

LATAH COUNTY ZONING COMMISSION EXHIBIT LIST

Public Hearing: on CUP 811 **Date:** February 1, 2017 **Time:** 5:30pm

Applicant: George Lisher

File #: CUP #811

EXHIBITS:

- Exhibit #1.** BOCC Motion and Order
- Exhibit #1A.** Case No. CV10-01009 Opinion and Order on Petition for Judicial Review
- Exhibit #1B.** Findings of Fact and Conclusions of Law for CUP 811
- Exhibit #1C.** Findings of Fact and Conclusions of Law for CUP 653
- Exhibit #1D.** Findings of Fact and Conclusions of Law for CUP 653A
- Exhibit #1E.** Findings of Fact and Conclusions of Law for CUP 653B
- Exhibit #1F.** Findings of Fact and Conclusions of Law for CUP 653C
- Exhibit #1G.** Packet for CUP 811 from June 2, 2010
- Exhibit #1H.** Recording of CUP 811 from June 2, 2010
- Exhibit #2.** Email submitted by Steve and Linda Norton on January 23rd, 2017
- Exhibit #3.** Packet received from Don and Carolyn Lazzarini on January 23rd, 2017
- Exhibit #4.** Letter submitted by Koehn Family on January 23rd, 2017



LATAH COUNTY
BOARD OF COMMISSIONERS
MOTION AND ORDER

P.O. Box 8068 ♦ 522 S. Adams ♦ Moscow, ID 83843
 (208) 883-7208 ♦ Fax: (208) 883-2280
 bocc@latah.id.us

COMMISSIONER Lamar MOVES THAT THE BOARD:
 Remand the matter of Conditional Use Permit # 811 to the Latah County Zoning Commission to
 take action as follows:

1. To recommend Findings of Fact and Conclusions of Law pursuant to the District Court's Order on Petition for Judicial Review entered in Lisher v. Latah County, Latah County case no. CV-2010-1009.
2. To hold a public hearing to update the record and make a recommendation to the Board of Commissioners regarding the request by Conditional Use Permit Holder, George Lisher, to modify three terms of Conditional Use Permit # 811. Those requested modifications are limited to the following issues:
 - a. Whether Condition 8 of Conditional Use Permit # 811 should be modified to provide for unlimited hauling of loads on the county road or, in the alternative, expanded limits on the load amount permitted to be hauled.
 - b. Whether Condition 18 of Conditional Use Permit # 811 should be modified to increase the term of Conditional Use Permit # 811 from 6 years to 10 years, or more.
 - c. Whether Condition 7 of Conditional Use Permit # 811 should be modified to eliminate the 75,000 ton blast, crush and removal limitations.

YES NO ABSTAIN

RECUSED
 Richard Walser, Chair
 District I

| | | |
|-------|-------|-------|
| _____ | _____ | _____ |
| ✓ | _____ | _____ |

[Signature]
 Thomas C. Lamar, Commissioner
 District II

| | | |
|--------------------|-------|-------|
| <u>[Signature]</u> | _____ | _____ |
|--------------------|-------|-------|

[Signature]
 David McGraw, Commissioner
 District III

ATTEST:
[Signature]
 Clerk/Deputy Clerk

DATE:
12-21-10

LCZC Hrg: CUP 811
 Applicant: Lisher
 Exhibit #: 1
 Date: 2/1/2017

ASK

FILED 6/15/15
A.M. 12:45 P.M. TWIN FALLS, IDAHO
BY [Signature]

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF LATAH

GEORGE LISHER, a single man,)
)
 Petitioner,)
)
 v.)
)
 LATAH COUNTY, acting through the)
 LATAH COUNTY BOARD OF)
 COMMISSIONERS and LATAH)
 COUNTY PLANNING AND BUILDING)
 DEPARTMENT,)
)
 Respondent.)
 _____)

CASE NO. CV10-01009
OPINION AND ORDER
ON PETITION FOR
JUDICIAL REVIEW

This matter is before the Court on Petitioner's Motion For Judicial Review. The Court heard oral arguments on this matter June 4, 2015. Petitioner George Lisher was represented by Danny Radakovich. Respondent Latah County was represented by Latah County Deputy Prosecutor Ashley Rokyta. The Court, having read the motion, briefs and affidavits submitted by the parties, and having heard oral argument of counsel, and being fully advised in the matter, hereby renders its decision.

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PROCEDURAL BACKGROUND

On September 24, 2010, George Lisher filed a Motion for Judicial Review of the Latah County Board of Commissioners' decision to affirm the Findings of Fact, Conclusions of Law, and Order of the Latah County Zoning Commission ("Zoning Commission"). Lisher applied for a conditional use permit to conduct mineral resource operations on three acres of a 280 acre parcel owned by Terry Walser.¹ Following a public hearing held on June 2, 2010, the Latah County Zoning Commission granted Lisher Conditional Use Permit #811. Lisher appealed the grant of the CUP to the Latah County Board of Commissioners, asserting the Zoning Commission made a number of factual errors and set restrictions not supported by the Zoning Commission's conclusions of law. The Latah County Board of Commissioners held a hearing on Lisher's appeal on August 2 and 9, 2010 and, after a full review of the record, on September 1, 2010 entered Findings of Fact, Conclusions of Law, and Order affirming the decision of the Zoning Commission. On September 24, 2010, Lisher filed the above-entitled Petition for Judicial Review.

STANDARD OF REVIEW

In a judicial review under the Administrative Procedures Act, a district court may not substitute its judgment for that of the agency as to the weight of the evidence presented. *Castaneda v. Brighton Corp.*, 130 Idaho 923, 926, 950 P.2d 1262 (1998); I.C. § 67-5279(1). "The court will defer to the agency's findings of fact unless those findings are clearly erroneous; the agency's factual determinations are binding on the reviewing court, even when there is conflicting evidence before the agency, so long as the determinations are supported by evidence in the record." *Castaneda v. Brighton Corp.*, 130 Idaho 923, 926, 950 P.2d 1262 (1998); citing

¹ Lisher had previously been granted a conditional use permit #635, in 2004, for the rock operation. His 2010 application at issue here sought to expand the conditions of operation.

South Fork Coalition v. Board of Commissioners of Bonneville County, 117 Idaho 857, 860, 792 P.2d 882, 885 (1990). A County's land use decision will be set aside if it (a) violates constitutional or statutory provisions; (b) exceeds the Commissioners' statutory authority; (c) is made upon unlawful procedures; (d) is not supported by substantial evidence on the record as a whole; or (e) is arbitrary, capricious, or an abuse of discretion. I.C. § 67-5279(3). Nevertheless, even if the Board errs in one of the above, the decision of the Board will be affirmed unless substantial rights of the petitioners have been prejudiced. I.C. § 67-5279(4). If the agency action is not affirmed, it shall be set aside, in whole or in part, and remanded for further proceedings as necessary. I.C. § 67-5279.

ANALYSIS

"Under the APA, specificity in the findings and reasons of the lower tribunal is vital". *Mercy Med. Ctr. v. Ada Cnty., Bd. of Cnty. Commissioners of Ada Cnty.*, 146 Idaho 226, 231-32, 192 P.3d 1050, 1056 (2008). "What is essential are sufficient findings to permit the reviewing court to determine that the Commission has acted non-arbitrarily." *Boise Water Corp. v. Idaho Pub. Utilities Comm'n*, 97 Idaho 832, 840, 555 P.2d 163, 171 (1976). "By reciting testimony, a court or agency does not find a fact unless the testimony is un rebutted in which case the court or agency should so state." *Crown Point Dev., Inc. v. City of Sun Valley*, 144 Idaho 72, 77, 156 P.3d 573, 578 (2007). When an agencies findings of fact are merely "recitations of evidence which could be used to support a finding without an affirmative statement that the agency is finding the fact testified to..." remand back to the agency for proper factual findings is appropriate. *Id.* at 78, 156 P.3d at 579.

In the present case, the Zoning Commissioner set forth numerous findings of fact that were merely summarizations of testimony presented to them². The commission based their decision on these summarizations. Upon review, the Latah County Board of Commissioners upheld the decision, finding the Commission's findings of fact accurately reflected relevant evidence.³ As the Board of Commissioners' decision was based on mere summarizations of testimony set forth by the Zoning Commission, this Court finds the Board of Commissioner's decision was not based on appropriate findings of fact.

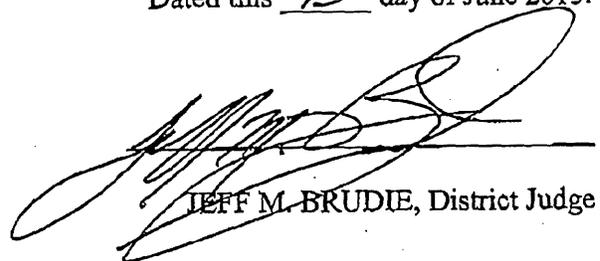
CONCLUSION

Based on the forgoing analysis, the record provided by the Latah County Board of Commissioners is insufficient. It is the order of this court that this matter be remanded back to the Latah County Board of Commissioners for appropriate factual findings.

ORDER

This matter is hereby REMANDED to the Latah County Board of Commissioners for appropriate factual findings.

Dated this 15 day of June 2015.



JEFF M. BRUDIE, District Judge

² Latah County Zoning Commission Findings of Fact 20 -32.

³ Board of Latah County Commissioners Findings, Conclusions and Decisions Finding of Fact 8.

CERTIFICATE OF MAILING

I hereby certify that a true copy of the foregoing OPINION & ORDER was:

hand delivered via court basket, or *faxed* ✓

_____ mailed, postage prepaid, by the undersigned at Lewiston, Idaho, this 15th day of June 2015, to:

Danny J. Radakovich
Fax: (208) 746-4672

Ashley Rokyta
Deputy Prosecuting Attorney
Fax: (208) 883-2290

Latah County District Court
Fax: (208) 883-2259

PATTY O. WEEKS, CLERK

By: *[Signature]*
Deputy



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

AMENDED FINDINGS OF FACT AND CONCLUSIONS OF LAW

FINDINGS OF FACT AND CONCLUSIONS OF LAW REGARDING THE REQUEST BY GEORGE LISHER FOR CONDITIONAL USE PERMIT #811 TO OPERATE A MINERAL RESOURCE DEVELOPMENT INCLUDING EXCAVATION, STOCKPILING, CRUSHING, AND BLASTING ON A PORTION OF A 280-ACRE PARCEL OWNED BY TERRY WALSER LOCATED IN THE AGRICULTURE/FOREST ZONE. THE SITE IS LOCATED ON THE EAST SIDE OF FLANNIGAN CREEK ROAD. THE PROPERTY IS LOCATED IN SECTION 23 OF TOWNSHIP 41 NORTH, RANGE 05 WEST, B.M. IN LATAH COUNTY AND IS REFERENCED AS LATAH COUNTY ASSESSOR'S PARCEL NUMBER RP41N05W230023A.

WHEREAS, George Lisher, made application for conditional use permit #811 on April 27th, 2010, and the application was deemed complete on May 7, 2010; and

WHEREAS, a duly noticed public hearing was held on Wednesday, June 2, 2010 before the Zoning Commission to take testimony and consider the conditional use permit application; and

WHEREAS, having reviewed the application, including all exhibits entered, and having considered the issues presented by the applicant,

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

I. FINDINGS OF FACT

1. The property owner is Terry Walser of Walser Ranch, 1540 Flannigan Creek, Potlatch, ID 83855. The applicant is George Lisher, 1080 Lisher Cutoff Road, Potlatch, ID 83855.
2. The applicant is requesting to operate a mineral resource development on approximately three (3) acres of a 280 acre parcel. A mineral resource development was previously conditionally permitted on this site from May 2004 to May 2010.
3. The subject parcel is zoned Agriculture/Forest (A/F), and the neighboring parcels are also zoned Agriculture/Forest (A/F). The existing use of the subject parcel includes agriculture, forestry, and a gravel pit. The neighboring uses include agriculture, forestry, grazing and low-density residential.
4. Mineral resource developments are listed in §3.01.02 of the Latah County Land Use Ordinance # 269, as amended, as a conditionally permitted use in the Agriculture/Forest Zone.
5. The subject parcel is designated "Rural" on the Comprehensive Plan Land Use Map. The Comprehensive Plan states, "This area is generally composed of less productive agriculture and forestlands and contains low density residential development not related directly to agriculture. 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 proposed use is located in an area designated as Zone "C" on panel #1600860135B and #1600860145B of the Flood Insurance Rating Map (FIRM) for Latah County provided by the Federal Emergency Management Agency (FEMA).

7. The location of this development is accessed of Flannigan Creek Road. There is an existing gated entrance.
8. Pursuant to §4.03.02.2 of the Latah County Land Use Ordinance #269, as amended, Idaho Department of Lands provided written verification that a reclamation plan has been submitted to them by George Lisher for compliance under the Idaho Surface Mining Act.
9. Pursuant to §4.03.02.09 of the Latah County Land Use Ordinance #269, as amended, the applicant provided a written plan to retain storm water runoff within the mineral resources development boundaries.
10. Pursuant to §4.03.03.01 of the Latah County Land Use Ordinance #269, as amended, there are no residences within 1000 feet of the mineral resource development.
11. Pursuant to §4.03.03.02 of the Latah County Land Use Ordinance #269, as amended, the applicant provided written testimony in his site plan that the required undisturbed or natural buffer on the perimeter of the mineral resource development is in place and will remain in place for the duration of this operation.
12. The applicant submitted written testimony pursuant to §4.03.03.4.A of the Latah County Land Use Ordinance #269, as amended, that the crushing systems have built in watering systems for dust control when operating.
13. The applicant submitted written testimony pursuant to §4.03.03.4.B and §4.03.03.4.D of the Latah County Land Use Ordinance #269, as amended, that all equipment including the crusher, drilling equipment, and trucks contain fire suppression and contamination clean-up equipment. Any necessary fire response and suppression would be supplied by the Potlatch Fire District.
14. The applicant submitted oral and written testimony pursuant to §4.03.03.4.C of the Latah County Land Use Ordinance #269, as amended, that no fuel will be stored on site.
15. The applicant provided written testimony that no additional public services will be required for operation of the mineral resource development and that the operation would present a cost effective source of rock for the community for both the public and private sectors.
16. The applicant provided oral testimony that blasting specifications will be handled by a licensed blasting company. He stated that the company must comply with all local, state, and federal regulations.
17. The applicant provided oral testimony that the mineral resource development is typically limited to five (5) months of hauling due to weather and road limit restrictions.
18. The applicant requested approval of additional hours of operation (Monday through Sunday, 6 AM to 7 PM for hauling and general operations, and Monday through Friday, 5 AM to 6 PM for drilling and crushing) that would vary from the requirement listed in Section 4.03.02 (1). The applicant requested the additional weekend and evening hours for hauling to accommodate private customers, and the ability to receive bids on jobs needing longer hauling hours.
19. The applicant testified that under the previous Conditional Use Permit #653 blasting occurred at the site twice. He testified that the blasting company charges for a minimum of 30,000 tons per blast.
20. Testimony was provided that there is a high demand for good quality gravel and base rock for the State of Idaho, sewer projects, water infrastructure, road projects, and private individuals. The sale of this rock provides employment and income to citizens of Latah County.
21. Testimony was provided that the existing mineral resource developments can not keep up with the demand for rock.

22. A Neighbor testified that historically a rock pit has been located in the general vicinity and has been hauled from on Saturdays and Sundays.
23. A neighbor testified that in the previous six (6) years he has not had any problems with the operation.
24. Individuals provided written and oral testimony that dust is a concern in the area and that magnesium chloride is not applied to Flannigan Creek Road unless the North Latah Highway District is hauling from the mineral resource development.
25. Neighbors provided oral and written testimony that the back-up warning noise from the loaders was very disruptive and the six (6) weeks of crushing was intolerable. The applicant provided testimony that each load takes approximately three (3) minutes to load. He testified that the back-up warning noise only sounds when the loader is in reverse.
26. Neighbors provided oral and written testimony that Flannigan Creek Road is not conducive to truck traffic due to lack of posted speed limit, rolling hills and corners.
27. Neighbors testified that the previous conditions set on CUP #653 for the location of this mineral resource development are tolerable. The neighbors expressed concern in regards to adding an asphalt batching plant to the proposed site.
28. Neighbors provided oral and written testimony that it is dangerous to have trucks stopping and parking in Flannigan Creek Road to unlock and open the gate. The Applicant testified that he would be willing to recess the gate in order to eliminate trucks parking on the road.
29. Neighbors provided oral testimony that residential wells in the area are marginal and that a homeowners well had been lost due to previous blasting. The applicant provided oral testimony that the homeowner's well that is believed to have been lost due to blasting, was not lost in entirety until November 24th, per TPM Water Systems.
30. No testimony was provided that the proposed conditional use would significantly impact any areas of significant historic, archeological, geologic, or biological significance.
31. The applicant provided written testimony that the previous mineral resource conditional use permit did not impact school facilities or student transport in the previous six (6) years.
32. Testimony was given that a sign that the applicant had placed on the west side of Flannigan Creek Road warning individuals of trucks entering the roadway is obnoxious. The sign is on the top and sided of an old black van with a large rock sitting on the roof of the van.

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

II. CONCLUSIONS OF LAW

1. The proposed mineral resource development, as conditioned, 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.
2. The proposed mineral resource development, as conditioned, will not require facilities or services with excessive costs to the public.
3. The proposed mineral resource development, as conditioned, is not in conflict, as a whole, the goals and policies of the Latah County Comprehensive Plan.

III. DECISION

Based on the Findings of Fact and Conclusions of Law as set forth in this document, the Latah County Zoning Commission hereby approves the request by George Lisher, for a Conditional Use Permit (CUP #811) to operate a mineral resource development to include excavation, blasting, crushing and hauling on a three (3) acre portion of a 280-acre parcel subject to the following conditions:

1. The mineral resource development shall be in compliance at all times with all applicable federal, state and local laws, rules and regulations.
2. The mineral resource development shall be in substantial compliance with the application as submitted.
3. The mineral resource development's hours of operation for blasting, crushing, loading, hauling, maintenance and ancillary operations are limited to Monday through Friday, 7 AM to 5 PM. Operations shall not occur on federally recognized holidays.
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 five (5) days prior to any blasting. The notification shall give the date and time of the planned blast.
5. The mineral resource development's gate shall be recessed into said property in order to eliminate trucks from stopping on the road to open and close the gate.
6. Blasts shall be limited to 30,000 tons per blast and all fly rock shall be contained to the subject property.
7. No more than 75,000 tons of rock shall be blasted, crushed, or removed from the site.
8. 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 tonnage in order to allow County staff to verify compliance with this condition.
9. Blasting shall not occur before 9:30 a.m or after 4:30 p.m. Blasting should not occur between 2:30 p.m. to 4:00 p.m when local schools are in session.
10. Operations shall continue to comply with the existing storm water retention plan.
11. Operations shall continue to comply with the existing reclamation plan required by the Idaho Surface Mining Act.
12. The excavation site shall be limited to three (3) acres in size.
13. The excavation site, any overburden and stockpiles, and a 75 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 Superintendant
14. An owner or operator may request and the Director may grant an exception to provide for additional hours of operation for a mineral resources 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.

15. *The van being utilized as a sign must be removed from the west side of Flannigan Creek Road.* Signs warning the public road users of truck entering, shall be placed within one-quarter (1/4) mile of the site's entrance onto a public road. The sign(s) shall be four (4) feet by four (4) feet, located eight (8) feet high and supported by two (2) four (4) inch by four (4) inch posts.
16. The mineral resource development shall be marked by warning signs posted 200 feet from mine operations.
17. This mineral resource development shall utilize the existing access to the site.
18. This conditional use permit shall expire six (6) years from the date of issuance, at which time the implementation of the reclamation plan shall begin.

PASSED BY THE ZONING COMMISSION OF LATAH COUNTY THIS 15 DAY OF Sept., 2010.



Wayne Sprouse, Chairman
Latah County Zoning Commission

IV. REQUIRED LEGAL NOTICES

NOTICE OF EFFECTIVE DATE AND NOTICE OF RIGHT TO APPEAL

All final decisions of the Zoning Commission may be appealed, as set forth in Section 1.02.18 of the Latah County Land Use Ordinance #269, as amended. An appeal period of fifteen (15) days shall begin upon the day of the mailing, or if hand delivered the day of delivery, of the Zoning Commission's 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 detailed on Ordinance #269. 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 permits 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.

LATAH COUNTY ZONING COMMISSION

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

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND DECISION**

This matter came before the Zoning Commission for public hearing on December 17, 2003. After review of the conditional use permit application and the entire record, and finding good cause therefore, the Zoning Commission hereby makes the following findings of fact, conclusions of law, and decision:

I. FINDINGS OF FACT

1. The application requests a conditional use permit for a rock excavation, crushing, and processing operation on a two-acre portion of 280 acres of land. Natural mineral resources development is a conditionally permitted use in the Agriculture/Forestry (A/F) Zone. The property is 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 site is owned by Walser Ranch, Inc. Mr. Lisher and Terry Walser (on behalf of Walser Ranch) signed the completed application.
5. The Zoning Commission heard the application pursuant to the Latah County Hearings Ordinance (Latah County Ordinance No. 70).
6. The Zoning Commission conducted a public hearing on the proposal on December 17, 2003. The requirements for notice of public hearing were met.

7. The following persons testified at the public hearing.

Charles (Hoey) Graham
2040 Mill Rd
Moscow, ID 83843

John Porter
PO Box 441
Troy, ID 83871

Rich Bailey
1100 Abbott Rd
Viola, ID 83872

Don Lazzarini
1395 Flannigan Creek Rd
Viola, ID 83872

George L. Lisher
1080 Lisher Cut-off
Potlatch, ID 83855

Clint Anderson
1020 McBride Rd
Potlatch, ID 83855

Dan Carscallen
318 S Cleveland
Moscow, ID 83843

Carolyn Lazzarini
1395 Flannigan Creek Rd
Viola, ID 83872

Sherman Clyde
2940 Clyde Rd
Moscow, ID 83843

8. The Zoning Commission takes notice of the Latah County Comprehensive Plan, Latah County Zoning Ordinance, and other applicable development regulations.
9. According to Section 11.04 of the Latah County Zoning Ordinance, the Zoning Commission is charged with making a recommendation of approval or denial to the Latah County Board of Commissioners along with any proposed conditions of approval. Final decisions for conditional use permits for natural mineral resources development lies with the Board of County Commissioners.
10. The record includes the documents in the proposal file at the time of the public hearing, as well as exhibits offered at the hearing, and the items taken notice of by the Zoning Commission.
11. The property varies in topography and vegetation. Flannigan Creek enters the property from the southern boundary, approximately one-half mile southeast of the proposed excavations site, follows northerly through the property, then veers to the northeast, exiting the property about one-quarter mile due East of the site. 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 above, and 800 feet northeast of, Flannigan Creek Road.
12. Existing uses on the property include grazing and natural mineral resources. There is an existing rock excavation site directly south of the proposed excavation site.

Historically, rock from that site has been removed by the use of methods less intensive than blasting, and is consequently considered "rip-rock."

13. Surrounding uses include agriculture, timber, and grazing. There are several residences more than one-quarter mile, but less than one-half mile, from the site. Access to these residences is nearly directly across from the existing road access to the site.
14. The conditional use permit application was submitted on November 7, 2003. It was determined to be technically complete on November 12, 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 is expected to be less than two acres and will be fenced and gated. Stock-piling of crushed rock would occur adjacent to Flannigan Creek Road, downhill from the excavation site. The applicant also seeks approval to operate an asphalt hot plant from time to time.
15. Drilling and blasting would be accomplished through contracts with a licensed contracting company. The applicant expects 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. As many as 20 to 30 truckloads of crushed rock will be hauled off the site during operation days. Operations are expected to continue for at least six years. Additional blasting and crushing may occur three to four years from the inception of operations. Overburden will be stockpiled for use in site reclamation. Upon the issuance of a conditional use permit, the applicant will submit a reclamation plan to the Idaho Department of Lands (IDL) for approval.
16. 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.
17. The North Latah Highway District has shown interest in becoming a major client of the proposed operations. The District is responsible for the maintenance and improvement of more than two-thirds of the county roads in Latah County. At present, the District obtains most of its crushed rock from a crushing facility near Joel, Idaho. Representatives of the District stated at the hearing that the location of the proposed operations is much closer to the District's operations facility in Potlatch and would therefore reduce hauling distances considerably. They also commented that the reduction in hauling distances could result in lower expenses for general road maintenance in the District.

18. Flannigan Creek Road is maintained by the North Latah Highway District. It is a gravel road of varying widths and grades. The District stated that if the permit was issued and the District became the major client, the District would increase regular maintenance along the Road. Magnesium Chloride, a compound widely used for road maintenance and de-icing, would be applied to the road surface on a regular basis to reduce dust and solidify the road base. Representatives of the District testified that the compound has improved conditions on roads throughout the District.
19. Certain owners of neighboring properties located southwest of the site expressed opposition or concerns regarding the proposal. This included concerns regarding increased truck travel on Flannigan Creek Road; the adequacy of the sight distance for the existing access for north-bound traffic along Flannigan Creek Road; potential pedestrian and vehicular conflicts during hours when school buses load and unload near the site; impacts on air quality by blasting and crushing operations, noxious odors produced by asphalt batch plants; impacts on water quality in Flannigan Creek; disruptive and incessant noises that may be aggravated by the unique topography of the area; the lack of a reclamation plan approved by IDL; potential devaluation of residential properties; the dangers of fly-rock incidental to blasting procedures; and inadequate enforcement capabilities of the Planning and Building Department.
20. The applicant acknowledged that the existing access to the site does not meet standards for sight distances. The Highway District indicated it would assist in relocating the ingress/egress for the site to a point further north along the road in order to meet the minimum standards for sight distances.
21. The applicant acknowledged that the proposed asphalt hot plant is not an integral part of the proposed operations.
22. The steep slopes east of the proposed excavation site down to Flannigan Creek may facilitate sedimentation in said creek. The submitted application did not adequately address the need for surface water management.
23. Issues raised by neighbors regarding the safety of school children loading and unloading on buses is 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.
24. Anecdotal statements regarding noise and air pollution that may exist as a result of the proposed operations do not evidence a greater level of impact than that which is caused by similar uses permitted in the A/F Zone.
25. Concerns regarding the lack of a reclamation plan approved by IDL can be allayed by prohibiting the initiation of operations until such plan is approved.
26. Testimony conflicted as to whether there are any known unique, scenic or natural amenities in the vicinity requiring protection. The Zoning Commission 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.

27. 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.
28. 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.
29. The Transportation Element of the Comprehensive Plan promotes an “efficient and safe transportation system in Latah County.” Reducing the hauling of rock from Joel to Potlatch will reduce wear and tear on county roads. The Zoning Commission finds that truck traffic along Flannigan Creek Road will increase substantially during operating hours of the proposed excavation. However, the increase use of the road will be offset by increased maintenance by the North Latah Highway District. Furthermore, the increased truck traffic will not significantly disrupt traffic flow.
30. 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 residential developments in the county.
31. 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. The site does not contain any areas of significant hazardous, recreational, historical, or environmental uniqueness.
32. 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.
33. The Agriculture/Forestry Zone allows a number of natural-resource based uses and buildings, including grain elevators, seed warehouses, 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.
34. The Latah County Zoning Ordinance requires the Zoning Commission to report to the Board of Latah County Commissions the effects of the proposed operations upon adjacent streets and whether it will depreciate the value of nearby properties. The increased vehicular traffic upon Flannigan Creek Road will be mitigated by increased

maintenance by the Latah County Highway District. Regarding property values, testimony by a local realtor opined that housing values in nearby properties will be reduced. The Zoning Commission agrees in part; however, the Commission finds that such depreciation will be temporary under the proposed condition that the proposed operations cease within six years of inception.

