PLANNING SERVICES DEPARTMENT
REPORT

For the Board April 10th, 2006

TO: Chair & Members of the Regional Board

FROM: Ron Fralick, Planner 1

DATE: March 31st, 2006

SUBJECT: Ministry of Energy, Mines and Petroleum Resources referral application
(Our File: GREX-06-02) (Reference File: 14675-20/1620504)

LOCATION: 1267 Fathers Place (Area ‘Central Okanagan East’)

LEGAL: Lot C, DL 1, ODYD, Plan 38632

RECOMMENDATION:

1. THAT support of Ministry of Energy, Mines and Petroleum Resources referral application GREX-06-02 for Yvette Mawson is conditional on the following;

   ➢ Registration of a Sec. 219 no-build/no-disturb covenant for the area north of the irrigation easement in order to avoid triggering the Riparian Areas Regulation (RAR), and to provide a buffering setback from adjoining Mill Creek Regional Park;
   ➢ Noise from operation be confined to the hours of 8:00 AM to 5:00 PM;
   ➢ Applicant to demonstrate that adequate dust control measures are in place prior to commencement of extraction;
   ➢ Applicant to fulfill “Notice of Intent” in accordance with Part 3 of B.C. Reg. 171/2002 of the Agricultural Land Reserve Use, Subdivision and Procedure Regulation;
   ➢ Submission of a reclamation plan by a qualified Professional Agrologist and associated performance bond to cover estimated reclamation, as per comments from the Ministry of Agriculture and Lands;
   ➢ Road conditions of the Ministry of Transportation noted in their response of March 30, 2006 to be included as ‘Special Conditions’ of the Mines Act Permit.
2. **AND FURTHER THAT** the Planning Services Department Report dated March 31, 2006 be forwarded to the Ministry of Energy and Mines for their information.

**PURPOSE:**

To consider a Ministry of Energy, Mines, and Petroleum Resources referral application to allow a sand and gravel mine operation on private property located within the ALR.

**POLICY:**

Objectives and policies of Ellison OCP Bylaw No. 1124 support the development, improvement, and expansion of agricultural activities, and to protect the viability of aggregate, mineral, energy and timber resources for future development.

**RATIONALE:**

- Property is recognized as having Primary Aggregate Supply Potential in the *Central Okanagan Growth Management Strategy Aggregate Supply and Demand Study*;
- Proposed extraction permit, if granted in accordance with the above recommendations, will ensure protection of Mill Creek Regional Park and the associated riparian area, will provide dust/noise control measures, will address road impact issues, and will ensure that the disturbed areas are returned for agricultural use;
- Extraction activity is relatively short-term with an anticipated completion date of August 31, 2006.

**BACKGROUND:**

The adjoining properties to the west (Lots A & B, Plan 38632) were the subject of an ALR application in 2001 (File: A-01-1) to permit subdivision of four lots all exceeding 2 ha in size, and a park. The Land Commission approved the application however the property owner did not proceed with the subdivision.

In accordance with Part 3 of B.C. Reg. 171/2002 of the Agricultural Land Reserve Use, Subdivision and Procedure Regulation, the applicant has not fulfilled the requirement to notify the Land Commission and local government of the soil removal proposal via a “Notice of Intent”. RDCO staff has advised the property owner of this requirement.

This application was precipitated in response to complaints received at the Regional District and Ministry of Energy and Mines due to the sand and gravel extraction activity on the subject property.
RELEVANT INFORMATION:

APPLICANT: Yvette Mawson
MAILING ADDRESS: 1267 Fathers Place, Kelowna, B.C., V1X 7V2
ZONING: A1 (Agricultural)
OCP: Rural 2 HA
EXISTING USE: Pasture, residential and associated outbuildings
ALR STATUS: Within the ALR
WATER SUPPLY: Glenmore/Ellison Improvement District

The property is located in an area of ALR lands to the south, west and east on lots varying from 2 ha to 4 ha in size. Mill Creek Regional Park is located to the north and the Country Rhodes residential subdivision is located further to the west adjacent to Lots A & B, Plan 38632.

