



COUNTY COMMISSIONERS

Cathy Wolfe
District One
Sandra Romero
District Two
Karen Valenzuela
District Three

HEARING EXAMINER

Creating Solutions for Our Future

BEFORE THE HEARING EXAMINER FOR THURSTON COUNTY

In the Matter of the Application of)	
)	
)	SUPT NO. 2011101306
)	
Miles Sand & Gravel Company)	
)	
)	
For a Special Use Permit)	FINDINGS, CONCLUSIONS,
)	AND DECISION
)	

SUMMARY OF DECISION

The requested approval for a special use permit to construct and operate a concrete batch plant at the existing Hamilton Resources mine facility operated by Miles Sand & Gravel at 16424 Old Highway 99 SE, Tenino, Washington is **GRANTED** subject to conditions.

SUMMARY OF RECORD

Request

Miles Sand & Gravel Company (Applicant) requested approval of a special use permit to construct and operate a concrete batch plant at the existing Hamilton Mine facility operated by Miles Sand & Gravel at 16424 Old Highway 99 SE, Tenino, Washington.

Hearing Date

The Thurston County Hearing Examiner conducted an open record public hearing on the request on December 3, 2012.

Testimony

At the open record public hearing, the following individuals presented testimony under oath:

Robert Smith, Resource Stewardship Department
Sara Brallier, Environmental Health Department
Mike Schuh, Applicant
William T. Lynn, Gordon Thomas Honeywell

Karen Parker
Roger Swanson
Tony Bigelow

Exhibits

At the open record public hearing, the following exhibits were admitted into the record:

- EXHIBIT 1 Resource Stewardship Planning & Environmental Section Report including the following attachments:
- Attachment a Notice of Public Hearing
 - Attachment b Zoning/Site Map
 - Attachment c Master Application, received April 21, 2011
 - Attachment d Special Use Permit Application, received April 21, 2011
 - Attachment e Letter from Mike Schuh, Miles Sand & Gravel Co., dated December 21, 2011
 - Attachment f Letter from William T. Lynn, Gordon Thomas Honeywell, dated August 10, 2011
 - Attachment g Site Plan Set, received April 21, 2011
 - Attachment h Noise Study, Environ, dated December 1, 2011
 - Attachment i Letter from Kristen Wallace, Environ, dated August 21, 2012
 - Attachment j Mitigated Determination of Non Significance (folder 12 102360 XA), Issued July 24, 2012
 - Attachment k November 15, 2012 Comment Memorandum from Sara Brallier, Thurston County Public Health and Social Services Department
 - Attachment l May 2, 2011 Comment Memorandum from Kevin Hughes of the Thurston County Public Works Department
 - Attachment m Comment Letter from Geoffrey L. Glass, Olympic Region Clean Air Agency, dated July 19, 2011
 - Attachment n Comment e-mail from Karen Parker, dated July 22, 2011

Attachment o	Comment e-mail from Scott and Susan Barrett, dated July 23, 2011
Attachment p	Comment Letter from Roger Swanson, dated July 26, 2011
Attachment q	Comment e-mail from Robert Powell, dated August 2, 2011
Attachment r	Comment Letter from Don and Brigitte Nelson received, August 2, 2011
Attachment s	Comment Letter from Cheri Landers, dated August 2, 2011
Attachment t	Comment Letter from Don and Brigitte Nelson, dated August 2, 2011
Exhibit 2	Enlarged Site Plans
Exhibit 3	Traffic Impact Analysis, April 2011
Exhibit 4	Scoping Report, March 2011
Exhibit 5	Photos of Public Hearing Notice Posting
Exhibit 6	Arial Photo of Vicinity
Exhibit 7	Exhibit A – Berm Plan
Exhibit 8	Applicant's Proposed Changes to Condition E
Exhibit 9	Applicant Brief Regarding Hours of Operation /Noise Issue, November 30, 2012
Exhibit 10	Site Management Plan, Hamilton Resources, with cover letter submitted December 5, 2012 ¹
Exhibit 11	Spill Plan Review, Brad Zulewski, Public Health and Social Services

¹ At the conclusion of the hearing, the record was held open for additional materials not available at the time of the hearing. First was the Hamilton Resources Site Management Plan on file with Department of Ecology, which the Applicant was to submit as soon as possible. Second was a memo from Thurston County Environmental Health Department regarding site inspection procedures and history for the existing mining operation on site. The record was held open through December 10th for the EHD memo; it was submitted on December 4th. Finally, the Applicant reserved the right to submit rebuttal comments, if any, to the EHD memo. Such rebuttal was due December 12th; however, on the 12th, the Applicant representative notified the Office of the Hearing Examiner by email that there were no comments. Exhibits 10 and 11 were submitted consistent with the scheduled discussed on the record and are admitted. The record closed on December 12, 2012.

Based upon the record developed at the open record hearing, the Examiner enters the following findings and conclusions.

FINDINGS

1. The Applicant requested approval of a special use permit (SUP) to construct and operate a concrete batch plant at the existing Hamilton Resources mine facility operated by Miles Sand & Gravel at 16424 Old Highway 99 SE, Tenino, Washington.² *Exhibit 1, Attachments c and d.*
2. Surrounding land uses include rural single-family residences on lots of five or more acres and undeveloped forested lands to the east and south, with ranch lands to the west and north. The Tenino city limits are situated approximately 850 feet to the north. *Exhibit 1, page 2; Exhibit 4, page 2, Vicinity Map.*
3. The Hamilton family began mining on the 172.66-acre site in 1979 prior to the County's adoption of zoning regulations requiring land use permits for mining. The legally nonconforming mine operates under a State Department of Natural Resources surface mine permit (No. 70-011902) that originally allowed a mining depth of 40 feet. In July 2004, the Applicant acquired the property from Hamilton and the DNR permit was transferred to Miles Sand & Gravel. Subsequently, Thurston County issued an additional SM6 Form authorizing mining to a depth of 100 feet within the 172.66 acres. Existing improvements on the site include an office building, a shop, a truck scale, a contained fueling station, and an existing gravel looped road with access from Old Highway 99. *Exhibit 1, page 2; Exhibit 1, Attachment f; Exhibit 4, see Existing Conditions Map.*
4. The site has a Rural Residential Resource (RRR 1/5) zoning designation. Concrete batch plants are allowed in the RRR 1/5 zone as accessories to a mineral extraction use, subject to special use permit review and approval. The subject property is not within the jurisdiction of the Shoreline Master Program for the Thurston Region. The site is in a category 1 aquifer recharge area and contains potential native prairie species habitat protected by the Thurston County critical areas ordinance (CAO). The project limits are in the 300-foot buffer of a high ground water hazard area. Aside from sparse weeds, the project limits contain no vegetation. *Exhibit 1, page 2; Exhibit 4; TCC 20.54.070(21)(a)(1).*
5. The batch plant is proposed at the northern limits of the mining area at a relatively higher elevation and would contain all process and stormwater runoff; it would not impact or be impacted by the high groundwater hazard area. The existing mine is permitted to excavate down to depths of 100 feet, below the groundwater table. Top soils (and thus prairie soils and associated habitats) have already been excavated within the project limits of the legally nonconforming mine. Soils will be reclaimed consistent with the approved reclamation plan when mining at the site is complete. The batch plant and its components would be removed from the site prior to reclamation. *Exhibit 4.*

² The legal description of the property is a portion of the Northeast Quarter of Section 12, Township 16 North, Range 1 West, W.M.; known as Tax Parcel Nos. 12625130102 and 12625420000.

