will hear the blasts. These will occur infrequently, estimated at one day every three to four years. Smoke from asphalt hot plants is unlikely to have any effect on persons living in the area because of the distance to the nearest residences and the likelihood that any smoke will dissipate before reaching those residences.
3. The use will not adversely affect surrounding properties to a greater extent than would a permitted use in the zoning district. Permitted uses in the zone include agriculture, grain elevators, seed warehouses and agricultural service industries, as well as small sawmills and fire stations. The proposed use is expected to generate no more

dust or noise than these permitted uses, with the exception of infrequent blasting, as indicated above.

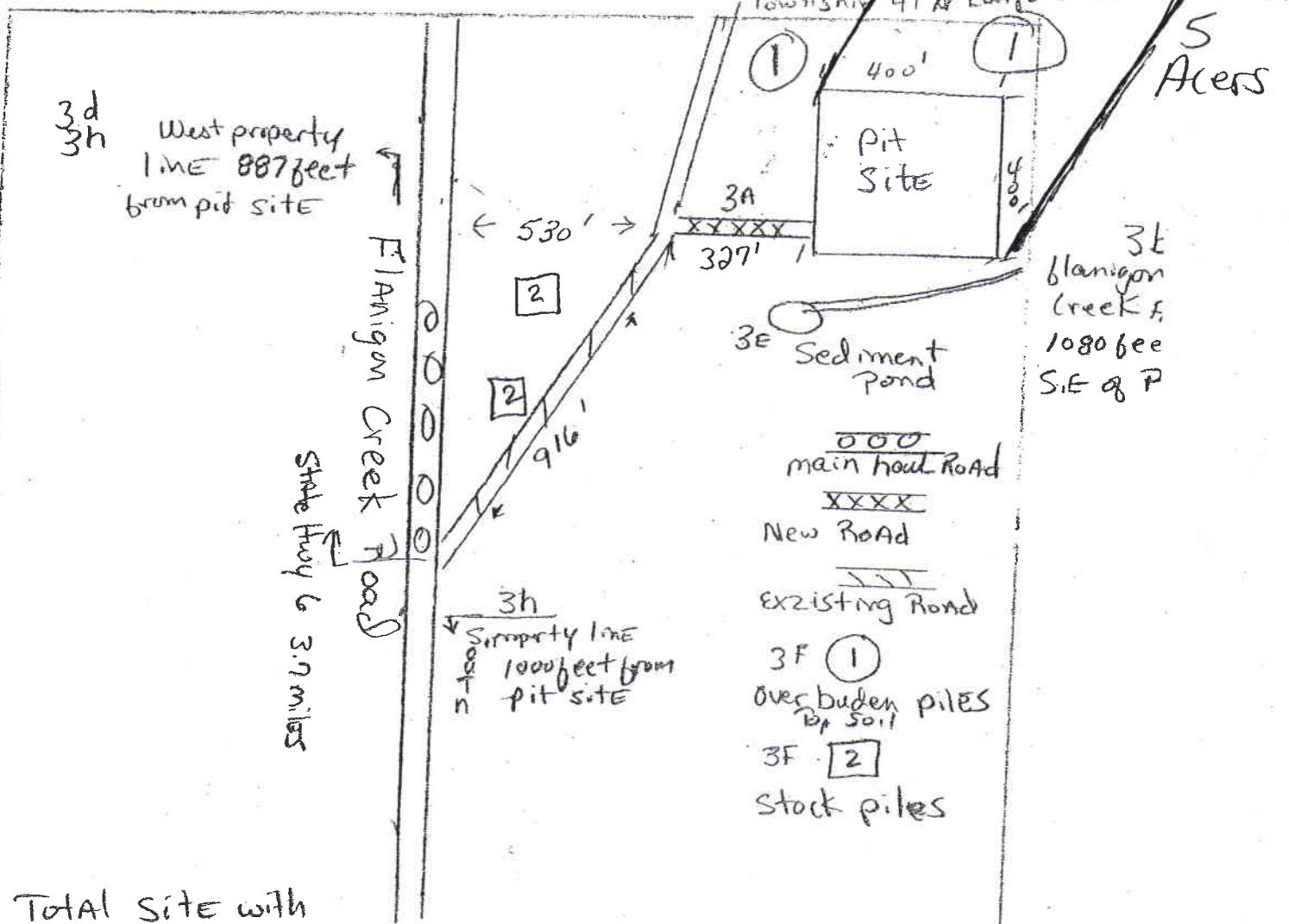
4. The use will not require facilities or services with excessive costs to the public. No new facilities or services will be required. To the extent there will be additional truck traffic on Flannigan Creek Road, it is not expected to substantially increase maintenance costs.