The proposed extraction area encompasses approximately 3.25 ha with total extraction estimated at 50,000 to 80,000 cubic yards. This is a short-term proposal with anticipated completion by the fall of 2006. The applicant indicates that the intent is to provide more arable land for pasture and future agri-tourism uses.

AGENCY REFERRALS:

The Engineering Department has no specific comments or objections to the application.

Parks Department staff indicate that Regional Parks and Trails Stewardship Policies of Official Regional Parks Plan Bylaw #884 state, “exploitation, extraction, or development of natural resources will not be permitted in regional parks, except as required for purposes of park management.” While the proposed extraction activity is outside of the regional park, Parks staff advises that the extraction may have an impact on the management policies of the Regional District to protect the natural resource of Mill Creek Regional Park.

As such, Parks staff suggests that a review of the proposed extraction area be undertaken by the applicant in order to establish a buffer/setback between the boundary of the regional park and the application area in an attempt to reduce any potential impacts to Mill Creek Regional Park.

The Inspection Services Department indicates that the proposed 7:00 AM start time may be too early, recognizing the adjacent residential subdivision. RDCO staff has recommended that operations from similar applications be restricted to the hours of 8:00 AM to 5:00 PM daily.
The Central Okanagan East Advisory Planning Commission supports improvement of agricultural land, however they recommend that a number of community issues be addressed, including, but not limited to, crushing off-site, limited hours due to noise, dust control and traffic, and adherence to August 2006 completion date. The APC questions responsibility for road restoration, and that it would be appropriate to have a letter of credit or bonding to ensure compliance to deadlines, site restoration and any off-site remediation.

The City of Kelowna has no objection to the proposed extraction application pending approval from the Agricultural Land Commission. The City cites concerns with potential noise and dust impacts to nearby residential developments and Mill Creek Regional Park. There may also be impacts to the road network in terms of traffic volume and road condition from heavy loads.

In addition, the City believes that it would be appropriate to consider the need for an assessment for Mill Creek under the Riparian Areas Regulation (RAR) by a qualified Environmental Professional demonstrating no harm to features, values and functions of fish and fish habitat.

The Ministry of Agriculture and Lands have no objection to the application subject to the following:

- A reclamation plan be submitted demonstrating that the mined area will be returned to an agricultural quality equal to the surrounding farmland;
- Reclamation plan and estimated costs to be approved by a qualified Professional Agrologist;
- Submission of a performance bond sufficient to cover estimated reclamation costs;
- Qualified Professional Agrologist is to certify that completed reclamation is in keeping with approved plan prior to the performance bond being returned.

The Ministry of Transportation advises that Fathers Place is an existing maintained public road right-of-way which has a gravel surface. Any mud, soil debris or other foreign material tracked onto the existing public roads during this operation is to be removed by the applicant at his expense, at least daily or, at any time the material inconveniences traffic. Applicant will be responsible for dust control on Fathers Place during this operation, which may involve daily maintenance. The road surface of Fathers Place may need grading during and after this operation. Should this operation negatively impact roads in this area, the Ministry of Transportation will consider placing load restrictions.

The Ministry has no objections to this temporary operation subject to the above conditions. Once the operation is finished, the Ministry of Transportation will inspect Fathers Place and any repairs required as a result of the gravel extraction operation will be the responsibility of the applicant.
PLANNING SERVICES DEPARTMENT COMMENTS:

With respect to allowance of the proposed use under the A1 zone, it is noted that under the Local Government Act activities involving the mining of aggregates cannot be regulated by “land use” bylaws. A bylaw can regulate the use of land, buildings and structures, which includes permanent platforms for screening or crushing equipment. Therefore, the activities of extraction itself (i.e. excavating and processing with mobile equipment) are not controlled by zoning or through land use designation.

In recognition of changes in 2002 to the Agricultural Land Commission Act and B.C. Reg. 171/2002 of the Agricultural Land Reserve Use, Subdivision and Procedure Regulation, property owners are required to notify the Land Commission and local government of a soil removal proposal via a “Notice of Intent”. This process eliminates the need to submit a formal application to the Land Commission for approval of extraction activity on ALR land where it is demonstrated that the extraction is within specific parameters and will improve farming opportunities. The applicant has not fulfilled the “Notice of Intent” requirement to date.

