



Town of Gorham
March 31, 2008
PLANNING BOARD MINUTES

LOCATION: Municipal Center Council Chambers, 75 South Street, Gorham, Maine

Members Present:

SUSAN ROBIE, Chairwoman
DOUGLAS BOYCE, Vice Chair
THOMAS FICKETT
THOMAS HUGHES
MICHAEL PARKER
MARK STELMACK
EDWARD ZELMANOW

Staff Present:

DEBORAH FOSSUM, Dir. of Planning & Zoning
THOMAS POIRIER, Assistant Planner
NATALIE BURNS, ESQ., Town Attorney
BARBARA C. SKINNER, Clerk of the Board

The Chairwoman called the meeting to order at 6:00 p.m. and read the Agenda. The Clerk called the roll, noting that all members were present.

1. MINERAL EXTRACTION/SITE PLAN – “BRICKYARD QUARRY” AND ASPHALT PLANT – off ROUTE 237/MOSHER ROAD – by SHAW BROTHERS CONSTRUCTION, INC.

PUBLIC HEARING – (CONTINUED) –

Request for approval of a Mineral Extraction Permit for the Brickyard Quarry, a proposed quarry operation on 125.5 acres +/-; zoned: Industrial/Suburban Residential; Map 31/Lots 12, 13, 14, & 15 and a revised Site Plan Application for a hot-mix bituminous asphalt batch plant; zoned Industrial; Map 31/Lot 15 for Shaw Brothers Construction, Inc., on land of S.B. Aggregates, LLC located on Route 237/Mosher Road.

Ms. Robie asked the Board what its wishes were about re-opening the public comment period. Mr. Boyce, Mr. Zelmanow, and Mr. Hughes all concurred that it would be appropriate to allow public comments in connection with the revised applications for a period of time not to exceed 30 minutes. Ms. Robie said she would ask that comments be restricted to the findings of fact and conditions of approval. It was agreed that the public comment period should occur at the beginning of this meeting.

Edward Zelmanow MOVED and Thomas Hughes SECONDED a motion to re-open the public comment period, with the period not to exceed 30 minutes, or 5 minutes per person.

DISCUSSION: Ms. Robie said it would be acceptable for the Planning Board members to ask questions of those who speak for clarification or additional information.

Motion CARRIED, 5 ayes (2 nays, Thomas Fickett and Michael Parker). [6:10 p.m.]

PUBLIC COMMENT PERIOD RE-OPENED:

Allene Bowler, 190 Mosher Road: Asked that the issue of stacking or queuing of trucks be re-visited. Ms. Robie referred to condition of approval #34, which states that only one truck shall be allowed to remain on Mosher Road. Ms. Bowler said that adequately addressed her concerns.

Jennifer Everett, 184 Libby Avenue: Referred to an earlier letter dealing with comments about Special Exceptions. Gave Board members copies of and quoted from a 2000 research study performed by EPA entitled Hot Mix Asphalt Plants, Emission Assessment Report, and referred to a diagram showing emissions from the entire site of a plant, not just the stack., but also from the dryers, the hot bins, mixers, storage silos, truck loader operations, hot oil heaters, as well as from fumes emanating from the trucks that will be used. Ms. Everett read an excerpt from the conclusion in the Minority Report on Fugitive Emissions from Asphalt Plants stressing the importance of addressing health issues that could be caused by the emissions from an asphalt plant, and urged the Board to consider some type of air quality monitoring as a condition of approval.

Mr. Zelmanow commented that the test results appear to date from the mid 1990s. Ms. Everett said this was the most recent EPA-source study she could find. Mr. Zelmanow said that it is possible that the industry technology was updated in response. Ms. Everett told Mr. Boyce that the study is quite intensive and runs to many, many pages.

Ms. Robie referred to Ms. Everett's comment concerning what Ms. Robie had said about the special exceptions and dust monitoring. Ms. Robie clarified her earlier statement by saying that if MSHA considers the most exposure to be for operators of the crushers, but as most of them are wearing monitors and are in air-conditioned cabs, there is little exposure, although they are still exposed as they get in and out of the cabs. Ms. Robie said that as she understood Mr. Shaw to say that no other persons on site are required to wear such monitors, she believes it seems that the likelihood of exposure to anyone off the site is miniscule. Ms. Everett said she interpreted it that everyone was in air-conditioned cabs so they don't test as frequently. Ms. Robie said that in her experience with industrial hygiene, if there is a potential for significant exposure of a hazardous chemical, anyone on site who has that potential for such exposure is monitored in some way.

Ms. Robie said if someone wants to speak during the proceedings, if he or she comes to the podium it is probable that they will be heard in due course, but there cannot be constant public comment during the Board's deliberations.

Mr. Hughes also clarified a statement referred to by Ms. Everett that he had said that blasting "was no big deal." He said initially he was very concerned, but having now been through a number of blasts as homes were built in his neighborhood, he has learned that the way blasting is done now is very different than what he had anticipated. He said he was very impressed with the process before the blasting was done and the process of the blasting itself. Ms. Everett countered that quarry blasting will be very different in scale and asked whether or not it will be covered, and hoped that will be considered by the Board when the blasting permit is discussed.

Hans Hansen, South Gorham. Spoke of his experience with various groundwater associations and his well drilling experience. Said he never wore breathing apparatus and dust was not an issue as water was added as wells were drilled, which is what the applicant will be doing. He said that silica dust is not a big threat in this area. Said that diesel trucks are more fuel efficient and less pollutant. Air monitoring would be impacted by other sources polluting the air such as woodstoves. Feels that only one check of neighboring wells to establish levels is necessary as any impact would be immediate upon blasting. 24 by 7 hours of operation would not be all the time.

Russell Sprague, 184 Libby Avenue: Asked if the applicant will be responsible for doing preliminary blast testing on new houses to be built in the area, such as the 49 new homes proposed off Libby Avenue. Ms. Robie replied that this is something to be considered. Said he is very disillusioned with the process and that the Board is folding to pressure from the applicant even when it is apparent that the project does not meet the requirements of the Code.

Theresa Dolan, 309 Mosher Road: Thinks that should this occur, some progress has occurred and said she is grateful that the Board has listened to their concerns. Brought up the issue of having the hydrogeological study done beforehand and the impact of operations 24 hours a day, 7 days, on the 106 homes in the area.

PUBLIC COMMENT PERIOD ENDED. (6:40 p.m.)

Mr. Stelmack said that he has reviewed the tape and minutes from the meeting of March 24, 2008 and feels that he is able to participate in tonight's discussion.

Michael Parker MOVED and Douglas Boyce SECONDED a motion not to recuse Mr. Stelmack from further discussion this evening. Motion CARRIED, 6 ayes (Mark Stelmack abstaining). [6:42}.

Ms. Robie said that the next step in tonight's proceedings will be to review the prepared "Brickyard Quarry Planning Board Decision, Findings of Fact, Conclusions and Conditions of Approval." The Board's suggested changes to this document are shown in the document dated March 31, 2008, as well as proposed Conditions of Approval, which are attached hereto and incorporated by reference.

Edward Zelmanow MOVED and Douglas Boyce SECONDED a motion to adopt the Findings of Fact, Conclusions and Conditions of Approval as discussed with the applicant and amended this evening. Motion CARRIED, 7 ayes. [9:21 p.m.]

Edward Zelmanow MOVED and Douglas Boyce SECONDED a motion to grant final approval to Phase 1 of the quarry application subject to the conditions of approval as amended this evening. Motion CARRIED, 7 ayes. [9:25 p.m.]

Edward Zelmanow MOVED and Thomas Hughes SECONDED a motion to grant final approval to Phase 2 of the quarry application subject to the conditions of approval as amended this evening. Motion CARRIED, 7 ayes. [9:26 p.m.]

Edward Zelmanow MOVED and Mark Stelmack SECONDED a motion to grant final approval to Phase 3 of the quarry application subject to the conditions of approval as amended. Motion CARRIED, 7 ayes. [9:27 p.m.]

The Board's next consideration involved the review of the proposed Operational Requirements Worksheet, License to Blast, as follows.

Chapter II Section 7) Blasting. No Blasting shall be done in any gravel pit except in accordance with the following:

- a) If an operator of a gravel pit intends to do blasting, the operator shall apply to the Planning Board to obtain a license to blast. Such an application may be filed either separately or concurrently with any other application under this mineral extraction ordinance.

The applicant is requesting a license to blast from the Planning Board. The applicant has submitted the blasting application concurrently with the other application provisions of the mineral extraction ordinance.

Edward Zelmanow MOVED and Douglas Boyce SECONDED a motion that the applicant has met the requirements of Chapter II, Section 7 a) and to accept the finding of fact as read into the record. Motion CARRIED, 7 ayes. [9:35 p.m.]

- b) In the application, the operator shall set forth in specific detail the reasons why such blasting is essential to economic viability of the operation.

The applicant identified the reason why blasting is essential to the economic viability of the operation in the Shaw Brothers' Brickyard Quarry Blasting Application. The applicant's reason was, "As this is a quarry operation, blasting is certainly necessary for the economic viability of this operation."

Douglas Boyce MOVED and Thomas Fickett SECONDED a motion to that the applicant has met the requirements of Chapter II, Section 7 b) and to accept the finding of fact as read into the record. Motion CARRIED, 7 ayes. [9:36 p.m.]

- c) In addition, the application shall include a site plan showing the limits where the blasting will take place; a statement on the number of times that blasting will occur on an annual basis; identification by name, address and telephone number of the entity that will actually do the blasting; a detailed description of the patterns and timing of each blast; a detailed description of all precautions which will be taken to insure that no damage will be done to surrounding properties; a detailed description of the devices and methods which will be used to monitor the effects of the blast (which shall include but not be limited to monitoring the seismic effect of the blast and performing both pre- and post-blasting inspections with photographs of all abutting properties); certificates of liability policies covering the blasting activity in an amount approved in advance by the Town Manager as sufficient to cover any damage reasonably likely to occur; a list of the names and addresses of all abutting property owners; and such other material as the Planning Board may require in order to review the license application.