35. The Zoning Commission 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 proposed conditions exhibit a reasonable relationship to the goals and elements of the Comprehensive Plan and the Latah County Zoning Ordinance. The Commission further finds that including an asphalt hot plant as part of the operations would undermine this consistency.
36. The Latah County Zoning Ordinance requires applicants requesting a conditional use permit subject to Section 11.04 of the Ordinance to post a bond to assure full compliance with the proposed plans and the Ordinance, unless the Zoning Commission finds that the posting of a bond would not be in the public interest or contrary to law. The Zoning Commission does not find such; but rather, the Commission finds that the posting of a bond is in the public interest and is lawful.
37. The Zoning Commission 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, the Zoning Commission enters the following:

II. CONCLUSIONS OF LAW

1. The proposed rock excavation/crushing/stockpiling operations, as conditioned, and without the operation of an asphalt hot plant, are consistent with the provisions of Section 11.04 of the Latah County Zoning Ordinance.
2. The proposed rock excavation/crushing/stockpiling operations, as conditioned, and without the operation of an asphalt hot plant, are consistent with the goals and policies of the Latah County Comprehensive Plan.
3. The proposed rock excavation/crushing/stockpiling operations, as conditioned, and without the operation of an asphalt hot plant, are not detrimental to the health or safety of those in the surrounding area or region.
4. The proposed rock excavation/crushing/stockpiling operations, as conditioned, and without the operation of an asphalt hot plant, will not adversely affect surrounding properties to any greater extent than would a permitted use in the Agriculture/Forestry Zone.

5. The proposed rock excavation/crushing/stockpiling operations, as conditioned, and without the operation of an asphalt hot plant, will not require facilities or services with excessive costs to the public.

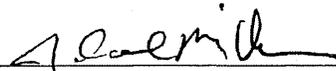
III. DECISION

Based on the above Findings of Fact and Conclusions of Law, the Zoning Commission recommends to the Latah County Board of Commissioners approval of the application for a conditional use permit, to maintain a rock excavation, crushing and stockpiling operation, 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. 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. 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. Blasts shall be limited to 30,000 tons per blast and all fly-rock shall be confined to the subject property.
5. Blasting shall not occur during the time 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.
6. Operations shall not begin until a surface water management plan is approved by the Latah County Planning & Building Department.
7. 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.
8. 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.
9. 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.
10. This conditional use permit shall expire six years from the date of issuance, at which time the implementation of the reclamation plan shall begin.

11. The Zoning Commission 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 adequate.
12. The applicant shall be required to post a bond in an amount to be determined by the Latah County Board of Commissioners upon recommendation by staff of the Planning and Building Department.

PASSED BY THE ZONING COMMISSION OF LATAH COUNTY THIS 16th DAY OF January, 2008



J. Carl Mickelsen, Chairman
Zoning Commission

NOTICE OF NON-FINALITY

This decision to recommend conditional approval of a conditional use permit is not a final action. The Latah County Board of Commissioners reserves the right to make final decisions for conditional use permits for natural mineral resources development. Such decisions shall be in writing and shall be made after receiving a recommendation from the Latah County Zoning Commission and the holding of a duly noticed public hearing before the Board. Interested parties and owners of real property within 300 feet of the subject property shall be notified of said hearing as provided for in Idaho Code 67-65.

LATAH COUNTY BOARD OF COMMISSIONERS

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

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND DECISION**

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:

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.

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

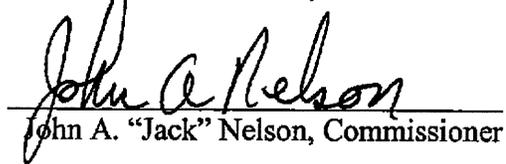
May, 2004.



Paul J. Kimmell, Chair



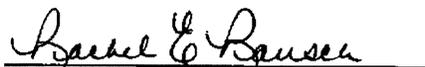
Tom S. Stroschein, Commissioner



John A. "Jack" Nelson, Commissioner

ATTEST:

DATE:


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.

**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 the 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:

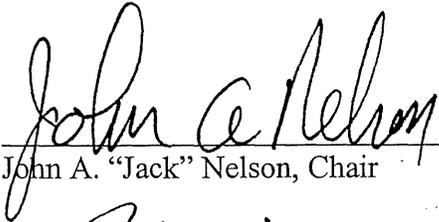
II. CONCLUSIONS OF LAW

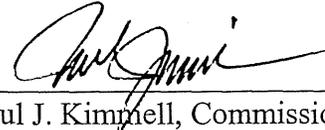
1. As required by §13.10.04.A.1 of the Latah County Zoning Ordinance, the Board of Latah County Commissioners has reviewed the proposed amendments to CUP 653 as they relate to the Latah County Comprehensive Plan. Taken as a whole, the Board of Latah County Commissioners concludes that these amendments 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

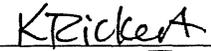

Paul J. Kimmell, Commissioner


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

**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 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 653C) BY GEORGE LISHER TO INCREASE HOURS OF OPERATION AND DELETE CONDITIONS SIX (6) AND SEVEN (7). 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 November 4th, 2009; and

WHEREAS, a duly noticed public hearing was held on Wednesday December 2nd, 2009 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 November 4th, 2009.
4. The subject property is zoned Agriculture/Forest.
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 surrounding properties are currently zoned Agriculture/Forest (A/F).
8. The surrounding property uses are agriculture, grazing, timber, and residential.
9. 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.
10. The applicant proposes to increase hours of operation, requesting that general operations be allowed seven days a week from 6:00 a.m. to 6:00 p.m.
11. 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.”
12. 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.”
13. 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.
14. The applicant, George Lisher, testified that he would like to extend his hours of operation as the North Latah County Highway District (NLCHD) starts to take rock out early at 6 a.m. and if they decide to put rock on Flannigan Creek Road at that time they have to go to another pit fourteen (14) miles away.
15. A representative of the North Latah Highway District (NLCHD) testified that the proposed start time of 6 a.m. would not be a disadvantage to the NLCHD as that is when they do most of their hauling. He also testified that there are no other gravel pits within the vicinity of the Lisher pit and that the further the NLCHD has to travel to get gravel the more fuel they burn.
16. 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.

17. 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.
18. Neighboring property owners testified that an increase in the hours of operation would lead to increased noise related to truck mufflers and scraping and dumping, for neighboring property owners.
19. Neighbors testified that an increase in operations will lead to a substantial increase in road traffic, which could possibly worsen the condition of Flannigan Creek Road.
20. The Commission discussed that the conditions imposed by CUP 653 were reasonable and, in large measure, addressed legitimate concerns raised during the hearing by surrounding property owners. The Commission also remarked that the applicant will be back to request an extension of CUP 653's May 2010 expiration date and that would be a more appropriate occasion to revisit a change in the hours of operation and possible changes to conditions #6 and #7.

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, 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 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, 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 denies the proposed amendment (cup 653C) to George Lisher's Conditional Use Permit (CUP #653) to increase the hours of operation from 6 a.m. to 6 p.m.; to delete condition #6; and to delete condition #7.

PASSED BY THE ZONING COMMISSION OF LATAH COUNTY THIS 16 DAY OF
_DECEMBER___, 2009.



Wayne Sprouse, Chairman
Zoning Commission

LATAH COUNTY ZONING COMMISSION EXHIBIT LIST

Public Hearing: CUP Mineral Resource Development **Date:** June 2, 2010 **Time:** 5:30pm

Applicant: George Lisher

File #: CUP #811

EXHIBITS:

- Exhibit #1.** Staff Report
- Exhibit #1A.** Criteria Worksheet
- Exhibit #1B.** Vicinity and Comprehensive Plan Land Use Map
- Exhibit #1C.** Zoning Map
- Exhibit #1D.** Aerial Photograph and Adjacent Property Owners Map
- Exhibit #1E.** Photos of Subject Property
- Exhibit #1F.** Buffer Map (75 feet)
- Exhibit #1G.** Buffer Map (1000 feet)
- Exhibit #2.** Application Form (Submitted by Applicant)
- Exhibit #2A.** Applicant's Narrative (Submitted by Applicant)
- Exhibit #2B.** Vicinity Map (Submitted by Applicant)
- Exhibit #2C.** Plat Map (Submitted by Applicant)
- Exhibit #2D.** Site Plan (Submitted by Applicant)
- Exhibit #2E.** Cross Section (Submitted by Applicant)
- Exhibit #2F.** Blasting Mailing List – One (1) Mile (Submitted by Applicant)
- Exhibit #2G.** Storm Water Calculations (Submitted by Applicant)
- Exhibit #2H.** Latah County Assessment Notice for Walser Ranch (Submitted by Applicant)
- Exhibit #3.** Notice of Filed Reclamation Plan from Idaho Department of Lands
- Exhibit #4.** Staff Introduction for Latah County Zoning Commission hearing for CUP #813 held on June 2, 2010.
- Exhibit #5.** Letter submitted by North Latah County Highway District
- Exhibit #6.** Letter submitted by Wayne and Joanne Hemmelman, on May 27, 2010
- Exhibit #7.** Email submitted by Steve and Linda Norton, on May 28, 2010
- Exhibit #8.** PowerPoint Slides (Submitted by Carolyn and Don Lazzarini)
- Exhibit #9.** DVD PowerPoint Presentation (Submitted by Carolyn and Don Lazzarini)
- Exhibit #10.** Life in Rural Latah County submitted by Carolyn and Don Lazzarini on May 28, 2010
- Exhibit #11.** Letter submitted by Koehn Family on May 28, 2010

LCZC Hrg: CUP 811
Applicant: Lisher
Exhibit #: 1G
Date: 2/1/2017

GEORGE LISHER
CONDITIONAL USE PERMIT APPLICATION #811
STAFF REPORT

SUMMARY OF APPLICATION:

A request was made by George Lisher for a conditional use permit to operate a mineral resource development including excavation, stockpiling, crushing, blasting, and an asphalt plant on approximately three (3) acres of a 280-acre parcel located in the Agriculture/Forest zone. The property is owned by Terry Walser. The property is located on the east side of Flannigan Creek Road, in Section 23, Township 41 North, Range 05 West, B.M. in Latah County and is referenced as Latah County Assessor's parcel number RP41N05W230023A.

Site Characteristics:

Size of Parcel(s): 3 acres of a 280 acre parcel
Soils: 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 #160086 0135B #1600860145B)

Land Use and Regulations:

Comprehensive Plan Designation: Rural
Existing Zoning: Agriculture/Forest (A/F)
Existing Uses: Gravel Pit, Forestry, and Agriculture
Neighboring Zoning: Agriculture/Forest
Neighboring Uses: Agriculture, Forestry, Grazing and Residential

Infrastructure/Services:

Water: Not Applicable
Sewer: Not Applicable
Access: Flannigan Creek Road, North Latah Highway District
Schools: Potlatch School District #285
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. Aerial Photograph and Adjacent Property Owners Map
Exhibit #1E. Photos of Subject Property
Exhibit #1F. Buffer Map (75 feet)
Exhibit #1G. Buffer Map (1000 feet)
Exhibit #2. Application Form (Submitted by Applicant)
Exhibit #2A. Applicant's Narrative (Submitted by Applicant)
Exhibit #2B. Vicinity Map (Submitted by Applicant)
Exhibit #2C. Plat Map (Submitted by Applicant)
Exhibit #2D. Site Plan (Submitted by Applicant)
Exhibit #2E. Cross Section (Submitted by Applicant)
Exhibit #2F. Blasting Mailing List – One (1) Mile (Submitted by Applicant)
Exhibit #2G. Storm Water Calculations (Submitted by Applicant)
Exhibit #3. Notice of Filed Reclamation Plan from Idaho Department of Lands
Exhibit #4. Staff Introduction for Latah County Zoning Commission hearing for CUP #813 held on June 2, 2010.
Exhibit #5. Letter submitted by North Latah County Highway District

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 67-6512

Latah County Land Use Ordinance #269, as amended:

- Section 3.01 Agriculture/Forest Zone
- Section 4.03 Mineral Resource Development
- Section 7.01 Conditional Use Permits

Latah County Comprehensive Plan

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:

George Lisher submitted application for a conditional use permit to operate a mineral resource development including excavation, stockpiling, crushing, blasting, and an asphalt plant on approximately three (3) acres of a 280-acre parcel located in the Agriculture/Forest zone. The property is owned by Terry Walser. The property is located on the east side of Flannigan Creek Road, in Section 23, Township 41 North, Range 05 West, B.M. in Latah County and is referenced as Latah County 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.

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.

George Lisher submitted a conditional use application to the Latah County Planning and Building Department on April 27th, 2010. The application was deemed complete by the Latah County Planning and Building Department on May 7, 2010. The conditional use permit application was signed by the applicant, George Lisher, and Terry Walser, of Walser Ranch Inc., owner of the subject property.

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.

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 findings 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. (Exhibit #1G)
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. (Exhibit #1F)

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. (Exhibit # 1F)

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. (Exhibit #2A)
- B. A plan for coordination with County response units for hazardous materials transport and use and emergency spill response. (Exhibit #2A)
- 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. (Exhibit #2A)
- D. A plan for fire suppression and response, including an inventory of tools stored on-site to implement planned suppression and response. (Exhibit # 2A)

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.

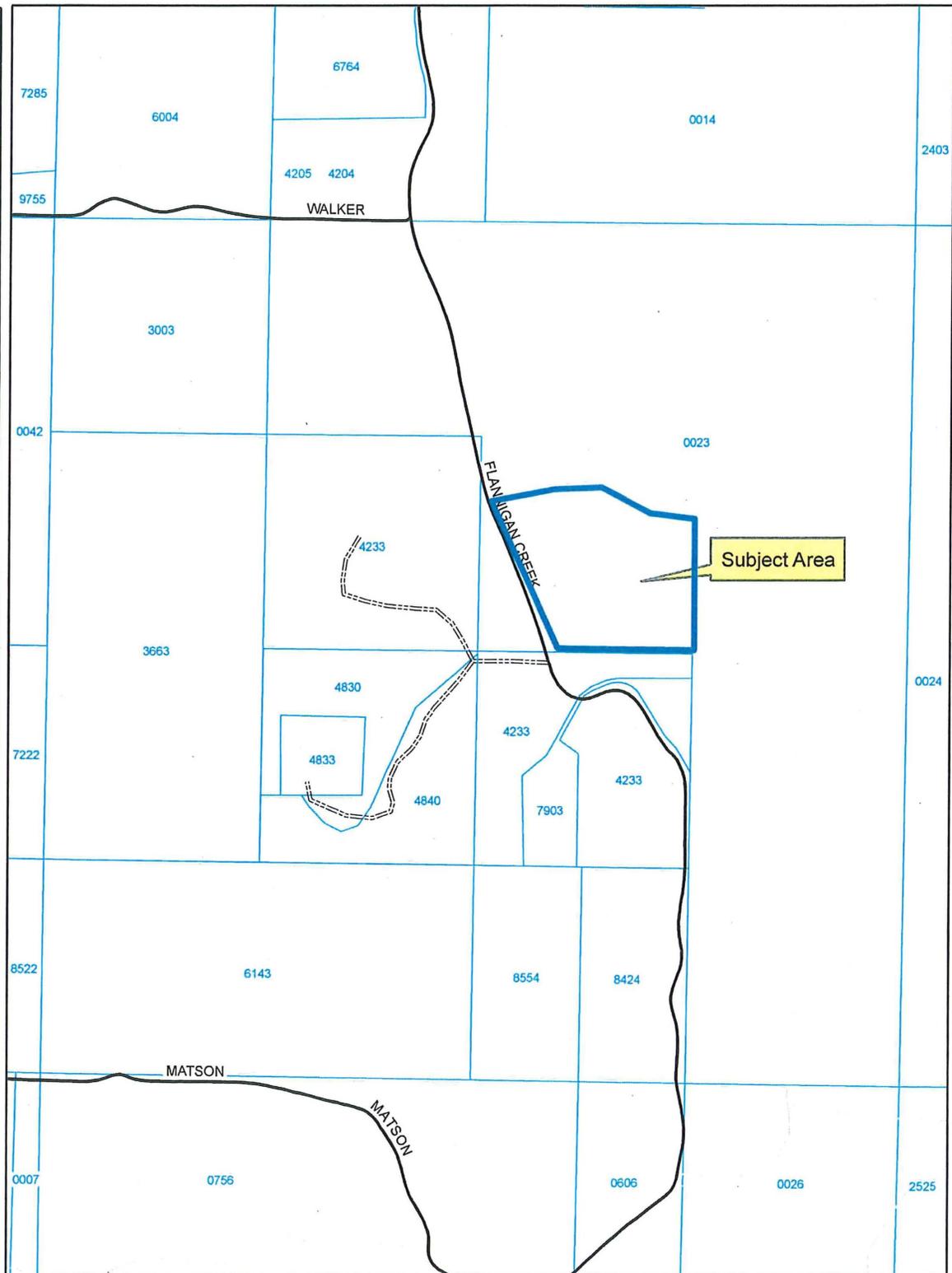
5) Section 4.03.02 requires the following

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. The applicant has requested the following operating hours: Blasting and crushing, 5:00AM to 6:00PM Monday through Friday. Hauling 6:00AM to 7:00PM Monday through Sunday. (Exhibit #2A)

2. Written verification of compliance with the Idaho Surface Mining Act, including filing of any reclamation plan required by the Idaho Surface Mining Act. (Exhibit #3)
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. (Exhibit #1E)
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. (Exhibit #2H)

CUP 811 Comprehensive Plan and Vicinity Map

Planning & Building Department



Comprehensive Plan

ZONE

- AOI
- ICR
- PRODUCTIVE
- RURAL



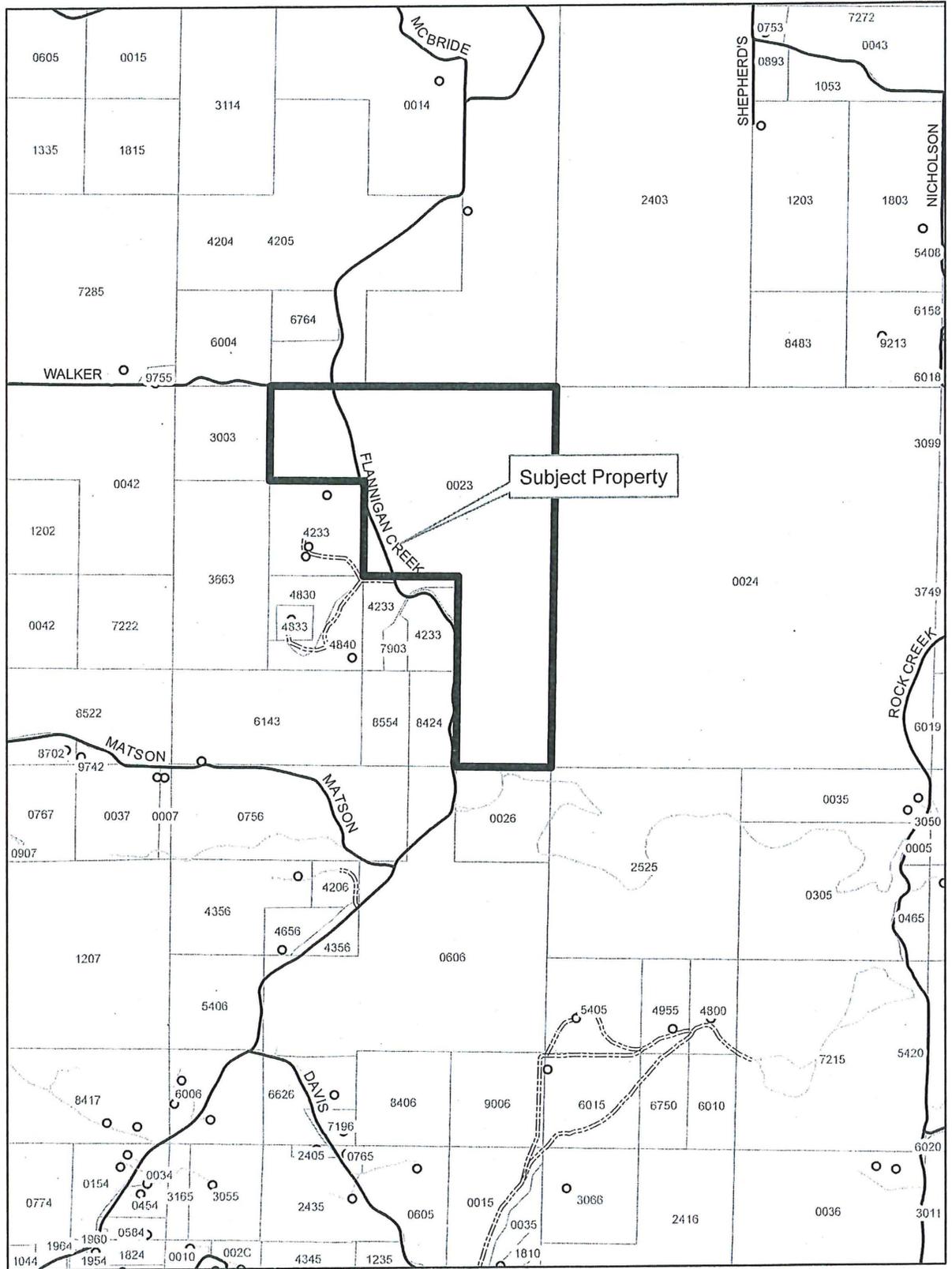
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NOTE: This Document is a representation only. Latah County bears no responsibility for errors or omissions.

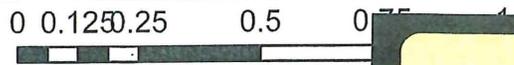
LCZC Hrg: CUP 811
 Applicant: Lisher
 Exhibit #: 1B
 Date: 6/2/2010

CUP 811 Zoning Map

Planning & Building Department



- Zoning_Districts_2009 ZONE_TYPE
- Agriculture / Forestry
 - Rural Residential
 - Suburban Residential



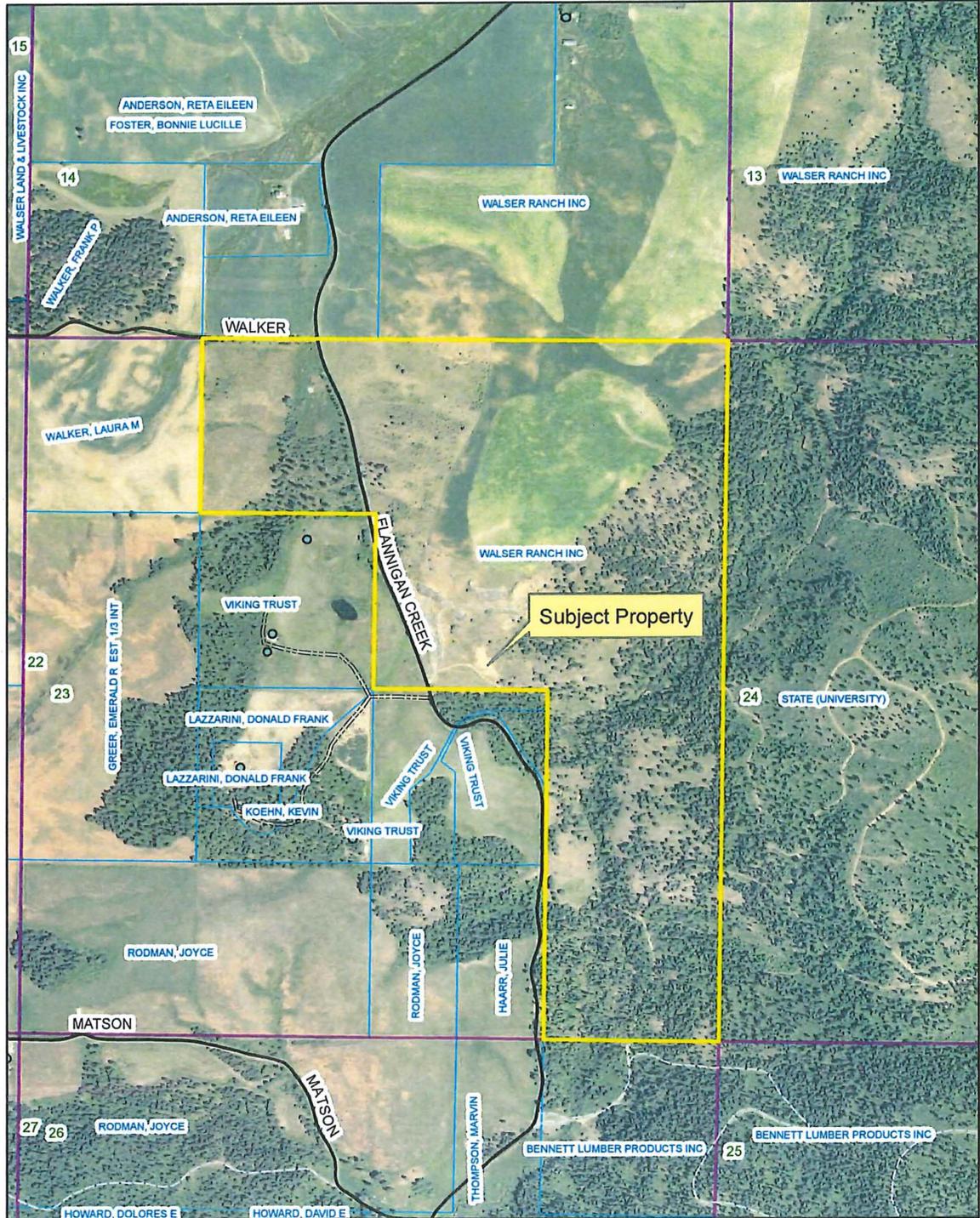
*Created on

NOTE: This Document is a representation of the zoning map. Latah County bears no responsibility for the accuracy of the information shown on this map.

LCZC Hrg: CUP 811
 Applicant: Lisher
 Exhibit #: 1C
 Date: 6/2/2010

CUP 811 Adjoining Owners and Aerial Map

Planning & Building Department



Legend

- Addresses

*Created on 5/5/10 by MK

NOTE: This Document is a representation only. Latah County bears no responsibility for errors.

