



## NOTICE OF DECISION

PURSUANT TO RICHLAND MUNICIPAL CODE SECTIONS 19.60.080 & 23.46.050, NOTICE IS HEREBY GIVEN THAT THE RICHLAND BOARD OF ADJUSTMENT HELD A PUBLIC HEARING ON MAY 18, 2023, TO CONSIDER AN APPLICATION SUBMITTED BY ROGER WRIGHT ON BEHALF OF THE PORT OF BENTON AND AMERICAN ROCK PRODUCTS FOR A SPECIAL USE PERMIT A 25-ACRE EXPANSION TO AN EXISTING MINING OPERATION. THE PROJECT SITE IS LOCATED ON ASSESSOR'S PARCEL NUMBERS 122081000002001 AND 122081000001002. ON MAY 18, 2023 THE BOARD OF ADJUSTMENT ISSUED A RULING TO APPROVE SPECIAL USE PERMIT # 2023-103 PER PROVIDED, REVISED CONDITIONS OF APPROVAL.

**REQUEST:** Special Use Permit to approve a 25-acre expansion of an existing mining facility.

**LOCATION:** Parcel Numbers 122081000002001 and 122081000001002

**DESCRIPTION OF ACTION:** Request approved subject to the conditions as enumerated in the Planning Staff's submitted report.

**SEPA REVIEW:** The above referenced action was reviewed in compliance with the requirements of the State Environmental Policy Act (RCW 43.21c). A SEPA Threshold Determination of Non-Significance (EA2023-112) was issued by the City of Richland on May 1, 2023 after utilizing the Optional DNS Method.

**APPEAL PROCEDURES:** This Special Use Permit is a Type II Permit action under RMC 19.20.010.B.9. RMC 19.70.010 explains that project permit applications shall be appealable as provided in the framework in RMC 19.20.030, which provides that Type II Permit decisions are not subject to a closed record appeal before the City Council but may be appealed to Superior Court. RMC 19.70.060, captioned "Judicial appeals", reads as follows: *Except in the event of legal authority providing for a different appeal process, the city's final decision on an application may be appealed by a party of record with standing to file a land use petition in Benton County superior court. Such petition must be filed within 21 days of issuance of the decision, as provided in Chapter 36.70C RCW.*

Mike Stevens  
Planning Manager

May 19, 2023  
Date

## FINDINGS OF FACT

The following Findings of Fact were established by the SUP2023-103, EA2023-112 Staff Report and approved as written by the Board of Adjustment at their public hearing May 18, 2023:

1. The City of Richland Comprehensive Plan designates the subject site as suitable for proposed use subject to a Special Use Permit per Richland Municipal Code [RMC] 23.26.030.
2. The subject site is located within the medium industrial use district (I-M).
3. RMC Chapter 23.46.025(B)(5) designates the Board of Adjustment to conduct the review of special use permit applications for the excavation, processing, removal of topsoils, sand, gravel, rock or similar deposits medium industrial use districts.
4. Roger Wright, on behalf of on behalf of American Rock Products and The Port of Benton has filed an application for a special use (Type II) permit to expand and operate an industrial aggregate mining operation on approximately 25 acres.
5. Excavation, processing and removal of topsoil, sand, gravel, rock or similar natural deposits is evaluated under the criteria contained in RMC 23.42.070.
6. A special use permit is classified as a Type II application under RMC 19.20.030.
7. Required findings for Type II applications are found under 19.60.095.
8. Public notice of the application and hearing was provided via mail to surrounding landowners within 300 feet of the site; through the posting of a sign on-site, on the City website, and through a legal advertisement in the Tri-City Herald, all in accordance with the notice provisions contained in RMC 19.40.010.
9. The applicant filed an environmental checklist along with their special use permit application.
10. The City issued a Determination on Non-Significance (EA2023-112) for the project on May 1, 2023, thus satisfying the requirements of the State Environmental Policy Act (*Exhibit 4*).
11. The size of the property exceeds the minimum lot standards for excavation, processing and removal of topsoil, sand, gravel, rock or similar natural deposits stipulated in 23.42.070(C)(1).
12. The physical conditions of the site are suitable for the proposed development.
13. Public facilities consisting of sewer, water and street access are in place and available to serve the proposed development. All utility systems have adequate capacity to serve the proposed development.
14. The proposal, as conditioned, is consistent with the City's comprehensive plan.
15. The proposed site is not impacted by the City's Critical Areas regulations or Shoreline Master Program.
16. City staff and others have reviewed the project and have recommended specific conditions of approval as set forth in this report.
17. As conditioned, the project meets the criteria for the issuance of a special use permit as established in RMC 23.46.040.
18. As conditioned, the proposed special use permit makes appropriate provisions for the public health, safety and general welfare, is consistent with the adopted comprehensive plan, meets the requirements and intent of the Richland Municipal Code, and, has appropriately identified and mitigated environmental impacts as described under RMC Chapter 22.09.
19. The initial development of the site operation was approved with conditions following the approval of SUP00-102 by the City of Richland Board of Adjustment
20. The subsequent expansion of the mining operation was approved with conditions following the approval of SUP2003-101 by the City of Richland Board of Adjustment
21. The as-yet unmined expansion of mining operation activities was approved with conditions following the approval of SUP2018-101 by the City of Richland Board of Adjustment.