The applicant has provided:

- *A plan showing the limits of where the blasting will occur,*
- *Information on the number of times that blasting will occur annually (50 blasts per year) (in addition, the MDEP has imposed a daily limit of four blasts),*
- *The blaster's name and address (McGoldrick Brothers, Windham, Maine),*
- *A description of the precautions and monitoring procedures that will be used to monitor the effect of the blasting on abutting properties,*
- *A proposal to notify all neighbors within 1,000 feet of the blast area and the Gorham Police Dispatch by telephone approximately one hour before each blast,*
- *A proposal to submit annually to the Town a certificate of insurance showing the insurance coverage of the blasting professional, and*
- *A list of the names and addresses of all abutting property owners*

The Board discussed with Mr. Shaw about blasting procedures he has used for other quarries. It was agreed that Mr. Shaw's method of notifying abutters would also take into account homes to be built. As a result of its discussions, the Board revised Condition of Approval #2 as follows:

2. That prior to start of quarry blasting operations **and annually thereafter** the applicant shall **supply offer** a pre-blast survey of property within a half mile of the blast area **subject to blasting during that year blast area** and **one half mile of the subject parcel** as outlined in the Shaw Brothers' Brickyard Quarry Blasting Application;

Additionally, Condition of Approval #8 was modified as follows:

8. That, **at the beginning of the blasting season**, the quarry operator will provide written notice to all **abutting properties property owners within 1000 feet of the potential blast area. at least seven (7) days**. **In addition, as described in the final approved blasting plan and as presented in the application submission, notification will given one hour in advance of each blast to all neighbors within 1000 feet of the blast site, the Town Planner, the Town Engineer and the Code Enforcement Officer; in advance of each blast as described in the final approved blasting plan and as presented in the application submission, as well as to the Town Engineer, the Code Enforcement Officer, and the Tow Planner;**

Theresa Dolan, abutter at 309 Mosher Road, came to the podium to say that one hour's notification would not give her sufficient time to return to her home from work to take care of her horses. Mr. Shaw indicated they would work with Ms. Dolan to make other notification arrangements. In response to a query from Ms. Robie, Mr. Shaw said he would try to accommodate other notification requests he might receive.

A new Condition of Approval, #9, was added:

9. That all property owners who agree to a pre-blast survey receive a copy of the survey report upon request; and

Thomas Hughes MOVED and Thomas Fickett SECONDED a motion that the applicant has met the requirements of Chapter II, Section 7 c). Motion CARRIED, 7 ayes. [10:33 p.m.]

Douglas Boyce MOVED and Michael Parker SECONDED a motion to accept the finding of fact as written. Motion CARRIED, 7 ayes. [10:35 .m.]

- d) After the application is complete, the Planning Board shall schedule a public hearing to consider the application and each abutting property owner and owners of property within five hundred (500) feet shall be given notice no less than fourteen (14) days notice in advance of the hearing. Failure of any property owner to receive notice shall not invalidate the hearing. Blasting applications shall be submitted and heard simultaneously with any other permits required under this ordinance.

*A public hearing notice has been sent, **no less than 14 days in advance of the hearing**, to the abutting property owners within five hundred feet meeting the requirements of the ordinance.*

Edward Zelmanow MOVED and Douglas Boyce SECONDED a motion to accept the finding of fact.

Discussion: Mr. Zelmanow suggested amending the finding of fact by adding the phrase "no less than 14 days in advance of the hearing."

Motion to accept the amendment to the finding of fact, CARRIED, 7 ayes. [10:38 p.m.]

Douglas Boyce MOVED and Mark Stelmack SECONDED a motion to approve the finding of fact as amended and that the applicant has met the requirement of Chapter II, Section 7 d). Motion CARRIED, 7 ayes. [10:38 p.m.]

- e) In order for the Planning Board to grant a license to blast, it must make specific findings that the operator has met its burden and established the following:
 - 1) That blasting is essential to the economic viability of the operation.
 - 2) That the blasting will be conducted in a manner, which will cause no damage nor unreasonable disturbance to surrounding properties.
 - 3) That all blasts will be comprehensively monitored.
 - 4) That there is adequate insurance to protect against any damage which may result from the blasting activity.

*The applicant has submitted a Blasting Protocol (Section 7) as part of the Operations Plan Notebook January 2008 (Amended March 2008). **A review of the blasting protocol (Section 7), of the Operations Plan Notebook, January 2008, and amended March 2008, shows that the applicant has met its burden and has addressed the required code provisions.***

Michael Parker MOVED and Mark Stelmack SECONDED a motion that the applicant has met the requirements of Chapter II, Section 7 e), and to accept the finding of fact as amended.

Discussion: Jennifer Everett came to the podium to question the potential “unreasonable disturbance” of blasts at 120 decibels. Mr. Shaw said that air blasts are monitored for seismic impact, not sound. Ms. Burns noted that under the DEP noise standards, there is a specific sound level requirement for production blasting, which is based on the number of blasts per day: if there is one blast, it is 129 decibels, if it is 2 blasts, it is 126 decibels, if it is 3, it is 124 decibels, and if it is 4 blasts, it is 123 decibels. Mr. Parker said he is satisfied with the state’s standards in this instance that this is an acceptable level. Mr. Stelmack concurred with Mr. Parker.

Motion CARRIED, 7 ayes. [10:40 p.m.]

- f) If the Board makes the above findings, then it shall issue a blasting license, which will authorize the operator to conduct the blasts on the dates and in a precise manner set forth in the operator's application.

Planning staff has prepared Blasting Conditions of Approval for the board to review as part of the applicant’s blasting license approval.

- g) Under no circumstances shall the Board permit any blasting within one hundred fifty (150) feet of an adjoining property line.

*The Code does not permit any **blasting for quarry operations** within 150 feet of an adjoining property line and the applicant is not proposing to blast within one hundred fifty (150) feet of any adjoining property line in conjunction with the quarrying operation. Blasting may, however, occur within 150 feet of adjoining property lines in conjunction with the construction of the stormwater ponds and site preparation for construction of the Asphalt Plant, which falls within Phase 1.*

- h) The records for each blast, including all monitoring records, shall be filed with the Town no more than ten (10) days after each blast, and all such records shall be available for public inspection and copying.

In the event the blasting contractor changes, Ms. Burns noted that the applicant must return before the Board and amend the application. Condition of approval #5 was amended to include the requirements of November 21, 2007, from the Portland Water District.

BLASTING PERMIT CONDITIONS OF APPROVAL

1. That this approval is dependent upon, and limited to, the proposals and plans contained in the application and supporting documents submitted and affirmed by the Applicant and that any variation from the approved plans, proposals and supporting documents is subject to review and approval by the Planning Board, except for minor changes which the Director of Planning and Zoning may approve;
2. That prior to start of quarry blasting operations **and annually thereafter** the applicant shall **supply offer** a pre-blast survey of property within a half mile of the blast area **subject to blasting during that year blast area** and **one half mile of the subject parcel** as outlined in the Shaw Brothers’ Brickyard Quarry Blasting Application;
3. That the applicant has subcontracted with McGoldrick Bros. Blasting Services, Inc. of Windham, Maine, to perform the blasting at the site. The applicant shall submit an appropriate certificate of liability insurance prior to the commencement of any blasting operations at the quarry in an amount

approved in advance by the Town Manager as sufficient to cover any damage reasonably likely to occur; and furthermore, that the Town shall be named as an additional insured and the Town notified at least fifteen (15) days in advance, if the insurance policy lapses;

4. That any changes in the blasting subcontractor will require the operator to notify the Town of Gorham and submit an appropriate certificate of liability insurance prior to the commencement of any blasting operations at the quarry in an amount approved in advance by the Town Manager as sufficient to cover any damage reasonably likely to occur and furthermore, that the Town shall be named as an additional insured and the Town notified at least fifteen (15) days in advance, if the insurance policy lapses;
5. That the operator shall be required to submit certification of the blaster's liability insurance on an annual basis thereafter in an amount approved in advance by the Town Manager as sufficient to cover any damage reasonably likely to occur ~~and furthermore, that the Town shall be named as an additional insured and the Town notified at least fifteen (15) days in advance, if the insurance policy lapses;~~ and including the requirements set forth in the November 21, 2007 letter from the Portland Water District, included as Exhibit 9 of the applicant's January 2008 Supplemental Information Site Plan Applications on file in the Town Planner's Office, and, furthermore, that the Town shall be named as an additional insured and the Town notified at least fifteen (15) days in advance if the insurance policy lapses;
6. That the maximum allowed number of blasts per year is 50 with no more than 4 blasts being conducted in any given day ~~and on such days and times as permitted by Title 25, Section 2441 (G);~~
7. That the records for each blast, including all monitoring records, shall be filed with the Code Enforcement Officer and the Town Engineer no more than ten (10) days after each blast;
8. That, ~~at the beginning of the blasting season,~~ the quarry operator will provide written notice to all ~~abutting properties~~ ~~property owners~~ within 1000 feet of the potential blast area. ~~at least seven (7) days.~~ In addition, as described in the final approved blasting plan and as presented in the application submission, notification will given one hour in advance of each blast to all neighbors within 1000 feet of the blast site, the Town Planner, the Town Engineer and the Code Enforcement Officer; ~~in advance of each blast as described in the final approved blasting plan and as presented in the application submission, as well as to the Town Engineer, the Code Enforcement Officer, and the Town Planner;~~
9. ~~That all property owners who agree to a pre-blast survey receive a copy of the survey report upon request; and~~
- 9-10.-That these conditions of approval shall be recorded at the Cumberland County Registry of Deeds within thirty (30) days of the Planning Board approval and a dated copy of the recorded Decision Document shall be returned to the Town Planner.

Michael Parker MOVED and Edward Zelmanow SECONDED a motion to grant the blasting permit application. Motion CARRIED, 7 ayes. [11:00 p.m.]

2. SCHEDULE OPTIONAL MEETING IF NEEDED

Thomas Hughes MOVED and Thomas Fickett SECONDED a motion to continue the public hearing to 6:00 p.m. on Monday, April 7, 2008. Motion CARRIED, 7 ayes. [11:02 p.m.]

3. ADJOURNMENT

Douglas Boyce MOVED and Thomas Fickett SECONDED a motion to adjourn. Motion CARRIED, 7 ayes. [11:08 p.m.]

Respectfully submitted,

Barbara C. Skinner, Clerk of the Board
_____, 2008

**BRICKYARD QUARRY
PLANNING BOARD DECISION
FINDINGS OF FACT, CONCLUSIONS
AND
CONDITIONS OF APPROVAL**

Brickyard Quarry Description: The applicant, Shaw Brothers Construction, Inc., is seeking approval to develop a quarry and related asphalt plant operation on property of S.B. Holdings, Inc. located on Tax Map 31, Lots 12, 13, 14, & 15. Both operations will be located on Route 237, in the vicinity of the Morin Brick Company building commonly referred to as the LaChance Brickyard. The parcel is ~~125.6~~ **121.13** acres in size and is currently undeveloped with a majority of the site consisting of rolling hills and woods. The applicant is proposing to split the parcel into two lots; the asphalt plant will be located on 15.83 acres identified on the plans as lot 1 and the quarry will be located on 105.30 acres identified on the plans as lot 2.

