



COUNTY COMMISSIONERS

John Hutchings
District One

Gary Edwards
District Two

Bud Blake
District Three

HEARING EXAMINER

Creating Solutions for Our Future

**BEFORE THE HEARING EXAMINER
FOR THURSTON COUNTY**

In the Matter of the Application of)	NO. 2009100282
)	
Quality Rock Products, Inc./)	FINDINGS, CONCLUSIONS,
EUCON Corporation)	AND DECISION
)	
For Five-Year Review and Amendment of)	
Special Use Permits LTD 3-85,)	
SUP 16-088, and SUP 93-03)	
)	

SUMMARY OF DECISION

The request for five-year review of special use permit numbers LTD 3-85, SUP 16-088, and SUP 93-03, and for amendment of the permits to consolidate them into a single permit and to expand the mining area to 160 acres, is **GRANTED** subject to conditions.

SUMMARY OF RECORD

Request:

Quality Rock Products, Inc./EUCON Corporation (Applicant) requested five-year review of three previously issued special use permits (numbers LTD 3-85, SUP 16-088, and SUP 93-03) for sand and gravel mining at 10201 Littlerock Road SW, Olympia, WA. In conjunction with the five-year review, the Applicant requested amendment of the three special use permits to consolidate them into a single permit and to expand the approved mining area to a total of 160 acres.

Hearing Date:

The Thurston County Hearing Examiner conducted an open record public hearing on the request on March 27, 2018. The Hearing Examiner left the record open until April 6, 2018 to allow the Applicant to respond to traffic-related concerns raised in public comment, to demonstrate compliance with past permit conditions (Exhibit 20), and to allow the County to respond to the Applicant's submittal (Exhibit 21).

Testimony:

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

Tony Kantas, Associate Planner, Thurston County
Dawn Peebles, Thurston County Environmental Health
Arthur Saint, P.E., Thurston County Public Works
Michael Kenrick, P.E., GeoEngineers (on behalf of County)
Peter Batuello, Gardner Bay Consulting, LLC (on behalf of Applicant)
Mike Parsons, Black Lake Resources
John Dorffeld
Justin DeBries
Sanoma Jefferson
Donald Bowne
Ken Nelson
Roger Kellam
Theresa Moore-Mabey
Mark Sand
Dan Penrose
Aslan Meade
Lee Riener

Attorney Heather Burgess represented the Applicant at the hearing.

Exhibits:

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

- Exhibit 1 Community Planning and Economic Development Report including the following attachments:
- A. Notice of Public Hearing
 - B. Master application
 - C. Special Use Permit application
 - D. Vicinity map
 - E. Constraints map
 - F. Site plan
 - G. Aerial illustrating eastern berm location
 - H. Project narrative, submitted February 10, 2009
 - I. Operations plan for the mine, Gardner Bay Consulting, dated November 17, 2017
 - J. Operations plan for the dry mix concrete batch plant, Gardner Bay Consulting, dated September 18, 2017

- K. Gardner Bay Consulting response to November 10, 2016 letter, dated February 21, 2017
- L. Gardner Bay Consulting response to Northwest Land & Water letters, dated February 12, 2017
- M. Impacts and mitigation summary, Gardner Bay Consulting, dated October 4, 2017
- N. Letter from Gardner Bay Consulting regarding SEPA comments received by WDFW, dated January 29, 2018
- O. Letter from Heather Burgess, dated March 3, 2017
- P. Letter from AECOM regarding Endangered Species Act review, dated August 29, 2017
- Q. Letter from AECOM regarding evaluation of Olympic mudminnow, dated January 17, 2018
- R. Aerial photo, dated 2015
- S. Panoramic pictures (3), dated March 26, 2012
- T. Thurston County Designated Mineral Resource Lands map, dated November 2003
- U. Zoning map
- V. Notice of Application (2 pages)
- W. Mitigated Determination of Non-Significance (MDNS), dated November 30, 2017
- X. Water right permit G2-30523, issued July 10, 2013
- Y. GeoEngineers review of the hydrogeologic reports, dated November 15, 2017
- Z. Letter from Washington Department of Fish and Wildlife (WDFW), dated December 14, 2017
- AA. Letter from Washington State Department of Ecology (WDOE), dated December 14, 2017
- BB. Letter from WDOE, dated August 4, 2009
- CC. Letter from WDOE, dated March 12, 2009
- DD. Letter from U.S. Fish and Wildlife Service (USFWS), dated August 4, 2009
- EE. Email from Bonneville Power Administration, dated July 27, 2009
- FF. Email from Olympic Region Clean Air Agency, dated December 4, 2017
- GG. Letter and attachments from Williams Northwest Pipeline, dated July 17, 2009
- HH. Comment letters in response to issued MDNS:
 - 1. Letter from the Law Offices of M. Patrick Williams, dated December 14, 2017

2. Email from Craig Merkel, dated December 14, 2017
 3. Letter from Roger Kellam, dated December 14, 2017
 4. Email from Ken Nelson, dated December 4, 2017
- II. Comment letters in response to the proposed Special Use Permit application and the Notice of Application:
1. Letter from Black Hills Audubon Society, dated November 27, 2017
 2. Letter from Northwest Land & Water, dated September 27, 2017
 3. Letter from Northwest Land & Water, dated May 1, 2017
 4. Letter from Northwest Land & Water, dated December 15, 2016
 5. Letter from the Law Offices of M. Patrick Williams, dated December 7, 2016
 6. Letter from Northwest Land & Water, dated December 2, 2016
 7. Letter from Sue Danver, dated April 17, 2015
 8. Letter from Keta Waters, dated April 21, 2011
 9. Email from Sue Danver, dated April 6, 2015
 10. Letter from Black Hills Audubon Society, dated April 3, 2015
 11. Letter from Mark Sand, dated March 13, 2015
 12. Letter from Black Hills Audubon Society, dated March 2, 2015
 13. Letter from the Law Offices of M. Patrick Williams, dated March 14, 2015
 14. Letter from the Law Offices of M. Patrick Williams, dated June 1, 2011
 15. Letter from Michael Patrick Williams, Esq., dated December 21, 2009
 16. Letter from Bjorgen Bauer Pitman Baur PLLC, dated November 10, 2009
 17. Letter from Black Hills Audubon Society, dated August 4, 2009
 18. Email from Mike and Cheryl Moore, dated August 2, 2009
 19. Email from John and Kris Van Gorkom, dated July 30, 2009
 20. Letter from Roger Kellam, undated
- JJ. Hearing Examiner Decision SUP 93-03, dated June 28, 1993
- KK. Hearing Examiner Decision SUP 16-088, dated January 23, 1989
- LL. Hearing Examiner Decision LTD 3-85 Amendment, dated July 7, 1986
- MM. Hearing Examiner Decision LTD 3-85, dated August 22, 1985
- NN. Hearing Examiner Decision SUPT 000788, dated May 30, 2003
- OO. Washington State Court of Appeals Decision of SUPT 000788, dated May 30, 2007
- PP. Wetland Delineation Report, dated January 22, 2009
- QQ. Environmental noise analysis, dated November 30, 2008
- RR. Transportation impact analysis, dated November 26, 2008

SS. Ground water submittal, dated October 20, 2017, with attachments:

1. Conceptual geologic and hydrogeologic model summary, dated October 9, 2017
2. Documentation of groundwater model, dated October 10, 2017
3. Impacts and mitigation summary, dated October 4, 2017
4. Groundwater monitoring program plan, dated October 6, 2017

TT. Groundwater monitoring reports, dated:

1. June 26, 2017
2. June 23, 2017
3. December 30, 2017
4. November 15, 2016
5. December 17, 2015
6. June 19, 2015
7. February 3, 2015

- Exhibit 2 Photos of posted Public Hearing Notice
- Exhibit 3 Recorded easement, Auditor File Number 3283519, dated March 14, 2000
- Exhibit 4 Environmental Health memorandum, dated March 27, 2018
- Exhibit 5 Letter from Heather Burgess, dated March 13, 2018
- Exhibit 6 Public comment letters from:
1. Donald Huston, dated March 20, 2018
 2. Connie Biermann, dated March 24, 2018
 3. Howard Glastetter, dated March 19, 2018
- Exhibit 7 Comment letter, Thurston Economic Development Council, dated March 8, 2018
- Exhibit 8 Dismissal of SEPA appeal, dated March 13, 2018
- Exhibit 9 Groundwater monitoring report for September 2017, dated January 18, 2018
- Exhibit 10 Applicant's response to Staff Report, dated March 26, 2018, with attached tabs A through D, and Attachment D has attached tabs A through M
- Exhibit 11 Applicant's PowerPoint presentation (46 slides)
- Exhibit 12 Peter Batuello Curriculum Vitae
- Exhibit 13 Michael Kenrick Curriculum Vitae
- Exhibit 14 Jennifer Pretare Curriculum Vitae
- Exhibit 15 Peter Schwartzman Curriculum Vitae
- Exhibit 16 Settlement agreement, dated March 2018
- Exhibit 17 Easement, Auditor File Number 9301290171, dated 1993
- Exhibit 18 Thurston County Chamber comment letter, dated March 27, 2018

- Exhibit 19 Adjacent property owners list for legal notice, dated November 16, 2017
- Exhibit 20 Applicant's post-hearing submittal, dated March 29, 2018
- Exhibit 21 County's response to Applicant's post-hearing submittal, dated April 10, 2018