George Lisher
MAP 1

(N)

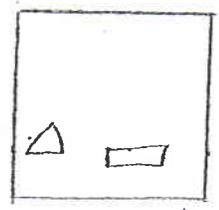
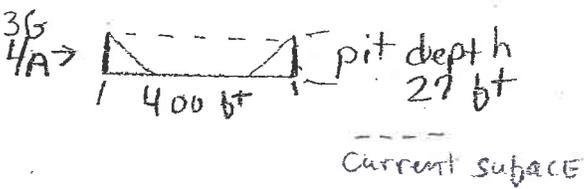
Purposed
New Ad

SWNE Section 23
Township 41 N Range 5 West
TOTAL 5 Acres



Total site with
stock piles 3 Acres

pit wall will be
put at A lot slope



pit site

Rock Crusher

Generator will
house fuel storage

1 inch = 400 feet

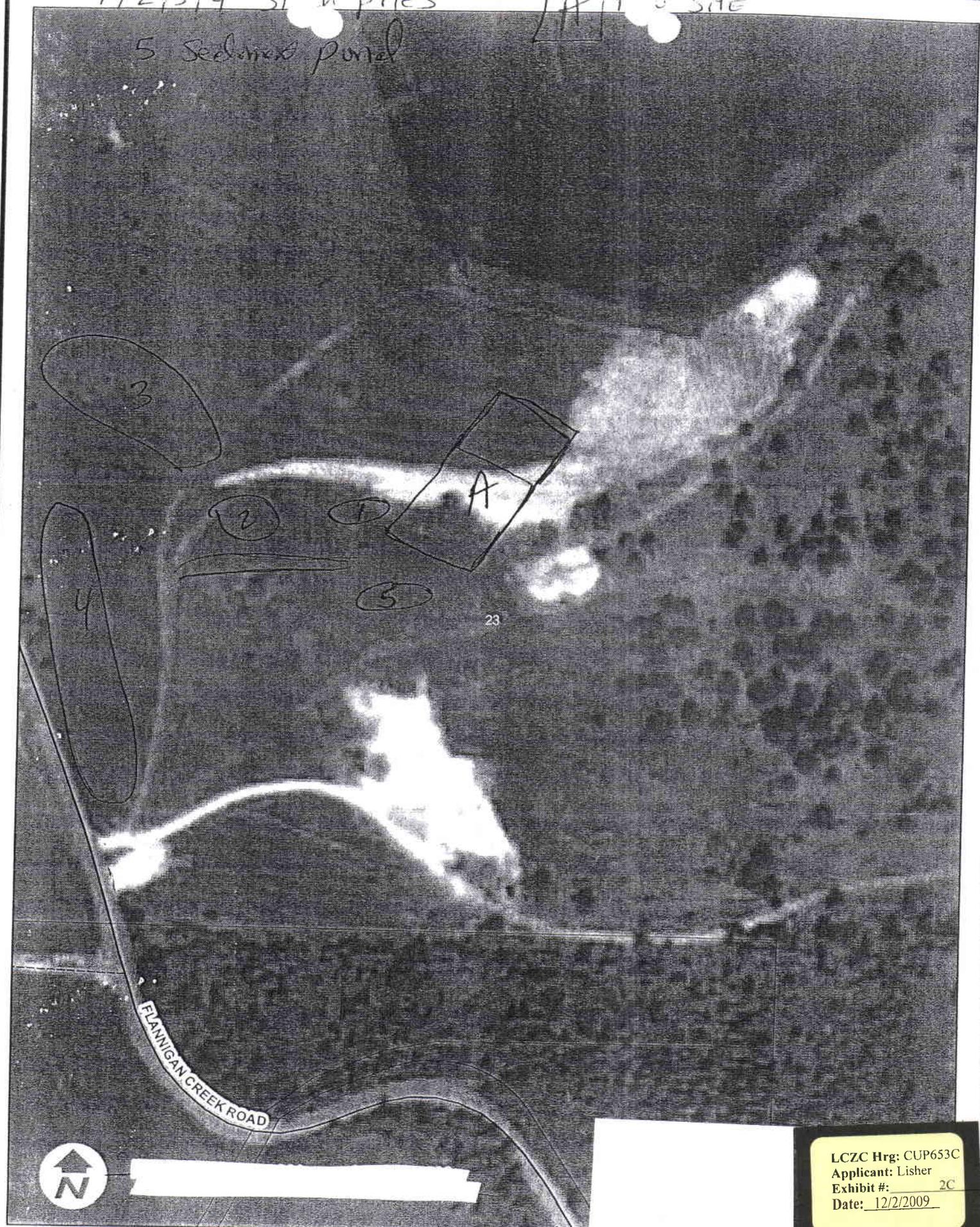
LCZC Hrg: CUP653C
Applicant: Lisher
Exhibit #: 2B
Date: 12/2/2009