Ledge is within close proximity of the surface on a good portion of the site and the applicant is proposing to remove the overburden and excavate the ledge on approximately 65.6 acres. The ledge will be processed into construction grade materials in the quarry. The construction grade material could be used by Shaw Brothers for use on construction projects, sold to independent construction contractors, or used to make bituminous pavement at the adjacent asphalt operation.

Hours of Operation: The proposed quarry hours of operation are 6:00 a.m. to 6:00 p.m. Monday through Friday and from 8:00 am to 2:00 p.m. on Saturdays. Rock and stone crushing operations will be limited to 7:00 a.m. to 5:00 p.m. Monday through Friday.

The applicant proposes to develop the quarry in three phases, identified on the plans as Phase 1, Phase 2, and Phase 3. Phase I will include site preparation work associated with the asphalt plant. The applicant proposes to clear, quarry, and reclaim in sub phases, so no area larger than 15 acres is being actively quarried at any one time. Quarrying will be conducted in 40' wall sections with 5' safety benches. Reclamation will entail that quarry walls or faces will be left in a condition that minimizes the possibility of rock falls, slope failures, and collapses. Vegetative cover will be established on all affected land except for quarry walls and flooded areas. A vegetative cover will be established on safety benches. The anticipated life of the quarry is in excess of 50 years. All three phases of the quarry will be externally draining.

The 1st phase of site construction includes construction of the stormwater management ponds and infrastructure, northern and eastern property berms, landscaping, quarry and asphalt plant access roads, site work associated with the asphalt plant, aggregate storage containers, and scale house. The 1st phase of the quarry is 40.03 acres in size with an estimated quarry depth of 115' average mean sea level. The overburden will be bulldozed into berms located along the northern and western property line for noise control during rock drilling and quarrying operation near the surface. The first phase of the quarry, stormwater will flow into stormwater pond 1. Stormwater pond 1 is located ~~on the asphalt plant located~~ on lot 1.

The 2nd quarry phase is located within the boundary of Phase 1 and is 27.55 acres in size with an estimated completed quarry depth of -85' mean sea level. Phase 2 reclamation will be to cease pumping ground ~~and surface~~ water and allow phase 2 to become a pond ~~in accordance with Maine DEP requirements for reclamation of quarries~~. The second phase of the quarry, stormwater and groundwater will be pumped into stormwater pond 1.

The 3rd phase of the quarry is located east of the 1st phase and adjacent to the asphalt plant (lot 1). Phase 3 is 14.22 acres in size with an estimated completed quarry depth of 117' mean sea level. Quarrying activity will proceed from west to east so that quarrying activity is buffered from Mosher Road. The third phase of the quarry stormwater will flow into phase II (pond).

A portable crusher will be installed on the site. The crusher will be moved around to different locations on the site in order to be close to the active excavation area. The applicant is proposing to start quarrying operations in the northeastern corner of Phase 1 with the crusher being located in the center of the eastern edge of Phase 1 behind two sound diversion berms.

Traffic: The quarry will be accessed via two entrances on State Route 237, one of which will serve both the quarry and the asphalt plant operations. The applicant has submitted a detailed traffic study for the quarry and asphalt plant that estimates a combined total of 800 vehicle trips entering and leaving the site on a daily basis. The quarry will generate an estimated 200 trips and the asphalt plant is estimated to generate 600 trips. The AM Peak Hour for the gravel pit falls between 7 AM and 8 AM with 20 vehicles entering and leaving the quarry portion of the site, the busiest PM Peak Hour is from 5 PM. to 6 PM with 20 vehicles entering and leaving the quarry site. The applicant has received a Maine Department of Transportation Driveway (MDOT) Entrance Permits requiring State Route 237 shoulder widening to a minimum of 8 feet for the appropriate length of a trucks acceleration/ deceleration distance. MDOT has given the applicant preliminary plan approval but final MDOT approval is required before the applicant can construct the road widening. The applicants have shown the required Route 237 widening on sheets 3 and 4.

MDEP Permits: The applicant is requesting final approval from the Planning Board for all three quarry phases at this time, conditioned upon final MDEP approval of Phases 2 and 3 in the future.-The applicant has received its MDEP permit (Permit Number L-23529-80-A-N) for a quarry operation and a variance for an externally drained pit from the Maine Department of Environmental Protection pursuant to the permit-by-rule provisions of the DEP for Phase 1. The applicant has also received a Natural Resource Protection Act Tier I permit to alter 14,863 square feet of forested wetland and wet meadow to construct the access road and berms associated with Phase 1 construction.

Phase 2 will require an additional variance from MDEP to mine below the water table. Mining below the water table requires additional groundwater monitoring as part of the variance process.

Phase 3 will require a NRPA Tier III permit for wetland destruction; the Tier III permits are only valid for two years. The Tier III permit will require wetland compensation in the form of creating new wetlands on site or purchasing wetlands located in a DEP approved wetland bank.

Zoning: The majority of the property is identified as Map31 / Lot15 and is located in the Industrial District where mineral extraction is a permitted use. Three adjacent lots owned by the applicant and identified as Lots 12, 13, and 14 on Tax Map 31 are zoned Suburban Residential District where mineral extraction is an allowed special exception use. While none of the actual quarrying activity falls within the Suburban Residential District, the Suburban Residential lots provide a buffer between the quarrying activity and abutting properties to the south and east of the quarry. The active area of the proposed mineral extraction operation falls within the Industrial District where ~~these uses are~~ **this use is** classified as permitted uses. No portion of the active mineral extraction operation falls within any of the parcels located in the Suburban Residential District, although these lots do provide required buffering and setbacks for the quarry operations in Phase 3.

Decision: On March 17, 20, 24 and 31, 2008 the Gorham Planning Board reviewed a request for approval of a Mineral Extraction Permit for the Brickyard Quarry, a proposed quarry operation on 125.5 acres +/-; zoned: Industrial/Suburban Residential; Map 31/Lots 12, 13, 14, & 15 for Shaw Brothers Construction,

Inc., on land of S.B. Aggregates, LLC located on Route 237/Mosher Road and made the following Findings of Fact and Conclusions:

A. APPLICATION REQUIREMENTS

Chapter II Section 4)a) Permit Application Requirements sub sections (1) – (10).

No new gravel pit or pre-existing pit which failed to meet registration requirements of Section 3 may commence operations without first applying to the Planning Board for a new pit operations permit. The following shall be submitted with the permit application:

- (1) initial application fee in such amount(s) and for such purpose(s) as the Town Council may from time to time establish by Council order

The appropriate application fees have been submitted.

- (2) names and addresses of current owner of the property and the current operator of the operation, and a copy of the deed or lease agreement if the operator is not the owner:

The applicant has demonstrated adequate right, title or interest. Shaw Bros. Construction, Inc. is the proposed operator of the quarry operation.

- (3) a site plan, drawn to a scale of one inch to one hundred feet, showing the location and boundaries of the property; the boundaries of proposed excavation areas (a boundary survey shall be required for any proposed pit in excess of five (5) acres); the present use of the entire property including any existing excavated areas; present uses of adjacent property; the location of all proposed access roads, parking areas and temporary and permanent structures; the type and location of all existing surface and ground water, including location of existing wells and streams, drainage ways, and depth to ground water at the site of the proposed excavation as determined by test borings and other geotechnical methods; the contours of the land within and extending beyond the boundaries of the parcel for two hundred (200) feet at five (5) foot contour intervals, or at intervals acceptable for a Department of Environmental Protection permit application; and the location of all proposed hazardous material storage areas; and other applicable site plan review requirements of Chapter IV, Section VI.

The applicant has provided a boundary survey and an 18+ sheet plan set drawn to appropriate scales showing the present use of the entire property including any existing excavated areas; present uses of adjacent property; the location of all proposed access roads, parking areas and temporary and permanent structures; the type and location of all existing surface water, including the location of existing wells and streams, drainage ways, and depth to ground water at the site of the proposed excavation as determined by test borings and other geotechnical methods (as provided in a report from MAI Environmental); the contours of the land within and extending beyond the boundaries of the parcel for two hundred (200) feet at five (5) foot contour intervals, or at intervals acceptable for a Department of Environmental Protection permit application; and the location of all proposed hazardous material storage areas; and other applicable site plan review requirements of Chapter IV, Section VI.

The Board voted to approve #3 with an additional Condition of Approval stating that the applicant shall show on Sheet 5 of the site plan the elevation of groundwater in the MAI letter of March 7, 2008.

- (4) A plan for controlling access to the site. The Planning Board may impose such additional access limitations as the particular circumstances of the proposed operation require to meet approval standards of Section 4.b. At a minimum, a solid gate with a lock shall be located at all entrances;

*The access to the site will occur by a paved driveway located off Route 237. The main entrance and exit for the asphalt plant will also be the main entrance for the Brickyard quarry. The applicant is proposing to pave 500 feet of the access road with a 65 foot entrance radii to allow trucks to enter the site with a faster turning speed than would occur with a tighter radius allowed under the ordinance. Access to the active quarry will be further restricted by providing temporary berms and a 4-foot high highway type wire fence with signs. Upon completion of reclamation a permanent 6-foot high chain-link fence shall be installed at the top of the reclaimed quarry slopes **wherever a vertical drop of more than four feet exists**. Both entrances to the quarry will be gated. The locations of fences will be as described in the application and shown on the plan.*

- (5) An operations statement, which shall include the approximate date of commencement of excavation and the duration of the operation, proposed phasing of the operation, proposed hours and days of operation, the estimated volume of the excavation, the method of extracting and processing, including the disposition of topsoil or loam, the equipment proposed to be used in the operations, and the operating practices proposed to be used to prevent surface or groundwater pollution, and minimize noise, dust, air contaminates and vibration;

The applicant has submitted information addressing the approximate date of commencement of excavation and the duration of the operation, proposed phasing of the operation, proposed hours and days of operation, the estimated volume of the excavation, the method of extracting and processing, including the disposition of topsoil or loam, and the equipment proposed to be used in the operations, and an operations plan notebook that outlines and the operating practices proposed to be used to prevent surface or groundwater pollution, and minimize noise, dust, air contaminates and vibration

- (6) An erosion and sedimentation control plan designed to standards of the Cumberland County Soil and Water Conservation District;

The applicant has made provisions for short term and long-term sedimentation and erosion control and will adhere to MDEP Best Management Practices, which are the same standards used by the Cumberland County Soil and Water Conservation District

- (7) a final reclamation plan pursuant to Section 6 or this section:

The applicant has provided a reclamation plan.