6. The RRR 1/5 zone allows a maximum building height of 35 feet; however, certain types of structures, including silos, are excluded from maximum height regulations. The minimum setback from side and rear property lines for commercial/ industrial structures is 10 feet. The minimum setback from the front lot line is 35 feet. As proposed, the project would satisfy applicable bulk dimensional zoning requirements. *TCC 20.09A.050(4); TCC 20.07.080; Exhibit 1, page 3; Exhibit 2, Site Plan.*
7. The proposed "dry-mix" concrete batch plant would be located on the graveled area near to the existing office and truck scale in the northeast portion of the developed mine area. Proposed improvements within the 4,600 square foot project limits include a new concrete slab on grade, equipment foundations, and pre-fabricated modular components including an aggregate feed hopper, mixing bin, a water tank, aggregate bins, and silos. Materials used to make the concrete would include sand, pea gravel, 7/8 rock, occasional 1.5 inch rock, fly ash, various admixtures, and water. Aggregates would be stored in bins that are open to the elements. Materials with finer particles, including the fly ash and admixtures, would be contained in silos not open to the elements. Concrete trucks would drive onto the slab, where the dry components and water would be added. The trucks would increase the RPMs of their engines and barrels to mix the ingredients. Batch plant components would be fitted with hoods to contain dust and a powered dust collector would gather and reuse fly away particulates. The proposed slab and equipment foundations would slope to channel process runoff to a containment basin. Proposed hours of operation are 5:00 am to 5:00 pm Monday through Saturday. One full time employee and one other employee to assist with clean up and operations would work at the batch plant; they would use the existing sanitation facilities in the office. At the nearest point, the proposed batch plant improvements would be set back 304 feet from the east property boundary. The existing gravel road to be used by concrete trucks is approximately 200 feet from the east property boundary. An existing 13- to 15-foot high berm between the proposed project site and the residences to the east would be extended to the north and south, and at the south end to the west, and raised to an approximate height of 25 feet in order to provide screening of the new use from the existing residences. Once built, the base of the berm would be parallel to and near the 50-foot mine perimeter buffer along the eastern site boundary. *Exhibit 1, page 2; Exhibit 4, Vicinity Map; Exhibit 1, Attachment d; Schuh Testimony; Exhibit 7, Berm Plan; Exhibit 2, Sheet 2, Site Plan.*
8. Thurston County's mineral extraction code, at TCC 17.20, contains noise control provisions based on those established in Washington Administrative Code (WAC). These provisions classify land uses into three environmental designations for noise abatement (EDNA) based on types of sounds generated and types of receiving properties into three EDNAs based on sound tolerance.³ Typically, residential properties are considered Class A, commercial properties are Class B, and industrial properties are

³ Pursuant to Washington Administrative Code (WAC) 173-60-020(6), "EDNA" means the environmental designation for noise abatement, being an area or zone (environment) within which maximum permissible noise levels are established.

Class C.⁴ The WAC establishes the following maximum permissible noise levels, which have been adopted by Thurston County:

EDNA of noise source	EDNA of receiving property		
	Class A	Class B	Class C
Class A	55 dBA	57 dBA	60 dBA
Class B	57	60	65
Class C	60	65	70

Between the hours of 10:00 p.m. and 7:00 a.m. the noise limitations of the foregoing table must be reduced by 10 dBA for receiving property within Class A EDNAs. At any hour of the day or night, the applicable noise limitations above may be exceeded for any receiving property by no more than:

- i. 5 dBA for a total of 15 minutes in any one-hour period; or
- ii. 10 dBA for a total of 5 minutes in any one-hour period; or
- iii. 15 dBA for a total of 1.5 minutes in any one-hour period.

WAC 173-60-040.

9. The Applicant submitted a professionally prepared noise study, which characterized the proposed batch plant as a Class "C" use. As a Class "C" use, it would be subject to the 60 dBA limit at the receiving residential property boundary between 7:00 am and 10:00 pm and a 50 dBA limit between 10:00 pm and 7:00 am with the following exceptions: up to 65 dBA for 15 minutes in any hour; up to 70 dBA for up to five minutes in any hour; and a sound maximum of 75 dBA for up to 1.5 minutes in any hour. The noise consultant conducted a sound level measurement study of existing noise at the eastern site boundary, nearest to adjacent residential uses, and found that existing day time sound levels comply with the day time noise limits. Currently the mine does not generate noise between 10:00 pm and 7:00 am. *Exhibit 1, Attachment h.*
10. According to the noise study, the primary sounds associated with dry-mix concrete plants are truck engines during the mixing process. Secondary noises are generated by loaders loading aggregate into the hopper and returning excess aggregate to the storage bin by a conveyor. Thirdly, the trucks generate noise when they enter and exit the batch plant site. Using previously collected sound level data from a concrete truck mixing a load of concrete and from a front-end loader filling a hopper, the study reports the truck and loader sound levels were 75 dBA at 100 feet. Next, the Applicant's study chose five locations along the eastern property boundary (along the rural residential lots) and projected the sound volumes from the existing mining activities and the proposed

⁴ Pursuant to WAC 173-60-030(1)(a), "Class A EDNA [means] Lands where human beings reside and sleep." Class C EDNA - Lands involving economic activities of such a nature that higher noise levels than experienced in other areas is normally to be anticipated [typically including] Industrial property used for the production and fabrication of durable and nondurable man-made goods. *WAC 173-60-030(1)(c).*

concrete batch plant activities at the five locations (see Exhibit 1, Attachment h, Figure 1). At all five locations, daytime combined noise volumes ranged from 48 to 54 dBA and nighttime combined noise volumes ranged from 45 to 50 dBA. In conclusion, the noise study noted that an existing berm near the project limits is proposed to be extended and raised to 25 feet in height and suggested that no other mitigation would be necessary. *Exhibit 1, Attachment h.*

11. As pointed out by the Resource Stewardship Department Staff, the mineral extraction code defines mineral extraction activities in residential zones as Class "A" EDNA uses for noise control purposes. *TCC 17.20.110.A (emphasis added); Exhibit 1, page 4.* The County Code defines mineral extraction as "the removal of minerals, including, but not limited to, sand, gravel, shale, rock, coal, soil, peat or clay, from an excavation in the earth." *TCC 20.03.040(84.5)*⁵.
12. Staff contended that the project is included in the term "mineral extraction activities" and that it must comply with the Class "A" EDNA noise source limits, rather than the Class "C". Further, Staff noted that batch plants are not permitted stand-alone land uses, but are only allowed as accessories to mineral extraction activities. Staff argued that accessory uses should be required to comply with and not exceed the standards of the primary use, and recommended the batch plant be restricted to Class "A" limits. *Exhibit 1, page 4; Smith Testimony.*
13. Representatives for the Applicant argued that the definition of mineral extraction activities only includes removal of minerals from the earth, not activities conducted with minerals that have already been removed.⁶ *Lynn Comments; Exhibit 9; Exhibit 1, Attachment h, August 21, 2012 letter from Kristen Wallace.*
14. Thurston County Environmental Health Division (EHD) Staff agreed with Resource Stewardship Staff's determination that the project must meet the standards for a Class "A"

