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**COMMUNITY PLANNING &
ECONOMIC DEVELOPMENT DEPARTMENT**

Creating Solutions for Our Future

Joshua Cummings, Director

**BEFORE THE THURSTON COUNTY
HEARING EXAMINER**

In the Matter of the Application of)	
)	Project # 2020103461
Port of Tacoma, Applicant)	
)	
)	
)	Maytown Aggregates
For Five Year Review of)	
Special use permit SUPT 02-0612)	
as amended on April 8, 2011)	
(No. 2010101170))	FINDINGS, CONCLUSIONS, AND
for a 284-acre gravel mine within a)	DECISION
<u>497-acre disturbed area</u>)	

SUMMARY OF DECISION

The request for approval of a five-year review of special use permit SUPT-02-0612, issued December 16, 2005 and subsequently amended on April 8, 2011, authorizing a 284-acre gravel mine within a 497-acre disturbed area, is **APPROVED**.

SUMMARY OF RECORD

Request

The Port of Tacoma (Applicant) seeks approval of the code-required five-year review of the mining operation authorized pursuant to SUPT-02-0612 on December 30, 2005 as subsequently amended on April 8, 2011. The 2005 SUP permitted mineral extraction on 284 acres within a 497-acre disturbed area subject to reclamation approved by the Washington Department of Natural Resources. The 2011 SUP Amendment altered the mine's groundwater monitoring plan.

Hearing Date

The Thurston County Hearing Examiner conducted a virtual open record public hearing on the request on April 27, 2021. The record was held open until April 29, 2021 to allow any members of the public having difficulty joining the virtual hearing to submit written comments, with time scheduled for responses from the parties. No post-hearing public comment was submitted, and the record closed on April 29, 2021.

Testimony

The following individuals submitted testimony under oath at the open record public hearing:

Lacy Garner, Associate Planner, Thurston County
Dawn Peebles, Environmental Health Specialist, Thurston County
Arthur Saint, Civil Engineer, Thurston County
Scott Hooten, Project Manager, Environmental Programs, Port of Tacoma
Scott Francis, Director of Real Estate, Port of Tacoma
Eric Staley, LEG, NV5 (for Applicant)
Inger Jackson, Senior Hydrogeologist, Pacific Groundwater Group (for Applicant)

Attorney Representation:

Carolyn Lake, Goodstein Law Group PLLC, represented the Applicant.

Exhibits

The following exhibits were admitted in the record of this matter:

1. Community Planning & Economic Development Department Staff Report including the following attachments:
 - A. Legal Notice
 - B. Notice of Application, mailed January 29, 2021
 - C. Updated Special Use Application received February 18, 2021 (original received August 6, 2020)
 - D. 2009, 2012, 2015 and 2019 Aerial Photos
 - E. Gopher & Prairie Soils Maps
 - F. Mine Registration
 - G. Site Plans
 - H. Table 2, Summary of County Permit Requirements
 - I. Comment Letter received: Email from Andy Newman, February 12, 2021 along with applicant's response
 - J. Comment Memorandum from Dawn Peebles, Environmental Health, dated October 28, 2020
 - K. Comment Memorandum from Arthur Saint, Public Works, dated January 12, 2021
2. Attachment A of the Port's Original Application, SUP Review Decision, dated January 15, 2016
3. Attachment B of the Port's Original Application, Reconsideration, dated January 29, 2016
4. Attachment C of the Port's Original Application, Production April to December
5. Attachment D of the Port's Original Application, County Inactive 2016, dated February 22, 2016