LCZC Hrg: CUP 811
 Applicant: Lisher
 Exhibit #: 1D
 Date: 6/2/2010



Access from Flannigan Creek Road - Locked Gate

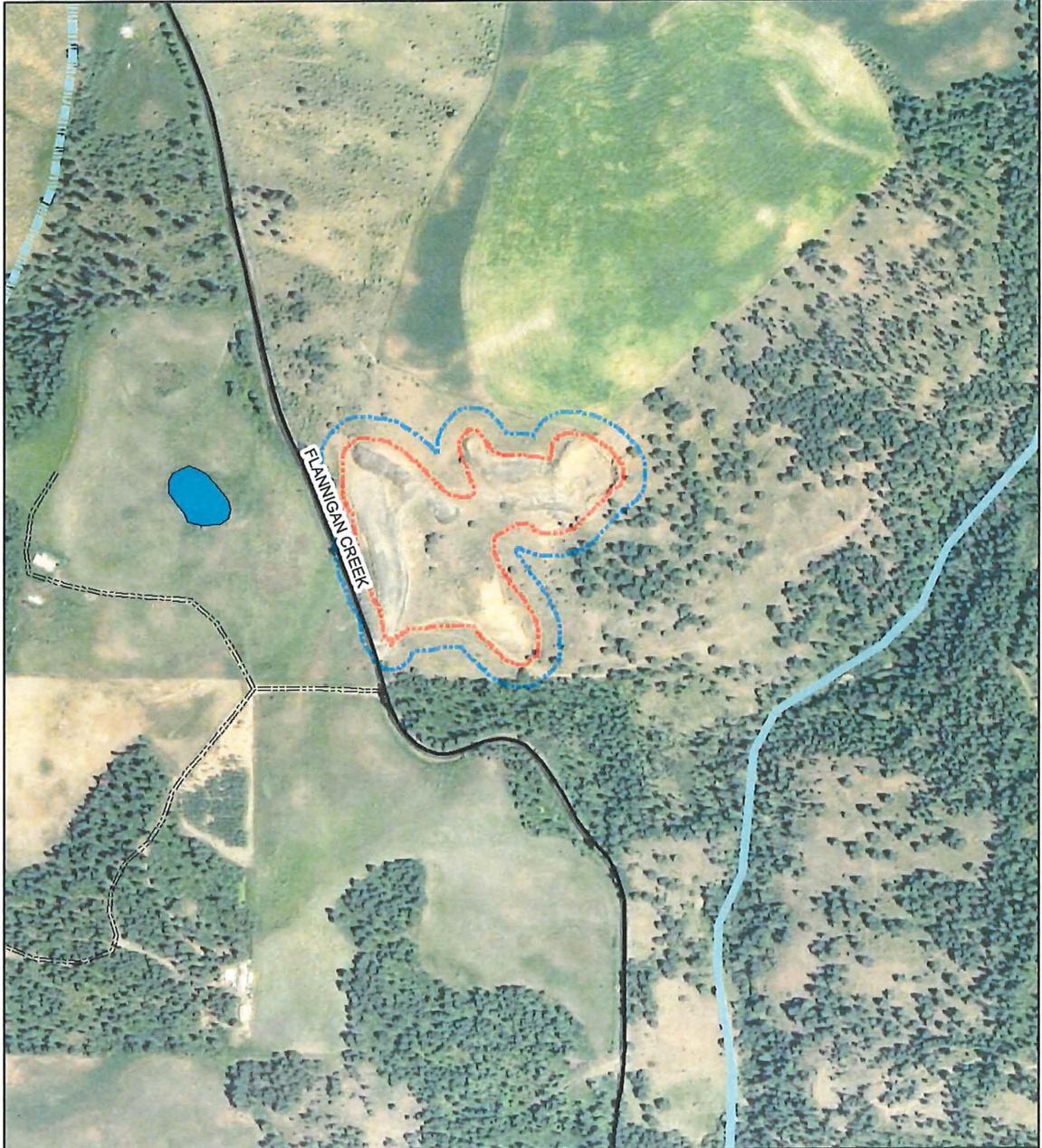


Lisher CUP 811

LCZC Hrg: CUP 811
Applicant: Lisher
Exhibit #: 1E
Date: 6/2/2010

CUP 811 Lisher

Planning & Building Department



Legend

CUP811 Buffers Descriptn

-  Site
-  75buffer

Streams

FLOWTYPE

-  INTERMITTENT
-  PERENNIAL
-  RIVER



*Created on 5/21/10 by MK

NOTE: This Document is a representation only.
Latah County bears no responsibility for errors or omissions.

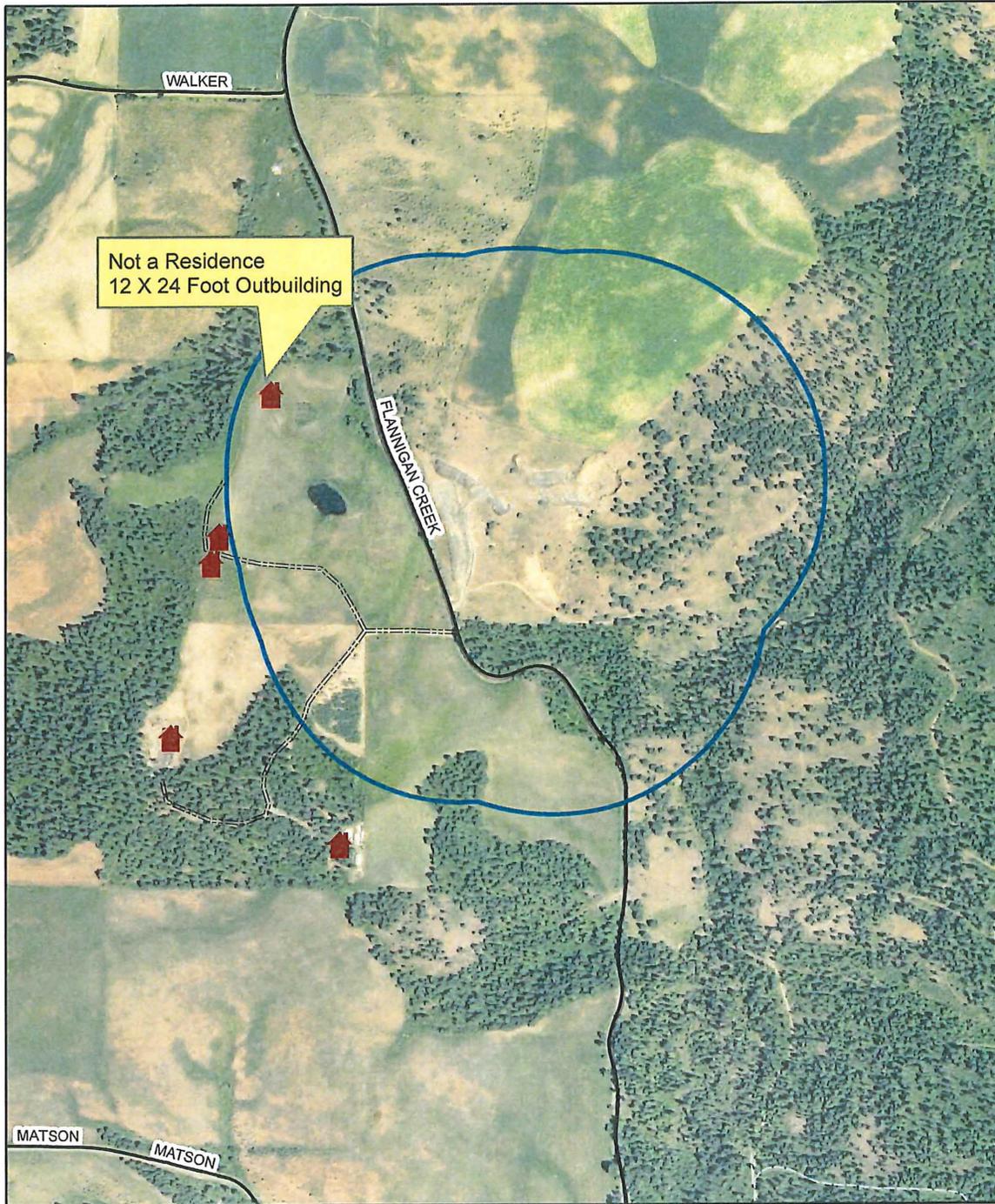
LCZC Hrg: CUP 811
Applicant: Lisher
Exhibit #: 1F
Date: 6/2/2010



CUP811 Lisher Rock Pit Sign Located on West Side of Flannigan Creek

CUP 811 Lisher

Planning & Building Department



Legend

-  Addresses
-  1000buffer

0 500 1,000
Feet

*Created on 5/21/10 by MK

NOTE: This Document is a representation only.
Latah County bears no responsibility for errors or omissions.

LCZC Hrg: CUP 811
Applicant: Lisher
Exhibit #: 1G
Date: 6/2/2010



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 208 875-1466 | c. Work Phone | |
| d. Mailing Address 1080 Lisher Cutoff Rd | | e. City Potlatch | f. State ID | g. Zip code 83855 |
| h. Property Owner (if different than applicant) Walsor Ranch, Inc | | i. Home Phone | | j. Work Phone |
| k. Mailing Address 16 Terry Walsor 1540 Blomgren Cir | | l. City Potlatch | m. State ID | n. Zip code 83855 |

2. General Site Information

| | | | | |
|--|------------------------------|---|---|------------------------------------|
| a. Assessor's Parcel Number(s) RP 41N05W230023A | | | b. Parcel Address (if applicable) | |
| c. Acreage of Existing Parcel 280 | d. Zoning Ag-for | e. Comprehensive Plan Designation Rural | f. Floodplain designation(s) C | g. FEMA Panel # 135, 145 |
| h. Is the parcel within an Area of City Impact? <input type="checkbox"/> Yes. <input checked="" type="checkbox"/> No. | i. Impact City N/A | | j. Road Used to Access Site Flanigan Creek Rd | |

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

3. Service Provider Information (please attach additional information if requested)

| | | | |
|---|--|--|---------------------------------------|
| a. Fire District Potlatch | | b. Road District North Latah | 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 mineral resources |
|---|

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 5-1-10 |
| c. Signature of Property Owner (if different than applicant) Walsor Ranch, Inc. Troy Walsor | d. Date 4/8/10 |

Office Use Only

| | | | |
|---------------------------------|---|------------------------------|------------------|
| Date Received 4-27-10 | Amount 200.00 | Receipt No. 347952 | By MSK |
| CUP # 811 | Date Determined Technically Complete 5/7/2010 | | By MSK |

7. Attachments

All attachments should be reproducible in black and white at 8½" x 11"

- Fee:** (\$200.00) Make checks payable to Latah County.
- Completed Narrative Worksheet:** See instructions on the Conditional Use Permit Narrative Worksheet.
- 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.
- Vicinity Map:** The map should show the site location in relation to neighboring communities and natural features.
- Assessor's Plat Map:** Include a copy of that shows the subject parcel and adjoining parcels.
- Other Attachments:** Required by staff / certain proposed uses.

LCZC Hrg: **CUP 811**
Applicant: **Lisher**
Exhibit #: **2**
Date: **6/2/2010**



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.

~~Excavate~~ Excavate, Blast and crush Rock at current site. Stockpiling will use current locations excavation site will not exceed 3 Acres use current Reclamation Plan RP2530 hours of operation Blasting & Crushing 5AM to 7pm 5 days a week hauling 6AM to 7pm 7 days a week, would like to have permission for asphalt plant, notify all addresses before blasting. No ~~to~~ limits on hauling or blasting.

Existing Uses of Property

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

Rock pit, Grazing, Ag

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.

It is marginal timber land, not good for farming or grazing not enough top soil to sub stain at location of pit site. Rock pit provides more income than grazing or timber

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

none

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

The rural character of Latah County will not significantly affected and there are no known unique cultural, scenic or natural amenities in the vicinity requiring protection. The proposed use is consistent with the objective of ensuring that land use policies do not unconstitutionally violate private property rights, with ~~notably at address that~~ ~~blatantly will~~

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

Perpose use is best in Rural areas, closest house more than 1/2 mile away

b. Population Element

no Residential ~~consturction~~ development

c. Housing Element

no Residential consturction

d. Economic Development Element

addo benefit to land owner extra income,

e. Public Services, Facilities, and Utilities Element

None

f. School Facilities and Student Transportation Element

no problem, ~~reparation~~ in the last 6 years

g. Transportation Element

no problem last 6 years

h. Natural Resource Element

Site has already has a Reclamation Plan
State permit 2530

i. Special Areas Element

none

j. Hazardous Areas Element

none

k. Recreation Element

none

l. Land Use Element

would help current landowner receive extra income
of land that is less productive - minimal impact on surrounding
areas

m. Property Rights Element

would like the same Rights as other Rock pits

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

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.

5. Dust Abatement

water will be used as needed for
Crushing Rock, the crusher has the system
in place to take care of dust

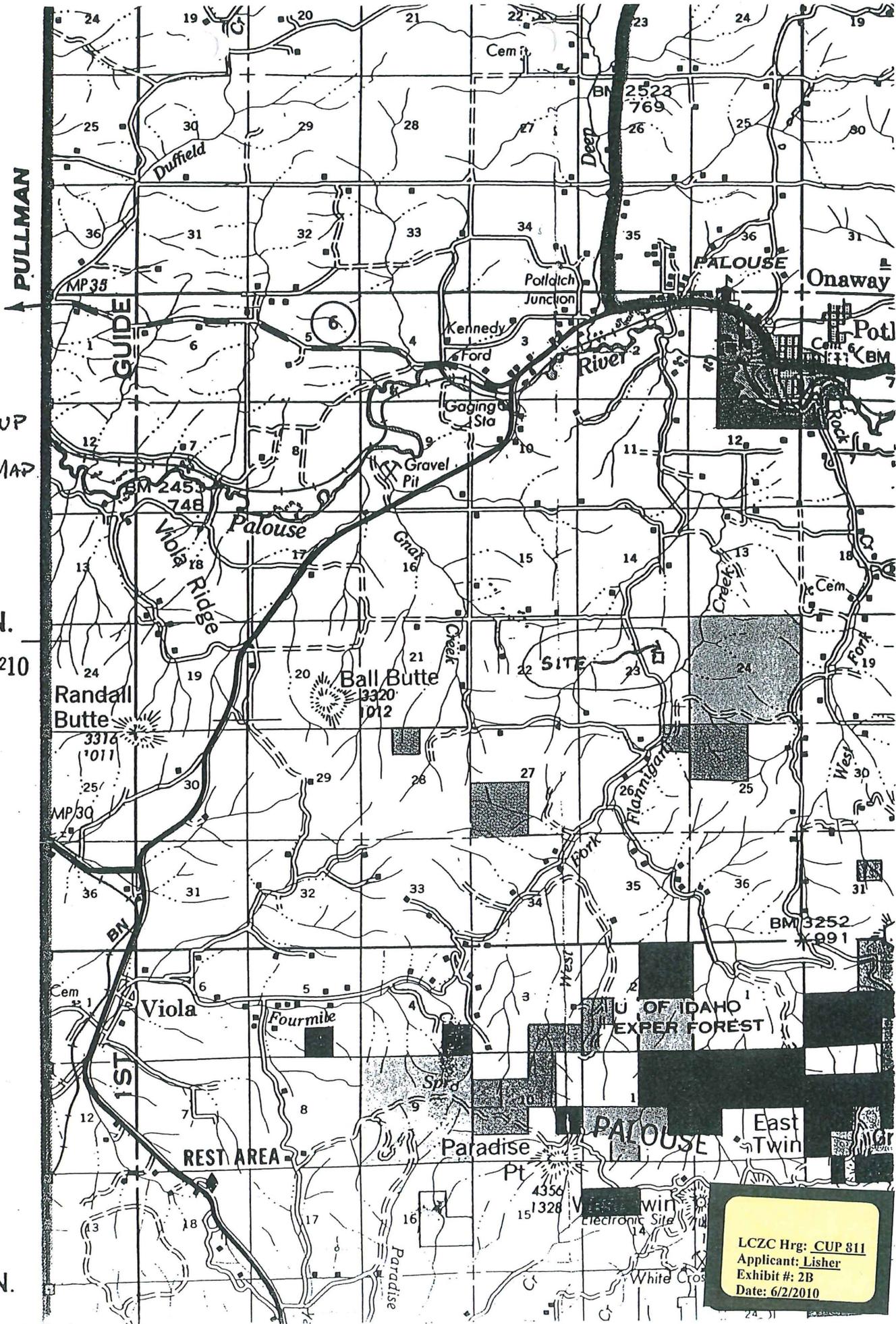
6 Fire, All vehicles and equipment will have
fire Ext.

7 fuel, no fuel will be stored on site.
Crusher has own fuel containment systems.

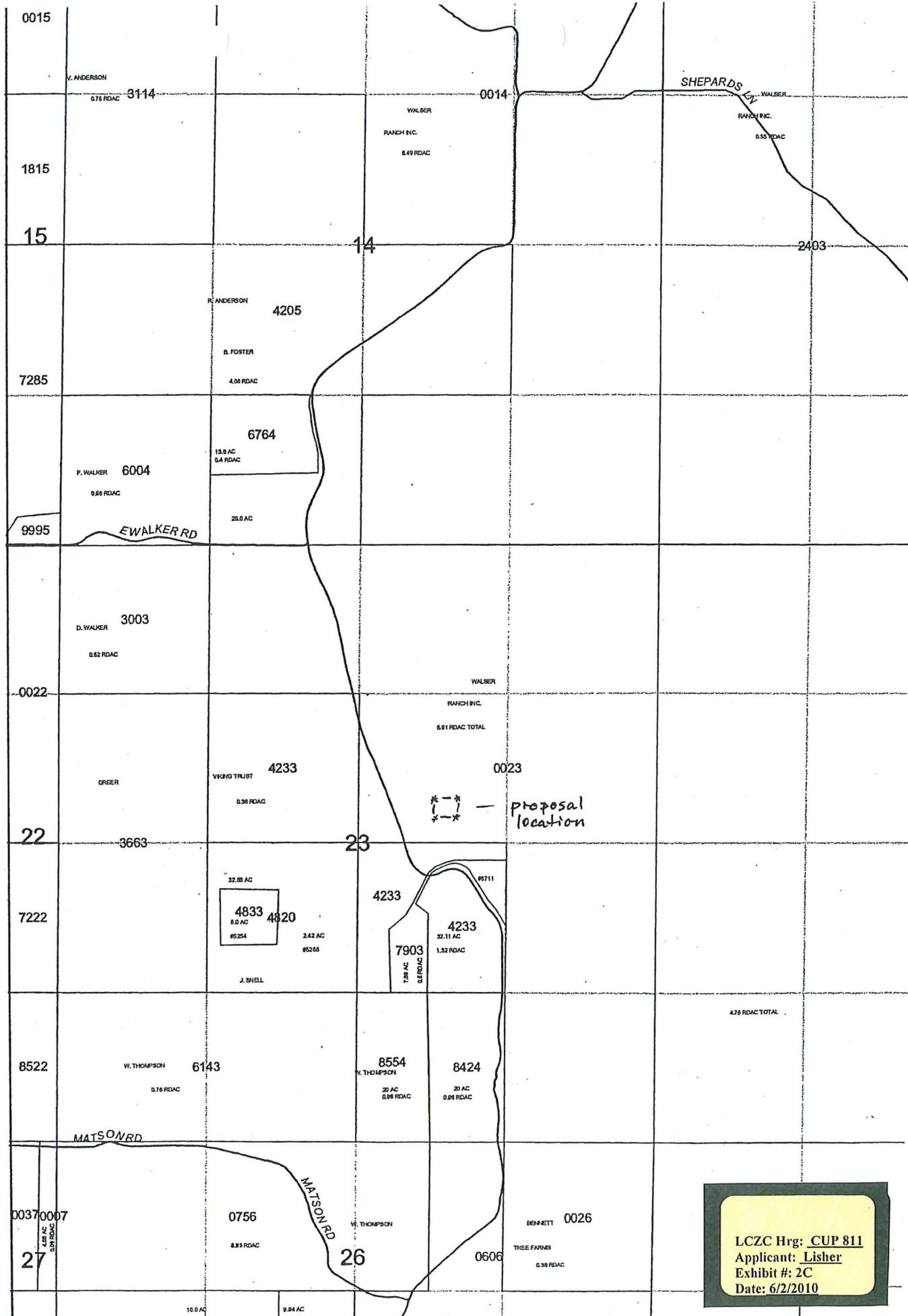
LISHER CUP
VICINITY MAP

T. 41 N.
5210

T. 40 N.



LISHER
CUP
Assessor's
Plat Map

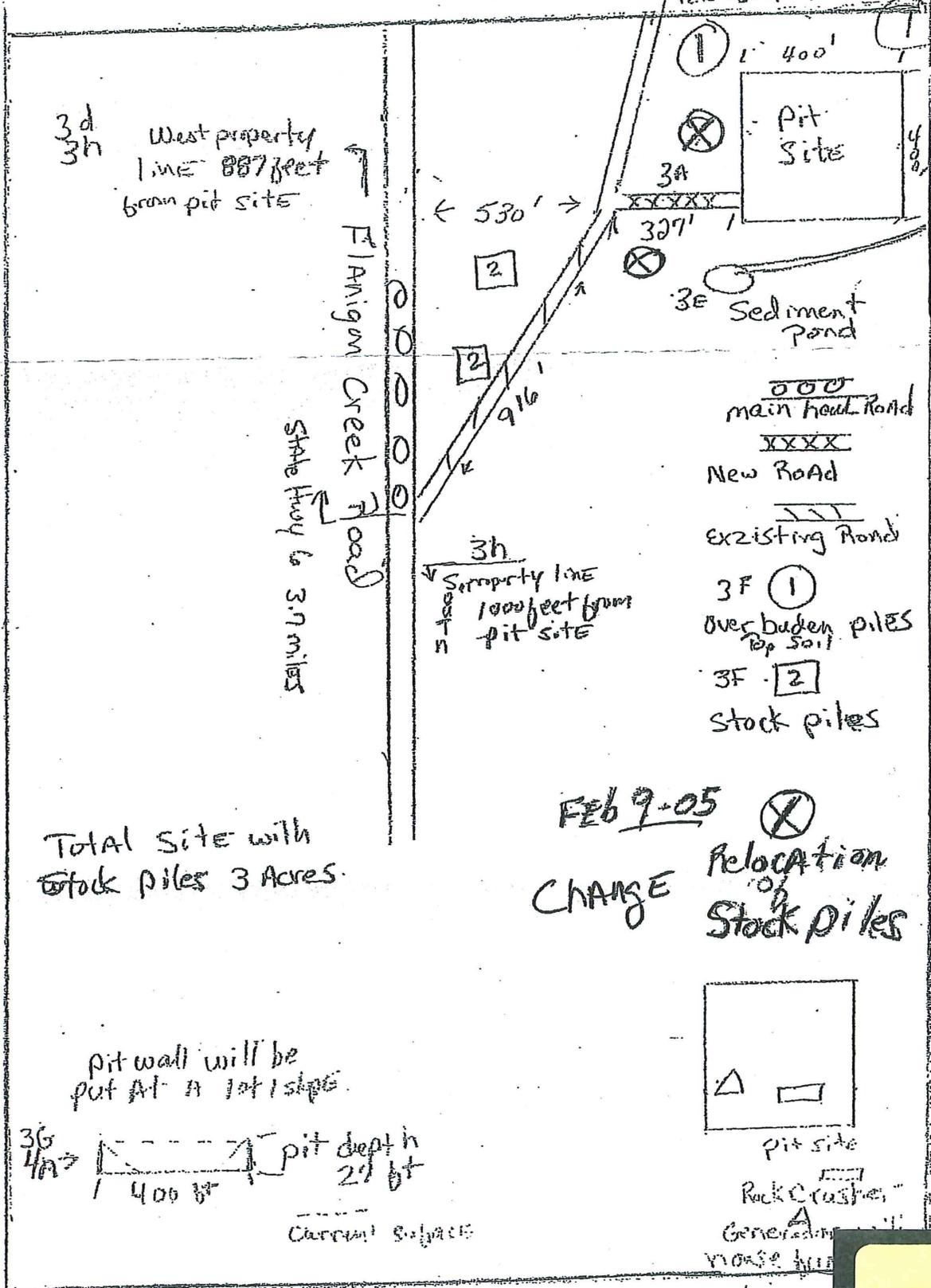


LCZC Hrg: CUP 811
 Applicant: Lisher
 Exhibit #: 2C
 Date: 6/2/2010

MAP 1

(A)

SWNE Section 23
Township 41 N Range 5 West



3d
3h
West property line 887 feet
from pit site

Flanigan Creek Road
State Hwy is 3.7 miles

3h
Property line 100 feet from pit site

1 400'
Pit Site
400'

3A
3E
Sediment Pond

main haul Road
New Road
Existing Road

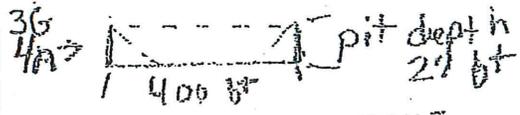
3F 1
Overburden Piles
3F 2
Stock Piles

Flanigan Cree:
10801
S.E. of

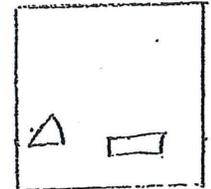
Total site with
stock piles 3 Acres.

FEB 9-05
CHANGE Relocation
of Stock Piles

pit wall will be
put at a 1st 1 slope.



Current surface



Pit site
Rock Crusher
Generator
mouse hole

1 inch = 4'

