APPEAL OF USE 2012-0019
LEMON CREEK GRAVEL EXTRACTION
BEFORE THE CITY AND BOROUGH OF JUNEAU
ASSEMBLY

PLANNING COMMISSION VERBATIM MINUTES
FROM NOVEMBER 27, 2012
VIII. REGULAR AGENDA

USE2012 0019: A Conditional Use Permit to extract 240,000 cubic yards of material from the Lemon Creek streambed over a six-year period.

Applicant: Coalaska Inc.
Location: 2025 Anka Street

Staff Recommendation: Staff recommends that the Planning Commission adopt the Director's analysis and findings and grant the requested Conditional Use permit. The permit would allow extraction of 240,000 cubic yards of gravel from the Lemon Creek streambed over a period of six years. The approval is subject to the following conditions:

Annual Grading Permit and Bank Protection
1. The operator shall stockpile about 50 cubic yards of broken rap, equivalent to Class I rip-rap, near the project area to address emergencies if the flow becomes redirected towards the bank. If the rock is not used it may be sold when the project ends.
2. Prior to issuance of the first year's grading permit and approval of the first year mining plan, the operator shall submit a bond of $30,000, sufficient to repair any serious bank damage.
3. By November 1, one month before the commencement of each mining season, the applicant shall submit a mining plan. The mining plan shall be processed by the Engineering Department as an annual grading permit. Such plan shall include:
   a. Estimation of material to be removed.
   b. Map of area to be worked (showing property lines).
   c. Map showing proposed culverts, access roads, bank stabilizations, berm details (including height, location, material composition and removal plan) stream relocations and other proposed features
   d. Methods for protecting Lemon Creek from oil, fuel and hydraulic fluid (including leaks from heavy equipment).
   e. Prior to the commencement of mining, the applicant shall verify property line location and delineate offset distance to the extraction area.
4. The top of excavation slopes shall be prohibited within 10' of any banks or the property lines.
5. The applicant shall directly hire, or pay permit inspection fees to provide for periodic inspection of the mining area by an appropriately licensed engineer and/or hydrologist.
6. Periodic inspections shall be made as determined by the engineer and/or hydrologist, sufficient to monitor the operation. Such periodic inspections shall include visits during or after high water events.
7. Inspection reports shall be submitted to the Engineering Department for each 10,000 cubic yards of material removed from the stream, and those reports shall include the following information:
   a. Volume of material removed.
   b. Map of area worked.
   c. Verification of compliance with mining plan.
e. Opinion whether bank/property line setbacks are adequately protecting adjacent properties.
f. Bank protection/stabilization measures if merited.

8. An inspection report shall be submitted at the end of the mining season, which includes all items in numbers 4-7. The report shall be submitted to the Engineering Department and to the Community Development Department within one month of the end of the mining season, or April 15.

9. The applicant/operator shall confine all excavations to within existing rip-rap banks. Prior to proceeding with annual excavations, the applicant must find and stake adjacent rip-rap banks.

10. The applicant/operator shall protect the structural integrity of existing stream banks and rip-rap banks. A no-disturbance zone of at least 10 feet horizontal distance from adjacent rip-rap and banks is required. (This condition is necessary because rip-rap boundaries may or may not correlate with property boundaries, as noted in the earlier requirement to mine 10 feet from property boundaries).

11. The applicant shall protect all vegetated slopes and maintain a similar non-disturbance zone identified above, unless a site-specific engineering analysis indicates otherwise.

12. All cut-slopes shall be less than 2 horizontal to 1 vertical unless a site-specific engineering analysis proves that a steeper slope protects adjacent properties.

13. Excavated areas within the creek bed must be clearly marked with warning signs. Excavated slopes must be graded to a gentle slope of 4 horizontal to 1 vertical before signs are removed. These measures shall be integrated into the annual grading permit.

14. The approved access points at 1721 Anka Street, 1791 Anka Street, and Ralph's Way shall be inspected each year to verify that no changes have been made to the embankment due to heavy creek flows during the previous year. Alterations to the proposed access will require approval by the Community Development Department and the CBJ Engineering Department.

**Project Expiration and Dates and Times of Operation.**

15. Gravel operations shall take place between December 1 and March 15. No in-water work shall be allowed between March 16 and November 30 with the following exception: In-stream work to connect the excavated sections of the creek shall be allowed for one 7 day period between May 15 and June 15. The applicant shall provide notice to CBJ Engineering and DNR-Habitat before work commences.

16. Operating hours shall be 7 a.m. to 6 p.m. on weekdays and 9 a.m. to 6 p.m. on Saturdays. Operations shall not be allowed on Sundays.

17. Gravel extraction shall be limited to 40 days per year.

18. The permit shall expire after six years or extraction of 240,000 cubic yards of gravel, whichever comes first.

19. The extraction amount shall not exceed 35,000 cubic yards per year.

**Truck Traffic and Street Maintenance.**

20. Truck traffic from the development shall be routed only through the Anka Street/Glacier Highway intersection.

21. Truck traffic and heavy equipment operation associated with gravel extraction is strictly prohibited from the Davis Avenue side of the river.
22. Prior to leaving the excavation area, the transport truck bed, with the tailgate locked, shall be raised to a minimum twenty degree angle for a timed 5 minutes to allow excess water to escape. Tilt time may be reduced if water escapement occurs sooner based on the project engineer's visual assessment and approval.

23. The applicant shall protect catch basins along the route from sediment infiltration by use of manufactured Catch Basin filters.

24. The applicant shall inspect the traveled route a minimum of twice daily for escaped material from the haul.

25. The applicant shall sweep and clean the roadway at the end of each day if any water or material has escaped, or if a major spill occurs.

26. The applicant shall immediately respond to any additional clean-up requests during the from the project engineer, CBJ or ADOT.

27. The applicant shall construct a rockery lane for debris removal from truck tires prior to entering Anka Street.

Habitat Protection.

28. No sediment migration from the truck or ramp shall be allowed in the waterway.

29. Prior to commencement of mining and prior to gravel bar coverage with snow and ice, the applicant shall field stake the exact excavation configuration and setbacks from flowing water.

30. The applicant shall place any large woody debris encountered during excavation activities at the surface of the floodplain, upstream or adjacent to the excavation area to encourage gravel bar formation and/or side channel creation. The woody material shall be partially buried to anchor the material during high flows.

31. There shall be no on-site fueling or equipment maintenance performed within 100 feet of the creek banks. This includes fueling or maintenance of portable equipment such as generators and pumps.

32. There shall be no on-site storage of fuel or other chemicals.

Staff Report

Teri Camery: To start off, I would like to draw your attention to two blue folder items on this case. We have received comments from two downstream property owners with concerns regarding property damage, particularly to the banks along the stream. We will start off with a brief overview of the zoning maps and then go into the specific issues in the staff report.

Conditional Use Permit to extract 240,000 cubic yards of gravel from the Lemon Creek streambed over a 6-year period.

Here is an aerial image; it is a little old, outdated, I don't think the condominiums are even included in this drawing. I am sorry, we couldn't get something more recent, but this is the main stretch of the streambed that is privately owned under this parcel. It is fairly unusual to have privately-owned streambed creeks in the Juneau area. This is from an old placer mining claim. So, there is a plat that created that specific parcel. Here is the zoning map, the stream corridor is following right along through here. It looks as if the stream is going into D10, but that is just the fault of the old map. The stream corridor is actually moving right through this area, so the zoning of this privately owned section of the creek is both rural reserve and industrial. Here is a
diagram from the applicant that shows the main gravel bars in that section. My understanding is that they have been mining a number of them, but as it is described in the staff report, they are not following this even or odd year approach that was laid out in the original 2006 permit. They have primarily been mining the same gravel bar each year because the stream is replenishing itself so rapidly each year.

Brief Background: Lemon Creek gravel extraction case number was 2006, but it was approved in 2007 for a 5-year period, so that 5-year Conditional Use Permit expired in June of this past year. Code requires a full new Conditional Use Permit, so that's what brings us here today. Okay, and I am going to stick with that image and go through some of the specifics of the staff report. Again, with the project design, the applicant has a new approach with mining the same gravel bars. The applicant is utilizing a steel ramp from 3 different access points along the creek rather than building a causeway, which was what was first proposed in 2006. The biggest part of this review is concerning bank stabilization, bank protection for properties downstream.

CBJ Engineering has put a tremendous amount of time and effort into designing detailed conditions that protect the downstream properties. I won't read over the conditions. We have 32 conditions on this project. So, I won't read each one of them individually. I am just going to highlight the main sections. So, the bank stabilization protection of downstream areas is definitely a key component and I will go into the specific highlights of that on a later slide. So, there is a game plan that must be submitted, inspection reports, there is a bond associated with this, and a lot of conditions regarding specific staking and preserving vegetative barriers to ensure the stability of the slopes. Another major issue in this proposal regards traffic and the haul route, and protection of the road along the corridor. We have a condition to……

We have conditions that stipulate that traffic must go through the established industrial area along Anka Street and on to Glacier Highway. Traffic is prohibited from going through the Davis Avenue residential area. You will see a number of concerns listed in the staff report from CBJ Engineering, CBJ Streets, and DOT regarding incidents that have occurred over the past number of seasons where gravel has spilled from the trucks, water had spilled from the trucks and that has resulted in icy road conditions. So, that has been a bit problematic. That has led to another series of pretty specific conditions regarding drainage time for the truckloads to make sure that the water is drained out, conditions to ensure that the gravel is quickly, rapidly picked up along the road, if there is any incident whatsoever. So, 7 conditions regarding that issue).

The next thing I want to talk about is noise. I want to go back to the zoning map. This is adjacent to a residential area. This always creates challenging issues, when you have an industrial area adjacent to especially a higher density residential area. You can see this is adjacent to D10 and D15. There is no question that gravel extraction is going to be a noisy endeavor. You’ve got excavators, trucks loading in the creek and you have it further exacerbated by the fact that it is in a valley and that noise may echo and reverberate. The difficult thing in this situation is that, again, because this is adjacent to a major industrial area, there is noise funneling through this area from a variety of industrial uses. So, what we have done on this permit is to just reduce that noise impact as best we can with pretty tight restrictions on hours of operation. We have proposed operating hours of 7:00 a.m. to 6:00 p.m. on weekdays and 9:00 a.m. to 6:00 p.m. on
Saturdays and no activity on Sundays. We also have a requirement that the applicant can operate for a maximum of 40 days per year. We have a further restriction, which overlaps with habitat issues that states the applicant can operate only from, I believe, December 1st through March 15. The applicant operates only during the low flow time of the year anyway. So, it is necessary for fish habitat, but it also provides some protection for that surrounding neighborhood.

Another issue worth noting certainly is Public Health and Safety: Despite the fact that this is a privately-owned section of streambed, it is certainly used by the residents. People will go out there to walk their dogs, play in the creek, various things like that. The applicant will probably tell you that shouldn’t be happening under any circumstances because it is privately owned, but the reality is that it does happen and, therefore, we are going to avoid creating a public nuisance. So, there is a condition requiring very specific warning signs and furthermore requiring that slopes have to be graded through a gentle slope to not cause any further safety issue.