RDCO Environmental Planning staff advises that they have reviewed the application and note that a portion of the proposed gravel pit is located within a Sensitive Ecosystem; specifically a disturbed grassland ecosystem and adjacent to a Riparian Ecosystem (Sensitive Ecosystem Inventory, 2003 – RDCO).

They also note that although the Riparian Areas Regulation does not apply to gravel extraction in particular, it does apply to any processing associated with the extraction. As the application indicates, this operation involves “crushing and screening” which is subject to the Riparian Areas Regulation. As such, a detailed environmental assessment is required to ensure adequate setbacks are delineated. Furthermore, Environmental Planning staff advises that mining activities are subject to the Fisheries Act, which under definition includes riparian vegetation. Therefore, removal or disturbance of riparian vegetation may trigger a Fisheries Act violation. Environmental Planning Staff recommend that all land north of the irrigation easement be protected via a no-build no-disturb covenant in order to avoid triggering the RAR process.

Planning Services Department staff have received several telephone calls and two letters from neighbouring property owners expressing opposition to the extraction activity. Primary concerns include noise, dust, truck traffic, lack of public consultation, and hours of operation. The Chair of the Regional Board responded to one of the letters dated March 20, 2006 that included a 3-page petition. A copy of the Chair’s letter is attached.

Due to opposition from area residents, the Ministry of Energy and Mines is requiring the applicant to hold a public information meeting on April 4, 2006. The meeting will be held at the Holiday Park Resort adjacent to Ellison Lake (commonly referred to as Duck Lake).
The property is recognized as having Primary Aggregate Supply Potential in the Central Okanagan Growth Management Strategy Aggregate Supply and Demand Study. The proposed extraction permit, if granted in accordance with the staff recommendations, will address the majority of agency concerns. Specifically, the recommendations will, protect the natural resources of Mill Creek Regional Park and the associated riparian area; provide dust/noise control measures; address road impact issues, and ensure that the disturbed areas are returned for agricultural use. It is noted that the extraction activity is relatively short-term with an anticipated completion date of August 31, 2006.

The Planning Services Department recommends conditional support of Ministry of Energy, Mines and Petroleum Resources referral application GREX-06-02, as per the Recommendation section at the beginning of the report.

Respectfully submitted,

Ron Fralick, Planner 1

Dan Plamondon, Deputy Director of Planning Services

RF/cb

Attached

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Ministry of Energy and Mines

Sand and Gravel/Quarry Operation Notice of Work and Reclamation Program

Application is for: [ ] Sand and Gravel Mine [ ] Rock Quarry

This application is for (check one): [ ] Development [ ] Amendment to existing permit Permit #.

Application is being made by: [ ] Owner (Private property) [ ] Operator/Agent (Person or company making application on Crown land or on private property not owned by applicant)

Name: Yvette J. Mawson
E-mail Address: yjmawson@shaw.ca

Company (if applicable)

Address: 1267 Faithful Place
City: Kelowna
Postal Code: V1X 7V2

Bus. Phone: (250) 718-0655
Fax: (250) 718-0655

LOCATION INFORMATION - Maps are mandatory under Schedule A

Name of Mine (What will the operation be called when in production?): Bluestone Inn/Farm
Street Address of Property, if applicable: 1267 Faithful Place

Access route from nearest town to property: Highway 97 - Old Vernon Rd - Faithful Pl

B.C. Geographic System Map Sheet Number(s) [i.e. TRIM 093L006] 82E 094

Northing: ___________________________ Easting: ___________________________ UTM Zone: 82E - 094

or NTS Map Sheet Number(s) [i.e. NTS 093L14E]: ___________________________

Latitude: 49° 41' 13.1" North, Longitude: 119° 36' 15.9" West

OWNERSHIP (Complete a, b or c if the land is not privately held by applicant)

a) Proposed mine is on private land:

Name of property owner: Yvette and Robert Mawson
Address: 1267 Faithful Place
City: Kelowna
Postal Code: V1X 7V2

Bus. Phone: (250) 718-0655
Fax: (250) 491-2276

Signature of owner agreeing to the mining operation proposed in this application (or attach letter of authorization signed by owner):