RECEIVED

LCZC Hrg: CUP 811
Applicant: Lisher
Exhibit #: 2D
Date: 6/2/2010

Map to Scale



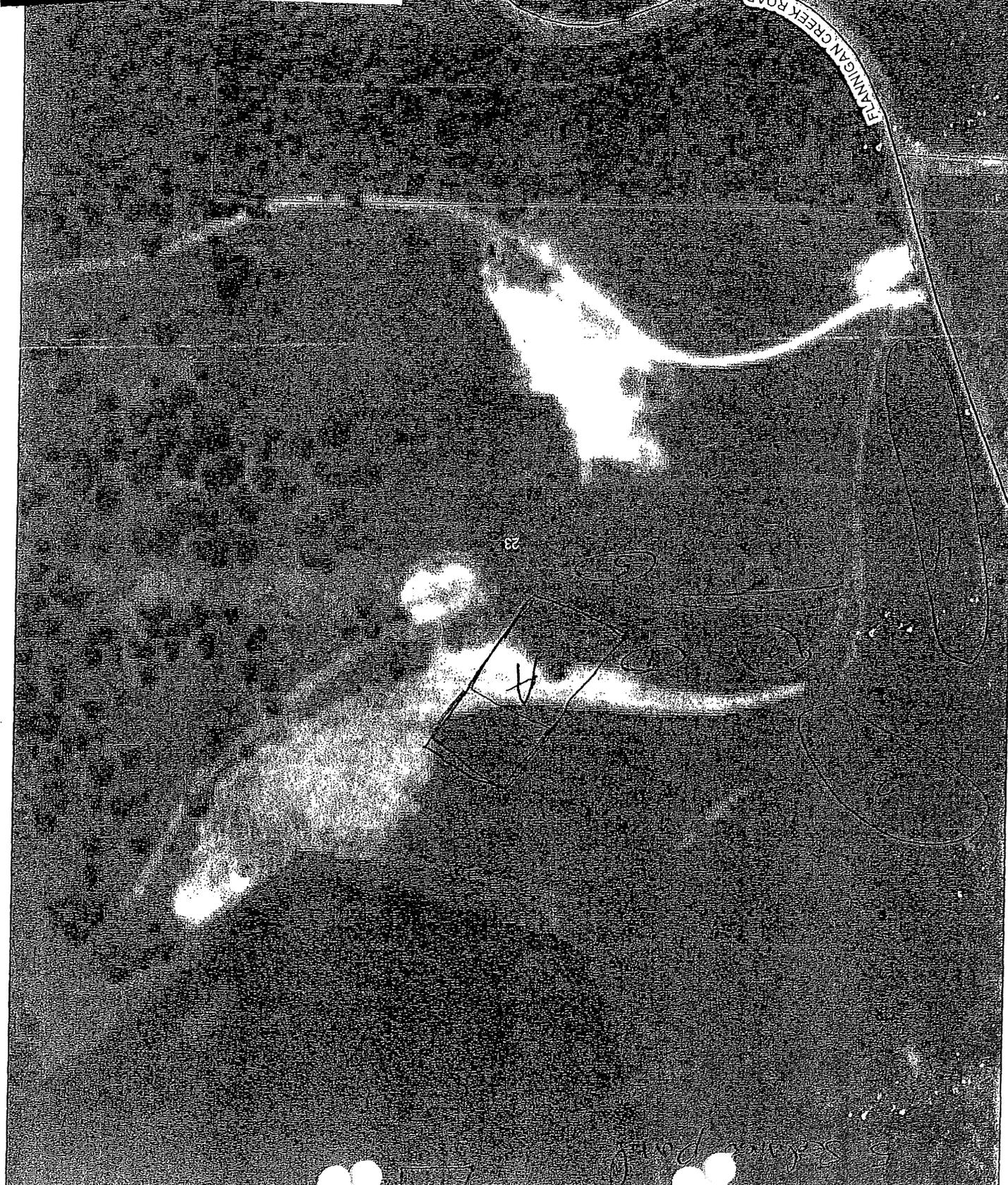
EMMIGAN CREEK ROAD

23



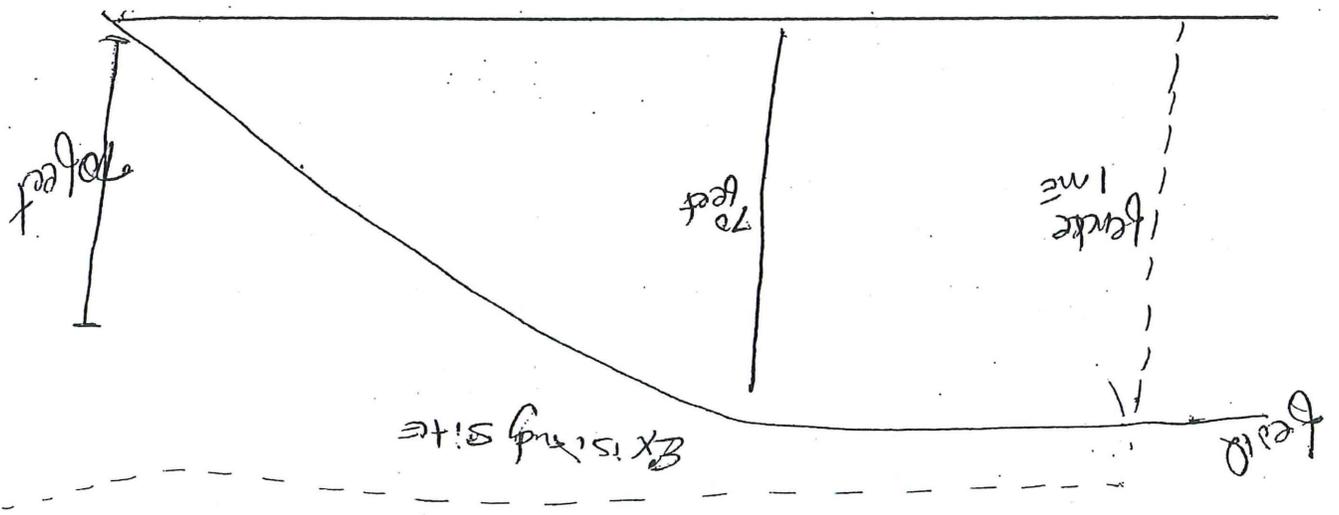
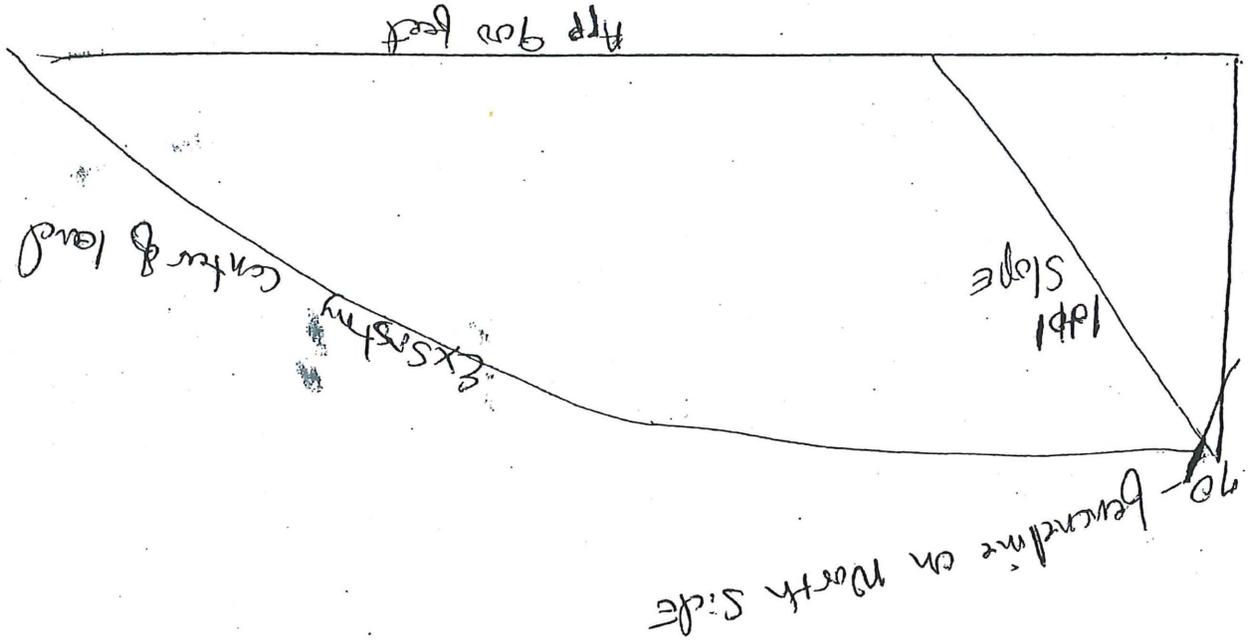
14/10/03 SHE

112/314 St on Piles



LCZC Hrg: CUP 811
 Applicant: Lisher
 Exhibit #: 2E
 Date: 6/2/2010

not to scale



S
 E + W
 N

Cup 6500
 Cross Section

Blasting Lot

George,

Here are the addresses of people within 1 mile. I also included people that are pretty close to one mile (within 1300 feet of one mile) but are outside the buffer area. You be the judge if you want to mail to those people (1069 Matson, 1075 Matson, 1276 Walker, 1295 Flannigan Creek).

Karl

FULLADDRSS ZIP Notes

1069 MATSON ROAD Viola 83872-9725 More than one mile, but only by less than 1300 feet

1304 WALKER ROAD Viola 83872

1389 FLANNIGAN CREEK ROAD Viola 83872

1329 FLANNIGAN CREEK ROAD Viola 83872-0000

1457 FLANNIGAN CREEK ROAD Viola 83872-9725

1271 MCBRIDE ROAD Potlatch 83855-9610

1437 FLANNIGAN CREEK ROAD Viola 83872-9725

1075 MATSON ROAD Viola 83872-9725 More than one mile, but only by less than 1300 feet

1490 FLANNIGAN CREEK ROAD Viola 83872-9725

1473 FLANNIGAN CREEK ROAD Viola 83872-9725

1300 WALKER ROAD Viola 83872-9725

1276 WALKER ROAD Viola 83872-9725 More than one mile, but only by less than 1300 feet

1105 MATSON ROAD Viola 83872-9725

1120 MATSON ROAD Viola 83872-9725

1395 FLANNIGAN CREEK ROAD Viola 83872-9725

1433 FLANNIGAN CREEK ROAD Viola 83872-9725

1331 FLANNIGAN CREEK ROAD Viola 83872-9725

1295 FLANNIGAN CREEK ROAD Viola 83872-9725 More than one mile, but only by less than 1300 feet

STORM WATER CALCULATIONS

for

GEORGE LISHER'S ROCK PIT SITE

JUNE, 2004

Ruen-Yeager & Associates, Inc.
Consulting Engineers and Land Surveyors
103 North Jackson Street, Moscow, ID 83843

For Additional
Information, Contact
Travis Mechling, P.E.
Tel: 208-883-3755

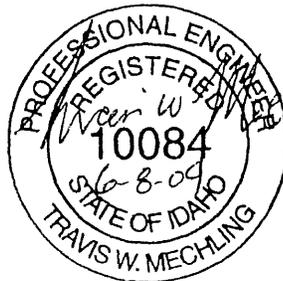
LCZC Hrg: CUP 811
Applicant: Lisher
Exhibit #: 2G
Date: 6/2/2010

STORM WATER CALCULATIONS

FOR

**GEORGE LISHER'S
ROCK PIT SITE**

PREPARED BY



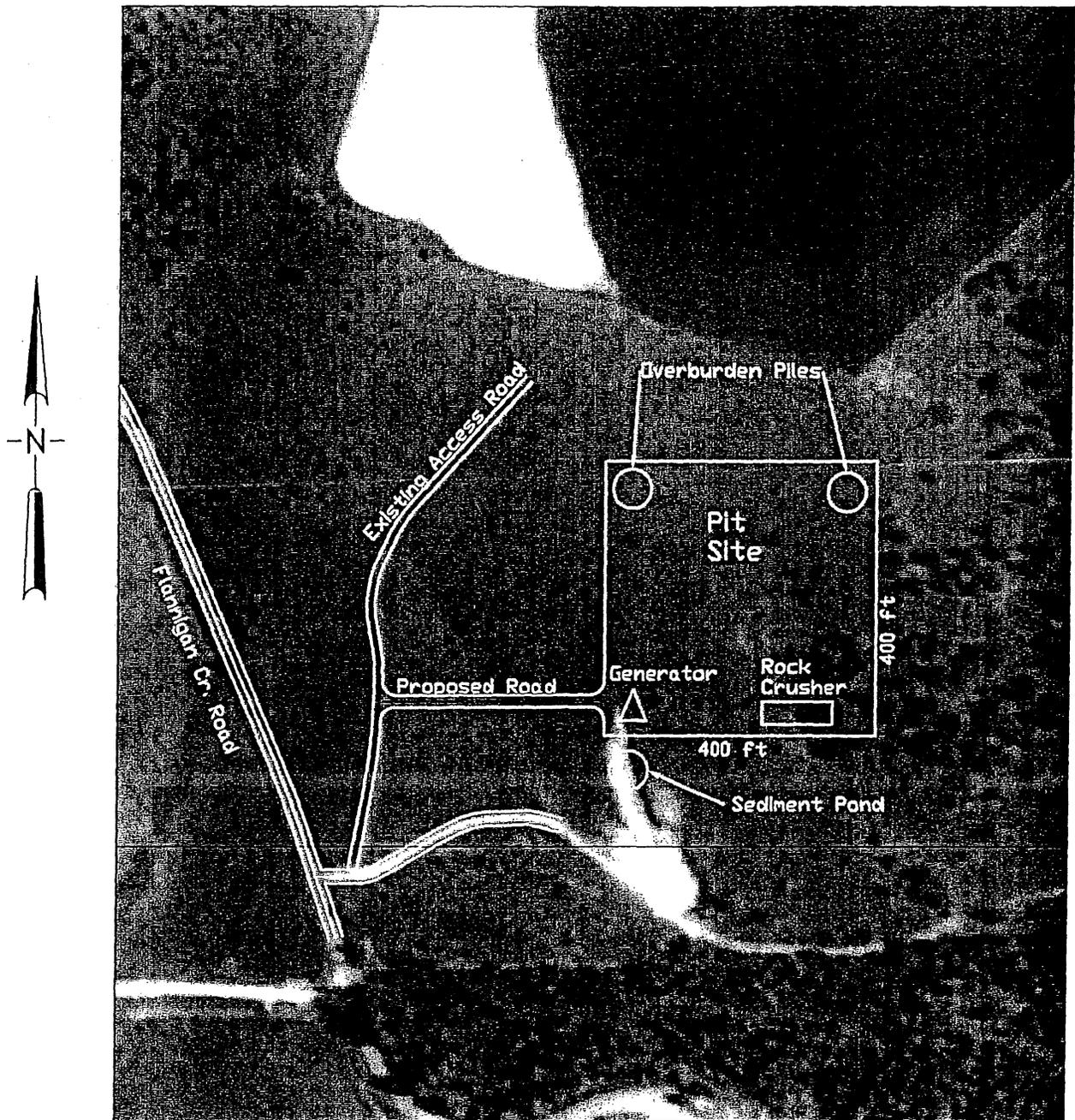
TRAVIS MECHLING, P.E.

JUNE 2004

RUEN-YEAGER & ASSOCIATES, INC.

103 NORTH JACKSON, MOSCOW, ID 83843

Storm Calculations For
George Lisher's Rock Pit



*This illustration is intended to determine the area for Storm Water Calculations only.
This illustration is not intended to represent a site layout design

SCALE

N.T.S.

| | | | | | |
|---|---|---|-------------|-----|----------|
| PROJECT: ROA.35 FILE NAME: ROA.35/George Lisher SHEET NUMBER: | George Lisher Rock Pit Layout Near Flannigan Cr. Road |  RUEN-YEAGER & ASSOCIATES, INC. CONSULTING ENGINEERS - LAND SURVEYORS 806 S. CLEARWATER LOOP, STE. N POST FALLS, IDAHO 83854 (208)773-7444 219 PINE ST SANDPOINT, IDAHO 83864 (208)265-4629 103 NORTH JACKSON MOSCOW, IDAHO 83843 (208)883-3755 | DESIGN BY: | NO. | REVISION |
| | | | TWM/RAB | | |
| | | | DRAWN BY: | | |
| | | | CHECKED BY: | | |
| | | | PLOT DATE: | | |

Storm Calculations (40 Year 2 Hour Storm per Latah County)

Q= ciA
c= 0.45 Unitless Surface Coefficient
I= 0.52 Precipitation Intensity Rate (in./hr.)
A= 3.67 Area of Developed Site (Acres)
Q_{40 Year-2 Hour Storm}= 0.86 ft³/sec

Pond Characteristics

Vol_{40 Year-2 Hour}= (0.86ft³/sec) (60sec/min)[0.5 (129 min-105 min) +.5 (15 min) + (105 min -15 min)]

Vol_{40 Year-2 Hour}= 5,647 ft³

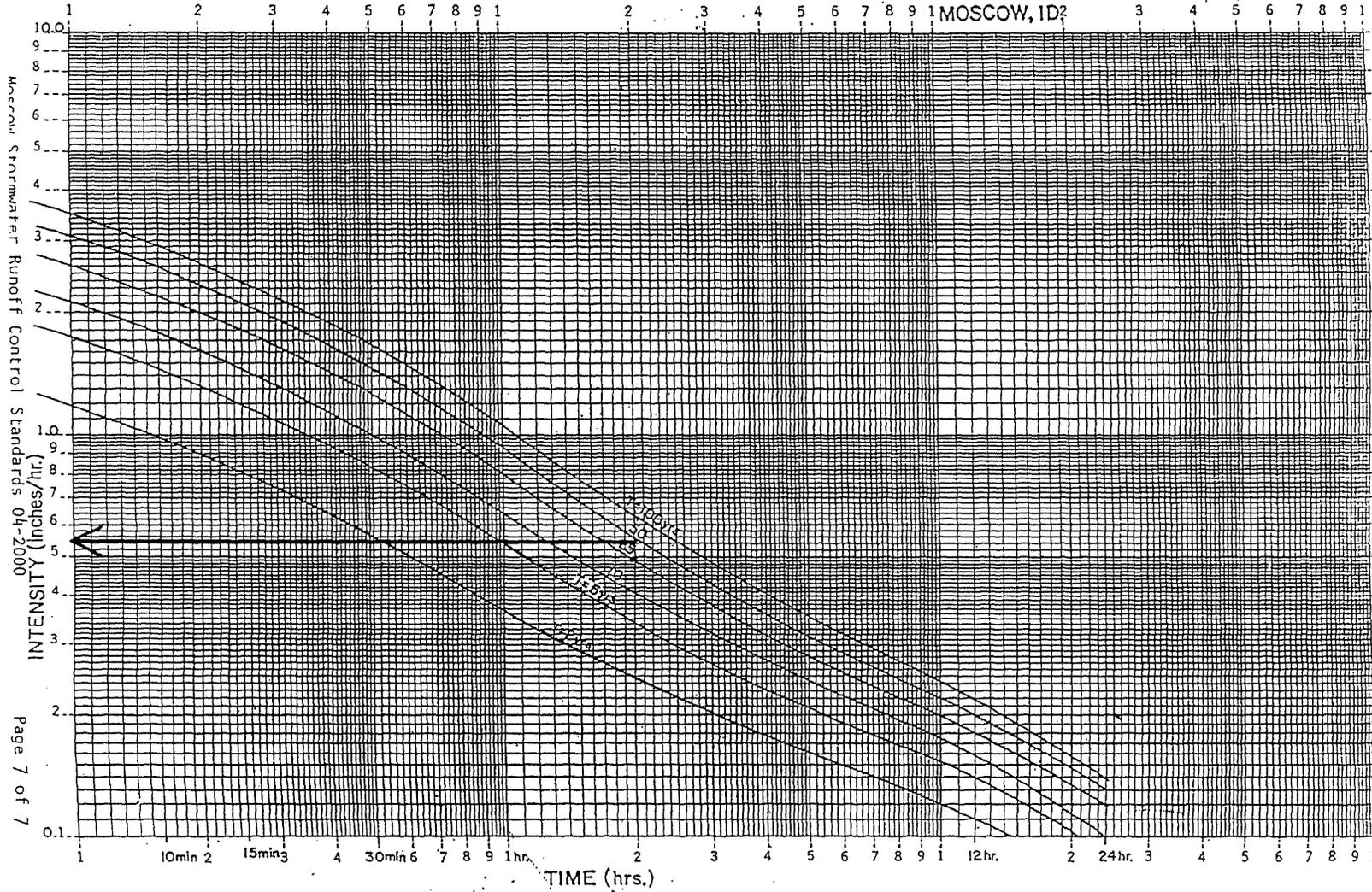
Overall Pond Depth= 5 ft (2 ft of Freeboard)
Water Depth= 3 ft
Area= 1882 ft²
Ratio of Width to Length= 3 :1

Pond Dimensions

Pond Depth= 5 ft
Water Level= 3 ft
Pond Length= 75 ft
Pond Width= 25 ft

RAINFALL INTENSITY-DURATION-FREQUENCY CURVES

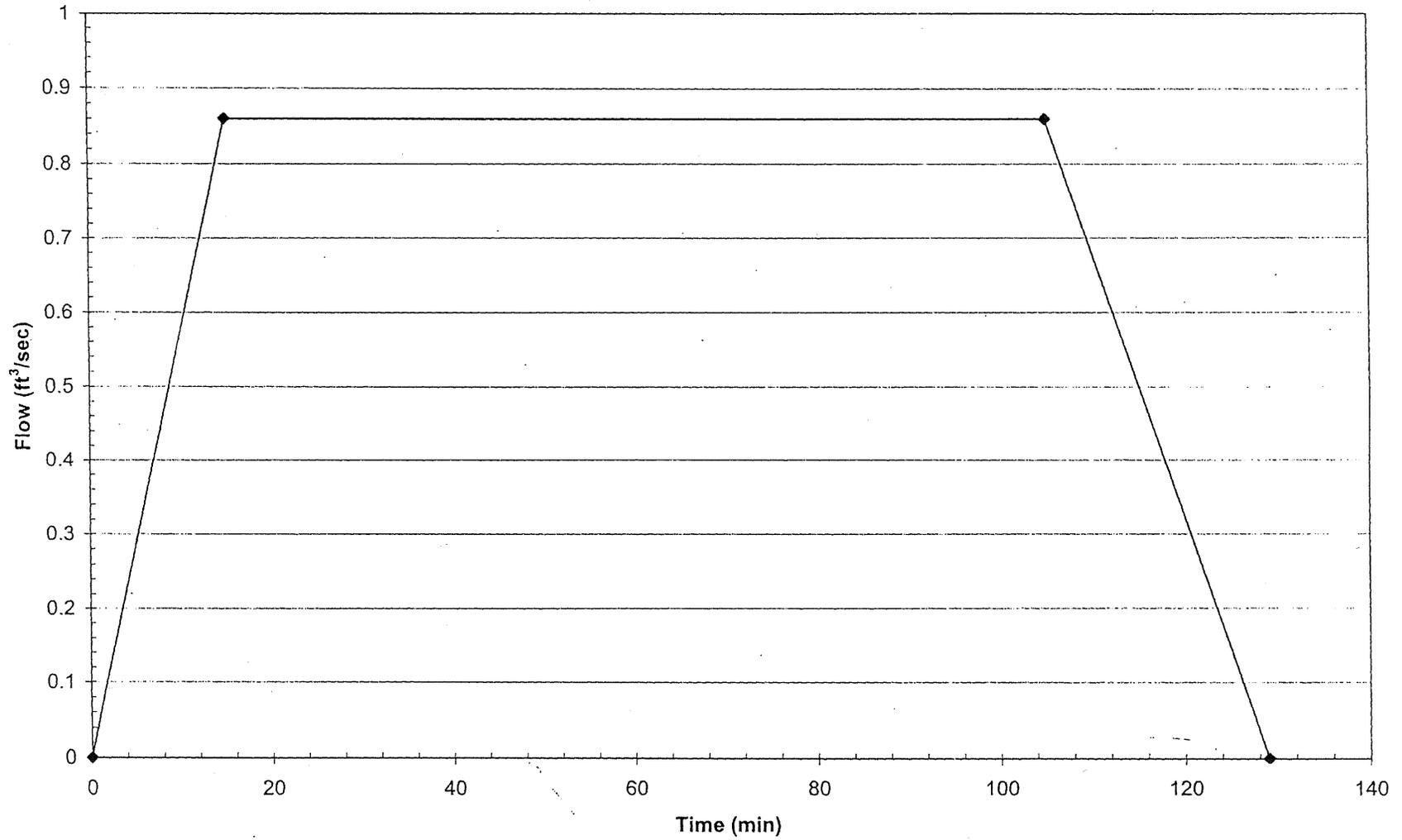
MOSCOW, ID



Maximum Stormwater Runoff Control Standards 04-2000

Page 7 of 7

Hydrograph from 40 Year 2 Hour Storm (per Latah County)



PATRICK J VAUGHAN
 LATAH COUNTY ASSESSOR
 PO BOX 8068
 MOSCOW ID 83843-0568

2009

ASSESSMENT NOTICE

THIS IS NOT A BILL.
 DO NOT PAY.

PARCEL DESCRIPTION:
 NE 1/4; NENW;
 E 1/2 SE
 23 41 5

For any questions, please notify the Assessor's Office immediately.
 Assessor's Telephone Number: (208) 883-5710

PARCEL ADDRESS:

WALSER RANCH INC
 1540 FLANNIGAN CREEK ROAD
 POTLATCH ID 83855

Appeals of your property value must be filed in writing, on a form provided by the County, by:

JUNE 22, 2009

Tax Code Area: 50-0000

Parcel Number: RP 41N05W230023 A

ASSESSED VALUE OF YOUR PROPERTY

| CURRENT CATEGORY AND DESCRIPTION | LOTS/ACRES | LAST YEAR'S VALUE | CURRENT YEAR'S VALUE |
|------------------------------------|----------------|-------------------|----------------------|
| 3 DRY AGR | 123.840 AC | 43,654 | 45,570 |
| 5 DRY GRAZING | 91.000 AC | 15,834 | 15,834 |
| 6 FORESTLAND PROD | 47.000 AC | 27,307 | 26,500 |
| 14 RURAL IND TRACT | 12.250 AC | 30,625 | 30,625 |
| 19 PUBLIC ROADS | 5.910 AC | | |
| 32 OUTBUILDINGS | | 800 | 800 |
| SUBTOTAL: | 280.000 | 118,220 | 119,340 |
| LESS HOMEOWNERS EXEMPTION: | | | |
| NET TAXABLE PROPERTY VALUE: | | 118,220 | 119,340 |

These values may not include personal property values. Taxes are based on the values shown on this Notice and on the Budgets of the taxing districts.

TAXING DISTRICT INFORMATION

| TAXING DISTRICTS | PHONE NUMBER | DATE OF PUBLIC BUDGET HEARING |
|------------------|--------------|-------------------------------|
| COUNTY | 208-883-2249 | 09/08/2009 |
| LIBRARY | 208-882-3925 | 08/18/2009 |
| SCH DIST 285 | 208-875-0327 | 06/09/2009 |
| SD #285 M & O | 208-875-0327 | 06/09/2009 |
| SD #285 SUPLMNT | 208-875-0327 | 06/09/2009 |
| N LATAH HWY | 208-882-7490 | 08/19/2009 |
| V-R CEM | 208-882-2305 | 05/27/2009 |
| POTLATCH FIRE | 208-301-2989 | 08/12/2009 |
| POTLATCH REC | 208-875-0735 | 08/20/2009 |

THIS IS NOT A BILL. DO NOT PAY.

See the back of this Notice for details.

LCZC Hrg: CUP 811
 Applicant: Lisher
 Exhibit #: 2#
 Date: 6/2/2010

PARCEL MASTER/HISTORY INQUIRY

PARCEL: RP 41N05W230023 A HISTORY YEAR 2009

NAME/ADDRESS
WALSER RANCH INC

LEGAL DESCRIPTION
NE 1/4; NENW;
E 1/2 SE
23 41 5

1540 FLANNIGAN CREEK ROAD

CODE AREA 500000

POTLATCH ID 83855

| CAT | RY | QUANTITY | UN | VALUE | HO MRKT | HO EXMP | CB MRKT | HS MRKT |
|--------|----|----------|--------|-------|---------|---------|---------|---------|
| | 3 | 2008 | 123840 | AC | 45573 | | | |
| | 5 | 2008 | 91000 | AC | 15834 | | | |
| | 6 | 2008 | 47000 | AC | 26508 | | | |
| * | 14 | 2008 | 12250 | AC | 30625 | | | |
| TOTALS | | | 280000 | | 119340 | | | |

F1=Help F3=Exit F6=NEXT HISTORY F7=LEGAL F8=CAT F12=MASTER

DEPARTMENT MEMORANDUM

SUBJECT: AMENDMENT TO RECLAMATION PLAN

NUMBER: RP-2530

OPERATOR: George Lisher
Potlatch, Id 83855

DETAIL: George Lisher requested amendment of his reclamation plan to move a portion of the crushed aggregate from the location identified in the original reclamation plan. The request is to facilitate separation of customer materials stored on the site and crushed rock Mr. Lisher will market to other customers.

REMARKS: There will be no increase in the disturbed acreage for the plan. The original of the amended map is attached

RECOMMENDATIONS: Approve the application with the following stipulations:

1. All refuse, chemical and petroleum products and equipment shall be stored and maintained in a designated location 100 feet from any surface water and disposed of in such a manner as to prevent their entry into a waterway.

2. State water quality standards will be maintained at all times during the life of the operation. Should a violation of water quality standards occur, mining operations on the site will cease immediately, corrective action will be taken, and the Department of Environmental Quality will be notified.

3. Erosion and non-point source pollution shall be minimized by careful design of the site access and implementing Best Management Practices; which may include, but are not limited to:

- a. Diverting all surface water flows around the mining operation;
- b. Removing and stockpiling vegetation and slash, except merchantable timber, for use in erosion control and reclamation;
- c. Removing and stockpiling all topsoil or suitable plant growth material for use in reclamation.

4. Reclamation bonding is provided by a statewide bond submitted through the Department of Administration.

5. Acceptance of this permit does not preclude the operator from obtaining other necessary permits and approvals from local, state and federal authorities, i.e. Storm Water Pollution Prevention Plan (SWPPP), waste water generation and/or air quality permits, National Oceanic and Atmospheric Administration Fisheries, U.S. Army Corps of Engineers 404 Permit, and Stream Channel Alteration Permits, for each production process.

RECOMMENDATION APPROVED:

RECOMMENDATION DENIED:

OTHER ACTION:

RDK:rdk
2/16/05

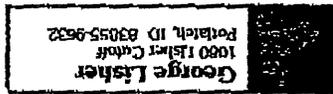
George S. Fisher

George Fisher

The purpose is to insure that
the stock piles of Rock are not joined
so that there will be no chance of
Rock ~~to~~ taken from the wrong
location. On the map County Piles are
marked [a]. My piles would be ~~to~~
So in adding two more areas to map.

The letter and map will make an
amendment to RP-2530/cup 653.

To Idaho Dept. of Lands



IDAHO DEPARTMENT OF LANDS

954 W. Jefferson St., PO Box 83720
Boise, Idaho 83720-0050
Phone (208) 334-0200 Fax (208) 334-2339

WINSTON WIGGINS - DIRECTOR

BOARD OF LAND COMMISSIONERS

DIRK KEMPTHORNE
Governor

BENYSURSA
Secretary of State

LAWRENCE G. WASDEI
Attorney General

KEITH L. JOHNSON
State Controller

MARILYN HOWARD
Sup't of Public Instruction

May 25, 2004

George Lisher
1080 Lisher Cutoff
Potlatch, Idaho 83855

SUBJECT: Reclamation Plan 2530

This correspondence is notification the above cited reclamation plan was approved on May 5, 2004.

| PLAN NO. | ACRES | COUNTY | LEGAL DESCRIPTION |
|----------|---------|--------|---|
| S- 2530 | 3 acres | Latah | Twp 41N, Rge 05W, SW $\frac{1}{4}$ NE $\frac{1}{4}$, Sec 23, |

The plan was approved subject to the following terms and conditions:

1. All refuse, chemical and petroleum products and equipment shall be stored and maintained in a designated location 100 feet from surface water and disposed of in such a manner as to prevent their entry into a waterway.
2. State water quality standards will be maintained at all times during the life of the operation. Should violation of water quality standards occur, corrective action will be taken and the Department of Environmental Quality will be notified.
3. Erosion and non-point source pollution shall be minimized at all times by careful design of the site access and implementing Best Management Practices; which may include, but not be limited to:
 - a. Diverting all surface water flows around the mining operation;
 - b. Removing and stockpiling vegetation and slash, except merchantable timber, for use in erosion and reclamation;
 - c. Removing and stockpiling topsoil or suitable plant growth material for use in reclamation.