⁵ The definition continues to establish the following specific exclusions from "mineral extraction": a) Excavation and grading at building construction sites where such construction is authorized by a valid building permit; or b) Excavation and grading in public rights-of-way for the purpose of on-site road construction, or in private rights-of-way for the same purpose if authorized by the roads and transportation services department; or c) Excavation and grading for the purpose of developing ponds or manure lagoons for agricultural purposes where the total time of excavation and grading does not exceed forty-five consecutive calendar days; or d) Excavation and grading in connection with and at the site of any creek, river or flood-control or storm drainage channel for the purpose of enlarging hydraulic capacity or changing the location or constructing a new channel or storm drain where such work has been approved by the roads and transportation services department; or e) Excavation and grading where the excavated material will be used on the same property or on property contiguous to and under the same ownership as the excavation. *TCC 20.03.040(84.5).*

⁶ The Applicant also contended that had batch plants been intended to be considered Class "A" uses, the Board of County Commissioners would have included them in the recent amendment to the Mineral Extraction Code that specifically defined "mineral extraction and asphalt plant activity" as Class "A" EDNA. *Exhibit 9 (new language underscored).* This argument was not persuasive. The ordinance naming asphalt plants as Class "A" uses along with mineral extraction activity was the result of a nine year public process specifically focused on asphalt plant placement, not a general amendment of the mineral extraction code; nothing in the record indicates that placement of concrete batch plants was also considered during the nine year process.

use; however, they read the Applicant's noise study to show that even applying Class "A" use standards, the project would only exceed permissible nighttime sound levels by one to five dBA and only during the hour from 6:00 to 7:00 am (assuming a start up time of 6:00 am) and would not exceed allowed daytime noise limits. EHD Staff recommended that the Applicant be required to explore potential noise mitigation measures to bring the proposal into compliance with Class "A" standards. *Exhibit 1, Attachment k.*

15. Resource Stewardship Staff recommended a condition of approval that would require quarterly monitoring of noise levels at the property boundaries consistent with the requirements of WAC 173-58 to be submitted to the Thurston County Health Department. *Exhibit 1, page 8.* The Applicant did not object to monitoring but requested some clarifications and changes to the condition that would, in part: allow the Health Department to determine whether noise monitoring was no longer required (presumably based on a record of compliance with applicable noise limits) and also allow the Applicant to submit the quarterly noise reports on an annual basis. *Exhibit 8.*
16. A related issue is the question of hours of operation. The mineral extraction code restricts gravel mining and accessory uses within or adjacent to a residential zoning district, to "hours of operation for excavating, processing and loading" from seven am to seven pm Monday through Saturday, with the following exceptions:
 1. Excavation and loading necessitated by flood emergencies;
 2. On Monday through Saturday, the early morning processing of concrete necessary to provide beneficial strength;
 3. Hauling to jobs under contract with a public agency. However, for any such hauling outside of the hours provided in subsection B of this section, the operator shall post reasonable notice near the site, notify the planning director, and notify the legal newspaper of the county and at least one radio station covering the area of the site.

TCC 17.20.115(B) and (C).

17. At the time of the hearing, Resource Stewardship Staff noted that while the code does allow for early morning processing of concrete, still the noise levels would have to comply with those for EDNA Class "A" uses. Staff contended that the proposed batch plant would not be able to operate before 7:00 am based on the data in the Applicant's noise study. *Exhibit 1, page 4; Smith Testimony.*
18. The Applicant submitted testimony and written argument contending that much of the demand for concrete relates to road and other infrastructure projects throughout the state, the majority of which are under construction in the summer months. The Applicant noted that the earlier start time necessary for the beneficial strength of the concrete would generally apply in the summer months, when concrete must be poured at the construction site before the ambient temperature is too high, and must be transported to the construction site before being poured. Also, the Applicant testified that subsection 3) allowing after hours operation for jobs where the concrete is hauled for a public agency

would frequently apply, noting that non-peak construction hours are frequently mandated by government contracts. The Applicant argued that the code specifically establishes these exceptions to its hours of operation limitations for concrete batch plants, and that the instant proposal would require start times as early as 5:00 am exactly for the purposes stated in the code. During the summer, after hours operations may be need 75 to 80% of the time to meet demand. *Lynn Comments; Exhibit 9.*

19. There would be no increase in impervious surface area, as the area within the project limits is wholly comprised of compacted gravel. Slopes within the project limits are zero to 5% and the underlying soils are rated as "somewhat excessively drained"; however, no stormwater or process water runoff would leave the project limits without going through the proposed containment basin collection system. Water from the containment basin would be tested, treated to adjust the pH to neutral if needed, and reused. No off-site work is proposed and no downstream impacts are anticipated. The intent of the containment system is to prevent discharge of process water and stormwater runoff from entering the groundwater; however, the mine's existing NPDES permit allows process water to be discharged following specified treatment.⁷ The NPDES permit would be updated to include the proposed batch plant. *Exhibit 4; Schuh Testimony.*
20. The Applicant submitted a professionally prepared traffic impact analysis (TIA) that evaluated existing roadway conditions and traffic and projected traffic volumes generated by the proposal. Concrete trucks (empty and full), employee, and supply vehicles would likely access the site from I5 to the west via Old Highway 99. The TIA projected that the batch plant would generate 30 new trips on an average day, 15 trips each assigned to the AM and PM peak hours.⁸ Considering existing and anticipated future traffic through the year 2021, the TIA projected that the batch plant would result in no noticeable increase in delay at any study intersection. Finally, the TIA reviewed the proposal against the requirements for a left turn lane into the site and found that the project would not trigger requirements for a left turn lane. No traffic mitigation was recommended. *Exhibit 3.* Some of the trips reported in the TIA represent existing area concrete truck traffic redirected to the new project from existing batch plant locations in the general vicinity. *Schuh Testimony.*
21. Thurston County Public Works Development Review Section reviewed the Applicant's preliminary site plan, the drainage scoping report, and traffic impact analysis, determining that all preliminary requirements of the Thurston County Road Standards and the Drainage and Erosion Control Manual are satisfied by the proposal. Public Works Staff recommended approval with conditions. *Exhibit 1, Attachment 1; Hughes Testimony.*

⁷ The current NPDES permit was issued August 4, 2010, modified August 17, 2011, and has an expiration date of October 1, 2015. *Exhibit 10.*

⁸ According to the TIA, these AM and PM peak hour volumes reflect a "worst case scenario" for the purposes of calculating off-site impacts, and that the 30 average trips per day would normally be spread throughout the day. *Exhibit 3.*