RECEIVED

1, 2, 3, 4 St in piles

1A/1B SITE

5 Sediment pond



not to scale

LCZC Hrg: CUP653C
 Applicant: Lisher
 Exhibit #: 2C
 Date: 12/2/2009

1 inch equals 600 feet

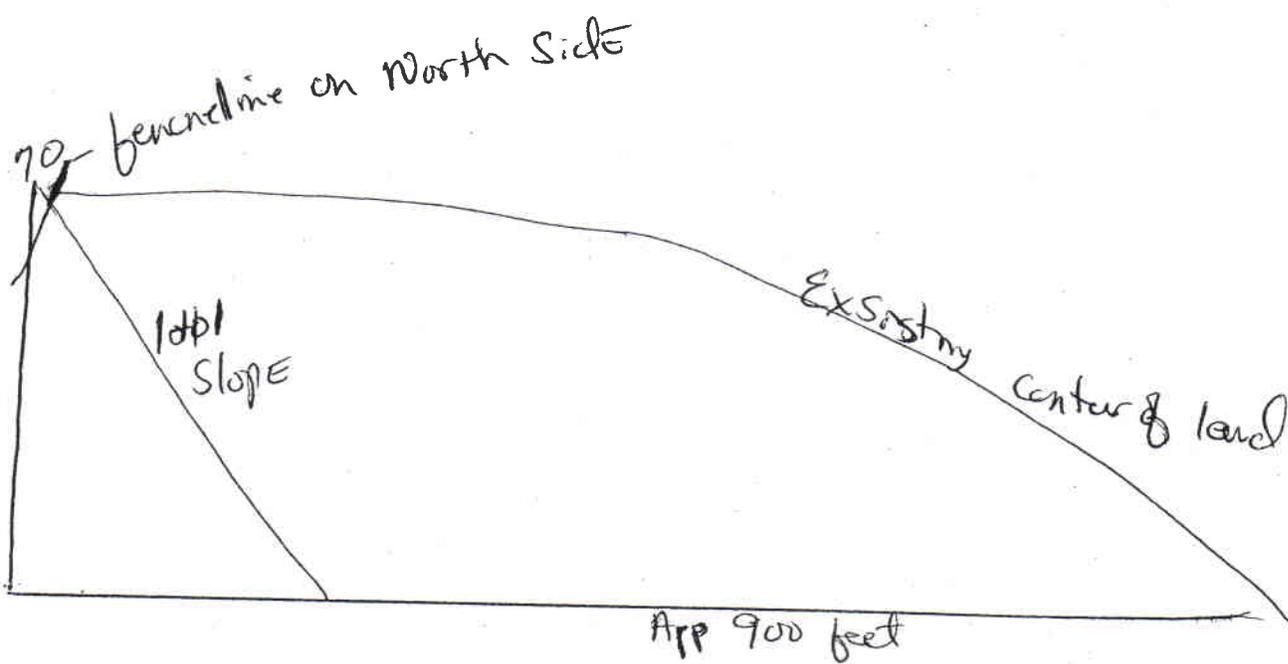
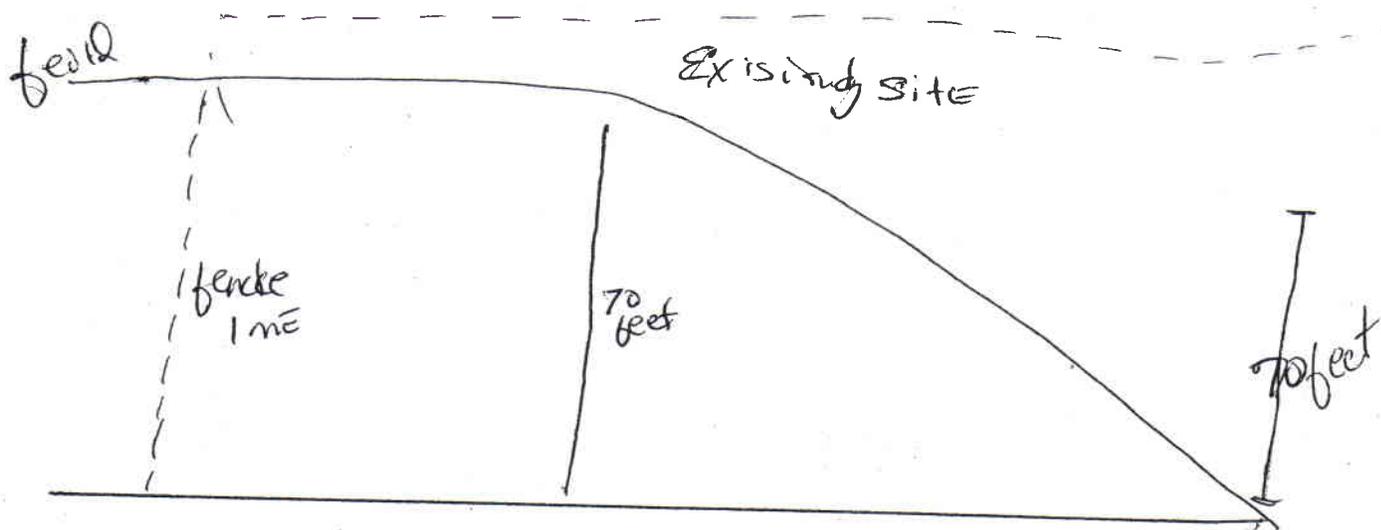
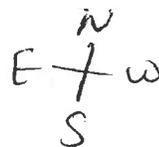