The next issue I want to address is habitat. We had a very extensive review on that component of the project. CDD hosted an interagency meeting with a number of different resource agencies as described in the report. The first thing that came up out of that meeting was the need to adjust the timeline. This project requires permits from the Corps of Engineers, from DEC, from Fish and Game, and they are all on different permitting cycles. So, the original proposal for this development was to have a 10-year permit. At the applicant's request, we reduced that to six years. So, CBJ’s permit would be timed more appropriately with Fish and Game, Corps, and others. So, we reduced it to 6 years and we reduced their total gravel extraction amount accordingly to 240,000 cubic yards. These are the main issues regarding habitat or placement of large woody debris. Large woody debris is very important to create side habitats for spawning salmon, for salmon fry during their upstream and downstream migrations.

So, it was very important particularly to the U.S. Fish and Wildlife Service and also to the Wetlands Review Board that there was a specific condition regarding placement of that large woody debris and fortunately, the applicant has been retaining this woody material anyway throughout their operation and in doing so, is recreating habitat at the same time as the gravel is being extracted. So, what we wanted to do in this analysis was to formalize what was happening already, which led to the condition that you see here regarding retaining that large woody debris and firmly anchoring it into the stream. Another issue that came from the U.S. Fish and Wildlife Service is regarding specific field staking of the excavation area. CBJ Engineering was focused on field staking of property lines and assuring that gravel extraction kept a safe distance from all the other property lines.

We have an additional condition regarding staking that is very specific to protection of the stream. That condition states prior to the commencement of mining and prior to gravel bar coverage with snow and ice, the applicant shall field stake the exact excavation configuration and setbacks from flowing water. The applicant, I’m sure, will describe to you how the extraction area that is laid out always stays 10 feet away from flowing water. Because they have access design with this ramp system, they have a steel ramp coming down from the different access points and then they have steel ramps that connect them between the gravel bars. The equipment is not actually in the creek. They are operating at a low flow time of the year. They
can go directly to these dry areas without getting into the creek. So, this condition is designed to stake out those areas in advance to ensure that water quality is maintained and to reduce sediment into the creek.

Another issue that came up with Fish and Wildlife Service and with the Wetlands Review Board was regarding a maximum annual gravel extraction amount. There was a pretty big discussion about how much gravel can be taken out in any one year without negatively impacting the stream. Unfortunately, there isn’t good data to answer that question. Both the resource agencies and the applicant acknowledged it but we just do not know. The conclusion was that you should take a conservative approach to that to protect the stream until we have firm data indicating that you can go with higher amounts. Fish and Wildlife Service suggested 25,000 cubic yards per year. Wetlands Review Board and other resource agencies considered as much as 50,000. So, our condition is going for 35,000 cubic yards per year to be safe.

The applicant has a lot of information in the application regarding the DEC-401 certification process. There are a lot of conditions in that regarding stormwater protection, protection of the creek from contaminants etc. So, the applicant already has to follow that. What we did in this review was to pick out a couple of the key elements from DEC’s conditions and adopt them as our own because they relate specifically to the habitat standard in CBJ code. So, those two conditions regarding prohibition on on-site fueling or equipment maintenance performed within 100 feet of the creek banks - this includes fueling or maintenance of portable equipment such as generators and pumps and there shall be no on-site storage of fuel or other chemicals.

The next thing to go over briefly is the discussion with the Wetlands Review Board. The Board met following the resource agency discussion. - The board highlighted many of the same issues, a lot of discussion about large woody debris. The other discussion that the board was very focused on was the timing window. The applicant is allowed through Fish and Game permit and repeated here to be within the creek from December 1st though March 15th, but there is another subpart of that condition that says in-stream work to connect the excavated sections of the creek shall be allowed for one 7-day period between May 15th and June 15th. The Wetlands Review Board was very concerned about that because that, from their perspective, was the worst time for equipment to be in the creek, that is when salmon fry are migrating downstream. The applicant explains that they have never been in the creek at that time, they don’t want to be in the creek at that time, its high water flow, it is not good for their equipment, but this comes from a condition from Fish and Game. Fish and Game wanted to have that allowance for them to be in there in that time, in case the stream wasn't naturally reconnecting itself. SECON explained that that has been happening anyway, the creek has always been reconnecting itself through the various extraction efforts in the creek, so they have not had to go in there at that time, they don’t want to. At the same time, they didn’t want us to take that timing out of the condition because they didn’t want CBJ to be in conflict with Fish and Game, so that is why we left that in there.

That wraps up the habitat section. The other challenging issue in this review is neighborhood harmony. We talked about that with noise, so I am just going to expound on that a bit. Again, we have got the River's Edge Condominiums. We have the D-10, D-15 residential area and there is no question that this is a noisy operation and very disruptive to the neighborhood when it
happens. It always puts CDD and the Planning Commission in a difficult position in situations like this because this residential area was developed after development of the industrial zone, particularly the Condominium Development. As I mentioned before, you get noise from any number of industrial sources through this area, so it’s a tough one. What we have done was to minimize the impact as much as possible by putting tight restrictions on the hours of operation, restriction on the number of days of operation. One thing that the Planning Commission might want to consider if further restrictions need to be made to protect neighborhood harmony and reduce neighborhood impacts would be to further reduce the number of days of operation; right now, the condition says a maximum of 40. The Commission may wish to consider lowering that to 35 or 30. I’m not sure what number might be appropriate. So I’ll just toss that idea out there for you. That’s not the current recommendation.

Other conditions designed to minimize neighborhood impacts again are restrictions on the truck traffic, making sure that the truck traffic goes through industrial area, specifically prohibited from Davis Avenue and we have the condition regarding warning signs for the development.

–That leads us to public comment. Two items in your blue folder, from downstream neighbors concerned about property damage. We have a public comment that was received before the staff report was finalized that I described in detail in this report. This neighbor has stated that she has damage to her home. She has cracks in her foundation that she believes is a result of this development and she has described the very serious noise from the operation and she is also concerned about damage to the habitat. I forwarded her comment to CBJ Engineering and to the applicant for their feedback. CBJ Engineering responded that they support this development because they feel it is really necessary for flood protection. Gravel continues to accumulate rapidly in the stream. The stream has been channelized for a long time, there is a buildup of material and from their perspective, if gravel extraction is not allowed to continue in this area, it’s going to result in serious flood damage to the surrounding properties.

Regarding property damage, the applicant responded that it would really take a professional survey to determine whether extraction was the cause. The applicant did state that they do not do drilling in the area. It is strictly the excavation activity, which again is loud, but theoretically should not be damaging foundations.

We also noted another development in the area, gravel extraction right on the River’s Edge property that occurred a number of years ago that we didn’t know if the neighbors were aware of. One could easily assume that that activity was part of this gravel extraction Conditional Use Permit when in fact it was not, so that is why we brought that up. The bottom line is we don’t know, we really have no proof of what could cause property damage to this neighbor's home. Some very valid concerns were raised regarding noise and other impacts. We have tried hard to address those issues with quite strict conditions in this review.

I want to wrap up with a brief discussion of the Comprehensive Plan. The Comprehensive Plan designates this parcel as heavy commercial and light industrial – the definition does include trucking, it does not include resource extraction. Resource extraction is included under the definition for heavy industrial use. So, the application does not strictly conform with this
definition. CDD's perspective is that it meets the intent of a heavy commercial/light industrial designation with all the restrictions we have placed on it regarding hours of operation, traffic, etc. Again, that is our summary of why this meets the intent of the Comprehensive Plan. Four categories of conditions, 14 conditions regarding the annual grading permit and bank protection, a number of conditions regarding project expiration, dates and time of operation, a number of different conditions regarding truck traffic, street maintenance, making sure the roads don’t get icy, and then the conditions regarding habitat protection.

Ms. Lawfer: With regards to Condition 19, it talks about no more than 35,000 cubic yards. If the permit is for 6 years and no more than 240,000 cubic yards. If you did 35,000 for 6 years, that is only 210,000, so there is a whole year worth of extraction that is getting lost and I don’t know if that is an oversight or if it was actually closer to 7 years. I am not sure how that works.

Ms. Camery: That was an oversight; I appreciate you catching that error. We changed the annual gravel extraction amount to 35,000 pretty late in the review process, so we did not make that adjustment.

Ms. Lawfer: So, that’s 210,000. Then, Condition #26, I just had a question because it says that the applicant shall immediately respond to any additional clean-up requests during the from…? I think I know what the intent is.

Ms. Camery: I think the missing word is operation, …respond to any additional clean-up requests during the operation from the Project Engineer, CBJ, or ADOT. I’m sorry for that.

Mr. Watson: Could you tell me how many additional conditions we added to this from the last time we heard this application?

Ms. Camery: The original review in USE2006 0054 had 26 conditions. We are now up to 32. Just a quick comment on that - Often times, we will just keep different project elements within the project description. We made a very specific decision to pull out the conditions, all these little details, and list them as conditions, so they could be actively monitored.

Mr. Watson: Has anybody kept any kind of a record on the number of complaints from the neighbors on noise since the original application was filed or has anybody provided you with that information?

Ms. Camery: I do not have that information.

Mr. Miller: I remember when this was in front of us last time and I was on the Wetlands Review Board at that time. At that Conditional Use hearing, I remember there was a lot of information given to us about the Inter-Fluve report, what that was, and why it was really so important to mine this gravel out of Lemon Creek. I wonder if you could go over that a little bit just to help refresh my memory and, as I recall, the gravel is traveling downstream and it is filling up Lemon Creek and it is causing potential flood hazards downstream. I am certain that you know a lot more about it than I do.
Ms. Camery: Sure, thank you for bringing that up. In 2004, City Engineering Department commissioned a study by Inter-Fluve Inc., a Hydrology Analysis of Lemon Creek Corridor. It is a really exhaustive report. It is huge. It is available through the CBJ Engineering website. I didn’t include it here because it’s detailed, it’s a big three-ring binder in my office. That report delineated all these different accumulations, deposition zones, and erosion zones in Lemon Creek from way up in Hidden Valley all the way down to where it meets the channel and identifying areas of rapid bank erosion way, way up the valley and then explained where that material was accumulating, specifying very specific pinch-points in the river and the creek, and the report was designed to assess flood hazard and flood mitigation. Gravel extraction on this specific stretch of the creek was specifically identified as a necessary measure to reduce flood impacts on the creek. There are a number of other measures. One was removal of the Ready-Mix Bridge, which has already been done. I cannot remember the other measures. Another component of this is stabilization of those banks way back in Hidden Valley. Ironically, SECON is mining its own property, SECON'S property is eroding so badly and they pick it up downstream. In dealing with flood concerns, then you really need to get better protection for those upstream banks, but in the absence of that, mining from a hydrology perspective really seems necessary in this area. The stream has been channelized for a long time.

If it weren’t channelized, it would naturally be meandering and distributing its gravel over a much broader area and you wouldn’t have the flood concern, but because it’s channelized, that material has nowhere else to go and it’s piling up badly. That is why CBJ Engineering is advocating for this development so strongly. At the same time, adding all these really extensive protections to ensure that extraction does not undermine banks.

Mr. Watson: Could you go back to the slide that shows the stream from where it turns right prior to where the new condominiums are down to the bridge?

Ms. Camery: The imagery?

Mr. Watson: Yes, that would be fine. The bridge is just slightly to the left of the edge of the screen?

Ms. Camery: The Ready-Mix bridge, yes, it would be quite a ways downstream actually. Yes, it is literally off the photo.