**KEEP IDAHO GREEN
PREVENT WILDFIRE**

EQUAL OPPORTUNITY EMPLOYER

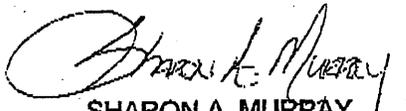
RP-2530

Page 2

4. In accordance with provisions of Idaho Code title 47, chapter 18, a payment to the state reclamation fund of \$84.00 for three disturbed acres over the next five months shall be paid prior to commencing mining operations. This payment will constitute financial assurance in lieu of a reclamation bond. Approval of this reclamation plan is conditioned upon receipt of the above payment, receipt of the signed, enclosed acknowledgement form and annual payments in accordance with Idaho Code title 47, chapter 18 and IDAPA 20.03.03.

5. Acceptance of this permit does not preclude the operator from obtaining other necessary permits and approvals from state and federal authorities, i.e., Storm Water Pollution Prevention Plan (SWPPP), waste water generation and/or air quality permits, National Marine Fisheries Service Consultation, U.S. Army Corps of Engineers 404 Permit, and Stream Channel Alteration Permits, for each production process.

If the department does not receive a written notice of objection from you regarding these stipulations by June 25, 2004, the stipulations will be considered as accepted.


SHARON A. MURRAY
Minerals Program Manager

cc: Roger Kechter, Ponderosa Area Office

CUP #811 – Staff Introduction

A request was made by George Lisher for a conditional use permit to operate a mineral resource development including excavation, stockpiling, crushing, blasting, and an asphalt plant on approximately three (3) acres of a 280-acre parcel located in the Agriculture/Forest zone. The property is owned by Terry Walser. The property is located on the east side of Flannigan Creek Road, in Section 23, Township 41 North, Range 05 West, B.M. in Latah County and is referenced as Latah County Assessor's parcel number RP41N05W230023A.

The Latah County Land Use Ordinance, under section 3.01.02(7), lists "mineral resource developments" as conditionally permitted uses in the Agriculture/Forestry zone subject to §4.03.

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 not in conflict 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 findings of fact and conclusions of law.**

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 resource development, unless making specific findings supporting the omission or alteration of the requirements of Section 4.03.02. 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.

Section 4.03.02 requires the following for mineral resource developments:

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.

The following exhibits will now be entered into the record.

EXHIBITS:

- Exhibit #1.** Staff Report
- Exhibit #1A.** Criteria Worksheet
- Exhibit #1B.** Vicinity and Comprehensive Plan Land Use Map
- Exhibit #1C.** Zoning Map
- Exhibit #1D.** Aerial Photograph and Adjacent Property Owners Map
- Exhibit #1E.** Photos of Subject Property
- Exhibit #1F.** Buffer Map (75 feet)
- Exhibit #1G.** Buffer Map (1000 feet)
- Exhibit #2.** Application Form (Submitted by Applicant)
- Exhibit #2A.** Applicant's Narrative (Submitted by Applicant)
- Exhibit #2B.** Vicinity Map (Submitted by Applicant)
- Exhibit #2C.** Plat Map (Submitted by Applicant)
- Exhibit #2D.** Site Plan (Submitted by Applicant)
- Exhibit #2E.** Cross Section (Submitted by Applicant)
- Exhibit #2F.** Blasting Mailing List – One (1) Mile (Submitted by Applicant)
- Exhibit #2G.** Storm Water Calculations (Submitted by Applicant)
- Exhibit #3.** Notice of Filed Reclamation Plan from Idaho Department of Lands
- Exhibit #4.** Staff Introduction for Latah County Zoning Commission hearing for CUP #813 held on June 2, 2010.
- Exhibit #5.** Letter submitted by North Latah County Highway District

That is all staff has unless the Commission has questions.

North Latah County Highway District

1132 White Avenue

Moscow, Idaho 83843

Deary Phone: (208) 877-1101
Fax: (208) 877-1298

Moscow Phone: (208) 882-7490
Fax: (208) 883-3926

Potlatch Phone: (208) 875-1101
Fax: (208) 875-8967

nlchd@nlchd.com

May 20, 2010

RECEIVED

Latah County Zoning Commission
Latah County Courthouse
522 S Adams
Moscow, ID 83843

MAY 21 2010
LATAH COUNTY

Dear Commissioners,

I submit this letter on behalf of the North Latah County Highway District Commissioners. The North Latah County Highway District ("Highway District") has exclusive supervision and jurisdiction over all public highways and public rights-of-way within the jurisdictional confines of the Highway District system. The Highway District's primary responsibility is to keep highways within its system in proper repair within the limits of available funds. To do so, the Highway District must have adequate rock available for use on its public highways at reasonable expense. It is with this public responsibility in mind that the Highway District has participated in past public hearing processes concerning George Lisher's conditional use permit application by providing factual information relative to the Highway District's operations.

While the Highway District has in the past purchased rock crushed in this pit from Mr. Lisher, the Highway District does not want Latah County to make any decision in the matter of this application that is **dependent** or **conditioned** in any way upon the Highway District's purchase or use of rock from this site. The application should again be considered independent of any potential commitment by the Highway District to purchase or use rock from this site. The only condition the Highway District would ask for is to coincide the pit's hours of operation with those of the Highway District – 6:00 am to 4:30 pm.

The Highway District will not express any opinion as to whether Mr. Lisher's application satisfies the criteria of the Latah County Zoning Ordinance or the Latah County Comprehensive Plan. At this point, those matters are solely within the province of the Latah County Zoning Commission, and we defer entirely to your reasoned judgment.

Thank you for your consideration.

Sincerely,

For the North Latah County Highway District Board of Commissioners



Dan Carscallen, Secretary

LCZC Hrg: CUP 811
Applicant: Lisher
Exhibit #: 5
Date: 6/2/2010

1098 E. Hatter Creek
Princeton, Idaho 83857
May 26, 2010

RECEIVED
MAY 27 2010
LATAH

Latah County Commissioners
Latah County Courthouse
Moscow, Idaho 83843

Commissioners and Whomever it may concern,

Please allow George Lisher to operate a rock crusher on the Walser property on Flanigan Creek. The neighbors complaints have been proven to be unfounded and a scare tactic. There have been no accidents because of extra traffic and the wildlife are still there. The domestic animals haven't been stressed. As for one neighbor stating that his well went dry after they blew the pit, I have heard that he has several wells on his place because that well always goes dry.

We have had enough of this county being against business. No wonder the tax base is less all the time. Do the right thing and approve agri-business. The county needs the rock.

Thanks,

Wayne Hemmelman
Joanne Hemmelman
Wayne & Joanne Hemmelman

LCZC Hrg: CUP 811
Applicant: Lisher
Exhibit #: 6
Date: 6/2/2010

mस्कnott@latah.id.us

From: Steve Norton [nortons@moscow.com]
Sent: Friday, May 28, 2010 1:04 PM
To: mस्कnott@latah.id.us
Subject: resubmission of attachments

Attachments: Lisher CUP 2010.doc



Lisher CUP
2010.doc (3 MB)

May 28, 2010

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

Re: CUP 811

To the Latah County Zoning Commission:

CUP 811, George Lisher's application to continue his gravel pit operation on Flannigan Creek Road is very similar to the original request made in 2003, CUP 653. After 40 hours of testimony, 120 exhibits and many hours of deliberation by the Latah County Commissioners the conditions on which the gravel pit operation would be conducted were set. Neither side was happy with the conditions, but they allowed George Lisher the opportunity to operate a gravel pit at this location and the conditions made it more bearable for the neighbors who found themselves living so close to an operating gravel pit. We have attached a copy of that decision for your consideration, since so much effort went into it and many of the conditions are still appropriate for CUP 811. It might save a lot of effort to use these conditions to build the new CUP. Please note condition #4 was eliminated in a subsequent hearing.

In your deliberations please take into account the price in money, time and quality of life the families who live near the gravel pit have paid for locating a gravel pit across the street from their homes. Please do whatever is possible to protect them.

Thank you for your efforts in working out a fair and equitable set of conditions.

Sincerely,

Steve and Linda Norton

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.

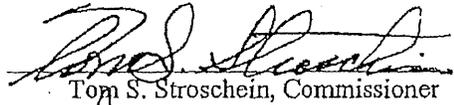
12. The excavation site shall be limited to two acres and shall be fenced, posted and gated as required by Section 11.04 of the Latah County Zoning Ordinance.
13. This conditional use permit shall expire six years from the date of issuance, at which time the implementation of the reclamation plan shall 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

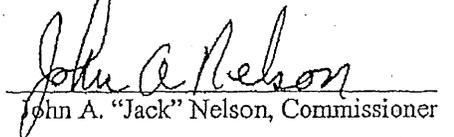
May, 2004.



Paul J. Kimmell, Chair



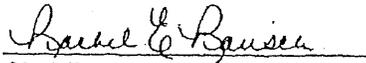
Tom S. Stroschein, Commissioner



John A. "Jack" Nelson, Commissioner

ATTEST:

DATE:



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.

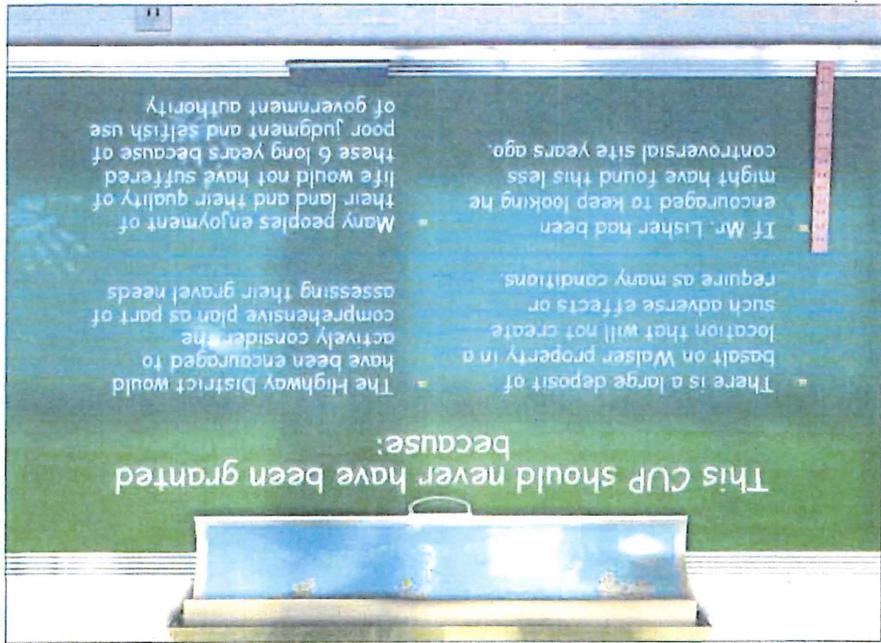


Flawed Premises Led To Forcing a Decision

- Commissioner's desire to give the Highway District what they pushed for led to authorizing an rfty CUP for the "only rock" in the area
- An extensive list of conditions was necessary to mitigate the known adverse impacts this CUP would create in the area and for the families living across from it

Forcing the CUP created long term fallout

- The outcome of the decision has played out to the point of exhaustion over the past six years.
- Lisher was allowed to utilize the zoning board hearing process to attempt to appeal issues protected by the original CUP contract.
- Multiple hearings initiated by Lisher over the 6 years wasted thousands of tax payer dollars and forced community members to stop their normal activities to write letters, collect evidence and prepare presentations for yet another zoning rehearing
- Everyone became completely tired and frustrated with the power planning and building gave to Lisher to disrupt our lives.
- That power came from administrator error.



11



- Isolated from Residences
- Surrounded by hills and mature forest
- Closer to Lisher home and NLCHD office in Portlatch
- Sits between Flannigan Creek and Rock Creek with quick access to McBride
- Loading area far from houses
- No bus stops in area
- Closest residence to loading would be property owner Waiser

Pro Pit Positive Features



11



Lisher

Waiser S

Proposed



Upper photo reveals lack of protection of 3 existing residences from blasting, crushing, loading noises of gravel operation started by Lisher in 2004.

Bottom photo shows proposed site whose topographic layout has hills and mature forest between it and a single dwelling located approximately 750 yards away.

More Pro Pit Positives

- Visible surface basalt formations cover area of over 300 feet in length.
- Limited overburden over basalt makes area useless for grazing.
- Implement and skid roads in place ready for improvement.
- Potential for long term financial benefit to Waiser.
- Sustainable small business for Lisher.

| Length | Area |
|------------|-------------------|
| 2883' long | 1.27 square miles |

Close up of one of the sample sites

Lower picture taken from North edge of proposed site facing south

Photos taken around May 21, 2010 reveal lack of meaningful soil covering this area





A couple of different photographs of exposed basalt at the proposed site

Small samples were taken, smashed to reveal fresh surface and compared to known basalt from Anderson Pit.

Samples are available to view









Location is 2.29 miles from Highway 6

- While only a suggestion the flat area to the right could be considered for a main stockpile area if a highway district bid was won

Proposed site entry from Flannigan Creek Road



- Mc Bride/ Flannigan Creek Intersection
- Close up of existing implement road accessing proposed rock pit site



It is with a sincere desire to end this conflict that I sought guidance in finding a solution that would provide Mr. Lisher his need for income as well as protect my family and neighbor's physical and mental well being from the very real trauma of this lengthy process.

It is in that spirit that I offer these ideas as a way to heal and disengage while lending support to Mr. Lisher's future business success.



- Walsen house off Flannigan Creek Road
- Proposed pit location is hidden behind timber on left side of photograph
- The implement road can be seen in the approximate center of the photo moving from right to left between the two pasture colors

This information has been provided to Dan Carscadden of the North Latah County Highway District

- During an informal conversation he acknowledge the idea of a rock pit closer to Fortlatch, with fewer conditions, and the possibility of adjusting hauling hours would be more attractive than the Lisher Cup location pictured.
- He was very clear however the decision to make any changes on the property were up to Lisher and Waiser and there was no contract with them.



See CD (exhibit 9)
from: Lazzarini
Powerpoint

Life In Rural Latah County
Quiet, Breath Taking, Priceless



LCZC Hrg: CUP 811
Applicant: Lisher
Exhibit #: 10
Date: 6/2/2010

May 20, 2010

Zoning Commission:

Unfortunately, I will not be able to attend this hearing since I will be traveling to Arkansas to see my 90-year-old father just released from the hospital. It is extremely hard for me to be away but as with everything you do, the only person with the ability to make long range plans is the applicant. All I can do is try to share what we have been through over the last six years. It is up to you and your common sense now to make your decision. I hope and pray you will read my letter and information and try to understand the heartache this rock pit has caused us over the last six years.

We don't enjoy being in the news or attending these meetings. It would be much easier to just give up. However, this pit has the ability to truly ruin our quality of life and it has also burdened us financially with the loss of our well. We continue to try to find the right words to explain how profoundly allowing this CUP has adversely affected our lives. We have made all the sacrifices for Mr. Lisher over the last six years and his only complaint is he isn't being allowed to do everything he wants. Everything he wants creates more and greater adverse impact on our lives. This is what the comprehensive plan was designed to eliminate.

After over 40 hours of testimony and over 120 exhibits, I still don't understand the reason why this pit was approved six years ago. 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 six years later to still share their point of view. How many times do we have to repeat this?

The Latah Board of Commissioner's decision and conditions were based on a two-acre area with the fact that it would end in six 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, six years. This is why the "Conclusions of Law" reads "as conditioned" in every section.

We believe this pit should have never been approved, but it was with significant conditions. I don't believe they thought it would hurt our wells, or if it did they would magically be replaced. They thought the crushing would only last a few weeks instead of a couple months. Our property values wouldn't be affected, since the pit was only going to be here for six years, so they said. 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 correct a wrong is in your hands.

I would encourage you to review the testimony and exhibits from these first hearings. I have attached copies of some of the exhibits we have copies of. It is these hearings that created the knowledge for why conditions were necessary.

In the findings of fact, they didn't choose to remember the letter from the property owner who was unable to get any assistance with his well he lost from blasting. Also, another neighbor of a rock pit, Adrienne Gurtzen, testified about his home that he bought for \$110,000 and took a loss of \$25,000 when he sold it (at a time property values were not dropping). These exhibits and testimony were left out of the "Findings of Fact". Sadly, these two citizens' experiences were discounted. Sad because they most accurately predicted what accurately happened to us.

The county employee, who selectively included information in the "findings," did like 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 pets or home? THERE IS NO COMPARISON. We were unable to respond to this due to right of the zoning board to limit discussion between themselves and the community. Testimony and letters do not take the place of discussion and serious deliberation with knowledgeable community members.

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 both 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 are dealing with our quality of life. Sometimes information was repeated wrong, and we did not have the opportunity to correct it. The logical questions and concerns we had from the beginning have been shown through the experiences of the past six years to be reliable and valid.

Our road is still a winding, narrow, unimproved country road where many country drivers take a NASCAR line through blind corners. Reducing heavy trucks traveling on it is a reasonable goal until which time significant re-engineering is completed. The commissioner's were assured our roads would be well maintained because of the rock pit. Even though we had never complained about our road prior to this rock pit, I think the Commissioners thought this would be such an improvement to us that we would be happy. It has not worked out to be so. We were told at the first hearings that this rock pit would only be used in our immediate area. This influenced their decision, but I have

followed many trucks out of our area with gravel. There is no accountability without expensive enforcement.

Even though the two hundred foot sight requirement was signed off, the driveway into the rock pit is still not visible within the required two hundred foot sight requirement. There is a raised hill, which blocks the view of oncoming traffic and the entrance to the rock pit. No conditions are in place to correct the un-safe situation for large trucks entering and leaving this pit. Trucks park outside the gate blocking Flannigan Creek Road to unlock the gate to enter. Drivers dismount their vehicles with the engine running to walk across the road and unlock the gate. This is both illegal and unsafe. Conditions must be in place to require recessed access gates to allow these large semi-trucks and trailers to exit the roadway prior to drivers dismounting. It is still legal to drive 55 mph on these road surfaces through this blind area. While the Zoning Commission can't change the speed limit, they need to consider it when creating conditions.

The Moscow school bus turns around in the road at the blind intersection 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 multiple blind corners with no road shoulders in this area. A condition to limit trucks coming into the area until 9AM limits contact between them and the bus stops and is consistent with required conditions in the comprehensive plan. It also allows for the commuter traffic to clear the area.

People drive the middle of these dirt roads out of habit. The chip-sealed road is now double yellow striped from Davis Road to Highway 95. This creates an 8-mile no passing zone on Flannigan Creek and Four Miles roads, which creates congestion around buses picking up children along the winding narrow two-lane road. Many don't drive on their side of the road when they round a curve, even with the double yellow stripes. Obviously, the best practice is to locate businesses with long term heavy truck traffic next to major highways designed for such traffic. A quick look at other successful commercial industrial crushing operations in the Potlatch to Harvard area shares this one common trait. The Comprehensive Plan is designed to reduce the conflict and waste of limited government resources by strongly encouraging commercial crushing operations to locate in suitable areas. The only alternative is to severely condition the operation, which as we have seen over the past six years does not reduce conflict or endless appeals disguised as new applications.

The noises of the rock pit does not compare to any other allowable land use. We have lived in this location for over 15 years. Considering every possible combination of industrial and Ag sounds we have experienced over that time, nothing in the rural/Ag zone has produced anywhere near the stressful disruption crushing, blasting and loading rock has produced. It is impossible to ignore and cannot be blocked from permeating our entire house for the hours and months it is allowed to continue. In reality, the only conditions capable of bringing a mining operation encroaching on existing family residences into compliance with "not adversely effect to a greater extent than a permitted use" is to severely limit blast size, crushing hours, total tons, and hauling.

What we have been clearly shown over the past six years both by his statements, written documents, and behavior is that Mr. Lisher doesn't want the Comprehensive Plan to apply to his operation. There is no compromise and believes he should be able to do whatever he wants, with no regard to the impact his prohibited activities have on the rest of the community. Any reference to a "Good Neighbor Policy" can only apply if both parties are subjected to the same environmental conditions. The applicant is not impacted by the blasting or crushing so he personally has no incentive to see the benefit of conditions to mitigate the suffering adjacent to the site. Such beliefs undermine the process and goals of a Comprehensive Plan. For the benefit of all parties, he should be encouraged to find a location to conduct his business where conditions are basically unnecessary due to the locations remote nature.

"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)

The following is what our life is like across 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 had to use two days of paid vacation 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. This adversely affects us to a much greater extent than any other permitted use. It is a direct tax that removes valuable consideration from our pockets.

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 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 because those who blast have taken the position we have the burden of proof, not them.

LOSS OF OUR WELL

Our worse fears happened and our well goes dry. 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 wait and pray 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 pray that we will 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 neighborhood have come up dry, it is a real concern that we will even hit water.

Thankfully, we did hit water. However, we continue to be 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 used to it. It is a loud crushing noise with intermittent louder bangs, which makes it impossible to block out or tolerate. The constant revving of the diesel engines going back and forth, the dumping of the rock into the truck and the beeping of the 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 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. Sleep deprivation and noise bombardment are both acceptable forms of torture to be used against terrorists, not families. After the crushing is done, we awakened to the constant beeping and the noise of the loaders and trucks back up alarms. It makes perfect sense the comprehensive plan was changed to limit hours of operation to start at 9 am. This is critical to prevent these 110 plus decibel alarms from harassing sleeping neighbors prior to a reasonable wake-up hour for adults and children.

We have spoken with various members in the community and the zoning board to point out there is a big legal difference between an applicant asking to change aspects of their business operation and an applicant asking to change the contract of conditions created by a Conditional Use Permit hearing process. The first is handled by having a new hearing in front of the Zoning Commission. The second invokes a right bestowed and controlled in the comprehensive plan only through an appeals process conducted in Civil Court and with a 30 to 90 day expiration. This is an important legal issue, which should be cleared up before this applicant is granted another CUP. This issue falls within the policy and operational responsibility of the Zoning Commission and Planning Commission.

Then we can only wait to be notified of another public hearing initiated by the CUP operator because he wants to change mandated conditions long after the appeals period has passed. This is being allowed by Latah County Planning to the detriment of all. The posted yellow CUP pieces of paper at the entrance to the rock pit are left in place by the

county and the operator on a small post out front. Not having any regulations about removing the posting after hearings serves to make these postings false markers because there is no way to tell by driving by if the posting is new or old. There needs to be an ordinance requiring these postings to be removed within 48 hours of a decision.

The realization that this painful and time consuming process is beginning again for the tenth hearing in six years makes me physically ill. I spend my free time writing, gathering paperwork, and praying that someone will just use their common sense and realize this experiment of allowing a crushing blasting operation to encroach on existing stay at home family residences didn't work out well and has become an expense in time, labor and stress that the citizens of Latah County can ill afford in these economic emergency times.

Nothing has changed since this pit was approved six years ago; except that we have lived our fears. We are weary of this process and the continued appeals over the last six years. We now know that Mr. Lisher can abuse the system, waste taxpayer dollars, and appeal any decision over and over. Not because it's legal, because he is allowed to. We have no choice but to accept any conditions, but Mr. Lisher can appeal and appeal. Mr. Lisher will continue to ask for everything and try to beat the county and this neighborhood down until he gets what he wants. He will bring in other pit owners and friends to tell you how wonderful it is to have a rock pit located here. It is hurtful to listen to how our homes and lives don't seem to matter to them and that they feel one person ought to be able to make money at a neighborhood's expense.

If this pit can't allow Mr. Lisher everything he wanted then why didn't he use the last six years to come up with another plan or location? If you tell him "no" and deny this pit, he will be forced to look for a better location. This immediate area is not short of basalt or rock pits. There are better locations in industrial zones and even better locations on this same property that would have less impact to homes, wells, and safety. This is not Mr. Lisher's property and he "gets to move" to another location at will. It is my understanding that he already has another rock pit and has shown a willingness to walk away from basalt if the costs were too high.

Mr. Lisher had six years with repeated hearings and appeals to understand the problem this rock pit has on the area and current homeowners, but he continues to re-submit the same plan over and over. He refuses to acknowledge the need for conditions, or his responsibility to incorporate reasonable accommodation into this new continuation application. The Zoning Commission should deny this application and return it to Mr. Lisher with advice. The advice would be he utilizes the last six years of hearing experience to provide an application addressing all the existing conditions with a balance. This application on its face pretends there was no six years of conflict and makes the Zoning commission and the public do all the work. Mr. Lisher has a responsibility to come to the table with a workable project, not a blank slate he has been told is unacceptable.

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

All he had to do to start this pit was haul in an old 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. He doesn't have to look at his signage everyday as he leaves his home. 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. He loses no sleep over the crushing and noise of his business. We have been told to pay to have our well tested. As a result of his business, 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 land use would affect us this way. The Zoning Commission and the Comprehensive Plan are in place to protect the community from just this kind of abuse and conflict.

Mr. Lisher had a profit business where he was NOT being asked to be accountable for anything. Maybe if he were held responsible, he wouldn't be so eager to continue with this pit so close to three homes and off a winding dirt road. Putting up a bond to pay for our wells, having our wells tested prior to blasting (which needs to be from an official source for insurance companies), removing his junk van and putting in proper signage, planting trees to try to cut down on the dust and noise, putting in a proper entrance are just a few of the things he should be responsible for. However, these things don't even begin to touch on the safety issues of where this rock pit is located. The county tried to put conditions into place to bring it into complying with the county's comprehensive plan, but it has not worked and it has been at our expense. The operative word is the **enjoyment** of such uses, not how much blasting and crushing can you survive.

How can anyone read the wording of the county comprehensive plan and approve a rock pit to move in on a country road, across the street from three homes and believe that it does not adversely affect us to a greater extent. Just the blasting and crushing operation alone cannot be compared with any other land use.

"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."

There are suitable places in this county for crushing and blasting. I'm sorry Mr. Lisher chose to open this pit even after he became aware of the need for severe conditions to protect the enjoyment of permitted uses. 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. Keep in mind that all the other area rock pits are adjacent to noisy paved main highways. Some have city water or shared well systems to

where losing a well isn't even a concern. Please take into consideration our situation is unique and the comprehensive plan is not a one size fits all process.

We love living in the country and everything that comes with it. This did not include an industrial type business when we bought our home. 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. It takes additional labor, time, and expense to live in the country and we do this because of the peaceful county life we used to have. We have always lived in the country and we aren't trying to change permitted uses in the rural/ag zone. This blasting/crushing operation came to us 9 years after we bought our home.

I believe if this was happening in front of your home you would see how the enjoyment has been removed from our quality of life. We have lived through the blasting and crushing and pray our family and neighbors never have to experience it again. The conditions were the only thing keeping us going since we knew that he wouldn't be blasting or crushing again and that his CUP would be up in six years.

I can't even begin to tell you how upsetting this whole six year process has been for us. Our home is our savings, it is where we spend our vacations and it is supposed to be our safe retreat. Living through these continued hearings and the rock pit itself has been a nightmare, robbing us of peace of mind and a quality of life we had know for 9 years!

Respectfully submitted,



Carolyn Lazzarini
1395 Flannigan Creek Road
Viola, ID 83872

Attachments:

Well loss & Insurance Letters
2004 Decision & Conditions
Other Exhibits

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

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

September 4, 2005

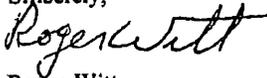
To Whom It May Concern,

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



McPherson & Wright Drilling Water Wells

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

February 18, 2004

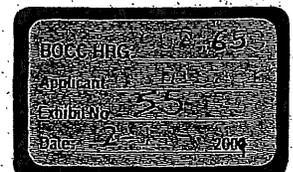
To Latah County Commissioners:

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.*





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.

