



COUNTY COMMISSIONERS

Carolina Mejia-Barahona
District One

Gary Edwards
District Two

Tye Menser
District Three

HEARING EXAMINER

Creating Solutions for Our Future

BEFORE THE THURSTON COUNTY HEARING EXAMINER

In the Matter of the Application of)	
)	Project # 2021106179
Daniel O'Neill, Applicant)	
)	O'Neill & Sons
)	
)	
)	
For Five Year Review of)	
Special Use Permits authorizing a)	FINDINGS, CONCLUSIONS, AND
25-acre gravel mine within an 87.69)	DECISION
acre parcel)	

SUMMARY OF DECISION

The request for approval of a five-year review to authorize ongoing surface mining pursuant to previous special use and five-year review approvals SUP 6-90, SUPT 97-1791, SUPT 000337, Project No. 2006104333, and Project No. 2014103531 within an approved 25-acre gravel mine site on 87.69 acres is **APPROVED** subject to conditions.

SUMMARY OF RECORD

Request

Daniel O'Neill of O'Neill & Sons (Applicant) seeks approval of a five-year review to authorize ongoing surface mining pursuant to previous special use and five-year review approvals SUP 6-90, SUPT 97-1791, SUPT 000337, Project No. 2006104333, and Project No. 2014103531 within an approved 25-acre gravel mine site on 87.69 acres located at 10147 Shermer Lane SE, Olympia, Washington.

Hearing Date

The Thurston County Hearing Examiner conducted a virtual open record public hearing on the five-year review request on June 28, 2022. The record was held open through June 30, 2022 to allow any members of the public who experienced access or technology barriers to joining the virtual hearing to submit written comments, with opportunity for responses by the parties. No post-hearing public comment was submitted and the record closed on June 30, 2022.

Testimony

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

Lacy Garner, Associate Planner, Thurston County
Dawn Peebles, Senior Environmental Health Specialist, Thurston County
Arthur Saint, Civil Engineer, Thurston County
Robert Connolly, PE, Senior Project Manager for Applicant
Daniel O'Neill, Applicant
Ken Stein
Joanie Stein

Exhibits

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

- Exhibit 1 Community Planning & Economic Department Staff Report to the Examiner, including the following attachments:
- A. Notice of Public Hearing, issued June 13, 2022
 - B. Master and Special Use Applications (Five-Year Review), received November 15, 2021
 - C. Special Use Application Supplemental Narrative Information
 - D. Special Use Application Compliance Memo
 - D1. Site Plan
 - E. Neighboring Parcel Access map
 - F. Notice of Application, mailed December 10, 2021
 - G. Comment Memorandum from Dawn Peebles, Environmental Health, dated May 10, 2022
 - H. Hearing Examiner Decision on SUP 6-90, dated June 11, 1991
 - I. Hearing Examiner Decision on SUPT 97-1791, dated January 28, 1998
 - J. Hearing Examiner Decision on SUPT 00337, dated August 31, 2000
 - K. Hearing Examiner Decision on Five-Year Review (Project No. 2006104333), dated November 1, 2007
 - L. Hearing Examiner Decision on Five-Year Review (Project No. 2014103531), dated April 5, 2016
 - M. Comment email from neighbor Richard App, dated December 29, 2021
 - N. Comment email from neighbor Ellen Hamlin, dated December 30, 2021
 - O. Comment email from neighbor Cindy Cook, dated December 30, 2021
 - P. Comment email from Nicole Damer, Washington Department of Natural Resources, dated November 29, 2021

- Q. Comment email from Shaun Dinubilo, Squaxin Island Tribe, dated November 30, 2021
- R. Comment letter from Brad Beach, Nisqually Indian Tribe, dated November 29, 2021
- S. Comment email from Kevin Hansen, Thurston County Hydrogeologist, dated January 12, 2022

Exhibit 2a Comment email from Joanie Stein, dated June 27, 2022

Exhibit 3 Quarterly noise monitoring report, submitted by the Applicant at the request of the Examiner on July 5, 2022