Mr. Chaney: I just want to make a quick comment. I think Teri gave an excellent overview of the issue. The condominiums have been constructed roughly in this vicinity here and the reason that Lemon Creek Valley is so flat is because Lemon Creek used to meander back and forth. This area was the mining claim; gravel was extracted from that area decades ago and the banks have been armored, as she mentioned. In addition to that, we have added all this development on both sides of the bank, so now we don’t want it to meander anymore, so all of the bedload is being deposited right here, and then there is the bridge that is just off the slide, which we are not going to replace anytime soon, so the water has to go through there. The point I wanted to make was the developer of the condominium project had an incident where the river was undercutting
the banks and so, they did a gravel extraction project up here and then very soon afterwards, placed a significant amount of rip-rap along this, continuing the channelization of the river, so that may have been some of the vibration and noise that residents of that condominium experienced, so just thought I’d point to the location of that. Can you point out where the actual project is taking place?

Ms. Camery: It’s basically four main gravel bars, likely SECON can explain this better than I do, but my understanding, based on this outdated image, these are the four main extraction areas.

Chair Satre: We can have the applicant point it out when he comes up so we can capture it on the record. Thank you Ms. Camery for the presentation. Unless there are any further questions for staff at this time, we will go ahead and move on to public testimony. The rules of order allow the applicant to come up first, after which members of the public can come forward, and the applicant has a chance to respond at the end.

Public Testimony:

Mike Short, I’m with SECON. I would like to answer questions right now. Teri has done a very good job in briefing about the project.

Chair Satre: Before we start out with questions, there was a little bit of confusion before you came up. I know the photo that’s behind you is outdated as Ms. Camery pointed out. Could you point out the general areas of extraction for us?

Mr. Short pointing to the map explained where they have been doing the extractions.

Mr. Miller: About how much gravel have you been getting a year?

Mr. Short: I think the maximum we have extracted in any one year was just under 10,000 yards; getting like 9700-9500 yards out of it.

Mr. Miller: And how many days did you operate to get to that?

Mr. Short: It varies each year depending on whether and how the operation happens down there. I know this last year we initially started to get in there and the ground wasn’t firm enough for us to be down on the gravel bar, so we had to wait until it firmed up and then were able to access it and go in there and extract the gravel. All total, it is ranging, looking at the records, anywhere from 10 days to 2 weeks.

Mr. Miller: So, it’s my understanding that you are excavating out the centers of these gravel bars and then in the spring, when the water comes up, it floods in, and then re-deposits gravel back in the hole that you excavated that winter and so basically if you took 10,000 yards out of a doughnut hole in one of those things, it fills back in with 10,000 yards the next year. Is it your belief or are you keeping up with the gravel that’s coming in or…?
Mr. Short: No, but in talking to some people around there, it is still accumulating in the bars there. I believe one of the city engineers made comment when he was sampling up there closer to the State Bridge _____ he states it built up about 3 feet there.

Mr. Medina: When you made your presentation at the Wetlands Review Board, I believe you passed out some water quality reports and if I remember right, you were well within those limits, am I correct?

Mr. Short: Yes, on both turbidity and the solids. There were no solids collected.

Mr. Watson: So, right now, you are pulling out 9500 yards a year for the last three years, more or less, what you put in the report. So, the concern with Fish and Game is that at the end of your timeline in the creek there, the natural flow of the water fills the holes back in. That is the way I understand it.

Mr. Short: Yes.

Mr. Watson: So, if you have only been pulling out 9500 yards a year and your plan is to pull out basically three times that many, so you would obviously be digging a lot deeper and at least to my mind, you’ll be digging a lot deeper in those sand bars, so would the river be able to re-channelize itself, if you mine that to the maximum, 35,000 yards a year.

Mr. Short: As far as what is the maximum, I don’t have an answer to that. I don’t have information to give you an answer on that. As far as the depth, there is a layer of clay about 10 feet down that undulates underneath that creek bottom that basically we don’t get into. We just extract the gravel just over the top of that.

Mr. Watson: I have seen you guys working down there over the years.

Mr. Short: I don’t see that we would ever get in there and extract the 50,000 as originally proposed. I just don’t see the techniques that we are using right at the moment being able to extract 50,000 yards, that’s why 35 was an agreeable number. Is there 35,000 yards in the existing bars there to extract? I don’t have a solid answer for you on that one.

Mr. Watson: Are you using a backhoe to pull it out or you using a front-end?
Mr. Short: We are using an excavator. It is a large one.
Mr. Watson: All right, no problem. I was just curious. I have seen both down there.

Mr. Short: Teri has some pictures in the handout she had, I believe it is on page 7.

Chair Satre: This is on the Conditional Use Application, your portion, Attachment 4?

Mr. Short: Page 7, the lower picture there, if you look at that, that is the extraction pond, the calm area and the wood there, that is the woody debris from the extraction that was set up at the sides and this is in the spring when the melt waters are rising in the creeks where it is now flooding the extraction zone, which is basically the upper part of the picture there. The main
channel of the Lemon Creek is on the far side, the upper side of the picture that is flowing through the pond that we extracted there. It is coming out in front here in the photographs and that woody debris is laying right there in that ridge beside the extraction zone and you can see that there is basically a 10-foot buffer that we try to leave between any active creek and/or reduce the extraction.

Mr. Watson: Do you have any knowledge of any other mining permits upstream of where you are operating now between there and where your operation is back up in the valley?
Mr. Short: In the creek?
Mr. Watson: Is there any other mining permits for extraction of gravel on this creek between what we are looking at now and upstream to where you are currently operating your…?
Mr. Short: No.

Ms. Grewe: You noted that in recent times you have operated 10 to 14 days a year and on page 5 you note gravel extraction will be limited to 40 days per year, so I am just wondering if SECON would be opposed if we try to lower that limit, like what is your range here or is 40 your bottom line?

Mr. Short: I would prefer to leave it at 40. Whether we are actively doing it for those 40 days, we may not be, but there are going to be stretches in there such as if we end up with, like if it freezes up real fast and we can’t haul, if we just can’t keep the road safe, we will stop and wait until the weather turns and then we will return to it. If you put that 40 days in there, are you going to allow me to operate outside of that, if I do shut down for safety, that would be a concern and when you start taking, if we do end up, let's say we do have a year that we mine 20,000, by simple math, that should give me 14 to 28 days there to move all that gravel. It takes so much time to use the excavator to dig up the gravel and then haul it down to our other yard. Is reducing the time…I would rather not.

Chair Satre: Mr. Short, you’ll have a chance to come up after public testimony to address any items brought up or to answer any further questions. Thank you for being here this evening.

Michael Williams. I live at 5846 Lemon Street: Some of you know me, some of you don’t. I am just going to point to where I live on this map. Right here, this piece of property that is at the end of Lemon Street, it’s basically a huge mother-in-law apartment above a garage. Basically, I am in favor of utilizing raw resources and the applicant having access to that; however, my concerns are about the neighborhood, the tranquility of it, and also the traffic. I think Teri did a great job in some of the stipulations and things that they put on there, but I also would like to expand on that a little bit. Last year, it was about maybe 10 above 0, the wind was blowing, and I was coming through basically via Western Auto headed to my house, just cruising through, what I call, the entrance to the Industrial Anka Street there going through the traffic light and I watched some trucks come through the intersection ahead of me and they weren’t dumping like little trash cans of water on the roadway while they slowed down to make this turn to go to Concrete Way where the new Breeze-In is. They were dumping swimming pools of water. I am not animating or being brash here, it was bad and that’s illegal. There’s not people that can dump material like that on the roadway. You have to have a permit to do that and added to that,
it’s winter time, it was creating ice and slush conditions and they were just going and going and basically I sent an e-mail off to the Assistant City Manager, which is now the Manager, and Mr. Swope..

I am not against the extraction of material. What I’m against is some of the behavior and the impact that this area of all the heavy equipment is having on the neighborhood and it’s not just the applicant or heavy equipment operators. I am going to blame the soccer moms and the baseball dads going to Costco and Home Depot, they are all in a rush. It is a very, what I would call, a hypersensitive area and I would just like you to think about that a little bit. I am on a second-story above a garage with 2 x 6 construction. I am well insulated, very well insulated, and I get all the noise and I know that one contractor or kind of trucking outfit has kind of moved some stuff farther towards what I would call the DIPAC Area, but rumbling in the ground and I have read things about earthquakes, it actually happens. At 5:30 in the morning, not this individual, but maybe others, their dump truck beds are tilted up and they are lowering them down at 5:30 in the morning, when they take off, the tailgate slamming against the back of the dump truck bed and it reverberates like a giant gong through the entire neighborhood at 5:30 in the morning.

The other thing that I would like to address is about complaints. I have called JPD and JPD says call the Community Development; you call Community Development or you get a phone message and they say, ‘well maybe you should call JPD’. It’s very hard to properly track complaints, because you don’t know who to go to or the agencies refer to each other.

The other thing I’d like to address is that enforcement is almost nonexistent. Mr. Bishop knows that I used to be in a uniform. We even have friends in uniform and writing a heavy equipment ticket is as easy as writing a speeding ticket. I called JPD a few years ago because dump trucks, a few of them at this time, didn't have tailgates, that’s an illegal, that’s a violation. The dispatcher said, "Well there’s nothing wrong with that." I said, "Wait a minute." I said, "I am going to give you my number. I want you to find out, call somebody, or ask somebody if that’s a violation or not, they’re hauling material and they don’t have a tailgate. I’ll wait." So, the individual said, "Okay." So, he came around, a couple of minutes later, he comes back on the phone. He goes, ‘you’re right’. I wasn’t mad because learning has occurred. This happens all the time. People do it. It is not this applicant. It is just the whole area. So, with that said, there are some concerns in the neighborhood and I have to raise my hand and say I do kind of live in close proximity to what I call an industrial area and I have to understand that; however, it would be nice if those people that were in that area understood that they are also in proximity to a neighborhood and that they need to get along. We also need to develop our raw resources or have access to them because Juneau has a limited amount of raw resources and we need those because we build things and we are trying to do that. So, I hope I helped you out. I don’t have any answers to everything, but when you say Mr. Watson, when you ask how many conditions have been put on them, they have been put on them for a reason. The last big project I worked on was ___ at Greens Creek. After that, I went to school in commercial fish. I know what it’s like to do heavy equipment. I do my own break jobs. I know what it’s like. It’s not the applicant, it might be the truck drivers, also the other people too, but it needs to get watched and it needs to really be monitored closely because it’s a real hypersensitive area. It’s turning into
the hub of Juneau and the other thing to add to this is, I should do an addition here, I’ve got the property, it’s a no-brainer. I don’t want to do it because of the noise and the pressure that this area has. It has got a lot of pressure on it, so as Teri was saying it’s kind of like there is no win-win or lose-lose. You’re trying to accommodate everybody. It is a real hypersensitive area. Again, there’s a lot of noise. There’s a lot of traffic. There are a lot of users from everybody and it could use some more enforcement or just people looking out a little bit. I know that DOT is doing a lot of surveying on the road. They are probably going to expand it a little bit. It would be great if they had another outlet, which was further down towards the Western Auto Area and they could come out towards to the Egan Expressway, you know where the Pioneers Home Vanderbilt but maybe not, it’s a ways off, but thanks for your time and I appreciate it and I guess that is it. I do think Teri did a good job. I appreciated the cleanup because it needs to get done, maybe it doesn’t some days but at least the option is there.