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

FINDINGS

Procedural Background

1. The Applicant requested five-year review of three previously issued special use permits - numbers LTD 3-85, SUP 16-088, and SUP 93-03 - for sand and gravel mining. The subject property is comprised of four tax parcels.¹ The existing mining operation has two access points: one at 10201 Littlerock Road SW² and the other from an existing developed access road easement extending from 88th Avenue SW (a County road) across private property to the mine site entrance. In conjunction with the five-year review, the Applicant requested amendment of the special use permits to 1) consolidate the three mining land use decisions into a single special use permit and 2) to expand the approved mining area to a total of 160 acres. *Exhibits 1, 1.B, 1.C, 1.H, 10, and 10.A.*
2. On August 22, 1985, the Thurston County Hearing Examiner approved, with conditions, special use permit LTD 3-85 to extract gravel and install a portable crusher/classifier on a 26-acre portion of Tax Parcel Number 12718310000, which totals 151 acres in area. The approval for LTD 3-85 was amended in 1986 to include placement and operation of a "dry cement batch plant" (concrete batch plant) within this portion of the mine, known alternately as the Littlerock I Mine or Fairview Mine. However, the concrete batch plant was not built in the years following approval. *Exhibits 1 (page 3), 1.LL, 1.MM, and 11 (slides 7 and 10).*
3. On January 23, 1989, the Thurston County Hearing Examiner approved, with conditions, special use permit SUP 16-088 for mineral/gravel extraction on Tax Parcel Numbers 13713440000 and 13724110000, which total 80 acres in area and are adjacent to and southeast of the 151-acre parcel that was the subject of LTD 3-85. This area is known alternately as the Littlerock II Mine or the Hardrock Mine. *Exhibits 1 (page 3), 1.KK, and 11 (slides 7 and 16).*
4. A subsequent separate special use permit - SUP 93-03, issued on June 29, 1993 - authorized gravel washing, asphalt and concrete recycling, and vehicle maintenance on

¹ The legal description of the subject properties is: a portion of Sections 18, 19, and 24, Township 17 North Range 2 West; also known as Tax Parcel Numbers 13724140000, 13713440000, 13724110000, and 12718310000. *Exhibit 1.*

² At various times in the Staff Report and MDNS, the site address is listed as 10201 Littlerock Road and other times as 10200 Littlerock Road. *Exhibits 1 and 1.W.* Both applications list the site address as 4741 88th Avenue SW. *Exhibits 1.B and 1.C.* It is not clear what constitutes the accurate address for the southern mine entrance. The undersigned takes note that Google Maps locates the mine at the 88th Avenue SW entrance.

the parcels that were the subject of SUP 16-088. *Exhibits 1 (page 3), 1.JJ, and 11 (slides 7 and 16).*

5. The only one of the subject tax parcels that was not included in a prior special use permit approval is Tax Parcel Number 13724140000, which is approximately 40 acres in area and is located contiguous to and south of the other parcels. This area is being called Littlerock III. *Exhibits 1.H and 11 (slide 7).*
6. A previous application (SUPT 000788, approved by the Hearing Examiner on May 30, 2003) to expand the mining operation on Tax Parcel No. 12718310000 to 151 acres was ultimately denied in the Court of Appeals in May 2007 after years of litigation. *Exhibits 1.NN and 1.OO.*
7. The Thurston County Comprehensive Plan designates 160 acres in the vicinity of the subject parcels as mineral resource lands of long-term commercial significance for sand and gravel. *Exhibit 1.T; Tony Kantas Testimony.* Of note, while 80 acres within the 151-acre parcel that hosts Littlerock I/Fairview were designated as mineral lands, the specific acres so designated were not identified. The 80-acre parcel hosting Littlerock II was also designated mineral lands. *Exhibits 1, 1.H, and 1.T.* The Natural Resource Lands chapter of the Comprehensive Plan contains a goal stating that “mineral resource lands of long-term commercial significance should be allowed to be used by extraction industries, with minimal harm to the environment.” *Comprehensive Plan, pages 3-28, Goal 7.* The policies of the Comprehensive Plan include that “restoration of mineral extraction sites should occur as the site is being mined” (Policy 4), and that extraction activities “not adversely impact adjacent or nearby land uses, or public health or safety” and “not negatively affect nor endanger surface and ground water flows and quality” (Policies 7 and 10). *Comprehensive Plan, pages 3-28 - 3-29; Exhibit 10, tab G.*
8. The subject property is zoned Rural One Dwelling Unit per 20 Acres (R 1/20), which allows mineral extraction with approval of a special use permit. Parcels to the south are also zoned R 1/20. Parcels to the east are zoned R 1/20 and Rural Residential Resource One Dwelling Unit per 5 Acres (RRR 1/5). Adjacent property to the north and west is part of the Black River National Wildlife Refuge. *Exhibits 1 (pages 2 and 6), 10 (tab C), and 11 (pages 2-4, aerials).*
9. Surrounding land uses include rural single-family residential development to the east and south. Most residential properties associated with comments in the record are among the 45 residences on 88th Avenue SW between the intersection of 88th Avenue and Littlerock Road and an existing site entrance from the western terminus of 88th Avenue. There are sparse rural residences and various commercial and resource based businesses along Littlerock Road between the site entrance at 10201 Littlerock Road SW and 88th Avenue SW, including a Chevron gas station just north of 93rd Avenue SW. Interstate 5 is less than three miles to the east on 93rd Avenue SW. *Exhibits 1 and 11 (slide 4); Google Maps Site View.*

10. Ashley Creek, a tributary to the Black River, encumbers the northwest most-corner of the site. Delineated wetlands occupy a portion of the southwest segment of the site. Both features are regulated pursuant to the Thurston County critical area ordinance (see Findings 28, 29, and 30 below). The Black River flows west of the site within the national wildlife refuge. In addition, the subject parcels are encumbered by a Bonneville Power Administration (BPA) transmission line easement, a Williams natural gas pipeline easement, and an abandoned Burlington Northern Railroad right-of-way, portions of which are currently developed with public trails. *Exhibits 1 and 11 (slides 7 and 8); Tony Kantas Testimony.*
11. The instant application for combined five-year reviews of LTD 3-85, SUP 16-088, and SUP 93-03 and the proposed SUP amendment was filed by Quality Rock Products, Inc. on February 10, 2009 and determined to be complete on July 13, 2009.^{3,4} *Exhibits 1.B, 1.C, 10, and 10.D (tab E).* In 2012, EUCON Corporation purchased the mines. As of 2017, operations are conducted by Black Lake Resources Inc., a local aggregate company under contract to purchase Quality Rock Products, Inc. *Exhibit 10; Mike Parsons Testimony.*
12. Thurston County acted as lead for review of the project's environmental impacts under the State Environmental Policy Act (SEPA). After reviewing the application materials, numerous technical reports, and comments submitted in response to the notice of application, the County issued a mitigated determination of non-significance (MDNS) on November 30, 2017. Comments from the Black Hills Audubon Society (BHAS) and three individuals were submitted prior to the December 14, 2017 comment deadline, and BHAS appealed the MDNS on December 22, 2017. Desiring to avoid additional litigation, the parties negotiated a settlement of the SEPA appeal in which the Applicant agreed to withdraw the proposed development of the concrete batch plant from the current SUP proposal and to record a restrictive covenant prohibiting the installation and operation of a concrete or asphalt batch plant as an accessory use to the mining operations at the Littlerock Mine property, applicable in perpetuity. *Exhibits 1 (page 4), 1.W, 1.HH, 8, and 16.* Because the concrete batch plant is no longer part of the development proposal, it will not be further analyzed in this decision.
13. The MDNS contains 19 conditions, paraphrased below, which require the Applicant to do the following:
 - Update permits issued by other agencies with jurisdiction.

³ There was significant delay in County review of the application due to the illness of County's hydrogeologist and the need to engage an outside consultant for the review. The County also determined it would be best to consolidate the proposed amendments with the required five-year reviews. *Tony Kantas Testimony; Exhibit 10, tab A.* The mine was essentially inactive from 2012 to 2017. *Exhibit 11, slide 3.*

⁴ There was no challenge by any party to the vesting of the application to codes in effect at the time of application completeness in July 2009. The undersigned notes that this vesting date mandates compliance for the instant proposal with former critical areas ordinance TCC Chapter 17.15, which was replaced in 2012, as well as with former TCC Chapter 20.54 (special use) without 2012 amendments. *Exhibit 10.D, tab A.*

- Update spill prevention controls and countermeasures plan, to include controls to prevent release of chemicals to ground and groundwater during expanded operation.
- Adopt groundwater monitoring program plan dated October 6, 2017.
- No discharge of stormwater outside mining operation limits, and direct wash water run-off and stormwater from the wash plant and maintenance to treatment and settling ponds.
- Re-submit Phase 7 for additional review and approval by the Hearing Examiner prior to extracting resources from below water table.
- Submit summary of groundwater monitoring data prior to mining below water table.
- Transfer mine potable water supply to Water Right G230523 prior to mining below water table.
- Update the Haul Road Agreement with Thurston County to reflect southern mine entrance to Littlerock Road and require all product hauling to be from Littlerock Road.
- Perform annual maintenance of septic system.
- Monitor the sediment thickness of the pit lake and add sediment if needed to reduce significant adverse effects to Ashley Creek, the Black River wetland complex, or nearby water supplies.
- Perform restoration/reclamation immediately following completion of each mining phase.
- Infiltrate one acre foot of water right each year from mid-June to mid-August during mining below water table.
- Maintain 600-foot buffer between Phase 4 mining and wetlands.
- Maintain 100-foot buffer from Ashley Creek.
- Submit critical area signage and dust control plans for County approval.
- Comply with October 2017 Groundwater Submittal documents and November 15, 2017 GeoEngineers review.
- Comply with applicable federal regulations.

Exhibit 1.W. The Applicant did not challenge the MDNS. Tony Kantas Testimony; Peter Batuello Testimony.