Name: Yvette Mawson
Date: Jan/06

b) Proposed mine is on Crown land:

Assets and Lands Corporation (BCAL) file reference number:

License of Occupation/Lease number: ___________________________ Expiry date of Licence/Lease (ym/d): ___________________________

c) Proposed mine is a mineral quarry (as defined under the Mineral Tenure Act):

What mineral is proposed to be mined? [ ] Misc. [ ] Hard [ ] Rock

Mineral Claim/Lease Tenure Number(s):

MANAGEMENT

Correspondence regarding this application should be sent to: [ ] Owner or [ ] Operator/Agent

The mine manager (Mines Act Sections 21 and 22) responsible for management and operation of the mine will be:

Name: Yvette Mawson
Bus. Phone: (250) 718-0655

Rev'd: 06/24/03
LAND USE

1) Cultural Heritage Resources (A cultural heritage resource is defined as "an object, a site or the location of a traditional societal practice that is of historical, cultural or archaeological significance to British Columbia, a community or an aboriginal people." B.C. law requires the conservation of these resources. It is the responsibility of the applicant to identify these resources.)

☐ Yes - please attach a plan for the conservation of cultural heritage resources on the property
☐ No - if cultural heritage resources are discovered while mining, you are required to report them to the Mining Division.

2) Soil Conservation

Average depth of overburden (material, including topsoil, overlying sand, gravel and/or rock): ___________ cm, or __________ m

Average depth of topsoil (Surface to maximum rooting depth of plants, plus 15 cm.): ___________ cm, or __________ m

Measures to stabilize soil/overburden stockpiles and control noxious weeds: [Signature]

Topsoil must be conserved for reclamation of the mine site.

Removal of topsoil from the site requires written approval of the Inspector

☐ No soil is removed

3) End Land Use

Is the site within the Agricultural Land Reserve?
☐ No ☑ Yes - authorization for soil removal from the Land Reserve Commission and Regional District must be obtained. Provide permit application number if available:

Is the site within the Forest Land Reserve?
☑ Yes - authorization from the Land Reserve Commission must be obtained

Is the site within a Tree Farm Licence?
☐ No ☑ Yes - state the TFL number:

Name of TFL holder:

Does the local government have a Soil Removal Bylaw?
☐ No ☑ Yes - please be aware that a Soil Removal Permit may be required by the local government

Official Community Plan designation for the site is: [Signature]

Current land use zoning for the site is: [Signature]

Proposed end land use is: [Signature]

4) Reclamation of Site (If space provided below is insufficient, please attach separate sheet describing proposed reclamation)

Reclamation measures and schedule proposed to achieve end land use objectives as per part 10.7.4 and 10.7.5 of the Health Safety and Reclamation Code for Mines in British Columbia (hereafter referred to as the Code): [Signature]

We plan to prepare the land for pasture and some agriculture. We hope a few horses coming.

If backfilling of pits or pit slopes is proposed in the final configuration for reclamation, provide details of materials to be used and placement procedure: [Signature]
MINE DEVELOPMENT PLAN (Maps are mandatory - please refer to Schedule A)

Unless otherwise required by the Inspector, complete the following mine development plan and prepare development maps and cross sections based on a period of 5 years or less. Mines operating for longer than 5 years, may be required to file updated Notices of Work every 5 years over the life of the mine at the discretion of the District Inspector.

Proposed start date (ymd): 2005/12/15
Proposed finish date (ymd): 2006/02/13
The mining operation will generally be (check one)

Continuous (operates throughout the year)
Seasonal, usually operates from __________ to __________
Intermittent (occasionally operates with extended periods of inactivity)

Estimate total mineable reserves over the life of the mine: __________ tonnes or __________ m³
Estimated annual extraction from site: __________ tonnes/yr, or __________ m³/yr

Application must be made to the Environmental Assessment Office if estimated extraction for sand or gravel production is 500,000 tonnes/yr. or 1,000,000 tonnes over 4 years; or if estimated extraction is 250,000 tonnes/yr. for quarried product.

Mineral quarries producing more than 1000 tonnes per year per claim require a mining lease.