- (8) identification of all required State and/or Federal permits, including, if applicable, a Department of Environmental Protection permit;

MDEP Permits: *The applicant has identified all required state and federal permits. These include the following: The applicant is requesting final approval from the Planning Board for all three quarry phases at this time, conditioned upon final MDEP approval of Phases 2 and 3 in the future.-The applicant has received its MDEP permit (Permit Number L-23529-80-A-N) for a quarry operation and a variance for an externally drained pit from the Maine Department of Environmental Protection pursuant to the permit-by-rule provisions of the DEP for Phase 1. The applicant has also received a Natural Resource Protection Act Tier I permit to alter 14,863 square feet of forested wetland and wet meadow to construct the access road and berms associated with Phase 1 construction. The applicant also must receive an MDOT permit for the entrance and will need to acquire a Natural Resources*

Protection Act Tier three Wetlands permit prior to commencement of Phase 3 of the quarry; this permit cannot be acquired at this time due to its two-year ~~length~~ duration. The applicant must also receive a variance from the MDEP to mine below the water table and must receive a MDEP air emissions license for the rock crusher.

- (9) a performance guarantee in the form of a bond, letter of credit, or such other financial instrument as deemed satisfactory by the Town Manager covering the cost of the reclamation plan;

The applicant will provide a performance guarantee per the requirements of the Land Use and Development Code and as detailed in the Conditions of Approval.

- (10) for new pits of five (5) acres or more, the following additional submissions are required:

- (a) A hydro geological study which shows the depth of ground water throughout the site and establishes that the gravel pit operation will not cause any pollution to ground water and/or surface water.

The applicant proposes to keep quarrying activities 5' above the water table until an amended hydrogeological study has been completed and the applicant has received a variance from the Maine Department of Environmental Protection to mine below the water table. As part of the hydrogeological study two monitoring wells were drilled in the northeastern and southeastern corners of the site with a third well to be drilled along the western property boundary in accordance with the condition of approval. The applicant has submitted a hydrogeological study from MAI Environmental reporting water-bearing bedrock fractures on the two drilled wells. This study will be updated when the third well is drilled during the construction phase of the quarry, within 60 days of approval.

The applicant has offered water quality testing to 15 residential properties that use wells in the vicinity of the site.

The applicant has also submitted a Spill Prevention Control and Countermeasures (SPCC) Plan addressing protocols for fuel and oil spills at the site.

The Board also will require a additional Condition of Approval that the applicant shall drill the third monitoring well along the western property boundary within sixty (60) days after the approval of the quarry and during construction. The water table level at that well shall be added to the plan and submitted to the Town Planner, together with an update to the hydrogeological study.

- (b) A traffic study which sets forth what the maximum estimated volume of traffic into and out of the pit will be, which describes the kinds of trucks and equipment which will be going into and out of the pit, which describes any existing or potential traffic hazards on roads servicing the site and applicant's plans to address them, and which describes the ability of such roads physically to withstand the additional traffic generated by the site. The study shall consider the actual existing traffic condition in the vicinity of the pit.

The applicant has provided an updated and revised traffic report addressing the submission requirements. The applicant has estimated a total of 200 vehicle trips entering and leaving the site on a daily basis for the quarry operations. The a.m. peak number of quarry trips is 20 and falls between 7 a.m. and 8 a.m. the p.m. peak number of trips is 20 and falls between 5 p.m. and 6 p.m. The applicant has received a Maine Department of Transportation Driveway (MDOT) Entrance Permits requiring State Route 237 shoulder widening to a minimum of 8 feet for the appropriate length of a trucks acceleration/ deceleration distance. MDOT has given the applicant preliminary plan approval but final MDOT approval is required before the

applicant can construct the road widening. The applicant have shown the required Route 237 widening on sheets 3 and 4.

Chairman Robie noted that a Condition of Approval has been identified that the applicant must provide the final MDOT permit and if it is significantly different as determined by the Planning Director, the applicant must return with a plan amendment.

B. OPERATIONAL REQUIREMENTS

Chapter II Section 5) Operational Requirements for New and Existing Pits . This is the section of the Land Use and Development Code that specifies the mandatory operational requirements. It also covers waivers, buffer reductions, and agreements between abutting parties. Staff will prepare a work sheet similar to the Special Exception worksheet for use during the meeting.

The applicant is requesting approval of three waivers from the following operational requirements:

- a. To ~~reduce~~ **eliminate** the 200 foot buffer strip between the quarry lot and the asphalt plant lot – Approved **based upon the Town Council’s enactment of the Ordinance provision allowing the use of a 100-foot wide portion of the quarry site in support of a neighboring industrial use, in this case the asphalt plant. The requirement of a buffer in this area would preclude such use as permitted by the Ordinance.**
- b. To reduce the 200 foot buffer strip between the quarry lot and the Morin Brickyard Lot (from 200 feet to 10 feet); - Approved - (language added to Finding of Fact about “Mutual Agreement or Waiver or Reduction of Common Setback Requirements” between Morin Brick Company and S.B. Aggregates, LLC)
- c. To reduce the buffer from 200 feet to 100 feet along the northerly and westerly property lines. Approved. Condition of Approval to be added stating that the buffer reduction on the southerly side be eliminated up to the Portland Water District pipe line and that a natural no-cut zone shall be retained in the buffer area for the duration of the quarry, except as recommended by a professional forester pursuant to Best Forest Management Practices and approved by the Planning Board.

Operational Requirements for New and Existing Pits

Unless otherwise expressly provided, the following requirements apply to all gravel pits; provided, however, any existing gravel pit lawfully in operation at the effective date of this ordinance which does not comply with these operational requirements shall be grandfathered with regard to such deficiencies except that there shall be no grand fathered rights as to hours of operation in paragraph d, duty to minimize dust in paragraph (e), and erosion and sedimentation control as provided in paragraph (g); provided, further, any such grandfathering shall not apply to any area for which an expansion permit is required.

- a) A buffer strip of 100 feet from all public rights of way and two hundred (200) feet from all other boundaries of the property is required except in the instance of a waiver as provided in this section. The slopes of the side of the pit shall be no more than 3:1. This slope requirement shall not apply to a quarry that is operating under a Notice of Intent to Comply filed with the Maine Department of Environmental Protection under the provisions of 38 M.R.S.A., section 490-Y or under any other quarry permit, license or approval issued by the Maine Department of Environmental Protection. No excavation is permitted within the buffer strip of any pit, including a quarry, except where provided for within. Natural vegetation shall be retained within the buffer area, except as recommended by a professional forester pursuant to Best Forest Management Practices and approved by the Planning Board. To the extent necessary to protect neighboring

uses from dust, noise and unsightly appearance, the Planning Board may require the applicant to provide screening, berm or a combination where there is an inadequate natural buffer. No excavation, including such operations existing at the time of adoption of this ordinance shall encroach into these buffer strips and no existing operation lawfully located within such buffer areas shall be permitted to expand closer to such line or lines. Except that applicants with new and existing excavations may apply for a waiver of the 200 foot buffer strip in any of the instances described below, and the Board shall grant such waiver in the case of

- (1) two abutting working gravel pits where the Planning Board may waive the requirement for any buffer,
- (2) where the pit abuts unbuildable land of a public utility provided the excavation remains at least one hundred (100) feet from the far side of the public utility's property line, and in no case shall it be any closer than ten (10) feet from the public utility's property line.
- (3) where all adjacent property owners within the area of reduced buffer agree to a lesser distance. Any such agreed upon reduction (to not less than a 10 foot buffer) will be consistent with the purposes of this ordinance in Section 1, The buffer strip may be reduced upon recording by all abutting property owners within the area of reduced buffer of reciprocal deeds stating that each agrees to the waiver. In the event of a reduced buffer under this subsection, the pit shall not be subject to the noise limits established by subsection 4 of this section of Chapter II, Section H of this Code in the area of the boundary reduced under the terms of this subsection if the abutting property owner agrees that the noise limits will not apply to the shared property line or that the noise limits may exceed an amount established in writing. Any agreement concerning the noise levels shall be included in the reciprocal deeds.

The applicant has provided a recorded copy of a "Mutual Agreement to Waiver or Reduction of Common Setback Requirements" between the Morin Brick Company and S.B. Aggregates, LLC to remove loam, sand, gravel, clay, or other minerals from within 10 feet of the shared property boundary. This Agreement contains the specific provision to mutually allow the buffer reduction between the quarry land and Morin Brick on the western and southerly side as shown on the plans.

- (4) the applicant may apply to reduce the buffer from two hundred (200) feet to not less than one hundred (100) feet, which reduction the Planning Board shall grant, provided that the applicant demonstrates:
 - (a) Noise generated at the excavation site, including noise generated within the reduced setback area may not exceed the noise requirements set forth in Chapter II, Section I (H)(1) of this Code. During the peak activity of 60 minutes in a 24 hour period, noise may not exceed 100 decibels at 600 cps when measured at the source.

The applicant ~~has agreed to meet~~ is subject to the Department of Environmental Protection noise standards regarding the quarry operation, which are more stringent than the Town's noise standard. The applicant has agreed that these standards may be enforced by the Town in place of the Town's noise standard. The Town hired a third party noise consultant, R. Scott Bodwell, P.E., Resource Systems Engineering, to review whether the quarry proposal meets the Maine DEP noise standard. After review of the noise study supplied by the applicant's noise professional (SE Ambrose) the Brickyard Quarry has the capability and willingness to meet the sound level limits of applicable state and local noise standards. Resource System Engineering identifies the need for periodic measurements of sound levels at nearby protected locations during facility operations. Resource System Engineering also recommends that Town of Gorham work in conjunction with Maine DEP to confirm sound levels

are in compliance as well as requesting written reports of sound level measurements and other site inspections by the Maine DEP.

- (b) the applicant provides a satisfactory plan to control the migration of dust that results from the mining operation which may include sweeping, paving, watering or other best management practices, and

The applicant's quarry operation will be in such a way that at a minimum the crushers will be operating behind a 100' wide wooded buffer and earthen berms at the limits of excavation. This will assist in mitigation of dust from the operation site to abutting properties. The crushers working within the quarry will require an air emissions license from the Air Bureau of the Maine DEP, these licenses will be provided to the Town prior to operation. In the "Operations Plan Notebook, January 2008" the applicant identifies the procedures to control the migration of dust. The procedures to control dust migration proposed are sweeping, paving, watering, using calcium chloride in accordance with State requirements, or other forms of Best Management Practices on quarry access roads and aggregate piles. The applicant is also proposing to install spraybars on rock crushers working in the quarry. The "Operations Plan Notebook, January 2008" identifies the quarry site supervisor will perform visual opacity determinations and ensure the fugitive emissions do not exceed an opacity of 20% or more for more than 5 minutes in any 1-hour period.