22. Two existing wells are located within the project limits, used by the mine. There are three domestic wells to the northeast, east, and south of the project. Due to the proposed containment system and proposed compliance with the NPDES permit, the concrete batch plant is not anticipated to impact any of these wells. No septic systems or fuel tanks are proposed. *Exhibit 4.*
23. Thurston County acted as lead agency for review of the proposal for compliance with the requirements of the State Environmental Policy Act (SEPA). In conducting environmental review, the County considered: the special use permit application and environmental checklist; updated project descriptions; correspondence from M. Schuh dated December 21, 2011; correspondence from W. Lynn, dated August 10, 2012; engineered site plans; a drainage scoping report; the noise study and traffic impact analysis; comments from Thurston County Public Works and Environmental Health departments; correspondence from Department of Ecology, and public comments. A single mitigation measure requiring testing of soil or groundwater for contamination by hazardous substances should evidence of contamination become suspected or known at any time during or after construction. Determining that compliance with County Code and the mitigation measure would prevent the project from resulting in probable, significant, adverse environmental impacts, the SEPA Responsible Official issued a mitigated determination of non-significance (MDNS) on July 24, 2012. No appeal was filed prior to the appeal deadline of August 14, 2012. *Exhibit 1, Attachment j.*
24. The application was routed to various public agencies for review and comment. The Washington State Department of Ecology submitted comments during the SEPA review period, which were incorporated into the MDNS. The Olympic Region Clean Air Agency (ORCAA) submitted comments noting that preconstruction review of concrete batch plants if required by that agency. *Exhibit 1, Attachments j and m.*
25. Written notice of the public hearing was sent to all parties of record on November 21, 2012. Notice of hearing was posted on site on November 20, 2012 and published in The Olympian on November 23, 2012. *Exhibit 1, page 3; Exhibit 1, Attachment a; Exhibit 5.*
26. Prior to and at the public hearing the County received public comments expressing concerns on the following topics: noise from operations and from equipment back up alarms; dust; a request for a taller berm and vegetation to create a shield for adjacent residences; light pollution; traffic impacts of the new trucks in addition to existing mine traffic, including speeding trucks and the use of "Jake brakes" adjacent to the nearby residences; impacts to nearby domestic wells from equipment leaks and chemicals used in making concrete; impacts to prairie habitat and species; impacts to property values; concerns that the batch plant would be allowed to operate even when the dust collector and hoods were not functioning properly, resulting in excess dust; and concerns about the potential for future asphalt plants on site. *Exhibit 1, Attachments n (Parker), o (Barrett), p (Swanson), q (Powell), r (Nelson), s (Landers), and t (Nelson); Parker Testimony; Swanson Testimony; Bigalow Testimony.*

27. One question repeatedly raised in public comment is whether the batch plant can be placed farther west or generally farther away from the neighboring residences. *Parker Testimony; Swanson Testimony; Exhibit 1, Attachment s*. Another comment raised by multiple individuals was that trees and vegetation along the perimeter of the project would go a long way towards mitigating dust and noise impacts. *Parker Testimony; Exhibit 1, Attachments n, q, and t*.
28. Roger Swanson lives at 17345 Mima Acres Drive, east of the current mining operation and southeast of the proposed batch plant. His house is situated on the rear of his lot, 200 from the mine perimeter. According to Mr. Swanson, when rock crushing is underway adjacent to his parcel, it is not possible to hold a conversation in his yard due to the noise. He and his wife experience severe dust in their yard as well. Mrs. Swanson has severe lung health problems and any concrete dust or additional dust from operations in their yard would be a severe hardship for them. Mr. Swanson asked for any and all additional barriers to control dust and noise. *Swanson Testimony*.
29. Staff noted that the existing mining operations are not subject to the instant permit and are permitted as a legally non-conforming use. *Exhibit 1, page 5; Smith Testimony*.
30. Regarding the proposed location of the batch plant near the eastern site boundary, the Applicant noted that the proposed location is in an area that has already been mined, and that areas further west are still being mined. DNR has approved the proposed location; the DNR permit would have to be amended to move the batch plant. Also, the proposed location would allow the batch plant to be served by the same road and utilities that serve the existing office and other improvements; moving the plant west would require relocating or adding new access and utilities. *Schuh Testimony*. Staff noted that the proposed location satisfies applicable setbacks. *Smith Testimony*.
31. The Applicant has no current plans to build and operate an asphalt plant on-site. *Schuh Testimony*. Any asphalt plant would be required to undergo separate review and permitting process subject to the mineral extraction code as recently amended. *Smith Testimony; Exhibit 9, Ordinance 14782*.
32. Regarding equipment leaking fuel and other engine fluids onto the mine surface and potentially reaching groundwater and neighboring domestic wells, the Applicant provided the following testimony: All trucks and machinery are maintained daily through pre- and post-trip inspections. One mine employee position is dedicated to overseeing compliance with the Site Management Plan reviewed and approved pursuant to the Sand and Gravel General Permit and the NPDES issued by the Washington State of Ecology. The Site Management Plan includes: best management practices for equipment maintenance; "maintenance shop zero discharge"; water management; "use of chemical treatment products"; discharges to ground water; discharge of stormwater runoff; spill prevention control plan; stormwater pollution prevention plan; erosion and sediment control plan; monitoring, record keeping, and reporting requirements; solid waste disposal; and other elements. Both Department of Ecology and the Thurston County Health Department staff conduct site inspections at least annually to monitor compliance with all permit and

code-based requirements. The County Health Department submitted a copy of its 2012 site inspection report, which found the existing operation in compliance with all requirements. *Schuh Testimony; Exhibit 10; Exhibit 11.*

33. Regarding impacts from new traffic, the Applicant reiterated that some of the increased traffic reported in the TIA is not actually an increase over existing conditions in the vicinity, as the new project would redirect existing concrete truck traffic to the new project from an existing batch plant. Some increase in traffic to the site would occur from hauling concrete specific supplies in, and the rest would be concrete truck traffic. Even with the projected increase, the TIA showed no significant increase in intersection delay through the year 2021. Regarding equipment back up alarms, the Applicant stated that the batch plant equipment would utilize a newer kind of alarm with a wider range of sound frequencies that dissipates more quickly, the sound of which would not travel as far as the traditional high-pitched alarms. *Schuh Testimony.*
34. Regarding dust generally and the concern that the plant would operate even if the dust collection system were not functional, the Applicant stated that concrete would not be made at the facility if the dust collecting vacuum was not working. *Schuh Testimony.* The Applicant indicated that during the summer, the mine has an employee dedicated to dust suppression using a water truck. Both the Applicant and Staff noted that the batch plant would be required to comply with all conditions imposed by the Olympic Region Clean Air Agency (ORCAA) on the permit from that agency. The Applicant indicated that ORCAA conducts random site inspections to monitor compliance with clean air requirements. *Smith Testimony; Schuh Testimony; Exhibit 1, page 6; Exhibit 1, Attachment m.*
35. Regarding truck traffic, speeding, and braking, the Applicant testified that the mine employs a full time safety compliance officer who is equipped with a radar gun and who monitors mine traffic. The Applicant noted that if neighbors report specific incidents with enough detail, he is able to determine which trucks are involved in complaint events and invited neighbors to contact him for this purpose. *Schuh Testimony.*
36. The extended berm surrounding the batch plant project limits would be 25 feet tall with slopes of 1:1.5. As proposed, it would be hydroseeded; no irrigation is proposed after planting. In response to public comment, the Applicant indicated a willingness to plant trees on top of the new berm to mitigate noise and dust if required to do so through the instant permit. *Schuh Testimony.*

CONCLUSIONS

Jurisdiction

The Hearing Examiner has jurisdiction to decide this special use permit application under Sections 2.06.010 and 20.54.015 of the Thurston County Code, and Section 36.70.970 of the Revised Code of Washington.