Mr. Bishop: You’ve got some issues that you want to see resolved. Do you have any suggestions for conditions that would meet your needs?

Mr. Williams: Right off the bat with what Teri put in there, I was really impressed to see the sweepers at the end of the day and some of that, but I don’t know what the answer is. I like the time constraints from 7 to 6, that’s better. Holding the trucks for a few minutes for everything to drain out, that’s better too, but again it’s just not this applicant or this person, it’s the other truck drivers, it’s the other companies, it’s also the individuals, the soccer moms, and the baseball dads zipping in and out of there too with stuff from Home Depot. It’s a very hypersensitive impacted place and the other thing is it could use some enforcement. We all see it on the road too and you could sit there and just like watch it. I know what to look for maybe, but it’s common, to me mud flaps are a violation. Everybody should have mud flaps. Everybody should have a tailgate. All the lights should work. License plates should all be visible and we should be able to see them. If you can’t see them, they need to be in a place where they don’t get dirt on them when they are posted. With that said, I actually do go down in that Creek a little bit in that area and it’s interesting because this summer was just one of the rainiest summers we ever had, but I am able to take a dog down there all the time. It’s not like it is flooding, but that’s not to say it can’t flood because it is filling in, but there is a lot of sand dunes. I haven’t ever seen it that high and down farther where the bridge is, close to where the Breeze-In Area is, the water is deeper down there and as you go farther down towards what I call where Concrete Way is, it gets in there, but I don’t want to be one of those people that say not my backyard. I would just like them to be appreciative of my backyard when they’re around it.

Michael Dau, I live at 1901 Davis Avenue, A10, in one of the River’s Edge Condos and my wife and I also own A11. First, I would like to make some clarifications on the map if I may. Up here is where they did their first excavation, the one that they were saying helped with the wall that would be……

Chair Satre: And I believe that is a different operator.

Michael Dau: Right, but excavating the gravel here is what basically caused the heavy water to run down this channel instead of this channel and it was what caused the erosion and they have
also dug here, they have dug here, and they dug down here and the water is no longer this wide. They were digging at least 20 to 60 feet from the bank on our side. I live right there. My deck looks right down at it. So, I just wanted to clarify that first. We’ve lived there since they built them for like about 6 years and so I’ve been there the entire time and in the first year it was not as bad. There was just noise and a couple of our tiles came loose off of our floor in the kitchen, but every year thereafter especially when they got down to the lower middle one here and they were having trouble getting through the ice layer of gravel and what they are doing is that they are not just using an excavator and a dump truck. They actually had a CAT with a ripper on the back of it. They brought down a hydraulic ram until they broke out a chunk of ice the size of a city bus to put aside so that they could get to the gravel. I sat there for three days and it was like an earthquake in my living room.

So, it’s not just noise, it is terrible, terrible vibration. We had two independent contractors in, in these last six months because we were doing some work in our rental units and I showed him the damage. We’ve got major cracks along every support beam. My fireplace has moved a quarter of an inch back from where it was mounted in the wall and I talked to them. They said normal settling usually happens in the first or second year. This all happened in the last couple of years from banging on the ice, trying to break through to get to the gravel to get to it and they are crossing the water where it runs because I showed you the middle one that they dug, if you guys want to come out, I could show you all four holes. You could see they had to drive across the water and the minute they started digging, the water runs into the hole. So, they are digging in the water. It is not just a dry hole like they seem to be saying. The two contractors both said, and you can see like over my fireplace from the ceiling all the way down to the floor, the main seam has come apart, but it’s not just cracked, it’s actually a shear where the paint is still trying to hold, but you can see where it’s lifted up and gone like this, it’s a shear tear and not just a crack and it’s still there. We used to have to vacuum up the dust everyday off the bathroom floor where the main support beam kept cracking more and more.

We were working with the board and the management company at one time trying to get a hold of SECON to get some relief for the repairs on the place and they said well, okay, the developer has more knowledge of that than we do, send their guys in. They came in, they took pictures of everything, the tiles, all the cracks, everything, supposedly submitted them to SECON and we didn’t hear anything back from it, then all of a sudden the management company guy came back to say ‘well, they just said it’s normal settlement’ and they weren’t going to do anything about it. So, we’re still trying to pursue that from the last time.

Other than that, I just only want to say that it’s not just noise, trust me, it's like a very violent earthquake. It was for three days straight because I was there the entire time in my living room. Thank you for your time.

Phil Gutleben, I live in the River's Edge Park Condominiums and I am in Unit B4. I have lived there about a year less than Mr. Dau and I am currently Vice President of the Homeowners Association there, but I’ve only been on the board less than a year. Since I am retired, typically, I am not here in January and February. I have not witnessed the disruption. Interestingly enough, in my unit in B Building, I have had no damage. I want to point them out here on the map [explained the location of the A and B buildings and where Mr. Dau had referred to as the
area of mining. I regularly walk my dog down there too and when they were staking it last December, I believe, and then when I got back I saw the pit that was there and I would say that the pit was within 20 feet of the rock wall and no more than 60-65 feet from the back of the building; so, it is really close than what Mr. Short says that its hundreds of feet away. It’s closer than that. Interestingly, when they had the bank give away upstream from the B building, that was pretty close to me and there was some noise on one night but as far as I am aware, there was no structural damage or cracking from that operation in the B building, which was much closer to that. So, a little bit about my personal involvement there, but our Homeowners Association is quite concerned about the lack of response from the contractor in terms of what Mr. Dau mentioned, where they wouldn't even come over and look at the damage and so we haven’t had a chance to have a meeting since this came up, but we’re probably going to recommend, at least I would suggest that as an officer, but since we have had no action yet, that our members take good pictures of their units before this happens again this year and if we can’t get some condition added to that about staying further away from the building, I would suggest that we appeal it to the City Council. So, that’s all I have.

Mr. Watson: Given the information you’ve heard this evening with regards to the potential of more serious damage to either side of the bank of the creek, if gravel extraction doesn’t take place, as a homeowner, not necessarily as a representative of your association but as a homeowner, what would you have in the way of suggestions to make it more harmonious between the two groups? If we were to approve this tonight, it’s sort of a catch-22 situation. It appears that if that area does not continue to be excavated, there is going to be some potentially flooding and certainly since you are on the cut-bank side of the creek there, it would more likely affect you first. So, do you have any suggestions that might make this work better for both sides?

Phil Gutleben: Well, that’s right, I did a little research myself and I found out that the mining started there in World War II and then stopped maybe 25 years ago or something and then the stream started to fill up again. But in terms of suggestive things, it seems to be that this ramming maybe is what causes damage. I don’t know how you get through the ice otherwise, but it seems to me that if you are within 60 feet of that building, the stream is probably 20 feet below the level where our property is and there is a trail on the top part, way up the bank. That’s about 10 feet from there to the water level if it is not in flood stage and then another 10 feet up to the rear of the condominiums, vertical rise, but 60 feet is way too close in my opinion. They need to stay further away and it is interesting that there has been very little if any damage to B Building because it has been further away unlike where I pointed out on the map again – the A Building sits here [pointed to the map] is right up here and this is the whole condominium complex here, this is really close.

Tom Whitely, I currently reside at 8161 Thunder Street, but I am still an owner of 1901 Davis Avenue #89 and my wife and I lived there for about 5 years and I just needed to reiterate what Mike was saying with the drilling and having a large excavator in the first parts of the morning, slamming its bucket down into a frozen ground literally within a stone’s throw of your bedroom, it’s not a good thing to wake up to especially if you have an infant like we had. What we need to
do is, we need to try to, and I know it’s not going to happen because of the fish habitat and everything there, is the extraction needs to happen when the ground is not frozen solid.

I will say that I grew up on Mountain Avenue and I used to play in this creek every day, which I had no idea was privately owned until today, but I’ve never seen it get flooded or anything like to my memory or show signs of being built up or anything like that and I’ve lived on Mountain Avenue for 18 years. Something needs to be done to help stop further damage to these buildings, because they are a large investment on me and the other owners that are here tonight and that’s all I needed to say.

*Sally Caldwell:* I live in the River's Edge Condo, 1901 Davis, and I am in the first building, Building A, #6, right in the center and I’ve been there about three years. First, I wanted to thank Ms. Camery for a very thorough and understandable presentation and some of the information that you were able to share was new to me and I think new to all of us. I think I can speak for most of us because I know my neighbors. We really love Lemon Creek and I really appreciate the information you were able to share about more detail about what’s happening on the creek, especially, we appreciate coexisting with the habitat there. Our resident black bear visits my deck frequently and you know we watch the eagles eat the fish and that’s real important to us. So, I have the same kind of concerns. I won’t really repeat too much. I appreciate what my neighbors just said. I feel like they’ve given really an accurate presentation of what we have been experiencing. I’ve only been there about three years.

I know what my condo looked like when I moved in. I have taken pictures of the cracks in the tile around the fireplace and in the beams. I happened to be laying a new floor downstairs at the time of the drilling last year and so the contractor that was involved in that showed me the separation that was happening between the foundation and the wall, and explained to me a little bit about how some separation does not have to be a problem, but how as we move down the wall closer to where the drilling is, the separation became of concern, so the separation was larger, and also they explained to me how they were able to see that that was new. So, I think one of the things that we’re saying is that the damage that we’ve experienced to the property was unfortunately, I guess, wasn’t referenced in the report, it was noise that was the concern. Although we did communicate with the contractor, I am not sure why it didn’t show up in the report, but the damage I can say is definitely correlated very closely with the drilling and nothing else going on that might have caused that. It does have the sort of a feel of an earthquake, a small earthquake, when the drilling is going on, sometimes especially when they are trying to break through the ice. Certainly, the noise is not pleasant.

One of the things that concern me is that there is a discrepancy between what we as residents of the area are experiencing and seeing with our eyes and what is being reported to the Assembly. You asked for suggestions and because of the discrepancy and the vested interest that we all have, our different vested interests, and living there and the private ownership of the property and their mission, it might be helpful to have an independent assessment of what is going on. We have people who actually have eyes on saying events are happening much closer and in violation, I guess, of some of the conditions, that something that can be found out, like Mike, the resident said, just by walking down there. So that might be something to consider, to have an
independent assessment of what’s happening there. The potential for flooding, we have had high waters since I have lived there. I haven’t felt the threat of a flood. I am just a regular person. I don’t know that much about flooding and how to determine potential for flooding. I would hope that that’s not just a subjective statement from the contractor and the report that they’ve done some kind of work and had professionals out who can kind of anticipate and ground their concern about the potential for flooding, because as we have a long-time resident say for over 20 something years there hasn’t been any real sense of threat of flooding. So, that would need to be substantiated, if it hasn’t been already. My hope would be that there would be some way to find a compromise so that all the needs and all the concerns can be taken care of. One of the other things I thought about is I understand the days of operation and the hours of operation includes Saturday, which for a lot of residents Saturday is a day off, and just as far as noise, we’re going to be more sensitive to activity on Saturday than we are if we are not even there and that’s just addressing the noise, but not addressing the property damage. I guess this is the final thing, I was wondering if there might be a way and this might come from an independent assessment, but there might be a way of considering other alternatives to the drilling to address the concerns about the potential for flooding. That’s way outside my area of expertise, but I think it is a fair question, are there other alternatives? I really appreciate the time that you’ve given us and having your ear.

Mr. Bishop: Can you describe the drilling a little bit and how long that was going on, and then the excavator trying to smash through the ice? Can you elaborate on what time period that was going over and how long that lasted?