- (c) the applicant has provided a satisfactory plan to visually screen the mining operation from properties adjacent to the area proposed for a reduced buffer. Screening may include maintenance of existing vegetation, growth, or in-fill planting to increase density of vegetation, the placement of earth berm or other best management practices.

The applicant has provided a plan to visually screen the mining operations from adjacent properties by leaving existing vegetation and the placement of earthen berms along the northern and western property boundaries. The applicant is proposing to mine no closer than 600' to the southern property boundary. The applicant is proposing to buffer phase 3 from the eastern property line with Mosher Road by conducting quarry-mining operations from west to east so there is always an earthen buffer between the quarry operation and Mosher Road.

- b) Excavation shall not extend below an elevation of five (5) feet from the seasonal high water table as established by competent, technical data. A variance from this requirement shall be allowed pursuant to paragraph 490-E, Variance, Performance Standards for Excavation for Borrow, Clay, Topsoil or Silt, 38 M.R.S.A. Sec 490-A-490-M and Article 8, Performance Standards for Quarries, 38 M.R.S.A. Sec. 490-W to 490-EE. The request for variance shall consist of a hydro geologic study and supporting documentation required by the Department of Environmental Protection. The variance shall be reviewed and approved by the Department of Environmental Protection. Planning Board approval shall be conditioned on Department of Environmental Protection approval. No standing water shall be allowed to remain longer than two consecutive calendar weeks unless specifically provided for by the Planning Board.

The applicant has proposed not to mine below the seasonal high water table until a variance pursuant to paragraph 490-E, Variance, Performance Standards for Excavation for Borrow, Clay, Topsoil or Silt, 38 M.R.S.A. Sec. 490-A-490-M is approved by Maine Department of Environmental Protection.

- c) The average slope of any cut bank measured from the top of the slope to the toe of the slope shall not exceed a horizontal to vertical ratio of 2:1; provided, that any gravel pit in lawful operation at the effective date of this ordinance whose slopes exceed this requirement may maintain, but not increase, such nonconforming slopes; provided, further, that for an expanded pit area or new pit

area which exceed five (5) acres in size, the slope for such areas may not exceed 3:1. These slope requirements will not apply to a quarry that is operating under a Notice of Intent to Comply filed with the Maine Department of Environmental Protection under the provisions of 38 M.R.S.A. Sec. 490-Y or under any other quarry permit, license or approval issued by the Maine Department of Environmental Protection, except for those extraction operations that occur in any area where a buffer has been reduced under the provisions of Section I, subsection C(5)(a) of this Chapter.

The applicant has received a permit (Permit Number L-23529-80-A-N) for a quarry operation and a variance for an externally drained pit from the Maine Department of Environmental Protection pursuant to the permit-by-rule provisions of the DEP for Phase I. The quarry will have approximately 40' walls with 5' benches and must be treated in such a manner as to leave them (the walls) in a condition that minimizes the possibility of rock falls, slope failures, and collapse.

- d) Hours of operation shall be limited to 6:00 a.m. to 6:00 p.m., Monday through Friday and 8:00 a.m. to 2:00 p.m. Saturday; provided, however, the Planning Board may extend Saturday hours of operation to 5:00 p.m. if it determines that such extended hours will not unreasonably interfere with neighboring residential uses existing at the time of the request. Where a mineral extraction operation abuts a lot with an industrial operation that uses produce from the mineral extraction operation as part of its manufacturing use, the Planning Board may approve additional hours of operation for the mineral extraction operation so that the hours are consistent with the hours of operation of the abutting industrial use. The extended hours of operation shall be limited to the area of the mineral extraction operation located within one hundred (100) feet of the boundary line of the abutting industrial use lot. This area of the mineral extraction operation shall be included in any site plan or other review for the industrial operation. In no event shall any crushing or screening of materials or mining occur during any extended hours of operation.

The proposed hours of operation for the quarry are from 6:00 AM to 6:00 PM weekdays and 8:00 AM and 2:00 PM on Saturday. Rock crushing activities are proposed to be conducted between 7:00 AM to 5:00 PM on the weekdays. The applicant is proposing to install aggregate storage bins on the quarry lot for use by the abutting industrial use (Asphalt Plant). The bins are located within 100' of the boundary line of lot 1 (Asphalt Plant Lot). The applicant is requesting the hours of operation for the quarry within the 100' of the asphalt plant be the same as the asphalt plant (Possible 7 days and 24 hours).

- e) All access roads outside the pit within the buffer area prescribed in subsection (a) above of public roads or adjoining property shall be paved and otherwise regularly treated with water or calcium chloride spray to minimize dust conditions.

The applicant has proposed paving the two quarry access roads approximately 500' from their intersection with Route 237. The applicant has also stated that the access roads may be treated with calcium chloride spray, water, and swept to ensure the minimization of dust.

- f) Rock and stone crushing shall be permitted as an accessory use to sand and gravel excavation operations, shall be limited to 7:00 a.m. to 5:00 p.m. Monday through Friday, and may be prohibited or further restricted by the Planning Board if it will unreasonably interfere with residential uses existing at the time of application. The Planning Board may require water bars on crushing equipment if necessary to control dust. On an annual basis no more than thirty-three percent (33%) of all materials crushed or otherwise processed on the property of such excavation operation may be brought in from a location outside the property.

The applicant has requested that the hours of operation for crushing activities be 7:00 a.m. to 5:00 p.m. Monday through Friday. The applicant and representatives have stated that water bars will be used on the rock crushers. The applicant agrees that on an annual basis no more than 33% of all materials crushed or otherwise processed will be brought onto the site.

- g) Erosion and sedimentation on site shall be adequately controlled, based on guidelines of the Cumberland County Soil and Water Conservation District.

The applicant has made provisions for short term and long-term sedimentation and erosion control and will adhere to MDEP Best Management Practices, which are the same standards used by the Cumberland County Soil and Water Conservation District.

- h) Sufficient topsoil shall be retained to comply with the approved reclamation plan.

The applicant will retain sufficient topsoil to be used in the reclamation in compliance with the approved reclamation plan.

C. RECLAMATION PLAN:

Ms. Robie said that there is no finding of fact with respect to the applicant's reclamation plan, so Ms. Robie summarized the requirement as follows: that no more than 15 acres of pit will be allowed to be open at any one time, and a reclamation effort has to occur before any further acreage is opened. The requirement refers to the Maine M.R.S.A. Sec. 490-Y standards for reclamation. She explained that reclamation would consist of stabilizing the quarry walls, vegetating the benches that will not be under the water line when the quarry is finished, and loaming and seeding areas not part of the quarry excavation. Mr. Shaw said that filling the completed pit with water is the ultimate reclamation, but he anticipates using temporary cover with stump grindings of rock excavation areas to meet the letter of the law, as well as a method to prevent dust. Mr. Shaw stated that he anticipates clearing more than 15 acres at a time, but the entire site will not be cleared at the same time.

The applicant has a reclamation plan on both a permanent basis for the quarry walls and benches and a temporary reclamation plan for the 15 acres of the pit that are open at any one time. In addition, the applicant is planning to cut trees and remove overburden as the pit progresses to minimize the open area rather than cutting the entire area at one time.

The Board did not identify any condition of approval relative to the reclamation plan.

D. SPECIAL EXCEPTIONS CRITERIA - CHAPTER I, SECTION IV (E)

Special Exception Criterion #1:

The proposed use will not create or aggravate hazards to vehicular or pedestrian traffic on the roads and sidewalks, both off site and on site serving the proposed use as determined by the size and condition of such roads and sidewalks, lighting, drainage and the visibility afforded to pedestrians and the operators of motor vehicles of such roads.

Michael Parker MOVED and Thomas Hughes SECONDED a motion that the Special Exception Criteria #1 is met for phases 1, 2, and 3 of the quarry. Motion CARRIED, 6 ayes (Mark Stelmack absent).

The applicant has submitted a detailed traffic study for the quarry and asphalt plant and estimates a combined total of 800 vehicle trips entering and leaving the site on a daily basis. The quarry will generate an estimated 200 trips and asphalt plant is estimated to generate 600 trips. The a.m. Peak Hour for the quarry falls between 7:00 a.m. and 8:00 a.m. with 20 vehicles entering and leaving the quarry portion of the site, the busiest p.m. Peak Hour is from 5:00 p.m. to 6:00 p.m. with 20 vehicles entering and leaving the quarry site. The applicant has received a Maine Department of Transportation Driveway (MDOT) Entrance Permit requiring State Route 237 shoulder widening to a minimum of 8 feet for the appropriate length of a truck's acceleration/deceleration distance. MDOT has given the applicant preliminary plan approval but final MDOT approval is required before the applicant can construct the road widening. The applicants have shown the required Route 237 widening on sheets 3 and 4.

Michael Parker MOVED and Thomas Fickett SECONDED a motion to approve the Finding of Fact. Motion CARRIED, 6 ayes (Mark Stelmack absent). [6:55 p.m.]

Special Exception Criterion #2:

The proposed use will not cause water pollution, sedimentation, erosion, contaminate any water supply, nor reduce the capacity of the land to hold water so that a dangerous or unhealthy condition exists.

Michael Parker MOVED and Douglas Boyce SECONDED a motion that Special Exception Criterion #2 is met for phase 1 of the quarry. Motion CARRIED, 6 ayes (Mark Stelmack absent).

Michael Parker MOVED and Douglas Boyce SECONDED a motion that Special Exception Criterion #2 is met for phase 2 of the quarry, subject to the approval of the Maine DEP of the variance for excavation below the water table. Motion CARRIED, 6 ayes (Mark Stelmack absent)

Edward Zelmanow MOVED and Thomas Hughes SECONDED a motion that Special Exception Criterion #2 is met for phase 3 of the quarry. Motion CARRIED, 6 ayes (Mark Stelmack absent). [7:20 p.m.]