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

FINDINGS

Background

1. Daniel O'Neill of O'Neill & Sons (Applicant) requested approval of a five-year review to authorize ongoing mining at the O'Neill & Sons mine, located at 10147 Shermer Lane SE, Olympia, Washington.¹ Currently, the surface mining operation is permitted within a 25-acre footprint, including buffer, excavation, and processing areas, as well as areas that have already been mined and reclaimed to approved subsequent uses. *Exhibits 1, 1.B, 1.C, and 1.D1.*
2. The existing mine was approved through five previously issued special use permits and five-year reviews. The original application was approved in June 1991 (SUP 6-90), creating 10-acre mining operation (Exhibit 1.H). The first five-year review of the 10-acre mine, then required by condition of approval, was approved in January 1998 under SUPT 9701791 (Exhibit 1.I). In August 2000, a 15-acre expansion of the mine was approved through SUPT 000337 (Exhibit 1.J), for a total permitted area of 25 acres. A second five-year review was approved in November 2007 via Project No. 2006104333 (Exhibit 1.K), and a third was approved in April 2016 via Project No. 2014103531 (Exhibit 1.L). The instant application seeks approval of the five-year review of the 25-acre mine consistent with Thurston County Code (TCC) 20.54.070.21.e, which states:

Any permit issued pursuant to this chapter shall be reviewed by the approval authority no less frequently than every five years from the date of the decision to approve the permit. The approval authority shall determine the frequency of permit review. The director may authorize a reasonable fee for this review. At the time of such review, the approval authority may impose additional conditions upon the operation if the approval authority determines it is necessary to do so to meet the standards of this chapter, as amended.

¹ The legal description of the subject property is a portion of Sections 20 and 21, Township 17 North, Range 1 West, W.M.; known as Tax Parcel Number 11721320100 and 11720410000. *Exhibit 1.*

TCC 20.54.070.21.e; Exhibit 1. The purpose of five-year review is to determine if the mining operation is in compliance with the conditions of the special use permit(s) under which the mine operates, and to determine whether the conditions of the existing permit(s) are adequate to address the impacts of the mining operation. *Exhibit 1.*

3. The original 10-acre mine site has been mined and reclaimed, including recontouring and planting. The 15-acre expansion area approved in 2000 is currently being mined for soil and gravel (the specific areas currently mined include Segments 5, 3a, and 3b on the approved reclamation plan).² In addition, the expansion area contains a sediment pond, infiltration pond, stockpiling site, and scale office. The site is accessed from 103rd Avenue and Shermer Lane SE. *Exhibits 1, 1.C. and 1.D1.*
4. The Applicant previously submitted a special use permit application (No. 2007101506) for a 45-acre expansion of the mine, which is referenced in the most recent five-year review (No. 2014103531). The Applicant is no longer pursuing the expansion application. *Exhibit 1.D.*
5. The subject property has a Rural Residential/Resource – One Dwelling Unit per Five Acres (RRR1/5) zoning designation. It is designated Mineral Resource Lands in accordance with TCC 20.30B. Mineral extraction activities are permitted within the RRR 1/5 upon special use permit approval, provided the Washington State Department of Natural Resources approves a reclamation plan for the site. The mine’s reclamation plan was approved by DNR in 2006. *Exhibits 1 and 1.D.*
6. Surrounding properties share the site's RRR 1/5 zoning and are developed with the following land uses: vacant timber lands to the north and west; scattered single-family residential development to the south; and County Parks property, comprised of the Chehalis Western Trail, and scattered single-family residences to the east. *Exhibit 1.*

Approvals Under Review

7. Permit SUP 6-90 contained conditions requiring the following: approval of the “plan submitted”; compliance with the requirements of the health department, public works department, and fire marshal’s office; restricted permitted activities/machinery to a 240 square foot scale house/office building, front end loaders, diesel trucks, tractors, and crusher; retention of a 100-foot buffer area from “all property lines” from which no gravel, trees, or ground cover could be removed; restricting access to a new private road connecting to 103rd Avenue (with a prohibition of removal of trees between the new road and residences to the west); establishing hours of operation 7:00 am to 5:00 pm, Monday through Friday, and 9:00 am to 5:00 pm on Saturday; a 10 year total mine life (sunset clause), with hearing examiner review at five years; low intensity down-shielded lighting; conformance with regional air quality agency regulations; dust control during dry weather; restriction to one 32 square foot sign at the 103rd Avenue entrance; submission of evidence of Washington State Department of Natural Resources (DNR) approval of a