14. Notice of the open record hearing was mailed to adjacent property owners, parties of record, Littlerock Fire District, and Tumwater School District on March 12, 2018, published in *The Olympian* on March 16, 2018, and posted near the west terminus of 88th Avenue SW and at the intersection of 88th Avenue and Littlerock Road SW. *Exhibits 1, 1.A, 2, and 19; Tony Kantas Testimony.*

15. EUCON Corporation took over the mine in 2012. From 2012 to 2016, the mine was apparently inactive, during which time on-site mining related activities included processing and exporting previously excavated materials and ongoing groundwater monitoring. Mineral extraction recommenced in 2017. Annual inspections by Thurston County, Department of Ecology, and Department of Natural Resources have continued to occur. *Exhibit 11, slide 3; Tony Kantas Testimony; Peter Batuello Testimony.*
16. Of Littlerock I (LTD 3-85 as amended), 24.5 acres is mined to 98%. Future activities in this part of the mine would include use as a mine support area, materials storage, and completion of reclamation. The 1.5 acres within the limits of the approved 26-acre mining area that have not yet been mined are to be relinquished. *See Exhibits 10 and 11 (slides 2 and 10-12).* Littlerock II is comprised of 80 acres including 19 acres of wetlands, six acres of wetland buffers and operational setbacks, and 55 acres of permitted mining area. To date, approximately 98,000 tons have been extracted from Littlerock II, and it contains an estimated 2.25 million cubic yards of available material to be mined. In addition to mining, this area would provide stormwater and process water management areas and reclamation after extraction is completed. The extent of previously mined areas is depicted in the record at Exhibit 11, slide 15. *Exhibits 9, 10, and 11 (slides 15-19).*

Proposal

17. The Applicant proposes to mine the remaining mineable areas of the combined parcels in seven phases. Proposed Phases 1 and 2 would be completed within approximately five years, coinciding with the next five-year review. Phases 3 and 4 are projected to be completed approximately five years after that. Phase 6, Phase 7, and site reclamation are anticipated to be completed in an additional seven years. *Exhibit 11, slide 3.* Proposed phased mining activities would occur in a clockwise pattern as follows:

- Phase 1: Southward expansion of the existing mine by 33.46 acres within Littlerock I.
- Phase 2: Mining of 23.58 acres to west of Phase 1 within Littlerock I.
- Phase 3: Mining of 20.11 acres to south of Phase 2 within Littlerock II.
- Phase 4: Mining of 13.04 acres to south of Phase 3 within Tax Parcel Number 13724140000.
- Phase 5: Mining of 32.69 acres to west of Phase 3 within Littlerock II.
- Phase 6: Mining of 9.59 acres to west of existing mine within Littlerock I.
- Phase 7: Mining of 23.9 acres into aquifer, in southwest quadrant of Littlerock I and northeast corner of Littlerock II. The lake created by Phase 7 would be 40 feet deep at final reclamation.

Exhibits 1.K⁵ and 11 (slide 24).

⁵ Based on testimony and its use in the PowerPoint presentation shown at hearing, the undersigned understood the phasing plan depicted in Exhibit 1.K (dated February 2017) to be the most current proposed phasing plan. However,

18. Based on the designation of 80 acres of the Littlerock I site as mineral lands of long-term commercial significance, the project seeks to expand the permitted mine boundary within Tax Parcel Number 12718310000 to 80 acres. The 80-acre Littlerock II site (Tax Parcel Numbers 13713440000 and 13724110000) is also designated as mineral lands by the Comprehensive Plan. However, nearly 20 acres of the site is encumbered by jurisdictional wetlands. Therefore the Applicant seeks, via the instant special use permit application, to create a total mine area of 160 acres, to match the area of mineral lands designated, out of Littlerock I, Littlerock II, and the newly proposed Littlerock III site (Tax Parcel Number 13724140000), consistent with the Comprehensive Plan. The requested SUP would also consolidate the three mines into one special use permit which would undergo future five-year reviews as a single mine. *Exhibits 1, 1.B, 1.C, 1.H, and 11; Peter Batuello Testimony; Tony Kantas Testimony.*
19. There are two slightly different site plans in the record. Exhibit 1.F is labeled as the site plan and it shows proposed phasing. The phasing plan in the record at Exhibit 11, slide 24, which was addressed as the phasing plan in the Applicant's testimony, shows approximately the same phasing; however, each plan shows different necessary information. Exhibit 1.F shows existing and proposed berming. Exhibit 11, slide 24 shows a 100-foot setback between all new mining activities and the site perimeter, and it also shows the current locations of adjacent and nearby critical areas. *Exhibits 1.F and 11 (slide 24).* Going forward, a single site plan incorporating all these details would be needed.
20. The currently proposed mining expansion differs from that of the ultimately denied SUPT 000788 in several key respects. This proposal reduces the extent of the expansion on Tax Parcel No. 12718310000 in order to provide increased critical area setbacks and to ensure that the mining area is limited to designated mineral lands of long-term significance. *Exhibit 1, page 4.* In addition, since the previously denied proposal, the Applicant has obtained a new water right for 50 acre feet through the purchase of existing appropriated rights from within the Black River drainage. This water right is drawn from an aquifer that is below and separate from the Black River surface water system. As part of the new water right acquisition process, the Applicant relinquished 20 acre feet back to the Black River basin. *Exhibit 1.X.* Further, the Applicant conducted extensive groundwater monitoring studies (Findings 31-34 below), which were accepted by the County after third-party review (Finding 35), conducted other environmental studies, and adjusted the mining plan to reduce impacts. Extensive geologic analysis was conducted to determine the locations and depth of the affected aquifers and their hydraulic connectivity with the

the graphic depicting the Phase 7 lake in the October 2017 hydrogeologic report shows a different lake outline, and Exhibit 1.I (dated November 2017) describes different projected extraction volumes on fewer acres than are shown on the phasing plan in Exhibit 1.K. These apparent discrepancies are acknowledged for the record; given the sheer number of iterations of the proposal over the many years it was under review, it is not possible to clarify these discrepancies on the record submitted. Of note, the undersigned is of the opinion that land use approval need only establish the outer perimeter of mining limits and the maximum depths of mining activity related to the water table elevation, and approval does not need to establish the which acres within the mining boundaries are to be mined in each phase nor the anticipated volumes of extracted materials in order for these findings to adequately support conclusions and decisions on the five-year reviews and SUP amendments.

surface waters. Adjustments to the previously proposed mining plan included reconfiguring, and reducing the size of, the pit lake to make it parallel to ground water flow, moving it west, and changing access to reduce impacts to confined aquifer east of the mine. The instant proposal also shifted the location of Phase 4 to provide a bigger buffer for the wildlife refuge. The project commits the Applicant to 1:1 mitigation for groundwater impacts. While it's technically challenging to measure the mine's effect on recharge for the Black River, the Applicant would be collecting data until Phase 7 and would be required to demonstrate that the pit lake won't adversely impact river recharge prior to commencement of Phase 7. *Exhibits 1.SS-1, 1.SS-3, 10, 10.E, and 11; Peter Batuello Testimony.*

The following findings will review various impacts of the historic and proposed future mining operations by subject matter.

Noise

21. Pursuant to the Washington Administrative Code (WAC) as adopted by Thurston County in TCC Chapters 10.36 and 17.20, the maximum daytime sound volume limit for "Class A" source and receiving properties, which include residentially zoned properties, is 55 decibels, and the nighttime limit is 45 decibels. For the purposes of this application, "nighttime" noise would be sounds from activities before 7:00 am, conducted in preparation for mining activities, which would be limited to vehicles and equipment being started and idling in order to begin work at 7:00 am promptly. The WAC also permits maximum noise levels 15 decibels higher than the general limit for up to 1.5 minutes in any one-hour period; the maximum daytime short duration sound volume allowed to be received by adjoining Class A receiver properties is 70 decibels. *TCC Chapter 10.36; WAS 173-60; Exhibit 1.QQ.*

22. Noise levels from the existing mining operation were most recently measured in November 2008 from four locations. The locations included:

Location 1: North property line, approximately 100 feet from site access onto 88th Avenue SW

Location 2: East property line of Littlerock I site, at its northernmost extent at southeast corner of Tax Parcel Number 12718300000

Location 3: East property line of Littlerock I site, south of Location 2 and 1,360 feet south of 88th Avenue SW

Location 4: South of the mine area, approximately 175 feet from the intersection of the south (truck) entrance and Littlerock Road SW

Exhibit 1.QQ, page 10. The sound measurement results indicated that for Locations 1, 2, and 3, the sound pressure levels complied with both the daytime and nighttime noise limits: Location 1, 51 dBA day, 43 night; Location 2, 52 day, 42 night; and Location 3, 51 day, 42 night. However, the noise levels measured at Location 4 exceeded daytime and nighttime limits, producing 66 and 52 decibels respectively, "due to traffic activities associated with heavy trucks and cars passing along Littlerock Road SW and entering

through the south entrance.” *Exhibit 1.QQ, page 13*. In addressing this exceedance, the Applicant’s noise study asserted that the Thurston County Code exempts from noise regulation the noise associated with trucks and other vehicles operating on public roads, and that no mitigation was required.⁶ However it was not clear from the study whether it could be determined that all sound volumes in excess of the maximum limits occurred on public roads, or whether trucks accelerating on the site continue to produce sound volumes in excess of limits. *Exhibit 1.QQ, pages 8 - 13*.

23. The 2008 noise study stated that estimated anticipated noise levels at the proposed new permit boundaries were based on the following assumptions: that excavation and loading vehicles would be operated at full capacity at the revised permit boundaries; that the vehicles/equipment would continue to start idling before 7:00 am; equipment assumed to be operating included two front-end loaders, one excavator, two bulldozers, one dump truck, and the existing crushing plant with two crushers operating continuously at its current location. The noise study projected average sound levels (Leq) at receiving Locations 1, 2, and 3 (nearest to the residences along 88th Avenue SW) as follows: Location 1 - 50 dBA daytime, 28 night; Location 2 - 50 day, 28 night; and Location 3 - 55 day, and 31 night. The study did not estimate sound volumes at Location 4, and did not indicate why, nor did it address additional locations at which the mine expansion would make noise monitoring appropriate. The study does not make clear why the projected daytime and nighttime sound volumes at Locations 1 and 2 would go down despite the fact that mining activities are moving closer to those receiving locations. The study asserted that anticipated noise to receiving properties was projected based on equipment being operated at the permit boundaries (within the 100-foot perimeter setback). However, two of the three source locations shown in Figure 7 on page 16 of the study are shown at a significant distance inside the proposed amended mining boundary.

