

OFFICE OF THE HEARING EXAMINER

THURSTON COUNTY

REPORT AND DECISION

PROJECT NO.: 2017106861, CONCRETE BATCH PLANT

FOLDER NO.: 17 117048 ZM

TAX PARCEL NOS.: 12625130102 and 12625420000

LOCATION ADDRESS: 16424 Old Highway 99 S.E., Tenino, WA

APPLICANT: Miles Sand & Gravel Company
Attn: Patricia Larson
400 Valley Avenue N.E.
Puyallup, WA 98372

PLANNER: Robert Smith, Senior Planner

SUMMARY OF REQUEST:

Five year review of a Special Use Permit that allows construction and operation of a concrete batch plant as an accessory use to an existing gravel mine. The site is located at 16424 Old Highway 99 S.E., Tenino.

SUMMARY OF DECISION: Approval, subject to one additional condition.

DATE OF DECISION: August 30, 2018

PUBLIC HEARING:

After reviewing the Community Planning and Economic Development Department Staff Report and examining available information on file with the application, the Examiner conducted a public hearing on the request as follows:

The hearing was opened on August 28, 2018, at 10:00 a.m.

Parties wishing to testify were sworn in by the Examiner.

The following exhibits were submitted and made a part of the record as follows:

- EXHIBIT "1"** - **Community Planning and Economic Development Department Staff Report**
- Attachment A** - **Notice of Public Hearing**
- Attachment B** - **Zoning/Site Map**
- Attachment C** - **Master Application**
- Attachment D** - **Special Use Permit Application**
- Attachment E** - **Site Plan Set**
- Attachment F** - **Notice of Application**
- Attachment G** - **Complete Application Letter**
- Attachment H** - **SEPA MDNS for Original Special Use Permit Application**
- Attachment I** - **December 27, 2012 Decision**
- Attachment J** - **Construction Permit for Clearing and Grading**
- Attachment K** - **Comment Letter from Thurston County Public Health and Social Services Department**
- Attachment L** - **Comment Letter from Nisqually Indian Tribe**
- Attachment M** - **Comment Letter from Washington State Department of Ecology**
- EXHIBIT "2"** - **Photographs of Public Notice Sign**

The Minutes of the Public Hearing set forth below are not the official record and are provided for the convenience of the parties. The official record is the recording of the hearing that can be transcribed for purposes of appeal.

ROBERT SMITH appeared, presented the Community Planning and Economic Development Department Staff Report, and introduced Exhibit 2, photographs of the posting of the site. The previously approved concrete batch plant has not been constructed and therefore there are no issues with conditions of approval. The conditional use permit was issued five years ago. The batch plant is vested to regulations in effect on that date.

WILLIAM LYNN, attorney at law appeared on behalf of the applicant and testified that no issues exist regarding compliance with conditions of approval and they request no changes in conditions. Miles intends to go ahead and construct the project. They have already constructed the mitigation required in the conditional use approval that is the berm. They constructed the berm and it is in place and will reduce noise of the plant once it is constructed.

MR. SMITH reappeared and testified that he has received no complaints regarding the mines overall operation.

No one spoke further in this matter and the Hearing Examiner took the matter under advisement. The hearing was concluded at 10:15 a.m.

NOTE: A complete record of this hearing is available in the office of the Thurston County Resource Stewardship Department.

FINDINGS, CONCLUSIONS, AND DECISION:

FINDINGS:

1. The Hearing Examiner has admitted documentary evidence into the record, heard testimony, and taken this matter under advisement.
2. This five year review is exempt from review pursuant to the State Environmental Policy Act (SEPA). The mitigating measures imposed in the Mitigated Determination of Nonsignificance (MDNS) issued on July 24, 2012, for the special use permit authorizing the concrete batch plant are still in effect.
3. Written notice of the public hearing was sent to all parties of record on August 10, 2018. Notice of the public hearing was published in The Olympian on August 17, 2018, at least ten (10) days prior to the hearing. Notice was posted on site on August 17, 2018.
4. The applicant, Miles Sand and Gravel Company, operates a surface mine on a 172.66 acre parcel located at 16424 Old Highway 99 S.E., Tenino, in unincorporated Thurston County. The mine is legally nonconforming and operates pursuant to a State Department of Natural Resources Surface Mine Permit.
5. By Report and Decision dated December 27, 2012, Sharon A. Rice, Thurston County Hearing Examiner Pro Tem, approved a Special Use Permit (SUP) that allowed construction and operation of a concrete batch plant at the site. The approval was subject to compliance with 18 conditions of approval. Condition F provides in pertinent part:
 - F. The instant special use permit shall be reviewed in a public process before the Hearing Examiner no less frequently than every five years from the date of the decision....

The applicant submitted a Master Application and Supplemental Application Special Use on December 21, 2017. The application requests the following:

This application is for the required 5 year review on the previously approved concrete batch plant SUPT No. 2011101306 in accordance with the Hearing Examiners' final approval (attached).

6. The applicant received a SUP that authorized a "dry-mix" plant that includes a concrete slab on grade, equipment foundations, and several, pre-fabricated,

modular equipment components. The plant is proposed for location within an existing gravel area of the surface mine. An existing driveway serving the mine from Old Highway 99 S.E. will also serve the batch plant.

7. The applicant has not constructed the concrete batch plant as yet. However, the applicant applied for and received approval of a construction permit for clearing and grading related to construction of the gravel berms around the batch plant as required for mitigation (see Conclusion 3A of the Decision approving the SUP). Thus, while the applicant has constructed the mitigation for the plant, it has not constructed the plant itself. Therefore, no review of compliance with conditions of approval is necessary or possible at the present time.

CONCLUSIONS:

1. The Hearing Examiner has the jurisdiction to consider and decide the issues presented by this request.
2. The applicant has shown compliance with mitigating measures imposed by the 2012 MDNS for the concrete batch plant. However, the applicant has not constructed the plant, and therefore no review of conditions of approval is necessary or possible. Upon construction of the plant the applicant must comply with all conditions of approval set forth in the Examiner's Decision approving the SUP.
3. The five year review shall therefore be approved subject to the following condition:
 - A. Construction and operation of the concrete batch plant shall comply with all conditions of the December 27, 2012 Hearing Examiner decision for Special Use Permit, project 2011101306.

DECISION:

The request for the first five year review approval of a special use permit authorizing construction of a concrete batch plant at the Miles Sand and Gravel Surface Mine located at 16424 Old Highway 99 S.E., Tenino, is hereby granted subject to the condition contained in the conclusions above.

ORDERED this 30th day of August, 2018.



STEPHEN K. CAUSSEAU, JR.
Hearing Examiner

TRANSMITTED this day of August, 2018, to the following:

APPLICANT: Miles Sand & Gravel Company
 Attn: Patricia Larson
 400 Valley Avenue N.E.
 Puyallup, WA 98372

OTHERS:

THURSTON COUNTY

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____.