Cup 653

New Expansion

LCZC Hrg: CUP653C
Applicant: Lisher
Exhibit #: 2D
Date: 12/2/2009

Cup 055
Cross Section



Not to Scale

LCZC Hrg: CUP653C
Applicant: Lisher
Exhibit #: 2E
Date: 12/2/2009

INTRODUCTION CUP 653C

A request by George Lisher to modify CUP #653 to increase hours of operation, and delete conditions 6, and 7. Mr. Lisher's rock pit is located approximately three miles south of the City of Potlatch and adjacent to Flannigan Creek Road, in Section 23, Township 41 North, Range 5 West, B.M., in Latah County, and is currently referenced as Assessor's Parcel Number RP41N05W230023A.

In 2007 Mr. Lisher requested several modifications to his existing rock crushing and excavation operation (CUP 653). This request (CUP 653B) was denied by the Latah County Zoning Commission with the exception of approving the request to delete condition #4 related to the recovery of cultural resources by the Coeur d'Alene Tribe. Mr. Lisher has submitted a similar request which is the subject of the current proposal.

Facts of application and the information submitted

1) Section 7.01 requires that specific uses within a particular zone require special consideration prior to being permitted in that zone (Section 3.01, Latah County Land Use Ordinance)

The Latah County Land Use Ordinance, under section 3.01.02(7), lists mineral resource developments subject to Section 4.03 as a conditionally permitted use in the Agriculture/Forest (A/F) Zone.

2) Section 7.01.01 requires that an application for a conditional use be made by the owner of the affected property.

The site is owned by Walser Ranch, Incorporated. Terry Walser signed the application on behalf of Walser Ranch, Inc. George Lisher, the applicant, signed and submitted the application on November 4, 2009.

3) Section 7.01.02 requires:

1. A conditional use permit may be granted if the Zoning Commission finds that the proposed use conforms to each of the following criteria:

- A. The use is not detrimental to the health and safety of those in the surrounding area and will not otherwise adversely affect permitted uses or the enjoyment of such uses in that zone to any greater extent than a permitted use in that zone;
- B. The use will not require facilities or services with excessive costs to the public;
- C. The use is consistent with the goals and policies of the Latah County Comprehensive Plan.