6. Attachment E of the Port's Original Application, County Inactive 2018, dated May 16, 2018
7. Attachment F of the Port's Original Application, Sign
8. Attachment G of the Port's Original Application, Material Escape Prevention Plan, dated August 9, 2018
9. Attachment H of the Port's Original Application, Compliance Noise Monitoring Results, dated September 2, 2018
10. Attachment I of the Port's Original Application, Truck Tickets, dated June 2018
11. Attachment J of the Port's Original Application, County Inactive, dated August 23, 2018
12. Attachment K of the Port's Original Application, Ecology Inactive, dated June 18, 2018
13. Attachment L of the Port's Original Application, Ecology Inactive, dated September 5, 2018
14. Attachment M of the Port's Original Application, Discharge Monitoring Report, dated May 11, 2015
15. Attachment N of the Port's Original Application, Solid Waste Handling Facility Inspection Form, dated December 31, 2016
16. Attachment O of the Port's Original Application, Solid Waste Renewal, dated January 25, 2019-25-2019
17. Attachment P of the Port's Original Application, DNR Surface Mining Operator's Report dated September 3, 2019
18. Attachment Q of the Port's Original Application, DNR Inspection Report, dated February 1, 2016
19. Attachment R of the Port's Original Application, DNR Inspection Report, dated December 19, 2018
20. Attachment S of the Port's Original Application, ORCAA Certificate
21. Attachment T of the Port's Original Application, Groundwater and Surface Water Monitoring Plan, dated March 17, 2011
- Ta. Interpretive Reports
 - 2011 Interpretive Report
 - 2013 Interpretive Report
 - 2015 Interpretive Report
 - 2017 Interpretive Report
 - 2019 Interpretive Report
- Tb. Perimeter Reports
 - 2010 Perimeter Report
 - 2011 Perimeter Report
 - 2012 Perimeter Report
 - 2013 Perimeter Report

2014 Perimeter Report
2015 Perimeter Report
2016 Perimeter Tables
2017 Perimeter Tables
2018 Perimeter Tables
2019 Perimeter Tables
2020 Perimeter Tables

- Tc. Additional County Reports 2011
Quarter 1 Data Report
Quarter 2 Data Report
Quarter 3 Data Report
Quarter 4 Data Report
22. Port 1: Narrative of Permit Conditions showing compliance, submitted to County February 23, 2021
 23. Port 2: Port's Notice of short-term mining, submitted to County April 22, 2021
 24. Port 3: Ecological Land Services Report re Mine Area 1, submitted to the County as part of initial review October 14, 2004
 25. Port 4: Stormwater Pollution Prevention Plan Maytown Aggregates, dated August 23, 2007. Ecological Land Services, Inc.- Referenced in Port Consultant Response to public comment letter dated March 4, 2021
 26. Port 5: Periodic Review Report Final Citifor, Inc., Facility Site ID#: 1391. Southwest Region Office Toxics Cleanup Program, dated June 2016. Washington State Department of Ecology. Referenced in Port Consultant Response to public comment letter dated March 4, 2021
 27. Port 6: Cleanup Action Plan Citifor (Former Pacific Powder) Site, Maytown Washington. Prepared for the Port of Tacoma. July 17, 2009 Draft for Public Review. Referenced in Port Consultant Response to public comment letter dated March 4, 2021

After considering the testimony and exhibits submitted at the open record hearing, the Hearing Examiner enters the following findings and conclusions:

FINDINGS

1. On December 16, 2005, the Thurston County Hearing Examiner approved SUPT-02-0612, authorizing the mineral extraction operation known as Maytown Aggregates at 13120 Tilley Road South, Tenino, Washington.¹ The instant application seeks approval of the five-year review of the mine consistent with Thurston County Code (TCC) 20.54.070.21.e, which states:

¹ The legal description of the subject property is a portion of Sections 1, 2, 11 and 12, Township 16 North, Range 2 West, W.M.; known as Tax Parcel Number 12602340100. *Exhibit 1.*

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.

The first five-year review was conducted in late 2010 and approved December 30, 2010. Subsequently, SUPT-02-0612 was amended on April 8, 2011. The amendment altered the ground water monitoring plan established in mitigation measures 6A and 6C imposed via the October 24, 2005 MDNS in the original SUP review, which were made conditions of permit SUPT-02-0612 approval. The second five-year review was approved, with conditions, on January 15, 2016. Some of the conditions were modified on January 29, 2016 in response to an Applicant request for reconsideration. *Exhibits 1, 2, and 3.*