Criteria and Standards for Review

Special Use Permit Criteria

The Hearing Examiner may approve an application for a Special Use Permit only if the following general standards set forth in TCC 20.54.040(3) are satisfied:

- A. Plans, Regulations, Laws. The proposed use at the specified location shall comply with the Thurston County Comprehensive Plan, and all applicable federal, state, regional, and Thurston County laws or plans.
- B. Underlying Zoning District. The proposed use shall comply with the general purposes and intent of the applicable zoning district regulations and subarea plans. Open space, lot, setback and bulk requirements shall be no less than that specified for the zoning district in which the proposed use is located unless specifically provided otherwise in this chapter.
- C. Location. No application for a special use shall be approved unless a specific finding is made that the proposed special use is appropriate in the location for which it is proposed. This finding shall be based on the following criteria:
 - 1. Impact. The proposed use shall not result in substantial or undue adverse effects on adjacent property, neighborhood character, natural environment, traffic conditions, parking, public property or facilities, or other matters affecting the public health, safety and welfare. However, if the proposed use is a public facility or utility deemed to be of overriding public benefit, and if measures are taken and conditions imposed to mitigate adverse effects to the extent reasonably possible, the permit may be granted even though said adverse effects may occur.
 - 2. Services. The use will be adequately served by and will not impose an undue burden on any of the improvements, facilities, utilities, or services existing or planned to serve the area.

20.54.050 - (Special Use) Conditions and restrictions.

In addition to those standards set forth in this chapter with regard to both general and specific standards which must be met, the approval authority may impose such additional conditions, safeguards and restrictions upon the proposed use as it may deem necessary in the public interest.

Use Specific Standards for Mineral Extraction Special Use Permits

Pursuant to TCC 20.54.070(21), the following use specific standards apply to mineral extraction uses:

- 21. Mineral Extraction. Mineral extraction (including expansions of existing conforming and legal nonconforming mines) and accessory uses are subject to the following provisions and the provisions of Chapter 17.20 of this code, the Thurston County Mineral Extraction Code:
 - a. Accessory Uses.

- i. The following accessory uses are allowed only when expressly permitted in a special use permit issued by the approval authority: washing, sorting or crushing of rock or gravel, asphalt production⁹ (batching or drum mixing), concrete batching, storage or use of fuel, oil or other hazardous materials, and equipment maintenance. Limited manufacturing of concrete products from sand and gravel excavated on-site may be allowed by the department as an accessory use to a permitted concrete batching facility; provided, that retail sales of such products are prohibited. All other accessory uses are allowed only when approved after administrative review by the development services and the roads and transportation services departments.
 - ii. Accessory uses are permitted only in conjunction with an existing mineral extraction operation. Recycling of asphalt or concrete is permitted as an accessory use only in conjunction with a permitted crusher and in accordance with any health department requirements. Temporary asphalt and concrete production may be permitted only to fulfill a contract for one specific public project and for a period not to exceed twelve months or the length of the contract, whichever is shorter. There must be at least twelve months between the end of one temporary use period and the beginning of another on the same site.
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- e. Permit Review. Any permit issued pursuant to this chapter shall be reviewed by the approval authority no less frequently than every five years from the date of the decision to approve the permit. The approval authority shall determine the frequency of permit review. The director may authorize a reasonable fee for this review. At the time of such review, the approval authority may impose additional conditions upon the operation if the approval authority determines it is necessary to do so to meet the standards of this chapter, as amended.

Relevant Sections of the Thurston county Mineral Extraction Code

17.20.100 - Dust and smoke control.

The operator shall obtain all required preconstruction approval permits from the Olympic Air Pollution Control Authority, and shall comply with all of the requirements of the Olympic Air Pollution Control Authority. In addition, the approval authority may require methods of dust control, such as water trucks or sprinklers, that will mitigate the mitigation of dust from the site.

17.20.110 - Noise.

- A. Noise levels shall comply with WAC 173-60. The operator shall ensure that noise levels are monitored by a technician with the qualifications contained in WAC 173-58, or acceptable qualifications as determined by the health officer, using instruments that meet the qualifications of WAC 173-58, at the property boundaries, at least

⁹ This provision was amended by Ordinance 14782, adopted and effective on August 14, 2012, which redefined asphalt batch plants a separate use rather than as an accessory use to mineral extraction operations. This amendment originated from review of designation of mineral lands of long term commercial significance during a Comprehensive Plan review in 2003: *Exhibit 9*.

quarterly after the initiation of the mining activity, during normal operating conditions and periods, and until or unless the health department determines that such monitoring is not necessary. Noise monitoring reports shall be provided to the health department and the planning department. Mineral extraction activity within the residential zoning districts of the county shall be considered a Class "A" EDNA pursuant to WAC 173-60-030 (2), the state noise standards. If the noise levels exceed the levels permitted by WAC 173-60, the health department or the planning department may take any enforcement measures necessary to ensure compliance with WAC 173-60.

- B. The approval authority may require additional measures to control noise, such as placing rubber or urethane screens and liners or crushing and screening equipment, equipping loaders and dozers with ambient-sensitive back-up alarms, or muffling engine noise, if site conditions or the site's proximity to residential zoned properties or residential uses warrants them.

17.20.115 - Hours of operation.

- A. Special use permits containing specific conditions regarding operating hours shall be governed by those conditions.
- B. For gravel mining and accessory uses within or adjacent to a residential zoning district, the hours of operation for excavating, processing and loading are limited to seven a.m. to seven p.m. Monday through Saturday.
- C. The following activities are exempted from the provisions of subsection B of this section:
 - 1. Excavation and loading necessitated by flood emergencies;
 - 2. On Monday through Saturday, the early morning processing of concrete necessary to provide beneficial strength;
 - 3. Hauling to jobs under contract with a public agency. However, for any such hauling outside of the hours provided in subsection B of this section, the operator shall post reasonable notice near the site, notify the planning director, and notify the legal newspaper of the county and at least one radio station covering the area of the site.

17.20.240 - Landscaping and screening.

