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Montana Department of
ENVIRONMENTAL QUALITY

Brian Schweitzer, Governor

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July 11, 2008

Dear Reader:

Jesson Rock-N-Ranch, LLC, of Livingston, MT applied for an operating permit for rock picking on November 1, 2007. The site is located in Section 30, Township 2 South, Range 9 East about 8 miles west of Livingston, MT on private property. Jesson Rock-N-Ranch, LLC seeks approval of its application for a 200 acre permit area which would be potentially be disturbed over the course of 50 years. The Montana Department of Environmental Quality (DEQ) issued a Draft Checklist Environmental Analysis (CEA) on April 8, 2008 evaluating the potential impacts from the rock picking operation and asking for comments on the proposed operation. The Draft CEA addressed issues and concerns raised during public involvement and from agency scoping. Three comment letters were received on the Draft CEA.

DEQ published a Draft Checklist Environmental Assessment (CEA) on April 8, 2008. The Draft CEA analyzed the potential impacts of the Proposed Action as well as the potential impacts of two alternatives: 1) No Action (Denial of the Operating Permit) and 2) Agency Modifications to the Proposed Action.

The Draft CEA addressed issues and concerns raised during public involvement and from agency scoping. The DEQ received three letters and/or emails from the public. The issues raised included:1) road safety, 2) maintenance of the access road and bridge, 3) hours of operation, 4) noise, 5) commercial development in a private neighborhood, 6) decreased value of neighboring land, 7) dust, 8) tailings, 9) on-going reclamation, 10) wind erosion, 11) wildlife impacts, and 12) noxious weeds.

Issue 1, road safety, is addressed in the Type and Purpose of Action section of the CEA on page 1. A flatbed truck would haul rocks on a seasonal basis with 15 to 20 truckloads removed per month, an increase in truck traffic of less than one round trip per day. The trucks are a standard design, normal sized, and loads are not excessively wide. There are no blind corners or other limitations to visibility along the access road. There would be minimal hauling on the road when the ground is frozen or the road would be snow covered. Any increase in traffic on a road increases the potential for an accident. As long as the truck drivers observe standard traffic safety practices while driving, the expected use of the road by haul trucks should have a minimal affect on traffic safety. The DEQ cannot limit use of a private road by trucks or set speed limits. The DEQ is unaware of any limitations on use of the private road set by any local homeowners association or zoning regulations.

Issue 2, maintenance of the access road and bridge would be impacted by the increase in traffic from the haul trucks. The increase in truck traffic would be less than one round trip per day. The trucks are a standard design, normal sized. The haul truck loads should not exceed the normal usage by other large trucks such as those used to haul in gravel or cement used to build roads or house foundations in the neighborhood. The increase in traffic would increase the wear and tear on the road and bridge. This may result in the need for more maintenance of the road and affect the bridge's life span. The DEQ cannot limit use of a private road by trucks or require maintenance of the access road. The DEQ is unaware of any limitations on use of the private road set by any local homeowners association or zoning regulations. Increased wear and tear on the access road and bridge would be an unavoidable impact of permitting the rock picking operation.

Issue 3, hours of operation and the days the operation would work are not addressed by the operator in the application for an operating permit. The days that work occurs would be seasonal, approximately mid-April to October. There would be impacts to neighbors from noise from rock loading and use of the access road by haul rocks. DEQ has no authority to limit hours of operation or days of operation. The applicant would have to voluntarily agree to set limits in his permit. Impacts to neighbors from hours of operation and day of operation would be an unavoidable impact of permitting the rock picking operation.

Issue 4, is noise. Rocks would be hand picked. Noise would be produced by use of a front end loader and haul trucks on the permit area and haul trucks along the access road. Work would be seasonal and it is expected that 15 to 20 truckloads would be removed per month during operations. There would be impacts to neighbors from noise from rock loading and use of the access road by haul rocks. The noise levels heard by the neighbors would be a nuisance but not exceed any thresholds for public safety. Increased noise is an unavoidable impact of a rock picking operation.

Issue 5, is that commercial development may affect the residential character of the area. The CEA has been mailed to all residents within half a mile of the operation as a form of notification as well as publication in the form of a legal notice in the local newspaper. Development in a private neighborhood is a civil matter involving zoning and possible covenants. The DEQ is unaware of any limitations on use of the permit area for commercial development set by any local homeowners association or zoning regulations.

Issue 6, is decreased value of neighboring land. The DEQ regularly receives comments from neighbors on how a proposed mining operation in the neighborhood would affect the value of neighboring land. The applicant has a right to mine his resources as long as he complies with existing statutes. The DEQ cannot stop development in a neighborhood as long as the operator complies with air and water quality standards and other applicable

laws and regulations. Development in a private neighborhood is a civil matter involving zoning and possible covenants. The DEQ is unaware of any limitations on use of the permit area for commercial development set by any local homeowners association or zoning regulations. The use of the land for a rock collecting operation may impact surrounding land values. Unlike an open pit mining operation the results of removing rocks from the surface would have less of an impact. Impacts to surrounding landowners property values would be unavoidable impacts of allowing the rock picking operation.

Sale or market value of adjacent property may be negatively affected by the presence of Jesson Rock-N-Ranch, LLC's operation, but DEQ has no specific information on this issue at this site.