*The applicant has made provisions to provide for the control and disposal of stormwater from the project. Based on the Town and Third Party Engineers' review of the applicant's "Stormwater Management Report," prepared by Shawn Frank, P.E., Senior Engineer, Sebago Technics, Inc., the post-development peak rates of run-off for the 2, 10, ~~and~~ 25-year storm events **and 100 year-storm events for the watershed outletting along the northeasterly property boundary** are less than the pre-developed peak rates at all study points. The stormwater infrastructure will control runoff from a minimum of 95% of the site's impervious area along with providing effective channel protection and temperature control by filtering runoff at a controlled rate.*

All proposed stormwater drainage structures are to be located on lot 1 (Asphalt Plant Lot) with the exception of a culvert under the quarry access road that flows into Stormwater Pond 2. The applicant has submitted a "Spill Prevention Control and Countermeasure Plan" (SPCC) that addresses protection for stormwater from fuel spills.

The applicant has provided an acceptable Erosion and Sedimentation Control Plan (Section 5, Operations Plan Notebook) that complies with the requirements of the ordinance, including Best Management Practices; and Section 6, Spill Prevention and Countermeasures Plan, and Section 9, Stormwater Pollution Prevention Plan, adequately meet the Town's requirements.

The applicant has received its MDEP permit (Permit Number L-23529-80-A-N) for a quarry operation and a variance for an externally drained pit from the Maine Department of Environmental Protection pursuant to the permit-by-rule provisions of the DEP for phase 1. The applicant has also received a Natural Resource Protection Act Tier I permit to alter 14,863 square feet of forested wetland and wet meadow to construct the access road and berms associated with phase 1 construction.

Phase 2 is contingent upon the applicant receiving the DEP variance to mine below the water table. Phase 2 will require an additional variance from MDEP to mine below the water table. Mining below the water table requires additional groundwater monitoring as part of the variance process.

Phase 3 will require a NRPA Tier III permit for wetland destruction; the Tier III permits are only valid for two years. The Tier III permit will require wetland compensation in the form of creating new wetlands on site or purchasing wetlands located in a DEP approved wetland bank.

Thomas Hughes MOVED and Douglas Boyce SECONDED a motion to approve the Finding of Fact as stated and modified. Motion CARRIED, 6 ayes (Mark Stelmack absent).

Special Exception Criterion #3:

The proposed use will not create unhealthful conditions because of smoke, dust or other airborne contaminants.

The applicant's quarry operation will be conducted in such a way that at a minimum the crushers will be operating behind 100' wooded buffers, and earthen berms at the limits of excavation. This will assist in mitigation of dust from the operation site to abutting properties. The crushers working within the quarry will require an air emissions license from the Air Bureau of the Maine DEP, these licenses will be provided to the Town prior to operation. In the latest version of the "Operations Plan Notebook, January 2008 and amended March 2008," the applicant identifies the procedures to control the mitigation of dust. The procedures to control dust migration are sweeping, paving, watering, using calcium chloride in accordance with State requirements, or other forms of Best Management Practices on quarry access roads and aggregate piles. The applicant is also proposing to install spray bars on rock crushers working in the quarry. The "Operations Plan Notebook, January 2008, and amended March 2008" identifies the quarry site supervisor will perform visual opacity determinations and ensure the fugitive emission do not exceed an opacity of 20% or more for more than 5 minutes in any 1-hour period. The applicant has proposed and agreed to pave 500 feet of each access road into the site, another way to assist in dust control, as stated in their Operations Plan Notebook, January 2008 and amended March 2008, section 4.

Michael Parker MOVED and Thomas Hughes SECONDED a motion that Special Exception Criterion #3 is met. Motion as amended CARRIED, 6 ayes (Mark Stelmack absent).

Michael Parker MOVED and Edward Zelmanow SECONDED the Finding of Fact as read and modified. Motion CARRIED, 6 ayes (Mark Stelmack absent). [7:41 p.m.]

Special Exception Criterion #4:

The proposed use will not create nuisances to neighboring properties because of odors, fumes, glare, hours of operation, noise, vibration or fire hazard, or unreasonably restrict access of light and air to neighboring properties.

Michael Parker MOVED and Thomas Fickett SECONDED a motion to postpone discussion of this Special Exception Criterion until after Criteria #5 and #6 have been addressed. Motion CARRIED, 5 ayes (Susan Robie abstaining, Mark Stelmack absent).

Special Exception Criterion #5:

The proposed waste disposal systems are adequate for all solid and liquid wastes generated by the use.

The applicant is proposing to bring under ground power to the site, public water, and natural gas from Mosher Road. The site will be served by a septic system and the applicant has submitted an HHE 200 Subsurface Wastewater Disposal System Application and shown the location of the septic system on the plans. The HHE 200 application estimates that the 12 employees on site will generate 180 gallons per day. The Operations Plan Notebook in Section 9 contains information about the applicant's spill prevention plan to deal with possible oil spills or any stored fuel on site.

Edward Zelmanow MOVED and Michael Parker SECONDED that Special Exception Criterion #5 is met for phases 1, 2, and 3 of the quarry. Motion CARRIED, 6 ayes (Mark Stelmack absent).

Edward Zelmanow MOVED and Michael Parker SECONDED a motion that the finding of fact as read into the record for phases 1, 2, and 3 of the quarry be approved. Motion CARRIED, 6 ayes (Mark Stelmack absent).

Special Exception Criterion #6:

The proposed use will not result in damage to spawning grounds, fish, aquatic life, bird or other wildlife habitat and, if located in a Shoreland Zone, will conserve: a) shoreland vegetation; b) visual points of access to water as viewed from public facilities; c) actual points of access to waters; and d) natural beauty.

The applicant has made provisions to provide for the control and disposal of stormwater from the project. Based on the Town & Third Party Engineers' review of the applicant's "Stormwater Management Report," prepared by Shawn Frank, P.E., Senior Project Engineer, Sebago Technics, Inc., the post-development peak rates of run-off for the 2, 10, and 25-year storm events are less than the pre-developed peak rates at all study points. The stormwater infrastructure will control runoff from a minimum of 95% of the site's impervious area along with providing effective channel protection and temperature control by filtering runoff at a controlled rate. The applicant has confirmed that there is no significant habitat in the area as listed in the DEP Registry and there are no vernal pools on the site, and DEP by virtue of the mining permit has also shown there to be no significant wildlife habitat. The applicant's proposed stormwater treatment system includes provisions for a high degree of sediment and pollutant removal, as well as thermal cooling of runoff provided by the use of underdrain gravel filters within the ponds, and there is over 1000 feet of vegetated drainage courses that runoff would travel through prior to reaching the Presumpscot River.

Edward Zelmanow MOVED and Michael Parker SECONDED a motion that Special Exception Criterion #6 is met for phases 1, 2, and 3 of the quarry. Motion CARRIED, 6 ayes (Mark Stelmack absent). [8:01 p.m.]

Edward Zelmanow MOVED and Thomas Hughes SECONDED a motion that the findings of fact discussed herein and read into the record be approved in supporting Special Exception Criterion #6. Motion CARRIED, 6 ayes (Mark Stelmack absent). [8:02 p.m.]

The Board identified a condition of approval that the plan shall be amended to include a note that the applicant has determined that there are no vernal pools on the site.

Special Exception Criterion #4:

The proposed use will not create nuisances to neighboring properties because of odors, fumes, glare, hours of operation, noise, vibration or fire hazard, or unreasonably restrict access of light and air to neighboring properties.

Edward Zelmanow MOVED and Thomas Fickett SECONDED a motion approving the applicant's request that the hours of operation for the area of the quarry within 100 feet of the asphalt plant be consistent with the hours of the asphalt plant. Motion CARRIED, 6 ayes (Mark Stelmack absent).

Edward Zelmanow MOVED and Thomas Fickett SECONDED a motion that Special Exception Criterion #4 is met for phases 1, 2, and 3 of the quarry. Motion CARRIED, 6 ayes (Mark Stelmack absent).

The proposed quarry hours of operation are 6:00 a.m. to 6:00 p.m. Monday through Friday and from 8:00 a.m. to 2:00 p.m. on Saturdays. Rock and stone crushing operations will be limited to 7:00 a.m. to 5:00 p.m. Monday through Friday.

The Board voted to allow the hours of operation of the 100-foot work area to coincide with the hours of the asphalt plant.

The Board found that the applicant has both the will and the means to bring noise into compliance with the required standards of the Department of Environmental Protection; and, further, two conditions of approval were defined to identify verification of the model used to predict noise and to address any subsequent testing. A third condition was identified that the applicant will work with the Town to have signs installed requiring no engine brakes in the vicinity of the plant. There is a condition of approval for the use of "Smart Alarms" for the equipment operating within certain parts of the quarry.

The Board found that the vibrations of modern blasting techniques will not constitute a nuisance to the neighbors. The Operations Plan Notebook (Section 7) describes the blasting protocol that leads to the conclusion that blasting will not be a nuisance to the neighbors. Further, the applicant is proposing to have three lights located on lot 2 (Quarry Lot) within the 100-foot work allowance for the asphalt plant. The applicant has submitted a photometric plan showing the projected light impacts, there will be no light leaving the site. The lights are needed to light aggregate storage bins as part of the asphalt plant's night pavement operations and every day operations when beginning at 3:00 a.m. Further, the applicant has stated that lights will not be on when the plant is not operating.

Douglas Boyce MOVED and Thomas Fickett SECONDED a motion to accept the findings of fact. Motion CARRIED, 6 ayes (Mark Stelmack absent).

The Board identified the following Conditions of Approval: That noise monitoring shall be conducted within 60 days after commencement of crushing operations and again within 60 days after

commencement of the asphalt plant that there shall be no exceedences of noise levels as identified and projected in the Ambrose Report. This monitoring may be conducted by the DEP if the DEP provides such information to the Town Engineer within the required time periods. If this does not occur, then the applicant shall fund a private noise consultant to conduct the testing in accordance with the recommendations set forth on page 4 of the February 19, 2008 letter from R. Scott Bodwell, P.E., of Resource Systems Engineering. Testing shall be conducted in accordance with the requirements of Chapter 37510(H) of the Maine DEP rules.

Condition of Approval: That subsequent testing shall occur on a complaint basis or as part of the DEP's monitoring of the quarry. Additional testing shall occur when the asphalt plant is replaced. Results of all subsequent testing shall be provided to the Town Engineer. Testing shall be conducted in accordance with the requirements of Chapter 375.10(H) of the Maine DEP rules.

Condition of Approval: That the applicant shall work with the Town to seek a "no engine brake" ruling from the Maine Department of Transportation.