A berm around the perimeter of the site is required unless the operator can demonstrate that one is not necessary to mitigate noise and visual impacts. The side slopes of the berm shall not exceed 1.5:1 ratio. Berms shall be at least eight feet in height. The approval authority may reduce the required berm height below eight feet if resulting noise impacts will not exceed the applicable standard and any resulting visual impacts will be consistent with the purposes of this chapter. Berms shall be planted and erosion control measures shall be taken as may be approved by the approval authority. Planting and berms shall begin at a point not closer to a street than the ultimate right-of-way line. The approval authority may require additional planting pursuant to Chapter 20.45. The approval authority shall consider site

conditions, proximity to residential uses, and existing views from neighboring properties, in setting specific conditions for landscaping, screening and berming, including increased berm height.

Conclusions Based on Findings

1. Noise:

Two County agencies (Resource Stewardship and Environmental Health) interpret the language of the mineral extraction code to include concrete batch plants - only authorized as an accessory use¹⁰ to mineral extraction itself - as within the scope of "mineral extraction activity" subject to a Class "A" EDNA when the site is residentially zoned and adjacent to residential properties. The Applicant forwarded a semantic interpretation of the code noting that the County's definition of "mineral extraction" only speaks to the act of removing minerals from the earth and that therefore batch plants should be treated as any other industrial use for noise purposes rather than as included in mineral extraction activities. The resulting disagreement requires legal interpretation of the ordinance pursuant to the rules of statutory construction.¹¹

Thurston County adopted the mineral extraction code for the purpose of increasing the protection of ground and surface water from the effects of surface mining and other mineral extraction, to lessen conflicts between surface mines and other mineral extraction operations and nearby land uses, and to continue the availability of mined materials to the citizens and commerce of the area. *TCC 17.20.010 (emphasis added)*. Concrete batch plants are only allowed subject to special use permit approval as accessory uses to mineral extraction operations. *TCC 20.54.070(21)(a)*.

The mineral extraction code expressly stipulates that "mineral extraction activity within the residential zoning districts of the county shall be considered a Class "A" EDNA pursuant to WAC 173-60-030 (2)... ." Thurston County Code does not define "mineral extraction activity". Its definition of "mineral extraction" arguably omits any reference to accessory uses of mining operations or concrete batch plants specifically and speaks directly to the "removal of minerals ... from an excavation in the earth." Notably, the definition's list of four exclusions also omits accessory uses and/or concrete batch plants specifically.

The Applicant's argument turns on the assertion that "there is no mystery or uncertainty about" the meaning of the County's definition of mineral extraction. If the Applicant's argument were accepted, then an accessory use - prohibited in the residential zone but for

¹⁰ Pursuant to TCC 20.03.040(1) An "accessory use" means a use or building which is clearly subordinate to and customarily found in association with a principal use (emphasis added).

¹¹ The primary objective in interpreting a zoning ordinance is to determine and effectuate the local legislative body's intent. *Jones v. King County*, 74 Wn. App. 467, 475, 874 (1994); *Choi v. City of Fife*, 60 Wn. App. 458, 461, 803 (1991). Washington Courts have held that ordinances should not be construed in a semantic, overly technical manner. Instead, "[t]he spirit or purpose of an enactment should prevail." *Glaubach v. Regency Blueshield*, 149 Wn.2d 827, 833 (2003). Finally, ordinances are not supposed to be construed in a manner that leads to unlikely, unreasonable, unrealistic, strained, or absurd results. *Alderwood Water Dist. v. Pope and Talbot, Inc.*, 62 Wn.2d 319, 321 (1963); *Meridian Minerals Co. v. King County*, 61 Wn. App. 195, 206 (1991).

the Class "A" mining operation - would be allowed to generate greater noise levels than the excavation and processing of minerals. In light of the legislative body's clear intent to provide a higher level of protection to residential uses adjacent to mining operations in residential districts, this would appear to be a strained if not absurd outcome. The Examiner concludes there is ambiguity as to whether mining accessory uses generally and concrete batch plants specifically are included in the intended scope of "mineral extraction activity" addressed in TCC 17.20.110(A). As such, it is appropriate to defer to the agencies with authority to implement and enforce the mineral extraction code and zoning code provisions, the Resource Stewardship Department and Environmental Health Division.¹²

Looking to the specific facts of this case, the proposed plant is adjacent to existing residences already subject to substantial impacts from a legally nonconforming mine that is not restricted to Class "A" sound levels. Whereas the current mining operations do not occur afterhours at all, the Applicant proposes to operate the batch plant after hours (before 7:00 am and after 7:00 pm) up to 85% of the time in the construction season, typically the summer months. Given such significant increase in exposure for the neighboring properties, it is all the more important to hold the proposal to the more restrictive permissible sound levels.

Considering the deference due to the interpretation of the enforcing agencies, it is concluded that the concrete batch plant must adhere to the Class "A" EDNA noise source standards. The batch plant is limited to a daytime sound limit of 55 dBA at the project site boundary adjacent to residential uses, except as follows: for 25% of a given hour, that limit rises to 60 dBA; for five minutes in a given hour, the limit rises to 65 dBA; and for 1.5 minutes in a given hour, the limit rises to 70 dBA. Noise limits are 10 dBA lower between 7:00 pm and 7:00 am.

The current sound study indicates that the proposal would not exceed the daytime Class "A" noise standards and would exceed the nighttime Class "A" standards by only up to five dBA. The addition of height to the berm, planting sound barrier vegetation atop the berm, and the various sound control methods outlined in TCC 17.20.110(B) can all be used to bring the batch plant's noise levels into compliance. Conditions would ensure the Applicant demonstrates compliance with the above stated noise limits.

Findings 2, 4, 5, 7, 8, 9, 10, 11, 12, 13, 14, and 15.

2. Hours of operation: The mineral extraction code specifically exempts concrete batch plants from the 7:00 am to 7:00 pm hours of operation for times when early morning production is required for the beneficial strength of the concrete and for government projects. The record contains no evidence suggesting that the Applicant cannot bring the operations into compliance with the Class "A" noise limits through the use of mitigations including but not limited to those listed in TCC 17.20.110(B). The concrete batch plant

¹² [I]n a doubtful case, great weight should be given to the contemporaneous construction of an ordinance by the officials charged with its enforcement. *See, e.g., Morin v. Johnson*, 49 Wn.2d 275, 279, 300 P.2d 569 (1956); RCW 36.70C.130(1)(b); *Milestone Homes, Inc. v. City of Bonney Lake*, 145 Wn. App. 118, 128 (2008).

shall be allowed to operate 7:00 am to 7:00 pm with seasonal hours of operation beginning at 5:00 am when necessitated by weather. After hours operations for bona fide government contracts shall be allowed subject to compliance with the notice/advertising requirements in TCC 17.20.115(C)(3). All operations shall be subject to the Class "A" noise source limits. *Findings 7, 10, 12, 14, 16, 17, and 18.*