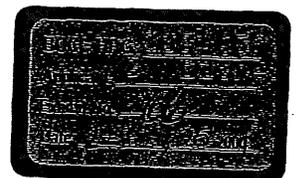
The discount factor could be huge. Buyers may decide there is no discount big enough to live next to an active rock-crushing site.

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



WELL LOSS & INSURANCE LETTERS

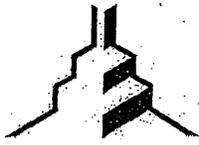
The following is the process we went through when we lost our well. Through this process we understood from testimony that we would have to hire an attorney to fight for reimbursement. Since this process is costly and we were borrowing against our home, we only pursued drilling for a new well. We didn't hear about an insurance claim form until one of the hearings after we reported our loss. We were asked to file a claim form, which we were happy to do. We didn't know that there was a claim form that we could pursue. 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 Fusion 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. 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. We were not told that it would be required of the blaster. I really believe that there should be easy access to the blaster & insurance company information. If they are requiring certain documentation, we should be notified.



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

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

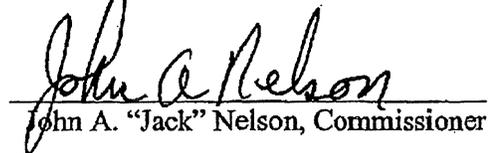
May, 2004.



Paul J. Kimmell, Chair



Tom S. Stroschein, Commissioner



John A. "Jack" Nelson, Commissioner

ATTEST:

DATE:


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.



1. E. Third
Moscow, ID 83843
Bus (208) 883-1525
Fax (208) 883-3747
E-mail: inquire@latahrealty.com
www.latahrealty.com

February 6, 2004

Mike and Debby Alperin
1295 Flannigan Creek Road
Viola, ID 83872

RE:

Dear Mike and Debby:

In response to your question—How will having an operating rock crushing plant located close to your home affect its value? In my opinion, this could have a large negative affect on the value of your home when you would try to sell it.

People move out into the county for privacy and peacefulness. They are trying to get away from the noise and congestion town brings with close neighbors and commercial activity.

Naturally, the closer one's home is to a commercial operation, the larger the negative affect will be on the property's value. In addition, one must consider how often the rock crushing plant will be operating. There are a lot of "dormant" rock quarries around the county. However one must consider that any of them could easily be started up and run continuously for days on end. When this happens it harms the tranquility of the neighborhood. Also, the trucks transporting the rock will be tearing up the road and pose a danger to those traveling the same road.

I can't think of anyone, if given a choice, would choose to live close to a rock crushing plant. It would be next to impossible to determine how much a buyer would discount a property if they must contend with an operating rock crushing plant in their immediate neighborhood.

I would hope you and everyone concerned with this issue understands, these rock quarries must be located somewhere, as we do need the gravel that they produce.

If you have any questions, please don't hesitate to contact me.

Very sincerely yours,

Gary Tribble, Broker

SHIRLEY G. RINGO
DISTRICT 6
LATAH COUNTY

HOME ADDRESS
1021 HERRINGTON ROAD
MOSCOW, IDAHO 83843
(208) 883-1005
EMAIL: ringoshirl@aol.com
sringo@house.state.id.us



COMMITTEES
REVENUE & TAXATION
COMMERCE & HUMAN RESOURC
LOCAL GOVERNMENT

House of Representatives State of Idaho

To: Latah County Commissioners
From: Representatives Shirley Ringo and Tom Trail
Re: Permit application for gravel pit near Flannigan Creek
Date: February 6, 2004

We believe there are a number of concerns to be addressed prior to issuance of a permit for the gravel pit. These are issues that will severely impact the neighboring residents.

1. Air pollution - excessive dust from heavy truck traffic, blasting, and crushing. (This poses a health concern because of Mrs. Mike Alperin's asthmatic condition.)
2. Water quality and habitat concerns with pollution of surface waters. Fish habitat may be impacted. There are adjoining wetlands to consider.
3. Neighboring wells may be affected by blasting.
4. Reclamation issues should be considered.
5. Truck traffic corresponding to school bus hours should be controlled.

These are only some of the issues that should be addressed very carefully. Neighboring residents are also naturally concerned about the effect a development such as this will have on property values. Immediately after learning of this proposal, these residents began to seek expert opinions concerning some of these issues. They believe more time may be required to produce expert testimony. We would urge you to set additional hearings, as time requires, to assure that the best information is available. We share the opinion of neighboring property owners that their quality of life should be protected.

Shirley Ringo
Tom Trail

TOM TRAIL
DISTRICT 6
LATAH COUNTY

HOME ADDRESS
1375 MOUNTAIN VIEW ROAD
MOSCOW, IDAHO 83843
(208) 882-6077
EMAIL: ttrail@moscow.com

House of Representatives
State of Idaho

RECEIVED

NOV 25 2009

LATAH COUNTY

November 23, 2009

To: Latah County Commissioners

From: 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

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.

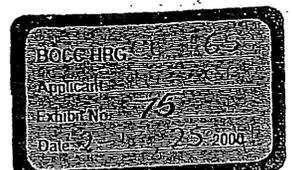
What is it like to live next to a gravel pit that is governed by a CUP? This is a question I can answer better than anyone else at this hearing. It is noisy, even on the quiet days. If they are not hauling, drilling or crushing then they are fixing equipment, moving things around or keeping the pit open 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

County Commissioners
Court House
Moscow, Idaho 83843

Stan Smith
Walker Road
Viola, Idaho 83872

February 8, 2004

Dear Commissioners:

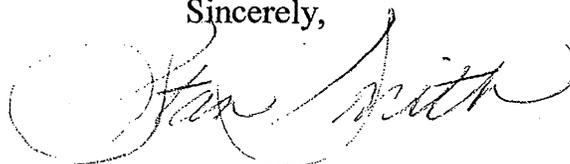
I oppose the request by George Lisher of Potlatch, Idaho for a conditional use permit to run a rock crushing operation on Flannigan Creek. I am against this request for the following reasons:

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, appearing to read "Stan Smith", written in dark ink. The signature is fluid and somewhat stylized, with a large initial 'S' and a long, sweeping underline.

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.

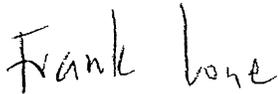
The size and type of traffic associated with the gravel operations necessitates consideration of enhanced public safety. Although it is recognized that local road construction does not require minimum specification requirements, use of Federal-Aid Non-National Highway System (Non-NHS) specifications 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,

A handwritten signature in cursive script that reads "Frank Loge".

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

February 11, 2004

Mr. Michael Alperin, Representative
Potlatch and Viola Citizens against the Flannigan Creek Road Rock Excavation
Project

**RE: Preliminary Assessment of the Traffic Impact of the Proposed Rock
Excavation Project**

Dear Mr. Alperin,

Per your request, I conducted a preliminary traffic analysis to assess the potential impact of the proposed Flannigan Creek Road rock excavation project. As part of this preliminary analysis, I visited the proposed operation site in Flannigan Creek Road on February 10, 2003. General information regarding the project were obtained from the project's CUP application.

The proposed operation site is located adjacent to Flannigan Creek Road approximately three miles south of the city Potlatch. The site is connected to US 95 to the south and to SH8 to the north through rural county roads [Four Mile/Flannigan Road/ Flannigan Creek Road].

Site Access Evaluation

No site plans were provided for the opposed operation site. The exact location of the ingress/egress for the site could not be determined. No information regarding the directional distribution or the number of the trucks entering/exiting the site were also available. With the limited sight distance on many portions of Flannigan Creek Road at the proposed operation site, access points with inadequate site distance could constitute a serious safety hazard for all road users [trucks, motorists and pedestrians]

Traffic Safety Impact Evaluation

Without information regarding the directional distribution and the amount of truck traffic generated to/from the proposed facility, the safety impacts of the proposed facility can not be fully assessed. However, there are many issues that need to be considered in this regard:

1. The width of the county roads serving the rock facility is 24 ft on average. During winter and spring, snow removal trucks pile snow on both sides of the road reducing the usable width of the road which is shared by motorists traveling in both directions and also pedestrians. Increasing the truck traffic in such conditions could lead to serious safety problems, especially for children and elderly citizen using the roads. This can be

This is what I did not read at
the last hearing.

Carolyn
Kappari

Update on filing a claim –

*Michele offered to get the blasters name for us.

*We received a letter from Amanda with the seismographic monitoring contact information.

*I called Amanda to get the blasters name and was given it. I'm not sure why I wasn't given the blasters name.

*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 prior. She said she would have Mike, the blaster, 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. He is paid by the blaster. I asked him if he could prove 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. I wanted to know the process. He finally told me, I should contact my homeowner's insurance agent.

*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. I am still waiting for the faxed information. She also has our mailing address, but nothing has come by mail either.

*Where do we go from here? What is the process?

September 7, 2005

Latah County Commissioners:

Here is the limited documentation you requested. As you can see the information corroborates what we stated during the hearing as well as others who documented well damage from blasting during the original hearings. As you asked for this information you seemed surprised we did not contact Lisher, the blaster or the county to report our well loss. I can only point to the numerous requests to remove the van, lock the gates and efforts to get assistance which require Lisher's good will and some action by planning and building. You include a document in the record which says you found the site in compliance (even though the site has never been locked). We did not report because nothing has been done.

The information requested does not document our hauling of water, showers taken in town, water hand-poured in toilets and clothes being washed at the laundymat in Moscow as we waited and prayed for our water to "come back"; as well as going to work every day. The documentation provided proves the water did not come back. We were forced into drilling a new well at a most difficult time.

What the documentation can't do is tell us exactly what happened in the ground resulting in our water no longer flowing; that is only speculation. The only thing different from the past 10 years was the blasting done and those were 30,000 ton blasts designed to reduce damage to surrounding property. Please remember you hold the safety of our home and our quality of life in your hands.

The documentation provided includes the original well drillers report from many years ago. A drillers report from a neighbor Webb Thompson to reflect a nearby well. New bills from Roger Witt well drilling, TPM water systems in Lewiston and the back hoe operator and the letters from Roger Witt and TPM water systems about the issue.

Don Lazzarini

reduced, but not fully mitigated, by enforcing a restriction to the truck operations during hours when children are present on the road.

2. The roads currently have no pavement or lane marking or speed warning signs at sharp curves. There are also no guardrails in areas where steep slopes are presented. With the increased number of trucks using these roads, considerable changes may be needed to improve the safety operation on these roads. Changes may include, lane marking, warning signs, and guardrails installation. There might be a need to change the speed limit in portions of these roads. Again, without information regarding the expected truck traffic, no full assessment can be made at this point.

Sincerely,

Ahmed Abdel-Rahim, Ph.D., P.E.



Assistant Professor-Civil Engineering department
National Institute for Advanced Transportation Technology
115B Engineering and Physics Building
University of Idaho- Moscow, ID 83843-0901
Phone: (208) 885-2957 Fax: (208) 885-2877
E-mail: abdelrah@uidaho.edu

Dear Editor, (Too long for letter to editor, but maybe you can use it at the meeting.)

Having experienced several rock crushing operations nearby, I can see why some folks along Flannigan Creek road are concerned.

In May of 1973 a Pullman rock crushing firm (since bankrupt), began crushing operations for the state of Idaho across the county road about 100 yards from my home. I found out about it when I arrived home from work one late afternoon to find the county road diverted onto my property so the contractor could set up operations on the former county road. Several rows of shrubs I had planted to reduce noise and dust from the county road were flattened. There were tracks left by a D8 as it cut "cookies" 100 feet onto my property, tearing up a portion native Palouse Prairie.

Workers parked their pickups on my property without permission. They through their lunch wrappers on to my property. Some brought their dogs to "work." The dogs worked at chasing my chickens and making "deposits" near my mailbox.

The state had the contractor remove the overburden (along with two species of orchid—one extremely rare) and place some in the ditch separating my property and the former county road. The whole operation was supposed to last a month tops. The first phase took over three months. The noise, dust, and bright lights ran six days a week, 24 hours a day. The seventh day they rested while a welder repaired the crushing equipment. No dust or lights, but lots of noise until dark. At 2 am Monday mornings the crushing operation would start up again. Trucks continuously moved gravel to stockpiles and from stockpiles to paving operations.

I asked a county commissioner (since deceased) about the road right of way. "The county has right of way 60 feet either side of road centerline." Where is the centerline, I asked. "Any place we choose."

We wrote a letter to the Idaho Transportation Department. No answer. We wrote then Governor Andrus and received a nice letter explaining that crushing operations would continue until the IDOT had removed the rock needed for the Troy-Deary hiway upgrade. Then the land would be recontoured and seeded back to native vegetation. We are still looking out our dining/living room windows at the original pit. The contractors have set up operations two more times since the first, but have done so on the pit site and have limited operations to a more reasonable 5 am until 10 pm Monday through Saturday.

A year after the first operation our well (located less than 50 yards from the pit) ceased to produce water. I had a local pump repair firm check out the problem. The pump was surrounded by rock rubble. Attempts to remove the pump failed. I had to have the well and pump drilled out. I consulted a lawyer and was told that if I received any money from the state it might equal his fees.

The shape of the pit acts as a natural amphitheater and focuses sound towards our

house. In the interim years un-muffled motorcyclists have roared around the site for hours. "Sportsmen" have decided it was a good spot to target practice, leaving shell casings, "clay pigeons" and trash. The pit seems to be a favorite place for city folk to drop off unwanted dogs and cats. The state still uses the pit to dump waste soil taken from ditch cleaning. A local log truck driver parks his truck and leaves it running for hours—usually starting about 3 am.

The land has not been recontoured or replanted. My family has spread over a hundred pounds of grass seed to help suppress the weeds including Canada Thistle and Spotted Knapweed. Last fall we dug, pulled and bagged over 80 pounds of Spotted Knapweed that was about to go to seed.

The state has done some "weed control"—usually too late in the season and applied by poorly trained personnel. In the late summer of 2002 a state truck pulling a trailer with about \$10,000 worth of ATV arrived one afternoon. As we watched in horror the operator began spraying everything in sight unless it was grass and trees. By now there are several dozen native wildflower species pretty well established in some parts of the site. When we could see that the spray operator was heading for a stand of rare Calochortus, my wife jumped on her bicycle and headed him off. When she asked him what he was spraying for (there are few "weeds" in that spot), he said "Scotch Broom and Spotted Knapweed." There is no Scotch Broom on this site, but he was spraying Goldenrod and native Lupine. When we checked several days later, his well trained eyes had completely missed the Spotted Knapweed.

We realize that we need a source of rock for safe road building. We have survived even with the pit nearly in our front yard, but the whole operation could have been done in a much better manner. I can see why the folks along Flannigan Creek are concerned. Mr. Lisher is a self proclaimed amateur crushing operator. I was dealing with "professionals."

Gerry Queener 
1900 Little Bear Ridge (across the road from the pit)
Troy, ID
208-835-5881

RECEIVED
MAY 28 2010
LATAH COUNTY

This letter is in response to the request of George Lisher
CUP#811.

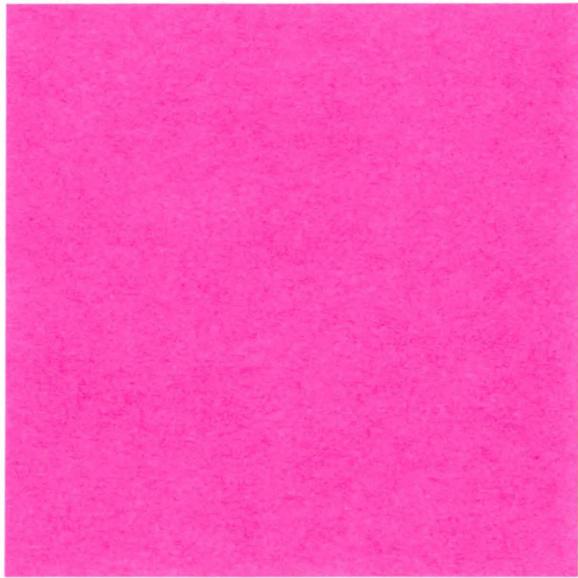
My name is Kevin Koehn and I live with my family at 1389 Flannigan
across from the rock pit. We are opposed to the request because:

1. The noise from crushing, blasting, other machinery operating,
sounds like it is in our backyard; invading our private and peaceful
rural setting.
2. What? An asphalt plant in the country on little Flannigan Cr Rd?
3. Increased truck traffic on Flannigan cr road that is not built for
lots of heavy loads.
4. Safety hazards of truck traffic on Flannigan.
5. Decreased values of our property.
6. A conditional use permit was granted several years ago and now
Lisher needs to respect the local neighborhood and not ask for
anything else.

Please consider these concerns

Thank You,
The Koehn family

LCZC Hrg: CUP 811
Applicant: Lisher
Exhibit #: 11
Date: 6/2/2010



NOTICE

OF

PUBLIC HEARING

**THIS PROPERTY IS THE SUBJECT OF A
CONDITIONAL USE PERMIT APPLICATION
HEARING ON**

WEDNESDAY, February 1st, 2017 at 5:30 P.M.

**AT THE LATAH COUNTY COURTHOUSE,
ROOM 2B**

**SEE BELOW OR CONTACT THE LATAH
COUNTY PLANNING OFFICE FOR MORE
INFORMATION (883-7220)**

January 22, 2017

From: Steve and Linda Norton
1178 Flannigan Creek Road
Viola, Idaho 83872

Re: CUP 811 Appeal (Originally CUP 653 then CUP 811)

To the Latah County Zoning Commission:

In regards to the appeal of CUP 811 hearing before you, we are resubmitting our previous comments from the last hearing in 2010. No changes in our position have occurred so we are requesting no changes in the conditions of the permit be made save one: there is no objection to extending the permit from six to ten years, provided that the other current restrictions are maintained.

As a reminder, we refer you to the original hearing testimony leading to adoption of the current restrictions in which Mr. Lisher initially stated that the purpose of the permit was only to have a little gravel for his and some friends personal use. Clearly, the community disruption from such an operation is quite different than that from the enormous disruption anticipated from his current intentions to greatly expand his scope of operations.

Thank you for your efforts in working out a fair and equitable set of conditions.

Sincerely,



Steve and Linda Norton

LCZC Hrg: CUP 811
Applicant: Lisher
Exhibit #: 2
Date: 2/1/2017

May 28, 2010

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

Re: CUP 811

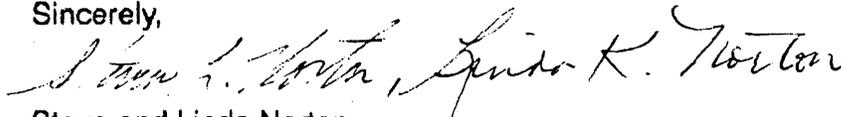
To the Latah County Zoning Commission:

CUP 811, George Lisher's application to continue his gravel pit operation on Flannigan Creek Road is very similar to the original request made in 2003, CUP 653. After 40 hours of testimony, 120 exhibits and many hours of deliberation by the Latah County Commissioners the conditions on which the gravel pit operation would be conducted were set. Neither side was happy with the conditions, but they allowed George Lisher the opportunity to operate a gravel pit at this location and the conditions made it more bearable for the neighbors who found themselves living so close to an operating gravel pit. We have attached a copy of that decision for your consideration, since so much effort went into it and many of the conditions are still appropriate for CUP 811. It might save a lot of effort to use these conditions to build the new CUP. Please note condition #4 was eliminated in a subsequent hearing.

In your deliberations please take into account the price in money, time and quality of life the families who live near the gravel pit have paid for locating a gravel pit across the street from their homes. Please do whatever is possible to protect them.

Thank you for your efforts in working out a fair and equitable set of conditions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Steve & Linda Norton".

Steve and Linda Norton

CRITERIA WORKSHEET

RECEIVED

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 expand his rock excavation and crushing site to five acres, to increase hours of operation, delete portions of conditions 2 and 5, and delete conditions 4, 6, 7, and 13. 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 13.10.02 requires that the proposed conditional use must be cited as a conditional use in its appropriate zoning designation (Articles 3-9 Latah County Zoning Ordinance)

The Latah County Zoning Ordinance, under section 3.03(F), lists natural mineral resources development as a conditionally permitted use in the Agriculture/Forestry zone (A/F). The zoning designation for this site is Agriculture/Forestry.

2) Section 13.10.03 requires that an application for a conditional use be made by the owner of the affected property or the owner's authorized agent.

The site is owned by Walser Ranch, Incorporated. Terry Walser signed the application as on behalf of Walser Ranch, Inc. George Lisher, the applicant, signed and submitted the application on June 7th, 2005.

3) Section 13.10.04 requires:

A. A conditional use may be granted if the proposal conforms to the following criteria:

trucks w/ longer beds pulling out on to road
visibility -
curved roads
winter - snow
ride center of
road -

- 1. The use is consistent with the goals and policies of the Latah County Comprehensive Plan;
- 2. The use is not detrimental to the health and safety of those in the surrounding area or region;
- 3. The use will not adversely affect surrounding properties to a greater extent than would a permitted use in the zoning district; and
- 4. The use will not require facilities or services with excessive costs to the public.

OR

B. If the commission finds that a use is essential to the public health, safety, or welfare, such use may be permitted even if the use is not compatible with the surrounding uses.

no easement is needed in vicinity
rock pit not needed -

8 rock pits - all on class #1 paved roads

LCZC Hrg: CUP 811
 Applicant: Lisher
 Exhibit #: 3
 Date: 2/1/2017

CUP 653A
 Lisher
 1A
 July 6 2005

4) *Section 11.04 requires that the following conditions are met:*

- A. Plans for fencing back at least ten (10) feet from the outer margin of the area to be excavated and barring all opening thereto by locked gates when the area is not occupied by permittee or his agents and regulating the depth of excavation. The plans required from the applicant shall consist of three (3) copies of a topographic map, with such cross sections as are necessary to adequately show the topography of the property in question and its relation to streets, alleys and surrounding property, together with three (3) copies of a similar map showing the extent of the proposed excavation and the contours of the ground after the removal of the material. A copy of each map shall be submitted to the Planning Commission, who shall report to the Board its findings regarding the effect of the intended excavation upon streets and alleys, either existing or contemplated, as to whether the proposed excavations will interfere with logical future development of the tract for building or other purposes, and whether it will depreciate the value of the nearby property. Whenever necessary and at least once each year an inspection of the property shall be made to determine if the excavation is in accordance with the terms of the permit. Any surveys which are necessary shall be made at the expense of the PERMITTEE and acceptance of the permit shall be considered as an agreement to pay such costs.
- B. The area is posted by signs of appropriate size to serve as a clear warning of the dangerous conditions resulting from the excavation.
- C. Upon completion of the excavation of an area which does not permit standing water to remain, the sides of the excavation are to be graded to one-to-one slope (45 degrees) and sides and other exposed surfaces are to be graded to a uniform grade and recovered with topsoil to a depth of six (6) inches and stabilized against erosion.
- D. Upon completion of the excavation of an area where such excavation has created or extended lakes, ponds, or other bodies of water, the sides of the excavated area bordering on such a body of water shall be graded to a one-to-two slope (30 degrees) and sides and other exposed ground surfaces shall be recovered with topsoil to a depth of six (6) inches and stabilized against erosion.
- E. The Planning Commission may also authorize, in conjunction with sand and gravel pit operations, additional allied uses such as concrete batching plants and/or asphalt mixing plants when such uses are located and conducted in such a manner as to be compatible with surrounding property and the uses made thereof.

To insure the compatibility of said additional uses with surrounding properties, the following terms and conditions, in addition to those set forth above, shall apply.

1. When the sand and gravel is depleted and/or the excavation thereof is completed to the contours as prescribed in the permit, all sand and gravel operations including any additional uses authorized therewith shall terminate.
2. It shall be unlawful and shall violate the terms and conditions of the permit if the operation requires or involves the importation of sand and gravel from places or sources other than those authorized in the permit.
3. The Planning Commission shall also have the authority to impose additional standards and conditions as set forth in Section 13.10.

- F. The applicant shall be required to post a bond with the Latah County Clerk to assure full compliance with the proposed plans and the provisions of this Section. The amount of the bond shall be determined by the Board of County Commissioners upon recommendation of the Planning and Zoning Commission. The Board, or the Commission, may require or recommend no bond if a determination is made that the positing of a bond would not be in the public interest or contrary to law.

LATAH COUNTY BOARD OF COMMISSIONERS

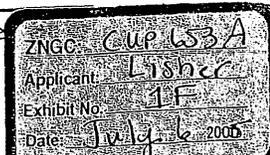
RE: Conditional Use Permit for rock excavation, crushing and processing operation Applicant: George L. Lisher File No. CUP-653

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION

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:

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.



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

March 3
Before we
were born
maybe - 1979
not since we
lived here - 9 yrs

Historical

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. *where are 3 only 2 residences?*
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.

*on 11/11/2004
10/20*

*Neighbors of other
rock pit owner testified of
fall of home east \$*

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.

D8

used an enclosed cup as example

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."

*properties
used not
comparable
to our
situation*

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.

constant vs sporadic

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).

*Cerry
Queener
lost well
Other
testimony
on lost well
???*

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. *still not done as of 2/20/11*
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. *parking on road*
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. *no value of our home per se - view does matter*
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. *noise-constant - truck as well*
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. *nothing more will be done*

Not Blasting & crushing

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.

not high quality - dirty gravel

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.

signage - van

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. *not locked* *Martin Luther King Day*
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. *Miss Work - Confine animals* *crushing*
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. *? log*
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 *not adequate*

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

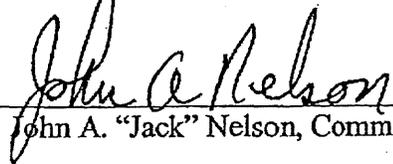
May, 2004.



Paul J. Kimmell, Chair



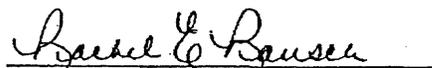
Tom S. Stroschein, Commissioner



John A. "Jack" Nelson, Commissioner

ATTEST:

DATE:


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 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

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 mean 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

Aimee Shipman

From: Mike&Deb [campviola@moscow.com]
Sent: Monday, November 30, 2009 10:49 AM
To: ashipman@latah.id.us
Cc: 'Mike&Deb'; copycourt3@verizon.net; dalperin@vetmed.wsu.edu
Subject: FW: Cup 653 Attention AMy Shipman
Attachments: Rock pit signage.jpg

Amy,

Here is the letter that was sent last week. Thanks for including this into the Lisher CUP package. Please send me a note back to let me know that you received this email.

Thanks,
 Deb Alperin

From: Mike&Deb [mailto:campviola@moscow.com]
Sent: Tuesday, November 24, 2009 8:50 PM
To: 'pb@latah.id.us'
Cc: 'Mike&Deb'
Subject: FW: Cup 653

From: Mike&Deb [mailto:campviola@moscow.com]
Sent: Tuesday, November 24, 2009 8:41 PM
To: 'pn@latah.id.us'
Cc: 'Mike&Deb'
Subject: Cup 653

November 24, 2009

Dear Latah County Zoning Commission,

This is the third attempt Mr. Lisher has made to amend the conditions of CUP #653. Mr. Lisher agreed to the conditions that were set up after seven long public hearings with the Latah County Commissioners in 2004. As neighbors of this pit we are weary of this process.

We have many concerns about the pit. The entrance is on a blind corner. Gravel trucks stop partially blocking the road while gates are being opened. The fencing is inadequate and the signage is an eye sore.

We, as land owners, have as many or more rights than Mr. Lisher. We did not buy property knowing there was an active pit and then complain. We had *peace*

11/30/2009

LCZC Hrg: CUP653C
 Applicant: Lisher
 Exhibit #: 10
 Date: 12/2/2009

and quiet and have a right to expect that to continue. This isn't about money. It's about a way of life this commission needs to protect.