E. SITE PLAN REVIEW REQUIREMENTS WORKSHEET

Applicable Requirements of Chapter IV, Site Plan Review, , Site Plan Review, Section IX , B, C, D, F, J, M and P

B. Access to the Site - Vehicular access to the site will be on roads which have adequate capacity to accommodate the additional traffic generated by the development. For developments which generate one hundred (100) or more peak hour trips based on the latest edition of the Trip Generation Manual of the Institute of Traffic Engineers, intersections on major access routes to the site within one (1) mile of any entrance road which are functioning at a Level of Service of C or better prior to the development will function at a minimum at Level of Service C after development. If any intersection is functioning at a Level of Service D or lower prior to the development, the project will not reduce the current level of service.

Access to the Site – Access to the site is via State Route 237, also known as Mosher Road. The applicant's traffic study shows Route 237 to have adequate capacity to accommodate traffic generated by the quarry project, which is estimated to generate 200 truck trips per day.

Michael Parker MOVED and Douglas Boyce SECONDED a motion that Requirement B of Chapter IV, Site Plan Review, Section IX, is met by the applicant. Motion CARRIED, 6 ayes (Mark Stelmack absent).

Michael Parker MOVED and Douglas Boyce SECONDED a motion to approve the finding of fact as read and amended by the Town Attorney. Motion CARRIED, 6 ayes (Mark Stelmack absent).

C. Access into the Site - Vehicular access into the development will provide for safe and convenient access.

- 1) Any exit driveway or proposed street will be so designed as to provide the minimum sight distance to meet the Maine Department of Transportation standards.
- 2) Points of access will be located to avoid hazardous conflicts with existing turning movements and traffic flows.

- 3) The grade of any proposed drive or street will be a -2.0% for a minimum of five (5) feet from the existing pavement edge or to the centerline of the existing drainage swale. From the above control point, a grade of not more than -3% shall be required for a minimum of two (2) car lengths or forty (40) feet.
- 4) The intersection of any access drive or proposed street will function at a Level of Service of C following development if the project will generate an ADT (average daily trip) of one thousand (1,000) or more vehicle trips, or at a level which will allow safe access into and out of the project if less than one thousand (1,000) trips are generated.
- 5) Projects generating an ADT of one thousand (1,000) or more vehicle trips will provide two (2) or more separate points of vehicular access into and out of the site.

C. Access into the Site – *The access to the site will occur at two locations off of Route 237. The main entrance and exit for the quarry will occur at the northern entrance with the southern entrance being used as an alternative access road into the quarry. The applicant is proposing to pave 500' of each access road with each access road having a 65' entrance radii to allow trucks to enter the site with a faster turning speed than would occur with a tighter radius allowed under the ordinance. This project does not ~~meet or exceed~~ generate the 1000 or more trips per day of some of the criteria and that sight distances are adequate.*

Thomas Hughes MOVED and Thomas Fickett SECONDED a motion that Requirement C of Chapter IV, Site Plan Review, Section IX, is met by the applicant. Motion CARRIED, 6 ayes (Mark Stelmack absent).

Michael Parker MOVED and Douglas Boyce SECONDED a motion to accept the finding of fact as read and added to. Motion CARRIED, 6 ayes (Mark Stelmack absent).

D. Internal Vehicular Circulation - The layout of the site will provide for the safe movement of passenger, service and emergency vehicles through the site.

- 1) Nonresidential projects will provide a clear route for delivery vehicles with appropriate geometric design to allow turning and backing for WB-40 vehicles.
- 2) Clear routes of access will be provided and maintained for emergency vehicles around all buildings and will be posted with appropriate signage (fire lane - no parking).
- 3) The layout and design of parking areas will provide for safe and convenient circulation of vehicles throughout the lot and will prohibit vehicles from backing out onto a street.
- 4) All roadways will be designed to harmonize with the topographic and natural features of the site. The road network will provide for vehicular and pedestrian safety, all season emergency access, snow storage, and delivery and collection services.

Thomas Hughes MOVED and Thomas Fickett SECONDED a motion that Requirement C of Chapter IV, Site Plan Review, Section IX, is met by the applicant, subject to a condition of approval as discussed at this meeting. Motion CARRIED, 6 ayes (Mark Stelmack absent).

D. Internal Vehicular Circulation – *The site has been designed to provide for circulation of employee vehicles, service vehicles, emergency vehicles, and visitor vehicles, and a painted*

walkway in compliance with OSHA requirements will be provided for employees to traverse between the control house and the scale house and any other locations OSHA so requires.

Douglas Boyce MOVED and Edward Zelmanow SECONDED a motion to accept the finding of fact as read and amended. Motion CARRIED, 6 ayes (Mark Stelmack absent).

- F. Storm water Management - Adequate provisions will be made for the disposal of all storm water collected on streets, parking areas, roofs or other impervious surfaces through a storm water drainage system and maintenance plan which will not have adverse impacts on abutting or downstream properties:

Edward Zelmanow MOVED and Douglas Boyce SECONDED a motion that Requirement F of Chapter IV, Site Plan Review, Section IX, is met by the applicant. Motion CARRIED, 6 ayes (Mark Stelmack absent).

- F. Stormwater Management – *The applicant has made provisions to provide for the control and disposal of stormwater from the project. Based on the Town & Third Party Engineers’ review of the applicant’s “Stormwater Management Report,” prepared by Shawn Frank, P.E., Senior Project Engineer, Sebago Technics, Inc., the post-development peak rates of run-off for the 2, 10, ~~and~~ 25-year storm events and 100 year-storm events for the watershed outletting along the north easterly property boundary are less than the pre-developed peak rates at all study points. The stormwater infrastructure will control runoff from a minimum of 95% of the site’s impervious area along with providing effective channel protection and temperature control by filtering runoff at a controlled rate.*

All proposed stormwater drainage structures are to be located on lot 1 (Asphalt Plant Lot) with the exception of a culvert under the quarry access road that flows into Stormwater Pond 2. The applicant has submitted a “Spill Prevention Control and Countermeasure Plan” (SPCC) that addresses protection for stormwater from fuel spills. Sections 5, 6 and 9 of the applicant’s Operations Plan Notebook provide for erosion control, a spill prevention and countermeasures plan, and a stormwater protection plan. The Town Engineer requested 100 year storm calculations, which were reviewed and adjustments were made to address issues. It was found that a 100-year storm will not adversely affect downstream property.

Michael Parker MOVED and Douglas Boyce SECONDED a motion to accept the findings of fact as read and amended. Motion CARRIED, 6 ayes (Mark Stelmack absent).

- J. Utilities - The development will be provided with electrical and telephone service adequate to meet the anticipated use of the project.

Edward Zelmanow MOVED and Thomas Hughes SECONDED a motion that Requirement J of Chapter IV, Site Plan Review, Section IX, is met by the applicant. Motion CARRIED, 6 ayes (Mark Stelmack absent).

- J. Utilities – *The applicant is proposing to bring under ground power, and telephone, to the site, public water, and natural gas to the site from Mosher Road. The site will be served by a septic system and the applicant has submitted an HHE 200 Subsurface Wastewater Disposal System Application and shown the location of the septic system on the plans. The HHE 200 application estimates that the 12 employees on site will generate 180 gallons per day.*

Michael Parker MOVED and Douglas Boyce SECONDED a motion to accept the finding of fact as read and modified. Motion CARRIED, 6 ayes (Mark Stelmack absent).

M. Exterior Lighting - The proposed development will provide for adequate exterior lighting to provide for the safe use of the development in nighttime hours.

- 1) All exterior lighting will be designed and shielded to avoid undue adverse impact on neighboring properties and rights-of-way.
- 2) Lighting shall be provided, at a minimum, in the following areas:
 - a. Entrances to facilities and recreation areas;
 - b. Street intersections;
 - c. Pedestrian crossings; and
 - d. Entrance roads.

Edward Zelmanow MOVED and Thomas Fickett SECONDED a motion that Requirement M of Chapter IV, Site Plan Review, Section IX, is met by the applicant. Motion CARRIED, 6 ayes (Mark Stelmack absent).

*M. Exterior Lighting – The applicant is proposing to have three lights located on the lot 2 (Quarry Lot) within the 100’ work allowance for the asphalt plant. The applicant has submitted a photometric plan showing the projected lighting impacts. **The lights shall be shielded to prevent light spillover onto neighboring properties.** The lights are needed to light aggregate storage bins as part of the asphalt plants night pavement operations. The lights will be extinguished when the asphalt plant is not running, **except for security lighting that shall be added to the plans.***

Michael Parker MOVED and Douglas Boyce SECONDED a motion to accept the finding of fact as read and modified. Motion CARRIED, 6 ayes (Mark Stelmack absent).

P. Landscaping - The development plan will provide for landscaping to define street edges, break up parking areas, soften the appearance of the development and protect abutting properties from adverse impacts of the development.

Edward Zelmanow MOVED and Thomas Fickett SECONDED a motion that Requirement P of Chapter IV, Site Plan Review, Section IX, is met by the applicant. Motion CARRIED, 6 ayes (Mark Stelmack absent).

P. Landscaping – The applicant is not proposing any landscaping on lot 2. Natural wooded buffer will remain around the property line of the lot to limit the visual and auditory effects of the quarry operation. In addition, there is a condition of approval that requires the applicant to maintain a buffer between the public right-of-way and the quarry operations at all times.

Thomas Hughes MOVED and Thomas Fickett SECONDED a motion to accept the finding of fact as written and amended with the condition of approval.

DISCUSSION: Mr. Parker suggested amending the motion to stipulate that the applicant begin “growing” 30-foot high trees to serve as a future buffer; the Board did not adopt his suggestion.

Motion as originally moved CARRIED, 6 ayes (Mark Stelmack absent).

CONDITIONS OF APPROVAL

PREPARED FOR MARCH 31, 2008 PLANNING BOARD MEETING

Shaw Brothers Construction, Inc.
Quarry Operation
State Route 237

Standard Planning COA

1. That this approval is dependent upon, and limited to, the proposals and plans contained in the application and supporting documents submitted and affirmed by the applicant and that any variation from the approved plans, proposals and supporting documents is subject to review and approval by the Planning Board, except for minor changes which the Director of Planning and Zoning may approve;
2. That the applicant shall obtain all local, state and federal permits required for the gravel pit/quarry prior to the commencement of mining in any of the proposed phases;
3. That within ten days of final approval, the applicant shall provide four full sets of the approved plans, sealed and signed by all professionals, to the Town: (1) to the Town Engineer, (2) to the Code Enforcement Officer, (3) to the Compliance Coordinator, and (4) to the Planning Director.
4. That the applicant shall provide property line information and site information, in AutoCAD format to the Assistant Planner, prior to the pre-construction meeting;
5. That the applicant shall provide copies of operation manuals and specifications on all proposed rock crushers to be used on the site to the Town Planner, Code Enforcement Officer, and Town Engineer prior to use;
6. That prior to the commencement of any site construction or the commencement of any mining activity in the proposed approval; the applicant shall request that the Compliance Manager schedule a pre-construction meeting between the applicant, applicant's engineer, and Town Staff to review the approved plans, conditions of approval, and site construction requirements;
7. That the site improvements shall be completed as shown on the approved plans prior to operation of mining activities or issuance of certificate of occupancy; or a performance guarantee, covering the remaining site improvements shall be established through the Planning Department;
8. That the applicant shall submit accurate plans and AutoCAD information of existing quarry operation area and conditions as part of the yearly Application for Registration of Existing Pit Operations to the Town Engineer and Code Enforcement Officer;
9. That all required reports shall be submitted by the applicant to the Town within 14 days of the applicant's receipt of the reports.