Ms. Caldwell: I didn’t take notes on anything. When it first started happening, I thought it was an earthquake, and it wasn’t until I talked to… I spent 17 years in Fairbanks, so earthquakes, you just kind of put your hands out and try to hold the bookcase up for a while; but when I talked to my neighbors, that’s when I found out it was from the drilling, the noise from the drilling. I didn’t take notes or anything, I assumed that it would be over right away and it continued. I’m not there during the day, during the week, which is most of the time that they are doing the drilling, so I’m not aware of what specifically is happening then. So, I don’t really think I could answer that question well. I can tell you my subjective experience, like on the weekends or on Saturday, it is like an earthquake and it was very disappointing to find the damage to the tile in the fireplace. We discussed with our board what kinds of things might we do here for our property. We have tile in our entryway, tile in our kitchen, and it is all coordinated with the tile in the fireplace. So, it is not like replacing one tile that was put in there in 2006, it’s replacing a lot, so it has quite an impact on us.

Chair Satre: Ms. Caldwell, the one thing we’ll clear up with the applicant is that whether this is drilling or some sort of hydraulic ram. I’m actually pretty certain it wasn’t drilling itself, but there was an activity that is causing the problem. We will get the details of that from the applicant and see if we can get to the bottom of that.

Ms. Caldwell: I appreciate that and again the discrepancy was a concern for me. I know my neighbors are right there with eyes on and for them to describe different equipment than the contractor described was a concern for me. I appreciate it.
Amalia Monreal, I live at the River’s Edge Park Condos, Building A5. I believe that you received the letter that I wrote regarding this issue. So, I moved there in 2006, and at that time, it was really exciting because there was silver salmon along with the dog salmon, I was excited to see it, and I had walked down there with my children and there was another neighbor who had lived there in the area much longer and had said "Oh yeah, silver salmon come up here." That was the last time that I saw them. I saw them one other time in the beginning and then they were gone after the excavation had started again, so one of my biggest concerns of course is it definitely feels like an earthquake, it’s a lot of shaking, it’s really, really loud, and although I was not aware that one of the benefits was to prevent flooding, which of course I'm very concerned about, but it’s the erosion that’s happening to the banks as well. There was a time when two people could walk down the trail, and now there are many places you can only go single file. So, I wonder, with all of that pounding and the extracting, and the water flow and the way it changes, all of that is connected to that erosion, and so I’m wondering, is it speeding up that process? I don’t know have the answer to that question, but it definitely looks very different from what it looked like the year that I moved in, and every year it looks very different. They reshape that streambed and it looks very different. I know...I believe that there are less salmon every time I go down there from the first year in 2006 when I moved in and every year after, there seems to be fewer and fewer. I’ve brought that concern up before to Fish and Game. So, it’s a beautiful area, I love the area, I feel somewhat responsible as a creek caretaker, my Tlingit name is _____ Mother of the Land in the Area, and I am Auke Kwan, so we’re one of the originators here, originating clans. We have caretakers. Every stream had a caretaker, whether it was Montana Creek, Salmon Creek, Lemon Creek, and so this is monitored for litter and for permission to fish etc. So, even when I see someone dumping - someone dumped a mattress and I called. So, I feel somewhat responsible to care take for Lemon Creek along with my neighbors, and so we are very concerned about what the next six years could look like, if it’s going to be the same values, the same damage, less fish, fewer eagles...so, my concern of course is for the habitat. I don’t want my home flooding. I thought it was very interesting that someone came up and spoke about living here for 18 years and playing at that creek and it never flooded. So, I think it’s all connected, whether it’s the erosion and the extraction that’s going on that may be expediting that erosion, but I thank the Assembly for being able to hear us this night and for Teri, who was very helpful. Thank you.

Mr. Chaney: We looked at this noise issue very carefully as staff and on Attachment 30 in the middle of the page, we specifically asked Secon about drilling. This is the letter from SECON that states SECON does not drill or make drilling noise from our activities....

Chair Satre: And I think we very much want to get to that with the applicant later on.

Mr. Chaney: You realize that staff was not aware of this issue when we made a recommendation?

Chair Satre: Yeah, and we’ll certainly address that here shortly. Thank you Mr. Chaney.
Cynthia Dau, we are owners of A10 and now the proud owners of A11. I think now you all kind of understand that this is not a noise issue. We all agree that if flooding is to occur, we need to do something about it; we live there. Flood control was what was served to us when we bought this property, we were the first ones in, this was how it was served up. We thought, ‘Oh! My goodness, it’s a new condo, there must be a problem. I’m glad somebody is on it.’ Flood control would look like ‘Oh! My goodness, we better get down in there with the heavy equipment and we better start stripping away a channel.’ That is not what has been done in 6 years. They go into the water. You know they’ve gone into the water because the dump trucks come out spewing water and they did pits which creates eddies. We have seen the river change. They do not haul away logs, they do not move stumps. This catches even more debris coming down the river, which in turn changes the course of the water. You can see on the map. The water used to run on the Costco side here continually. It has not done so for three years. I would suggest maybe somebody look at that.

In the approval for them to be in the river, one, yes, there is continual heavy equipment in the water, spilling water to prove a point. They say they have approval to be in there September through March, is that correct?

Ms. Camery: December through March.

Ms. Dau: December through March. December is still raining. I can look down. When it’s not frozen, there’s still a lot of water; however, you know it’s freezing. They can’t just go in with building…they dump a lot of dirt on the Costco side, they create a ramp, they cross open water. They might sit on a spit for a day or two, but then they have to break through what’s frozen. I suggest you have a child jump rope on your bed at 7 o’clock in the morning, bounce on your kitchen counter, and bang garbage can lids all at the same time; it will give you an idea of what we go through every year. I understand heavy equipment is going to make noise. It’s the vibration. I understand we were asked to take pictures. I’m not a photographer. I took great pictures this year because I knew what was coming. The picture I took over here does not show what its split here. The picture I took over here; now when I take a picture, I can’t get the light to show the new split in the seam. We now own Unit 11. It has never had damage other than minor settling like a nail popping or something. We now have a brand new in the last six months and reportedly from our tenants immediately after the river dredging, that’s a split above the stairwell and I am not exaggerating by saying it’s almost a quarter-inch split. I have no idea what is happening to the structure of our buildings. Actually, I would be afraid to send a contractor up to look and that’s not something that I would just have done. We had two contractors come in for different reasons and at the same time, asked them their opinion on the ongoing and annual damage to Unit A10, in the first year, maybe it was settling. This is not coincidence and we’ve had two contractors say this is not coincidence. The reason we have not filed or followed up or pushed further is because we trusted our board and our association when they said, ‘We’re going to have SECON come in and take a look at it.’ Interestingly enough, that happened in the first year or so. They brought in their video cameras and their microphones and their cameras and they assured us that, ‘Yes we see this, yes this is a lot’, our tiled floor actually, the grout isn’t cracked on our tile floor, the tile floor lifted. When you walk on it, it moves like bubbly linoleum. We were assured that they were going to fix it. Then Century 21, which is
now Exit, Duane and the property manager came back and said ‘Oh my goodness, they want paperwork.’ We all filled out paperwork and submitted it. Nothing happened, nothing happened, nothing happened except every year, more damage. Now, we are told ‘Oh, that’s normal settling.’

I don’t believe it for a minute. I have lived here all my life. I have lived in multiple homes. I have never seen the damage that I see in this building and it’s a new construction. I think the last point I want to make is if you look around, it is really important to know that there are 7 of 21 units represented here and this is on pretty short notice. That is very enlightening to me. Thank you for the opportunity to speak.

Chair Satre: Thank you very much for being here this evening. Any further public testimony. We will go ahead and bring Mr. Short back up. I know we will have a few questions for you, but are there any specific items you would like to bring up in response to the public comment this evening.

Mr. Short: As far as being in the water, we aren’t allowed to be in the water. Yes, there is water in the excavation sites when we dig the gravel out. There is some inflow, so there always is a pond that you can see in the pictures that I submitted during the excavation. It’s something that Teri through the CBJ and DOT has put some conditions on it as far as allowing the water to drain out the truck boxes before they leave the site and hopefully that mitigates some of the water leaving the site.

I am still confused as to the drilling. I personally do not know of any drilling activity that we have done down there. I do know that we have had a dozer down there to clear off a path down there, did the powerful dry gripping with the dozer. I guess that I don’t have an answer for that one.

The excavators, what I do know, has been used to excavate the material out of the river bar and load it into the trucks.

Damage to the properties, I don’t know how to approach that. I have no reference on it myself. I found out today that there has been some paperwork files with SECON. From what I understand, the last it was taken up was that there was no response back from the parties involved. I don’t know where it stands today, right now.

As to the noise, I don’t know how to get around that as far as excavating the frozen ground I don’t have an answer.

Chair Satre: Mr. Short, I want to get back to the drilling question. I know that some of the members commented that maybe it wasn’t drilling, it was some sort of hydraulic ram, there is something that’s beyond a river on a dozer; it’s beyond an excavator. I’m just trying to get down to the bottom of this so that we could be sure that we’re all talking about the same things here. Is there anything else that your group has used down there to help break up the ice and the gravel?
Mr. Short: Previous year to this year, I personally don’t know. This year, no, the only equipment that was down there this year was the excavator, a dozer, and then the dump trucks,

Chair Satre: And you guys are obviously in no way permitted to do any sort of drilling and blasting down there?
Mr. Short: That’s correct, there is no permit.

Mr. Watson: How long have you had the responsibility for the project of taking the gravel out of the streambed?
Mr. Short: Just this summer.
Mr. Watson: This summer, so this is basically your first year.
Mr. Short: Yeah.

Mr. Medina: So, based on your answer, you haven’t been in charge of the project during an excavation period?
Mr. Short: I was here for this one that happened this spring, yes.

Mr. Medina: How often were you on site during the extraction process?
Mr. Short: Every day.

Mr. Medina: For how..?
Mr. Short: I work in the office right across.
Mr. Medina: Right, but I mean were you there for like an hour or a couple of hours. Did you make multiple visits during one day or…?
Mr. Short: Visited the site a few times. Actually was in the office every day for eight hours a day.

Mr. Medina: When you were on site, did you witness any particular kind of extraction that you deemed to be questionable? I mean, were you satisfied with the operation that was there, do you feel like it was within the parameters of the permit?
Mr. Short: From what I saw, it was in the parameters of excavating material. I have never excavated material that hurts myself. So, this is a new experience for me. From what I have seen, everything was done proper, right down to, if there was a question in the street such as the city called up and says you need to look at the streets. We actually had a rubber track backhoe out there, working trying to keep the streets clean. Sweepers come on site and sweep as needed. We were being asked to be even more vigilant this year, so we’re willing to comply with it, to make sure that the streets are safe. As far as the extraction, I guess that I don’t have a lot of answers for the concerns that were expressed here as far as the drilling operations whatever they are calling it. If it is the excavator banging the ground, I can understand that makes noise and that would cause some vibrations.

Mr. Bishop: Mr. Short, you said you were on site this spring for the excavation during that period. Can you briefly describe what that involved or what that entailed?
Mr. Short: For me, it was simply going on to see how the operation was going, how they are approaching it. I have seen how they install the ramps that are being accessed through the gravel
bar, how the equipment got down there, watched the trucks coming up out of there, watched them load a few loads, just basically overseeing the operation, how it is proceeding.