Description of Work (Check appropriate boxes):
[ ] Excavation of Pit Run
[ ] Crushing
[ ] Mechanical Screening
[ ] Washing - please complete Schedule B
[ ] Blasting - please complete Schedule C
[ ] Timber Clearing * - estimate volume of timber: __________ m³

* Timber Clearing on Crown Land requires a Free Use Permit or License to Cut from the Ministry of Forests

Provide a brief description of operation, including proposed work schedule (i.e., hours, days of usual operation):

N/A

Equipment List: (Please attach separate list if space provided below is insufficient)

<table>
<thead>
<tr>
<th>Type of Machine</th>
<th>Make/Model</th>
<th>Size/Capacity</th>
<th># on Site</th>
</tr>
</thead>
<tbody>
<tr>
<td>30-12</td>
<td>Jaw Crusher</td>
<td></td>
<td>✓</td>
</tr>
<tr>
<td>98D</td>
<td>Loader</td>
<td></td>
<td>✓</td>
</tr>
<tr>
<td>D - 6</td>
<td>Digger</td>
<td></td>
<td>✓</td>
</tr>
<tr>
<td></td>
<td>Salt Screening</td>
<td></td>
<td>✓</td>
</tr>
</tbody>
</table>

Surface Disturbance - Information provided must be documented in development plans submitted under Schedule A

(Note that 10,000 m² = 1 hectare)

Existing Disturbance (Work areas, unclaimed areas, access roads, etc.) __________ m², or __________ hectares

Proposed Mining Disturbance (New work areas, settling ponds, access roads, buildings, etc. to be developed within the time frame of this Notice of Work) __________ m², or __________ hectares

Total Disturbed Area (Existing + Proposed Disturbance) __________ m², or __________ hectares

Will any portion of this disturbance be reclaimed within the time frame of this Notice of Work?

[ ] No
[✓] Yes - state size of area to be reclaimed: __________ m², or __________ hectares

Estimated Cost of Reclamation:
Applicant $__________
Mining Division $__________

Revised: 06/24/03
Ministry of Energy and Mines
Sand and Gravel/Quarry Operation
Notice of Work and Reclamation Program

Are settling ponds or other structures proposed to control sedimentation in surface run off?  
[ ] No  [ ] Yes - please complete Schedule B

What is the average depth to the high groundwater table at the proposed excavation?  
Elevation of the groundwater table was determined from (check applicable boxes):
[ ] Existing area wells  [ ] Test wells drilled for this purpose  
[ ] Test pits  [ ] Other (describe)  

Describe measures proposed to protect groundwater quantity and quality from potential impacts of the proposed mining activity (i.e. fuel management program, buffer above water table, etc.):

Berm in place & gutter

Note that excavations below the groundwater table may require special approval from the Inspector.

Will fuel/lubricants be stored on site?  
[ ] No  [ ] Yes - Small Tanks for Lesser Only

If yes, handling, transportation and storage must adhere to B.C. Environmental Standards and Guidelines for Fuel Handling, Transportation and Storage, 2nd edition.

Shortest distance between proposed excavation to nearest residence: 150 m, or _______________

Shortest distance between proposed excavation to nearest residential water source: 150 m, or _______________

Describe measures proposed to prevent inadvertent access of unauthorized persons on the mine site (i.e. fencing, vegetative barriers, berms, etc.):

Private road - we can add sign

Are measures proposed to minimize noise impacts of the operation? (i.e. equipment selection, restrictions on hours of operation, noise barriers, etc.)  
[ ] No  [ ] Yes - Please describe:

10 am - 3 pm

Derm in place

Are measures proposed to minimize dust impacts of the proposed operation? (i.e. apply dust suppressants, water sprays, wind breaks, vegetation, etc.)  
[ ] No  [ ] Yes - Please describe:

Misting of Immediate Area when required

Are measures proposed to minimize visual impacts of the proposed operation? (i.e. vegetative barriers, berms, green belts, etc.)  
[ ] No  [ ] Yes - Please describe:

Derm's

OCCUPATIONAL FIRST AID
First Aid Supplies and communication at the mine site are required as per Parts 3.6.1 to 3.6.3 of the Code.

Describe the means of communication from the mine site:

radio/cell phone/ house phone

Location of nearest hospital: 15 min.