Fire Department COA

10. That all gas meters (propane or natural gas) shall be protected by bollards;
11. That all above ground fuel storage tanks shall be permitted by the State Fire Marshal's Office and meet all applicable State requirements;

12. That the keys for access control gates should be provided in lock boxes located at the gate entrances with lock box keys provided to the Gorham Fire Department;
13. That no explosives shall be stored on site, unless pre-approved by the Gorham Fire Department, State Fire Marshal, and the storage meets all Federal and State standards;
14. That the Spill Prevention Countermeasures and Control Plan (SPCC) should be signed and sealed by a professional engineer and the plan shall be reviewed by the Town Engineer every three years and updated by the applicant as necessary. Copies of the most current plan shall be provided to and made available in the Code Enforcement office, the Public Works Department, and on site at all times;

MDEP Variance & Permit COA

15. That prior to starting mineral extraction operations within phase 2 and phase 3 of the quarry the applicant shall provide proof of Maine Department of Environmental Protection permits and variance approvals for each successive quarry phase to the Town of Gorham;
16. That the applicant shall provide copies of all federal and state air emissions licenses for the rock crushers prior to start of production of construction material to the Town Engineer, and the Code Enforcement Officer;

Noise COA

17. That the applicant shall meet the Maine Department of Environmental Protection noise requirements as set forth in Section 10 of Chapter 375 Code of Maine Regulations (No Adverse Environmental Effect Standard of the Site Location Law), as stipulated by the letter from Walter P. Stinson, P.E. of Sebago Technics to Deborah F. Fossum, dated August 23, 2007;
18. That rock drilling noise associated with the quarry shall be mitigated to meet Section 10 of Chapter 375 Code of Maine Regulations (No Adverse Environmental Effect Standard of the Site Location Law);
19. That the applicant shall conduct noise monitoring at the following times:
 1. Within 60 days from the commencement of outside sales of materials from the quarry and when all noise-contributing equipment is operating;
 2. Within 60 days after the commencement of full operation of the asphalt plant;
 3. After replacement of the temporary asphalt plant.Such noise monitoring shall be conducted in accordance with the requirements set forth in the letter from R. Scott Bodwell, P.E., Resource Systems Engineering, to Deborah Fossum, Town Planner, dated February 19, 2008, and hereby incorporated by reference. Sound levels shall be measured at nearby protected locations to ensure that the sound levels meet Section 10 of Chapter 375 of the Code of Maine Regulations (No Adverse Environmental Effect Standard of the Site Location Law). Monitoring required under this condition may be conducted by the Maine DEP or by a private noise consultant funded by the applicant. The applicant shall provide all testing results to the Town Engineer and the Code Enforcement Officer within the established 60-day monitoring period.

- ~~18. That the applicant shall in the first year of operation, monitor the sound levels at the property line with the machinery at maximum operating capacity in order to determine that noise levels at the property boundaries and protected location meet the Section 10 of Chapter 375 Code of Maine Regulations (No Adverse Environmental Effect Standard of the Site Location Law). Copies of the test results shall be provided to the Town Engineer, and the Code Enforcement Officer;~~

~~19. That the applicant shall provide for the following noise monitoring requirements outlined as follows by R. Scott Bodwell, P.E., Resource Systems Engineering, dated February 19, 2008, to Deborah Fossum, Town Planner;~~

~~“That the applicant shall perform predicted sound levels and determine if additional mitigation is required by periodic measurement of sound levels at nearby protected locations during facility operations. The sound levels will be measured per Chapter 375, Section 10 Code of Maine Regulations during full operation of the quarry and during representative daytime and nighttime periods. The measurements should be taken with instrumentation capable of supporting a determination of tonal and short duration repetitive sounds to demonstrate compliance. Measurement of loader activity shall be conducted to confirm that best management practices are being applied at the appropriate locations and that sound levels are consistent with estimates by SE Ambrose.”~~

~~20. That upon movement of the rock crusher to a different location, the applicant shall conduct noise measurements at nearby protected locations to ensure the sound levels meets Section 10 of Chapter 375 Code of Maine Regulations (No Adverse Environmental Effect Standard of the Site Location Law);;~~

20. That the applicant shall ensure installation of “Smart Alarms” on all equipment operating on the site

~~22. That the applicant shall conduct noise monitoring within sixty (60) days of start up of the crushing operations and again in sixty (60) days of start up of the asphalt plant and that there will not be exceedences of noise levels identified and projected in the Ambrose Report. This monitoring may be conducted by the Maine DEP, if the Maine DEP provides such information to the Town Engineer within the required sixty (60) day time periods. If this does not occur, then the applicant shall fund a private noise consultant to conduct the testing to determine compliance with the applicable DEP noise standards. Testing shall occur in accordance with the recommendations set forth in the Resource Engineering Systems, Scott Bodwell, P.E., letter dated Feb. 19, 2008. Testing shall be conducted in accordance with the requirements of Section 10 (H) of Chapter 375 Code of Maine Regulations (No Adverse Environmental Effect Standard of the Site Location Law);~~

21. That the applicant shall conduct subsequent testing on a complaint basis or as part of the Maine DEP’s monitoring of the quarry. Additional testing shall be required when the asphalt plant is replaced. Results of all subsequent testing shall be provided to the Town Engineer **within 14 days**. Testing shall be conducted in accordance with the requirements of Section 10 of Chapter 375 Code of Maine Regulations (No Adverse Environmental Effect Standard of the Site Location Law);

22. That the applicant shall work with the Town to seek a “no engine brake” ruling from the Maine Department of Transportation;

Fence COA

23. That the applicant shall maintain a four-foot tall temporary fence around the quarry area along with caution signs, “Active Quarry- No Trespassing”, placed every 100’ during the active life of the quarry;

Reclamation COA

24. That prior to initiating any construction activities at the project site, **the applicant**, Inc. shall provide a reclamation performance guarantee in a form and amount acceptable to the Town Attorney and the Town Manager. This guarantee shall include provisions for a periodic three-year review of the

performance guarantee and adjustment of coverage based on an updated estimate of the cost of reclamation for each phase of the project;

25. That the reclamation work shall be completed within nine months of the closing of the site (or a portion of a site with regard to phased reclamation plans). Reclamation of continuing operations shall be conducted in phases, if necessary, so there is never open more than fifteen (15) acres of total extraction operation area;
26. That upon default of any obligations to reclaim the quarry under this approval, the Town may, after written notice and an opportunity to be heard by the Board of Appeals, cause the quarry operator's reclamation plan to be implemented pursuant to the performance guarantee;
27. That reclaimed areas shall be guaranteed for a period of eighteen (18) months following the substantial completion of reclamation, during which time the performance guarantee shall remain in full force and effect;

MDEP Inspection Reports and Monitoring COA

28. That the applicant shall submit copies of all construction inspection reports required as part of Maine Department of Environmental Protection permitting to Town Engineer, and the Code Enforcement Officer;
29. That the applicant shall ~~submit~~ **maintain on site** copies of all required visual and laboratory monitoring of stormwater samples as required by the Multi-Sector General Permit and must provide to the Town Engineer and the Code Enforcement Officer **any report of deviations required to be submitted to the DEP**;
30. That the applicant shall submit copies of all Maine Department of Environmental Protection site inspection reports as well as descriptions of sound measurement report data to the Town Engineer, and the Code Enforcement Officer;

Traffic COA

- 31 That no certificate of occupancy or removal of mining material, **other than the removal of materials to be used in the construction of the required Route 237 and site improvements**, shall be allowed prior to the completion of all required roadway improvements as set forth in the MDOT Driveway Permits and detailed in the MDOT final approved construction drawings;
- 32 That no more than one truck shall be allowed to remain on the State Route 237 widened shoulders prior to the opening of the gate to the quarry in the morning and no queuing shall occur in the State Route 237 shoulder area;
- 33 ~~That the Planning Board shall not sign the Mylar for the project until the applicant submits proof of the final approval from MDOT.~~ In the event that the MDOT permit requires substantive changes to the approved site plan, the applicant will return to the Planning Board for an amended approval;

Hydrogeological COA

34. That the applicant shall identify the elevation of ground water, as set forth in the MAI letter of March 7, 2008, on sheet 5 of the Site Plan;

35. That the applicant shall drill the third monitoring well along the western property boundary within sixty (60) days after the approval of the quarry and during construction. The water table level at that well shall be added to the plan and submitted to the Town Planner, together with an update to the hydrogeological study;

PLBD COA

- 36 That the applicant shall increase the natural no-cut buffer along the southern boundary to the southern edge of the proposed phase 1 of the quarry, trees will remain in the no-cut buffer area for the duration of the quarry except tree cutting recommended by a professional forester pursuant to Best Forest Management Practices and approved by the Planning Board;
37. That the applicant shall amend the plan to include a plan note that the applicant has determined that there are no vernal pools on the site;
38. That the applicant shall provide for OSHA approved painted walkways between the scale house and the control house as well as any other locations required by OSHA;
39. That the applicant shall maintain ~~an adequate~~ a continuous buffer between the public right-of-way and the quarry operations throughout the life of the quarry;
40. That the applicant shall provide the deeds for the asphalt plant lot and quarry lot and all applicable utility, drainage, and access easements for review and approval of the documents by the Town Attorney prior to the scheduling of the pre-construction meeting;

Recording Decision Document COA

41. That these conditions of approval shall be recorded at the Cumberland County Registry of Deeds within thirty (30) days of the Planning Board approval and a dated copy of the recorded Decision Document shall be returned to the Town Planner.
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2. ADJOURNMENT – 11:12 P.M.

Respectfully submitted,

Barbara C. Skinner, Clerk of the Board

_____, 2008