LCZC Hrg: CUP653C
Applicant: Lisher
Exhibit #: 3
Date: 12/2/2009

2. **If the Zoning Commission finds that a proposed use is essential to the public health, safety, or welfare, such use may be permitted even if the use is not found to meet the criteria listed above.**
3. **The Zoning Commission shall have the authority to set an expiration date for any conditional use permit so long as the reasons for such are included in their finding of fact and conclusions of law.**

4) *Section 4.03.03 New Mineral Resource Developments states the following:*

Any mineral development which is not registered as an existing development or does not qualify to be registered as an existing development, not exempt as per Section 4.03.04 of this ordinance, or does not have an existing conditional use permit, shall be considered a new development. Prior to operation, all new developments must obtain a conditional use permit under the provisions of Section 7.01 of this ordinance. In addition the Zoning Commission shall, as a minimum, place the requirements of Section 4.03.02 upon any newly permitted mineral development, unless making specific findings supporting the omission or alteration of the requirements of Section 4.03.02. Mineral resource developments which have been granted a valid conditional use permit prior to one year after adoption of this ordinance shall be considered permitted and shall observe all conditions previously established. New mineral resource developments shall be exempt from the provisions of Section 7.01.07 of this ordinance. The following are requirements for operation of all new mineral resource developments:

1. Activity associated with a mineral resource development shall be at least 1,000 feet from any home existing at the time of application for conditional use permit, unless a lesser distance is approved by the Zoning Commission. A lesser distance shall not be approved unless the applicant submits a signed notarized form, approved by the Planning Department, from all owners of record of any residential building within 1000 feet of the development consenting to the location of the mineral resource development. Each form shall be recorded in the Latah County Recorder's Office by the Planning Department. Approval of a distance less than 1000 feet shall be within the discretion of the Zoning Commission, even if all owners of residential buildings within 1000 feet approve of the location of the development.
2. The operator of a mineral resource development must provide at least a 75 foot undisturbed or natural buffer on the perimeter of mineral resource development operations. The buffer and the area of mineral resource development operations shall be maintained so that they are continuously free of all noxious weeds as determined by the Latah County Noxious Weed Control Superintendent. Frontage on a public road does not require a buffer. Activities associated with a mineral resource development shall not be allowed within the 75 foot buffer area. Location and specifications for access road(s) shall be determined by the Zoning Commission.

3. To protect aquatic and terrestrial habitat and other biological resources, all mineral resource developments and mineral resource development operations shall be set back at least 75 feet from perennial streams and 30 feet from any intermittent streams shown on USGS 7.5 minute maps; except for stream crossings that are regulated by a state or federal regulatory system and those activities permitted under the Idaho Placer and Dredge Mining Protection Act from the Idaho Department of Lands, a Stream Channel Alteration Permit from the Idaho Department of Water Resources, a Dredge and Fill Permit from the U.S. Army Corps of Engineers, a Development Permit from the Latah County Planning Department, and / or a National Pollution Discharge Elimination System permit from the U.S. Environmental Protection Agency. Applicable permit documentation shall be provided to the Zoning Administrator prior to onset of mineral resource development.

4. The applicant shall prepare and submit the following plans with the application for a conditional use permit:

A. Dust abatement plan to include mineral resource development operations and all access roads.

B. A plan for coordination with County response units for hazardous materials transport and use and emergency spill response.

C. A plan for procedures and protocols for spill containment and storage of oil, fuels, and/or chemicals; and documentation of compliance with the state and federal laws or documentation of exemption from requirements.

D. A plan for fire suppression and response, including an inventory of tools stored on-site to implement planned suppression and response.

5. The applicant may be required to post a bond with the Latah County Planning Department to assure full compliance with the proposed plans and provisions of this section. The amount of the bond shall be determined by the Latah County Zoning Commission.

5) Section 4.03.02 requires the following

1. Hours of operation are limited to 9 AM to 6 PM daily. An operator may vary from this requirement by applying for a conditional use permit under the provisions of Section 7.01 of this ordinance.

2. Written verification of compliance with the Idaho Surface Mining Act, including filing of any reclamation plan required by the Idaho Surface Mining Act.