2. The mine is not currently active. A prior operator conducted mining activities between 2011 and 2015. The mine was inactive from 2016 until the Applicant recommenced mining operations briefly in late June of 2018. The Applicant returned the mine to inactive status in September of 2018; however, a brief period of mining activity is planned for this year. *Exhibits 1, 1.J, 5, 6, and 13; Testimony of Lacy Garner and Scott Hooten.*
3. Surrounding land uses are as follows. To the north are wetlands and a forested hillside owned by the Applicant; there are also two residences across the railroad tracks to the northwest, and approximately 1,300 acres of undeveloped forestland zoned R 1/20 and RRR 1/5. There is forestland to the northeast. Property to the east and southeast consists of mounded prairie owned by the Washington State Department of Fish and Wildlife (WDFW); there is a rural residential subdivision approximately 2,000 feet beyond the mine boundary adjacent to the WDFW-owned land. To the south there is a wetland associated with Beaver Creek, owned by WDFW, and a rural residential subdivision about 2,000 feet from the mine boundary. To the west is forestland, Tilley Road, and a rural residential subdivision about 1,800 feet from the mine boundary. *Exhibit 1.*
4. The 284-acre mineral extraction portion of the site was designated Mineral Lands of Long Term Commercial Significance on December 16, 2005. A reclamation plan was approved by the Washington State Department of Natural Resources (DNR) in 2007. The approved mine consists of nine segments, eight of which are designated mine areas and one of which is designated a fill area. All mining to date (approximately 35 acres total) has been from Mine Area 1, which is 45 acres in area. Stockpiling of clean fill material commenced in 2012 within the 44-acre fill area. *Exhibit 1; Lacy Garner Testimony.*
5. The application for the current five-year review was submitted on August 6, 2020 and determined to be complete on September 3, 2020. Although the January 15, 2016 five-year review decision specified that the hearing on the subsequent review must occur prior

to April 8, 2021, pandemic-related County delays and Planning Staff turnover resulted in the April 27, 2021 hearing date; the delay was not the result of the Applicant's actions. The application and most supporting materials were submitted in July 2020. *Testimony of Lacy Garner and Carolyn Lake; Exhibit 1.B.* The purpose of five-year review is to determine whether the operation is in compliance with the conditions of the approved special use permit and to determine whether additional conditions are necessary to ensure compliance with applicable county code standards. *Exhibit 1.*

6. The mine operates under five approval documents: the MDNS dated October 24, 2005; SUPT-02-0612 dated December 16, 2005; the first five-year review decision (No. 2010102512) dated December 30, 2010; the modified MDNS dated January 19, 2011; the SUP Amendment (2010101170) dated April 8, 2011; and the second five-year review decision (No. 2015106455) dated January 15, 2016 with the subsequent reconsideration decision. Altogether, there are 72 conditions found in the approval documents which are listed in a table (Table 2 - Exhibit 1, Attachment H) prepared by the Applicant. *Exhibits 1 and 1.H; see also Exhibit 22.* Table 2 lists each condition and describes the current compliance status as understood by the Applicant. *Exhibit 2, Table 1.* The table is incorporated into these findings by this reference.
7. With respect to those conditions added through the 2016 five-year review process, Condition A of the decision on reconsideration required the Applicant to provide a minimum 30 days' notice prior to commencing mining. Consistent with this requirement, the Applicant notified the County of its intent to commence mining more than 30 days prior to commencing mining on or around June 25, 2018. The Applicant has provided 30 days' notice that it intends to recommence mining for a brief period between May 20, 2021 and June 28, 2021. *Exhibits 3, 6, 8, 12, and 23.*
8. Condition B of the 2016 decision on reconsideration required the Applicant to submit a plan implementing the quarterly noise monitoring requirements of the 2005 MDNS to the County Environmental Health Division within 90 days of recommencing mining activity on the site. The Applicant submitted the required plan and the results of noise monitoring conducted pursuant to the plan on September 4, 2018. These documents were reviewed and approved by Environmental Health Division Staff. Noise monitoring was conducted while the mine was operational on June 29, 2018, including use of a fuel truck, excavator, and six trucks. Measured sound levels at four locations around the site perimeter were below the limits of the Thurston County Code (which incorporate the limits specified in the Washington Administrative Code). *Exhibits 1.J, 3, and 9.*
9. Condition D of the 2016 decision on reconsideration required the Applicant to submit a material escape prevention plan to the Public Works Department within 60 days of recommencing mining activity on the site. The Applicant submitted the required plan on August 9, 2018. The County Public Works Department approved the plan on August 14, 2018. *Exhibits 3 and 8.*
10. County Public Works, Public Health and Social Services, and Development Services Staff reviewed each condition of the approval documents, and, considering County Code

requirements, the submitted documentation, and site visits (including most recently a visit on February 9, 2021), determined that the mining operation complies with the conditions as indicated in Table 2. Planning Staff recommended approval of the instant five-year review with no additional conditions of approval. *Exhibits 1, 1.J, and 1.K.*