⁶ The noise of vehicles operating on public roads is not included in the listed exemptions in the County noise regulations. TCC 10.36.040 - Exemptions. The following sounds are exempt from the provisions of this chapter: A) Sounds created by fire alarms; B) Sounds created by emergency equipment and emergency work necessary in the interests of law enforcement or of the health, safety or welfare of the community; C) Sounds created by off-highway vehicles while being used in officially designated off-road vehicle parks; D) Sounds created by warning devices not operated continuously for more than thirty minutes per incident; E) Sounds created by yard maintenance equipment utilized for yard maintenance purposes between the hours of seven a.m. and ten p.m.; F) Sounds created by uses or activities for which required federal, state and/or local governmental approval has been obtained; G) Sounds originating from residential property relating to temporary projects for the maintenance or repair of homes, grounds and appurtenances between the hours of seven a.m. and ten p.m.; H) Sounds originating from temporary construction sites as a result of construction activities between the hours of seven a.m. and ten p.m.; I) Sounds created by the use of a generator during power outages; J) Sounds from customary agricultural activities; K) Sounds created by the installation or repair of essential utility services; L) Sounds from the combined activities of starting, servicing, idling, revving or testing motorized vehicles unrelated to use of the vehicle for the purpose of ingress and egress as provided in subsection M of this section. This exemption from the provisions of this chapter only allows these activities for up to five minutes in any four-hour period between the hours of seven a.m. and ten p.m. If there is more than one vehicle involved, the five-minute limitation applies to all of the vehicles combined; and M) The operation of motorized vehicles for the purpose of ingress and egress to the property, including idling a vehicle to warm the engine prior to departure from property. This is limited to what is customary for a reasonably prudent resident of Thurston County. However, for purposes of warming-up a vehicle, idling is limited to ten minutes for all vehicles except commercial diesel vehicles which are limited to twenty minutes.

Also, it appears all three source locations are within proposed Phase 1. Phases 4 and 5 are located closer to Littlerock Road, with its sparse residential and commercial uses. There was no discussion addressing whether sound volumes from mining in later phases is intended to be addressed. Even though 2008 operations were shown to exceed nighttime noise limits (from vehicle engine idling before 7:00 am), there was no discussion of whether or not vehicle idling should be allowed to continue to occur before 7:00 am. *Exhibit 1.QQ.*

24. In hearing testimony and the written post-hearing submittal, Applicant representatives indicated that future operations would be conducted using more modern equipment expected to generate less noise at receiving property shared boundaries, and that the portable classifier would be located farther from the nearest residential properties. They asserted that these factors would ensure lower sound volumes at receiving properties. *Peter Batuello Testimony; Exhibit 20.*

Traffic

25. The proposed mine expansion is not expected to cause an increase in daily traffic volume beyond the number of trips approved in previous permits, because proposed peak production levels of 750,000 tons per year would not change; only the time horizon would change. On an average day (with production estimated to be 2,641 tons, or 1/284 of annual volume of 750,000 tons, with 284 representing the number of production days in a year), 232 daily trips would be generated, including 194 aggregate truck trips, 10 delivery truck trips, and 28 employee trips. Of these daily trips, 22 would occur in the AM peak hour, and 19 would occur in the PM peak hour. On a peak season day (with production estimated to be 4,327 tons, or 1/26 of a month producing 15 percent of the annual volume, with 26 representing the number of production days in a month), 358 trips would be generated, including 320 aggregate truck trips, 10 delivery truck trips, and 28 employee trips. Of these daily trips, 36 would occur during the AM peak hour and 20 would occur during the PM peak hour. *Exhibit 1.RR.*
26. Site access for truck traffic is currently from Littlerock Road SW, via an access driveway located approximately one mile south of 93rd Avenue SW. Other than the site access intersection, the intersection that would be most heavily impacted by truck traffic would be the intersection of Littlerock Road SW and 93rd Avenue SW, because 93rd Avenue SW provides a route to Interstate 5 (I-5) that is used by approximately 80% of the trucks. Based on 2008 conditions (the year the traffic analysis was conducted, in preparation for the 2009 SUP application), the Applicant's transportation engineer projected that with 2014 background traffic volumes, the affected intersections would operate at level of service (LOS) C or better during peak season operations. *Exhibit 1.RR.*
27. Employee access to the site has historically been from 88th Avenue SW, which has a 22-foot wide paved width and minimal grassy shoulders. This approach to the site passes through a residential area before reaching Littlerock Road SW. Pedestrians and cyclists use the paved travel lanes. Although gravel trucks are supposed to access the site by the southern entrance on Littlerock Road SW, credible testimony was provided that hauling trucks sometimes use the 88th Avenue SW entrance, along with other heavy vehicles

making deliveries. In addition, residents testified that they have observed employees speeding. *Exhibit 1.RR; Testimony of Justin DeBries, Sanoma Jefferson, Donald Bowne, and Ken Nelson.*

Critical Areas

28. Critical areas on the subject parcels include: a Type 3 stream (Ashley Creek, a seasonally intermittent stream), which crosses the northeast corner of the Littlerock I site; a 0.06-acre portion of a Category III wetland that is associated with Ashley Creek; and a 19.12-acre portion of a Category I wetland located in the northwest portion of the Littlerock II parcels. Ashley Creek and the associated Category III wetland each require 100-foot buffers, and the Category I wetland requires a minimum 300-foot buffer. Through the State Environmental Policy Act (SEPA) environmental review process, the County imposed a 600-foot buffer requirement for the Category I wetland for the Phase 4 expansion, and the standard 100-foot buffer requirement from Ashley Creek. *Exhibits 1.W, 1.PP, 1.SS-3, 10, and 10.B.*
29. The Category I wetland on the subject property is part of a larger wetland complex that is associated with the Black River. The Black River flows from north to south through the wetland complex to the west of the subject property. The river and off-site portion of the wetland complex are part of the Black River National Wildlife Refuge. Ashley Creek is a seasonally intermittent tributary to the Black River. Groundwater beneath the subject property flows from east to west towards the Black River. *Exhibits 1.SS-3 and 10.*
30. There are two protected species of wildlife that are known to occur near the subject property. The Olympic mudminnow, which is listed as a State Sensitive Species and is on the Priority Habitats and Species list, has been found within the Black River approximately 0.26-miles from the northwest boundary of proposed Phase 6. The mudminnow might use the wetlands adjacent to the mine. The Oregon spotted frog, which is listed as a threatened species under the federal Endangered Species Act and has designated critical habitat to the west of the subject property, has been documented as close as 1,200 feet from the site and has potential to occur in the Black River and associated wetlands. For both species, no direct effects are anticipated as there is not suitable habitat within the proposed mine area. However, indirect effects might occur due to decreased groundwater recharge to the wetlands resulting from the proposed pit lake. The biologist who evaluated the potential impacts concluded that, with the mitigation proposed, the potential indirect effects would be insignificant. *Exhibit 1.N. (including attachments)*

Groundwater Recharge

31. The proposed pit lake in Phase 7 would penetrate the water table into a relatively shallow aquifer underlying the mine. This aquifer is hydraulically connected to a laterally contiguous aquifer that is relatively local as well as to the deeper aquifer associated with the nearby Black River and associated wetlands. There is potential for the creation of the pit lake to result in changes to the following ground and surface water features: flow volumes in Ashley Creek; annual and seasonal discharge of groundwater to the Black River and connected wetlands; and groundwater availability to springs that serve as a

source for a shallow well on a nearby property owned by Mark Sand located approximately 0.35 miles east of the eastern mine boundary (the Sand property well).⁷ To study these potential impacts, Applicant consultants Gardner Bay Consulting and Pacific Groundwater Group prepared a conceptual geologic and hydrogeologic model of the subject property and surrounding area, a numerical groundwater flow model, a groundwater monitoring plan, and an impacts mitigation plan. These were submitted, in part, to address the reporting requirements of the Mineral Extraction and Asphalt Production chapter of the Thurston County Code (TCC Chapter 17.20). The final model considered the following: the uppermost aquifer, the laterally contiguous aquifer, and that associated with the Black River and its wetlands; recharge from precipitation; changes in recharge due to creation of pit lake; groundwater discharge to the wetland complex; potential mitigation by and/or needed to address the effects of the sediment “skin” that forms at the bottom of such lakes; how recharge from the lake would vary between average conditions versus drought conditions; and the transitions between the unconfined aquifer conditions at the mine site and the confined aquifer conditions upgradient of the mine. The modeling considered eight different scenarios representing permutations of different pond skin thicknesses⁸, recharge rates, and climatic conditions, among other variables. *Exhibits 1.SS-2 and 1.SS-3.*

32. Based on the results of the modeling, the following impacts are predicted:

- Six of the eight simulations predicted that the pit lake would likely result in a rise in upgradient groundwater levels, which would increase the Ashley Creek baseflow. In the event that the pit lake results in a lowering of upgradient groundwater levels (as predicted in two of eight simulations), the maximum loss of groundwater recharge to Ashley Creek was projected to be 0.001 cubic feet per second, which is a small proportion of a previously recorded low flow rate. (A rate of 0.94 cubic feet per second was recorded in August of 2002.)
- Six of the eight simulations predicted groundwater mounding upgradient of the mine, predicted to increase the baseflow to Ashley Creek and the springs feeding the Sand property well, with groundwater elevation increases of 1.1 to 3.5 inches. Two of the eight simulations showed potential reductions in Ashley Creek flows and in the springs, with groundwater elevation decreases of 1.4 to 2.6 inches.
- The pit lake would reduce groundwater recharge to the Black River and associated wetlands due to evaporative losses during the summer months that would exceed increased recharge during the winter months. The average annual reduction in recharge is expected to range from 0.023 cubic feet per

⁷ Mark Sand operates a family farm, Ashley Creek Farm (established 1963), on his property at 9221 Littlerock Road, where they grow garlic, corn, flowers, pumpkins, and squash. Ashley Creek and the springs/ponds associated with the creek are their irrigation source. *Exhibit 1.II-11.*

⁸ Fine-grained sediments naturally accumulate in pit lakebeds, resulting in a hydraulic “skin” on the lakebed which has relatively low permeability. *Exhibit 1.SS-2, page 9.* The two “skin” thicknesses considered in the model were 5.7 feet (representing the expected thickness naturally remaining after excavation), and 8.1 feet (representing a mitigated condition in which silt is added). *Exhibit 1.SS-2, pages 2 and 11.*

second in average climatic conditions to 0.027 cubic feet per second during drought conditions. Based on stream gauge data at Highway 12, approximately 11 miles downstream, the average Black River discharge is between 260 and 460 cubic feet per second. While average river flows near the subject property are much lower, even with those lower flows the reduction would not represent more than 0.44% of September seasonal low flows.