3. SUP criteria: The record reflects that dust, noise, and truck traffic of the legally nonconforming mining operation are experienced by adjacent homeowners as substantial adverse effects. The instant application cannot be required to mitigate the conditions of the existing, legally nonconforming use; however, it is clear that the proposed concrete batch plant would generate some amount of additional dust, noise, and traffic. *Findings 7, 26, 27, 28, and 29.*
 - A. Raising the berm height to 25 feet would reduce noise to adjacent residential properties and may bring the batch plant into compliance with Class "A" noise source standards, but it would not address dust. In order to ensure that the new accessory use would not result in additional substantial adverse dust and noise effects on adjacent properties or on the public health and welfare, the Applicant shall raise the berm to 25 feet consistent with the berm plan in Exhibit 7 and shall plant evergreen trees along the top of the full length of the berm surrounding the batch plant such that they result in a noise- and dust-suppressing screen when mature. The plantings shall be irrigated until they are capable of surviving without irrigation and shall be maintained for the life of the batch plant. *TCC 20.54.030(3)(a), 20.54.050, 17.20.110(B), and 17.20.240; Findings 7, 10, 30, 34, and 36.*
 - B. As stated in conclusion 1 above, the batch plant shall be subject to compliance with Class "A" noise source restrictions. Conditions would ensure that monitoring and reporting consistent with the requirements of the mineral extraction code are completed and that mitigation is implemented until compliance with Class "A" standards is achieved. *Findings 2, 4, 5, 7, 8, 9, 10, 12, 14, and 15.*
 - C. The record shows that the proposal's traffic impacts would be minimal, with approximately 30 trips per day. This level of traffic increase would have very little impact on intersection delay or demand for transportation resources in the project vicinity. Any unforeseen traffic impacts arising from the concrete batch plant would be addressed through the required five year review. *Findings 7, 20, and 21.*
 - D. Together with the mining operation, the batch plant would be required to comply with permits issued by Washington Department of Natural Resources, Washington Department of Ecology, and the Olympic Region Clean Air Agency. These permits address process and storm water treatment and discharge, protection of groundwater, dust and other emissions, and other environmental and public health issues. Batch plant operations would be subject to ongoing inspection by the state agencies as well as Thurston County. The proposal as conditioned is consistent with the Thurston County Road Standards and the Thurston County Drainage Design and Erosion Control Manual. The proposed accessory use was reviewed for compliance with the

requirements of SEPA; an MDNS was issued and not appealed. The Thurston County review agencies recommended project approval. As conditioned, the proposal would not impose an undue burden on adjacent properties, the public health and welfare, or any public facilities, utilities, or services. *Findings 19, 21, 22, 23, 24, 32, 33, 34, 35, and 36.*

DECISION

Based on the preceding findings and conclusions, the requested special use permit to construct and operate a concrete batch plant at the existing Hamilton Mine facility operated by Miles Sand & Gravel at 16424 Old Highway 99 SE, Tenino, Washington is **GRANTED** subject to the following conditions (which apply to the Applicant and any successor in interest):

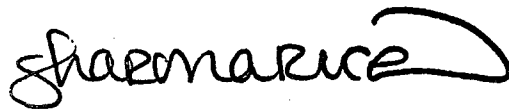
- A. Prior to construction, the following conditions of the Public Works Department shall be met:
1. The proposed roadway in concept and design shall conform to the Road Standards.
 2. The storm water management system shall conform to the Drainage Design & Erosion Control Manual.
 3. All drainage facilities outside of the County right-of-way shall remain private and be maintained by the owner.
 4. Storm water runoff shall be controlled through all phases of the project by facilities designed to control the quality and quantity of discharges and shall not alter nor impact any existing drainage or other properties.
 5. No work shall take place until a construction permit has been issued by Thurston County Public Works – Development Review Section.
 6. The proposed grading or site work shall conform to Appendix J of the International Building Code, Title 14.37 of the Thurston County Code and Drainage Design & Erosion Control Manual.
 7. When all construction/improvements have been completed, contact the Thurston County Public Works – Development Review Section for a final inspection.
 8. This approval does not relieve the Applicant from compliance with all other local, state and/or federal approvals, permits, and/or laws necessary to conduct the development activity for which this permit is issued. Any additional permits and/or approvals shall be the responsibility of the Applicant.
 9. Once the planning department has issued the official approval, a construction permit application shall be submitted along with the construction plans with any

required revisions (see below) to Thurston County Public Works – Development Review Section for review and acceptance.

- a. Submit for review and acceptance, the revised SWPPP prepared as part of the revised NPDES Permit required by Department of Ecology.
12. Prior to receiving final inspection approval from this department, the following items shall be required:
- a. Completion of all proposed improvement and associated drainage facilities.
 - b. Final inspection and completion of all punch list items.
10. Prior to construction, the Applicant shall:
- a. Pay outstanding construction review and inspection fees.*
 - b. Have the erosion and sediment control inspected and accepted.
 - c. Receive a construction permit.
- * The current fee schedule can be found online at <http://www.co.thurston.wa.us/permitting/fees/fees-home.html> or contact Ruthie Padilla with the Thurston County Public Works – Development Review Section by phone at (360) 867-2050 or by e-mail at padillr@co.thurston.wa.us.
- B. The batch plant is subject to Class "A" noise source limits. On a quarterly basis, the Applicant shall submit sound monitoring reports prepared by a technician with the qualifications contained in WAC 173-58, or acceptable qualifications as determined by the health officer, using instruments that meet the qualifications of WAC 173-58, at the property boundaries during normal operating conditions and periods. If Class "A" noise limits are shown to be exceeded at the time of any quarterly report, additional noise mitigation measures (such as those in 17.20.110(B)) shall be implemented immediately. Should operations continue to exceed Class "A" limits, additional mitigations shall be added until compliance with the Class "A" noise limits is achieved. Quarterly noise reports shall be submitted for the first five years of life of the accessory use, until or unless the Thurston County health department determines that such monitoring is not necessary. If the quarterly reports show noise levels that continue to exceed the levels permitted by WAC 173-60, the appropriate County agency shall take any enforcement measures necessary to ensure compliance with WAC 173-60.
- C. The batch plant may operate between 7:00 am and 7:00 pm, Monday through Saturday in compliance with Class "A" sound limits. Early morning operations when necessary for the beneficial strength of the concrete may be allowed seasonally, not to start before 5:00 am. Afterhours activities for bona fide government contracts may be allowed subject to compliance with the notice/advertising requirements of TCC 17.20.115(C)(3).

- D. If contamination is currently known or suspected during construction, testing of potentially contaminated media must be conducted. If contamination of soil or groundwater is readily visible, or is revealed by testing, the Washington State Department of Ecology must be notified (Contact the Environmental Report Tracking System Coordinator at the Southwest Regional Office at (360) 407-6300).
- E. Prior to construction, the Applicant shall submit all necessary plans and information to the Olympic Region Clean Air Authority for review and approval.
- F. The instant special use permit shall be reviewed in a public process before the Hearing Examiner no less frequently than every five years from the date of the decision. The Applicant shall submit an application for the Five Year Review on forms provided by the Resource Stewardship Department and shall pay the applicable application review fees, and the hearing shall take place prior to the lapse of the five year time period.
- G. Dust from the batch plant operations shall be prevented from affecting residences to the east through the proposed vacuum system, the required tree barrier on top of the 25-foot berm, and any other means necessary including the use of water trucks or sprinklers as needed.
- H. The operation shall comply with all applicable standards of the Thurston County Mineral Extraction Code (TCC 17.20) as modified herein.
- I. All development on the site shall be in substantial compliance with the approved site plan. Any expansion or alteration of this use beyond that initially approved by the Hearing Examiner will require approval of a new or amended special use permit. The Resource Stewardship Department will determine if any proposed amendment is substantial enough to require Hearing Examiner approval.