² The current, DNR-approved reclamation plan was not provided for the record, but both Staff and Applicant testified to its existence. *Testimony of Lacy Garner and Dan O’Neill; Exhibit 1.D.*

reclamation plan including tree planting prior to commencement; conveyance of stormwater runoff from active excavation areas to an on-site sedimentation pond and retention of stormwater on-site; provision of 2:1 maximum slopes in all reclaimed areas unless otherwise permitted by DNR; implementation of an erosion/sediment control plan; any future composting on-site must be covered and runoff therefrom retained on-site; compliance with noise levels in WAC 173-60-040; provision of proof of DOE approval of water rights used for wash or process water; muffling and maintenance of equipment used on-site; and compliance with the listed conditions. *Exhibits 1.H, 1.I, and 1.L.*

8. The first five-year review decision, SUPT-97-1791, imposed the same conditions as the initial permit with two changes. First, the 10-year life of mine restriction was removed. Second, five-year review was imposed as a permanent requirement for the life of the mining operation. Both SUP 6-90 and SUPT-97-1791 expressly placed the burden for achieving five-year review within five years on the Applicant. Both approvals restricted mining on-site to compliance “with the site plan as approved by the Hearing Examiner for the mineral extraction activities.” *Exhibits 1.D, 1.I, and 1.L.*
9. In 2000, SUPT 000337 approved a 15-acre expansion, for a total 25-acre mine area within the subject property. The expansion was subject to some additional conditions, including: ongoing compliance with the previous two permits’ conditions; restriction of truck volumes to a yearly average of 50 trips per week, with a maximum of 100 trips per week during peak operations; required compliance with the Thurston County mineral extraction code; Applicant provision of repairs/improvements to 103rd Avenue needed to reduce traffic noise and dust, or to improve traffic safety; no additional lighting or signage was allowed with the expansion; and crushing and washing of mined material was prohibited from taking place on the 15-acre expansion area. This approval again stated that it was the Applicant's responsibility to ensure five-year review occurred “within the five year time period.” *Exhibits 1.J and 1.L.*
10. The first five-year review of the expanded mine approved in August 2000 was completed in November 2007. The conditions of this approval required compliance with all three previous approvals. They also required the following: consultation with the Thurston County Noxious Weed Control Department to establish a noxious weed management plan within 90 days; that all development shall be in substantial compliance with the approved site plan; and that the special use permit undergo five-year review. *Exhibit 1.K.*
11. The second five-year review of the expanded mine approved in August 2000 was completed in April 2016. The conditions of this approval required compliance with all four previous approvals, as well as associated mitigation measures imposed through the State Environmental Policy Act (SEPA) environmental review process. They also required the following: coordination with County Noxious Weed Department Staff with respect to inspections and implementation of a submitted vegetation management plan; annual review of the Spill Prevention Control and Countermeasures plan each year; compliance with the conditions set forth in an April 29, 2015 memorandum from the Thurston County Environmental Health Division; compliance with RCW 46.61.655(3), requiring loads to covered if susceptible to spillage; preparation of a site survey to

determine if mining had breached the western mine boundary, and reclamation of the breach if not approved as part of a separate mine expansion application; registration with the Olympic Regional Clean Air Agency if a crusher is used within the 10-acre original mine area, and approval of an amendment to SUPT 000337 to use a crusher outside of the original mine area; compliance with the mine registration and inspection requirements of TCC 17.20; provision of documentation to support any lack of compliance with the deadlines established in the conditions of approval; compliance with the approved site plan; and five-year review of the special use permit to “determine whether the conditions of approval have been complied with or should be amended.” The condition requiring five-year review specified that the review hearing must be held on or before April 5, 2021 (i.e., five years from the decision date). *Exhibit 1.L.*