Exhibit 1.SS-2 and 1.SS-3; Peter Batuello Testimony.

33. To mitigate the impact of the loss of 0.027 cubic feet per second of recharge (approximately 6,369,862 gallons per year), the Applicant submitted that the shallow aquifer would be recharged by 3,370,000 gallons per year from water used in operations and 160,000 gallons per year through application of water for dust control during the dry season. The Applicant would also remove from service an existing shallow well, using instead an already-approved water right that allows extraction from the TQu aquifer, located at a depth of 205 feet. This would halt the previous withdrawal of approximately 1,825,000 gallons of water per year from the shallow aquifer. Septic discharges associated with use of the water right would add 638,750 gallons per year. The Applicant also proposes to intentionally discharge a portion of its water right, up to 325,900 gallons per year, into shallow trenches or low depressions during June and July, to supplement groundwater-sourced base flows during low flow periods. In total, these measures are expected to result in recharge of approximately 6,319,650 gallons per year, roughly equivalent to the amount anticipated to be lost due to creation of the pit lake in the worst case modeling simulations. *Exhibits 1.X, 1.SS-3, and 11 (slide 43).*
34. Despite these measures, should reduced baseflows in the Black River be demonstrated to be caused by the pit lake, the following mitigation measures are proposed in the following order. First, the Applicant proposed increasing skin thickness in the pit lake. Should that not suffice, the Applicant would obtain permits to provide streamflow augmentation from on-site resources. Finally, if these measures still do not counteract the negative recharge of the river complex, the Applicant would reclaim the pit lake. Note that while no negative impacts to the Sand property well are anticipated, the Applicant proposes to include the well in the groundwater monitoring program. Should the Sand well become impaired from mine activity, the Applicant would provide an additional water source, including possibly installing a new well on the Sand property. *Exhibits 1.X, 1.SS-3, and 11.*
35. On behalf of Thurston County, the third-party hydrogeology consultant GeoEngineers reviewed the Applicant's submittals to determine whether they adequately address groundwater issues previously identified by the County, whether they satisfy the reporting requirements of TCC 17.20.020, and to review County and public concerns relating to the environmental effects of mine expansion. GeoEngineers concluded that reporting requirements, County requests for clarification/additional information, and comments and concerns from the public (including the Sand comments) were adequately addressed in the Applicant's revised groundwater information. However, GeoEngineers

recommended that the Applicant complete a revised wetland survey approximately two years prior to mining below the water table to establish baseline wetland and critical habitat conditions and initiate ongoing wetland monitoring to identify and address potential impacts from the pit lake. *Exhibit 1.Y.* Based on this recommendation, the mitigated determination of non-significance that was issued for the proposal includes the following requirement:

5. The proposal for in-water mining, identified as Phase 7, shall be resubmitted to the Hearing Examiner, prior to extracting resources from below the water table through a 5-year mining review. Expansion into Phase 7 shall be authorized only if the applicant can demonstrate compliance with the conditions of the requested Special Use Permit, should it be approved, and that it has demonstrated that Phase 7 will not impact the aquifer, near-by domestic wells, Ashley Creek, the Black River, and the wetlands associated with the Black River. The Phase 7 review submittal shall include an updated wetland survey to establish a wetland boundary baseline and a wetland monitoring plan to address potential wetland impacts from Phase 7.

Exhibit 1.W. At hearing, Planning Staff confirmed that the review required prior to commencement of Phase 7 is a five-year review, not a new or amended SUP. *Tony Kantas Testimony.*

36. With specific regard to MDNS mitigation measure 5 (above), in the instant proceedings the Applicant requested clarification that the second sentence of this condition is intended to prevent significant or adverse impact to the aquifer, near-by domestic wells, Ashley Creek, the Black River, and the wetlands associated with the Black River, asserting that these words were inadvertently omitted in drafting the MDNS condition. *Exhibit 10.*
37. There are currently four groundwater monitoring wells on the subject property, which have been used to monitor the uppermost aquifer since 2012. There is also some limited data from these wells from 2002 and 2003. The results of the data available to date indicate that the groundwater elevation, gradient, flow direction, and water quality have been generally consistent over time. The water table measurements show that groundwater flows to the west-northwest, with water table elevations typically between 155 and 135 feet. The seasonal difference in elevation is typically three to four feet. The data has not shown adverse water quality impacts to the aquifer beneath the mine from previous mining activity. *Exhibits 1.SS-4, 1.TT-2 through 1.TT-7, and 9.*
38. The groundwater monitoring plan that has been implemented on the site has been modified over time. The current plan, dated October 6, 2017, incorporates feedback by GeoEngineers during its review of the project submittals. The plan is designed to “measure and document groundwater quality, monitor the effects of resource recovery operations on groundwater, and compare aquifer performance to predictions presented in other studies.” *Exhibit 1.SS-4, page 2.* In conjunction with the proposed mine expansion, the groundwater monitoring plan calls for installation of three new monitoring wells, plus a fourth to be installed downgradient of the proposed pit lake at the time that the pit lake

bottom extends below an elevation of 120 feet. Groundwater would be monitored twice a year, during the months when the water table is expected to be at its highest and at its lowest elevations (March and September/October, respectively). In addition, water levels would be monitored at an existing upgradient well on the Sand property, the pit lake, and Ashley Creek. The groundwater monitoring plan requires the Applicant to notify the County if water levels or water quality deviate significantly from expected trends and to take steps such as conducting additional monitoring, evaluating operations, and developing a response plan. Condition 3 of the November 30, 2017 MDNS requires implementation of the groundwater monitoring plan and twice-yearly reporting to the County summarizing groundwater quality and quantity conditions. The monitoring program includes real time monitoring on an hourly basis and would be in effect between the current approval and the time Phase 7 is being reviewed, years in the future. The Applicant asserted that over that time, the plan would provide adequate information with which to justify approval or denial of the Phase 7 request to mine below the groundwater table. *Exhibits 1 (page 19) and 1.SS-4; Peter Batuello Testimony; Michael Kendrick Testimony.*

39. As required by the mitigated determination of non-significance (MDNS), reclamation would occur progressively, with each mining phase reclaimed at completion. *Exhibits 1.W and 11; Peter Batuello Testimony.* Per the MDNS, the reclamation would be required to be consistent with the Washington Department of Natural Resources mine reclamation permit and applicable best management practices. The Phase 7 pit lake would be required to be restored using techniques such as adding plant and habitat diversity, irregular shoreline, slope variations, and plantings to provide shade and refuge. The Applicant has submitted a restoration planting plan. *Exhibits 1.W and 11 (slide 32); Peter Batuello Testimony.*
40. There are existing berms along the northern and eastern boundaries of the Littlerock I site, and along the western boundary of Littlerock II, providing separation between the mine site and residential development to the north and east, and between the mine site and the Black River wetland complex to the west. The eastern berm has been planted. County Planning Staff recommended as a condition of SUP approval that the eastern berm be extended southward prior to mining Phases 4 and 5 consistent with the requirements of TCC 17.20.240. The site plan attached to the County's Staff report at Attachment F depicts additional top soil berms along the outer perimeters of Phases 1, 2, 4, and 6. *Exhibits 1 (page 18), 1.F, 1.G, and 10; Tony Kantas Testimony.*
41. The berms provide a deterrent to unauthorized access to the mine. In addition, there is secured fencing at each mine entrance with signs prohibiting unauthorized access. *Exhibit 10, tab G.*
42. All lighting would be shielded and directed so as to affect only the project site and not result in glare off-site. *Exhibits 1 (page 12) and 10 (tab G).*
43. Stormwater requirements applicable to the site are governed by Sand and Gravel General Permit WAG501449, which is under the jurisdiction of the Department of Ecology. The

Department of Ecology has reviewed and approved the best management practices used at the site, which include recycling process water through a sediment-lined settlement pond, not using additives in process water, not discharging process water to stormwater conveyance systems, retaining all stormwater on-site, and not allowing stormwater to mix with process water. *Exhibits 1.AA and 10 (tab G).*

Five-Year Review Findings

44. The original permit is more than 30 years old, and all of the conditions on the existing permits date from 25 to 33 years ago. In its review of the requested five-year review approvals, the County did not identify any compliance problems with respect to the previous permit approvals for LTD 3-85, SUP 16-088, and SUP 93-03. *Tony Kantas Testimony; Exhibits 1 and 21.*
45. Addressing five-year reviews, the Applicant submitted that the conditions of the prior SUP approvals have been satisfied as follows. To facilitate review, the Applicant prepared a table addressing each condition of each of the three permits from which the following comments are excerpted:

LTD 3-85 (Littlerock I): County inspections have not reported compliance problems. The types of extraction equipment, daytime only operations, exclusive use of the south mine entrance for hauling, portable crusher/classifier, erosion control, topographical changes, and 150-foot perimeter buffer are consistent with permit conditions. The mine did execute and has operated under an approved haul route agreement, which restricted hauling access to the south site entrance. The mine has operated under a current surface mining permit from Department of Natural Resources. The Applicant asserted that no noise exceedances above Class A noise limits have been documented in Thurston County records.