## CONDITIONS OF APPROVAL

The following Conditions of Approval were included in the Planning Staff's SUP2023-103, EA 2023-112 Report and approved as written by the Board of Adjustment at their public hearing May 18, 2023 with one modification (see Condition #1, *italics*). Staff has updated the Staff Report with this language and posted the updated version to the City's website. Additional note: In the interest of consolidating all mining operation conditions, Staff has consolidated the following previous Conditions of Approval as appropriate to properties subject to this and prior permits, including SUP00-102, SUP2003-101, and SUP2018-101. Those former permit Conditions of Approval are superseded by the following SUP2023-103 Conditions:

### General Conditions

1. The applicant shall provide an annual report to the Department of Development Services Planning Department and representatives from LIGO and PNNL for review and shall include a meeting of the applicant's site manager and senior management staff and City Staff to review the operation and resolve concerns the City, LIGO, or PNNL may have. Failure to do so is grounds for permit termination per 23.42.070(H). The annual report shall cover all existing and prospective operations originally permitted via SUP00-102, SUP2003-101, SUP2018-101 and SUP2023-103. The first report and meeting shall take place no later than one (1) calendar year from the date of the Notice of Decision.  
*In general, the report shall document that mining operations are consistent with all standing requirements. Those ongoing requirements shall include (at a minimum) Richland Municipal Code [RMC] 23.42.070 "Excavation, processing and removal of topsoil, sand, gravel, rock or similar natural deposits", RMC 23.26.020 "Industrial performance standards and special requirements", applicable Washington State Department of Natural Resources [DNR] Conditions of the Permit (Exhibit A), and, the included Conditions of Approval within SUP2023-103. Rather than a narrative, parties representing ongoing mining activities need only provide a short response to affirm compliance with each established and enumerated provision item-by-item. Mining representatives likewise shall provide an updated site plan, per SUP2023-103 Condition #11. Any milestones, changes in equipment, updated plans (including DNR reclamation plans), reclamation activities or other relevant changes of note shall be included where appropriate within the communication.*  
(Language in *italics* presented by Staff following correspondence with the applicants and approved by the Board of Adjustment at their May 18<sup>th</sup>, 2023 public hearing meeting on this item.)
2. Administrative review of Special Use Permits SUP00-102, SUP2003-101, SUP2018-101 and SUP2023-103 shall occur within 5 years of the date of the Notice of Decision, as otherwise provided for in RMC 23.42.070(G). Once the 5-year period of Special Use Permit validity has expired the City reserves the right to reject the extension of mining and excavation authorization if operations fail to comply with the approval conditions listed herein, per RMC 23.42.070(H).
3. This Special Use Permit shall be contingent upon the applicant obtaining and maintaining compliance with all necessary permits, licenses, certifications, and approvals required by any federal, state or local governmental agency having jurisdiction over said activities. A copy of said permits, and any ancillary documentation such as site management plans or maps) shall be filed with Richland Development Services. Falling out of compliance with permits or operating beyond listed parameters of operation as specified in "Conditions of the Permit" or approved and reviewed application documentation to said agencies shall be considered violating the terms of this condition and therefore subject to permit termination under RMC 23.42.070(H). Required permits shall include, but not be limited to:

- a. Washington State Department of Natural Resources Surface Mining and Reclamation Permit (per 23.42.070(E)(1)).
  - b. Benton Clean Air Authority approval.
  - c. Washington State Department of Ecology Sand and Gravel General Permit.
4. All mining and reclamation shall comply with the Washington State Department of Natural Resources [DNR] Surface Mining Reclamation Permit #70-012968 Conditions of the Permit as dated April 8, 2008 and Conditions of the Permit #70-013265 dated January 31, 2020, and, any updated conditions to follow per this, or, future proposals at this site, unless such prior agency conditions are superseded by new/updated conditions. Applicant is required to provide the City with the updated DNR approval and Conditions of the Permit. Violation of DNR Conditions are, and will be considered, a violation of the terms of this condition and therefore subject to permit termination under RMC 23.42.070(H).
5. Site operations shall be limited to mining and processing of material excavated from the site. Importation of off-site materials shall be limited to those materials necessary to process the material being excavated on site. At such time as the on-site materials have been excavated and processed, all operations permitted pursuant to SUP00-102, SUP2003-101, SUP2018-101 and SUP2023-103 shall cease with the exception of those operations necessary to complete the approved reclamation plan. This condition does not limit the use of recycled materials in the production of asphalt and concrete in accordance with industry standards which is necessary for the efficient utilization of those resources. Likewise, all equipment, structures and appurtenances shall be removed from the site in accordance with RMC 23.42.070(D)(9).
6. Operations shall at all times be in compliance with the requirements of Richland Municipal Code Sections 23.42.070 "Excavation, processing and removal of topsoil, sand, gravel, rock or similar natural deposits", or, successor Code standards. Including, but not restricted to the following items:
  - a. *Per 23.42.070(B)(1), applicant shall supply Staff an updated site plan showing the location of onsite haul roads.*
7. On site activities shall comply with all provisions of RMC 23.26.020 Industrial performance standards and special requirements.
8. Processing operations shall be limited to the area identified in the Compliance Noise Measurements report by MFG Consultants (dated May 25, 2001) to be in compliance with WAC 173-60-040 and RMC 23.42.070(D)(1) for "daytime" work hours of 7am through 10pm, shall at all times operate with at least a landscaped partial berm as discussed in said report, via methods, materials, and landscaping described within the SCM Consultant letter ("Eucon Corporation – Port of Benton Industrial Land Development, June 7, 2001) and located where indicated in the SCM Consultants Landscape Layout (May 21, 2001) (shown in Figure 4a, 4b & 4c and approved via SUP00-102/SUP2003-101, Condition 10), as approved with the BP04-00473 Landscape Plan (2004), and, as originally proposed in the 2002 Site Plan (the latter two both shown in Figure 8). Applicant shall update their berming/landscaping plan for review and approval by Development Services Staff prior to expansion of mine operations authorized by this permit. Staff will allow more region-appropriate plantings on top of new/reestablished berms, as noted in Analysis section, in lieu of original, approved plantings. Noise complaints filed with the City will be investigated. If violations of the noise standards are found, the applicant shall amend its operating conditions through the adjustment of the hours of operation; the use of different equipment that generates a lower volume of noise, the relocation of noise producing equipment or employ similar strategies or combinations of strategies until noise levels emanating from the site are found to be in compliance with the noise standards. The costs associated with testing for noise standard compliance will be borne by the applicants.