Mr. Bishop: So, that was not then...or was that in May 15th through the June 15th period or was that ....?
Mr. Short: No, that was in January and February.
Mr. Bishop: Okay, so it wasn’t really the spring. It was more in ......?
Mr. Short: No, we’ve never...as far as what I understand, we’ve never been in the May window to reconnect the extraction zone.

Mr. Bishop: So, the point I’m trying to figure out is it seems like most of the problems that we are encountering tonight revolve around trying to break the ice, trying to break the rock up, and I’m wondering, from your standpoint, from the contractor, my guess is you’re spending half your time trying to get to the material. Do you have any idea how that might play out if you were to be able to use a period in the summer or the spring time or maybe earlier, in the fall to get in there and work when it’s not frozen. I mean, it seems to me that you will be in and out of there much faster with minimal damage to your equipment and probably minimal impact to the neighbors if that were the case.

Mr. Short: What you suggest there is, it really hits the nail on the head as to the timing of it, when you’re excavating with equipment and this does not even have to be in this creek, as soon as your frost level starts getting very deep, it becomes very uneconomical to continue. So, there is a timeframe in there when the ground has enough frost in there to where the equipment can move around on the sand and gravel out there and yet it’s not frozen deep enough where it becomes problematic. How that time plays out? I don’t know.

Mr. Bishop: Teri, can you tell me, it says here in the Fish and Game attachment, fish habitat attachment #14, that the sensitive time period is March 15th through May 15th for the chum salmon hatching and migration out period. Is that really, does it need all that period? March seems pretty early, there is no thaw yet in March on the stream. You’re barely there. That seems like you are starting pretty early for the chum salmon. Can we pin that down to a tighter category and work with that or not?

Ms. Camery: That is difficult because that condition has to match what’s on Fish and Game’s permit.
Mr. Bishop: Right, I understand that, but working with Fish and Game to try to make something that is more viable for everybody, if that’s a possibility.
Ms. Camery: I guess, we could certainly raise the question with them. My understanding is that those timing windows are established by the fish surveys, habitat data that they have based on fish counts in the area. It’s always a little bit different for each stream. So, the timing windows are very specific to certain areas. So, I guess, based on my experience, those dates are based on some amount of data analysis that Fish and Game has for that stream. So, I have not seen them show willingness on other projects to adjust those dates. I could certainly ask that question.

Chair Satre: We can come back to that again after we are done with Mr. Short.
Ms. Bennett: I am wondering Sir, if you have liability insurance that would allow for compensating people whose homes are damaged by the vibrations.

Mr. Short: Yes, we do.

Mr. Miller: Could you comment on, the first thing here is being in the water versus in the creek. I think that would be important to distinguish.

Mr. Short: In the water, I believe that’s the confusion there. When we go down to extract the gravel, we have to survey and set stakes 10 feet in any armored or stream to the most restricted on the gravel bar meaning that anywhere the stream or armored banks, the rip-rap banks are for the stream, we have to stay 10 feet inside that gravel bar. So, we have to leave a buffer of gravel between that. When we excavate, you are in a creek bottom, so you naturally end up with water entering your extraction zone. When we are digging in there, it is always low. There are some pictures that I submitted that show actual loading the trucks there and in that, you’re always going to end up with a little bit of water in your truck and that’s what leading to the water leaving the site and that’s what we’re trying to cure as far as some way of either…I suggested putting a stockpile on the ground there, but then that in turn violates the Corps permit; we cannot place material on the ground. We have to put it into a conveyance vehicle and remove it from the site. Engineering suggested we simply raise the box and allow the water to drain out of it before we leave the site and that’s what we’re going to do, I mean that’s the condition on the permit now. So, no, we are not in the creek.

Mr. Miller: You just mentioned that Engineering, was it CBJ Engineering?

Mr. Short: Yes, CBJ Engineering recommended that we raise the bar for a time and then after we… reading what he’s saying, basically after we establish a timeframe, you know, based on watching how long it takes for the water to drain out of there and that’s how long we decide to keep the box raised before we leave the site.

Mr. Miller: So, the condition states 5 minutes.

Mr. Short: Right, but I believe also there is a stipulation that it can be changed by their service.

Mr. Miller: So, if it takes 8 minutes?

Mr. Short: Then we have to wait there 8 minutes, it will take a few minutes and he’ll give us a blessing to leave in 2 minutes.

Mr. Miller: The condition for the street sweeper at the end of every day, do you think that will take care of the issue of …?  

Mr. Short: Actually, I believe that the way I worded it that we anticipate having a rubber track backhoe there during the operation every day. The sweeper will be there on call as needed. So, if we feel that the streets need to be swept, because we ended up with gravel on the street, then, yes, they will have to sweep it. If there is no spillage or no gravel on the street, I don’t see the need of simply sweeping the street.

Mr. Miller: So, now the big one here seems is the vibrations. It sounded to me like some of the folks who testified were describing a rock breaker at the end of an excavator trying to break. So, in your experience, what do you think would cause less vibration? Do you think a rock breaker to break through the ice to get you through a small area quick where you could get it out with an
excavator bucket or do you think a ripper on a dozer would? What do you think would create less vibrations, and have you thought that through at all, have you done any type of testing while you are out there working to determine that?

Mr. Short: I think a hydraulic breaker such as you’re suggesting, although would be noisy, when it’s actually being worked; the duration would be a lot less. It would actually chisel a hole down through there and break up the ice a lot quicker, although there would definitely be a pretty definite ringing sound throughout the valley there. Like I said, it would be a lot less than I guess a daily event.

Mr. Watson: Do you subcontract this project out or does SECON operate all of its own equipment?

Mr. Short: No, it’s all subcontracted.

Mr. Watson: One contractor or more?

Mr. Short: Channel.

Mr. Watson: One of the questions one of the neighbors raised was when the drivers are dropping the box back down there, there is a very loud pronounced noise, I’ve heard it plenty of times. So, when you’re dumping the water out of the load and you drop that box back down, is that going to aggravate the situation with the noise? I think it would, but….

Mr. Short: Actually, during the operation there, I believe what he is describing, is what we call an in-dump where it has a flinging gate, and what they are doing is basically cleaning their box by using the gate to slam against the box. When they are hauling gravel, they’re not doing that, they are simply backing up, getting loaded, and then they will simply stay there, tilt their box, and let the water drain out. They shouldn’t be ramming their tailgate against the box to clean it out. I don’t know anything beyond that as far as what was happening there at 5:30 in the morning.

Mr. Watson: One of the things I picked up on tonight is there seems to be a definite lack of effective communications back and forth, from SECON to the neighbors and vice versa. If nothing else comes out of this tonight, I’d certainly like to hear your thoughts on how to improve that process, either notifying, at least, the folks in the condominiums with an e-mail to the association saying for the next three days, we’re going to be doing x, y, and z. It is only my thought because they have an association, which means a contact point and from that contact point they ought to be able to take care of the communications from there, but there certainly seems to be a breakdown. If this is approved tonight, the biggest problems are still going to remain there and that seems to be the lack of communication and the lack of facing the neighbors and SECON’s ability to be a responsible businessman in the community, and I know you probably can’t speak for the corporation, but I would sure like to hear your thoughts on how it could be improved.

Mr. Short: Yes, we can send out notifications as far as when we anticipate being in the creek. There is no problem with that. I just need the addresses to send them to.

Mr. Watson: Just to follow up on that; so, what about a contact at SECON's end?
Mr. Short: SECON can be contacted at any time. During the operation, there will be a superintendent in charge of the operation; he is who you will be referred to.

Ms. Lawfer: Since you were involved in what I would consider a winter extraction, you said it was the first part of the year, so it would have been in the colder period, the amount that you extracted, it’s my understanding it was like 9000 to 10,000 cubic yards?
Mr. Short: Correct.
Ms. Lawfer: Was that because of necessity or was that because that was all you could get out?
Mr. Short: Actually, I think it was more on that’s all we could get out at that time.

Mr. Lawfer: Okay, which leads to my next question…If we went up to 35,000 cubic yards, is there a point in time where you’ve broken through the ice and now it’s available or is it really pretty much an even ice coverage throughout?
Mr. Short: I don’t know how to answer that one per se because the conditions through the creek change and each winter is going to be a little bit different. All I can say is, if it is frozen a foot down, then probably it’s all going to be frozen pretty much a foot down. It’s just going to be how far that frost penetrates in out there.

Ms. Lawfer: That leads to my next question with regards to that. So, in watching the weather, you know you’ve only got a certain time period, and if you go in and say the freezing is only a foot down and you get below it and it’s actually available. In other words, it’s optimal time to extract and get this done because once you’ve broken through the ice, you can do it. How much during the time period, say from 7 in the morning until 6 at night, could be extracted during an optimal day where you could just go great guns?
Mr. Short: I just have to guess, maybe 1000-1500 yards in a day's time, at the outside maybe 2, I don’t know. I would have to go back and look at our records.

Ms. Lawfer: And then with regards to the notice, one of the conditions is that City and CBJ Engineering and DNR would be notified of times that you were going to extract. I know that we talk a lot about noise, but I think it’s not so much the noise, I think it’s the vibration that is the issue with property owners around. Do you know of any seismic monitoring equipment available, whereby you know it’s going to happen because you've given notice, whereby you could set it up so that, say 2 or 3 places along the residential area, that is causing the problems, it could be monitored?
Mr. Short: Yes, there are seismic monitors.

Ms. Lawfer: There is? Okay. And then when you notice that you are going to do extractions, how far into the notice time, is it one day? Is it the day before? Is it ….?
Mr. Short: I believe we are required to give notice one month in advance.

Ms. Lawfer: One month in advance? Okay. And then lastly, we have Attachment #14 and that is the Fish and Game permit that is on file that expires in 2013. I’m looking at the fourth paragraph on Page 3 of 5 on Attachment 14, and it talks about a biologist coming to inspect the area between June 15th and the 1st before it’s re-routed; in other words, the biologist is going to tell you where to put the stumps. Do you know if that has happened since this permit?
Mr. Short: I do know that Fish and Wildlife has been out there. I do know that it seems like he has been out there on every extraction. He has also been part of the notice meetings when we set it up to go in there and mine. Neil was at the agency meeting and he was quite enlightening of what’s going on out there.

Ms. Camery: If I may, this is Fish and Game’s permit, not Fish and Wildlife Service
Ms. Lawfer: oh, I’m sorry, I apologize.

Chair Satre: Then also that one specifically in reference to that re-route season, which I don’t believe, at least staff had said that they have not actually had to do that during the past permit.

Ms. Lawfer: But on the recommendation, if someone from Fish and Wildlife came out, they are the ones that are talking placement of the stumps and what’s happening with regards to the bank, is that correct?
Mr. Short: Actually, we do nothing with the bank. We are to monitor them, we are to retain rip-rap on site in case there is a problem with the banks, so that we can stabilize them, but we stay away from the banks. As far as the woody debris, we are not to remove it from the Lemon Creek area, it’s to stay on site, and Neil generally has an idea of where he wants it. So far, he has been happy of what has happened out there yet.

Ms. Lawfer: Well, I understand you are not to remove debris, but I was just wondering if it was Fish and Wildlife that was helping you place it or …?
Mr. Short: Well, the first year, he was concerned that we just simply set it to the side and then after watching what happens to the debris, he was impressed at how much habitat increased on that side over there.