SUP 16-088 (Littlerock II): County inspections have not reported compliance problems. The types of extraction equipment, daytime only operations, and exclusive use of the south mine entrance for hauling are consistent with permit conditions. No clearing has occurred outside the approved site limits except for access between the two mines. Lighting is directed and limited. The mine is registered with the Olympia Region Clean Air Agency. Stormwater is retained on-site. The mine operates under a DNR approved reclamation plan. Finished slope grades are 2:1. Excavation to date has complied with the approved site plan.

SUP 93-03: County inspections have not reported compliance problems. The conditions of the third mining SUP incorporate several of the conditions of SUP 16-088, but with expanded list of allowed machinery/structures, with which the Applicant asserts operations have maintained compliance. The permit required a noise study, of which the Applicant can find no record; however, the 2008 noise study submitted with the instant application demonstrated that noise regulations are satisfied during crushing. Operations to date have complied with the approved site plan.

Exhibits 11 and 20; Peter Batuello Testimony.

46. As noted in Finding 22, the Applicant's own 2008 study raises the question of daytime and nighttime exceedances at Location 4. While daytime exceedances could possibly be attributable to mine traffic generated only while on the public roadway, there is no explanation offered for the nighttime exceedances. *Exhibit 1.QQ.*
47. As noted in Finding 19, the proposed Phasing Plan at Exhibit 11, slide 24 shows a 100-foot setback. The record presented did not explicitly address whether this is an intentional reduction the 150-foot setback required in LTD 3-85 for future mining activities within the Littlerock I mine. *Exhibit 11, slide 24.*

Comments on the Current SUP Proposal

48. In comments on the MDNS, the Washington Department of Fish and Wildlife requested that the Applicant be required to update the wetland delineation (prepared in 2009) prior to commencing work, in addition to updating the wetland delineation prior to Phase 7 as required by the MDNS. *Exhibit 1.Z.* At this time, the County has not required an updated delineation to be provided until the review prior to Phase 7. Buffers from the critical areas would be maintained, and the project is not expected to have any impact on the wetlands until such time as work is conducted below the water table. *Peter Batuello Testimony.*
49. In comments on the MDNS, the Olympic Region Clean Air Agency commented that installation and operation of a concrete batch plant would constitute a new source of air pollution and would require review and approval of an air permit application. *Exhibit 1.FF.* After this comment was issued the Applicant withdrew the concrete batch plant from the project proposal, as noted previously.
50. The MDNS requires the Applicant to update all existing permits required by other agencies to reflect the new mine boundaries and phasing plan, including the Washington Department of Natural Resources (DNR) Mine Reclamation Permit, Olympic Region Clean Air Agency Permit, Department of Ecology Sand and Gravel General Permit (stormwater/NPDES), Spill Prevention Controls and Countermeasures Plan, and Thurston County recycling permits. *Exhibit 1.W.* The DNR inspects mining sites annually and enforces mining depths and limits. *Peter Batuello Testimony.*
51. Public comment on the application (not described in these Findings elsewhere) included requests that the mine be reclaimed in phases, and that hours of operation be strictly enforced due to noise issues with past and present operations. One person who resides at 88th Avenue SW testified that he heard equipment on the mine site at 5:45 am on the morning of the instant hearing. Others testified that they cannot enjoy their outdoor areas due to constant mine noise, including the continuous sound of back up alarms. Another resident of 88th Avenue SW testified that her mailbox has been taken out four times by mine trucks, and that the mine has replaced it each time. One commenter requested that access by 88th Avenue SW be restricted to emergency vehicles only. Concerns were also

expressed about potential impacts to drinking water wells (including on Sand property), impacts to Ashley Creek (which went dry the previous summer), dust on Littlerock Road, and the adequacy of public notice. One written comment stated, "There is no right of way to [the project] from 10201 Little Rock Road SW." *Exhibit 6.1*. Several neighbors expressed concern that the Applicant would not be held to comply with the proposed conditions, as the past operator was not. *Exhibit 6; Testimony of John Dorffeld, Justin DeBries, Theresa Moore-Mabey, Sanoma Jefferson, Mark Sand, and Lee Riener*.

52. Testimony in support of the proposal was provided by representatives of the Thurston County Chamber of Commerce and Thurston Economic Development Council. *Testimony of Dan Penrose and Aslan Meade; Exhibits 7 and 18*.
53. Mike Parsons of Black Lake Resources responded to public comment and encouraged neighbors with concerns to contact him directly. He testified that Black Lake Resources is a local company deeply invested in the community. The employees and management live here in the community. He testified that they intend to be good neighbors. *Mike Parsons Testimony*.
54. County Planning Staff responded to public comment with additional information about notice of the public hearing. If neighbors experience concerns with mine operations, they are encouraged to call either or both County code enforcement and planning, and both departments are tasked with following up on complaints about mining operations. Staff indicated that there is now a permanent hydrogeologist on staff with the County. Neighbors who encounter issues with well water impacts are encouraged to contact the County, and these concerns would be investigated. There is a speeding reporting program at the County, as well, to report speeding drivers on 88th Avenue SW whether they are mine employees or otherwise. With regard to noise complaints, neighbors should call the Thurston County Health Department, which staff would inspect the site and measure sound volumes. If investigation shows that the mine emits sounds that are over limits at receiving property lines, the County would contact the mine operator and determine whether additional mitigation should be implemented to ensure compliance with the conditions of approval and County standards. With respect to back up alarms, they are required for worker safety. All mines use equipment with back up alarms. *Tony Kantas Testimony*.⁹
55. Public Works Staff testified that the Department would not support a condition restricting site access by 88th Avenue SW to emergency vehicles only. *Arthur Saint Testimony*.
56. In response to public comment, the Thurston County consulting hydrogeologist indicated that Ashley Creek and other local surface waters did run dry this last season due to low precipitation. He confirmed that Ashley Creek is seasonally intermittent. He also confirmed that the mine's recently acquired water right taps into a deeper aquifer than the

⁹ The undersigned notes that WAC 173-60-050(4)(e) exempts back up alarms if they meet the following definition: "Sounds created by safety and protective devices where noise suppression would defeat the intent of the device or is not economically feasible."

shallow one feeding Ashley Creek, and if anything, the proposed pit lake should improve recharge to the creek over the current condition. *Michael Kendrick Testimony.*

57. At the conclusion of public testimony, the Applicant proposed additional conditions addressing neighbor concerns noted above. One proposed condition offered to submit new noise and traffic studies within 180 days of approval to establish a record for the subsequent five-year reviews; this was a proposed revision to condition 7 recommended by Staff. In response to the traffic issues raised in public comment, the Applicant agreed to erect a sign prohibiting mine access at the corner of 88th Avenue SW and Littlerock Road, to be designed and installed consistent with Thurston County and state requirements. *Exhibit 20.* The new conditions were submitted after close of the record at the Hearing Examiner's request. *Exhibit 20.* Also as requested, Planning Staff submitted comments in response to Applicant's post-hearing submittal, which indicated that Staff support the recommended additional conditions. *Exhibit 21.*
58. The Applicant offered in evidence a 1993 easement, Auditor File Number 9301290171, in which Donald Huston granted a 60-foot easement for access and utilities, pursuant to which the Applicant has legal access to Littlerock Road SW. *Exhibit 17.*
59. In support of the proposal, the Applicant contended that the project would provide economic and environmental benefits to the greater community and despite that the fact that the earlier approved mines are vested to codes that have been replaced, the proposal would be compliant with the County's mineral extraction code at TCC Chapter 17.20. With respect to economic benefits, the 12 million tons of aggregate available on-site would directly support up to 10% of projected private and public development proposals in the County, preventing import of these resources from outside the County, reducing greenhouse gas emissions from development. Ongoing mining of the site is expected to generate over seven million dollars in annual sales and to support 40 direct jobs (in the mining operations) and 15 indirect jobs (in related employment), generating a compensation impact of 3.9 million to the region. These figures were taken from a letter in support of the proposal from the Thurston Economic Development Council. *Peter Batuello Testimony; Exhibits 7, 11 (slides 33-34), and 18.*
60. With respect to environmental benefits, the Applicant contended that the project would relinquish 20 acre feet of its approved water right back to the Black River Basin, continue to perform environmental studies of the mine's impacts to the sensitive areas and groundwater, and commit to mitigate impacts for effects to groundwater shown to be related to mining activities. The 19 plus acres of wetlands within Littlerock II would be available for conservation. Some disturbed areas would be reclaimed early to mitigate for past impacts, and each of the proposed phases would be reclaimed as it is completed, rather than reclamation waiting until mining of the entire site is completed. Upon final reclamation, the subject property would be left with an evolving, reclaimed ecosystem with new beneficial habitat features and would revert to the underlying zoning. Finally, the approved water right would be available for future beneficial use. *Peter Batuello Testimony; Exhibit 11, slides 25-30.*

CONCLUSIONS

Jurisdiction:

The Hearing Examiner has jurisdiction to conduct the requested five-year review pursuant to TCC 2.06.010 and TCC 20.54.070(21)(e). The Examiner has jurisdiction to hear and decide requests for special use permits, including amendments to approved special use permits, pursuant to TCC 2.06.010 and TCC 20.54.015.

I. Criteria of Approval For Five-Year Reviews:

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.”