11. Both the initial special use permit (SUPT-02-062) and the 2011 amendment to the permit underwent review for compliance with the requirements of the State Environmental Policy Act. The October 24, 2005 mitigated determination of non-significance (MDNS) became final on November 8, 2005. A modified MDNS was issued for amendments to the SUP on January 19, 2011, which became final on February 9, 2011. SEPA review is not required for the instant five-year review because it is not an action pursuant to SEPA regulations. *See WAC 197-11-704.* Inspections and reviews of prior decisions are exempt from SEPA review pursuant to WAC 197-11-800 (12) & (13). *Exhibit 1.*
12. Notice of application was mailed to all property owners within 2,600 feet of the site, tribes, and relevant state agencies on January 29, 2021. Notice of virtual public hearing was sent to all property owners within 2,600 feet of the site and to other interested parties on April 8, 2021 and was published in The Olympian on April 16, 2021. In addition, notice was posted on the County's website. *Exhibits 1, 1.A, and 1.B.*
13. Agency comments from reviewing departments outside the County were submitted by Washington Department of Fish and Wildlife and the Squaxin Island Tribe, both of which indicated they had no concerns regarding the requested five-year review. One public comment letter was received, which requested that prior to commencing mining potential issues relating to contamination (a portion of the subject property was formerly used for explosives manufacturing and is the subject of a cleanup action regulated by the Washington Department of Ecology), groundwater level changes, migration of turbid groundwater, and groundwater temperature be addressed. The Applicant submitted detailed documentation addressing these issues, including groundwater monitoring reports and a 2016 report from the Department of Ecology reviewing the cleanup activities that have occurred. Groundwater monitoring was required by the original special use permit for the mine, and the groundwater monitoring requirements were revised as part of the 2011 amendment. The groundwater monitoring plan that has been in place since 2011 addresses groundwater levels, turbidity, and temperature. It also includes testing for pollutants. The Applicant has conducted the specified groundwater monitoring even though the mine has been inactive, for the purpose of protecting the viability of the mining special use permit. With respect to clean-up activities on the former explosives manufacturing site, the Department of Ecology's report contained conclusions that cleanup actions "appear to be protective of human health and the environment" and that an Environmental Covenant is in place that "will be effective in protecting public health from exposure to hazardous substances and protecting the integrity of the cleanup action (Exhibit 26, page 18)." *Exhibits 1, 1.I, 1.H, 21, 25, 26, and 27; Inger Jackson Testimony.*

CONCLUSIONS

Jurisdiction

The Hearing Examiner has jurisdiction to conduct the five-year review pursuant to TCC 2.06.010 and TCC 20.54.070(21)(e).

Criteria of Approval For Five Year Review

Pursuant to TCC 20.54.070(21)(e), a special use permit for a mine “shall be reviewed by the approval authority no less frequently than every five years from the date of the decision to approve the permit.... 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.”

Conclusion Based on Findings

1. Based on the evidence submitted, the Applicant has demonstrated ongoing compliance with the conditions of permit approval. No issues have been identified suggesting the need for additional conditions to meet the standards of TCC 20.54. *Findings 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 13.*

DECISION

The five-year review of special use permit SUPT-02-0612 as amended on April 8, 2011 authorizing a 284-acre gravel mine within a 497-acre disturbed area is **APPROVED**.

DECIDED May 11, 2021.



Sharon A. Rice

Thurston County Hearing Examiner

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 Community Planning & Economic Development 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 **\$777.00** for a Request for Reconsideration or **\$1,054.00** an Appeal. Any Request for Reconsideration or Appeal must be **received** in the Building Development 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.



Project No. _____
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 ☐ \$777.00 for Reconsideration or \$1,054.00 for Appeal. Received (check box): Initial _____ Receipt No. _____
Filed with the Community Planning & Economic Development Department this _____ day of _____, 20____.