9. Rock crushing and cement batching activities shall continue within the boundaries of the pit site authorized under SUP00-102/SUP2003-101. Materials excavated from the project site shall be transported to existing rock crushing and batch plant facilities by truck and/or conveyor belt.
10. Warning and trespass signs shall be installed around the perimeter of the active operation area at intervals of no greater than 200 linear feet.
11. Prior to the commencement of work in the proposed 25-acre expansion area, applicant shall supply City of Richland Development Services a site plan with locations of all furnishings required per RMC 23.42.070(B)(3), showing all setbacks, structures, haul roads, locations of warning signs, fencing, and conveyors, and, shall update said site plan on an annual basis.
12. Blasting is not anticipated to be required. In the unlikely event that any blasting on site is needed, the applicants shall submit a blasting plan to Richland Development Services for review and approval. Said plan shall comply with the provisions of RMC 23.42.070(D)(2). Additionally, representatives at PNNL and LIGO shall be given a copy of any blasting plan and the opportunity to review and provide input on the plan prior to the City's review and approval.
13. Applicant shall supply detailed plans for post-mining grading and planting prior to commencing new excavation within Phases 19 and 20. Drawings or maps that are part of the reclamation plan shall be drawn at a scale of not larger than 50 feet or smaller than 100 feet to one inch. Said activities shall comply with landscaping standards within RMC 23.54.160 and Washington State DNR reclamation plan documentation.
14. No excavation or processing activities pursuant to this Special Use Permit shall begin until fencing and warning signs are installed per RMC 23.42.070(C)(3 & 4). This is to include project phase areas as originally conditioned per SUP00-102 and SUP2003-101 where such fencing was never installed, has since been removed, or in any case is required per Code, such as in the following areas:
  - a. Active extracting, processing, stockpiling, and loading of materials is occurring.
  - b. Boundaries are in common with residential or commercial zoned property or public lands.
  - c. Any unstable slope or any slope exceeding a grade of 40 percent (2.5 H:1 V) is present; or
  - d. Any settling pond or other stormwater facility with side slopes exceeding 3 H:1 V is present.
  - e. And, all fences shall be at least six feet in height above grade measured at point five feet from the outside of the fence, installed with lockable gates at all openings and entrances, with no more than four inches from the ground to the fence bottom, and maintained in good repair.
15. In the event that any unprotected slopes onsite exceed 3H:1V, a report prepared by a licensed or registered professional engineer or geologist shall be submitted for review and approval to the City of Richland Building Official for all slopes on site prior to the commencement of mining activities within Phases 19 and 20. Once approved, the recommendations of the report shall become conditions of the special use permit.
16. Excavation shall not occur below the 365-foot contour as identified upon the approved site plans or when ground water is reached, whichever comes first. Final grading of the floor of the pit shall be completed in such a way as to maintain buildable industrial sites throughout the project site.
17. The edge of any excavated area shall be setback a minimum of 50 feet from any property boundary, public street, or rail line. In the event this condition has been violated, applicant shall seek immediate remediation and restore buffer area with soil, plantings, or other

amenities indicative of the nearest non-disturbed area, though not required to directly restore the area pre-work site conditions.

18. Per RMC 23.42.070(C)(2) extractive operations permitted here shall proceed in phases per submitted Reclamation Plan #70-012968 (November 2022), Sheet 3, and, SUP2018-101 Exhibit 1g.
19. City of Richland Development Services Staff, PNNL, and LIGO representatives shall be notified any time new equipment or methods are anticipated which exceed or otherwise significantly depart from noise/vibration/emission levels/ranges previously observed on site, and, specifications for the proposed equipment shall be provided all aforementioned parties.
20. Applicant shall implement the use of all available measures to prevent the transport of rocks, dirt and mud from haul trucks onto public roadways throughout the life of the project.
21. Applicant shall be responsible for repairing any damage to public roadways caused by the operation of the facility. Evidence of such damage shall be rutting, cracking, and/or settlement of the road surface in excess of adjacent road sections not utilized by the operator. In the event the City Engineer determines that such damage has occurred the site operator shall repair and/or replacement the damaged roadway surface as required by the City. The site operator's responsibility shall be determined as his proportionate share of truck traffic on Hagen Road.
22. Outdoor lighting installed on-site shall be consistent with the lighting standards contained in RMC Chapter 23.58 and the Pattern Outdoor Lighting Code (USA) Standard version 2.0 (July 2010).
23. Given the sensitive nature of the scientific research conducted at the Pacific Northwest National Laboratories (PNNL) and Laser Interferometer Gravitational-Wave Observatory (LIGO) campuses located near the project site, impacts of vibration, dust and noise generated may require extraordinary mitigation measures. In the event that PNNL or LIGO finds that the activities authorized under this special use permit, or SUP00-102, SUP2003-101, and SUP2018-101, are interfering with PNNL research, the following process shall be followed:
  - a. PNNL or LIGO shall notify both City Development Services and the applicant in writing that the applicant's mining activities have negatively impacted scientific research taking place. It will be their (PNNL/LIGO) responsibility to demonstrate that the interference comes from mining activities taking place on the project site and not from other sources.
  - b. Representatives from the City, the applicant, PNNL/LIGO shall meet to identify the specific nature of the impact to research and to shall work cooperatively to determine options that would mitigate the impacts. Said meeting shall be scheduled for the first moment of availability between all respective parties.
  - c. A written agreement establishing updated mining procedures shall be signed by all parties and shall modify the Conditions of Approval attached to this or other applicable special use permits active for the Hanford Pit site.
  - d. In the event that an agreement cannot be reached, City Development Services shall determine whether or not amendments to the applicant's conditions of approval are needed. If it finds that such amendments are necessary to protect research activities, it shall issue written amendments to the permit conditions that the applicants shall be required to observe.
  - e. Parties that are aggrieved with the decision of the City Staff have the opportunity to file an appeal to the City Hearing Examiner, following the procedures for the appeal of an administrative determination set forth in Title 19 of the Richland Municipal Code.
24. Prior to the commencement of excavation, applicant shall coordinate with Staff for a site visit to inspect signage, fencing, slopes, berms, landscaping and other Code/Condition-related improvements here required.

