



COUNTY COMMISSIONERS

Cathy Wolfe
District One

Sandra Romero
District Two

Bud Blake
District Three

HEARING EXAMINER

Creating Solutions for Our Future

BEFORE THE THURSTON COUNTY HEARING EXAMINER

In the Matter of the Application of)	
)	Proj# 2015106455
Port of Tacoma, Applicant)	
)	Maytown Aggregates
)	
)	
For Five Year Review of)	DECISION ON APPLICANT'S
Special use permit SUPT 02-0612)	REQUEST FOR RECONSIDERATION
as amended on April 8, 2011)	
(No. 2010101170))	
for a 284-acre gravel mine within a 497-acre)	
Disturbed area)	

SUMMARY OF DECISION

The Applicant's request for reconsideration is **GRANTED**. This order shall be attached to and be made part of the January 15, 2016 Findings, Conclusions, and Decision.

SUMMARY OF REQUEST

After a December 22, 2015 public hearing, the Thurston County Hearing Examiner approved the above-captioned application for Five Year Review on January 15, 2016 subject to conditions.

On January 25, 2016, Applicant representatives filed a request for reconsideration, indicating that as of December 31, 2015, the Applicant had terminated its mine operation agreement with Lloyd Enterprise, Inc. and that since that date there has been no active mining on the site. The request indicated that the Port intends to actively pursue the sale of the property and market the site as a permitted mine; however, the Port may resume active mining in the future. Because of this material change in circumstances, the Applicant asserted that conditions A, B, and C, which address public concerns regarding noise and the tracking of earth and quarry materials into public rights-of-way, could be modified to delay their time frames to align with the recommencement of mining without any public detriment.

The request also asked that the following two additional findings be added to the Decision:

- 33. **Effective December 31, 2015, the Port terminated its mine operation agreement with the former operator of the site, Lloyd Enterprise, Inc.**
- 34. **The Port remains committed to maintaining the mining permit viability, to preserve the property's highest and best use for the purpose of sale.**

The original conditions in question read:

- A. Within 90 days of the instant approval, the Applicant shall prepare and submit a plan to implement the quarterly noise monitoring consistent with 2005 MDNS Condition 15, to include quarterly reporting of results to the County, for review and approval to the County Environmental Health Division. Noise monitoring shall consider all sensitive sound receiving properties adjacent to the mine perimeter. Quarterly monitoring and reporting consistent with the approved plan shall commence within 30 days of plan approval, and in no case shall fail to commence prior to June 1, 2016.
- B. Should the County receive verified reports, or should Public Works detect upon its own inspection, that mining materials, mud, or earth are being tracked onto public rights-of-way from the mine site, wheel washing shall be required to commence within 30 days.
- C. Within 60 days of the instant decision issuance, the Applicant shall develop and submit a plan to the County Public Works Department for the prevention of the escape of materials from loaded vehicles leaving the site into the public roadway. The plan shall be implemented within 15 days of Public Works approval.

Decision, page 17.

The Applicant proposed a new condition requiring 30-day notice prior to mining recommencement which would then trigger compliance with the time frames of conditions A, B, and C. The submittal also requested modification of the time frame imposed by condition B, regarding wheel washing, to allow 90 days rather than 30 days for the wheel washing to be implemented upon the County's receipt of verified reports, or the County's own inspections, showing materials being tracked into the public right-of-way from the mine site entrance.

The following specific changes to the conditions were requested (with additions in bold, removed language in strikethrough, and conditions renumbered):

- A. **The Port shall provide notice to the County of mining commencement no later than 30 days prior to the start of mining.**
- B. Within 90 days of **the recommencement of mining activity on the site and no later than 120 days after the Port's notice to Thurston County of mining activity recommencement** ~~instant approval~~, the Applicant shall prepare and submit a plan to

implement the quarterly noise monitoring consistent with 2005 MDNS Condition 15, to include quarterly reporting of results to the County, for review and approval to the County Environmental Health Division. Noise monitoring shall consider all sensitive sound receiving properties adjacent to the mine perimeter. Quarterly monitoring and reporting consistent with the approved plan shall commence within 30 days of plan approval, ~~and in no case shall fail to commence prior to June 1, 2016.~~

- C. **After mining has recommenced**, should the County receive verified reports, or should Public Works detect upon its own inspection, that mining materials, mud, or earth are being tracked onto public rights-of-way from the mine site, wheel washing shall be required to commence within ~~30~~ **90 days of the County's notice to the Port that this requirement is triggered.**
- D. Within 60 days of the **recommencement of mining activity on site and no later than 90 days after the Port's notice to Thurston County of mining activity recommencement**, ~~instant decision issuance~~, the Applicant shall develop and submit a plan to the County Public Works Department for the prevention of the escape of materials from loaded vehicles leaving the site into the public roadway. The plan shall be implemented within 15 days of Public Works approval.

Remaining original conditions D through G were proposed to be renumbered E through H.

Resource Stewardship Staff indicated agreement with the reconsideration request in its entirety.