12. The instant proceedings are the five-year review required by the April 5, 2016 decision. The Application was submitted on November 15, 2021. The Applicant submitted that the COVID-19 pandemic of 2020 and 2021 affected Applicant, consultant, and County staffing levels and staff availability, resulting in delays in application preparation. County Planning Staff concurred that the pandemic played a large role in the delay, along with a staffing shortage. *Exhibits 1.B and 1.D; Testimony of Dan O’Neill and Lacy Garner.*
13. The 25-acre mining operation was previously reviewed for compliance with the State Environmental Policy Act (SEPA) during review of both the initial 10-acre special use permit (SUP 6-90) in 1991 and the 15-acre expansion area (SUPT 000337) in 2000. Five-year reviews are exempt from SEPA review. *Exhibits 1, 1.H, and 1.J.*
14. The 1991 MDNS contained three mitigation measures requiring the following: all turbid water shall be retained on-site; an erosion/sediment control plan prepared by a qualified engineer must be submitted and approved by Public Works prior to grading permit issuance; and that any future composting on-site be covered and runoff generated be retained on-site. *Exhibits 1.L and 1.D.*
15. The 2000 MDNS contained extensive mitigation measures, paraphrased as follows: horizontal expansion to the west only was approved, not mining into groundwater or to the east; provision of a 25-foot no-cut buffer of existing trees and shrubs around a Type 5 stream in the northern portion of the expansion area, including flagging of the buffer edge at 20-foot intervals and placement of a specific note on the mine map or survey document; compliance with Public Works requirements and the 1994 Drainage Design and Erosion Control Manual; compliance with noise standards in WAC 173-60, including provision of a baseline noise study at the time mining begins (in the expansion area), with additional noise studies/reporting as required by the Environmental Health Division (EHD); filing of a notice of intent (NOI) to use rock crusher on-site with the regional clean air agency prior to commencement of crushing; compliance with EHD requirements regarding on-site wastewater management systems and water supplies; receipt and posting of a forest lands conversion permit prior to timber harvest on-site; flagging and checking of any identified nest trees prior to commencement of logging in a given area; restriction of forestry activities hours of operation; and prohibition against

cutting or any disturbance to Oregon white oak trees on-site or their understories without approval of a habitat management plan. *Exhibits 1.L, 1.D, and 1.J.*

16. The purpose of the Thurston County mineral extraction code, adopted June 28, 1993 (Ordinance No. 10368) and codified as TCC Chapter 17.20, is to: increase the protection of ground and surface water from the effects of mineral extraction; to lessen conflicts between mineral extraction/asphalt plants and nearby land uses; and to continue the availability of mined materials and asphalt to the citizens and commerce of the area. *TCC 17.20.010.* The mineral extraction code establishes specific standards for mine-related activities relating to spill prevention, fuel/hazardous materials management, drainage/stormwater control, wash and process water, domestic water supplies, roads, dust control, noise, hours of operation, fencing, lighting, mine rehabilitation/conservation, vehicle preparation, site access, contact information for the public, hydrogeological study, groundwater monitoring, well separation, setbacks, stockpiles, control of vibration, landscaping/screening, parking, mine registration, and inspections. *TCC Chapter 17.20.* Pursuant to the ordinance:

No extraction shall be conducted closer than one hundred feet to the boundary of any district in which extraction is permitted or allowed by special use nor closer than one hundred feet from the property boundary at the time of application. However, the setback may be reduced by the approval authority if, due to topography, or adjoining easements or designated resource lands of long-term commercial significance, the purposes of this chapter can be met with the reduced setback. The setback area shall not be used for any other use in conjunction with extraction except access streets, berms, fencing, landscaping, and signs.

TCC 17.20.230. The instant application, and all applications for mining approvals of the existing mine after 1993 (SUPT 97-1791, SUPT 000337, SUP 2006114627, and Project No. 2014103531) were reviewed for compliance with the provisions of Chapter 17.20. According to Planning Staff, minor additional conditions are needed to ensure the mining operations remain consistent with the requirements of the ordinance. *Exhibit 1.* The recommended additional conditions are included in the staff report at Exhibit 1. At hearing, Staff requested that recommended that condition number 2 in the staff report be stricken. The remaining conditions (1) incorporate the conditions of the prior approvals, (2) require a five-year within five years of the date of the instant decision, (3) require compliance with applicable state and federal agency permit requirements, including the Olympic Region Clean Air Agency and the Washington State Department of Natural Resources; and (4) warn that any future increases in activities would be reviewed pursuant to the current requirements of the mineral extraction code. *Exhibit 1; Lacy Garner Testimony.*

17. County Environmental Health Division (EHD) Staff reviewed the requested five-year review and did not identify any compliance issues requiring additional permit conditions. EHD Staff noted that the Applicant submitted a required noise study, and that since that time, there have been no complaints that would trigger additional noise monitoring reports. Staff also noted that the facility has maintained its gravel mine registration with Environmental Health and has an appropriate hazardous material handling and spill

response plan, which is reviewed annually by the owner. *Exhibit I.G; Dawn Peebles Testimony.*