The current permit is tolerable – barely. If these changes are accepted, our standard of living will deteriorate dramatically. We love our rural lifestyle. That is why we live here. If these amendments are passed, it is possible some of us will be forced to sell homes we have lived in for many years because we will be unable to continue with that standard of living. This is an abridgement of our rights under the Idaho Constitution.

We are not asking you to change, delete or add anything to the already in use CUP #653. We are asking you to leave CUP #653 as it is.

Respectfully,

Mike & Debby Alperin

JUN 2 2005
LATAH COUNTY

The King Family
6600 Flannigan Creek Road
Viola, Idaho 83872
23 June 2005

Latah County Planning and Building
Latah County Courthouse
P.O. Box 8068
522 South Adams
Moscow, ID 83843

Attn. Amanda HESS
208 883-7225 FAX
208 883-7220 Phone

To Whom It May Concern:

I am commenting on the CUP #653A modification requested by George LISHER. We do not agree with deleting portions of:

Condition 2 that may include changing the "operating hours from 7 AM to 5 PM", or the provision that "the gate to the facility shall be closed and locked at all other times".

Condition 5 changes to "any fly-rock shall be confined to the subject property".

On the deletion of conditions 4, 6, 7 and 13:

Condition 4: no comment

Condition 6: It is a concern that our water well/water levels may be impacted by increased blasting. As our household is directly across from the blasting area we are very concerned with any changes that could impact any quality of life and also water aspects.

Condition 7: It is felt that 60 loads per week are enough and increased heavy traffic will impact driving conditions. Flannigan Creek Road is hazardous enough now.

Condition 13: This is the most important and major concern. This is foremost in our minds. We strongly object to increasing the life of the CUP#653A. Mr. LISHER agreed to the 6-year condition at the issuance of the conditional use permit. We look forward to the implementation of the agreed *reclamation plan* at the agreed *time*. Again, we strongly object to allowing the CUP to expire beyond the agreed 6-year date.

Thank you for your consideration of our concerns. Your response would be appreciated.

Erik Thorson
Erik Thorson, trustee
Viking Trust/ Viking Trust-Lands ET
352 Serrano Drive
San Francisco, CA 94132

eking1@hotmail.com
Phone/FAX 415-586-1183

| | |
|--------------|--------------|
| ZNGC: | CUP 653A |
| Applicant: | Lisher |
| Exhibit No.: | 3 |
| Date: | July 6, 2005 |

NOVEMBER 23, 2009

NOV 25 2009

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

RECEIVED

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.

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.

From: Mike&Deb [campviola@moscow.com]
Sent: Monday, November 30, 2009 10:49 AM
To: ashipman@latah.id.us
Cc: 'Mike&Deb'; copycourt3@verizon.net; dalperin@vetmed.wsu.edu
Subject: FW: Cup 653 Attention AMy Shipman
Attachments: Rock pit signage.jpg

Amy,

Here is the letter that was sent last week. Thanks for including this into the Lisher CUP package. Please send me a note back to let me know that you received this email.

Thanks,
Deb Alperin

From: Mike&Deb [mailto:campviola@moscow.com]
Sent: Tuesday, November 24, 2009 8:50 PM
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To: 'pn@latah.id.us'
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Subject: Cup 653

November 24, 2009

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11/30/2009

LCZC Hrg: CUP653C
Applicant: Lisher
Exhibit #: 10
Date: 12/2/2009

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We are not asking you to change, delete or add anything to the already in use CUP #653. We are asking you to leave CUP #653 as it is.

Respectfully,

Mike & Debby Alperin

11/30/2009



John H. Bassman

Home: 1189 Flannigan Creek Road
Viola, ID 83872
(208) 882-1125

Office: Department of Natural Resource Sciences
Washington State University
Pullman, WA 99164-6410
(509) 335-5296

February 8, 2004

Latah County Commissioners
5th and Van Buren
Moscow, ID 83843

To Whom It May Concern:

The application of George Lisher for a conditional use permit concerning operating a rock quarry on Flannigan Creek Road has recently come to my attention. The proposed site for the operation is within one and one-half miles of my 80-acre property and I would like to comment on various elements of the proposed use.

Notwithstanding the county zoning commission's dismissive attitude, I believe Lisher's proposed use is likely to have substantial, negative immediate impacts for residents and the environment in the vicinity of the quarry with little contribution to the local economy and substantial costs to the taxpayers of the county. It will increase the need for county services for road maintenance and repair, unduly endanger the public traveling on county roads, and as a consequence increase the burden for emergency services responding to injuries that will inevitably result from increased heavy equipment traffic resulting from the use. County services are already inadequate to meet the present needs, and will be unduly stretched to respond to the increased demands rendered by this activity. Moreover, it will substantially disrupt the serenity, decrease property values, and increase costs for many residents, not just those adjacent to the proposed site.

Flannigan Creek Road and Four Mile Creek Roads are the main travel corridors servicing a growing, affluent rural residential population which contributes substantially to the county tax base. Within the last five years alone, many new residences have been constructed and at least two residential developments would be significantly impacted, including the Newell Addition. The attraction of this area rests substantially on its serenity and the character of the landscape offered by the mix of forest and agriculture that are consistent with the land use designated by the county. A substantial industrial operation resulting in noise and air pollution, truck traffic, smoke, and particulate matter will represent a significant deterioration of the environment for current residents, substantially reduce property values, and likely be a serious deterrent for further development.

Lisher's application considerably overstates the potential for *economic development* while trivializing the negative economic impacts. Few jobs will be created and the value of the product removed is comparatively low relative to its adverse economic impacts. It will not, as Lisher contends, support forestry. The number of acres harvested, particularly on Federal lands has declined to near zero in recent years and there is virtually no road building requiring rock. In fact, most new forest roads on federal and industrial forest lands are designed to be removed and

reseeded after harvest to minimize environmental impacts. It does offend the objective of clustering commercial uses in and around areas with adequate public services since there are no other commercial industrial operations in the near vicinity, and public services are presently minimal at best. It seems to me that the county would be well advised to consider the potential economic impact resulting from a reduction in tax base from degradation of the neighborhood and the concomitant flight of affluent residents escaping this industrial intrusion.

In my opinion, the alliance of the North Latah County Highway District to this project raises some serious questions of impropriety. They are on record as stating that location of a quarry here would reduce cost because they obtain rock for road maintenance at Joel, Idaho. Yet there are already two other rock quarries in the near vicinity—one at the junction of state route 6 and U.S. 95 near Potlatch and the other on Rock Creek Road. These are about two and one half and one mile(s), respectively, from the proposed site. The former is accessible by highways designed to handle the loads imposed by heavy trucks and wide enough to accommodate traffic without undue public hazard. Other quarries on the Deary-Havard road are in close proximity and are also accessed by highways of sufficient design capacity. Why cannot rock be obtained from these already operating sites that are much closer than Joel? There is simply no merit to the contention the county needs this facility to meet demand. The Rock Creek Road site has, in fact, been used by the county for years. The Highway District is also on record as stating they will assist in relocating ingress and egress for the site and it is my understanding that they have already done so, at public expense. Would that other private enterprise have such liberal access to public equipment and employees? One has cause to legitimately question this as a serious conflict of interest given the letter attached to the permit application.

Although Lisher portrays the site's location as being in a sparsely populated rural area, there are in fact a significant number of residents that will be adversely impacted by the proposed activities. To which must be added a substantial number of transients that use this road as a travel corridor between Potlatch and Moscow-Pullman. This area is no longer dominated by a few farms with the occasional farm vehicle on the road. To suggest that few people will be impacted is a misrepresentation of the present state of affairs.

The proposed use would substantially increase the need for **Public Services** as a consequence of greatly increased heavy truck traffic. That part of the Flannigan-Four Mile Creek Road that is paved is comprised of a compact gravel-tar material that is inadequate to sustain the substantial heavy truck traffic that will be generated by rock quarry. This is likely to cause substantial breakdown of the pavement, leading to potholes, cracking and other deterioration of the road surface. To maintain the road even in its present state would require a manifold increase in attention from county road crews to keep it in a safe, if not operationally desirable condition. Similarly, the short gravel section of this corridor will require a much more frequent grading schedule if it is not to become impassible with potholes and washboard ridges. The North Latah Highway District has acknowledged the increased maintenance requirement and agreed to do this. If the additional maintenance is achieved, it will be at a substantial increase in cost to county taxpayers. Lacking diligent maintenance, citizens will be subjected to increased road hazards that almost certainly will cause more accidents and undue wear and tear on vehicles, an additional economic burden for both residents and other road users.

If the commissioners choose to approve this use, then it is only prudent and reasonable to pass on these additional costs to the developer that is the beneficiary. Certainly there is adequate precedent for municipalities assessing developers for required road improvements and maintenance associated with increased traffic generated by their enterprise.

There are other significant **Public Safety** and **Transportation** issues. The Flannigan-Four Mile Creek Road is heavily traveled and traffic has increased manifold in the past ten years since all but two miles have been paved. Part of this is a result of new residences, but certainly some is also due to having a paved short-cut between Moscow-Pullman and Potlatch. However, the road is narrow with barely enough room for two passenger vehicles to bypass each other when the pavement is clear. When there is snow on the road and plow berms on the edges, the difficulty and danger increases substantially. It is not uncommon for cars to be run off the road and I have personally witnessed a county sheriff vehicle be put in the ditch. The winding nature of the road exacerbates this problem further, especially where longer vehicles are involved. It is not difficult for the prudent observer to imagine the impact of an additional 30 heavy trucks (60 roundtrips) per day will have on public safety. There are bound to be more accidents and given the great distance and long response time for emergency vehicle response, there is every possibility that some of these will be needlessly fatal. At the minimum, greater vigilance on the part of county emergency services will be required, at public expense. If this plan is approved the county will bear some significant responsibility for loss of life or property damage resulting from accidents involving trucks, some of which will inevitably be county vehicles.

Related to this are significant **Student Transportation** issues. The additional truck traffic will certainly increase risk for students waiting to load or after disembarking from school buses and it should be noted that these children are easily distracted and frequently not attentive to such impending hazards. Beyond this is the additional driving hazard of school busses traveling this road. Busses already have a difficult enough time negotiating this road with its attendant traffic because of their size. Bypassing rock trucks with drivers intent on making quotas represents a substantially increased risk for students and unnecessarily burdens the responsibility of school bus drivers, circumstances which are exacerbated during winter road conditions.

There are also serious environmental issues which have not been adequately addressed. The site is close enough to Flannigan Creek to present a significant impact. There is significant potential to increase sediment loading in Flannigan Creek with associated degradation of riparian zones for some considerable distance downstream. Although Lisher is proposing a shallow sediment basin associated with the quarry itself, there is no evidence that any measures will be taken to mitigate the effects resulting from removal and stockpile of the overburden. An additional hazard may result from the quarrying itself. Hard rock mining exposes mineral elements to the atmosphere causing oxidation and potential leaching of heavy metals with subsequent contamination of both surface and ground waters. This occurs not only during the mining activity, but occurs to material exposed for long periods afterwards. Heavy metals are extremely toxic to humans and livestock. One example of heavy metal contamination from mining is evident only a short distance to the north in the Coeur d'Alene basin, which may still be under consideration as a superfund site by the U.S. Environmental Protection Agency. Another example is provided on the Spokane Indian Reservation with uranium contamination. To the extent this may be an issue with the proposed use cannot be assessed without knowledgeable study, however, there are potential implications for several adjacent properties, including cattle feeding operations. There could be potential impacts on the Palouse River which Flannigan Creek joins only a short distance from the proposed site.

Wildlife populations will likely be displaced by the blasting and noise from excavation machinery and such displacement could have negative ramifications for adjacent property owners, aside from aesthetic considerations. For example, beaver, that have made resurgence on Flannigan Creek, stabilize the stream basin, help control flooding, reduce stream bank erosion, and therefore mitigate damage from runoff events. Elk may concentrate in protected areas away from the noise, resulting in more severe crop depredation on adjacent properties.

Home: 1189 Flannigan Creek Road
Viola, ID 83872
(208) 882-1125

Office: Department of Natural Resource Sciences
Washington State University
Pullman, WA 99164-6410
(509) 335-5296

February 12, 2004

Latah County Commissioners
5th and Van Buren
Moscow, ID 83843

To Whom It May Concern:

I would like to follow up on my testimony at the public hearing February 11 regarding the application of George Lisher for a conditional use permit to operate a rock quarry on Flannigan Creek Road.

Based on testimony provided to the commissioners at the hearing, it seems prudent that the commissioners obtain the following information **before** a decision is made on whether to approve the use:

- a thorough **Environmental Impact Assessment** by a reputable independent concern that addresses:

air pollution,
noise pollution
wildlife
water quality issues
geology issues, including impacts of blasting on aquifer and wells

- an unbiased assessment on the feasibility of the North Latah Highway District to **obtain rock from other operating quarries** in the Potlatch vicinity located on Class I highways

From testimony, it appears that arbitrary district boundaries have been established that limit economic acquisition of rock from existing quarries in an efficient manner.

- Consider revising operation of the highway districts such that the prospect of having the county call for **open, independent bids** for rock delivered to highway district central facilities.

This would have the impact of stimulating local business, reduce the price for materials, and obviate the need for the public to haul rock from various dispersed locations with the concomitant liability for the county.

- Conduct a highway use and safety assessment for the Four Mile Creek–Flannigan Creek Road corridor.

The purpose would be to document the type and volume of present traffic, the ability of the road to sustain the additional wear and tear imposed by the proposed use, make recommendations on modifications of the road bed that would be required to safely handle present and anticipated future traffic. A qualified road engineer should be utilized.

- An anthropological, cultural assessment should be conducted

Testimony suggests that issues relative to the Native American Graves Protection and Repatriation Act of 1990 and other similar legislation may be relevant. Most massive site disturbance operations perform such assessments and they are required on federal lands.

- Financial analysis including costs and benefits for:
 - tax revenue and losses, i.e. compared to average residences in the area
 - road repair and maintenance vs. transportation costs saved
 - lawsuits resulting from bodily injury and property damage
 - county hauling rock from site vs. using a bidding process and having rock delivered to county yard
 - jobs created
- Unambiguous statement from all highway districts as to how many county trucks would be on the road i.e. (number trucks per day) x (number of round trips per truck) x (number of days per month).

While I remain opposed to this proposition for the reasons stated in my letter to the commissioners dated February 8, 2004, **should** the commission decide in favor of approving the use, then the following restrictions should be considered in addition to those imposed by the county zoning commission:

- Before operation commences, the Developer should pay for such road improvements deemed necessary by qualified engineers to insure public safety given the projected increase in volume and type of traffic
- Require the developer to pay for additional road maintenance cost engendered by the heavy truck traffic resulting from his enterprise
- Have in place, and monitored, a surface water protection plan consistent with best management practices
- Establish a sampling schedule for water quality monitoring that would include both surface and ground water, assess sediment loading as well as water chemistry, particularly heavy metal contaminants. This would help allay public concerns over safe drinking water. An independent and reputable lab should be contracted to conduct the sampling and analyses at developer's cost.
- Require the permittee to establish a vegetation screen composed of both hardwood and conifer tree species to mitigate air, noise, and visual pollution.

Research has shown that properly designed vegetation screens are effective at scrubbing particulate matter from the air and reducing noise levels. They also have a positive net ecological benefit by increasing habitat. Operation of the quarry should be delayed until the vegetation screen reaches sufficient height to be fully functional. Qualified Landscape architects should be used for design, calculation of site angles, etc.

- A viable and functional reclamation plan that is insured by posting a substantial bond for compliance.
- Restriction on route of travel by rock trucks such as to minimize impact on the maximum number of residents

Prudence would imply that all trucks, private and county, enter and exit the proposed site from and to the north, respectively.

Sincerely,

John H. Bassman, Ph.D.
Professor of Ecology

In making zoning and land use decisions, the PZ and BOC make factual inquiry into whether the proposed zoning or land use reflects the goals of, and takes into account those factors in the Comprehensive Plan *in light of the present factual circumstances* surround the proposed zoning or land use. Where those goals and/or policies conflict, it may be that the decision-makers find the proposal to be in accordance with some goals of the plan, but not others. In such a case, the decision-makers must balance conflicting goals as closely as reason, justice, and the character of the plan make practical and possible. A proposed zoning or land use need not be in complete compliance with every goal and policy of the plan and should not be disapproved merely because it does not meet one or more goals or policies. *So long as each relevant goal or policy is considered in making the decision*, it is possible to conclude that the proposal is in harmony with the intent and general character of the plan.

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.

Issues on appeal:

1. Lisher submitted application severely lacking in any relevant detail.
2. County P&B employee's requested and received Lishers permission to enclose a document created 6 years ago as a narrative for the current application.
3. Relevant conflicts with comprehensive plan are so substantial 7 minutes is insufficient time for financially affected opposition persons to respond to all the issues he failed to address.
4. Failure to apply new criteria "or the enjoyment of such uses"
5. Failure to base decision on if applicant met criteria
6. Failure to understand a conditionally permitted use does not give the property owner a property right in that use.
7. Failure to base decision on full testimony (evidence) given at hearing
8. Failure to determine whether opposition countered applicants evidence.
9. Four members, no female representation, chair non-voting
10. Waiving of comprehensive requirements-reading with no discussion
11. Member statements reflect lack of consideration and reliance on assumptions
12. One member failed to reveal relevant ex parte knowledge and bias til public input portion of meeting closed
13. Planning director told zoning commission to remove an important condition because she did not have the enforcement capability after closing public input
14. Findings of fact misrepresent, leave out facts, and distort information for purpose of achieving a desired outcome.
15. Planning director allows improper interpretation of 7.01.06 expansion of conditional uses to allow rock pit applicant to have multiple appeals of conditions throughout the six-year conditional use permit creating excessive cost to public services and harassment to community members.

MILO GREENGARD - JUSTIFY BY IGNORING THESE ISSUES
NOT IN OPPOSITION - BAO MARKETING - I JUST WANT TO VIOLATE COMMUNITY PLANNING EFFORTS
SUPPORT COMPREHENSIVE PLAN

1. Lisher submitted an application severely lacking in relevant detail.

By any standard the written narrative provided by Lisher fails to adequately complete the application. As a result the responsibility for providing all the answers to the conditional use permit narrative falls on the zoning board members and the public. This creates a negative hearing process where applicants denial, and non-relevant answers bounce back at zoning board and community who struggle to provide relevant information. An incomplete permit narrative should be caught by planning and building staff. Since Lisher provided no relevant information he should be held to his product. No information if accepted shifts the burden away from applicant to the community.

Actual example from Lisher application:

Consistency Requirements

Please respond to each of the three criteria listed in section 70102 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 adversely affect permitted uses or the enjoyment of such uses in that zone to any greater extent than a permitted use in that zone.

Lisher wrote: It is marginal timber land, not good for farming or grazing not enough top soil to sub stain at location of pit site. Rockpit provides more income than grazing or timber.

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

Lisher wrote: None

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

Lisher wrote: The rural character of latah county will not significantly affected and there are no known unique cultural, senic or natural amenities in the vicinity requiring protection. The perposed use is consistent with the objective of ensuring that land use polices do not unconstitutionally violate property rights.

These incomplete answers result in an application that does not address any of the issues and this style of response continues through the whole application.

7.01.03 PUBLIC HEARINGS AND PROCEDURES

1. A public hearing before the Zoning Commission shall be held on each *complete* application received by the Planning Department within six months of receiving the

2. County P&B employee's requested and received Lisher's permission to enclose a document created 6 years ago as the narrative for the current application.

Members of zoning board relied up this document to form opinions and make decisions. It wasn't until Lisher explained staff had asked if they could include the document that he revealed the information zoning commission relied upon wasn't current and didn't accurately reflect his request. The document was written 6 years prior for the original application and does not reflect any current and timely knowledge, because it can't. The decision by P and B staff to attempt to prop up an incomplete application with a document they know is not current, adversely impacted the hearing process, created confusion, and is

unprofessional. Such an action conflicts with the courts findings *in light of the present factual circumstances.*

3. Relevant obvious conflicts with comprehensive plan are so substantial 7 minutes is insufficient time for financially affected opposition persons to respond to all the issues Lisher failed to address.

If Lisher doesn't answer the application questions and the zoning board doesn't discuss the obvious conflicts with the goal of mitigating them, who will. It does not seem appropriate to leave responsibility for coming up with mitigating conditions in the hands of the very people who are adversely effected financially, emotionally, and physically by the rock pit and only allow them 7 minutes to do all this. I am confident most hearings only need 6 or 7 minutes to cover relevant points, but this rock pit and the process allowed by planning and building staff have relieved Lisher of providing relevant information and meaningful engagement with a complex process. An opportunity to address all the comprehensive criteria, when no effort was made by the applicant: cannot be done in 7 minutes.

4. Failure to apply new criteria "or the enjoyment of such uses"

5. Failure to base decision on if applicant met criteria

6. Failure to understand a conditionally permitted use does not give the property owner a property right in that use.

7. Failure to base decision on testimony (evidence) given at hearing

8. Failure to determine whether opposition countered applicants evidence.

The hearing was basically divided between rock pits owners and their family members testifying how important gravel is to everyone and how we don't have enough of it and folks who live directly across from and experience adverse effects from it or wish to further mitigate its negative impacts. Since applicant didn't supply evidence or any meaningful responses it is hard to understand how a new permit could be justified.

When deliberation turned from elements of the comprehensive plan instantly to they permitted it once and a guy has a right to run a business; this used the conditional use permit to bestow a property right to that use in contrast to the ordinance. The prior hearing six years prior had a different and lower standard which did not incorporate the language of "or the enjoyment of such uses".

The board member sitting on Mr. Sprouse's right states in the record "It's the same comprehensive plan it was six years ago." This is 100% wrong. The following is the shift from discussing the comprehensive plans implications to ignoring them in this members own words:

I think we are looking at this application and we need to just deal with this application. I don't think it is up to us to tell the applicant that he needs to go look at another site. I agree with you that the alternative was a really nice to be presented, but I think this was the application that we were given to deal with and I think we need to deal with it

"My discussion earlier, I, you went through the comprehensive plan but it sounds to me like these people went through 40 some hours of that same kind of discussions over the comprehensive plan and *it's the same comprehensive plan that it was six years ago.* So, I guess I will make a motion that we approve CUP 811 with essentially the same conditions that were approved under the previous CUP with some minor changes to those conditions since some of them did go away."

By closing down any relevant discussion of the multiple negative impacts the crushing,

blasting, loading, and noise nuisances the old lower standard was allowed to override the importance of the new evidence and knowledge gained over six years. It is very possible these zoning members didn't know there was a change. The comprehensive plan on its face is designed to limit and control conflict. The move to deal with this application, within the context of the comprehensive plan needs to acknowledge a hearing may have enough evidence and testimony showing the conditional use does not comply with the spirit or language of the ordinance and must be denied.

The opposition provided detailed and personal testimony of how this specific rock pit in this specific setting has adversely affected them to a greater extent than any other permitted uses they have experienced in their fifteen years at the location. These are present factual circumstances and knowledge that did not exist 6 years prior.

This level of proof by the opposition, who knowingly used very specific language from the comprehensive plan to explain the adverse effects they experienced in the context of the comprehensive plan is reflected in Mr. Sprouse's attempts to initiate discussion and create a record.

The Chair Mr. Sprouse states:

"but getting on to the next part of that 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 was...I think that there has been a significant affect that is beyond the permitted uses and I think that has been demonstrated.

This one here is one that has come back to us with what I feel is more pertinent and realistic or real feed back to be quite often it is hard to judge sometimes, but this one has more realistic feed back.

B, the use... well and I guess to finish that out is that I don't believe this application meets that criteria.

The use will not require facilities or services with excessive costs to the public, Basically, not the only thing that I came to that was that with the several amendment requests to the CUP and our county being, I don't want to say, dire financial straights, but we're short. The fee for the applications does not any where cover...correct me staff if I am wrong, you know...cover the costs of research and paperwork and all the things that need to be done to do this. And that becomes the cost to the public, now and is it excessive or not?

No one denies or counters this direct application of the standards of the comprehensive plan to this current set of details. Instead Mr. Sprouse's very specific references to the comprehensive plan criteria is treated as if it never happened.

9. Four members, no female representation, chair non-voting

The lack of female representation on the board is best understood by the zoning board member who during the ultra short sharing period after testimony was closed stated he once lived next to a rock pit. He said it "drove his wife crazy" but it didn't bother him. In the multiple appeals Lisher was allowed over the past six years, the only time a member of the zoning board stated a rock pit moving into her location and listening to back up alarms at 7 am would adversely impact the quality and enjoyment of her home was a woman sitting on the board. I have never seen another woman on the zoning board since.

Mr. Hagadorn wrote off the testimony of those in opposition to this CUP as them being

emotional outburst about listed conditions preventing Lisher from having a job. It is reasonable to ask if the women who live in the houses across from the rock pit and the wife of the zoning commission member driven crazy by the rock pit are being represented in these hearings, especially when the community developed ordinance and comprehensive plan are read, but not utilized in deliberation. The lack of recognition of the female multitasking brain and often better hearing result in their adverse experiences being ignored.

10. Waiving of comprehensive requirements-reading does not reflect consideration

Wayne Sprouse, the chair attempted to engage the other board members in laying out the many facets of the comprehensive plan. Though he shared his impressions of elements and goals that he thought fit or didn't fit he was unable to get the other three male zoning board members to engage or speak out. When he completed a general run through of the many elements and issues to be considered a second member began to speak. It was as though Sprouse had never revealed all the things they are required to consider.

This member moved instantly to the long hearings held six years ago and his thoughts about how this pit was already granted one cup, and moving it to another location wouldn't be as easy as just giving it another CUP. The recordings reveal the three other members never considered or spoke to the many elements. They took the fast and easy route of using the old conditions without making an attempt to mitigate the issues of blast damage, crushing noise and early morning high decibel vehicle alarms voiced in this specific hearing. It is very clear in the recording, Sprouse brought up some import issues they should consider, but they never did.

11. Member statements reflect lack of consideration and reliance on assumption

There were assumptions being made about prior testimony in early hearings, the involvement of those in opposition in the early hearings to help create these conditions, and a general lack of reliance on the whole record to inform the decision to grant this CUP. More specifically there has been conflict in the record over the past 6 years which Michelle Fusion has not addressed though zoning board members and commissioners and members of the public have directly requested a ruling. Here is the assumption the zoning board relies on in their hearing as voiced by Mr. Sprouse.

#8 Protecting existing land uses from conflicting land uses. That does specifically apply to this and there is a conflict and now becomes the thought which one comes first the chicken or the egg. It has also been testified that the pit has been there since 1949, however, in constant use, I don't know.

I don't know if we got a definitive answer on that. As it is now, it requires a conditional use permit for operation as a pit and so it is something that we have I guess control over or say in as a commission, as a county. To protect it, existing land uses from conflicting uses. I don't need to go any farther as far as all the testimony that we have had on conflict.

The problem Mr. Sprouse faces is when he hears testimony that "the pit" has existed since 1949 he is not recognizing there are two very distinct and separate pit operations. The 1949 pit is situated down in a lower area of the property, with a large dirt bank between it and the existing houses. There is no crushing or blasting associated with it. Because of its very specific operation it does not adversely effect residents more than permitted uses.

This 1949 pit according to Director Fusion to regulated by:

SECTION 4.01 NONCONFORMING USES

4.01.01 DEFINITION AND PURPOSE OF REGULATION

A nonconforming use is a parcel, use, or structure which was legal when commenced or built, but which does not conform to subsequently enacted or amended regulations. It is the purpose of this Section to allow, but not encourage, the continuation of nonconforming uses. Nonconforming uses shall not be allowed to expand in size or increase in intensity except as provided by this Article.

4.01.02 CONTINUATION AND EXPANSION OF USE

A nonconforming use may be continued indefinitely. Unless they become a conforming building or use, nonconforming buildings or uses shall not be enlarged or expanded except as permitted under Section 4.01.05 of this ordinance. Enlargement or expansion includes, but is not limited to, any alteration to the original building or use which would increase its size or intensity of use. The existence of a nonconforming use shall not be adequate justification for permitting other uses prohibited by this ordinance.