Travel time to hospital: 15 min  Estimated number of employees on site (Includes contractors): 1

Describe First Aid Level and supplies:

Level 1 / industrial first

Yvette Maurice hereby make application to undertake the mining activities described in this Notice, and in accordance with the Mines Act and the Health, Safety and Reclamation Code for Mines in British Columbia.

Applicant Signature: Y. Maurice

Date: Jan 25/04

Revised: 06/24/03
March 27, 2006
File No.: 0530-02/6635-01 & GREX-06-02

Mr. Al. Strachan
#71 – 6400 Spencer Road
Kelowna, B.C.
V1X 7T6

Dear Mr. Strachan:

Re: Sand and Gravel Extraction Operation on Lot C, DL 1, ODYD, Plan 38632
1267 Fathers Place

The Regional District acknowledges receipt of your letter and 3-page petition dated March 20, 2006 regarding the above. I have discussed this matter with our Planning Services Department and wish to advise you of the following.

While we appreciate and understand your concerns regarding this type of operation in your neighbourhood, the Regional District has no jurisdiction with respect to extraction of sand and gravel in our region. Jurisdiction lies with the Ministry of Energy, Mines and Petroleum Resources (office in Kamloops, B.C.).

I have confirmed that the property is the subject of a current application with the Ministry of Energy, Mines and Petroleum Resources to permit extraction of sand and gravel. The application was precipitated as a result of complaints to the Regional District and Ministry of Energy and Mines. It is noted that the Regional District is one of several referral agencies of the Ministry of Energy and Mines that are requested to provide comment on sand and gravel applications that are forwarded to our office.

The Ministry of Mines referral application was received in our office on February 17, 2006 and is currently being processed for comment from the applicable Agricultural Advisory Committee, Central Okanagan East Advisory Planning Commission, Parks Department and other Regional District staff. The Regional Board will consider the referral application at their meeting of April 10, 2006 or April 24, 2006.

A copy of your letter and signed petition has been provided to the Planning Services Department and will ultimately be considered by the Board in their deliberation and recommendation to the Ministry of Energy and Mines on the referral application. While the Ministry has indicated a willingness to work with local government, it is noted that all recommendations of the Board are at the discretion of the Inspector of Mines, and may or may not be considered and imposed as conditions of a Mines Act Permit to extract sand and gravel.
With respect to notification of area residents, this again is at the discretion of the Inspector of Mines as to what form of notification is required (i.e.: newspaper ad, public information meeting, or no notice at all). The Regional District is unable to confirm whether any notification to area residents advising of this operation has been, or will be required of the applicant by the Ministry of Energy and Mines.

Given that the property is within the Agricultural Land Reserve, the applicant is required to notify the Agricultural Land Commission and local government of their proposal. The process (referred to as a ‘Notice of Intent’) must be fulfilled prior to Ministry of Energy and Mines approval of the application. The notice requirement has not been fulfilled to date.

In recognition that the Regional District has no jurisdiction over sand and gravel extraction operations and in light of overwhelming concerns of area residents, I recommend that you contact Mr. Joe Seguin, Regional Manager at the Ministry of Energy and Mines office in Kamloops to discuss this matter. A copy of your letter and petition should also be forwarded to Mr. Seguin in advance of Regional Board consideration of the application to ensure that the Mines Ministry is fully aware of area resident concerns. Mr. Seguin can be reached at (250) 371-6051.

I trust that the above provides answers to your questions and clarification of the approval process for sand and gravel operations in the Province.

I can be reached at (250) 469-6224 if you wish to discuss this matter further.

Yours sincerely,

[Signature]

Robert Hobson
Chair

cc: Joe Seguin, Ministry of Energy, Mines and Petroleum Resources
    Agricultural Land Commission
    Al Homing, MLA
    Kelly Roth, Director of Inspection Services
    Dan Plamondon, Deputy Director of Planning Services
    Brian Ralph, Bylaw Enforcement
    Ron Fralick, Planner 1
    Bill Vos, Director of Parks and Facilities
    Murray Kopp, Deputy Director of Parks and Facilities
Ministry of Energy and Mines Referral
GREX-06-02 Fathers Place
50-80,000 yards of material proposed for extraction