Ms. Lawfer: Then if I may ask one question of staff with regards to that. In Attachment 24, it has about the same time period as the Fish and Wildlife permit and it has the Lemon Creek split survey with regards to fish. Do we know...is that something that is routine? In other words, what I'm getting at is, this permit expires in 2013, soon, and so is that a part of the process or do you know where this attachment came from?
Ms. Camery: Neil Stichert presented this information at the interagency meeting that we had on this project. It is separate from what Fish and Game does and it gets a little bit confusing. We had active consultation in this review from Fish and Wildlife Service. We did not receive comments from Fish and Game. The applicant has given us the Fish and Game permit, which as you mentioned expires in 2013, but we did not receive formal comment from Fish and Game. I’m sure that Fish and Game has their own fish surveys that they can test on a regular basis, that again establish the timing windows. I included this just because we did not have any other data in the staff report regarding the specific species in the area. I’m sure I could have gotten that from Fish and Game if I had dug that out, but because this is what had been most recently presented to me, even though it is quite old, 2007, that’s why I included it in the report.

Ms. Lawfer: So, do you know of any plans to possibly do this type of a footsurvey again in that area?
Ms. Camery: Again, I think Fish and Wildlife Service will do it on an occasional basis. My assumption is that Fish and Game does surveys like this systematically to develop their timing windows and the other data they have, but I can't speak for exactly what their process is.

Mr. Haight: I think that I have a couple of topics, but the first one is, I think that we have this strong interest in mitigating the vibration to the River Bend Condos, and Mr. Miller has talked about different methodologies for breaking the ice-borne gravel and Ms. Lawfer has talked about the seismic monitoring, how do we tie this together to get us to a point where we are truly minimizing that, finding the methodology that will reduce that vibration. Is it something... obviously we don't have answers right here... but is there something that we can do that will allow us to go in and try one method, find out what that result is, try another method, do some sort of a comparative analysis. Is there something that we can do with that?

Mr. Short: I do know that in the winter of 2010-2011, when we extracted gravel that year, we had a lot of frost in the extraction. We won't go back in there and do that again. It's cost prohibitive for us to go in there and try to pull that depth of frost above the ground. One-foot range for the type of excavator that we are using would not cause a banging or vibration because it does not have enough structure there to resist it. When you start talking great depth of frost in the ground, it is not economical for us to be there. The seismic activity, the monitors cost money to place, then you have to have an engineer on staff to give you the report. That is a possibility. The noise is from the actual excavator. I don't know of any way to get around that part of it. I don't have an answer for that type of noise, the diesel machine and the movement of the machinery, I don’t have an answer.

Mr. Haight: It's kind of the feeling that I have had as well. I'm not sure how we find that, that sweet spot in the methodology. The other topics that I wanted to dive into just momentarily, we've talked a little bit about the flooding issue, about a year ago, we had a discussion and a presentation, may be it was a little over a year ago, about the new FEMA mapping analysis and I do not recall how this fits into the new map and maybe this is something I should direct more towards staff, but how is this and does it play into this whole role of flooding?

Mr. Short: In preparing this document, I did look at some of the FEMA reports there. I did study the Inter-Fluvereport. Actually, I was surprised when Neil Stichert was at the agency meeting, he brought out photographs of Lemon Creek during flood stage. I believe the year was 1973, and most of that area there was under water, a lot of damage in there. As far as the flooding of that area, by us removing 10,000 yards out of one of these islands here and for that island to be filled back in within a matter of months, just one island, that's a lot of gravel coming down there. As Teri mentioned, you go up to our upper property, further up in Hidden Valley and you can see where that gravel is coming from and there is a lot of gravel that has been moved from that upper property and has come down. So, yes, if it’s not mined, it’s going to fill in. It’s either that, we either mine there or we go up in the valley and mine, it’s one or the other. Otherwise, it will flood. You know, it may not be this year, but as we all know, it’s sometime in the future, we’ll get a snowpack and then you will have an event and you’ll have a flood.

Mr. Bishop: I am trying to figure out where the timing, the scheduling on this came from. It appears that the applicant proposed the time period. Is that correct?
Mr. Short: The original applicant was Mr. Horecny. I have no idea if he proposed it or where that came from.

Mr. Bishop: Because it seems to me that there are three different permits being issued and the Fish and Game, their comment on it was up to four island groups within the project will be mined from June 1st through March 15th. Other agencies will issue permits that restrict your work to shorter seasons, so the permit that restricts the work to shorter seasons is the 401 Cert from DEC. I’m not sure why they are restricting it from December. It seems to me that there is some working time period that could be worked between the fall and the freeze-up time and I am also concerned that this permit from the Army Corps of Engineers is expiring in February 2013, so you’ve only got a short time until your Corps permit is up. I don’t see how you’re going to resolve the issues that we’re talking about tonight without getting into the ground before it freezes and doing most of your work either before or after freeze-up, so I’m having a hard time putting together why we’re only working within the short period where everything is frozen solid, so I don’t know how we got there or how we get around this, but it seems that we need to look back at the dates and figure out what you need in order to get in the ground before its 3-feet of rock.

Chair Satre: We can address that during the discussion. It is an interesting point.

Mr. Medina: Mr. Short, I believe at the Wetlands Review Board, you made a comment that it would be your preference to actually extract further up the valley, but obviously you don’t have a permit for that. Realizing we’re talking about Lemon Creek right now, in this area, is it a possibility when the permit expires that you could get one further up?

Mr. Short: When this one here expires?

Mr. Medina: Yeah, in six years, if that was approved.

Mr. Short: Actually, I think there is enough interest where I would probably be working on it here in January.

Mr. Medina: So, that would alleviate the neighborhood, I realize it is not an immediate……?

Mr. Short: From what I’ve seen the original permit, how long it took to get the original one through with all the different agencies, it’s not going to happen very quick.

Mr. Medina: Right, but your intent is to start working on that?

Mr. Short: In January.

Mr. Medina: Okay, thank you.

Mr. Miller: Just following up with Mr. Bishop’s last comments. The narrowing of the window of the time, is it dependent on water level? My understanding is that it’s dependent on water level, but then earlier you said something that it has got to be frozen hard enough for you to be able to get the excavator out on those islands, so it has to be froze some, but not too much or what is this?

Mr. Short: Froze, not too much for our wheeled vehicle to be out there. Remember, we’re driving on sand and gravel. The excavator can move around out there, the dozer that goes out and keeps the snow off does fine. Yeah, it is nice to have it froze about a foot, 6 inches to a foot, that’s the ideal condition, so you can move around on it, get it filled deep very easily.
As to why we have this window of December, January and February, I don’t know. I do know that there are several agencies, the coastal management, they are no longer in existence, but they were our original party of this permitting process. The Corps permit, that is being updated right now, I have already been in contact with them a couple of times. I don’t know if they are driving it or DEC. I have to have both those permits to be in the creek. The 401 basically gives us the access of getting permit to pollute in the water on the uplands, which means that since we leave the creek, we follow under that jurisdiction. The reasonable assurance is what gives us the ability to operate inside the creek. Fish and Wildlife, Fish and Game, which is the DNR, I believe they have more of the timeline as far as why we are in there at that time of the year. Like I said, I don’t know who originally set that timeframe in the original permit. I guess that Mr. Horency received the original issue of this use permit in there. I don’t know why it was done at that time. I do know that when he was mining it originally, he simply did it during the summer.

Ms. Lawfer: I was just going to let commissioners know, if you look on Page 4 of the Office of Habitat and Management of the Fish and Game, it talks about…that adult chum and coho migrate into Lemon Creek and spawn from mid-July to early November, Dolly Varden are found year round and then chum fry and coho migrate downstream from late March through May, so you look at it and really I mean other than January through about March 15, kind of fits in the time period, but they do lay out a time period with regards to the fish and those time periods….

Mr. Miller: So, all of the gravel that’s in here, they look like round rocks, is it all round gravel, and is that what I guess that whole Lemon Creek plane, is it the same kind of material everywhere, under Costco and across the river, is it all kind of the same stuff and is it that loose sandy gravel, do you know?
Mr. Short: From my research, most of that …all of the Lemon Creek area there, all the residences, the Costco, the Industrial Park, at some time or another was mined out of there and that all has been filled back in by Lemon Creek over time. That’s where the gravel for a lot of your construction in Lemon Creek for the past century has come from. Is it the same gravel? Yeah, it’s all coming from the Glacial Till up in Hidden Valley.

Mr. Miller: So, that loose gravel, do you think part of this vibration that…you think it carries farther in that loose stuff? I have heard people talk about that kind of material being like a pile of marbles.
Mr. Short: Basically, that’s why we have to wait for it to be frozen, because it is so loose, it’s not a very solid mat out there.

Chair Satre: Alright, with that, let’s go ahead and close public testimony. Mr. Short, thank you for being here this evening and thanks everybody else as well. Let’s go ahead and take a short break before we continue our deliberations on this item.

BREAK 21:31 to 21:37

Chair Satre: It’s a good opportunity if there are any final clarifying questions for Ms. Camery or Mr. Chaney; this is a good time to ask.
Mr. Miller: I have a question about equipment usage and I don’t recall that it is not allowed to be able to use a rock breaker or sometimes a hammer or even a drill. If you had a drill rig, a drill rig is way quieter than a rock hammer, but if you are ripping with a dozer, I would think that you could really minimize vibration and the time spent trying to break through that ice, if you were able to use one. I don’t recall that it’s in either two permits that we have heard that that was not allowed.

Ms. Camery: I guess my response to that would be, it wasn't specifically stated in the project description, that that equipment would be used, but nor did we ever have any condition that stated that it was prohibited.

Mr. Chaney: It wasn't in the project description nor was it envisioned by staff that there would be an excavator bashing through a frozen layer that was very large. When I thought about it, I was expecting that the excavator, which is a fairly powerful machine could tear through the frozen upper layer and undermine and as you undermine, it tends to collapse into the hole. It is not a very substantially vibrating or, you know, it’s not an unusual amount of vibration. It’s an excavation; I think we’re fairly familiar with that. The discussion tonight of bashing through layers of ice and then frozen rock just wasn’t envisioned, so that’s why it was not addressed and so it wasn't that it was thought about and left out on purpose, we just weren't thinking about it.

Mr. Bishop: So, I think with the testimony we’ve had tonight, I feel very uncomfortable with the application as its proposed. I think that there is a lot of information that still has to be garnered to determine how this can be done without the impacts to the community and I don’t want to spend a whole lot of time trying to figure out how it’s going to be done tonight. I would prefer to continue this item until such time that staff has the ability to investigate what we’ve heard tonight and get back to us on it and look for a solution to the problem. I think that we can spend a lot of time kicking this around tonight and get nowhere. I think it would be a lot better time spent letting the staff try to figure it out and then figure out where they want to go with this at this point. I think that we would be foolhardy to push this forward with what we’ve heard tonight. I guess I’ll leave it at that.

Chair Satre: Mr. Bishop, along those lines, specifically what would you like staff to address? I think there are a few heads nodding around the table, if we go down this route, we should give them at least some _____ and then they can go from there.