3. The excavation site, any overburden and stockpiles, and a 50 foot buffer strip surrounding these areas shall be maintained so that they are continuously free of all noxious weeds as determined by the Latah County Noxious Weed Control Superintendent.
4. The operator shall provide, by certified mail, written notification to all residences within one mile of any blasting. The notification shall be distributed and in the possession of the occupants of these residences at least 72 hours prior to any blasting. The notification shall give the date and time of the planned blast.
5. Blasting shall be restricted to the hours of 9:30 AM to 4:30 PM, Monday through Friday. No blasting shall occur on Saturdays, Sundays, or the following holidays: January 1, Memorial Day, Labor Day, Thanksgiving Day, and December 25.
6. An owner or operator may request, and the Director may grant, an exception to provide for additional hours of operation for a mineral resource development when additional hours of operation are needed to alleviate a public emergency. Public emergencies include the following:
 - A. Damage to public roads or structures that require immediate repair.
 - B. Road construction or repair that is scheduled during nighttime hours to reduce traffic conflicts.
7. Signs, upon approval of the signs by the Planning Department, warning of truck entrances shall be posted within one-quarter (1/4) mile of the site's entrance onto a public road.
8. The mineral resource development shall be marked by warning signs posted 200 feet from mine operations.
9. A plan to retain storm water runoff within the mineral resource development boundaries.

Exhibits will now be entered into the record:

- Exhibit #1. Staff Report
- Exhibit #1A. Criteria Worksheet
- Exhibit #1B. Vicinity and Comprehensive Plan Land Use Map
- Exhibit #1C. Zoning Map
- Exhibit #1D. Adjacent Owners and Aerial Photograph Map
- Exhibit #1E. CUP 653B Findings of Fact and Conclusions of Law (Zoning Commission)
- Exhibit #1F. CUP 653A Findings of Fact and Conclusions of Law (Board of County Commissioners)
- Exhibit #1G. CUP 653A Findings of Fact and Conclusions of Law (Zoning Commission)
- Exhibit #1H. CUP 653 Findings of Fact and Conclusions of Law (Board of County Commissioners)
- Exhibit #1I. List of Latah County Rockpit CUPs
- Exhibit #2. Application Form (Submitted by Applicant)
- Exhibit #2A. Applicant's Narrative (Submitted by Applicant)
- Exhibit #2B. Site Plan Map (Submitted by Applicant)

- Exhibit #2C.** Site Plan Map on Aerial Photo (Submitted by Applicant)
- Exhibit #2D.** Topographic Map (Submitted by Applicant)
- Exhibit #2E.** Cross Section Map (Submitted by Applicant)
- Exhibit #3.** Staff Introduction for Latah County Zoning Commission hearing for CUP653C on Wednesday, December 2, 2009.
- Exhibit #4.** Letter to Latah County Planning and Building Department from Rep. Tom Trail received November 25, 2009



**House of Representatives
State of Idaho**

November 23, 2009

RECEIVED

NOV 25 2009

LATAH COUNTY

To: Latah County Commissioners

From: Rep. Tom Trail

A handwritten signature in black ink, appearing to read "Rep. Tom Trail".

Subj: CUP #653

This is the third attempt that Mr. Lisher has made to amend the conditions of CUP #653. Mr. Lisher greed to the conditions that were set after seven long public hearings with the Latah County Commissioners in 2004. I attended a number of these. Mr. Lisher was told by the County and Planning Board not to come back agin if he didn't have a different set of amendments. The second time he tried to get a change he made no changes with his proposed amendments and we are fashed with the same situation on the third time around. I believe that you call a CUP because it is an agreed upon conditions.

Many of my constituents have great concerns over Mr. Lisher's efforts and have grown weary of the process. One of the concerns is the entrance is on a blind corner. I recently went by the gravel pit and it appears that fencing is inadequate. Gravel trucks stop partially blocking the road while gates are being open.

My constituents can live with the current CUP but if any of the amendments proposed by Mr. Lisher are approved it will greatly make a negative impact on the rural life style of my constituents who bought or built in the area before the gravel pit went in. I urge you to disallow approval of the amendments that Mr. Lisher has brought forward.

LCZC Hrg: CUP653C
Applicant: Lisher
Exhibit #: 4
Date: 12/2/2009

November 25, 2009

From: Linda and Steve Norton
1178 Flannigan Creek Road, Viola, ID

Re: Modifications to CUP 653C

To the Latah County Zoning Commission:

This is at least the 10th meeting called to deal with CUP 653 over the last 6 years. There were over 120 exhibits entered into the public record and more than 40 hours of public testimony. Clearly, this is a contentious conditional use of the land on Flannigan Creek Road. The conditions placed on CUP 653 addressed several problems unique to this gravel pit operation. They made it safer for the people who drive the narrow road and for the school bus that turns around here after picking up children who wait for the bus across from the gravel pit entrance. These conditions were intended to help the neighboring families cope with the difficult conditions generated by the pit and make living across from an operating gravel pit less objectionable. George Lisher accepted the conditions placed on the gravel pit when he began his operation. Mr Lisher has applied to have the conditions on the permit deleted at least 3 times since the permit was issued. He has not shown that any of the reasons for which the conditions were placed on the permit have changed. He knew from the beginning the conditions would affect his operation. To allow modifications of the operating conditions at this time would be contrary to the intent of the CUP.