In the context of DEQ's regulation of gravel pits under the Opencut Mining Act, DEQ contracted a study to determine whether the existence of a gravel pit and gravel operation impacted the value of surrounding real property. The study (Rygg, February 1998) involved some residential property near two gravel operations in the Flathead valley. Rygg concluded that DEQ authority under the Opencut Mining Act to protect air quality, to minimize noise and visual impacts to the degree practicable through the use of berms, vegetation screens, and limits on hours of operation, to otherwise prevent significant physical harm to adjacent land, and to require reclamation of the site were effective in preventing decrease in taxable value of those lands surrounding the gravel pits. In his review of the study, Jim Fairbanks, Region 3 Manager of the Montana Department of Revenue, Property Assessment Division, said:

> In the course of responding to valuation challenges of ad valorem tax appraisals, your reviewer has encountered similar arguments from Missoula County taxpayers regarding the presumed negative influence of gravel pits, BPA power lines, neighborhood character change, and traffic and other nuisances. In virtually ALL cases, negative value impacts were not measurable. Potential purchasers accept newly created minor nuisances that long-time residents consider value diminishing.

Also in reference to the permitting of gravel pits, DEQ has stated that proposed gravel mining and gravel crushing operations create the possibility of reducing the attractiveness of home sites to potential homebuyers seeking a quiet, rural/residential type of living environment and could affect the marketability of existing homes.

Despite DEQ's lack of authority under the MMRA to minimize noise and visual impacts and to limit hours of operation, Jesson Rock-N-Ranch, LLC's proposed operation will have a significantly less noticeable presence than the typical gravel operation, which generally operate from 7 a.m. to 7 p.m. at least five days a week, have significantly more

truck traffic hauling mined material, and often include the operation of a crusher. Thus, its impact on the taxable value and marketability should be significantly less.

Issue 7, is dust. Air quality is addressed in the CEA on page 2. The CEA notes that dust would be produced due to travel on dirt roads commonly found in the area. The landowner would be responsible for controlling dust within the permit boundary. Dust is a common problem resulting from increased traffic on gravel roads. The applicant has a right to use the private road. If dust on the access road becomes an issue for the surrounding landowners, they may want to join with the applicant on developing a dust control program including chemical dust suppressants. Increased dust is an unavoidable impact of allowing the rock picking operation.

Issue 8, concerns tailings left on the ground. Tailings are the remains of ore after the valuable minerals have been removed. Tailings would not be created on the site as the rock is being directly hauled away without processing. Some waste rock may be produced on the site that is not suitable for shipment. This rock would remain on the permit area. Waste rock production would be an unavoidable impact of allowing the operation.

Issue 9, concerns on-going reclamation. Based on an inspection of the site on April 28, 2008 reclamation is ongoing and satisfactory. Maximum disturbance unreclaimed at any one time would be limited to a total of 20 acres over a five year period.

Issue 10, concerns wind erosion. Individual rocks are being lifted from the surface with minimal disturbance. As noted on page 2 of the CEA under the heading of Geology and Soil Quality, Stability and Moisture the small size of the disturbance would limit soil loss due to wind erosion. Ongoing reclamation would also limit wind erosion. Blowing dust from operations would be an unavoidable impact of allowing the operation to proceed.

Issue 11, concerned impacts to wildlife. Page 2 of the CEA addressed the issue under the heading of Unique, Endangered, Fragile or Limited Environmental Resources. It states that the level of impact from picking up rocks and seasonal use of the area for rock collecting would limit impacts. The inspection of April 28, 2008 noted a dozen or so mule deer and some whitetail deer, a badger hole, and a possible coyote den in the proposed permit area. Wildlife would be displaced during rock picking operations. This is an unavoidable impact of allowing a rock picking operation.

Issue 12, concerns noxious weeds. The CEA addressed this issue on page 2 under the heading of Vegetation Cover, Quantity and Quality. It notes that disturbance would lead to more noxious weed invasion in the area and loss of native species. Weed control

would limit these impacts. The operator must comply with the Park County Weed District's program for controlling weeds.

DEQ noted on the inspection on April 28, 2008 that soil was not being salvaged at the current loadout site. A mitigation attached to approval of the operating permit would require that soil be salvaged from any additional acreage disturbed for the loadout/truck turn-around area and that the current loadout site would be ripped prior to seeding.

The comments received have not changed the conclusions in the Draft CEA. DEQ has decided to adopt the Draft CEA as the Final EA and has selected the Agency Modifications to the Proposed Action Alternative.

The operating permit will be issued contingent on Jesson Rock-N-Ranch, LLC posting the required reclamation bond and signature by the Director of DEQ. Following are the proposed permit conditions:

Permit Area: 200 acres
Permitted Disturbance: 200 acres
Maximum Disturbance Unreclaimed at any One Time: 20 acres over a five year period.
Bond: $13,690

A stipulation to the permit is that soil must be salvaged from any additional acreage disturbed for the loadout/truck turn-around area and that the current loadout site be ripped prior to seeding.

Information on the Jesson Rock-N-Ranch, LLC operating permit application can be obtained by writing or calling the Montana Department of Environmental Quality, c/o Herb Rolfes, P. O. Box 200901, Helena, MT 59620, telephone (406) 444-3841; e-mail address hrolfes@mt.gov.

Warren D. McCullough

Warren D. McCullough, Chief
Environmental Management Bureau

7/11/08
Date

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