### SUP2018-101 Specific Conditions

25. Access to the site shall be provided from the southerly property boundary across the existing gravel extraction and processing operation permitted through SUP2003-101. No other access road extending to Battelle Boulevard or crossing the eastern or western property boundaries is authorized under this special use permit. In the event that the applicant seeks access onto Battelle Boulevard, it shall submit a site plan to the Richland Traffic Engineer depicting the proposed access onto Battelle Boulevard along with any proposed improvements to Battelle Boulevard that may be necessary to safely accommodate such access. The Richland Traffic Engineer may require that a traffic study prepared by a qualified consultant be submitted for the approval of the Richland Traffic Engineer. If approved by the Richland Traffic Engineer, an access onto Battelle Boulevard may be constructed. Any conditions of approval attached to construction of the access road shall modify the conditions of approval attached to special use permit SUP2018-101 and SUP2023-103.
26. Perimeter fencing shall not be required except in the following circumstances:
  - a. Fencing shall be provided along a property boundary where the adjacent slope exceeds 2.5H:1V within 50 feet of a property boundary
  - b. Fencing shall be installed adjacent to the Battelle Boulevard right-of-way.
  - c. Fencing shall be provided around any settling ponds which contain slopes in excess of 3H:1V.
  - d. Fencing required in items a -& b listed above shall be installed at the beginning of work within a new phase. Fencing required around settling ponds shall be installed at the time that the settling pond is created.
  - e. All required fencing shall be constructed of a solid, sight-obscuring material and shall be a minimum of six (6) feet in height as required under RMC 23.42.070(C).
27. Prior to any excavation within phases 3, 4, 9 or 10, the applicant shall submit a landscape plan to Richland Development Services for review and approval identifying the type, size and spacing of landscape screening along Battelle Boulevard. Once approved, the landscape plan shall be installed for the portion of the Battelle Boulevard frontage contained within a particular phase of development.
28. Future project slopes along Battelle Boulevard shall be sent to the City of Richland Public Works Department and the City of Richland Building Official. Once approved, the recommendations of the report shall become conditions of the special use permit.
29. Issuance of this special use permit does not authorize the applicants to cross the existing City of Richland Industrial Rail Spur. The applicant shall be responsible for obtaining any necessary agreement(s) from the City of Richland Public Works Department to cross their track.

### Agency Conditions

#### *State of Washington Department of Ecology*

30. Interstate Concrete & Asphalt Hanford Pit has Sand and Gravel General Permit (Permit Coverage (WAG505182) with Department of Ecology (Ecology). Expansion of this site *may* require the existing permit to be modified. The Site Management Plans *will* need to be updated as site conditions change. (See attached letter in *Exhibit 6*.)

#### *Cascade Natural Gas Company*

31. Mining operations shall not encroach within 25-feet of the gas line running north-to-south through the proposed excavation area.
32. CNGC representatives are required to monitor excavations within 2-feet of high-pressure gas mains.

33. Mining operations shall follow all applicable Washington state dig laws as outlined by the Washington Utilities Transportation Commission (WUTC).