18. In response to notice of the requested five-year review, the Washington Department of Natural Resources (DNR) commented on November 29, 2021 that the project shows mining and associated reclamation work outside of the area approved in the Surface Mine Reclamation Permit area, and that a permit application was required to be submitted and approved for the expansion prior to continuing work outside of the approved boundary. *Exhibit I.P.* The Applicant testified that following this comment from DNR, a site visit was conducted with DNR representatives that confirmed that no mining breached the mine boundary, although some vegetation removal may have been conducted outside the boundary. *Dan O'Neill Testimony; Exhibit I.D.* Planning Staff testified that they have been in communication with representatives from DNR, which state agency has indicated that the Applicant would be addressing DNR's concerns directly with the state agency and no County action on the matter was requested. *Lacy Garner Testimony.* Addressing this issue, the Applicant testified that approximately six weeks prior to hearing, he conducted a site visit with a DNR representative who observed firsthand the conditions referenced in the November 2021 DNR email to County Staff. Mr. O'Neill testified that DNR Staff told him to leave the area as it is now and that it will be addressed during the permitting for the next phase of mining. To the best of his understanding, his mine is currently in compliance with DNR's permitting processes. *Dan O'Neill Testimony.*
19. The County Hydrogeologist commented, based on a January 2022 site visit, that small quantities of debris/waste were observed in fill soils that had been brought to the site, and wanted the Applicant to be aware that fill materials used for reclamation must not be contaminated and that discovery of contaminated materials (or those capable of leaching contaminants) brought onsite may trigger investigation or monitoring requirements, including notifications to the Thurston County Health Department, the State Department of Natural Resources and/or the State Department of Ecology. *Exhibit I.S.*
20. The original permit authorized the use of rock crushers on-site; however, none have ever been used. *Exhibit I.D.* Rock crusher use was only authorized within the original 10-acre mine boundary, which is fully mined and reclaimed; it is prohibited in the 15-acre expansion area. *Exhibit I.J.*
21. The Applicant submitted a memorandum outlining the mining operation's compliance with the conditions of approval of the various approval documents. Consistent with the most recent five-year review approval, the Applicant has: implemented the vegetative management plan and has met with County Noxious Weed Department staff annually; has reviewed its Spill Prevention Plan annually; submitted a required noise monitoring report per the previous EHD review comments; has complied with load coverage requirements; has confirmed through a survey that no mining breached the western mine boundary (although some shrub removal may have breached the boundary); has confirmed that no on-site rock crushing has been conducted during the past five years, and none is proposed during the next five years; has kept up with mine registration and inspections; and has abided by the approved site plan. As described previously, the

present five-year review was not submitted timely, but the Applicant provided cogent reasons beyond the Applicant's for the delay. *Exhibit 1.D; Exhibit 3.*

22. Notice of public hearing was sent to all property owners within 2,600 feet of the site and to other interested parties on June 13, 2022, published in The Olympian on June 17, 2022, and posted on County website on or about June 22, 2022. *Exhibits 1 and 1A.*
23. Issues raised in public comment on the application included: the noise and exhaust from dump trucks traveling down 103rd Avenue SE to the mine site, including from trucks that line up on 103rd Avenue SE prior to 7:00 am to wait for the gate to open; mud being tracked onto the road from truck traffic; the narrow width of 103rd Avenue SE, which makes it difficult for two trucks to pass each other without damaging the road edge; and pedestrian and cyclist safety, in that there is not a stop sign on 103rd Avenue SE at the Chehalis Western Trail crossing, which trucks must cross to enter the mine site. *Exhibits 1.M, 1.N, 1.O, and 2a; Testimony of Ken Stein and Joanie Stein.*
24. Thurston County's noise ordinance regulates the noise generated by vehicles while on site, but does not regulate noise generated by vehicles while on the public road. In this case, the County Environmental Health Division has not received noise complaints regarding on-site activities and does not consider itself to have jurisdiction over road noise. *Dawn Peebles Testimony; TCC 10.36.030.* The trucks line up in the early morning because, per the conditions of special use approval, mine operations cannot start until 7:00 a.m., and a gate prevents trucks from entering prior to that time. *Robert Connolly Testimony; Exhibit 1.J.* The conditions of approval also limit truck traffic to an average of 50 truck trips per week, or a maximum of 100 truck trips in a six-day week during peak operations. In 2010, the Applicant received approval to increase truck traffic to 80 trips per day for a three-week period, but since then traffic volumes have remained below the maximum allowed by SUPT 00337. *Exhibits 1.J and 1.C.*
25. With respect to pedestrian and cyclist safety, the Chehalis Western Trail has a stop sign for trail users. This is a typical arrangement in areas where trails intersect streets. Although there is not a stop sign on 103rd Avenue SE, the Applicant's internal policies require truck drivers to stop at the trail crossing, and the Applicant intends to enforce this policy against the truck drivers who work with him. Truck speeding is a law enforcement matter. Public Works Staff suggested that if possible, a truck staging area on site rather than in the right-of-way might result in lesser conflict between the adjacent land uses. *Testimony of Arthur Saint and Daniel O'Neill; Testimony; Exhibits 1.N and 1.O.*
26. With respect to comments about damage to 103rd Avenue SE, County Public Works Staff inspected the road after receiving complaints, but the condition described had been corrected by the time of the visit. Staff testified that the Public Works Department will inspect again if complaints are received in the future. *Arthur Saint Testimony.*
27. In response to written public comment, the Applicant testified that he would be willing to personally notify neighbors of time limited peak volume operations, similar to those complained of in the written public comment, if he had current phone numbers for them.