The five-year review requirement contained in the conditions of SUP 16-088 direct the Hearing Examiner “to determine whether the conditions of the approval have been complied with or should be amended.” *Exhibit 1.KK.*

The five-year review requirement contained in the conditions of SUP 93-03 allow the Hearing Examiner to “impose additional conditions upon the operation of the use if it is necessary to further mitigate the impact of the use” and to “terminate the use if conditions of approval have been violated or the Examiner concludes that adverse impacts of the use cannot be adequately mitigated by existing or additional conditions of approval.” *Exhibit 1.JJ.*

II. Criteria for review of Special Use Permits:

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 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.

Conclusions Based on Findings:

1. As conditioned, five-year review requirements are satisfied for the three previous mining special use permits. The record presented supports a conclusion of compliance with the conditions of the previous permits, with the possible exceptions of truck traffic accessing the site by 88th Avenue SW and noise. The record also raised the unaddressed question of the mine perimeter setback for future phases differing from that required in the earlier permits.
 - A. Credible testimony revealed that gravel trucks have still been accessing the mine via 88th Avenue SW, in violation of permit conditions for LTD 3-85 and SUP 16-088. The Applicant's proffered condition restricting mine access to the Littlerock Road site entrance is accepted; however, an additional condition will be added to provide relief for neighboring property owners from undue impacts of the mine. Because the Applicant has legal easement to use the northern site entrance and because Public Works Staff did not recommend restricting access by 88th Avenue SW to emergency vehicles only, the additional condition will not require that, but the Applicant is strongly encouraged to reduce all traffic accessing the site by 88th Avenue SW to the extent possible. *Findings 2, 6, 51, and 57.*
 - B. Given the public comment about noise impacts experienced by surrounding residential properties and the failure of the 2008 noise study to effectively show strict compliance of past operations and to explicitly address reasonable questions about future operations, a condition requiring an immediate new noise study is warranted. The Applicant's proposed noise study within 180 days of the instant approval is accepted. However, in order for the next five-year review to effectively address noise concerns, there should also be a noise study that is not older than one year at the time of the next application for five-year review, which would address mining in new areas. Also, an additional condition would restrict the time before 7:00 am that on-site equipment would be allowed to warm up/idle in preparation for a 7:00 am start time, to facilitate compliance with noise standards and the ability to provide enforceable conditions. *Findings 21, 22, 23, 24, 46, 51, 55, and 48.*
 - C. The 100-foot perimeter setback depicted at Exhibit 1.F is consistent with current mineral extraction regulations at TCC 17.20.230. Given the fact that the existing berming along the mine site nearest to the residences on 88th Avenue SW would be retained and extended, and given that the new mining areas abut forested lands, a 100-foot perimeter setback for new mined areas would be appropriate despite the

earlier permits' requirement for 150 feet. A new condition would require a single site plan to be created depicting proposed phasing, proposed berming, all critical areas and associated setbacks, and the 100-foot perimeter setback depicting the limits of the permitted mining area. This complete site plan must be created in order to support the required demonstration of future compliance and/or to facilitate future enforcement. *Findings 19, 40, and 47.*

With these new conditions, future operations of the mining use would be consistent with the requirements of the special use permit chapter. *Findings, 1, 2, 3, 4, 8, 11, 16, 18, 44, 45, 46, 47, 54, 57, and 58.*

2. With conditions of approval, the proposed amendments satisfy the special use permit criteria for approval.
 - A. The record submitted shows no grounds that would support a conclusion that the request to consolidate the three mining permits into one permit would be inconsistent with applicable regulations. Consolidation would conserve County resources in terms of review and enforcement and would provide administrative efficiencies for the Applicant, which could facilitate full implementation of the groundwater monitoring plan and all other mitigation measures, to the benefit of the neighbors and the environment.
 - B. As conditioned, the proposed expansion of the mining boundary to 160 acres in accordance with the phasing plan would comply with the Thurston County Comprehensive Plan and all applicable federal, state, regional, and Thurston County laws or plans. The expansion would be consistent with the mineral resource designation of the subject property and the goals and policies of the Comprehensive Plan. Conditions imposed by the MDNS address the Comprehensive Plan policy to restore sites as they are mined as well as the policy prohibiting negatively affecting surface and groundwater flows and quantity. The conditions restricting access from the 88th Avenue SW entrance would prevent adverse impacts to surrounding land uses. With respect to other laws and plans, as conditioned the expansion would be consistent with federal and state requirements regarding endangered species, noise, stormwater management, and spill prevention. The expansion would be consistent with the County's mineral extraction regulations at TTC Chapter 17.20. The Applicant's submittals satisfy the requirements for a hydrogeological report and groundwater monitoring plan. The Applicant's requested clarification that MDNS condition 5 is intended to prohibit *significant adverse* impact to the aquifer, nearby domestic wells, and Ashley Creek is adopted. As a SEPA condition, it would be required to be limited to probable, significant, adverse environmental impacts. These words will be inserted into the MDNS condition where it is incorporated into the SUP conditions of approval, for clarity. The conditions of approval would ensure that adequate screening is provided during the southward expansion of the mine through extension of the berming within the perimeter setback. *Findings 2, 3, 4, 5, 7, 8, 12, 13, 21, 22, 23, 24, 25, 26, 27, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 48, 49, 50, 51, 52, 56, 57, 58, 59, and 60.*

- C. The expanded mine would be consistent with the R 1/20 zoning designation, which allows mineral extraction with a special use permit. The minimum 100-foot setback required by the mineral extraction regulations would be satisfied, as conditioned. The zoning bulk dimensional development standards (structure setbacks, lot coverage, structure height, etc.) do not apply in this context. *Findings 8 and 19.*
- D. As conditioned, the use would be appropriate in the location where it is proposed. The environmental impacts of the project have been extensively reviewed over many years, and the conditions of the MDNS require additional review as the project proceeds, including continued groundwater monitoring and updated wetland delineation. With these controls in place, and considering the finding of the studies conducted to date that the project's impact on the water table would be minimal with the mitigation proposed, sufficient evidence has been presented that the use would not result in "substantial or undue" adverse effects on the natural environment. With conditions requiring signage restricting mine access from 88th Avenue SW, limiting equipment idling prior to 7:00 am, and requiring new noise studies now and prior to the next five-year review - upon which studies the County could require additional noise mitigation - there would not be substantial or undue adverse effects on adjacent properties, neighborhood character, or traffic conditions. The expanded mine would be adequately served by, and would not impose an undue burden on, improvements, facilities, utilities, or services in the area. Even with peak season traffic, affected roads are expected to maintain acceptable levels of service. Sufficient water rights for the expanded use have been obtained. *Findings 2, 3, 4, 5, 9, 10, 12, 13, 21, 22, 23, 24, 25, 26, 28, 29, 30, 31, 32, 33, 34, 35, 37, 38, 39, 51, 56, and 57.*
3. Although the current five-year reviews for the three permits have not been timely accomplished, the record reflects that the delay was attributable in large part to the consolidation of the three reviews together with the proposed SUP amendments. Because the consolidation of the three mines is approved, going forward it is expected that timely five-year reviews will be achievable. Going forward, it is intended that the conditions imposed in this decision shall replace the conditions of the previous three permits.
4. The record presented shows that notice of the hearing was provided consistent with the requirements of the County Code. *Findings 11 and 14.*

DECISION

Based on the preceding findings and conclusions, the requests for five-year review and amendment of special use permits LTD 3-85, SUP 16-088, and SUP 93-03 to consolidate the permits into a single permit (2009100282) and to expand the approved mining area to 160 acres are **GRANTED** subject to the following conditions:

1. Operation of the gravel extraction business shall comply with requirements of the Thurston County Public Health and Social Services Department, Public Works

Department, Fire Marshal, and Thurston County Community Planning and Economic Development Department.

2. The mining operation shall be conducted in full compliance with the Thurston County Mineral Extraction Code (TCC 17.20).
3. Within 30 days of the instant approval, the Applicant shall prepare and provide to the County an updated site plan incorporating (at a minimum) the following: the proposed phasing (as shown in the record at Exhibit 1.F or Exhibit 11, slide 24, whichever is accurate, if not identical); the existing on-site berms; the proposed additional berming in the record at Exhibit 1.F; a 100-foot perimeter setback for all new mining areas (consistent with Exhibit 11, slide 24); all critical areas and setbacks as required by the November 30, 2017 MDNS; both mine site entrances and the existing roads within the site that connect to the entrances; the location of the on-site domestic well; the BPA easement, the gas pipeline easement, and the railroad right-of-way; all existing structures on-site; locations of all groundwater and surface water monitoring stations; parcel boundary lines; a legend indicating scale and the cardinal directions; and any other site plan elements required by the Planning Department for a complete site plan. This shall be the site plan for the newly consolidated mine, with which the Applicant will be required to show compliance at future five-year reviews.
4. Buffer dimensions and setbacks shall be measured from existing property lines or public rights-of-way, whichever is more restrictive.
5. All activities on the site shall be in substantial compliance with the approved site plan created as a result of condition 3 above. Any expansion or alteration of this use beyond that approved by the Hearing Examiner herein will require approval of a new or amended special use permit. The Community Planning and Economic Development Department will determine if any proposed amendment is substantial enough to require Hearing Examiner approval.
6. The landscaping of the eastern berm shall be maintained so that the plantings survive to provide the required site noise, dust, and visual screening. Prior to mining the southern phases of the mine, the eastern perimeter berm shall be extended southerly in accordance with TCC 17.20.240. Additional berming shall be provided at the time of future phases meeting, at a minimum, the berming depicted on the site plan in the record at Exhibit 1.F.
7. If contamination is currently known or suspected during mining operations, 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 by contacting the Environmental Report Tracking System Coordinator at the Southwest Regional Office at 360-407-6300.
8. Ongoing water quality monitoring shall comply with the Hydrogeologic Submittal and Groundwater Monitoring Program Plan from Gardner Bay Consulting LLC, dated October 20, 2017.