DECIDED this 27th day of December 2012.



Sharon A. Rice
Thurston County Hearing Examiner *Pro tem*



Project No. 2011101306 Supt
Appeal Sequence No.: _____

☐ Check here for:

RECONSIDERATION OF HEARING EXAMINER DECISION

THE APPELLANT, after review of the terms and conditions of the Hearing Examiner's decision hereby requests that the Hearing Examiner take the following information into consideration and further review under the provisions of Chapter 2.06.060 of the Thurston County Code:

(If more space is required, please attach additional sheet.)

☐ Check here for:

APPEAL OF HEARING EXAMINER DECISION

TO THE BOARD OF THURSTON COUNTY COMMISSIONERS COMES NOW _____
on this _____ day of _____, 20____, as an APPELLANT in the matter of a Hearing Examiner's decision rendered on _____, 20____, by _____ relating to _____

THE APPELLANT, after review and consideration of the reasons given by the Hearing Examiner for his decision, does now, under the provisions of Chapter 2.06.070 of the Thurston County Code, give written notice of APPEAL to the Board of Thurston County Commissioners of said decision and alleges the following errors in said Hearing Examiner decision:

Specific section, paragraph and page of regulation allegedly interpreted erroneously by Hearing Examiner:

1. Zoning Ordinance _____
2. Platting and Subdivision Ordinance _____
3. Comprehensive Plan _____
4. Critical Areas Ordinance _____
5. Shoreline Master Program _____
6. Other: _____

(If more space is required, please attach additional sheet.)

AND FURTHERMORE, requests that the Board of Thurston County Commissioners, having responsibility for final review of such decisions will upon review of the record of the matters and the allegations contained in this appeal, find in favor of the appellant and reverse the Hearing Examiner decision.

STANDING

On a separate sheet, explain why the appellant should be considered an aggrieved party and why standing should be granted to the appellant. This is required for both Reconsiderations and Appeals.

Signature required for both Reconsideration and Appeal Requests

APPELLANT NAME PRINTED _____

SIGNATURE OF APPELLANT _____

Address _____

Phone _____

Please do not write below - for Staff Use Only:

Fee of ☐ \$595.00 for Reconsideration or \$820.00 for Appeal. Received (check box): Initial _____ Receipt No. _____

Filed with the Resource Stewardship Department this _____ day of _____, 20____.

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THURSTON COUNTY
PROCEDURE FOR RECONSIDERATION AND APPEAL
OF HEARING EXAMINER DECISION TO THE BOARD

NOTE: THERE MAY BE NO EX PARTE (ONE-SIDED) CONTACT OUTSIDE A PUBLIC HEARING WITH EITHER THE HEARING EXAMINER OR WITH THE BOARD OF THURSTON COUNTY COMMISSIONERS ON APPEALS (Thurston County Code, Section 2.06.030).

If you do not agree with the decision of the Hearing Examiner, there are two (2) ways to seek review of the decision. They are described in A and B below. Unless reconsidered or appealed, decisions of the Hearing Examiner become final on the 15th day after the date of the decision.* The Hearing Examiner renders decisions within five (5) working days following a Request for Reconsideration unless a longer period is mutually agreed to by the Hearing Examiner, applicant, and requester.

The decision of the Hearing Examiner on an appeal of a SEPA threshold determination for a project action is final. The Hearing Examiner shall not entertain motions for reconsideration for such decisions. The decision of the Hearing Examiner regarding a SEPA threshold determination may only be appealed to Superior Court in conjunction with an appeal of the underlying action in accordance with RCW 43.21C.075 and TCC 17.09.160. TCC 17.09.160(K).

A. RECONSIDERATION BY THE HEARING EXAMINER (Not permitted for a decision on a SEPA threshold determination)

1. Any aggrieved person or agency that disagrees with the decision of the Examiner may request Reconsideration. All Reconsideration requests must include a legal citation and reason for the request. The Examiner shall have the discretion to either deny the motion without comment or to provide additional Findings and Conclusions based on the record.
2. Written Request for Reconsideration and the appropriate fee must be filed with the Resource Stewardship Department **within ten (10) days of the written decision**. The form is provided for this purpose on the opposite side of this notification.

B. APPEAL TO THE BOARD OF THURSTON COUNTY COMMISSIONERS (Not permitted for a decision on a SEPA threshold determination for a project action)

1. Appeals may be filed by any aggrieved person or agency directly affected by the Examiner's decision. The form is provided for this purpose on the opposite side of this notification.
2. Written notice of Appeal and the appropriate fee must be filed with the Resource Stewardship Department **within fourteen (14) days of the date of the Examiner's written decision**. The form is provided for this purpose on the opposite side of this notification.
3. An Appeal filed within the specified time period will stay the effective date of the Examiner's decision until it is adjudicated by the Board of Thurston County Commissioners or is withdrawn.
4. The notice of Appeal shall concisely specify the error or issue which the Board is asked to consider on Appeal, and shall cite by reference to section, paragraph and page, the provisions of law which are alleged to have been violated. The Board need not consider issues, which are not so identified. A written memorandum that the appellant may wish considered by the Board may accompany the notice. The memorandum shall not include the presentation of new evidence and shall be based only upon facts presented to the Examiner.
5. Notices of the Appeal hearing will be mailed to all parties of record who legibly provided a mailing address. This would include all persons who (a) gave oral or written comments to the Examiner or (b) listed their name as a person wishing to receive a copy of the decision on a sign-up sheet made available during the Examiner's hearing.
6. Unless all parties of record are given notice of a trip by the Board of Thurston County Commissioners to view the subject site, no one other than County staff may accompany the Board members during the site visit.

C. STANDING All Reconsideration and Appeal requests must clearly state why the appellant is an "aggrieved" party and demonstrate that standing in the Reconsideration or Appeal should be granted.

D. FILING FEES AND DEADLINE If you wish to file a Request for Reconsideration or Appeal of this determination, please do so in writing on the back of this form, accompanied by a nonrefundable fee of **\$595.00** for a Request for Reconsideration or **\$820.00** an Appeal. Any Request for Reconsideration or Appeal must be **received** in the Permit Assistance Center on the second floor of Building #1 in the Thurston County Courthouse complex no later than 4:00 p.m. per the requirements specified in A2 and B2 above. **Postmarks are not acceptable.** If your application fee and completed application form is not timely filed, you will be unable to request Reconsideration or Appeal this determination. The deadline will not be extended.

* Shoreline Permit decisions are not final until a 21-day appeal period to the state has elapsed following the date the County decision becomes final.