Mr. Bishop: I would like to find out how the timing on the permit was done and whether there is any ability to maneuver within that, especially since they’re in the process of renewing their permits right now, whether we can get into the gravel before it freezes and keep it stirred up to the point where they are able to work with it. I would like to find out when they have been doing it and what seasons they have been doing it, when they have been attempting to do it, when this breaking has been taking place, if they are getting in too late in the season, if they need to be getting in earlier than when they are and if that’s allowed via the permits as they already are issued, I’d like to find out what kind of equipment they are using if there is better equipment to be used that would have less impact. I think that’s the general gist of it. I think those are the big issues we need to have resolved before we can make any determination on how to proceed.
Chair Satre: Comments along those lines, questions for staff, always look forward to a motion to be put on the table to discuss as well.

Mr. Watson: If we were to consider Mr. Bishop’s comments as a motion, my questions would be would it impact the applicant's ability to go forward with his extractions this year? Number two, if he couldn’t go forward with the extractions this year, would the lack of excavation in anyway potentially cause a flooding situation? If we cannot answer positively to the last question, then I think we need to be very careful.

Mr. Miller: On the couple of issues that were raised, I think staff has done a good job with the road maintenance and the water drainage and sweeper, that kind of thing, in the water versus in the creek things, some of the testimony raised concerns about, I think those were addressed and I think they are being met by the applicant. As far as the wood leaving the site, I think that was also addressed. They are not allowed to take the wood or the stumps out of there and I think that was addressed and it’s addressed in the application. The one issue I think that is somewhat unresolved and I’m not sure, it sounds to me like 2010 and 2011, they tried to dig through too much ice and beating on the ice with the excavator. I mean even if there is only 6 or 12 inches of ice, it still takes some work to get through it, but if you need 6 or 12 inches of ice to work, then you still have to have that ice there, and right now, there is about that much ice there and now would probably be a good time for them to be in the stream. So, I’m not sure that if we are trying to minimize the vibrations and the impact to the neighbors, that putting it off does that, especially when right now, is the time to be in there. I think there have been some very valid concerns raised and I think that the applicant would be wise to heed those concerns and address them in the field with trying to minimize what it takes to break through that 6 or 12 inches of ice, so I guess that’s where I am.

Chair Satre: Before we continue to comment along these lines, now would be the appropriate time to entertain a motion to continue. If a commissioner would like to do that or simply put a motion to approve the Conditional Use Permit on the table as well, let’s put something on the table and discuss it.

Mr. Bishop: Mr. Chair. I move that we continue this to our next regularly scheduled meeting for the purposes as was stated before.

Chair Satre: Comments on the motion.
Mr. Watson: My question still hasn't been answered and I may sound somewhat redundant here, but if I could get an answer to those, I might be able to be more honestly answer how I would vote.
Mr. Chaney: On the flooding situation, I think from what I understand that…the bed of Lemon Creek is raising inches per year, but not feet per year, but over time it will create a flood risk, if no excavation is done, but I don’t think it needs to be done in any particular…, this year or next year, but if we don't do anything as a community, eventually it will fill in and then it will get flooded, but even with normal flows – that’s the concern there, so I don’t think waiting the whole year would be a significant risk on flood, although that of course is a guess, we don't know what any particular year might give, and then was there a second question?
Mr. Watson: Actually there was and that was would continuing this application tonight, will it hinder the applicant's ability to go forth with harvesting of gravel in the upcoming season?

Mr. Chaney: I think it would narrow their window because there is work that has to be done in advance. We only have one meeting currently scheduled in December. If we don’t get it resolved in the first meeting in December. We can decide later if we might be able to have a special meeting in December, but if for some reason it wasn’t resolved then, it could be resolved in January. Of course that would narrow their opportunity, so I think there is some concern there.

Ms. Camery: Just to add to that, the current condition proposed via CBJ Engineering is that the applicant needs to submit a full detailed mining plan one month in advance.

Chair Satre: And I just have a question along those lines, because the condition we have and I believe…they mirror the prior Conditional Use Permit…so, it says by November 1, one month before the commencement of each mining season, the applicant shall submit a mining plan. Have we already gone past that?

Ms. Camery: I would interpret that as having some flexibility that the key thing is one month before the commencement.

Chair Satre: It says by November 1. I’m just a little concerned about that one.

Ms. Camery: I appreciate the detail. I think the interpretation there is by November 1… to mean that extraction would take place in December.

Chair Satre: December 1 is the beginning of the window between then and March 15.

Ms. Camery: I agree that for purposes of clarity, by November 1, really should be taken out.

Mr. Medina: Well actually, I have a comment and another proposed condition. I will speak against the motion. Mr. Miller brought up some valid concerns, obviously there are some problems with the vibration in the neighborhood and I take those very seriously. I would be in favor of approving this permit with an added condition of installation of the seismic measuring devices, I'm not sure if that is possible, and also recommending that the applicant do some PR with the neighborhood, and address them and see if there is any concern going on during the extraction process and to see if you can alleviate those.

Mr. Bishop: I appreciate the need for the applicant to get in there as soon as possible, if they can. I think that’s what I would want to see, next year, if we can't get them in there now. I think that they have already gone beyond what I think is acceptable in the years past and they have proven that they aren’t able to work in these conditions when it gets difficult, and they don’t have a solution as yet or we would have heard it already. I don’t have any reason to believe that the same thing isn’t going to happen this year, this happened in years past, because we don’t have a plan set out. I think that the reason we have the condition that says they have to have it in by November 1st, is because the Engineering Department wants 30 days to be able to review the mining plan to see if it’s suitable. We don’t have a mining plan and November is almost over, so are we going to say that they only have to have it in one day and they can get a review or 10 days and then get the review done? That’s not going to happen. We need to be able to have some back and forth to review this mining plan. So, we can say that we want them to be able to be in there by December 1st, and I think that if they were in there by December 1st, then they probably...
would be able to start digging and keep it open, but that isn’t going to happen. They haven’t even got their mining plan in yet, and so I think that what we need to do is, we need to have them have a mining plan in there. We need to have them get back with us on how they are going to do this, so they’re not damaging the neighbors’ houses, so they’re not bashing their buckets into the ground and ringing bells in the neighbors’ ears at 6 o’clock in the morning. I think that they haven’t proved to be good neighbors at this point so far, and they have to prove that they can be good neighbors. This just isn’t acceptable in an area that’s D10, right next to an industrial area, there has to be some give and take, and there hasn’t been any give, it has been all take so far.

Mr. Medina: I can understand where Mr. Bishop is coming from; although there are hours of operation and it is not 6 o’clock in the morning and I believe they have to have a 30-day window to have their mining permit in, so they are not going to get in there by December 1. They have to submit it 30 days before they go in. So, in that essence, I would disagree with your comments.

Ms. Grewe: I would support the motion as stated for the reasons that Commissioner Bishop just stated and I also have kind of a procedural issue. Can we take up the motion? I’m not sure, are we taking up that motion? But Medina has offered to………?

Chair Satre: He did. Mr. Medina, I was going to get you to wrap it up and move on, but you did that yourself and I appreciate that. So, we are speaking directly to the motion to continue and as it is on the floor right now, and if there is not additional comment after you, Mr. Grewe, then I will call the question.

Ms. Lawfer: In looking at the permits that we have, the DEC Certificate of Assurance as well as the Office of Habitat Management and Permitting, one, we know that, and perhaps I could be off and staff could tell me otherwise, but to me it looks like the DEC permit has already expired as of October. Is that correct?
Ms. Camery: That is correct.

Ms. Lawfer: So, without a DEC permit, is it possible to go in there and do work?
Ms. Camery: No.

Ms. Lawfer: So, there is no extraction? Do you know what the timeline is for DEC permits?
Ms. Camery: I know DEC is actively working with the applicant on this permit. DEC was at the interagency meeting that I have referred to, but you’re correct, the extraction cannot proceed until we get DEC permit in order, and I guess I might add to that that if they don’t get final approval from CBJ Engineering on their mining plan, again CBJ Engineering has 30 days to review their mining plan after they turn it in according to proposed conditions. If they may not get that completed before their Corps permit expires, the applicant needs to deal with the expiration of the Corps permit and getting the new DEC permit as well as the City's permit; and then Fish and Games permit, I believe expires on August 1, 2013.

Mr. Watson: I’m not sure if this comment is allowed, but I’d like to go on record to say that the decision that the Planning Commission will be making is, should the applicant's other responsibilities for procuring permits should not be considered when we vote.
Chair Satre: We are certainly dealing with the Conditional Use Permit and what our authorities are here, although there is certainly a grander context.

Ms. Lawfer: If I can make a comment with regards to that? I was just looking to see for timelines with regards to voting on the motion.

Chair Satre: We do have a motion on the floor to continue. Final comment on that motion?

Mr. Miller: What I stated earlier, I think my thoughts have changed a little bit in that the applicant doesn’t have their 30-day notice in, then they don’t have that mining permit, and then I think with a foot of frost right now, it would be a great time to get in there and I think they could minimize the vibrations, but in 30 days from now who knows what’s going to be there? This, I think, is a really tough position for the applicant, and the liability issue of the vibration and is it the vibration that they are causing that’s causing the sheetrock cracks or is it regular settling, or is it the vibrations from all the soccer moms driving to Costco every day? I mean I don’t know what it is, right? Probably nobody else does either. So, this is a tough one.

It sounded to me like staff would like to maybe think about it a little bit and work on it a little bit, so I guess maybe I’ve got to give them a chance to do that, so I’m going to speak in favor of the motion.

Chair Satre: I’ll wind up comments from my end. I would normally probably not be inclined to vote yes on a motion to continue, but in this case I think there are questions to be answered about what we’re hearing about is damage to the properties, and while we have to protect the property owner's right to who owns the streambed, we also need to protect the property owner's rights that are next door, and I think that Mr. Bishop's motion to continue to ensure we are doing the right thing on this permit is appropriate. I would simply add in my comment, I would like to see some consideration of an exclusion zone around the existing condominium that is closest to the riverbank. There are obviously multiple areas that we can mine through here. Right now, they can go fairly close to the condominiums, maybe if we can back it off for a year, there are some things that could be learnt. I’m not sure, but staff can certainly investigate those options. So with that, roll call please on the motion to continue.

**Roll Call Vote:**

Ayes: Miller, Bennett, Grewe, Haight, Lawfer, Bishop, Watson, Satre
Nays: Medina.

Chair Satre: Motion to continue has carried [8:1]. Staff, do you have appropriate direction?

Ms. Camery: I guess my only concern is I don’t know that we will be able to have answers to all this information by the next Planning Commission meeting.

Chair Satre: I appreciate that, but certainly we want to work forward on this in an expeditious manner and then hopefully, the applicant will work with staff to make that happen.
Mr. Watson: If there is any way that you can accomplish it, there is one thing I would like Community Development to take in mind. There are three positions on the Commission that are open at the end of this year, and the potential for three new people coming on the Commission is always there, and having to go through this process with inexperienced people could be much more challenging than it has been this evening. So, I would encourage some expeditious process to take place. If we have to have a special meeting on this, Mr. Chair, I would certainly recommend that.

Chair Satre: I’ll keep in touch with staff as we go.

Mr. Medina: Will this need to go back before the Wetlands Review Board or just the Planning Commission?

Ms. Camery: I would say no, unless there is a significant change to the habitat protections involved and I will certainly do everything I can to deliver this by December 11th.

Chair Satre: Thanks to the applicant for being here to answer our questions and thanks to the neighbors for being here as well. We appreciate your testimony this evening and certainly we will have notice when this comes back around.