When asked directly if he would be willing to notify by email those who commented by email in this proceeding, he stated that yes, he would be willing to notify them by email. *Dan O'Neill Testimony.*

28. Having considered all comments and heard all testimony, Planning Staff maintained their recommendation for approval subject to conditions but requested to strike recommended condition B. *Lacy Garner Testimony; Exhibit 1.* The Applicant waived objection to the remaining recommended conditions. *Testimony of Dan O'Neill and Robert Connolly.*

CONCLUSIONS

Jurisdiction

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

Criteria of Approval For Five Year Review

Pursuant to TCC 20.54.070(21)(e), a special use permit for a mine “shall be reviewed by the approval authority no less frequently than every five years from the date of the decision to approve the permit... . At the time of such review, the approval authority may impose additional conditions upon the operation if the approval authority determines it is necessary to do so to meet the standards of this chapter, as amended.”

Conclusions Based on Findings

1. As conditioned, the record as a whole demonstrates that the mine can comply with all conditions of the previous SUPs and five-year review approvals. *Findings 1 through 28.*
2. Addressing neighbor concerns about the impacts of trucks waiting outside the mine boundaries prior to 7:00 am, the permit conditions expressly apply to and control the impacts of the mining operation within the mine boundaries. Although loading, unloading, excavation, and other operations are not allowed to commence until 7:00 am, trucks waiting within the mine (with engines on or off) may have less impact to neighboring properties. In the interest of being a good neighbor and reducing conflicts between land uses, the Applicant may wish to revisit operational policies that would allow trucks to line up and wait within the mine boundary, or to request drivers to turn off their engines while waiting outside the gate prior to 7:00 am.³ Also in the vein of being a good neighbor, the Applicant is encouraged to provide advance notice of periods of peak operations to his nearest neighbors and/or those who commented by email in the instant proceedings.

³ There was no testimony from any party about whether TCC 12.61.385 may apply to the truck traffic complained of by neighbors.

DECISION

Based on the foregoing findings and conclusions, the requested five-year review is **APPROVED** subject to the following conditions:

- A. All mining activity shall continue to be in compliance with the conditions established through SUP 6-90 (Exhibit 1.H), SUPT 97-1791 (Exhibit 1.I), SUPT 000337 (Exhibit 1.J), Project No. 2006104333 (Exhibit 1.K), and Project No. 2014103531 (Exhibit 1.L).
- B. Another five-year review shall be required within five years of the date this review approval becomes final. The Applicant is responsible to ensure that such review is performed within the five-year time period.
- C. It is the Applicant's responsibility to be in compliance with all applicable state and federal agency permit requirements, including and not limited to the Olympic Region Clean Air Agency and the Washington State Department of Natural Resources, specifically with regard to respecting mine permit boundaries.
- D. Any future increase in activities on this site will be reviewed with respect to all applicable and current requirements of the Thurston County Code Title 17.20 Mineral Extraction Ordinance.

DECIDED July 13, 2022.



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 **\$804.00 for a Request for Reconsideration or **\$1,093.00** 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 ☐ \$804.00 for Reconsideration or \$1,093.00 for Appeal. Received (check box): Initial _____ Receipt No. _____
Filed with the Community Planning & Economic Development Department this _____ day of _____ 20____.