JURISDICTION

Pursuant to Thurston County Code (TCCC) 2.06.060:

Any aggrieved person ... who disagrees with the decision of the Examiner may make a written request for reconsideration by the Examiner within ten days of the date of the written decision. The request for reconsideration shall be filed with the Development Services Department upon forms prescribed by the Department. If the Examiner chooses to reconsider, the Examiner may take such further action as he or she deems proper and may render a revised decision

Pursuant to Thurston County Hearing Examiner Rules of Procedure Rule 9.4.b:

- 1) Any party of record may file a written request with the Hearings Examiner for reconsideration within ten (10) days of the date of the Hearings Examiner's recommendation or decision. The request shall explicitly set forth alleged errors of procedure or fact. The request may also include direction to a specific issue that was inadvertently omitted from the Hearings Examiner's recommendation or decision.
- 2) Additional evidence may only be submitted upon a Request for Reconsideration if it is new evidence not available at the time of the public hearing, upon a showing of significant relevance and good cause for delay

in its submission. At the Examiner's discretion, parties of record will be given notice of the consideration of such evidence and granted an opportunity to review such evidence and file rebuttal arguments.

- 3) The Hearings Examiner shall respond to the request for reconsideration by either denying the request or approving the request by modifying or amending the recommendation / decision based on the established record or setting the matter for an additional public hearing.

Submittals

Documents considered in this reconsideration request include:

- Request for Reconsideration, filed on behalf of the Port of Tacoma by legal counsel on January 25, 2016
- Thurston County Resource Stewardship response by Mike Kain (email), January 27, 2016

DECISION AND ORDER

Based on review of the submittals, the new evidence that may not have been available at time of hearing is of significant relevance. The new evidence demonstrates that no public detriment would result from delaying further testing until mining recommences. The request for reconsideration is granted in its entirety.

Order:

1. The January 25, 2016 request for reconsideration is added to the record of the five year review permit decision.
2. Resource Stewardship Staff's January 27, 2016 response is added to the record of the five year review permit decision.
3. The requested additional findings are incorporated into the Decision by this Order.
4. The requested changes to the Decision's conditions of approval, as detailed above, are adopted. No other changes to the January 15, 2016 Decision are made. All other conditions remain in effect, and the mining use must continue to comply with all applicable conditions of all previous approvals, as spelled out in the Decision.
5. This Order shall be attached to and be made part of the January 15, 2016 Findings, Conclusion, and Decision.

Decided January 29, 2016.



Sharon A. Rice
Thurston County Hearing Examiner

THURSTON COUNTY
PROCEDURE FOR APPEAL TO BOARD
AFTER HEARING EXAMINER RECONSIDERATION

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 after reconsideration, you may file an appeal. The appeal process is described in A below. Unless appealed, decisions of the Hearing Examiner after reconsideration become final on the 11th day after the date of the reconsideration decision. **The Board of Thurston County Commissioners renders decisions within 60 days following a notice of appeal unless the Board, the applicant, and the appellant mutually agree to a longer period.

An appeal of a SEPA decision must be filed in Superior Court pursuant to the Land Use Petition Act, RCW Chapter 36.70C. An appeal of a decision relating to SEPA shall be done in accordance with RCW 43.21C.075 and TCC 17.09.160 (T).

A. APPEAL TO THE BOARD OF THURSTON COUNTY COMMISSIONERS

1. Appeals may be filed by any aggrieved person or agency directly affected by the Examiner's decision. The form is provided for this purpose on the opposite side of this notification.
2. Written notice of appeal and the appropriate fee must be filed with the Resource Stewardship Department within **ten (10) days** of the date of the Hearing Examiner's decision on a reconsideration request.
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.

B. STANDING All appeal requests must clearly state why the appellant is an "aggrieved" party and demonstrate that standing in the appeal should be granted.

C. FILING FEES AND DEADLINE If you wish to appeal this determination, please do so in writing on the back of this form accompanied by a non-refundable fee of **\$866.00**. Any appeal must be **received** in the Permit Assistance Center on the second floor of Building #1 in the Thurston County Courthouse complex no later than 4:00 p.m. per the requirements specified in A2 above. **Postmarks are not acceptable.** If your application fee as well as completed application form is not filed by this time, you will be unable to appeal this determination. This deadline may not be extended.

**** Shoreline Permit decisions are not final until a 30-day appeal period to the state has elapsed following the date the County decision becomes final.**



Project No. _____

Appeal Sequence No. _____

APPEAL OF HEARING EXAMINER DECISION AFTER RECONSIDERATION

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 _____, 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.

APPELLANT NAME PRINTED

SIGNATURE OF APPELLANT

Address _____

Phone _____

Please do not write below - for Staff Use Only:

Fee of \$866.00 Received: Initial _____ Receipt No. _____ Filed with the Resource Stewardship Department this _____ day of
_____, 20____.

Q:\Planning\Forms\Current Appeal Forms\2015.Appeal.rec.doc