9. The approved special use permit shall be reviewed by the Hearing Examiner no less frequently than every five years from the date of this decision. It is the Applicant's responsibility to initiate the five-year review process early enough that the hearing on the five-year review can be held within five years of the prior approval. Consistent with TCC 20.54.070(21)(e), at the time of each five-year review, the Examiner may impose additional conditions upon the operation if it is determined that it is necessary to do so to meet the County's mineral extractions standards and/or criteria for issuance of this special use permit.
10. Within 180 days of the date the instant permit becomes final, the Applicant shall submit updated environmental noise analysis and transportation impact analysis reports reflecting noise and traffic conditions at/near the time of the instant approval to the Thurston County Department of Planning and Economic Development for review. In addition, prior to the first five-year review following the instant approval, the Applicant shall provide a second updated noise study that accurately assesses and reports the sound volumes received at property boundaries as of that time. This second noise study shall be not more than one year old at the time of five-year review.
11. Hours of operation shall be limited to 7:00 am to 7:00 pm, Monday through Saturday. If hauling to jobs under contract with a public agency necessitates hauling outside of these permitted hours, the operator shall post reasonable notice near the site, notify the Planning Director, and notify the official County paper of record and at least one radio station covering the area of the site.
12. The operator shall be responsible for maintaining the site in a neat and orderly manner at all times.
13. Operation of the consolidated mine shall comply with the 18 conditions of the November 30, 2017 mitigated determination of non-significance (MDNS) as follows¹⁰:
 1. The Applicant shall update all existing permits required by other agencies to reflect the new mine boundaries and phasing plan. This includes, but is not limited to: WADNR Mine Reclamation Permit, Olympic Region Clean Air Agency Permit, Department of Ecology Sand and Gravel General Permit (NPDES), Spill Prevention Controls and Countermeasures Plan, and Thurston County Recycling Permits.
 2. Fuel storage, fuel dispensing, and equipment maintenance shall be allowed, including mobile fueling, provided proper spill control measures are implemented. The Applicant shall submit an updated Spill Prevention Controls and Countermeasures Plan prior to any mining approved by Special Use Permit Number 2009100282 describing how the new mine operations will implement best management practices and engineering controls to prevent the

¹⁰ In the event of conflict between the MDNS conditions and those imposed in the instant SUP decision, the more restrictive condition is intended to govern.

release of chemicals into the ground and shallow groundwater. All fueling, including mobile fueling, will be performed using secondary containment. All vehicle maintenance will be performed on a concrete pad, equipped with spill containment and run-off controls to direct spills and contaminated run-off to an oil-water separator.

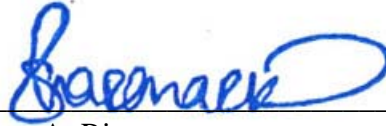
3. The Applicant shall adopt the Groundwater Monitoring Program Plan, revision 2.0, prepared by Gardner Bay Consulting LLC, dated October 6, 2017. This shall include:
 - a. Installation of new monitoring points within three months of permit approval, including surface water monitoring locations at Ashley Creek and the Sand well (installed on Tax Parcel Number 12718440100 in 2003).
 - b. Twice yearly reports to the County summarizing water quality and water quantity conditions.
4. There shall be no discharge of stormwater from the project to areas outside the mining limits. All wash water run-off and stormwater from the wash plant and maintenance shall be routed to treatment and settling ponds.
5. The proposal for in-water mining, identified as Phase 7, shall be resubmitted to the Hearing Examiner for a five-year mining review prior to extracting resources from below the water table. Expansion into Phase 7 shall be authorized only if the Applicant can demonstrate compliance with the conditions of the requested Special Use Permit, should it be approved, and also demonstrate that Phase 7 will not result in *significant, adverse* impacts to the aquifer, near-by domestic wells, Ashley Creek, the Black River, or the wetlands associated with the Black River. The Phase 7 review submittal shall include an updated wetland survey to establish a wetland boundary baseline and a wetland monitoring plan to address potential wetland impacts from Phase 7.
6. Prior to initiating mining below the water table, the operator shall submit a summary of groundwater monitoring data that demonstrate a statistical normal and standard deviation of groundwater levels and chemistry. This summary shall be a basis of comparison for groundwater impacts that may occur as a result of below water table mining, as described in "Documentation of Groundwater Model, Quality Rock Products Littlerock Mine," prepared for EUCON Corporation, revised October 10, 2017.
7. Prior to extracting resources from below the water table, the Applicant shall transfer the mine's potable water supply from the currently exempt well to Water Right G2-30523.
8. The project shall update the Haul Road agreement with Thurston County to reflect the south entrance from Littlerock Road.
9. The existing septic system shall be maintained annually, including removal of solids and inspection of drain-field performance.

10. All product hauling into or from the mine shall be via the mine entrance at 10200 Littlerock Road SW. Employees, visitors, and small package deliveries may be via 88th Avenue SW.
11. The operator will monitor the thickness of sediment that accumulates naturally in the pit lake and maintain a minimum five-foot skin thickness across areas greater than five feet below the water surface. Based on groundwater monitoring during construction, the County may require additional sediment to be added, up to fully reclaiming the pit lake, to reduce significant adverse effects to Ashley Creek, the Black River wetland complex, or nearby water supplies that are a direct result of pit lake construction.
12. The operator shall perform restoration/reclamation immediately following completion of each mining phase. The reclamation shall be consistent with the requirements set forth in the WADNR Mine Reclamation Permit and include adding fill or regrading slopes to 2h:1v or flatter and seeding open areas to control short term erosion. The reclamation of the pit lake shall be in accordance with the Washington Division of Geology and Earth Resources Open-File-Report 96-02 "Best Management Practices for Reclaiming Surface Mines in Washington and Oregon." Specifically, Phase 7 shall be reclaimed using practices for restoring areas mined below the water table and reclamation shall include additional plant and habitat diversity, irregular shorelines, slope variations, and plantings to provide shade and refuge.
13. During mining below the water table, the operator shall allow a controlled discharge of one acre foot of the water right to infiltrate to low depressions each year between the middle of June and the middle of August. The infiltration of this water is intended to offset groundwater recharge rates that are predicted to be lower as a result of the pit lake.
14. Phase 4 shall maintain a minimum 600-foot buffer from the western wetlands associated with the Black River.
15. A minimum 100-foot buffer shall be maintained from Ashley Creek.
16. Prior to any mining activity proceeding associated with the subject application, the operator must submit a critical area signage plan in accordance with TCC 24.60 and a dust control plan for County review and approval.
17. All mining activity must remain in compliance with the October 6, 2017 Groundwater Monitoring Program Plan, the October 20, 2017 Groundwater Submittal, and the November 15, 2017 GeoEngineers Review of the Revised Quality Rock Product Hydrogeologic Summary Submittal.
18. It is the responsibility of the landowner to comply with applicable federal regulations. Approval of this and other County permits may be superseded by federal law. Endangered species cannot be harmed at any time, even after permit issuance. If any are found, the Applicant must contact the U. S. Fish and Wildlife Services.

14. The operator shall comply with all vibration limits established by State regulations.
15. Mining activity noise levels shall comply with the Thurston County noise ordinance and WAC 173-60. As a means of addressing the issue of pre-7:00 am engine sounds and historic exceedances over nighttime noise limits, the practice of warming up/idling engines on-site in preparation for a 7:00 am work start shall be limited to not more than 20 minutes (starting not earlier than 6:40 am), consistent with TCC 10.36.040.M's allowance for commercial vehicles.
16. The Applicant shall stop work and contact the proper authorities, including Nisqually Tribe Preservation Officer Jackie Wall at 360-456-5221, if discoveries of archaeological artifacts or human burials are made during excavation.
17. Prior to commencing future phases of the expanded mining operation, the Applicant shall update their easement agreements with the Bonneville Power Administration and Williams Northwest Pipeline.
18. Stock piles shall not exceed 100 feet in height as measured from ground level before excavation.
19. In order to mitigate the impacts of mine traffic to the residential neighborhood on 88th Avenue SW, within 90 days of the date the instant approval becomes final, the Applicant shall submit a proposed street sign design together with any required application and fees to the Thurston County Public Works Department for a sign prohibiting mine access (i.e., "No Mine Access") to be erected at the Applicant's expense within the Thurston County right-of-way at the corner of 88th Avenue SW and Littlerock Road. The Applicant's sign design and installation shall comply with applicable codes and standards, including those in the Manual on Uniform Traffic Devices, Washington State Department of Transportation guidelines and specifications, Thurston County Code and Road Standards, RCW 47.36, and WAC 468-95. The sign shall be installed within 30 days of Thurston County approval and shall remain in place, maintained by the Applicant, for the duration of the mining operation on the property.
20. The Applicant shall immediately prohibit all hauling trucks and any other vehicles transporting mined materials or large deliveries to/from the site from using the 88th Avenue SW site entrance. All mine traffic accessing the site before 7:00 am shall use the Littlerock Road SW site entrance. In addition, the Applicant shall encourage employees, visitors, delivery drivers, and all other traffic to access the site from the Littlerock Road SW entrance at all times to the maximum extent feasible. The business address of the mine shall be updated in all advertising to reflect the correct address for the Littlerock Road SW mine entrance.
21. In order to streamline and simplify future reviews, the Applicant shall obtain and present to the County with its five year review application a single document containing the groundwater monitoring plan, monitoring results since the instant approval, and any

proposed future mitigation, such that all groundwater monitoring information is available in one document for the first five year review following the instant approval.

DECIDED April 30, 2018.



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 **\$688.00** for a Request for Reconsideration or **\$921.00** 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 ☐ \$688.00 for Reconsideration or \$921.00 for Appeal. Received (check box): Initial _____ Receipt No. _____
Filed with the Community Planning & Economic Development Department this _____ day of _____, 20____.