We would like to comment on a few things that have happened since the gravel pit operation began. The permit allowed for 75,000 tons of rock to be blasted and crushed. In Oct, 2004 60,000 tons of rock was blasted in two 30,000 ton blasts. Eight days after the blasting, the Lazzarini's well quit delivering water. Their well was closest to the blast site. In November, after deciding the blasting company would not cover their loss they drilled a new well at their own expense. George Lisher testified on May 5, 2007 that on that day in Oct 2004 four blast caps did not detonate. Would there have been more damage if all the caps detonated?

Gravel was crushed from January to March of 2005. The noise of crushing 60,000 tons gravel lasted 2 months! How long would it take to crush 200,000 tons? Thankfully, the conditions put on the CUP are helping here by limiting the duration of the noise to between 7 am and 5 pm and families do not have to endure early and late-day noise. But some of these families work at home (Forest Nursery), some are stay-at-home Moms who home-school their children, some are retired. They must suffer the day-long noise. This is a place of business for George Lisher, but it is home to everyone else and there is no getting away from the noise and traffic from loading and hauling gravel.

We understand that running a gravel pit is a business and gravel pit owners and blasters do not want to incur extra costs that effect their bottom line. But who is bearing the costs here? Mr. Lisher doesn't live near the gravel pit, so he bears none of the negative effects of living near a gravel pit. It is Don, Carolyn and their family as well the other 2 families that risk damage to their homes, wells, and property due to blasting, they suffer the unbearable noise level that results from 2 months of gravel crushing and the constant erosion of their quality of life caused by general gravel pit operation. It is the neighbors and their children who pay the price.

The 60,000 tons of gravel in 2 piles at the pit appears to have been used for 2 purposes over the last 5 ½ years. One pile is for use by the North Latah County Highway District and one pile is to be sold and hauled by Mr Lisher. The pile used by the North Latah County Highway District is significantly reduced, the pile sold by Mr Lisher is only half gone. It appears that this CUP supports a gravel pit that does not have much of a market outside of the North Latah County Highway District and therefore should not be considered for modification.

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LCZC Hrg: CUP653C
Applicant: Lisher
Exhibit #: 9
Date: 12/2/2009

It is my understanding that Mr Lisher's gravel business is to be considered as an independent business and separate from the operation of the North Latah County Highway District. The North Latah County Highway District is just one of his possible buyers. A private pit does not have to, or may not have the opportunity to sell to the North Latah County Highway District. It is important that the county provide equal opportunity to gravel pit operators. It is not imperative to keep this pit in operation for use by the North Latah County Highway District insuring that George Lisher has the county's business. There may be other pit owners who would like the county's business who are being excluded from contracting with the North Latah County Highway District because of the county's continued business with Mr Lisher. Therefore the gravel pit operation must be considered separate from the needs of the North Latah County Highway District.

The whole issue of the reduction in property value that results from an operating gravel pit opening across the street from your home after you purchased your property, within sight of your home, within earshot, within a quarter of a mile has been discussed at these hearings. Several realtors have commented that it would effect the value of the home and that it is an item that requires disclosure to future buyers. It seems pretty obvious that unless you own the gravel pit you live next to, it is undesirable to live so close to an operating gravel pit and that this will make your property harder to sell and be the cause of reduced value. One of the conditions of the CUP is that it is to expire 6 years from issue and the reclamation plan implemented. This should occur May 12, 2010 at which time these property owners will have their property value restored. It seems fair and reasonable that this proceed as spelled out in the original CUP as it was a condition on which the CUP was issued and all parties were aware of it.

Over the past 5.5 years George Lisher got to run a gravel pit business at this location, the adjacent property owners were allowed some conditions on the permit to make life near a gravel pit more palatable, but now it is time to let the permit expire and let some other gravel pit owner apply for the North Latah County Highway District business. It seems that the Latah County Zoning Commission and the Board of Latah County Commissioners have tried to be fair in this matter and we urge you to leave unchanged all the conditions currently on the permit.