4.01.03 DISCONTINUANCE OF USE

Property with nonconforming uses discontinued for more than one year shall thereafter only be used for conforming uses. An intent to resume operation of a nonconforming use without actual operation of the non-conforming use shall not be sufficient by itself to allow resumption of a nonconforming use after one year of nonuse of the nonconforming use. Evidence must be provided by the individual of the last date the use occurred prior to an interrupted use being allowed to resume. If an illegal intervening use occurs, the nonconforming use will not be allowed to continue at any time. Legally built unused buildings or improvements designed for a purpose which subsequently became nonconforming are subject to the provisions of Idaho Code Section 67-6538. *Nonconforming uses may not be converted to other illegal or nonconforming uses at any time.*

The existence of a nonconforming use shall not be adequate justification for permitting other uses prohibited by this ordinance. This reference to the non-conforming 1949 pit does not justify a completely separate and different functioning rock crushing pit on a hill top located on the same 280 acre parcel. If the new Lisher pit did fall under this statute then it could not increase the size and intensity of use (meaning no crushing or blasting).

Most important, when I called to file a formal complaint about the 1949 pit, staff at P&B told me the time limit for nonconforming uses to shift to conforming uses due to non-use was 10 years. In fact it is one year. My concern is based on a consistent pattern of conduct by planning and building director Fusion, no attempts will be made to apply this ordinance to the 1949 pit. By doing so she is encouraging the non-conforming use and the confusion experienced by Mr. Sprouse and others. *It is the purpose of this Section to allow, but not encourage, the continuation of nonconforming uses.* This section is very clear.

So when Mr. Sprouse looks at testimony for a 1949 pit, these folks are not talking about the pit covered in CUP 653 or CUP 811. So reliance on testimony this pit has existed since 1949 fails to acknowledge the photograph, CUP record, and testimony that Lisher's gravel crushing operation came to our home 9 years after we purchased it. There is no chicken and the egg and planning and building staff should be helping all persons understand this. This old pit does not require a conditional use permit according to Fusion, but she fails to inform the zoning chair of his error during the hearing. These two pits are so separate in function and operation that completely different operators utilize them. An analogy would be owning

a 1949 Ford pickup and using it to claim you had operated a 2004 Ford for the past 61 years. There is a very arbitrary and capricious process to justify actions taken.

12. One member failed to reveal relevant ex parte knowledge and bias until public input portion of meeting closed

Hagadorn said nothing when Sprouse asked if there were any ex-parte contacts. After the public comment portion of the hearing was completed Hagadorn revealed an intense knowledge of site, including driving past it four times a week. A history that included statements about people who hauled out of the old rock pit (which has nothing to do with the new gravel CUP), traffic on the road, a historical perspective, and references to old timers tossing some dynamite around. This intentional testimony was provided in support of the rock pit, but did not allow re-buttal because none of this was shared until after public input was closed. This monologue went on for a long time.

Hagadorn stated during this same time period that those in opposition were not only emotional but he noticed they were the same group who always came to these Lisher rock pit hearings. If he had been unbiased he would have commented that the only people testifying in support of the rock pit, were rock pit owners and one of their sons. There was no recognition that Mr. Lisher had been allowed so many hearings over the past six years that maybe we were the only people, not worn down and giving up on the process.

Hagadorn's behavior and statements reveal he is allowing his understanding of property rights and pro-business passion to over-ride his responsibilities to listen to testimony and apply the specific details of the comprehensive plan to any deliberations he may undertake.

13. Planning director directed zoning commission to remove important conditions because she did not have the enforcement capability after closing public input

One of the original conditions from the first hearings six years ago was the pit was to be fenced and the gate locked. As the zoning board began to import the old conditions list into the new CUP Michelle Fusion spoke up and told them to remove the fencing and locked gate requirement because she couldn't enforce it. Sprouse asked out-loud on the record why the requirement for a locked gate. Fusion did not respond and the audience was prevented from speaking. This is another example of the public being present but not allowed to provide input because staff take actions after the public comment is stopped.

Having been at all the hearings I knew the locked gate was to prevent the rock pit from being used as a place to shoot, hangout, and function as an attractive nuisance. This continues to be a valid concern. Fusion's explanation she didn't have the ability or resources to enforce the locked gate requirement is of great concern. A lock on a gate is the easiest and most obvious aspect of the many conditions applied to this rock pit. If she can't enforce that condition, how can she enforce the others? Enforcement is a very real cost of conditional use permits and simply choosing to not enforce is wrong.

The end of the hearing created a condition to remove the trashed van sign from the property. There was clear discussion on the record, but when the signed findings came out, this important piece of signage correction was missing. What happened in private to remove this? Did Fusion again direct the zoning commission to remove a condition without public input and outside of public view?

14. Planning director allows improper interpretation of 7.01.06 expansion of conditional uses to allow rock pit applicant to have multiple appeals of conditions throughout the six-year conditional use permit. Until this abuse has been

addressed this CUP creates an excessive cost to public services, community trust in planning and building, and allows statutory harassment of homeowners located across from this pit.

7.01.06 EXPANSION OF CONDITIONAL USES

Expansion, enlargement, or alteration of an approved conditional use shall be reviewed by the Planning Department upon written request by the permit holder. If the Department determines that the alteration, expansion, or enlargement is beyond the scope of action allowed by the original permit, the Department shall require the permit holder to apply for the review and approval of the Zoning Commission under the provisions of Section 7.01.03.

At best this is a poorly written paragraph, at the worst it allows applicants to by-pass expensive appeals processes their opponents must use. Taken in the context of the conditional use hearing process with a very strict 30 day appeal period and expensive transcription of taped testimony it looks like a loop-hole. In fact it has been allowed to function as a loop-hole for Mr. Lisher the past six years. This is not without grave concerns and written and public testimony at these recurring hearings in front of Michelle Fusion, but she has taken no action to fix the problem. She needs encouragement from her bosses because this has a very real financial and trust effect on county government officials.

It does not appear legal for the municipal powers to give an applicant multiple appeals to conditions designed to limit the impact of a rock pit, while giving the opposition a single very limited and expensive appeals process. If this ordinance paragraph were interpreted with the understanding it was never intended to provide different appeals processes to parties involved in the same hearing process, the words might make a little more sense.

In the second paragraph of 7,01.06 it says ‘If the department determines the alteration, expansion, or enlargement is beyond the scope of action allowed by the original permit’ the words scope of action means what was adjudicated and denied by the original permit. Beyond would indicate outside of or previously unconsidered issues.

By way of example, if a dog kennel CUP was requested for six dogs and approved, then a later request to expand to 12 dogs is beyond the scope of action allowed by the original permit. With 12 dogs never having been considered, the applicant can have a hearing, because it is beyond the scope allowed in the original. If however, the original request was for 12 dogs and the full hearing created conditions limiting the kennel to six dogs for six years, then the size of the kennel is an action based on denial and specific control measures. These have a very limited and specific appeals process.

Issues reviewed and specific conditions put in place by a legal hearing process is very different than issues not yet considered. The first are considered and conditioned limitations falling under the 30 day appeals process. If the expansion, alteration and enlargement are beyond the scope of action (because they have not been considered in previous hearings) then a new hearing is appropriate according to the language.

Allowing an applicant repeated appeals of limiting conditions has nothing to do with beyond the scope of action, it falls directly within the scope of action limited by the original permit. Once a hearing denies a scope of action, it is limited to a 30 day appeal period. Public hearings are very expensive and allowing Mr. Lisher to appeal his limitations after the 30 day appeal period is malfeasance.

This new CUP with conditions Mr. Lisher doesn’t agree with will without a doubt result in another six years of his utilizing the mis-interpretation of this section. As a taxpayer I am

concerned this is a direct and excessive expense to public services associated with this specific CUP. It is even more disturbing it has been allowed to continue for 6 years by the planning and building Director. This CUP should not be allowed until this is corrected.

15. Findings of fact misrepresent, leave out facts, and distort information for purpose of achieving a desired outcome.

There has been over 6 years of multiple hearings concerning this rock pit. The one consistent piece has been the unique style of writing used to present the information from the testimony and exhibits presented during the hearings. There is such a strong pattern I am led to believe they have been authored or corrected by the same person.

The hearing board requires we all provide our names, address and place our testimony in the support, oppose or neutral positions. Based on this very specific information and our subsequent testimony, the use of the term neighbors to describe anyone from five miles away to directly across from the rock pit serves to mislead the reader on the relevance of their testimony.

A person living .68 miles away from the rock pit with a large rounded hill between them and the pit will have a very different experience than one completely exposed to the whole rock pit operation. It is logical when this person says the rock pit doesn't bother them. But if the findings of fact state "a neighbor testified that in the previous six years he has not had any problems with the operation" it is the consistent lack of relevant detail that misleads the reader.

There are lots of entry's concerning the applicant provided written testimony including no additional public services will be required and the operation would present a cost effective source of rock. If these quotes were taken from the 6 year old document then this was all conjecture 6 years ago and do not reflect current conditions or the current high costs of this applicants business.

Mr. Krasselt, a rock pit owner testified conditions raised the cost of operating a pit, making it difficult for them to compete with other pits without conditions. This would have been important to reveal the Lisher CUP will not be able to present a cost effective source of rock, but it was left out of findings.

Testimony was provided there is a high demand for good quality gravel. What was never stated is that the rock in the pit is good quality gravel. Testimony was provided existing mineral resource developments cannot keep up with the demand for rock. If that is the case encouraging Mr. Lisher to move his pit to a location which will not have to limit the blast, noise and hours of operation would do a much better job of helping the communities demand for rock. A point also made indirectly by Mr. Krasselts testimony.

There was extensive testimony, photographs and maps depicting a more likely location and good quality basalt site on the Walser property. Why was this important piece of testimony left completely out of the findings? A review of the records findings of fact would leave one to believe it never occurred. This information and the comprehensive plan elements create a strong and compelling argument to deny this application.

I testified in detail concerning the damage the previous blasting had done to our well and we included written documentation. That homeowner was me, not a neighbor. I testified the well, stopped producing 8 days after the double blast. It is clear and on the record. In this same paragraph of findings of fact the author says the applicant provided oral testimony that the homeowners well that is believed to have been lost due to blasting, was not lost in

entirety until November 24, per TPM water systems. Mr. Lisher, read only a portion of the document conveniently leaving off that it was produced at Don and Carolyn Lazzarini's request. Creating spin and justification without fairness and balance is outside of the duties and ethical requirements of planning and building staff.

This document from TPM has my name on the top and is part of the documentation we have provided multiple times during the various hearings. To interpret this document in this manner requires a complete rejection of my testimony and a failure to identify the date of blasting and direct testimony in this specific hearing. In fact: the well stopped producing eight days after the blast. The letter only documents how long we waited to call TPM because we hoped and prayed time would allow the well to heal from the blast damage.

Mr. Lisher testified he didn't know if the blasting damaged our well or not. Why are these important aspects of his testimony, left out while, less relevant pieces are included.

When questioned about the alternative rock location, Mr. Lisher's testimony reveals he has looked at different requirements of the state, and maybe someone else could figure it out but he can't. In consideration of his incomplete and non-responsive written application, it would be important to realize he might require professional assistance to figure out complex statutory language. The zoning board has no obligation to ensure he has a rock pit, even though some of their statements make it appear they believe they do.

Testimony directly solicited by Mr. Hagadorn from Mr. Lisher during his rebuttal stage left the impression the back up alarms only lasted during a three minute loading period. This of course requires them to intentionally ignore highway districts multiple trucks and belly dumps that utilize this site under the 653 CUP at an intensive rate.

The function of these alarms, as testified to by my wife and I who live directly across from the pit, wake us up at 7 am. The issue is how long do we allow are bedroom alarm to beep, until we shut it off. My wife and I wake and shut off an alarm within 5 seconds of hearing it. So if a back up alarm on the adjacent rock pit wakes us up with off and on beeping, the deed is done we are awake. The only way to remedy this process is to implement a later operation time as reflected in 4.03.02 Hours of operation are limited to 9 AM to 6 PM daily. These were testified to during the hearing as preferred hours for those of us that live across from the pit.

The applicant provided written testimony that the previous mineral resource conditional use permit did not impact school facilities or student transportation in the last six years. This is interesting because "no problem, in the last six years" is scrawled in the school facilities and student transportation element of the application narrative work sheet. How would Mr. Lisher know if the hundreds of truck loads of rock hauled by the highway district impacted school facilities or the students at the bus stop? But of course if one actually reads what is covered under that heading in the elements it doesn't have that meaning.

That scrawl does not rise to the level of written testimony if you consider his complete pattern of not using the comprehensive plan to understand what he is responding to in the narrative. This is such a arbitrary and unreasonable reach to find something to support this decision. One must really question the ethics and motivation of the writer. Whom I believe should be identified for the record.

NO testimony was provided that the proposed conditional use would significantly impact any areas of significant historic, archeological, geologic or biological significance. If Mr Lisher was not required to address this issue, in his recent application, the end result is there is not testimony nor is there a denial. This is what happens when short cuts and incomplete

applications are allowed. No testimony is not what the comprehensive plan requires. That these statements fall under findings of fact relate to the spin placed on their meaning and how unreasonable, inaccurate, and dis-ingenuous the document became.

The written appeal must specify which findings or conclusions the appellant finds to be in error and explain the appellant's reasons for determining the findings and conclusions are in error.

All three conclusions of law are in error as well as the many findings listed in the previous section.

The findings and conclusions are in error because even though the committee chair read the elements of the comprehensive plan and pointed out areas that needed discussion this necessary discussion never occurred. Instead of discussing important elements a member of the zoning commission stated he felt bad for all the people who lived next to the pit, but since a permit had been issued, a man has a right to continue his business. This level of reliance on a decisions made six years prior, failed to incorporate factual present circumstances presented in testimony.

This immediate jump to relying on a previous conditional use permit, (now expired) stopped consideration of creating conditions to deal with major noise and property right issues experienced by and testified to by opposition during this hearing. It side tracked the hearings serious purpose of reconciling current testimony The hearing proceeded against ordinance language "The listing of a particular use as a conditionally permitted use does not give the property owner a property right in that use".

The assumptions made out-loud by two zoning members reveal both their lack of knowledge concerning both the process and the comprehensive plan. Photographs, maps, and detailed testimony were made during the hearing, directly countering the need for this conflicting rock pit at this location. This evidence and testimony revealed a large basalt field on another portion of Walser's property. This evidence was not available when the original hearings were held six years prior making the original justification for home owners directly in sight and hearing of this pit to suffer noises and damage, no longer justifiable. Since Mr. Lisher didn't want to consider it. They proceeded as if they couldn't consider it either.

Section 67-6504. This Commission shall be composed of five members assigned to positions A -E. The Zoning Commission shall elect a Chairman, Vice-Chairman, and Secretary. This Commission *shall abide by the provisions of this ordinance, the Local Land Use Planning Act, and shall also adopt by-laws as required. The Land Use Board of Appeals shall not have the authority to waive the requirements of this ordinance or take any action that is contrary to the specific provisions of this ordinance.*

A careful look reveal the actions of the zoning board resulted in waiving the requirements and taking action contrary to the specific provisions of this ordinance.

My substantial rights of I have as a homeowner and community member have been prejudiced and the findings, conclusions, or decisions are:

- 1) in violation of constitutional or statutory provision;
- 2) in excess of the statutory authority of the Zoning Commission;
- 3) made upon unlawful procedure;
- 4) not supported by substantial evidence on the record as a whole; or
- 5) arbitrary, capricious, or an abuse of discretion.

Any affected person may submit a written response to the appeal within 15 days of the filing of a conforming written notice of appeal.

My home is located directly across from and in line of sight of the entire rock pit operation. My property values are reduced, my enjoyment of my home and property are diminished, and my well stopped producing any water 8 days after a double blast. It cost 8 thousand dollars to drill a new well. These are direct adverse effects of the rock pit, my wife and I experienced after the original CUP was authorized 6 years ago. I claim direct and real adverse effects of this decision.

According to section 3.01 AG/Forest zone

3.01.01 Permitted uses in this zone as a right of property ownership include one single family dwelling for each eligible parcel and home occupations per section 4.02. This is contrasted with no right of property ownership for mineral resource development subject to 4.03. This creates a higher level of protection for home property rights which need to be addressed at any level of discussion.

The purpose of this ordinance is to promote the health, safety, and general welfare of the people of Latah County by establishing regulations and standards in accordance with the Latah County Comprehensive Plan.

As per Idaho Code Section 67-6510, mediation may be utilized for land use permits. The mediation can occur between an applicant and any other affected person objecting to the application. Mediation or the processing of asking the folks in the hearing to come up with ideas to help mitigate the adverse effects they are experiencing is likely to result in more relevant and beneficial conditions.

3.01.01 Permitted uses in this zone as a right of property ownership include one single family dwelling for each eligible parcel and home occupations per section 4.02. This is contrasted with no right of property ownership for mineral resource development subject to 4.03. This creates a higher level of protection for home property rights.

14. Property Rights element

Goal To ensure that land use policies, restrictions, conditions and fees do not unconstitutionally violate private property rights, and establish an orderly, consistent review process that enables the county to ensure any proposed actions will not result in an unconstitutional taking of private property without due process of law.

Relevant Comprehensive Plan Objectives

To make Latah County a desirable place in which to live, work, and visit, the CP and land use map outline a pattern of growth compatible with community traditions, values, and vision for the future, including:

Fostering of other land uses which will help achieve a solid broad-based and sustainable economic foundation.

Clustering of commercial and higher density residential uses in and around areas with adequate public services

Preservation of the rural character of Latah County to ensure the protection of the cultural, scenic and natural amenities presently found in the County. One our most precious natural amenities for the previous 9 years was the extreme quiet of the area. This is very difficult to find and hard to have taken from us.

Ensure that land use policies do not unconstitutionally violate private property rights. Comprehensive Plan shall serve as a basis for ordinances and regulations that will achieve the overall goals identified through the active participation of County residents. When the County, through its citizens, finds that the Plan no longer reflects current conditions and community values, it shall be amended or replaced.

Community Design element

Goal: to ensure a pattern of planned growth which results in the orderly and attractive development of Latah County.

Policies: Encourage commercial developments to locate in or near existing cities

Encourage landscaping of new developments to protect the existing character of the surrounding area.

Protect existing land uses from conflicting uses.

Preserve the rural character of Latah County

Population element

Goal To ensure that population growth is accommodated in an orderly pattern.

Policies:

5. Unproductive and forest lands may be developed, if these lands are suitable for development and if such development will not otherwise conflict with surrounding uses.

Housing element

Goal To ensure an adequate and attractive living environment to meet the needs of residents of different ages, family sizes, lifestyles, and income levels.

Policies:

Encourage the development of a variety of housing types on land suitable for development.

4. Economic development element

Goals:

4. To guide the development of a commercial and industrial sector that will be compatible with the natural environment and existing land uses.

Policies:

Designate a sufficient amount of land suitable for commercial and industrial uses.

Ensure buffering of new commercial and industrial uses from surrounding land uses.

4. Discourage commercial and industrial development which adversely affects the public's health and safety.

Mining

5. Protect existing residences and businesses from impacts of mining and processing operations.

5. Public services, facilities, and utilities element

Goal To provide an orderly pattern of development which will ensure adequate public facilities and services without excessive costs.

Policies: minimize any adverse effects of new public facilities upon residential areas, natural resources, and special areas or sites.

Transportation element

Goal To promote an efficient and safe transportation system in Latah County

Policies:

1. Ensure access onto public roads will not disrupt traffic flow and that access is adequate for emergency response vehicles

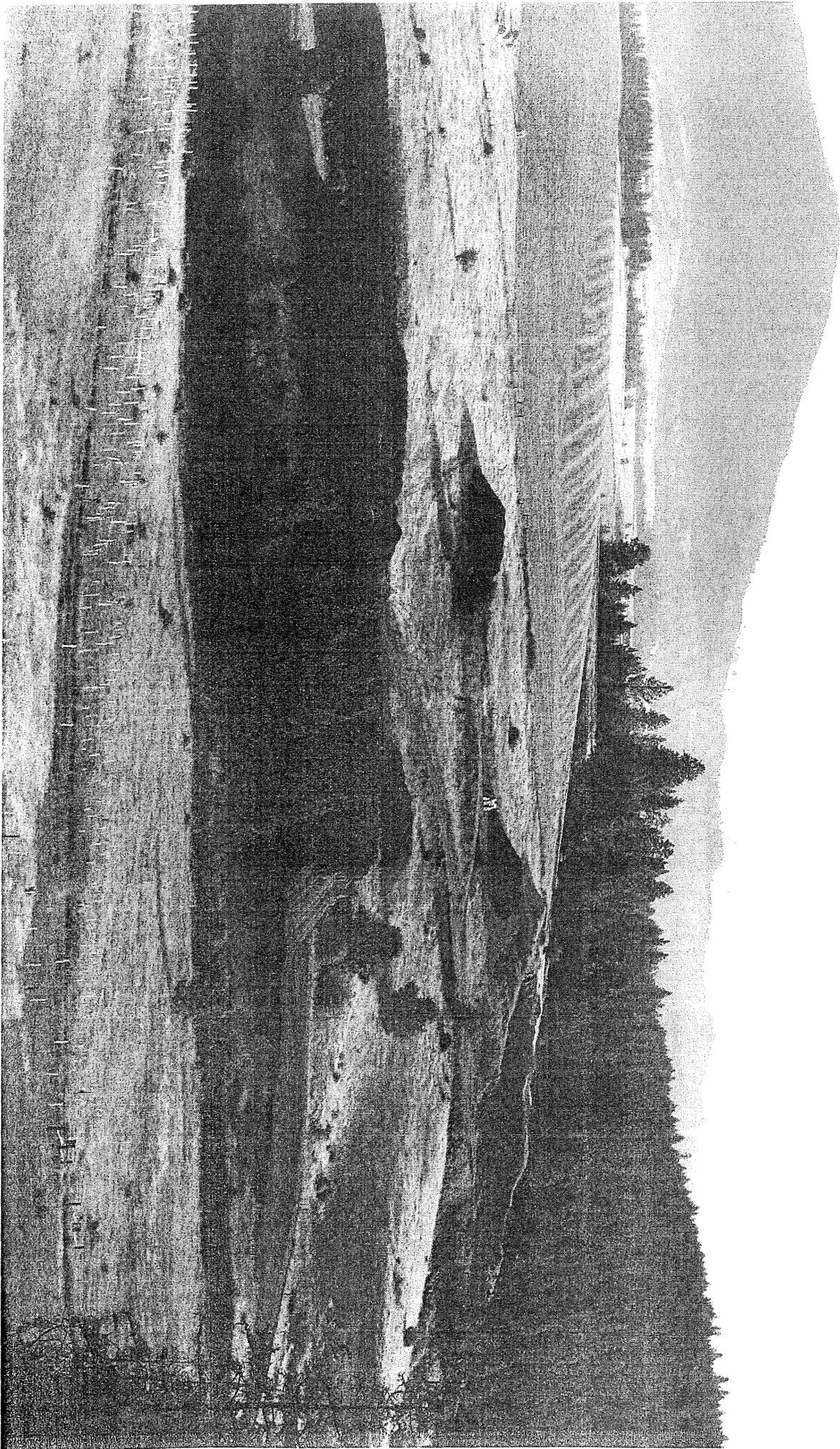
Natural Resource element

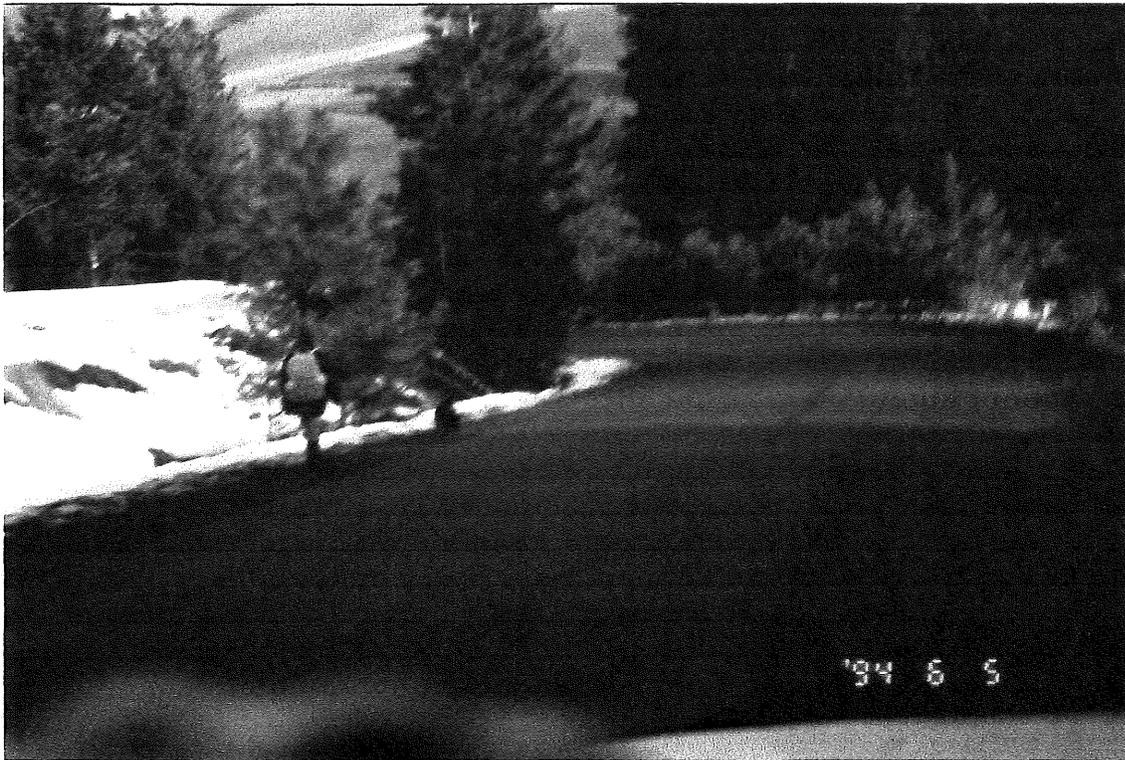
Goal To ensure sound stewardship of the County's natural resources.

Policies:

2. Prohibit development that significantly pollutes or degrades the natural environment.
3. Maintain sustainable groundwater resources and prevent degradation of groundwater quality
4. Protect wildlife habitat, particularly critical winter range, from encroachment

In making zoning and land use decisions, the PZ and BOC make factual inquiry into whether the proposed zoning or land use reflects the goals of, and takes into account those factors in the Comprehensive Plan in light of the present factual circumstances surround the proposed zoning or land use. Where those goals and/or policies conflict, it may be that the decision-makers find the proposal to be in accordance with some goals of the plan, but not others. In such a case, the decision-makers must balance conflicting goals as closely as reason, justice, and the character of the plan make practical and possible. A proposed zoning or land use need not be in complete compliance with every goal and policy of the plan and should not be disapproved merely because it does not meet one or more goals or policies. So long as each relevant goal or policy is considered in making the decision, it is possible to conclude that the proposal is in harmony with the intent and general character of the plan.





RECEIVED

JAN 23 2017

LATAH COUNTY

To: The Board of Latah County Commissioners 1-23-2017
in regards to the hearing to be held Feb 1st, 2017

This writing is in response to the Notice of Public Hearing concerning CUP 811. I am opposed to all modifications being requested by the permit holder. Unlimited hauling of loads on Flannigan Creek road should not be permitted. Eliminating the blast, crush, and removal limitations could easily damage our water wells and the noise of rock pit operations continually invade ~~the~~ privacy and safety of close residences and all those that use Flannigan Creek road. Resale value of our properties are also adversely affected.

Thank you for your consideration
in this matter

Kevin Kocher
1389 Flannigan Creek Rd
Viola, ID

LCZC Hrg: CUP 811
Applicant: Lisher
Exhibit #: 4
Date: 2/1/2017